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THE INDUSTRIAL RELATIONS ACT 1973

Act 67/1973

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PART I – PRELIMINARY

1. Short title.

This Act may be cited as the Industrial Relations Act.

2. Interpretation.

(1) In this Act, unless the context otherwise requires -

“agency shop order” means an order under section 69;

“award” means an award made by the Tribunal under section 78 or 83;

“bargaining unit” means employees or classes of employees, whether or not employed by the same employer, on whose behalf a collective agreement may be made;

“Board” means the National Remuneration Board established by section 47;

“branch” means a branch of a trade union;

“check-off agreement” means an agreement between an employer and a trade union for dues to be deducted from the wages of an employee by the employer and paid to the trade union;

“civil service union” means a trade union of employees membership of which is confined to public officers;

“collective agreement” means a procedure agreement, or an agreement which relates to terms and conditions of employment, made between a trade union of employees or a joint negotiating panel and an employer or a trade union of employers;

“collective bargaining” means negotiations relating to terms and conditions of employment or to the subject matter of a procedure agreement;

“Commission” means the Industrial Relations Commission established by section 41;

“contract of employment” means a contract of service or of apprenticeship, whether express or implied;

“contribution” means the amount of money deductible from the wages of an employee under an agency shop order;

“Court” means the Industrial Court established under the Industrial Court Act;

“disciplined force” has the same meaning as in section III of the Constitution;

“dues” means a regular subscription payable to a trade union by a member as a condition of his membership, but does not include any other subscription or levy;

“executive” means the body entrusted with the management of the affairs of a trade union;

“federation” means a federation of trade unions;

“industrial dispute” means a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to -

(a) a contract of employment or a procedure agreement except, notwithstanding any other enactment, those provisions of the contract or

agreement which -

(i) concern remuneration or allowance of any kind; and

(ii) apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau.

(b) the engagement or non-engagement, or termination or suspension of employment, of an employee; or

(c) the allocation of work between employees or groups of employees;

Amended by [\[Act No. 13 of 2003\]](#)

“industry” means trade;

“joint negotiating panel” means the representatives of 2 or more trade unions of employees authorised to participate in collective bargaining and to enter into a collective agreement;

“local authority” has the same meaning as in section 2 of the Local Government Act 1989;

“lock out” means any action taken by an employer, whether or not in contemplation or furtherance of an industrial dispute, and whether or not the employer is a party to the dispute, which consists in -

- (a) the exclusion of a group of employees from a place of employment;
- (b) the suspension of work in a place of employment; or
- (c) the collective, simultaneous or otherwise connected termination or suspension of employment of a group of employees;

“Minister” means the Minister to whom responsibility for the subject of Industrial Relations is assigned;

“negotiating rights” means the right to participate in collective bargaining;

“officer” means, in relation to a trade union –

- (a) a member of the executive;
- (b) a member of the managing body of a branch;

(c) a shop steward or other executive officer, by whatever name called;

"Pay Research Bureau" means the bureau referred to in the yearly Recurrent Budget under the Vote of Expenditure pertaining to the Prime Minister's Office.

Added by [Act No. 13 of 2003]

"political fund" means a fund of a trade union kept exclusively for the purpose of incurring expenditure for the furtherance of political objects;

"procedure agreement" means an agreement which relates to –

- (a) machinery for consultation with regard to, or for the settlement of, terms and conditions of employment;
- (b) negotiating rights;
- (c) facilities for officers;
- (d) procedures relating to disciplinary matters; or
- (e) procedures relating to grievances of individual employees;

"public officer" includes primary aided school teacher;

"register" means the register required to be kept by the Registrar under section 4;

"registered" means registered under this Act;

"registered office" means the registered place of business of a trade union;

"Registrar" means the Registrar of Associations or any other public officer acting on his behalf or under his authority;

"Remuneration Order" means an order under section 96;

"representational status" means the authority of a trade union of employees to represent a member of that trade union in any difference between the member and his employer in which the member is relying upon his legal rights;

"secretary" means the secretary of a trade union or any person who acts or purports to act as such;

"sole bargaining agent" means a trade union or joint negotiating panel which has exclusive negotiating rights in respect of a bargaining unit;

"special fund" means a fund of a trade union, other than a political fund, to

which the members of the trade union are free not to contribute;

"strike" means any action taken by a group of employees, whether or not in contemplation or furtherance of an industrial dispute and whether or not they are parties to the dispute, which consists in -

(a) a concerted stoppage of work; or
(b) a concerted course of conduct, including going slow or working to rule, which is carried on -

(i) with the intention of preventing, reducing or otherwise interfering with the production or distribution of goods or the provision of services; and

(ii) in the case of some or all of the employees involved, in breach of their obligations to their employer or in disregard of the normal arrangements between them and their employer;

"trade" or "industry" includes any occupation, calling or business and includes any part of a trade or industry;

"trade union" means an association of persons, whether registered or not, having as one of its objects the regulation of industrial relations between employees and employers and includes a federation;

"treasurer" means the treasurer of a trade union and includes any person who, under the rules of the trade union, is responsible for any accounts of the trade union or for the collection, receipt, disbursement, custody or control of the moneys of the trade union;

"Tribunal" means the Permanent Arbitration Tribunal established by section 39;

"union's share" means that portion of the contribution which is payable under section 70 to a trade union;

"visiting force" has the same meaning as in section 2 of the Visiting Forces Act;

"wages" means all emoluments payable in cash to an employee under a contract of employment;

3. Application of Act.

(1) Subject to subsection (2), this Act shall bind the State.

(2) This Act shall not apply -

(a) to a member of a disciplined force;

(b) to a member of a visiting force;

(c) to a person in the service of the State who is not a public officer.

(3) Subject to Part IX, this Act shall apply to the public service and civil service unions.

PART II - REGISTRATION OF TRADE UNIONS

4. Register of trade unions.

(1) The Registrar shall keep a register in the prescribed form in which shall be entered the particulars of all registered trade unions.

(2) Any interested person may, on written application to the Registrar, at all reasonable times inspect the register.

5. Registration of trade unions.

(1) Subject to section 110, every trade union shall, not later than three months after the date of its formation, apply to the Registrar for registration.

(2) No trade union shall claim or receive any admission fee, dues or contribution unless the trade union has been registered under section 11.

(3) Where a trade union fails to comply with subsection (1) or (2), the trade union shall commit an offence and the trade union shall be wound up by the Registrar in the prescribed manner.

Amended by [\[Act No. 25 of 1975\]](#)

6. Application for registration.

(1) The application for registration of a trade union shall be in the prescribed form.

(2) Every application under subsection (1) shall be accompanied by -

- (a) the prescribed fee;
- (b) two copies of the rules of the trade union; and
- (c) a statement of particulars in the prescribed form.

(3) The Registrar may, by written notice, require an applicant to provide any further information he may reasonably require for the purpose of considering the application.

(4) Where the Registrar considers that the rules or the name of the trade union do not comply with this Act, he shall give written notice to the trade union of the want of compliance and afford the trade union such time as he considers reasonable in which to submit amended rules or another name.

(5) The Registrar shall refuse any application which does not comply with this section.

(6) Where a trade union –

- (a) fails to provide any information required by the Registrar under subsection (3); or
- (b) refuses to submit amended rules or another name as requested by the Registrar under subsection (4),

the Registrar shall refer the application to the Commission.

7. Objections to registration.

(1) The Registrar shall, in the prescribed manner, publish in the *Gazette* and in 2 daily newspapers a notice of any application which is not refused by him under section 6(5).

(2) Any registered trade union may, not later than 21 days after the publication of the notice in the *Gazette* under subsection (1), lodge a written objection to the application with the Registrar.

(3) The Registrar shall, not later than 14 days after receiving an objection under subsection (2), by written notice, require the applicant to show cause, within such time as may be specified in the notice, why the objection should not be upheld.

8. Consideration of application and objection.

(1) Where an objection to an application has been lodged in accordance with section 7(2), the Registrar shall, after the time limit specified in a notice issued under section 7(3) has elapsed, refer the application and the objection to the Commission.

(2) Where no objection is lodged in accordance with section 7(2), the Registrar may, after the time limit specified in section 7(2) has elapsed -

- (a) register the trade union; or
- (b) refer the application to the Commission.

(3) The Commission shall hear and consider the application and any objection to it and, after making such enquiries as it considers necessary, direct the Registrar to register or not to register the trade union.

(4) Where in accordance with subsection (3) the Commission directs the Registrar -

- (a) not to register a trade union; or
- (b) notwithstanding an objection lodged against an application for registration, to register a trade union,

it shall specify the grounds for refusing to register the trade union or the reasons for rejecting the objection, as the case may be.

9. Grounds for refusal to register.

(1) Subject to subsection (2), a trade union shall not be registered if -

- (a) any of its objects is unlawful or is inconsistent with this Act;
- (b) the trade union is engaged, or is about to engage, in activities likely to cause a serious threat to public safety or public order;
- (c) its rules are ambiguous;
- (d) except in the case of a civil service union, its membership is open to public officers;
- (e) its membership is open to persons who are not engaged in the same trade, or in similar or connected trades or in the same undertaking;
- (f) its rules do not contain adequate provision, or it is not organised

to provide adequately, for the protection and promotion of the interests of its members in every trade which it purports to represent;

(g) any of its officers is not qualified to hold, or is incapable of performing the duties of, his office;

(h) its name is the same as that of a registered trade union or so resembles that of a registered trade union that the public may be deceived or misled; or

(i) its name is, in the Registrar's opinion, objectionable or otherwise unsuitable.

(2) Subsection (1)(d) shall not apply in relation to the registration of a federation comprising a federation of civil service unions and other trade unions.

Amended by [\[Act No. 25 of 1975\]](#); [\[Act No. 35 of 1976\]](#)

10. Notification of decision and appeal.

(1) Where, pursuant to a direction of the Commission under section 8(3), the Registrar -

(a) refuses to register a trade union; or

(b) notwithstanding an objection lodged against an application for registration, registers a trade union,

he shall give written notice to the applicant trade union and to any trade union which has objected to the application for registration, of the ground on which the refusal is based or, of the reasons for the rejection of the objection, as the case may be.

(2) Any trade union aggrieved by a decision to register or not to register a trade union may, not later than one month after the date of the notification of the decision, appeal against the decision to the Tribunal and, on appeal, the Tribunal may make such order as it thinks fit.

(3) The Registrar may appear and be heard on an appeal under subsection (2).

11. Certificate of registration.

The Registrar shall, on registering a trade union, issue a certificate of registration in the prescribed form to the trade union and the certificate shall, unless the registration is

cancelled pursuant to section 13, be conclusive evidence that the trade union is not registered.

Amended by [\[Act No. 25 of 1975\]](#)

12. Consequences of refusal to register.

(1) Where the Registrar has refused to register a trade union, the trade union shall be dissolved forthwith and be wound up -

(a) if no appeal has been lodged under section 10(2), not later than one month after the date of the notification of the decision;

(b) if an appeal has been so lodged and the appeal has been dismissed, not later than one month after the date of the dismissal of the appeal.

(2) Where a trade union is not wound up and its property distributed as provided by its rules within the time specified in subsection (1), every officer shall commit an offence and the trade union shall be wound up by the Registrar in the prescribed manner.

Amended by [\[Act No. 25 of 1975\]](#)

13. Cancellation of registration by order of Tribunal.

(1) The registration of a trade union may be cancelled on the ground that -

(a) the registration was obtained by fraud or misrepresentation;

(b) the trade union has ceased to exist;

(c) by reason of any change of circumstances for which the trade union is responsible, the trade union would no longer be eligible for registration;

(d) the trade union has engaged, or is about to engage, in activities likely to cause a serious threat to public safety or public order;

(e) the trade union has contravened its rules by failing to provide effective representation of the interests of its members in general, or of those of its members who belong to a particular trade; or

(f) the trade union has failed to comply with any requirement (including a requirement relating to its rules) imposed on it by this Part, and has

persisted in its default after the Registrar has given it written notice specifying the default and fixing a time which shall not be less than 2 months for remedying the default, and that time has expired.

(2) Where the Registrar is of opinion that the registration of a trade union should be cancelled, he shall refer the matter to the Tribunal, stating the ground which, in his opinion, justifies the cancellation.

(3) Where on a reference under subsection (2), the Tribunal is satisfied that the ground of the reference is well-founded, the Tribunal may -

(a) adjourn the hearing of the reference so as to allow the trade union time to remedy the default or failure; or

(b) direct the Registrar to cancel the registration of the trade union.

(4) Where, at the resumed hearing after an adjournment under subsection (3) (a), the Tribunal finds that the trade union has not taken adequate steps to remedy the default or failure, it shall direct the Registrar to cancel the registration of the trade union.

(5) On receipt of a direction under subsection 3(b) or (4), the Registrar shall cancel the registration of the trade union.

14. Consequences of cancellation of registration.

(1) Where the Registrar cancels the registration of a trade union

(a) he shall publish a notice of the cancellation in the *Gazette* and in 2 daily newspapers;

(b) the trade union shall forthwith cease to engage in any trade union activity;

(c) the trade union shall be dissolved within one month, or such further period as the Registrar may allow, after the date of the publication of the notice in the *Gazette* under paragraph (q).

(2) Where a trade union is not dissolved within the time specified in subsection (1)(c), every officer shall commit an offence and the trade union shall be wound up by the Registrar in the prescribed manner.

Amended by [[Act No. 25 of 1975](#)]

PART III - CONSTITUTION AND ADMINISTRATION OF TRADE UNIONS

A - RESTRICTION ON LEGAL PROCEEDINGS

15. Acts in furtherance of industrial dispute.

(1) An act done by a person in contemplation or furtherance of an industrial dispute shall not give rise to an action in damages on the ground only -

(a) that it induces or will induce another person to break a contract to which that other person is a party or prevents another person from performing a contract;

(b) that it consists in his threatening that a contract, whether he is a party to it or not, will be broken or will be prevented from being performed, or that he will induce another person to break a contract to which that other person is a party or will prevent another person from performing a contract; or

(c) that it is an interference with the trade, business or employment of another person, or with the right of another person to dispose of his capital or his labour as he wishes.

(2) An agreement or combination by 2 or more persons to do or procure to be done any act in contemplation or furtherance of an industrial dispute shall not render any of those persons liable to civil or criminal proceedings, if the act in question is one which, if done without any such agreement or combination, would not render him so liable.

B - STATUS, RULES, MEMBERSHIP AND DISSOLUTION

16. Trade union to be a body corporate.

(1) Subject to the other provisions of this Act, a registered trade union shall be a body corporate having perpetual succession and a common seal and all the rights and powers of a natural person.

(2) No property belonging to a trade union shall be disposed of, pledged, mortgaged or charged unless a majority of all the members of the trade union who are not disqualified from voting pursuant to section 20(2) have consented to the transaction.

(3) A trade union may sue and be sued in its corporate name and service of any notice or process by or on the secretary shall be deemed to be service on behalf of or on the trade union.

17. Rules of trade unions.

(1) The rules of every trade union shall make provision for all the matters specified in the First Schedule.

(2) Every member of a trade union shall, on request made to the secretary and on payment of a fee of one rupee, be entitled to receive a copy of the rules of the trade union.

(3) A secretary who fails to supply a copy of the rules under subsection (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50 rupees.

18. Alteration of rules or change of name.

(1) Subject to subsection (2), a trade union may alter its rules or change its name by a resolution approved at a general meeting held in accordance with the rules of the trade union.

