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Article abstract

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State Regulation of Trade Disputes in Essential Services in Nigeria

Tayo Fashoyin

This paper examines the management of trade disputes in essential services in Nigeria and identifies two settlement approaches which are seen to have the opposite effects to those intended.

Until about a decade ago little attention, if any, was paid to the procedure for the settlement of trade disputes in Nigeria, although the Trade Disputes (Arbitration and Inquiry) Ordinance was enacted as far back as 1941¹. This law embodied the British *principle of voluntarism* upon which the Nigerian system of industrial relations was based. Characteristically, voluntarism recognises the freedom of labour and management to manage their day-to-day affairs, though within the limits of the legal framework. Thus, while the law made provision for conciliation, arbitration and inquiry (the latter is commonly referred to as fact-finding in the West) for the settlement of trade disputes, it recognised the right of the parties to decide which of these methods they would use while the Minister of Labour (until recently known as Commissioner) must obtain the consent of the parties in prescribing either of the above methods for settlement of dispute. Furthermore, the award or decision of any of the methods was not binding on either party to a dispute.

While it could be argued that the apparent permissiveness of the law could inhibit government intervention in any serious industrial crisis were the law enforced to its letters, the argument would be superficial, for governments had never shown remorse or anxiety in exercising their supreme power by going outside the realms of the law. Indeed, governments had customarily abandoned the trade disputes ordinance when dealing with trade disputes that might, rightly or wrongly, be regarded as subversive or threatening to public peace. For example, the war-time General Defence Regulations of 1941 and later the Criminal Code of 1958 were invoked when dealing with trade disputes in essential services. This had frequently led to

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•• An earlier version of this paper was presented at the Fifth World Congress of the International Industrial Relations Association in Paris in September 1979.

¹ Renamed the Trade Disputes (Arbitration and Inquiry) Act, 1958, Cap. 201.

the detention of outspoken trade unionists such as Michael Imoudu during the trade unions' formative years². This approach to the settlement of disputes had been more or less the norm throughout the country's labour history. This had, almost without exception, been accompanied by dismissal, prosecution and conviction³.

In principle, restrictive legislation are enforced where the conduct of labour relations is perceived to be threatening to public peace or where it amounts to depriving the public essential services which might result from industrial action⁴.

In any event, because government found greater usefulness in the more restrictive legislation there was, until 1976, no strong need to enact specific laws on trade disputes in essential services. Indeed, the term "essential services" had rarely been used, except the reference in the Criminal Code which, as already mentioned, had been used to prevent any strike that might obstruct the provision of essential services⁵. Undoubtedly, the character of Nigerian unions is regarded as one major explanation for the passiveness of government because the trade union movement was, until recently, hopelessly proliferated into ineffective mushroom unions of 1 170 most of which were even incapable of utilising the existing legislation effectively.

This paper examines the management of trade disputes in essential services in Nigeria. It identifies two settlement approaches which are seen to have the opposite effects to those intended. The paper concludes that a progressive approach to the settlement of trade disputes should not only reflect the goals of public policy but must produce mutually satisfactory results.

THE ORIGIN OF THE LAW

To begin with, it is desirable to understand the main reasons why government enacted a special legislation on disputes in essential services. Undoubtedly, the Nigerian civil war of 1967-70 served as the immediate cause for introducing what may now be regarded as revolutionary labour legislation in Nigeria. As expected, the primary attention of government

2 See E.E. UVIEGHARA, *Trade Union Law in Nigeria*, Benin City, Ethiope Publishing Corporation, 1976, pp. 25-26.

3 *Ibid.*, pp. 26-29 and Robin COHEN, *Labour and Politics in Nigeria*, London, Heinemann Educational Books Ltd., 1974, Chapter 7.

4 See A.A. ADEOGUN, "Industrial Relations and the Law" in T.O. Elias (ed.), *Law and Social Change in Nigeria*, Lagos, University of Lagos-Evans Brothers Ltd., 1972, p. 123.

5 *Ibid.*, *loc. cit.*. As will be argued in this paper the distinction between disputes in essential services and other types of disputes is only a formality for the definition of the former is so broad as to include all conceivable types of dispute.

during the period was focussed on how to end the war while preserving the unity of the country. Class action, as demonstrated by some unions, was not only anti-government but equally unpatriotic, as far as public opinion was concerned. Therefore, the need to bring the unions "under strict control" serves as the main goal of the Trade Disputes Emergency Decrees of 1968 and 1969 which significantly circumscribed the freedom of unions (and to a lesser extent, employers) in the labour-management relationship⁶. There was also the salient economic factor dictated by a combination of rapid economic activity resulting primarily from the unprecedented increase in oil wealth, and a programme of reconstruction immediately after the war.

