The conundrum of trade unionism and contract staffing

Definition/History
Section 1, Trade Unions Act CAP. T14 Laws of the Federation of Nigeria (LFN) 2004 defines a trade union as "*any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers*".

In Nigeria there were over 1000 trade unions by the mid-1970's, which following a Commission of Enquiry instituted by the Federal Government to streamline their activities, were then restructured into 42 industrial unions as at 1977.

Subsequently in February 1978 the Nigeria Labour Congress was formed, and vide Trade Union (Amendment) Decree 22 of 1978, the 42 Industrial Unions became its affiliates.

The Trade Unions were restructured again in 1989 into 29 affiliate unions to the Nigeria Labour Congress, and these are listed in The Third Schedule of the Trade Unions Act, CAP. T14, LFN 2004.

Similarly 44 senior staff and employers' associations were also listed in the Schedule.

According to the Labour Act a "worker" *means any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour*, see Section 91, Labour Act CAP. L1, LFN 2004.

The Trade Union Act however defines a worker as "*any individual who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing, and whether it is a contract personally to execute any work or labour or a contract of apprenticeship*".

However no definitions of "*part-time worker*" or "*contract worker*" are contained in either the Interpretation Act CAP. I23, Labour Act CAP. L1 LFN 2004, or Trade Union Act CAP. T14 LFN 2004; we would thus have to resort to the ordinary dictionary meaning thus a part-time worker is one who works less than 30 – 35 hours a week, while a contract worker is one who is hired on a specific task(s) basis and/or for a specified period of time.

Over time it has been a commonly held belief in Nigeria that contract workers cannot belong to trade unions; indeed one of the main attractions (for want of a better word) for employers in using the instrumentality of contract staff was that trade union issues were not likely to arise due to the workers' inability to join unions.

Firstly contract staff who so joined a trade union were at risk of not having their contract renewed upon expiration, and if Management was of the opinion (righty or wrongly) that their union activities negatively affected the company then such workers were usually eased out at the end of their contract period; alternatively their contract would contain a termination clause (usually 1 month notice or 1 month salary in lieu of notice) and provided the requisite period of notice is given or payment made in lieu of notice, such termination would seem proper in the circumstance.

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An employer is not bound to give the reasons for termination, as the employee's employment can be terminated for good reason, bad reason or no reason at all. See the cases of *Taiwo v. Kingsway Stores (1950)19 NLR 122, NNPC v. Idoniboye-Obu 1 N.W.L.R. (Pt 427) 655*; neither is the motive for termination relevant. Hence it was difficult in most cases to fault such terminations.

Similarly workers who had been seconded to an oil & gas company from a third party outsourcing company, may not have been able to properly belong to a union because the outsourcing company was not actually in that industry (properly so called), as such it was difficult to justify an attempt to join a union, moreso as there were no numbers to draw strength from.

Some employers even required employees to sign an undertaking (yellow dog contract) not to belong to trade unions as a precondition for taking up a job.

Legal guarantees

But as far back as 1989 the National Industrial Court in *Patovilki Industrial Planners Limited v. National Union of Hotels and Personal Services Workers Suit No. NIC/12/1989* held that both regular and casual workers have the right to form a trade union.

However probably due to a lack of publicity of the said case, the misconception as to non-membership of trade unions was still thought to apply to contract workers.

Additionally, misinformation, through another belief, seemingly replaced the earlier assumption, as a hurdle to workers' unionisation.

This had to do with the requirement that at least 50 workers are required to register a union; but the rule was misconstrued to mean that for workers to be unionised, the company had to have at least 50 workers in its employ, thus companies who had less than 50 employees readily rebuffed efforts to unionise their workers for this reason, indeed some companies made a conscious effort to keep the number of their employees below 50.

On the issue of whether there is a minimum number of staff required to be employed by a company before they can be unionized, there is however no express provision of the law to that effect.

The Trade Unions Act CAP.T14, LFN 2004 provides in Section 3 that an application for registration as a trade union of workers must be signed by at least 50 workers of the union; but this should not be confused with the required number of workers in the company, moreso as the latter collective is merely a branch of the larger trade union which is in turn affiliated to the central labour organization.

The requirement for 50 workers is with regard to application for registration of a new union, Section 3(2) Trade Unions Act CAP.T14, LFN 2004 lends further credence to this by stating that before a trade union is registered the Minister of Employment, Labour and Productivity must be satisfied that it is expedient to register the union either by regrouping existing trade unions, registering a new trade union provided no trade union shall be registered to represent workers or employers where there already exists a trade union.

