

**HIGH STRIKE PRONENESS OF PUBLIC SECTOR UNIONS IN NIGERIA AND
TRANSFORMING THE LETHARGIC DISPUTE RESOLUTION SYSTEM**

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1.0 INTRODUCTION

Conflict is an inherent feature of the employment relations and presupposes managerially the provision of a stand by mechanism for its resolution in order to avert its negative consequences on the organization and the public at large. The most apparent aspect of industrial conflict is the strike. Strike, the temporary stoppage of work by a group of employees in order to express a grievance or enforce a demand” (Hyman 1984:17), is a calculative act by employees reflecting the view “that every dispute represents the working out of real human problems and involves real individuals ...” Hyman (1984). It is carried out within a social context that may define its nature, character and resolution.

An aspect of industrial relations with which the public often associate unions, is the strike. This is largely due to its implications for service delivery and public welfare – the cost to society. The effect of the 2012 Oil subsidy strike action on Nigeria’s economy, for instance, was estimated at a total loss of \$11 billion during the 11 day strike - at the rate of \$1 billion per day. (Daily Times January 13, 2012)

The public sector in Nigeria has been strike-prone, particularly the educational sector. In the one year period leading to 2015, several public sector trade unions embarked on strikes that were remarkable in their durations. The educational unions are the Academic Staff Union of Universities (ASUU), the Academic Staff Union of Polytechnic (ASUP), the College of Education Academic Staff Union (COEASU) and the Nigerian Medical Association (NMA). Others are the Joint health Sector Unions (JOHESU) and the Judiciary Staff Union of Nigeria (JUSUN).

The objective of the paper is, therefore, to examine the factors that may account for the long strikes in the Nigerian public sector, identify reason (s) for the failure of existing dispute resolution system and explore mechanisms for preventing or minimizing the occurrence of industrial action in the sector to ensure that the provision of public goods and services are not jeopardized.

This introductory section is followed by a brief narrative of some public sector strikes and outline of their causes. This is followed by the third section on the synopsis of the trade dispute settlement procedure in Nigeria. The fourth section deals with the causes of strikes in Nigeria followed by the section on the recipe on making the dispute settlement system more effective.

2.0 SOME PUBLIC SECTOR STRIKES

Between 2013 and 2014 not less than six public sector unions, (four of which were tertiary education unions) in Nigeria embarked on strikes which lasted several months. Below are some of the events.

2.1 Academic Staff Union of Universities (ASUU)

The Academic Staff Union of Universities (ASUU) embarked on a nationwide strike in July 1st, 2013 which lasted till December 17, 2014. The dispute bothered on implementation of a 2009 collective agreement reflecting among others, the funding of public universities by the Federal government and academic earned allowances. The Federal Government had reneged on the 2009 agreement it reached with ASUU; the union had embarked on a strike on the 5th of December, 2011 which it suspended on the 2nd of February, 2012 following a Memorandum of Understanding (MoU) signed by the parties committing the Federal Government to the implementation of the agreement. The strike under review was, therefore, to compel the government keep faith with the agreement/MoU. The President of the Nigerian Labour Congress (NLC), on December 11, 2014 brokered a negotiation between the Federal Government and ASUU which led to the suspension of the strike.

2.2 Academic Staff Union of Polytechnics (ASUP)

The Academic Staff Union of Polytechnics (ASUP) embarked on strike that lasted from October 4, 2013 to July 12, 2014. The strike was in protest of what the union described as government's nonchalant attitude towards technical and technological education, as well as under-funding of the institutions; the refusal of most state governments to implement the approved new salary scale for polytechnic teachers and the 65 years retirement age; the imposition of professors from outside the polytechnic institutions to serve as rectors and the need for the commencement of the Needs Assessment of Nigerian Polytechnics. The union was also agitating for the establishment of National Polytechnic Commission to cater for the peculiar needs of the technical education sector, especially with regard to the existing dichotomy between Higher National Diploma (HND) and Bachelor Degree holders.