(2) An alteration of the rules or a change of the name of a trade union shall not have effect until it is registered.

(3) An application for the registration of an alteration of the rules or a change of the name of a trade union shall be made, in the prescribed form, to the Registrar and shall be accompanied by the prescribed fee.

(4) The Registrar may, by written notice, require the trade union to provide any further information he may reasonably require for the purpose of considering the application.

(5) The Registrar shall, in the prescribed manner, publish in the *Gazette* and in 2 daily newspapers a notice of any application for a change of the name of a trade union.

(6) Any other registered trade union may, not later than 21 days after the publication of the notice in the *Gazette* under subsection (5), lodge a written objection to the application with the Registrar.

(7) The Registrar shall, not later than 14 days after receiving an objection

under subsection (6), by written notice, require the applicant trade union to show cause, within such time as may be specified in the notice, why the objection should not be upheld.

19. Consideration of application for alteration of rules and change of name.

(1) An alteration of the rules or a change of the name of a trade union shall not be registered where -

(a) it has not been made in accordance with this Act or with the rules of the trade union; or

(b) at the time of the application for registration of the trade union, the trade union would not have been registered had -

(i) its rules included any provision contained in the alteration; or

(ii) its name been similar to the new name.

(2) The Registrar shall, on registering an alteration of the rules or a change of the name of a trade union, issue to the trade union a certificate of the registration, in the prescribed form.

(3) Where the Registrar -

(a) refuses to register an alteration of the rules or a change of the name of a trade union; or

(b) rejects an objection to a change of the name of a trade union,

he shall give written notice of his decision to the applicant trade union and to any trade union which has objected to the change of name.

(4) Any trade union aggrieved by a decision of the Registrar under this section may, not later than 14 days after the date of the notification of the decision, appeal against the decision to the Tribunal and, on appeal, the Tribunal may make such order as it thinks fit.

(5) The Registrar may appear and be heard on an appeal under subsection (4).

20. Membership.

(1) No person shall be eligible to be a member of a trade union unless he

resides in Mauritius and -

(a) he is *bona fide* engaged in a trade which the trade union purports to represent; or

(b) if he is not so engaged, he has been so engaged at any time for a period of, or periods amounting in the aggregate to, not less than 18 months.

(2) No member of a trade union shall have the right to vote at a meeting of the trade union if his dues are in arrears by more than 3 months or such shorter period as may be specified in the rules of the trade union.

(3) The minimum age for membership of a trade union shall be 16 years or such greater age as may be specified in the rules of the trade union.

(4) Subject to section 24 and to the rules of the trade union, a member of a trade union who is a minor may enjoy all the rights of a member, and may execute any instrument or give any discharge required under the rules of the trade union.

21. Members' nominees.

(1) Subject to subsection (2), a member of a trade union may, by written notice to the trade union, nominate a person to whom any money payable on the death of the member shall be paid.

(2) An officer of the trade union shall not be nominated under subsection (1) unless he is the husband, wife, father, mother or child of the member.

(3) A trade union shall, on receiving satisfactory proof of the death of a member, pay any money payable on the death of the member to the person nominated by the member under subsection (1).

22. Registered office.

(1) Every trade union shall have a registered office to which all communications and notices may be addressed and where all the books and documents relating to the trade union shall be available for inspection by the Registrar or by any person having a pecuniary interest in the funds of the trade union.

(2) The trade union shall give notice of the address and of any change of its registered office to the Registrar.

23. Branches of trade union.

Where a trade union establishes or dissolves a branch, it shall give written notice of the establishment of the branch, or of the dissolution, to the Registrar not later than 14 days after the date of the establishment or of the dissolution.

24. Executive and officers.

(1) No person shall be qualified to become or, having been so appointed or elected, shall continue to be an officer who -

(a) is a minor;

(b) is an undischarged bankrupt or is insolvent;

(c) has, within the 3 preceding years, been convicted of an offence involving fraud or dishonesty;

(d) in the case of a trade union of employees, is not a member of that trade union.

(2) Every trade union shall cause the names and titles of every officer to be prominently exhibited in its registered office and in the office of every branch.

(3) Every trade union shall, not later than seven days after the appointment or election of its officers and of every change among its officers or in their titles, give written notice to the Registrar of the appointment, election or change.

(4) Where the Registrar has reasonable cause to believe that any change notified to him under subsection (3) was not made in accordance with this Act or the rules of the trade union, he shall not register the change and shall give written notice to the trade union of the ground on which the refusal is based.

(5) Any person aggrieved by a decision of the Registrar under subsection (4) may, not later than 14 days after the date of the notification of the decision, appeal against the decision to the Tribunal and, on appeal, the Tribunal may make such order as it thinks fit.

(6) The Registrar may appear and be heard on an appeal under subsection (5).

(7) Any person who, not being qualified as such under subsection (1), acts or purports to act as an officer shall commit an offence.

25. Meetings of trade unions.

(1) Every trade union shall, between 1 January and 31 March in every year, hold an annual general meeting.

(2) The notice convening an annual general meeting shall be published, not less than 21 days before the date of the meeting, in one daily newspaper approved by the Registrar.

(3) The notice convening the annual general meeting shall specify -

(a) that the meeting is convened as an annual general meeting; and

(b) that the matters to be considered at the meeting will include -

(i) the statement of accounts of the trade union for the preceding year; and

(ii) the election of officers and members of the executive.

(4) Where an annual general meeting of a trade union consists in a meeting of delegates of branches or, in the case of a federation, of the constituent trade unions, the trade union shall, at the same time as the publication of the notice under subsection (2), give each branch or, in the case of a federation, each of the constituent trade unions, written notice setting out all the matters to be considered at the meeting and the number of delegates to be elected by each branch or by each of the constituent trade unions.

(5) Each branch or, in the case of a federation, each of the constituent trade unions shall, not later than 5 days after the publication of a notice under subsection (2), convene a general meeting at which -

(a) all the matters to be discussed at the annual general meeting of the delegates shall be considered;

(b) the delegates to represent the branch or, in the case of a federation, the constituent trade union shall be elected; and

(c) where the matters to be discussed at the annual general meeting include a resolution which, under this Act or under the rules of the trade union, must be approved by the members of the trade union, there shall be taken a ballot of the members of the branch or, in the case of a federation, of the members of the constituent trade union, on the resolution.

26. Taking of ballots.

(1) Where a trade union proposes to take a ballot for any the purposes specified in this Act or in its rules it shall, not less than 21 days before the date of the taking of the ballot, cause notice of the ballot to be published in one daily newspaper approved by the Registrar.

(2) A notice under subsection (1) shall specify –

(a) the day on which and the time and place at which the ballot is to be taken; and

(b) the matter which is to be determined by the ballot.

(3) The persons appointed as scrutineers of a ballot shall, after the counting of the votes, certify the result of the ballot to the Registrar and secure the ballot papers which have been counted and those which have been rejected, in separate sealed parcels which shall be retained by the trade union for a period of at least 6 months.

27. Federation and amalgamation of trade unions.

(1) Subject to subsection (2), 2 or more trade unions (including federations) may combine to form a federation or amalgamate to form one trade union if a resolution for federation or amalgamation is approved, on a ballot, at a general meeting of every trade union concerned, by a majority of all the members of that trade union who are not disqualified from voting pursuant to section 20(2).

(2) A federation or amalgamation shall not have effect until the federation or the trade union formed by the amalgamation is registered.

(3) Where the Registrar registers a trade union formed by an amalgamation of two or more trade unions he shall cancel the registration of those trade unions.

28. Dissolution of trade unions.

(1) Subject to subsection (2), a trade union may be dissolved where a resolution for its dissolution is approved at a general meeting held in accordance with the rules of the trade union.

(2) Where, under the rules of the trade union, provision is made for a special fund, the dissolution of the trade union shall not have effect until a majority of all the members who contribute to the special fund have approved, on a ballot, the manner in which any asset of the fund is to be disposed of.

(3) Where a trade union resolves that it should be dissolved, it shall, not later than 14 days after the date on which the resolution for the dissolution is approved in accordance with subsection (1), give written notice of the resolution to the Registrar.

(4) On receipt of a notice under subsection (3), and on being satisfied that the resolution to dissolve the trade union has been approved in accordance with subsection (1), the Registrar shall publish a notice of the dissolution in the *Gazette* and in two daily newspapers.

(5) The dissolution of a trade union shall take effect from the date of the publication of the notice in the *Gazette* under subsection (4).

(6) Where on the dissolution of any trade union, the Registrar is of opinion that the rules of the trade union for the disposal of its funds and other property are inadequate or are not being properly applied, he may issue to an officer such written directions as he considers necessary to safeguard the interests of the creditors or members of the trade union, and the officer shall comply with those directions.

Amended by [\[Act No. 25 of 1975\]](#)

[\[Reprint No. 3 of 2003\]](#)

C - PROPERTY AND FUNDS

29. Application of funds.

(1) Subject to subsections (2) and (3), no trade union shall apply its funds except for the following purposes -

- (a) expenditure incurred for the purpose of complying with this Act;
- (b) the payment of reasonable emoluments to officers;
- (c) reasonable expenditure for the administration of the trade union and the auditing of its accounts;
- (d) the conduct of legal proceedings to which the trade union or any of its members is a party, where the proceedings are undertaken for the purpose of securing or protecting any rights of the trade union or of any of its members in relation to his contract of employment;
- (e) the conduct of an industrial dispute on behalf of the trade union or any of its members, and the payment of compensation to members of the

trade union for any loss arising out of an industrial dispute;

(f) benefits to members of the trade union or their dependents on account of accidents, unemployment, sickness, old age or death; and

(g) any other purpose approved by the Minister.

(2) No trade union shall apply any of its funds either directly or indirectly in payment of any penalty imposed upon any person by a court of law, other than a penalty imposed upon the trade union itself.

(3) No trade union shall apply any of its funds in support of or in connection with any unlawful strike and lock-out.

(4) Where, under the rules of a trade union, provision is made for any special fund, the rules applicable to that special fund -

(a) shall specify the expenses and benefits which may be paid out of that fund;

(b) shall not be altered except by a resolution approved, on a ballot, by a majority of the total number of members who contribute to that fund.

30. Restriction on application of funds for political purposes.

(1) No trade union shall apply any of its funds for a political object unless its rules provide for the setting up of a political fund from which payments for political objects may be made, and no assets of the trade union other than those forming part of the political fund shall be applied or charged for any political object.

(2) No assets of the trade union other than lawful contributions of members to the political fund shall be credited to that fund.

(3) Contribution to the political fund of a trade union shall not be made a condition of membership of the trade union.

(4) No member of a trade union shall be liable to contribute to a political fund unless he has, by written notice to the trade union, agreed to contribute to that fund.

(5) A member who is not liable to contribute to a political fund shall not be excluded from any benefits of the trade union, or placed in any disability or at any disadvantage as compared with other members who contribute to the political fund, except in relation to the control and management of the political fund.

(6) For the purposes of subsection (1), payments for political objects include expenditure incurred for -

(a) the payment of any expenses incurred, either directly or indirectly, by a candidate for election to the Assembly or to a local authority, before, during or after the holding of the election, in connection with his candidature or election;

(b) the holding of any meeting or the distribution of literature or documents in support of a candidate or prospective candidate;

(c) the registration of voters, or the selection of a candidate, for the Assembly or any local authority;

(d) the holding of a political meeting or the printing or distribution of political literature or political documents.

31. Political fund of federations.

Where a federation has set up a political fund, no constituent trade union of the federation shall contribute to that fund unless -

(a) the constituent trade union has set up a political fund;

(b) the constituent trade union has, with the approval, on a ballot, of a majority of all the members of the constituent trade union who contribute to its political fund, given written notice to the federation that it agrees to contribute to the political fund;

(c) the contribution of the constituent trade union to the political fund of the federation is paid exclusively from the assets of the political fund of the constituent trade union.

32. Notice to contribute to political fund.

(1) A notice under section 30(4) or 31(b) shall have effect from the first day of the month following the month in which it is given and shall cease to have effect on the last day of the month following the month in which a written notice of intention to cease to fund contribute to a political fund is given.

(2) In the case of a federation no notice of intention to cease to contribute to a political fund shall be given by a constituent trade union unless the approval, on a ballot, of a majority of all the members of the constituent trade union who contribute to its political fund has been obtained.

33. Misapplication of funds.

(1) Where 5 or more members of a trade union, or the Registrar, have reason to believe that a trade union is incurring expenditure in breach of this sub-Part or of its rules, they may apply to the Court to restrain the trade union from incurring that expenditure and, on such an application, the Court may make such order as it thinks fit.

(2) Where an application under subsection (1) is made in relation to a trade union which has been or is about to be dissolved, the Court may order that the assets of the trade union be vested in the Registrar.

(3) Where an order under subsection (2) has been made, the assets of the trade union shall vest in the Registrar and the trade union shall be wound up by the Registrar in the prescribed manner.

D - ACCOUNTS AND RETURNS**34. Keeping of accounts and records.**

(1) Every treasurer shall keep a record of all moneys received and paid by him for and on behalf of the trade union and shall -

- (a) in respect of each year;
- (b) on his resignation;
- (c) on the expiry of his term of office; or
- (d) where required so to do by the rules of the trade union,

render to the trade union a true account of all moneys received and paid by him since his appointment or since he last rendered an account, whichever is the later.

(2) The treasurer of a trade union shall prepare a general statement in the prescribed manner of all receipts and expenditure of the trade union in respect of every year, and of the assets and liabilities of the trade union existing on the 31 December in every year.

(3) Every account or statement prepared under this section shall be in the prescribed form and shall be audited by 2 persons to be appointed by the trade union with the approval of the Registrar.

(4) Every treasurer shall, in accordance with the rules of the trade union, hand over to the trade union the balance which on any audit appears to be due from him and all bonds, securities, books, papers or other property of the trade union in his possession, under his control or entrusted to his custody.

(5) Where a treasurer fails to comply with subsection (4), the trade union, any of its members acting on behalf of the trade union or the Registrar may, by judicial process before the Court, recover from the treasurer -

(a) the balance appearing to have been due upon the account, if any, last rendered by him;

(b) all other moneys received by him on account of the trade union; and

(c) all bonds, securities, books, papers or other property in his control or custody.

35. General statement to be submitted to annual general meeting.

(1) The treasurer of every trade union shall submit the general statement prepared under section 34(2) for the approval of the members of the trade union at the annual general meeting of the general trade union and shall, on the application of a member of the trade union, deliver to him a copy of the statement.

(2) Every trade union shall cause a copy of the last general statement to be prominently exhibited in the registered office of the trade union and in the office of every branch.

36. Annual return to Registrar.

Every trade union shall, on or before the 1 April in every year, submit to the Registrar a return, in the prescribed form, containing -

(a) a certified copy of the general statement required to be prepared under section 34(2);

(b) a statement of the names and postal addresses of its officers; and

(c) a return of its membership as on the 31 December of the previous year.

37. Retention and inspection of trade union records.

(1) Every trade union shall retain -

(a) for a period of at least three years after the last date to which they relate -

(i) all books and statements of accounts, and auditors' reports;

(ii) all registers of members, and all records of money paid by members to the trade union;

(b) for a period of at least three years after their date of origin, all minutes of meetings (including branch meetings), vouchers, receipts, correspondence and other documents relating to the affairs of the trade union.

(2) A trade union shall permit a member of the trade union to inspect the books and accounts of the trade union and the register of its members on his giving reasonable notice to the trade union.