Partly in efforts to ensure uninterrupted implementation of these developments and partly in response to mounting trade union pressure for improvement in wages and conditions of service which had deteriorated during the war, government established the Adebo Wages and Salaries Review Commission whose responsibility, among others, was to review wages and salaries in the *public sector* and make appropriate awards⁷. Like its predecessors, the Adebo Commission awards produced more controversies than the demands for its establishment, and quite unexpectedly, led to strikes not only in the public sector but in the private sector as well. Yet, three years later another body — the Udoji Public Service Review Commission, primarily charged to *harmonise* wages and salaries in the public sector with those in the private sector was established. Its recommendations or awards were widely disputed, again in both sectors. This rather chaotic system of wage determination has itself been disruptive to the maintenance of industrial peace in Nigeria⁸.

Yet the consequence of widespread industrial unrest in the country, but particularly in major economic sectors such as petroleum, banking and manufacturing could be disastrous on the economy. In the oil industry, for example, popular thinking has been, as recently expressed in a national newspaper, that "everything that concerns oil concerns our vital national interest"⁹. In the banking industry, also, some union leaders has insisted on maintaining the existing differentials between workers in the industry and those in other sectors, an apparent objection not only to government har-

6 FASHOYIN, Tayo, "The Impact of the Trade Disputes Decrees of 1968 and 1969 on Strike Activity", *Quarterly Journal of Administration*, Vol. XIII, No. 1, October 1978, pp. 53-71.

7 See the *Second and Final Report of the Public Service Review Commission 1970-1971*, Lagos, Federal Ministry of Information, 1971.

8 For details of the disputes surrounding both commissions' awards see Tayo FASHOYIN, *Industrial Relations in Nigeria. Development and Practice*, London, Longman Group Ltd., 1980, Chapters 6 and 8.

* 9 *Daily Times*, 19 February 1979, p. 3.

monisation policy but also to the growing need for equity and income distribution in the country.

It was generally believed, also, that many of the poorly organised and badly led unions could not fully appreciate the importance of certain economic sectors to the prosperity of the country. Indeed, as the evidence has often shown, these unions had embarked on industrial actions without bothering to use the procedures enunciated in the law. Furthermore, the government seemed concerned about the activities of some trade unionists who, though well informed, were unwilling to educate their followers on the need for constructiveness in presenting their demands and also to recognise the essentiality of the services they provide to the public. In fact, popular impression in official circles was that some of these union leaders were deliberately inciting their followers to cause crisis in the work-place.

The foregoing views crystallised to produce two major developments. The first led to the unprecedented announcement of a revolutionary and elaborate National Labour Policy in December 1975. This policy unequivocally stresses the commitment of government to monitor, if not control the activities of the trade unions, both internally and externally. It also emphasises the need for unions to form a kind of partnership with government in the pursuit of national development¹⁰.

The second, to which this paper is addressed, is the view that rather than contain the excesses of some unions and their leaders, it serves the greater interest of the country to invalidate the existence of any unions and their leaders who contravenes the provisions of the essential services decrees.

In any event, while the above arguments could have paved the way for the enactment of a law on the essential services as far back as the early seventies, it was not until 1976 that a delineation of the essential services was made under the Trade Disputes Decree (no. 7) promulgated in that year¹¹. Under the decree, essential services are defined to include¹²:

- (a) The public service of the Federation or of a State;
- (b) Civilians employed in the Armed Forces of the Federation;
- (c) Employees of any firm whose services are consumed by the Armed Forces;

¹⁰ For an elaborate treatment of the new labour policy see my *Industrial Relations in Nigeria. Development and Practice*, *op. cit.*, Chapter 7 and Appendix B.

¹¹ Hitherto settlement of disputes in *all* services in the country had been covered under the existing Trade Disputes Emergency Decrees of 1968 and 1969.

¹² See Schedule I of the Trade Disputes Decree No. 7, 1976. Note that the Trade Disputes (Essential Services) Decree No. 23, 1976 was promulgated only 3 months later. The definition of essential services in both decrees is the same.

