

Developing Integrated Collective Bargaining System in a Bi National Organization: The Case of the Tanzania Zambia Railway Authority (TAZARA)

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The Tanzania Zambia Railway stretches 1,860 kilometers from the East African Indian Ocean port of Dar es Salaam in Tanzania to New Kapiri-Mposhi in land locked Zambia. It is defined as a bi-national organization as opposed to either transnational or multinational because it is jointly owned and managed by the Governments of Tanzania and Zambia. Its construction was made possible by Chinese interest-free loan to the two Governments. Few development projects in Africa have been charged with as much political and ideological dynamite as Tanzania Zambia Railway. To the Western powers, angry that the Chinese had entered territory which they considered their own preserve, it was a Red Railway intended to thrust communism into the very heart of Africa. For the white regimes in Southern Africa, grimly attempting to hold back demands for majority rule, it was seen as Africa's Ho Chi Minh Trail, carrying guerrilla further, armed with Chinese thoughts and weapons to the banks of the Zambezi River. The Chinese regarded the project as a Friendship Route to strengthen the new African states against the forces of imperialism and for Tanzania and Zambia it was a Freedom Railway, which should prove an instrument in increasing their independence. These reactions underpin not only the complexity of the establishment and management of a bi-national organization but also present challenges to the two national trade unions on how best they can represent their members. Industrial relations literature has cited differences in countries' historical, social, political, economic, and ideological background as the main obstacles in the development of collective bargaining machinery in transnational or multinational organizations. A study in Tanzania Zambia Railway Authority has attempted to develop an integrated bi-national collective bargaining machinery whose collective agreements are likely to be legally enforceable in their respective countries. This paper explores the development of trade unions in both Tanzania and Zambia which can be divided in three phases: first, the construction phase; second, the consolidation phase; and the third and final phase, trade union liberalization and political pluralism which covers the development of a bi national collective bargaining model with its Joint Industrial Council structure and negotiation procedures. The paper compares and contrasts trade union development in the two contracting states and critically examines how each phase has influenced trade union development. It provides a brief historical outline of collective bargaining process and spells out advantages and limitations of bi-national collective bargaining machinery. The paper concludes by observing that one of the main objectives of regional

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groupings is economic integration and suggests that integrated collective bargaining machinery be adopted as an ideal industrial relations model for regional groupings such as the African Union (AU), Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA), Economic Community for West African States (ECOWAS), Eastern African Community, and other regional groupings around the world since it localizes industrial relations function in general and collective bargaining in particular.

Keywords: Bi-national organization, Interest free loan, British imperial experience, Unilateral declaration of independence, Integrated collective bargaining, ideological dynamite, Contracting states, economic exploitation

Setting the Scene

The idea of building a railway through Northern Rhodesia (now Zambia) was not new; it was part of the imperial plan of the diamond mining magnate, John Cecil Rhodes, of building a railway from the Cape Colony of South Africa to Cairo in the North of Africa (Bailey, 1976; Hall & Peyman, 1976). According to Rhodes, the railway would serve two purposes first, to open and bring civilization (Christianity) to Africa (British imperial expansion), second, and more important, to gain a string of colonies to provide valuable raw materials and an expanding market for manufactured goods (economic exploitation). According to the imperialists, the construction of the railway was determined by the availability of the raw material and the market for manufactured goods. As one contemporary writer on the Cape to Cairo Railway project put it: “The main function of Africa for many years to come will be the production of raw material for the use of industrialized world” (Bailey, 1976, p. 10).

Rhodes’ plan was to link Cape Town in South Africa through either Tanganyika (Tanzania) or Congo, then to Sudan (another British colony) and to Cairo in Egypt. The Berlin Conference, which determined the partition of Africa in 1884, recognized Tanganyika and Congo Free State as Germany Belgian colonies respectively. The same conference recognized a railway as a sign of effective occupation, thus calling it Permanent way (Hall & Peyman, 1976). Consequently, Rhodes’ plan to construct a Cape-to Cairo railway was frustrated because neither Belgium nor Germany could allow a railway owned by another imperial power to pass through its territory (Figure (a), (b), and (c)).

