

Agency workers and their equivocal roles – Wandering employees?

ABSTRACT

Agency workers (AWs) were originally employed on a substitutional and short-term contract basis, but recently they are found to be employed on a long-term purpose in Nigeria. Although agency labour helps solve recruitment challenges, it correspondingly erodes employment relations and causes conflicts across employers, trade unions and agency workers. As such, the current research aimed to examine the rise of AWs and analyse its influence on the union's representation. The samples were 36 respondents (management, agency workers and trade unions) recruited from three oil multinational companies in Nigeria and were interviewed. Research data were analysed through thematic analysis and NVivo, revealing three important findings. First, AWs were often asked to take the posts which used to be taken by the permanent staff, but without the right to join the union. Second, the unions did not welcome AWs and concerned its implication on the recruitment of permanent staff. Third, AWs were reluctant to join the unions as their contract might not be renewed. Research findings brought new insights into the literature of agency workers. Managers are reminded that AWs are suffering from the issues identified above. Any management strategies will not reach their maximum effect unless these issues are rectified.

KEYWORDS: Agency Worker; Labour Management; Nigeria; Oil Industry; Union

INTRODUCTION

Global economic competitive pressure is changing the business environment today, most especially in terms of employment relations (Connelly & Gallagher, 2006; William, 2017). As trade boundaries decrease and business costs reduce, industrialists are devising ways to remain competitive, and key among these intensified competitive pressures is the use of agency workers. As such, the use of agency workers has become a global phenomenon, spreading across all industries and professions (CIPD, 2019; Smith, 2016).

This phenomenon has taken a particularly sharp form within the highly strategically important Nigerian oil industry, giving rise to a two-tier workforce (permanent employees and agency workers), on differential terms and conditions of work, which consequently influences trade union reactions. The unions perceived the growth of agency workers as a deliberate act on the part of the Nigerian oil industry to undermine their membership and strength.

Based on the increasingly usage of agency workers in the Nigerian oil industry, this paper aims to explore the rationale for the growth of agency workers, particularly, in the core production area of the Nigerian oil industry, and union's dilemma of representation. It is also expedient to investigate the trade unions behaviour towards agency workers, and agency workers perception of the union representing their interests. It is further important to determine the strategies and course of actions that can be taken by the workplace actors with an interest in ameliorating this trend, and the ways agency workers can seek social legitimacy (Gumbrell-McCormick, 2011). In view of this, a search of the literature reveals a great number of scholars contributing to the body of knowledge of agency workers and the trade union experiences globally.

LITERATURE REVIEW

Global Trends and Conception of the Development of Agency Work

A recent report from the Chartered Institute of Personnel and Development (CIPD) confirmed that agency workers have been on the increase, the United Kingdom (UK) having had a relatively low level of agency workers at 20 per cent, compared with a European Union (EU) average of 28 per cent (CIPD, 2019). France, the Netherlands, Italy, Spain and Poland had the highest rates of agency workers between 34 per cent and 40 per cent (CIPD, 2019), with Australia, at 24 per cent, and Nigeria at 21.4 per cent respectively (Rasak, 2011). Agency work is also a prominent feature of labour markets in most of the developing nations, such as Bangladesh and India where nearly two-thirds of wage employment sector are agency workers (ILO, 2016). In addition, 2.9 per cent of young people between 15 to 24 years of age are more likely to be in agency work, compared to 13 per cent older workers between aged 25-54; with 5.5 percent less educated workers more likely to be in agency work compared to 0.4 per cent who are educated and in professional jobs (Martinez *et al.*, 2010). In countries such as Argentina, Belgium, Germany, Finland, India Japan, and the Netherlands, more women have been found to be in agency work than men (ILO, 2016).

Agency workers fall within the scope of non-standard employment, a diverse and heterogeneous category of workers covering anything from casual, temporary, zero-hours contract, and part-time workers (Forde & Slater, 2014; Kalleberg, 2009). These forms of work arrangements are complementary in the sense that workers migrate from the traditional permanent employment relationship and are denied basic rights (Burgess, Connell, & Winterton, 2013; Flecker, 2010). They are hired by an employment agency, then deployed to work under the supervision of the client company, it is a three-way or triangular employment relationship (Kalleberg, 2009). Although, the relationship between the client company and the

employment agency is based on the contract of work, the agency workers do not have any employment contract with the client company. Hence, the conventional bilateral employment relationship between employer and employee with an explicitly defined employment contract, is replaced by one in which employer responsibilities are not only shared with the employment agency, but also, characterised by an ambiguity as to where the division of responsibility reside (De Cuyper *et al.*, 2008; Rubery *et al.*, 2010). Even the ruling of the courts, when challenged, have left this group of workers in-between-the-cracks, because verdicts have ruled that agency workers are neither workers of the employment agency nor the client company. It is an exploitative situation in which the work is truly temporary, forcing the worker to frequently move from one assignment to another, a situation now considered legitimate around the world (Rubery *et al.*, 2010).

Although, there is no clear justification for the growth of agency workers, from the employers' perspective, cost effectiveness, technological changes and labour legislation are alleged to be the driving force (Houseman *et al.*, 2003; Huws & Podro, 2012; Kalleberg, 2009;). While several other authors argued from the workers perspective for the rationale for engaging in agency work (CIPD, 2019; Forde & Slater, 2005; Rubery, 2015).

The Rationale for Workers Engaging in Agency Work

The rationale cited by workers for engaging in agency work are diverse, which include balancing work with other activities, and the inability to secure more desirable or permanent work. For example, the work of Kunda *et al.*, (2002), describe a free agent perspective, where a small proportion of highly-skilled workers preferred to work outside the traditional arrangements in order to gain a range of benefits, such as, greater financial benefit, and the autonomy over their work conditions and lifestyle. Also, based on the CIPD's report (2019), over 72 per cent of agency workers indicated that they did not want a permanent job, with 13

per cent who chose agency work because they were students, under 11 per cent, – including part-time and the self-employed, said they could not find a permanent job, and over 3 per cent said they were ill or disabled. It could also be deduced from on-going research evidence that agency work for most of the workers in some of the developed countries is also by choice, and not by coercion, as in the case of other developing countries, predominantly Nigeria.