38. Powers of Registrar in relation to accounts.

(1) The Registrar may verify, inspect or audit the books and accounts of any trade union and, for this purpose, may require any trade union or any officer or former officer to appear and to produce for his inspection the books and accounts.

(2) The secretary or treasurer of a trade union shall, not later than 21 days after the receipt by him of a written notice from the Registrar, furnish the Registrar with such information relating to the trade union, including detailed accounts of the funds or other assets of the trade union or its branches, as may be specified in the notice.

PART IV - PERMANENT ARBITRATION TRIBUNAL, INDUSTRIAL RELATIONS COMMISSION AND NATIONAL REMUNERATION BOARD

A - PERMANENT ARBITRATION TRIBUNAL

39. Establishment of Tribunal.

(1) There is established for the purposes of this Act a tribunal to be known as the Permanent Arbitration Tribunal.

(2) The Tribunal shall consist of –

(a) (i) a President; and

(ii) a Vice-President,

whose offices shall be public offices; and

(b) not more than 6 other members, who shall be appointed annually by the Minister, after consultation with such organisations representing employees and employers as he considers appropriate.

(3) A person shall not be appointed President of the Tribunal unless he is qualified for appointment as a judge.

(4) Part I and, where appropriate, of Part II of the Second Schedule shall have effect with respect to the Tribunal and its members.

40. Functions of Tribunal.

The Tribunal shall have such functions as are set out in this Act or as may be prescribed or as may otherwise be provided by Parliament.

B - INDUSTRIAL RELATIONS COMMISSION

41. Establishment of Commission.

(1) There is established for the purposes of this Act a commission to be known as the Industrial Relations Commission.

(2) The Commission shall consist of a Chairman and not less than 3 nor more than 6 other members, who shall be appointed annually by the Minister, after consultation with such organisations representing employees and employers as he considers appropriate.

(3) Part II of the Second Schedule, where appropriate, shall have effect with respect to the Commission and its members.

42. Functions of Commission.

The Commission shall have such functions as are set out in this Act or as may be prescribed or as may otherwise be provided by Parliament.

43. References to Commission by Minister.

(1) The Minister may refer to the Commission any question relating to

industrial relations generally or to industrial relations in any particular industry, and the Commission shall enquire into and report upon any question so referred.

(2) The report of the Commission on any question referred to it under subsection (1) may be published in such manner as the Minister may, after consultation with the Commission, determine.

44. Conciliation service.

The Commission shall provide a conciliation service for the assistance of employees, employers and trade unions.

C - NATIONAL REMUNERATION BOARD

45. Establishment of National Remuneration Board.

(1) There is established for the purposes of this Act a board to be known as the National Remuneration Board.

(2) The Board shall consist of a Chairman and not less than 4 and not more than 10 other members who shall be appointed by the Minister, after consultation with such organisations representing employees and employers as he considers appropriate.

(3) The Chairman, Vice-Chairman and the members of the Board shall be appointed for such term as the Minister may determine.

(4) (a) Where the Minister refers any matter to the Board under section 94, the Minister may appoint such even number of assessors as he thinks fit, half to represent employees and half to represent employers, to assist the Board in its determination of the matter.

(b) Before making any appointment under this subsection the Minister shall consult such organisations representing employees and employers, interested in the particular matter, as he considers appropriate and if, after consultation, the Minister is unable to secure the consent of suitably representative persons for appointment as assessors, whether to represent employees or employers or both, the Minister may appoint assessors to represent employees only, or employers only, or may refrain from appointing any assessor.

(c) A person shall not be qualified to be appointed as an assessor if he is a member of, or a candidate for election to, the Assembly or any local

authority.

(5) Part II of the Second Schedule, where appropriate, shall have effect with respect to the Board and its members.

46. Functions of the Board.

The Board shall have such functions as are set out in Part VIII or as may be prescribed or as may otherwise be provided by Parliament.

D - GENERAL

47. Principles to be applied by Tribunal, Commission and Board.

Where any matter is before the Tribunal, the Commission or the Board shall, in the exercise of their functions under this Act, be applied have regard, *inter alia*, to -

- (a) the interests of the persons immediately concerned and the community as a whole;
- (b) the principles and practices of good industrial relations;
- (c) the need for Mauritius to maintain a favourable balance of trade and balance of payments;
- (d) the need to ensure the continued ability of the Government to finance development programmes and recurrent expenditure in the public sector;
- (e) the need to increase the rate of economic growth and to provide greater employment opportunities;
- (f) the need to preserve and promote the competitive position of local products in overseas markets;
- (g) the need to develop schemes for payment by results, and so far as possible to relate increased remuneration to increased labour productivity;
- (h) the need to prevent gains in the wages of employees from being adversely affected by price increases;
- (i) the need to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility; and

(j) the need to maintain a fair relation between the incomes of different sectors in the community.

[Reprint No. 4 of 1974]

48. Intervention by the Attorney-General.

(1) Where any matter is before the Tribunal, the Commission or the Board, the Attorney-General may, for the purpose of giving such assistance to the Tribunal, the Commission or the Board as he may be able to provide, intervene in the matter if it appears to him that some question of public importance or affecting the public interest is in issue.

(2) The Attorney-General may, at the request of the Tribunal, the Commission or the Board, intervene in any matter before the Tribunal, the Commission or the Board.

(3) The Attorney-General may, on an intervention made under this section, tender such evidence, and make such submissions, as he thinks fit with respect to the matter before the Tribunal, the Commission or the Board.

(4) No intervention by the Attorney-General shall be taken to cause the Attorney-General to become a party to the matter before the Tribunal, and accordingly no order or award shall be made against the Attorney-General in any matter.

PART V - PROTECTION OF INDIVIDUAL RIGHTS

A - TRADE UNION ACTIVITIES

49. Rights of employees.

(1) Every employee shall, as between himself and his employer, have the right -

(a) to be a member of a trade union;

(b) not to be a member or to refuse to be a member of a trade union; and

(c) to take part, at the appropriate time, in the activities of a trade union of which he is a member, including the right to seek appointment or election as an officer of the trade union, and to hold office as such.

(2) No employer shall refuse to engage an employee or dismiss, penalise, or otherwise discriminate against an employee by reason of his having exercised, his exercising, or wishing or being likely to exercise any right under subsection (1).

(3) Nothing in this section shall be construed as preventing an employer from encouraging an employee to join a trade union which has negotiating rights in respect of that employee.

(4) In this section -

“appropriate time” means time which -

(a) is outside the working hours of an employee; or

(b) is within the working hours of an employee and which, in accordance with arrangements with his employer, is consented to by, or on behalf of, the employer;

“working hours” means any time when, under his contract of employment, an employee is required to be at work.

(5) Any employer who fails to comply with subsection (2) shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding six months and to a fine not exceeding two thousand rupees.

50. Protection in unlawful actions.

Notwithstanding anything in the rules of a trade union, no person who refuses to participate in, or otherwise to act in furtherance of, any strike or lock-out which is unlawful, or who refuses to take any other action which is unlawful, shall, by reason of the refusal be subject to -

(a) expulsion from a trade union;

(b) removal from office as an officer;

(c) any fine or penalty imposed by a trade union;

(d) deprivation of any right or benefit to which he or his legal personal representatives would otherwise be entitled; or

(e) any disability or disadvantage, whether direct or indirect, as compared with other members of the trade union.

B - PROHIBITION OF CLOSED SHOP

51. Closed shop agreement to be void.

(1) No employer shall enter into an agreement with a trade union which purports to -

(a) preclude the employer from engaging an employee who is not a member of a trade union;

(b) preclude the employer from engaging an employee who has not been recommended or approved by a trade union;

(c) require that one of the terms and conditions of employment of an employee shall be that that employee must become a member of a trade union.

(2) Any person who has been refused employment and who claims that the refusal was attributable wholly or partly to a provision in an agreement as is specified in subsection (1), may apply to the Court for an order under subsection (3).

(3) Where on an application under subsection (2) the Court finds –

(a) that a provision in an agreement as is specified in subsection (1) is or was in force; and

(b) that the refusal to employ the applicant was wholly or partly attributable to that provision,

the Court may order the employer to pay to the applicant such sum by way of compensation as the Court thinks just.

PART VI - PROMOTION OF INDUSTRIAL RELATIONS

A - CODE OF PRACTICE

52. Practical guidance for promotion of good industrial relations.

(1) The Code of Practice set out in the Third Schedule shall -

(a) provide practical guidance for the promotion of good promotion of industrial relations;

(b) provide practical guidance for the grant of negotiating trial rights;

(c) assist employers and trade unions of employees to make effective collective agreements.

(2) A failure on the part of any person to observe any provision of the Code of Practice shall not of itself render that person liable to proceedings of any kind.

(3) In any proceedings under this Act any provision of the Code of Practice which appears to the Tribunal, the Commission or the Court to be relevant to any question arising in the proceedings shall be taken into account for the purpose of determining that question.

B - REPRESENTATIONAL STATUS

53. Agreement for representational status.

An employer and a trade union of employees may enter into an agreement whereby the employer recognises the representational status of the trade union in relation to his employees who are members of the trade union.

54. Order for representational status.

(1) Subject to subsection (2), a trade union of employees which has been refused representational status by an employer employing any of the members of the union may apply to the Court for an order directing the employer to recognise the representational status of the trade union.

(2) Where an application under subsection (1) relates to an employer in respect of whom the same trade union has previously made an application, the Court shall not consider the application unless -

(a) it is made after one year from the date on which the Court decided the previous application; or

(b) the applicant satisfies the Court that there has, since the previous application, been a change in circumstances sufficient to justify another application.

(3) Subject to subsection (4), the Court may make an order under this section if it is satisfied that -

(a) the applicant has sufficient resources and is sufficiently well organised to effectively represent its members;

(b) the grant of the application is not likely to affect adversely any existing or proposed collective agreement; and

(c) the grant of the application is conducive to good industrial relations.

(4) The Court shall not, unless it considers that there are exceptional circumstances, make an order under this section if the applicant -

(a) has less than 100 members; or

(b) has less than 5 members in the employment of the employer.

55. Revocation of order for representational status.

Where there has been a change of circumstances which would justify the revocation of an order under section 54, the Court may, at the instance of an employer, revoke the order.

C - RECOGNITION

56. Application to Commission

(1) An application for the consideration of any question relating to the claim of a trade union of employees or a joint negotiating panel for negotiating rights may be made to the commission by the trade union or panel, or by the employer directly affected by the claim, or jointly by the trade union or the panel and the employer.

(2) Subject to subsection (3), the Commission shall consider an application under subsection (1) if it is satisfied that a reference of the question to the Commission is necessary with a view to promoting a satisfactory settlement.

(3) The Commission shall not consider an application under subsection (1) where it appears to the Commission that it is being invited to consider an order made by the Tribunal which is still in force or, in the case of an application which relates to a previous recommendation made by the Commission, if the application is made within one year of the date on which the previous recommendation was made.

57. Extension of scope of application.

(1) Subject to subsection (2), where an application is made under section 56, the Commission may extend the scope of the application if, after hearing the parties on the proposed extension of the scope of the application, it appears to the Commission to be appropriate to do so in the interests of a satisfactory settlement of the question in issue.

(2) The scope of an application shall not be extended to any employer who is not specified in the original application, unless that employer has been made a party to the proceedings.

58. Recommendation as regards recognition.

(1) Subject to subsections (3) and (4), the commission shall make a recommendation on an application under section 56 and the recommendation may be made subject to such conditions as the Commission thinks fit.

(2) The Commission may, in making a recommendation under subsection (1), require -

(a) a trade union of employees recommended for recognition as a sole bargaining agent, or for inclusion in a joint negotiating panel, to make sufficient trained officers available for purposes of collective bargaining; or

(b) any trade union so recommended to undertake not to make or pursue any claim to be recognised as sole bargaining agent for any other bargaining unit consisting wholly or partly of employees of any employer to whom the recommendation relates.

(3) Where at any time while an application under section 56 is under consideration by the Commission, it appears to the Commission that a satisfactory settlement of the question in issue has been reached by agreement of the parties, it may terminate consideration of the application and confine its recommendation to a record of the terms of the agreement and of the material circumstances surrounding it.

(4) The Commission shall not recommend the recognition of a sole bargaining agent for a bargaining unit unless the Commission is satisfied that to effectively represent the bargaining unit -

(a) the trade union of employees concerned or, in the case of a joint negotiating panel, each of the trade unions concerned has sufficient resources and is sufficiently well organised, and

(b) the trade union of employees or the joint negotiating panel concerned is sufficiently supported by, or is acceptable to, the employees comprised in the bargaining unit.

(5) Where the Commission makes a recommendation under this section, it shall publish, in such manner as it considers appropriate, the recommendation and the reasons therefor.

59. Enforcement of recommendation for recognition.

(1) Subject to subsection (2), where the Commission has made a recommendation for the recognition by an employer of a sole bargaining agent, an application for an order to enforce the recommendation may be made to the Tribunal by the trade union of employees concerned or, in the case of a joint negotiating panel, any of the trade unions concerned, or the employer.

(2) Except in the case of a recommendation which records an agreement between the parties, no application under subsection (1) shall be entertained by the Tribunal where it is made more than one year after the date on which the recommendation was made.

(3) The Tribunal shall, when considering an application under subsection (1), take into account any change in the material circumstances which appears to the Tribunal to have occurred since the making of the recommendation to which the application relates.

(4) Before making an order on an application under subsection (1), the Tribunal may refer to the Commission, for investigation and report, any question material to the application.

60. Order for recognition.

(1) Where the Tribunal makes an order on an application under section 59, the order shall -

(a) define the bargaining unit;

(b) specify the employer and the trade union or joint negotiating panel concerned;

(c) specify the duration of the order, which shall not exceed the period of 2 years beginning with the date of the recommendation to which the application relates;

(d) declare that, while the order remains in force, the trade union of employees or joint negotiating panel concerned shall be recognised as sole bargaining agent; and

(e) require the trade union of employees or joint negotiating panel and the employer concerned to meet at specified intervals or at such times and on such occasions as the circumstances may reasonably require for the

purposes of collective bargaining.

(2) The Tribunal may, at the instance of any party specified in the order, revoke or vary an order made under subsection (1) where it is satisfied that there has been a change of circumstances, or any default on the part of any party specified in the order, which is sufficient to justify the revocation or variation of the order.

(3) The Tribunal may, in addition to any order it may make under this section, order the payment of compensation to a trade union by an employer if it is satisfied that the recommendation to which the application relates has not been put into effect or an order made by the Tribunal has not been coupled with.

61. Saving.

(1) Nothing in this Part shall prevent the parties affected by a recommendation of the Commission under section 58 or an order of the Tribunal under section 60(l) from agreeing to vary the recommendation or order.

(2) Where an agreement to vary a recommendation of the Commission under section 58 or an order of the Tribunal under section 60(l) is reached by the parties affected by the recommendation or the order, a copy of the agreement shall, not later than fourteen days after the date on which the agreement is reached, be filed -

(a) in the case of a variation of a recommendation, with the Commission;

(b) in the case of a variation of an order, with the Tribunal.

D - CHECK-OFF AGREEMENTS

62. Conditions for check-off agreements.

(1) Subject to subsection (2), no employer shall refuse to enter into a check-off agreement with a trade union if the following conditions are satisfied -

(a) the trade union has negotiating rights;

(b) the trade union has a membership of not less than 200 persons and has had that membership for a period of not less than one year immediately preceding the date on which the request to enter into the check-off agreement is made; and

(c) the employer employs not less than 10 members of the trade union.

