TRADE UNIONS (AMENDMENT) ACT 2005 AND THE RIGHT TO STRIKE IN NIGERIA: AN INTERNATIONAL PERSPECTIVE*

Abstract

The right to strike is an integral part of the right of workers to associate with other persons to form or join trade unions for the advancement or protection of their interests. It is the most potent weapon at the disposal of workers for compelling collective bargaining and enforcing collective agreements. Without it, workers will be at the mercy of employers who may impose low wages and poor conditions of employment contrary to the terms and conditions of employment agreed between them. This right is, however, not absolute. It is subject to national laws and regulations which may impose severe limitations which, in some cases, may amount to an outright prohibition of the right to strike. This paper examines the effect of the Trade Unions (Amendment) Act 2005 on the right to strike in Nigeria. It examines the rationale for the ban on strikes in essential services. It also examines the conditions which workers who are not engaged in the provision of essential services must fulfil before they can embark on lawful strikes. These conditions are examined in the light of international labour standards. The paper also offers suggestions for reform.

Introduction

The right to strike is an integral part of the freedom of every citizen to associate with others particularly to form or join a trade union of his choice for the protection of his interests, which is entrenched in section 40 of the *Constitution of the Federal Republic of Nigeria 1999*. Part of this freedom is the right of every citizen to give or withdraw his services by giving notice to his employer in accordance with the terms of his employment. A denial of this right will amount to forced labour, which is a violation of section 34 of the *Constitution* except in justifiable circumstances.

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In the English case of *Crofter Handwoven Harris Tweed & Co. v. Veitch*[1] Lord Wright stated that where the rights of labour are concerned, the rights of the employer are conditioned by the rights of the workmen to give or withhold their services. "The right to strike is an essential element in the process of collective bargaining."

In *Union Bank of Nigeria Plc v. Edet*[2] Uwaifo JCA recognized the right to strike as a collective weapon for enforcing collective agreements when he said:

It appears that whenever an employer ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the union and the employer and ultimately to a strike action should the need arise and it be appropriate.[3]

This paper examines the effect of the *Trade Unions (Amendment) Act 2005* on the right to strike in Nigeria. It examines the rationale for the ban on strikes in essential services and the conditions which workers who are not engaged in essential services must fulfil before they can embark on lawful strikes in Nigeria. These conditions are examined in the context of international labour standards and suggestions are made for reform.

Conditions for a Lawful Strike

The conditions which workers must fulfill before embarking on a lawful strike in Nigeria are contained in section 31(6) of the *Trade Unions Act LFN 2004* as amended by the *Trade Unions (Amendment) Act 2005* and sections 4, 18 and 42 of the *Trade Disputes Act LFN 2004* as amended.

Section 31(6) of the *Trade Unions Act*, as amended, provides as follows:

31(6) No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a trade dispute unless-

- ***(a) the person, trade union or employer is not engaged in the provision of essential services;***
- ***(b) the strike or lockout concerns a labour dispute that constitutes a dispute of right;***

1. (1942) 1 All ER 142 at p. 159.
2. 1993) 4 NWLR (Pt. 287) 288.
3. *Ibid*, at p. 298. See also *New Nigeria Bank Plc v. Egun* (2001) 7 NWLR (Pt. 711) 1 at pp. 18-19.

(c) the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer;

(d) the provisions for arbitration in the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004 have first been complied with; and

(e) in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

From the above provisions, there are four important *conditions* that workers in Nigeria must fulfill before they can embark on a lawful strike. These are:

1. The workers and their union must not be engaged in the provision of *essential services*;
2. The strike must be in contemplation or furtherance of a labour dispute that must constitute a *dispute of right*;
3. The provisions for *arbitration* in the *Trade Disputes Act, Cap T8, LFN 2004* must be complied with;
4. The union must have conducted a *ballot* at which a simple majority of all registered members voted to go on strike.