2.3 Colleges of Education Academic Staff Union (COEASU)

The Colleges of Education Academic Staff Union (COEASU), embarked on strike on December 18, 2013. The union's grievances bothered among others on the non-accreditation of some of its programmes, corruption of the security architecture of the colleges through outsourcing to settle political allies at the detriment of staff and government's huge investment and non-payment of pension/death benefits to families of deceased members. The COEASU suspended its strike on July 21, 2014 to enable negotiations with the Federal Government.

2.4 Nigerian Medical Association (NMA)

The Nigerian Medical Association (NMA) commenced a nationwide strike on July 1, 2014, following alleged failure of the Federal Government to provide for its grievances. The Union documented this via a letter to the Secretary to the Government of the Federation, on June 11, 2015 titled "Facing the Challenges in the Health Sector" in which the association listed a 24 'minimum point' demand which it expected government to meet. The demand list included the funding of health care in Nigeria, expansion of Universal Health Coverage to cover all Nigerians, health infrastructural upgrade, appointment of a Surgeon-General of the Federation, improvement of workplace conditions/conditions of service.

Given the public interest implications of the impending NMA Strike, the government took immediate steps to prevent it by commencing negotiations with the striking doctors. The NMA suspended the 55 day strike effective August 25, 2014 over health concerns associated with Ebola incursion into the country.

2.5 Joint Health Sector Unions (JOHESU)

In reaction to the concessions made by the government to the striking doctors, particularly in the aspect of the appointment of Surgeon General the Nigerian Union of Allied Health Professionals (NUAHP) and Joint health Sector Unions (JOHESU) on October 16, 2015 and November 12, 2015 commenced industrial action to compel the Federal Government to implement a 2009 collective agreement with the unions which included the circularization of the approval of consultancy status for some cadres of health workers and payment of the arrears of all honorary consultants appointed by the boards of management of hospitals, which were arbitrarily stopped

on the directive of the Minister of Health since December 2010 and a presidential directive compelling the National Salaries, Incomes and Wages Commission to negotiate and approve reasonable and respectable allowances as well as emoluments for health workers in Nigeria as indicated in collectively signed agreement since 2009 and reiterated in an August 2013 agreement. The Union also demanded for the implementation of the ruling of the National Industrial Court of Nigeria (NICN) delivered on July 22, 2013.

2.6 Judiciary Staff Union of Nigeria (JUSUN)

The Judiciary Staff Union of Nigeria (JUSUN) on January 2, 2015 directed all its members to proceed on a strike due to the alleged failure of the Federal Government to implement a verdict of a Federal High court of January 13, 2014 on the autonomy of the judiciary. The strike was, therefore, called to press for the implementation of the judgment delivered by Justice Adeniyi Ademola which obliterated the piecemeal funding of the judiciary and ordered the Accountant-General of the Federation to be deducting funds standing to the credit of the judiciary from the Federation Account and be disbursing same directly to the various heads of court. In a letter suspending the strike with effect from January 26, 2015, the union stated that the suspension was due to the compliance of the Federal government with the court ruling and hence, was applicable at the federal courts - the National Judicial Institute, the National Judicial Council and the Federal Judicial Service Commission while states wishing their members to resume work should comply with the court ruling just like the Federal Government did.

3.0 SYNOPSIS OF PROCEDURES FOR SETTLEMENT OF TRADE DISPUTES IN NIGERIA

Internal Settlement

Where there is an existing agreement between workers and employers on how to settle trade dispute, the parties must first attempt to follow the procedure.

Mediation

In case they are unable to reach a settlement under the agreed procedure or if no such procedures exist, both sides are required to meet within seven days under a mediator mutually agreed upon

by the parties with a view to settling the dispute amicably. The Minister may if satisfied that the provisions on mediation have been complied with issue a notice to the parties requesting compliance.

If parties fail to reach an agreement within the stipulated time they have a duty to formally inform the Minister stating the points of disagreement and steps already taken to resolve the dispute.