- (d) Any services provided or maintained by any level of government or private enterprise which is connected with electricity, power, water or fuel of any kind, broadcasting and all forms of communication, including cable and wireless, dock labour including ports, aerodromes, all other means of transportation, hospitals of any kind, public health, sanitation of kinds, fire;
- (e) Service in any capacity in the Central Bank of Nigeria, Nigerian Security, Printing and Minting Company and any banking business in the Federation¹³.

As can be seen, the list comprises a whole gamut of services that could legitimately come under the law. Indeed, it seems correct to suggest that any service, irrespective of the sector or industry can be deemed *essential* depending on how the service came to be rendered. For example, if an essential service, say the National Electric Power Authority (NEPA), contracts a business to another firm whose primary function is not power generation, say, construction, the latter firm will come under the provisions of the law. Also, if a local government council (an essential service) hires the services of a private cleaning company to sweep the streets and workers in this company strike, they will be enjoined by the law. The law therefore provides, if rather legalistic, conditions for *any* service in Nigeria to be regarded as essential, depending on the particular circumstance.

PROCEDURE FOR SETTLEMENT OF DISPUTES

Basically the procedure for settling trade disputes in Nigeria is the same in all sectors or services, though there are differences of approach when considering an essential service. Thus under the Trade Disputes Decree 1976, either party to a dispute may inform the Commissioner for Labour^{13a} *in writing* of the existence of a trade dispute, the issues involved and the internal machinery that had been used to bring about settlement¹⁴. The Commissioner is empowered to refer the dispute to conciliation, inquiry, arbitration or industrial court, usually in that order, although he need not follow this sequence. In any event, if a conciliator is appointed, the conciliator is required to report back to the Commissioner within 14 days if he

¹³ See Trade Disputes (Essential Services) Decree No. 23, 1976, Section 8.

^{13a} Under the new civilian constitution the Commissioner is now called Minister. Here we shall refer to him as the Commissioner for this makes no difference in his role with respect to interpreting or enforcing the law.

¹⁴ Section 4. It is equally possible for the Commissioner for Labour to apprehend a dispute if he is satisfied that such a dispute exist.

is unable to bring about settlement and within another 14 days the case is referred to the Industrial Arbitration Panel. The arbitration award should normally be given within 42 days, although this time could, and has often been extended. If the award is satisfactory to both parties it becomes law, otherwise an appeal is made to the National Industrial Court through the Commissioner. The decision of this court is final. Note that throughout these stages the strike is illegal; although the law does not specifically ban strikes, it does make it practically impossible to engage in legal strikes.

The above describes very briefly the procedure for settling any labour dispute. With respect to the essential services there are the following differences. First, unlike disputes in non-essential services, section 31(1) of the Trade Disputes Decree categorically prohibit the use of strike weapon by workers employed in the essential services. Second, the Commissioner for Labour does not have to wait for the report of the conciliator before he acts. In fact, when to intervene in a dispute in an essential service wholly depend on what is at stake; he may enter the picture as soon as it is obvious to him that conciliation would be meaningless or inappropriate in which case he may refer the dispute to arbitration or directly to the industrial court¹⁵. But as will be shown, not only is this procedure completely insensitive to the nature of disputes in the essential services, it is quite distinct from the inevitable machinery under which disputes are settled. It will be shown that the ultimate course of settlement has been through means outside the legal framework. When this occurs the government, as it must, takeover the dispute from the affected management and assumes full control for bringing about settlement of the dispute.

PENALTIES FOR VIOLATION

Under the Trade Disputes Decree, 1976, if an individual engages in an illegal strike, he is liable to a fine of N100.00^{15a} or imprisonment for six months. In the case of an organisation, eg. a firm or a union, it is liable to a fine of N1,000.00¹⁶. Ironically, penalties of fine have scarcely been enforced, particularly on workers or unions because in real life, imposition of penalties of this kind on workers and unions in Nigeria serve no less a design to discourage workers who hold only fragile allegiance to trade unionism. Furthermore, enforcement of penalties of the same kind on unions will un-

¹⁵ See Section 5 of the Trade Disputes (Essential Services) Decree No. 23, 1976, and Section 12 of the Trade Disputes Decree No. 7, 1976.

^{15a} N1 = \$1.77, approximately.