Strikes in Essential Services

Section 31(6)(a) of the *Trade Unions Act*, as amended, requires as one of the conditions for a lawful strike that the workers and their union must not be engaged in the provision of *essential services*. The effect is that workers engaged in the provision of essential services are restrained from organizing or participating in strikes. The First Schedule to the *Trade Disputes Act,* as amended, defines *essential services* as:

1. The public service of the Federation or of a State which shall for the purpose of this Act include service in a civil capacity, of persons employed in the armed forces of the Federation or any part thereof, and also, of persons employed in an industry or undertaking (corporate or incorporate) which deals or is connected with the manufacture or production of materials for use in the armed forces of the Federation or any part thereof.

2. Any service established, provided or maintained by the Government of the Federation or a State, by a Local Government Council, or any municipal or statutory authority, or by private enterprise -

- ***(a) for, or in connection with, the supply of electricity, power or water, or of fuel of any kind;***
- ***(b) for, or in connection with, sound broadcasting or postal, telegraphic, cable, wireless or telephonic communications;***
- ***(c) for maintaining ports, harbours, docks or aerodromes, or for, or in connection with, transportation of persons, goods or livestock by road, rail, sea, river or air;***
- ***(d) for, or in connection with, the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or any of the following public health matters, namely sanitation, road-cleaning and disposal of night-soil and rubbish;***
- ***(e) for dealing with outbreak of fire.***

3. Service in any capacity in any of the following organizations-

- ***(a) the Central Bank of Nigeria;***
- ***(b) Nigeria Security Printing and Minting Company Limited;***
- ***(c) any body corporate licensed to carry on banking business under the Banks and Other Financial Institutions Act.***[4]

The concept of *essential services* connotes the idea that certain services are of fundamental importance to the community that their disruption will have harmful consequences. The public interest in uninterrupted operation of these services, therefore, outweighs the consideration that workers should be free to withdraw their labour, and that special provisions should apply to them, either preventing industrial action being taken at all or imposing restrictions upon its conduct.[5]

In the past, Government has made attempts to impose restrictions on workers in essential services from taking industrial action, which is consistent with ILO Convention 98 concerning the *Right to Organize and*

4. See also *Trade Disputes (Essential Services) Act LFN 2004,* s. 9(1)
5. See Gullian S. Morris, "The Regulation of Industrial Action in Essential Services" (1983) 12 ILJ 69-83.

Collective Bargaining which excludes public servants engaged in the administration of the State.[6]

However, it is not the intention of the Convention that the definition of public servants excluded from the mainstream of industrial relations practices should be extended to cover all areas of government operations and private enterprises engaged in the provision of broadcasting, postal, transportation, waste disposal and banking services.

The Freedom of Association Committee of the Governing Body of the International Labour Organization defines "essential services" in its strict sense as "services the interruption of which would endanger the life, personal safety or health of the whole or part of the population."[7]

The Committee listed the following as essential services: the hospital sector; electricity services; water supply services; the telephone service; the police and armed forces; the fire-fighting services; the prison services; the provision of food for pupils of school age and the cleaning of schools; and the traffic control.[8]

The Committee also decided that restrictions on the right to strike in essential services should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.[9]

The *Trade Unions (Amendment) Act 2005* did not define *essential services*. Section 31(9)(b) simply provides that *essential services* shall be as defined in the First Schedule of the *Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria, 2004*. In addition, the Act did not make any provision for speedy conciliation and arbitration of disputes in essential services. Section 31(8) simply provides that the provisions for arbitration in the *Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria,*

6. See ILO Convention 98 of 1949, Article 6.
7. See *Digest of the Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* 5th (revised) edition (Geneva: International Labour Office, 2006) at p. 116 paragraph 564.
8. *Ibid*, at p. 120, paragraph 585.
9. *Ibid*, at p. 122, paragraph 596.

2004 shall apply in all disputes affecting the provision of essential services and the determination of the National Industrial Court in such disputes shall be final.

In South Africa, persons engaged in essential services are precluded from participating in strikes but, as an alternative to participation in a strike action, such persons are compelled to refer their disputes to arbitration.[10] This is in line with an internationally recognized principle that industrial actions are limited in respect of essential services, but it is required that such limitations should go hand-in-hand with speedy conciliation and arbitration procedures as an alternative to protest action.[11]

It is submitted that the absence of provisions for speedy conciliation and arbitration of trade disputes in essential services is most unsatisfactory. Only such provisions could compensate for the ban on strikes in essential services.

