INDUSTRIAL RELATIONS IN MALAYSIA

MALAYSIAN TRADES UNION CONGRESS
19 JALAN BARAT
PETALING JAYA
MALAYSIA

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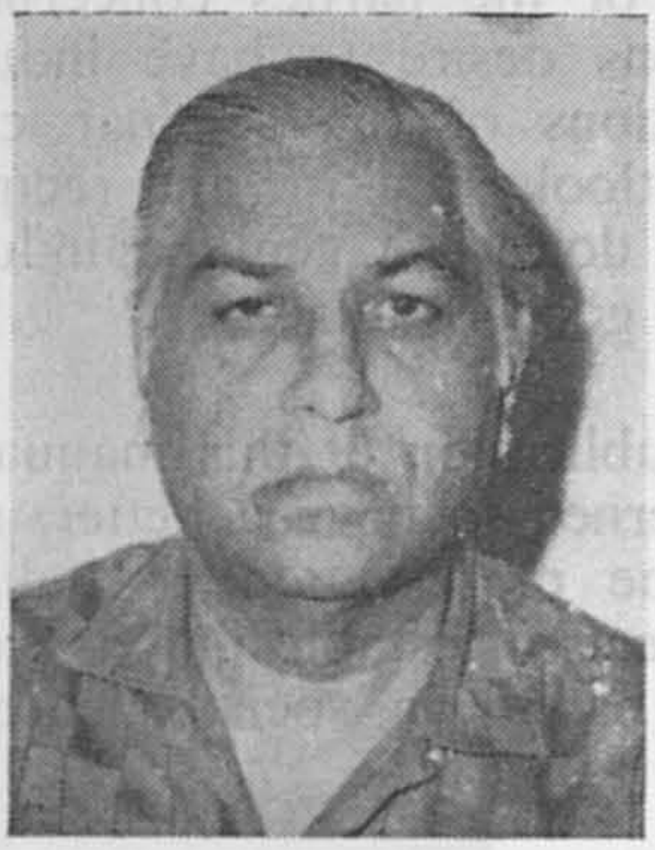
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INTRODUCTION



By Mr S. J. H. Zaidi
Secretary General
MTUC

This booklet contains the proceedings of the National Seminar on Industrial Relations organised by MTUC in co-operation with the Friedrich-Ebert-Stiftung held in 1974.

The Seminar is considered to be of very great importance to MTUC, not only because its theme covered a vital field of a very major concern to all trade unions, but also due to the fact that the contributions made by the participants at the seminar brought to surface various new aspects pertaining to the complicated task of maintaining industrial peace in the country, which hitherto had perhaps either not fully appreciated or simply ignored. It is therefore in the hope that not only the work of the seminar will not be forgotten, but that through this booklet its message, ideas and deliberations will also reach to many others who are active in the field of Industrial Relations that a decision to have the proceedings of the seminar published, was taken.

Thus the basic purpose of this manual, the third in the series of Workers' education manuals being currently published by MTUC, is to provide additional concepts based on a humanistic approach to those for whom industrial relations, in one form or other, is a matter of everyday practical concern. The booklet does not attempt to advocate any new philosphies. It merely seeks to present in compendious form, essential facts about the system of industrial relations, the various legislations that govern this system, viewed from a very objective perspectivity by the participants.

In fact the very purpose of the Seminar was to discuss objectively the prevailing system of industrial relations in the country and to

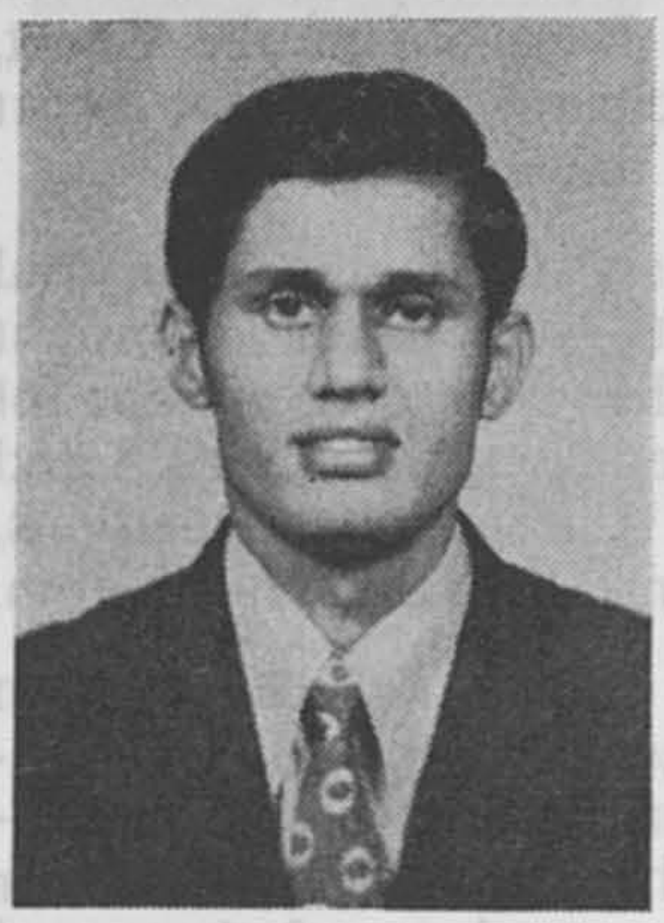
consider whether or not there is a case for a review of the present system of industrial relations. The recommendations as made by the seminar, appear to clearly indicate that there is a need for a review and rethinking, in many areas.

It can hardly be denied that a sound and pragmatic system of industrial relations is very essential for national development. No amount of legislations can ensure industrial harmony if there is no goodwill and sincere desire on the part of the parties concerned to find a satisfactory solution. Trade unions desire to have industrial peace in the industry and the deliberations of the seminar clearly endorsed this thinking. With a similar outlook, thinking and reciprocal attitude of employers, there can without doubt be genuine industrial harmony and peace in the country for the good of all.

It is therefore our hope that the publication of this manual will help in whatever small measure, all concerned to have a better understanding of the problems involved in the preservation of industrial peace and harmony and thereby the prospects of establishing a real and lasting industrial peace in the country, based on social justice and enlightenment, will be further enhanced.

Finally, I take this opportunity to place on record MTUC's appreciation to the Friedrich-Ebert-Stiftung for their continued co-operation in the field of social progress, workers' education and other areas of mutual interests to the two Organisations.

FOREWORD



by Mr S. Radhakrishnan
Director of Education
MTUC

This book, the third in the series of workers education manuals focuses atttention on a very vital subject namely Industrial Relations in the country. It is the record of an important national seminar on Industrial Relations organised by the MTUC in co-operation with the Friedrich-Ebert-Stiftung which was held from 8th — 21st July, 1974 at the MTUC Building, Petaling Jaya.

The Objective of the seminar was to bring together principal officials of affiliated unions, industrial relations officials and others actively involved in industrial relations to discuss objectively the system of industrial relations in the country. One of the important pre-occupation of the MTUC is to bring about an effective system of industrial relations in the country especially in view of the existing weaknesses in the system. Trade Union officials are increasingly called upon in spite of the limitations in the laws to conduct industrial relations activities with a high degree of sophistication. It was hoped that the seminar would provide the opportunity for union executives to make an in depth study of the different aspects of the industrial relations system, exchange their knowledge and experiences as well as to review their concepts and practices of industrial relations.

Thirty-four trade union officials from 32 affiliated unions participated in the seminar. The participants represented a wide cross-section of the trade union movement covering the three sectors namely private, public and quasi-government and local authorities. In addition to the above the personnel officer of Pahang Consolidated Co. Ltd also participated in the seminar.

The panel of speakers consisting of Labour Ministry Officers, employers representatives, university lecturers, lawyers, trade unionists and other public figures were invited for the seminar. In addition to listening to the varied views expressed on specific topics the participants had the opportunity to seek clarification and express their views. The participants further desliberated at length in small working groups and formulated their recommendatoins. As part of the programme a visit to the Industrial Court was also organised. The participants witnessed the proceedings of the court in session. The President of the Court, Mr. Mathews Abraham kindly met the participants during the court adjournment and answered question posed by the participants.

In addition to discussing the many aspects of the industrial relations system in the country the participants were given an insight into the pattern of Industrial Relations in the Federal Republic of Germany and the United States by Mr. Ruediger Sielaff of the FES and Dr. John E. Hutchison, Visiting Professor of International Relations, John Hopkins School of Advanced International Studies, Washington.

The highlight of the seminar was of course a mock session where a scene in the industrial court was enacted at the MTUC premises towards the end of the seminar. The performance of the participants in their respective roles — counsel for the employer, counsel for the workers, the Chairman of the Court, the members of the panel and witnesses was very good. It clearly indicated that the participants were able to put into practice the knowledge which they have acquired.

In conclusion, I take this opportunity to thank the Hon'ble Minister of Labour and Manpower, Tan Sri Dato V. Manickavasagam and Tuan Haji Ramli Omar, the Parlimentary Secretary, Ministry of Labour and Manpower for kindly officiating the opening and closing sessions of the seminar respectively, the speakers for the invaluable contributions, the affiliated unions and participants, the MTUC officials and staff, the press, Radio and Television and last but not least the FES Representative in Malaysia, Bro. Ruediger Sielaff for his assistance. It is hoped that this manual would prove useful as a reference material to not only trade unionists but others interested in the field of industrial relations.

MESSAGE



by Dr P. P. Narayanan
President
MTUC

It is my pleasure to offer my felicitations on the publication of the MTUC/FES book on "Industrial Relations in Malaysia".

I note with interest that this book contains actual papers presented, reports of working groups and recommendations of the MTUC/FES National Seminar on Industrial Relations held from 8th to the 21st July, 1974 at Petaling Jaya.

I am particularly happy that the contents of the book are the products of discussions on practical problems and other factors faced in the field of industrial relations. This is especially so since the past decade has witnessed substantial changes in the labour laws and industrial relations in this country.

I have no doubt that the panel of eminent Industrial Relations Practitioners who presented paper at the Seminar have provided sufficient food for fruitful and stimulating discussions by the participants drawn from the various trade unions in the country.

Every written document that MTUC produces is a gift to posterity. Now that plans are drawn up to strengthen leadership of trade unions at the lower levels, publications of this type will help.

Brother Radhakrishnan, our Director of Education, deserves our compliments and heartfelt thanks for the special attention he always pays in documenting MTUC's efforts in the field of trade union education. This is a welcome change!

MESSAGE



by Mr Siegfried Bangert
Director
International Department
Friedrich-Ebert-Stiftung

It is indeed a very happy occasion to send this message for inclusion in a booklet on industrial relations.

This is not only because another book is being published jointly by MTUC and FES, but this book contains the papers, proceedings and results of a seminar organised under the cooperation of MTUC and FES. Therefore this book is also an example of the successfulness of the cooperation of MTUC and FES in their joint trade union education programme.

In my opinion education on industrial relations is extremely important in developing countries and for all parties involved, because the aspirations of all social groups involved in production need to be met. And peaceful dealings and mutual respect will achieve more than fear and victimisation. This book is giving conducive guidelines to every trade unionist who wants to know more about industrial relations in Malaysia (or even a little about Germany). It is not just a reflection of papers delivered by experts or of textbook advice, but a collection of different contributions made by government officials, employers, trade unionists and academicians.

Trade unionists have added most of the contributions in this booklet. And their contributions show that the interests of all have been considered carefully and objectively, though they never forgot their trade union background. The way the seminar participants reflected their aspirations and ideas with realism indicates the cooperative

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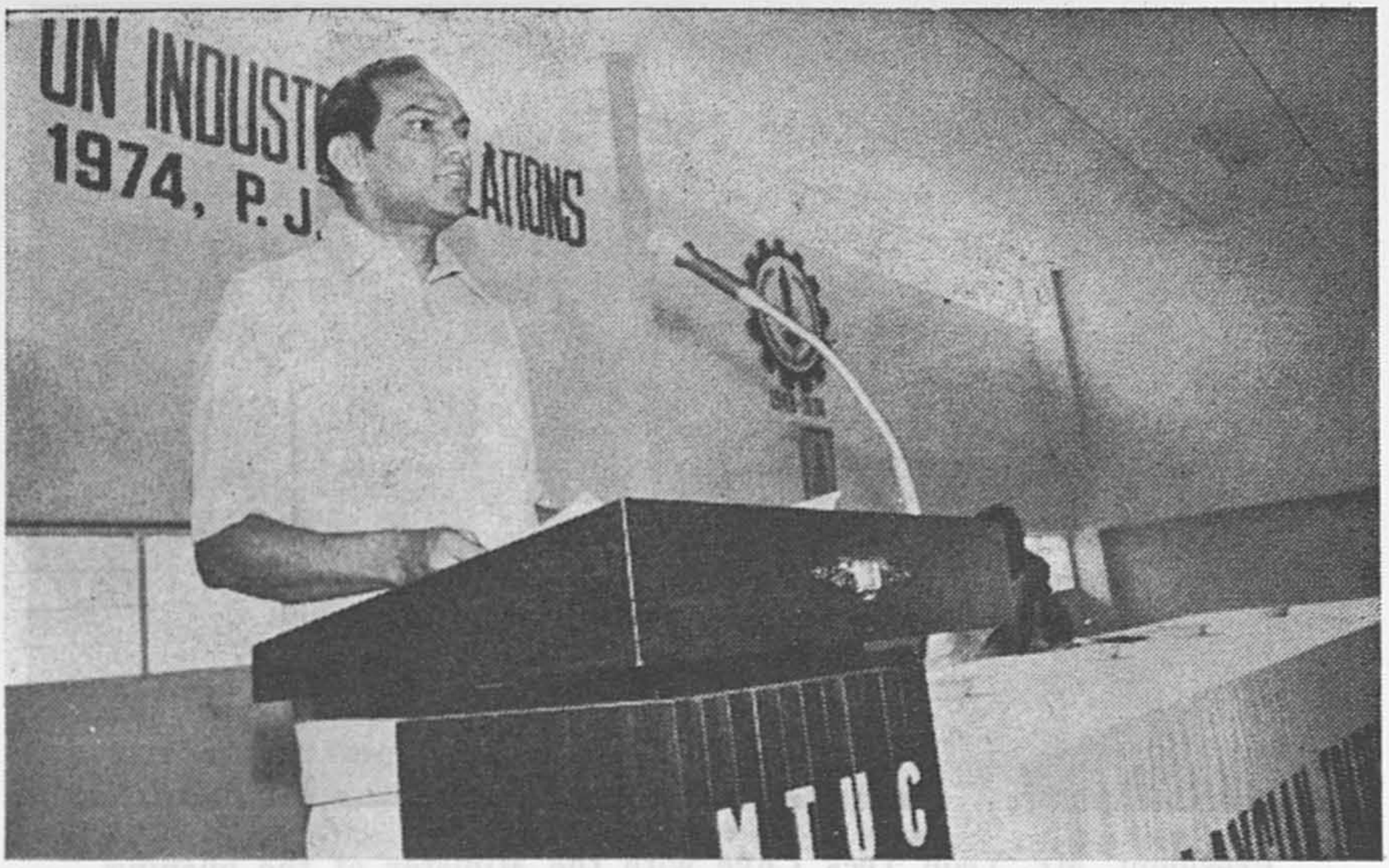
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Industrial Relations Act, 1967



The Hon'ble Minister, Tan Sri Dato V. Manickavasagam addressing the opening session.