(2) An employer may, at any time, enter into a check-off agreement with a trade union of employees.

63. Registration of check-off agreements.

The terms of any check-off agreement shall be set out in a memorandum and signed by or on behalf of the parties thereto and a copy of the memorandum shall, within one month of its being signed, be lodged with the Tribunal.

64. Tribunal may declare check-off agreements.

(1) Where a trade union requests an employer to enter into a check-off agreement and the employer refuses to enter into the check-off agreement, the trade union may, where it satisfies the conditions set out in section 62(l), make an application to the Tribunal for an order that a check-off agreement should have effect between the trade union and the employer, and, on hearing the application, the Tribunal may make such order as it thinks fit.

(2) Where, on an application under subsection (1) the Tribunal has made an order that a check-off agreement should come into force between a trade union and an employer, the trade union may, by written notice, require the employer to comply with the agreement in respect of the members of the trade union who are employed by him.

65. Provisions relating to check-off agreements.

(1) Where a check-off agreement is in force, the following relating to provisions shall have effect -

(a) a deduction of dues from the wages of an employee shall only be made if the employee has given written notice to the employer to make the deduction;

(b) the first deduction made pursuant to a notice given by an employee under paragraph (a) shall be made from the wages earned for the month following the month in which the notice is received by the employer;

(c) the notice given under paragraph (a) shall cease to have effect on the last day of the sixth month following the month in which written notice is given by the employee of his intention to cease to pay dues to the trade union;

(d) the employer shall, not later than the tenth day in each month,

give written notice to the trade union of the names of any persons who have given notice under paragraph (a) -

- (i) who have ceased to be employed by him; or
 - (ii) who have notified him of their intention to cease to pay dues to the trade union;
- (e) where dues are validly altered in amount by a trade union -
- (i) the trade union shall give written notice of the alteration to the employer; and
 - (ii) the employer shall deduct the amount of the dues as altered from the wages earned by an employee for the month following the month in which the notice of the alteration is received by him;
- (f) the whole amount of the deductions shall accrue to the trade union.

(2) Every check-off agreement which is inconsistent with the provisions of this section shall, to the extent of the inconsistency, be void.

66. Termination of check-off agreements.

Where any of the conditions of section 62(l) is no longer satisfied by a trade union, the employer may apply to the Tribunal for the termination of the check-off agreement and, on hearing the application, the Tribunal may make such order as it thinks fit.

E - AGENCY SHOP ORDERS

67. Application for agency shop order.

- (1) Subject to section 74, where a check-off agreement is in force between a trade union and an employer, the trade union may make an application to the Commission for a recommendation that the Tribunal make an order in its favour directing that the contract of employment of an employee comprised in a bargaining unit shall include a condition that a deduction be made from the wages of the employee.
- (2) The application under subsection (1) shall set out -
- (a) the name and address of the trade union and of the employer against whom the application is made;

(b) the bargaining unit in respect of which the agency shop order is sought;

(c) the particulars of the check-off agreement to which the trade union and the employer are parties;

(d) the rules of the trade union relating to the payment of dues and the imposition of levies; and

(e) the amount of the dues and levies and the times at which the dues and levies are payable.

68. Recommendations for agency shop order.

(1) The Commission shall, before recommending the making of an agency shop order, have regard to the material circumstances surrounding the application and in particular to -

(a) the amounts payable on admission, the dues and levies which may be imposed by the trade union, and the times at which those amounts become payable;

(b) the circumstances in which a member may be excused from the payment of dues or levies; and

(c) the circumstances in which a person may join, and may resign from, the trade union.

(2) The Commission shall not recommend an application unless it is satisfied that -

(a) the officers are elected and removable in a democratic manner; and

(b) any power contained in the rules of the trade union to waive the payment of dues or levies is limited to cases of genuine hardship.

(3) Where the Commission is of opinion that a prima facie case has been made out for recommending the making of an agency shop order, it shall take a ballot to determine, in relation to the employer against whom the application is made, the number of employees comprised in the bargaining unit specified in the application who are in favour of the making of the order.

(4) Where, in relation to the employer against whom the application is made, on a

ballot under subsection (3), three-fourths or more of the employees comprised in the bargaining unit vote in favour of the making of an agency shop order, the Commission shall recommend that the Tribunal make the agency shop order.

(5) The recommendation under subsection (4) shall specify –

(a) the bargaining unit;

(b) the name and address of the trade union and the employer against whom the application is made;

(c) the total amount deductible monthly as contribution, being an amount which shall not exceed the monthly dues payable by a member of the trade union; and

(d) the union's share of the deduction in respect of each employee who is not a member of the trade union.

(6) The union's share specified in the recommendation of the Commission under this section shall in no case be less than 50 per cent, or more than 75 per cent, of the contribution.

69. Making of agency shop order.

(1) Where the Commission makes a recommendation under section 68, the Tribunal may, after hearing the trade union and the employer against whom the application is made, make an order on such terms as it thinks fit.

(2) An agency shop order shall be in the prescribed form and shall come into force on such day as may be fixed in the order.

70. Effect of agency shop order.

(1) Notwithstanding anything in any other law in force, agency shop where an agency shop order has been made under section 69 -

(a) all employees in the employment of the employer against whom the application is made, comprised in the bargaining unit specified in the agency shop order, shall pay the contribution specified in the order;

(b) the agency shop order shall be binding on the employer who shall -

(i) deduct the contribution specified in the agency shop order from the wages of his employees comprised in the bargaining

unit specified in the order; and

(ii) pay to the trade union concerned the union's share specified in the order.

(2) Any employee comprised in the bargaining unit and who is not a member of the trade union may, by written notice, authorise the employer to pay to the trade union the whole of the contribution specified in the agency shop order, and the employer shall pay the amount accordingly.

(3) Where no notice under subsection (2) is given by an employee who is not a member of the trade union, the balance of the contribution after the payment of the union's share, shall be paid to the Workers Education Fund established under section 71.

71. Workers Education Fund.

For the purposes of section 70(3), there is established a fund to be known as the Workers Education Fund which shall be administered in the prescribed manner.

72. Operation of agency shop order.

(1) Where a trade union specified in an agency shop order under section 69 ceases to be registered under this Act, the order shall cease to have effect, and any other trade union may, in accordance with section 67, apply for an agency shop order in respect of the employees comprised in the bargaining unit specified in the agency shop order which has ceased to have effect.

(2) Where, on the application of a trade union, the Court is satisfied that there has been a breach of an agency shop order made in favour of the trade union, the Court may -

(a) make such order as it thinks fit for the enforcement of the agency shop order; and

(b) order the payment of compensation to the trade union, by the employer, not exceeding two thousand rupees in respect of any one application.

(3) Where an agency shop order is in force, the trade union specified in the order shall represent every employee comprised in the bargaining unit specified in the agency shop order in any dispute in which the employee is concerned, whether or not the employee is a member of the trade union.

(4) If a trade union specified in an agency shop order fails to comply with

subsection (3), any employee who is aggrieved by the non-compliance may make an application to the Court to revoke the agency shop order, and the Court may, upon hearing the application, make such order as it thinks fit.

73. Discontinuance of agency shop order.

(1) Subject to subsection (2), where an agency shop order is in force, an employee comprised in the bargaining unit specified in the agency shop order may make an application to the Commission for a ballot to determine whether the agency shop order should not be discontinued.

(2) The Commission shall not consider an application under sub-section (1) unless -

(a) it is made after not less than 2 years after the date on which was taken -

(i) the ballot under section 68; or

(ii) a ballot under subsection (3) in respect of the same agency shop order; and

(b) the Commission is satisfied that not less than one-fifth of the employees comprised in the bargaining unit have signified in writing their concurrence in the application.

(3) Subject to subsection (2), the Commission shall, on an application being made under subsection (1), take a ballot of employees comprised in the bargaining unit specified in the agency shop order to which the application relates on the question whether the agency shop order should not be discontinued.

(4) The Commission shall notify the result of the ballot to the employee who made the application for a ballot, the employer and the trade union concerned.

(5) Where, on a ballot taken under subsection (3) -

(a) a majority of the employees eligible to vote; or

(b) three-fourths or more of those who voted in the ballot,

have voted in favour of the discontinuance of the agency shop order, the order shall cease to have effect on the last day of the month following the month in which the ballot was taken.

74. Limitation for applications.

An application by a trade union for an agency shop order in respect of a bargaining unit, or any part thereof, shall not be entertained by the Commission if it is made within 2 years of the date on which -

(a) an application in respect of the same bargaining unit was last made by the trade union; or

(b) an agency shop order in respect of the same bargaining unit in favour of the trade union ceased to have effect under section 73(5).

F - PAYMENTS IN ACCORDANCE WITH CHECK-OFF AGREEMENTS OR AGENCY SHOP ORDERS

75. Provisions from wages of employees.

(1) Where a deduction is made from the wages of an employee in accordance with a check-off agreement or an agency shop order -

(a) the amount of the deduction shall not be recoverable by the employee from his employer;

(b) not more than one deduction shall be made in respect of any month, and the deduction shall not exceed in amount the dues payable by any member of the trade union in respect of that month;

(c) a deduction shall only be made after all deductions required or permitted to be made by or under any other law in force have been made;

(d) every employer shall, not later than 14 days after making a deduction -

(i) pay over the amount accruing to the trade union concerned by cheque made payable to the trade union and marked "Account Payee", to a bank with which the trade union has a current account;

(ii) give written notice to the trade union of the remittance;
and

(iii) pay over to the Workers Education Fund the amount accruing to the Fund, in such manner as may be prescribed;

(e) the trade union shall, not later than 14 days after the receipt of a notice under paragraph (d)(ii), deliver a written acknowledgment of the remittance to the employer.

(2) Where an employee takes part in an unlawful strike, the employer may decline to make any deduction as required by any check-off agreement or agency shop order from wages earned by the employee for the month in which the strike commences or continues.

76. Prohibition of other payments.

(1) Subject to subsection (3), an employer who makes a deduction from the wages of an employee for the purpose of making a payment to a trade union shall, unless that deduction is made in accordance with a check-off agreement or of an agency shop order, commit an offence, and shall, on conviction, be liable to imprisonment for a term not exceeding 6 months and to a fine not exceeding 2,000 rupees.

(2) On the conviction of an employer under subsection (1) the Court may, in addition to any fine imposed, order the repayment to the employee of the amount of any deduction of wages made in contravention of this section.

(3) It shall be a defence in any proceedings under subsection (1) for an employer to satisfy the Court -

(a) that he was purporting to act in accordance with a check-off agreement or of an agency shop order; and

(b) that the commission of the offence was due -

(i) to the employer's ignorance of any facts which he could not with reasonable diligence have ascertained; or

(ii) to a bona fide mistake in the keeping of the employer's records; and

(c) that the consequences of the ignorance or mistake have been rectified.

G - WORKS COUNCILS

77. Establishment of works councils.

(1) The Minister may require the Commission to examine the state of

industrial relations in an industry and to report on the desirability or otherwise of forming works councils in that industry.

(2) Subject to subsection (3), on any reference to the Commission under subsection (1), the Commission shall enquire into the matter and may recommend the establishment of works councils in the industry, and shall specify, in its recommendation, the terms on which the works councils should be established.

(3) The Commission shall not recommend the establishment of a works council in an undertaking in any industry where -

(a) it is satisfied that the establishment of a works council in the undertaking will not be conducive to good industrial relations;

(b) a works council or similar body is already functioning under a voluntary arrangement in the undertaking;

(c) there are less than 20 employees in the undertaking.

(4) Where the Commission recommends the establishment of works councils, the Minister may, by regulations, establish works councils in accordance with the terms specified by the Commission in its recommendation.

(5) Nothing in this section or in any regulation made under this Act relating to works councils shall prevent or discourage the establishment under voluntary arrangements in any undertaking of improved means of communication between employees and employer.

PART VII - INDUSTRIAL DISPUTES

A - VOLUNTARY ARBITRATION

78. Arbitration in industrial disputes.

(1) Subject to subsection (2), the parties to an industrial dispute may jointly refer the dispute to the Tribunal and thereupon Tribunal shall enquire into the dispute and make an award thereon.

(2) The Tribunal shall not enquire into any industrial dispute, or any matter connected therewith, where -

(a) notification of the reference of the dispute has not been given to the Minister;

(b) the dispute relates to any matter within the exclusive jurisdiction of the Court; or

(c) the dispute relates to any matter which is the subject of pending proceedings before the Commission or any court of law.

B - REPORTING, INVESTIGATION, CONCILIATION AND COMPULSORY ARBITRATION OF DISPUTES

79. Reporting of industrial disputes.

(1) Any industrial dispute, whether existing or apprehended, may be reported to the Minister by or on behalf of any party to the dispute.

(2) Every report of an industrial dispute shall be made in writing and shall specify -

(a) the employees and employers, or the descriptions thereof, who are parties to the dispute;

(b) the party by or on whose behalf the report is made; and

(c) every issue or matter giving rise to the dispute.

(3) Where an industrial dispute is reported to the Minister, a copy of the report shall be served by or on behalf of the party making the report upon every other party to the dispute.

80. Rejection of report by Minister.

(1) The Minister may reject a report under section 79, if it appears to him that the report -

(a) relates in whole or in part to a dispute which is not an industrial dispute; or

(b) is made by or on behalf of a party who is not, or is not entitled to be, a party to an industrial dispute in relation to any of the issues or matters raised in the report; or

(c) does not contain sufficient particulars of the issues or matters giving rise to the industrial dispute.

(2) Where the Minister rejects a report under subsection (1), he shall give written notice of the rejection to all the parties specified in the report.

81. Appeal to Tribunal against rejection of report.

Where a report of an industrial dispute under section 79 is rejected by the Minister, any party aggrieved by the rejection may appeal against the rejection to the Tribunal and on any such appeal the Tribunal may confirm or revoke the decision of the Minister.

82. Consideration of report by Minister.

(1) Where an industrial dispute has been reported to the Minister under section 79, and the report has not been rejected by the Minister under section 80 or, if it has been rejected, the rejection has been revoked on an appeal to the Tribunal under section 81, the Minister may, with a view to promoting a settlement of the dispute, take any one or more of the following steps -

- (a) make proposals to the parties for the settlement of the dispute;
- (b) recommend that the parties make use or further use of any machinery for the voluntary settlement of disputes available to them;
- (c) refer the parties to the Commission for conciliation;
- (d) cause the Commission to make an investigation into the dispute;
- (e) advise the parties to refer the dispute to the Tribunal;
- (f) subject to subsection (2), refer the dispute to the Tribunal.

(2) The Minister shall not refer a dispute to the Tribunal -

(a) within 14 days of the day on which the Minister received the report of the dispute under section 79; or

(b) where the parties are endeavouring to reach agreement, before the expiry of such longer period of time as the parties jointly declare they require for the settlement of the dispute.

83. Compulsory arbitration.

Where any dispute is referred to the Tribunal by the Minister under section 82, the Tribunal shall, with all diligence, enquire into the dispute and make an award thereon.

84. Limitation on report of dispute.

Where a dispute has been referred to the Tribunal under this Part, no party to the dispute may report any other dispute between the same parties within the period of 6 months immediately following the date on which the original report was made.