Statutes
However by refusing to allow contract workers unionise, several infringements arose with respect to the African Charter of Human and Peoples' Rights 1981, Constitution of the Federal Republic of Nigeria (CFRN) 1999, Labour Act CAP L1 LFN 2004, Trade Union Act CAP T14 LFN 2004, International Labour Organisation Convention C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

In the first instance a worker cannot be stopped by an employer from joining a trade union because this would be a usurpation of his constitutionally guaranteed right to freedom of association, see *Section 40, Chapter IV Constitution of the Federal Republic of Nigeria 1999*.
A breach of this right or even an anticipated breach could be redressed by instituting a legal action at the State High Court, see *Section 46, CFRN 1999*.

Relying on *Section 12, CFRN 1999,* African Charter of Human and Peoples' Rights 1981 has been enacted into law as African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP. A9 LFN 2004, Article 10(1) provides that "*Every individual shall have the right to free association provided that he abides by the law*". 10(2) *Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.*

As mentioned earlier Section 1, Trade Unions Act CAP. T14 LFN 2004 defines a trade union, "*any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers*", it has been argued that this section is the basis for recognising the right of contract workers to unionise, but the clear wordings of the section do not support that contention because "*temporary or permanent*" as used here refers to the longevity of that combination (trade union) of workers or employers for purposes of regulating terms and conditions of employment of workers, and not the nature of the workers' employment.

Also Section 25(1) Trade Unions Act CAP. T14 LFN 2004 on Recognition (which is usually relied upon by trade unions in their requests to management for recognition) has been largely taken out of context, it states as follows: "*For the purposes of collective bargaining all registered Unions in the employment of an employer shall constitute an electoral college to elect members who shall represent them in negotiations with the employer*". The recognition is with respect to the right of the elected members to represent workers in negotiations with the employer; it does not mean that every request for recognition must be automatically acceded to.

Non-compulsion/propriety of membership
Similarly a worker cannot be compelled to join a trade union if he is of the opinion that its membership would not best serve his interests.

Section 4 of the Trade Union (Amendment) Act 2005 states as follows:

> "*(4) Notwithstanding anything to the contrary in this Act, membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member*".

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Correspondingly Section 9(6)(a)&(b) Labour Act CAP. L1 LFN 2004 contains similar provisions viz:

9(6) No contract shall-
(a) make it a condition of employment that a worker shall or shall not join a trade union or shall or shall not relinquish membership of a trade union; or
(b) cause the dismissal of, or otherwise prejudice, a worker-
(i) by reason of trade union membership, or
(ii) because of trade union activities outside working hours or, with the consent of the employer, within working hours, or
(iii) by reason of the fact that he has lost or been deprived of membership of a trade union or has refused or been unable to become, or for any other reason is not, a member of a trade union.

These provisions largely mirror Article 2(a) & (b) International Labour Organisation Convention 98.

The major qualification to this right of being able to join a trade union however is that the trade union must be the appropriate/relevant union to the industry in which the worker is employed; in *Sea Trucks (Nigeria) Limited v. Pyne (1999) 6 N.W.L.R (Pt 607) 514* the Court of Appeal held that a worker in a sea transportation company could not properly belong to Nigeria Union of Petroleum and Natural Gas Workers as Sea Trucks Limited was a shipping company and not an oil & gas company, hence the proper union was Nigerian Union of Seamen and Water Transport Workers.

Thus in such instances if the company in question could not properly be said to be in the sector, an attempt to join the industry union would be inappropriate and can be the basis of termination of workers' employment if their purported union activities have adverse effects on the company's operations; the affected company would also lodge a complaint with the Ministry of Labour that its workers are seeking to join an inappropriate trade union, and/or seek clarification therefrom, see *Sea Trucks (Nigeria) Limited v. Pyne (supra)*.

Overtime a number of casualties were recorded on both sides of the divide, with many employees losing their jobs and several employers having disruptions to their business operations, in addition to expending time/resources defending law suits.

Globalisation and Best practices
With the increase in globalisation, a common feature recorded all over the world has been the attendant mobility in labour hence a rise in the use of contract staffing to meet employment needs.

There are however several benefits to employees/employers for the use of contract staffing, and these are as varied as there are employees/employers.

Global best practices have led other climes to the enunciation of, for example, the EU Directive 2008/104/EC of the European Parliament and of the Council on 19th November 2008 on Temporary Agency Work; note however that the directive has a 30-year chequered history, prior to enactment.

In Nigeria, matters seemingly came to a head with several complaints to the Federal Ministry of Labour & Productivity on non-adherence to rulings and court judgments, thus on 13th August 2010 the Honourable Minister of Labour & Productivity inaugurated a panel whose terms of reference included making recommendations on several issues *inter alia* casualization of labour in the oil & gas industry, stopping their exploitation and guaranteeing their workplace rights.

Subsequently Guidelines on Labour Administration Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector, dated 25th May 2011 was issued by the Honourable Minister of Labour and Productivity.

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