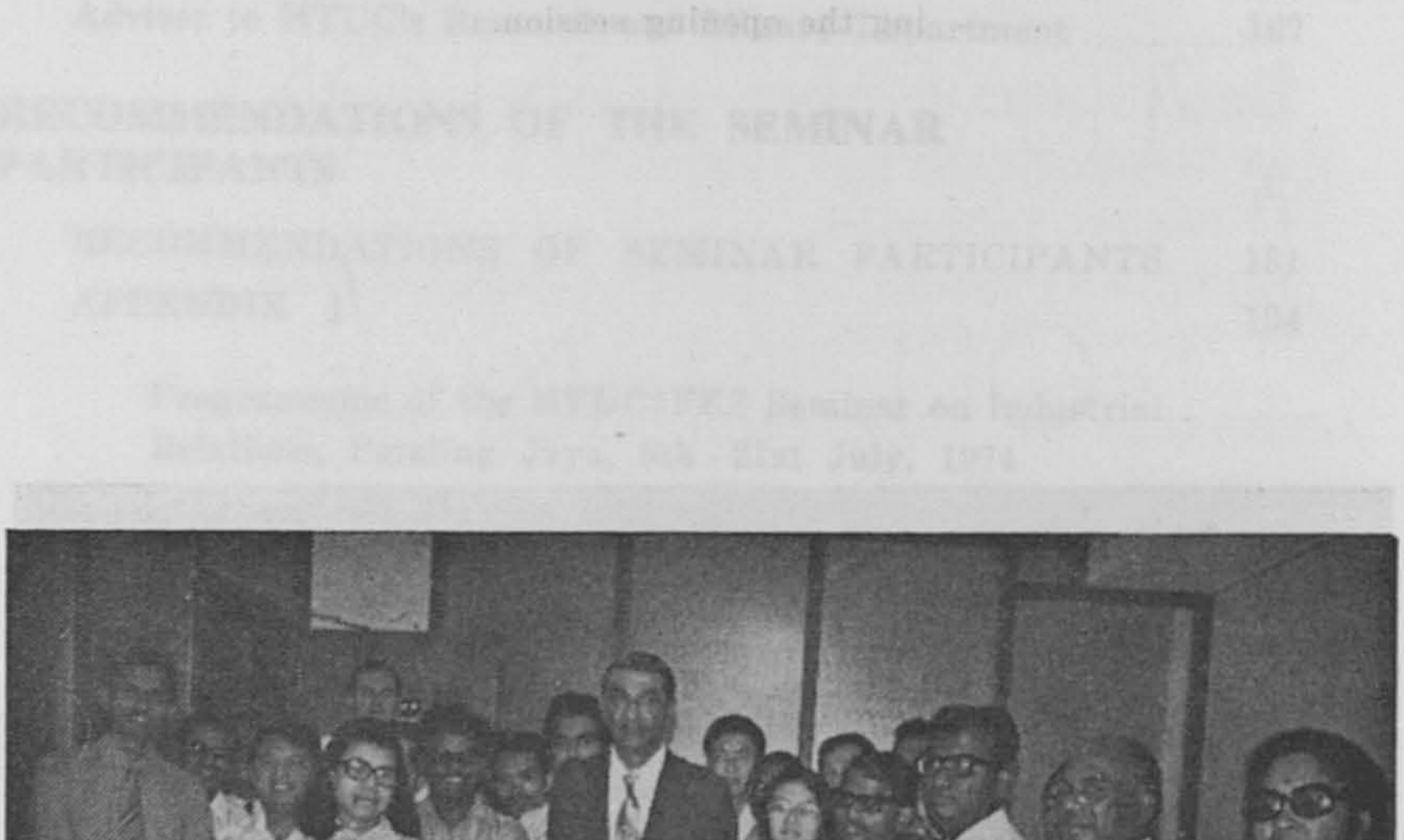
TRADE UNION ORDINANCE



Group photograph of participants with officials.



President, Mr. Yeoh Teck Chye with the Minister at the opening session.



The President of the Industrial Court posing for a photograph with the participants.

THE

TRADE UNION ORDINANCE

1959

Malaysia, for instance, trade unions were introduced as a result of the British Labour Government's decision to extend Trade Union rights to their "Subjects" in the colonies of the "Great" British Empire in 1931.

However, the Labour Government's policy assumed a different colour by the time it reached the Far East and one of the worst results was the formation of splinter unions with the blessings of the so called Trade Union Advisers.

Malaysia is a perfect example to illustrate this point. We have today 243 Unions with a paid up membership of 372,504.

It is pertinent to quote the Registrar of Trade Union's comments contained in his latest report published in 1973 which reads *inter alia:*

> "116 of the 239 Employees Union or 48.5% of the total number of Employees Unions of workmen employed by Government and these unions had a total membership of 98,141 representing 33% of the total membership of all employees unions. The remaining 123 Unions were unions of employees in the private sector and in quasi-government establishments."

When the affliated unions of CUEPACS in keeping with the primary object "to secure complete consolidation" of Government workers submitted for registration the constitution for a single King-Size union — The National Union Of Employees in the Public and Civil Service (NUEPACS), this giant baby however became victim of an abortion operation by the instruments of amendments to the Trade Union Ordinance in 1967. This clause was subsequently entrenched as a permanent feature in the Trade Union Ordinance, 1959 vide PU (A) 379. This is a clear indication that the authorities are following a policy of "Divide and Destroy" the unity of working class.

It is worthwhile to point out here that the Union I belong to — The National Union of Government Office Workers (NUGOW), which in keeping with its very first object "to secure the complete organisation of Government Workers" has the right to organise the unorganised as per the membership clause quoted below:

> *"Rule 3 — Membership*
>
> 1. Membership of the Union shall be open to all monthly paid office workers in Government service in West Malaysia who are above the age of sixteen and whose place of work is in West Malaysia; provided that no person for whom education is provided under the Education Ordinance 1957, shall join or be a member of the Union, unless he is:-
>
> (a) bone fide employed as workman as defined in Trade Union Ordinance, 1959; and
>
> (b) over the age of eighteen years."

Despite this constitutional right of NUGOW the Registrar of Trade Union has directed this union to restrict its membership to a narrow group of Government workers — *vide* his letter quoted below:

> *(English translation)*
>
> It is observed that your Union's membership consists of workers from various departments and various categories of workers in the Government service, and this is contrary to the provisions specified under Perinta PU (A) 379 Dated 28th October, 1971 which among other things states that Government Officers can organise their unions with their membership limited to workers within their sphere of an **occupation, Government Department** or **Ministry.** Moreover, as per Rule 3.1 of your Union Constitution, it is understood that your union must limit its membership to those whose work is of Clerical nature. Hence, you are required to remove members who do not hold clerical posts in Government offices and to cease enlisting workers of other than such posts as members of your union. Please acknowledge receipt of this letter forthwith and ensure that the above direction is complied with accordingly.
>
> Sgd.
> (ABDUL WAHAB BIN MOHD OTHMAN)
> Pendaftar Kesatuan Sekerja
> Malaysia

When PU (A) 379 permits unions to be organised Ministry-wise and Departmental-wise, thereby allowing workers of various crafts to be members of one union, it is simply illogical to insist that NUGOW should cater for specific catergory of workers. NUGOW contends that Public Service is "An Industry in itself and believes in the Maxim: One Industry, One Employer, One Union, and this is the accepted policy of the Malaysian Trade Union Movement.

The interpretation of NUGOW's rule for that matter or the rules of any Trade Union is a matter for the members of the Union to decide and not for the Registrar of Trade Unions to dictate in the name of Law.

It is this authoritative aberration of the Registrar of Trade Unions that any right-thinking man should object. The rights of a citizen under a democracy belongs to him by virtue of him being a citizen and under no circumstances such rights are to be subjected to begging or bartering.

The above instances are just to throw some light on the unbriddled powers of the Registrar of Trade Unions under the Trade Union Ordinance. Several other sore aspects of the Ordinance can be summarised by stating that it completely lacks the spirit and intention behind the oft-repeated declared policy of the Government, *viz;* to encourage strong, healthy and responsible unions.

Legal Obstacles to the Formation and Consolidation of Large Trade Unions

by Seminar participants

Group A

Recommends to amend the Trade Unions Act 1965 (No. 81 of 1965) to the following:—

Section 3 should read: "Where one or more trade union registered in respect of a particular trade, occupation or industry exist, the Registrar shall allow only that trade union as has the greatest number of workmen in the said trade, occupation or industry as its members to continue to be registered; and he shall cancel the certificate of registration of the other trade union or trade unions aforesaid."

Group B

Feels that there are provisions in the Trade Union Ordinance that are not condusive towards the formation of and the consolidation of large trade unions. We have discussed the sections of the Trade Union Ordinance which we deem as undesirable and our proposals for changes are as follows:—

We are of the opinion that Section 2(1)a restricts the membership of Trade Union to workman employed within a particular trade, occupation or industry or within any similar trades, occupations or industries. We are of the view that membership of Trades Union should be industry wise and therefore recommend that this section be amended accordingly.

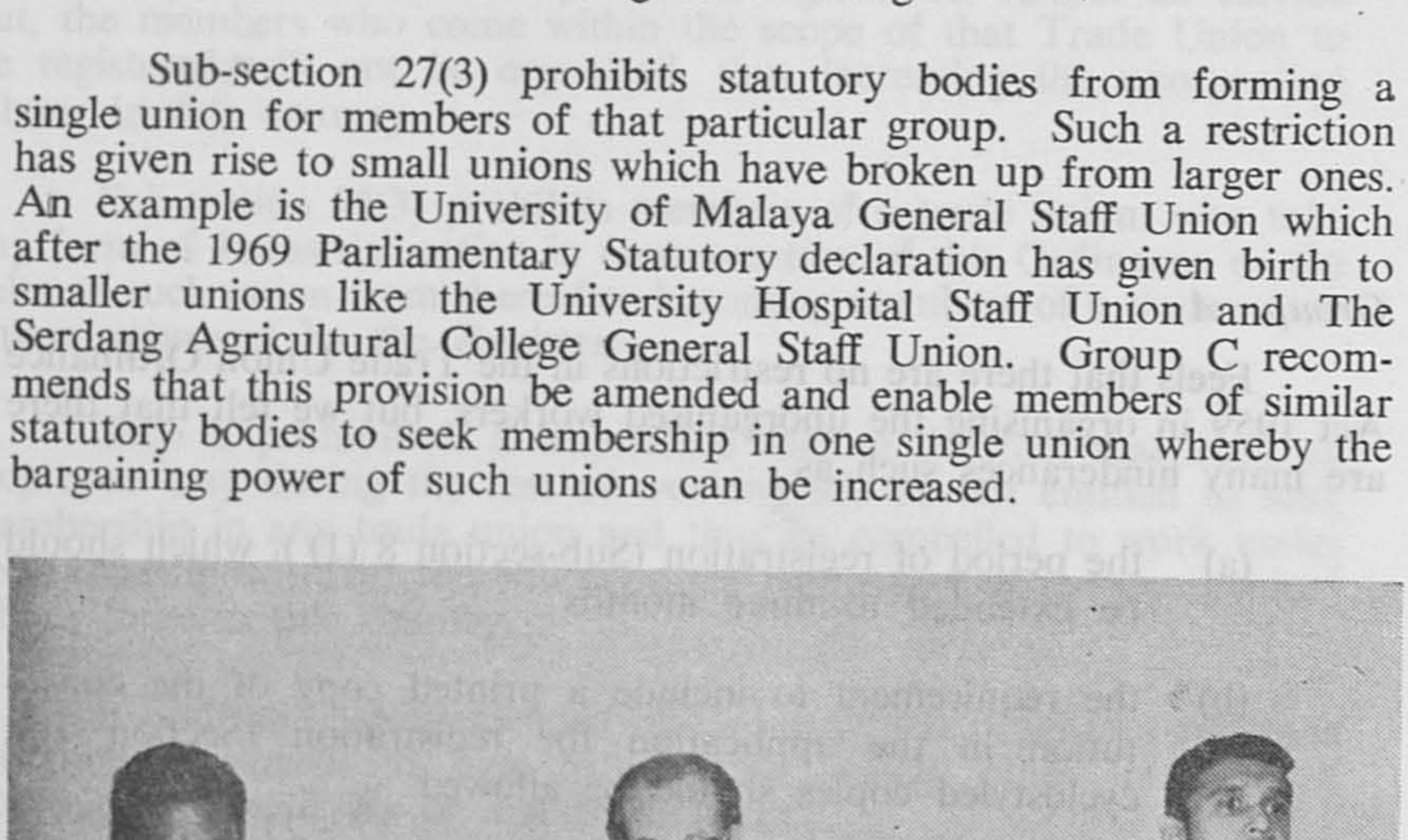
Section 10(i) encourages the formation of 'pea nut' unions and therefore Group 'B' feels that this provision be amended so that the

This Group C feels that such unlawful acts of Management should be stopped and provision should be made to allow Protem Committee Members or Officers to represent such "retrenchment" at both Management and Ministry levels.

The above recommendation is made because if Managements practising "dismissal on account of retrenchment" is not checked the birth of Trade Unions will be killed before delivery.

By Section 27 no Public Officer shall join or be a member of any Trade Union or shall be accepted as a member of any Trade Union. Even though sub-section 2 says that the Yang Di Pertuan Agung may by notification in the Gazette exempt from the above restriction either wholly or subject to conditions, Group 'C' after due consideration concluded that sub-sections (1) and (2) of section 27 be deleted. Such restrictions are rather unnecessary due to the fact that a "Public Officer" means a person in the permanent or temporary employment of any Government in the States of Malaya or Sabah. If a Public Officer who is also an employer is restricted from being a member of a Trade Union unless exemption is granted we can safely say that the particular provision is not in anyway contributing any chances for the formation and growth of large unions.

Sub-section 27(3) prohibits statutory bodies from forming a single union for members of that particular group. Such a restriction has given rise to small unions which have broken up from larger ones. An example is the University of Malaya General Staff Union which after the 1969 Parliamentary Statutory declaration has given birth to smaller unions like the University Hospital Staff Union and The Serdang Agricultural College General Staff Union. Group C recommends that this provision be amended and enable members of similar statutory bodies to seek membership in one single union whereby the bargaining power of such unions can be increased.



Panelists from left, Mr. G. Vadivello, Encik Abdul Wahab bin Mohd. Othman and Mr. Dunston Ayadurai.