C - AWARDS AND AGREEMENTS**85. Effect of awards.**

(1) An award shall be published in the *Gazette*, and shall –

(a) state the parties, the employees and the employers to whom each of the provisions of the award shall apply; and

(b) take effect -

(i) on the date of its publication in the *Gazette*, or

(ii) if it is expressed to have retrospective effect, on the date specified in the award; and

(c) be binding on all the parties to whom the award applies for such period not exceeding 2 years as the Tribunal may determine.

(2) Any party to whom an award applies may, while the award is in force, make an application to the Tribunal for a variation of the award and the Tribunal may, after hearing all the parties to whom the award applies, vary the award where it is satisfied that there has been, since the making of the award, a change in circumstances which justifies the variation.

(3) Subject to subsection (4), an award shall, from the date on which the award takes effect, be an implied term of every contract of employment between the employees and employers to whom the award applies until -

(a) it is varied by agreement or by a subsequent award pursuant to subsection (2); or

(b) it ceases to have effect.

(4) An award shall not contain any provision which is inconsistent with the provision of any law, other than a Remuneration Order, relating to the terms or conditions of, or affecting, employment, and any award containing any such inconsistent provision shall, to the extent of the inconsistency, be void.

86. Registration of collective agreement in settlement.

Where the parties to an industrial dispute which has been notified or reported to the Minister under this Part have reached a collective agreement by settlement, the terms of the agreement shall be set out in a memorandum which shall be signed by or on behalf of all the parties to the dispute, and any such party may lodge a copy of the memorandum duly signed with the Tribunal.

87. Extension of awards and agreements.

(1) Subject to subsection (2), where an award or a collective agreement which governs the terms and conditions of employment in a part of an industry is in force, an employer or a trade union of employees to whom the award or agreement applies may make an application to the Tribunal for an order to extend the award or agreement to the whole of the industry and, on hearing the application, the Tribunal may grant or refuse the order.

(2) No order shall be made under subsection (1) unless the Tribunal is satisfied that -

(a) the parties to the award or agreement are or represent a substantial proportion of the employees or of the employers in the industry, the employees being employees of the description to which the award or agreement applies;

(b) an employer engaged in the industry is not bound by the award or agreement;

(c) the extension of the award or agreement is necessary or desirable in the interests of uniformity of terms and conditions of employment in the industry.

(3) An order under subsection (1) may be made subject to such conditions as the Tribunal thinks fit and, in particular, the order may provide that where an employer is observing terms and conditions of employment which are more favourable than the terms and conditions of employment specified in the award or agreement, the employer shall continue to be bound by the more favourable terms and conditions of employment.

(4) The terms of an order under subsection (1) shall be deemed to form part of the award or agreement and shall be deemed to have had effect on the date on which the award or agreement came into force.

88. Interpretation of order award and agreement.

- (1) Where any question arises as to -
 - (a) the interpretation of any order or award made by the Tribunal;
 - (b) any order or award being inconsistent with any law in force;
 - (c) the interpretation of any collective agreement, any party to whom the order, award or agreement relates, or the Minister, may apply to the Tribunal for a declaration on the question, and thereupon the Tribunal shall make a declaration on the question after hearing the parties concerned.
- (2) A declaration by the Tribunal under subsection (1) shall be notified to the parties and shall be deemed to form part of the order, award or collective agreement.
- (3) Notwithstanding subsection (1), where a question arises out of any clerical mistake, incidental error or omission, the Tribunal may, on its own motion and without hearing the parties, make a declaration to rectify the mistake, error or omission.

D - ENFORCEMENT OF COLLECTIVE BARGAINING

89. Order for adherence to agreed procedure.

- (1) Where it appears to the Tribunal on an application made to it under this section that, in regard to any existing or threatened strike or lock-out arising out of an industrial dispute, all the conditions specified in subsection (4) are fulfilled, the Tribunal may make an order under this section.
- (2) An application under subsection (1) may be made by the Minister or by or on behalf of any party to an industrial dispute whether or not the dispute has been reported to the Minister under section 79 and if the dispute has been so reported, whether or not the report has been rejected by the Minister under section 80.
- (3) An order under subsection (1) shall -
 - (a) require the parties named therein to make use of the existing machinery for the voluntary settlement of disputes; and
 - (b) declare any existing or threatened strike or lock-out in the industry named therein to be unlawful.
- (4) The conditions specified for the purposes of subsection (1) in relation to

an existing or a threatened strike or lock-out arising out of an industrial dispute in any industry, are -

(a) that there is machinery of negotiation or arbitration for the voluntary settlement of disputes in that industry;

(b) that a substantial proportion of the employees and of the employers in that industry are, either directly or indirectly, parties to an agreement for the use of that machinery;

(c) that that machinery is suitable, for the settlement of that dispute; and

(d) that all practical means of reaching a settlement of that dispute through that machinery have not been exhausted.

90. Order for utilisation of legal remedies.

(1) Where it appears to the Tribunal on an application made to it under this section that, in regard to any existing or threatened strike or lock-out arising out of an industrial dispute, the dispute relates wholly or mainly to issues specified in subsection (4), the Tribunal may make an order under this section.

(2) An application under subsection (1) may be made by the Minister or by or on behalf of any party to the dispute.

(3) An order under subsection (1) shall -

(a) require the parties named therein to make use of the procedure and remedies available under this Act or any other law in force; and

(b) declare any existing or threatened strike or lock-out in the industry named therein to be unlawful.

(4) The issues specified for the purposes of subsection (1) are issues or matters for the determination of which procedures and other remedies are available under this Act or any other law in force, and without prejudice to the generality of the foregoing, include any issue or matter relating to -

(a) the recognition of a trade union of employees as having negotiating rights or representational status;

(b) the introduction or implementation of a check-off agreement;

(c) the legal rights of individual employees, whether as employees or members of trade unions.

91. Order for adherence to award and agreement.

(1) Where it appears to the Tribunal on an application made to it under this section that, in regard to any existing or threatened strike or lock-out arising out of an industrial dispute, all the conditions specified in subsection (4) are fulfilled, the Tribunal may make an order under this section.

(2) An application may be made under subsection (1) by the Minister or by or on behalf of any party to the dispute and on any such application the Tribunal may, without hearing any of the other parties to the dispute, make an interim order for such limited duration as the Tribunal may consider necessary and proper in order to safeguard the interests of the applicant.

(3) An order under subsection (1) shall -

(a) require the parties named therein to comply with the existing award or agreement; and

(b) declare any existing or threatened strike or lock-out in the industry named therein to be unlawful until a date specified in the order, being a date on which, in the opinion of the Tribunal, the award or agreement shall cease to have effect.

(4) The issues specified for the purposes of subsection (1) are issues or matters for the determination of which procedures and other remedies are available under this Act or any other law in force and, without prejudice to the generality of the foregoing, include any issue or matter relating to -

(a) the recognition of a trade union of employees or a joint negotiating panel as having negotiating rights or representational status;

(b) the introduction or implementation of a check-off agreement;

(c) the legal rights of individual employees, whether as employees or members of trade unions.

E - UNLAWFUL STRIKES OR LOCK-OUTS

92. Unlawful strikes or lock-outs.

(1) Subject to subsections (2) and (3), an existing or threatened strike or

lock-out in any industry shall be unlawful unless -

(a) a report of the industrial dispute out of which it arises has been made under section 79; and

(b) 21 days have elapsed since the date on which the Minister received the report and the dispute has not been settled or referred to the Tribunal; and

(c) the strike or lock-out commences within 56 days from the date on which the Minister received the report.

(2) Where the parties to an industrial dispute have, pursuant to section 82(2)(b), declared that they require a longer period than 21 days for the settlement of the dispute, an existing or threatened strike or lock-out in any industry shall be unlawful unless -

(a) the longer period so declared, and a further period of 7 days thereafter, have elapsed, and the dispute has not been settled or referred to the Tribunal; and

(b) the strike or lock-out commences within 35 days after the expiration of the longer period so declared.

(3) Where the Minister has rejected the report of an industrial dispute and his declaration has, on an appeal under section 81, been revoked, the time-limits specified in subsection (1) shall be reckoned as from the date of the decision of the Tribunal on the appeal.

Amended by [[Act No. 25 of 1975](#)]

93. Imperilling the national economy.

Where a strike or lock-out which is not unlawful has commenced and the Prime Minister is of opinion that the continuance of the strike or lock-out will imperil the national economy, he may, by regulations, declare that strike or lock-out to be unlawful and, thereupon, the strike or lock-out shall be unlawful for a period of 60 days beginning from the day following the day on which the Order is published.

PART VIII - REMUNERATION ORDERS

94. References to the Board.

(1) Where the Minister is of opinion that it is expedient to fix a minimum remuneration in respect of any category of employees, he may refer the matter to the Board.

(2) (a) Without prejudice to subsection (1), a joint consultative or negotiating body composed of representatives of substantial numbers of employees and of employers in an industry may request the Minister to refer any matter concerning minimum remuneration in that industry to the Board.

(b) The Minister shall consider any request under paragraph (a) and may, if he thinks fit, refer the matter to the Board.

95. Recommendations.

(1) Upon a reference under section 94, or on its own motion, the Board may submit to the Minister recommendations -

(a) for fixing the remuneration (including holiday remuneration) to be paid and prescribing the conditions of employment to be provided, either generally or for any particular industry, by their employers to or for all or any of the employees of the category mentioned in the recommendation; or

(b) for requiring holidays to be allowed by employers for any of the employees of the category mentioned in the recommendation.

(2) Before submitting any recommendation to the Minister, the Board shall -

(a) make such investigations as it thinks fit;

(b) publish in the *Gazette* and in at least 3 daily newspapers a notice specifying that copies of the recommendation it proposes to make may be obtained at the office of the Board and the time, which shall not be less than seven nor more than fourteen days from the date of the publication, within which written representations with respect to the proposed recommendation may be sent to the Board;

(c) consider any written representation made within the time specified in the notice;

(d) make such further enquiries or give such further consideration to the matter as it thinks necessary.

(3) The Board shall, not later than 28 days after the publication of the notice under subsection (2)(b), submit its recommendation to the Minister, either without

amendment or with such amendments to the proposed recommendation as it thinks fit.

96. Remuneration Orders.

(1) Where the Minister receives a recommendation under section 95, he may -

(a) by regulations, make a Remuneration Order implementing the recommendation;

(b) reject the recommendation and -

(i) make no Remuneration Order; or

(ii) by regulations, make any such Remuneration Order as he thinks fit; or

(c) refer the recommendation back to the Board with a request to reconsider the recommendation in the light of observations the Minister may make.

(2) Where the Minister refers a recommendation back to the Board under subsection (1), the Board shall reconsider the recommendation and make a fresh recommendation to the Minister and, on the submission of a fresh recommendation by the Board, the Minister may -

(a) by regulations, make a Remuneration Order implementing it; or

(b) reject the fresh recommendation and -

(i) make no Remuneration Order; or

(ii) by regulations, make such Remuneration Order as he thinks fit.

(3) The Minister shall cause every Remuneration Order under this section to be published in the *Gazette* and in at least 3 daily newspapers.

(4) Any Remuneration Order under this section shall take effect from a date which shall be specified in the Order, and different dates may be fixed in relation to different categories of employees.

(5) A Remuneration Order may be made to take effect retrospectively.

(6) A Remuneration Order may authorise specified benefits or advantages,

being benefits or advantages provided by the employer or by some other person under an arrangement with the employer, to be reckoned as payment of wages by the employer in lieu of payment in cash, and defining the value at which any such benefits or advantages are to be reckoned.

96A. Power to make regulations to reflect payment of additional remuneration

(1) Notwithstanding sections 94 to 96, the Minister may, following the enactment of any law providing for the payment of additional remuneration, make such regulations as are necessary in order to reflect any such additional remuneration in the salary, wage or other remuneration payable under any regulations implementing any Remuneration Order governing any category of employees, to whom the additional remuneration is payable.

(2) Regulations made under subsection (1) may be by way of regulations amending regulations made to implement any Remuneration Order.

Amended by [\[Act No. 25 of 1975\]](#); [\[Act No. 10 of 1997\]](#)

97. Effect of Remuneration Order.

(1) Subject to section 98, where a Remuneration Order is in force in relation to an employee, the Order shall have effect notwithstanding the terms and conditions contained in any agreement entered into by the employee.

(2) Subject to subsection (3), any employer who contravenes any Remuneration Order made in respect of his employee shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 6 months and to a fine not exceeding 2,000 rupees.

(3) It shall be a defence in any proceedings under subsection (2) for an employer to satisfy the Court -

(a) that he has used every diligence to ensure compliance with this Part; and

(b) that the offence was committed -

(i) without his knowledge, consent, or connivance; or

(ii) by reason of a *bona fide* mistake in the keeping of his records;

and

(c) that the consequences of the ignorance or mistake have been rectified.

(4) Where an employer is convicted of an offence under subsection (2) which consists in the payment to an employee of a lesser remuneration than the minimum remuneration specified in a Remuneration Order the Court may, without prejudice to any penalty which may be imposed under subsection (2), order the employer to pay to the employee the amount which represents the difference between the amount which ought to have been paid to the employee and the amount actually paid.

98. Permits to infirm and incapacitated persons.

(1) Where, in respect of a person employed or desiring to be employed in circumstances in which a Remuneration Order applies or will apply to him, the Principal Labour Officer or any public officer duly authorised by him is satisfied, on application being made to him either by the person or his employer or prospective employer, that the person is affected by infirmity or physical incapacity which renders him incapable of earning the minimum remuneration specified in a Remuneration Order, he may, subject to such conditions as he thinks fit, grant a permit authorising the employment of that person at less than the minimum remuneration so specified.

(2) Where a permit under subsection (1) is in force, the remuneration authorized to be paid to the employee under the permit shall, subject to compliance with the conditions under which the permit has been granted, be deemed to be the minimum remuneration in relation to that employee.

(3) Where a person is employed at a lesser rate than the minimum remuneration specified, the employer shall give written notice to the Principal Labour Officer of the employment and of the rate of remuneration.

(4) Any person, employer or prospective employer who is aggrieved by the decision of the Principal Labour Officer or officer authorised by him to grant or to refuse to grant a permit under subsection (1) may make an application to the Tribunal to reverse the decision, and, on hearing the application, the Tribunal may make such order as it thinks fit.

PART IX - THE PUBLIC SERVICE AND CIVIL SERVICE UNIONS

99. Application of Act to public service.

In the application of this Act to the public service and civil service unions -

(a) the functions of the Permanent Arbitration Tribunal, the Industrial Relations Commission and the Minister shall be exercised –

(i) in the case of the Tribunal, by the Civil Service Arbitration Tribunal established under section 100;

(ii) in the case of the Commission, by such machinery as may be prescribed;

(iii) in the case of the Minister, by the Minister to whom responsibility for the Public Service is assigned; and

(b) Sub-Part C of Part IV, Sub-Part G of Part VI, Part VIII, section 108(b) and the Second Schedule shall not apply.

100. Civil Service Arbitration Tribunal.

(1) There is established for the purposes of this Part a Tribunal to be known as the Civil Service Arbitration which shall consist of -

(a) a President to be appointed by the Minister; and

(b) two assessors who shall be chosen in such manner as may be prescribed.

(2) The President of the Permanent Arbitration Tribunal established under section 39 may be appointed President of the Civil Service Arbitration Tribunal.

(3) In the exercise of its functions under this Act the Civil Service Arbitration Tribunal shall, in so far as may be appropriate -

(a) have regard to the principles laid down in section 47;

(b) be guided by the Code of Practice set out in the Third Schedule.

(4) The Civil Service Arbitration Tribunal shall have such other functions as may be prescribed or may otherwise be provided by Parliament.