In addition, there is evidence that the adoption and implementation of neo-liberal ideologies intended to solve some of the burning issues of unemployment and poverty in most of the developing nations have proved to be an illusion (Oluwadare, 2014). Most of the political leaders, including those in Nigeria, who entrusted their nation's wellbeing in the hands of foreign investors were placed under constant pressure to maintain conditions such as, softening of labour law to keep foreign investors in their countries (Danesi, 2012; Fapohunda, 2012). A major outcome of the implementation of economic restructuring along liberal principles led to privatization, and redundancy in an already over-saturated Nigerian labour market. The private sector that was to be empowered by the government neoliberal policies to engage the laid-off employees could not absorb them (Fapohunda, 2012; Oluwadare, 2014). Consequently, taking advantage of the high unemployment rate, employers of labour have continued to employ workers on a non-permanent contract basis through employment agencies, and denied the right to unionisation, thereby infringing the rights and privileges of the Nigerian workers.

Unfortunately, unlike most of the developed countries where agency workers by law have access to health and safety, right to unionisation, holiday pay, a pension scheme and a form of transition into permanent employments, agency workers in Nigeria are located outside the scope of such benefits. For example, Forde and Slater (2005), reviewed the nature of temporary agency work in the UK, using a Labour Force Survey data on short-term transitions and prospects, and found that 48 per cent of the sample had moved to permanent work, while 38 per cent remained in temporary employment, 7 per cent became unemployed and 7 per cent

left the labour force. Less than 50 per cent of all the agency workers in the study made the transition from agency work to permanent work.

Similarly, the Dutch phase system and the Italian stabilisation system both show evidence that temporary agency workers over time are automatically converted into permanent employees, and it is important to recall that in EU countries over 90 per cent of temporary agency workers are covered by collective agreements (Voss *et al.*, 2013). Whilst to a great extent the developed nations viewed temporary agency work as a transitional process to permanent work, agency work in Nigeria is described as a ‘trap’ for at least as many workers, rather than a ‘bridge’ to permanent employment as it is in developed countries (Forde, & Slater, 2010). Agency workers in Nigeria are bedevilled by the fact that movement across the frontiers of these segments are confined, despite possessing the requisite qualifications and skills to be employed directly on permanent jobs in which some of them have been rendering services as agency workers for over fifteen years in some cases.

Since Nigeria is not a welfare state, most agency workers require employment continuity to be financially stable (Adewumi & Adenugba, 2010). They want the same fair pay and privileges accrued to others- surely no one is pleased to see a colleague performing the same job as themselves, whilst earning more and having all the constitutional rights, because they occupy permanent work positions (Danesi, 2012). Indeed, agency workers also require protection in the event of health and safety, redundancy, and pension. For example, there was a fire disaster in a Chinese company at Ikorodu, Lagos-Nigeria in 2004 as a result of a power surge leaving about 250 employees dead. An enquiry reported that none of the factory workers could escape because the employer at close of the working day, locked the doors leading to the factory only to be opened the following day. It was confirmed that this practice to lock those working on night shift in the factory till the next day had been a traditional practice in the company (Oginni & Adesanya, 2013). Intriguing, the state and federal government of Nigeria

kept mute regarding this incident, it was only when the labour union had made enquiries and visited the factory, were sanctions then imposed on the management.

Agency workers want the right to be represented at the workplace, and to be treated equally as human beings, the same access to opportunities for training and development, so that they can also aspire to attain advancement in their careers. In fact, organizations and governments from the developed countries have not only recognized such needs are required to improve the working conditions of many agency workers, they have also greatly acknowledged that fulfilling agency workers can be beneficial to organizational success and to society in general (Voss *et al.*, 2013). Therefore, advances in most countries legislation and implementation of regulatory policies, often grounded in social dialogue, have improved the working conditions of many agency workers in the developed countries (Rubery, 2015). Even in some developing countries, where the benefits are not so widespread, there are still considerable numbers of agency workers that have benefitted from such reforms, so that many jobs have met the requirements, or at least moved towards, desired reforms. Notably therefore, most of the academic debates on the growth of agency workers hinge on the importance of national labour legislation.

Labour Legislation as a Precursor to the Growth of Agency Workers

Forde and Slater (2014) highlighted how the myriad of state regulations has created space for individual interpretation of the regulations, and the proactive measures of employers in adapting their strategies and moving into new forms of contracting and relationships, which may or may not be within the scope of the regulations. Stringent regulation provides strict protection for permanent workers, whereas employers' desire for certain forms of flexibility (including disposability) may encourage the creation of jobs outside the regulated area (Dickens, 2004). Rather than a desire for flexibility being the only driver towards greater use

of agency workers, Dickens (2004), proposes that most organisations use agency workers because there are cost benefits and other advantages that they can accrue from these agency workers who are being excluded from some legal and social protection.

With regard to the issue of legal and social protection for agency workers bound by triangular employment relationships, and observing that the traditional notion of employee and/or employer in terms of labour regulations and social security programmes does not reflect the present dispensation of reality in the employment relationship, ILO (2016), therefore emphasised the need for an institutional approach to mitigate the social exclusion as a result of gaps in most nations' labour legislation. Thus, if the growth of agency workers is perceived as a way of avoiding regulation guiding employees on permanent employment contracts, it is therefore argued, that agency workers should be more widespread in nations with restricted regulations on employment relations (Mitlacher, 2007). However, recent studies have indicated that this is not the case in some circumstances. Nijssen and Paauwe (2012) found no link between national legislative frameworks guiding employment and proportion of agency workers, arguing that within the prevailing trend to deregulation, variations still exist among nations, which provide an explanation for differences in the proportions of agency workers between nations.

Among the EU member states, France with the strongest employment legislation has one of the highest proportions of agency workers. The UK, a nation with the weakest employment protection legislation amongst the EU, also has a large proportion of agency workers (CIPD, 2019). Whilst agency work has thrived within the underlying context of liberalization of the employment agencies, the comparatively high rates of agency workers at opposite ends of the employment legislation spectrum, as well as, the growth of agency workers in the nations that lie between these extremes, point to a general increase of agency workers irrespective of the circumstances of the regulatory context.

Koene *et al.* (2004) analyzed nation variation by bringing other less substantial evidence to explain high proportions of agency work into their analysis; concluding that the general business requirements and national culture may further explain variations. Lower proportions may be attributable to the persistence of deeply embedded negative attitudes towards agency work. The relatively lower proportion of agency work in Sweden, a nation that has immensely liberalised legislation guiding the use of agency work, may be due to cultural animosity towards agency work, unlike the Netherlands where agency work is culturally more acceptable (Taht & Mills, 2015). Thus, while permanent employment and the termination of standard employment contracts is greatly regulated in Sweden, the level of agency work remains relatively low (MacKenzie *et al.*, 2010), whereas in the Netherlands and the UK, rates of agency work are higher, although there is less of an imperative to avoid regulations guiding permanent employment in these nations since it is much easier to terminate employment contracts.

