LAWS OF DOMINICA

INDUSTRIAL RELATIONS ACT

CHAPTER 89:01

Act
18 of 1986

Current Authorised Pages

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Note on Subsidiary Legislation

Until replaced by Regulations made under this Act, the Trade Disputes (Arbitration and Inquiry) (Claims for Recognition and Conduct of Courts) Regulations (S.R.O. No. 39 of 1968) shall, so far as may be applicable to this Act, remain in force.

The Trade Disputes (Arbitration and Inquiry) (Claims for Recognition and Conduct of Courts) Regulations were made under the Trade Disputes (Arbitration and Inquiry) Ordinance (Cap. 119) which was repealed by the Industrial Relations Act 1975 (Act No. 35 of 1975).

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INDUSTRIAL RELATIONS ACT

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CHAPTER 89:01

INDUSTRIAL RELATIONS ACT

AN ACT to consolidate the law relating to Industrial Relations. 18 of 1986.

[24th July 1986] Commencement.

PART I

INTERPRETATION AND APPLICATION

1. This Act may be cited as the – Short title.

INDUSTRIAL RELATIONS ACT.

2. (1) In this Act – Interpretation.

"bargaining agent" means a trade union that is recognised by an employer as the bargaining agent for –

(a) a bargaining unit comprised of employees of the employer; or

(b) a managerial employee employed by the employer;

"bargaining unit" means the group of employees of the employer that is recognised by the employer as such or determined to be the appropriate bargaining unit pursuant to the provisions of section 25;

'Board" means the Industrial Relations Board established by section 3;

'business" includes trade, undertaking, operation and establishment;

'Chairman's panel" means the members of the Board appointed by the Minister on the joint nominations of the registered trade unions and the employers' federation pursuant to section 4;

collective bargaining" means treating and negotiating between an employer and a bargaining agent with a view to a conclusion of an industrial agreement, the renewal or revision of an industrial agreement or the resolution of any dispute or difference;

Court" means the Eastern Caribbean Supreme Court established by section 4 of the Supreme Court Order; Ch. 4:01.

decision" means any decision, award, finding, order or direction;

"employee" means any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward, whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour, but does not include –

(a) any managerial employee; or

(b) any person who is responsible for or has an effective voice in the formulation of policy in the business of the employer;

"employees' panel" means the members of the Board appointed by the Minister on the joint nomination of the registered trade unions to constitute the employees' panel pursuant to section 4;

"employers' federation" means any organisation representative of employers;

"employers' panel" means the members of the Board appointed by the Minister on the nomination of the employer's federation;

Schedule. "essential service" means any of the services set out in the Schedule;

"full-time Chairman of the Tribunal" means the member of the Industrial Relations Board appointed by the Minister to be full-time Chairman of the Tribunal pursuant to section 5;

"industrial agreement" means an agreement in writing entered into between an employer and a bargaining agent on behalf of employees of the employer or on behalf of a managerial employee employed by the employer containing provisions respecting terms and conditions of employment of those employees or the managerial employee and the regulation of relations between the employer and the bargaining agent;

"Labour Commissioner" means the holder of the office of Labour Commissioner, or a public officer authorised by the Minister to act in his stead;

"lockout" means the closing of a place of employment, a suspension of work by an employer or a refusal by an employer to employ a number of his employees, done to compel his employees, or to aid another employer or to compel his employees, to agree to terms and conditions of employment;

"managerial employee" means any person employed by an employer –

(a) who has authority –

(i) to hire employees;

(ii) to terminate the employment of employees; or

(iii) to order that employees be suspended without pay;

(b) who makes effective recommendations that will, unless in unusual circumstances, be acted upon by the employer respecting any matter mentioned in paragraph *(a)*;

(c) in a capacity that requires that person to have full knowledge of the financial position of the business of the employer,

but does not include any person who is responsible for or has an effective voice in the formulation of policy in the business of the employer;

"managerial trade dispute" means any dispute or difference between an employer and a bargaining agent relating to the employment or terms and conditions of employment of any managerial employee and includes any dispute or difference concerning the interpretation, application, administration or alleged violation of an industrial agreement respecting any managerial employee;

"Minister" means the Minister responsible for Industrial Relations;

"parties" means, in relation to –

(a) a trade dispute or managerial trade dispute, the employer and the bargaining agent involved in the trade dispute or managerial trade dispute;

(b) an industrial agreement, the bargaining agent and the employer who have entered into the industrial agreement;

(c) a proceeding before the Tribunal, the applicant, the respondent and any other person or organisation named as a party to the proceeding in the application or by the Tribunal;

(d) a claim for recognition by a trade union, that trade union and the employer to whom the claim for recognition is made;

"registered trade unions" means all of the trade unions that are registered pursuant to the Trade Unions and Trade Dispute Act, but does not include an employers federation or any organisation of employers registered pursuant to that Act;

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"strike" means, subject to subsection (2) –

(a) a cessation of work or a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding; and

(b) a slowdown of work or other concerted activity on the part of employees in relation to their work that is designed to restrict or limit output, including action commonly known as a "sit-down strike" a "go-slow", or a "sick-out";

"trade dispute" means any dispute or difference between an employer and a bargaining agent connected with the employment or terms and conditions of employment of any employee, and includes any dispute or difference concerning the interpretation, application, administration or alleged violation of an industrial agreement affecting any employee, but does not include a dispute or difference in respect of which a complaint or application may be made to the Tribunal pursuant to any other Act by an employee, by a trade union acting on behalf of an employee or by an employer;

"Tribunal" means the Industrial Relations Tribunal provided for under section 6 (5).

(2) A failure to commence work or a refusal to continue working by reason of the fact that unusual circumstances have arisen that are hazardous or injurious to health or life does not constitute a strike.

(3) The provisions of this Act shall not apply to the State.

PART II

INDUSTRIAL RELATIONS BOARD AND TRIBUNAL

Industrial Relations Board and jurisdiction thereof.

3. There is hereby established a Board to be known as the Industrial Relations Board which shall be constituted and operated in accordance with this Act.

Number of members of Board.

4. (1) The Board shall consist of not more than thirteen members appointed by the Minister in accordance with subsection (2) and section 5.

(2) Subject to subsection (3), the Minister shall appoint as members of the Board –

(a) four persons jointly nominated by the registered trade unions to constitute the employees' panel;

(b) four persons nominated by the employers' federation to constitute the employers' panel; and

(c) four persons jointly nominated by the registered trade unions and the employers' federation to constitute the Chairman's panel,

but a person shall not be qualified to be appointed as a member of the Board who is not resident in Dominica.

(3) Where –

(a) the registered trade unions fail jointly to nominate four persons to the employees' panel;

(b) the employers' federation fails to nominate four persons to the employers' panel; or

(c) the registered trade unions and the employers' federation fail jointly to nominate four persons to the Chairman's panel,

within fourteen days of the date of a request to do so from the Minister, the Minister may appoint a sufficient number of persons to any panel to which the number of persons mentioned in paragraphs *(a)*, *(b)*, or *(c)* have not been nominated in addition to those that have been nominated, if any, so that the prescribed number of persons are appointed under this section as members of each panel.

(4) Subject to subsection (5) and to section 5(2), a member of the Board shall hold office for a period to be specified by the Minister not exceeding three years from the date of his appointment to the Board, and shall be eligible for reappointment to the Board at the end of that period.

(5) The Minister shall revoke the appointment of a member of the Board –

(a) on the joint request of not less than two-thirds of the

registered trade unions, where the member is on the employees' panel;

(b) on the request of the employers' federation, where a member is on the employers' panel; and

(c) on the joint request of not less than two-thirds of the registered trade unions and the employers' federation, where the member is on the Chairman's panel.

