

A Critique of Collective Bargaining Policy in Nigeria from Colonial Era till date

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Abstract

This study focused on critical evaluation of collective bargaining policy in Nigeria from historical perspective. The main objective of this study was to evaluate the structure and system of collective bargaining in Nigeria since the colonial period. The study adopted a conceptual analysis and theoretical explanation of the origin, development, weakness and state involvement in collective bargaining policy in Nigeria through a critical review of extant literatures. The study revealed that collective bargaining as machinery for wage determination in public sector supposed to prevent the unilateral imposition of wages on the union by government and vice versa as the case may be. However, it is not often used by the Nigerian government to determine wages rather government relied more on wage commissions, wage tribunals, and civil services administrative rules to determine wages in the public sector. Therefore, collective bargaining appears to be ineffective bargaining machinery in Nigeria is weak because of government direct involvement in collective bargaining machinery in Nigeria is weak because of government direct involvement in collective bargaining process to review, amend, even absolutely reject collective agreement reached between unions and government representative at the bargaining table. The study, therefore, concluded that collective bargaining is not an effective institution within the context of employment relations in Nigeria.

Keywords: Employment Relations, Collective Bargaining, Trade Unions, Colonial Authority

1. Preamble

Neo-classical economists' analyses of wage determination through the competitive labor market did not take into account the very important fact, that many labor markets are not competitive. There are considerable presence of distortions caused by non-competitive institutional elements such as trade unions, and collective bargaining (Fajana; 2000). The alterations of the labor market can bring about the imposition of the unions on firms, or the firms on union. But an alternative approach which involves both the unions and firms is what is referred to as collective bargaining (Fajana, 2000). The success of collective bargaining depends on the strength of collectivity of workers, and the aggregation of several individuals' needs into a single programme of demands.

However, the unions' objective is to ensure through collective bargaining higher wages and better conditions of work. As Freeman and Medoff (1984) opined that; "Trade unions bargain for higher wages, equal pay, fair working conditions, or employment protection"

2. Development of Collective Bargaining Policy in Nigeria

In providing an explanation on the role played by collective bargaining in the public sector wage determination, there is a need to explore its history and development in Nigeria from 1937 till date. The late development of wage employment accounts for the late development of trade union and subsequently other institutions and processes in industrial relations in Nigeria such as collective bargaining (Fashoyin; 1992, Fajana; 2000, Otobo; 2013).

Fashoyin (1992) noted that industrial relations in Nigeria began in the public sector as a result of the near-absence of a private sector organization in Nigeria. This accounts for late development of wage employment. Wage employment came with industrialization and commercialization that started in the 1940s which were introduced in the colonial public sector (Yesufu; 1984).

In his view ,Otobo (1986) raised four valid observations concerning origin and development of wage employment; (i) that a colonial but largely urban-based administrative framework was established in 1861 when Lagos was annexed by Britain which, coupled with flourishing commercial activities , served to produce a wage employment; (ii) that the actual military conquest of Nigeria spilled over to the second decade of the twentieth century, so that an effective administrative apparatus only became operational during the 1920s and 1930s. This led to the creation of a nascent national proletariat , since as many as 227,451 were reported to be employed in the public sector alone by 1936; (iii) that the late introduction of currency notes and coins as the medium of exchange , as well as the extensive use of forced labour and convict labour, meant that insufficient attention was paid to the payment of regular wages until the 1920s, when the administration's own employees (Europeans & Africa) were sufficiently organized to press for better terms of employment; (iv) that racial discrimination and rivalry , as lopsidedly reflected in pay differentials and fringe benefits , such as orbits of coercive comparisons as African employees pushed for equal treatment.

Otobo (2007) opined further that the absence of wage employment and the pattern of work relations account for the late development of trade union in Nigeria, and subsequently collective bargaining. The origin of collective bargaining can be traced to the legal recognition of trade unions in 1938 in the public sector. As noted by Fashoyin (1992) that private sector companies in Nigeria were not unionized until 1946. In all, the history of collective bargaining in Nigeria can be linked with legal recognition of trade union in 1937.