(5) The Civil Service Arbitration Tribunal shall regulate its proceedings in such manner as it may determine.

PART X - OFFENCES AND PENALTIES

101. Prevention of intimidation.

(1) Without prejudice to the Public Order Act but subject to section 102, any person acting on his own behalf or on behalf of a trade union may, in contemplation or furtherance of an industrial dispute, attend at or near a place where a person works or carries on business, either alone or in reasonable numbers and at a reasonable time for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any other person to work or abstain from working.

(2) Any person who, without lawful excuse, attends at or near a place where a person works or carries on business, otherwise than in accordance with the conditions specified in subsection (1) or for a purpose other than one that is specified in subsection (1), shall commit an offence.

(3) Any person who, with a view to compelling any other person to abstain from doing or to do any act which that other person has a legal right to do or abstain from doing, without lawful authority or excuse -

- (a) uses violence on or intimidates such other person or his wife or children or damages his property;
- (b) persistently follows such other person about from place to place;
- (c) hides any tools, clothes or other property owned or used by such other person or deprives him of, or hinders him in, the use thereof;
- (d) watches or besets the house or other place where such other person resides, or works or carries on business, or happens to be, or the approach to such house or place; or
- (e) follows such other person with two or more persons in a disorderly manner in or through any street or road,

shall commit an offence, and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.

102. Penalty for strike or lock-out offences.

(1) Any person who in connection with any strike or lock-out which is unlawful -

- (a) calls, institutes, organises, carries on, procures or incites other persons to take part in, the strike or lock-out; or

(b) takes part in or assists in the strike or lock-out, shall commit an offence, and

-

(i) in the case of an offence under paragraph (a) shall, on conviction, be liable to a fine which shall not be less than 500 rupees nor more than 1,000 rupees or to imprisonment not exceeding 12 months;

(ii) in the case of an offence under paragraph (b) shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment not exceeding 3 months.

(2) Any person who ceases work or refuses to continue work, being work which under his terms and conditions of employment he is bound to do, in circumstances which give rise to a reasonable suspicion that he is taking part in or acting in furtherance of an unlawful strike, and fails to satisfy the Court that he ceased work, or refused to continue work, as the case may be, for causes wholly unconnected with that strike, shall commit the offence of taking part in an unlawful strike.

(3) Any person who, for the purpose of promoting or maintaining a strike or lock-out which is unlawful, directly or indirectly contributes financial assistance -

(a) to a trade union of employees which calls, organises or carries on the strike, or to any employee who takes part in or assists in the strike; or

(b) to an employer or trade union of employers which institutes, takes part in or assists in the lock-out,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

(4) Any trade union or any employee or employer or any other person who receives financial assistance for the purpose of promoting or supporting a strike or lock-out which is unlawful shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees.

(5) Where a person who commits an offence under this section was at the time of the offence an officer of a trade union it shall be presumed, until the contrary is proved, that he committed the offence with the authority of the trade union.

(6) Where an officer of a trade union commits an offence with the authority of the trade union, every person who at the time of the offence was an officer of the

trade union shall likewise commit that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all reasonable diligence to prevent the commission of the offence.

103. Offence by trade unions and officers of trade unions.

(1) Any trade union which fails to comply with any provision of this Act or the Second Schedule or any regulation made under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

(2) Any officer of a trade union who fails to comply with any provision of this Act or the Second Schedule or any regulation made under this Act shall commit an offence.

(3) Where a trade union commits an offence under subsection (1) the officer responsible under the rules of the trade union for complying with the provision of this Act, or the Second Schedule or the regulation which has been contravened by the trade union shall commit an offence unless he proves that the offence was committed without his consent or connivance and that he exercised all reasonable diligence to prevent the commission of the offence.

(4) Any officer of a trade union who commits an offence under this section shall, on conviction, be liable to a fine not exceeding 2,000 rupees.

(5) Where an officer of a trade union is convicted under this section of a misapplication of the funds of the trade union in breach of section 29 or 30 -

(a) he shall be disqualified for a period of 3 years for being an officer of a trade union; and

(b) the Court may, in addition to any fine imposed upon the officer, order him to refund to the trade union the amount of the funds illegally applied.

104. Other offences.

Any person, other than an officer of a trade union, who fails to comply with this Act or the Second Schedule or any regulations made under this Act shall commit an offence and shall on conviction, be liable to a fine not exceeding 500 rupees.

PART XI - MISCELLANEOUS

105. No pay while on strike.

Notwithstanding any other enactment, an employee shall not be entitled to receive, nor

shall be awarded by any court of law or by the Tribunal, any wages in respect of any day during which he takes part or assists in a strike.

106. Service of notices.

(1) Subject to subsection (2), every notice or other document required to be served on or sent to a trade union or to an officer shall be deemed to have been duly served or sent if forwarded by registered post to the postal address of the registered office of the trade union.

(2) Where any notice has to be served on or sent to a trade union and the trade union -

- (a) has ceased to exist; or
- (b) has no registered office,

the notice shall be published in the *Gazette* and in 2 daily newspapers.

107. Publication of returns.

The Registrar shall publish in a concise form, in the *Gazette* and in 2 daily newspapers, the returns, other than the general statements prepared under section 34(2), submitted to him by trade unions under this Act.

108. Regulations.

The Minister may make such regulations as he thinks fit for the purposes of this Act, and in particular, but without prejudice to the generality of the foregoing power, regulations may be made -

- (a) to provide for the inspection of registers and documents kept by the Registrar, and the making of copies of any entries in it;
- (b) to provide for the operation, composition, rules and proceedings of works councils and the tenure of office of their members;
- (c) to provide for the records to be kept by trade unions;
- (d) for the levying of fees and charges; and
- (e) to amend the Schedules.

**FIRST SCHEDULE
(Section 17)**

CONSTITUTION AND MANAGEMENT

1. The name of the trade union, and the address of its registered office.
2. The objects for which the trade union is established.
3. The election of the executive and the re-election of that body at regular intervals not exceeding 2 years, and the manner in which members of the executive may be removed.
4. The election or appointment of the officers of the trade union and the manner in which they may be removed.
5. The powers and duties of the executive and of each of the officers of the trade union.
6. The manner in which any branch of the trade union shall be formed; the management of the branch; and the convening and conduct of meetings for the transaction of the business of the branch.
7. The convening and conduct of meetings for the transaction of the business of the trade union.
8. The circumstances in which and the persons by whom instructions may be given to members of the trade union for any kind of industrial action (including a strike or lock-out).
9. The conditions governing the eligibility of members for voting in any election or ballot.
10. The manner in which, for any purpose of the trade union, elections are to be held or ballots taken, including the procedure for the counting and scrutiny of votes and ballot papers and the procedure for the declaration or notification of the result of any election or ballot.
11. In the case of a federation of trade unions or a trade union of employers, the circumstances (if any) in which the federation or the trade union has power to negotiate and enter into agreements on behalf of its members.
12. The procedure to be followed for the alteration of the rules.
13. The circumstances and the manner in which the trade union may be dissolved.

MEMBERS OF THE TRADE UNION

14. The description of persons who are eligible for membership of the trade union, the procedure for dealing with applications for membership, including provision for appeals against decisions of the persons responsible for determining such applications.

15. (a) The dues payable in respect of membership of the trade union (including any contributions payable in respect of admission or re-admission), or the basis on which the amount of the dues is to be determined.

(b) The procedure and penalties in case of default in payment of dues.

16. (a) The descriptions of conduct in respect of which disciplinary action (whether by way of suspension, expulsion or otherwise) can be taken by or on behalf of the trade union against any of its members .

(b) The nature of the disciplinary action which can be so taken in respect of each such description of conduct.

(c) The procedure for the taking of disciplinary action, including provision for appeals against decisions of the persons responsible for taking it.

17. The circumstances in which, and the procedure, other than expulsion by way of disciplinary action, by which membership of the trade union may be terminated.

18. The procedure for inquiring into any complaint of a member of the trade union that action contrary to the rules of the trade union has been taken by the trade union or by any person acting on its behalf.

PROPERTY AND FUNDS OF THE TRADE UNION

19. The investment of the funds of the trade union (or their deposit in a bank).

20. The purposes for which, and the manner in which, any property or funds of the trade union are authorised to be applied.

21. Where any financial benefits are to be available to members of the trade union out of its property or funds, the circumstances in which those benefits are to be available to members, and the amounts of those benefits.

22. (a) The keeping of a register of members showing the names, addresses and payments made by the members.

(b) The keeping of proper accounting records, the preparation of accounts in accordance with the relevant provisions of this Act.

(c) The audit of the register of members and of the accounts at least once every 6 months.

(d) The rights of members of the trade union to inspect the accounting records and the register of members.

23. The amount of the security to be furnished by officers whose office is connected with the collection, receipt and management of moneys on behalf of the trade union.

24. The distribution of the property and funds of the trade union in the event of its dissolution.

SECOND SCHEDULE
(Sections 39, 41 and 45)

**PERMANENT ARBITRATION TRIBUNAL, INDUSTRIAL RELATIONS COMMISSION AND
NATIONAL REMUNERATION BOARD**

PART I

ORGANISATION AND SITTINGS OF TRIBUNAL

1. The Tribunal shall have an official seal.
2. The Tribunal may sit –
 - (a) in one or 3 divisions as may be necessary;
 - (b) at any time and in any place in Mauritius.
3. (1) (a) The jurisdiction of the Tribunal shall be exercised by a division of the Tribunal.
 - (b) Every division of the Tribunal shall –
 - (i) be presided over by the President or Vice-President of the Tribunal; and
 - (ii) consist of the presiding member and 2 other members.
- (2) Applications in respect of such matters as the rules of the Tribunal may specify may be heard and determined by the President or any member of the Tribunal

designated by the President for the purpose.

(3) Where in the course of any proceedings before the Tribunal, a vacancy arises in relation to one of the members other than the President, or the Vice-President, as the case may be, the remaining 2 members of the Tribunal may, where the parties to the proceedings agree, continue and conclude those proceedings notwithstanding the vacancy.

(4) Where the Tribunal proceeds in accordance with sub-paragraph (3), no act, proceedings or determination of the Tribunal shall be called in question or invalidated by reason of the vacancy.

4. (1) Where it appears to the President to be expedient to do so, he may appoint two assessors to assist the members of the Tribunal in the determination of any particular reference or appeal before the Tribunal, one from a panel of not less than six persons appointed by the Minister after consultation with such representatives of employers as he considers appropriate, and one from a panel of not less than six persons appointed by the Minister after consultation with such representatives of employees as he considers appropriate.

(2) Where, in the course of any proceedings before the Tribunal, an assessor appointed under paragraph (1) is absent, the Tribunal may continue and conclude those proceedings notwithstanding the absence of the assessor.

5. Any award or decision of the Tribunal shall be that of the members of the Tribunal and, in the event of any disagreement -

(a) of the majority of such members, if there are three; and

(b) of the President if there are only two members.

PRACTICE AND PROCEDURE OF TRIBUNAL

6. (1) The Tribunal shall so exercise its jurisdiction in any proceedings as to enable the parties to the proceedings to avail themselves of the conciliation services of the Commission, or of other opportunities for conciliation.

(2) The Tribunal may in relation to any dispute or other matter before it -

(a) remit the matter, subject to such conditions as it may determine, to the parties for further consideration by them with a view to settling, or limiting, the several issues in dispute,

(b) dismiss any matter or refrain from further hearing or from

determining the matter, if it appears to the Tribunal that the matter is trivial, or that further proceedings are unnecessary, or undesirable in the public interest;

(c) hear and determine the matter in the absence of any party who has been summoned to appear before the Tribunal and has failed to do so;

(d) order any person to be joined as a party to the proceedings who in the opinion of the Tribunal -

(i) may be affected by an order or award, or

(ii) ought in the interests of justice to be joined as a party,

and to do so on such terms and conditions as the Tribunal may decide;

(e) generally give all such directions and make all such orders, whether interim or permanent, conditional or unconditional and do all such things as are necessary or expedient for the expeditious determination of that matter.

7. (1) Subject to subparagraph (2), the Tribunal may not order the payment of costs or expenses by any party to proceedings before the Tribunal.

(2) Where, in the opinion of the Tribunal -

(a) any proceedings before the Tribunal were unnecessary, improper or vexatious; or

(b) there has been unreasonable delay or other unreasonable conduct in bringing or conducting the proceedings,

the Tribunal may order a party to the proceedings to pay to any other party thereto such amount as it may specify towards the costs or expenses incurred by the other party in connection with the proceedings.

PART 1A

ORGANISATION AND SITTINGS OF THE BOARD

7A. (1) the Board may sit –

(a) in one or 2 divisions as maybe necessary;

(b) at any time and at any place in Mauritius.

(2) The jurisdiction of the Board shall be exercised by a division of the Board.

(3) Every division of the Board shall –

(a) be presided over by the Chairman or Vice-Chairman of the Board; and

(b) consist of the presiding member and 4 other members.

PART II

MEMBERSHIP OF TRIBUNAL, COMMISSION AND BOARD

8. (1) A member, other than the President or the Vice-President of the Tribunal

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(a) shall be appointed from among persons experienced in the field of industry, commerce, finance or industrial relations; and

(b) shall hold and vacate office in accordance with the terms of his letter of appointment.

(2) A person shall not be qualified to be appointed as a member -

(a) where he is a member of, or a candidate for election to, the Assembly or any local authority; or

(b) in the case of the Tribunal or the Commission, where he is a public officer, a local government officer or an officer of a trade union.

(3) Previous membership shall not affect eligibility for re-appointment.

9. A member may at any time resign his office by notice in writing addressed to the Minister.

10. The Minister may remove a member, other than the President or Vice-President of the Tribunal from office.

11. The appointment and the termination of office of every member shall be notified in the *Gazette*.

12. (1) Notwithstanding that the term of his office has expired, a member may, with permission given in accordance with subparagraph (2), continue his office for so long after the end of his term as may be necessary to enable him to complete the performance of any duty that was commenced before his term of office expired.
- (2) For the purposes of this paragraph, permission may be given -
- (a) in the case of the President of the Tribunal, the Chairman of the Commission or the Chairman of the Board, by the Minister;
 - (b) in the case of any other member, by the President of the Tribunal, the Chairman of the Commission, or the Chairman of the Board, as the case may be.
13. -
14. (1) Subject to any regulations made in that behalf, the Tribunal, the Commission and the Board may regulate their own procedure.
- (2) The Tribunal, the Commission and the Board shall seek to avoid formality in their proceedings.
15. A member of the Tribunal, the Commissioner or the Board who has a direct or indirect interest in any matter which is the subject of proceedings before the Tribunal, the Commission or the Board shall not take part in those proceedings.
16. The Tribunal, the Commission or the Board may appoint committees from amongst its members to examine and report on any matter connected with its functions under this Act,
17. (1) The Tribunal, the Commission and the Board shall not be bound by the law of evidence in force in Mauritius.
- (2) Where any witness objects to answering any question or to producing any relevant document on the ground that it will tend to incriminate him, or on any other ground which he could lawfully raise in civil or criminal proceedings, he shall not be required to answer the question or to produce the document, and shall not be liable to any penalty for refusing to do so.
- (3) For the purpose of dealing with any matter before it, the Tribunal, the Commission or the Board may, by order, require any person -
- (a) to furnish, in writing or otherwise, such particulars in relation to any matter as may be required;

- (b) to attend before it and to give evidence on oath or otherwise; or
- (c) to attend before it and produce any document.