Group C

In the considered opinion of *Group C* a trade union should be registered by the Registrar of Trade Unions without undue delay after an application is made. This can be achieved if there is a deadline for the RTU's decision. If the percentage of the unorganised workers is to be brought to its minimum, new unions should be given ample time to set their foundations for organising unorganised workers. Instead the RTU's undue delay gives the Management of organised but unregistered trade union member, ample time to put into practice all the lawful ways in which a trade union can be abolished before its birth.

The members once having been retrenched, but find work elsewhere loose faith in trusting even Registered Trade Unions. Thus the percentage of unorganised labour in this country increase rapidly.

Sub-section 12(i) (c) gives the RTU unquestionable powers to refuse to register a trade union if he is of the opinion that the trade union is likely to be used for unlawful purposes. At the discussion of Group C it was decided that the RTU takes such a decision after due enquiry and prove his decision with substantiated evidence to the applicants for registration of such a union. It was felt that if the RTU is left unquestioned as to why such a registration cannot be carried out, the members who come within the scope of that Trade Union to be registered will not be organised, thus increasing the unorganised labour in this country.

Sub-section 26(3) prohibits members of a trade union, who take any form of Industrial action in contravention of this Ordinance or the rules of such union from thereafter becoming members of a trade union unless approved by the Registrar.

Such a prohibition is unjustified due to the fact that such an employee may during the rest of working life be not entitled to seek membership in any trade union and thus be compelled to work under poor conditions. This too will raise the percentage of the unorganised labour force in this country.

It is strongly recommended by Group C that provisions be made for such employees to seek membership in any other trade union catering for employees of a different trade.

Group D

Feels that the definition of workman needs to be changed. At present Part 1 (2) confines workman to any person including apprentices employed by an employer under a contract of employment to work for hire or reward and as such the Ordinance does not allow the trade union to extend their scope to the rural workers such as farmers, fishermen, share croppers and other "self-employed" people.

Our group is hazy as to how these workers could be organised.

The total working population is estimated to 3.9 million, of which 53% is comprised of agricultural workers. The Definition of Workman simply prohibits the trade unions from organising these workers.

The Powers of the Registrar of Trade Unions

by Seminar participants

Group A

Is of the opinion that the Registrar of Trade Unions has been given too wide a discretionary power in the registration of unions as well as determining the scope of membership of Unions already in existence or being formed, and as such we are not satisfied with this situation and feel that the following changes are necessary in the Trade Union Ordinance Act, 1959:

Section 12 (2) — to delete (c) as this gives him the discretionary power to decide which is lawful & which is not. As such we recommend that a panel comprising of MTUC Officials with Labour Advisory Council should sit in it.

Section 17 (2) should read as — Any such appeal to the Minister shall be presented, considered and disposed of in such manner and in such form as recommended by the panel which shall comprise officials from the Ministry of Labour and MTUC officials,

Section 12 (3) (b) (ii) to be deleted.

Section 15 (i) (b) (ii) to be deleted.

Section 15 (i) (b) (iv) delete from 'or' to 'to be' to read as — 'that the Union has been used for any unlawful purpose or for any purpose contrary to its objects or rules.

Section 15 (4) — to subsitute the word 'him' to 'the panel' reading as '. . . has failed to satisfy the panel that its certificates . . .'

THE

INDUSTRIAL RELATIONS ACT, 1967

COLLECTIVE BARGAINING — Agreements

The provisions of Section 12 relating to collective bargaining is of certain advantage to the Trade Unions. Section 12 encourages both the employers and the Trade Unions to voluntarily bargain and in the event the employers refuses trade unions could seek the assistance of the Labour Ministry. Here again where employers have refused to bargain Labour Ministry failed to help the Unions in accordance with the provisions of Section 12 of the IR Act.

Section 13A — Restrictions on Industries granted pioneer status

Section 13A of the Act prevents Unions from asking and the employers from giving better benefits than those provided for in Section 60 of the Employment Ordinance. These restrictions are unnecessary and most unjustified. Immediately after these restrictions were imposed in 1969 a number of Industries on Pioneer status withdrew the benefits that were given for a number of years.

Section 16A — Dismissals

Section 13 prevents Trade Unions from taking any form of Industrial action in connection with dismissals. The provisions of Section 16A sets out the procedure for the settlement of dismissal cases.

The implementation of these provisions have been most unsatisfactory thus far. The most important factor Trade Unions are opposed to is the long delay in disposing of dismissal cases. It takes the ministry as much as 6 months to 1 year to give a ruling.

Industrial Court

According to the provisions of Section 19 of the Act the Industrial Court consists of a President or Chairman, one Workers Representative, one Employers Representative and one Independent member.

Trade Unions feel that most of the so called independent panel members are infact employers themselves and as such the constitution of the Court is not balanced.

Reference of trade disputes to Industrial Court

According to the provisions of Section 23 the Minister can refer trade disputes to the Industrial Court on the joint request of the parties concerned or on his own motion in the interest of security or the economy of the country.

Through experience it has been found that a number of disputes were referred to the Industrial Court because the Unions were in a position to take effective action against the employers.

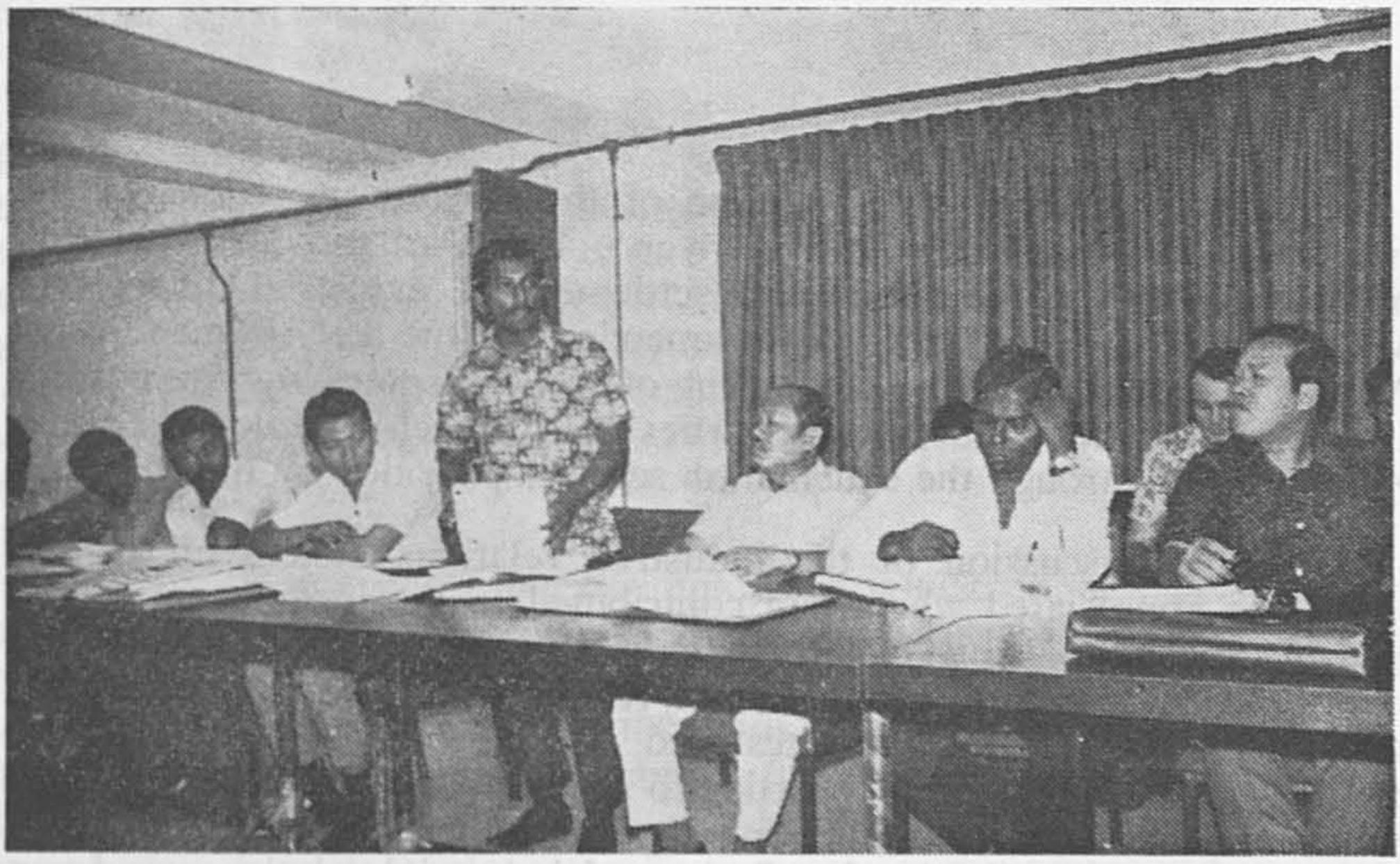
Intimidation

The provisions of Section 36 is very restrictive and it can be enforced to break the unity of the workers and to break legal strike actions. Anti-Union employers have found the provisions of Section 36 most advantageous and in many occasions they have used it to harass and frustrate workers on Industrial action.

Even though the restrictive provisions of Section 36 applies to both the Employers and the Unions they are usually applied against the Unions.

Conclusion

As has been stated in the introductory paragraph with the exception of a few the rest of the provisions are acceptable to the Unions provided the Labour Ministry enforce the law effectively and efficiently.



One of the participants seeking clarification during question time

The Industrial Relations Act 1967 and its Traditions

by B. Kumaran
Director of Industrial Relations
for Selangor/Pahang, Ministry
of Labour and Manpower

In this paper a broad outline of the various provisions of the Industrial Relations Act, 1967 is given. This Act provides the legal framework for the prevention and settlement of industrial disputes in Malaysia. The I.R. Act 1967 as amended by the I.R. (Amendment) Act 1971 provides for the settlement of trade disputes by compulsory arbitration or adjudication when parties fail to reach a settlement either voluntarily or through the conciliation services provided by the Ministry.

For a discussion of the industrial relations system all factors should be appreciated which had contributed to the introduction of an element of compulsion in arbitration; a general knowledge of the statutory provisions for regulations of relations and the prevention and settlement of industrial disputes and related labour laws; a clear concept of the rights of the parties to a trade dispute and the nature of the disputes involved are essential pre-requisites for a better understanding of how the Malaysian System of industrial relations works.

Some background knowledge of various labour laws and regulations that had existed in the past, the changes made from time to time and some historical events which contributed to the introduction of the I.R. Act is of some interest.

The first legislation was enacted in the year 1940 known as The Industrial Court Enactment 1940. This idle piece of legislation only existed in the statute book until repealed and replaced in the Federation of Malaya by the Industrial Courts Ordinance, 1948 and the Trade Disputes Ordinance 1949. This Ordinance was patterned on the lines of the then prevailing legislation in the United Kingdom based on the concept of voluntary arbitration.

The voluntary system was abandoned in the wake of the Indonesian Confrontation which commenced in 1964. It was significant that in the course of that year 508,439 man days were lost through 85 strikes involving 226,429 workmen — the respective figures being the highest for any one year since Malaysia achieved independence. The situation called for extraordinary measures since the uninterrupted maintenance of essential services and the flow of primary goods for export on which the national economy depended became a matter of vital importance in the context of the Confrontation. In the circumstances, legislation was passed introducing compulsory arbitration for the first time as an emergency measure. By virtue of the powers conferred upon the Yang di Pertuan Agong under the Emergency (Essential Powers) Act 1964, The Essential (Prohibition of strikes and Prescribed Industrial Actions) Regulations 1965 were decreed. It was noted that the number of man-days lost through strikes had declined from 508,439 days in 1964 to 157,980 days involving 9,452 workmen in 1969. The impact of compulsory arbitration upon the country was not lost sight of when the time came for repealing the 1965 Regulations. In the light of experience gained when the emergency ended it was decided to retain the compulsory arbitration system as a means of promoting industrial peace and stability which was necessary for the implementation of Government's economic policy. In 1967, the 1965 Regulations, the Industrial Courts Ordinance 1948 and the Trade Disputes Ordinance 1949 were repealed and replaced by the present Industrial Relations Act 1967.

Following the May 13th Incidents in 1969, once again, a state of emergency was proclaimed. The situation warranted a further review of Industrial Relations Policy from a different standpoint. The review led to the introduction of the October 1969 amendments under the Emergency (Essential Powers) Ordinance 1969. The 1969 amendments were subsequently confirmed by Act of Parliament — Act A 92 — Industrial Relations (Amendment) Act 1971. New provisions were introduced into the Act among which Sections 12 and 16A merit special mention.

It was then realised that unemployment and economic imbalances between the races provided a barrier to the achievement of national unity. Government's economic policy under the Second Malaysia Plan is, therefore, designed to facilitate the eradication of economic imbalances and to provide increased opportunites for all races to participate in economic development as a means of achieving national unity. In that context also, it is deemed necessary to create and maintain a suitable climate for rapid economic growth by preserving industrial peace and stability at any cost. Therefore, the role of organisations of workers and employers would have to be related and geared to the attainment of national objectives. Unrestricted or indiscriminate use of the right to strike and lock-out is detrimental to economic growth and is regarded as a luxury which the country at the present stage of economic development cannot afford. It is against this back-ground the system must be viewed in any exercise contemplated for the review of the present system or the Act itself.

I shall touch upon certain main features of the Act which, as I said earlier, merit special attention.

(i) *Section 12(3)* (Non-Negotiable Matters)

Section 12(3) prohibits trade union of workmen from including in the proposals for a collective agreement proposals in relation to such matters as to promotion, transfer, termination of services etc., but the law also declares that a trade union may raise in the course of discussion questions of a general character relating to procedure of promotion notwithstanding that such questions do not form part of the proposals.

Section 41 prohibits strike and lock-out in any of the matter covered by this section. It is to be noted that the provisions do not prohibit the management from making any proposal in relation to promotion and other matters to be included in a collective agreement.

(ii) *Individual Dismissals* (Section 16A)

By virtue of Section 16A the Minister is empowered to hear and determine disputes between an employer and a single workman in respect of alleged dismissal without just cause or excuse. Another amendment provides that in the exercise of this discretion the Minister may also refer a dispute involving a single workman to the Court for settlement. In this connection, it is pertinent to mention that in the event of such reference, the Industrial Court is bound under the provisions of the Section 49 (2) of the Act to settle the dispute in accordance with the principles laid down in Section 27 (5) of the Act which reads : —

"The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalties and legal form"

It is to be noted that the same principles would apply when the Minister makes a decision in a 16A Enquiry Case.

(iii) *Pioneer Industries* (Section 13A)

Employers are restricted in the case of pioneer industries for the first 5-year of their establishment from granting any terms and conditions of service more favourable than those prescribed under Part XII of the Employment Ordinance 1955, i. e. on matters such as Rest Days, Public Holidays, Sick Leave, Annual Leave and Overtime, unless permitted to do so by the Minister after considering any representation by an employer and a trade union. There is however nothing to prohibit a union from claiming or an employer from granting more favourable terms in respect of other matters such as wages, bonus, etc.