(6) Where a vacancy occurs in the office of any member of the Board by –

(a) the death or resignation of a member;

(b) the expiration of the term of which a member was appointed; or

(c) as a result of the revocation of the appointment of a member, pursuant to subsection (5),

the vacancy shall be filled by the Minister by the appointment of another person, nominated by the same organisation or organisations that nominated the former member.

(7) Where –

(a) the Minister is required to fill a vacancy pursuant to subsection (6); and

(b) the organisation or organisations required to nominate a person to fill the vacancy fail to nominate a person within fourteen days of the date on which the vacancy occurs,

the Minister shall appoint a person to fill the vacancy.

Appointment of full-time Chairman of the Tribunal.

5. (1) The Minister may appoint one person as a member of the Board on a full-time basis to be the full-time Chairman of the Tribunal where it appears to the Minister that it is expedient to make such an appointment. The person appointed to that office shall have knowledge and experience of industrial relations, law or administration and shall be required to discharge such other duties related to his office as may be assigned by the Minister.

(2) Notwithstanding anything to the contrary in any law provided, the terms and conditions of service including security of tenure and remuneration in respect of the office of full-time Chairman of the Tribunal shall be determined by the Minister:

Provided that the appointment shall not be on the permanent establishment.

(3) The Minister shall consult with the registered trade unions and the employers' federation before making an appointment.

Selection of members to hear application or matter.

6. (1) Where, pursuant to this or any other Act, any application or matter may be referred to the Minister for submission to the Tribunal, or wherever a person or organisation is entitled to make an application, or refer a matter to the Tribunal as specified in the relevant section, notice of the proposal to do so shall be given to the Minister, and where such a notice has been given the following provisions shall apply:

(a) the Minister may offer such advice or assistance to the party or parties giving the notice and to such other parties as appear to him to be directly concerned as he may consider appropriate with a view to promoting agreement between them with respect to the matters to which the application would relate;

(b) nothing in paragraph *(a)* shall prevent the party or parties giving the notice from making an application or referring a matter under this section at any time after the notice has been given; the application addressed to the Secretary to the Board may be sent by registered post or delivered to the Secretary at the address as published from time to time as may appear to the Minister to be appropriate;

(c) at any time within the period of fourteen days from the date on which an application or matter or the notice referred to in paragraph *(a)* is received by the Minister for submission to the Tribunal, or after the time has expired within which the Minister may take steps by means of conciliation to secure a settlement of a trade dispute under section 57 or 58 including any extension of such time under section 58(4), the Minister may select three members of the Board in accordance with subsection (2) to hear and determine that application or trade dispute.

(2)*(a)* Where pursuant to subsection (1)*(c)* the Minister may select three members of the Board to hear and determine an application

or matter, he shall select one member from the Chairman's panel and one member from each of the employees' and employers' panel.

(b) Notwithstanding the provisions of subsection (2)*(a)*, the Minister may select the full-time Chairman of the Tribunal instead of a member of the Chairman's panel to act as the Chairman and one member from each of the employees' and employers' panel to hear and determine that application or matter.

(c) The powers of a member of the Chairman's panel under the Act or any other Act may be exercised by the full-time Chairman of the Tribunal in the same manner as they may be exercised by a member of the Chairman's panel.

(d) Subject to subsection (1), where the Minister has selected three members of the Board in accordance with subsection (1)*(c)* to hear and determine an application or matter to be submitted to them by the party or parties giving notice thereof, the Minister may notify the party or parties concerned to that effect; the application or matter to which the notice relates may then be addressed to the Secretary to the Board and sent by registered post or delivered to the Secretary at the appropriate address within such period after the date of that notification as may be specified therein.

(3) The Minister shall not select any member of the Board to hear and determine an application or matter where that member is directly or indirectly concerned with that application or matter because –

(a) he holds office in or is a member of a trade union that is a party to the application or matter;

(b) he is an employer who is a party to the application or matter; or

(c) he is a director, shareholder, partner, officer, manager or employee of an employer who is a party to the application or matter.

(4) Where the Minister selects three members of the Board pursuant to this section to hear and determine an application or matter he may –

(a) select the same three members to hear and determine any other application or matter that has been made or referred to the Tribunal; and

(b) select other members of the Tribunal in accordance with this section to hear and determine any other application or matter at the same time.

(5) Where the Minister selects three members of the Board pursuant to this section to hear and determine an application or matter –

(a) those members shall, for all purposes of that proceeding, be deemed to be the Tribunal;

(b) any reference in this or any other Act to the Tribunal shall, in respect of that proceeding, be deemed to be a reference to the three members selected to determine any particular matter.

(6) Where, in any proceeding before the Tribunal, one of the members of the Tribunal dies or becomes incapacitated or otherwise unable to act, the Minister shall forthwith appoint from the same panel as that member another member to act in the place of that member and the Tribunal shall continue that proceeding as if there had been no change of members.

Secretary.

7. (1) The Minister may appoint a Secretary to the Board and may make any one or more appointments as secretaries to the Tribunal as he thinks fit.

(2) The Minister may also appoint such officers and staff as he may consider necessary who shall be public officers.

(3) Nothing in this section shall prevent the Minister from appointing the Secretary to the Board as a Secretary to the Tribunal if he considers it expedient or appropriate to do so.

Rules of Tribunal.

8. The Board may make Rules of general application for the Tribunal respecting –

(a) the hearing and determination of any application or matter that may be made or referred to it;

(b) the forms to be used in respect of any application or matter that may be made or referred to it;

(c) the specification of the time within which and the parties or persons to whom notices and other documents shall be sent by the Tribunal or any party or person;

(d) procedures for its hearings; and

(e) such other matters as may be incidental or conducive to the proper performance of any of its duties.

Powers of Tribunal.

9. (1) The Tribunal has power to order costs in proceedings before it where for exceptional reasons the Tribunal considers it proper to do so, the order being for a specified sum in respect of costs incurred not exceeding the sum of five hundred dollars.

(2) The Tribunal has, in relation to any proceeding before it, power –

(a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the Tribunal considers requisite to the full investigation and consideration of any matter within its jurisdiction that is before it in the proceeding;

(b) to administer oaths and affirmations;

(c) to receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion the Tribunal sees fit, whether admissible in a court of law or not;

(d) to make such examination of records and such inquiries as it thinks necessary, subject to the provisions of any other Act relating to the examination of records;

(e) to require an employer to post and keep posted in appropriate places any notice that the Tribunal considers necessary to bring to the attention of any employees any matter related to the proceeding;

(f) to enter any premises of an employer where work is being or has been done by employees and to inspect and view any work, material, machinery, appliance or articles therein and interrogate any person respecting any matter that is before the Tribunal in the proceeding;

(g) to adjourn or postpone the hearing from time to time;

(h) to abridge or enlarge the time for instituting the proceeding or for doing any act, filing any document or presenting any evidence in connection with the proceeding;

(i) to amend or permit the amendment of any document filed in connection with the proceeding;

(j) to add a party to the proceeding at any stage of the proceeding where the evidence before it makes it necessary to do so; and

(k) to decide any question that may arise in the proceeding, including, without restricting the generality of the foregoing, any question as to whether –

(i) a person is an employer, employee or managerial employee;

(ii) a group of employees is an appropriate bargaining unit;

(iii) a trade union has succeeded another trade union as a bargaining agent;

(iv) an employer has sold, leased, transferred or otherwise disposed of his business;

(v) an industrial agreement has been entered into;

(vi) any person or organisation is a party to or bound by an industrial agreement;

(vii) an industrial agreement is in operation;

(viii) a dispute or difference is a trade dispute or a managerial trade dispute; and

(ix) a trade dispute or a managerial trade dispute involves the interpretation, application, administration or alleged violation of an industrial agreement.

Proceedings to be public.

