

1ST PAPER: LABOUR LAWS AND THEIR IMPLICATIONS
ON TRADE UNION EFFECTIVENESS

PRESENTED BY

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Protocols.

INTRODUCTION

I want to appreciate the Academic Staff Union of Polytechnics (ASUP) for inviting me as a resource person to this important workshop. I want to state that I have not come to present a paper. I have also come to learn.

I consider this workshop strategic because of its goal and timing. A keen observer of trade unionism in the country since 1999 will agree with me that the trade unions in the country are facing more challenges. One of the challenges is the introduction of voluntariness of union membership. This has affected adversely the strength of many trade unions in this country as many employers induce non-membership of trade unions in their workplaces. This has made organizing and mobilizing for membership more difficult than before. So, any trade union that intends to remain relevant and strong must out of necessity build the capacity of its officers and members.

The right to belong to trade union is one right that many employers, including the government, do not want their employees to enjoy. The reason is captured in the solidarity song of the labour movement that the: *"union makes us strong."* In any workplace where there is a trade union, the dream of the employer is that the union should be weak. Several employers and managements loathe strong unions because strong trade unions defend, protect and promote the interests and welfare of their members religiously.

GROUPING TRADE UNIONS OPERATIONS IN NIGERIA

In Nigeria, trade unions can be grouped into three namely: the trade unions that operate in the public sector only, those that operate in the private sector only and those that operate both in the public and private sectors. The sector a trade union operates contributes in immense ways to its operational strategies. The grouping impacts on the effectiveness of a trade union. A trade union that operates in the

public sector, for example, negotiates at the centre, with one authority and the agreement is binding on managements that were not at the negotiation table. Trade unions covering public service workers have this advantage. While a trade union in the private sector, on a subject matter, may have to negotiate with each employer. In this case, the outcomes are not likely going to be same. This poses a serious challenge to trade unions to the effectiveness of such a union. It is more difficult for the trade unions that have members in the public and private sectors. The Academic Staff Union comes within this group as it represents academic staff in both the public owned – that is government owned – and privately owned polytechnics.

ASUP AS A TRADE UNION IN THE ACADEMIC ENVIRONMENT

What does it connote to say that the Academic Staff Union for Polytechnics operates in an academic environment? I will put it the other way. When is an environment said to be academic? The answer is not simplistic. However, I will not delve into this in the presentation. It is safe for me to simply state that a trade union that primarily operates in educational or school setting is operating in an academic environment. The Academic Staff Union of Universities is another good example. There are others.

An educational institution is a unique environment and therefore those that carry on trade union activities therein are expected to be knowledge based so that they deliver effectively to their members' function and also help in the realization of the goals of the institution. That is why the issue of teaching conditions in our higher institutions is important.

In view of the above, my task in this paper is not only to proffer suggestions on how ASUP can promote and protect the interests of its members but also how it can be a worthy partner in pursuance of academic excellence in polytechnics across the country. This is possible by creative trade union activism that is proactive and engaging. To engage, no doubt, requires effective organization.

APPROACHING THE TASK OF THE PAPER.

My topic is such that may be treated with loads of legalism. I will do my best to make it natural. The topic, to my mind, calls for experience sharing and brainstorming. I will put forth some nuggets drawn from my experience – of over three decades of trade union law practice – to spark robust discussion by the participants in this workshop. However, before I proceed, I will pose the following salient questions to the participants, namely:

1. Do you think that your union has been discharging its duties to the members?
2. What landmark achievement(s) will you ascribe to your union officials?
3. Are there areas of welfare that the union has ignored or is not touching?
4. Do you think that the present approaches of the union officials in dealing with issues of the union are effective?
5. Are there new ways the union officials can do things for better results?

I do not know if participants will work in groups in this workshop. If they will, I think that the posers above will be helpful. A trade union needs to periodically evaluate its activities and impacts. The evaluation need not be externally based or conducted. In a workshop of this nature, a union can evaluate its operations. Such evaluation will help the trade union to consolidate and/or re-strategize thereby breathing in fresh air into its blood stream.