Accordingly, this explains the dilemma in clarifying national characteristics as analytical determinants behind the employment trend of agency workers. For the case of Sweden, it is not simply cultural prejudice towards agency work that has slowed its growth; strong trade unions have also played a significant role in shaping the employment terrain (Koene, *et al.*, 2004). This influence may be both direct and indirect, that is, influencing the modus operandi of agency work. In contrast to France, where there is a strong tradition of hostility to agency work and all forms of precarious work, a strong attachment to the traditional norms of employment, agency work thrives (Barbier, 2005). According to Koene, *et al.*, (2004), this is due to the weakness of French trade unions, hence their inability to fight the growth of agency work. Just as labour legislations and trade unions have played important roles in shaping the growth and usage of agency workers in most of developed countries, this is in contrast to the Nigerian context (Danesi, 2012; Iyayi, 2009).

In the Nigerian context, there is no legal framework that regulates the terms and conditions of agency workers, hence an easy access for employers to take advantage of this economically profitable group of workers (Okafor, 2012), who perennially uses them beyond the peripheral functions to core activities as means of cutting cost, maximising profit and de-unionization (Danesi, 2012). The Nigerian trade unions, particularly, the oil industry trade unions are vehemently opposing the use of agency workers beyond the marginal level, as this is perceived as a calculative tendency by the Oil MNCs to externalise the internal labour market of the industry, thereby impacting on the union memberships and strength (Adewumi & Adenugba, 201005).

The Rationale for Trade Unions Opposition to Agency Workers

The neo-liberal ideology that became prominent in the 1990s has brought about significant changes in the global economy, particularly in Nigeria, with adverse effect on employment relationships, and posing greater implications for organized labour, such as, the Nigerian oil industry trade unions: the Petroleum and Natural Gas Senior Staff Association (PENGASSAN), and the National Union of Petroleum and Natural Gas Workers of Nigeria (NUPENG) (Adewumi & Adenugba, 2010).

In the 1990s, the Nigerian oil industry operated a permanent employment system, which consisted of approximately 70 per cent of permanent workforce and 30 per cent contract workers, who were all directly hired by the oil MNCs (Danesi, 2012; Graham, 2010). The contract workers were less privileged without access to the same rights as the permanent employees, especially in terms of the right to join an association of workers (trade union). Notwithstanding this deficiency, in 2002, the trade unions maintained an aggressive unionisation of contract workers across the major oil MNCs (Shell, ExxonMobil, Chevron, Total, and Agip). Over 60 per cent of contract workers were mobilized and the unions

successfully negotiated with the employers on their behalf, although the resulting benefits were not comparable to the permanent employees' terms and conditions of work, but, did include the application of minimum labour standards (Graham, 2010). Nonetheless, the contract workers were more enthusiastic about being associated with the unions, perceiving it as a great privilege for them to start enjoying some basic employment rights like their colleagues on permanent employment contracts. Yet, mobilizing these employees at that time was challenging as most of the employers fiercely opposed the move (Graham, 2010).

In order to hinder the trade union's aggressive drive, the oil MNCs engaged the services of employment agencies to supply agency workers throughout their operational bases in Lagos, Port Harcourt and Warri. The trade union's attempts to implement a standing agreement with the oil MNCs, the employment agencies, and government to mobilize the agency workers, were unsuccessful as the management of the oil MNCs further introduced a service contract clause in the employment relationship with its agencies (Graham, 2010). Thus, resulting in mounting pressure placed on the employment agencies to ensure they fired union activists in their labour force, or they would have their contract with oil MNCs terminated. All these were attempts by the MNCs to frustrate the trade unions mobilisation drive (Fapohunda, 2012).

In further resisting the trade unionisation drive, the Nigerian government reformed the existing labour law in March 2005, thereby putting an end to automatic trade union membership and making union membership voluntary (Danesi, 2012). This move by the government gave impetus to employers' refusal to recognise trade unions in relations to agency workers, which subsequently made it difficult to mobilize this segmented and fragmented labour force. However, irrespective of the government and the management disposition towards trade unionism, the unions are not relenting. They decided to move against the use of agency workers in the industry, as this has been perceived as a modern strategy of taking the people back to the days of slavery, this move usually taken through organised strikes actions (Dodondawa, 2017;

Oluokun, 2015; Omoyibo, 2012). As such, the industry has been experiencing a high level of strike actions since 2000 to date, where employers and employees' relationship is influenced by distrust, antagonistic behaviours, and confrontation. A summary of reported issues in some oil companies in Nigeria between 2000 and 2017 are shown in Table 1.

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The situation is particularly serious where opposition and confrontation lead to clear conflict and strife (Solidarity Centre, 2010). Strike action is the most common and most visible expression, but conflict with the management may also take the form of peaceful bargaining and grievance handling, of boycotts, of political action, of restriction of output, and of sabotage and absenteeism. Several of these actions, may take place on an individual as well as on organised basis. The strike action may involve a variety of actions and may take the form of a refusal to work overtime or to perform a certain process (Adewumi & Adenugba, 2010; Danesi, 2012; Dodondawa, 2017).

The Nigerian trade unions are not alone in this struggle, in China for example, and especially the province of Guangdong has become a major nexus of the global market since the early 1980s. Companies such as Nike, Wal-Mart, Mattel and others have taken advantage of the low corporate tax, poor environmental controls and inexpensive labour (Barboza, 2008). China's rising growth of agency workers and conditions of work has been uneven between regions and provinces (Nordhuag, 2012). However, friends, and families who worked in other provinces of China, were in communication with the help of mobile phones and often compared incomes and working conditions, followed by demands for equitable pay with those in other provinces. The refusal by management to grant comparable incomes and working conditions as those of their counterparts, led to a series of picketing, organised protests and strike actions by the unions. This state of social unrest provided the framework for the Chinese government's enactment of a new Labour Contract Law in 2008 (He & Xie, 2012), which legalised

employees' rights on a series of tension provoking issues, including the stipulation that management gives a documented contract letter to every agency worker, reduce overtime periods, greater and appropriate responsibilities for the trade unions. Relatively speaking, every form of self-organisation, strike actions and protests have been seriously discouraged by Chinese government but have promoted trade unions in the satisfaction of building social stability and what they called peaceful nation.