10. Except with the agreement of the parties, every proceeding before the Tribunal shall be held in public.

Tribunal may state case.

11. (1) At the conclusion of the hearing and determination of any application or matter, the Tribunal may, on the application of any party to the proceeding, state a case on any point concerning the interpretation or application of this or any question of law involved therein for the opinion of the Court.

(2) Before the Tribunal states a case for the opinion of the Court pursuant to subsection (1), it shall provide to the parties a copy of the

statement of facts in the case that it intends to submit to the Court, and shall give the parties an opportunity to comment on the statement of facts within a period of time to be specified by the Tribunal.

(3) Where a case has been stated for the opinion of the Court pursuant to subsection (1), sections 149 to 156 of the Magistrate's Code of Procedure Act shall be applied in hearing the appeal with all necessary adaptations and modifications.

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(4) The determination of the Court on any question arising on the case shall be conclusive for all purposes.

Exercise of Powers of Tribunal.

12. (1) The Tribunal shall exercise such powers and perform such duties as are conferred or imposed upon it by this Act, including the making of orders requiring compliance with the provisions of this Act, with any regulation made under this Act or with any decision made in respect of an application or matter before the Tribunal.

(2) The Tribunal shall, in relation to any application or matter made or referred to it, proceed to hear and determine the application or matter with the utmost dispatch and shall deliver a decision with respect thereto as soon as possible.

(3) Where, in relation to any application or matter made or referred to the Tribunal, the Minister is satisfied that the Tribunal is failing to observe the requirements of subsection (2), the Minister may withdraw the application or matter from the Tribunal and may proceed in accordance with section 6 to select three other members of the Tribunal to hear and determine the application or matter.

(4) A decision of the Tribunal may be made retroactive to a date not earlier than the date on which the dispute or difference to which the decision relates first arose.

(5) In determining the date to which a decision in respect of any application or matter is to be made retroactive, the Tribunal shall have regard to –

(a) the promptness with which each of the parties proceeded in respect of the application or matter;

(b) any delay that occurred in respect of the application or matter; and

(c) the extent to which any party is responsible for that delay.

Majority decisions.

13. A decision of a majority of the members of the Tribunal in respect of any application or matter is a decision of the Tribunal.

Tribunal may review decisions.

14. (1) The Tribunal may review, rescind, amend, alter or vary any decision made by it, in respect of an application or matter.

(2) A Tribunal may rehear any application or matter before it where evidence of new facts not previously available are presented to it.

(3) A Tribunal may call for additional evidence before making any decision in any application or matter before it.

Decision not to be questioned.

15. (1) Subject to subsection (2) –

(a) the hearing and determination of any application or matter by the Tribunal shall not be subject to prohibition, mandamus or injunction in any court; and

(b) any decision of the Tribunal shall not be questioned, challenged, appealed, reviewed or quashed in any court.

(2) Any party to an application or matter before the Tribunal shall be entitled to appeal to the Court in respect of any decision of the Tribunal on the ground that –

(a) the Tribunal did not have jurisdiction in the proceeding;

(b) the Tribunal exceeded its jurisdiction in the proceeding;

(c) the decision was obtained by fraud; or

(d) the decision is erroneous in law.

(3) On an appeal made to it pursuant to subsection (2), the Court may make such order as the circumstances of the case require including, without restricting the generality of the foregoing, an order –

(a) quashing the decision of the Tribunal and remitting the matter to the Tribunal with such direction as the Court considers necessary;

(b) directing a new hearing on any question without interfering with the decision of the Tribunal upon any other question; or

(c) dismissing the appeal.

(4) On an appeal made to it pursuant to subsection (2), the Court may dismiss the appeal if it considers that no substantial miscarriage of

justice has actually occurred although it is of the opinion that any question raised in the appeal might have been decided in favour of the person or organisation making the appeal.

(5) An appeal pursuant to subsection (2) by a party to a proceeding before the Tribunal shall not, unless the Court otherwise orders, operate as a stay of the decision of the Tribunal in respect of the proceeding.

(6) The Court shall make an award as to costs.

Decision of Tribunal binding.

16. A decision of the Tribunal given in a proceeding is binding upon –

(a) every person or organisation that is a party to the proceeding;

(b) any successor or assignee of the business of an employer who is a party to the proceeding, including any person who has acquired or taken over the business of the employer;

(c) any successor to a trade union that is a party to the proceeding; and

(d) any employee employed by an employer who is a party to the proceeding or by a successor or assignee of the business of that employer.

Decision may be filed in Court.

17. (1) Where a person or organisation has failed to comply with any decision of the Tribunal, any person or organisation affected thereby may, after fourteen days from the date on which the decision was made or the date provided in it for compliance, whichever is the later date, file in the Court a copy of the decision.

(2) A decision of the Tribunal that has been filed in the Court pursuant to subsection (1) shall be registered in the Court and, when registered, shall have the same force and effect, and proceedings may be taken thereon, as if the decision were a judgement obtained in the Court, except that the provisions of section 14 shall continue to apply thereto.

Arbitration Act not to apply. Ch. 4:50.

18. The Arbitration Act shall not apply to any proceeding of the Tribunal or any decision made by it.

PART III

EMPLOYEES AND MANAGERIAL EMPLOYEES

Tribunal may determine whether a person is an employee or managerial employee.

19. (1) Subject to subsection (3), where any question arises as to whether a person is an employee or a managerial employee for purposes of this Act, the question shall be referred to the Tribunal appointed by the Minister.

(2) Where any question arises as to whether a person is an employee or a managerial employee in any proceeding before the Tribunal, the Tribunal shall determine the question.

(3) If any person or organisation feels aggrieved by a determination of the Tribunal made pursuant to subsection (1) he may, within seven days thereafter, appeal the determination to the Court.

PART IV

RECOGNITION OF BARGAINING AGENTS FOR BARGAINING UNITS

Claim for recognition.

20. Subject to section 21, a trade union claiming to represent a majority of the employees in a bargaining unit may make a claim to the employer of those employees to be recognised as the bargaining agent for the bargaining unit.

When claim for recognition may be made.

21. (1) A claim for recognition made to an employer by a trade union pursuant to section 20 in respect of a bargaining unit may –

(a) where no industrial agreement is in force and no trade union is recognised as the bargaining agent in respect of the bargaining unit, be made at any time;

(b) where an industrial agreement is in force in respect of the bargaining unit, be made not earlier than four months and not later than three months prior to the expiration of the term of the industrial agreement;

(c) where another trade union is recognised as the bargaining agent for the bargaining unit but that trade union and the employer have failed to conclude an industrial agreement in respect of the bargaining unit within a period of twelve months from the date on which that trade union was so recognised, be made after the expiration of that period and until such an industrial agreement is concluded; and

(d) where an industrial agreement respecting the bargaining unit has expired and no new industrial agreement respecting the bargaining unit has been concluded, be made after the expiration of six months from the date on which the industrial agreement expired, unless the Tribunal, on application by the trade union, permits the claim for recognition to be made before the expiration of that six-month period.

(2) Where a trade union makes a claim for recognition respecting a bargaining unit and fails to establish that claim as a result of a poll held pursuant thereto, the trade union shall not make a further claim for recognition respecting that bargaining unit until after the expiration of six months from the date on which the previous claim for recognition failed.

(3) A trade union that is recognised by an employer as the bargaining agent for a managerial employee employed by that employer shall not claim to be also recognised, and shall not be recognised, by the employer as the bargaining agent for the bargaining unit comprised of or including other employees of that employer.

Requirements.

22. A claim for recognition made pursuant to section 20 shall be in writing and shall describe the bargaining unit that the trade union considers appropriate.

Employer to recognise trade union or give notice.