(iv) *Industrial Court*

The Industrial Court established under the Act hears and settles all disputes referred to it by the Minister. Disputes involving Government or statutory bodies as employer may be referred only with the prior consent of the Yang diPertuan Agong. Disputes referable for settlement to the Court fall under four categories; namely:—

(a) Disputes in respect of individual grievances espoused by a trade union;

(b) Disputes over terms and conditions of service;

(c) Disputes over interpretations of the terms of an award or collective agreement taken cognisance by the Industrial Court; and

(d) Disputes over non-implementation of an award.

The setup of the Court and how it operates and hands down decisions are matters of common knowledge and I do not wish to tread too much into this field.

(v) *Right to Strike/Lock-Out And Legal Restraints*

The Industrial Relations Act (read in conjunction with the Employment Ordinance 1955 and Trade Union Ordinance 1959) recognises the right of workmen to go on strike in breach of contract of service, provided that the cause of the workmen is espoused by a trade union in accordance with its constitution and provided further that the conditions prescribed under Sections 40, 41 and 42 are observed. Similarly, the right of an employer to declare a lock-out in furtherance of a trade dispute is equally recognised. The employer is also under a statutory obligation to lodge a report of the intended strike in a public utility service with the Minister. Furthermore, the right to declare a lock-out is also subject to the same conditions applicable to a strike in regard to the obligation to give a reasonable notice.

The Act prohibits strike or lock-out in regard to matters covered by an award or collective agreement taken cognisance of by the Court and also in respect of matters which a union is prohibited from raising as proposals such as promotion, transfer dismissal etc. The Act also prohibits strikes and lock-outs where the dispute had been referred to the Industrial Court and strikes over recognition pending settlement by the Minister. Under Section 40 sub-section (1) of the Act a strike in a public utility service is illegal if staged without serving a notice in the prescribed form within the prescribed time. Under Section 41 of the Act, a strike is illegal if it is staged in contravention of the provisions of Section 12 sub (iii) of the Act. One of the matters covered under this sub section is strike on account of dismissal of a workman in circumstances in which sub-section (1) of Section 16A of the Act applies. Under Section 42, a strike is illegal if it is also staged in contravention of a provision of any other written law. (See High Court Judgement by Justice Hamid in respect of Lian Yit Engineering works vs workers).

Under the provisions of the Trade Union Ordinance 1959, it is illegal for a body of workmen acting collectively to stage a strike unless they had first organised themselves into a trade union and registered it. Again, under the provisions of the Trade Union Ordinance 1959 the right of a union to organise a strike is subject to a majority decision — the ultimate decision — of the members affected.

(vi) *Picketting*

The Industrial Relations Act permits peaceful picketting.

The provision in the Act relating to picketting has been amended to bring out clearing the right of a worker to picket in his place of employment in furtherance of a trade dispute. The right of a worker to peaceful picketting includes the right to stop workers or vehicles — peacefully, of course — "merely" for the purpose of peaceful communications in accordance with Section 37 Sub 1 (a).

(vii) *Unfair Labour Practices*

Under the provisions of the Act as originally framed certain acts of unfair labour practices were prohibited for which no penalties were provided. This lacunae was removed by an amendment providing for a maximum penalty of imprisonment for a term not exceeding twelve months or to a fine not exceeding $2000/— or both such imprisonment and fine for acts of victimisation under certain circumstances. The provisions of Sections 46A (1), 47, 48 and 55 are relevant in this context.

Despite the protestations of the trade unionists the Employers may take comfort in the fact that, thus far, the penal provisions have remained dormant in the statute book.

In conclusion, whilst legislation essentially provides the frame-work for the regulation of relations, good labour-management relations cannot be achieved by mere legislation alone. What may be considered is whether industrial peace and stability can be guaranteed by a review or changes in the present legislation or whether there is a need for re-thinking and change of attitudes on the part of all those concerned in the field of industrial relations. In other words, the question posed is whether the fault, if any, lies in the machinery itself or those who operate the machinery. That, to my mind, seems to be the crux of the problem.

Some Comments on the Industrial Relations Act 1967

by K. P. Gengadharan
Bar-at-Law

In the 15 minutes alloted to me I shall attempt to highlight some of the Sections of the Industrial Relations Act 1967 which, to my mind, needs to be amended.

Section 2 of the I.R.A. defines a "strike" as follows : -

> "Strike" means the cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal or a refusal under a common understanding of a number of persons who are or who have been so employed to continue to work or to accept employment and includes any act or ommission by a body of workmen employed in any industry acting in combination or under a common understanding, which is intended to or does result in any limitation or restriction or cessation of or dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment.

The words "...an includes any act or ommission ... their employment" linked to the definition is included to cover situations of "*go slow*". The definition as it stands is so wide that innocent acts such as collective refusal to work overtime and even collective taking of morning/afternoon tea breaks can be interpreted as "strike" and further the acts need not *infact* result in any limitation or restriction because under the present definition "intended to" sufficies.

"Strike" infact should be acting in combination under a common understanding which is *intended to and does infact* result in a limitation or restriction or cessation of the whole or any part of the actual contractual duties and obligations under a contract of service.

Section 5 of the Act prohibits "closed shop" policies. However, it is felt in certain quarters that the Act should allow for such a policy if it is expressly agreed upon between the Employer and the Union.

Section 5 (2) (c) I.R.A. 1967 enables an Employer to require that any workman employed in confidential capacity in matters relating to staff relations shall cease to be or not become a member or officer of a trade union. This provision in the Act can be abused by an employer. I would recommend that such confidential capacity posts in all undertakings should be classified and designated. If an employer wants to promote an employee to such a post with the conditions of Section 5 (2) to be applied then it is only fair to require that such a promotion should be with the consent of the employee. Direct appointments to such posts must be permitted but there should be no employer's prerogative to transfer an employee to such a post if the employee does not consent. It is felt that if Section 5 (2) is not amended the existing provision can be used by an employer to transfer an employee to such a post and thereby remove an active unionist from the union.

Sections 4, 5 and 6 Part II of the Act deals with the rights of workmen and employers and their trade unions. Section 7 (1) reads "Any complaint of any contravention of the provisions of Section 4. 5 and 6 may be lodged in writing to the Minister setting out all the facts and circumstances constituting the complaint". Subsections 2 and 3 of Section 7 goes on to provide the powers of the Minister and Court respectively upon receipt of complaint. But in this regard it is also important to look at Section 55 (1) of the Act because Section 55 (1) provides that such contraventions of Sections 4. 5 and 6 are not offences under the Act and therefore no prosecutions may be brought even if there is or are blatant contraventions. Further Section 7 does not make it mandatory upon the Minister to refer such contraventions to the Industrial Court if he himself is unable to settle the dispute. The Act should be amended making it obligatory upon the Minister to refer a dispute to the Court if he is unable to settle it.

Reference of trade dispute to the Industrial Court is dealt with by Section 23. However, the Minister can still refuse to refer a dispute to the Court even if there is a joint request by the employer and the union for reference to the Court. It must be made mandatory upon the Minister to refer a dispute to the Court if there is a joint request.

Section 43 provides the penalty for illegal strikes and lock-outs. It reads as follows : -

Section 43 (1)

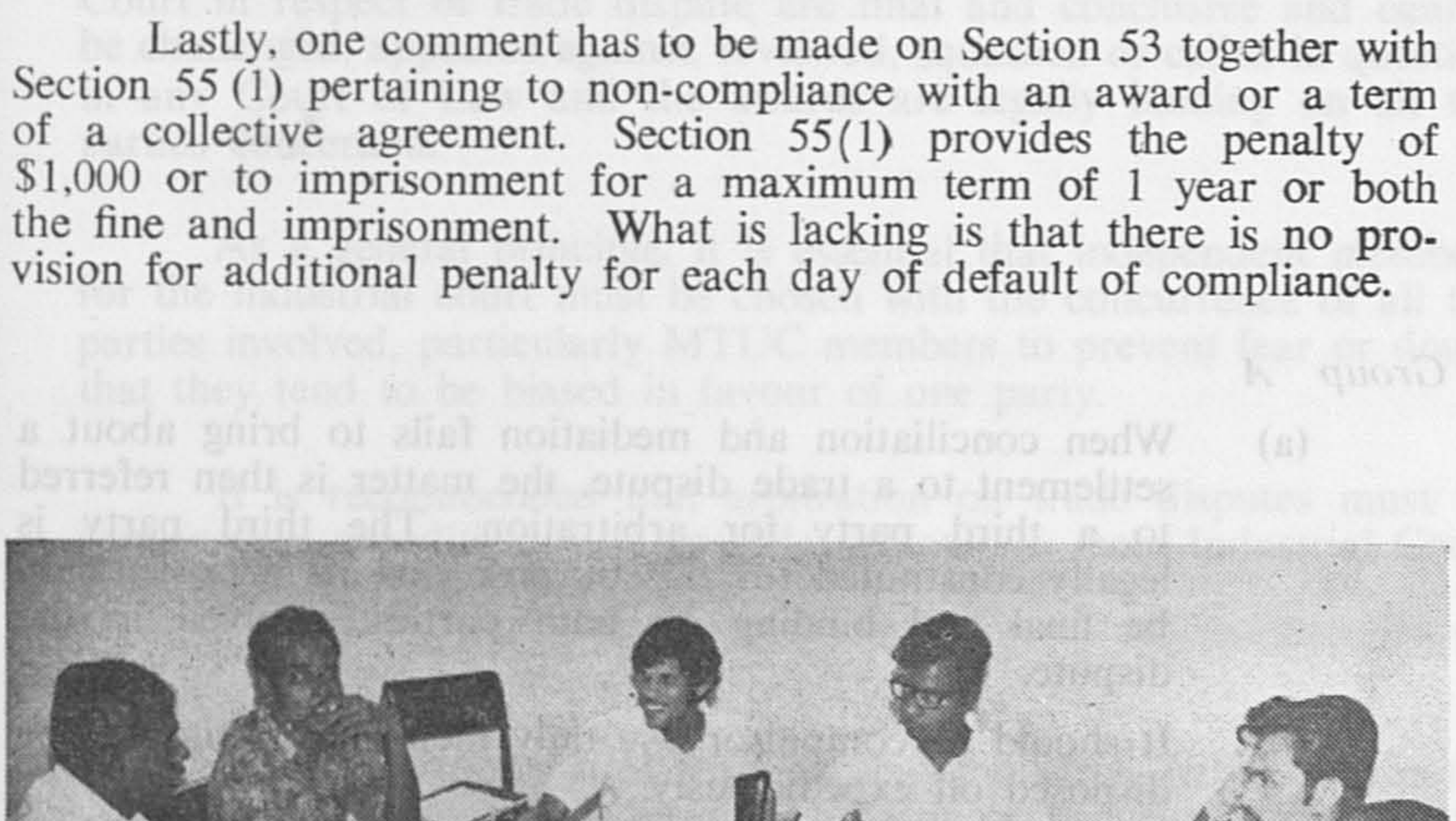
> Any workmen who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine, and a further fine of fifty dollars for every day during which such offence may continue.

Section 43 (2)

> Any employer who commences, continues or otherwise acts in furtherance of a lock-out which is illegal under this Act shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine, and a further fine of fifty dollars for every day during which such offence may continue.

A glance at the above will reveal that the maximum fine which can be imposed upon a workman for participating in an illegal strike is $1,000 which sum is also the maximum fine which can be imposed upon an employer who illegally locks out his workmen. The law, on the face of it, apparently attempts to give equal treatment to both parties, but on closer examination reveals unequal treatment. An example will illustrate this point. If there is an illegal strike by 100 workmen it render each workman liable to a maximum fine of $1,000 making a total maximum of $100,000 whereas an employer who illegally locks out 100 employees would only be liable to a single maximum fine of $1,000.

Lastly, one comment has to be made on Section 53 together with Section 55 (1) pertaining to non-compliance with an award or a term of a collective agreement. Section 55(1) provides the penalty of $1,000 or to imprisonment for a maximum term of 1 year or both the fine and imprisonment. What is lacking is that there is no provision for additional penalty for each day of default of compliance.



A group discussion in session

Industrial Arbitration

by Seminar Participants

Group A

(a) When conciliation and mediation fails to bring about a settlement to a trade dispute, the matter is then referred to a third party for arbitration. The third party is legally constituted for this purpose and its decision shall be final and binding on both parties involved in the dispute.

(b) It should be compulsory — only then the dispute can be disposed off expediciously.

(c) It is a suitable and commendable form of resolving trade disputes.

(d) (i) The dispute should be referred for arbitration as expediciously as posible, in any case not later than one month.

(ii) The Panel of Arbitrators should be well balanced, and so constituted as not to cause fear or suspicion in its ability to be objective, impartial and just.

(iii) The decision handed out should have immediate effect.

(iv) Any non-compliance in effecting the decision, should be referred back to the Panel of Arbitrators for enforcement.

(v) Fine for non-compliance should be exorbitant enough as to discourage defiance and act as

Trade Union Suggestions for an Amendment in the Industrial Relations Act

by Seminar Participants

The Industrial Relations Act 1967 is not a perfect piece of legislation, but nevertheless, it is a good one. Like all good legislations, it has its shortcomings: -

(i) Recognition of registered trade unions by employers should be both automatic and mandatory. If the laws of the country allow and permit the registration of a trade union, it would be a mockery of the highest order to require recognition by the employer. (Section 8).

(ii) In the question of dismissal, representation in writing should be made to the respective State Director of Industrial Relations, and not to the Minister. This method will save time and minimise red tape and delay. (Section 16A).

(iii) If a trade dispute is not otherwise resolved, the dispute should be referred to the Court on the request of either party, and such reference need not require a joint request, as is the case now. Redress and justice should not be denied solely on the ground that only one party seeks it, nor should it be made possible and available on the whimps and fancy of a Minister. (Section 23).

Group B

Group B feels that the Industrial Relations Act 1967 in some cases is prejudicial to the interests of the workers and needs changes.

THE EMPLOYMENT ORDINANCE 1955

Meaning and Importance of the Employment Ordinance, 1955

by E. Sreedharan
Labour Officer
Ministry of Labour
and Manpower

The Employment Ordinance, No. 38 of 1955, which came into force on 1st July, 1957 is one of the principle legislations enforced by the Labour Department.

The first part of the Ordinance deals with definitions of various words and phrases used in the Ordinance of which the important ones are service, day, employer, labourer and wages.

A contract of service is an agreement which may be oral or in writing, express or implied whereby a person agrees to employ another as a labourer and the other agrees to serve his employer as a labourer. The main ingredients of a contract of service are the right of hire and fire, control, supervision, instruct on what to do including the fixing of wage rates, wage periods and payments. If no contract of service exists between two parties, then none of the provisions of this Ordinance will apply. It is a thin line that seperates a contract of service from a contract for services. The only requirements of service which must be in writing is when it involves work of a specified type or time which would exceed one month.