As argued by Fashoyin (1992) "in any event, the earliest evidence of joint negotiations or joint consultation in the country was in 1937 when the colonial government established provincial wage committees throughout the country"

The function of the wage committee was to undertake periodic wage review for daily paid employees in the public sector. The committee composed mainly of government officials and this make wage determination a unilateral decision (Yesufu; 1984) In 1942, due to agitation and dissatisfaction among workers, the colonial government expanded the committee to include workers representatives (Yesufu; 1984). Even though the roles of wage committees were mainly advisory, Fashoyin (1992) asserts that the inclusion of workers representatives in the provincial wage committees could be regarded as the origin of collective bargaining in the Nigerian public sector (Fajana; 2000) Fundamentally, the provincial wage committees were used as political instruments of the contending political parties of the period (Fashoyin; 1984). With the general strike of 1945 and the growing disenchantment of trade unions , it became apparent that the provincial wage committees were used by daily paid workers who represented only a small fraction of the total workforce in the public service. And in the case of established staff, there was no machinery for bipartite wage determination. For these reasons, the Whitely Council system was introduced 1948, which had been in used in the United Kingdom.

The recommendation for its establishment was contained in two reports by Mr. Cowan, of the British ministry of labour and national service. Basically, there were three councils catering for senior, junior staff and technical employees. Each council functioned as a negotiating as well as dispute-settling machinery in the public service. Although Whitleyism was structurally a traditional bargaining machinery covering federal, state, and sometimes local government employees (Fashoyin; 1992) but the system failed in many government establishments (Otobo; 2007).

Yesufu (1962) and Fashoyin (1992), observed that Whitleyism failed in the public sector. This is because the machinery was used as consultative bodies rather than bargaining machinery. Again, there were problems of representation on union sides, indecision, red-tapism and lack of government support.

Furthermore, they were rendered useless because the decisions on wages and conditions of employment were made by semi-political wage commissions, particularly for public employees. The provincial wage committees were introduced initially to determine the rate of pay of daily-paid employees in the public sector and were generally made up of government representatives alone. The scope and structure of the committees were substantially reviewed in 1942 to covered salaried employees and their representatives.

Fashoyin (1992) opined that this marked the beginning of collective bargaining in the public sector. The provincial wage committee achieved minimal success because the policy conflicted with civil service practices and the sovereign principle. Moreover, employees' representatives on the committee made little impact on the outcome of committees' deliberations, for lack of basic tenets of the collective relations in public employment (Fashoyin; 1992).

3. The General Strike of 1945 and Whitley Council (1948)

The general strike of 1945 and the growing desire of the workers to participate in the determination of their conditions of employment necessitate the government to introduce the Whitley Council system in 1948. The Whitley system comprised three councils -1, 2 and 3 respectively for senior, junior and industrial employees respectively. The National Public Service Negotiating Councils is subdivided into three councils.

Council I: Used by the management (official) side represented by the Establishments Departments of the Federal and State Governments. On the workers' (staff) side the Association of Senior Civil Servants of Nigeria (ASCSN) whose members are drawn from grade levels 07-14 at the Federal and State Civil Services. The ASCSN approximates the senior staff association in the private sector.

Council II: Used by the management (official) side. This is made up as in council I above. 'On the staff side, there are two unions NCSU (Nigerian Civil Service Union) and NUCSTSAS (Nigerian Union of Civil Service Typists, Stenographic and Allied Staff). Employees covered by this council are drawn from the clerical, secretarial, executive and non-industrial cadres usually on grade levels 01-06.

Council III: Used by the management side as in councils 1 and 2 above. On the staff side are five unions namely:

- i. The Civil Service Technical Workers Union of Nigeria (CSTWUN)
- ii. Printing and Publishing Workers Union (PPWU)
- iii. National Association of Nigerian Nurses and Midwives (NANNM)
- iv. Medical and Health Workers Union
- v. Customs Excise and Immigration Staff Union (proscribed in 1988).

The functions of the councils include:

- i. Provision of the best means for utilising the ideas and experience of the staff;
- ii. Means of securing to the staff a greater share in, and responsibility for the determination and observance of the conditions under which their duties are carried out;
- iii. Determination of the general principle governing conditions of service e.g. recruitment, hours of work, promotion, discipline tenure, remuneration and superannuation.

A cursory examination of the above function suggests that it demonstrate the principle of bilateral relations and also an indication of the commitment of the colonial government to have a constant dialogue over employment conditions with the employees.

