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**Collective Bargaining in the Oil and Gas Industry in Nigeria:**

**Perspectives and Challenges**

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Acknowledgments

I set out publishing this book, acknowledging God, the creator of Heaven and Earth, the giver and sustenance of life, who preserved me for this moment and enabled me to complete this project. I thank my late parents, Chief and Mrs. Abraham Ogbeifun, without whom there would have been no me. And without their exposing me to education early in life, there would perhaps have been no book like this to my name.

I am highly indebted to Steve Ojeh, Ph.D., who helped with insights on how collective bargaining in the upstream sector of the oil and gas sector in Nigeria operates as reflected in chapter 12 and on the total remuneration approach in chapter 13; comrade Bayo Olowoshile, who helped with the insights on collective bargaining, employment contracts, and compensation philosophy in the downstream sector of the oil and gas industry in chapter 11; and Uche Attoh Esq., who provided insight on implementation of bargaining benefits for unionized staff versus nonunionized staff in chapter 18.

Publishing this book was fraught with challenges and circumstances beyond my control. The recent devaluation of the naira complicated the resolution of the challenges. However, the actions of Phillip Clarkson, who called and emailed me persistently on the need to get started, and Jerry Taskar’s support in interfacing with Phillip and the eventual payment options, got the job done. To Philip and Jerry, I say thank you.

This book is about practical experiences gathered through the process of activism in the trenches and on the platform by the National Association of Nigerian Student Nurses and Midwives, the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN), and the Trade Union Congress of Nigeria. From the foundation chair of the first ever zonal office (Warri) of the Nigerian National Petroleum Corporation (NNPC), through the NNPC Corporate Headquarters Branch industrial relations officer, the NNPC Corporate Headquarters Branch chair, to the highest office of PENGASSAN in 2003, comrades Bisi Olowoyo, Joel Dimla, Onyeama Biringa, Ayuba Tanko, Tope Oyegbade, Shola Abuachi, Ngozi Oniti, Geoffrey Enakpoya, Pius Evbuomwan, Steve Ere, et al. were all fantastic, and so supportive. My story in the union would be incomplete without acknowledging the memorable roles played by comrades Ebi Esara, Francis Johnson, and Theodora Ekere, of blessed memory, in some or all of my elections.

My eventual stint in the Employee Relations section of the Human Resources Division of the NNPC enabled me to see things from the other side of the aisle. My switch from Medical Services, where I served as a nurse anesthetist, was propelled by NNPC management in April 2005, when I was promoted to an SS1 position, where I could no longer belong to a union.

When I was a unionist and staff of the NNPC, one would have thought that my leaders would want to exert an influence that could sway my thoughts on critical national oil and gas issues. In the office, I had to, in some circumstances, differ on many issues with my workplace leaders, such as the managing directors of the NNPC. Instead of taking an adversary position, Chief Gaius Jackson-Obaseki and later Chief Funsho Kupolokun were empathetic towards me and showed a lot of understanding. When I was promoted to SS1, which is a management position, I was barred from taking part in active unionism, and many thought I would be victimized for some of the decisions our administration took, which might not have gone down well with them. These gentleman never did. They knew that I had my political leaders in the Central Working Committee and the National Executive Council of PENGASSAN, whose bidding must be done for the sake of remaining loyal to those who elected us into office. They treated me with all respect and dignity.

I also wish to thank Dr. Peter Nmadu, the group general manager, Medical Services, under whom I served as a nurse anesthetist before my deployment to the Human Resources Division of the NNPC. He helped me through the electioneering campaigns with flexible work schedules and did not hesitate to release me for employee relations duties when he was contacted. My becoming PENGASSAN president would have been a dream in the spiritual realm, and Chief Austin Ezenwaka, manager, Employee Relations in 2003, refused to invoke the clause that workers at certain levels could not hold elective union positions. This immeasurable risk to his job is worthy of my sincere gratitude. At the end of my tenure to date, he has never regretted his action because if he did otherwise, PENGASSAN would have lost my service and the oil and gas sector would have lost our initiatives and perhaps my perspective on this subject matter.

As with all my humble beginnings, I became the first occupant of the Supervisor Employee Relations office in the NNPC. Challenging as it was, the Group General Manager, Human Resources, Mrs. Lilly Adegbite, the General Manager, Human Resources, Deacon V. V. Mowoe, the Manager, Employee Relations, Mr. Peter Odjoji, and the Deputy Manager, Employee Relations, Mr. J. N. Dimla, made settling in very easy for me. To them, I owe a bunch of gratitude.

As Deputy Manager and later Manager, Employee Relations, I worked more closely with two group managing directors, Engineer Austin Oniwon and Engineer Andrew Yakubu, who were amazingly great and effective leaders. They were very supportive and gave me opportunities to help manage conflicts in the entire industry on behalf of the NNPC, a senior partner in the joint-venture operations. This leverage allowed me to have an interface with several companies and help in the resolution of industrial relations disputes that emanated from collective bargaining and employment contracts. To these gentlemen, I say a big thank you. I am also very grateful for Engineer Oniwon to have found time to write the foreword to this book, even as the world was in a lockdown and supposed to be resting with family. May his shadow never grow less now and forever.

An array of friends nudged me to commit my thoughts and experience to writing, no matter how little the contribution would be. Each time, I told them that there are so many books on collective bargaining and I did not see any other need. Mrs. Irene Edemirukewa would always say,

Is it that you are afraid of making mistakes or not having enough to write on? Whichever way, I believe you have the capacity to leave your experience on the sands of time for oil and gas unions and their corresponding partners. Just do it. The feedback from readers would shape and enrich subsequent editions.

To this Amazon and other friends, I say thank you.

Foreword

According to Jeremiah 1:5, “Before I formed thee in the belly I knew thee; and before thou camest forth out of the womb I sanctified thee, and I ordained thee a prophet unto the nations” (King James Bible Online, 2020). The journey through life, though predestined, according to the scriptures, does not imply that life is a straight curve without twists and turns. Therefore, for us to make successes of those pathways, we must ride through these curves and turns with focused determination and dedication. So it has been with Dr. Louis B. Ogbeifun, who started his career as a healthcare giver.

Over the years, first as a lay member of the Petroleum and Natural Gas Senior Staff Association of Nigeria, then as a member of the Nigerian National Petroleum Corporation (NNPC) management, and finally as the Group Managing Director of NNPC, Louis Ogbeifun has, through active unionism, transformed his skills from a benevolent healthcare giver into an astute and dedicated workers’ welfare protector and a fierce workers’ rights defender.

This book could not have been written by any better person than Louis, given his wealth of first-hand involvement in the plight of the working people of Nigeria’s oil and gas industry. It could not have come at a more auspicious time than today, when the industry is at a critical crossroads.

When Sidney and Beatrice Webb first used the term *collective bargaining*, it was in the context of protecting vulnerable factory workers from predatory factory owners and overlords (Webb & Webb, 1897). The term and its application have shifted over the decades in response to the changing dynamics of the global business environment.

Today, the paradigm has decisively changed. It has been a situation where crude oil was projected to sell at −US$30.00 (minus) per barrel, that is, US$30.00 below production cost. It has been a situation where the US economy lost more than 30 million jobs within 2 months. It has been a season when governments all over the world gladly paid workers to stay at home and forcefully made them stay there. It has indeed been an unprecedented and exciting time.

The dynamics have radically changed, and the content and context of future collective bargaining and the collectively bargained agreement will never be the same. It is no longer going to be the workers’ rights versus the rights of the business owner (or manager). Henceforth, the focus will be on the **right of the business** to survive. The business must win; otherwise, both the business owner (or manager) and the workers will lose.

This is why this book by Louis Brown Ogbeifun, who delved so brilliantly into the art of negotiation with a win–win goal, comes in very handy. Many readers will find something that they already knew; some will find things they thought were known; and yet some will see things that they never knew. There is something here for everybody.

Therefore, I earnestly present and commend this brilliant piece, which I tag the “back-to-the-future” handbook, to executives, human resources managers, workers, and workforce union leaders as a veritable guide to future collective bargaining negotiations and the survival of businesses in the increasingly uncertain future. Happy reading.

Austen Oniwon

Preface

Collective bargaining is not a new field in industrial relations. But what is new is the rate at which practitioners are expanding its scope in dizzying dimensions. It would seem that there is no end to the expansion. That alone is a great danger and a time bomb waiting to explode. Some of the unexpected outcomes of the unlimited elasticity of the scope of collective bargaining in the oil and gas sector, and the battering of the world’s economy by COVID-19, include a possible spike in short-term contracts, an upsurge in redundancies and job insecurity, a worsening lack of respect for the principles of the International Labour Organization (ILO) decent work agenda, and unilateralism on the part of employers of labor. With the COVID-19 scourge across the world, the ILO (2020) postulated according to different scenarios that the world could see losses of close to 25 million jobs. In April, Kenny (2020) reported that the ILO Director-General Guy Ryder predicted that the COVID-19 crisis was expected to wipe out 6.7% of working hours globally in the second quarter of 2020—equivalent to 195 million full-time workers. Therefore, Ryder admonished the world to decisively work fast and put the right measures in place to avert the impending catastrophe.

In her second edition monitor, the ILO opined that according to the new study, 1.25 billion workers are employed in the sectors identified as being at high risk of “drastic and devastating” increases in layoffs and reductions in wages and working hours. Many of these workers are in low-paid, low-skilled jobs, where a sudden loss of income is devastating.

The study also looked at the issue regionally and found that the proportion of workers in these “at-risk” sectors varies from 43% in the Americas to 26% in Africa. Some regions, particularly Africa, have higher levels of informality, which, combined with a lack of social protection, a high population density, and weak capacity, pose severe health and economic challenges for governments.

The oil and gas industry has had the good, the bad, and the ugly. The global financial crisis of 2007–2008 led to the crashing of the price of oil from US$147 to US$30 a barrel. Later, in 2014–2015, members of OPEC (Organization of the Petroleum Exporting Countries) consistently exceeded their production quotas. China had a slowdown in economic growth, and the United States almost doubled its production because of the improvements in shale fracking methods. At such times, Nigeria’s oil and gas industry, as a part of the global market, also had its fair share of the negative impacts.

Irrespective of the above, there has been nothing as impactful as the coronavirus war of 2020. According to Ogbeifun, in Young (2020), the Nigerian situation could be alarmingly worse. It would come with huge job losses because of lack of supportive frameworks for short-term contract workers, inadequate or near absence of social safety nets, inadequate public utilities, lack of systemic shock absorbers that would absorb the COVID-19 shocks, reliance on a monolithic oil-based economy, which is dollar-driven; increased weakening of the naira against the dollar, having scores of unsold crude cargoes in the international market, a dip in the crude oil price to an average level of US$24–US$25 per barrel before snowballing into huge shortfalls in funding the federation account; and budgetary failure and consequent inability to pay salaries by the federal, state, and local governments. This book is a wake-up call for industrial relations practitioners. They must put on their blue thinking caps to manage future collective bargaining challenges and the myriad conflicts that might arise with the job losses and anticipated company closures.

There are many excellent books and research articles on this topic. This book has not come to supplant any of its precursors, but from a practical point of view, complement their efforts. There are several books on labor–management relations, industrial relations, and workplace conflicts, both nationally and internationally. But none has focused on the practical application of collective bargaining elements in the oil and gas industry in Nigeria, like this one will do.

The writing of the book is based on active union experience that spanned over a decade. It has impelled me to face the challenge of putting down the thoughts, processes, and reasons behind union and management behaviors during negotiations.

I expect that this book will add to the pool of knowledge on the industrial relations turf in the oil and gas industry in Nigeria.

Louis Brown Ogbeifun

Acronyms and Initialisms

|  |  |
| --- | --- |
| BATNA | best alternative to a negotiated agreement |
| BEC | branch executive committee |
| CAS | consolidated annual salary |
| C&B | compensation and benefits |
| CBA | collective bargaining agreement |
| CEDR | Centre for Effective Dispute Resolution |
| CEO | chief executive officer |
| CMS | consolidated monthly salary |
| COLA | cost of living adjustment |
| E&P | exploration and production |
| EVP | employee value proposition |
| Forex | foreign exchange |
| GED | group executive director |
| GMD | group managing director |
| HR | human resources |
| ICT | information and communication technology |
| ILO | International Labour Organization |
| IOC | international oil corporation |
| MLS | management largesse syndrome |
| MOC | multinational oil corporation |
| NICN | National Industrial Court of Nigeria |
| NNPC | Nigerian National Petroleum Corporation |
| NPDC | Nigeria Petroleum Development Company |
| NUPENG | Nigeria Union of Petroleum and Natural Gas Workers |
| OPEC | Organization of the Petroleum Exporting Countries |
| PENGASSAN | Petroleum and Natural Gas Senior Staff Association of Nigeria |
| PIB | *Petroleum Industry Bill* |
| PLC | public limited company |
| PMS | premium motor spirit |
| PPP | purchasing power parity |
| SWOT | strengths, weaknesses, opportunities, threats |
| TMC | top management committee |
| TR | total remuneration |

Introduction

Collective bargaining is the heart and soul of an efficient industrial relations practice. For it to be successful, it must obey the 3Cs rule: consultation, collaboration, and cooperation.

The oil and gas industry in Nigeria has three segments: the upstream sector, the midstream sector, and the downstream sector. Within these three is a mix of employers from the multinational oil corporations (MOCs) in joint ventures with the Nigerian National Petroleum Corporation (NNPC), federal government agencies, and Nigerian investors. The industry has been witnessing a gradual downslope movement for almost a decade, now made worse by the COVID-19 pandemic for many reasons. Some of those reasons are self-inflicted, while others are directly or indirectly linked to local and international conspiratorial acts. The parlous state of the industry is a result of the government’s lack of political will to change the traditional ways of managing the oil and gas governance models. Nigeria’s oil and gas revenue is paid into the federation account and shared by the federal, state, and local governments at a monthly rent collection center, known as the Federation Account Allocation Committee. Because of this practice, Nigeria had not cultivated a culture of savings until 2012; by 2016, the federal government owed the MOCs cash arrears of several billion US dollars.

This entitlement mentality has killed the initiatives and dulled the innovative capabilities of Nigeria’s political leaders. In addition to oil, Nigeria is blessed with abundant mineral resources, such as marble, clay, tantalite, gold, limestone, lead, zinc, kaolin, and gypsum. However, these resources are not attractive to government. Mining and production activities are in the hands of local artisanal prospectors, exploiters, and producers who work for a syndicate of international investors. These raw materials find their way out of the country across land, sea, and air borders. Yet we do have border and security agents. Revenues generated from these activities end up in international coffers without there being any excise duty payments. Another self-inflicted pain is the increasing rate of raises in emoluments arising from annual, biennial, or triennial collective bargaining arrangements. Most companies spend between 35% and 46% of their total budget on human resources.

Conspiratorial actions, such as vandalism on product pipelines, theft of crude, and illegal bunkering, are daily occurrences. The vandals collaborate with security agents, insiders in the operating companies, conflict entrepreneurs within the oil-producing communities, and international conspirators to vandalize pipelines and steal crude oil, which ultimately finds its way to the global market.

Besides the global economic meltdown, the challenges besetting the oil and gas sector include rapid changes in technology, unfettered borderless trades, heightened insecurity, multiple taxation, and outdated oil and gas laws. Contestations from the trade unions over rights and privileges, in some cases dictating how management rights should be exercised, add more stress. More than ever, these complex contestations put a lot of pressure on oil and gas operations, management, employees, and other stakeholders in the oil and gas sector in Nigeria.

Because of the dollar- and import-driven economy, the naira’s gradual free fall and the fluctuating crude oil price became very serious, worsening the already severely challenged sector. The naira to US dollar exchange rate averaged ~~₦~~156 in 2012, ~~₦~~160 in 2013, ~~₦~~183 in 2014, ~~₦~~363 in 2019, and ~~₦~~440 in June 2020. In the last quarter of 2014, it spiraled to an all-time high of more than ~~₦~~500/dollar in the black market, with an accompanying crude oil price slump that hovered between US$45 and US$57 per barrel. This situation had a negative effect on the oil and gas sector. The sector witnessed unprecedented shocks, which affected all the streams. For instance, upstream operators could not meet their production quota because of several aggravating factors, such as pipeline vandalism, crude theft, insecurity, and the escalating cost of production.

On the flip side, the downstream sector experienced severe shortages in the supply of petroleum products due to the oil majors’ inability to import premium motor spirit (PMS) or kerosene to supplement NNPC’s imports. The marketers gave the following reasons for this seeming failure:

* The federal government owed the marketers subsidy claims amounting to several billion naira.
* Excruciating double-digit interest rates on bank loans made it impossible for the banks to offer marketers further loans to import petroleum products.
* Marketers were unable to break even because of the naira’s progressive depreciation and the high cost of bringing in the products.

All these marketers claimed that these factors resulted in intermittent shortages of PMS and kerosene at gas stations. Therefore, the marketers recommended total deregulation of the industry’s downstream sector and doing away with the corruption-laden subsidy regime process. For an import-dependent, monolithic, and dollar-driven economy, whose masses depended on kerosene for cooking and on PMS for running generators during the frequent power outages, the political, social, and economic consequences of deregulating the downstream sector by the ruling People’s Democratic Party, especially in a year of presidential elections, were too grievous. Deregulation would have been tantamount to committing political suicide. However, in the middle of the COVID-19 pandemic, the government announced it would remove the petroleum products fuel subsidy and that market fundamentals would henceforth determine the pump prices.

These challenges, coupled with other complex factors in the world’s oil politics—the excruciating sanctions on Russia over Ukraine, the discovery and production of shale oil by the United States, the refusal of the member states of OPEC (Organization of the Petroleum Exporting Countries) to cut crude oil production in the face of an oil glut and sliding crude oil prices, sourcing for alternative cheap energy supplies by non-oil-producing countries and cutting down on crude oil importations by European countries, and the rebound of crude production by Iraq and Libya—led to further untoward pressures and complications on the oil and gas sector in Nigeria.

The consequences of all these highlighted challenges are, in one way or another, a lack of funds, decaying infrastructure, agitation, and strife between partners that should have been working together for improved productivity.

Given these new harsh economic realities, and in a bid to cut competitive edge, attract and retain good-quality employees, achieve customer satisfaction, pay overhead costs, and sustain operations amid the uncertain stormy economic waters, global economic recession, oil glut, crashing crude oil prices, and the steep plunging of the naira against the dollar, companies were forced to develop and emplace survival strategies to stay afloat. Embedded in these survival strategies were bittersweet pills.

To achieve strategic corporate goals, industry captains embarked on cost-saving measures. These measures involved the reordering of priorities, restructuring, and maximizing work efforts by concentrating on core business areas, mergers, acquisitions, and the total overhauling of processes, functions, and procedures. The restructuring processes across the value chain of Nigeria’s oil and gas sector resulted in huge divestments from the onshore environment by the multinationals. These repositioning strategies have resulted in galloping outsourcing of jobs and cuts in recurrent expenditures, leading to the adoption of “lean and mean” company structures. They have also compelled some companies to freeze wages, suspend the annual or biennial collective bargaining cycles, and downsize. However, a combination of these challenges and strategies can have fatal consequences for industrial relations practices and the country. These consequences include increased outsourcing, massive redundancies, workplace dysfunction, and strife between employee and employer representatives over collective bargaining, leading to escalating industrial actions and a saturated unemployment market.

With these scenarios, collective bargaining tends to be taking the hit, and the workplace is becoming a fertile agar plate for workplace conflicts. Companies that were unable to adapt to these changes fast enough collapsed at a dizzying pace. With myriad organizational challenges, ongoing alignments, and realignments, the retrenched and aggrieved workers agitate for more enhanced severance benefits. Simultaneously, the union leaders engage in aggressive and bitter cyclical negotiations with employer representatives for enhanced pay and pension benefits. These have worsened dysfunction in the workplace.

The modern-day enterprise has a mix of human resource contracts and strategies. The first set of employees on the organization’s internal payroll system is usually referred to as payroll staff, or permanent staff. Employees in the second category may not have a permanent status, but they directly draw salaries from the organization’s payroll; they are called the direct contract hire. This group is usually made up of experienced or newly recruited employees who are older than the usually stated employment age brackets for starters and may or may not have designated slots on the organogram. At times, the age may fit into the frame of those who should be directly employed as payroll staff but have been recruited as contract staff as a cost curtailment measure. This set of employees is excluded from earning all the emoluments and benefits attached to regular staff. The payroll staff is usually unionized without any encumbrances.

The third category of workers is usually referred to as causal workers, tempos, or temporary staff. This group works indirectly for the principal companies through designated third-party contractors. This category of workers goes through many hurdles to become unionized. Their pay structure is quite different from that of payroll staff and usually less attractive.

The employment security of unionized workers is less hazardous than that of the nonunionized workers. Workers agitating for the redistribution of profits during their previous organizational efforts, emplacement of competitive welfare packages, and improvements in their wages understand that capitalists will not be willing to part with profits when confronted on an individual basis. They realize that the only way to get a piece of the organizational pie is to join forces by forming a trade union, which will enable them to collectively seek ways of improving their wages and status within the undertaking.

Often, the establishment sees union agitation for improved pay, friendlier policies, and inclusion in some strategic committees as overstepping the union’s bounds and meddling in the company’s affairs. On the flip side, in greater perspective, the union sees management as uncaring capitalists that only want to maximize profits at the expense of their collective efforts. This attitude further pulls apart collective bargaining partners that should work for the good of the organization. This is where collective bargaining becomes a buffer and a resounding launch pad, allowing both employee and employer representatives to come together and collectively bargain according to pre-agreed terms. It also offers the workers and their employer the opportunity to use social dialogue toolkits to work towards finding a common ground. Employer, employee, and the organization itself would have a fair range of survival openings and options.

For a collective bargaining platform to offer the best of options that would ensure the organization’s survival, the partners should strive to put the organization’s interest above their own section’s or constituents’ interests. This is necessary because the organization’s death will also signpost the death and (or) absence of jobs, more restrictive labor mobility, scrapping of several positions, increased unemployment, and the inability to guarantee employment security for unionized members. Collective bargaining in the oil and gas sector is enterprise based. It takes place at annual, biennial, or triennial intervals, in which each company engages in separate collective bargaining. The antitrust principle makes it criminal to obtain or discuss intercompany emoluments formally. It is one of the reasons it is tough to get data for comparative analysis and benchmarks. Still, practitioners can discreetly find a way around this.

With the state of the industry in Nigeria, employee and employer representatives must begin to look beyond pie sharing only. They should be concerned about how the pie is baked. They should ensure that some pie is left over for challenging times: recession, economic downturn, oil glut, sliding crude prices, and so on. Employees and employers can only have a pie to share if the parties adopt a collaborative strategy that ensures that the organization is healthy enough to bake a pie big enough to share, with some left for other bona fide shareholders. Therefore, all stakeholders must strive to take a situational collective bargaining approach to survival of the organization. This adaptive experiential bargaining system is recommended for Nigeria because most other bargaining models are no longer adequate for modern-day practice.

Sidney and Beatrice Webb, in their study of the cooperative movement in Great Britain, were said to have been the first to use the term *collective bargaining* (Webb & Webb, 1897). Since then, many countries have adopted legislation to cover issues that can be commonly discussed within the collective bargaining framework and all other negotiations in the workplace.

In its earliest form, collective bargaining covered very few items, which were predominantly waged based and rudimentary. This could be termed the era of bread-without-butter bargaining. In this rudimentary phase, workers negotiated to have the essentials of life. They needed food for themselves and their family. The next part of the struggle was the bread-and-butter phase. The bargaining platform provided workers the opportunity to negotiate enhancements, which enabled them to have some butter spread on their bread.

The third phase slightly moved beyond bread and butter, especially in the advanced world. Workers that had hitherto worked without rest days began to have shortened work hours, paid leave, a housing allowance, medical and insurance coverage, and so on. Having achieved this much, workers soon found out that a worker might have bread, butter, education, and enhanced wages but could go broke before the end of the month. This was because of policies that largely eroded their earning power. Therefore, workers began to use collective bargaining tools and other union platforms to challenge policies that would negatively affect their salaries and, by extension, their quality of life. Depending on values and ideologies, unions in developed, developing, and underdeveloped countries have continued to use the collective bargaining platforms to cover more spectra of interests and needs as juxtaposed with their priorities.

Over the years, unions have increased the scope of collective bargaining to include various bonuses: bonuses on turnover, first oil discovery bonus, end-of-year bonus, productivity bonus, Christmas bonus, 13th month bonus (annual wage supplement), and so on. There have also been pension enhancements; redundancy benefits; extended annual, sick, maternity, and paternity leave; homeownership schemes; education and furniture grants or allowances; enhanced housing allowances; healthcare for self, spouse, and children during service years and for self and spouse in retirement; safety and environment packages; recognition for union rights; appliances for work and home; and cost of living adjustment (COLA), which eases the consequences of a double-digit inflation index.

From management’s perspective, the bargaining process ensures that the management of workplace relationships is entrenched and respected. The areas of management rights have also grown in leaps and bounds. There are, for instance, aspects that deal with management of the enterprise; the use of performance evaluation systems for job motivation, training, and sanctions; promotion of staff and pay raises; on and off cycles and work schedules; standards and core values; the right to hire and fire; and determination of the projections of management, which management cannot share with the workers. To decrease the likelihood of disruption to production by union agitations, management ensures that a no-work–no-pay clause is inserted in any agreement signed with the unions. However, this is rarely implemented, as the unions see nonpayment of salaries after any industrial action as victimization.

In Nigeria, management, in most instances, agrees to the payment of productivity bonuses to enhance productivity. However, there is an ongoing discussion on whether productivity bonuses should be paid as an on-the-job output in the organization’s overall production basket or given as an incentive to every industry employee. An unfolding concern is whether the payment of a productivity bonus improves productivity, since many companies pay these bonuses to workers across all bands, with less to show for it. The core operations staff are quick to argue that if these bonuses are paid to all staff, it does not reflect the value of actual performance relative to production output; therefore, it is not necessarily seen as an incentive for boosting production. They believe that the core operations staff remain the key staff in the line of production, whereas units like medical services, finance and accounts, and human resources are ancillary to the primary operations and, therefore, cannot be entitled to bonuses they did not participate in making. Whatever the impressions and outcomes of such bonuses and arguments, the gesture by management encourages employees to develop a commercial mindset, empathetic to organizational travails, and to act as business leaders in the enterprise at all times.

The Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG), representing the unionized white- and blue-collar employees in the industry, respectively, like their counterparts all over the world, have used collective bargaining to achieve monumental enhancements in their welfare packages far beyond the bread-and-butter negotiations that still characterize the minimum saga in the Civil Service. For instance, in reaction to the inefficiency of the power sector and the increase in the pump price of automotive gas oil (diesel), some branches of the union have succeeded in getting some companies to provide generators to their members as a bargaining item. This started with the provision of lower capacity generators, which incrementally improved over the years. Companies that are not buoyant enough agree to pay subsidized power-improvement allowances, since public utilities either do not exist or are grossly inadequate. This ensures that their employees can afford to provide energy to use their computers and the internet for work amid power outages, even when out of the office. Furthermore, employees need a minimum level of comfort to get enough rest and be fit for work the next day. The nation’s level of insecurity has imposed additional costs of hiring local vigilantes to ward off robbers, kidnappers, and unwanted guests at night. Workers also need to sink their boreholes, which would enable them to have potable water in their homes. To this effect, most companies have minimum subsidies that would assist in putting these facilities in place.

To discourage employers from retrenching, stringent demands and handsome handshake packages have been negotiated for redundancy payments for unionized employees. For those working in carbon-polluted environments, unions have ensured that companies comply with strict health, safety, and environmental best standards. In some instances, companies also pay hazard allowances. Over the years, unions tend to have toned down management prerogatives.

In recent times, some branches of NUPENG have resorted to using collective bargaining to close wage gaps between the lower bands and their senior counterparts. In 2013, the branches of PENGASSAN and NUPENG in an oil and gas company that operates in all of the sectors’ value chain, opted for a flat rate monetary increase across the board for all unionized staff of their organization. This was a sharp departure from the application of percentage increases on each grade level’s salary band. In other words, instead of using a 5% increase on the salary bands of all unionized staff, a specific amount was agreed to be paid to all unionized staff. The reasons for this are as follows:

* A percentage increase in each salary band continues to widen the gap between NUPENG and PENGASSAN, that is, between unionized staff and management.
* A 5% increase in each salary band would translate to different amounts.
* The flat rate on each salary band maintains equity of earnings, irrespective of whether one is a junior or senior staff.

Overall, collective bargaining serves as an effective communication tool for sustaining relationships in the enterprise. It is also an avenue for negotiating improved wages and all other issues bordering on an employment contract. The new face of collective bargaining also involves its use in the settlement of disputes arising in the interaction between employers and their employees. It is expected that the agreement reached after each bargaining cycle by the social dialogue partners is appropriately documented and implemented.

Chapter 1. Collective Bargaining Defined

Collective bargaining done in good faith should result in a mutually beneficial agreement that metamorphoses into enduring trust, confidence, relationship building, and partnerships between the social dialogue partners.

International Labour Organization (ILO) Convention 154 (ILO, 1981) defines *collective bargaining* as all negotiations that take place between an employer, a group of employers, or one or more employer organizations on the one hand, and one or more worker organizations, on the other, for

* determining working conditions and terms of employment; and (or)
* regulating relations between employers or their organizations and a workers organization.

Article 8 of the convention also categorically states that “the measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.” This definition assumes that the negotiation process will involve a group representing the employees and another group representing the employer on the bargaining table. The representatives of the workers in the majority of cases are elected union officials. On the other hand, the employers appoint their representatives, who they usually designate as management staff assigned to manage industrial relations in trust for the enterprise’s owners.

Within the collective bargaining contextual framework, parties are encouraged not to do anything that could hinder, or by extension, to embark on any voyage that would hamper the freedom it was supposed to confer. The measures and principles underlying collective bargaining will not be so contrived by either party to jeopardize the joint efforts and interests of parties in the process of collective bargaining.

Flowing from the ILO standpoint, collective bargaining has become an internationally acclaimed tool used as a legal instrument with which employers and management representatives manage the interactions that take place between the duo. Collective bargaining should also spell out the following objectives:

* Determine the net worth of the employees’ inputs that support the company operations.
* Prescribe the rights of management and the union.
* Determine the principle that guides relationships between labor and management.
* Prescribe the type of dialogue process to be in place for the management of labor–management relations in the enterprise.
* Determine the type of conflict management approaches to be used in resolving conflicts arising from employment contracts.
* Guide the partners’ relationships during the agreement’s life span and until a new agreement is put in place.
* Acknowledge that the engagement processes and the decisions reached during negotiations are expected to be devoid of unilateralism.
* Outline the grievance procedure.

The amended Nigerian Labour Decree No. 21 (Nigeria 1974, 1978) defines *collective bargaining* as “the process of arriving or attempting to arrive at a Collective Agreement.” Section 91 of the *Labour Act* defines a *collective agreement* as

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

This definition tends to perceive collective bargaining as merely a process of reaching and documenting an agreement between employee and employer representatives. In an ideal setting, collective bargaining seems to be the pillars upon which the promotion of industrial democracy in the workplace rests.

Thomason (1984, p. ??) defines *collective bargaining* as

a method of resolving conflicts, which is characterized by its involvement of at least two opposed parties who have a different (even opposed) interest in the outcomes of decisions, but who come together voluntarily to determine matters of common concern.

In Thomason’s view, collective bargaining is a voluntary process and a tool for resolving conflicts between parties with opposing viewpoints or interests. However, irrespective of the opposing views, the parties collaborate to determine matters of common concern.

Allan Flanders (1969, p. ??) defines *collective bargaining* as the “procedure by which wages and employment conditions of workers are regulated by the agreements between the workers’ representatives and their employers.” This definition tends to simplify the meaning and scope of collective bargaining. Flanders, in my opinion, hinged this definition on the procedures and agreements jointly put in place by the parties. It also reflects a process of regulating the activities between the representatives of the employees and their employers, which ultimately forms the basis for determining wages and employment conditions for workers.

As a British colony, Nigeria, in the *Annual Report of the Department of Labor 1954/55, Lagos* (Nigeria 1955), recognized collective bargaining as an imperative in an industrial democracy. According to Kilby (1967, p. ??), quoting the government’s pronouncement on the issue, “Government re-affirms its confidence in the effectiveness of voluntary negotiation and collective bargaining for the determination of wages.” This is an affirmation of the government of the day’s commitment to promoting the involvement of negotiating partners in a voluntary process to determine wages. It is also stating support for the long-term interest and commitment of the government towards the promotion of employers and trade unions in a symbiotic process of consultation and discussion—the foundation of industrial democracy in the workplace.

The post-independence third national development plan of 1975–1980 encouraged joint problem-solving by emplacing industrial self-government, collaboration between social dialogue partners in the workplace, and dispute resolution on the collective bargaining platform. However, where conflicts arose, they were encouraged to use neutral third parties.

These enhancements were to ensure that workers practiced industrial democracy without encumbrances and participated actively in the nation’s economic and sociopolitical development. However, the government realized that during bargaining and workplace interactions, conflicts were likely to arise. Where this occurred, the government was to play the role of a neutral third party, using mediation or conciliation. If these resolution methods failed, the federal minister of Labour and Employment, who had the authority to intervene in such conflicts, would be at liberty to refer the disputants to the Industrial Arbitration Panel or the National Industrial Court of Nigeria.

The political expediency and practice in place at a particular period largely determine the extent to which collective bargaining activities by the stakeholders can be applied. For instance, during the military era in Nigeria, the process and commitments made by the government towards collective bargaining in the workplace, as highlighted earlier, were abolished. The military junta proscribed any union perceived to be aligning with the agitation for the restoration of democracy. Freedom of association was restricted, and union leaders became the alumni of several prisons in Nigeria. After any proscription, the military junta usually set up task forces to manage the affairs of proscribed unions and stopped the remittance of check-off dues. Administrators, on a whim, arbitrarily fixed wages. These acts were increasingly accentuated as the military became entrenched in the political space. In contrast, in a democracy, the freedom to unionize, organize, and bargain should be inherently fluid and remain unfettered.

Be it a conflict or emolument-enhancing tool, collective bargaining tends to ensure continuous negotiation and dialogue between employee and employer representatives to foster industrial harmony in the enterprise. It also encourages them to leave the domain of each other’s pre-negotiation positions to secure written agreements that cover the terms and conditions of employment.

Whether selectively or wholly applied, collective bargaining involves some or all of the following:

* A negotiation takes place in the workplace between the representatives of the workers and those of the employer.
* The contents of procedural and substantive agreements are defined.
* At least two parties with opposing needs, viewpoints, or interests take part.
* The rights of the bargaining parties are determined, and compensation-enhancing measures are applied.
* Give-and-take negotiations may replace the old paradigm of entrenched positions.
* The process specifies the involvement of workers in an industrial democracy without encumbrances and, by extension, the active participation of workers in the economic and sociopolitical development of the nation.
* Procedures for regulating wages and conditions of employment are highlighted in the agreements reached between employee and employer representatives.
* The mode of communication between worker and employer representatives is stipulated.
* The application of voluntarism in the practice of industrial democracy is encouraged.
* Conflict resolution through a joint problem-solving approach is highlighted.
* Arriving or attempting to arrive at a collective agreement between the union and management in the workplace is encouraged.
* Emolument-enhancing measures are introduced.
* The signing of an agreement between the parties is encouraged.

For these reasons, and in accord with international standards, a few indigenous and multinational companies in the oil and gas industry continue to use collective bargaining as the guiding principle for undertakings in the sector in Nigeria.

Such bargaining occurs between the representatives of the workers and those of the employer. The process covers procedural, substantive, and other negotiable items jointly agreed to by the parties for negotiation before the process commences.

To successfully birth a collective bargaining process with a positive outcome, it is necessary to have the following in place:

* laws putting in place guidelines and procedures to guarantee the freedom of association by the workers;
* a platform to bargain without coercion or encumbrances;
* union representatives elected or appointed by the majority of the workers;
* a process that gives management representatives the authority to negotiate with the unions;
* the emplacement of clear communication lines;
* the recognition of union rights by management; and
* the recognition of management rights by the union.

In addition,

* Partners should see each other as having equal powers on the negotiation table. Outside the table, the parties must recognize who is the designated leader, by statute, to efficiently and effectively manage the enterprise for the good of all.
* The parties should approach collective bargaining with an open mind.
* The parties are encouraged to concentrate on mutual bargaining positions.
* Management should provide a friendly atmosphere for bargaining to take place.
* Cooperation is needed to achieve mutual and inclusive goals that would support the achievement of the business objectives.
* Areas of mutual benefit should be emphasized.
* The decision to bargain should be voluntary.
* During an emergency, pandemic, or force majeure, there should be a secure platform for virtual meetings of the social dialogue partners.

Suppose social partners built and earned each other’s trust to ensure industrial harmony in the workplace; this would foster consistent productivity. In that case, these partners are encouraged to strictly adhere to the rules and statutes guiding the collective bargaining process. When the parties sign the collective agreements, they should implement the contract’s terms to the letter and without delay. Whenever one of the parties cannot implement some components of the agreement, for whatever reason(s), the party that has constraints should call the attention of the other party to the challenges. Once this is acknowledged, the parties should reconvene for discussions on how best to resolve the issues.

Chapter 2. Rules, Regulations, and Statutes Guiding the Collective Bargaining Process

The absence of unbiasedly crafted laws, rules, and procedures in any organization is like an airplane without an operations manual.

Rules and regulations guide the collective bargaining process. They take their roots from conventions, practices, communiqués, agreements, charters, statutes, and constitutions. Workers in different parts of the world are likely to differ in needs and interests, depending on their level of development, values, socioeconomic environment, and ideology.

Workers in underdeveloped and developing countries are likely to be more inclined to use the collective bargaining process to press for employee rights to organize, for freedom of association, and for the freedom to engage in collective bargaining. They are also likely to negotiate for wage increases, which would enable them to have the necessities of life and employment security. Those in developed countries are more likely to use collective bargaining as a platform for seeking social justice; for addressing issues of gender inequality, the dignity of labor, and standard work; and for obtaining flexible work regimes, family support systems, increases in the real minimum wage, improved social and welfare safety nets, friendlier tax regimes, and a better life at retirement.

Employees’ freedom of association and their rights to organize and collectively bargain are enshrined in ILO Convention 87 (ILO, 1948) and Convention 98 (ILO, 1949). ILO Recommendation 91 (ILO, 1951) also urges member states to establish appropriate laws or regulations covering negotiating, concluding, revising, and renewing collective agreements or to be available to assist the parties in the negotiation, conclusion, revision, and renewal of collective agreements. ILO Recommendation 91 goes further to define *collective agreement*s as

all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more representative workers’ organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.

Apart from the unions’ right to organize and bargain in an unencumbered manner, member states that have ratified and domiciled the ILO conventions should statutorily promote collective bargaining by enacting appropriate laws to support the framework.

In line with international standards, government, employers, and representatives of employees form the tripod upon which industrial relations rest. On behalf of the federal government, the Ministry of Labour and Employment sets policies and monitors labor relations in the country. The minister’s office, the Industrial Arbitration Panel, and the National Industrial Court of Nigeria act as arbiters that intervene when there are conflicts between the partners in the tripod. The National Assembly, on its part, makes laws to promote social dialogue and industrial democracy in the country.

Beyond laws that support workers’ rights to unionize, section40 of the Nigeria Constitution (Federal Republic of Nigeria, 1999) goes further to reaffirm the inalienable right of any worker to join any union or association of choice:

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

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

These are critical and laudable steps in the collective bargaining process. Worthy as this seems, there are some omnibus provisions in Nigeria’s *Labour Act* that are at variance with the partners’ principles of freedom to engage in collective bargaining without shackles. For instance, section 13 (1) of the *Labour Act*—*Cap. 198, LFN, 1990*, provides that

Normal hours of work in any undertaking shall be those fixed

1. by mutual agreement; or
2. by collective bargaining within the organization or industry concerned; or
3. by an industrial wages board (established by or under an enactment providing for the establishment of such boards) where there is no machinery for collective bargaining.

However, sections 19 (1) and 19 (2) of the *Trade Disputes Act*, on the other hand, prohibit the grant of any wage increase without the approval of the minister (Nigeria, 2004b). The mere fact that the minister must consent to the wage increase literally means that the final authority to determine collective bargaining outcomes does not rest with the bargaining partners and, therefore, is against the spirit of ILO Convention 98 (ILO, 1949). It also seems that in practice, these provisions have only been strictly applicable to collective bargaining in the Civil Service and a few private organizations. Most private enterprises conduct their negotiations without the outcome being consented to by the minister before implementation.

Some sections of the *Trade Disputes Act* (Nigeria, 2004b) seem to contravene ILO Convention 87 (ILO, 1948) and Convention 98 (ILO, 1949) directly. Article 2 of Convention 87 states explicitly that employees and employers of all cadres shall have the right to join organizations of their choice. Section 11 of the *Trade Unions Act* (Nigeria, 1977) went beyond the intent of article 9 of Convention 87 to exclude workers in the Customs and Excise Department, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and the exterior Nigerian Telecommunications Limited, among others, from unionization. Other ouster clauses include staff designated as a projection of management. These categories of employees cannot establish or join any union of their choice, as contained in section 3 (3) of the *Trade Unions Act*. Workers in the education sector and government parastatals voluntarily contract into unions at a very senior level.

Some cadres of employees in the oil and gas industry are designated as management projections and cannot participate in union activities. In this industry, management projections and others in the management bracket do not participate in union activities. Neither can they participate in any industrial actions. The good in it is that for a country that runs on a monolithic economic system, this ensures that the nation’s economy does not grind to a halt when workers are on strike. However, to no small extent, this has not proved advantageous in the disruption of work during industrial actions in the downstream sector. The September 16, 2014, pension strike by both the Petroleum and Natural Gas Senior Staff Association of Nigeria and the Nigeria Union of Petroleum and Natural Gas Workers, over the Pension Commission’s threat to withdraw the license of the Nigerian National Petroleum Corporation’s closed pension administration, witnessed the majority of those ousted by law from unionism obeying the stay-at-home order. This sympathy strike by nonunionized staff clearly shows that irrespective of worker stratification, when it comes to the preservation and convergence of interests that are perceived to be for the common good of all, even management staff would indirectly participate in any industrial action. No coercion by any agency of government can stop them. The overall success of a particular strike involving all employees depends on the nature of the issues in contention and their relevance to all the segments of employees in an enterprise.

Other clashes in collective bargaining interests between the unions and the management of Nigeria’s oil and gas sector are possible. One is the issue of redundancies in the industry. Under section 20 (3) of the *Labour Act*, the definition of *redundancy* is “an involuntary and permanent loss of employment caused by an excess of manpower.” The determination of what constitutes excess workforce is an exclusive preserve of management and, therefore, subject to subjectivity and abuse by the same administration that is responsible for the recruitment process. So, if a company has been diligent in managing its human resources, an excess in workforce should not arise except during sudden unforeseen circumstances, such as a force majeure or a pandemic. In such a case, the unions strongly believe that management should hold consultations and reach agreements before taking any action that would affect a large number of their members. Section 20 (1) (a) stipulates that “the employer shall inform the trade union or workers’ representative concerned of the reasons for and the extent of the anticipated redundancy.” Anticipating a thing makes it a futuristic endeavor, allowing both parties time to have and conclude a dialogue before redundancy occurs. Unfortunately, the union leaders are usually unaware of the redundancy exercise until the letters are almost on the verge of being distributed to those affected. The drawback of this clause is that the mode of management’s conveying the process to the union is not clearly spelled out; nor is a time frame for such disclosure stated. Thus, management could verbally inform the union of its intent less than 24 hours before the redundancy exercise proceeds.

The principle of “last in, first out,” spelled out in section 20 (1) (b), “shall be adopted… subject to all factors of relative merit, including skill, ability and reliability.” Again, it is only management that determines the parameters to use. The ability and disability clauses have made it easier for management to disengage union leaders at will in some organizations. Although section 20 (1) (c) of the *Labour Act* directs the employer to use its “best endeavors to negotiate redundancy payments to any discharged workers who are not protected by regulations made under subsection (2) of this section,” most employers would have paid what they thought was ideal into the disengaged workers’ account before commencing discussions. The *Labour Act* on redundancy permits employers to merely inform the union of any impending redundancy. However, as noted above, the law encourages management to use its best endeavors to negotiate a redundancy package in the same breath. It does not stipulate whether the negotiation should be with the employee representatives or directly with the disengaged employees. This is also likely to be interpreted to mean that only employees not captured by any collective bargaining agreement should have the privilege of embarking on any negotiation (for a sample of a collective bargaining agreement see Appendix A). This clause also presupposes that management is under no obligation to impose a time limit on the consultation on redundancy. There are examples of management informing the union leaders on a Friday while the letters were ready for distribution on a Monday. That cannot be said to be fair. And it cannot have been the intention of the crafters of the law. The only way to ensure equity and justice for all stakeholders is to review this clause, and the unions should not wait for management to kick-start the review process.

The face of the oil and gas industry in Nigeria has changed for the worse in the past 5 years. Nigeria’s quota of oil production was 3 million barrels per day in 2011, but the sector was barely able to produce 2.3 million barrels per operating day at that time. From 2015, production fell below 1.5 million barrels per day because of the vandalism of petroleum pipelines, increases in the theft of crude, and sabotage by the militants operating in the Niger Delta region under the guise of protesting the underdevelopment of the delta and seeking greater control of the resources in the oil-producing area. These conditions have led to an astronomical rise in the operating expenditures of the oil and gas companies.

To worsen the sector’s woes, the pre-COVID-19 crude oil price nose-dived in January 2015. It went below US$50 per barrel until it hit a negative number. Before then, there was a steady decline in imports from Nigeria’s trading partners. The big companies started divesting from Nigeria’s oil and gas industry more than 5 years ago. They virtually abandoned the shallow waters for more in-depth sea exploration to avoid interfacing with communities, militants, and vandals. Although the divestments were blamed on a hostile socioeconomic environment, one of the hidden reasons behind the divestments has been the unions’ incessant use of coercive tools in matters relating to expatriate quota, promotion, and enhanced special severance packages, which had hitherto been seen as management prerogatives. Other reasons include very attractive tax and royalty incentives. The divestments, massive unemployment, falling crude oil prices, heightened insecurity, increased cost of doing business, and harsh economic environment are not reasonable or favorable pre-bargaining indices and worry all the stakeholders.

By the look of things, the sector in the post-COVID-19 era will need business-oriented leaders with good emotional intelligence skills (Goleman, 1969, 1995, 1996), who can understand that partners should display deep empathy across the divide in moments of need. Unions and management should not just be superintending redundancy packages as spiritual leaders do the dead. They should be doing everything legally possible to save workers’ jobs. Modern-day unionism, especially in the immediate post-COVID-19 era, should endeavor to use a combination of tools that can build confidence in employers, attract new investors, and give hope to workers at all times. Therefore, the oil and gas unions may wish to change their modus operandi of using industrial actions in an effort to resolve issues at the slightest provocation. At the same time, management must go back to the drawing board and seek ways of engaging the unions to reduce strife in the already dysfunctional sector. It is in the interest of industrial relations practitioners to evolve other confidence-building strategies that would help stabilize the industry. If not, both partners will wake up to a very harsh reality by the time the political topsy-turvy in the country takes its toll on the sector about 5 years from now.

To forestall further ouster clauses that seem inimical to the freedom of labor organizations and to prevent job disruptions that do no good for the industry, the unions must walk the extra mile by lobbying the legislative arm of government to emplace law reforms that will, in practice, protect the workers from the vagaries of modern-day changes in the workplace. This is one of the reasons for charging and collecting check-off dues. Otherwise, the issue of redundancy will continue to be a significant source of contestation. Second, unless there are enabling laws that support and attract investments, the multinational oil corporations will continue to divest from the country and move into areas that would grow their business models.

A closer look at the ILO international standards on labor–management relations at the enterprise level has brought to the fore the need for cooperation at the level of the undertaking. Steps to ensure cooperation at this level have been recommended, as have been measures to provide consultation and collaboration between employers and workers on all issues. Such changes need to be facilitated through voluntary agreements between the parties.

Irrespective of the drawbacks of the present collective bargaining system, the employees and employers in Nigeria’s oil and gas industry have done well within the scope of the self-inflicted political and harsh socioeconomic realities. However, they could do better in the use of collective bargaining as a relationship management tool, instead of seeing it as a tool for improving only their financial benefits in the challenging years ahead.

Chapter 3. Nature of Collective Bargaining

A structure without foundation is like a sail without a boom.

From the definitions of *collective bargaining*, its nature seems to be fundamentally hinged on the following:

Collective bargaining involves at least two parties

Collective bargaining is a joint platform with a minimum of two parties. The parties should meet voluntarily and at regular intervals for consultation, collaboration, and negotiation on matters of mutual benefit or to resolve conflict(s) or anticipated conflict(s), with the sole aim of reaching a voluntary written agreement.

Collective bargaining is voluntary

Collective bargaining is driven by voluntarism. From the outset, parties freely opt to bargain according to guidelines they have agreed to. For example, the respective parties agree to abstain from the arbitrary use of their constituent powers during negotiation. They must not do anything that would seemingly reflect elements of coercion.

Collective bargaining deals with conflicting interests

Employee and employer representatives usually come to the table with opposing viewpoints, positions, interests, and needs; such conflicts should be resolved through the use of middle-of-the-road options. This consideration ensures that both parties leave the negotiation table happier and alive to bargain another day.

Collective bargaining involves collective action

In despairing moments at negotiation, parties must see beyond their immediate constituencies to accommodate the other party’s views for the common good of the organization. The parties’ needs and interests should be moderated in such a way to ensure that the survival of the organization is their prime focus throughout negotiation. Achieving this requires the collective action of the bargainers. An example of this collective action was displayed during the collective bargaining of the Nigerian National Petroleum Corporation (NNPC) in 2011. The negotiation was heading for a deadlock when the house resolved to constitute a smaller committee that would look into the areas of disagreement. The committee was made up of representatives from management, from the Petroleum and Natural Gas Senior Staff Association of Nigeria, and from the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG). While other negotiating council members were on recess and engaging in informal consultations in caucuses, the committee worked tirelessly for the next 24 hours, night inclusive. The guiding motivation was that the committee members saw themselves foremost as members of the same family working for the good of the organization. They examined the interests and needs of both the unions and management without losing focus on the organization’s survival as a whole. By the wee hours of the following day, the committee had put together options and alternatives to consider at the plenary session at 9 a.m. When the plenary resumed, the committee presented its report, and the negotiating council adopted it as a working paper. This helped break the deadlock and moved the process towards a win–win outcome and an agreement.

Collective bargaining encourages and promotes the practice of industrial democracy

One of the hallmarks of collective bargaining is the promotion and sustenance of industrial democracy. Industrial democracy gives workers the ability to freely organize themselves into employee associations or unions, elect their leaders without the influence of employers, choose what they want in terms of welfare packages, and determine their future within the ambit of the agreement reached with their employers. For this to happen, employers should recognize the unions’ rights to freely elect the representatives that will negotiate on behalf of their members.

Collective bargaining discourages remaining in the domain of pre-negotiation positions

The parties in a bargaining session come into negotiation with high expectations. The employer may either come with too low an offer or not even have an offer at the beginning of a negotiation. The unions, on the other hand, usually come to the negotiation table with too high expectations. In most cases, the unions do not trust that employer representatives will reveal the whole mandate offered. In some instances, even when management has given its all, the unions accuse their company management of not exhausting the full mandate it got from the board. This distrust leads to some hardening of positions at the beginning of the negotiation, until much later, when a deadlock becomes imminent.

Collective bargaining enables active participation in the development of organizations

The belief held by most bargainers that collective bargaining must lead to enhancements in emoluments is not in all cases correct. As a rule, collective bargaining must focus on competitiveness, organizational growth, sustainability, and affordability. The company’s bottom line should dictate enhancements in salaries and benefits. Affordability, which is the ability to pay, and the agreement’s sustainability reached on the negotiation table, should not be lost on bargaining partners. Otherwise, the organization may face imminent collapse, and the outcome would jeopardize employment security.

In the past few years, the oil and gas sector witnessed some examples that may help us understand why it is necessary to accommodate each other for the organization’s overall good and to work for the employment security of workers. In 2003, an oil servicing company based in Port Harcourt suddenly woke up to the harsh realities that its wage bill outstripped its revenue profile and that the company was already in the intensive care unit in dire need of an economic lifeline. The major reason the company was gasping for breath was the recklessness with which the collective bargaining tool was ingeniously applied. For instance, one of the company’s distress elements was the negotiated compulsory award of 18% cost of living adjustment (COLA) payable to all employees each January. The implication of the application of COLA on January 1 of every year was that all employees would earn 18% and their base pay. Added to that was a minimum of 5% performance evaluation raise. Some could have up to 10%, while those on promotion earned about 12%. This system compounded the salary base before adding the merit ratings and other annual bargaining elements. The system also had a negative impact when it came to pension and redundancy payouts. Unions enjoyed the ovation and popularity of being the greatest bargainers of their time. The company management also enjoyed the uncommon generosity and beneficial outcome of the collective bargaining process because any increase in the unionized staff’s salaries was also applied to that of the management cadre. Unbeknownst to them, the hemorrhaging pipe, if not methodically plugged, would make the company go into a financial coma and imminent death.

The salaries and benefits grew at an average of about 50% per annum, while the company expanded its bottom line by less than 10%. Redundancy and pension benefits grew exponentially. A proactive union leadership would have realized early enough that they were already walking most of their members out of the company into the unemployment market.

Rather than facing the harsh reality and facts on the ground and working hard to save jobs and collectively redesign a sustainability path that would enable the company to stay afloat, the unions insisted that not a jot of their emoluments be reduced. Of course, the company collapsed under the heavy burden of recurrent expenditures. The company was, after that, bought by another business entity. Since the new company was unwilling to take over such huge recurrent expenditures, all the employees were placed on redundancy and paid off, and then they reapplied to work for the new company. Of course, many of the union leaders were not reabsorbed. Reabsorbed placements were on the basis of merit.

In this unfortunate incident, the company collapsed for the following reasons:

* The union officials played to the gallery with a populism agenda and did not have the ability to envision the future and act accordingly.
* The union representatives and the company management lacked a commercial mindset, which would have made them realize that a company could never survive a self-imposed Malthusian trap and catastrophe in which employee salaries grew geometrically at about 50% per annum. In comparison, the company grew its bottom line arithmetically at an average of less than 10% during the same period.
* Union representatives saw collective bargaining as an instrument for profit sharing and an alternative to a fair compensation philosophy.
* Union and management representatives did not develop a mindset that would enable them to see the company as theirs. They had entrenched an entitlement mentality in the system, which both parties enjoyed.
* Management, on the other hand, lost the prerogative of running the organization to the unions.
* Management forgot the fiduciary responsibilities they owed their shareholders.
* Leadership failed.

The hard lesson here is that when employees and their representatives, out of self-centeredness, action, or inaction, refuse to protect the company’s anatomy and physiology, the company will not stay strong enough to continuously avail them the much-needed financial rewards for their work efforts.

In 2008, another oil company facing similar difficult times found that its pension plan was heading for an imminent collapse. Some of the reasons for the imminent collapse were as follows:

* Pension deductions were based on total emoluments instead of the base pay.
* The COLA had a spiraling and compounding effect on the pension basket at payout.

Management wanted a radical redesign of the pension scheme, which hinged on the defined benefits scheme, and brought it in line with the *Pension Reform Act* (Nigeria, 2004a). The unions vehemently resisted the change and were uncooperative for several reasons:

* They were afraid of members’ reaction, which could lead to their impeachment.
* They did not want to be seen as having left a legacy of reducing members’ total earnable income during their tenure.
* They felt that the company had a bottomless vault that would never go empty.
* The oil price was at about US$147 per barrel and, therefore, there was no reason to plead inability to pay pensions.

The disagreement dragged on for almost 3 years. By 2011, the funding gap had grown to about ~~₦~~350 billion. The gap has already breached the pension laws, which stipulated that funding gaps should be bridged within 90 days. The pension scheme was heading for imminent collapse, and it was almost too late to salvage the situation. At this stage, it dawned on the union leadership that if nothing were done, their members were likely to retire without a pension basket to draw from. This exigency and the new reality forced both the unions and management to remove the COLA that compounded salaries and pension benefits. On its part, the company agreed to adequately fund the scheme on the same terms by paying some lump sums at agreed intervals into the funding pool. The company also transferred some properties to the pension fund. The company took these steps to eliminate the funding gap. These, with other measures taken, hugely reduced the company’s pension funding gap. The company hoped that the restored workers’ pensions would in the future remain sustainable.

Collective bargaining encourages mutual respect

During bargaining, employee and employer representatives are encouraged to set ground rules that would enable participants in negotiation to respect the process and the other bargaining partners. They should be ready to consult and discuss. They should adopt civility instead of using arm twisting, threats, and coercion. In times of despair during the bargaining process, parties must realize that the dialogue process can sometimes be tortuous. At such difficult times, parties must respect the rules of engagement set out in the procedural agreements, which from the outset should include the recognition of union and management rights, representational arrangements, definition of the subjects of substantive bargaining, and redundancy clauses.

Parties in collective bargaining should understand that those calling the shots are the principals and constituents, which in most cases, are outside the collective bargaining table. For instance, the commander-in-chief of any country who issues the military’s last orders to act is not usually on the war front. Similarly, the branch chair that leads the negotiation on the union side and the industrial relations or human resources manager on the other side need emotional intelligence skills, tact, and diplomacy to navigate the rough stretches of the collective bargaining process without unnecessarily ruffling feathers. Where feathers have to be ruffled, parties should be hard on the issues and not on themselves. Being hard on each other on the negotiation table does not help in the early resolution of issues. Being kind to each other does not necessarily mean “selling-out,” either. Bargaining partners must learn how to balance the act in their interactions with each other. For instance, officials of the oil and gas unions at the enterprise level are the organization’s staff. They only serve in those official union capacities for a period, after which they will be integrated back to the shop floor to continue with their primary assignments. During the service period, be it in the union or on the management side, what should guide their actions is respect for the rule of law and the dignity of labor.

Parties in a negotiation should refrain from using words that would set them apart. Using abusive or uncomplimentary remarks makes opposing parties rigid and positional. A union leader who showed no regard for organizational ethos during union service cannot freely return to serve under that same company management. One can display toughness without being outright abusive. Some union officials tend to be carried away by the populist agenda and forget that service time in their different capacities is but transient. One can be an efficient and effective union leader without using indecent language. Some ex-union leaders who achieved so much for their constituents, including strikes when necessary, are still held in high esteem by their respective organizations. Principled bargaining by a party should not be taken for granted or interpreted as an act of cowardice. Management knows the grandstanding union leaders who hold rigid positions for selfish reasons; management also knows union leaders who bargain by pursuing the principles of fairness and justice on behalf of their members. That is why NNPC, Saipem Contracting, Mobil Producing Nigeria Unlimited, Total E&P Nigeria Ltd., Nigerian Agip Oil Company, and a host of others have given management positions of authority to some union leaders after their tenure.

Management representatives should also note that while they are on the bargaining table, they should drop the “big boss” toga at the door. They should accord the respect due to the union leaders as leaders of the workers and treat them as equals on the bargaining table. After the negotiation ends and the agreement is signed, the ascribed role of the individuals involved determines who calls the shots and where the power resides outside the bargaining furnace.

The leader of each team should be respected and not derided. When one side notices disaffection or discord in the opposing side’s camp, there is the possibility of latching on to this flaw to score cheap bargaining points. On occasion, intra-team outbursts have become noticeable in plenary. Unions, at some point, may even go to the extent of changing leadership while the negotiation is ongoing. These are signs of power plays, ego trips, distrust, and lack of team cohesion.

Collective bargaining is a statutory instrument for the settlement of workplace conflicts

An organization may be fraught with conflicts. The conflicts could be due to the opposing interests or intents of the various segments of the organization. In trying to bring all the actors in a dispute together for the organization’s overall benefit, both parties usually evolve an acceptable process to search for a solution to their challenges. Collective bargaining, for example, is a veritable tool in industrial relations practice. It enables divergent interests to converge for the maintenance and sustenance of a peaceful and harmonious industrial relations environment. This process brings together opposing parties and viewpoints, encourages discussions on the issues, and in the end, encourages a win–win outcome. If the process is efficiently managed, it allows for all the actors to save face, and it promotes an intertwining relationship, knitted in trust and openness, to achieve excellent benefits for both employee and employer. Article 6 of ILO Convention 82 (ILO, 1947) states that “employers and workers shall be encouraged to avoid disputes, and if they arise to reach fair settlements employing conciliation.” It went further to specify the need for consultation in line with the rules of engagement and the need for both parties to allow the settlement of such disputes through the approved state machinery of conciliation (section2). Such disputes are expected to go through a process of investigation and resolution in a fair manner (section3). This may account for why the grievance procedure is embedded in a collective agreement, which in essence guides employers and employees in the management of conflicts arising from employment relationships.

The grievance procedure states the types and nature of the grievances explicitly. They may be personal or group in nature. When an employer breaches any aspect of the codes of ethics in the workplace, and an observation letter was written to that individual, whether the person is a union official or not, that letter must be personally responded to in line with corporate guidelines. The culture of turning in personal memos for a collective union response does not promote an ideal workplace culture in disciplinary matters.

Collective bargaining involves the use of negotiation

Employee and employer representatives come to the negotiation table with different mandates. The mandate of the unions is usually on the high side. Since both parties cannot get out the door with the negotiating baggage they came in with, they must negotiate among themselves to get the best out of the process at the commencement of negotiation. Negotiation is not just a one-way or one-off happening. It is recurrent and precedential. The collective agreement reached after each negotiating cycle has a life span. It also has a time frame for renewal. The time frame could be annually or biennially.

Negotiation is the art of engaging another party to get what is wanted in exchange for something that the other party has, which ordinarily both parties have no means of getting when standing alone. Some of the critical elements of negotiation that must be documented in an agreement are when the agreement exists, the wage reopening clause where and when necessary, all aspects of redundancy, and pensionable issues. At the end of negotiations, parties are encouraged to commit the outcomes to written agreements, and such an agreement must be jointly signed. Having reached a deal, the social partners-in-negotiation should ensure that they adhere to the terms of the signed contract to build trust, which should lead to industrial harmony.

Collective bargaining encourages industrial harmony in the workplace

At the infancy of industrial relations development, collective bargaining was hardly used except as a means of regulating wages and working conditions. Subsequently, it came to be employed in many great industrialized countries. It has promoted a simultaneous reconciling of the interests of the employers and the workers. This ensures that workers are carried along in decision-making processes through their elected or appointed representatives. It also ensures the provision of a congenial atmosphere for the practice of industrial democracy, advancing social progress, and promoting constructive labor–management relations. It affords employers and workers an opportunity to resolve issues of wages and conflicts democratically, without coercion. Collective bargaining encourages parties involved in negotiations to resolve workplace challenges without using walkouts or industrial actions to force the other party to accede to demands.

A closer look at the ILO’s international standard on labor–management relations at the enterprise level has brought to the fore the need for cooperation at the level of the undertaking (Nigeria, 1974, 1978). The review has recommended steps to ensure collaboration at this level. It has also recommended measures to provide consultation and collaboration between employers and workers on all issues, to be facilitated through voluntary agreements between the parties. Some of the critical considerations in any labor–management collective bargaining agreement are conflict resolution clauses and a feedback mechanism for post-monitoring checks. These would help keep both parties within defined boundaries and would serve as early warning signs and spell out the steps for mitigation. If done, they would foster industrial harmony in the workplace.

Collective bargaining has broadened its scope in modern Nigeria

When first introduced, collective bargaining covered a minute number of items, among which wages were generally predominant. However, since then, the scope has rapidly expanded to cover matters such as various bonuses, shorter working hours, more extended annual leave, and better working conditions against multiple contingencies.

This tendency for collective bargaining to cover more and more matters has been apparent in all countries with an industrialized market economy. The collaborative bargaining process represents the bridge of expressions between union representatives and management representatives. In Nigeria, the new threats of insurgency, kidnapping of oil and gas workers, destruction of oil and gas assets, banditry, and militancy have opened up new frontiers in agitations. These concerns include the following:

* Workers should live in city centers, where security is better.
* Where living in city centers is not possible, management should provide buses with security escorts from homes to workplaces, airports, and major events or pay enhanced security allowances.
* Enhanced transportation allowances would enable workers to purchase new cars.
* The employer should provide insurance coverage for families.
* Housing grants would enable employees to build their own houses.

Collective bargaining is a communication tool for ensuring effective labor–management relations

Awareness of the need to communicate effectively is the first step in improving communication skills in a rapidly changing society. The industrial relations manager should maintain an open-door policy allowing union officials to confer at any time. The communication spectrum should promote trust and allow for confidence building among stakeholders. The unions must trust the industrial relations manager to let them bring up issues for clarification.

At one time, NUPENG wanted to carry out an action based on a memo that was misinterpreted by the mailing clerk. The memo asked for management’s approval to secure the services of a transportation company to provide buses and drivers (service contract). This meant that the recruitment of drivers for the buses would not be necessary. The dispatch clerk alerted the NUPENG chapter chairman that all the drivers in the corporation’s employment would soon be sacked. The entire workplace became charged. But the union’s leadership reasoned that there was no way drivers would be penciled down for disengagement without the knowledge of the corporation’s employee relations manager. They also claimed that, with the open-door relationship with the manager, it would be unfair to carry out any immediate industrial action without reaching him first. So they gave the corporation management the benefit of the doubt. The union leaders reasoned that if the employee relations department knew about the disengagement plans, it would have invited the union for engagement. That was trust in action. On that note, they demobilized and came to our office. When they presented the item, the manager of employee relations appreciated their trust and confidence. He told them that with the relationship they had built over the years, there was no way management would contemplate a severance of that magnitude without engaging the unions. While they were there, he contacted the general administration services in charge of transportation that had originated the memo. The right story emerged, and the union leaders went back to brief their members on the actual situation.

Lessons learned

The following lessons were learned:

* Trust is critical in union–management relations.
* Communication is vital in relationship building.
* Parties in industrial relations should not make decisions on the spur of the moment.
* Parties should never act on rumors. They should, at all times, seek clarification on issues that are unclear to them.
* Each party should be receptive and calm when dealing with the other party.
* Parties should endeavor to cultivate active listening skills when dealing with each other.
* A party should not push aside or sweep under the carpet the complaints or observations of the opposing side.
* A party should always see the other party as genuine in the presentation of their claims until they prove otherwise.
* Parties should not reach conclusions without seeking clarifications from end-users.
* Management should use paperless systems in confidential matters.
* Union leaders must at all times remain in control of their members and direct them to where they ought to be and not where they want to be.
* Unions should not communicate as alternative management.
* Management should not rationalize for the unions on areas they have concerns with.

Collective bargaining can test the integrity of partners

Parties should pass the integrity test in all phases (pre, during, and post) of collective bargaining. Management should endeavor at all times to implement the signed agreement to the letter. The principles of no delay, no denial, and no deceit should be the hallmark of any collective bargaining process. Parties must be transparent, open, and truthful when briefing their constituents or principals.

In 2004, a now defunct indigenous oil and gas company entered into collective bargaining. The parties in negotiation agreed to use an *x*-factor on “net value” for calculating the base wage increase. But when the final agreement was drafted for signing, that same clause was inadvertently or mischievously crafted to read the *x*-factor on “gross value.” Management appealed to the unions to change the clause from “gross value” to “net value” because of the grave consequences this would have on both parties. The unions knew that paying the *x*-factor on the gross value would lead to the insolvency and collapse of the organization, but after consultations with their congress and national secretariat, they refused to change the clause. What motivated the unions at that time was the mouthwatering payout, not job security. They were afraid because of the turn of events in the industry. They also believed that as skilled workers, they would quickly get alternative jobs. They forgot that job mobility in Nigeria was very restrictive. The union leaders were not emotionally intelligent enough to see the bigger picture, which would have guaranteed that their employment together would survive beyond the company. Irrespective of the moral suasion and pleas from management, the unions proceeded on indefinite strike action. The company was also unwilling to pay a gross value using the *x*-factor because of the damage it would do to its financial base.

Not finding things easy, the company pressed the button for liquidation. Everybody lost. The workers were shoved into the unemployment market. With the economic downturn, the dollar- and generator-driven economy, and unguided investments, the retrenched workers were soon walking the streets looking for jobs. After 2 years, the owners of the enterprise floated another company. Most of the workers that were laid off in the former company applied for employment in the new concern. However, the management of the new concern did not consider any of them for employment.

Lessons learned

The following lessons were learned:

* The inadvertent typographical error should not have been used against the management representatives because there were many negotiations to come in which the good deed could have been reciprocated.
* Partners must remain truthful on positions already reached, no matter how skewed in their favor the situation is.
* The good for the self must be subsumed for the overall good of the enterprise. If not, all the would-be actors could be washed away with the tide.
* The integrity of the union and that of the workers were seriously damaged.
* If the organization had survived beyond that point, management could not have trusted the union leaders again.
* It was a grievous error for the union leaders to have misled the congress. Even when that mistake was made and identified, it was the union leaders’ responsibility to help guide the workers to where they ought to have been and not to where their members wanted to be. This is important because workers do not have all the information and facts at the union leaders’ disposal. So, it was the duty of the union leaders to guide the congress’s decision-making process rationally.

Collective bargaining is voluntary

Collective bargaining needs the voluntary participation of parties, cooperation, sacrifice, collaboration, and compromise to arrive at a mutually beneficial agreement. There is nothing in the bargaining dictionary that stipulates that some items cannot be negotiated upwards or downwards in times of harsh economic realities and uncertainties. Therefore, parties must use their best endeavors to save workers’ jobs and keep the organization afloat. If recklessness in bargaining and a who-cares attitude lead to the collapse of the organization, everybody loses.

Chapter 4. Elements of an Effective Collective Bargaining Process

When people are restricted to no-go areas in any relationship, they find means of probing and knowing why they are bound to the so-called no-go areas. When they cannot find answers to their agitations, they ascribe unfairness to the process and find all means of breaking the barriers.

Be fair to all parties

The collective bargaining process must be seen to be fair to all parties in a negotiation. Enough notice should be given to all the bargaining partners before the commencement of the process. The notice should include the date, agenda, venue, and time of negotiation (all harmonized through consultations and dialogue).

Negotiate all employment-related matters

The partners, mostly on the management side, should allow bargaining on all matters connected with employment contracts, without the unions usurping the typical management functions of organizing, budgeting, supervising, appraising, and so on. Unions should know that any company management is saddled with managing the organization efficiently and effectively, to improve productivity. Issues of appraisal, recruitment, promotion, and deployment of financial resources are not within the realm of union rights or prerogatives. However, when unions have concerns about inappropriate application of management tools that will demean or disadvantage their members, they should feel free to engage management objectively and rationally. As representatives of the employees, unions have the inalienable right to make suggestions on how best to deploy organizational resources without sounding as if they are coercing management. Union leaders must, however, know that should they wish to cross the red line into the management domain, it has to be done with caution and respect.

Understand the socioeconomic implications of negotiated items

The parties in a negotiation do not bargain in a void nor do so in absolute terms. They do so within the confines of the law, socioeconomic environment, and society, which dictate the balance of financial and social relationships. Therefore, collective bargaining allows both parties to appreciate and understand the implications of their negotiations on the organization, members of the union, and their immediate environment.

Consider the social framework

Collective bargaining takes place within a social framework, which should be devoid of technical and legal encumbrances. Within this social framework are human interactions. Once two or three people with interdependencies gather to pursue any endeavor, conflicts necessarily arise. Therefore, parties should acquire soft skills that enable them to deploy collaborative strategies and manage people issues arising out of these interdependent relationships. They should also stay within the ambit of set rules, guidelines, and regulations.

Recognize the status of collective bargaining partners

Bargaining partners are considered equals during the collective bargaining process. Equality of the negotiation partners allows bargaining to be pursued without duress, coercion, or power imbalance. The process stresses representation on an equal basis and terms. Negotiation should be carried out in an atmosphere devoid of harassment, threats, and duress. There is no place for the “big boss” or master–servant gameplay in workplace collective bargaining or negotiations. However, outside the gate of negotiation, everybody knows who the manager or enterprise leader is.

Be flexible

The content, elements, and process of collective bargaining should encourage compromise, consensus building, and flexibility at all times. For instance, the span of a collective agreement may end in February, but the parties are encouraged to commence negotiation in January so that the new agreement reached comes into effect as soon as the old one is expiring, so there is no lapse. Alternatively, parties might begin after the expiration of the previous deal with a caveat in the agreement that “the new agreement shall come into effect by March 1” of that year. Lastly, if the socioeconomic indices such as we have during COVID-19 cannot support any negotiation, both parties must come together and seek common ground on the matter. For instance, some company management agreed with their unions to give minimal reliefs on non-weighty items with a promise that when once the situation improves, the wage reopener clause would be invoked to negotiate on selected items.

Consider the socioeconomic environment and who calls the shots

The socioeconomic environment and the political climate should not be lost on bargaining partners. Oil and gas companies should be mindful of how they manage the conflicts arising from their collective agreements. Unfortunately, most oil-producing communities are underdeveloped, lack basic amenities, and have high unemployment among their youth. So, care must be taken on how far they can escalate the conflicts arising from negotiations beyond the confines of their operational area. Settling collective bargaining conflicts should never be in the public domain. The agencies of government within the oil and gas spectrum should also be very mindful that in the present circumstances, the minimum wage of civil servants is ~~₦~~30,000, which is less than US$100 a month. When Muhammadu Buhari was elected Nigeria’s president in 2015, one of the new administration’s headaches was the inability of more than two-thirds of states and local governments to pay workers’ monthly salaries and pension. They owed their employees 3–24 months’ salary and 12–36 months’ pension. Some states, such as Kogi and Osun, were paying half salaries. To shore up support for the new administration, the federal government, in September 2015, approved the disbursement of over ~~₦~~330 billion as a special intervention fund to 27 states. The intervention was to offset some of the salary arrears.

In August 2016, Nigeria slipped into a recession, which made matters worse for the oil and gas unions under the federal government governance system. The relevant agencies were the Nigerian National Petroleum Corporation (NNPC), the Petroleum Equalisation Fund, the Petroleum Technology Development Fund, the Department of Petroleum Resources, the Petroleum Training Institute, and the Petroleum Products Pricing Regulatory Agency. Ironically, President Buhari, who was giving bailout funds to states to clear salary and pension arrears and superintending a country in a recession, was also saddled with the final approval of the collective agreements signed by any of these federal government agencies in the oil and gas sector.

Currently, the chief executive officers in the agencies have had to activate a legal bypass system that enables them to give awards to their employees as entrenched in their enabling Acts, instead of embarking on full-scale negotiation. If this situation continues, a critical element of union rights will have been taken away and replaced by company management’s directing will and discretion. Using discretion in granting awards has washed off a critical and essential element resident in the collective bargaining cocktail, which makes it an exercise worth looking into by social dialogue partners.

The president of the Federal Republic of Nigeria must approve any collective bargaining agreement for the federal government agencies because he is the minister of Petroleum Resources and, at the same time, the chair of the NNPC board. The board of the NNPC is a constitutionally recognized body legally charged with the responsibility of determining the emoluments of its staff as contained in the *Nigerian National Petroleum Corporation Act* (Federal Republic of Nigeria, 1990). Of particular interest are the **s**upplementary provisions relating to fixing the salaries of the NNPC managing director and immediate subordinates in part A:

9. (1) The salaries of the Managing Director of the Corporation and of his immediate subordinates shall be such as may be determined from time to time by the National Council of Ministers.

(2) The salaries of the other employees of the Corporation shall be determined by the Corporation.

(3) Subject to any regulations made under paragraph 10 of this Schedule, the corporation shall pay to any of its employees such pensions and gratuities as it may determine.

10. The Board may make regulations providing for-

(a) the conditions of service of its employees;

(b) the grant of pensions, gratuities and other retiring benefits to its employees and their dependants, and the grant of gratuities to the estates or dependants of its deceased employees; and

(c) the establishment and maintenance of medical benefit funds, superannuation funds and provident funds and the contributions (if any) payable thereto and the benefits receivable therefrom.

The unions, in their bid to fulfill the collective bargaining mandates on behalf of their members, face many real challenges: the country’s battered and monolithic economic base; unstable crude oil prices; the coronavirus meltdown; sabotage of oil and gas installations; dollar-driven importation of petroleum products; wholesale exportation of crude oil and the inability to add value within the production chain; inefficiencies in the refining sector; and the government’s unfettered interventions in the affairs of these agencies. There is no likelihood that things are going to get better soon. Until these agencies become self-funding and removed from the federal government’s apron strings, management and the unions in these organizations will continuously conflict with collective bargaining issues. Therefore, the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG) must, as a matter of necessity, urgently advocate for the full commercialization of the NNPC based on the Nigeria LNG Ltd. model and for passage of the *Petroleum Industry Bill* into law.

Reach workable agreements driven by flexibility instead of positions

In some collective bargaining agreements, before any of the parties can introduce new items, they must have been mentioned, discussed, and agreed upon during three joint consultative meetings in the life of the expiring collective agreement. However, either party can introduce an item without earlier discussions if that item will serve as a tradeoff that would save the process from a deadlock without compromising the integrity of the process. Since collective bargaining permits negotiation on matters connected with employment, management should endeavor to be flexible in management-prerogative cases without losing the power to manage the enterprise to the union. However, the employer cannot deregulate certain areas for union discussions. These areas are promotion, transfers, performance evaluation tools, rules of hiring, and so on.

Search for common ground for parties

In collective bargaining, parties are encouraged to not adopt a winner–loser or winner-takes-all attitude. They should always find an equilibrium or the middle-of-the-road option that would, in the end, enhance face-saving safety nets for both union and management.

The following advice may contribute to a successful collective bargaining process:

* Avoid distractions by ensuring that the negotiation takes place as a retreat and in a serene environment. Experience has shown that when parties conduct negotiations in their workplace, the participants tend to face distractions and calls to attend to other duties, which may significantly interrupt the process and cause distractions, with resultant delays.
* Carry out negotiations in a friendly atmosphere, devoid of harassment, threats, and duress. This is imperative because negotiation is not a war that must be won at all costs. Parties should be mindful that when two enemies are at war, they always want to kill, maim, and overrun the other. Negotiation should also not be a winner-takes-all race. It is about collaboration and collectively making it possible for parties to have a joint problem-solving solution that lets each of the parties win in some areas and make sacrifices in others. No one party enters the collective bargaining room through the bargaining door and leaves through the same door with all expectations fulfilled. Parties must necessarily leave some collective bargaining items behind as future negotiating items or tradeoffs. So parties in a negotiation should carefully go through their wish lists and identify those for future tradeoffs and those not likely to scale through the negotiation process within the current cycle.

Ensure empathy and a companionable physical environment

Apart from positive attitudes, the parties are encouraged to show empathy when things get rocky. Parties in bargaining should be kind to themselves. They should find time to stretch, exercise, refresh, and unwind. There have been occasions when union representatives refused to eat food provided by the management during lunch break. In the words of the union leaders,

We are not here to eat. We are here for serious business. We shall fast all through the negotiation process because our members usually accuse us of romancing, wining, and dining with management. Besides, this management is not conceding to some areas of interest quick enough.

Apart from seriously putting their health and safety at risk, union representatives with this attitude portray a waste of resources and an infantile behavior that should not be encouraged.

Conduct the collective bargaining process honestly and transparently

The outcome of any collective bargaining usually depends on fairness, honesty, and transparency. Some bargaining partners give it in bits. Some do not give anything or shift their positions at all. Partners should realize that extended meetings and payments for venues, food, and drinks over a long period also deplete a company’s scarce resources, which could have been deployed in other areas of the venture instead. Apart from resources wasted on an extended stay in rented accommodation, the working-hour losses could be phenomenal. Although bargaining partners should be at liberty to use the psychological “wear-them-down” tool, it should not be unnecessarily stretched. Shop floor members of the union may become restive when negotiation extends beyond a reasonable time. Rumors of sell-out by the union leaders are common under such circumstances, and unions should try to avoid that booby trap.

Communicate effectively

Partners must be open and prepared to share information that would enable them to bargain effectively. There should not be a hide-and-seek game or behind the scene manipulations that put any of the parties in a disadvantageous position. Therefore, bargaining partners must give enough information to allow the other parties to understand and appreciate their perspectives. Notice of meetings, date, agenda, venue, and time of commencement of the negotiation process and follow-up discussions must be well communicated to all the parties. Parties must learn to summarize and paraphrase for clarity. The use of open-ended questions helps and motivates the other party to talk more. Closed-ended questions that would elicit a yes or no answer should be used sparingly. Talking down to the other party should be avoided. Each negotiator should deploy effective and active listening during negotiations. Remarks like “Thank you for the offer, but you can do better” and “We appreciate your offer; a shift could help us wrap this up quickly” should be encouraged. The usual “You’re keeping the remaining mandate to earn management’s commendation for cost saving” or “You’ve always been the union’s problem” should be discouraged.

Concentrate on areas of mutual interest and needs, NOT positions

The most plausible options and the best alternatives to the original positions should be determined before negotiation commences. Parties in negotiation, more often than not, answer to principals. For instance, the management representative is responsible to top management, while the union representative is responsible to the congress members. Therefore, those sitting on the negotiation table should not see themselves as enemies but servants sent to accomplish a mission on their principals’ behalf.

Parties are encouraged to spar at a pre-negotiation workshop to understand the socioeconomic implications of the items slated for negotiation. Management should arrange pre-negotiation training. If the process is well managed, it becomes an investment of inestimable value. It can significantly reduce extended stay, long periods of bargaining, and the stress that comes with complex and challenging negotiations. Unfortunately, many organizations see pre-negotiation training as a cost that should not be. During a pre-negotiation workshop, parties usually get to know each other better and successfully rip off the walls of ego, prejudices, power, and arrogance. It is necessary to organize a pre-negotiation workshop or parley to apprise negotiating partners of the company’s financial performance from the previous negotiation cycle, present financial status, and future projections. Parties should be able to measure the achievements and challenges of the last financial year, the company’s strengths and weaknesses, and its strategic plan. It is also important to look at the state of the pension scheme and the implications of negotiations on the staff pension, its challenges, the number of retirees drawing from the pension basket, and the projected number of those to retire in the current year. Other areas of concern should include the status of comparators in the industry. Lastly, the parties should discuss the role of labor and managers in productivity enhancements and sustainability.

In appraising the above, management must stay on the path of truth and integrity as unions can easily detect any untruth related to the company management’s data because their members form the bulk of those in the company’s finance, audit, and accounting departments. The unions should also make presentations to the management representatives on how they perceive the company, appraise the company’s performance, highlight leakages in the system, and recommend what the company should do to enhance its financial performance and improve productivity. All these actions should be done with openness, sincerity, and purpose, without jeopardizing each other’s positions before negotiation commences. At the end of the presentations, rationality and objectivity should be the hallmark of the synopsis, and both parties should then use the data gathered to streamline their bargaining engagement.

Collective bargaining should not encourage no-go areas on matters connected with employment contracts.

The oil and gas bargaining process in so many companies is fraught with so much distrust. Experience has shown that the unions, in most instances, believe that management has a hidden agenda for a pre-collective bargaining workshop. Union leaders also believe that the data usually presented to them during pre-negotiation workshops do not show the whole truth. The utter distrust, which is often driven by perceptions, makes the unions see management data as mere window dressing that does not reflect the actual financial records. They believe that the essence of hiding or presenting doctored data is to ward off union agitations for improved wages. With this mindset, the union officials are propelled into taking a position that includes posture, behavior, and skepticism. When this happens, most company management concludes that pre-negotiation workshops are a waste of financial resources and unnecessary.

Irrespective of the unions’ beliefs and prejudices, company management can reduce skepticism to the barest minimum by not waiting until negotiation periods to brief the union executives of the company’s financial status. The company’s financial position and what management is doing to reposition the company for better performance should be part of the quarterly joint consultative meetings. Union leaders should also do whatever is necessary to get relevant information for their pre-negotiation engagement. They may not always see their negotiating partners as truthful, so the pre-negotiation workshop is required to deal with parties’ concerns before the negotiation can occur transparently. A high level of trust allows managers and union representatives to come out of pre-negotiation workshops better informed and able to approach negotiation with openness and honesty.

Experience has also shown that parties believe their rights are absolute. It is through a well-structured pre-negotiation workshop that areas bordering on union and management jurisdictions can be articulated and discussed. At the end, the parties reach common ground on what to expect on the table. Once this is known, it guides the parties to be careful when crossing the red line into the other party’s prerogative areas. For instance, management cannot dictate to the unions what procedures to adopt in electing their representatives or who should lead the negotiation on the their side. On the other hand, the unions cannot wish to negotiate how the organization should be run or by whom nor to determine who should be part of the management negotiation team.

During the 2011 negotiation between the management of the NNPC and the staff unions, a case in point occurred. Negotiations between management, PENGASSAN, and NUPENG had been ongoing for several weeks, with an existing wide gap between the unions’ positions and that of the NNPC management. The negotiating council then unanimously adopted a five-person committee to caucus, brainstorm, and make recommendations to plenary on how best to resolve the conflict to avoid a deadlock.

The union leaders vehemently objected to the nomination of one of the management representatives. They threatened to pull out of the negotiation if management did not substitute another official. The management refused to accede to this request and insisted that the union had no right to determine who should represent management on the negotiation table. The union officials had no choice but to accept the management nominee. Fortunately, the committee was the saving grace, as the committee report formed the basis for the agreements subsequently reached by all the parties. Thinking outside the box like the parties did is necessary to prevent deadlocks in negotiations.

Chapter 5. Purpose of Collective Bargaining

Everything under the sun has a purpose. Life without purpose cannot give real meaning to existence. When the true meaning of existence is lost, the essence of life itself becomes meaningless.

The purpose of collective bargaining is to set the standard for regulating the employee–employer working relationship; set the standard for employment contracts; resolve disputes arising from the employment contract; and ultimately enthrone, maintain, promote, and sustain stability and order in the workplace.

Involve stakeholders in the decision-making process

Internationally, industrial relations practitioners often cite government (represented by the Ministry of Labour and Employment), employers (company representatives), and employees (worker representatives) as the main actors in industrial relations. In Nigeria, the judiciary is usually not included in this categorization. The judiciary is a significant stakeholder, as the court makes judicial pronouncements that, in the end, shape the conduct of other actors. When the other three actors are in dispute, they approach the court to interpret the policies, restore lost rights, or act as a judge for sustainable relationships.

The government formulates industrial relations policies that guide the actors and ensure that stakeholders conform to such guidelines. For instance, in the early 2000s, there were intense agitations by the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG) on outsourcing, casualization, and many companies’ refusal to allow workers in their establishments to unionize. The unions followed this up with a series of industrial actions until the minister of Labour and Employment came up with the *Guidelines on Contract Staffing and Outsourcing in the Oil and Gas Sector* (Federal Ministry of Labour, 2014). The guidelines broadly categorized contract staff as labor or service. They went further to define the meaning and scope of labor and service contracts, the approach to collective bargaining for this group of employees within the framework, and the criteria for the registration and engagement of labor contractors. The Ministry of Labour and Employment expected all employers of labor in the oil and gas sector to comply with the guidelines for administering the collective bargaining process for third-party labor contract staff or outsourced jobs within the new framework.

The guidelines specifically urged the employers (third-party labor contractors) to engage the representatives of PENGASSAN and NUPENG in the collective bargaining process. Explicit as the policy seemed, the unions are still at loggerheads with oil and gas companies over collective bargaining issues because of the following:

* The unions expect the principal companies to facilitate the implementation process between them and their agents (third-party labor contractors), especially if they have to carry out collective bargaining in clusters. The unions often express the opinion that the principals have fiduciary responsibilities to direct their agents (third-party labor contractors) to engage them in negotiations, especially if they have to carry out collective bargaining in clusters.
* The principals (international and indigenous oil and gas companies) claim that micromanaging the third-party contractors who work on their behalf would be tantamount to selling a goat without releasing the leash to the new owner and, therefore, dabbling in the internal affairs of another legal entity. Consequently, they often assert that it is the unions’ responsibility to organize their members and directly engage the labor contractors who are their direct employers.
* The labor contractors, who are paid a commission on the total number of staff managed on behalf of their principals, argue that they do not have the means to meet the demands of the unions because there is little or no mandate to expend funds beyond the fixed contractual expenditure already outlined in their contract with the principal companies.

With the above three positions, the unions’ challenge is how to properly situate the process of collective bargaining with the third-party labor contractors without involving the principal companies that engaged the third-party contractors, who carry out labor management on their behalf. Outsourcing is legally backed and, therefore, legitimate. The judgment of the **National Industrial Court of Nigeria, in the** **case of the *Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) v. Mobil Producing Nigeria Unlimited* (2013) 32 NLLR (Pt. 92)** brought this to the fore. Outsourcing in Nigeria has been a complex phenomenon until recently, when judicial pronouncements clarified the true meaning of triangular relationships involving a principal and a primary company, which has employees working for a secondary and third party on behalf of the principal. The Supreme Court and the National Industrial Court of Nigeria in ***Shena Security Co. Ltd v. Afropak (Nigeria) Ltd & ORS.*****(2008) LPELR-3052(SC) and the *Petroleum and Natural Gas Senior Staff Association v. Mobil Producing Nigeria Unlimited* unreported suit No. NIC/LA/47/2010 (judgment delivered on March 21, 2012)** considered the primacy of facts, co-employer status, and mode of payments of remunerations. **These cases proved that the idea of a company using a third-party contractor working on its behalf as a mask to shield it from liabilities of the former is no longer tenable. The principal company employing a third party can no longer abdicate its responsibilities of overseeing what its agents are doing while working on its behalf. So it is the principal company’s responsibility to ensure that the third-party contractor does not deny workers their rights to unionize and bargain collectively.** Companies have found outsourcing helpful in the management of labor costs, and it also allows them to concentrate on their core mandates. However, irrespective of terminology, workers should not be denied their right to belong to a union and choose collective bargaining to improve their welfare.

Use collective bargaining as a collaborative problem-solving tool

Whether with a payroll staff or outsourced employment, collective bargaining allows employee and employer representatives ample opportunities to partake in the organization’s decision-making process. For instance, when the NNPC staff unions realized that their pension scheme was unsustainable and headed for a collapse, they collaborated with management to fashion salvaging ways. The decisions reached in 2010 by both parties became a plank for driving the pension scheme’s sustainability as a significant policy decision that affected the entire workforce.

Promote a symbiotic relationship between negotiating partners

If well managed, collective bargaining is a process that should promote symbiotic relationships and synergy between negotiating partners. Bargaining partners are but two sides of the same coin, used for purchasing peace and industrial harmony in an organization.

Encourage a paradigm shift from the status quo and positions

Change is the bedrock of any organization that must survive the current insecurity and harsh socioeconomic environment in Nigeria. Therefore, it is in the interest of bargaining partners to work for both parties’ mutual benefit and claims in a negotiation. It is of the utmost necessity to shift from the status quo and “this is how we have traditionally done it” system to a more rational, holistic approach, which would reposition the organization and the trade unions for the best of times.

Chapter 6. Goals of Collective Bargaining

The goal is a propeller that pushes our inner drives towards a particular end. Life without dreams or a pre-planned purpose is a life of misery waiting to happen. It is like a balloon, released into the air, which the wind tosses hither and thither until it is finally punctured or deflated without recourse to the original owner.

The goals of collective bargaining include resolving competitive disputes and cooperative issues; and helping union and management representatives keep face with their constituents and (or) principals.

Economic goals

The consideration here is for the unions to bargain for any item that will enhance their economic power and protect workers’ salaries from changes in the economy, inflation, and other economic downturns. Other goals may be to obtain gratuity, redundancy, and pension benefits. They should also benchmark with companies that have the same structures, production quota, and output. There is a place in a negotiation where orange has to be compared with orange. For example, comparing a downstream company that markets finished petroleum products with an upstream company does not seem appropriate. Even when comparing two upstream companies, unions must consider their peculiar circumstances. The union officials should go beyond mere comparisons and ask questions like “What is the daily production output of the two companies?” “How many employees do the companies have?” “Do the two companies operate in the same volatile community?”

Equality in generic items

The oil and gas unions often prefer equality of factors in determining generic benefits, which include consolidated salary, rent, and so on. On non-generic items, however, they tend to allow disparities in incentives and (or) enhancements. Examples of non-generic areas include seismic, onshore, and offshore allowances. The reason for this consideration is to ensure that staff working in more hazardous operations or areas have incentives and (or) enhancements for role-specific items.

Social and welfare goals

The social and welfare goals for negotiation include but are not limited to educational assistance or grants for children’s training, a security allowance, and a generator, which is necessary because of a lack of energy infrastructure. More than ever before, the oil and gas unions will push for telecommunication allowances, which have become necessary in the COVID-19 virtual workplaces. Other benefits sought include long-service awards and milestone payments; a golden handshake upon exit from work in the form of gratuity, medical, life insurance, and disability benefits;leave (maternity leave, paternity leave, sick leave, and casual leave)**;** registration with recreational outfits to maintain work–life balance; subsidized annual vacation; and a furniture allowance.

Chapter 7. Scope of Collective Bargaining

Every project has a scope. Scope gives planners the latitude to know the level of resources to deploy to accomplish a particular task. A project without a scope is like a surfboard without a rail.

Mandatory areas

The mandatory areas of collective bargaining are supposed to be wages, hours, working conditions, and allowances. These areas have emotional attachments and are very dear to trade unions. Therefore, company management should treat them with caution. However, any company management should concede to any item on the principles of affordability and sustainability. No matter what the unions threaten, no company management should approve any item it cannot afford and, by extension, will be unable to implement.

Permissible topics

The permissible topics are items that do not directly relate to wages. They are issues tagged as management prerogatives. These include hours and working conditions, management of the organization, performance evaluation tools, and discipline.

Grievance procedures

Whenever two or three persons gather in a team to work towards a project’s birthing or a productive venture, disputes must of necessity arise. Therefore, an efficient and effective dispute resolution mechanism should be part of a collective bargaining agreement. The step-by-step approach to handling grievances arising from workplace relationships should be specified to guide tripartite behaviors.

Non-permissible topics

Non-permissible topics are variants with principles of fair play, justice, equity, ideal standards, and ethics guiding workplace relationships. These include all illegal or offensive items and clauses calling for gender, racial, or religious discrimination.

Life span of a collective bargaining agreement

The life span of a collective agreement is a critical aspect of any negotiation process. When it will start and when it will lapse must be clearly stated. Where it is necessary for early negotiation, both parties should expressly and unambiguously commit to writing the process and how it will be carried out. For instance, the government agencies in the oil and gas industry now know that any presidential election year is not usually favorable for negotiation because of the inability to get the attention of the president of the Federal Republic of Nigeria. Therefore, the parties should insert a clause that would ensure that negotiation begins about 3 months before the end of the agreement’s life span, to enable them to wrap up the negotiation before the election starts.

What collective bargaining should be

Collective bargaining should offer all of the following:

* voluntary negotiation of issues and demands;
* engagement between negotiation partners, especially between the union and management;
* **a** platform that projects conflicting claims or positions of the parties or anticipated conflicts, interests, and needs;
* **a**n avenue for employees to seek compensation and gains on work efforts;
* a platform where employers seek to be allowed to keep the profit for the future growth of the organization and minimize what it expends; and
* a platform for reaching consensus and an agreement, a give-and-take attitude, andempathy and flexibility.

What collective bargaining should not be

Collective bargaining should not be an ego trip**,** a substitute for compensation philosophy**,** a substitute for company policies and procedures**,** a shift towards a disagreement, a power tussleaimed at correcting the imbalance of companies’ organizational structures**,** or a replacement for management or union rights.It should neveraim at maintaining rigidity of positions.

Advantages of collective bargaining

To the individual

It would be an uphill task for each employee to individually bargain terms of employment with the company management. Even if this were possible in smaller organizations, it wouldn’t be comfortable in big organizations.

* The respect for group solidarity with a constituency that can bark and bite is a huge advantage in a representative democracy.
* The supply job market saturation and the restrictive labor demand side in Nigeria could act as a motivation for companies to declare an individual worker redundant without any replacement plan.
* There is power in collective strength.
* Lack of individual negotiation skills might work in favor of company management.
* Employees working alone without guidance or a consultant might be ignorant of their entitlements.
* Fear of victimization or job loss could make the individual employee negotiate with company management and accept whatever offer management makes.
* Management that is in control of the machinery of production could discount the individual as a cost that can be gotten rid of at any time.

To the employer

Collective bargaining can have several benefits for employers:

* The process can prevent the chaos, mob actions, and anarchy associated with the engagement of all workers at the same time or in multiple groups.
* Management can put a face to individual or group actions when things go wrong with the process.
* Troubleshooters are wary of management’s big stick and are likely to tread cautiously during a bargaining process.
* The process allows management to strategize, with no surprise elements from the uncoordinated actions of workers.
* Collective bargaining enables a management representative to feel the pulse of worker representatives, thereby enabling management to take proactive steps in managing and retaining talents, which would reduce job turnover.

To social dialogue partners

Collective bargaining can have the following benefits for social dialogue partners:

* It promotes representative democracy.
* It allows parties to concentrate on areas of mutual interest instead of individual or group positions.
* It offers a joint problem-solving approach to negotiation and conflicts.
* It serves as a learning process.
* It creates harmony and workplace stability.
* It discourages a power imbalance.

Negotiation means so many things to so many people. It is haggling to get the best out of the customer or having a breakeven point when the sale is depressed to the local fish seller. To the buyer, it is getting the best fish or service at a minimal cost. To parties in conflict, it is getting a better deal that would cover the expenses and either get the whole pie or give a smile to the bank after the resolution of the conflict. To corporate bodies, it is getting the best bargain to ensure the continuity and sustainability of operations. To the labor union, it is getting the best out of the employers while still keeping intact its members’ jobs.

In real life, a negotiation that will enable everyone to conclude and go home happier than they came in should be premised on flexibility and sacrifice. The affordability and sustainability of the elements negotiated should be of grave concern to the party expending the resources. The outcome should ensure the enterprise’s survival, which will allow for future negotiations to occur.

Factors that affect negotiation

Social conditions

Many social situations can have negative effects on the collective bargaining process:

* a hostile relationship between the trade union and the employer;
* a display of intolerance, impatience, and rigidity by the bargaining partners;
* a display of poor negotiation skills by the bargaining partners;
* discrimination;
* a high unemployment rate; and
* strikes and lockouts.

Environmental conditions

Sometimes the environment can have negative effects on the collective bargaining process. An example is

* a force majeure, which can include
* fire,
* tornado,
* hurricane, and
* pandemic.

Organizational conditions

Many organizational situations can have negative effects on the collective bargaining process:

* weak institutions;
* a saturated organogram;
* unfair practices, which include
* lack of consultation,
* non-recognition of trade unions,
* victimization of union leaders, and
* lack of respect for management prerogatives.

Economic conditions

Many economic situations can have negative effects on the collective bargaining process:

* downturn;
* high-interest rate;
* galloping inflation;
* low purchasing power parity;
* negative end-of-year reports;
* lack of retained earnings; and
* restrictive economic freedom.

Political conditions

Many political situations can have negative effects on the collective bargaining process:

* autocracy;
* uncertainties;
* absence of democracy; and
* lack of political freedom.

Legal conditions

Legal conditions can have negative effects on the collective bargaining process:

* impunity;
* non-adherence to the rule of law; and
* outdated laws.

Chapter 8. Types of Negotiation Agreement

**“**What is *the* use of running if we are not on the right road?” (German proverb)

Cole (1993) states that two types of negotiation agreement have been generally identified: procedural agreement and substantive agreement.

Procedural agreements (non-economic items)

Formal written agreements, laws, rules, processes, and basis (with references and definitions) can be used to resolve matters that may arise in implementing the terms regulating employee–employer relationships in the collective agreement. The procedures act as a voluntary code of conduct for the parties concerned: managers on the one hand and employee representatives on the other.

By the parties agreeing to a procedural agreement (framework of rules) that will guide their relationships, they have, by extension, agreed to abstain from any arbitrary use of their powers.

The procedural agreement may include the following terms:

* recognition of the rights and responsibilities of the parties in negotiation;
* scope and tenure of the agreement;
* a declaration of principles;
* employee grading and classification within union membership;
* labor relations meetings and procedures;
* employment status in mergers, acquisitions, etc.;
* grievance, dispute, and arbitration processes and machinery;
* ethics and disciplinary procedure;
* health, safety, security, and environmental policies;
* diversity management;
* harassment policy;
* education, training, and development process;
* mode or process of employment separation;
* performance management process;
* no-strike/no-lockout clause;
* employee policy handbook or manual; and
* company policy on recruitment, probation, productivity, and promotion.

Substantive agreement

The substantive agreement is a formal written agreement that deals with the financial and economic items in collective bargaining. It also contains the terms under which, for the time being, employees are to remain employed. Such agreements usually run for a limited period, such as one year, or possibly two. Potential inclusions are as follows:

* salaries, benefits, allowances, and mode of payment;
* payroll deductions;
* working days and hours;
* overtime, holiday, and shift allowance;
* pension scheme and employee savings plan;
* medical and health scheme;
* compensation for industrial accident or dismemberment;
* education training and development scheme;
* recreation scheme and (or) facilities;
* grants, loans, and advances;
* service recognition and awards;
* salary increases, allowances, bonuses, and profit sharing;
* end of service benefits and entitlements:
* resignation,
* termination,
* redundancy,
* repatriation,
* early retirement,
* mandatory retirement,
* gratuity, and
* ex gratia;
* check-off system (payment of union dues);
* home ownership scheme;
* welfare (healthcare benefits, dental benefits, etc.); and
* vacations and leaves of absence:
* annual leave,
* study leave,
* sick leave,
* casual leave,
* compassionate leave,
* maternity or paternity leave, and
* national or community service volunteer leave.

Expectations of negotiation outcomes

Trade union expectations are usually very high during annual or biennial negotiations. But these expectations could be reduced if management on its own gives awards when new milestones are exceeded, even without prompting by the unions. It does not have to be much. Experience has shown that some social dialogue partners feel distrust and loss of confidence; it is always difficult to convince the unions to be empathetic in challenging times. When management makes an appeal to labor for empathy with declining production, crude theft, or challenging times, the question the union officials usually ask is “When the company was doing well, what did the company offer us?” This answer to this question is that companies should give raises or awards in boisterous times without prompting by employee representatives. If company management makes this a habit, it becomes a social bank to draw from in the future.

Parties should understand that negotiation may not necessarily lead to increases in wages and other emoluments. The economic and sociopolitical environments should determine whether bargaining can take place or not. In extreme circumstances, negotiation could lead to a wage freeze, a freeze in some selected allowances, or a cut in work hours. For instance, during the COVID-19 pandemic, a wise trade union official will accept any of those opportunities for its members to continue being on the payroll instead of pushing for a wage increase that might lead to layoffs.

In Nigeria, many situations might stall negotiations. The socioeconomic indices and environmental factors might suddenly become unfavorable. Some of these situations could be a sudden sharp fall in crude oil prices, massive crude oil theft and vandalism of petroleum products pipelines, illegal bunkering, and fire, which could lead to the declaration of a force majeure. The negotiation could fail during the period of a recession. Both parties should carefully engage and holistically reexamine the analysis before the talks arrive at near expected outcomes. The critical thing is to adopt measures to achieve internal and external equity and fairness without rocking the boat. For instance, when the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG) submitted their *Charter of Demands* to a federal government agency in October 2014, they knew that Nigeria would have a new government by May 2015. Therefore, the unions expected that negotiation would commence in January and end in February 2015, early enough for the president to sign off on it before the election began. The crude oil price was at US$112–US$115 per barrel when they collated the items for the *Charter of Demands*. Unfortunately, oil dipped to US$70 per barrel in November 2014, and by January 2015, it was already below US$50 per barrel.

Second, the union officials did not take into consideration the fact that the executive arm of government had to focus on the fight against Boko Haram, a jihadist terrorist organization based in northeastern Nigeria. This was a major campaign issue the opposition was using against President Goodluck Jonathan’s administration.

Third, the PENGASSAN branch in the Nigeria Petroleum Development Company (NPDC) was prosecuting an industrial action against company management over the ownership of OML 42. In addition, the NPDC branch was angry against company management because of its strategic alliances with some other companies; the opaque transfer of strategic assets to a local strategic partner; contract staffing arrangements; and the managing director’s utter disregard for the unions. Besides, the union officials alleged that the Mrs. Diezani Alison-Madueke, who was both the minister of Petroleum Resources and the chairperson of the Nigerian National Petroleum Corporation (NNPC) board, was the brains behind the infractions. Meanwhile, the minister was expected to transmit the signed collective bargaining agreement between PENGASSAN, NUPENG, and NNPC management to the president of the Federal Republic of Nigeria for approval.

Fourth, the unions did not consider the issues surrounding the February and March 2015 peak of political campaigning. Although the negotiation was concluded to secure all necessary approvals, the president never signed the agreement reached, and implementation became a challenge. In my opinion, the factors enumerated above were severe impediments to the approval of the 2015 collective bargaining agreement. Besides, the union should not have expected to secure the cooperation of the minister of Petroleum Resources and the president because they severely dented their images before the electorate in an election year.

Consequently, parties in negotiation during challenging times should gauge the political and socioeconomic indices and the mindset of the approving authority and do the appropriate thing:

* Cancel the negotiation outright.
* Adjourn proceedings until a more favorable time.
* Reschedule the process to the next negotiation cycle.
* Evoke the wage reopener clause to negotiate on very few items within the year.
* Maintain the status quo of the current agreement.
* Reduce some elements in the current package to enable the employer to keep the entire staff on the payroll.
* Freeze wages.
* Give minimal awards to cushion the effect of rising inflation.

Unions should also note that if they push the employer beyond the threshold of affordability and sustainability in challenging times, company management might reduce personnel, overtime, and duty tours drastically. Management could also resort to more teleconferencing, virtual workstations, and cost-cutting measures unpalatable to the unions. Therefore, labor should be more conscious of employment security for their members during challenging economic times rather than pushing for increases in salaries and redundancy benefits. Besides, when labor is at loggerheads and striking against the approving authority of its negotiated outcomes, it makes sense to tarry a while before commencing negotiation. Furthermore, union leaders should realize that most workers who have spent decades in employment might find it more challenging to appropriately take advantage of redundancy benefits during economic meltdowns and tumultuous times.

Why should union leaders in Nigeria support employment security instead of putting members on redundancy?

* Nigeria’s industrial wheels revolve around diesel- or petrol-powered generating systems because of constant power outages. The lack of adequate energy supply would be a massive financial drain to those starting businesses afresh.
* Following the mandate of the Central Bank of Nigeria, the rate for the 182-day treasury bills drastically dropped from 11.02% in October 2019, to 8.12% in November 2019, to 5.60% in December 2019, to 4% in 2020. This means that no matter how much redundancy benefit one earns, the economic turf for investment is becoming very hostile and unfriendly. Therefore, workers and union leaders must begin to pay attention to employment security, multiskilling of members, and a gradual easing out of employment. These would be more beneficial than members being sent out of work when not fully prepared for life outside the workplace.

For a successful negotiation to take place, certain conditions are necessary for the chain. These include the following:

* the willingness of the parties to engage in dialogue and remain calm and patient throughout the process;
* respect for the fundamental rights of the bargaining partners and the principles of collective bargaining; and
* appropriate institutional support (statutory, legislative, ILO conventions, etc.).

At the end of negotiations, the parties should commit to writing the agreement reached. The collective bargaining agreement should be straightforward and unambiguous so that it will not require an interpretation by a court. It should also include when the next negotiation cycle will resume. Irrespective of differences in opinion or class, working towards an agreement will require symbiotic relationships between the dialogue partners.

Chapter 9. Collective Bargaining Process

A structured process allocates responsibilities and guides the performance of duties.

Negotiation as a collective bargaining tool is the spindle around which industrial relations practice revolves. Negotiation occurs between unions and company management to improve the welfare of staff and to resolve conflicts. The approach to collective bargaining in the oil and gas industry varies from company to company, but the outcome remains the same.

The collective bargaining process uses negotiation as its primary tool. It is within this framework that both partners are encouraged to carry out the business of collective bargaining. It should be stressed that modern-day industrial relations practice has dramatically widened the activities of the collective bargaining process. The unions have completely hooked management to the extent that collective bargaining is so time-consuming and expensive to prosecute. The company entirely shoulders the sponsorship of all the negotiating council members in the pre-negotiation training workshops and logistics for the whole negotiation period. The significant advantage of this is the cooperation and social credits they draw from the unions. Hence, the companies that do not toe this path tend to run into a series of challenges during negotiations with more overhead costs and protracted bargaining periods.

Pre-negotiation workshop

The pre-negotiation workshop is usually planned by the industrial relations section of the human resources department for negotiating councils. The workshop is becoming popular because of the following:

* It reduces the gaps between the union representatives and management representatives.
* It promotes mutual trust and confidence-building.
* It reduces friction between the bargaining partners during negotiations.
* It reduces the level of hitherto pre-negotiation perceived opacities.
* It enables the partners to switch roles during simulation exercises (e.g., management playing the part of the unions and the union officials playing the part of management representatives). Partners feel the pressure of being on the other side and learn to respect each other’s viewpoints.
* It helps to clarify misunderstood positions.
* It reduces the period of negotiation from months to weeks.
* It allows the other partner to size up to plan for the appropriate strategies for short-, medium-, and long-term wins.
* It allows the bargaining partners to appraise the state of the enterprise.
* It affords parties the opportunity to be apprised of the enterprise’s challenges and opportunities.
* It brings negotiating partners closer.
* It helps to identify critical issues of consideration during the negotiation.
* It exposes parties to the best negotiation practices and standards.
* It helps parties to learn how to generate the best and worst alternatives to negotiated agreements.

Despite the advantages, a pre-negotiation workshop also has drawbacks:

* It exposes the strengths and weaknesses of the other party, unless they are trained separately.
* It exposes partners to the kitchen heat of negotiation and therefore builds shock absorbers to absorb the heat during proper negotiation.

Figure 1 illustrates ???

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Figure 1

Negotiation Flowchart

Definition of *negotiation*

Brittel and Ramsey (1995) postulate that a business requires two essential skills: the skill of managing people and the skill of making deals. In managing people and making deals, parties in collective bargaining need to be skilled in the art of negotiation. They need to know how to give and take for the benefit of the organization and the workers. At the end of any negotiation, parties should drive on a win–win highway without losing face or self-worth before their constituencies.

*Black’s Law Dictionary* defines *negotiation* as the act of communicating with one another through which two or more parties arrive at a mutually acceptable resolution to a commonly recognized issue (Garner & Black, 2009). So negotiation should be a means to an end, not an end. Ideally, it is a mechanism to achieve goals and not a showcase for the advancement of ego.

Nierenberg (1968) defines *negotiation* as a game, but a cooperative exercise, and builds a “need theory” to optimize it. This definition weighs its concept on Maslow’s hierarchy of needs. Nierenberg’s work presumes that a negotiator can decide to work against each level of one’s own or one’s opponent’s needs, depending on the orientation and perhaps the specific goals to be achieved. Cohen (1980), on the other hand, shows an infectious optimism in postulating that anything can be negotiated. He refers to the world as a giant negotiating table and recognizes three critical elements of negotiation: information, time, and power.

According to Menkel-Meadow (1983, p. ??),

if the purpose is to meet legitimate underlying interests, negotiations that involve overstated positions are not likely to satisfy needs, as the needs are masked by statements that do not accurately reflect what the parties want.

From the above definitions and assumptions, some critical elements in the negotiation process are the following:

* time;
* two or more parties;
* needs, interests, and positions;
* negotiators’ skills and experience;
* power balance or imbalance;
* information available to the negotiators;
* negotiators’ goals, frame of reference, and orientation;
* management of people’s emotions, behavior, needs, positions, and interests; and
* use of compromise and collaboration to reach desired outcomes.

Party positions may be overstated. Statements of intent may not truly reflect the needs of the parties and, therefore, may be difficult to satisfy in negotiations.

Whichever way one looks at various authors’ positions, they could act as a guide to practitioners. Each negotiation has its peculiarities and dynamics. There are also marked differences between negotiations in the undertakings and ones that occur outside the workplace. For instance, car buyers may not need to use the tool of compromise when buying a new car from a car dealer because they are not obliged to meet with the seller again in the future, since there are multiple dealerships to choose from. However, in the workplace, the two parties in negotiation, be it for resolving disputes or an anticipated dispute or for collective bargaining, have interdependent and ongoing relationships. They see each other often; they are likely to engage in future negotiations and, therefore, must work together for the organization’s good. So in the latter case, collaboration, compromise, and cooperation become imperative.

In all, negotiation is a consensual bargaining process in which the parties attempt to reach an agreement on a disputed or potentially disputed matter. Negotiation has often been used interchangeably with bargaining. In whatever context it is used, the consideration for future relationships between parties in a negotiation should propel them to strive for a win–win outcome. *Negotiation* may also be defined as “the building of a consensus to resolve a dispute between parties that are interdependent and that look forward to future business interaction and cooperation.”

****Challenges of negotiation****

**A negotiation can be negatively affected by a variety of factors:**

* incompatible needs and interests;
* time pressures;
* incompatible frames;
* negotiation styles;
* low-level skills of the negotiators;
* power imbalance;
* inadequate information; and
* negotiators’ paradigms, goals, and orientation.

For a successful negotiation to take place, certain conditions are necessary:

* access to relevant information to deal with and participate in the dialogue;
* the will and commitment to engage in dialogue;
* a respect for fundamental rights and the principles of bargaining;
* appropriate institutional support;
* an agreement by the parties on the issues in dispute or in an anticipated dispute;
* productivity as the point of convergence for parties who must admit that their interests, goals, and needs are not entirely incompatible;
* parties recognizing the need to cooperate to achieve the set goals and sustain optimum productivity; and
* a focus on areas of mutual benefit.

****Special considerations in negotiation****

**Negotiations can be affected by a variety of considerations:**

* Negotiators should always remember that no two negotiations are the same. Even if they were, the dynamics are not. Therefore, parties must painstakingly plan for each collective bargaining process as a new project.
* If party A uses traditional approaches but does not observe the ground norm of good faith bargaining, party B must remodel its strategy and not leave the stage a lily-livered negotiator. Party B must confront party A with a superior reasoning power. If party A is trampling on the rights of party B, party B must resist.
* The pre-negotiation dynamics could be affected by unforeseen events and circumstances (e.g., the COVID-19 pandemic). The parties must evolve smart ways of dealing with them.
* One of the parties may plan to use the wear-and-tear tactics of psychological warfare. The other party should never lose its patience, calmness, or sense of focus. If the opposing party delays, wastes time, arrives late to meetings, and is insensitive to the feelings of the other party, the other party should use the period for focused discussions on new approaches and strategies with its group members.
* Tit for tat is not a negotiating style. Any negotiator can act tough or is capable of bargaining in bad or good faith.
* Negotiations may not always end in a win–win, especially in challenging times. If this happens, the negotiators should not plan to get even or resort to being dirty, which might earn more, but it comes with grave consequences at the expense of a future relationship. In labor and management relations, the race is not a one-off. The doors are always open. The actors will meet someday, and their paths will cross. When a negotiation only meets parties’ partial expectations, one side may ask why they didn’t get the full value of their demand(s). Which tactics or strategies worked for the other party? What could have been done better to counter them? No matter the outcome, the teams should leave the negotiation table with their heads held high, display some level-headedness, and play to remain relevant another day. An audit would help reveal a team’s strong and weak areas. Teams should begin work towards the next cycle now.

Suppose a party continues to display an irrational, uncooperative attitude; shows utter disrespect for the bargaining process; remains positional, abusive, and coercive; and bargains in bad faith. In that case, that party should not expect to enjoy negotiation niceties or protection under the law of fairness and equity.

Irrespective of differences in opinion, value, motivation, or class, working towards an agreement will require remaining in a positive and cooperative negotiation lane. Negotiation partners should endeavor to see each other as equals.

The following will also add value to the negotiation process. A one-item dispute agenda for negotiation is usually easier to deal with than a many-item agenda. From the outset of a negotiation process, it may be expedient for the parties to agree on one of two options:

1. Sign off on any item for which there is a mutual agreement.
2. Sign off after a final agreement has been reached.

In using option (i), none of the parties will deny what they voluntarily signed when there is an adjournment. The alternative (ii) allows parties to have face-saving tradeoffs and, by so doing, prevent deadlock.

Negotiation strategies

Negotiators often adopt one of two strategies: a positional (competitive) negotiation strategy or a principled (problem-solving) negotiation strategy.

Positional (competitive) strategy

The positional negotiation strategy is traditional. It is characterized by a winner-takes-all attitude and mentality in which each negotiator sets a minimum limit. According to Roger Fisher and William Ury, “this winner-takes-all mentality may manifest in two ways: soft and hard” (Fisher & Ury, 1981, p. ??). The soft negotiator desires an amicable settlement, thereby avoiding personal conflict, and makes concessions readily to reach an agreement. The hard negotiator, on the other hand, is a bully, trying to wear out the opponent. Most often, this method is counter-productive: it ignites in the soft negotiator a spirit of competition. The soft (or perceived weaker) negotiator rises to the challenge, and the effect is the inability of both parties to reach a negotiated agreement.

Key characteristics of the positional strategist

The positional strategist

* sets predetermined gains and minimum limits;
* focuses on people instead of the issues;
* entrenches positions on perceived best options;
* justifies taking extreme positions;
* threatens and deploys unwholesome tactics to force agreement;
* uses staging of walkouts, constituents’ power, and bluffs as tools to arm-twist the other party;
* gives only when an offer is made;
* gives in bits and never concedes a large amount at one time;
* is never pressured by time and is prepared to remain at the negotiation table for as long as the other party is willing; and
* psychologically wears down the opponent.

Positional bargainers engage in this strategy for various reasons:

* preservation of reputation;
* reliance on the constituent power (e.g., shutting down the refineries and crude oil platforms to bring management or government to their knees);
* ego preservation;
* fear of hostility from constituents (e.g., union leaders may not concede any ground outside the congress’s mandate because they may be impeached afterward);
* mistrust;
* broken relationships;
* vengeance;
* refusal to grant any privileges to the other party outside recognized rights (e.g., unions may direct their members to refuse overtime jobs; management may refuse to grant union leaders time to travel for union engagements); and
* incessant skirmishes.

****Principled (problem-solving) strategy****

The strategy that has gained enormous acceptance as an alternative to the traditional one is the principled negotiation strategy. “Getting to Yes” by Fisher and Ury (1981) in the Harvard Negotiation Project is considered the springboard for this strategy.

Key characteristics of the principled strategist

The principled strategist

* lets principles rather than positions guide negotiation;
* emphasizes joint problem-solving;
* uses objective standards as a basis for decision-making;
* separates the people from the problems;
* strengthens and sustains relationships;
* encourages cooperation, collaboration, and consensus in arriving at decisions;
* efficiently uses negotiation tools;
* desires a satisfactory, win–win outcome; and
* encourages fair and open-minded presentation of issues.

Fisher and Ury (1981) had a firm conviction that a cooperative approach would remove inefficiencies associated with the traditional positional method. This cooperative approach would give both parties the satisfaction of having a win–win outcome without either side feeling exploited. The end-product is possible because the approach allows the use of their best alternative to a negotiated agreement (BATNA) in reaching a mutually acceptable outcome.

However, no matter how well planned and executed, the above do not suggest that deadlocks might not occur, even when a principled negotiation approach is adopted. According to the Centre for Effective Dispute Resolution (CEDR, 2004, p. ??),

In principled negotiation, negotiators seek to develop good relationships with the people on the other side, and if a deadlock occurs, they may reconsider their BATNA or involve a third party to help develop agreement on interests or provide objective standards for a fair settlement.

Furthermore, CEDR believes that some competitive or positional elements are likely to be present even in the best-principled negotiation. There may be tensions between creating value and claiming value. And where negotiators work hard to enlarge the pie, there is still the question of who gets which slice. The negotiation or bargaining phase helps to bring the parties closer to the settlement agreement. All the agreed terms in this phase are summarized for clarity and understanding of the parties.

Negotiation: art or science?

Negotiation could be said to be an art or science depending on the inclinations, experience, and perceptions of the individual discussing it. As an art, it uses soft skills. A negotiator who is not adequately honed in using soft skills would only rely on the traditional approaches to achieve a desired end that could mar relationships. As a science, negotiation deals with facts, numerics, accounting, economics, calculations, and empirical data. It also deals with the psychological, physiological, physical, and emotional states of those in negotiation. All these fall within the realm of science. Negotiation depends on social structure, social skills, and the negotiator’s ability to take negotiation decisions that might cement or destroy relationships.

Negotiation is conducted without the combination of the necessary skills, tact, and facts. The process could degenerate to a war of words or sometimes a shouting match, ending in a deadlock.

Negotiation is an interactive communication process that might occur when one party wants something from another party that ordinarily would be difficult to get on a stand-alone basis. It is also an attempt to reach an agreement on the procedural and substantive lists to enhance workers’ welfare or an attempt to reach an agreement on a disputed or potentially disputed matter. Negotiation allows parties to agree on courses of action to bargain for collective advantage and mutual interests.

When to negotiate

There is no gainsaying that birthing better welfare packages for union members requires auspicious timing, with one or more of the following in place:

* economic boom;
* democratic dispensation (regime);
* favorable and positive economic indices;
* low unemployment;
* right profit margin;
* competitive edge;
* industrial growth;
* robust supportive regulatory and legal frameworks to back the negotiation practice;
* equally balanced, stable, and healthy negotiators;
* value-added by workers, reflected in green bottom lines;
* good retained earnings;
* mutual trust and symbiosis between bargaining partners;
* workplace with less disruption to operations;
* right and good times;
* favorable tax policies; and
* people-oriented leadership.

When to exercise care or not negotiate

Not all times are auspicious. These ones aren’t:

* Difficult and challenging times (e.g., economic meltdown, war, social or economic dysfunction caused by pandemics like the COVID-19 scourge of 2020). If there must be negotiation, it may be to make concessions to freeze wages, maintain the status quo, cut down on wages and salaries, and so on.
* Periods of high unemployment and severe economic downturn (e.g., recession, depression, pandemic, war).
* Force majeure (e.g., natural disasters, pandemics, or significant destruction of the planet may warrant shutting down operations for a very long time).
* Political transition periods. Since the military era, federal government agencies have not maximally benefited from the collective bargaining process when it coincides with presidential transition elections. During Ibrahim Babangida’s 1992/93 program for a transition to a third republic, the bargaining process was scrapped. That was partly responsible for the June 7, 1993, strike action by the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) . The collective bargaining of 2015, which was done shortly before President Jonathan’s exit, never saw the light of the day until President Buhari assumed office. Those of 2017 and 2019 ended without presidential approval. In the private sector, transition periods for chief executive officers (CEOs) may prove a double-edged sword. For instance, an outgoing CEO may be magnanimous in granting enhancements, depending on how well he or she worked with the employees. We have also seen CEOs transferred at the peak of collective bargaining periods because of the union’s dispute, which made productivity impossible. No peaceful, cooperative engagement can occur in times of dysfunction and anarchy. Even in normal circumstances, an outgoing CEO may not commit to signing any agreement, which might pose a challenge for the incoming CEO.
* The recession after COVID-19. The recession that will follow the scourge will impose far-reaching changes on organizations and the ways unions and management react to the collective bargaining process. In his address at the PENGASSAN 6th Triennial National Delegates’ Conference on September 27, 2020, in Abuja, on the theme the Future of Work Post Pandemic and Energy Transition, the group managing director (GMD) of the Nigerian National Petroleum Corporation (NNPC) said that Nigeria currently produced a barrel of oil at US$35 and sold it for US$45. It meant that the industry earned US$10 per barrel, paid taxes and royalties, and planned and maintained its facilities. Interestingly, the human resources (HR) overhead stood at 46% of the industry budget. With this assertion by the GMD, it was evident that the industry had to reduce its costs if it were to survive.

Nigeria was forced by OPEC (Organization of the Petroleum Exporting Countries) to cut its production quota from 2.9 million barrels per day, which was attained in March 2020, to 1.7 million barrels per day. To the GMD, cutting production became a necessity to avoid a glut and a reduced crude oil price. For the GMD, it was better to sell 1.7 million barrels at $45 per barrel than to produce 10 million barrels and sell at $10. The scenario is undoubtedly not a cheerful or palatable one for the labor movement. This scenario implies that the impact of COVID-19 on annual or biennial collective bargaining will be grave. For the discerning mind, unless labor leaders are intelligently tactful and managers are empathetically upright, the turf of industrial relations will be rough and rocky for the next few years.

One of the COVID-19 outcomes is the “work from home method,” which is likely to replace convergence in offices until a vaccine is available to help people develop immunity to the disease. The first 12 months of the COVID-19 scourge will be the most critical for employers and employees. Interactive workplace processes will suffer setbacks, and more virtual workstations will replace those in the workplace. All the employer needs to do is increase the bandwidths of staff communication facilities and make them available to staff. In doing so, companies will make far-reaching changes to work structures and to health and safety domains, and they’ll formulate new policies to support the changes. Organizations may find the post-COVID-19 period a promising time to reduce their structural designs to a “lean and mean” frame, under the guise of maintaining physical and social distancing protocols. We are likely to have more short-term contracts, adoption of flexible working hours, and more outsourcing to reduce overhead on recurrent expenditures.

For the oil and gas sector, unless the situation reverses soon, multiple redundancies, which may strain union and management relations, will be common. The negative impacts will most likely affect members of the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG) more than PENGASSAN members. Instead of lamentations and fisticuffs with employers, oil and gas workers should quickly seek new multiskilling ways, sharpen their saws, and carry out self-motivated learning and development exercises if they want to keep their jobs.

Furthermore, most workplace interactions are likely to be simple electronic transmissions of information and virtual or remote meetings with the aid of video and audio conferencing. Companies are likely to curtail flying or commuting in and out of stations for meetings, thereby saving travel and out-of-station allowances, and so on. Incidentally, some of these changes might be breaches of already signed collective bargaining agreements. These cost-curtailment measures could trigger large-scale frustrations among shop floor union members who could in turn impeach the union leaders. On the other hand, the union officials could be so frustrated and agitated that they make life difficult for employers through ultimatums and (or) industrial actions.

One of the lacunae in our labor law is that pandemics are not listed alongside other naturally occurring emergencies as a reason for making employees redundant, embarking on pay cuts, or deferring payments. Therefore, COVID-19 cannot be used as a force majeure to tamper with any existing collective bargaining agreements without the workers’ express permission. Sections 5 and 17 of Nigeria’s *Labour Act*—*Cap. 198, LFN, 1990* deal with the payment of salaries to workers and the employer’s duty to provide work at all times, respectively.

5 (1) Except where it is expressly permitted by this Act or any other law, no employer shall make any deduction or make any agreement or contract with a worker for any deduction from the wages to be paid by the employer to the worker, or for any payment to the employer by the worker, for or in respect of any fines: Provided that, with the prior consent in writing of an authorized labor officer, a reasonable deduction may be made in respect of injury or loss caused to the employer by the willful misconduct or neglect of the worker.

The pandemic has forced workers ready for work to stay at home. So that an employee can maintain physical and social distancing at home, the employer must provide remote work according to its capacity and capability. How to reconcile these two extremes remains a dilemma.

17 (1) Except where a collective agreement provides otherwise, every employer shall, unless a worker has broken his contract, provide work suitable to the worker’s capacity on every day (except rest days and public holidays) on which the worker presents himself and is fit for work; and, if the employer fails to provide work as aforesaid, he shall pay to the worker in respect of each day on which he has so failed wages at the same rate as would be payable if the worker had performed a day’s work:

Provided that

(a) where owing to a temporary emergency or other circumstances beyond the employer’s control (the period of which shall not exceed one week or such longer period as an authorized labor officer may allow in any particular case), the employer is unable to provide work; the worker shall be entitled to those wages only on the first day of the period in question, and

(b) This subsection shall not apply where the worker is suspended from work as a punishment for a breach of discipline or any other offense.

17 (2) Where a worker is employed in any agricultural undertaking on a plantation on a contract of service under which he earns wages calculated by reference to the number of days’ work performed in each month of his service, the employer shall provide the worker with work suitable to his capacity on not less than twenty-four days in each month during the whole of which he is so employed; and, if the employer fails to provide work as aforesaid on any of those twenty-four days on which the worker presents himself and is fit for work, he shall pay to the worker in respect of each such day wages at the same rates as would be payable if the worker had performed a day’s work.

In light of the above, where it becomes so glaring that a worker would lose a part of their emoluments, the employer cannot unilaterally do a pay cut without the understanding of and mutual agreement with the employee. In some instances, the employee may even sacrifice more than ever expected if engaged. Online video conferencing and email channels have bridged the gap that would have hitherto occurred. Therefore, no employer can claim that the pandemic is a barrier to doing the needful when it comes to job and pay cuts.

However, the actions to be taken by employees and employers would mostly depend on a subsisting contract of employment—a collective bargaining agreement jointly entered into by the workers and the employer.

Negotiation in industrial relations covers a wide range of issues. These issues are related to employment contracts between employees and employers. Negotiation could commence with the use of any of the three approaches below:

* Attempt to resolve the most straightforward issues first—When negotiating on several and (or) complex issues, it is advisable to resolve the smaller and non-complex matters. Parties using this method should mutually identify the less complicated issues for resolution before tackling the complex issues. Parties in this type of negotiation might or might not sign off on any agreed item until reaching a final agreement on all matters. With this method, either party can allow a face-saving tradeoff for a more holistic agreement, to prevent deadlock.
* Attempt to resolve the complex issues first—Parties in negotiation may decide to identify their very critical needs and interests at the takeoff of bargaining. These are usually difficult to tackle because of the emotions attached. Once the objective is achieved, the agreement on any of the line items should be signed off. The negotiators should congratulate themselves and progress to resolving the smaller issues or use them as tradeoffs. The benefit here is that neither party will deny or go back on already signed items if the going gets tough, more so if major hurdles have been scaled. At the end of the negotiation, both sides come together to fashion the endpoint agreement.
* Attempt to resolve the issues as listed on the agenda— Parties may also determine from the outset to sequentially resolve the items listed on the agenda. Since the pre-negotiation understanding was to resolve all issues as they appear on the agenda, parties should endeavor to sign off on each resolved item before moving on to the next point.

*Negotiation* has often been used interchangeably with *bargaining*. *Negotiation*, in whatever context it is used, considering the interactions between various actors in the workplace, may be defined in an industrial relations context as “the building of consensus to resolve conflicts arising from employment contracts.”

Pre-negotiation phase

Pre-negotiation planning by both parties is as vital to the success of the negotiation as the outcome of the process itself. It is, therefore, advisable for the parties to have a fair view of some or all of the following:

Review of previous agreements

It is crucial to consider the impact of previous agreements on organizational finances, returns on investments, efficiency, and effectiveness. Parties, especially management, should summarize labor unit costs per hour of all staff on the negotiating team for each negotiation in the past 10 years. Getting to know this will help management plot cost-reduction strategies during the next negotiation.

Past performances by the actors in the negotiation

Each party in a negotiation should appraise the strengths and weaknesses of the actors in previous negotiations and their performances over 5 or 10 years. It does not matter whether it is still the same set of negotiators. The appraisal is to give first-time information on the actors’ styles so that the negotiators can plot the strategies to counter their hardliners without necessarily ruffling feathers.

An organization abhors a vacuum. Therefore, the industrial relations activities in any company are also continuous. If the actors in a negotiation are still the same, it is easier to appraise their previous performances and relate them to the present circumstances. For instance, company management that was miserly in granting awards or bonuses during an economic boom is not likely to give them at all in a period of gloom. Also, a union leader that was positional and had no empathy in an economic downturn is not likely to concede any ground during a boom.

Therefore, for adequate guidance on how best to handle actors on the table, it is necessary to assess whether the actors

* are hard or soft negotiators;
* give in heaps or little bits;
* waste so much time defending positions;
* are hard on the issues and soft on the people or hard on the people and soft on the issues;
* are skillful or inexperienced;
* are cost and time conscious or not—the more parties stay on the negotiation table, the more agitated they become and the more cost incurred by the company (hotel bills and person-hours spent on the table).

Time taken to reach previous agreements

Do an analysis of the length of time it took to reach each of the agreements in the past 10 years and note the average time spent. The appraisal is necessary to enable parties to prepare against the average, the maximum, and the working hours spent for each of the previous negotiations, the cost to the organization, and the overall financial commitments.

Chronology of base and average wage rates in the last 5 or 10 negotiations

For companies that negotiate annually, the actors in bargaining should take the base and average wage rate increases in the past 10 years or the previous five negotiations for those that engage in biennial negotiations. Calculate these against the net income, person-hour losses (time of every person spent on the negotiation table) paid for by the company, and maximum productivity for the same periods. These are particularly important for management to determine the cost and impact of negotiations on wages and productivity.

Compounding factors on terminal benefits

It is wise to note the factors that may negatively impact terminal benefits in the last 10 years. For instance, the cost of living adjustment (COLA) payment on consolidated salaries would have a compounding effect on wages, pension, and redundancy benefits. This may be less burdensome if paid as a one-off.

Cost of unworked but paid hours in the last 5 years

Unworked but paid hours have been minimal in strictly commercial environments. However, the placement of community youths on the payroll of some oil and gas companies without the youth presenting themselves for work is not uncommon in areas where youth restiveness is very high. This is an indirect cost incurred for buying the peace, making way for optimum production to occur. This cannot be overlooked as a cost to be considered by the negotiating parties.

Cost of additional security and surveillance

Parties should not overlook the cost of additional security and surveillance on pipelines. The theft of crude oil and the escalating cost of fixing vandalized pipelines are extraneous costs that are dominant in Nigeria’s oil and gas sector and absent in other oil-producing nations. The escalated production costs reduce profits, and these facts may play out on the bargaining table.

Costs of yearly overtime

A company that is efficiently and effectively managed needs minimum overtime in person-hour management. This factor is important. Management should weigh the cost of hiring extra hands and other technology before deciding on the best option for improving the bottom line.

Management largesse syndrome

Management largesse syndrome (MLS) is solicited and unsolicited assistance to the unions in cash or in kind for the underbelly purpose of having a robust relationship with the unions that will possibly soften the union positions on issues. For instance, management commits enormous sums of money to funding several union activities like releasing the members for meetings and paying for associated logistics, delegates’ conferences, and other tours that the unions would ordinarily have paid for out of their check-off dues. The union should realize that these funds are operational costs that would have been added to the company’s bottom line if unspent; therefore, the pie available for sharing is reduced. Managers must not see MLS as a cost but as an investment. Without peace, no organization can attain its optimum.

On the management side, the protection of the executive jumbo pay, allowances, share allotments, and drive to increase the dividends of shareholders are also responsible for a smaller pie available for sharing during annual or biennial negotiations. Corporate management should exercise care in ensuring that those who toil to bake the pies have a fair share for their work efforts.

Competitiveness

Every company wants to cut a competitive edge and develop a compensation philosophy to best attract and retain workers. Management should do theindustry comparison and develop a graphical analysis of wages across the industry bands in the past 10 years, not just in terms of pay but also in terms of cost structure, the industrial culture of the companies surveyed, production output, milestone achievements, and population and determine what to do to become competitive.

Where a company is not competitive, the collective bargaining table is not the best place to correct it. The company should emplace a compensation philosophy to address this issue.

Decision-making tools

Negotiators must be able to use simple decision-making and analytical tools to arrive at agreements that will affect the lives of the organization, employees, and employers. Some tools parties might consider are the following:

* SWOT analysis
* PESTLE model
* Six hats

SWOT analysis

Though most of the aforementioned tools were designed for planning and decision-making in management, they could also be used creatively in negotiation. SWOT (strengths, weaknesses, opportunities, threats) analysis, ascribed to Albert Humphrey, an American management consultant, helps identify internal and external factors that are imperatives in achieving organizational goals and objectives (Thakur, 2010; Van Vliet, 2010). Every union has a purpose and an aim to set out for each negotiation. In using SWOT analysis, parties in a negotiation can analyze strengths and weaknesses that are internal to the organization. For instance, a company that operates in the upstream sector, which produces crude and sells internationally, is more boisterous than a downstream company that functions as a retailer of refined petroleum products. A SWOT analysis becomes fundamental in a country like Nigeria, which does not produce any finished petroleum products internally but imports them from refineries abroad. Also, most components of the companies’ equipment are imported and paid for in dollars. In the same vein, international oil corporations (IOCs) with headquarters in big economies are likely to have easier access to foreign exchange for quick responses to equipment emergencies. The local investor is likely to be less responsive to unionism and union demands than an IOC because of a lack of access to foreign exchange, the high cost of funds, and the instability of the Forex market. An agency of the federal government of Nigeria is less likely to have all the funding it needs for staff motivation, deployment of technology to meet with emerging needs, and proactive transformation. Nor is it likely to have sufficient mandate for annual or biennial collective bargaining processes.

Externally, government agencies might spend less on community-related security activities because of reliance on the state’s coercive power. In contrast, a private company has to pay its own way and is likely to incur more overhead, thereby increasing its business cost. However, sabotage to government pipelines is more likely than sabotage to pipelines of an IOC. The theft of crude, damage to crude channels, and all other infractions tend to be directed towards government assets because the perpetrators see them as theirs.

PESTLE model

PESTLE analysis is a tool for assessing *p*olitical, *e*conomic, *s*ocial, *t*echnological, *l*egal, and *e*nvironmental influences on a company’s bargaining position.

(a) Political

The political structure, transition uncertainties in politics, the absence or presence of democracy, and the political freedom inherent in the political ethos, ideology, and philosophy will determine how the federal government reacts to union demands. If the president doubles as the minister of Petroleum Resources, who should give final approval to a collective bargaining agreement between unions and the management in federal agencies in times of downturn? The appointment of heads of the agencies is politically motivated, so when they assume duties, they are bound to toe the line of the person who appointed them. This has grave consequences for internal and external decision-making processes. Therefore, parties must be well versed in the political orientation at national and organizational levels, which in the end determines the industrial relations practice.

(b) Economic

Parties in negotiation for improved welfare and wages should thoroughly understand current economic indices, the health of the company, the allocation of resources in the organization, management’s focus on growth, the production level, the economic downturn, and the worth of the local currency. Other considerations should include unemployment rate, mobility of labor, interest rate, and access to funds. Although the procedural and substantive agreements guide the bargaining partners, each party in a negotiation should be cautious about when to and when not to negotiate. Working smart around what is economically feasible becomes imperative in a globally induced economic slump related to the COVID-19 pandemic.

* Company income statement—For management to negotiate with the unions and commit to funding any negotiation, the bargaining partners must consider the net income (revenue − expenses) of the company. Unstable crude oil prices, vandalism, increased security votes to prevent hostage-taking, and kidnappings are factors that will increase the running costs of corporate organizations. Other variables, such as an oil glut or a switch to an alternative energy, may lead to a red bottom line over time. This should be a cause of worry for parties in a negotiation. On the flip side, a green bottom line and an increase in oil prices occurring over a reasonable time can be a source of hope upon which negotiation can be scheduled.
* Cash flow statement—To determine the cash flow in an organization, one must consider the financing investment and core operations. The current processes taking place in an organization and the balance-sheet changes that occur because of these operations are recorded in the cash flow statement. The statement should not be considered on a stand-alone basis because it does not reflect a company’s comprehensive financial profile or stability. However, it gives a snapshot of the cash flow combined and used alongside other economic evaluation tools.
* Retained earnings—Parties in a negotiation should get information about the organization’s retained earnings over some time, especially in the year immediately before negotiation commences. They should not just be looking at the cash flow and the income statement. Retained earnings give the parties the organization’s worth when considered alongside the income statements and the balance sheets. Management will usually get such services through its corporate planning unit. For the unions, there is the need to elect those on their executive committees who have the financial wherewithal to understand finance departments. A non-accounting-biased financial secretary or treasurer is less likely to be able to appropriately advise the unions on the usage of these tools. This may place the management representatives who are specialists in various fields far ahead of the union executives. The time has long gone when unions made demands on various line items without considering what the company earned. It is not enough to look at the inflow without taking a cursory look at either the expenditure patterns or the budget set aside for the company’s future expansion and growth. Management has to let the unions know the company’s growth and strategic direction at a pre-negotiation strategy meeting.
* Financial data—As a precondition to effective collective bargaining, the union and management representatives should know the company’s financial data. This includes the numerical time series covering periods of the company’s economic activities or even an industry-wide economic analysis. Since monthly data analysis can be cumbersome, a quarterly or annual evaluation can be an alternative.
* Purchasing power parity—The employer should seriously consider purchasing power parity (PPP), a criterion for an appropriate exchange rate between currencies, before arriving at the best deal with the union. The PPP is especially vital in a monolithic and foreign-currency-dominated commodity trading between countries. In Nigeria, the US dollar dominates the crude market. Therefore, management should seriously consider the prevailing rate and the equivalent of what that naira component can purchase before entering into a negotiation with the unions and deciding what possible raises it can afford. For instance, the naira/dollar rate in 2016 hit an all-time high of ~~₦~~305/$ and above ~~₦~~400/$ at the interbank Forex and parallel markets, respectively. With the Central Bank’s intervention, the price of the naira settled at US$358–US$360 for almost 4 years. In the wake of 2020, with the COVID-19-dictated global economic slump, the Central Bank revised its policy to allow forces of demand and supply to dictate the price of the naira to the dollar. So in March 2020, it announced an ~~₦~~380/$ benchmark. But by the beginning of June 2020, the rate was at ~~₦~~440/$. Because Nigeria is a highly import-driven country, the cost of doing business would have also risen. This increase would be transferred to the consumers in the marketplace, of which workers are a part. Ultimately, this compounds the double-digit interest rate, reduces access to funds, increases the cost of goods, and depletes the workers’ earning power.

The unions, on the other hand, should realize that Nigeria is majorly an import-dependent country. It does not produce most of its spare parts or machinery. Most of the chemicals used in oil and gas operations are also imported. There is no doubt that this import- and dollar-driven economy would significantly reduce the company’s retained earnings, increase operational expenditures, and in the end, reduce funds available for welfare services. Therefore, unions and management both need to ensure that empathy plays a significant role in their interdependent relationship. If unions developed a commercial mindset and acted as business managers without mortgaging the essence of unionism, it would go a long way to strengthening the synergy needed for productive ventures to take place.

In summary, parties should overview the recurrent expenditure growth rate against the company’s horizontal and vertical growth in the past 10 years. In recent times, the growth rate of recurrent expenditure patterns every 4 years in some oil and gas companies is between 50% and 100%. Conversely, the company growth rate is less than 30%. These types of growth rates will, in the long run, remain an unsustainable paradox. In this kind of atmosphere, it is only a matter of time for the enterprise to run into economic distress and troubled waters.

(c) Social

Unions and management can only maximize opportunities when there is a potent industry regulator. The regulator should be able to assiduously work to deter social dialogue partners from perpetuating unfair labor practices, non-recognition of union or management prerogatives, impunity, and non-adherence to the rule of law.

The cordial or hostile relationship between the trade union and employer, intolerance, impatience, rigidity in the bargaining process, poor negotiation skills, and discriminatory approaches may make or mar negotiations. Aside from these, parties in a negotiation should be mindful of social events that could make negotiation cumbersome or nearly impossible. Socially related disasters could spin enterprises towards a harsh economic downturn for the country and, by extension, move industrial relations practice towards the edge of the cliff.

For instance, in 2020, the coronavirus induced a global economic crisis, which shook the world to its foundations. The aviation, hospitality, transportation, and tourism industries took a severe bashing. In reaction to the hit, the oil and gas industry became depressed, and the price of oil dropped abysmally to an all-time 18-year low, recording the mid-twenties US dollars in March 2020. At one point, Group Managing Director Mele Kyar of the NNPC, in a bid to make Nigerians aware of what was to come, said, “50 cargoes of Nigerian crude oil are stranded on the international market due to the effects of Coronavirus” (Momoh, 2020). Continuing, he averred that

there are over 12 stranded LNG cargoes in the market globally, which has never happened before, LNG cargoes that are stranded with no hope of being purchased because there is an abrupt collapse in demand.

Under these conditions, it is doubtful that any meaningful negotiation could take place.

(d) Technological

The union should begin to take an interest in the effects of technology on employment and job security. Companies are slowly and gradually embarking on improving workers’ technological wherewithal to qualify them for work-at-home jobs and removing them from company payrolls and organograms. It is up to union leaders to envision that technological future now, get prepared for it, and begin to negotiate how management can put more emphasis on learning and development. The new focus would help employees to multiskill and scale up on technological preferences, instead of bread-and-butter negotiations. For instance, COVID-19 will redefine the world of work in so many ways. The 5G technology, the use of robotics, cloud computing, artificial intelligence, and so on will significantly redefine HR processes in the post-COVID-19 era. Companies will ultimately discover jobs that could conveniently and comfortably be performed in the comfort of workers’ homes. So, it is not whether an employee is lettered and has a university degree or not. The question is whether the degree is aligned with corporate dreams and visions in the deployment and use of digital technologies, which will accomplish more with far fewer personnel. Therefore, those that would survive the COVID-19-imposed complications in the world of work are those who have gone back to learn, unlearn, retool, reskill, and ready themselves for the new normal.

(e) Legal

Negotiatedagreements can only be wholly favorable when the legal frameworks, business regulations, and tax laws are also fair. Therefore, from the outset, parties in negotiation should seek to discover any new legal encumbrance(s) to their negotiation process. For instance, in early 2019, the federal government reviewed its policies on royalties and taxes. It ordered IOCs to pay almost US$20 billion in taxes, which it says were owing to local government and states. The companies were jolted and jittery. It was like a thunderbolt from outer space, which caught them unaware. On the surface, the directive could appear harmless. But from a deeper perspective, the new legal framework was going to dig holes in the companies’ financial baskets. It could snowball into multiple litigations, which might erode the funds that would have gone into welfare benefits. It could also deter future investments, which would lead to job losses and an increase in the country’s unemployment rate. The *Petroleum Industry Bill* (PIB), which sought to transform the industry, was introduced in 2000 and as of the time of writing has yet to birth. The non-passage of the PIB has slowed down investments, delayed the downstream sector’s deregulation process, led to a lack of funds, stunted development, and maintained recurrent redundancies, leaving a near-comatose industry that is not currently competitive.

(f) Environmental

With a potent industry regulator, there should be a reduction in breaches of health, safety, and environmental protocols. The elimination of accidents and working hour losses would lead to increased company profits and make more money available for welfare benefits.

Six Hats

Dr. Edward de Bono’s six thinking hats exploredthe world of imaginary colored hats, which people could put on during a decision-making process (Mulder, 2014). In de Bono’s opinion, the hats help a group working on a standard task to use parallel thinking. The color of the hat would connote the direction of the group’s thoughts towards a particular endeavor. Although he opined that the main idea is to have the group “wear only one hat at a time,” I believe that in negotiations, different actors should wear different hats in line with assigned roles and tasks within the team. However, the leader should almost all the time put on the blue hat to interrogate other team members’ decisions (Table 1).

[Table 1 goes near here][& the following two-line table title goes above the table]

Table 1

Adapting Dr. Edward de Bono’s Six Thinking Hats to the Decision-Making Process in Negotiation

Process flow

The preparation for any collective bargaining begins with planning. The success of any collective bargaining process depends on a solid ground of good, thorough, and efficient planning. The process and route differ from company to company. The process flow used here is the model operated by one of the big gates in the industry. The process of bargaining in all companies tends to follow the same trajectory. However, there could be mild variations from the conceptual phase of the unions’ intent to negotiate to the implementation of a negotiated agreement.

Union

After implementing the current agreement, the union executives should think about how well the last negotiation went, gauge the areas of successes and where they did not meet the expectations of their constituents, and determine what to do better next time. A proactive union commences preparation for the next negotiation after the implementation of the last negotiation agreement. The branch executive committee (BEC) should meet to appraise and identify the areas their members were not happy with and begin a compilation of the items, including new items.

As the consultation for the next negotiation cycle is ongoing between the BEC and management, convergence and differences should be noted. In some climes, the BEC sets up a neutral committee comprising past union officials from the elders council and the congress. This team checks the benefits and drawbacks of the current negotiation and their expectations for the next cycle. The feedback is compiled and tabled for discussions in subsequent joint consultative meetings with management representatives. This proactive approach ensures that any new item is discussed and agreed upon by both parties before the next negotiation. The articles so approved by the house are included in the union’s *Charter of Demands* for the next phase of negotiation.

As the consultations progress, union and management deploy their respective units to survey industry positions on all the issues identified and those items already signed off. Following these surveys, the team sets a plan for the larger body, stating what they need to focus on in the new negotiation cycle, and harmonizes various positions from the units. The team analyzes current economic indices, does a comparative analysis of previous agreements, and surveys remuneration levels using federal government apex parastatal and oil companies as benchmarks to ascertain competitiveness. Of importance also are company or government focus and policy frameworks that could affect wages and earnings. Policies governing deregulation, liberalization, buyouts, and mergers may have severe impacts on the collective bargaining process. With this analysis done, the BEC makes its recommendations to plenary.

After thorough consultations, the BEC compiles the new *Charter of Demands*. The document includes specific areas of focus, goals, objectives, and what the union intends to negotiate. Every charter usually has a vision and a mission. After a thorough review of the *Charter of Demands*, the union will submit it to management. It would be encouraging for the two in-house unions (i.e., PENGASSAN and NUPENG) to set up a harmonization committee to take into account the minimum and maximum benchmarks before presenting their separate packages, but with different mandates according to their bargaining strengths. Unfortunately, in most cases, the unions adopt separate negotiation strategies.

Management

Management usually carries out a year-round remuneration survey from time to time. It does this through the research unit of the employee relations section. During the negotiation year, management updates its previous comparative analysis in the information bank, obtains the inflationary index, determines the cost of goods, and so on. The employee relations section in a formal memo then flags management on the unions’ intent and the need to make financial provision for it in the next budget cycle.

Presentation of intent to management

The unions compiled the reviewed documents into a single source charter by each of the unions. This document, now titled *Charter of Demands*, is submitted to management at least 3 months before the expiration of the current collective bargaining agreement.

Management studies the proposals and then collates inputs from the corporate planning division and the finance and accounts department, along with the comparative analysis from the industry survey.The negotiating council meets to jointly verify and clarify the contents of the *Charter of Demands* submitted by the union.

The employee relations section collates the submitted charter from the unions. It makes a draft proposal side by side with its survey and recommends possible scenarios for consideration by multi-management levels. The process usually commences with presentations to the general manager, HR, who, if satisfied, owns the process and makes the next presentation to the group general manager, human resources. If group general manager approves the proposal, it will be forwarded to the office of a group executive director (GED). Once the GED judges the proposal to be okay, a presentation is made to the GMD. Once this is favorably considered and approved by the GMD, the document is forwarded through the corporate legal office for the consideration of the top management committee (TMC). The TMC comprises the GEDs of all the directorates. This is like a mini court hearing in which the HR team is thoroughly grilled on the charter and its proposal. If the TMC is satisfied, the proposal and charter are tabled before the board for consideration and approval. Then and only then does the GMD convey an approved mandate for any negotiation to HR for the commencement of bargaining.

With this approval, a pre-negotiation workshop is organized for the negotiation council. At the workshop, the committee members are brought up to speed on the state of the enterprise, the socioeconomic environment, an appeal for the understanding of the bargaining partners, and so on.

At the appropriate time, HR management informs the unions of the date, venue, and time the negotiation will commence and makes adequate provision for boarding facilities and the venue. The venue is usually devoid of distractions from work interference by other staff.

Step-by-step activities of a typical negotiation process

On the first day of negotiation, the negotiating council engages in the following public activities:

1. Solidarity song

Though it’s an emotional and energy-sapping event, the union sings the solidarity song, which is its galvanizing strength. This usually reduces the tension in the room. Besides, the beauty of the solidarity songs and the mantra of “forward ever, backward never” reinforce the need to have something better than the previous negotiation. For both parties, the negotiation must produce a document that will motivate the workers to continue to put in their best during the period the collective bargaining agreement will cover. On the flip side, enterprise will be further strengthened and repositioned for improved productivity.

2. Welcome address

The chair of the joint negotiating council welcomes participants to the bargaining table. Management appreciates the synergy between it and the unions, without which it would be impossible to sustain productivity and industrial peace in the organization. At times, the massaging of unions’ ego, an appreciation for their maturity, and the preference for social dialogue to resolve issues are needed to let the unions know how important they are in the scheme of things. The address briefly mentions achievements recorded within the previous agreement’s span, appeals to the unions to stick with the best practices in negotiation, and ensures that the bargaining ends on a happy note for both parties.

3. Presentation by corporate planning or finance division

Presentations by CEOs of global or large companies usually cover their subsidiaries’ economic activities. Some of the critical information from the last negotiation to date reflects the measurement of performance at the corporate level, crude price updates, recurrent expenditures, the state of the company’s business, the strategic plans, its growth agenda, the organization’s bottom line, and the need for union understanding. Interestingly, management in almost all cases projects the continuum’s gloomy side and a red to low green bottom line.

After the presentation, participants are invited to make comments and observations and (or) ask questions. The unions usually pick holes in management’s financial appraisal of the organization at this stage. Some of the questions usually asked are the following: Why is it that it is only during a negotiation that management briefs the unions on the organization’s financial status? Why is it that, in most cases, the presentations usually show a low green or red bottom line? Why won’t the employer brief its employees on the organization’s state of financial affairs periodically and before negotiation?

The unions will appeal to management to not deny them their dues during the negotiation under the guise of red bottom lines.

4. Presentation by PENGASSAN and NUPENG

Although PENGASSAN and NUPENG negotiate separately, they usually prefer to make a harmonized presentation on the general principles to be followed during the negotiation. The presentation mentions very high expectations for the expected packages, a comparative analysis of their earnings against those of management, leakages in the system, the need to close the gaps between the upper echelon of the organization and the rest of the staff, justifications for the increases sought, and an appeal for management’s understanding.

5. Keynote address by the company’s managing director or a representative

In the keynote address the managing director or a representative conveys the thoughts of the organization to the negotiating council. The address encompasses the historical perspectives of collective bargaining, the outlook of the enterprise, the industrial relations atmosphere in the organization, the key achievements of management, and an appeal for cooperation between the representatives of management and the unions all through the negotiation period. The speaker formally wishes them good luck and declares the negotiation open by mandated announcement, if any.

6. Discussions

Participants at this point discuss the mandate given and other concerns of interest. It is noteworthy that no mandate, no matter how huge, has ever been acceptable to a union.

In some companies, no mandate is announced. The items on the table attract item-by-item percentages as the negotiation progresses.

7. Closing remarks

The HR director concludes the session with closing remarks and wishes the council successful bargaining.

The announcement of the mandate marks the beginning of the negotiation. The mandate in some companies is a fixed sum or percentage increase; the council is at liberty to joggle around the items presented by the unions.

Immediately after this, members of management and the union meet separately to discuss and adopt negotiation strategies. The two parties later reconvene at plenary to get briefs on the timetable. They then jointly set the ground rules and the structure of negotiations. Each party raises any concerns, and the house jointly resolves the issues.

8. The setting of ground rules

Just before the whistle goes, the collective bargaining partners are enjoined to jointly put in place a set of ground rules, which will guide them through the entire process. Once agreed, they are encouraged to follow the rules set:

* Have mutual respect.
* Do not engage in distractive behaviors.
* Do not interrupt when the other party is speaking.
* Do not pass uncomplimentary remarks, even if not pleased with the other party’s behavior.
* Do not speak as a crowd but individually through the group leader.
* Channel all complaints related to the process through the leader of each party.
* Seek clarification of issues if not clear.
* At the end of each day, summarize proceedings and agreements reached.
* Do reality checks on proposed agreements.
* Sign agreements that have been reached.

The plenary then breaks to reconvene as agreed on the timetable.

9. Offer

On resumption, the union chairperson, who leads the colleagues, makes a case-by-case defense of the union’s demands. There are emotional and soul-touching reasons in favor of the charter submitted and reasons why the workers must harvest returns for their work efforts. Where necessary, the chairperson allows other team members who could sway management to buttress the argument for their position.

Management carefully listens to the union arguments and, in the end, responds to the demands by offering the unions either a percentage or naira increase, whatever management deems fit. The lead management representative, who is the chairperson of the council, also clarifies the reasons behind the offer and why management cannot concede more than given. This goes on with each demand until the demands are exhausted.

During a negotiation, parties take time to evaluate the offers from the other party, note the strengths and weaknesses of the bargaining partner, calculate resources available to accomplish the task, and consider the perception of stakeholders and the expectations of the parties.

10. Negotiation and the bargaining phase

Most of the negotiations I witnessed went into late nights. Despite the ground rules, negotiations are fraught with emotional outbursts. The unions, in most cases, refuse to let go of their demands as presented. At the same time, management pushes for drastic reductions and tries to make the union demands look so distant from the realm of affordability and rationality. In the end, concessions and tradeoffs are made, and agreements are reached.

When there are extreme positions and negotiations get tough, either party is at liberty to call for a time-out for a tea break or to constitute a smaller group as a committee to try to resolve the gray areas. At this stage, the focus should be to avoid deadlock. This committee, therefore, works as a neutral, rational, and objective third party. It examines the two positions and endeavors to find a middle-of-the-road option. It writes and submits its report to the committee of the whole house for further deliberations. Difficult as this seems, it has been tried several times with outstanding success.

11. Collective bargaining agreement

The collective bargaining agreement is a summation of the proceedings during negotiation. All issues discussed and the sequence of events must be carefully documented, as this will guide the secretary of the negotiating council in the writing of the agreement. Parties must endeavor to do a reality check for workability, affordability, and sustainability on agreed items. If the negotiation is ratified, the chairperson proceeds to read what was agreed upon item by item. This is then committed to a written agreement, which will be signed by both parties.

When a collective bargaining agreement is written, it must be complete. It should contain all that was collectively agreed on. It should be clear, unambiguous, and simple, and all clauses should be signed.

The beauty of the above model, which a company like the NNPC adopts, takes about 2 weeks to conclude. In contrast, some of the private sector companies spend 2–3 months on the negotiation table. Deadlocks that lead to strike notices or court processes are also very rare with this model. It is cost-effective in terms of time and money.

The only challenge the government agencies face, which is quite different from the free hands enjoyed by IOC joint-venture partners, is that even when the board has approved their package, it must still get to the president of the Federal Republic of Nigeria for approval. Although a corporation like the NNPC is guided by the *Nigerian National Petroleum Corporation Act, Cap. N123* (Federal Republic of Nigeria, 2004), which calls for the NNPC board to determine the salaries and benefits of NNPC employees, the package still goes through a tortuous bureaucratic approval by government. Negotiation takes an average of 2 weeks, whereas it takes 3–7 months to get the agreement approved for implementation.

12. Implementation

Once an agreement has been signed and approved by the managing director of a private company, the company generates implementation circulars for its subsidiaries. In the case of the federal government agencies, the agreement makes its way back from the commander-in-chief and president of the federal republic, through the minister of State and Petroleum Resources, the GMD of the NNPC, down the line to the manager of industrial relations, who takes this to the National Salaries, Incomes and Wages Commission before the implementation circulars can be generated. Until a collective agreement is implemented, the negotiation has not been concluded. So, the employer should ensure that the agreement reached is implemented without delay. It is the HR department’s duty to ensure that the agreement is uniformly implemented across the corporation.

Possible outcomes of negotiation

Negotiations can have a variety of outcomes:

* Parties reach the desired end with the signing of an agreement. Both parties won because they made sacrifices, collaborated, and cooperated to reach the outcome, called a win–win.
* Parties end on a sad note, which is referred to as a lose–lose. This scenario is due either to a deadlock on a general note or to a failure to agree on many of their major items. Parties would either end up in arbitration or have unending bargaining sessions.
* One party ends on a sad note because its team members could not get most of their desired items approved by the council, and the other party ends on a happy note because the team secured wins for most of the items demanded. This is a lose–win scenario. This is an adversarial situation, with one party feeling an element of bitterness. This happened once in the life of the NNPC staff unions. The unions went in for their negotiations, but only PENGASSAN signed an agreement with management. NUPENG did not because they were deadlocked. Management had to implement the agreement with PENGASSAN. The matter went to the Industrial Arbitration Panel for arbitration. Unfortunately, NUPENG lost in arbitration and also in that negotiation cycle.
* The parties adjourn for further consultations. This is like staying alive to do battle another day. Both parties should seize the opportunity created by the adjournment to consult widely and to engage each other informally. In the unions, the thought leaders or the elders council might help by smoothening the rough edges. Management may wish to seek a broader mandate and consult with other managers in similar circumstances to learn how they managed disagreements in previous negotiations. This consultative approach is a better option than having a deadlock.
* The parties are deadlocked, and one party immediately plans to use arm-twisting tactics to subdue the other. Such was my experience in 2008, when PENGASSAN in an upstream company, in a joint venture with the NNPC, immediately called on its members to strike after they deadlocked over collective bargaining issues. The strike was already 1 week old when the GMD of the NNPC directed me to facilitate mediation between the parties. I held several caucus meetings and plenaries with them in Calabar. The sessions went well, but the management team moved its position from granting a 10% increase to granting 13%. Similarly, PENGASSAN moved its position from 35% to 17%. Although no final agreement was reached, the aggressive behavior towards each other simmered down, and both parties no longer saw themselves as enemies.

On the basis of my report, the GMD of the NNPC invited both parties to Abuja. After a few caucuses, the disputants agreed on a 15% increase for selected items. After that, the union called off the strike. The GMD used reverent mediation, in which both parties respected the position of the GMD in the industry. So, when parties are not making progress in a negotiation, they should endeavor to solicit a neutral third party who can facilitate mediation between the parties.

A successful negotiation ensures stable productivity, reduced industrial disputes, higher worker morale, reduced wastage, improved job turnover, mutual trust and confidence, reduced interactional barriers, restored relationships, and industrial harmony in the workplace.

However, for a collective bargaining process to be successful, both parties should understand that irrespective of their opposite positions, they must work together for the good of the organization. Employee and employer representatives should understand that their needs and interests are incompatible. Furthermore, without the organization’s existence, all workers, including all management staff, are losers, and they will end up in the unemployment market. One of the most challenging aspects of negotiation is learning to reconcile interests and not positions. A party’s rigidity in a negotiation usually brings out the worst in the other party and sets one party against the other. Therefore, a consideration for the reconciliation of interests preserves relationships and the company from imminent collapse, which a recurrent expenditure burden would impose on it.

Other factors that might help make negotiation a success include the will and commitment of the parties to engage in dialogue and respect for the other party’s rights. Also important is an appropriate institutional framework to support the process (statutory, legislative, communiqués, agreements, legal, precedents, ILO frameworks, etc.), conducive economic and sociopolitical environments, employment opportunities, and the green bottom line of the organization.

Irrespective of opposing opinions, focusing on needs, wants, desires, and interests helps resolve differences in the workplace.

Generally, bargaining in good faith by both employer and union representatives creates mutual trust and respect during negotiation and promotes a win–win outcome. It goes a long way to determining labor–management relationships. Good faith bargaining is a practical necessity, which should go beyond legal provisions and technicalities.

Suppose partners learn to negotiate in good faith, which underscores the no deceit, no denial, and no delay principles. They will achieve gradual and incremental positive outcomes, which are rewarding, fulfilling, and sustainable. They must see each other as equals representing their different constituencies. The following considerations may also add value to a negotiation process:

* Jointly set the pre-negotiation ground rules.
* Jointly identify and agree on the issues in dispute and those of mutual benefit.
* Admit that parties’ interests, goals, and needs are not entirely incompatible.
* Recognize the need to cooperate to achieve set goals.
* Emphasize areas of mutual benefit.
* Seek to listen, appraise, and understand the interests and needs of the other party.
* Try to figure out the person calling the shots on the other side.
* Determine whether there are multiple or restricted alternatives.

If the parties negotiated in bad faith, management might undercut the union. The union might get great outcomes but suffer severe collateral damage to relationships and devastating future outcomes.

Chapter 10. Types of Bargaining

Good faith bargaining is an essential ingredient for collective bargaining.

Rights bargaining

The essential consideration in rights bargaining is a focus on the legal rights of either management or the union. The union, especially one representing employees with short-term contracts, is always on the warpath with company management over noncompliance with the extant labor laws, fair labor practices, and rights to organize, unionize, and bargain collectively.

Management, on the other hand, has devised means of ensuring that many of the short-term contracts fall under the category of service contract, in which a third party supplies services, but not labor, to the organization. Companies use this ploy to circumvent unionization of the service-contract employees. The assumption here is that those employed on a service contract would have been duly registered members of a primary trade union before being deployed to the secondary area of employment. For instance, if a company has been engaged to transport workers from point A to point B, which is an oil and gas company, the expectation is that the company would provide both the buses and the drivers. From the outset, the drivers would have been members of the National Union of Road Transport Workers. Even though the drivers would be working in an oil and gas environment, they cannot be members of the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) or the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG). Irrespective of affiliations, the oil and gas unions see this as unfair because they believe any employee working in an oil and gas environment, be it on a permanent or short-term basis, should be a member of PENGASSAN or NUPENG. Management also pushes back when the oil and gas unions want to use collective bargaining to negotiate criteria for promotions or to dictate performance evaluations for the drivers, and so on.

Distributive bargaining

Distributive bargaining is akin to traditional positional bargaining, which is competitive and adversarial. The consideration here is to effectively resolve the issues surrounding fixed mandates or resources. Fortunately, practitioners have found a way of ensuring that the process is not strictly that of distributive bargaining in cases like divorce. In any divorce, the parties usually work so hard to keep custody of the children, keep the estate, and decide who will pay alimony and what quantum the support will be from the earnings of the other party. The idea is to take as much money as possible from the other party. In most cases, one party goes home with a more significant cut of the pie. But in workplace relations, a winner-takes-all like this would result in strained relationships, industrial actions, and productivity reductions.

Integrative bargaining

Integrative bargaining is also known as interest- or merit-based bargaining, joint problem-solving bargaining, and so on. This method deals with many complex issues, including interests, resources, and the real issue in dispute. In negotiation, process owners who know that the gains of a win–win settlement far outweigh a deadlock or an inability to reach a workable agreement will try as much as possible to find common ground and a workable solution to the issues on the table. Therefore, the parties must develop a strategic plan to deal with any of the types of bargaining highlighted above.

Elements of an effective collective bargaining process

An effective bargaining process has some or many of the following characteristics:

* Negotiation takes place within a social framework devoid of technical or legal encumbrances.
* Parties agree on the date, venue, and time of negotiation.
* The bargaining partners are recognized as equal, thereby allowing bargaining on equal terms.
* The parties are free to negotiate all matters connected with the dispute presented for negotiation.
* Negotiation is flexible.
* The parties understand the socioeconomic implications of a deadlock.
* Finding equilibrium can save face for either party.
* Negotiation is carried out in an atmosphere devoid of harassment, threats, or duress.
* Bargaining is carried out honestly and transparently.

Good faith bargaining

To bargain in good faith means that the parties meet as agreed, with an open mind over issues in dispute. Bargaining in good faith means that the negotiating parties in a negotiation are encouraged to do the following:

* Observe the principles of no deceit, no denial, and no delay.
* Do not deny unions the right to collective bargaining.
* Be truthful to themselves.
* Refrain from deceits that could mask the true essence of issues on the negotiating table.
* Provide verifiable data, and give information that would enhance a knowledge-based negotiation.
* Follow the ground rules, which will enhance the prospect of a negotiable settlement.
* Regard all items within the scope of bargaining as rightly negotiable and solvable bilaterally.
* Discuss demands freely and thoroughly, and justify adverse reactions with reasons.
* Consider compromise proposals to find a mutually satisfactory basis for agreement or settlement.
* Give information that will enable the other party to bargain responsibly.

Once the parties sign an agreement, there should not be any delay in implementation. Any party that cannot fulfill the terms of the deal should inform the other party and ask for a meeting to resolve the new issues or challenges.

Generally, the adoption of good faith bargaining by disputants creates mutual respect and mutual trust during bargaining, and it also promotes a win–win outcome. Besides, it goes a long way to determining the course of future relationships. It is a practical necessity that helps the parties to move closer to their interests and needs.

Collective bargaining has gone far beyond the bread-and-butter process of just multiplying the current meal subsidy at work by three and then by six household members to arrive at the subsidy demanded in negotiation. Both sides, especially the unions, must carry out diligent research on benchmarks with at least five comparators. This research should not just be on emoluments, but also on what other companies produce, their overhead, their areas of operations, and their bottom lines. For instance, if the Nigerian National Petroleum Corporation (NNPC) unions want to benchmark their earnings with any company in the upstream sector, they should also consider what the NNPC produces in that sector, the population of employees in other companies, and those companies’ assets, liabilities, and bottom lines. Other areas of consideration should include access to foreign exchange, the turnaround time of projects, and so on.

Chapter 11. Collective Bargaining, Employment Contracts, and Compensation Philosophy in the Downstream Sector of the Oil and Gas Industry

—Bayo Olowoshile

The downstream sector of the oil and gas industry in Nigeria was first to determine the wage process in the industry. Mobil Oil, Total Nigeria, and Esso (later Unipetrol) led this sector for a long time.

Over the years, many branches of the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG) have used collective bargaining to correct imbalances in salary structures, especially in negotiations with companies that do not have a structured benefit and compensation philosophy system. However, using the bargaining platform for such exercises has proven ineffective in bridging the gaps between compensation for unionized staff and compensation for the management cadre. The application of percentage increases across salary bands tends to widen the salary gaps. Therefore, where there are gaps in pay parity, an expert in compensation and benefits (C&B) should be engaged to diagnose and make recommendations for bridging the gap. Once top management approves the consultant’s advice, the company will update its C&B manual.

This chapter focuses on employment contracts and C&B in the downstream oil and gas sector in Nigeria and the collective bargaining tool. Consequently, this chapter tapped on the subsisting social partnering between PENGASSAN as a trade union representing the organized senior staff and middle management employees in the oil and gas industry on the one side, and the respective management of the oil and gas major marketing companies, representing the employers, on the other. The chapter essentially enriches the inherent and emerging labor and industrial relations issues, which are of concern and interest to both parties. The extant national laws and adopted international treaties support the negotiation on wages, so long as the parties follow the stipulated or agreed process or practice to ultimately reach an agreement.

The downstream sector deals mainly with the marketing and distribution of petroleum products and gas. The market leaders with strong structures and influence in the sector are Total Nigeria PLC, Oando PLC, and Mobil Oil Nigeria PLC. They engage with trade unions on matters relating to employment contracts, terms, conditions, and welfare benefits for their members who are employees of the companies.

These three companies have a reputation for well-established human resources (HR) departments, which serve as models with critical interests in these companies’ HR domains. The companies inherently have collective bargaining as a general HR function. They also have well-built HR specializations and subdivisions, which perform their tasks efficiently. In addition, these organizations have templates for standard HR functions. They regard human capital as a strategically valued asset of the organization and provide training and development to meet industry and global dynamics. Smartly.io-designed HR philosophy is executed in tactful, logical, and responsive modes.

Essential areas applicable to the bipartite industrial relations within the companies are the following:

* employment contract agreement;
* collective bargaining agreement (including other related resolutions or communiqués);
* compensation and benefits philosophy;
* compensation review procedures;
* compensation and benefits structure strategy;
* extant national and labor laws guiding collective bargaining;
* international labor treaties;
* industry and industrial policy and practices; and
* company policy and way values, codes of conduct, and ethics.

Employment contract agreement

An employment contract agreement derives from the employer–employee relationship in an employment contract of service. A contract of service comes with statutory stipulations and benefits to be accorded by the employer to the employee, including hours of work, annual leave, and pension benefits. The agreement states the employment conditions, rights, responsibilities, and duties of the employer and the employee, otherwise called the terms of the contract. Both sides are obliged to comply with these terms. The parties also give each other due notice for the review of the contract terms.

Unlike in the United Kingdom and other jurisdictions where an employment contract does not have to be in writing, in Nigeria, section 7 of the *Labour Act—Cap. L1, LFN, 2014* specifies that the employment contract agreement be in written form. It will be duly served on the worker not later than 3 months after employment begins.

The employment contract specifies the following in writing:

* the name and registered address of the employer or group of employers of the undertaking where the worker works;
* the name and address of the worker and the place and date of engagement;
* the nature of employment;
* if a fixed term, the date when the contract expires;
* the appropriate period of notice to be given by the party willing to terminate the employment contract, with due regard to statutory stipulation or as agreed by the parties;
* the rates of wages and method of calculation thereof and the manner and periodicity of payment of wages;
* any terms and conditions relating to hours of work or incapacity to work due to sickness or injury, including any provision for sick pay; and
* any special conditions of the contract.

If, after the date at which the said terms apply, there is a change in terms, the employer must inform the worker in writing of the nature of the change not more than 1 month after the change.

Employment contract

Nigeria’s extant national and labor laws guarantee workers’ rights to membership in an organized labor union (trade union) because of the ratification and domestication of conventions 87 and 98 of the International Labour Organization (ILO). The laws also confer the rights of organized labor unions to bargain collectively with their respective employer or group of employers and enter into an agreement on the terms and conditions that will regulate its members’ employment contracts. Employees’ rights to be represented by a trade union of choice for their particular company is also guaranteed. These representatives routinely engage the employers to negotiate or review the conditions of their employment contracts, which will, in the end, produce a collective bargaining agreement (CBA) to regulate their relationships.

A union, when negotiating or reviewing with the employer the terms and conditions of employment—whether as stipulated in the CBA provisions or extant laws or during a dispute of rights or interests—usually does so on behalf of its members only. The company, on the other hand, is at liberty to apply the same rule or other binding policy to different staff categories.

Collective bargaining agreement

Collective bargaining is a process through which an employer and a trade union negotiate terms, conditions, and employment relationships for employees of that company who are members of that trade union. It is also an effective mechanism for resolving disputes arising from the interdependent relationships between trade unions and employers. Collective bargaining usually takes place within the agreed scope of issues and context in both parties’ proposals. The ILO considers the process a social dialogue that recognizes workplace rights and privileges and management prerogatives. It is carefully designed to promote peaceful and harmonious labor relations and to manage other related interests and concerns of workers and employers in the industrial environment.

Usually, a registered trade union in a given statutory jurisdiction negotiates from time to time on behalf of its members with employers or management in its jurisdiction. Typically, the CBA reached between the parties—the trade union and the employer or management representative—is a legally binding and enforceable contract because of the extant national and labor law provisions, the *Trade Disputes Act* (Nigeria, 2004b), and the judicial system.

A CBA in these companies usually entrenches such fundamental workplace principles as the following:

* the right (and obligation) to safe, healthy, and secure jobs and work environment;
* the right (and obligation) to decent and dignifying work–life balance;
* the right to career development;
* the right (and obligation) to participate in policy decision-making processes, control, and ownership;
* the right (and obligation) to fair and equitable distribution of profit to those who made it possible; and
* the right (and obligation) to a harmonious workplace environment and a grievance mechanism to address disputes arising from the contract of employment.

From the preceding, the CBA encapsulates employment-contract-related issues and areas that are classified into two broad parts: procedural and substantive agreements.

Compensation and benefits philosophy

A company’s C&B philosophy stresses effective recruitment strategies, efficient talent management, and efficient and effective performance management. The philosophy is also designed to motivate employees to excel in meeting the organization’s business objectives and upholding its core values. Usually, the philosophy is in line with the company’s priorities:

* to attract and retain qualified, high-performing, and motivated employees;
* to motivate and reward excellent performance;
* to ensure that the compensation system boosts staff and public trust and confidence;
* to inspire employees to provide effective service delivery, productivity, and profitability;
* to fulfill the organization’s mission and support its success-related strategies and values; and
* to promote fair compensation as integral to the organization’s success.

Compensation review procedures]

For the companies referenced in this chapter, C&B review procedures include a wide variety of strategies:

* Staff positions are used for benchmarking job groups and grades.
* Comparative analysis is used to benchmark compensation at the local, sector, and national levels against market data.
* Job descriptions, special skills, job locations, and the complexity of responsibilities are all benchmarked.
* Staff CBAs are reviewed.
* The employee performance review process or reward system is used.
* Markets and the inflation index are taken into account.

However, for the companies considered here, the priorities for the C&B scheme are as follows:

* The C&B review relies on the process or outcome of staff collective bargaining.
* Group or grade pay levels are equitable internally and competitive externally.
* The C&B philosophy fosters a sustainable competitive edge.
* The C&B philosophy is designed to periodically reward management performance.
* The wage structure is consistent and comparable with the practice in the sector.
* The C&B philosophy factors in an adjustment that considers the inflationary trend and cost of living index.

To ensure that every company subjects itself to equitable standards, it should also subject itself to the *Antitrust Law*, which prohibits the exchange of business data with competitors so as to prevent collusion in the pricing of production factors, including wages.

Compensation and benefits structure and strategy

C&B structure and strategy normally have a mix of the following:

* a monthly salary system;
* the hourly base wage;
* performance-based pay; and
* periodic adjustments to pay ranges.

As far as these companies are concerned, the right compensation strategy ensures that pay levels are internally equitable and externally competitive. Parties in the negotiation attempt to ensure the right mix of the two most common market pricing methods and point factors to foster competitiveness and pay equity appropriately. This practice becomes a management tool for rewarding performance and skills development; and by capping the pay for particular jobs or locations, it controls overall base salary costs.

Salary ranges and structures defined

The span between the minimum and maximum base salary that an organization will pay for a specific job or group of jobs is called a salary range. Job groups and salary grades are hierarchical within an organization. Salary structures are expressed as pay grades or job grades to reflect the value of a job in the external market and within the organization.

A traditional salary structure has numerous tiers and (or) pay grades, with a relatively small distance between each. This structure enables employees to get raises when promoted. When designed correctly, the traditional hierarchical structure recognizes different pay rates for performance and guarantees a reasonable level of control over internal compression and salary expenditures.

C&B may be structured for implementation in the following ways:

* monthly payroll items—consolidated basic salary, transport, housing, utility, lunch;
* annuities—housing, life insurance;
* grants and loans—homeownership grants, car loans, car refurbishment, furniture, generator and power improvement, children’s education, information and communication technology (ICT) benefits;
* welfare benefits—medical enhancement, health maintenance organization, club membership, fitness;
* productivity or profit-sharing bonus; and
* performance rewards and motivation—merit, promotion benefits.

Extant national and labor laws guiding collective bargaining

* Constitution of the Federal Republic of Nigeria
* *National Minimum Wage Act*, 2019
* *Pension Reform Act*, 2014
* *Employee Compensation Act*, 2010
* *Labour Act*, 1990
* *Trade Disputes Act*, 2006
* *Trade Unions Act*, 2005
* *Nigerian Oil and Gas Industry Content Development Act*, 2010
* *Petroleum Act*, 1990
* *Companies Income Tax Act*, 2004
* *Factories Act*, 1987
* *Health and Safety and Environmental Act*

International labor treaties

Standards set by the ILO’s multilateral conferences are the primary sources and critical references for international labor treaties dealing with issues in employment contracts, compensation, and benefits.

* ILO conventions 87 and 98
* *African Charter on Human and Peoples’ Rights*, 1986

Industry and industrial policy and practices

* Health and safety and environmental policy and practice
* Anti-trust policy
* Enterprise-based bargaining policy and practice

Companies’ policy and way values, codes of conduct and ethics

* Company code of conduct and ethics
* Company way values
* Employee life assurance; group accident policy

Collective bargaining in the downstream oil and gas sector

General challenges

Collective bargaining in the downstream sector can be affected by many challenges:

* Volatility affects predictability of the business climate.
* The regulatory framework (fiscal and institutions) may affect investment decisions.
* The country has no control over the exchange regime.
* Double-digit interest rates make it difficult for many downstream companies to take out loans to import petroleum products.
* Negotiation cycles are frequent.
* Demands need to be streamlined or moderated to be more realistic.
* The existence of multiple C&B structures adds extra time to negotiations.
* Attitudinal issues may result in parties attacking each other instead of the issue.
* Labor congresses seem unable to set moderate, realistic mandates.
* Many downstream companies have no way to measure productivity or efficiency.
* There are no clear-cut roadmaps or criteria for increasing wages.
* The scope of collective bargaining as it relates to management prerogatives is restricted.
* Joint validation of facts and recognition of objective criteria by bargaining partners is lacking.
* Unions add new elements to salary and wage demands in each negotiation cycle.
* Conflict resolution clauses are missing from the collective bargaining process and unimplemented agreements.
* Negotiating partners are inexperienced.
* Ego gets in the way.
* Positional bargaining is commonplace.
* The cost of doing business is high because of the vandalism of product pipelines, dollar-driven regimes, lack of access to foreign exchange, high cost of funds, insecurity, high interest rates, inadequate infrastructures, and so on.

Drawbacks

Collective bargaining in the downstream sector may have many drawbacks:

* unrealistic expectations (benchmarks most often target upstream packages);
* inaccurate perceptions;
* grudges or unresolved conflicts;
* differing strategies and tactics;
* divided and uninformed constituencies;
* lack of tolerance, mutual trust, and respect;
* ineffective skills and mechanisms for conflict resolution;
* fears, apathy, and attrition;
* lack of consideration for the other party’s time;
* self-opinionated and avoidance approach;
* not listening or deliberately refusing to hear the other party;
* use of threats or coercion;
* poor communication skills or system;
* barriers to language, faith, or gender;
* discrimination, sectionalism, paternalism, and so on;
* absence of logical procedures;
* disrespect for pluralism and freedom of association;
* non-recognition of trade union and (or) trade union rights;
* non-adherence to signed agreements;
* lack of support from labor administration authorities;
* exhibition of extreme bad faith;
* ineffective flow of communication and information; and
* misrepresentation of the letter and the spirit of the agreement.

Benefits

Collective bargaining also has some positive attributes:

* It fosters the establishment of strong and independent parties in the industrial relations system.
* It encourages dialogue rather than conflict and possibly eliminates third-party intervention and adversarial decisions.
* It tends to foster joint participation in the company’s processes and helps decide what portion of the pie is to be shared by the parties entitled to a share.
* It shares the rule-making power between employers and unions, which was hitherto regarded as management prerogatives.
* It guarantees industrial peace for the duration of the agreement, either generally or more usually on matters covered by the collective agreement. It can limit grievance and dispute handling to processes jointly agreed to in the CBA.
* It serves as a virile tool for social dialogue partners in labor relations. Social partners cover employers, organized labor, government, and other co-opted stakeholders in industry.
* It is a valuable tool for a long course of successful networking and mutual appreciation.
* It generates trust and mutual understanding for a continued relationship, which gradually eliminates the attacking personality’s attitude.
* It is less likely that union affiliations will change frequently. It enhances membership stability in the union in situations where the availability of multiple unions could lead to shifting of union loyalties.
* Over time, it tends to foster cordial relations between the union and workers on the one hand and the employer on the other hand.
* It engenders a productive relationship between the industry unions and employer organization by introducing stability, peace, and harmony in the industry as a whole.
* It curtails employee-hour loss in strikes and lockouts, as it discourages the procedural resolution of labor and management disagreement.
* It encourages parties to strengthen their technical capacity to access and process relevant facts and data to make and accept a superior argument in the social dialogue process.
* It strengthens parties’ political will and commitment to the exhaustive social dialogue process.
* It enhances mutual respect for fundamental rights, social justice, and non-interference in adherence to collective bargaining principles.

Sustainability of the negotiation and review cycle

* The collective bargaining cycle is a crucial matter between the trade unions and management. The companies in the downstream sector generally review staff CBAs on a 12- or 24-month cycle.
* Trade unions and management invoke the wage reopener clause to adjust the cost of living at mid-term intervals.
* In-built adjustment for the cost of living at midterm without negotiation is management’s idea.
* Having a cycle minimizes the tension and pressure associated with the annual negotiation process.

Techniques for breaking the friction cycle

* The *Trade Unions Act* (Nigeria, 1977) established the legal zeal for CBA enforceability. The CBA becomes justiciable once the Federal Ministry of Labour and Productivity endorses it.
* The collective bargaining process then became the veritable means of determining the cost of labor in the industry.

Addressing the challenges of the collective bargaining process in the downstream sector can only be possible if

* bargaining partners consider their organizations first, above any other interests;
* parties remove bluntness and engage in a principled bargaining strategy;
* reality checks are taken during the engagement process;
* negotiating partners hold out hidden mandates and positions to break deadlocks;
* parties turn the negotiation table into a synergy instead of a win–lose race;
* parties establish rapport to galvanize effective communication;
* parties identify common interests, needs, and goals;
* parties lay the ground for a win–win solution to problems; and
* parties shift identified problems to the common interest domain.

International rules guiding collective bargaining

ILO Convention 87 enshrines freedom of association and the rights to organize (ILO, 1948).

ILO Recommendation 91 enjoins member states to establish appropriate laws or regulations to negotiate, conclude, revise, and renew collective agreements or to be available to assist the parties in the negotiation, conclusion, revision, and renewal of collective agreements (ILO, 1951). Section 2 (1) of the recommendation goes further to define *collective agreements* as

all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more representative workers’ organisations.

ILO Convention 98 covers the application of the principles of the right to organize and bargain collectively (ILO, 1949).

ILO Convention 151 is concerned with labor relations (ILO, 1978).

ILO Convention 154 is concerned with the promotion of collective bargaining (ILO, 1981).

Chapter 12. Collective Bargaining in the Upstream Sector of the Oil and Gas Industry

—Steve Ojeh, Ph.D.

The principle of collective bargaining in Nigeria’s oil and gas industry, with particular reference to the upstream sector, is as unique as the industry itself. The uniqueness is not unconnected with the fact that the sector provides about 95% of Nigeria’s revenue. Thus, the sector’s business environment receives more than a proportionate share of changes in the Nigeria’s business environment landscape.

For instance, fear of the reactions of the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG) is a primary consideration when one is making political decisions in Nigeria related to the upstream sector. This is understandable, as political leaders want to maximize votes and can ill afford disruptions by industrial actions from the unions—their industrial efforts typically cripple the polity. Similar reactions follow changes in economic decisions, such as cost of living adjustments, inflation, and pronouncements with both macro- and microeconomic impacts. The same reactions follow major legislative pronouncements, including those with environmental dimensions. It is not unusual for the oil industry unions to react to environmental issues that affect their operations. These issues include areas within management prerogatives, not because they are within labor’s right as enshrined in the various labor statutes, but because of their enormous influence on members and on Nigerians in general, whether the actions themselves are legally appropriate or not.

The preceding also creeps into the landscape of collective bargaining within the subsector. The relationship between management and the unions is influenced not only by the legal framework and the stipulated rules of engagement but also by the external environmental factors described above. For example, it is not unusual for national political considerations to influence the outcome of the company’s simple exercise of management prerogatives in favor of the unions for fear of the latter’s use of their might to disrupt the populace.

Collective bargaining approach in the upstream sector

Except for the group executive councils of some oil and gas companies, the branches mostly drive the industry’s collective bargaining process. The branches are affiliates of the national bodies and represent the respective unions in each company. Collective agreements mainly derive from industry practice as a means of determining negotiable and non-negotiable items. To this extent, inclusion or exclusion of items for negotiation is guarded by the management team’s negotiation strength on its resolve to allow or not to enable negotiation of items considered management prerogatives. This resolve can sometimes be weakened if it becomes an industry practice not to negotiate such items. For example, where most companies in the pay market bargain on promotions and transfers, the pressure for others to adopt similar practices increases. Against this background, it is not unusual for the unions to play one company against the other, knowing that companies constrained by the need to comply with anti-trust laws have limited freedom to share data among themselves. The preceding notwithstanding, the upstream practice is to focus the collective bargaining process on the total remuneration (TR) strategy.

Determination of the *Charter of Demands*

In principle, the collective bargaining agreement between a trade union and its management contains mandatory provisions on the steps required before the union can submit its *Charter of Demands* to management. Those conditions include a notice of intent, which is the *Charter of Demands* that the trade union should submit to management. The *Charter of Demands* contains the union’s expectations of what it wants management to approve for the union members in the next negotiation cycle. In the charter, the union will usually notify management that the life span of its present collective bargaining agreement will expire at a particular date in the future. It will also specify the union’s readiness to commence negotiation before the expiry date. The duration of such a contract is 1–2 years. For companies that operate collective agreements of more than 1 year, it is the norm to include a wage reopener clause. This clause allows any of the parties of a negotiated agreement to initiate a charter on specific items or to modify employment terms and conditions within the life of an existing collective agreement. For instance, if inflation is rising and eroding the current collective agreement’s gains, the union may wish to select transportation or housing allowances as areas it needs cushioning before the next collective agreement falls due. On the other hand, a company that has declared a force majeure might wish to freeze on-call or shift allowances, which would demand some sacrifice from the employees.

From the outset, the union evaluates its company’s total compensation philosophy, which includes salaries, allowances, and benefits, and goes ahead to engage its members on their expectations. After the consultation, the union executives compare the competitiveness of the current compensation package with those of the comparators. Usually, the executive branch committee sets up an ad hoc committee to carry out this assignment. The committee is assigned tasks, targets, and timelines. Some branch executives may wish to constitute a committee of the whole house to carry out the assignment. Other branches would include former and experienced union leaders, called the elders, on the committee. A similar exercise is carried out by management, who may use the collective bargaining opportunity to introduce new human resource policies, such as work schedules and cycles, which it may have been unable to implement through the standard administrative framework.

Mandate setting

Following the identification and determination of the items the union wishes to include in the *Charter of Demands*, the next stage is to set negotiation mandates. The union usually completes this process before the commencement of negotiations. For the union, the branch executive committee, in consultation with the national secretariat, decides on the vital pay levels it should accept. To determine the pay levels, the union evaluates such factors as the company’s pay position relative to that of the competition, bearing in mind the height it wishes to attain. The union does not usually consider company productivity levels, including cost pressures.

On the other side, some collective agreements include clauses relating to the company’s preferred position relative to the negotiation. Mandate determination by the company involves analyzing and evaluating the union’s *Charter of Demands*. In turn, the company matches it with its ability to pay and sustain the same, but with a clear sight of competition in the pay market. A number of the players anchor the analysis with its pay philosophy, while others are driven by industry practice and pressure from union expectations, bearing in mind the environmental pull and push factors highlighted earlier. On this basis, the mandate agreed with the company’s senior management team eventually forms the basis for engaging in collective bargaining to reach an agreement.

A joint meeting point is the use of the TR concept by both management and the union. The TR concept involves enumeration and monetization of all the pay and benefits elements. These elements will be matched against those of the competitors. For instance, where a company and the trade union set out to be number two or to attain a position within the 75th percentile of the pay baskets in the market segment, or sector, the parties would use that standard as the basis for mandate determination. Facts, data gathering, and validation will be the standard for driving the process. The process enables both parties to reach an agreement in line with the overarching philosophy. In this scenario, collective bargaining is about the pay baskets and where the company wants to be within the comity of the upstream companies.

A critical exercise that leads to the determination of TR includes the use of compensation survey data already collected and analyzed within the sector’s pay baskets. For this exercise, it is not out of place to use job matching to compare industry job levels and ensure that similar parameters are being used to determine comparisons between and within the companies.

The breakdown of TR includes the base pay, which typically comprises leave allowance, as appropriate, and the 13th month bonus. Cash allowances are usually annualized as benefits. Benefits in this context refer to non-cash entitlements and status-induced benefits that are convertible to cash. The incentives, which are various TR elements in the short to long term, are benefits that can be translated to comparable annual figures. In monetization of the vital pay elements, meals, medical care, and car maintenance are easily categorized as either cash allowances or benefits. For instance, where the company provides meals, they are classified as a benefit. However, if employees are given a cash amount to cover meals, the meals are categorized as a cash allowance.

Conducting the negotiation

Following receipt of the *Charter of Demands* and in line with agreed clauses in the collective agreement, both parties decide on the commencement date for the new negotiation. Management mainly initiates this communication. At the commencement of the negotiation, the union’s negotiating team typically comprises elected members of the branch as stipulated in the union’s constitution and sometimes as a subject of agreement in the existing collective agreement. The national and some zonal officials may be members of the negotiating team. For other negotiations, representation is based on the maturity and experience of the branch, national, or zonal officials. Irrespective of the representation, the branch chairperson typically leads the union negotiating team.

The management team is made of senior officers from the human resources and industrial relations departments who have extensive negotiating experience. Some companies also involve senior managers who are not generally on the negotiation team in the negotiation process. Typically, items not contained in the demand charter are excluded from discussion. The items for negotiation are broadly sorted into two categories: the statement of principles, otherwise referred to as procedural discussions; and the specific terms and conditions of employment, also known as the substantive agreement.

The negotiation flow involves the union’s management invitation to state reasons for demand on items it initiated; management reactions follow. Management also follows the same pattern for items it initiated. The TR strategy is comprehensively discussed in the following chapter.

Chapter 13. Practical Approaches in the Oil and Gas Collective Bargaining Process

Every collective bargaining instrument has its rationality, objectivity, and subjectivity. The making of successful or failed negotiations is premised on how well parties plan for the exercise; the communication strategies they adopt; and their behavior, attitude, actions, and (or) inactions—not the size of the pie presented for sharing.

Total remuneration model

Total remuneration (TR) is majorly applicable to the upstream sector of the Nigerian oil and gas industry. It derives from the concept of total reward, which can be partitioned into material and immaterial components. This total reward strategy (Jiang et al., 2009) is a holistic approach that aligns with the strategies of both business and people. It encompasses everything employees value in their employment relationships, such as compensation, benefits, development, and the work environment (Kaplan, 2007). Fernandes (1998) identified the critical elements as basic salary, variable pay, pension benefits, death-in-service benefits, long-term disability benefits, private medical insurance, vacation entitlement, company car schemes, share schemes, mortgage subsidies, and so on. Lyons and Ben-Ora (2002) confirmed the preceding by indicating that the total reward strategy represents the best foundation of pay for performance, leading them to define the strategy as including the following: base salary, variable pay (containing both short-term and long-term incentives), other compensation, perquisites, benefits, and performance management.

The preceding was summarized by Tropman (2001), who posited that the concept of total compensation can be mathematically expressed in 10 variables:

TC = (BP + AP + IP) + (WP + PP) + (OA + OG) + (PI + QL) + *X*

where TC = total compensation; BP = base pay, or salary; AP = augmented pay, that is, any one-time payment, even if received at regular intervals; IP = indirect pay; WP = works pay, that is, employer-subsidized equipment, uniforms, and so on; PP = perks pay, that is, special benefits—anything from accessories to employee discounts on company products; OA = opportunity for advancement and increased responsibility; OG = opportunity for growth, both through on-the-job training and through off-site training and degree attainment; PI = psychic income, that is, the emotional enhancements provided by the job itself and the setting; QL = quality of life, that is, an opportunity to express other important aspects of life; and *X* = any unique element that an employee wants that the workplace can facilitate.

Advantages of the total remuneration model

The TR model has several advantages:

* It’s easy for both parties to know where they stand—The TR model helps the parties chart a course for a quicker conclusion of negotiation. The provision and validation of data are key components of the process. The provision of empirical data reduces unnecessary arguments. In an industry with a history of long and protracted negotiations, this point cannot be overemphasized.
* It enhances the practice of knowledge-based negotiation—In principle, both management and the union have opposing interests. While the union wants to maximize benefits, management aims to maximize profits. These natural positions hamper collective bargaining. Under the TR framework, though, the discussion is more open, and the unions in particular appreciate understanding the business parameters feeding into the TR outcome.
* It enhances union interest in baking the pie—Where the TR principle is fully implemented, union interest in productivity improvement is higher. The bigger the pie, the bigger the part to be allocated to employee compensation.
* It offers greater flexibility—A total package structure gives both parties the freedom to reallocate resources to pressure areas without impacting the total outcome. That way, the package is better structured to meet individual needs.
* It can be used to identify total costs of employment—This approach vividly brings to the fore hitherto hidden costs. For management, the framework has the added advantage of simplifying and controlling costs, particularly those associated with employment.
* It better positions the company to attract and retain high-quality staff—The core role of human resources and, indeed, the business is to attract, motivate, and retain staff. There is no better means of achieving those objectives than using the tool, which showcases total pay rewards using the TR principles.
* It helps to maintain competitiveness in internal and external equity—At the heart of the remuneration is the consideration of competitiveness in internal and external equity. There is no better way to drive negotiations to these objectives than to use the TR approach.
* It helps to simplify and enhance comparativeness—Without prejudice to the players’ anti-trust responsibilities, the TR approach helps in matching more accurate pay and benefits benchmarks and comparisons between companies in a particular pay market. This has certainly been the case with upstream companies.
* It helps to address worker concerns—One of the challenges of modern remuneration methodologies is employees’ inability to know and understand their true worth. With the TR principle, workers are aware of their pay structure, their true worth, and where they stand in the pack.

Disadvantages of the total remuneration model

As useful as TR is, it has some drawbacks:

* It leads to leapfrogging—Ideally, remuneration surveys are more effective when the quantum of the pay market is extensive. With the upstream market so small, though, the five players in it find themselves in a “rat race” to maintain their espoused positions. The result is that employment cost rises astronomically, and the widening gaps between the few upstream companies and other big employers become a national concern.
* It creates undesirable pressure to maintain the top quartile—Relating to the above is that as the players assess themselves against competition and try to maintain their preferred positions, the cost of employment assumes the lion’s share of operating costs. Where this is not appropriately managed, particularly in an environment of dwindling resources and rising costs, a company’s capacity to invest in the capital projects that drive growth and sustainability could be compromised. The credibility of compensation benchmarking without concurrent productivity and efficiency benchmarking becomes a critical business survival issue.
* It tends not to reward pay for performance—When the TR is the chosen approach, a reward for performance to improve the organization may be absent. This arises from a focus on matching the desired position by increasing total compensation rather than on rewarding “A” type employees and sanctioning those whose performance is below expectations.
* It undersells non-monetary forms of the employee value proposition (EVP)—The TR approach does not adequately reward or recognize companies that emphasize enhancing other EVP elements, such as challenging work and work environment. These represent different forms of employment costs to an employer that may not be duly recognized.

Challenges of the total remuneration model

The TR model faces several challenges:

* Data quality—For the framework to be useful, the data determining the TR parameters need to be accurate and trusted by both parties.
* Reliability of data source—The industry has a high propensity for respecting anti-trust laws. This makes it challenging to collect data from the competition, thus leaving this task in the hands of often-expensive consultants and informal sources with an uncertain outcome.
* Visible leadership commitment—The TR model requires commitment from the leaders of the union and management, without which it will not work.
* Agreement on remuneration philosophy—The TR principle works better when the company’s rank in the pay market is known and accepted. When the company wishes to be in the 50th percentile and the union prefers a higher position, the TR framework hurts rather than helps in reaching an agreement.
* HR data analytics—The TR seed nourishes the soil of data analytics. Where the competence of HR data analytics is not sturdy, the parties will be unable to harness the benefits of TR or fully use it.

Fixed pie model

The fixed pie model is closely related to distributive bargaining. Experience, especially with the government agencies, is a fixed lump sum that the employer presents to its representatives as a mandate. The lump sum is usually appropriated in the budget for salary increases during the negotiation year. This approach is like baking a pie for 20 people and then handing it over to them to share among themselves however they like. In this case, the 20 people would be the items in negotiation: base salary, housing, out-of-station allowance, per diem, transport and utility allowances, and so on. However, because a pie for 20 can be shared into other bits to accommodate some contingencies, the people who share that pie could further split it into more parts to go around the desired targets. The chief executive openly announces this amount at the commencement of negotiation or hands it to management’s lead negotiator in private.

If the fixed lump sum is ~~₦~~100 million, say, and it was appropriated in the budget for salary increases in a negotiation year, the parties cannot exceed the amount specified in the budget. In negotiation, after the mandate has been presented to the negotiation council, the council is at liberty to spread the money on the items as deemed fit. The advantage of this approach is that it gives parties the flexibility to prioritize their needs and interests and then determine how to spread the money on those priority needs. For instance, the union may want a chunk of that money to increase base salary, which might compound the pension elements later on. This may not be readily acceptable to the employer, whose burden it would be to settle pension liabilities in the future. The union may insist on increases on whatever item(s) it desires, whether or not this would affect pension liabilities. It may also decide to ask for things like rent and power improvement allowances, which would enable its members to meet their yearly rent obligations and to purchase generators. Management may not align with some of these items because of their capital intensive nature or perhaps because of overshooting the budget limits.From experience, the union usually finds ways of reaching out to the chief executive to expand the pie to enable it to have more money on some items. When moral persuasion does not help, it could deploy the tools of coercion, deadlock, or other unconventional means to extract more money from the employer.

These opposing interests are the real tests of negotiators. How they navigate the complexities is highly dependent on the skills of the negotiators. Despite the disadvantages, using the fixed pie model is faster because parties know how much is available at the beginning of a negotiation.

Onion model

The onion model presumes that a certain amount, known as the mandate, has been earmarked for the negotiation, but only the management representatives know how much it is. When the negotiation commences, management could present the tiniest fraction of what the union wants, which they know it will refuse. Management then gradually increases the amount and stops. Once the management representatives do the weathering of the onion skin with that fraction, one could say negotiation has commenced. That outer skin represents management’s initial position. It is now left for the union representatives to reach the real mandate, which is embedded and deeply wrapped in the inner layer of the onion. To get to that layer, union representatives have to work extra hard, weathering the outer layers with the skills of an ardent negotiator. Each layer represents a part of the mandate. As the parties strip the layers down the middle of the onion with methodical patience, information gathering, and negotiation, they begin to access parts of the mandate.

The resilience and bargaining skills of the union may strip the onion to its last layer. Still, if the employer representatives are more skillful, the parties may end at the periphery, and the remaining layers represent an unspent mandate, or savings for the organization.

This model keeps parties on the table for too long. The parties sometimes become exhausted and frustrated. If the union finds out there was an unspent mandate, the next negotiation becomes tougher. It would be laden with so much distrust that the union will never believe management, even when the negotiation mandate is exhausted in future negotiations. The onion model encourages skepticism and cynicism. It should not be deployed when the negotiators are not skillful in the art of negotiation or when the deadline for the expiration of the current collective bargaining agreement is close.

Up-the-hill model

Up-the-hill bargaining is like having a clean slate. Nothing is assumed. Parties are supposed to start at the bottom of the hill. They gradually climb until they get to the top. Every step taken by both parties means that an agreement has been reached. If the parties fail to secure an approval over an element in the discussion, they remain where they are until movement becomes possible. As they move up to the top, they begin to knock off obstacles. This approach is usually exhausting, as it requires stamina, tactics, strategy, and focus. If any of the parties take their eyes off the process, that party might tumble, and the negotiation will end on a negative note. Where the parties are unable to make any upward movement, they are heading for a deadlock. Management adopts this method during challenging periods, when the company’s bottom line is red and the organization faces a gloomy and uncertain future. When a company adopts this strategy, its focus is on survival. So, in its wisdom, it could direct its representatives to inform the union of management’s inability to increase salaries and welfare packages for some challenging reasons. When the union officials begin to agitate, management then gives a minimum percentage. If the union still persists, management could, in a subtle, threatening manner, say that “any increase might lead to challenges with human resources and an inability to pay salaries and wages.” When this occurs, management is advertently or inadvertently reminding the union that if it pushes above what the company can afford, redundancy might be an option. In rare cases, management could outright negotiate for redundancy as a way of improving the emoluments of those that are not let go. At this point, the union will be thinking about employment security. Or it could gain enhancements that could drastically lead to job losses.

Chapter 14. Roles in a Tripartite Collective Bargaining Process

A dialogue process that does not have laid-down rules, procedures, or guidelines defining the roles and terms for the interactions between actors in the chain of communication in collective bargaining is a cannon let loose.

Roles of management

Two-way communication

An effective chain of communication will ensure that members of the negotiation council know who is responsible for each aspect of their welfare during collective bargaining. Communication during bargaining should not be a top-down directive but a two-way tool for effective management of the process. The employer should show sincerity of purpose and a transparent attitude, and it should regularly brief the union on the status of the enterprise. It should give the union officials adequate information to bargain effectively.

The union’s strategy may be to annoy management representatives with its use of the word *deadlock*. Management representatives should remain calm and find effective ways of countering such tactics instead of giving verbal responses.

The wheel of communication is oiled by regular and constructive dialogue. This is needed irrespective of any deadlock during the negotiation. Management must be more proactive and mature by providing leadership and platforms for meetings at such critical moments.

Reward

The union usually harps on the fact that when the company experiences green bottom lines in times of plenty, it does not give bonuses to motivate workers. Therefore, the company should not expect the workers to play “good guys” and understand when things are rough. So, between and during negotiations, management should reward workers without prompting, no matter how little it can offer. Doing so will serve as the emotional bank the employer can draw from during challenging socioeconomic times.

Procedures

Parties in a negotiation should comply with statutory and legal regulations. Employers should allow the union to use company facilities in the workplace as long as the union seeks necessary approval and such spaces are not needed for operations. Management should know that the easiest way to resolve a deadlock is to give the union enough information to effectively represent its members. Parties should regard all items within the scope of bargaining as rightly negotiable, except where status is barred. If such a challenge occurs, both parties should try to bilaterally and amicably resolve the issues. Management must ensure that it dispenses procedural justice at all times. Cycles of negotiation should be respected, and signed agreements should be implemented without delay. It is in the employer’s best interest not to be coerced into reaching any agreement because of the threat of industrial action. The employer should respect workers’ rights and dignity and endeavor at all times to honor terms and agreements reached. Where there is a reason to deviate from the norm, the employer should, at the earliest convenience, promptly invite the union to participate in joint problem-solving.

Focus

From the outset, management must focus on the areas for which increases are likely. For instance, it is no longer fashionable to increase any financial element that will compound pension benefits or have multiplier effects on monthly salaries. This should be spelled out to the union before the negotiation begins.

Firmness, fairness, transparency, and open-mindedness

Neither management nor the union can win all the time. They should endeavor to discuss demands freely and fully and justify their differences with reasons. They should consider compromise proposals to find a mutually satisfactory basis for an agreement or settlement. Negotiation may be more cumbersome in challenging times; management should continue to explore a win–win option. Bargaining should process with firmness, fairness, transparency and open-mindedness.

Time

Management should not waste the time allotted for collective bargaining. It should seek the prompt release of the union representatives to enable them to prepare their positions. With good pre-bargaining plans, both parties know it is not in their interest to prolong any negotiation. For the union, the more it stays on the table, the more agitated its members become. On the management side, the person-hours of the council cannot be overlooked entirely. It is in maintaining a balance that both parties can reach a fruitful end.

Angel in a union’s cloak

Management must identify a typical shoe-fitting union official within its ranks that should always put on the unions’ thinking cap to figure out how the unions think. This may seem like role-playing, but it must be real and convincing. This angel in a union cloak must be close enough to the union to earn its trust as a friend without any iota of doubt and be capable of gathering the union’s thoughts to present to management in their raw form. This enables management to deliberate on the best options to either counter the union claims or assuage its feelings and reach the best agreement. One of the most critical aspects of negotiation is when the union plays games on the table by psychologically wearing down management, knowing they cannot be tolerant of prolonged negotiations. No matter the threat or coercion, management should be guided by the principles of affordability and sustainability before making concessions or reaching an agreement with the union.

Recognition of union rights

Management should adhere to the rules of engagement and respect union executives and their right to represent their members without harassment.

Implementation of collective agreements

After each negotiation, management should implement the agreement and keep its promises to the staff. Management should judiciously adhere to negotiation cycles. Where there are challenges that may make implementation or adherence to the negotiation cycle difficult, management should first meet with the union leadership. After that, the negotiation council should call a meeting to deliberate and find solutions to the challenges.

Management prerogatives

Management should allow some level of flexibility in management prerogatives, as no right is ever absolute. However, while the union can raise opinions on implementation challenges bordering on the prerogatives of management and affecting its members, it should do so with caution, respect, and moral suasion. Management must not surrender to the union its right to manage the company. It should explain why certain actions were or must be taken. It must let the union know that it is in the interest of the union and its members to be in an environment that is managed according to the rule of law. For instance, if union leaders complain that they are unfairly treated in rankings and ratings during annual appraisals, this should be mutually discussed. Still, the union cannot, on this basis, commence an industrial action. Working for a union in any oil and gas company in Nigeria is not a full-time job. It is a secondary role voluntarily entered into and, therefore, a sacrifice in service. It is for management to recognize and reward workers’ efforts fairly and justly. It should realize that the unions are sponges that soak up the emotions of the workforce, thereby reducing management’s burden. Management also has to ensure the applicability of policies and procedures and enforce discipline with fairness and uniformity. Where a member of the union breaches the rules, procedures, or regulations guiding the entire workforce, the union should allow the standard process of addressing such issues to take its course.

Training

Management should ensure that the union members know their rights and privileges as set out in the labor laws so they can deal with modern-day challenges. An uninformed union might continue to pursue privileges as rights.

Divide and rule tactics

Some management representatives prefer to use divide and rule tactics. They promote intra-union conflicts, or they leak information to grassroots members to force the union to reach an agreement on management proposals. This strategy has only a short-term payoff and should not be encouraged. Management should also not use a lockout to enforce its position.

Roles of the union

Members’ welfare

A major role of the union is to achieve enhanced salary, allowance, and welfare packages for its members. However, given the socioeconomic uncertainties, restructuring, and policy summersaults in so many organizations, the union cannot but begin to look into improved health, safety, environment, job satisfaction, and motivation strategies.

Focus

Unions must, from the outset, determine which of the possible areas in which increases are possible it should focus on. For instance, knowing that it is no longer fashionable to increase any financial element that will compound pension benefits or have multiplier effects on monthly salaries, the union may decide to try for enhanced hazard, meal, or power allowances; seek new items, like homeownership or appliances; and so on. A common mistake is to compare the emoluments of its members with those of management staff. A union should bridge the gap with rational bargaining models instead of leveraging antagonism over grade-level differentials.

Expectations

Union representatives should not unnecessarily heighten workers’ expectations during the pre-collective bargaining engagements with the shop floor workers. When a union demands a 120% increase on the current package, it is ridiculous to agree on a 5% increase at the end of the day. A smart union should set realistic goals with maximum and minimum benchmarks giving just a little off reality marks. The issue is not how bogus the demand is but how effective the union is in getting close to realistic benchmarks. When the bargaining is over, the constituents put pen on paper to analyze what the union achieved on their behalf. If their hopes were dashed, productivity might suffer in the first few months after negotiation. In extreme circumstances, the constituents lose confidence in their leaders and may move a vote of no confidence.

Big picture

Unions must endeavor to align their thoughts with the organization’s vision, mission, and strategic plans. A proactive union can set aside some of the fixed pie to motivate those in the critical sector to bake more pie for splitting.

Preservation of operations

The union should not use an industrial action to disrupt or obstruct operations during negotiations. In the case of a deadlock, the grievance procedures should be adhered to.

Good faith bargaining

Union representatives should exercise loyalty and engage in good faith during bargaining. Some union leaders come to the negotiation table with an ax to grind and see this as the time to take their pound of flesh over a misdeed of management staff. Some union leaders complain that managers give their members low ratings in the annual performance evaluation and do not appreciate all they do to support production. So when they have an opportunity to make life difficult for the manager of the collective bargaining process, they maximize their efforts. This is a whirlwind that has no payoff. Negotiation must come to an end someday, but the ripples of bad blood initiated during the process may not disappear soon.

Some want to use the collective bargaining process to negotiate long-term stagnation on a particular position. Others want to carve out a portion on the appraisal forms so that union activities can be scored or rated. Collective bargaining cannot substitute for an enduring human resources process like the performance appraisal or an organization’s compensation philosophy. Personal interests must not conflict with the overall interest of the workers. Union leaders should display leadership values, efficiency, and effectiveness during negotiations. They should also be alert to social, economic, and political environments and know that whatever agreement is reached impacts the building blocks of the organization.

Communication

Worker representatives should request information that will help them bargain efficiently and effectively, in line with the signed collective bargaining agreement. They must give purposeful and meaningful direction to the workers and take them where they ought to be and not where they want to be because of the information at their disposal. They should not communicate as alternative management. The union should follow laid-down communication procedures and report excerpts of discussions with management to workers without coloration. Unions should not tell workers what they want to hear. Unions should tell their members the truth at all times, no matter how bitter it is.

Life and stability of the organization

The stability of the organization is sacrosanct. The union should be interested in the organization’s continuous existence and fortunes because it is when the organization lives that the union can have a platform to make demands on behalf of its members.

Roles of government

Government is the third actor in industrial relations but first among equals because of its enormous powers. It is an employer of labor and generally makes policies that guide the parties in line with best standards.

Policy formulation

Government formulates policies that will, at all times, guide the conduct of the employers and employee representatives in their day-to-day activities.

Symbiotic relationships in social dialogue

The government has to ensure that relationships between the dialogue partners promote fluid and peaceful industrial relations practice. It also ensures that the public does not suffer the negative effects of dysfunctional industrial relations practice.

Dispute resolution

The government plays a balancing act by preempting and intervening in anticipated disputes or escalated disputes involving other industrial relations actors. It is not unusual to have disputes arising from the absence of strong grievance procedures, ineffective communication, policy somersaults, employment contracts, compensation philosophy, collective bargaining, redundancy, weak corporate governance, or high handedness on either side of the aisle (management and union or even government itself), disrespect for the rules of engagements, and so on.

Chapter 15. Factors That May Facilitate or Hinder Negotiation

Suppose you are not acquainted with the factors that could facilitate or hinder your movement in a negotiation. In that case, you are likely not to be well prepared for the inherent surprises that could come your way as you negotiate.

The emerging nature of organizations to realign with modern-day cutthroat competition may lead to policies that make negotiation very challenging. In 2009, the federal government decided not to grant increases in salaries and emoluments in the Civil Service in reaction to some economic challenges. For example, the Nigerian National Petroleum Corporation, a state enterprise, though not dependent on the government for funding, could not grant a salary increase to its staff during its 2009 negotiations. This and many other factors may facilitate a smooth negotiation or destroy the very essence of negotiation.

Factors that could facilitate negotiation

Collective bargaining is facilitated by the following:

* a good planning phase;
* the setting of ground rules;
* acceptance of the other partner as an equal on the table;
* bargaining in good faith;
* a conducive environment devoid of distractions;
* a neutral ground for negotiation;
* pursuit of a win–win outcome by both parties;
* involvement of skilled negotiators;
* parties that know their limitations;
* mutual respect of rights;
* emphasis on areas of mutual interest;
* realistic options; and
* face-saving trade-off when needed.

Factors that could hinder negotiation

Collective bargaining is hindered by the following:

* unpreparedness;
* noncompliance with the previously signed collective agreement;
* non-recognition of individual rights;
* distrust;
* too high expectations;
* bargaining in bad faith:
* insincerity of one or both parties,
* lack of concession until a certain outcome is achieved,
* misrepresentation of facts,
* use of uncouth language,
* lack of respect for the procedures and collective bargaining process,
* use of constituent power,
* threat of walk-outs,
* threat of industrial action,
* management threat of severance if union demands are too high,
* the arrogance of power,
* the inexperience of bargaining partners (e.g., a young industrial relations manager with a good theoretical background but no cognate experience; or recently graduated union leader that wants to bring to bear the college “aluta” style to the bargaining table without industry experience), and
* disrespect for the other party.

Chapter 16. Role of Emotional Intelligence in the Collective Bargaining Process

Be it in mediation, negotiation, or litigation, dealing with emotional cleavages is crucial for success.

Bargainer, know thyself!

When you understand yourself, you are wiser; when you can understand others, you are intelligent; when you understand both, you have the world of negotiation in your hands.

I firmly hold the belief that negotiators are made and not born. If we were all born negotiators, hundreds of millions of newborns would have negotiated when, where, and how they wanted to be delivered. So many people would not have chosen the country of their birth. Some perhaps might not have chosen their parents. Others would have wanted to be born into a particular social class. To that effect, our nature, nurture, educational background, and acquired negotiation skills play significant roles in making good negotiators.

Goleman’s (1995, 1996, 1997) emotional intelligence theory tends to encourage individuals to do a thorough self-appraisal and get a realization of who they are, building controls and shock absorbers against emotional flares. Therefore, the first rule in collective bargaining is “bargainer, know thyself.” This is necessary for relationship management. It can never be more accurate in use than in the collective bargaining process of the present day. The ability to manage one’s emotions allows a person to be in total control of their anger and use of language, which would attract positive gravitational pull, fair gestures, and reciprocal respect, understanding, and empathy from the other party. The skillful negotiator knows when to offer a disarming smile and when to ask, when to listen, and when to say yes or no. A good negotiator knows when to stay around the table or walk away, when to use inviting words, when to use silence to extract a yes, and when to repel attacks.

A skillful negotiator ignores the intimidating credentials of the other party. The astute negotiator is confident and smart in dealing with situations as they arise instead of being lost in the other party’s maze of academic overload. The lead negotiator doesn’t need to speak on all issues if others at the table can complement that person’s efforts. In such instances, the party lead should allow subject matter experts to use their core proficiency. When one party notices a deficiency on the other party’s side, the first party should be kind and not rub it in their faces. Only petty negotiators are concerned with trivialities. If a party senses any lack in its approach, it should take a break and get its members to appraise and proffer solutions instead of feeling defeated or using bravado to coerce the other party into submission.

Therefore, parties in a negotiation must have good interpersonal skills (respect), personal skills (emotional self-awareness, self-regulation, motivation, empathy), and social relationship skills.

Emotional skills

The ways and manners of the union and management lead negotiators affect the conduct and outcome of any collective bargaining process. Reputable negotiators do not have time for petty rehearsals from times past. They are focused, good listeners, and great users of body language, and they have enormous open-ended questioning skills. Good negotiators focus on and attack the challenges, not the people. They are inherently forward-looking, avoid distractions, and are goal-oriented. The lead negotiators should be well honed in the application of emotional intelligence competencies before embarking on any negotiation.

Whatever body language the leader displays goes a long way towards determining the team’s elasticity in challenging periods. A happy leader radiates hope. Even in despairing moments, a leader must learn to wear the look of hope at all times so that the foot soldiers in negotiation can follow with hope. Except as a tactic, a cranky or moody leader conveys hopelessness, failure, and possible loss of confidence in the collective bargaining process.

Negotiation is not a tea party. It entails the deployment of several skills, forbearance, smartness, calmness, and intellectual prowess. It is also fraught with distasteful and despairing moments. When the going gets tough, the managers of a negotiating process act as sponges to soak up the emotions of their followers or principals. They are hope carriers and stress pacifiers, breaking down the bridges to bad outcomes without breaking down trust or confidence. During a negotiation, the feedback to constituents should be courageous hope, because anything else would truncate the negotiation process.

In 2005, the management of a company in the downstream sector of the oil and gas industry was negotiating with its unions. A union demand was being discussed, but management was a little hesitant to give in. A branch chairman from an operational base in Port Harcourt sent a text message to his vice-chairman saying that management would deny that item. His people should know that he was not supporting a decision by other union leaders. This act led to severe agitations. Before the other council members could think of how best to manage the new development, the vice-chairman of the union in Port Harcourt sent text messages to different zones. This led to threats from the union leaders of other branches and almost ruined the negotiation. At the end of the bargaining process, the branch chairman was suspended from the group. What happened in this case was a negotiating team member wanting to play smart by betraying his colleagues. In any democratic project, majority views should prevail. Once a group decides on majority approval, others must queue behind their leader for the sake of group cohesion and survival.

In another instance, while a negotiation was ongoing between the management and unions of an oil servicing company in 2013, one of the chairmen sent a text message to shop floor members. The message accused a particular manager of posing a stumbling block to the process. Some shop floor members anonymously sent multiple text messages to the manager, telling him never to return to base because he would be severely dealt with upon arrival. This generated a lot of heat and disrupted the negotiation. Management had to call off the process until the union leaders addressed the issue. Management told the unions that they would be held liable if anything happened to the manager.

From these two experiences, one can see that negotiation partners should use wisdom and great discretion to forestall disruption of the bargaining process.

The stakeholders in collective bargaining should see the process as a lose-some, win-some business game. Rightly or wrongly, negotiators should view today’s sacrifice, which they perceive as a loss or a win, as a social and moral bank they can draw from in the future. The union leaders should not act like partisan politicians who lose elections and, by extension, lose their investments. In oil and gas unions, the trade union practice is not the primary assignment of the executives. Therefore, the unions should never see collective bargaining as a do-or-die affair. Negotiation in the corporate world is a continuum involving union and management representatives. Parties should realize that in bargaining there is usually a tomorrow, when the perceived loss of yesterday becomes the foundation upon which a buoyant demand could be made today. Negotiation is not a competition in which a winner must emerge as a gold medalist. Parties should not endanger the lives of negotiating council members through threats and unwholesome practices.

It is always advisable for leaders to be good team players. They should learn to obey the will of the majority. That does not mean that a dissenting opinion in the team should not be recorded for posterity. But leaders should not portray themselves as the only ones representing the valid will of the workers or accuse other team members of being sellouts breeding discontent and anarchy.

**Social skills**

Organizational and social awareness

Negotiators must be aware of the entire state of the organization. Things to consider include the following:

* the company’s solvency status;
* external policies impacting the organization;
* the organization’s strategic business plans;
* the organization’s weaknesses and strengths at the time of negotiation; and
* the organization’s competitiveness.

In 1993, the military government would not give the Nigerian National Petroleum Corporation (NNPC) the mandate to negotiate with one of its staff unions, the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN). This and many other reasons led PENGASSAN to go on strike on June 7, 1993. During the strike, PENGASSAN realized it was dealing with forces outside its immediate domain, but it was unaware that the military junta had refused to let NNPC embark on the usual biennial collective bargaining. The military was poised to stoke the conflict so that with the severe fuel shortages and anger during the strike they would have a ready-made alibi for not giving in to civilians in the ensuing chaos. On the other hand, the politicians saw PENGASSAN as a tool being used by the military to truncate the 1993 elections. Although PENGASSAN had a genuine reason to embark on that industrial action, the timing disrupted Nigerians’ socioeconomic lives, and it lost the sympathy of the populace.

If there had been trust between the PENGASSAN group and management, NNPC could have engaged the union leadership in strict confidence to seek ways to handle the government. Instead, management let the union feel NNPC was unwilling to negotiate.

***Situational management***

Negotiations are never the same. The dynamics, strategies, and tactics that led to the last negotiation’s success might have changed and are unlikely to be suitable for future collective bargaining. Therefore, parties in a negotiation should be adaptive and sensitive to negotiating environments. They should note the political, social, and economic settings before making decisions that may make or mar negotiations. For instance, negotiation during any presidential election year in Nigeria presents its peculiar challenges. Periods of economic downturn also pose severe difficulties for negotiating partners. Therefore, the parties in a negotiation must work hard to start and end their negotiations before the election commences. And they must be able to adapt their situational management styles as time dictates.

***Empathy***

Parties in a negotiation should be empathetic towards each other. Top management may put too much pressure on its negotiators to give less time to union demands or spend less time on the negotiation table. Shop floor members of the unions see those negotiating on their behalf as too weak to break management’s stranglehold on better deals. They are usually upset by their union executives staying in hotel rooms enjoying management largesse. Some even see this generosity as the reason behind the long negotiating periods. Either way, negotiation drains energy and resources. A negotiator should care about the other party’s interest and the negative result if that party doesn’t achieve that interest. Giving themselves face savers goes beyond a textbook sermon, but they should be granted.

***Relationship management***

The leaders of each team in a negotiation should never see themselves as enemies on the table. Therefore, they must not do things to hurt each other’s ego, which may be counterproductive at the negotiation. It should be noted that those who call the shots are the principals who are usually outside the negotiating table. The union representatives derive their mandate from their constituents, while management representatives derive theirs from top management’s mandate. Until both sides come to this realization, they are likely to be on the warpath, which does no good to either party. Therefore, parties in a negotiation should find the time to be kind during the process. More importantly, they have a continuous relationship after bargaining, which they should not sacrifice because of emotions on the negotiation table.

***Financial status of the organization***

The parties, irrespective of their position, must consider the organization’s financial status in either making demands or making offers. The company’s bottom line reflects its ability or inability to implement the outcome of the negotiation process, sustain the new collective bargaining agreement, and continue to have a life.

***State of the industry***

There is a need to do a critical survey of the entire industry before arriving at benchmarks in negotiation. The oil and gas industry in Nigeria has been in a state of distress. With dipping oil prices, vandalism of pipelines, and massive divestments going on, it is unlikely that bargaining can be business as usual. The unions have to determine whether there should be a negotiation at all, whether they should accept a compromised award in the place of negotiation, whether they want to put more members on the job, or whether they should sacrifice a larger chunk of their numerical strength for improved conditions for a few. The unions should never forget that they need to confront management; it is their strength that will count. So there is an advantage in numerical strength.

**Socioeconomic environment**

Collective bargaining partners should attempt to understand what and how societal reactions might impact the negotiated agreement or how their negotiation might impact their immediate environment. Therefore, the socioeconomic climate is a critical factor to consider before disagreeing or using industrial action as an arm-twisting strategy to get management to accede to union demands. Bargaining in an oil and gas environment when there is a damaging negative crude oil price, as is happening during the COVID-19 era, cannot be the same as when crude prices were at $180 per barrel and daily output was 2.3 million barrels.

In a country where the poverty index is very high, negotiation partners should consider the environment before choosing their strategy for a particular negotiation. Strategies must vary according to the prevailing circumstances. For instance, the unions should consider factors that might make society unsympathetic to their agitations. These factors include the unemployment rate, the sector’s bankability, the perception of the public, and the effects of the bargaining outcome on the stakeholders’ dividends. Critical questions the union should also ask before any deadlock is declared are the following:

* If this issue gets into the public domain, what would be the perception of the press, the public, and the oil and gas sector?
* Will this issue exacerbate the outcry of oil- and gas-producing communities that feel shortchanged in the entire compensation chain?
* What would be the opportunity costs of not arriving at an agreeable outcome with management?

Management should also, on its part, think of the level of inflation, the purchasing power parity, and the cost of transportation, electricity, and housing before taking any hardline decision that might lead to a deadlock.

**Managing emotions, frames, and mindsets**

It should not be lost on negotiating partners that negotiators also have their emotions, frames, mindsets, values, and preferences. We are not all skilled in the art of self-control and anger management. Therefore, partners should expect some unexpected short-fused reactions from the other party and give themselves ample opportunities to vent. This would help to shape the responses and feedback of team members. If emotions are still running too high, the leaders should call for a corridor walk or coffee break, where parties can discuss in small groups before reconvening at plenary.

**What is the other party’s interest?**

Negotiation is not a hero versus a villain. Labor and management relations is not about buying a car or negotiating a mortgage. It is about aligning labor and management interests, which should leave the organization healthier at the end of negotiation. For instance, the union wants a raise on the car maintenance allowance. Its position is to ensure that workers get to work early instead of commuting to work on unreliable public transport. Management, on its part, is interested in eliminating tardiness and, therefore, improving the quality of staff-hours at work. So the interests of both parties should align, and they should work towards an outcome that would be affordable and sustainable for management to implement.

If the parties didn’t shift their positions, they should investigate why that was so. Alternatively, they could also ask, “Why not the other options?”

Chapter 17. Resolution of Disputes Emanating from the Negotiation Process

Why should one embark on a project one knows from the outset can never be completed?

Negotiation for improvements in employment contracts has gone beyond aspirations to win on bread-and-butter issues only. It could also be used to retain ownership of a dispute resolution process. How a dispute over a contract of employment or collective bargaining is resolved depends on the frame, positions, mindset, and values of the parties in conflict.

Negotiation outcomes

Win–win

Barring any unforeseen circumstances, implementation of a negotiation that ends on a win–win note is usually straightforward. A win–win does not mean that the negotiating partners had no discontent or discomforting moments during the bargaining process. Negotiation is like a buffet: the people fetch what they can chew and, once the plate is full, leave to come back again if not satisfied. By the time the budget, template, and mandate basket can no longer accommodate any other item(s), negotiation must necessarily close. The parties definitely would have left part of the lesser items behind in the room. It behooves the partners to either trade or swap items with any of the leftovers or happily allow the items to remain in the room for future negotiations. So, no negotiator should hope to enter and leave the room with all the negotiation baggage brought in. Some of those items must necessarily remain behind if the mandates cannot accommodate the aspirations. It is a win–win because both parties voluntarily and deliberately made sacrifices in the enterprise’s overall interest and survival. A win–win outcome partially or fully meets the parties’ prioritized negotiation goals and objectives for implementation.

Lose–win or win–lose

The lose–win and win–lose scenarios leave one of the parties in a state of lugubriousness. Heads or tails, one side lost because relationships would be strained and productivity might suffer. If the union won, management is unlikely to exercise good faith in the implementation process, which could frustrate the union and its members. If management won, there could be industrial action(s), which might hinder productivity.

Lose–lose

Any dispute that ends in a lose–lose manner results in frustration, discontent, bad blood, hopelessness, suspicion, and grief for both parties. Any lose–lose outcome would likely result in a lockout by management or a strike by the union. At this time, the congress or top management is likely to take the driver’s seat. That would take away the control of the process from the leaders leading the negotiation and, therefore, their ability to determine the dispute’s outcome.

Deadlock

A deadlock is a situation where parties in a negotiation are unable to reach a settlement agreement. An impasse in bargaining is not uncommon. However, the parties should not allow the deadlock to fester or push them into taking hostile and violent options. When a deadlock occurs, parties should commit the impasse areas to writing, with a commitment to continue with off-the-table discussions. If that fails, the parties should adjourn and engage a neutral mediator.

Adjourn and engage a neutral third party

The mediator should be conversant with the labor laws and statutes governing employment relationships, especially those related to the oil and gas sector. It would be an added advantage if the mediator knew the structure, culture, and values of the union and the industrial relations process in the sector.

Once the parties have voluntarily referred the matter to a mediator, they should maintain the status quo while exploring other resolution mechanisms. It is in the best interest of all disputing parties to retain control over their dispute resolution process (Figure 2). The *Labour Act* and the *Trade Union Act* have adequate provisions for resolving labor disputes.

[Figure 2 goes near here][ & the following two-line figure caption goes above the figure]

Figure 2

Control and Ownership of the Conflict Resolution Process by the Parties in Dispute

The mediator should work with the parties and ensure a resolution within three working days. Where this fails, the union could involve its zonal or national secretariat. Where the secretariat is unable to resolve the matter, the parties should then declare a trade dispute through the Federal Ministry of Labour and Employment for intervention.

Ask the Ministry of Labour and Employment to intervene

Since the Federal Ministry of Labour and Employment has offices in all the states with oil and gas operations, the matter could be referred to the director at the state level or to the headquarters in Abuja, depending on the complexity of the issue(s).

After the referral, the ministry informs the disputing parties that the matter is being handled. It will maintain the status quo while determining the best alternative dispute resolution and (or) litigation tool to use so that the matter does not escalate. The available tools are as follows:

* mediation;
* conciliation;
* arbitration through the Industrial Arbitration Panel; and
* adjudication by the National Industrial Court of Nigeria (NICN).

Mediation

Mediation is a voluntary process in which a neutral third party facilitates the process of negotiation between disputants. The mediator will listen to the parties, understand the issues, and work them through the process until they proffer their own settlement agreement. Usually, the said agreement has the terms and conditions jointly agreed upon by the parties. The settlement agreement in industrial relations in Nigeria is generally in the form of a communiqué.

Conciliation

The terms *mediation* and *conciliation* may differ or be used interchangeably depending on the dispute or country. In the UK health sector, conciliation facilitates the resolution of complaints by a neutral body, with no agreement over financial compensation typically included in the outcome (CEDR, 2004). In Nigeria, a conciliator helps the parties arrive at a consensus by exploring the opportunities for settlement, making proposals for settlement, and providing the environment for negotiation.

The structural process of conciliation is akin to that of mediation. The date, agenda, venue, and time are communicated to the parties. The Federal Ministry of Labour and Employment uses a combination of power, reverent mediation, and conciliation to resolve conflicts in the collective bargaining process between unions and management in the oil and gas industry.

Mediation and conciliation are voluntary processes that allow disputants to retain control over the dispute process and reach their own generated outcomes, written up as settlement agreements.

Arbitration

Arbitration is a process that empowers the arbitrator to decide the outcome of a dispute between parties. The decision made, which is in the form of an award, is binding on both parties. The award has an element of finality. An application to set aside an arbitral award can only be ordered if the application by a party is within 3 months of the award being made. An aggrieved party can only apply to set aside an arbitral award on some of the grounds spelled out by sections 29, 30, and 48 of the *Arbitration and Conciliation Act*:

* A party making the application was hindered from entering the agreement.
* The arbitration agreement to which the parties are subjected is not valid under the law or not within arbitration law.
* There was no proper notice of appointment of arbitrators or the arbitral tribunal.
* The arbitral award dealt with a dispute not contemplated, or it was beyond the scope of what was submitted to arbitration.
* The composition of the arbitral panel did not adhere to the pre-arbitration agreement of the parties.
* The arbitral procedure adopted lacked fairness.
* The arbitrator lacked appropriate qualifications.
* The recognition and enforcement of the award will be against public policy in Nigeria.
* The arbitrator engaged in misconduct.

Adjudication

The NICN is a court with special powers to adjudicate labor disputes. Its procedure is the same as that of the regular courts. Judgment passed by this court is also binding on both parties, and before 2017, it used to be a finality. However, in the case of *Skye Bank Nigeria PLC v. Anaemem Iwu*, the Supreme Court ruled that “the law allowed the appeal court to sit on matters emanating from trial courts, including the NIC.” It also said “the Court of Appeal has the jurisdiction, to the exclusion of any other court in Nigeria, to hear and determine all appeals arising from the decisions of the trial court” (Chiomi, 2017, p. ??)

It should be noted that arbitration awards and court judgments are legally binding on the parties. Both processes take away disputants’ control and ownership of any dispute resolution process.

Chapter 18. Implementation of Bargaining Benefits for Unionized versus Nonunionized Staff

That a segment of the workforce is not allowed by law to unionize is a disadvantage and vexatious enough. That the same people will not have the rewards and raises approved for the unionized cadre in the same enterprise is double jeopardy.

Generally, workers are in employment to satisfy individual human needs. Employees expect that at the end of an agreed period, the employer will pay the agreed financial reward for the work efforts. Generally, these financial rewards enable employees to raise and care for their families by providing housing and by clothing and feeding them. In addition, the employees have to provide security for their families, drill individual boreholes for potable drinking water, purchase generators for electricity, and so on. Most of these are extra costs on the workers’ salaries because of lack of public utilities or inadequate social safety nets. So whether workers are unionized or not, they expect to improve their wages and benefits at regular intervals. These improvements come through the collective bargaining system.

ILO Convention 87 (ILO, 1948; the Freedom of Association and Protection of the Right to Organize Convention) is a core convention that lays the foundation for an ideal worldwide industrial democracy. Interestingly, Nigeria ratified and domesticated this convention. One fundamental principle enshrined in this convention is the freedom granted to workers to join or not to join any union. The freedom to join any association of choice reinforces the provision of section 40 of the Nigerian Constitution (Federal Republic of Nigeria, 1999):

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

No worker was a union member before becoming an organization, except when recruited as an experienced hire from another organization where the economic activities are the same. So, joining a union is an aftermath of having a valid employment contract in an organization. The worker’s primary assignment is to work for an organization in return for compensation for work efforts. In doing this, workers do know that employers would not under any circumstances easily or freely give away any part of the pie baked in the name of “organizational profit.” They also understand that maximizing their rewards cannot be easily achieved without having a formidable aggregation of like minds, a body that will represent them at all times. In the same vein, no worker can be the subject of prejudice for being a member or non-member of a union, as enshrined in section 9 (6) of the *Labour Act*.

From the preceding (and morally so), no employer can deny any worker, be that worker on the pay roll or not, the inalienable right to unionize and have free access to collective bargaining.

Workers organize themselves into a pressure group known as the union for one or all of the following objectives:

* to bargain collectively;
* to protect members’ rights and privileges in the workplace;
* to ensure employment security for members;
* to regulate and maintain a relationship with management;
* to promote the economic, social, and educational welfare of members in any lawful manner;
* to maintain a high standard of discipline, artistry, and professional practice among members;
* to promote and sustain industrial harmony for productivity to take place (if there is dysfunction, productivity and profit will decline);
* to build the capacity of members; and
* to advocate, promote, and (or) support legislation that will be in the interest of members, especially in establishing and protecting legitimate trade union rights and the introduction of social safety nets.

Consequent to the above, unionization and collective bargaining rights are employee rights, which law-abiding employers should not deny. However, it is common to find that some oil companies or unions frown at allowing nonunionized (or non-check-off dues paying) employees to enjoy union-negotiated benefits. They liken this to reaping where they did not sow.

Some of the reasons the unions canvass against those nonunionized employees enjoying the benefits of their efforts are as follows:

* Nonunionized employees are not financial members of the union.
* It is unfair to use the check-off dues of members to plan and implement a negotiation and have the benefits extended to non-members.
* Typical career staff believe that belonging to the union is a distraction, a waste of their talents, and would instead remain committed to their jobs. So why should they enjoy the benefits of a union effort they say is a waste of time?
* Union executives often face low performance ratings because of their union activities and are not promoted when due, while the nonunionized staff have the reward of promotion when due.

In April 2011, one of the federal government agencies in the oil and gas sector concluded its biennial collective bargaining with a signed agreement. But the unions insisted that the company’s management staff should not benefit from the outcome of the negotiation. The two in-house unions said the reason for their action was to bridge the gap between unionized employees’ salaries and those of the management cadre. Unfortunately, the senior staff employees on SS1 are not unionized. These employees are seen as middle management staff, a projection of management, and are legally barred from unionization. The corporation management was at a crossroads. In the end, top management met with the unions and agreed that the SS1 staff who were not unionized employees be paid the negotiated rates. Deputy managers and above forfeited the annual cost of living adjustment for the next two years.

In December 2019, an oil exploration and production (E&P) company concluded negotiations with the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN). In a cost-cutting measure, the E&P company management directed that its management staff would lose the recently negotiated *x*% on benefit. In the past, whatever PENGASSAN got on salary, welfare items, and severance packages was always applied to all Nigerian staff across the board. PENGASSAN, sensing danger, protested this unilateral action of management. It believed that if that decision stayed, it would just be a matter of time before the E&P company management unleashed its big stick of unilateralism on it. There were palpable fears that when its members eventually got promotions into the management cadre, they would also lose what others in that category had lost. The union was worried that other oil and gas companies might key into this unilateral precedent and it would soon become a norm in the industry. Management, however, rejected union assertions, refused to negotiate with the unions, and vigorously defended its position on the basis of the following arguments:

* Management has the right to apply resources in the pursuit of organizational goals.
* Management employees are not members of any trade union.
* Therefore, the PENGASSAN had no right to dictate what management should or should not do with nonunionized employees of the company.

The union then petitioned the minister of Labour and Employment for intervention. The minister, who was relying on section 4 (1) of the *Trade Disputes Act*—*Cap. T8, LFN* (Nigeria, 2004b), directed the parties to attempt to settle the dispute amicably by any agreed means as enshrined in their internal dispute resolution mechanism, if it existed. If unable to reach an agreement after 2 weeks, the parties were encouraged to return to the ministry. In response to the directive of the minister, the company engaged the unions and the relevant management employees. The employer applied graduated lower rates to the management staff salaries and benefits. The question of whether nonunionized staff should or should not enjoy the benefits of a collective agreement negotiated by the union is not an easy hurdle to scale.

In the Nigerian context, I believe that management or the union should not exclude nonunionized staff from enjoying the negotiation benefits flowing from union collective agreements because of the following:

* It is discriminatory to do so.
* In the educational sector in Nigeria, professors are unionized members of the Academic Staff Union of Universities (ASUU). That a similar cadre of staff in the oil and gas industry does not belong to a union should not expose them to the disadvantage of losing raises negotiated by the unions.
* Flowing from ILO Convention 87 (ILO, 1948), there is a freedom granted to workers to join any union of their choice or not to join if they so wish. This provision aligns with the existing national laws and court judgments (see Supreme Court decision in *Osawe v. Registrar of Trade Unions* 1985). The freedom also extends to the principle that no workers shall be discriminated against for the fact that they belong or do not belong to a union.

The non-application of negotiated union benefits to nonunionized employees, in my opinion, would be discriminatory and would significantly hamper industrial harmony and productivity. It might also increase job turnover, as employees may move to other companies where they are flexible on this matter. It may also set aggrieved managers against unionized members under their supervision. Whether in a unionized or nonunionized environment, every worker expects incremental and occasional welfare benefits from management. If this expectation is not met, it may lead to frustration, anger, sabotage, and a very dark industrial relations cloud hanging over the organization.

For experienced hires into the management cadre, a company should clearly state its financial obligations to its employees in contracts and the company procedural guide. However, for members promoted from PENGASSAN into higher levels, the employer should ensure that the members do not lose their benefits as they transit into the management cadre. For the sake of equity and justice, employers must find a smart balance in dealing with this dichotomy to avoid actions from the hidden hands of a third force in the enterprise. One such way is to ensure that the company has a standard compensation philosophy, which could weld the experienced hire’s entitlements to those of the legacy staff.

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Appendix A. Sample of a Collective Bargaining Agreement

**COLLECTIVE BARGAINING AGREEMENT BETWEEN *X* UNION AND THE MANAGEMENT OF JOBA NIGERIA LIMITED**

**[This is by no means exhaustive.]**

Arising from the recently concluded negotiations and the signing of the collective agreements between JOBA STAFF UNION and the MANAGEMENT of JOBA NIGERIA LIMITED, and the subsequent approval by the board of JOBA NIGERIA LIMITED, the following adjustments in the consolidated salary and fringe benefits have been approved for implementation for only the unionized employees of JOBA NIGERIA LIMITED, with effect from 1st July 2020. This is without prejudice to the collective bargaining agreements of subsidiaries overseas, which will continue to independently fix their emoluments according to environmental factors prevailing in those climes.

1. CONSOLIDATED SALARY

The consolidated salaries shall be increased by *X*% across all the unionized JOBA NIGERIA LIMITED staff on grade levels JS 1–5 and SS 6–12. The minimum and the maximum bands for each of the grade levels are as follows:

**MINIMUM (N) MAXIMUM (N)**

1. 000000

2. RENT SUBSIDY

**2.1** To ensure that our employees live in secure environments and within early reach for operational emergencies, JOBA NIGERIA LIMITED shall accommodate the operation’s staff in our estates located close to our operational bases.

**2.2** Employees in the housing estates shall forfeit their yearly rent subsidy.

**2.3** JOBA NIGERIA LIMITEDshall,on the 1st of January every year, pay a housing subsidy at *X* rate to staff not accommodated in the estates. The difference between the old and the new rates shall be paid for the period from July to December 2020.

3. MEAL SUBSIDY

JOBA CONSULT LIMITED shall continue to provide subsidized meals for employees in our onshore or offshore platforms at staff canteens when on duty. All other staff shall have the cost of the meals paid to them at *X* rate.

**3.1** Everyemployee shall be entitled to *X* time for coffee or tea break.

4. VEHICLE LOAN

JOBA CONSULT LIMITED shall grant a vehicle loan to staff as follows (as agreed by parties during the negotiation):

**4.1** The loan shall be paid once in six (6) years with a minimum repayment period of four (4) years and a maximum of six (6) years.

**4.2** All other conditions relating to vehicle loans shall continue to apply.

5. TRANSFER BENEFITS

Employees who are on a permanent transfer, from one location to another at the instance of JOBA NIGERIA LIMITED, shall be entitled to an allowance in lieu of hotel accommodation for one hundred and twenty days (120) days as follows (rate as agreed during negotiation):

**5.1 Disturbance Allowance**

The staff shall be entitled to *X* consolidated monthly salary (CMS) as a disturbance allowance.

**5.2 Cost of Transportation for Self, Spouse, and a Maximum of *X* Children**

JOBA NIGERIA LIMITED shall provide transportation to the new location or pay the cost of transportation for self, spouse, and a maximum of *X* children at *Y* rate per kilometer per person.

**5.3 Transportation of Personal Effects**

JOBA NIGERIA LIMITED shall transport the personal effects of the transferred staff to the new location or pay the cost of transportation according to distances as follows (as per agreed rates):

0–300 km *X*~~₦~~

301–650 km *X*N

651–850 km *X*N

**5.3.1** Employees who voluntarily seek to be transferred for any reason whatsoever shall not be entitled to items 5 and 5.1 above.

**5.3.2** Employees transferred as a result of punitive measures because of infractions on corporate ethics and culture shall not be entitled to items 5 and 5.1 above.

6. LOCAL TOURS AND COURSES

Employees who are on duty tours and courses outside their locations will be entitled to lodging and feeding in a 3–5 star hotel or the company’s guest house. JOBA NIGERIA LIMITED shall provide transportation (except taxi to/from airport or motor park to/from residence) for the entire trip. The company shall provide assistance and support at the airports to the hotels and venues of assignments.

**6.1 Out of Pocket Allowance**

An out of pocket allowance shall be paid to employees during their compulsory stay in the hotel/guest house at the following rates (as agreed during negotiation):

7. FIELD ALLOWANCE

JOBA NIGERIA LIMITED shall pay a field allowance to staff working in field locations (seismic, offshore, and onshore operations) at the following rates (as agreed during negotiation):

8. ON-CALL ALLOWANCE

JOBA NIGERIA LIMITED shall pay *X*% of consolidated monthly salary (CMS) to staff placed on on-call duty as on-call allowance.

9. OVERTIME

Normal working days: *X*% of daily consolidated daily salary (CDS).

Public holidays, weekends, and rest days: *X*% of CDS.

**9.1** Monthly overtime payment shall, however, be subject to a maximum of *X*% of consolidated monthly salary (CMS) for

1. Operators
2. Technicians
3. Employees in chemical warehouses
4. Plant, fire, and safety technicians
5. Maintenance technicians
6. Medical staff on such duties

A maximum of *X*% of CMS will apply to others. Senior staff shall, however, not be entitled to overtime pay.

10. GIFT VOUCHER

The corporation shall pay to all staff a gift voucher allowance at the end of September, each year, at the following rates (as agreed by parties):

11. SPECIAL HAZARD ALLOWANCE

A special hazard allowance of *X* amount per month shall be paid to staff that are continuously exposed to or handle the substances identified as “hazardous” in the course of their work.

Any other substance that falls under this category as defined by the parties to be hazardous after certification by safety and health experts and confirmation by the Federal Ministry of Health, during the life span of the collective agreement, shall attract the special hazard allowance of *X* amount per month.

12. KILOMETER ALLOWANCE

The new rate is *X* amount per kilometer for staff that travel in their cars to carry out official duties. Where there are airport facilities in both departing and arriving destinations, air travel remains the option preferred by management. However, where it becomes incumbent to travel by road, the head of the department of the concerned staff must approve such travels before they embark on the journey.

13. RESPONSIBILITY ALLOWANCE

A responsibility allowance shall be paid to eligible staff as follows:

**13.1** Senior staff who are covering management duties shall be paid *X* amount per month.

**13.2** Personal assistants and confidential secretaries who are attached to M class and above shall be paid *X* amount per month.

**13.3** Secretarial staff, clerks, and drivers who are attached to management staff on *X* class and above shall be paid *X* amount per month.

14. LONG SERVICE AWARD

The company shall continue to reward its long-serving staff for 10, 15, 20, 25, 30, and 35 years of service.

**14.1** Plaques and pins shall also be provided for each of the milestones.

**14.2** The gift items agreed may be monetized, or the company shall make provisions for tangible items (a customized wristwatch/clock, a refrigerator, a gas cooker, a generator, etc.).

15. SHIFT ALLOWANCE

*X*% of the consolidated monthly salary (CMS) shall be paid to staff placed on either eight (8) hours’ or twelve (12) hours’ shift duty.

16. DRIVER’S NO-ACCIDENT BONUS

*X*% of the consolidated monthly salary (CMS) shall be paid as a no-accident bonus to drivers that are not involved in any form of accident from January to December of every year.

17. LEAVE DURATION

Annual leave shall be *X* working days for junior employees and *Y* working days for senior employees. The leave period shall be granted upon consultation with the employee by the unit head and depends on the exigencies of operations.

18. LEAVE BONUS

*X*% of the consolidated annual salary (CAS) shall be paid to every employee a month before proceeding on annual leave.

19. 13th MONTH SALARY

*X*% of the consolidated monthly salary (CMS) shall be paid to every employee that has not been indicted for any breach of JOBA’s procedures or guidelines as enshrined in the employee handbook.

20. COST OF LIVING ADJUSTMENT

The cost of living adjustment (COLA) remains the same. The consolidated annual salary (CAS) of staff shall be adjusted by *X*% from the 1st of January of every year. The difference between the old and new rates shall be paid for the period July to December 2020.

21. SECURITY ALLOWANCE

*X*% of the consolidated annual salary (CAS) shall be paid as a lump sum to staff from the 1st of January of each year. The difference between the old and the new rates shall be paid for the period July to December 2020.

22. GENERATOR GRANT

JOBA NIGERIA LIMITED shall provide a 15 kVA (kilovolt–ampere) diesel generating set to unionized staff every ten (10) years, or a flat rate of *X* amount per annum shall be paid in place of a generating set.

23. REDUNDANCY OR SEVERANCE

Given the uncertainties arising from the COVID-19 pandemic, the fear of the unknown arising from the ongoing slump in crude oil prices, and the possible divestment that might take place if the economic climate does not improve, both the unions and management have agreed on implementation of the following **REDUNDANCY OR SEVERANCE PACKAGE** for employees that might be affected by any unplanned release from the services of JOBA NIGERIA LIMITED:

23.1 In Lieu of Notice

Employees who are disengaged from services of JOBA NIGERIA LIMITED as a result of the ongoing slump in crude oil prices/divestment shall be entitled to *X* consolidated month salary (CMS) payments in lieu of notice.

23.2 Pre-Retirement Course

To help our compulsorily retired or severed employees, a pre-retirement or severance course shall be organized for those who have not attended the program before their exit.

23.3 Relocation Allowance

The corporation pays *X*% of terminal base salary as a relocation allowance.

23.4 Gratuity

As a parting gift, *X*% of their terminal base salary shall be paid for every year of meritorious service to employees affected by any special or unplanned severance from the services of JOBA NIGERIA LIMITED. In extreme circumstances, and at the discretion of management, such employees might be promoted to the next grade level.

**23.5** Employee(s) that have been compulsorily severed due to breaches of the company’s laws, rules, and regulations shall not benefit from this line item.

23.6 Pension

Staff affected by severance shall be paid five (5) years of pension upfront, which shall revert to the monthly pension as contained in the JOBA NIGERIA LIMITED pension scheme after five (5) years of collection of the upfront.

**23.7** The five (5) years of pension upfront payment shall not be extended to employee(s) that have been compulsorily retired as a result of breaches of the company’s laws, rules, or regulations.

23.8 Outstanding Loans

Loans granted to staff but still outstanding shall be written off if it was the company that scheduled the staff for special severance.

**23.9** Employee(s) that have been compulsorily severed due to breaches of the company’s laws, rules, and regulations shall have the loan deducted from their terminal benefits.

23.10 Medicals for Staff Dependents

Underage dependents of staff shall have one (1) year of treatment from the medical services of JOBA NIGERIA LIMITED.

23.11 Payment of Benefits to Disengaged Staff

JOBA CONSULT LIMITED shall pay benefits to staff affected by redundancy or severance directly into their payroll account at the time of disengagement.

23.12 Staff Living in JOBA Quarters

Disengaged staff living in the corporation’s housing estate should be given three (3) months’ notice to relocate.

24. EFFECT ON JOBA NIGERIA LIMITED CONDITIONS OF SERVICE

Except for the areas where adjustments are indicated in this agreement, all other areas of the company’s conditions of service remain unchanged.

25. CONFIDENTIALITY

This document is highly confidential. Its circulation is strictly limited to those who are directly involved in its implementation. The contents of the collective agreement or this implementation circular MUST not in any case be circulated to all staff.

26. IMPLEMENTATION

The changes shall be implemented with effect from 1 July 2020.

**26.1** Where any of the parties is unable to implement the agreement reached, that party should, within ten (10) working days, invite the other party to the negotiation table to discuss and resolve the issue.

27. FORCE MAJEURE

The implementation of this agreement shall depend upon the prevailing circumstances under which this agreement was reached. In cases of extreme emergencies, pandemics, or rig destruction due to natural disasters (hurricane, tornadoes, etc.), war, or economic downturn that might make this agreement unworkable, the negotiating council shall summon an emergency meeting to reappraise the contents and take the best decisions for the good of the organization.

28. DISPUTE RESOLUTION

Dispute(s) arising from the 2020 collective bargaining agreement shall be resolved in line with the *Trade Disputes Act* (“the Act”) section 4 (1), which allows the adoption of the following steps:

1. An internal conflict resolution mechanism involving the Joint Consultative Council platform should be used. In my opinion, where they are unable to resolve the dispute, the parties could go a step further to invite an experienced mediator of their choosing; the mediator will creatively work with the parties to resolve the conflict(s) in three (3) working days. If there is still no resolution, the next step could be taken.
2. Where (a) failed, the aggrieved party shall report the dispute to the Ministry of Labour and Employment to declare a trade dispute on the items so identified.
3. The minister should use his or her discretion to refer the case to a mediator, conciliator, board of enquiry, arbitration, or the National Industrial Court of Nigeria.

It should be observed from the above that unless and until all the above steps have been judiciously followed, any of the parties in dispute that embarks on a strike or lockout will be in breach of the Act. The minister could also take over the case, in the interest of the nation. If he or she does, none of the parties should proceed with any industrial action.