¹⁶ Section 13 (2) of the Trade Disputes Decree No. 7, 1976.

doubtedly put them out of business because of their poor financial resource¹⁷. The alternative i.e. imprisonment is the more likely penalty that can be enforced on trade unionists, as earlier noted.

This latter approach closely resemble penalties for violating the law on essential services. Note, therefore, that unlike the above provision no option of fine is available to strikers, their leaders or organisations in the essential services. Thus, section (1) of the Trade Disputes (Essential Services) Decree, 1976, provides that "if the Head of the Federal Military Government is satisfied that any trade union or association any of the members of which are employed in any essential service (a) is or has been engaged in acts calculated to disrupt the economy or acts calculated to obstruct or disrupt the smooth running of any essential service; or (b) has, where applicable, wilfully failed to comply with the procedure specified in the Trade Disputes Decree 1976 in relation to the reporting and settlement of trade disputes, he may by order in the *Gazette* proscribe the trade union or association... and the proscribed organisation shall as from the date of the order cease to exist." A union so proscribed is required to submit its certificate of registration to the Registrar of Trade Unions within 14 days and all properties of the union are forfeited to the Federal government.

The law also abrogate the right of members of the union to form or join another union until a minimum period of six months has lapsed. Also, officials of a proscribed union are for ever barred from holding leadership positions in any union in an essential service. Furthermore a union leader or member found to be involved in acts prejudicial to industrial peace after the proscription of this union may be detained indefinitely in a prison or police custody¹⁸. Needless to say that any person so detained would have lost his right to institute legal action against any matter that may be brought against him by government.

That the law in its construct was decidedly anti-union is reflected in its one-sidedness, for it explicitly gave the impression that the onus for industrial unrest in the essential services rest squarely on workers and unions. It is therefore not surprising to note the strong opposition and protests against the law amongst union leaders¹⁹. These protests, though, were not against the principle or desirability of a law on essential services but rather its par-

¹⁷ For more on this, see M.O. KAYODE, "An Analysis of the Management of Trade Union Finance in Nigeria", *Nigerian Journal of Economic and Social Studies*, Vol. II, No. 3, November 1969, pp. 327-342.

¹⁸ Trade Disputes (Essential Services) Decree No. 23, 1976, Section 4.

¹⁹ See *The Nigerian Tribune*, 27 May 1976.

tiality, particularly for failing to put any costs on employers. This rather embarrassing shortcoming of a major public policy did in fact cast doubts on the sincerity of government in its oft-repeated neutrality in labour and management relations. In any event admission of partiality was acknowledged in a 1977 amendment to the law which now impose a fine of N10,000 on any employer or employers' association that contravene the provisions of the law²⁰.

It is remarkable to note that even though the law explicitly abrogate the right to strike or lock-out, strikes in essential services have been a common occurrence in the country but the government has enforced the proscription provisions rather discriminately, as will be shown. This brings to question the underlying reasons for enacting the law. For observation not only suggest that the law will be used selectively but also show clearly that quite apart from the economic rationale adduced earlier, its objectives include non-economic contents but also has strong political undertone. Therefore, the underlying philosophy of the law is questionable as much as it raises a big question of what exactly constitute an essential service. In whatever perspective it is viewed, the law leaves an uncertainty as to what political influence may be brought into the settlement of disputes in the essential services from time to time.

THE EXPERIENCE OF THE LAW

To fully appreciate the intent of the law-makers a review of the experience of the law is in order. The discussion thus far implicitly suggests that two distinctive categories of disputes settlement procedures can be identified, viz: (1) disputes which are amicably settled; this may otherwise be referred to as the *containment approach*, and (2) disputes on which the proscription order was invoked, which may be referred to as the *eliminationist approach*. Some disputes in the two categories are briefly examined essentially to highlight some salient features of the two approaches.

As far as the containment approach is concerned, disputes in essential services are supposed to be settled as laid down in the law, eg. appointment of a conciliator who is usually an official of the Federal Ministry of Labour^{20a}. In practice, however, satisfactory settlement has often been achieved after intervention of top government officials. Furthermore, disputes rarely go through the legalistic process or get to the National Industrial Court, partly because the situation becomes extremely tense requiring extraordinary measures and partly because of the need for urgent solution.

²⁰ See Trade Disputes (Essential Services) (Amendment) Decree No. 69, 1977, Section 1a.

^{20a} Under the recent reorganisation of the civil service, the new administration has renamed the Ministry as the Ministry of Employment, Labour and Productivity. Where necessary we shall use the old name.