This is an indication of paternalistic process of government in labour relations in the public sector by which both parties according to Fashoyin (1992) misunderstood the purposes and limits of the Whitley Councils. He emphasized further on the first function of the council that

while any group of employees would welcome an employers that seeks its views on methods of improving management process, that does not necessary create a favourable atmosphere for labour-management relationships, more so when it is realised that the councils were empowered to discuss general principles with respect to employment issues, but no individual cases or grievances were allowed to be discussed.

It is very important to note that in the public sector collective bargaining decisions of the councils were to be reported to the government and thereupon shall become operative subject to the overriding authority of the head of state and subject to the approval of the legislature where necessary.

In the public sector collective bargaining, there exists a chain of decision-making process which may originate from the negotiating table but goes on to the various governmental agencies up to the highest levels in the public authority.

The ultimate law making authority (legislature) was often responsible for finalising the decisions of the whitely councils in most cases. Fashoyin noted that this unique method of labour management dialogue and decision-making clearly makes the outcome of negotiations completely different from the private sector. He opines further that in the private sector, the nature and scope of union-management relations were constitutionally restricted.

4. Critical Evaluation of the Whitley Council

Fashoyin (1982), on two accounts argued that two major factors inhibited the performance of the Whitley councils in the public sector. The first was the unfavourable responses of the civil servants to trade unionism and what it sought to achieve. The first and the largest union in the public sector, the Civil Service Union (CSU) was organised in 1912 mainly in response to the organization of similar bodies in other west African colonies (Yesufu;1984, Fashoyin ; 1992). As noted by Fashoyin the CSU was not a protest organization for it was not founded on the basis of any felt deprivation. Indeed, the employment conditions of the civil servants of the period were the best available. Furthermore, employees in the civil service enjoyed a relative security of employment over those in private sector and then compensation was in most cases, comparatively better than what obtained in the private sector.

The Association of Senior Civil Servants also suffers the same fate as the CSU. The Association of Senior Civil Servants was expected to use the Whitley council 1 for collective bargaining purposes. This class of workers represents the middle level in the civil service grade and over time they move to the highest grade. The civil servants covered by council 1 and 2 which are mainly white collar workers see the civil service method ofdetermining conditions of employment as a good substitute for collective bargaining. As observed by Fashoyin (1992,) petitions, deputation and lobbying were preferred to negotiation.

The unfavourable legal environment and public attitude towards unions in government, especially as regards the use of strikes, were detrimental to collective bargaining. The second inhibiting factor affects the blue collar worker represented by council 3. The second factor was the organizational unpreparedness of the workers' unions in the public sector which make the operation of collective bargaining to be a precarious machinery. Unlike the Association of Senior Civil Servants and the CSU respectively represented by all potential middle –level and junior civil servants in the civil service, there was no solidarity among blue collar workers.

The blue collar workers did not enjoy much of the comfort of the civil service employment. They operate in labour market which is fairly different from that of the white collar workers. Because of this, they were militant and more responsive to trade unions tactics than the workers in councils 1 and 2.

As observed by Fashoyin (1992), the public sector unions up to the mid-1970s were not only proliferated into ineffective units, they lacked the resources, both financial and material, to pursue their objectives to a beneficial end.

Therefore, the union that would have used the Whitley council were structurally deficient to use it to advantage and thereby rely on government paternalistic treatment of their grievances. In this regard, Fashoyin (1992) argued that many writers have demonstrated that unions in Nigeria have constantly preferred collective bargaining. According to him this assertion only explains the true feelings of private sector unions. In the 1970s, most unions in the public sector have customarily embraced the formation of periodic semi-political wage commissions whose awards have, by and large, been accepted by the unions and their members

The third inhibiting factor was the lack of commitment to the principles upon which the Whitley council was based. The representatives of each side were inexperienced and unfamiliar with matters relating to employeremployee relations. And lastly, Fashoyin (1992) noted that the most damaging blow to the principle of collective bargaining as embodied in the Whitley council was the concomitant use of semi-political method of wage determination through special commissions or tribunals. He went further to say that the wage commission system does not bear any semblance to neither the principle of Whitleyism nor the declared official stance of the government on wage determination through collective bargaining. It is important to note that throughout the 1970s, bipartite or tripartite bargaining hardly occurs in the public sector.