ENGAGING THE TOPIC OF THE PAPER

I shall now engage the topic of my paper: **Labour Laws and their Implications on Trade Union Effectiveness**. I will anchor my presentation on the assumption that an effective trade union refers to a union that is alive to its responsibilities to the members and is not tardy in the responding to issues concerning its members.

The right to belong to a trade union is a constitutional right. Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has provided as follows:

“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 interest.”

Section 12(1) of the Trade Unions Cap T14 of Laws of the Federation of Nigeria, 2004 also provides that:

“A person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of that union by reason only that he is of a particular community, tribe, place of origin, religion or political opinion.”

Internationally, the right to belong to trade union is provided for enshrined in the International Labour Organization Convention and also the African Charter on Human and People’s Rights. So, trade unionism in the country is in furtherance of the fundamental right of workers in Nigeria to associate for the protection and promotion of their interest and welfare as workers.

SOURCES OF LAW ON TRADE UNIONS IN NIGERIA

The primary sources of law on trade unions in Nigeria are:

1. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)
2. The Trade Unions Act Cap T14, LFN 2004
3. Case law (that is decisions of courts in the country)
4. The Constitution of a trade union.

The Trade Unions Act Cap T14 LFN 2004 spells out in detail the process of coming into existence of trade unions and compulsory provisions that should be in the rules (that is constitution) of a trade union. Section 4 (1) of the Trade Unions Act clearly stated these compulsory provisions. By Section 3(6) of the Act, a trade union will not operate except its rules have been submitted to the Registrar of Trade Unions and are approved as being in compliance with the Act.

In view of this provision, the constitution of trade unions in Nigeria have statutory flavor.

The importance of a trade union's constitution cannot be over emphasized. Sections 3(6) and 4(1) of the Trade Unions Act are clear on this. Hence, Article 7.02 of the ASUP Constitution has provided as follows:

“The Constitution shall be deemed to be the basis of the contract among the members to establish and operate the Union.”

A trade union constitution being the basic instrument that regulates the conduct of the affairs of a trade union, in discussing the implications of the trade union law on the effectiveness of a trade union, the discussion will be incomplete without a resort or recourse to the union's constitution. For the purposes of this paper, it is the ASUP Constitution that will be considered. Article 7.06 of the ASUP Constitution is germane. The provision has declared as follows:

“Any bye-law which contradicts, derogates, or is inconsistent with the provisions of the Constitution or the Trade Union Act shall be null and void and of no effect.”

This provision is an enactment of the supremacy of the ASUP Constitution in the running of the affairs of the union.

ISSUES THAT AFFECT EFFECTIVENESS OF TRADE UNION UNDER THE LAW

There is no gainsaying that if a trade union in carrying out its operations keeps to the clear provisions of the Trade Unions Act and its constitution that it will be effective. I refer to such a trade union as a healthy union. Crisis and instability in a trade union will undermine the effectiveness of its officers. A crisis prone or bedeviled trade union cannot be said to be effective. So, I shall consider some of the identified thorny issues that cause crisis and instability. They include these:

Denial of the right of members to free speech

Section 39(1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) provides for freedom of expression. It is one of the guaranteed fundamental rights of persons in Nigeria. The right to freedom of expression empowers a person to hold contrary opinion to the mainstream view or position **on an issue or matter**. In a trade union where there is not enough space for the inputs or views of members on big issues or the officers carry on without recourse to the members, even on big issues, the officers cannot be effective. As officers of a trade union, we must accept that contrary views are not always acts of opposition or insubordination. I contend that the stifling of the atmosphere for discussion and criticisms breeds crisis and instability. Giving space to members of a union to ventilate their opinions and/or positions is one of the important tools for effectiveness of officers, for it breeds respect for the officers and encourages active participation by the members. Also, it leads to ownership of decisions and activities of the officers by members. I strongly believe that lack of criticisms, in an organization, allows leadership to make costly mistakes that may hurt the followers severely. *Frankly speaking, it is social intolerance, which a trade union should not allow but abhor.*

It is interesting to note that under Article 24(a) of the ASUP Constitution frowns at hate speech. For under this provision, it is a breach of the union's constitution to *"use of abusive or foul language in a meeting."* Officers of ASUP are enjoined by Item 3(c) of the ASUP Code of Conduct to acknowledge the right of members to *"criticize the policies of the union and its officers."* Such criticisms should not be defamatory - i.e. libelous or slanderous - or *"undermine the union as an institution, or destroy or weaken the union as a collective bargaining machinery."* Officers of the union should uphold this provision of ASUP Constitution. Conflict is distant in any society or organization people mind their language.