A day is a period of twenty four hours commencing at midnight. Employer is a person who employs any other person as a labourer under a contract of service and includes his agent or manager.

Briefly the definition of labourer includes all persons skilled or unskilled employed by way of manual labour under a contract of service whatever their wages. It also includes overseers or supervisors employed to oversee other labourers employed by the same employer.

Persons not employed by way of manual labour and whose wages do not exceed $500/- p.m. excluding payment for overtime, subsistence allowance and commission, also fall within this definition. Persons employed in a Managerial capacity *do not* fall within this definition.

Wages means all remuneration payable to a worker under this contract of service but does not include value of benefits provided, travelling allowances, payments to defray special expenses or gratuity.

Under Section 8 of the Ordinance no contract of service shall restrict the right of a labourer to join a registered trade union or to participate in its activities or to associate with others to form a trade union.

Notice period for termination of a contract of service is laid down in Section 12 of the Ordinance. The notice period for termination shall be as agreed under the contract of service and shall be the same for both parties. Where no notice period is laid down, then it would be one week for persons employed for less than two years, two weeks for persons employed for more than 2 years but less than 5 years and 4 weeks for persons employed for 5 years or more. Contracts of service can also be terminated instantly by one party paying the other an indemnity equivalent to the period of notice.

Under Section 14 of the Ordinance an employer can hold an inquiry to inquire into the misconduct of a "labourer". For purposes of holding the inquiry the "labourer" can be suspended for a period exceeding one week and be paid half of his basic wages. If no misconduct is revealed his full wages shall be paid. But if misconduct is revealed, then the employer can either dismiss the worker without notice, downgrade him or suspend him without wages for one week.

Under Section 16 of the Ordinance a "labourer" employed in an agricultural undertaking on daily rates of pay should be provided with not less than 24 days work in a month. If it is not possible to do so, he should be paid 24 days' wages.

Wages are payable, under Section 19, within 7 days from the last day of any wage period. A labourer can be paid advances upto a maximum of the wages earned by him in the previous month. Larger advances are payable for the purchase of a house, land or livestock.

Deductions from a "labourer" wages shall be in respect of payments to a trade Union or thrift and loan society with the written consent of the "labourer", any over payments in the preceeding 3 months, deductions for indemnity due to an employer, deductions authorised by any written law and deductions made with the prior permission of the Commissioner. Total deductions shall however not exceed 50% of the wages earned by the labourer during that month.

Under Section 33 of the Ordinance where a Principal for the purposes of his trade or business, contracts out the whole or any part of a piece of work to a contractor, he is jointly liable together with the contractor or any sub-contractor engaged by the contractor for any

wages due to a "labourer". The principal, contractor, or sub-contractor not including the employer however will not be liable to pay more than one month's wages and the "labourer" should have instituted proceedings within 30 days from the day on which the wages became due.

Section 34 prohibits female workers employed in industrial and agricultural undertakings from working between the hours of 10.00 p.m. and 5.00 a.m.

Maternity protection is provided under Section 37 of the Ordinance. A female "labourer" should have been employed for a period of at least 90 days before the nine months preceeding confinement and for at least one day in the 4 months preceeding confinement before she is qualified for maternity allowance. If she qualifies she will be entitled to one month's pre-confinement leave and one month's post-confinement leave at a minimum payment of $3/- per day.

Part 12 of the Ordinance applies only to labourers earning $500/- or less. The provision under this part include rest days, hours of work, overtime hours and rates, holidays, annual leave and sick leave.

A worker employed in any employment not affected by any other written law relating to a weekly holiday, is entitled to a rest day of one day per week. The employer is also required to maintain a roster indicating the rest days of his worker. If a labourer works on a rest day at his own request he is to be paid the ordinary rate of pay for one day's work. If he is required to work on his rest day by his employer, he is entitled to his ordinary rate of pay for that day and an extra day's wages.

A labourer shall not be required to work for more than 8 hours per day or for more than 48 hours per week. If a labourer works for more than 8 hours per day or 48 hours per week than he is entitled to overtime pay at one and a half times the hourly rate. However the total overtime hours in any month shall not exceed 32 hours unless such employer has been granted exemption by the Minister.

Every labourer is entitled to 5 annual holidays with pay each calendar year of which 3 must be State or national holidays. However a labourer who absents himself without his employer's consent or reasonable excuse on the day preceeding or succeeding the holiday, he will not be entitled to that holiday.

A labourer becomes eligible for annual leave on completion of one year's continous service. The leave entitlement is 7 days with full pay if he has been employed by that employer for less than 5 years and 14 days with full pay if he has been employed for a period of 5 years or more. A labourer will forfeit his right to annual leave if he absents himself without permission or reasonable excuse for more than 10% of the total days in the year of his leave entitlement.

A labourer who has completed 12 months continuous service and after being duly examined by a medical officer appointed by his employer or if no such officer is appointed, then by any medical officer, is entitled to 14 days paid sick leave in a year if no hospital-

isation is necessary and sixty days paid sick leave in a year if hospitalisation is necessary. The sixty days sick leave for hospitalisation is deemed to include the 14 days sick leave without hospitalisation. If a worker falls sick on a rest day or on a holiday, he is not entitled to paid sick leave.

Under Section 60G a labourer who has been in continuous service for less than 3 years is not entitled to any retrenchment benefit. Under Section 60H, a labourer who has been in service for a continuous period of less than 5 years is not entitled to any retirement benefit.

Part 15 of the Ordinance deals with complaints and inquiries. The Commissioner can inquire and decide on any complaints between a workman and his employer or any person liable for any wages or other payments due to the labourer under his contract of service. Under this part the person complaining will have to make a written complaint and the complainant will be examined on oath. The Commissioner has the power to issue summons on the person complained against and also to examine on oath the persons summoned or present whose evidence is found material to the matters in issue. An appeal on the decision of the Commissioner lies with the High Court.

The final part of the Ordinance deals with penalties for various offences committed under the Ordinance.

Unsatisfactory Features of The Employment Ordinance, 1955

by John R. Gurusamy
Bar-at-Law

The Employment Ordinance 1955 has to a large extent replaced "The Labour Code" of the FMS and the Labour Ordinance of the Straits Settlements. The Labour Code 1935 dealt with housing of immigrants, (namely, Chinese, Indian and Indonesian) which was provided by the owners of estates and mines. The Health Provisions under the Labour Code S. 183 to 188 are still applicable and the employer is liable for the cost of the first 30 days in hospital of a labourer and any of his dependants at $1.50 per day and the provision of transport of a labourer to hospital, though he is not responsible for fees payable to doctors privately consulted without his consent.

The Employment Ordinance, 1955 applies to 'labourers' with no wage limit (except for Part XII where the limit is $500/-) and 'persons' excluding the Managerial group, earning not over $500/- per month as in P. U. 342/1967. Part XII deals with Rest Days, Hours of work, Holidays, Annual Leave, Sick Leave, Payment of Retrenchment and Retirement Benefits etc. and came into force on 10th October, 1969. This Part does not apply to Domestic servants and non-certificated seamen.

Thus for the first time workers especially in the unorganised areas were given statutory minimum benefits such as 7 days paid annual leave for less than 5 years service; 14 days paid annual leave for more than 5 years service; 14 days paid annual sick leave if no hospitalisation is necessary or 60 days if hospitalisation is necessary; and 5 paid gazetted public holidays.

Since Mr. Sreedharan has ably summarised the provisions of the Employment Ordinance, I shall merely highlight certain sections

which participants may wish to discuss with a view to making recommendations for amendment in the light of progress and justice to the worker.

For instance, S. 17 which is reproduced below is too archaic to remain in the statute book.

> 'Where a contract of service between an employer and a labourer terminates, any contract of service between the employer and the husband or wife of the labourer shall also terminate unless the husband or wife within forty-eight hours of the termination of the labourer's contract of service notifies the employer that he or she desires that such contract of service shall continue in force.'

In practice, many an innocent wife cum diligent worker has had her contract of service terminated for the fault of her husband. However, it is generally felt that this section should be deleted for it is not right to tie the employees' contract of service to that of his or her spouse where both are employed by the same employer. Another section which has caused problems to workers is S. 23 which reads as follows:

> "Wages shall not become payable to or recoverable by any labourer from his employer for or on account of the term of any sentence of imprisonment undergone by him or for any period spent by him in custody or for or on account of any period spent by him in going to or returning from prison or other place of custody or for or on account of any period spent by him in going to, attending before or returning from a Court otherwise than as a witness on his employer's behalf."

In practice, certain employers who otherwise are willing to pay their employees for the period spent in custody or in attendance in court quote the above section which denies them the use of their discretion even in deserving cases. At a time where the police make increasing use of their powers of detention under S. 117 of the C. P. C., the Internal Security Act or the Industrial Relations Act, 1967, I feel this section should be amended as follows- "Wages shall not become payable to or recoverable by any employee from his employer for or on account of any sentence of imprisonment undergone by him unless he is successful on appeal, if any."

Section 16 provides that in any agricultural undertaking in an estate, daily rated workers shall be provided with a minimum of 24 days work in each month or wages in lieu thereof. The definition of 'agricultural undertaking' is given in S. 2. It means any work in which any labourer is employed under a contract of service for the purposes of agriculture, horticulture or silverculture, the tending of domestic animals and poultry or the collection of the produce of any plants or trees. There is certainly a case for amending this definition to cover workers in the Timber industry with a view to giving them a minimum of 24 days work or wages in lieu especially as the industry is the second largest export earner in Malaysia.

Contract labourers have been at a disadvantage for far too long. Perhaps they should be deemed to be labourers for the purpose of this Ordinance and consideration should be given to amending S. 33(1) accordingly.

Part XI applies to Domestic Servants and contains merely one section namely S. 57 providing for termination of contract by the domestic servant or her employer by giving 14 days notice or wages in lieu.

S. 2 defines "domestic servant" as a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use.

In view of the wide scope of the definition of 'domestic servant' and in keeping with social progress and Govt's own aim of looking after the interests of the have-nots, it is high time that the First Schedule is amended so that domestic servants benefit from the minimum statutory provisions of the Ordinance which are denied them at present.

Section 60 (3) states that "any labourer who *at the request of his employer* works on a rest day shall be paid an extra day's wage at the ordinary rate of pay for one day's work in addition to the ordinary rate of pay for that day." This means that even if a worker is required to work, for example, for one hour by his employer on his rest day, he should be paid double or 2 days wages, in the case of hourly or daily rated workers. To deny workers the benefit of this section, some employers have resorted to persuade their employees to sign forms stating that they are in fact requesting work on their rest day so that they do not have to pay an additional day's wages.

(In the case of monthly rated employees those working on their rest day at the request of the employer are entitled to be paid for an additional day's work in accordance with the formula given in the second proviso to Section 60I of the Ordinance).

To overcome this problem this section could be amended by the deletion of the words 'at the request of his employer'.

What is not clear is whether a worker can claim treble time for work on his rest day at the request of the employer in excess of 8 hours since the proviso to S. 60A (3) (b) clearly states that 'work performed on any rest day or any of the five gazetted public holidays under subsection (1) of section 60D shall not be construed as overtime work'.

However, a suitable amendment could be made to ensure that any worker shall be paid at the rate of not less than one and a half times his hourly rate of pay (irrespective of the basis on which his rate of pay is fixed) for each hour of work in excess of eight hours carried out on a rest day or public holiday.

Section 60D (i) entitles all labourers for 5 gazetted public holidays with pay. But as this provision came into being in 1969 before the Govt. declared the 1st of May as a public holiday, it is reasonable to amend this section from 5 to 6 gazetted public holidays.

Section 60F (1) provides paid sick leave of 14 days if no hospitalisation is necessary or 60 days if hospitalisation is necessary to any labourer who has served an employer for a period of not less than twelve months. In keeping with the times, consideration should be given to deleting the qualifying period of 12 months, and further the

law should be amended to oblige the employer to meet the cost of medicines or hospitalisation charges arising out of a labourer's illness especially as many workers are already covered under the existing Labour Code (FMS Cap. 154) Health Provisions. Serious consideration should also be given to oblige the employer to display a summary of the labour laws at the work place as was the practice under the Labour Code so that both employers and employees are fully aware of their rights and obligations.

The present restrictions on the payment of retrenchment and retirement benefits as contained in Sections 60G and 60H respectively should be removed. Many employers will be relieved if S. 60J (2) is amended as non-compliance of S. 60G and H will appear to be an offence at the present time.

A new section on equal remuneration for work of equal value irrespective of sex should be embodied in the Ordinance as a number of industries have already implemented this. As 1975 is International Women's Year, some thought to implementing equal pay in the private sector more fully over a period of years will be a step in the right direction.



A group discussion in session

The Enforcement of the Employment Ordinance

by Semniar participants

GROUP A

The enforcement of the Employment Ordinance in Malaysia is not very satisfactory.

In order to make enforcement effective, we recommend the following : -

(a) more labour officers should be recruited to enable frequent visits and conduct investigations.

(b) more publicity should be given to the postal addresses of labour officers. This would help the workers to write and submit their grievances or lodge their complaints in person.

(c) booklets should be published and distributed to workers to notify them of their rights and educate them with regard to their obligations and responsibilities.

(d) whenever labour officials visit an industry or factory, notification of such visits should also be extended to the Union. This will give equal opportunity to the Union to be prepared with the necessary facts and figures.

(e) at the end of such visits, labour officials should also hold a joint session with the employer and union officials. This practice will promote healthier industrial relations, besides providing useful clarificatons.

(f) in an industry where the workers are not organised‘ workers representatives should be either elected or appointed and given opportunity to meet the labour officials. After the

meeting, these representatives will carry back information to their fellow-workers.

(g) separate courts should be set up in every state to prosecute employers guilty of an infringement which will effectively overcome the long delays in prosecution and will definitely relieve the civil courts of the congestion they are facing.

GROUP B

Group B feels that the enforcement of Employment Ordinance is not satisfactory.

(a) For the enforcement to be carried out satisfactorily and effectively, the provision of the Employment Ordinance relating to the rights and benefits of the workmen should be communicated with workmen in a booklet, in simple language and it should be in all languages.

(b) Regular visits must be made by the Enforcement officers. This visits should be at least 6 months once.

(c) Due notice must be given to the workmen by the Enforcement Officer of his visit to that particular place of employment.

(d) During such visits the Enforcement Officer should make separate discussion with the employer and the workers representative, where a Trade Union is not available.

(e) The E.O. could be enforced much more effectively if the Enforcement Officers of every districts are changed or transferred every 2 or 3 years.

Improvement on the Employment Ordinance

by Seminar participants

GROUP A

Section 12

This regulation is far from alright, in fact, it is too harsh, and does not take into consideration the human problem and suffering of the worker is being subjected to.

We recommend that in-respective of the length of service of a worker, the length of notice of termination should be one month, both for the employer and worker. However, in lieu of such notice, one month's salary shall be acceptable. The arrangement will give the worker sufficient time and opportunity to seek an alternative employment.

Section 14

This regulation enbodied in the Ordinance is neither just nor fair. We are of the opinion that he should be first given a letter asking him to show cause why his service should not be terminated, listing all the allegations against him, and be given an opportunity to defend himself within two weeks. A committee, comprising the employer, worker's representative and an independent member (who is mutually acceptable to both parties in the dispute), should meet to consider the workman's reply with the workman and his representative present.

The result of the inquiry and investigation can take one of the following forms : -

(a) down-grading the worker
(b) suspension without pay for one week
(c) dismissal with due notice.

We feel that it does not provide to safeguard for the workmen, as he is not represented by his representative.

We feel that a notice of termination of contract must be given in writing under all circumstances, with reasons for termination of contract.

Section 60 E

Group B feels that the paid leave provided for in Section 60E is inadequate and we feel that it should be as follows :

0 years to 5 years	—	10 days.
5 years to 10 years	—	15 days.
10 years and above	—	20 days.

and further more any workmen who has served less than a year should be entitled for earned leave.

Section 60 F

Group B feels that sick leave is also inadequate and we feel that one month sick leave should be given to all workmen for non-hospitalisation even if he has served the employer less than one year.

Group B feels that 3 months sick leave per year should be given to all workmen for hospitalisation even if he has served the employer less than one year.

Medical leave from Registered Medical practioners should be recognised.



Token of appreciation to MTUC from the participants.

GRIEVANCE HANDLING

by A. M. Dali Ravindran
Asst. Secretary
(Organisation) MTUC

DEFINITION OF GRIEVANCE

A grievance is normally defined as a complaint by the employee concerned which he brings to the attention of his immediate superior and which is subsequently not settled to the satisfaction of the employee. Complaints affecting one or more individual workers in respect of their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharges, would constitute grievances.

IMPORTANCE OF EFFECTIVE GRIEVANCE ADJUSTMENT

It is generally recognised that adequate grievance procedure are essential for the promotion and maintenance of good Labour-Management relations and a high degree of efficiency in the undertaking.

The lack of opportunity for workers to air their grievances and of a reasonable assurance that these grievances will at least be given serious consideraton (even if not settled to the worker's satisfaction) can only promote unrest, dissatisfaction and frustration. This in fact may create a poor level of morale among the work force, which ultimately will inevitably create an atmosphere hardly conducive to workers giving their best effort.

The grievance procedure also serves as a safety measure. In the absence of a grievance procedure, a worker concerned may not be able to air out his grievances adequately and this would subsequently boil up and are capable of leading to an unpleasant situation which would jeopardise the orderly and proper functioning of the undertaking. On the other hand through an adequate grievance procedure, of putting forward grievances and discussing them immediately covers the heat. Even if the grievances are not ultimately accepted, workers at least have the satisfaction that they have let management know what they think on a given problem which serves to relieve the pressures.

The existence of a grievance procedure also permit the study and evaluation of grievances by the management for the purpose of locating trouble spots in the undertaking.

The importance of effective grievance procedure must be seen from the angle of fair play or to use another term industrial democracy.

Effective grievance procedures, particularly those in which the trade unions play an important role, by contributing to a climate of mutual confidence and a better relationship between the parties can also make for a setting in which collective bargaining has a better chance of functioning well. The examination of a grievance may disclose a wider problem that had not been envisaged during a collective bargaining and hence nothing relative thereto had been included in the collective agreement. Thus the consideration of such grievance can very well pave the way for negotiation of general issue in subsequent collective bargaining.

Undertaking level procedures usually ensure that attention will be speedily given to the grievance whereas submission of grievances to outside bodies is often accompanied by delays due to attendant formalities and administrative detail plus the fact that outside bodies may not meet frequently and may have heavy work load. Furthermore, where grievances are handled within the undertaking they are being handled by people familar with the situation and problems involved. Not only are they probably most capable of finding acceptable solutions but they are also most interested in arriving at a realistic settlement for it is one which they must live in the future.

Therefore arrangements for speedy hearing and settlement of individual complaints of the workers are essential for the promotion and maintenance of good employee/employer relations. The effectiveness of these arrangements will depend in particular on the active co-operation of the Management and the workers' representatives in confirmity with law or practice or under a collective agreement.

be done if decisions are not based upon a full understanding of labour contracts and labour history.

INTERPRETATION OF THE CONTRACT

The jurisdiction of the grievance agency must first be determined in the event that jurisdiction is not clear. The claim may be made by either side that the subject matter is not within the scope of the grievance procedure. Whether it is not cannot be determined by one of the parties arbitrarily. It must be determined impartially. In Malaysia under Section 12 (3) of the Industrial Relations Act, employers have been given certain prerogatives with regard to terms and conditions of service which no employee can question unless there is strong evidence to prove that the action by the employer under the section was a clear-cut case of victimisation.

The prerogatives as provided under this Section 12 (3) are with regard to questions such as:

(a) promotion of an employee

(b) transfer of an employee provided such transfer does not entail a change to the detriment of a workman in regard to his terms of employment.

(c) appointment of a new employee to fill a vacancy.

(d) termination of an employee's services, on grounds of redundancy, reorganisation of the employers business or profession and the criteria for such termination.

(e) the dismissal and subsequent reinstatement of an employee by the order of the Minister under subsection (1) of Section 6 (A) of the Industrial Relations (Amendment) Act of 1971.

(f) the allocation of duties and tasks to an employee which are consistent and as implied by the terms of his contract of employment.

Inspite of these restrictions on collective bargaining, the law also provides for employees or their trade unions to discuss with the employers questions of a 'general character' on issues such as procedures of promotion provided such questions do not form part of the Collective Agreement.

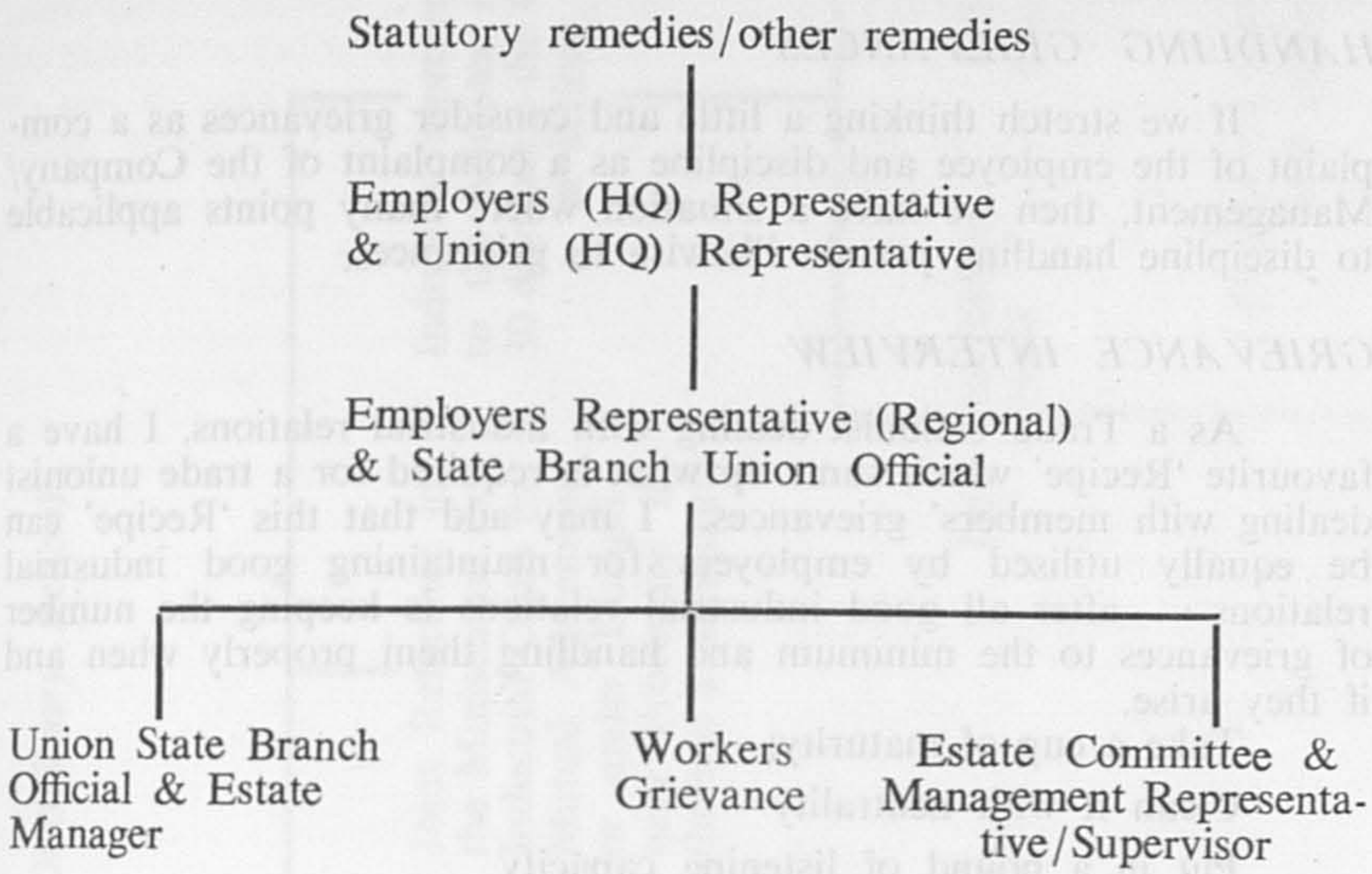
This being so, disputes arising on or from any of the above issues will not be within the scope of the agreement. In short the procedure itself is subject to grievance procedures and to arbitration.

CAUSES OF GRIEVANCES

Physical Causes

These type of grievances are very common in the private sector. Employees complain about their work places, their machines and tools, ventilation and lighting, sanitation and other similar physical reasons. Many of these factors affect directly their comfort and health and quite often their output and earnings.

Grievance Procedure in the Plantation Sector



can be settled at any of the stages or finally culminate in Industrial action or adjustment under the relevant labour laws. The point is the grievance should as far as possible be settled at lower levels rather than being allowed to 'snowball' to higher levels. Sometimes minor grievances can get out of proportion when they are passed on to higher stages of the grievance prodecure. This is because it is very often at the higher stages that the parties are (i) not aware of local situations and circumstances where the grievance occurred (ii) the parties talk about 'company policy' and 'Union policy' and other 'principles'.

PREVENTION OF GRIEVANCES

The best way to handle grievances is to prevent them. The way to prevent grievances is to prevent the causes out of which grievances arise.

ANALYSIS OF CAUSES

It is the duty of union officials as well as the employers to make an analysis of sources of grievances. What do workers complain about? The best way to answer the question is to tabulate the causes of grievances showing the sources of complaints. This tabulation will provide materials for a chart to guide union officials and management in establishing a preventative programme.

DELEGATION OF AUTHORITY

One of the most effective means for the prevention of grievances is the granting of adequate power to the lowest level of supervisory staff to adjust all grievances, which can be handled by them. This calls for the establishment of a clear-cut grievance procedure.

Minor grievances which can be handled by the immediate superior are aggravated when they are unnecessarily passed on to

higher company officials in the case of the private sector and Heads of Departments in the case of the public sector.

HANDLING GRIEVANCES

If we stretch thinking a little and consider grievances as a complaint of the employee and discipline as a complaint of the Company/ Management, then we have a situation where many points applicable to discipline handling pertain likewise to grievances.

GRIEVANCE INTERVIEW

As a Trade Unionist dealing with industrial relations, I have a favourite 'Recipe' which sums up what is required for a trade unionist dealing with members' grievances. I may add that this 'Recipe' can be equally utilised by employers for maintaining good industrial relations — after all good industrial relations is keeping the number of grievances to the minimum and handling them properly when and if they arise.

Take a cup of maturity;
Clean it with neutrality
Put in a pound of listening capacity
Add a large dose of professional objectivity
Mix it with a pinch of personal sympathy.

And your 'cake' will be:

Tough but Tender
Harsh but Human
Firm but Fair

Then serve the 'cake' immediately.

The above recipe will show that among other points, the grievance interview (both for Union officials and management) involves the following:— giving the complainant ample time keeping temper (yours and his) under control asking analytical questions to make certain that facts are straight and that the grievance is in fact what the complainant thinks it is abstaining from argument taking note of facts; keeping the discussion impersonal and objective but at the same time maintaining a sympathetic point of view. It is also advisable sometimes to discuss certain points (during the first grievance chat) with the complainant so that alternative views may be brought out. This is to prevent the worker from thinking mistakenly that as a result of his recital, he will be guaranteed what he requests.

TO ANSWER A GRIEVANCE

A half-promise is as bad as a definite promise. Good Industrial Relation officers avoid any inference of a promise unless they are absolutely certain they can deliver. Even when it is almost certain that the worker's request cannot be granted there is still sometimes merit in holding up the answer so as to give it some consideration rather than to say 'No' on the spot. Careful preparation and care in answer help to adjust the case since the weight of evidence makes it

DISCIPLINARY DISPUTES SETTLEMENT METHODS

(When a Workman feels aggrieved with the Disciplinary Action)

- Appeal to Top Management
- Invoke the Grievance Procedure
- Joint Discussion Between Management and Union
- Joint Reference to the Minister or the Industrial Court by Mutual Agreement or under Disciplinary Procedure if there is a provision
- Individual representation to the Minister (within 30 days after the Course of action)
  - Deal with Matter himself
  - Refer to Industrial Court
    - Decision is binding to both parties.

Note :

It is not incumbent on the Aggrieved party to exhaust all these channels one after another. He can approach the Minister of Labour and Manpower without going through other Procedures under Section 16A of the Industrial Relations Act.

Again, when a grievance is adjusted to the satisfaction of a complainant it is possible to explain what has been involved such as: efforts made to secure the move; proof of concern for the welfare of the worker (both by the Union and the company), etc.

Still another way of taking a positive advantage of grievances is when employees are partially responsible for the complaint about conditions. For example if work load is too hard, it may be because the employees are not following the correct method. The projection of this point will bring advantages both to the workers concerned and the Company. In other words counter — 'complaints' may be registered to offset the grievance or to obtain needed reforms at the same time that a grievance is adjusted.

Finally, on the other hand taking positive advantage of grievance can mean improving management practices and procedures, though this may appear harsh sometimes. For example an unjustified retrenchment can serve as a lever to have discipline cases checked. A threatened strike due to hard work can result in a better machinery maintenance programme. A protest over a transfer or promotion can end in developing more uniform policies and standards of procedure.

CONCLUSION

As stated earlier, the best remedy for grievances is prevention. The human tendency is such that once a grievance is allowed to cultivate, it is very likely that the particular grievance will snowball and reach a very difficult and complicated stage. Usually at this late stage, the name and image of the union and the management is under scrutiny by the employees and where there has been press publicity (as is very often the case) and the public. In such a situation it is difficult to come to a compromise for fear of "loss of face" by either party.

At this stage the initial minor grievance can be the cause for industrial strife costing many wasted manhours for the employers and hardship and loss of earnings for the union members. It is an established fact that many things can be obtained by reasonable discussions across the table rather than challenges and threats.

It is important to bear in mind that for us in the trade union movement, our most deadly weapon in the armoury is the 'strike'. It is only proper and ethical for us to use it discriminately and in cases where there is no other recourse or remedy. Once this sense of responsibility is cultivated, nobody can accuse us of using our trump card without rhyme or reason. This is responsible trade unionism.

The Importance of Grievance Handling

by S. Sivagnanam
Asst. Director of
Industrial Relations
Ministry of Labour
and Manpower

Prompt redress of individual grievances is essential for sustaining good labour management relation and promoting efficiency at plant-level. Absence of machinery for it leads to small grievances developing into collective disputes.

The types of grievances I have in mind are those arising out of complaints affecting one or more individual workers in respect of their conditions of work and not disputes over matters of general applicability to all. Any worker who has grounds for a grievance should have the right to submit this grievance and have it examined in an appropriate manner without any prejudice whatsoever resulting to him.

The best way to deal with a grievance is to dispose of it in the shortest possible time at the lowest possible level practicable. Establishments must have agreed procedures for dealing with grievances. A Model Grievance Procedure should have successive time bound steps, each leading to the next in case of lack of satisfaction.

Normally efforts to settle a grievance should begin by direct discussions between the worker affected and his immediate supervisor at the workplace. Since he is normally close to the situation giving rise to the grievance, the immediate supervisor will often be in a good position to find a satisfactory solution.

If a settlement is not effected at the level of the immediate supervisor, the grievance should be considered at one or more higher steps up to and including top-level management of the undertaking

concerned. It is important for the worker to know that his grievance is not being overlooked or brushed aside and that, if necessary, he can have his case brought before the highest authority in the undertaking.

An aggrieved worker has the right to be represented by a trade union representative such as a shop or any other type of workers' representative during the adjustment of his grievance.

Often such representation may help to ensure that all aspects of the worker's grievance are given every consideration by management. Further, while there is general consensus that the worker should have this right at all steps of the procedure, it is felt by some that the introduction of the representative at the initial step of the procedure tends to unduly magnify what might otherwise be a relatively minor problem by hardening attitudes and thereby lessening the possibility of a rapid settlement at this lowest level. On the other hand, it is contended that there are situations in which such initial step representation is warranted owing to the nature of the issue — such as the interpretation of a collective agreement — or to the inability of the worker, even at this level, to explain his case.

It is generally desirable that the management spokesmen at the various steps of the procedure be line people,

It is desirable that at each step of the grievance procedure an effort should be made to reach a settlement freely accepted by the worker and management. In order to give meaning to this idea it is absolutely necessary that the management representatives at each step, and particularly at the lower steps, have not only the competence to deal with grievances but the requisite authority to settle them. Even the best structured multi-step procedure is futile and, what is worse, a source of serious trouble for the undertaking if every grievance has to go to the very top for only then will the necessary authority be found for settlement.

A grievance procedure, to be effective and serve the purpose for which it was established, must be as expeditious as possible, first, in order that justice is done to the worker concerned and, secondly, in order to avoid accumulation of grievances. Hence there is value in fixing time limits.

As a matter of principle neither the worker concerned nor his representative should suffer any loss of wages because of their participation in the grievance procedure. If this were not the case, grievance procedure could hardly operate effectively.

The worker concerned should have the right to be present at all steps of the grievance procedure. The workers' presence contributes to clarifying the particular fact situation involved and also serves to assure him that his case being properly pursued by his representative and receiving a fair hearing by management.

Where grievances have not been settled within the undertaking they should be finally settled by one or more of the following procedures, direct negotiations between the employers' and workers' organisations concerned conciliation by Ministry of Labour or arbitration at least to

Grievances in Industries

by W. Fernando
Director, Malayan
Agricultural Producer's
Association

1. When most people think of industrial grievances, they think only of the grievances of employees. They appear to forget that employers too have grievances. They forget that there are two types of grievances, employees' grievances and employers grievances. Of the two types, employers grievances deserve more sympathy because they cannot be expressed as loudly or as vociferously as those of employees.

2. Speaking on behalf of employers generally, I should like to mention some of the grievances which employers have and I quote below a few examples:—

(i) There are, first of all, workers who are only employees but who are not workers. They do little or no work.

(ii) There are those who do the minimum possible, avoid onerous duties with the result that although their noses are not absolutely clean, there is little that an employer can do.

(iii) There are those who, because of the foregoing reasons, fail to receive promotion but shout blue-murder and claim that they are being victimised.

(iv) There are those who spend the greater part of their time doing Trade Union business and tend to forget what they are being paid for.

(v) Then, there are those who carry out instructions sullenly, almost to the point of rudeness.

(vi) There are those who show no sign of loyalty to their employer.

(vii) Finally, there are those who make use of their position to enrich themselves by means which are not quite in the book.

3. It is all very well to say that the employer holds the upper hand in that he can dismiss the worker who is inefficient. This is perfectly true but if such a person should be dismissed, his case is immediately espoused by the Trade Union. Such people are usually good Unionists since they are fully aware that they will need the full protection of the Union for them to continue working. The inevitable result it that a charge of victimisation will be brought against the employer.

4. It will, therefore, be appreciated the hopelessness of the lot of the employer and I have been hoping that one of the speakers before me will be able to show how employers' grievances can be satisfactorily aired and how they can be resolved.

Unfortunately, however, everybody has been speaking of workers' grievances and although, to my way of thinking, these are relatively small compared to employers' grievances, I shall follow the crowd and devote myself to workers' grievances.

5. I will be the first to admit that workers too have grievances and many of them are genuine. The number of grievances is in inverse proportion to how good the employer is.

6. Any grievance by a worker, imaginary or otherwise, should be brought to the attention of the employer and workers should be encouraged by Management to voice their complaints. Most workers, however, are reluctant to bring their grievances to the notice of Management, either through shyness or through fear that the grievance may not be a genuine one. It is unfortunate when this happens because the workers continues to be disgruntled and his state of mind will spread to other workers. Grievances tend to grow within the worker like a malignant growth and colours his future actions. To overcome this reluctance, workers could be encouraged to voice their complaints through a suggestion box or a grievance box or by allocating a particular Officer whose duty it is to hear such grievances. Such an Officer should be selected with care so that by personality and by aptitude he is suitable for that task.

7. An alternative method would be for grievances to be brought out at regular meeting of works committees or some similar set-up. At such meetings grievances of the workers could be discussed and settled without the workers' names being necessarily mentioned.

8. I used the word "settled" in the previous paragraph because some Unions seem to think the settling of a grievance means agreeing to the Union. Settling a grievance as settling a dispute can only mean arriving at an agreement or a solution which is mutually satisfactory. The successful resolution of grievance will, therefore, depend largely upon the personalities and personal qualities of the people representing workers and employers. At that discussion table, workers' representa-

tives must not feel that merely because they are workers' representatives that they must feel obliged all the time to support any claim put up by workers. Similarly, the person representing the employers should be prepared to withdraw their case if they find that their case is not a good one. Both parties should, therefore, come to the discussion table as two entirely disinterested parties determined to judge the issues and facts in as impartial and fair manner as possible. If workers feel that they are obliged to support the workers' claim no matter how bad it is, it will only result in employers taking a similar attitude and disputes cannot then be resolved by the parties concerned but will have to be referred to third parties.

Sample Grievance Procedure in Collective Agreement

(a) It is the desire of both parties to this Agreement that grievances arising between an employee and the Company, or between the Union and the Company be settled as equitably and as quickly as possible. In pursuance of this, it is agreed that grievances should be processed according to the following procedure with the aim of reaching agreement at the lowest possible level and of maintaining continuous good relations between both parties. Problems or complaints must be taken up by the employee with his immediate supervisor in the first instance.

(b) A grievance shall be defined as a complaint by the employee concerned which he brings to the attention of his immediate supervisor and which is subsequently not settled to the satisfaction of the employee.

(c) If he fails to obtain satisfaction from his immediate supervisor within three working days he may approach the next level of supervision within a further period of five working days.

(d) If an employee fails to obtain satisfaction after completing procedure in (c) he may refer his grievance verbally or in writing wherever possible either directly or through his Union representative to the Employment Officer within five working days. After referring to the Employment Officer and if no satisfaction is obtained within five working days the matter is to be discussed between the employee and the Company or between the Company and the Union, if the employee so desires.

(e) If no agreement is reached the matter may be referred by either party for conciliation in accordance with the Industrial Relations Act 35/67.

(f) At all stages of the procedure where a time limit is specified such time limit may be extended by agreement between the employee, or the Union if the employee has referred his grievance to the Union, and the Management.

(g) Any grievance which is not presented by an employee to his immediate supervisor within six working days of the date of occurrence of the alleged grounds for complaint shall be considered null and void.

Conducive Conditions for Grievance Handling

by Seminar participants

GROUP A

It is not generally true that grievances resolved without reference to a third party. In fact, at present the general grouse seems to be that there are not enough labour officers in the country to sort out the workers problems.

Of course, there are instances where employers and trade unions have brought about a satisfactory solution to grievance without enlisting the assistance of the third party. MAPA and NUPW is one of the few examples and they must be considered as exceptions !

When the stakes are high — heavy loss to be sustained by the Company, acute hardship for the workers — human beings tend to be sensible ! Enlisting the assistance of a third party can result in long delays and sufferings, and this fact of life encourages the parties in the disputes to be practical and pragmatic, and so the grievance is settled between them.

Sometimes when the unions are strong, numerically and financially, we witness instances where might prevails over right and the third party can be dispensed with !

But in most cases, unions are weak, ill-organised, without proper leadership and knowledge. In these instances the almighty employer is always right and assistance from the third party is always required.

For the good of everybody, it is better if an aggrieved person does not involve himself in handling other disputes.

GROUP C

Employers and trade unions have brought about satisfactory solutions to grievance without reference to a third party or resorting to industrial action. This is generally the case in this country for the following reasons.

(a) Generally the grievances are of a minor nature which could be settled amicably to maintain industrial good-will and relationship.

(b) There are provisions in the Employment Ordinance and Industrial Act for the help of third party or industrial action if an amicable settlement is not arrived at the first attempt between employer and employee.

(c) To instill in the minds of the workers their sense of trust and confidence for the employer, it will be appropriate for the employer to show sympathy towards the worker or grievances.

(d) There are voluntary withdrawals of grievances by workers when they realise during the course of discussion that there was not much to gain.

(e) The majority of the employers are against facing appeal against their decisions or meeting union officials.

(f) There are employers who exercise their sense of responsibility and authority with the required efficiency to settle disputes.

(g) Normally neither the employer nor the employee would like to damage the image of the industry.

(h) Fear on the part of the employers with regard to loss of revenue if industrial action is contemplated.

We have also come to a decision that an aggrieved party in a dispute should be allowed to handle other grievances or disputes. An aggrieved party is taken as union officials who have pending cases with the employer or face defeat over certain claims or grievances. The reason are:

1. Being an official of a trade union, he is duty bound to take up grievances from his members to the respective employer if they are referred to him.

2. Generally, union officials present their grievances of their members without fear or favour.

3. In small unions, there will not be an alternative other then the main official to take up grievances, and therefore it is mandatory for him to take up the dispute.

Investigation must be carried out and all relevant information be collected. Principal office bearers of the union should be briefed about the matter and be consulted, whenever necessary, before the case is taken up.

The outcome should be communicated to the worker, and reported to the committee.

(b) In dealing with the employer the officer should be calm in presenting his views and facts on the grievance. He should also be tactful, firm and objective and lastly he should also have decisive arguments and not allow himself to be provoked easily by even insults.

GROUP C

In dealing with the worker concerned, a trade union officer when handling a grievances should adhere to the following code of conduct.

1. He should be receptive to join the confidence of the workers.
2. He should be impartial when recording the grievance.
3. He should study the grievance carefully to assess the genuine points in the grievance.
4. He should not hesistate to advise the worker if the report cannot be substantiated with facts and evidence to avoid unnecessary wastage of time and labour.
5. The report must be recorded with clarity and legibility.

In dealing with the employer,

1. great care and caution should be given in the presentation of the grievance
2. he must exercise diplomacy and humility;
3. he should not hesitate to admit the mistake if it occurs during negotiation and express apology;
4. he should not get provoked if the behaviour of the employer is not cordial.

GROUP D

Our group felt that to effectively deal with members grievance, the trade union officer who is handling the case should follow the following code of conduct.

How to deal with a member's grievance?

1. Interview the member.
2. Know your union contract.
3. Get the facts.
4. And check the facts.
5. Access the evidence.
6. Propose action.

7. Keep the grievance well informed.
8. Keep record of the case.

Points to consider before seeing management

1. Decide what you want and why.
2. What would you do if you fail.
3. Leave yourself room to manoeuvre.

How to deal with the employer,

1. Be courteous and firm.
2. State your case clearly.
3. Let the management talk.
4. Defend your case with argument.
5. Decision.
6. Keep record of the proceedings, then
7. Follow up if not settled.

Code of Grievance Handling for Workers

by Seminar participants

GROUP A

An aggrieved worker should restrain from any arguement or provocation but leave the matter as it is and should seek the advice of the union at once in dealing with his superior employer. He should then ask the union to intervene only after no satisfactory result is achieved from his superior or employer.

GROUP B

A worker alleging that he has a grievance or complaint must immediately lodge it with his immediate superior concerned. If necessary the worker can solicit the assistance of his union representatives.

If within 3 working days the grievance has not been resolved to the satisfaction of both parties, the matter will be reported to the Head of the Section.

If the worker is dissatisfied with the decision of Head of Section, the matter may be taken up with the Department Manager concerned in conjunction with a member of the Union committee within 4 working days.

If no solution is reached within 8 working days of the meeting with the employer and union representatives the matter may be referred to the Department of Industrial Relations.

GROUP C

As a first step, the worker himself should make an attempt to bring his grievance to his immediate supervisor with a view to securing a

mutual settlement. If this fails, then he should seek the advise of his union and with this advise he should personally bring his grievance to the employer. He must be polite and must present the grievance with clarity. If he is not satisfied with the decision of the employer, he may bring it to his union representative for their intervention.

The processes mentioned above must be employed and result obtained as expeditiously as possible.

GROUP D

The following steps should be taken:

Step 1 — The worker who has a grievance in the first instance should take it up with his immediate superior and if no settlement is reached, then the workman concerned can refer the matter to the (Shop Steward) within 4 days.
(Immediate Superior)

Step 2 — The Shop Steward takes up the matter with the presonal department and if still no settlement is reached at this level, then he should refer the matter to the Union within one week.

Step 3 — The Union takes up the matter with the Top Authority of the undertakings and if still no settlement is reached within further 7 days then the matter is referred to the 3rd party for concilation.