Conciliation

Where settlement was not reached through mediation a conciliator is appointed under the Act to negotiate with the parties in dispute with a view to bringing about a settlement within seven days of the appointment. If this succeeds he is under obligation to send the terms of settlement signed by the parties to the minister which will be binding on the workers and employers to whom they relate. Where the conciliator is unable to resolve the dispute, he has a duty to report the fact to the Minister.

Arbitration

The Trade Dispute Act provides that the Minister may upon failure of conciliation, within 14 days of receiving the report thereof, refer the dispute to the Industrial Arbitration Panel (IAP). An Arbitration Tribunal of one or more arbitrators constituted by the Chairman of the IAP listens to the parties or their representatives on the dispute. The Arbitration Tribunal is required to make its award within 21 days. If the parties do not object to the award within 7 days, it will be confirmed by the Minister and published in the Federal Gazette and it will be binding on the workers and employers to whom it relates.

National Industrial Court

Should any of the parties file an objection to the award of the IAP within seven days the Minister shall refer the dispute to the National Industrial Court (NIC). The award of the NIC shall be final and binding on the workers and employers from the date of the award.

The act provides for appeal to the Court of Appeal from the decisions of the NIC only on questions of fundamental rights. The Act also empowers the Minister to sidestep conciliation and

refer a trade dispute directly to the NIC where the workers concerned are engaged in essential service or it is inappropriate to go to arbitration.

Provisions on Strikes And Lockouts

Trade Dispute Act prohibits strikes and lockouts where there is a trade dispute and a mediator has not been appointed or the Minister has taken steps to refer the dispute to a conciliator, the IAP or the NIC. It also stipulates that any worker who participates in a strike is not entitled to any wages or other remuneration for the period of the strike and the period shall not count for the purpose of reckoning the period of continuous employment. On the other hand, any worker locked out by the employer shall be entitled to his or her wages and other remuneration for the period of the lockout.

4.0 OVERVIEW OF STRIKE TREND IN NIGERIA

Strike data demonstrates the nature of breakdown in industrial harmony occasioned, not simply by the cessation of work by workers but also the nature of grievance and the extent of loss of productive time. In the light of the non-availability of disaggregated strike data on the public sector and recent data reflecting 2014, I use the most recent data available from the office of the National Bureau of Statistics (NBS) to reflect the strike trend up to 2008.

Table 1. presents a summary of industrial disputes between 2004 and 2008. While there were 36 industrial disputes in 2004, this increased to 189 in 2006 and 299 in 2008 representing more than eight fold increase between 2004 and 2008. A total of 127,377 workers were involved in the disputes in 2004 but this rose by more than six folds to 868,907 in 2008. Overall, 2,626,399 man-days were lost in 2004, compared to 8,974,981 in 2008 an increase of more than three folds over the period.

TABLE 1: SUMMARY OF INDUSTRIAL DISPUTES 2004-2008)

ITEMS	2004	2005	2006	2007	2008
Number of Disputes	36	149	189	250	299
Number of Disputes Resulting in Strikes	26 (72.2%)	57 (38.2%)	63 (33.3%)	79 (31.6%)	93 (31.1%)
Number of Disputes Resolved	32	110	79	212	245
Duration of Disputes (Days)	277	657	910	1, 264	1,115
Number of Workers Involved	127, 377	280, 606	208, 589	414, 543	868, 907
Total Man Days Lost	2,626,399	4,308,013	7,785,993	3,415,737	8,974,981

Source: National Bureau of Statistics, Abuja 2012

While the number of disputes that resulted in strikes in 2004 was 26 representing 72% the figure rose to 93 in 2008 representing 31%. Although this represents a decline in the proportion of disputes resulting in strikes from 72% in 2004 to 31% in 2008 the figure, nevertheless remains high. A comparable data reflecting strike trend in European countries (Table 2) provides a relatively different scenario.