23. (1) Where an employer receives from a trade union a claim for recognition in respect of a bargaining unit for which no other trade union is recognised as the bargaining agent, he shall, within fourteen days of the date on which he receives the claim for recognition –

(a) recognise the trade union as the bargaining agent for that bargaining unit; or

(b) give notice to the trade union and the Minister that he doubts that the trade union is entitled to be recognised as the bargaining agent for that bargaining unit.

(2) A notice from an employer to a trade union and the Minister that the employer doubts that the trade union is entitled to be recognised as the bargaining agent for a bargaining unit shall –

(a) be in writing;

(b) specify the employer's reasons for doubting that the trade union is entitled to be so recognised; and

(c) describe, where he disagrees with the description of the bargaining unit set out in the trade union's claim for recognition, the bargaining unit that he considers to be appropriate.

(3) Where an employer receives from a trade union a claim for recognition in respect of a bargaining unit for which another trade union is recognised as the bargaining agent, the employer –

(a) shall forthwith give to the bargaining agent and the Minister a notice in writing –

(i) stating that he has received the claim for recognition; and

(ii) describing, where he disagrees with the description of the bargaining unit set out in the claim for recognition, the bargaining unit that he considers to be appropriate; and

(b) shall not recognise the trade union making the claim for recognition as the bargaining agent for the bargaining unit unless required to do so as a result of a poll held pursuant to section 26.

(4) Where an employer receives claims from two or more trade unions to be recognised as the bargaining agent for the same or a similar bargaining unit in respect of which no trade union is recognised as the bargaining agent –

(a) he shall forthwith give to those trade unions and the Minister a notice in writing –

(i) stating that he has received the claims for recognition; and

(ii) describing, where he disagrees with the description of the bargaining unit set out in any or all of the claims for recognition, the bargaining unit that he considers to be appropriate; and

(b) he shall not recognise any of those trade unions as the bargaining agent for the bargaining unit unless required to do so by the Labour Commissioner as a result of a poll held pursuant to section 26.

(5) In determining the claims of trade unions for recognition as the bargaining agent for a bargaining unit, the Minister may order

separate polls; and in that event the union whose claim was first received shall be entitled to have its claim determined first.

Where an employer fails to give notice.

24. Where –

(a) a trade union makes a claim to an employer to be recognised as the bargaining agent for a bargaining unit in respect of which no other trade union is recognised as the bargaining agent; and

(b) the employer does not, within fourteen days of the date on which he has received the claim for recognition, give notice pursuant to section 23 (1) that he doubts that the trade union is entitled to be recognised,

he shall be deemed to have recognised the trade union as the bargaining agent for the bargaining unit.

Minister to determine appropriate bargaining unit.

25. (1) Where the Minister received a notice from an employer given pursuant to section 23(1), 23(3) or 23(4) that raises the question of the description of the appropriate bargaining unit, the Minister shall determine the question after hearing such representations and evidence and requiring the production of such documents as he considers necessary or as may be prescribed by Regulations.

(2) If any party feels aggrieved by a determination of the Minister made pursuant to subsection (1) that party may, within seven days thereafter, appeal the determination to the Tribunal.

(3) The Minister in making a determination pursuant to subsection (1) and the Tribunal in hearing an appeal pursuant to subsection (2), may –

(a) determine whether any person is an employee for the purposes of this Act;

(b) add persons to or exclude persons from the bargaining unit; and

(c) amend the description of the bargaining unit in such manner as may seem appropriate.

(4) Where a claim for recognition made by a trade union is in respect of a bargaining unit that includes employees of more than one employer and the Minister is required to determine the question of the description of the appropriate bargaining unit pursuant to subsection (1), the Minister may determine that all or some of the employees

constitute an appropriate bargaining unit if he is satisfied that –

(a) the employers are under common ownership, control or management;

(b) the employees have a sufficient community of interest to justify their inclusion in one bargaining unit; and

(c) collective bargaining with respect to that bargaining unit is likely to be efficient and effective.

Minister to hold poll.

26. (1) Where he receives a notice from an employer pursuant to section 23(1), the Minister shall cause a poll to be held among the employees in the bargaining unit to determine whether they wish the trade union making the claim for recognition to be their bargaining agent.

(2) Where –

(a) the Minister receives a notice from an employer to whom section 23(3) applies; or

(b) an employer to whom section 23(3) applies fails to give to the Minister the notice required thereby, but the claim for recognition otherwise comes to his attention,

the Minister shall cause a poll to be held among the employees in the bargaining unit to determine whether the employees wish the trade union making the claim for recognition to be their bargaining agent.

(3) Where –

(a) the Minister receives a notice from an employer to whom section 23(4) applies; or

(b) an employer to whom section 23(4) applies fails to give to the Minister the notice required thereby, but the claim for recognition otherwise comes to his attention,

the Minister shall cause a poll to be held among the employees in the bargaining unit to determine which trade union, if any, the employees wish to be their bargaining agent.

(4) Where –

(a) a poll is held pursuant to subsection (3) to determine which trade union, if any, the employees in a bargaining unit wish to be their bargaining agent; and

(b) the employees, by the poll, do not give majority support

to any one trade union, but have cast ballots in favour of all trade unions involved in the poll totalling more than 50 percent of the number of employees eligible to vote in the poll,

the Minister shall cause a second poll to be held among the employees.

(5) Where, pursuant to subsection (4), the Minister causes a second poll to be held among employees in a bargaining unit, the ballot in that poll shall give the employees a choice as to whether they wish the trade union for which the largest number of votes were cast in the first poll to be their bargaining agent.

Regulations.

27. (1) The Minister may make Regulations respecting the organisation and conduct of polls including, without limiting the generality of the foregoing, Regulations respecting –

(a) the holding of meetings with the parties for the purpose of settling any matters relating to a poll;

(b) the documents and information that the Minister may require the parties to produce;

(c) the manner in which any question raised by any challenge shall be determined;

(d) the determination and certification of lists of employees eligible to vote in a poll;

(e) any forms to be used in respect of a poll;

(f) any notices to be given to the parties and the contents of such notices;

(g) the posting of any notice by an employer or trade union;

(h) the authorisation of any public officer to conduct the poll and the duties of that public officer;

(i) the taking of the poll;

(j) the form of the ballot;

(k) the casting of ballots;

(l) the persons permitted to be present at the taking of the poll;

(m) the counting of votes;

(n) the ground upon which a person attempting to vote in the poll may be challenged and the procedure to be followed in such cases;

(o) the manner in which the parties are to be notified on the result of the poll; and

(p) the time within which any of the steps to be taken or things to be done in connection with the poll shall be taken or done.

(2) Until replaced by Regulations made under this Act, the Trade Disputes (Arbitration and Inquiry) (Claims for Recognition and Conduct of Counts) Regulations S.R.O. No. 39 of 1968, shall so far as may be applicable remain in force.

Where application may be made to void a poll.

28. (1) Where, in respect of a poll held pursuant to section 26, it is alleged that there has been interference in the conduct of the poll or the selection of a bargaining agent, either by offending against the provisions of section 30 or 65 of this Act or otherwise, to such an extent that the poll is likely not to reflect the true wishes of the employees eligible to vote in the poll, the party aggrieved may apply to the Tribunal to void the poll.

(2) Where an application is made to it pursuant to subsection (1) the Tribunal may, if it is satisfied that the poll is likely not to reflect the true wishes of the employees eligible to vote in the poll –

(a) void the poll; and

(b) advise the Minister to cause another poll of the employees to be conducted at such date and under such conditions as may be recommended by the Tribunal.

(3) Where, before the votes cast in a poll have been counted, the Minister or the person authorised by the Minister to conduct the poll receives notice that an application will be made to the Tribunal pursuant to subsection (1), the Minister shall cause every ballot box to be sealed and, subject to subsections (4) and (5), shall retain each such ballot box in that condition.