Enthroning a regime of popular participation in the affairs of a union.

Trade unionism, I must say, is a movement. Therefore, every trade union should enjoin her members to participate actively in its affairs. Section 14(2)(c) of the

Constitution of the Federal Republic of Nigeria, 1999 (as amended) that states as follows:

“It is hereby accordingly declared that: the participation of the people in their government shall be ensured in accordance with the provisions of the Constitution.”

Article 3.04 of the ASUP Constitution has similarly provided as follows:

“Every member shall participate actively in the affairs of the Union and refrain from any act(s) which may bring the Union into disrepute.”

The primary vehicle for the participation of the members is the periodic union meetings, where members assemble to discuss on matters affecting them and their union, and take decisions on them. In ASUP, it is called Congress at the Chapter level. One of the factors that undermine effectiveness of union officers is their non-interest in organizing timely, credible and participatory meetings. It is no secret that in some trade unions meetings are deliberately not called, especially where the leadership has become unpopular or is not performing. The point must also be made that in meetings, critical voices should not be denied opportunity to contribute. Denial of opportunity to contribute on weighty issues may affect the effectiveness of the officers in handling the issue as a division may arise. Also, the officers may falsely be accused of corruption, connivance, etc. It is difficult to operate in such atmosphere.

As it is the duty or responsibility of union officers to encourage participation of members in the union affairs, corrupt or incompetent union officers will not be interested in participation of members. So, it is imperative for trade union officers to develop strategies of sustaining participation of union members in the affairs of the union. I suggest that union officers should develop creative strategies for sustaining the interest of the members in their union. No union member will be willing to participate in or contribute to the affairs of a trade union that the

officers have gone to sleep or are corrupt. For a virile and efficient trade union, an inclusive governance style is advocated.

Lack of transparency in union administration:

The demand for transparency is a big issue in the trade union movement in the country. Some officers seem to have forgotten that one of the parameters for measuring internal democracy of an organization is the level of transparency of its officers in the management of the affairs the group. A trade union is not a private enterprise or venture. The officers of a trade union are holders of public trust. It is for this reason that the funds of trade unions are not taxed. In the First Schedule to the Trade Unions Act, in Item 13, it is provided as follows:

“A provision for the inspection of the books, accounts and nominal roll of members of the trade union by any person who has an interest in the funds of the union.”

The constitution of every trade union in Nigeria has similar provision that allows members access to the financial books. In the ASUP Constitution, it is Article 4.02 and it provided as follows:

“Any member shall upon request and within two weeks notice have access to the books of the Union.”

This is trade union democracy. It is, also, an admission that access to information promotes effectiveness of union officers as it destroys rumour peddling and its undermining effects. So, a trade union leadership must necessarily keep accurate and updated records of the union activities, finances and projects which should be accessible to members when the need arises.

In this age of information technology, one of the ways of promoting transparency in trade union is effective utilization of the internet as it is cheap and links all the members of the union. Trade unions in Nigeria are yet to maximize the benefits of the internet. I urge you to pause and ask yourself: How many trade unions in this country have functional websites? Another question to ask is: How many trade

unions in this country have their audited annual accounts in their websites? In this era of access to information, union officers will be more effective when they earn the respect of union members by promoting transparency in the conduct of union affairs. Unions should efficiently and effectively utilize the internet.

Devolution of functions and power:

Every trade union constitution in Nigeria contains ample provisions that entrench devolution of functions and powers between the different levels of officers and organs of the union. Like other trade union constitutions in the country, the ASUP Constitution has created offices and organs, and has clothed each with specific functions and powers. Article 7.08 of the ASUP Constitution provides that:

“The government of the Union shall be vested in the following:

- (a) *The National Delegates Conference*
- (b) *The National Executive Council*
- (c) *The Council of National officers*
- (d) *The Zonal Executive Council*
- (e) *The Chapter Executive Council.*”

How far the union officers implement this important provision will determine their effectiveness. If there is always conflict of exercise of power or authority or contest for power or authority, the officers cannot be effective. Infighting hurts organizational strength. A trade union is not an exception.

The doctrine of checks and balances:

The doctrine of checks and balances is important in a trade union. It is an integral part of devolution of powers. To avoid absolute power, which creates tyrants, a trade union constitution should spell out expressly and clearly the duties and/or powers of the various officers and also those of the various organs of the union. For effectiveness, at all time, the powers of the organs of the union for the various tiers of the union should weigh more than those of the officers.

Respect for fair hearing:

Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has provided for fair hearing in matters. Under the common law, fair hearing is required in disciplinary matters of organizations. Trade unions are not an exception. The Trade Unions Act in Item 7 of the First Schedule stipulated that a trade union constitution should provide for the procedure for the *“appointment and removal of appointed and elected officers.”* Every trade union constitution in this country contains provision for discipline of erring members and staff. It is my submission that a spirited adherence to the hallowed principle of fair hearing and due process in disciplinary matters of a union by the officers will strengthen the union. The capacity of a trade union to achieve internal stability and progress is determined by its ability to ensure discipline. Strict adherence to due process in disciplinary matters will increase members and staff confidence in the officers of the union. This will, invariably, enthrone redress instead of revolt in the union.

Fair hearing is the cornerstone of every justice system. The internal justice system of a trade union must imbibe the tenets of fair hearing. I must state here that the issue of fair hearing is constitutional. Fair hearing is, indeed, one of the wheels that democracy – whether national or trade union democracy – moves on. The provisions for discipline in a trade union’s constitution must clearly state the offences, the procedure for hearing an allegation of having committed an offence and the punishment to be meted, if a member or officer is found liable.

Article 5.01 of the ASUP Constitution, on discipline, provides thus:

“The Union shall have the right to mete disciplinary measures against any member for just cause after due process has been followed.”

In Article 25.01(d) and (e) of the ASUP Constitution, the words ‘due process’ and ‘just cause’ are defined. Due process is defined as giving of notice of the charges against a member and affording him or her reasonable opportunity to defend self against the charges. While the phrase ‘just cause’ means a breach of the code of conduct or any other misconduct considered to be unworthy by the Congress, the NEC or the NDC. The definitions are important in the quest for effectiveness.

By Article 8.04(iv) of the union's constitution, a branch may be dissolved *"in a circumstance of gross violation of the Constitution of the union."* No other organ or officer can exercise this power without NEC meeting to take a decision.

In the internal justice process of trade unions, there are provisions for appeal by aggrieved persons. Item 5 of the Code of Conduct of the union's constitution gives members right of appeal. Article 7.07 of the ASUP constitution has given the members:

“. . . the right to initiate legal action at his or her expense in connection with any breach of the provisions of the constitution after exhausting the internal conflict management machinery established by this Constitution."

The implication is that an action by a member may be premature and will not be heard in a Court of law if the internal procedure has not been exhausted. This is a condition precedent in law and has effect on the jurisdiction of the Court to hear suits connected with the matters covered by the provision. However, officers are not to abuse the provision to frustrate members as it could cause crisis and/or division. The essence of the provision is to provide ample opportunity for credible dialogue and negotiation within the union to avert unnecessary and costly crisis and litigations.

It is necessary to remind the union officers seated here that pursuant to Section 19(1) of the Trade Unions Act, a union member having *"sufficient interest"* can now apply to the National Industrial Court by the Third Amendment of the 1999 Federal Constitution *"for an injunction to restrain any unauthorized or unlawful application of the funds of a trade union."* Also, five or more members can apply for *"an injunction restraining any such application of the funds of a trade union."*

Organizing credible union elections:

One of the advantages of democracy in any society or organization is its capacity to make for peaceful change. Democracy believes that an untried leader may be better than a tried one. It must be admitted that our national approach to politics

has deeply permeated our lives and our organizations that peaceful succession and conduct of credible elections are becoming difficult at all spheres. Union leaders must come to the stark reality that constitutional power is transient and prepare for succession while their tenures last. Time has come when ascendancy to trade union leadership should be on integrity, capability and dedication. The cult or myth of indispensability in many trade unions should not be promoted as it is the next door to crisis. Article 8.01 and 8.02 and Article 13 of the ASUP Constitution provide for the qualifications of the union members for nomination and election, the procedure for elections and the tenure of officers.

I am proud to be associated with ASUP. Your last National Delegates Conference demonstrated that the union is democracy sensitive and friendly when it called on candidates who were unopposed to still face the affirmation of the delegates. This is exemplary and commendable. I say kudos to Comrade President and his team for believing in the sanctity and efficacy of the ASUP Constitution.

Need for accountability by union officers:

The word ‘accountability’ has many definitions. For the purpose of this paper, the definition by Transparency Accountability Initiative (TAI), a non-governmental organization, will be adopted. TAI defines accountability as follows:

“ . . . making officials answerable for their activities and that there is redress when duties and commitments are not met.” This definition is simplistic and gives a clear understanding of what accountability means.

For there to be accountability in a trade union, there must be in existence rules and established practices in support. In this paper, my interest will be on financial and administrative accountability. An x-ray of the Trade Unions Act and various trade union constitutions will show ample provisions for their realization. These are tools of effectiveness of union officers.

Part IV of the Trade Unions Act deals extensively with matters of management of trade union finances. I will refer to some provisions. Section 37(1) of the Trade

Unions Act specifically and clearly provided that a trade union *“shall send to the Registrar before 1 June in each year an annual return in the prescribed form . . . and shall be certified as correct by the duly appointed auditor.”* Section 37(4) of the Act, has imposed a duty on trade unions that, upon the request of a member, to *“deliver or send to him free of charge a copy of the latest annual return sent by it to the Registrar under this Section.”*The words ‘free of charge’ should be noted.

By Item 7 of the ASUP Code of Conduct, in furtherance of its commitment to financial accountability, an ASUP member is *“entitled to be reasonably informed”* of:

- i. how the funds of the union are being used, and*
- ii. how the financial records and accounts are kept.*

The provision also stated that summaries of audited reports are to be distributed to ASUP members. Permit me to ask: Is this being done religiously? We should remind ourselves that Item 11 of ASUP Code of Conduct directs that the leadership to be *“responsive to the desires of the members”* of the union. Article 7 of the Code of Conduct is one of the desires of the members. So, one parameter for measuring effectiveness of, for example the relevant officer, is the making of the document available to the members. Responsiveness entails respect for and implementation of the rules of the union.

Financial accountability and administrative accountability are like two goats tied in a place. It is practically difficult to have financial accountability in a trade union without administrative accountability. The two are inter-connected and should be pursued together for effectiveness of the union leadership, at all levels.

Administrative system of a trade union is representative because the officers and the staff hold power in trust for the members. Recourse to Item (6) (d)(iv) of ASUP Code of Conduct clearly demonstrates that officers of the union shall *“serve as an effective link between the union and its members.”* Why? It is for effectiveness. Where there is linkage between a union and the members, the union is strong

and effective. So, the place of administrative accountability in a union cannot be overemphasized. The managers of the affairs of a trade union must be accessible and open to the members. Affairs of trade unions should not be treated like or as top secret.

Article 23.03 of the ASUP Constitution and Item 6(d)(ix) of its Code of Conduct are instructive and are reproduced below. Article 23.03 of the Constitution states that:

“The handing over notes shall indicate what accounts of money are in the accounts, all files, documents, cheque books and other properties shall be handed over to the new Executive Officers within two weeks after election.”

Item 6(d)(xi) of the Code of Conduct states that officers and staff of the Union shall:

“(xi) Render a true account of his stewardship to the members of the Union when the occasion arises.”

It follows that stewardship report card of the officers of the union is *sine qua non*. It is posited here that effective administrative system of a trade union leads to effective trade union governance.

CONCLUSION

In course of the presentation, some suggestions have been made to specific issues addressed. I will end by inviting the union to deepen its quest for a stronger and more effective ASUP.

Again, thanks for inviting me.