TABLE 2: STRIKE DAYS PER THOUSAND EMPLOYEES IN FIVE EUROPEAN COUNTRIES (1980s AND 2003-7)

	France	Italy	Poland	Portugal	UK
1980-85		400			400
2003	201	43	1	20	19
2005	80	48	0	10	6
2006		29	3	16	28
2007		26	16		39

Source: Carley, M. (2008) 'Developments in industrial action 2003-2007', eironline, <http://www.eurofound.europa.eu/eiro/studies/tn0804039s/tn0804039s.htm> cited in <http://www.workinglives.org/research-themes/wlri-project-websites/cams/industrial-conflict-and-conciliation.cfm>

The strike trend in Nigeria contrasts with the evidence in Europe where industrial conflict in France, Italy and the UK among others is reported to be very low compared to ten or twenty years earlier. Trade union membership is said to be low with unions more likely to emphasize social dialogue than membership mobilization in pursuit of their objectives. The development of the European Social Model from the mid-1980s is also reported to have created a much stronger floor of individual and collective legal rights than existed previously with many of the larger public and private employers adopting human resource management policies that seek directly to motivate and persuade employees individually rather than collectively:

In the UK, for example, the average number of days lost per year in the late 1970s and early 1980s stood at around 7 million working days in official records, or 300 days per thousand employees. By the second half of the 1990s and early years of the twenty-first century, days lost to officially-recorded stoppages had fallen to around 0.5 million per annum or just 20 days per thousand employees and in 2005 there was a record low of just 6 days per thousand employees – although this was quite exceptional...

(<http://www.workinglives.org/research-themes/wlri-project-websites/cams/industrial-conflict-and-conciliation.cfm>)

5.0 CAUSES OF HIGH STRIKE PRONESS

5.1. Failure of the Dispute Resolution System

The industrial dispute settlement system in Nigeria has not been effective in resolving conflicts in order to prevent strikes. This is in spite of the fact that the structuring of the procedure is basically aimed at achieving this even at the risk of denying workers the right to strike. As implied in section 3.0 above, the processing of disputes begins with internal procedure and terminates at the National Industrial Court (NIC). The Trade Dispute Act as amended technically outlaws strikes with the exception of disputes of rights. The high rate of strikes outside the provision is an evidence of the failure of the system underscored by the fact that employers and employees rarely comply with the provisions of the law while the law is weakly enforced by the relevant authorities.

5.2. Lack of Confidence in the Dispute Settlement System

There is a lack of confidence in the dispute resolution mechanism among trade unions. This is basically due to the domination of the system by the Government. This perception of control of the system by government is fueled by the fact that government appoints the arbitrators and supervises the system through the Ministry of Labour and Productivity. Trade unions complain that government wields undue influence over the arbitration system thereby eroding judicial trust.

5.3 Poor Wages

Nigerian workers have always been associated with low wages – a legacy said to have been bequeathed from the colonial period (Adesina 1994) and the primacy of wage commissions in wage determination (Fashoyin 1992; Fajana 2000). According to a February 2009 press release of the Nigeria Labour Congress (NLC):

Today, Nigerians who are lucky to have jobs are finding it increasingly difficult, if not impossible, to survive on their monthly pay. The major reason for this is that the pay of the Nigerian worker is not only one of the lowest in the world; it has also not improved as it should in the face of changes in market conditions. Workers in the public sector are particularly worse off. (NLC 2009)

Another contributory factor is the fact that minimum wage in Nigeria is often not a product of collective bargaining and hence, not rationally determined. According to the NLC:

The wage reviews were largely unstructured; sometimes negotiated wages were changed by government through circulars; at other times, government effected unilateral wage increases (www.nlc.org).

5.4 Frustrations Due To Huge Social Burden

Workers in Nigeria have always borne the social burden of the unemployed and other dependents (Adesina 1994). The NLC observed:

Workers can no longer survive on what they earn; the situation is made worse by the fact that those who work also have to support family members who form part of the huge army of the unemployed (www.nlc.org).

The observation by the NLC is predicated on the fact that unemployment rate in Nigeria is above 23% while unemployment benefits, child care benefits and old age benefits are not provided by the state as are obtainable elsewhere.