(4) Where –

(a) the Minister has sealed a ballot box pursuant to subsection (3), and

(b) the application pursuant to subsection (1) is not made within seven days of the date on which the poll was held,

the Minister shall cause the seal on the ballot box to be broken and shall

proceed with the conduct of the poll as if the ballot box had not been sealed.

(5) Where –

(a) the Minister has sealed a ballot box pursuant to subsection (3), and

(b) an application pursuant to subsection (1) is made,

the Minister shall retain the ballot box in a sealed condition until the Tribunal has made a decision on the application and shall then order the poll to be proceeded with in accordance with that decision.

Minister to notify parties.

29. (1) The Minister shall determine the result of any poll held pursuant to section 26 and shall forthwith notify the parties in writing of that result.

(2) Where, in a poll held pursuant to section 26(1) or 26(2) among employees in a bargaining unit to determine whether they wish the trade union making the claim for recognition to be their bargaining agent, the majority of the employees have voted in favour of the trade union being their bargaining agent, the employer shall recognise that trade union as the bargaining agent for the bargaining unit.

(3) Where, in a poll held pursuant to section 26(3) or 26(4) among employees in a bargaining unit to determine which, if any, of two or more trade unions they wish to be their bargaining agent, the majority of the employees have voted in favour of one of the trade unions being their bargaining agent, the employer shall recognise that trade union as the bargaining agent for the bargaining unit.

Employees to have time off to vote.

30. Every employer –

(a) shall take all necessary steps to ensure that any employee employed by him who is eligible to vote in a poll shall have an opportunity to vote;

(b) shall permit each such employee to be absent from his work for the purpose of voting; and

(c) shall not make any deductions from the pay of any such employee or impose any financial or other penalty on him by reason of that absence.

Prohibitions against influencing employees voting.

31. No person or organisation shall, in relation to any poll held pursuant to this Act –

(a) seek, in any premises on which the poll is being held or upon any road or place within one hundred yards of such premises, to influence an employee to vote or refrain from voting for a trade union;

(b) assemble or congregate in any premises on which the poll is being held or within one hundred yards of such premises, unless that person is waiting to vote or is a person authorised or permitted by the Regulations to be present at the poll;

(c) seek to ascertain how any employee has voted or intends to vote;

(d) give or promise to give any money to or procure any office for an employee or any other person –

(i) in order to induce that employee to vote or refrain from voting;

(ii) as a result of that employee having voted or refrained from voting; and

(iii) in order to induce that employee or person to procure, or endeavour to procure, the selection of any trade union as a bargaining agent or the vote of any employee;

(e) procure, promise to procure or endeavour to procure, in consequence of having received any gift or procurement, the selection of any trade union as a bargaining agent or the vote of any employee;

(f) accept any money or other reward as a result of having induced any employee to vote or refrain from voting or as a result of any employee having voted or refrained from voting;

(g) give, provide or pay the whole or any part of the expense of giving or providing any food, drink, entertainment or provision to any employee –

(i) for the purpose of inducing that employee to vote or refrain from voting; or

(ii) as a result of that employee having voted or refrained from voting;

(h) alter, deface, remove, or otherwise tamper with any notice required by the Regulations to be given or posted; or

(i) wilfully obstruct any person in the execution of any function or duty imposed upon that person by or under this Act or the Regulations.

Prohibitions against bribery.

32. No employee shall, in relation to any poll held pursuant to this Act –

(a) receive, agree to receive or contract for any money, gift, loan, reward, office or place of employment for himself or any person for voting or agreeing to vote or for refraining or agreeing to refrain from voting; or

(b) accept or take any food, drink, entertainment or provision from any person where the intent of that person is –

(i) to induce the employee to vote or refrain from voting; or

(ii) to reward the employee for having voted or refrained from voting.

PART V

RECOGNITION OF BARGAINING AGENT FOR MANAGERIAL EMPLOYEES

Claim for recognition respecting managerial employee.

33. A trade union claiming to represent any managerial employee employed by an employer may make a claim to the employer to be recognised as the bargaining agent for that managerial employee:

Provided that a trade union that is recognised by an employer as the bargaining agent for a bargaining unit comprised of or including employees of the employer shall not claim to be recognised and shall not be recognised by the employer as the bargaining agent for any managerial employee employed by the employer.

Requirements of claim for recognition.

34. (1) A claim for recognition made pursuant to section 33 by a trade union in respect of a managerial employee –

(a) may be made at any time;

(b) shall be in writing; and

(c) shall be accompanied by a statement in writing by the Secretary of the union that the trade union has been accepted by the employee as his bargaining agent.

(2) Any Secretary making any statement in writing required under subsection (1)*(c)* which he knows to be false is liable on summary conviction to a fine of seven hundred and fifty dollars or in default of payment to imprisonment for six months.

Employer to recognise trade union as bargaining agent.

35. Where an employer receives a claim for recognition made pursuant to section 33 from a trade union with respect to a managerial employee, the employer shall recognise the trade union as the bargaining agent.

Joint bargaining agents.

36. Two or more trade unions may jointly claim to be recognised as joint bargaining agents for a bargaining unit pursuant to section 20 or for a managerial employee pursuant to section 33, and in either such event the provisions of this Act apply to such trade unions, *mutatis mutandis*, as though they were a single trade union.

PART VI

TERMINATION OF RECOGNITION

Application for poll.

37. Subject to section 38, where a trade union has been recognised as the bargaining agent for a bargaining unit, an employee in the bargaining unit may apply to the Minister to cause a poll to be held among the employees in the bargaining unit to determine whether they wish the trade union to continue to be their bargaining agent.

When application may be made.

38. An application pursuant to section 37 by an employee in a bargaining unit with respect to a trade union that has been recognised by an employer as the bargaining agent for the bargaining unit may –

(a) where the trade union was recognised as the bargaining agent without a poll being held, be made within six months of the date on which the trade union was recognised;

(b) where an industrial agreement is in force in respect of the bargaining unit, be made not earlier than four months and not later than three months prior to the expiration of the term of the industrial agreement;

(c) where the trade union and the employer fail to conclude an industrial agreement in respect of the bargaining unit within

a period of twelve months from the date on which the trade union was so recognised, be made after the expiration of that period and until such an industrial agreement is concluded; and

(d) where an industrial agreement between the trade union and the employer respecting the bargaining unit has expired and no new industrial agreement respecting the bargaining unit has been concluded by them, be made after the expiration of six months from the date on which the industrial agreement expired, unless the Tribunal, on application by the employee, permits the claim to be made before the expiration of that six-month period.

Requirements of application.

39. Where an employee makes an application to the Minister pursuant to section 37 to cause a poll to be held among the employees in a bargaining unit to determine whether they wish a trade union to be their bargaining agent –

(a) the application shall be in writing;

(b) the application shall be accompanied by a petition supporting the application signed by a majority of the employees in the bargaining unit; and

(c) the employee shall send a copy of the application to the trade union and the employer of the employees, but without a copy of the petition referred to in paragraph *(b)*.

Trade union may relinquish recogniton.

40. Where a trade union receives from an employee a copy of an application made to the Minister by the employee pursuant to section 37, the trade union may, within seven days of the date on which the Minister receives the application, give notice in writing to the Minister that it relinquishes its recognition as the bargaining agent for the bargaining unit described in the application.

Minister to hold poll.

41. (1) Where the Minister –

(a) receives an application made by an employee pursuant to section 37 with respect to a trade union that is the bargaining agent for a bargaining unit;

(b) does not, within seven days of the date on which he receives the application, receive a notice from the trade

union that it relinquishes its recognition as the bargaining agent for the bargaining unit; and

(c) is satisfied that the application is *bona fide* and is not made as the result of the influence of or advice from the employer or the employee,

the Minister shall cause a poll to be held among the employees in the bargaining unit to determine whether they wish the trade union to be their bargaining agent.