Similarly, Indonesian trade unions were very active at the local level assisting agency workers to demand better working conditions, however, a rare and powerful reaction became evident at the national level towards the end of 2005, when unions began to campaign against the government's intentions to allow more work flexibility by revising the Labour Law No. 13 of 2003 (Tjandraningsih & Nugroho, 2008). Unions' resistance towards the proposed revision was supported by activists, NGOs and academics, who joined in protests and provided both moral and logistical support. The demonstration was directed toward the heart of both central- and provincial-government, the President and Governor's offices, and the institutions which were responsible for the law. The demonstration proved effective insofar as the government declared it would review the revisions and repeat the entire process, in order to accommodate the union concerns. Although little success were achieved, workers still experienced discrimination for joining the union (Tjandraningsih & Nugroho, 2008).

The restrictive labour laws of most nations in expanding the enclaves of the unprotected labour force has driven the unions and the workers up against the wall, whereby their options or ability to act are limited or constrained. Consequently, this situation provoked workplace activism in new and novel ways. In some circumstances it is possible that workplace activists will develop where none existed previously or had a minimal presence like the situation in Indonesia. One feature of these developments is that past forms of a single union activism may no longer be appropriate in the contemporary era of neoliberal capitalism. In the most general

terms one can say that the revisions of the labour laws in Indonesia and China have been driven by trade unions activism (He & Xie, 2012), as there is evidence that the governments of both nations have been much more anxious about the political and economic dangers posed by industrial unrest; hence the revision of the nation's labour laws to accommodate agency workers.

Furthermore, studies have also shown the beneficial effects of trade unions' reaction to the increasing usage of agency workers in the developed countries, and how trade unions struggles have yielded positive results, such as the enactment of the minimum wage in the UK (ACAS, 2014; Heery, 2009; Heery, *et al.*, 2004). In the UK, agency workers are protected under the Transfer of Undertakings Protection of Employment (TUPE), irrespective of TUPE criticism based on limited coverage and narrow effects, at least TUPE forms the basis for these workers' terms of employment and collective rights (ACAS, 2014; Baccaro *et al.*, 2003). Also, in recognising the need for effective enforcement, the post of Director of Labour Market and Enforcement was created by the Immigration Act 2016, as part of the UK Government's reforms to strengthen efforts to tackle non-compliance in the labour market, consequently setting the strategic direction of the enforcement bodies. In line with this, the UK is likely to introduce further regulation for other specific groups such as, gig economy workers and possibly workers on zero-hours contracts following the recent report of Taylor Mathew (2017) on fair and decent work.

Whereas, the issue of agency workers has necessitated a re-adjustment of the collective labour relation rules and practices in most developed countries, so that the workers concerned can enjoy the fundamental collective labour relations rights and union representation, this cannot be said of the Nigeria system, where an increasing number of workers have found themselves outside the standard purview of collective relations (Danesi, 2012; Lekara, 2019). Although, the unions in Nigeria are trying but cannot go beyond the provision of the law; the

political and economic situations have further weakened the strength of the union, in their struggle for workers representation (Oginni & Adesanya, 2013). In response to the union struggles, the Federal Ministry of Labour and Employment charged with the responsibility of ensuring compliance to terms and conditions of employment, issued a code of conduct with regards to the use of agency workers in the Nigerian oil industry (Danesi, 2012). This study however argued that although the code of conduct was a step in the right direction, it was not enough to address the concerns of the trade unions. Accordingly, there is still need for stringent labour legislation to regulate and protect agency workers right as experienced in the UK, Sweden, China, Indonesia and other countries (Rubery, 2015; He *et al.*, 2012).

METHODOLOGY

Case Study Area: The Context of the Nigeria Oil Industry

The aim of this study was to investigate the shift from standard (permanent) employment to non-standard (agency) work arrangements in the Nigerian oil industry, as a source of on-going dispute between trade unions and employers. This study was carried out within the context of the Nigerian oil industry, a major driver of the Nigeria's economy, as it constitutes about 90 per cent of Nigeria's foreign exchange earnings and 83 per cent of its Gross Domestic Products, hence, the government is dependent on the oil industry's existence for the nation's development (Ajonbadi, 2015). Basically, the oil industry holds a strategic position in the growth and development of the nation (Danesi, 2012). In the oil industry operations, there are multinational

As Nigeria's economy increasingly becomes global, and as competition becomes the key survival strategy of the organisations, the state dominance of employment relations is under pressure to change fundamentally (Omoyibo, 2012). In addition, the often-displayed reactive protest behaviour displayed by the trade unions will also be challenged (Fapohunda, 2012).

This study aim is to chart out the aspects of equilibrium in the face of contemporary changes in the economic environment and workplace.

Research Design and Sampling

The research methodology adopted the qualitative approach, aimed at the development of theories and understanding, and essentially driven by critical realism philosophy (Bhaskar, 2008), with an ontological undertone embedded with social constructivist approach. The study utilised in-depth interviews to elicit information from the respondents in order to gain valuable insights through the subjective narratives of the respondents and providing understanding from the respondent perspectives (Creswell, 2007; Saunders *et al.*, 2012). The focus of the study was on the specific categories of employees in the Nigerian oil industry.

The study utilized purposive sampling techniques in selecting the respondents (McEvoy & Richard, 2006). This approach was primarily adopted to overcome the issues associated with understanding the most affected populations in the workplace. The criteria for selecting the respondents among the employees includes those with valuable information of the phenomenon under investigation, based on their official status and experiences. This included those in management positions who have an interface with human resource management, and those employees who were recruited by employment agencies for the oil MNCs. The inclusion of these categories of employees enabling access to collect first-hand information about their experiences.

Lastly, a sample of the trade union officials in the industry were selected, to collect their perceptions of agency workers, and how they handled the challenges arising from the issue of agency worker mobilisation. Accordingly, 36 respondents were selected from management, agency worker, and trade union groups who were between the ages of 25-55. They were interviewed using in-depth interviews based on the existing literature and were probed for factors. The data collected was interpreted with the NVivo software, which is perhaps the most

widely used and potent computer software for the analysis of qualitative data for management scientists (Bryman & Bell, 2011). The data derived from the in-depth interviews was defined through NVivo software, which enabled the researcher to organise and analyze the research data whilst also increasing the transparency of the research outcomes.