One of the disputes in this category occurred shortly after the law was promulgated in 1976. Workers of the Wastes Disposal Board in Lagos embarked on industrial action in protest against the Board's plan to declare redundancy among the workforce. For weeks the streets of Lagos were littered with refuse as negotiation and conciliation were unsuccessful in bringing about settlement. The impasse was broken at the intervention of the State government which immediately ordered the setting aside of the redundancy plan and subsequently induced the workers to resume their work. Similarly, the Lagos State branch of the powerful Nigeria Union of Teachers (NUT) embarked on a strike action against the Teaching Services Commission over arbitrary down-grading of 2,500 teachers and for failing to improve other conditions of service for its members. The strike, which started from 1 to 20 June 1978, occurred at a critical period when the nation-wide end-of-year examinations for primary and secondary schools were about to begin. Efforts to use the legal framework failed, as did appeals from traditional and civic leaders, and a promise by the Military Governor of the State that he would personally look into the teachers' grievances. Eventually, the union's term for a call-off of the strike, i.e. the appointment of a *judicial* commission of inquiry to look into its grievances, was accepted by government before the teachers returned to their classrooms²¹. It is noteworthy that members of the NUT in other parts of the country similarly went on strike in December 1978 over the same issue of poor conditions of service. These latter disputes were settled in the same fashion, i.e. outside the legal framework.

Finally, towards the end of 1978 members of the Lagos State branch of the Nigerian Medical Association embarked on a state-wide strike in protest against a law barring doctors in government service from private practice²². Needless to say that this strike paralysed medical care delivery in the state because both government and private hospitals and clinics participated in the action. The sick were, in many cases, taken to the adjoining states of Ogun and Oyo by their relatives while in some cases, incidences of avoidable deaths occurred²³. When it became obvious to government that doctors in other parts of the country were planning to join in the action, the Federal

21 Initially the government had appointed an inquiry (fact-finding) panel under Section 30 (4) (d) of the Trade Disputes Decree, 1976 to look at the union's grievances but the latter objected because under the law government would not be bound to accept the views or recommendations of the panel.

22 Although the strike was planned to be nation-wide, an Edict subsequently published by the Lagos State government (unfortunately meant to be a test case), stipulating a tough, and perhaps unrealistic standards for the registration of private clinics and hospitals prompted doctors in Lagos State to embark on the strike.

23 In a particular case at the Lagos Island Maternity Hospital a pregnant woman died because no medical attention was forthcoming.

Commissioner for Labour and later the Chief of Staff, Supreme Headquarters (equivalent of Vice-President under the presidential system) intervened and subsequently set aside both laws and reinstated the *status quo* pending a review to arrive at a mutually acceptable standard.

Similar cases have occurred in electricity, banking, ports, airways, etc., all regarded as essential services. It should be emphasised that in these and all the disputes described above delicate issues of public interest, health and safety were involved. But for the most, the disputes have been settled amicably, though outside the legal framework and generally through intervention of top government hierarchy.

Under the eliminationist approach two disputes may be cited. The first dispute involved the National Union of Nigerian Bank Employees (NUNBE) under the leadership of Babs Animashaun who was its General Secretary. The union served as a central body for some house unions in the banking industry. By its structure NUNBE negotiated directly with individual bank employers. A dispute over wage increase between the union and Barclays Bank (now Union Bank) was referred to the Industrial Arbitration Panel (IAP) in 1975. Note that the settlement procedure had commenced with the containment approach. The issue, it seemed, was that of delay in the settlement machinery. It is equally noteworthy to mention that Animashaun was a very outspoken unionist (sometime an extremist) whose activities in trade unionism were as reassuring to the rank-and-file as threatening to many employers with whom he negotiated. His trade union activities in the banking industry, especially for insisting on negotiating a separate agreement with government over the Udoji awards had become increasingly embarrassing to government which felt that the demands were not only unreasonable but also undermining government wages policy. However, unhappy at the delay of the IAP award, Animashaun gave a 14-day ultimatum to the Bank after which he threatened to call all Barclays Bank workers on a nation-wide strike. Coincidentally on the 14th day, in May 1976, the IAP award which turned out to be favourable to the union, was made public.