The construction of Tanzania Zambia Railway was made possible by Chinese interest free loan of £167 million to the two governments; other conditions included eight years grace period and 22 years repayment period (Bailey, 1976). The construction was undertaken by the Chinese Railway Construction Team (CRCT), from 1970 to 1975. There were no trade unions during this phase because they were prescribed by the labour laws of both Zambia and Tanzania. Industrial relations issues were regulated either by management and workers consultations through local human resource officers known as Field Assistants or were referred to the Ministry of Labour.

The railway was handed over to the Governments of Tanzania and Zambia on 1st July 1976 after six months trial period. Chinese Railway Construction Team (CRCT) employees were laid off, while those recommended to work for the operating railway were re-employed under permanent and pensionable conditions of employment by Tanzania Zambia Railway Authority established by the Tanzanian Railway Project Implementation Act 1968 to run the railway. Under new conditions of employment, workers were eligible to form a trade union subject to the Security of Employment Act 1964 of Tanzania and the Industrial Relations Act 1971 of Zambia.

Maps

The following maps show (a) Africa, Cape to Cairo, (b) Zambia's rail outlets to the sea, including the Tanzania Zambia Railway, and (c) Route of the Tanzania Zambia Railway (Bailey 1976).

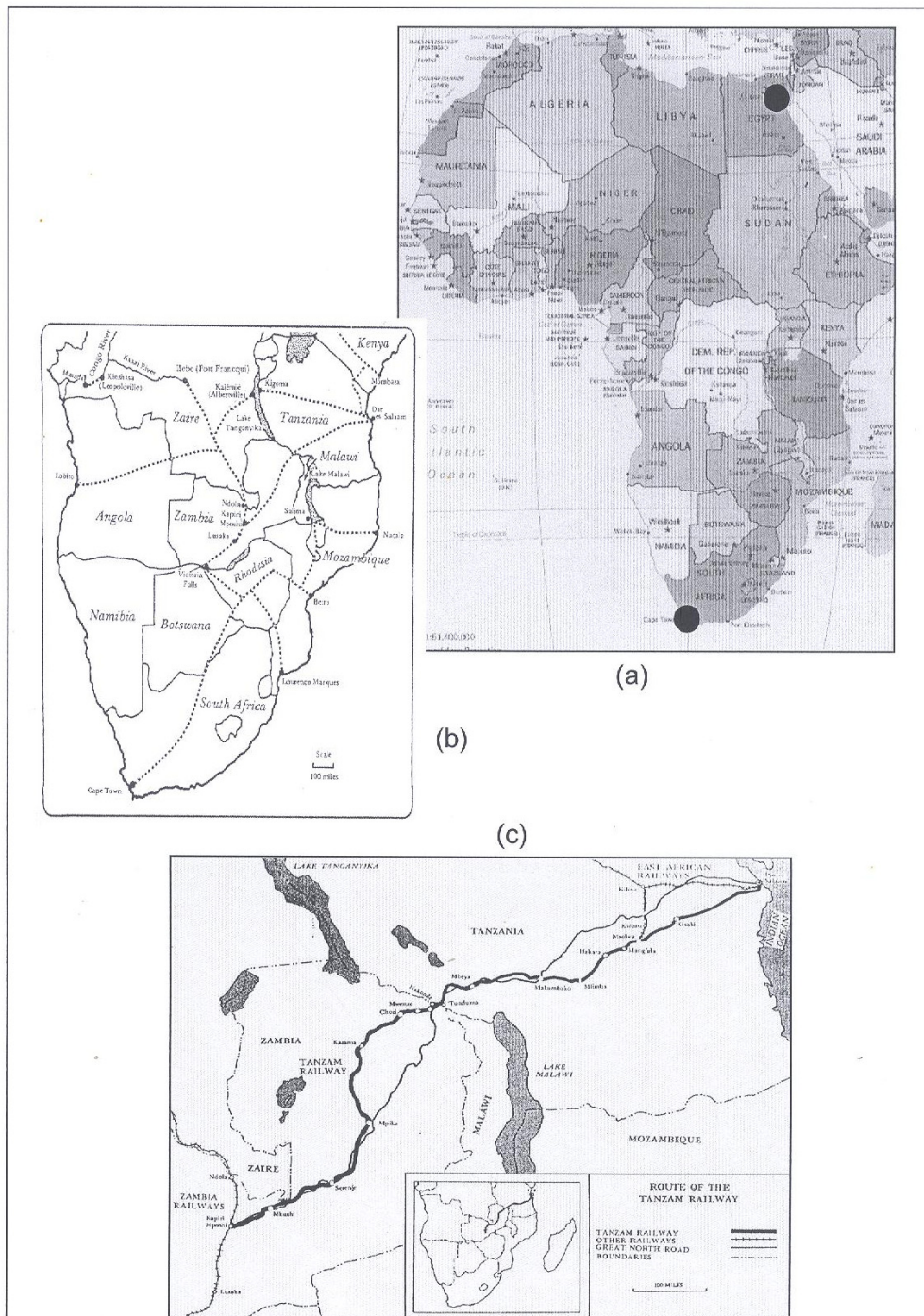


Figure 1. African Railway net work (a)Cape to Cairo.(b)Zambia outlets to the sea (c)Route of Tanzanian Zambia Railway (Bailey1976).

The Development of Trade Unions in Tanzania Region

Genesis of Trade Unionism in Tanzania

Tanzania (formerly Tanganyika and Zanzibar), unlike any other East African country, suffered two successive colonial masters: the Germans, from 1884 to 1919, and the British, from 1919 until the time of independence in 1961 (Kaniki, 1979; Mahyo, 1979; Khahama, 1985).