Disputes of Rights versus Disputes of Interests

Section 31(6)(b) of the *Trade Unions Act*, as amended, also requires as a condition for a lawful strike that the strike must be in contemplation or furtherance of a *labour dispute* that must constitute a *dispute of right*. The Act did not define *labour dispute*, but the term refers to disputes between workers and employers both at the individual and collective levels.[12]

The implication is that strikes are lawful only in contemplation or furtherance of a labour dispute. This excludes disputes between workers and workers such as intra-union and inter-union disputes from been a lawful ground for industrial action as was the case when two factions of the National Union of Petroleum & Natural Gas workers (NUPENG) threw the oil and gas sector into a terrible industrial stalemate, which in turn threw the entire national economy into a mess.[13]

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10. See *Labour Relations Act 1995,* ss. 65(1)(d) and 74(1).
11. See Convention 98 on the Right to Organize and Collective Bargaining. See also M. Forde, "The European Convention on Human Rights and Labour Law" (1983) 31 *Am. Journal of Comp. Law*, p. 301.
12. See Abel K. Ubeku, *Industrial Relations in Developing Countries: The Case of Nigeria* (London: MacMillan Press, 1983) pp. 157-158.
13. See G. G. Otuturu, "The Right of Workers to Strike in Nigeria: A Critical Appraisal" *Nigerian Journal of Labour Law and Industrial Relations* Vol. 3 No. 2 (2009) pp. 37-48 at p. 43.

The requirement that the labour dispute must constitute a *dispute of right* has brought into sharp focus the dichotomy between disputes of right and disputes of interest. Apparently, the effect of section 31(6)(b) of the Trade Union Act is that disputes of interest are no longer recognized as legitimate grounds for strikes. Section 31(6)(c) reiterates the concept of a *dispute of right* as "a dispute arising from a collective and fundamental breach of a contract of employment or collective agreement on the part of the employee, trade union or employer."

However, the definition of *disputes of right* in subsection (9)(a) of section 31 of the Act has introduced some confusion into industrial jurisprudence. The subsection defines *disputes of right* as "any labour dispute arising from the negotiation, application, interpretation or implementation of a contract of employment or collective agreement under this Act or any other enactment or law governing matters relating to terms and condition of employment."

It is submitted that the statutory definition of *disputes of right* as opposed to *disputes of interest* is all-inclusive. By including disputes arising from the "negotiation" of a contract of employment or collective agreement in the definition of disputes of right, the legislators have defined disputes of right to include disputes of interest.

Disputes of right are generally distinguished from disputes of interest in the sense that *disputes of right* are concerned with the interpretation and implementation of existing rights arising from the individual contracts of employment or collective agreements or statutes. *Disputes of interest*, on the other hand, are concerned with the negotiation of new rights or the variation of contracts of employment or collective agreements.[14]

Disputes of right are also known as grievance disputes, legal disputes or judicial disputes, while disputes of interest are also known as bargaining disputes, economic disputes or conflicts of interest. There is often a close affinity between disputes of interest and collective disputes on the one hand, and between disputes of right and individual disputes, on the other hand. A dispute of right, for example, involves the assertion by or on behalf of an aggrieved worker that he or she has suffered from a violation

14. See Van Jaarsveld and Van Eck, *op. cit.,* at p. 341-342.

of a legally enforceable standard applicable to that worker.[15]

In the United States, disputes of interest are called "major disputes" while disputes of right are called "minor disputes" or "grievance disputes." Minor disputes or grievance disputes are subject to a special grievance procedure culminating in mandatory, final and binding arbitration. Under the *Railway Labour Act of 1934*,[16] strikes are prohibited over minor disputes and may be enjoined by a federal court at the behest of the employer. In *Trainmen v. Chicago R & I. R. Co*[17] the Supreme Court held that all minor disputes are subject to mandatory, final and binding arbitration through the board of adjustment procedure, which could be invoked by either party.