FINDINGS

The interviews were transcribed, and data analysed under different headings depicting the various aspects of the discussion. The disaggregated data helped to generate the following three themes: - Rationale for the growth of agency workers; Regulatory Framework, and the Unions Dilemma of Representation. These three themes were further developed with the concepts in the literature using the retroductive inference in order to draft the findings (McEvoy & Richards, 2006). The employment relationships in the Nigerian oil industry cannot be fully understood without considering the wider employees' views on the growth of agency workers upon which the management formulate their strategies, and its implications for the trade union. Accordingly, the responses from the broader workforce are divided into the emergent themes each providing a focus on different aspects of the phenomenon under investigation. The emergent themes include: first, the Management Rationale for the Growth of Agency Workers in the Nigeria oil MNCs, key amongst which emerged the Optimisation of Resources. The second emergent theme, was the Agency Workers Experiences of Differential Terms and Working Conditions in a two-tier Workforce in the Nigerian oil MNCs, key amongst which emerged was Disparity in Working Hours, Disparity in Conditions for Annual Holiday, Hazard of Unfair Dismissal and Industrial Accidents, as well as, Lack of Support and Protection. The third emergent theme involved The Regulatory Framework and the Inadequacy of Employment Protection for Agency Workers, and the final emergent theme was The Trade Unions Perceived Dilemmas in Representing Agency Workers: Institutional and Non-institutional Factors.

Management Rationale for the Growth of Agency Workers in the Nigerian Oil MNCs

Global market competition and fluctuations in product demands were alleged to facilitate the use of agency workers in the Nigerian oil MNCs. Thus, the growth of agency workers is viewed as a market-oriented reaction, to respond to changes in the level of demand for products and services, not necessarily to cut cost. Although cost reduction was partly a rationale. It was also argued that the new knowledge economy, which places a premium on technical skills, propelled the usage of agency workers in the core production areas in order to maintain a competitive advantage. Arguably, the management alleged that the organisation operates like an organism that goes through some metamorphosis, and in the phase of adverse market challenges, management embarks on Human Resource (HR) policies that are beneficial to the organisation. Key amongst such policies is the optimisation of resources to cope with market dynamics and innovative technology.

Optimisation of Resources

In order to achieve optimisation of resources, the findings suggest that the Nigerian oil industry operates dual and triangular employment relations (see Figure 1). The labour force is segmented into what Atkinson (1984), termed core (internal labour market- permanent), and peripheral (external labour market- agency workers). The internal labour market comprises of few permanent employees who are directly employed by the oil industry to carry out core functions, such as oil exploration and production processes, and are termed critical to the success of the business. They have long-term employment contracts, largely represented by the trade unions, and fall under the ambit of employment protection laws. While the peripheral (agency) workers are supplied by employment agencies and fractionalized into what is known as service, contract, and support staff with various contractual status, and occupational positions.

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Although, Atkinson's (1984) distinctiveness between the core and peripheral seems not to be fully operational in the industry. Finding shows that some of the peripheral (agency) workers are being utilized within the core production areas. For instance, the grey position (See Figure 1) is mostly occupied by the service staff due to their technical skills and expertise, and their functions extend into the core production areas of the organisations. They have long-term employment contracts by virtue of their intermittent contract renewal, but are never regarded as permanent staffs, nor accorded the rights accrued to the permanent staffs. Thus, the oil industry operates differential terms and conditions of a two-tier workforce.

Agency workers experiences of differential terms and working conditions in a two-tier workforce in the Nigeria Oil Industry

Disparity in Working Hours.

There are standardized working hours for the permanent employees who work for 9 hours daily, Monday to Friday. Their resumption time varies, some resumes between the hours of 8am and 5pm; 7am and 4pm; 9am and 6pm. Those working on the rig work on shift basis. But the agency workers work approximately 12 hours daily from Monday to Friday, due to the imposition of overtime shift on them without a commensurable pay. The organisations alleged to have agreed overtime rates with the employment agencies and pay them accordingly, hence, overtime pay is embedded in the workers' wages. The trade unions refuted this claim and alleged that most of these workers' wages do not include a detailed statement of how they are paid. This practice is very unlike the experiences in developed countries such as the UK, where any extra-working hours are termed overtime and compensated accordingly.

Disparity in Conditions for Annual Holiday.

In addition, except for permanent staff who have their terms and conditions of work explicitly documented know when they are due for holidays, this cannot be said of the agency workers. The oil MNCs have arrangements with the employment agencies for agency workers who are required to work 12 calendar months to be granted seven days' holiday. However, these agency workers preferred to remain on duty rather than accepting the holiday, the explanation for such a decision is that, they are not paid for the period of holiday nor receives any holiday pay. A crucial fear is that, once the agency workers agreed to proceed on holiday, the tendency of them being replaced is petrifying, thus, agency workers are not keen to go on holidays for the fear of being replaced and loss of subsistence.

Hazard of Unfair Dismissal.

In the issue of dismissal or redundancy, agency workers are made redundant without any compensation nor benefits. Notice of termination is an issue between the oil MNCs and their employers. The employers are privileged to know when and why such exercise would take place by the oil MNCs- and then the agency workers are then informed. Likewise, where the intention is initiated by either of the employers, the oil MNCs are consequently informed. However, most often, agency workers are fired by their employers without notice, or when they are suspected of militancy activities. The disposability of agency workers has been made easier since there is no mechanism in place regulating unfair dismissal as practice in most of the developed countries.

Industrial Accidents and Lack of Support and Protection.

In the case of the agency worker falling victim to an industrial accident or sudden health issue at the workplace the oil companies take care of the wounded agency worker. Thereafter, whatever costs incurred, the expense is deducted from the employers confers, who subsequently deducts the amount from the wages of the wounded worker. In effect, neither the

oil companies nor the employers are liable for the medical care arising from the workplace accident.

A great number of agency workers have fallen victim to severe industrial accidents without any form of help from their employers. This is against what is operational in most of the developed countries, such as, the UK where health and safety is a top priority. According to trade union representatives, employment agencies who recruit more than twelve workers have an obligation to insure their workers under the Health Insurance Scheme. The reason for the Scheme is to protect workers in the event of industrial accidents, in case of any disability attracting worker compensation; the insurance company will be responsible for the payment. However, it was revealed that most of the Insurance Policies in the possession of the employment agencies were not genuine. Even in circumstances when industrial accident attracts disability compensation, before the injury can be assessed, the worker is fired and ultimately suffers the results of the disability unaided either by the oil MNC and the employer.

Given the peripheral nature of agency workers in the industry, it is therefore argued that the main objective of management utilization of agency workers is not only in attaining competitiveness, but primarily it is in reducing labour costs which according to Armstrong (2009), unsurprisingly contributes to the larger percentage of the cost of running an organisation. Although, past evidence has shown that adverse market conditions have compelled most organisations to reassess their staffing mix, the dominant response is that their only option, alongside or as an alternative to shedding direct labour, was bringing in agency workers, who are rarely protected under any legislative law or coverage (Forde *et al.*, 2010; Rubery *et al.*, 2010).