But leaders of the union claimed that poor communication network made contacts with all the state branches impossible so as to inform them of the IAP decision and accordingly call-off the impending action. In any event, Barclays Bank workers in four cities (including Ibadan) outside Lagos went on strike immediately after the expiration of the ultimatum on 26 May, 1976. While this one-day action may have caused some disruption in banking services in the affected cities, particularly in the commercial city

of Ibadan, the extent to which the strike hurt the economy may have been blown out of proportion by the press²⁴.

Technically, the strike appeared to be a wild-cat or unofficial action given that top union leaders (in Lagos) had blamed the strike on the impatient leaders in the affected branches, particularly for failing to obtain clearance from the national headquarters in Lagos. This accusation would however, appear baseless, for not only is there an efficient communication system between Lagos and Ibadan (less than 100 miles apart), branch leaders at Ibadan had on their part insinuated that the reason they called-off the strike was due to the non-participation of the Lagos branch²⁵. It appeared, therefore, that the strike was a deliberate gimmick by top leaders of the union undoubtedly to “assess” or “test” the reaction of government to a violation of the law.

The following day — May 27, a national daily, *The Nigerian Tribune* carried a front-page story captioned “BLOW ON DECREE Barclays Workers Spurn Order”²⁶, (emphasis supplied) a rather irritating news to government officials partly because the IAP awards was, after all, favorable to the union. Partly, also, government conception of the matter was that Animashaun and his union were definitely trying to test the strength of government, hence the immediate proscription of NUNBE²⁷. The position of government became glaring in a statement announcing the proscription order. In it government pointed out that “The action of the employees of the Bank is... considered by the Government as a wilful act calculated by the union not only to disrupt the smooth running of the economy but also to block the way of the Government to enforce the new decree²⁸.” Whether or not this view is valid is debatable but it should be pointed out that the strike action took place only *six* days after the decree had been promulgated. On the other hand, it should be emphasised that the union did not go on strike

²⁴ It is fair to say that press reports, particularly in *The Nigerian Tribune* were decidedly in support of union protests against the decree. The newspaper’s reports of the period, particularly by putting the strike as a frontpage item on the 27 May was meant to ridicule the law, and or its makers.

²⁵ *The Nigerian Tribune*, 28 May 1976, p. 1.

²⁶ *Ibid.*, 27 May 1976, p. 1.

²⁷ See Trade Disputes (Essential Services) (Proscription) Order, 1976, LN 44 *Nigeria Office Gazette*, Part B., Vol. 63, No. 29, Lagos, 3 June 1976. Automatically, sections of the law affecting the leadership were enforced. Interestingly, a government tribunal subsequently found Animashaun guilty of mismanagement of union funds. See *Report of the Tribunal of Inquiry into the Activities of the Trade Unions*, Lagos, Federal Ministry of Information, 1977, pp. 82-86.

²⁸ *The Nigerian Tribune*, 28 May 1976, p. 1.

in Lagos, which is the base of Nigeria's economy as well as the Federal capital²⁹.

In the second case, two unions were simultaneously proscribed. The unions were the Shell-BP and Allied Workers Union of Nigeria and the Senior Staff Association of Shell-BP Company. The first was a junior staff union while the other was a management association. The dispute originated between the junior staff union and the company over housing allowance and Christmas bonus, although the latter issue was the immediate cause of conflict. The dispute arose over an agreement concluded between the two parties providing for 100 per cent of pay as Christmas bonus to the workers but was invalidated and reduced to half by the Ministry of Labour consistent with the incomes policy guidelines. Apparently doubtful of the sincerity of management and the extent of support which it had given to the agreement, members of the union were dissatisfied with government decision, incomes policy notwithstanding. Accordingly they embarked on a strike on 20 October 1977 in defiance of the law and without notifying the Ministry of Labour of the existence of a trade dispute or attempted to maintain dialogue with their employer as required by law. Recall that if internal method failed a dispute had to be notified in writing after which a conciliator may be appointed, and so forth.

With respect to the Senior Staff Association, it wanted to negotiate on the same issue (Christmas bonus) with the company but the latter was unwilling to negotiate, undoubtedly because of the prohibitive cost of the agreement it had signed with the junior staff union which already had ran into trouble anyway. While the association did not want to declare a trade dispute, it decided to go on a sympathy strike with the junior staff union, understandably as an arm-twisting tactic to bring the company to the bargaining table. Accordingly, members of the association not only refused to "make-up" or fill the gap left by the junior workers but also refused to perform part of their legitimate function, contrary to the expectation that such cadre of people would demonstrate a greater degree of maturity and responsibility in such a situation. This expectation had apparently been misplaced!