(4) Any order made under subparagraph (3) may include a requirement as to the date on which or the time within which the order is to be complied with.

(5) Any order purporting to be signed by or under the authority of the President or Vice-President of the Tribunal, the Chairman of the Commission or the Chairman or Vice-Chairman of the Board shall be presumed, until the contrary is proved, to have been given by the Tribunal, the Commission or the Board, as the case may be.

(6) Any person who without lawful excuse fails to obey an order given under subparagraph (3) shall commit an offence.

(7) Any person who, being required by an order made under subparagraph (3) to furnish information, makes a statement or furnishes any information which he knows, or has reasonable cause to believe, to be false or misleading in a material particular shall commit an offence.

(8) Any witness who is required to attend before the Tribunal, the Commission or the Board shall be entitled to the fees or allowances prescribed in the Witnesses Attendance Allowances Act for witnesses in civil cases.

18. (1) There shall not be included in any publication relating to any order, award, report, recommendation or other statement made or authorised by the Tribunal, the Commission or the Board or by the Minister, any information disclosed during the course of proceedings under this Act by any party or witness in proceedings before the Tribunal, the Commission or the Board which was made known to the Tribunal, the Commission or the Board only by the disclosure, and in respect of which the party or witness has made a request during the proceedings that the information be withheld from publication, and no person concerned in or present at any proceedings of the Tribunal, the Commission or the Board shall publish or disclose the information to any person not concerned in or present at those proceedings, except with the consent of the party or witness.

(2) Any person who publishes or discloses any information in breach of subparagraph (1), shall commit an offence.

(3) Subparagraphs (1) and (2) shall be without prejudice to the power of the Tribunal, the Commission or the Board to take such other steps as they may consider necessary or desirable to safeguard national or industrial secrets or other information appearing to the Tribunal, the Commission or the Board to be deserving of confidential

treatment.

19. It shall be in the discretion of the Tribunal, the Commission and the Board to admit or exclude the public or representatives of the press from any of their proceedings.

20. (1) In relation to proceedings before the Tribunal, the Commission or the Board -

(a) where the public or representatives of the press are excluded, no report or summary of the proceedings may be published; and

(b) where the public or representatives of the press are permitted to be present, a fair and accurate report or summary of the proceedings may be published.

(2) Until the order, award, report or other result of the proceedings has been published in accordance with this Act, no comments shall be published in respect of the proceedings or any evidence adduced in the course of those proceedings.

(3) Any person who, before any award, order or other result of any proceedings before the Tribunal, the Commission or the Board has been published in accordance with this Act, publishes -

(a) the terms of the order, award, report or other result; or

(b) any comment on the proceedings or any evidence adduced thereat, shall commit an offence.

21. Any person who -

(a) at any sitting of the Tribunal the Commission or the Board -

(i) wilfully insults any member thereof; or

(ii) wilfully interrupts the proceedings; or

(b) commits any contempt of the Tribunal, the Commission or the Board, shall commit an offence.

MISCELLANEOUS

22. The Tribunal, the Commission and the Board shall be assisted in the performance of their functions by such public officers as the Minister may determine.

23. Proceedings before the Tribunal, the Commission and the Board shall be exempt from stamp duty and registration dues.

Amended by [[Act No. 25 of 1977](#)]

THIRD SCHEDULE
(Section 52)

CODE OF PRACTICE

PART I - INTRODUCTION

1. This Code is founded on the following four main propositions -

(a) the employer and his employees have a common interest in the success of the undertaking;

(b) good industrial relations are the joint responsibility of management and employees and the trade unions representing them;

(c) collective bargaining, carried out in a reasonable and constructive manner between employers and strong representative trade unions, is the best method of conducting industrial relations;

(d) good human relations between employers and employees are essential to good industrial relations.

2. The standards set by this Code are not intended to be exhaustive, or to prevent the introduction or recommendation by any person or authority concerned, of any additions or improvements.

PART II - RESPONSIBILITIES

MANAGEMENT

3. While good industrial relations are a joint responsibility, the primary responsibility for their promotion rests with management.

4. Management at all levels should give regular attention to industrial relations, and managers should wherever possible receive training in the industrial relations implications of their jobs.

5. Where a trade union has negotiating rights, management should -

- (a) jointly with the trade union maintain effective arrangements for negotiation, consultation and communication, and for settling grievances and disputes;
- (b) take all reasonable steps to ensure that managers observe collective agreements and use agreed procedures; and
- (c) make clear to employees that it welcomes their membership of the recognised trade union and their participation in the trade union's activities.

6. Where a trade union has representational status, management should -

- (a) maintain effective arrangements for consultation, communication and for settling individual grievances of members of the trade union, and ensure that those arrangements fully satisfy the rights of representation of the trade union, whether established by law or by agreement;
- (b) take all reasonable steps to ensure that managers use those arrangements and
- (c) make clear to employees that it respects their rights to join a registered trade union and to take part in its activities, which include seeking recognition for negotiating purposes.

7. Effective Organisation of work is an important factor in good industrial relations. Management should therefore ensure that -

- (a) responsibility for each group of employees is clearly defined in the organisational structure;
- (b) each manager understands his responsibilities and has the authority and training necessary to do his job; and
- (c) individual employees or work groups know their objectives and priorities and are kept informed of progress towards achieving them.

TRADE UNIONS OF EMPLOYEES

8. The principal aim of trade unions of employees is to promote their members' interests. They can do this only if the undertakings in which their members are employed prosper. They therefore have an interest in co-operating in measures to promote efficiency. They also share with management the responsibility for good industrial relations.

9. Trade unions of employees should therefore –

(a) where appropriate, jointly with individual managements, maintain effective arrangements for negotiation, consultation and communication and for settling grievances and disputes;

(b) where appropriate, jointly with employers' associations and others concerned, maintain effective arrangements at industry or other levels for settling disputes and for negotiating terms and conditions of employment;

(c) take all reasonable steps to ensure that their officers and members observe collective agreements and use agreed procedures; and

(d) maintain effective procedures for resolving particular issues with other trade unions and make full use of any procedures established for settling inter-union disputes.

10. Trade unions of employees should ensure that their officers –

(a) understand the Organisation, policies and rules of the union;

(b) understand their powers and duties; and

(c) are adequately trained to look after their members' interests in an efficient and responsible way.

11. To ensure that their Organisation is effective, trade unions of employees should also -

(a) employ enough full-time officers to maintain adequate contact with management and with their members in every establishment where the trade union has negotiating rights, and with any employers' association concerned;

(b) encourage their members to attend union meetings and to take part fully in union activities by holding branch meetings at times and places convenient to the majority; and

(c) maintain effective procedures for settling disputes within the union.

TRADE UNIONS OF EMPLOYERS

12. The principal aim of trade unions of employers is to promote those interests of their members which can best be served by co-operation at industry or other appropriate levels.

13. Trade unions of employers should therefore -

- (a) where appropriate, jointly with the trade unions concerned, maintain effective arrangements at industry or other levels for settling disputes and for negotiating terms and conditions of employment;
- (b) encourage their members to develop effective arrangements for settling grievances and disputes at the level of the establishment or undertaking;
- (c) take all reasonable steps to ensure that their members observe collective agreements and use agreed procedures;
- (d) identify trends in industrial relations to help their members to anticipate and keep abreast of change;
- (e) collect and analyse information about industrial relations and distribute it to their members; and
- (f) provide an advisory service to their members on all aspects of industrial relations.

THE INDIVIDUAL EMPLOYEE

14. The individual employee has obligations to his employer, to his trade union if he belongs to one, and to his fellow employees. He shares responsibility for the state of industrial relations in the establishment where he works and his attitude and conduct can have a decisive influence on them.
15. Every employee should -
 - (a) satisfy himself that he understands the terms of his contract and abide by them; and
 - (b) make himself familiar with any arrangements for dealing with grievances and other questions which may arise on his contract, and make use of them when the need arises.
16. Some employees have special obligations arising from membership of a profession and are liable to incur penalties if they disregard them. These may include obligations, for example in regard to health, safety and welfare, over and above those which are shared by the community as a whole.
17. A professional employee who belongs to a trade union should respect the obligations which he has voluntarily taken on by joining the union. But he should not, when acting in his professional capacity, be called upon by his trade union to take action which would

conflict with the standards of work or conduct laid down for his profession, and in particular if that action would endanger -

- (a) public health or safety -
- (b) the health of an individual needing medical or other treatment; or
- (c) the well-being of an individual needing care through the personal social services.

18. Professional associations, employers and trade unions shall co-operate in preventing and resolving any conflicts which may occur between obligations arising from membership of a profession and those which the professional employee owes to his employer and to his trade union if he belongs to one.

PART III - EMPLOYMENT POLICIES

GENERAL

19. Clear and comprehensive employment policies are essential to good industrial relations. Management shall initiate these policies, but they shall be developed in consultation or negotiation, as appropriate, with representatives.

20. Employment policies should include positive policies -

- (a) to avoid discrimination on grounds of race, place of origin, political opinions, colour or creed; and
- (b) to promote equal opportunity in employment.

PLANNING AND USE OF MANPOWER

21. Manpower planning, (such as taking stock, calculating future requirements, identifying the action necessary) shall be carried out in a manner appropriate to the size and nature of the undertaking.

22. In operating its manpower policies management shall –

- (a) avoid unnecessary fluctuations in manpower;
- (b) where changes are necessary, make them with as little disruption as is practicable to the employees concerned;
- (c) maintain arrangements for transferring employees from one job to another

within the undertaking; and

(d) record information which will help it to identify the cause of, and to control, absenteeism and labour turnover.

RECRUITMENT AND SELECTION

23. In recruiting and selecting employees management shall -

(a) decide the qualifications and experience needed by applicants;

(b) consider filling vacancies by transfer or promotion from within the undertaking;

(c) obtain as much information about applicants as is relevant to selection for the job, but avoid enquiries which are unnecessary for that purpose;

(d) base selection on suitability for the job; and

(e) explain the main terms and conditions of employment and give any relevant information about trade union arrangements before an applicant is engaged.

TRAINING

24. Management should ensure that new employees are given -

(a) induction training, including information about the matters referred to in paragraph 45; and

(b) training needed to supplement previous education, training and experience.

25. Management shall ensure that young people entering employment for the first time are in addition given broader initial instruction covering -

(a) a general introduction to their working life, including the importance of health and safety precautions; and

(b) basic training in related skills, where appropriate, as well as specific training in their particular job.

26. Management shall -

(a) ensure that any necessary further education and training is provided when there is a significant change in the content or level of the job; and

(b) encourage employees to take advantage of relevant further education and training opportunities at all stages of their careers.

PAYMENT SYSTEMS

27. Payment systems vary according to the nature and organisation of the work, local conditions and other factors, but the following principles apply generally.

28. Payment systems should be -

(a) kept as simple as possible, consistent with their purpose, so that employees can understand them;

(b) based wherever applicable on some form of work measurement under which payment is linked to performance; and

(c) jointly negotiated where trade unions have negotiating rights.

29. Differences in remuneration should be related to the requirements of the job, which shall wherever possible be assessed in a rational and systematic way in consultation with the trade unions concerned.

30. Payment systems shall be kept under review to make sure that they suit current circumstances and take account of any substantial changes in the organisation of work or the requirements of the job.

STATUS AND SECURITY OF EMPLOYEES

31. As far as is consistent with operational efficiency and success of the undertaking, management should -

(a) provide stable employment, including reasonable job security for employees absent through sickness or other causes beyond their control; and

(b) avoid unnecessary fluctuations in the level of earnings of employees.

32. Differences in the conditions of employment and status of different categories of employees and in the facilities available to them shall be based on the requirements of the job. The aim should be progressively to reduce and ultimately to remove differences which are not so based. Management, employees and trade unions should co-operate in working towards this objective.

REDUCTION OF WORK-FORCE

33. A policy for dealing with reductions in the work force, if they become necessary, shall be worked out in advance so far as practicable and shall form part of the undertaking's employment policies. As far as is consistent with operational efficiency and the success of the undertaking, management shall, in consultation with the trade unions concerned, seek to avoid redundancies by such means as -

- (a) restrictions on recruitment;
- (b) retirement of employees who are beyond the normal retiring age;
- (c) reductions in overtime;
- (d) short-time working to cover temporary fluctuations in manpower needs; or
- (e) re-training or transfer to other work.

34. Where redundancy becomes necessary, management in consultation, as appropriate, with the appropriate Ministry and with the employees or their trade unions, shall -

(a) give as much warning as practicable to the employees concerned and to the Ministry;

(b) consider introducing schemes for voluntary redundancy, retirement, transfer to other establishments within the undertaking, and a phased rundown of employment;

(c) establish which employees are to be made redundant and the order of discharge;

(d) offer help to employees in finding other work, in co-operation with the Ministry; and

(e) decide how and when to make the facts public, ensuring that no announcement is made before the Ministry, employees and their trade unions have been informed.

WORKING CONDITIONS

35. Management shall, in consultation and co-operation with employees and their trade union, aim at improving on the minimum standards of working conditions specified in any other law in force.

36. Management and trade unions shall -

- (a) take all reasonable steps to ensure that employees understand and observe all health and safety precautions, whether established by law or by agreement and in particular make use of protective equipment; and
- (b) maintain regular consultation about matters of health and safety.

PART IV - COMMUNICATION AND CONSULTATION

GENERAL

37. Management and trade unions shall co-operate in ensuring that effective communication and consultation take place so as to promote efficiency, understanding and the individual employee's sense of satisfaction and involvement in his job.

38. Communication and consultation are particularly important in times of change. The achievement of change is a joint concern of management and employees and shall be carried out in a way which pays regard both to the efficiency of the undertaking and to the interests of employees. Major changes in working arrangements shall not be made by management without prior discussions with employees or their trade unions.

39. When changes in management take place, for example, following a merger or take-over, the new managers shall make prompt contact with the trade unions concerned and take steps to explain changes in policy affecting employees.

COMMUNICATIONS

40. The most important method of communication is through personal contact between each manager and his immediate work group or individual employees, and between managers and employee representatives,

41. Personal contact shall when appropriate be supplemented by written information and may be further supplemented by training and induction lectures or courses, and special meetings.

42. Management shall, as far as is reasonably possible, regularly provide employees with information about -

- (a) the performance and plans of the establishment in which they work and, so far as they affect it, of the whole undertaking; and
- (b) changes in Organisation and management affecting employees.

43. It is the duty of managers at all levels to those responsible to them to explain management policies clearly and to give clear working instructions.

44. Management and trade unions shall co-operate to ensure that management is kept informed of the views of employees and of the problems they may face in meeting management's objectives.

45. Management and trade unions shall use their best endeavours and co-operate to ensure that each employee is adequately informed about -

- (a) the main terms and conditions of his employment;
- (b) the requirements of his job and to whom he is directly responsible;
- (c) disciplinary and grievance procedures;
- (d) trade union arrangements and his rights of association;
- (e) social and welfare facilities;
- (f) fire prevention, safety and health rules; and
- (g) the conclusions reached through negotiation and consultation.

46. Trade unions shall –

- (i) ensure that they have the means to communicate effectively with those whom they represent; and
- (ii) recognise that management has a responsibility for communicating directly with its employees.

CONSULTATION

47. Consultation means jointly examining and discussing problems of concern to both management and employees. Consultation between management and employees or their trade union representatives about operational and other day-to-day matters is necessary in all establishments, whatever their size. Large establishments shall have systematic arrangements for management and trade union representatives to meet regularly.