The Regulatory Framework and the Inadequacy of Employment Protection for Agency Workers

There is strong evidence of a concession that the current Nigerian Labour Law is not providing adequate employment protection for agency workers (*c.f.* Fapohunda, 2012; Okafor, 2012). The Labour Law does not define what agency work is and does not provide a legal framework for the regulation of conditions of work for these workers. The Nigerian Labour Law, only defined one class of worker, which stated that:

‘A worker is 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’ (Labour Act, 1974).

This description unsurprisingly does not recognise any worker on a triangular employment relation contract. Danesi (2012) raises an important point arguing that this description is inadequate as it does not specifically define the broad range of various types of workers. The present Labour Law was enacted in 1974 when agency work was unknown in the industrial relations environment. Unfortunately, this law is out of date and has not been reviewed to address the present actualities in the workplace, which further aids the growth and utilisation of these workers (Danesi, 2012).

In addition to the ambiguity of the Nigerian Labour Law, the Federal Ministry of Labour and Employment particularly, the department of Trade Union Services and Industrial Relations Department are institutions charged with the responsibility of ensuring compliance with laws and standards, as well as, protecting workers' rights. However, these institutions have failed in their duties, due to lack of resources- caused by the paltry budgetary allocations attributed to government inefficiencies. This statement regarding the Nigerian government should not be surprising, since the implementation of neoliberal agenda, it is obvious the government is more involved in safeguarding the interest of capital. Hence, the paltry budgetary allocation to the Federal Ministry of Labour and Employment.

A reform of the Labour Law to conform with the present-day workplace realities particularly related to the plight of agency workers was highly indicated by most of the participants. The trade unions particularly lamented, that the absence of any law or collective voice to regulate the terms and conditions of agency workers implies that employers can fashion their relationship without any restraints. Hence the use of agency workers is perceived as a strategy of the management to suppress the trade unions and exploit the vulnerable agency workers.

The Trade Unions Perceived Dilemmas in Representing Agency Workers: Institutional and Non-Institutional Factors

The most compelling finding was the dilemma faced by the Trade Unions between the indifference to union representation by the agency workers on one hand, and the efforts by the union representatives to recruit the agency workers in the union. The trade unions alleged that the protected permanent workforce is shrinking, whilst at the same time the insecure agency labour force is rapidly increasing, hence, the urgency for an agency worker union representation inclusion strategy. Some of the union leaders attested that, the failure of not including agency workers can lead to the complete extinction of the internal labour market, and trade union in general. Despite the inclusive approach, the union leaders struggled with workers fragmentation, in that it necessitates them going the extra mile to reconcile potential different interests among workers with different contractual employment terms. They however lamented, although, it was quite challenging, and most of the agency workers were not willing to join the union, due to their precarious employment status and employer's hostility, this has not in any way affected their fight against the exploitation of the agency worker workforce.

However, other union leaders remain passive as they perceived inclusion as conforming to the precarious work arrangements, arguing that, the unpredictable nature of agency workers stands as a barrier for inclusion. Even when these workers are permitted to join the union, the

fact remains that the membership rate will constantly fluctuate as at, and when, the agency workers projects start and end. This has the potential to bear negative consequences for the union in terms of taking part in collective bargaining processes. They also assumed their statutory interests may be marred, as by representing the interests of agency workers- their own interests may be neglected, in considering the organisational resources available. From the previous statements by the trade union representatives, it is evident that the trade unions perception of agency workers had an influence on their responses in either positive or negative ways.

On the other hand, not all agency workers view trade union positively as their representatives, or the protectors of their interests. The perceptions of the trade unions primary aim in representing and protecting the permanent employees hinders the agency workers interest in becoming members. Also, the agency workers perceived trade unions as compromising with the management, or being indifferent to their interests, as a result, they see the trade union as incompetent machinery in representing them in any struggle. The possibility of bias by the trade unions in favour of the welfare of their permanent worker members is possibly noticed by the agency workers, and partly constitutes a factor that maintains the distance between them and the unions.

From the ongoing evidence, the perceived inabilities of the trade unions to represent agency workers, constitute what this study termed as institutional and non-institutional factors (See Figure 2). Institutional factors such as the implementation of neoliberal policies in Nigeria, and the active role of government in deregulating the labour market was perceived as a mechanism promoting the growth of agency workers, and the shifting balance of power in favour of employers. This dominance is reflected through policies and laws that were made by the government which have seen a great number of workers outside the purview of collective bargaining, and as such, contributed to high level of workers' exploitation. Unfortunately, these

policies, such as deregulation has greatly weakened the capacity of the Nigerian government to enforce labour-union rights.

Deregulation and liberalisation open loopholes for employers to exploit workers by circumventing legal and collectively agreed standards (Batt *et al.*, 2009; Jaehrling & Méhaut, 2012). This study argues that the growing trend of agency workers is not only about the market-oriented factor, but can be perceived as a factor in the wider neoliberal process of disintegrating the working class, and the retreat of the labour movement identity underpinned by the values of collectivism and solidarity (Howell, 2005; Paleologos, 2006;). This compelled some of the union leaders to take a defensive position, by trying to protect, as much as possible the core of the workforce who are still their members, rather than trying to extend organisation to the fragmented labour force, hence, the non-institutional factor.

The non-institutional factors such as, the indifference of trade union leadership to include agency workers as members, the unwillingness of agency workers to join the union, the perception by agency workers that the union leadership do not have their interest at heart, and the employers hostility towards unionism, all played an important role in the declining nature of the strength of trade union membership. This divisive strategy of the agency workers not seeing themselves as having a common goal and interests contributes to promoting the agenda of the neo-liberals.

< Insert Figure 2 About Here >

DISCUSSION

There is clear evidence that the utilization of agency workers has increased beyond the periphery into the core activities of the Nigerian oil industry, thereby impeding trade union membership and strength.

The success of any organisation is said to largely depend on the expertise, skills, morale and commitments of its workforce (Robinson & Barrera, 2012). Hence, the findings indicate

that the growth of agency workers was as a result of neo-liberal global market dynamics. Likewise, the new knowledge economy, which places a premium on best fit, propelled the wider usage of agency workers from the periphery to the core activities of the day to day business of the Nigerian oil industry (Dundon & Rollinson, 2011). This evolution is similar to Marx's prediction, that at a certain point in the development of production, science and technology become qualitative forces of production that can increasingly generate value removed in terms of immediacy from 'living' human labour, for example, through automation (Robinson & Barrera, 2012). Although, it is important to note that the reconfigured work arrangements have emerged to compete more efficiently in the competitive global market, hence, the employers drive for the use of agency workers in executing their businesses. Yet, these reconfigured work arrangements consequently have an impact on the growth of union membership, as agency workers are denied the right to unionization.