This development was embarrassing to government because the oil industry contributes more than two-thirds of government revenues. Meanwhile, the Federal Commissioner for Labour had publicly warned the workers of the illegality of their action and appealed to them to utilise the legal framework through a conciliator already appointed to bring about settlement. The workers ignored the Commissioner's appeal and remained adamant insisting that government must rescind its decision on their agree-

²⁹ Note that a clause under the Banking (Amendment) Decree, 1973 had provided for conditions (i.e. proscription) similar to the Trade Disputes (Essential Services) Decree, 1976 but was never enforced, presumably because the "targeted man" never ran foul of the law!

ment. In a sharp reaction, the government invoked the provisions of the essential services law by proscribing the two unions immediately³⁰. Justifying the action, the government issued a public statement which read, in part:

The federal Military Government is satisfied that the trade unions concerned wilfully failed to comply with the procedure specified in the trade disputes decree, 1976 in relation to the reporting and settlement of trade disputes. It is also satisfied that the strike called by them is calculated not only to obstruct and disrupt the smooth running of the operations of Shell-BP Petroleum Development Company of Nigeria but also to disrupt the economy of the nation³¹.

A careful look at this case revealed that there was probably a greater economic risk caused by the strike than in the banking situation. Yet, this cannot be divorced from the inherent personality clash, first within the management hierarchy in the company and second, between the affected management officials on the one hand, and government officials on the other. Observable evidence showed that the provisions of the law might not have been invoked had the senior staff association not participated in the strike. This view, though, has never been admitted by government officials.

SOME COMMENTS

By their very nature the last two cases tended to challenge the legitimacy of government social and economic policies. Yet, the choice of settlement procedure followed in undoubtedly political, for, all things being equal, disputes in the medical care delivery are as threatening to the nation as were disputes in the banking and oil industries. Two conclusions can be drawn from the NUNBE case.

On the one hand, the decision of the union to go on strike outside Lagos was a strategic design by its top leaders in Lagos to demonstrate the union's disaffection with the essential services decree. But why this task had to be carried out by NUNBE can only be explained by examining first the personality of the union's leaders (especially its general secretary) and second by examining how they perceive their role in the labour movement. On the other hand, the reaction of government to proscribe NUNBE can be explained not so much by the consequences of the disruption to banking services due to the strike but mainly by emphasizing the supremacy of government in enforcing its laws. The proscription of NUNBE suggest, in any case that the authorities were after the top leadership of the union inasmuch as the branches of the union that went on strike were the veritable violators of the law.

³⁰ See Trade Disputes (Essential Services) (Proscription) Order, 1977, LN 55 and LN 56 in Federal Republic of Nigeria, *Official Gazette*, Part B, Vol. 64, No. 53, Lagos, 10 November 1977.

³¹ Cited in *The Nigerian Observer*, 31 October 1977, p. 13.

In any event, the likely effects of the law on future development of industrial relations are not clear; the fact that extraneous considerations do enter into when to invoke the law and on which union makes any opinion tentative. This is more the case because Nigeria has recently returned from military to elected civilian government which is likely to react to trade union pressure in a manner quite responsive to political considerations. The response of the politicians will be reflected in their conception of the efficient way of managing workers' discontent, freedom of association under the International Labour Organisation's conventions to which Nigeria subscribes, and the extent of co-operation (or coalition!) between the politicians and trade unionists.

There is, also, the uncertainty of the likely effects of the recent restructuring of the trade union movement on the overall mode of labour and management relations in general and the settlement of trade disputes in particular. Within the past three years the government has succeeded in restructuring the 1,170 house unions in Nigeria into 42 industrial unions and the formation of the Nigeria Labour Congress (NLC), as the single central labour organisation³². Apart from the assumption that the new unions may likely demonstrate greater maturity in the conduct of labour relations their numeric strength and likely financial viability will certainly make them stronger and militant to the extent that a government might find it practically difficult and politically inexpedient to proscribe a whole union as it had done with the NUNBE. For example, given the strength and organisation prowess of the NUT, any attempt to proscribe any of its branches least the national union would constitute not only an ill-fated decision any government can make but one which is likely to have adverse effects in the country. This reference to the potential power of the trade unions is made to underscore the most recent role of the NLC. Barely a year after its formation, the NLC in co-operation with its affiliates has intensified labour's demand for the repeal of the essential services decree along with other restrictive and punitive legislation of the military administration³³. While a total abolition of the laws are not likely, modifications which conforms with ILO Conventions are most probable under the civilian government.