In terms of the mechanisms for the resolution of labour disputes, an important aspect of the distinction between disputes of right and disputes of interest is that disputes of right are subjected to arbitration and adjudication procedures, while disputes of interest are left to be resolved through collective bargaining and the respective powers of employers and employees, which could include strikes and lockouts.[18]

Thus, in other countries, disputes of right are resolved through arbitration and adjudication procedures, while disputes of interest are resolved through collective bargaining and the respective bargaining powers of employers and employees including strikes and lockouts.

Compulsory Arbitration

Section 31(6)(d) of the *Trade Unions Act*, as amended, further requires as a condition for a lawful strike that the provisions for *arbitration* in the *Trade Disputes Act* must be complied with. The provisions for *compulsory arbitration* are contained in sections 4, 6 and 18 of the *Trade Disputes Act* as amended.

Under section 4(1) of the Act, the parties to a trade dispute are enjoined to attempt to settle the dispute amicably by any agreed means, if any exists.

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15. See A. Gladstone, "Settlement of Disputes Over Rights" in R. Blanpain (ed) *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (The Netherlands: Kluwer Law International BV, 2010) p. 722.
16. See *Railway Labour Act*, s. 204.
17. 353 US at 34-36, 39.
18. See A.T.J.M. Jacobs "The Law of Strikes and Lockouts" in R. Blanpain, *op. cit.*, at p. 673.

If settlement fails, or if no such agreed means of settlement exists, section 4(2) enjoins the parties to settle the dispute by mediation within seven days.

It is clear that section 4(1) envisages a voluntary grievance procedure established by collective agreement for the settlement of trade disputes. This is consistent with ILO Recommendation No. 130 of 1967 which recommended the institution and proper implementation of a suitable grievance procedure as an essential element in sound labour relations in an establishment.

Section 6 deals with the formal declaration of a trade dispute. This occurs if the parties fail to reach an amicable settlement within seven days of the appointment of a mediator. The section requires either of the parties to report the dispute to the Minister of Labour within three days of the end of the seven days. The purpose is for the Minister to initiate compulsory procedures for the settlement of the dispute. However, section 6 does not provide any sanction for failure to report the dispute to the Minister. It is therefore very unlikely for unions to take such initiative. It would rather conduct a ballot and serve a strike notice on the employer.

Section 18 of the *Trade Disputes Act* has often been erroneously cited as banning strikes, with the effect that workers have lost the right to strike. However, a thorough interpretation of section 18(1) will lend credence to the fact that rather than banning strikes, the section recognizes the right to strike by reiterating the alternative dispute resolution procedures referred to in section 4 or 6, with which workers are required to comply before embarking on a strike.[19] For the purpose of clarity, section 18(1) provides as follows:

An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in connection with any dispute where –

(a) the procedure specified in section 4 or 6 of this Act has not been complied with in relation to the dispute; or

(b) a conciliator has been appointed under section 8 of this Act for the purpose of effecting a settlement of the dispute; or

(c) the dispute has been referred for settlement to the Industrial Arbitration Panel under section 9 of this Act; or

19. See Note 34 above, at pp. 39-40.

(d) an award by the arbitration tribunal has become binding under section 13(3) of this Act; or

(e) the dispute has subsequently been referred to the National Industrial Court under section 14(1) or 17 of this Act; or

(f) the National Industrial Court has issued an award on the reference.

Section 18(2) makes it an offence for any person who contravenes subsection (1) of the section. Thus if workers take part in a strike in contravention of section 18(1), the strike will be *prima facie* illegal and the strikers will be visited with criminal sanctions.