The lack of explicit guidelines within the Nigerian Labour Law for this category of workers leaves them more vulnerable, and subjects of exploitation, with minimal resistance. Hence, the call for a review of the Labour Law in order to reflect realities in the workplace. Given the growing trend for engaging agency workers in the Nigeria Oil Industry, relevant legislative backings have become more necessary for the occupational health and welfare of these workers, and to ensure their social legitimacy within the employment relationships.

This study has been able to show the effects of neo-liberal policies not only on the trade unions, but the employees and society in general. The trend towards the utilisation of agency workers has become a driving force in the global capitalist economy, as cost effective and easily disposable tools. The standard collective bargaining is being replaced by individual contracts based on bargaining between employers and employees. In the process, employees bargaining power has been eroded and particularly the bargaining power of the agency workers. Also, the rights of agency workers in the current Nigerian Labour legislation is very weak,

which has enabled their rights to be violated with impunity. This is a societal issue that must be resisted by the Nigerian trade unions, NGOs and human right activists. The study concludes that trade unions representatives must continue in their struggle against employers' exploitative tendencies in order to remain relevant. The unions must unite; and form a solidarity to counteract the power of capital in the age of neoliberalism that has eroded labour standard. In so doing, they should see themselves as labour against capital and let go of the divide and rule strategy of the employers in causing confusion and disunity in their midst.

This study, therefore, contributes to the current discussion on the decent work concept, and the freedom of right to association laid down by the International Labour Organisation (ILO, 2009), and its associated policy agenda, as advocated by the trade unions. Furthermore, drawing on industrial relations studies regarding trade unions' strategic choices, this study arrived at a conclusion drawn from the empirical findings, that there was an urgent need for a unified and solidaristic approach by the trade union institutions, and the necessity to integrate both institutional and non-institutional factors into a single analytical framework, through policy implementations.

Recommendations for Policy Development and Implementation

Nigeria as a nation has made major strides in attaining international labour standards set out by ILO, such as the enactment of Pension Reform Act 2004, and Employee's Compensation Act 2010. However, the Nigerian reform of the Trade Unions Act 2005 tends to demonstrate one step forward, and two steps backward in the process. The reform did not take into considerations the interest of employees, particularly, the agency workers, and has been widely criticized by both national and international bodies. The reform is perceived not to be in harmony with ILO standards and the practice of industrial relations. In view of this seemingly negative impact of the reform on the experiences of agency workers, from the finding, this study recommends the following: First, the unions must rise up to the challenge of providing

quality services, dynamic leadership style, transparent democratic principle towards the protections of not only their members, but also to the non-unionized agency workers; Secondly, a fairly obvious recommendation is for the Nigerian government to reform and enforce new labour laws that will address all forms of unfair labour practices and implement a restraint on those organisations who are found to be taking advantage of workers.

Limitation

Overall, whilst the current case study was limited in focusing on the Nigerian oil industry, it was successful in reflecting the Nigerian labour market where agency workers are found to be virtually dominant in every sector. Thus, it is argued that, by including agency workers from other industries may have introduced more variance in the heterogeneity indicators, which may in turn, would have affected the results. However, by using the oil industry, the study has offered reasonable possibilities for generalising the findings since the oil industry utilised more agency workers compared to any other industry in Nigeria.

This research study will therefore contribute valuable insights into the available published academic literature on agency workers and trade union struggles in the emancipation of workers globally. It also promotes the decent work agenda and the freedom of right to association laid down by the International Labour Organisation in its conventions which Nigeria has ratified. The 1998 ILO Declaration of the fundamental principles of the rights at work should be strictly adhered to in the reviews of labour laws in Nigeria to ensure agency workers' rights are upheld and given a social legitimacy (Danesi, 2012).

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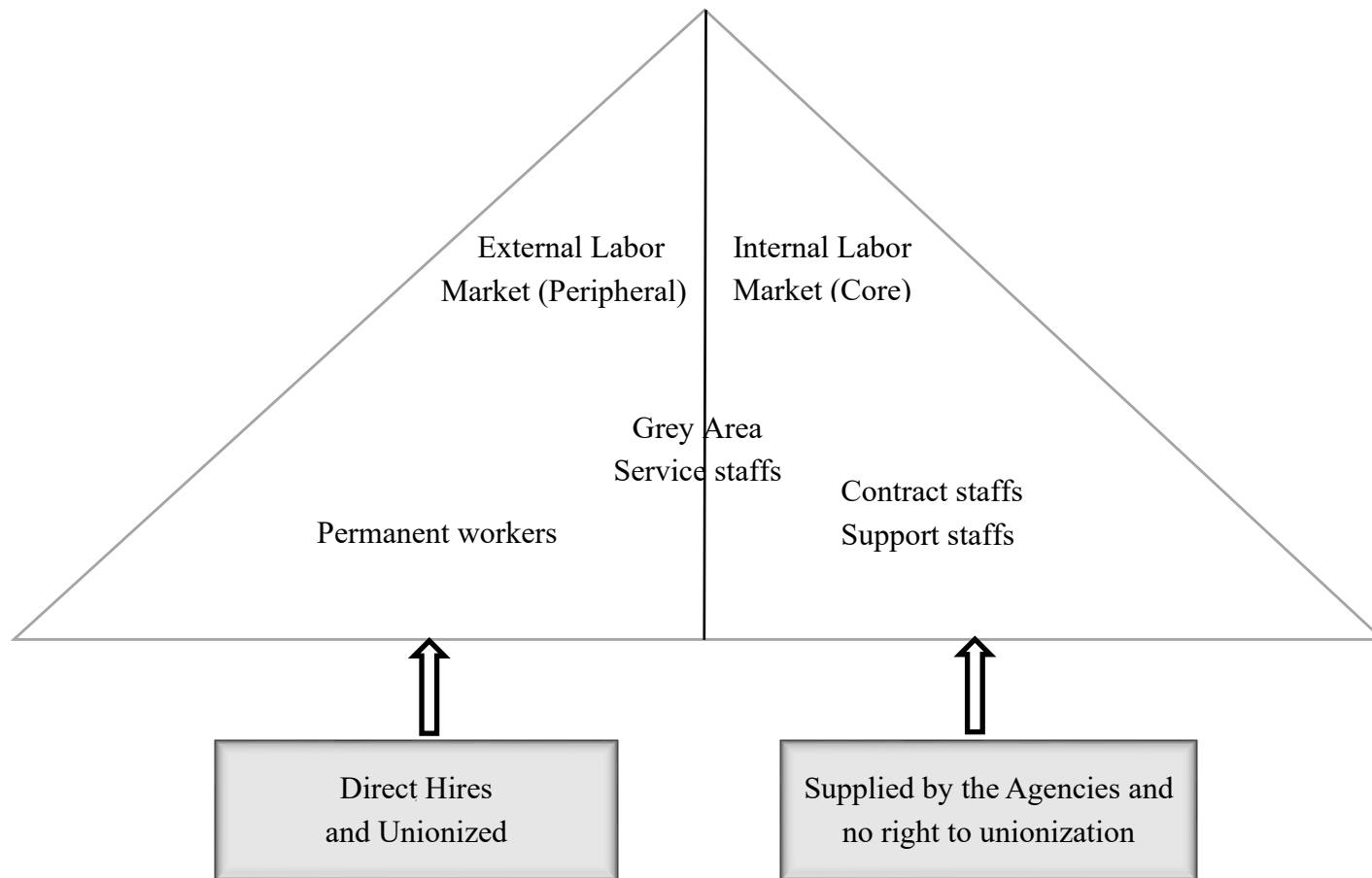