The first trade union to be formed in Tanganyika main land was Tanganyika Federation of Labour (TFL) in 1955 when colonial government recognized the existence of trade unions, their registration and regulation (Figure 2). Like in any other colonies, trade unions in Tanganyika were strictly regulated by colonial political economies. By 1967, the Tanzanian Government realized that the inherited British political economy was not compatible with Tanzanian society and declared Tanganyika a socialist state and aligned trade unions to socialist means of production.

Trade unions under socialism. *National Union of Tanganyika Workers (NUTA)*. The National Union of Tanganyika Workers (NUTA), established under NUTA Act No. 4 of 1964, became the only trade union in Tanganyika and was affiliated to the ruling political party, Tanganyika African National Union (TANU); it therefore functioned as an arm of the ruling party, commonly referred to as transmission belt or what Debrah (2004, p. 81) calls an “economic development-oriented/state institution”.

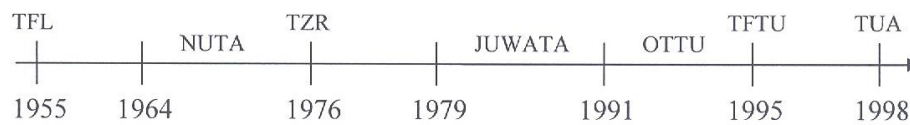
One of NUTA’s objectives was to promote the policies of TANU and to encourage its members to join TANU (Pratt, 1976; Rwekaza, 1999). This approach to organizing a trade union was unacceptable as it contravened the International Labour Organization’s (ILO) principle which stipulates that: “governments should not attempt to transform trade unions into instruments for pursuance of political aims” (ILO, 1994, p. 59).

Under the provisions of the NUTA, if an employee remained out of the trade union after two months of employment, the employer had the right to terminate his employment (Mihyo, 1979, p. 74; Rwekaza, 1999). This provision curtailed the fundamental freedom of association as it reinforced compulsory association aimed at boosting union membership, an infringement of the workers’ rights to establish and join organizations of their own choice (ILO, 1994, p. 41).