However, the use of the word "or" after each paragraph shows that the requirements of section 18(1) are disjunctive rather than conjunctive. Thus workers who have complied with the requirements of section 4 can legally embark on strike provided a simple majority of them have voted in support of the strike in a secret ballot and they have given due notice of their intention to proceed on a strike action to their employer. The decision of Araka CJ in *Eche v. State Education Commission*[20] supports this view. In that case, after efforts at mediation failed, public primary and post-primary school teachers in Anambra State proceeded on a strike. The main issue for determination was whether the strike action was lawful having regard to section 17(1) of the *Trade Disputes Act 1990* (now section 18(1) of the *Trade Disputes Act 2004)*. Araka CJ held that it was lawful. In arriving at this conclusion, his lordship drew attention to the fact that section 17(1) uses the word "or" rather than "and" and stated that, in essence, where employees have complied with the provisions of any of the subsections, they may proceed on strike to press for their claims. In his words:

> ***It is therefore not correct that if a strike is not to be considered as illegal, all the provisions of the various subsections ... must be complied with by the worker. It is sufficient, in my view, if the provisions of only one of the subsections have been fully complied with. That is the effect of the word "or" that has been used after each subsection.***[21]

20. (1983) 1 FNR 386.
21. *Ibid*, at p. 391.

The requirement that workers must first comply with the provisions for arbitration in the *Trade Disputes Act* before embarking on a strike is consistent with international labour standards. However, the Freedom of Association Committee of the Governing Body of the ILO considers that a system of compulsory arbitration through the labour authorities, as in Nigeria, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers and their unions to organize their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association.[22]

Strike Ballot and Notice

Section 31(6)(e) of the *Trade Unions Act*, as amended, requires as a condition for a lawful strike that a *ballot* must have been conducted in accordance with the rules or constitution of the trade union at which a simple majority of *all* registered members must have voted to go on strike.

The requirement of a strike ballot has excluded the incidence of *wildcat strikes*. However, the requirement that a simple majority of *all* the registered members of the trade union must have voted to go on strike is oppressive and unduly restrictive. The obligation to observe a certain quorum and to take strike decision by secret ballot may be considered acceptable. However, the requirement of a decision by over half of *all* the workers involved in order to declare a strike is oppressive and could hinder the possibility of carrying out a lawful strike, particularly by workers in large enterprises.[23]

The ILO Committee on Freedom of Association has considered that the decision to call strike in the local branches of a trade union should be taken by the general assembly of the local branches, when the reason for the strike is of a local nature and that, at the national level, the decision to call a strike should be taken by the executive committee of the trade unions by an absolute majority of all the members of the executive committee.[24]

After obtaining a strike ballot, the workers and their union are obliged to give to their employer a notice of their intention to go on strike. In

22. See *Digest,* at p. 117 paragraph 568.
23. *Ibid*, *at* p. 115 paragraph 556.
24. *Ibid*, at p. 116 paragraph 562; Bernard Gernigon, Alberto Odero and Horacio Guido, *ILO Principles Concerning the Right to Strike* (Geneva: International Labour Office, 2000) p.29.

industrial relations parlance, this notice is commonly called *strike notice*. The requirement for *strike notice* is contained in section 42(1) of the *Trade Disputes Act* as amended. The section makes it an offence if any worker ceases, whether alone or in combination with others, to perform the work which he is employed to perform without giving his employer at least *fifteen days' notice* of his intention to do so in circumstances involving danger to persons or property. Of course, every strike involves danger to the employer's property or business. The obligation to give prior notice to the employer before calling a strike is consistent with international labour standards. The period of notice serves as a cooling-off period. It is designed to provide a period of reflection, which may enable both parties to come once again to the bargaining table and possibly reach an agreement without having recourse to a strike.[25]

In practice, when an employer receives a strike notice, he may either compromise with the union or report the dispute in writing to the Minister of Labour in accordance with section 6 of the Act. The Minister will normally take appropriate steps to resolve the dispute, such as appointing a conciliator, or referring the dispute to the Industrial Arbitration Panel, or a board of inquiry, or the National Industrial Court for the purpose of effecting a settlement of the dispute.[26]

Conclusion and Suggestions for Reform

The power of workers to withdraw their labour is the equivalence of the power of management to shut down production, to switch it to different purposes and to transfer it to different places. Without the right to strike, workers would be at the mercy of employers who would be at liberty to impose low wages and poor conditions of work[28] contrary to the terms and conditions of employment agreed by the parties through collective bargaining. The right to strike is recognized under international labour law as an integral part of the freedom of association and the right of trade unions to organize their activities.[29] This right is, however, not absolute. It is subject to national laws which may impose limitations or severe

25. *Ibid*, at p. 115 paragraph 554.
26. See *Trade Disputes Act LFN 2004*, ss. 8, 9, 17 and 33.
27. See Otto-Khan Freund and Bob Hepple, *Laws against Strikes* (London: Fabian Research Series 305, 1972) p. 8.
28. See W. D. Ross, "Industrial Relations in Great Britain" (1942) 58 LQR 184 at 187.
29. See *Digest*, at p. 109, paragraph 523.

restrictions on the exercise of the right to strike. However, a complete denial or very severe restriction of the right to strike in any country may indicate that the freedom of association exists only on paper. This is the view of the ILO Committee of Experts on the Application of Conventions and Recommendations.[30]

It is submitted that what we need is not the prohibition of strikes or the imposition of more stringent conditions for the exercise of the right of workers to organize their activities. What we need is a law that will strengthen the protection granted to trade unions and their members, particularly union officials. What we need is a law that will protect workers from dismissal or criminal prosecution for organizing or participating in strikes and other forms of industrial action in contemplation of or in furtherance of a trade dispute.

In this regard, the Committee on Freedom of Association of the Governing Body of the ILO resolved that employees should not be dismissed or refused re-employment on account of their having participated in a strike. The Committee stated that the right to strike is one of the essential means through which workers' organizations may promote and defend the economic and social interests of employees.[31]

There is an urgent need to further amend the *Trade Unions Act* to reverse the type of labour dispute for which workers are allowed to embark on strikes. In this regard, section 31(6)(b) should be amended by substituting *dispute of right* with *dispute of interest*. Accordingly, section 31(6)(c) should be deleted and the definition of dispute of right in section 31(9)(a) of the Act should be substituted with the definition of dispute of interest as "any labour dispute arising from the negotiation of new terms and conditions of employment of any person or the variation of existing terms and conditions of employment." This will bring the *Trade Unions Act* in conformity with the practice in other countries where disputes of right are subjected to arbitration and adjudication procedures, while disputes of interest are left to be resolved through collective bargaining and the respective powers of employers and employees, including strikes and lockouts.

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30. See Note 8 above, at p. 294.
31. See *Digest*, at p. 109, paragraph 520-522. See also Emeka Chianu, *Employment Law* (Benin City:

There is also an urgent need to amend the *Trade Disputes Act* to redefine *trade dispute* in line with the intendment of the *Trade Unions (Amendment) Act 2005* that strikes should be allowed only in contemplation or furtherance of a *labour dispute*. Thus, the term *trade dispute* should be redefined as "any dispute between employers and workers which is connected with the terms of employment and physical conditions of work of any person." The phrase "or between workers and workers" should be deleted from the definition of trade dispute. This will exclude *inter union* and *intra union* disputes from the purview of strikes.

Similarly, the *Trade Disputes Act* and the *Trade Disputes (Essential Services) Act 2004* should be amended to properly delimit the definition of *essential services*. In this regard, recourse could be made to the definition of essential services in the South African *Labour Relations Act 1995* as "service the interruption of which endangers the life, personal safety or health of the whole or any part of the population."[32] Then, in line with international labour standards, essential services, as defined, should include "the hospital sector; electricity services; water supply services; the telephone service; the police and armed forces; the fire-fighting services; the prison services; the provision of food for pupils of school age and the cleaning of schools; and the traffic control."[33]

Furthermore, the *Trade Dispute (Essential Services) Act* should be amended to provide for compulsory arbitration of trade disputes in essential services to compensate for the prohibition of strikes by workers engaged in the provision of essential services. It should also provide for appeals as of right from the award of an arbitral tribunal to the National Industrial Court for final adjudication. It is in violation of such provisions that the President should exercise his executive powers to proscribe trade unions in essential services.

Finally, there is also a need to reduce the incidence of sympathy strikes. In this regard, the statutory definition of strike in section 48 of the *Trade Disputes Act* should be amended to exclude *sympathy strikes*.

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32. Bemico Publishers (Nig.) Ltd, 2004) p. 275.
33. See *Labour Relations Act 1995,* s. 213.