(2) The provision of this Act and the Regulations that relate to a poll conducted pursuant to section 26, including sections 27 to 32, apply *mutatis mutandis* to a poll held pursuant to this section.

Where recognition terminated.

42. (1) Where, on an application made to the Minister by an employee pursuant to section 37 with respect to a trade union that is the bargaining agent for a bargaining unit –

(a) the trade union gives a notice to the Minister pursuant to section 40 that it relinquishes its recognition as the bargaining agent for the bargaining unit;

(b) a poll is held pursuant to section 41 and the majority of the employees in the bargaining unit have voted against the trade union continuing to be their bargaining agent,

the recognition of the trade union as the bargaining agent for the bargaining unit shall thereby be terminated.

(2) Where, pursuant to subsection (1), the recognition of a trade union as the bargaining agent for a bargaining unit is terminated, any industrial agreement in force with respect to the bargaining unit to which the trade union is a party ceases to be in force.

Managerial employee may terminate recognition.

43. Where a trade union has been recognised as the bargaining agent for a managerial employee, the managerial employee may terminate the recognition of that trade union as his bargaining agent at any time by giving to his employer and the trade union a notice in writing that he no longer wishes the trade union to be his bargaining agent.

PART VII

COLLECTIVE BARGAINING AND INDUSTRIAL AGREEMENTS

Where trade union recognised as bargaining agent.

44. (1) Where a trade union is recognised by the employer as the bargaining agent for a bargaining unit or for a managerial employee –

(a) the trade union so recognised has, subject to subsection (2), exclusive authority and the duty to represent and bargain collectively on behalf of employees in the bargaining unit or the managerial employee;

(b) the recognition of any other trade union that was previously recognised as the bargaining agent for the bargaining unit or managerial employee is deemed to have terminated in respect of the bargaining unit or managerial employee; and

(c) the trade union so recognised is deemed to be substituted as a party to any industrial agreement that affects the bargaining unit or managerial employee in the place of the bargaining agent named in the industrial agreement.

(2) Notwithstanding that it is not recognised by an employer as the bargaining agent for a bargaining unit, a trade union may represent an employee of that employer who is included in the bargaining unit in any dispute or difference that concerns the interpretation, application, administration or alleged violation of an industrial agreement.

Obligations to negotiate

45. Where a trade union is recognised by an employer as the bargaining agent for a bargaining unit or for a managerial employee, the trade union and the employer shall, in good faith, treat and enter into negotiations with each other for the purpose of collective bargaining in respect of that bargaining unit or managerial employee.

Industrial agreement not to be concluded where claim for recognition pending.

46. (1) Where –

(a) a trade union is recognised by an employer as the bargaining agent for a bargaining unit; and

(b) another trade union has, pursuant to this Act, claimed to be recognised as the bargaining agent for the bargaining unit,

the employer and the bargaining agent shall not conclude an industrial agreement while the claim for recognition of the other trade union is pending.

Term not to exceed three years.

47. (1) No industrial agreement shall be for a term that exceeds a period of three years from the date on which it came into effect.

(2) Where an industrial agreement purports to be for a term that exceeds a period of three years from the date on which it came into effect, the industrial agreement shall be deemed to be for a term of three years from that date.

(3) A year means a period of twelve months beginning with the date of an industrial agreement or any anniversary thereof.

Provision for dispute settlement to remain in force.

48. Notwithstanding section 47 or any provision in an industrial agreement, any provision contained in an industrial agreement for the settlement of disputes that concern the interpretation, application, administration or alleged violation of the industrial agreement shall remain in force after the termination of the industrial agreement and until a new industrial agreement has been concluded between the parties or their successors or assignees.

Industrial agreement binding.

49. An industrial agreement made by or on behalf of an employer and a bargaining agent in respect of a bargaining unit or managerial employee is, subject to and for the purposes of this Act, binding upon –

(a) the bargaining agent;

(b) every employee in the bargaining unit or the managerial employee; and

(c) the employer.

Employer to file copy of industrial agreement.

50. Every employer who is a party to an industrial agreement shall, within three days of the signing of the industrial agreement by the parties, file one signed copy thereof with the Minister.

Trade union succession.

51. Where, by reason of a merger or amalgation of trade unions or a transfer of jurisdiction among trade unions, a trade union succeeds another trade union that is a bargaining agent –

(a) the successor trade union shall be recognised as the bargaining agent in the place of that other trade union; and

(b) the successor trade union shall be deemed to have acquired the rights, privileges and duties of that other trade union, whether under an industrial agreement or otherwise.

Employer succession.

52. Where an employer sells, leases, transfers or otherwise disposes of his business –

(a) a trade union that is the bargaining agent for a bargaining unit comprised of employees employed in the business continues to be the bargaining agent for that bargaining unit or managerial employee;

(b) a trade union that has made a claim for recognition pursuant to this Act before the date of the sale, lease, transfer or other disposition may proceed with its claim; and

(c) the person to whom the business is sold, leased, transferred or otherwise disposed of –

(i) shall treat a claim for recognition to which paragraph *(b)* applies as though he had been the owner of the business on the date when the claim for recognition was made;

(ii) is bound by any industrial agreement that is, on the date of the sale, lease, transfer or other disposition, applicable to any employee or managerial employee in the business; and

(iii) becomes a party to any application or other proceeding that is pending on the date of the sale, lease, transfer or other disposition that affects any employee or managerial employee employed in the business.

Tribunal to determine question.

53. Where any question arises concerning the application of section 51 or 52, any person or organisation affected thereby may apply to the Tribunal to determine the question.

Restriction on contracting out.

54. Any provision in an agreement, whether a collective or industrial agreement or not, shall be void in so far as it purports to exclude or limit the operation of any provision of the Act.

PART VIII

SETTLEMENT OF TRADE DISPUTES AND MANAGERIAL TRADE DISPUTES

Trade dispute may be reported to Minister.

55. (1) Where any trade dispute exists which the parties have not been able to settle by negotiation between them either party may report

the trade dispute to the Minister and shall on the same date serve a copy of the report submitted to the Minister to the other party to the dispute.

(2) A trade dispute may not be reported to the Minister pursuant to subsection (1) after the expiration of six months from the date on which the trade dispute arose.

(3) A report of a trade dispute that is made to the Minister pursuant to subsection (1) shall be in writing and shall set out the issues involved in the trade dispute in respect of which the parties have not arrived at a settlement.

Where parties have failed to follow dispute settlement procedures.

56. (1) Where a trade dispute has been reported to the Minister and, on application made to him by one of the parties within seven days thereafter, it is established to the satisfaction of the Minister that the parties have failed to follow the procedure for the settlement of disputes contained in an industrial agreement between them, the Minister may refer the trade dispute back to the parties in order that the procedure may be followed.

(2) Where the Minister refers a trade dispute back to the parties pursuant to subsection (1), the trade dispute shall be deemed not to have been reported to the Minister pursuant to section 55 (1).

(3) Where the Minister has referred the dispute back to the parties under the provisions of subsection (2); and either party thereafter informs the Minister that the procedure for the settlement of disputes was adhered to, the Minister shall refer the matter to the Tribunal for it to determine whether the procedure for the settlement of disputes as set out in the industrial agreement between the parties to the dispute was followed before the trade dispute was referred to him.

(4) If the Tribunal reports to the Minister that the procedure had not been followed, the Minister shall then refer the dispute back to the parties, with such directions as he may consider necessary for them to comply with the procedures for the settlement of disputes contained in the industrial agreement between them; and the parties to the dispute shall comply with the directions given by the Minister.

Conciliation by Labour Commissioner.

57. (1) Where a trade dispute has been reported to the Minister he may –

(a) refer the trade dispute to the Labour Commissioner for conciliation; or

(b) take such other steps as he considers may contribute to a settlement of the trade dispute.

(2) Where a trade dispute has been referred to the Labour Commissioner pursuant to subsection (1), he shall forthwith confer with the parties and endeavour to assist them to settle the trade dispute.

Additional powers of and action by the Minister on report.

58. (1) Nothing in section 57 shall be construed as precluding the parties to a difference or dispute from meeting by themselves in an endeavour to reach a settlement. The Minister may in writing in any case request further particulars of any of the matters specified under section 55(3) including where there is no agreed procedure, the steps, if any, which have been taken in an endeavour to settle the questions to which the trade dispute relates.

(2) Particulars supplied in pursuance of a request by the Minister under subsection (1) shall be subject to the provisions of section 55(1) and shall be read as one with the matters reported under section 55(3).

(3) Where a trade dispute has been referred to the Labour Commissioner pursuant to section 57(1), without prejudice to the generality of his powers thereunder, he may take such steps as he may consider advisable to secure a settlement of the dispute by means of conciliation within fourteen days subject to subsection (5) after the date on which the trade dispute was reported or deemed to have been reported to the Minister.

(4) Upon application in writing by either party to the dispute or the Labour Commissioner, the Minister may extend the time specified in subsection (3) including any further extensions of time under this subsection, within which the Labour Commissioner may take steps to secure a settlement of the dispute by means of conciliation.

(5) For the purpose of assisting the Minister in his endeavour to secure a settlement of a dispute by means of conciliation under section 57 the parties to the dispute shall enter into conciliation in good faith and where the Minister serves written notice on the parties concerned requiring them to attend a meeting for that purpose, the parties concerned shall so attend.

(6) Where the Minister is satisfied that –

(a) no useful purpose would be served by continuing the process of conciliation under section 57 or under this section; or

(b) either party to a dispute that has been reported to him refuses to enter into conciliation in good faith or to carry out any request of the Minister under subsection (1) or subsection (5),

the Minister may, notwithstanding anything to the contrary provided in any law, establish the Tribunal at that point in time and refer the matter to the Tribunal to hear and determine the trade dispute. Such steps may be taken notwithstanding that the time within which the Minister may endeavour by means of conciliation to secure a settlement thereof, including any extension of such time under subsection (4) has not expired or the procedures for the settlement of disputes have not been exhausted. Notice thereof may be served by direction of the Minister on the parties.

(7) Nothing in this section shall apply in the case of an essential service with respect to any difference or dispute which may arise between an employer and any trade union whether or not the dispute has been reported to the Minister.

Where Minister required to refer trade dispute to Tribunal.

Schedule.

59. (1) Where a trade dispute exists, whether it has been reported to the Minister or not, and –

(a) the trade dispute is in respect of an essential service, as set out in the Schedule; or

(b) the trade dispute has been reported to the Minister and it cannot be satisfactorily settled by means of conciliation and the Minister is satisfied that the issues involved in the trade dispute are not frivolous or vexatious, but that there are serious questions in dispute to be settled and that the dispute is suitable for submission to arbitration or quasi-judicial settlement,

the Minister shall refer the trade dispute to the Tribunal for arbitration.

(2) Where the parties to a trade dispute jointly give to the Minister a notice in writing requesting him to refer the trade dispute to the Tribunal for arbitration the Minister may do so in accordance with subsection (3).

(3) Subject to section 6 (1)*(c)*, the Minister may refer a trade dispute to which subsection (1) or (2) applies to the Tribunal for arbitration at any time after the trade dispute has been reported to him

and notwithstanding that a strike or lockout is taking place with respect to the trade dispute.

(4) Where a trade dispute that has been reported to the Minister concerns the interpretation, application, administration or alleged violation of an industrial agreement, either party or the Minister may refer the trade dispute to the Tribunal for arbitration.

Arbitration by Tribunal.

60. (1) Where a trade dispute has been referred to the Tribunal for arbitration pursuant to section 59(1) or 59(2) –

(a) the Tribunal shall hear and determine the matter;

(b) the decision of the Tribunal made in respect of the arbitration shall, subject to section 15, be final and binding; and

(c) the trade dispute shall be deemed to have been settled in accordance with the decision of the Tribunal.

(2) Where a strike or lockout is in progress with respect to a trade dispute at the time the Minister refers the trade dispute to the Tribunal for arbitration pursuant to section 59(1) or 59(2) –

(a) the parties shall forthwith terminate the strike or lockout;

(b) the parties shall not declare or authorise any further strike or lockout in respect of the trade dispute; and

(c) every employee participating in a strike in respect of the trade dispute shall cease to do so.

(3) Where the parties to a dispute have been called upon by the Tribunal to appear before it for the hearing and determination of a trade dispute and one party without the permission of the Tribunal fails to appear for the hearing and determination of the dispute, the Tribunal shall nevertheless proceed to hear and determine the dispute, and notwithstanding the absence of that party, the decision on the disputes shall be final and binding on all parties to that dispute.

When strike or lockout may occur.

61. (1) Subject to subsection (2), no trade union shall declare or authorise a strike and no employer shall declare or authorise a lockout unless –

(a) the strike or lockout is in respect of a trade dispute to which that trade union or employer is a party;

(b) the trade dispute has been reported to the Minister and fourteen days have elapsed from the date on which the trade dispute was so reported; and

(c) the Minister has not referred the trade dispute to the Tribunal for arbitration pursuant to section 59 (1) or 59 (2).

(2) No trade union shall declare or authorise a strike, no employee shall participate in a strike, and no employer shall declare or authorise a lockout, in respect of a trade dispute that concerns the interpretation, application, administration or alleged violation of an industrial agreement.

Managerial trade dispute.

62. Where any managerial trade dispute exists, sections 55 to 61 apply, *mutatis mutandis*, to the managerial dispute as if it were a trade dispute; and –

(a) every reference to a trade dispute in those sections shall be read and construed as a reference to a managerial trade dispute; and

(b) every reference to an employee in those sections shall be read and construed as a reference to a managerial employee.

Referral to Tribunal by bargaining agent.

63. (1) Where a managerial trade dispute has been reported to the Minister and the bargaining agent and the employer have been unable to settle the matter, the bargaining agent may, after the expiration of fourteen days from the date on which the managerial trade dispute was reported to the Minister, refer the managerial trade dispute to the Tribunal for arbitration.

(2) Where a managerial trade dispute has been referred to the Tribunal for arbitration pursuant to subsection (1), sections 60 and 61 apply with respect to the managerial trade dispute as if it had been referred to the Tribunal by the Minister pursuant to section 59(2).

When employee may participate in a strike.

64. (1) No employee shall participate in a strike unless –

(a) the strike is in respect of a trade dispute that directly involves or affects a bargaining unit in which the employee is included; and

(b) the requirements of section 61(1) have been met in respect of the trade dispute.

(2) No managerial employee shall participate in a strike unless –

(a) the strike is in respect of a managerial trade dispute that directly involves or affects the managerial employee or a managerial employee employed by the same employer; and

(b) the requirements of section 61(1) have been met in respect of the managerial trade dispute.

PART IX

UNFAIR PRACTICES

Employer prohibitions.

65. (1) No employer and no person acting on behalf of an employer shall –

(a) seek to make in whatever manner or make the employment of any person subject to the condition that he shall refrain from becoming or shall cease to be a member of a trade union;

(b) refuse to employ or continue to employ any person or otherwise discriminate against any person in regard to employment or any term or condition of employment, because that person –

(i) is a member of a trade union;

(ii) is an officer, representative or delegate of a trade union;

(iii) has participated in union activities outside working hours or, with the express or implied consent of the employer, during working hours;

(iv) is entitled to the benefit of any decision under this Act;

(v) has appeared as a witness or has given any evidence in a proceeding before the Tribunal;

(vi) has made an application to the Tribunal;

(c) seek, by intimidation, threat of dismissal or any other kind of threat, to induce or compel any person to refrain-

(i) from becoming or to cease to be a member, officer, representative or delegate of a trade union;

(ii) from freely exercising his right to participate in a poll for union recognition;

(iii) from appearing as a witness or giving evidence before the Tribunal; or

(iv) from making an application to the Tribunal;

(d) participate in or interfere with the formation or administration of a trade union or the representation of any employee or managerial employee by a trade union.

(2) No employer and no person acting on behalf of an employer shall, where –

(a) an employee or a managerial employee has applied to the employer in writing for leave for the purpose of carrying out his duties or exercising his rights as an officer or delegate of a trade union;

(b) the employer has granted or in breach of the provisions of this Act has unreasonably refused or failed to grant leave to the employee or managerial employee for that purpose; and

(c) the employee or managerial employee subsequently absents himself from work solely for that purpose,

suspend, discharge or impose any financial penalty on or take any other disciplinary action against the employee or managerial employee for so absenting himself from work.

Trade union prohibition.

66. No trade union and no person acting on behalf of a trade union shall –

(a) participate or interfere with the formation or administration of an employer's organisation; or

(b) discriminate against a person in regard to employment, a term or condition of employment or membership in a trade union, or intimidate or coerce a person or impose a pecuniary or other penalty on a person because he –

(i) has appeared as a witness or has given evidence in a proceeding before the Tribunal; or

(ii) has made an application to the Tribunal.

PART X

OFFENCES AND PENALTIES

Offence respecting lockouts.

67. (1) Every employer who declares or takes part in a lockout contrary to this Act is liable on summary conviction to a fine of five thousand dollars.

(2) Every person who, on behalf of an employer, declares or authorises a lockout contrary to this Act is liable on summary conviction to a fine of two thousand dollars.

(3) Every trade union that declares or authorises a strike contrary to this Act is liable on summary conviction to a fine not exceeding five thousand dollars.

(4) Every person who, on behalf of a trade union or on his own behalf, declares, authorises or induces other persons to take part in a strike contrary to this Act is liable on summary conviction to a fine of two thousand dollars.

(5) Every employee or managerial employee who participates in a strike contrary to this Act is liable on summary conviction to a fine of five hundred dollars.

(6) Any person who fails to pay any fine imposed under this section is liable to imprisonment for six months.

General offences by employers and trade unions.

68. (1) Subject to section 67, every employer or trade union who violates or fails to comply with any provision of this Act is liable on summary conviction to a fine of five hundred dollars.

(2) Subject to section 67, every person other than an employer or trade union who violates or fails to comply with any provision of this Act is liable on summary conviction to a fine of three hundred dollars.

Directors etc. of company guilty of same offence as company.

69. Where the person who is guilty of an offence under this Act is a company, every director, manager, secretary and other officer of the company is guilty of the like offence and liable to the like punishment unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Consent of Director of Public Prosecutions.

70. Except with the consent of the Director of Public Prosecutions, no prosecution shall be instituted in respect of an offence under this Act.

71. No right to receive pay shall accrue to an employee for the period during which he may have gone on strike contrary to the provisions of this Act. No right to pay during strike.

PART XI

MISCELLANEOUS

72. The Minister may, where he deems it expedient, make any inquiries regarding matters that may affect industrial relations. Inquiries by Minister.

73. (1) For the purpose of section 72 or where a dispute or difference between any employer and any bargaining agent or employees exists or is apprehended, the Minister may refer the matter to Tribunal appointed for the purpose of inquiring into the matter. Board of inquiry.

(2) A Tribunal appointed by the Minister for the purpose of inquiring into any matter shall investigate the matter and report thereon to the Minister, and for that purpose has all of the powers conferred on a Tribunal by paragraphs *(a)*, *(b)*, *(c)*, *(d)*, *(f)* and *(g)* of section 9(2).

(3) Subject to subsection (4), where the Minister receives a report from a Tribunal, he may provide copies of the report to such persons as are in his opinion interested in the matter and may publish the report in such manner as he thinks fit.

(4) Where a Tribunal obtains information in the course of an inquiry respecting any trade union or business which is not available otherwise than through evidence given at the inquiry –

(a) no member of the Tribunal shall disclose that information other than in the report of the Tribunal; and

(b) the Minister shall not publish the portion of the report of the Tribunal containing that information,

except with the consent of the trade union or business.

74. The members of the Tribunal and any person who is not a public officer who is appointed to act as a conciliator or mediator in respect of any dispute or difference shall be paid – Remuneration.

(a) an allowance for each day during which he is actively engaged in performing his functions or duties at such rate as may be provided by regulation; and

(b) his travelling and other expenses when he is required to be absent from his ordinary place of residence in performing his functions or duties at the rates paid to public officers.

Industrial Relations Advisory Committee.

75. (1) The Minister may appoint an Industrial Relations Advisory Committee for the purpose of advising him on any matter relating to industrial relations and, in particular, to advise him as to the operation of this Act and any modification, revision or amendment to this Act that may be considered advisable for the improvement of industrial relations.

(2) The Minister, in appointing members to the Industrial Relations Advisory Committee, shall appoint such persons as he considers qualified to make an important contribution to its operation, including representatives of the Employers Federation, representatives of the registered trade unions and public officers.

Union dues and assessments.

76. Nothing in this or any other Act prohibits the parties to an industrial agreement from including in the industrial agreement provisions for a check-off of union dues and assessments.

Regulations.

77. The Minister may make Regulations respecting –

(a) the representations and evidence or the documents that he may require to be provided or produced pursuant to section 25 (1);

(b) the organisation and conduct of polls pursuant to section 27;

(c) the allowance to be paid to any person pursuant to section 74;

(d) the form of any application notice or other document referred to in this Act; and

(e) any other matter that may be necessary for the proper functioning or administration of this Act.

Delegation by Minister.

78. (1) The Minister may in relation to any matter or class of matters, delegate to any public officer any of his powers or functions under this Act other than his power to delegate under this section.

(2) The Labour Commissioner may, in relation to any matter or class of matters, delegate to any public officer any of his powers or functions given to him under this Act or as the result of a delegation by the Minister pursuant to subsection (1), other than this power to delegate under this section.

SCHEDULE

(Sections 2 and 59(1)*(a)*).

The Banana Industry
The Citrus Industry
The Coconut Industry
Electricity Services
Health Services
Hospital Services
Prisons Services
Sanitary and Water Services
Port Services
Fire Services
Telecommunications

SUBSIDIARY LEGISLATION

*9/1991.

INDUSTRIAL RELATIONS (ALLOWANCE TO TRIBUNAL MEMBERS, ETC.) REGULATIONS

made under sections 74 and 77(c) and (e)

Commencement.

[1st October 1990]

Short title.

1. These Regulations may be cited as the –

INDUSTRIAL RELATIONS (ALLOWANCE TO TRIBUNAL MEMBERS, ETC.) REGULATIONS.

Interpretation.

2. In these Regulations, the term "Tribunal" has the same meaning as in section 2 of the Act.

Allowance payable to members of the Tribunal, etc. Schedule.

3. The members of the Tribunal and any person who is not a public officer who is appointed to act as a conciliator or mediator in respect of any dispute or difference shall be paid the allowance specified in the Schedule.

Payment to Secretary of Tribunal.

4. The Secretary of the Tribunal shall be paid in accordance with section 4.18 of the Revised General Orders.

(Regulation 3).

SCHEDULE

Chairman	-	$50.00 per hour
Members	-	$30.00 per hour
Conciliator/Mediator who is not a public officer	-	such fee as may be agreed upon.

*This Regulation revoked S.R.O. 48/1986.