It was only in 1981 under the Shagari civilian administration that a tripartite wage bargaining took place following the general workers strike of May 1981 organized by the NLC occasioned by the demand for wage review. This led to the minimum wage of N125. Damachi led tripartite minimum wage committee inaugurated by the Babangida regime on January 30, 1990; which was manipulated by President Babangida who determined the minimum wage of N250. The constitutional Government of Obasanjo, like its predecessor the Abubakar regime, also avoided any tripartite collective bargaining in the fixing of the 1999 national minimum wage of N7, 500. And recently the fixing of N18, 000 national minimum wages which was passed into Law in 2011 was not based on collective bargaining.

The government merely consulted with officials of the NLC without carrying on board private sector employers and state governments who were to implement the wage awards at the state and local government levels. This exclusion generated serious conflicts at those levels as state governments expressed inability to pay, and consequently conceded to various shades of collective bargaining and agreements.

It should be noted that the preference of State for wage commissions was inherited from the colonial administrators. Collective bargaining in the private sector is somehow different to the process in the public sector. Otobo (2007) observed that collective agreements are industry-based though supplemented by in-plant or domestic negotiations. In the oil and gas sector domestic negotiation are important with Shell-BP as the pacesetter.

As Otobo noted further that employers in the oil and gas sector do compare notes on terms and conditions of employment. In the Food, Beverage and Tobacco sector, the attempts is directed more at achieving uniform rates, narrowing differences in rates and thus taking labour cost out of competition. In the oil and gas sector there has always been tension and grievances over disparity in the private and public sector rates (Otobo, 2007). This is because within the public sector management of Nigerian National Petroleum Commission (NNPC Group) does not have the power to negotiate directly with the representatives of workers.

In addition the private sector oil companies have direct control over their finances and so can negotiate and determine directly with the unions, terms and conditions of employment. A major weakness of collective bargaining process in the private sector as noted by Otobo (2007) is the absence of collective agreement enforcement in a court of law. This is evident in increased incidence of abandonment of agreements by employers especially in the public sector. Since government as an employer and arbiter failed to demonstrate good industrial relations in the public sector by failing to honour most collective agreement, the private sector employers are increasingly following the foot step of government as an employer of labour in the country

5. State Involvement and Collective Bargaining Policy in Nigeria

Within the public sector in Nigeria collective bargaining is not effective as machinery for wage determination. Ghosi (1989) averred that within the context of Nigerian industrial relations, collective bargaining is a form of direct intervention. He further noted that the Nigerian government has been directly appointing wage commissions in the determination of wages and salaries of public sector employees.

In the Nigerian system of industrial relations, there is direct intervention of the government in the collective bargaining process (Ghosi; 1989). This was also evident in the explanation of Otobo (2007) that the "government is heavily involved in regulating collective bargaining despite its official position of being fully in support of free collective bargaining, a policy it declared publicly in 1954"

The Nigerian government as an employer has been determining public sector terms through the establishment and functioning of wages and salaries commission (Otobo;2007). To achieve this objective the government established salaries and wages commission in order to strive to isolate the demonstration effect of private sector terms of employment so as to keep its own wage bill down (Otobo, 2007). It is pertinent to note that there were issues and challenges unresolved that have surfaced in public sector bargaining and wage determination (Otobo, 2007).

Collective Bargaining involves the employer and its representatives on the one hand, and employees and their representatives on the other (Otobo, 2013). In practice, within Nigerian public sector, employer is not immediately visible. The public service commission and the ministry of establishment, among others, have a hand in the recruitment and discipline of public servants and yet have nothing to do with the day-to-day management of the main civil service and parastatals (Otobo, 2007). This constitutes hindrance to the effectiveness of collective bargaining in the public sector.

Fashoyin (1992) observed that conflict of interest occurs among parties to collective bargaining in the public sector. Similarly, in the observations of Yesufu (1984) and Otobo (2007), government is represented by projection of management while workers are represented by unions. This alone is a problematic situation (Otobo, 2007). According to him, no management of a ministry is empowered to negotiate terms and conditions of employment.

As Yesufu (1984) and Ghosi (1989) observed the problem of differentiating the parties to collective bargaining is rather too cumbersome. The conditions of work as negotiated by the unions' member will affect directly the conditions of management group. Therefore, the civil servants may be bargaining against themselves at the long run. Ghosi (1989) supporting the stand of Yesufu (1984) opine that collective bargaining in the public sector lacks aggressive posturing required for effective bargaining because the top civil servants perceived themselves as the government. Therefore, the competencies of the parties to agreement reached during negotiation in the public sector become difficult to implement.

Otobo (2007), observed that in reality, the terms of the agreement may not go directly to the government. The most senior official in the affected ministry may pass the first judgment on the terms and may decide that the issue lacks merit to justify forwarding to the government and of course no need to clear terms with the ministry of establishment or public service commission. In this regard, the employer is not immediately visible in the bargaining process (Otobo; 2007), Yesufu (1984).

The issue of mandate for and during negotiations brings more clearly the consequences for collective bargaining in the public sector of the questions employers and employees are in day-to-day relations at work (Otobo;2007). The hierarchy of chain of decision makers and approving authorities tends to limit the mandate and empowerment of negotiator representing the employer and subsequently result in lack of respect for the outcome of the negotiation process by the ultimate employer in the public sector (Otobo;2007)

The ultimate employer in the public sector has the right to accept, modify or even reject the terms of agreement reached (Fashoyin; 1992). This may undermined the goodwill and encourage the growth of distrust and adversarial relations (Otobo; 2007). In addition, the public sector employer at all level may refuse to negotiate, and when forced by circumstances or out of rational choice to do so, they resent the counter-offers and demand of the other parties, and also maintains the right to have a final say as the state/government (Otobo, 2007). However, the government derived legitimacy from doctrine of sovereignty, which rest on the idea that government represent sovereign power and as such only the government could determine the terms and conditions of employment in the public sector including wage issues (Ghosi; 1989, Fashoyin; 1992, Otobo; 2007). This was also observed in the Morgan commission (1964, para 103) thus "*it appears that in dealing with their employees, the government are unduly conscious of their prerogative to determine the levels of remuneration and condition of service, irrespective of their acceptability to the workers"*

For these reasons, the government usually reneges or goes back on agreement without feeling any great sense of responsibility for subsequent conflict situations or that breach of agreement is sanctionable (Otobo, 2007).

6. Challenges of Public Sector Wage Bargaining in Nigeria

Within the Nigerian public sector integrity issues is very critical but without cognizance. This explains why collective agreement reached is not respected especially by the Nigerian government. Otobo (2007) noted that bargaining process is characterized by blatant disregard for agreement reached and procedures are dominated by conflicts and low trust relations between the parties involved in collective bargaining. In support of Otobo (2007) stand on these issues Aiyede (2002), Adesola (2004) observed that public sector wages have been set through government fiat or quasi- political wages commissions or tribunals largely set up by the government. According to them, the implementation of agreement on wages, reached through the machinery for nationwide negotiation that has predominated in the public sector , has often been chaotic, attended by controversies , agitations and widespread strikes, costing the country enormous resources in terms of man-days lost. Similarly as observed by Fajana (2018) that The current pay policy in Nigeria confers on the NSIWC, the central role of regulating the salary administration system in the Federal Public Service, except in the case of remuneration of officers covered by the (Certain Political, Public and Judicial Office Holders (Salaries, Allowances, etc) Act.In performing these functions assigned to it by law, NSIWC periodically carries out pay surveys to establish pay differentials between the public and private sectors. Sometimes, it is done to establish the differentials between the self-funded agencies and the treasury-funded agencies in the public sector. For

32 | A Critique of Collective Bargaining Policy in Nigeria: Fajana et al.

instance as noted by Fajana (2018) There is always a provision in the enabling laws of many agencies which give their Boards the power to determine their staff remuneration. They, therefore, argue that they don't have to obtain any approval from Government to implement such board-determined remuneration packages despite established agreement between Unions and government. Fajana (2018) observed further that the boards of most of the agencies await the conclusion of collective bargaining involving agencies on harmonized salaries and the relevant circular that conveys the approved level of adjustment. They, then, without regard to the fundamental issue of the base salary that yielded the percentage mark up, apply same on their more robust pay packages with the excuse that Government approved the increase for everyone. Thus they exacerbate the already yawning pay differentials. The result is always a reckless bloating of the remuneration package in such agencies and a flagrant distortion of established pay relativities in the public service. In turn, these serve as lethal charges to the fuse of agitation for further wage review in the disadvantaged organizations.

In most instances collective agreements are not restricted to those workers whose union representatives entered them. They are cloned and operated by some others on the excuse that all the workers involved belong to the same union. For example, a collective agreement entered into by the Nigerian National Petroleum Corporation Management and the local chapter of NUPENG and PENGASSAN can be adopted wholly by the Petroleum Equalization Fund (PEF), PTDF, PPPRA, DPR etc. without regard to the peculiarities of each agency which ought to be evaluated at the bargaining table and remunerated differently. It would appear that there is a need to clearly demarcate/define the coverage of each bargaining unit (even as an item on the agenda of the negotiating parties) to minimise this trend.

Salary differentials and salary relativities rather than cost of living have tended to drive the demand for wage adjustment at the bargaining table which tends to make the exercise of wage adjustment perennial.

The present minimum wage policy that legislates, a common uniform minimum wage floor across the country was made acrimonious by the insistence of union leaders that its implementation should result in across-theboard salary adjustment for everyone. This position contrasts with the evidence from practices across the globe. Even the objection by some state governments to the federally-enacted minimum wage is only one option. In its simplest form, a minimum wage act simply prohibits employers of labour from hiring workers for less than a given hourly, daily, weekly or monthly minimum wage.

Another crucial issue in the public sector wage bargaining is the deregulation of collective bargaining. In reality, as noted by Otobo, there has been no deregulation of collective bargaining. In the public sector no ministry or parastatals has the autonomy to negotiate binding terms with employees. For instance the attempts by Academic Staff Unions of Universities (ASUU) to negotiate with individual university councils gravely undermined by circular to the universities authorities imposing an upper ceiling in increases of basic salaries; it was a centralized system and ASUU responded by opting to negotiate directly with the approving authority. Similarly, NNPC hands over all proceeds from sale of crude oil to the federal government and thus has no independent finances to operate in the manner of Shell or Total or Chevron, Texaco (Otobo;2007).

7. Recent Development in the Nigeria Public Sector Wage Bargaining

However, in most cases, the use of this wage machinery drives the government to use its prerogative to amend the collective agreement to its advantage. As a consequence, there are reactions from trade unions in the form of protests, strikes and demonstrations. In 2014, the Academic Staff Union of Universities (ASUU) embarked on six months strike action to push home its grievance on non-implementation of the 2009 collective agreement with the Federal Government of Nigeria. Similarly, the National Union of Research Institutions (NURI) went on an industrial strike for over a year to protest the non-implementation of the 2008 agreement on the condition of work, remuneration and unpaid allowances (Elegbede, 2016).

Historically, since the colonial era collective bargaining as machinery for wage determination in public sector appears to prevent the unilateral imposition of wages on the union by government and vice versa as the case may be. However, it is not often used by the Nigerian government to determine wages. Therefore, collective bargaining appears ineffective as a potent tool for wage determination in Nigeria's public sector.

For instance, in the year 2013, a collective agreement was reached between the Federal Government of Nigeria and the Nigeria Medical Association on the new Consolidated Medical Salary Scale. This was done without consultation with the various state governments. While Federal government implemented the new salary scale Lagos

State Government refused to do so on the ground that it will cost 1.8 billion Naira to implement. Most state governments, in the same vein, drew from the example of the Lagos state government because the new salary scheme was conceived as a huge burden they are not prepared to carry. This account, for the industrial actions embarked upon by Medical Doctors in Lagos State for over seven months (Oyebade, 2015)

Similarly, in the year 2000, some state governments failed to implement the minimum wage endorsed by the Federal Government leading to industrial conflict. The industrial actions began with workers in the employment of Lagos State Government and the strike actions spread to over twelve states of the federation. The reactions seem to affect the morale and productivity of workers in the public sector. The low morale can generate certain attitudes such as moonlighting, fraud and corruption which in the long run may affect the productivity of the workforce in the public sector.

8. Conclusion

This study revealed that collective bargaining machinery lacks rigorous effectiveness in the Nigeria Public Sector because of government regulations and intervention. The federal government reserved the rights to accept, amend or reject collective agreement reached between representatives of government and trade unions which seriously undermined effective use of collective bargaining as machinery and process in wage determination and condition of services of the civil servants.

The challenges facing collective bargaining posed some threats to effectiveness of public sector administration because workers in that sector tends to increasing negative reactions and covert expression of grievances in response to poor conditions of work, pay and remuneration.

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