Figure 1. Dual and triangular employment relations

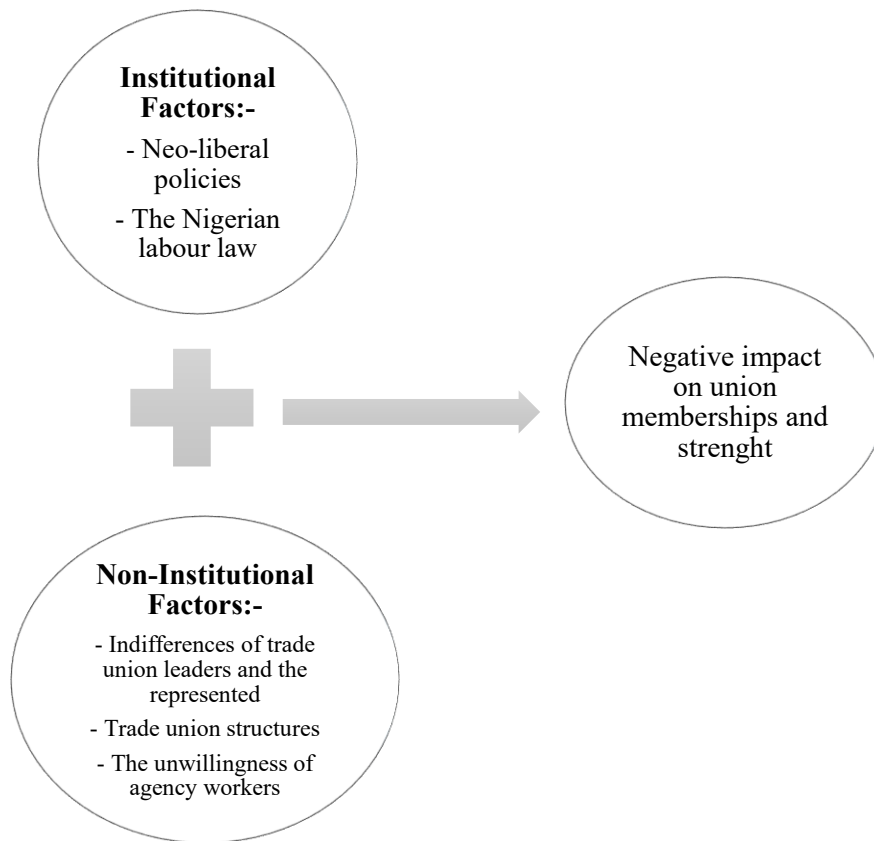


Figure 2. Framework of institutional and non-institutional factors

Table 1. Summary of the reported issues

	Companies	Description of the reported issues	Period
1	Major oil producing companies (Shell, ExxonMobil, Chevron, Agip, Halliburton, etc)	Management failure to honour the tripartite agreement of standardizing contract workers	28/04/2000
2	Major oil producing companies	Unethical labour practices. Management charged with biased treatment on Nigerian workers over the expatriates, and issues of casualization.	27/11/2000-07/12/2000
3	Major oil producing companies (NUPENG)	Casualization, termination and victimization	28/06/2001
4	Transocean	The refusal of management to allow workers to put forward their grievances to the visiting officials of the parent company from France	07/03/2003-18/03/2003
5	Major oil producing companies	Increasing number of expatriate workers in the industry Externalising the internal labour market	11/04/2005-14/04/2005
6	Chevron	Management refusal for an attempt for contract employees to join labour	15/06/2006-22/06/2006
7	Chevron and Shell	PENGASSAN strike action over job appointments and safety standards. Sudden firing of 21 contract staff who have put in 15-25 years' service after attempting to join union	23/06/2008-28/06/2008 10/10/2008
8	Major oil producing companies	Trade unions strike over concerns for workers security in the industry	09/09/2009-12/09/2009
9	ExxonMobil	PENGASSAN indefinite strike action over the sacking of 84 workers and expatriate quota violation, as well as the issue of contract labour	30/11/2010
10	Major oil producing companies	NUPENG industrial disputes with management on casualization. Warning strike over unjustifiable mass disengagement and migration of workers to contract staff and casuals in the downstream, unfair labour practices and anti-union activities-failures to engage PENGASSAN on issues in the petroleum industry bill.	28/01/2012-30/01/2012 16/04/2012-19/04/2012

11	Major oil producing companies	Refusing oil workers union rights stop casualization NUPENG three days warning strike over inhuman treatment by these three multinational companies; inability to implement signed collective bargaining agreement with petroleum tanker drivers and non-adherence to guidelines on contract staffing/casualization and the abuse of expatriate quotas.	13/02/2013-16/02/2013 01/07/2013-03/07/2013
12	Major oil producing companies	PENGASSAN and NUPENG strike action over casualization of work, and the use of contract staff in the core production areas. Insensitivity to the health and safety of workers in operational areas, career progression as well as undue delay of the on-going collective bargaining agreement	07/07/2014-31/07/2014
13	Major oil producing companies	PENGASSAN went on six days strike for failure of government and partners to honour collective agreement and planned restructuring without carrying the union along	07/07/2016-13/07/2016
14	Major oil producing companies	PENGASSAN and NUPENG 3 days' strike action over indiscriminate sack of workers without benefits. Casualization of the workforce	11/01/2017-13/01/2017

Note. The table is compiled on the bases of published data. Sources included: Fajana (2005), Oluokun (2015), Dodondawa (2017) and other relevant sources.