The NUTA General Council was barred from sanctioning or proposing strike action in respect of any labour dispute without exhaustive procedures stipulated by the Trade Disputes (Settlement) Act 1962. This prohibition is incompatible with ILO Convention No. 87. Outlawing strikes and the imposition of the compulsory statutory arbitration virtually abolished the right to free collective bargaining (Rwekaza, 1999). Consequently, NUTA was not allowed to negotiate for conditions of employment for their members, although it was allowed to advise the government on wages policies and other issues relating to workers (Mihyo, 1979).

***Jumuia ya wafanya kazi Tanzania (JUWATA)*.** In 1979 the government declared the United Republic of Tanzania following the merger of the main land Tanganyika and the Islands of Zanzibar and Pemba. NUTA was replaced by JUWATA (Jumuia ya Wafanya kazi Tanzania, or Workers’ Mass Organization) for the newly formed political party Chama Cha Mapinduzi (CCM or Revolutionary Party) and became the sole trade union in Tanzania and took care of all labour matters. In 1989 JUWATA held elections, the newly elected office bearers tried to de-link the trade union from party domination, supervision, and control (Rwekaza, 1999). JUWATA was granted relative autonomy with the adoption of political pluralism and the subsequent multiparty system in 1990.

Organization of Tanzania Trade Unions (OTTU). JUWATA was replaced by the Organization of Tanzania Trade Unions (OTTU), established under the Organization of Tanzania Trade Union Act 1991 as the sole trade union representing all workers in Tanzania. The main objective of OTTU legislation was to free workers' unions from the government. This led to the re-establishment of one-industry-one trade union, leading to the establishment of the Tanzania Railway Association of Workers Union (TRAWU) which covered Tanzania Zambia Railway workers. Consequently, 1992 marked the beginning of the collective bargaining process in the Tanzania Region Zambia Railway Authority. The 1995 elections paved the way for the establishment of the Trade Unions Act 1998 and the Employment and Labour Relations Act 2004, realigning Tanzania Trade Unions to free trade unionism.



TFL:Tanganyika Federation of Labour; *NUTA*: National Union of Tanganyika workers; *TZR*: Tanzania Zambia Railway Authority; *JUWATA*: Jumuia ya Wafanya kazi Tanzania (Workers' mass organisation); *OTTU*:Organization of Tanzania Trade Unions; *TFTU*: Tanzania Federation of Trade Unions; *TUA*: Trade Union Act.

Figure 2. Profile of the development of trade unions in Tanzania.

The Development of Trade Unions in the Zambia Region

Genesis of Trade Unionism in Zambia

The colonial government attitude towards establishing trade unions in Northern Rhodesia (Zambia) was that Africans were not nature enough to get involved in trade unionism; the government's policy was that no civil servants were allowed to participate in politics. This policy was supported by the large mining companies, fearing the effect of strikes on production (Mulford, 1967).

The first trade union in Northern Rhodesia was the European Mine Workers Union formed in 1936 and determined the development of trade unionism on racial basis. The Shop Assistants' Union was the first African Trade Union formed in 1947 while the strongest and the most wealth trade union, the Northern Rhodesia African Mine Workers' Union (NRAMWU), was formed in 1949 (Gerzel, 1979; Macpherson, 1981; Nordlund, 1966).

Trade Unionism in Independent Zambia

At independence in 1964 the Zambian government espoused corporatist philosophy of humanism and corporatist approach to trade unionism which stressed unity and corporation above sectional interest in national economic development.

In 1968, the government acquired controlling interest of 51% in all vital industries and by 1973 the government declared the country a one-party state. Although the government tried to control trade unions by offering union officials government positions, trade union officials preferred to remain independent from government control. In 1990, independent trade unions spear headed the return to multiparty democracy in Zambia (Larmer, 2000; Nordlund, 1996).

Comparison of the Factors Influencing the Development of Industrial Relations in Tanzania and Zambia

There are differences and similarities which have influenced the development of industrial relations of the two countries. The similarities include: first, both countries were British colonies and therefore inherited British political economy; second, both nationalized their industries; third, both were declared one-party state; fourth, both countries' political economies collapsed leading to economic restructuring; and finally, both have reverted, to multiparty democratic systems.

Differences include: First, the two countries pursued different ideologies, African Socialism and Humanism by Tanzania and Zambia respectively after independence and industrial relations systems were dictated by these ideologies. Second, the two countries have different economic bases, Tanzania being basically an agricultural country while Zambia is highly dependent on copper mining industry. Third, the copper industry dictates wages in Zambia as the government and the mining industry owners would rather give in to salary demands than risk industrial action which would stop copper production. Fourth, trade unions in Tanzania were controlled by the party, whilst trade unions in Zambia were controlled by the government through the legal system (Gertzel, 1979).

Nature of Collective Bargaining

The term collective bargaining was originally used by Beatrice and Sidney Webb (1894) who identified and differentiated three major categories of trade union activity. First, mutual insurance in the provision of friendly social benefits in the event of sickness, unemployment, and industrial action. Second, collective bargaining for the negotiation of terms and conditions of employment on behalf of their members. Third, legal enactment in the lobbying of legislation supportive to the members' interests. As a method of determining the terms of employment relationship, collective bargaining utilizes the process of negotiation between representatives of management and employees and results in an agreement which may be applied uniformly across a group of employees (Salamon, 2000, p. 323; Farnham & Pimlott, 1990). The main constituents of collective bargaining are: (i) determination of the relationship between employees and management; (ii) the processes through which this determination takes place, i.e., negotiation; (iii) the result of the negotiation, that is agreement, commonly known as a Collective Agreement; (iv) final, the application of the contents of the agreement to the group it covers. According to the ILO, collective bargaining is "an institutionalized procedure of joint determination of rules to govern the terms and conditions of employment of the workers concerned and the labour management relationship" (year, p.). The term "institutionalized" conveys the legal status of the collective agreement especially in countries where it is regarded as a legal document, as is the case in Tanzania and Zambia.

The regularized patterns of union-management interaction or the network of institutionalized bargaining relationships are referred to as "bargaining structures" (Bean, 1994). Bargaining structures establish the framework for the exercise of power within the labour market. These structures may be broadly classified in terms of the level at which negotiations are conducted. Three models can be distinguished: (i) industry wide, a multi-employer bargaining which is external to the firm, as practiced in Western Europe on wage-related issues; (ii) single enterprise or firm bargaining, as typically found in the USA, Japan, Tanzania, and Zambia; and (iii) economy-wide systems between trade unions and the employers' central confederation, characteristic of several countries including Norway, Sweden, Denmark, and the Netherlands.

While trade union activities associated with collective bargaining process seem to be obvious and procedural in a national setting, they seem to bring some concerns in a national organization setting such as: the determination of relationships of employees of two nationalities and bi-national management, the establishment of bi-national collective bargaining structures through which negotiations would take place, the legality of the collective agreements within the two contacting states, and the application of the contents of the collective agreements.

Collective Bargaining in Tanzania Zambia Railway Authority

Background

When the railway was handed over to the two governments in 1976, Tanzania was a one-party socialist state; the principal labour law was the Security of Employment Act 1964 which provided for the establishment of trade union field branches (workers' committees in the workplace) but did not provide negotiations between management and trade unions for employees conditions of employment.

In Zambia the principal labour law was the Industrial Relations Act 1971 which provided for negotiations between trade unions and management for employees conditions of employment; the Act provided for one union in each industry, and works councils as a means of consultation between workers and management and set out procedures for registering a trade union: signing a recognition agreement; forming a joint council; signing a collective agreement (Section 4 while 7 (1) provided for the number of trade union members required for registering a trade union and its constitution. Under a one industry one union Act, the Railway Workers Union of Zambia (RWUZ), was the only legitimate trade union for workers of the newly established Tanzania Zambia Railway Authority.

Single Trade Union Negotiation Phase

The Zambia Region was the first to start negotiating for their members' conditions of employment, having established a trade union and formed the Joint Industrial Council. The first Railway Workers Union of Zambia (RWUZ) and TAZARA Management Joint Industrial Council (JIC) met in 1982. Members of JUWATA, the Tanzanian trade union, attended as observers since both TAZARA Management and RWUZ accepted them as members of a trade union despite their not being allowed to formally negotiate for their members in accordance with their government's socialist ideology. However, JUWATA attendance raised a legal concern when the Collective Agreement was sent to the Zambian Labour Commissioner for approval. It was noted that there were two trade unions: the Railway Workers Union of Zambia (RWUZ) (or Zambia) and Jumuyia ya Wafanya Kazi Tanzania (JUWATA) (for Tanzania), and that the Agreement stated two Acts: the Industrial Relations Act Cap 517 of 1971 of the laws of Zambia and the Security of Employment Act 1964 of the laws of Tanzania (Collective Agreement between Tanzania Zambia Railway Authority (TAZARA) and the Railway Workers Union of Zambia (RWUZ), 29th January, 1982).

The Commissioner for Labour in Zambia rejected the agreement on the grounds that:

- (a) It incorporated facts or material alien to the Zambian situation,
- (b) The inclusion of JUWATA as a subscribing party to the Agreement was not only unacceptable but contrary to the current industrial relations laws in the country and,
- (c) The majority of the provisions of the Agreement were contrary to the provisions of the industrial relations scene in Zambia and therefore, the agreement should make provisions which were legally enforceable in Zambia.

With these remarks the Agreement was referred to Zambia Industrial Relations Court which directed that the parties to the collective agreement re-negotiate the agreement and that it should only take account of laws and practice of laws in Zambia (Re: MLSS, 4th May, 1982).

The Agreement was re-negotiated, resubmitted, and eventually approved by the Labour Commissioner. The Zambian Labour Commissioner's rejection of the first Agreement highlighted the importance of the two trade unions and TAZARA Management to work within the laws of each contracting state yet it raised the implementation question. If the Agreement is confined to the labour laws of one country, should its implementation be confined to the members of that country's trade union? Tanzania Zambia Railway Authority's Council of Ministers rules that the agreement be implemented throughout the railway system. The system wise implementation raised the question of the cost of the Joint Industrial Council (JIC). The Railway Workers Union of Zambia (RWUZ) argued that their members subscribed to the costs of the JIC, but questioned whether they should continue subscribing to the JIC if the Agreement was extended to the members of JUWATA in Tanzania. The Council of Ministers rules that TAZARA Management should fund the Joint Industrial Councils until such time that trade unions in Tanzania would be allowed to negotiate with management and therefore be able to fund their JIC meetings.

Joint Trade Unions Negotiation Phase

In 1992 Tanzania Government allowed trade unions to negotiate with their employers; consequently, Tanzania Railway Association of Workers Union (TRAWU) started negotiating with TAZARA Management for their members' conditions of employment. The two trade unions negotiated jointly with TAZARA Management for 1992 to 1994 collective agreement, for 1994 to 1996 collective agreements the trade unions started negotiations jointly, but differed on the final offer of salary increase. RWUZ accepted 3% salary increase, but TRAWU rejected it. TRWU decided to negotiate with Management on their own for the Agreements covering 1996 to 1998. Although the two trade unions negotiated separately, the two agreements were similar because they were based on the previous Collective Agreement which was jointly negotiated, except for the following two differences: First, there were differences relating to the provisions of the benefits accrued to dead employee or spouse and the dead employee's biological child or legal dependant. Second, TRAWU demanded and was awarded Golden Hand shake for a retired employee, and also suggested that a consultative committee comprising management and trade union officials be responsible for recommending to the Managing Director the type and nature of the award to be given to the best workers. The Railway Workers' of Zambia (RWUZ) collective agreement did not contain the Golden Handshake and consultative committee provisions because they were not demanded.

One management negotiating with two trade unions within the same organization presented both management and trade unions not only with the problem of the application of two different collective agreements within the same organization but also threatened the unitary nature of the organization enshrined in the organization's Act. But management and trade unions resolved to find a lasting solution to separate negotiation problem.

In Search of an Integrated Collective Bargaining Machinery

Negotiating separately with two trade unions triggered the need to find a system where the two unions would negotiate as one team. This was necessary for three main reasons: First the one main purpose of trade

unions is to protect their member' interests; second: as the two trade unions belonged to one and the same organization, they were faced with challenge of harmonizing their members' conditions of employment; and third: different conditions of employment would defeat the purpose of running the organization as a unitary system as provided by the Act.

Management suggested to the two trade unions that they negotiate as one since they had been consulting each other on most issues affecting their workers, and they were also part and parcel of running TAZARA as a single undertaking. Management wrote to the two trade unions.

...since TAZARA started holding separate negotiations with the two trade unions (TRAWU & RWUZ) on conditions of service. Management has been experiencing enormous problems arising from application of different conditions of employment to employees working for one and the same organization and with one common purpose and objectives. This trend has not helped either Management or the unions promote industrial harmony because employees from either one union or both feel unfairly treated by management or betrayed by the union that represents them, and finally, Management is of the view that more financial and time resources are spend on these separate negotiations which could be rationally utilized if three parties had a viable negotiating arrangement. Management proposes that future negotiations be held jointly between Management on one side and the two trade unions negotiating as one on the other side. (Director of Human Resources, 6th January, 1998)

The two trade unions accepted the proposal, paving the way for the establishment of Tanzania Zambia Railway Authority Joint Industrial Council (TZRJIC).

Tanzania Zambia Railway Authority's Integrated Collective Bargaining

Structure

TZRJIC comprises the Chair, the Council Secretary and 22 members, seven from each trade union and eight from management (see Figure 3). The chair can come from either Tanzania or Zambia, is independent, and is proposed by either Management or the trade unions and approved by the other party; the chair should be knowledgeable in the field of industrial relations, and in fact the current Council Chairman is a lecturer in industrial relations at President's Citizenship College in Zambia. The Joint Industrial Council Secretary is appointed by the Directorate of Human Resources at Head Office. One of the two Regional General Managers acts as spokesperson for the Management negotiating team while one of the presidents of the trade unions acts as the spokes person of the two trade unions.

The two Heads of Human Resources, one for each region, were of the opinion that they should have been members of the Council because they were responsible for implementing the agreements; however, Management believed that since the Regional General Managers and the Director of Human Resources were members, it was not necessary to include the Heads of Human Resources.

There have been three collective agreements under this arrangement: 1999-2001, 2001-2003, 2005 and 2005-2007. The arrangement has been hailed as a tremendous success indicating that it is possible to develop collective bargaining machinery in a bi-national organization which can operate within the labor laws of the two-contracting state. This is a great improvement on earlier findings by Nothrup and Rowan (1979) that it was not possible to establish joint negotiating machinery in a multinational organization due to different labour laws, social and historical backgrounds.

Negotiation process. *Bi-national integrated collective bargaining model background.* According to TAZARA's negotiation terminology, proposals refer to items suggested by TAZARA Management for

discussion with trade unions. Demands refer to items suggested by trade unions for discussion with the Management. In other words, trade unions *demand* and management *proposes*.

Both Management and trade unions examine current collective agreements and identify clauses or new items which would constitute demands or proposals. The bi-national trade unions collective bargaining model assumes that negotiations are initiated by trade unions. From discussions and other materials it is possible to depict this process in Figure 4.

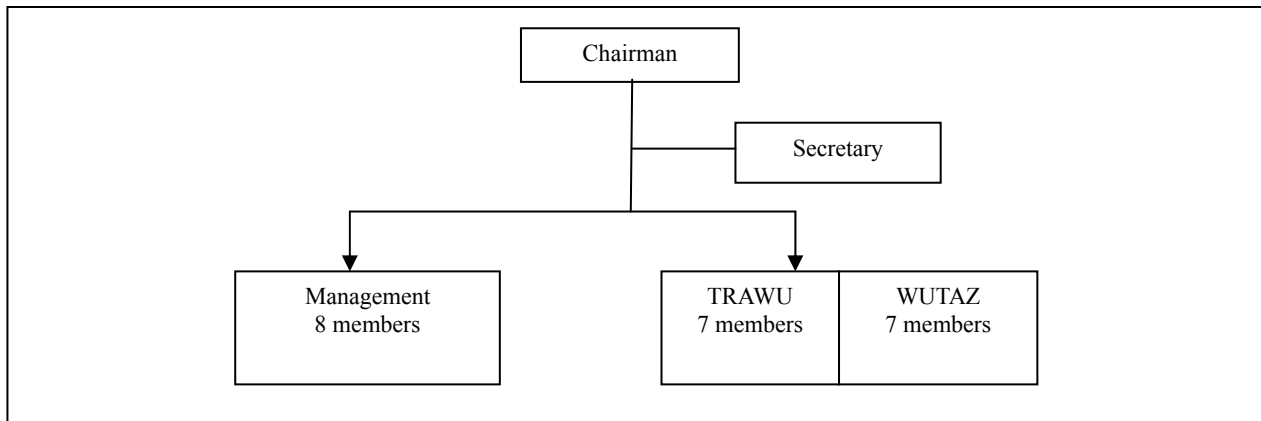


Figure 3. TAZARA integrated joint council structure.

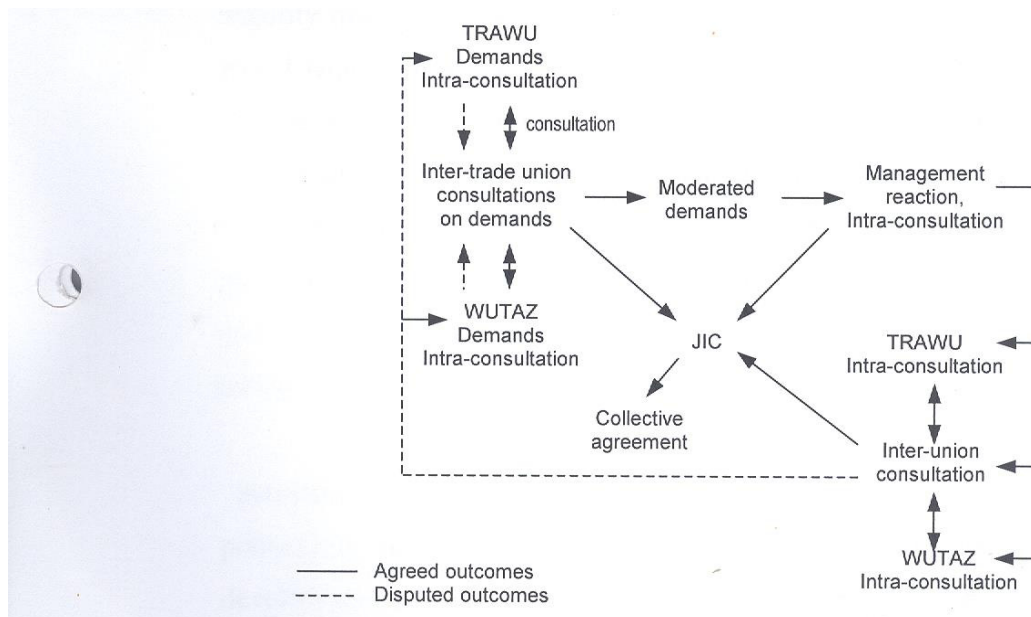


Figure 4. Bi-national integrated collective bargaining model.

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