48. Management shall take the initiative in setting up and maintaining consultative arrangements best suited to the circumstances of the establishment, in co-operation with the trade unions concerned. The arrangements shall not be used to bypass or discourage trade unions.

49. Consultation and negotiation are closely related but distinct processes. Management and trade unions shall consider carefully how to link the two. It may often be advantageous for the same committee to cover both. Where there are separate bodies, systematic communication between those involved in the two processes is essential.

PART V - COLLECTIVE BARGAINING GENERAL

50. Collective bargaining may take place at various levels, ranging from an industry to a group of employees within an establishment. Negotiation for the same group of employees may be conducted at different levels about different subjects.

51. Where negotiations take place at more than one level, the matters to be bargained about at each level shall be defined by agreement. The aim shall be to assign to each level the matters which can be realistically settled at that level. Equally, whatever the level at which an agreement is reached, its terms shall be capable of being applied effectively at the place of work.

BARGAINING UNITS

52. Collective bargaining in an establishment or undertaking is conducted in relation to defined groups of employees which can appropriately be covered by one negotiating process.

53. A bargaining unit shall cover as wide a group of employees as practicable. Too many small units make it difficult to ensure that related groups of employees are treated consistently. The number of separate units can often be reduced by the formation of a joint negotiating panel representing a number of unions.

54. The interests of employees covered by a bargaining unit need not be identical, but there shall be a substantial degree of common interest. In deciding the pattern of bargaining arrangements, the need to take into account the distinct interests of professional or other employees who form a minority group shall be balanced against the need to avoid unduly small bargaining units.

55. Factors which shall be taken into account in defining a bargaining unit include -

- (a) the nature of the work;
- (b) the training, experience and professional or other qualifications of the employees concerned;
- (c) the extent to which they have common interests;
- (d) the general wishes of the employees concerned;

- (e) the Organisation and location of the work;
- (f) hours, working arrangements and payment systems;
- (g) the matters to be bargained about;
- (h) the need to fit the bargaining unit into the pattern of union and management organisation;
- (i) the need to avoid disruption of adequate existing bargaining arrangements which are working well;
- (j) whether separate bargaining arrangements are needed for particular categories of employees, such as supervisors or employees who represent management in negotiation.

56. Where proposals are made for establishing or varying a bargaining unit, the first aim of management and unions shall be to reach agreement on a voluntary basis. Where this proves impossible, parties shall, jointly or separately, consider -

- (a) referring the matter to an employer's association, or to a higher level within the trade union;
- (b) referring the matter to the Commission for examination and advice.

RECOGNITION - GENERAL CONSIDERATION

57. The interests of employees are best served by strong and effective trade unions.

58. The competition of separate trade unions for the right to negotiate for the same grades of employees leads to friction and weakens the trade unions.

59. Recognition agreements applying to an industry and made between federations or groups of trade unions and employers shall be concluded whenever appropriate.

60. Recognition of a trade union shall not depend upon its having as members any given percentage of the grade or grades of employees in question, and likewise withdrawal of recognition shall not necessarily follow from any given fall in the number of such members.

CLAIMS FOR RECOGNITION

61. A claim for recognition by a trade union shall not be entertained in so far as that claim

is founded on the race, caste, community, political opinions, creed or sex of the members of that union.

62. Claims by trade unions for recognition for negotiating purposes shall, as far as possible, be settled voluntarily between the parties.

63. In the case of any claim, management is entitled to know the number, but not the identities, of the employees covered by the proposed bargaining unit who are members of the union making the claim. Where the extent of support cannot be agreed, it shall be determined by arrangements agreed between the parties, for example, by a secret ballot.

64. Where management is not facing conflicting claims by two or more trade unions, management shall consider whether the support for the claim among the employees concerned, whether members of the union or not, is sufficient to enable the union to be adequately representative for negotiating purposes. If the union has sufficient support, management shall, unless there are other circumstances which in the view of management justify refusal of recognition, recognise that union for negotiating purposes. If there is failure to agree, the parties shall be willing to have the matter considered by the Commission.

DUAL RECOGNITION

65. In general, it is in the interests of employees and of the industry that any given grade of employees in an undertaking shall be represented by a single trade union.

66. The fact that conflicting claims are made by trade unions to represent a given grade of employees is not of itself justification for the employer to refuse to recognise any union for negotiating purposes.

67. Where 2 or more trade unions seek recognition in respect of the same grade of employees, those unions shall examine the possibilities of an amalgamation, or of the formation of a joint negotiating panel, or of some other appropriate variation in the trade union structure in the industry in question.

68. An employer shall not be required to recognise as representing any given grade of his employees more than one trade union, where the trade unions concerned are or shall be capable of working harmoniously through a joint negotiating panel.

69. Responsibility for avoiding disputes between trade unions about recognition lies principally with the trade unions themselves. Employers shall not be put under any pressure to abandon a position of neutrality where rival claims are concerned, and a position of neutrality must include the honouring of all existing collective bargaining commitments. The parties shall be willing to refer any differences between them to the Commission.

70. The responsibility of a trade union for the failure of an existing joint negotiating panel, or for the failure of a proposed panel to gain acceptance, shall weigh heavily against any claim by that trade union for individual recognition.

71. Where there is any uncertainty as to the prospect of a joint negotiating panel acting as a single entity and behaving responsibly towards the employer, the formation of that panel may be recommended or agreed for a trial period, or for more than one trial period.

AFTER RECOGNITION

72. Relations between management and trade unions which it recognises for negotiating purposes shall be based on agreed procedures which provide a clear set of rules and a sound basis for resolving conflicts of interest.

73. Management shall agree with recognised trade unions on the provision of reasonable facilities to enable them to keep in touch with their members and to represent them effectively.

74. Management and recognised trade unions shall facilitate and encourage personal contact and discussion between managers and officers of the trade unions at all appropriate levels. Contact shall not be left until difficulty arises.

WITHDRAWAL OF RECOGNITION

75. The recognition of a new trade union may give rise to the question of the withdrawal of the recognition of another trade union. Although dual recognition is undesirable, it does not follow that the recognition of a new trade union must inevitably result in the withdrawal of the recognition of the old trade union. If both trade unions are deserving of recognition, the decision shall be influenced, not only by the numerical support currently shown for each trade union, but by the past history and record and likely future record of the trade unions, and particularly by the willingness of each trade union to co-operate with the other and with the employer in resolving the issue, whether by forming a joint negotiating panel or otherwise.

76. A trade union claiming to take the place of an existing recognised trade union shall first prove that the latter has failed and is unable adequately to represent the interests of the grade or grades of employees concerned. The case shall be fully substantiated, and great weight shall not be attached to faults that could have been remedied by discussion within the existing trade union in accordance with ordinary trade union practice.

77. It is in the joint interest of employers and employees that allegations of inadequate trade union Organisation shall be fully investigated.

78. Where the failure and inadequacy of an existing recognised trade union has been substantiated in accordance with paragraph 76, the next question to be examined is the adequacy of the organisation of the trade union claiming recognition in its place. The claimant trade union shall be required to prove that it is better fitted, and therefore more likely to serve the interests of its members, than the existing recognised trade union.

COLLECTIVE AGREEMENTS

79. Collective agreements deal with matters of procedure and matters of substance which are of joint concern to management and employees. A single agreement may contain provisions of both kinds or they may be dealt with in separate agreements. In either case, the agreement shall be in writing and there shall be arrangements for checking that procedural provisions have not become out of date.

80. Procedural provisions shall lay down the constitution of any joint negotiating body or specify the parties to the procedure. They shall also cover -

- (a) the matters to be bargained about and the levels at which bargaining shall take place;
- (b) arrangements for negotiating terms and conditions of employment and the circumstances in which either party can give notice of their wish to re-negotiate them;
- (c) facilities for trade union activities in the establishment and the appointment, status and functions of union officers;
- (d) procedures for settling collective disputes and individual grievances and for dealing with disciplinary matters; and
- (e) the constitution and scope of any consultative committees.

81. Substantive provisions settle terms and conditions of employment. They shall indicate the period for which they are to apply, and cover -

- (a) wages and salaries, where appropriate, overtime rates, bonuses, piecework and other systems relating earnings to performance;
- (b) hours of work, and, where appropriate, provisions for overtime, and shift working; and
- (c) holiday entitlement and pay.

82. Agreements may also cover such matters as -

- (a) techniques for determining levels of performance and job grading, for example, work measurement and job evaluation;
- (b) procedures for handling redundancy and temporary lay-offs; and
- (c) the deduction by management of trade union dues from the pay of members.

83. There is advantage in agreeing at industry level as much as suitable for adoption over the industry as a whole, including -

- (a) terms and conditions of employment suitable for general application;
- (b) general guide-lines for negotiating at a lower level matters which cannot be decided satisfactorily at industry level; and
- (c) a procedure for settling disputes, either for the industry as a whole or as a model for individual undertakings to adopt by agreement.

84. To maintain fair and stable pay structures, an agreement reached at the level of the establishment or undertaking shall define -

- (a) how and within what limits any negotiations at a lower level shall be conducted, and
- (b) how it relates to any relevant industry-wide agreement.

DISCLOSURE OF INFORMATION

85. Collective bargaining can be conducted responsibly only if management and trade unions of employees have adequate information on the matters being negotiated.

86. Management shall endeavour to meet all reasonable requests from trade unions of employees for information which is relevant to the negotiations in hand. In particular, it shall, in the most convenient form, make available, the information which is supplied to shareholders or published in annual reports.

PART VI - EMPLOYEE REPRESENTATION AT THE PLACE OF WORK

87. Employees need work-place representatives to put forward their collective views to management and to safeguard their interests. It is also an advantage for management to deal with representatives who can speak for their fellow employees.

88. A work-place representative is the representative of the members of his trade union in the place of work, but the trade union of which he is an officer is responsible for his

actions as its officer. Accordingly, trade unions shall clearly define the powers and duties of work-place representatives, and the circumstances and manner in which they can be removed from office.

89. Trade unions and management shall seek agreement on -

- (a) the number of work-place representatives needed in the establishment; and
- (b) the work groups for which each representative is responsible.

90. To encourage trade union members to vote in elections of representatives, management shall offer the trade unions facilities to conduct elections in the establishment and to publicise the dates and details.

91. Trade unions shall notify management promptly in writing when officials are appointed and when changes are made.

92. Trade unions shall -

- (a) give each work-place representative written credentials setting out his powers and duties within the trade union, the work group he represents and his term of office; and
- (b) seek agreement with management on the issue of joint written credentials setting out the relevant rights and obligations of such representatives and of management.

93. Where more than one trade union is recognised but each trade union has only a small number of members, the trade unions shall seek to, agree on the election of one representative to represent all their members in the establishment.

94. Where there are a number of senior representatives of different trade unions which negotiate jointly, the trade unions shall seek to agree on the election of one of them to co-ordinate their activities in the establishment.

95. In each of these cases trade unions shall seek agreement with management on the coordinating functions of the representative concerned.

96. The facilities needed by work-place representatives will depend on their functions. The nature and extent of these facilities shall be agreed between trade unions and management. As a minimum, they shall be given -

- (a) time off from the job to the extent reasonably required for their relations functions, permission not being unreasonably withheld, and

(b) maintenance of earnings while carrying out those functions.

97. Management shall also make available other facilities appropriate to the circumstances. They may include -

(a) lists of new employees;

(b) accommodation for meetings with the employees whom they represent, with other representatives and with officers;

(c) access to a telephone and the provision of notice boards; and

(d) the use of office facilities where the volume of the representative's work justifies it.

98. Each trade union shall ensure that its own representatives are adequately informed about its policies and organisation and about the agreements to which it is a party. Management shall ensure that the representatives are adequately informed about its objectives and employment policies.

PART VII - GRIEVANCE AND DISPUTES PROCEDURES

GENERAL

99. All employees have a right to seek redress for grievances relating to their employment. Each employee must be told how he can do so.

100. Management shall establish, with the trade unions of employees concerned, arrangements under which individual employees can raise grievances and have them settled fairly and promptly. There shall be a formal procedure, except in very small establishments where there is close personal contact between the employer and his employees.

101. Where trade unions are recognised, management shall establish with them a procedure for settling collective disputes.

102. Individual grievances and collective disputes are often dealt with through the same procedure. Where there are separate procedures they shall be linked so that an issue can, if necessary, pass from one to the other, since a grievance may develop into a dispute.

INDIVIDUAL GRIEVANCE PROCEDURE

103. The aim of the procedure shall be to settle the grievance fairly and as near as

possible to the point of origin. It shall be simple and rapid in operation.

104. The procedure shall be in writing and provide that -

(a) the grievance shall normally be discussed first between the employee and his immediate superior;

(b) the employee shall be accompanied at the next stage of discussion with management by his work-place representative if he so wishes;

(c) there shall be a right of appeal.

COLLECTIVE DISPUTES PROCEDURES

105. Disputes are broadly of two kinds -

(a) disputes of right (i.e. as to legal rights), which relate to the application of existing collective agreements or contracts of employment; and

(b) disputes of interest (i.e. economic disputes), which relate to claims by employees or proposals by management about terms and conditions of employment.

106. A procedure for settling collective disputes shall be in writing and shall –

(a) state the level at which an issue shall first be raised;

(b) lay down time limits for each stage of the procedure, with provision for extension by agreement; and

(c) preclude a strike, lock-out, or other form of industrial action until all stages of the procedure have been completed and a failure-to-agree formally recorded.

107. The procedure shall have the following stages -

(a) work-place representatives shall raise the issue in dispute with management at the level directly concerned;

(b) failing settlement, it shall be referred to a higher level within the establishment; and

(c) where still unsettled, it shall be referred to further agreed stages, for example, to a stage of an industry-wide procedure, or to a higher level within the undertaking.

108. The procedure shall include agreement to make use of the independent conciliation service provided by the Commission, and of the independent arbitration service provided by the Tribunal, and to take claims to the Court, as appropriate before considering resort to any industrial action.

PART VIII - DISCIPLINARY PROCEDURES

109. Management shall ensure that fair and effective arrangements exist for dealing with disciplinary matters. These shall be agreed with the trade unions concerned and shall provide for full and speedy consideration by management of all the relevant facts. There shall be a formal procedure except in very small establishments where there is close personal contact between the employer and his employees.

110. Management shall make known to each employee -

- (a) its disciplinary rules and the agreed procedure; and
- (b) the type of circumstances which can lead to suspension or dismissal.

111. The procedure shall be in writing and shall -

- (a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;
- (b) give the employee the opportunity to state his case and the right to be accompanied by an officer of his trade union;
- (c) provide for a right to appeal, wherever practicable, to a level of management not previously involved; and
- (d) provide for independent arbitration if the parties to the procedure wish it.

112. Where there has been misconduct, the disciplinary action to be taken will depend on the circumstances, including the nature of the misconduct. But normally the procedure shall operate as follows -

- (a) the first step shall be an oral warning or, in the case of more serious misconduct, a written warning setting out the circumstances;
- (b) no employee shall be dismissed for a first breach of discipline except in the case of gross misconduct;
- (c) action on any further misconduct, for example, final warning, suspension

without pay or dismissal, shall be recorded in writing;

(d) details of any disciplinary action shall be given in writing to the employees and, if he so wishes, to his work-place representative; and

(e) no disciplinary action shall be taken against a work-place representative until the circumstances of the case have been discussed with a full-time official of the trade union concerned.

Related documents: