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AN ASSESSMENT OF THE FUNCTIONALITY OF LABOUR ARBITRATION IN NIGERIA

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ABSTRACT

Collective bargaining is a process of negotiating between management and workers represented by their representatives for determining mutually agreed terms and conditions of work which protect the interest of both workers and the management. Collective bargaining is essentially a process in which employees act as a group in seeking to shape conditions and relationships in their employment. Collective bargaining is a process by which employers, on the one hand, and representatives of employees, on the other, attempt to arrive at agreements covering the conditions under which employees will contribute and be compensated for their services". Thus, collective bargaining can simplify be defined as an agreement collectively arrived at by the representatives of the employees and the employers. This paper reviews recent trends and developments in respect of collective bargaining. It examines the evolution of collective bargaining institutions in different regions of the world. It highlights the manner in which collective bargaining structures have adapted to competitive pressures and the increasing coordination of bargaining practices both within and across borders. In a survey of collective bargaining agendas, the authors note the increasing diversity of issues on the bargaining agenda. They highlight particularly innovative practices in respect of the application of collective agreements to non-standard workers and the role that collective bargaining played in mitigating the effects of the recent economic crisis on workers and enterprises. They argue that the support of public policy is essential to promote and sustain collective bargaining. The basic objective of collective bargaining is to arrive at an agreement between the management and the employees determining mutually beneficial terms and conditions of employment. The need for and importance of collective bargaining is felt due to the advantages it offers to an organisation. Collective bargaining develops better understanding between the employer and the employees. It provides a platform to the management and the employees to be at par on negotiation table. As such, while the management gains a better and deep insight into the problems and the aspirations of die employees, on the one hand, die employees do also become better informed about the organisational problems and limitations, on the other. This, in turn, develops better understanding between the two parties.

Keywords: Labour, Arbitration, Nigeria.

1. INTRODUCTION

Conflict exists when two or more persons wish to carry out acts, which are mutually inconsistent but not inevitable. As Nnoli observed,[2] it may be correctly argued that conflict is inherent in social life. This is because social phenomenon is subject to continuous change. They are always in motion, adding or subtracting new or old elements and taking on new forms of existence as they

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[2] Nnoli Okwudiba "A General Survey of Conflicts in the South East Zone of Nigeria" in *Africa Peace Review* op. cit. pp. 72-73.

resolve the numerous contradictions in their path to better life. At times, this motion or change is slow, almost imperceptible; at other times, it is fast and the outcome of the process is glaring within a short period. Accordingly, society on its part is a system of conflict prevention and resolution mechanisms, which keep these conflicts within check, maximizing their constructive elements and minimizing their destructive aspects. Conflict is just as likely to be adaptive and constructive as it is maladaptive and destructive. The concern of society is better to understand and diminish those forms of conflicts that dehumanize, destroy and degrade its members materially and spiritually.

Nnoli asserted that for that purpose society constructs an elaborate system whose objective is to prevent destructive conflicts from coming to the fore and getting them resolved once they come. The essence is to prevent conflict from transcending the threshold of hostility into violence. The society ensures that individuals internalize the culture of cooperation, peace and non-violence in their relations through the process of socialization of its members. By various forms of sanctions, aggressive and violent behaviours are discouraged and suppressed.[3]

The most powerful side prevailing over the other by way of conquest, defeat and submission may terminate conflict. This has been the most significant form of settlement in history. There is impressionistic and quantitative evidence that this is presently changing and that resolution short of outright victory is becoming more prevalent. Settlement of the latter type means willingness by parties to agree to terms.[4]

According to Gurr, conflict may be peaceful or violent. Violent conflict is the open, forceful interaction of contending individuals, groups and nations.[5] Violent conflict arises where two or more parties are involved in overt contentious acts in which they engage mutually opposing actions and coercive behaviour designed to destroy, injure, or control their opponent. Violence is an effect of conflicts that are suppressed, ignored, or not articulated. As Richardson stated, it is the end of a conflict spiral of mutual, self-affirming suspicion of hostility and aggressive intentions, which are soon divorced from the original contradiction.[6]

Conflict could involve anomic outbreaks of riots, strikes, inter-tribal conflicts, political clashes and anti-government demonstrations and mutiny, which constitute a breakdown of law and order.

As Imobighe asserted, all human societies experience crisis and indeed conflict at one time or another, in the process of their regular interactions. According to him, conflict can occur within a group or between groups, within a state or between states, within an organisation or between organisations, within a family or between families, as well as in inter-personal relationships.[7] Conflict is a struggle for power, which ceases only when those involved in it are dead.

Conflict and communication

An interpersonal approach to conflict management focuses on the communicative exchanges that make up the conflict episode. Intrapersonal conflict – internal strain that creates a state of ambivalence, conflicting internal dialogue or lack of resolution in one's thinking and feeling – accompanies interpersonal conflict. One may endure intrapersonal conflict for a while before such a struggle is expressed. Communication is the

[3] Ibid. p. 73.
[4] G. Evan and Newman J. *The Dictionary of World Politics*, (New York: Harvester Wheatsheaf 1992) p. 53.
[5] T. Gurr *Handbook of Political Conflict*, (New York: Free Press 1980) p. 31.
[6] L. F. Richardson *Arms and Insecurity* (London: Stevens and Sons 1961) P. 16.
[7] Thomas A. Imobighe "Conflict in Africa: Roles of OAU and Sub-Regional Organisations", Lecture delivered at the National War College of Nigeria Abuja on 19th February 1998.

central element in interpersonal conflict. Communication and conflict are related in the following ways:

- Communication *creates* conflict.
- Communication *reflects* conflict.
- Communication is the *vehicle* for the destructive or productive management of conflict.

If two work associates are vying for the same position, they can handle the competition in a variety of ways. They may engage in repetitive, damaging rounds with one another, or they may successfully manage the conflict. Communication can be used to exacerbate the conflict or lead to its productive management.[8]
Cooperation and competition
Conflict parties engage in an expressed struggle and interfere with one another because they are *interdependent*. A person who is not dependent upon another – that is, who has no special interest in what the other does – has no conflict with that other person. Each person's choices affect the other because conflict is a mutual activity. People are seldom totally opposed to each other. Even two people who are having an "intellectual conflict" over whether a community should limit its growth are to some extent cooperating with each other.

Parties in strategic conflict, therefore, are never totally antagonistic and must have mutual interests, even if the interest is only in keeping the conflict going. Without openly saying so, they often are thinking, "How can we have this conflict in a way that increases the benefit to me?" These decisions are complex, with parties reacting not in a linear, cause-effect manner but with a series of interdependent decisions. As in the natural environment, in which a decision to eliminate coyotes because they are a menace to sheep affects the overall balance of animals and plants, no one party in a conflict can make a decision that is totally separate – each decision affects the other conflict participants. In all conflicts, therefore, interdependence carries elements of cooperation and elements of competition.[9]

2. COLLECTIVE BARGAINING

Collective bargaining is a process of negotiations between employers and a group of employees aimed at reaching agreements to regulate working conditions. The interests of the employees are commonly presented by representatives of a trade union to which the employees belong. The collective agreements reached by these negotiations usually set out wage scales, working hours, training, health and safety, overtime, grievance mechanisms, and rights to participate in workplace or company affairs.[10] The union may negotiate with a single employer (who is typically representing a company's shareholders) or may negotiate with a group of businesses, depending on the country, to reach an industry wide agreement. A collective agreement functions as a labor contract between an employer and one or more unions.

Collective bargaining consists of the process of negotiation between representatives of a union and employers (generally represented by management, in some countries such as Austria, Sweden and the Netherlands by an employers' organization) in respect of the terms and conditions of employment of employees, such as wages, hours of work, working conditions, grievance-procedures, and about the rights and responsibilities of trade unions. The parties often refer to the result of the negotiation as a *collective bargaining*

[8] Amason, A. C. (1996). "Distinguishing the effects of functional and dysfunctional conflict on strategic decision making: Resolving a paradox for top management teams", *Academy of Management Journal*, 39, 123-1

[9] Baron, R. A. (1997). "Positive effects of conflict: Insights from social cognition", In C. K. W. DeDreu & E. Van de Vliert (Eds.), *Using conflict in organizations* (pp. 177–191). London: Sage.

[10] Herman, Jerry J. "With Collaborative Bargaining, You Work with the Union--Not Against It." *The American School Board Journal* 172 (1985): 41-42, 47

agreement (CBA) or as a *collective employment agreement* (CEA).
Collective bargaining has been recognized internationally as a basic human right. In 2007 the Canadian Supreme Court ruled that:

> The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work. ... Collective bargaining is not simply an instrument for pursuing external ends ... rather [it] is intrinsically valuable as an experience in self-government"[11]

The right to collectively bargain is recognized through international human rights conventions. Article 23 of the Universal Declaration of Human Rights identifies the ability to organize trade unions as a fundamental human right.[12]

Item 2(a) of the International Labour Organization's *Declaration on Fundamental Principles and Rights at Work* defines the "freedom of association and the effective recognition of the right to collective bargaining" as an essential right of workers.[13] The Freedom of Association and Protection of the Right to Organize Convention, 1948 (C087) and several other conventions specifically protect collective bargaining through the creation of international labour standards that discourages countries from violating worker's rights to associate and collectively bargain.[14]

In June 2007 the Supreme Court of Canada extensively reviewed the rationale for regarding collective bargaining as a human right. In the case of *Facilities Subsector Bargaining Association v. British Columbia*,[15] the Court made the following observations:

> The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work... Collective bargaining is not simply an instrument for pursuing external ends…rather [it] is intrinsically valuable as an experience in self-government... Collective bargaining permits workers to achieve a form of workplace democracy and to ensure the rule of law in the workplace. Workers gain a voice to influence the establishment of rules that control a major aspect of their lives.

3. RAISING A GRIEVANCE AT WORK

Employees should let the employer know the nature of the grievance and issues promptly. Try to resolve any grievance informally in the first instance to try to nip it in the bud. Employers should arrange any formal meeting without unreasonable delay and should carry out any necessary investigations to establish the facts of the case. Employers should allow the employee to be accompanied at any formal meeting and should allow the employee the right to appeal against any formal decision

[11] Howard Richards (2004). *Understanding the Global Economy*. Peace Education Books. p. 301
[12] United Nations General Assembly (1948). "Article 23".*Universal Declaration of Human Rights*. Paris. Retrieved August 29, 2007
[13] International Labour Organization (1998). *Declaration on Fundamental Principles and Rights at Work*. 86th Session: Geneva. Retrieved August 29, 2007
[14] Namit, Chuck; and Larry Swift. "Prescription for Labor Pains: Combine Bargaining with Problem Solving." *The American School Board Journal* 174 (1987): 24
[15] 2009 BCSC 1562

made. Employers should have their grievance procedure in writing and make sure all staff are aware of any policy or procedure.

Grievances are concerns, problems or complaints raised by a staff member. Any worker may at some time have problems or concerns with their work, working conditions or relationships with colleagues that they wish to raise with management. Grievances are best dealt with at an early stage, informally, with the immediate line manager. However, organisations should have formal procedures in place to handle cases left unresolved. Having formal grievance procedures in place allows employers to give reasonable consideration to any issues which can't be resolved informally and to deal with them fairly and consistently. Pursuing the formal route should be a last resort rather than the first option.

4. CONFLICT MANAGEMENT

Conflict management is the process of limiting the negative aspects of conflict while increasing the positive aspects of conflict. The aim of conflict management is to enhance learning and group outcomes, including effectiveness or performance in organizational setting. Conflict management is the practice of being able to identify and handle conflicts sensibly, fairly, and efficiently. Since conflicts in a business are a natural part of the workplace, it is important that there are people who understand conflicts and know how to resolve them. This is important in today's market more than ever. Everyone is striving to show how valuable they are to the company they work for and, at times, this can lead to disputes with other members of the team[16].

5. CONFLICT MANAGEMENT STYLES

Conflict happens and how an employee responds and resolves conflict will limit or enable that employee's success. Here are five conflict styles that a manager will follow:

(a) Accommodating :

An accommodating manager is one who cooperates to a high degree. This may be at the manager's own expense and actually work against that manager's own goals, objectives, and desired outcomes. This approach is effective when the other person is the expert or has a better solution.

(b) Avoiding: Avoiding an issue is one way a manager might attempt to resolve conflict. This type of conflict style does not help the other staff members reach their goals, and does not help the manager who is avoiding the issue assertively pursue his or her own goals. However, this works well when the issue is trivial or when the manager has no chance of winning.

(c) Collaborating: Managers become partners or pair up with the each other to achieve both of their goals in this style. This is how managers break free of the 'win-lose' paradigm and seek the 'win-win.' This can be effective for complex scenarios where managers need to find a novel solution.

(d) Competing: This is the 'win-lose' approach. A manager is acting in a very assertive way to achieve his or her goals, without seeking to cooperate with other employees, and it may be at the expense of those other employees. This approach may be appropriate for emergencies when time is of the essence.

(e) Compromising: This is the 'lose-lose' scenario where nobody really achieves what they want. This requires a moderate level of assertiveness and cooperation. It may be appropriate for scenarios where you need a temporary solution, or where both sides have equally important goals.

[16] Bodtker, A. M., & Jameson, J. K. "Emotion in conflict formation and its transformation: Application to organizational conflict management", *The International Journal of Conflict Management*, (2001) 3, 259-275

(f) Conciliation: Conciliation is the voluntary referral of a conflict to a neutral external party which either suggests a non-binding settlement or conducts explorations to facilitate more structures of conflict management.

Appeasement, need satisfaction and problem-solving are the conflict management methods that can be grouped under the conciliatory approach. Appeasement is founded on the theory that conflicts escalate into wars due to failure to redress lawful grievances. Appeasement is regarded as an essential ingredient of conflict management because there are cases where accommodation and flexibility have prevented war and led to friendship and alliances.

Moreover, needs satisfaction has things in common with appeasement. Human begins have needs that must be satisfied. In not, resistance arises where the means for such are available. Where human needs are neglected protects and conflicts are the results. However, there are problems inherent in the human needs theory. Human needs theory also suffers from a similar problem to that of appeasement theory, namely, how to determine the irreducible minimum of the needs that must be satisfied to ensure societal harmony. Just as its difficult to agree on what constitute legitimate grievances, it is not easy to determine the irreducible minimum needs to be satisfied. There are other problems of the human needs theory; firstly, the satisfaction of one need might lead to the assertion of another. Secondly, human need theory is a prey to the insatiability of the human appetite. Therefore for the theory to be of a good value there is the need to an accord on the irreducible minimum needs to be satisfied. However, such an account is difficult to get.

Also related to the theories of appeasement and human needs is the problem-solving technique which seeks to get the root of conflict through an analytical mechanism. Where conflict is seem generally as a response to neglected needs its resolution or management must seek to identify the neglected needs to be satisfied. Moreover, managers of the conflict must work out the options available for their satisfaction to arrive at some mutuality of interest between the parties, where they can explore to resolve the conflict. The problem-solving technique at all levels must seek to alter the conditions that lead to crisis. In this approach problem-solving gives a good chance for a comprehensive treatment of the issues involved in the conflict. Some of the mechanisms used for the problem-solving measure are problem solving workshops, two-track or multi-track diplomacy, satisfaction of needs, redressing grievances, interests harmonization and third party facilitation.

Conciliation involves an independent conciliator discussing the issues with both parties in order to help them reach a better understanding of each other's position and underlying interest. The impartial conciliator tries to encourage the parties in dispute to come to an agreement between themselves, and so avoid the stress and expense of contesting the issue in tribunal.

(g) Mediation: Mediation involves a wide range of activities including fact finding, message delivery, good offices and serving as an honest broker. Also mediation is the voluntary, informal, non-binding process undertaken by an external party that fosters the settlement of differences or demands between directly invested parties. It is the intervention of a third party, a voluntary process in which the parties retain control over the outcome although it may include positive and negative inducements. Mediation is a completely voluntary and confidential form of alternative dispute resolution. It involves an independent, impartial person helping two or more individuals or groups

reach a solution that's acceptable to everyone. The mediator can talk to both sides separately or together. Mediators do not make judgments or determine outcomes - they ask questions that help to uncover underlying problems, assist the parties to understand the issues and help them to clarify the options for resolving their difference or dispute. The overriding aim of workplace mediation is to restore and maintain the employment relationship wherever possible. This means the focus is on working together to go forward, not determining who was right or wrong in the past.

(h) Arbitration: Arbitration is where an impartial person makes a decision on a dispute. Arbitration involves an impartial outsider being asked to make a decision on a dispute. The arbitrator makes a firm decision on a case based on the evidence presented by the parties. Arbitration is voluntary, so both sides must agree to go to arbitration; they should also agree in advance that they will abide by the arbitrator's decision[17]. Arbitration can be seen as an alternative to a court of law with its rules for procedures such as disclosure of documents, evidence and so on. But arbitration is private rather than public. Unlike a court, in an arbitration hearing the Arbitrator will ask the questions. There is no formal cross-examination or swearing of oaths.

Arbitration can also be used to settle individual disputes. For example, an individual and an employer might decide to go to arbitration to avoid the stress and expense of an Employment Tribunal. However, as with any workplace dispute, it is important to make use of all internal procedures to resolve the issue in question, before proceeding to arbitration.[18]

Hearings will normally last about half a day, although the arbitrator has power to adjourn if necessary. The arbitrator can also call a preliminary hearing in extreme cases. This is where the arbitrator feels that there may be considerable differences between the parties, for example over the provision of documents or the availability of someone called to speak at the hearing.

6. NEGOTIATION AND MEDIATION AS MECHANISM FOR RESOLVING LABOUR DISPUTES

The term "labour dispute" clearly connotes a quarrel between employers and employees. It is otherwise known as a "trade dispute," In section 48 of the Trade Disputes Act (TDA), "Trade Disputes" are defined as: "any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person." This was expatiated upon by Niki rob, JCA (as he then was) in the case of *National Union of Road Transport Workers v. Ogbedo*[19] when his Lordship held that in the context of the then section 47 of the TDA of 1990, "… the word dispute conveys the element of disagreement which must involve a trade, meaning an occupation or employment as a means of procuring livelihood."

Judicial approach to conflict management is a non-violent method of dispute management. It involves the use of the courts in litigation processes. The judicial approach relates to the management of conflict within a legal framework in which a third party is given or assumes the responsibility of reaching an effective decision concerning the settlement of

[17] Follett, M. P. (1940) *Constructive Conflict*, In H. C. Metcalf & L. Urwick (Eds.), Dynamic administration: The collected papers of Mary Parker Follett (pp.30–49). New York: Harper & Row. (originally published 1926

[18] Kozan, M. K. (1997) Culture and conflict management: A theoretical framework. The International Journal of Conflict Management, 8, 338-360

[19] (2012) LPELR-SC.22/2005

a conflict. Parties who choose this approach take their case to a court of law, before a judge of competent jurisdiction.

To establish the proper ambit of labour disputes in Nigeria (and the urgent need for effective means of resolving them), we must also mention the Trade Unions (Amendment) Act 2005. Section 6 of the Amendment Act introduces new preconditions for stakes or lockouts. It provides that: "No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless:

a) the person, trade union or employer is not engaged in the provision of essential services;
b) the strike or lockout concerns a labour dispute that constitutes a dispute of right;
c) the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer;
d) the provisions for arbitration in the Trade Disputes Act cap. 432, Laws of the Federation o Nigeria, 1990 have first been complied with; and
e) in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

One thing to note about the new section 6(a) to (e) is that the provisions are cumulative. That is to say, an industrial action must satisfy the requirements of all the paragraphs. For instance, it is not enough for a dispute to have arisen between employers and employees or their respective unions. Having a lawful strike would depend on the nature of the industry (whether categorized as essential service industry or not); the subject matter of the dispute whether a dispute of rights or a dispute of interests); extent of compliance with the Trade Disputes Act and whether a majority of the employees or trade union members had voted for the strike or not.

Ironically, while the new section 30(6) of the Trade Unions Act may be taken as a sure acknowledgement of the right to industrial action, the effect of all the preconditions it introduces, and of section 6(7), is to make such actions a harder proposition. Under section 6(7) any person, trade union or employer who contravenes any of the provisions of the section commits an offence and is liable on conviction to a fine of N10,000 or six months imprisonment or to both the fine and imprisonment.

By introducing the new subsections 6(b) and (c), the Amendment Act brings in the issue of dispute of rights v. dispute of interests. In essence, the limitation of industrial actions to disputes of rights mean that political or general interest disputes can no longer constitute valid grounds for industrial action in Nigeria. Strikes, lock outs and picketing are allowed, if at all only in respect of "a labour dispute that constitutes a dispute of right" or "a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer"

As regards paragraphs (b) and (c), it would appear that the former is wider than the latter. Certainly, a dispute of right might occur even when the right in question does not arise from any collective agreement or contract of employment. For instance, issues of safety at work are issues which may confer legal rights on workers under the Law of Tort even though all applicable contracts of employment and collective agreements are silent on it. However, this distraction between paragraphs (b) and (c) of the amendment is confounded by the definition of ‘disputes of right’ offered in sub section 9 o the same section.

By that definition, disputes of right means "any labour" dispute arising from the negotiation, application, interpretation, or

implementation 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." With this definition, paragraph (c) becomes clearly redundant. In other words, the same result would have been achieved if the paragraph was left out.

Be that as it may, the amendments clearly leave out disputes of interest' which may be on issues not legally agreed by the parties in the course of employment or guaranteed to them by relevant law but nevertheless important enough to affect their welfare. This question arose during the fuel strike of January 2004. The Federal Government announced a N1.50k tax of petrol and diesel and, in reaction, the Nigerian Labour Congress called on workers to embark on a nationwide strike, beginning January 21, 2004.

On its part, the Federal Government went to the High Court of the Federal capital Territory, Abuja to seek the following reliefs:

a) Declaration that the mass protest and strikes or any other form or manner of protest as the defendants deemed or may decide to embark upon on 21st January, 2004,or any time thereafter in reaction to the N1.50k per litre on petroleum motor spirit (PMS) and automatic gas oil (AGO) is illegal, unlawful and is contrary to peace and order of the nation.

b) Declaration that the defendants are not entitled to embark on any protest or strikes in respect of any matter not within the purview of the Trade Union and Trade Disputes act, Caps. 437 and 432 respectively of the Laws of the Federation of Nigeria, 1990.

c) Injunction restraining the defendants by themselves, their agents, servants and/or privies or otherwise howsoever form embarking on any other form or manner of protest on 21st January, 2004 or at any time thereafter.

The learned trial Judge assumed jurisdiction in the case, saying that the Defendants had a fundamental right to protest against the fuel tax imposed by the Plaintiffs. He therefore refused to grant the injunction sought by the Federal Government. In the event, the Federal Government failed to stop the strike and its appeal to the Court of Appeal was eventually dismissed."

Although the trial court's decision that NLC had a fundamental right to protest against the fuel tax was eventually set aside on account of the Court's lack of jurisdiction, it is likely that disputes of this nature, which do not arise directly from the parties' contract of employment or collective bargaining, will continue to arise and strike actions will continue to be used to settle them. In fact, it is such disputes of interest that are more likely to cause sustained industrial actions. Breach of contracts of employments and collective agreements (here described as disputes of right) are more likely to be settled by conciliation or arbitration than the so-called disputes of interest.

It is our submission that negotiation and mediation can be deployed in the resolution of any dispute involving employers and employees, whether or not such a dispute is within the statutorily recognized scope of "labour disputes" considered above. In other words, even those disputes that may not, as a result of the foregoing provisions, be resolved by negotiation and mediation. Disputes of interest, for instance are potentially more disruptive and deserving of speedy resolution than disputes of right. Also those aspects of labour disputes which are not recognised by law as valid reasons for industrial action are surely deserving of effective resolution. Otherwise a disharmony will inevitably occur for which there is no escape valve. The same logic applies to disputes involving workers who are expressly forbidden from going on strike, e.g., those engaged in essential services.

The only succour to the situation is effective negotiation and mediation.

7. RESOLUTION OF LABOUR DISPUTES – STATUTORY PROCEDURE

By nature, labour disputes are very disruptive. Because labour involves a production process, a badly managed labour dispute can quickly affect the immediate community and, eventually, the national economy. If we take, for instance, the educational and service sectors, such as the universities and the telecommunications industry, labour disputes immediately impact a multitude of people whose present and future are largely dependent on the smooth running of the system. In those circumstances, strikes and lock outs can generate such disharmony as to damage the long term interests of the affected sector. Indeed, many companies have been known to flounder and die off as a direct result of persistent labour disputes.

a) the procedure specified in sections 4 and 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 the Act for the purpose of effecting a settlement of the 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 an 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 this Act; or
f) the National Industrial Court has issued an award on the reference.

Contravention of these provisions is an offence which attracts up to 6 months imprisonment.

8. NEGOTIATION AND MEDIATION UNDER THE TRADE DISPUTES ACT

Section 4 of the TDA (also referred to in section 18(1)(a) above) concerns negotiation and mediation. We should not straightaway that these two concepts are dealt with as internal mechanisms for settling labour disputes, i.e, to be employed ever before the dispute is reported to the Minister. Section 4 provides:

a) If there exists agreed means for settlement of the dispute apart from this Act, whether by virtue of the provisions of any agreement between organisations representing the interests of employers and organisations of workers or any other agreement, the parties to the dispute shall first attempt to settle it by that means.

b) If the attempt to settle the dispute as provided in subsection (1) of this section fails, on if no such agreed means of settlement as are mentioned in that subsection exists, the parties shall within seven days of the failure (or, if no such means exists, within seven days of the date on which the dispute arises or is first apprehended) meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to the amicable settlement of the dispute."

Perhaps more importantly, the livelihood of workers and their dependants are also at stake. Work stoppages, whether caused by strikes or lock outs, immediately entail salary stoppages. Sometimes they lead to permanent loss of employment. The often unanticipated loss of income seriously affects workers whose complaints were, in the first place, of low wages.

For the above stated reasons, ad because government, as the single largest employer of labour, has often been the worst hit, there has

been consistent legislative activity to ensure early resolution or reasonable control of labour disputes. Many of these are contained in the TDA. For instance, Section 18 of the current version provides that an employer shall not declare or take part in a lock-out, and a worker shall not take part in a strike action in connection with any trade dispute where:

9. RESOLVING CONFLICT RATIONALLY AND EFFECTIVELY

In many cases, conflict in the workplace just seems to be a fact of life. We've all seen situations where different people with different goals and needs have come into conflict. And we've all seen the often-intense personal animosity that can result. The fact that conflict exists, however, is not necessarily a bad thing: As long as it is resolved effectively, it can lead to personal and professional growth. In many cases, effective conflict resolution can make the difference between positive and negative outcomes.[20] The good news is that by resolving conflict successfully, you can solve many of the problems that it has brought to the surface, as well as getting benefits that you might not at first expect:

a) Increased understanding: The discussion needed to resolve conflict expands people's awareness of the situation, giving them an insight into how they can achieve their own goals without undermining those of other people.
b) Increased group cohesion: When conflict is resolved effectively, team members can develop stronger mutual respect and a renewed faith in their ability to work together.
c) Improved self-knowledge**:** Conflict pushes individuals to examine their goals in close detail, helping them understand the things that are most important to them, sharpening their focus, and enhancing their effectiveness.

However, if conflict is not handled effectively, the results can be damaging. Conflicting goals can quickly turn into personal dislike. Teamwork breaks down. Talent is wasted as people disengage from their work. And it's easy to end up in a vicious downward spiral of negativity and recrimination.

10. CONCLUSIONS

Conflict is a phenomenon associated with human beings. Conflict exists when two or more persons wish to carry out acts, which are mutually inconsistent but not inevitable. Miall asserted that there are certain criteria, which may serve to distinguish conflict from other situations. Firstly, a conflict can only exist where the participants perceive it as such. Secondly, a clear difference of opinion exists regarding values, interests, aims or relations. Lastly, the parties must consider the outcome of the conflict extremely important.

Therefore, conflict arises when there are conflicting claims and aims of different persons and this is embedded in the social arrangement of the society. The ultimate in human affairs is not the extinction of conflict but how to manage conflicts effectively when they arise.

11. THE WAY FORWARD

For an effective and efficient resolution of labour disputes to be attained, we have unfolded a few theoretical models and strategies that could be followed. These are as follows:

a) Competitiveness**:** People who tend towards a competitive style take a firm stand, and know what they want. They usually operate from a position of power, drawn from things like position, rank, expertise, or persuasive ability. This style can be useful when there is an emergency and a decision needs to be

[20] Luthans, F., Rubach, M. J., & Marsnik, P. "Going beyond total quality: The characteristics, techniques, and measures of learning organizations", *International Journal of Organizational Analysis* (1995)

made fast; when the decision is unpopular; or when defending against someone who is trying to exploit the situation selfishly. However it can leave people feeling bruised, unsatisfied and resentful when used in less urgent situations.

b) Collaborative: People tending towards a collaborative style try to meet the needs of all people involved. These people can be highly assertive but unlike the competitor, they cooperate effectively and acknowledge that everyone is important. This style is useful when you need to bring together a variety of viewpoints to get the best solution; when there have been previous conflicts in the group; or when the situation is too important for a simple trade-off.

c) Compromising: People who prefer a compromising style try to find a solution that will at least partially satisfy everyone. Everyone is expected to give up something and the compromiser also expects to relinquish something. Compromise is useful when the cost of conflict is higher than the cost of losing ground, when equal strength opponents are at a standstill and when there is a deadline looming.

d) Accommodating: This style indicates a willingness to meet the needs of others at the expense of the person's own needs. The accommodator often knows when to give in to others, but can be persuaded to surrender a position even when it is not warranted. This person is not assertive but is highly cooperative. Accommodation is appropriate when the issues matter more to the other party, when peace is more valuable than winning, or when you want to be in a position to collect on this "favor" you gave. However people may not return favors, and overall this approach is unlikely to give the best outcomes.[21]

e) Avoiding: People tending towards this style seek to evade the conflict entirely. This style is typified by delegating controversial decisions, accepting default decisions, and not wanting to hurt anyone's feelings. It can be appropriate when victory is impossible, when the controversy is trivial, or when someone else is in a better position to solve the problem. However in many situations this is a weak and ineffective approach to take.

Once you understand the different styles, you can use them to think about the most appropriate approach (or mixture of approaches) for the situation you're in. You can also think about your own instinctive approach, and learn how you need to change this if necessary. Ideally you can adopt an approach that meets the situation, resolves the problem, respects people's legitimate interests, and mends damaged working relationships.

The second theoretical strategy is commonly referred to as the Interest-Based Relational (IBR) Approach. This type of conflict resolution respects individual differences while helping people avoid becoming too entrenched in a fixed position.[22]

In resolving conflict using this approach, you follow these rules:

a) As far as possible, make sure that you treat the other calmly and that you try to build mutual respect. Do your best to be courteous to one-another and remain constructive under pressure.

[21] Pinkley, R. L. "Dimensions of conflict frame: Disputant interpretations of conflict", *Journal of Applied Psychology*, (1990) 75, 117-126

[22] Rahim, M. A., & Bonoma, T. V. "Managing organizational conflict: A model for diagnosis and intervention", *Psychological Reports*, (1979) 44, 1323-1344