5.5 Socio-economic Inequality

Nigeria has a reputation for high level of inequality. The observation of the NLC on this is noteworthy:

In Nigeria, the difference in pay between managers and workers is not only one of the highest in the world: out of every N1 paid as wages, managers collect more than 80 kobo while workers receive less than 20 kobo; the difference has been increasing over the years. At the same time, owners and managers of banks, top government officials and members of the political class have seen their pay and wealth swell astronomically while workers have had to survive on starvation wages.

According to a Leadership Editorial, recent research by The Economist of London, the salaries collected by Nigerian legislators rank the highest of those received by parliamentarians in 29 other countries which include Britain, USA, France, South Africa, Kenya, Saudi Arabia and Brazil. Incidentally, the annual salary of one of the nation's federal lawmakers is 116 times the country's gross domestic product (GDP) per person.

<http://allafrica.com/stories/201307250190.html>

According to the NLC:

In Nigeria, while workers' salaries increased by 15 percent between 2006 and 2007, those of political office holders increased by over 800 percent. The 2008 increase in the compensation of political office holders has further aggravated the disparity. On average, their compensation package has been doubled. We need to reduce this disparity for greater equity, productivity and morale (NLC 2009).

According to a British Council (2012) Report:

Nigeria is among the thirty most unequal countries in the world with respect to income distribution. The poorest half of the population holds only 10 percent of national income. ... Inequality harms social cohesion and may exacerbate conflict, especially when some social groups are perceived to be excluded from opportunities. (British Council 2012).

5.6 Poor Capacity for Social Dialogue and Respect for Collective Agreement

All the strikes in reference in section 2.0 of this paper were traceable to the lack of capacity on the part of the government to negotiate with the aggrieved workers and, or the keep faith with the spirit and letter of collective agreements. The case of ASUU and ASUP in particular were fallouts from 2009 collective agreements which the government failed to implement. The NLC observed that workers always had to fight to get government to agree to collective bargaining even when the procedure was agreed in previous negotiations NLC. Agreements reached with government were sometimes distorted at implementation or not implemented at all by government. Government also failed to abide by the timeframes set out for subsequent negotiation with workers (NLC 2009). Over time trade unions have come to believe that strike is the only weapon that compels the government to negotiate or respect collective agreements which it freely signs with trade unions. This may reflect government's low capacity for democratic engagement.

According to ASUP Chairman:

Government has failed to gain the trust of labour unions. When the Academic Staff Union Polytechnics, ASUP, went on strike, government did not speak to the union for three months. The issue remains partially resolved. Governments sign agreements with no intention of keeping them. The disputed 2009 agreement is due for re-negotiation, yet it has not been implemented.

5.7 The Ecosystem of Industrial Relations in Nigeria

The socio-economic and political environments within which Nigerian public sector employees work reflect a hostile, contradictory and compromising one. The reality of poverty vis a vis the perception of national wealth and widespread corruption as well as authoritarian tendency of the government tend to encourage trade union militancy.

5.7.1 Poverty

The National Bureau of Statistics (2010) reported that 112.519 million Nigerians live in relative poverty conditions. The information is alarming when compared with the country's estimated 163 million population. The absolute poverty measure puts the country's poverty rate at 99.284 million or 60.9 per cent; the dollar per day measure, puts it at 61.2 per cent while the subjective poverty measure puts it at 93.9 per cent. The figures implicate jobless growth – a pointer to the fact that there is a contradiction between the country's Gross Domestic Product growth rate of between 6 -7 per cent and the high poverty rate reported. This is deemed high when compared with poverty rate of 54.4 in 2004 and the rise in inequality from Gini Coefficient 0.429 in 2004 to 0.447 in 2010. Surveys conducted in 2010/11 and 2012/13, by the World Bank, however, reckoned that the poverty headcount in Nigeria (based on a US\$1.4 per day threshold) fell from 35.2% in 2010-11 to 33.1% in 2012-13, compared with 61.2% reported by NBS. Widespread poverty puts additional pressure on the working poor - the high poverty environment is associated with wage related agitations by trade union (Ige et. al.2011).

5.7.2 Corruption and Moral Dilemma

Nigeria has always ranked among the most corrupt nations in the world. The 2014 report by the Transparency International (TI), placed Nigeria 39th on the corruption ranking of 175 countries - a marginal improvement on the global Corruption Perception Index, moving four points from the previous 35th position in 2012 and 1st position in 2000 (Transparency International 2000; 2014).

The discontent arising from the combination of widespread poverty, inequality and corruption serves as a trigger for worker agitation and unofficial strikes. These also constitute a moral dilemma for the government in the enforcement of Trade Dispute Act.

5.7.3 Authoritarian Tendency

The government is often reluctant to negotiate terms and conditions of service or any labour grievance for that matter, until trade unions issue threats of strike. Government also has a penchant for disobeying court rulings and often violates collective agreements (Onyeonoru and Kester 2007). Trade unions have devised several means of dealing with the situation: suspension

of strikes rather than calling off strikes – to enable them resume the strike without fresh procedure; issuing ultimatum instead of strike notice; and negotiating a non-victimization clause (including the payment of arrears of salaries not paid during strike) as part of the terms for resumption of work.

5.8 The Effect of the Rentier Status of the Nigerian economy.

The Nigerian economy is an oil based economy. Hence, long strikes in the public sector are not necessarily felt in terms of economic loss as long as such strikes are not in the oil sector and oil revenue continues to accrue. This is unlike the private sector where days lost to strike represent direct economic loss. To the extent that global economic crisis did not affect the oil industry in Nigeria, the strike and business cycle thesis will not apply.

6.0 MAKING THE DISPUTE SETTLEMENT SYSTEM MORE EFFECTIVE

There is a consensus that the dispute resolution system in Nigeria is not effective (Essien 2014; Chidi 2014; Anyim et.al 2012). Some factors accounting for the situation have been highlighted above. To make the industrial dispute settlement system more effective, the following recommendations are made.

1. An Alternative Dispute Resolution (ADR) system should be put in place to complement the statutory work of the IAP and NIC. Anyim et. al. (2012) highlighted the benefits of such a system.
2. Wide gap exists in worker education which needs to be filled, particularly as it affects the issue of industrial dispute settlement procedure. The Ministry of Labour and Productivity needs to collaborate with other stakeholders in making this possible, for instance, through seminars and workshops with relevant stakeholders.
3. With the improvement in autonomy provided for the IAP and NIC since the 2006 amendment to the Trade Dispute Act, the two bodies should take reasonable steps to restore confidence in the dispute settlement system, particularly as I relates to the enforcement of compliance – in line with the rule of law. The amendment empowers the NIC and IAP to enforce awards (Section 23); power of committal for contempt (Section 24); salaries and allowances of the members of the NIC to be paid out of the

Consolidated Revenue Fund of the Federation (Section 31) and the elevation of the NIC to the status of a High Court – the Supreme Court for labour matters.

4. There is a need to revise the sanctions for non-compliance with the Trade Dispute Act particularly in the light of meager amounts currently provided for as fines for offenders (N200 or \$1 for individuals and N2000 or \$10 for employers). The current situation breeds impunity.
5. Political office holders and (government actors) should be orientated and sensitized towards the principles and benefits of social dialogue as well as the need to respect collective agreements. In this light, a comprehensive negotiated wage review with provisions made for adjustment for inflation is desirable to discourage sectoral agitations for wage increases and to reduce wage inequality. The ambivalent position of government as a regulator and employer is addressed in Article 7 of the ILO Labour Relations (Public Service) Convention, 1978 (No. 151) which promotes collective bargaining and other forms of social dialogue in the public services. The participation of the government in the negotiations of terms and conditions of employment in the public sector should not be considered as a form of tripartism; the government in this case only acts in its capacity as employer (ILO 2013).
6. Corruption in the wider environment has to be confronted head on. The various Anti-graft agencies need to approach the issue with more seriousness in order to generate an environment for good governance and trade union discipline. Diligent prosecution of corrupt persons has been rare.

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