³² Along with the 42 industrial unions are 15 management (senior staff) associations, nine employers' associations and 4 professional associations (including the Nigerian Medical Association). For the names and memberships of all the unions see *Industrial Relations in Nigeria. Development and Practice, op. cit.*, Appendix C.

³³ See *Communique of the National Executive Council of the Nigeria Labour Congress held in Lagos, 22-23 May, 1979*.

SUMMARY AND CONCLUSION

While the law on essential services in Nigeria is broad enough to cover practically all industries, its application is undoubtedly discretionary. In some cases, application of the law takes the form of containment of disputes where mutually satisfactory settlement are sought and achieved. In other cases, the eliminationist approach is followed, in which case the union, its members and leaders are effectively put out of business. However, while there are no precise yardsticks for determining which of the two settlement approaches shall be applied and on which union, there is hardly any doubt that non-economic considerations, i.e. those that have no logical relationship to the economic rationale of the law, such as political, do influence such decisions. In fact, experience with the use of the proscription clause thus far suggest that the personality of the trade unionist affected is a major determining factor.

Since Nigeria has recently undergone political transition (from military to civilian administration), it seems reasonable to assume that there will be some changes in both orientation and approach to the settlement of trade disputes in the essential services, although we do not as yet know what form of pattern these changes will take. One thing seems clear, nevertheless, that any government in Nigeria will closely monitor labour relations practices in sensitive economic and social sectors in a way consistent with its philosophy and degree of harmony with labour. It should be pointed out, however, that Nigeria's industrial relations experience suggests that irrespective of the penalties imposed on the right to strike, strikes will surely occur, partly because government has shown its unwillingness to enforce the full provisions of the law in all cases of trade disputes.

Given this discriminating enforcement of public policy, a broad-based progressive approach to the settlement of disputes, one that conform with the accepted Conventions of the I.L.O. on freedom of association and collective bargaining, irrespective of the sector of the economy is needed. A progressive approach to industrial conflict does not lie in the proscription of unions but in speedy identification of the causes of workers' discontent and finding effective means of bringing about *mutually satisfactory* solutions.

Conflits de travail et services essentiels au Nigéria

L'ordonnance de 1941 relative aux conflits de travail (arbitrage et enquête) a caractérisé le régime volontariste dont le Nigéria a hérité de la Grande-Bretagne. Bien qu'elle fût permissive, le gouvernement a traditionnellement renoncé au recours à la loi dans sa réglementation des conflits de travail. La loi fut finalement délaissée pendant la décennie 1960, en partie à cause du besoin pressant de changements institutionnels dans les relations professionnelles. Le décret relatif aux conflits de travail (1976) et le décret concernant les services essentiels de la même année prévoient l'un et l'autre des mécanismes détaillés de règlement des conflits de travail dans les services essentiels.

Bien que la grève, selon les nouvelles lois, entraîne comme pénalité l'interdiction des syndicats, trois d'entre eux seulement ont été ainsi proscrits, même si plusieurs d'entre eux ont fait la grève dans les services essentiels. L'article laisse entendre, toutefois, que le gouvernement a adopté une double approche: si certains syndicats ont été interdits, il fut possible pour d'autres de continuer à exister. L'application sélective de la loi soulève des questions fondamentales: qu'est-ce qui détermine quand la loi doit être appliquée et à qui doit-elle l'être? Jusqu'ici, l'expérience permet de se rendre compte, néanmoins, que la personnalité du chef syndical est un critère déterminant dans la décision de proscrire le syndicat.

À la suite de transformations profondes dans la structure des syndicats et d'un changement de gouvernement, nous sommes dans l'incertitude quant au rôle de la loi dans le règlement des conflits de travail dans les services essentiels, quoique l'approche choisie par le nouveau gouvernement reflétera sa conception de la méthode idéale de surmonter le mécontentement des travailleurs et la puissance relative des syndicats eux-mêmes. Quoi qu'il arrive, une approche sage consiste à identifier rapidement les causes de conflit et à trouver des solutions mutuellement satisfaisantes aux parties.