Measures to Reduce the Number of Grievances

by Seminar participants

GROUP A

There are regular grievances occuring very often such as (a) late attendances (b) medical treatment, (c) sick leave, (d) efficiency, (e) frequent changes in allocation of duties giving rise to insecurity and disatisfaction, and in the case of plantation workers, i.e. (a) shortage of water supply (b) poor sanitation (c) damages on homestead.

Changes in general employment or working conditions could reduce the number of grievances. Our suggestions are:

(a) Providing transport.

(b) Permission be granted to worker to consult government Medical Officer if he is not satisfied with the treatment given by the approved Company's Medical Practitioner as in the case of estate workers whereby only the Hospital Assistants are in authority.

(c) Regular visitation by enforcement officers to ensure that proper requirements are attended to more especially with the plantation workers and the unorganised industrial workers.

(d) Less frequent allocation of duties especially from one department to another.

Lastly the Group feels that—

Relationships are usually better where supervisors are union members since they than understand and share trade union aspirations. A good industrial relations policy would provide for agreed procedures to handle grievances and disciplinary matters. A wise Management should realise that grievances left unsolved and hidden through fear will become sources of conflict.

GROUP B

There are regular grievances which occur very often. Those grievances are promotion, transfers, working conditions, dismissal and victimisation.

Bearing upon these grievances it is suggested that a favourable collective agreement be mutually drawn and agreed upon by both parties concerned. It is further suggested that a grievance committee meeting comprising of employer and employee should be held at regular intervals to deal with such grievances.

GROUP C

The regular grievances are those pertaining to promotion, victimisation and transfer (according to their frequency). We recommend amendment to relevant regulations in the I. R. A. section 12 (3) (a) (b) (c). According to this section, it is interpreted as prerogative on the part of employer to decide upon promotion, transfer, etc. which would not be in the best interest of the worker. This should be included as a matter for intervention by union officials or appropriate authority when a case of malpractice could be established. It should also be a matter for collective agreement. It is recommended that proper conditions of service for workers be introduced.

GROUP D

There are regular grievances which occur very often such as: bad time keeping, insubordination, unfair allocation of work, abusive remarks, granting of leave, dismissal.

It is the group's considered opinion that positive changes in the present system of employment can minimise the grievances, though it cannot be totally eradicated as human being, one is bound to have grievance of one nature or the other. In most instances the grievance of a workman is valid and have reasons as majority of the employers or their subordinates are still not enlightened and regard the labour just as one of the factors of production and have no consideration to their feelings and aspirations and are the main cause for the grievances.

Generally the employers and their subordinates should be made to realise that a happy and contended labour is always more productive and efficient, and steps should be taken towards that end. Another point in this respect is that in this country labour is less respected, looked down as under-dogs of the employers (of course, this varies in degree depending on the status of the job). This attitude should completely change and there must be mutual respect to each other particularly the employers, should treat the other with human dignity.

In view of the above, we have the following suggestions:—

(a) a double increment for efficiency of service and good behavior.

(b) if an employer dose not make use of the medical benefits he should be given a bonus of 15 days pay.

(c) organised periodical dialogue between management and the workers.

(d) Sports and social gatherings to organise at intervals where both parties participate as equals.

INDUSTRIAL CONFLICTS



A panel discussion. From left, Mr. Patrick Rao, Mr. John Doraisamy, Mr. Sam Abishegam and Mr. G. Joseph.

The Meaning of Industrial Conflict

by P. A. Patrick Rao
Asst. Secretary
(Industrial Relations).
MTUC

Industrial conflict is a complex matter which could be divided into two distinctly different groupings namely, trade union striving to win a position in economic society, that is, recognition and acceptance of its existence as an institution for the socio-economic advancement of the workers in the face of strong employers' resistance against any encroachment by trade union into their traditional authority and the other involving economic issues, such as wages, conditions of service fringe benefits and etc. Often people are heard to refer to or speak of industrial dispute or trade dispute but rarely of 'industrial conflict'.

Industrial conflict is essentially a labour-management conflict and it is a matter of considerable importance. To obtain a clear knowledge and understanding of it, it should be looked into and examined in detail and in depth. Conflict in an industry, to my mind, cannot be avoided altogether but the area and the intensity of such conflicts can certainly be minimised by means of legislative action or by such other procedures as may be jointly agreed upon by the parties themselves. Unavoidable because of the basic and irreconciable conflict of principle and interests between the two parties namely, labour and capital. The basic object of a trade union is to agitate for higher rewards for labour whereas profit is the motivating factor of the owners of capital. Labour and capital are equal partners of production and one cannot go without the other. This fact, unfortunately, is not shared by all capitalists for in their opinion, labour is a commodity like raw materials and by such a wrong reasoning, labour is being denied a just and equitable share of the fruits of its labour. It is further argued by the owners of capital that labour should remain content with the wages and other amenities which are offered to them. Fortunately, however, trade

unions' actions over these years which took the form of economic pressure have brought about a certain degree of enlightenment among employers to be conscious of and to conform to 'social justice' in their dealings with human labour.

It should therefore be sufficiently clear from this that the basic role and function of the two constituent bodies are different both in purpose and objective. This conflict of interest will continue so long as the basic economic structure remains to be that of free or capitalist enterprise.

Conflict of the kind which is now under examination, be it due to general dissatisfaction or due to harsh and un-reasonable attitude of those managerial personnel whose primary function is to promote cordial and harmonious relationships between management and its workers and regardless of the source of its origin must and should be effectively dealt with and disposed off expeditiously on the principle of 'justice and equity" Un-necessary delays in the settlement of grievances or problems whether it concerns an individual worker or a combination of workers would and could develop into a state of industrial warfare. Besides straining harmonious labour-management relationship which is a necessary condition for the continuance of stability in an industry, it may well lead to industrial action with consequent loss of production. In this connection, it is relevant and important to note the fact that frequent industrial un-rest is bound to have serious effect over the economic growth and progress of a nation. Its success and failure in this direction would depend to a large extent on the forces of production.

Conflict in this context, will apply to any disagreement between a worker or a combination of workers on the one part and the management on the other on any matters involving or affecting (i) employment, meaning, a condition in which a man is kept occupied in executing any work and it means not only an appointment to any office for the first time but also the continuity of the appointment or, (ii) non-employment meaning a dispute of workman out of service with employment and or (iii) working relationship.

Let us now direct our attention to matters which are known to have given or would probably give rise to conflict. Few examples of a general nature are cited below:—

(i) Basic hostility towards trade unions because of their functional role which seek to restrict the powers and areas of managerial rights;

Refusal to accept and treat union leaders on equal footing;

(ii) Lack of proper knowledge and understanding of human problems;

Victimising union leaders during the formation and organisation of a union;

(iii) Un-warranted interference in trade union with the view to influencing members into undermining union leadership;

(iv) Promoting the formation of unions which are company based and open to managerial influence.

(v) Inflicting harsh and severe punishment against active union members for relatively small and minor mis-conducts;

Deliberate delay and un-compromising attitude as well as lack of sincerity in wanting to settle problems and concluding collective agreements.

What best could be done to overcome industrial conflict ? To my mind, there is no simple answer nor for that matter is there any text book formula which could provide an effective solution to this. Legislative action may to a certain extent, help reduce conflicts but it alone will not provide the total answer. There should be a basic change in the attitude of employers towards trade unions. Industrial warfare or the trial of strength should be replaced by positive industrial co-operation followed by the spirit of goodwill, understanding, friendly tolerance, mutual respect and confidence. Only by these alone, could there be a sure answer to overcoming the present ills in the industry.

The Approach to Industrial Conflicts

by G. Joseph
Barrister-at-law

In the present day world if we look around there are all sorts of conflicts everywhere. Conflicts between nations and within nations, conflicts within Trade Unions and between trade Unions and if we come down to grass root level there is also conflict between husband and wife, brothers and sisters, even in a recent case where the son-in-law is suing the father-in-law for the promised dowry. So it is not strange to have conflicts in industries when each, the worker and the employer believes in their own invisibility and the importance they play and contribute towards economic development.

The strength and growth of any Industry is directly related to and dependant not only upon the support of the consumers but is also dependant mainly on the peaceful co-existence of the employer and employee of that Industry. If peace in the industry fails even support from the consumers cannot help. So industrial peace in this respect is vital for the development and well-being of any nation.

The everyday problems connected in the running of an Industry are numerous, be they in the form of faulty administration or lack of proper personnel management and I dare say that it may be a physical impossibility to prevent absolutely any of the small or minor incidents that arise from time to time. But these small incidents can be prevented from being turned to a major issue which may in turn result in an Industrial Dispute. But whether a situation created is minor or major, there can be Industrial harmony if there is a common denominator and a lot of good-will and common sense.

Perhaps the basic reason for Industrial unrest is due to the employers false sense of value and lack of a proper mental orientation towards the modern worker especially when more and more workers have become aware of the rights and their might. The days have gone where employers exploited every situation to make more profits through the efforts of labour. Every employer is interested in more profits and argue that without their capital investment there can be no industry. While the employees argue that without their sweat and toil, the capital by itself cannot bring in the desired result. Under the circumstances they feel that they are entitled to the fair share of the profit. Thus there is a gap to be bridged in the mental orientation between the employer and workers.

The workers believe that they should use such powerful weapons like strikes, go-slows, picketing, work-to-rule, etc. to resolve their disputes with the employers, whereas the employers think the conflicts can only be stopped by outright dismissal of a set of employees who do not behave in a fashion suitable to them. They also use their weapon such as lock-outs, lay offs etc.

How an Industrial Dispute arises or putting it another way what is an Industrial Dispute, is defined in our Industrial Relations Act as:—

> "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers, which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person;

However, the Government whose paramount interest in the Welfare of the public has interfered and introduced possible solutions to bring down or solve the conflicts. But, apart from Government intervention there are also methods adopted by the employers and workers to solve conflicts in the industry. One of the methods is collective bargaining which is more and more used in various industries in modern days. Governmental interference to solve the conflicts comes by way of legislation which provides for reference to a Governmental body, such as the Ministry of Labour. This Ministry in turn may refer matters either to the Labour Court or Industrial Tribunals. There are also instances where the Ministry Officials can take it upon themselves to solve these problems by a method known as Conciliation. Among the legislation which the Government has passed to regulate the behaviour of the employer and the employees are:—

(1) Employment Ordinance.
(2) Workmen's Compensation Ordinance.
(3) Social Security Ordinance.
(4) The Wages Council Ordinance.
(5) The Industrial Relations Ordinance.
(6) Trade Union Ordinance.

The workers on the other hand have their own methods of solving industrial conflicts through grievances procedure directly with the employers where such conflicts exist. The Organised labour enters into a contract with the employers and sometimes in the contract they embody clauses which provide for settling disputes through their own machinery. Failing to succeed through the machinery they may provide for reference to the Government machinery.

Up to this point I have been narrating what is existing in this country to solve the conflict that they may arise as a result of difference between the employer and worker. I am here neither to condemn the employer and praise the worker or vice-versa, nor to discuss the merits and demerits of the methods used to solve Industrial Disputes in this country which is adopted by the Government. But if employees and employers find that there are flaws in the existing system, then the best way to improve it is, to play a constructive and useful role towards its improvement and not by just condemning it or showing an apathetic view. I am not saying that the existing system is good but if you find that it is not good then it must be improved, but whatever improvements or suggestions are made the foremost thing in mind should be the welfare and benefit of the nation and all its citizens.

In concluding I cannot but find a better passage in one of Mahatma Gandhi's speeches in the year 1946 and I quote below:—

> "The class struggle has always been there. It can be ended if the capitalists voluntarily renounce their role and become all labourers. The other way is to realize that labour is real capital, in fact, the maker of capital. What the two hands of the labourer would achieve, the capitalist would never get with all his gold and silver. Can any one live on gold ? But labour has to be made consicious of its strength. It has to have in one hand Truth, and in the other Non-violence, and it should be invincible. Labour and capital, classes and masses, are as old as the hills. The whole trouble arises from the fact that neither labour, nor those who are guiding the labour movement realise the dignity and strength of labour. It is like the lame leading the blind. I got the opportunity and privilege of reading Karl Marx's Capital whilst I was in detention. I entertain high regard for his great industry and acumen. But I cannot believe in his conclusion. I have no faith in violence being able to usher in non-violence. World though is moving and is outdistancing Karl Marx. That, however, does not detract from the merit of the great man's labour."
>
> (Hindustan Times, 5-1-1946.)

Further, equally attractive was the following passage from the speeches of Pandit Jawaharlal Nehru in 1953. I quote below:—

> "As you have said much about labour relations, I would put before you our basic approach to that problem. You object, I understand, to tribunals and

their functions. Then what are we to have ? Are we to leave matters to the internal conflict between labour and capital, to what you call strikes, lock-outs, and the rest ? Long ago, about twenty five years ago, I was President of the Trade Union Congress. Not merely because of that, but otherwise too. I have been in touch with workers and understand their psychology somewhat. I do not approve of bogus trade unions being set up, or of attempts to split up the trade union movement by employers or others. It is far better for industry to deal with well organised, disciplined trade unions than to have conflict with the trade union world. It is true that trade unions occasionally do not function rightly. Wrong people get into them and incite men to adopt wrong methods. You have to deal with them, no doubt, but you can only deal with them satisfactorily by that human approach which I mentioned. I have no doubt that in the future the participation of labour in industry will grow and should grow." "I am all in favour of trade unions. I have been in favour, in theory, of labour's right to strike because I have read the history of the labour movement in England and Europe for the last 150 years. And I think every employer should realize the terrible time labour has had for generations, how they were crushed, how they were sent to Australia for the pettiest offence, as life term convicts, and how slowly, by means of co-operative efforts, the trade unions gradually gained some — I cannot call them privileges — normal human rights. That is why labour prizes the right to strike jealously. That has been its only sanction. And yet this business of strikes and lockouts should be faced. Apart from the wastage involved, this conflict is illogical and wrong. The only other way is to find mutual agreement, or if there is not mutual agreement, to bring in some third party in the shape of conciliator, arbitrator or tribunal. A tribunal may not always decide rightly, from the point of the employer or of the workers. That argument could be advanced in the case of our normal judiciary, because one party or the other is bound to be dissatisfied. Are we then going to abolish the judiciary ? If tribunals and conciliatory processes do not function rightly, let us improve them. But it has to be recognized that the alternative is conflict, which is bad and which will ultimately result in upheavals and the cracking up of the whole economic structure".

(Pp 65-66, Vol. 3 "Jawaharlal Nehru's Speeches".)

way that Malaysian industry can help to raise the living standards of our people. Merely paying high wages cannot itself increase productivity. Wealth in terms of goods and services has to be created — it cannot be negotiated or for that matter legislated into existence. In other words labour and management should approach the bargaining table not to end up in conflict but determined to negotiate in an atmosphere of mutual respect, goodwill and co-operation so that labour relations can be conducted on a business like basis with emphasis on productivity and profits rather than on fads and frills.

As industrial relations practitioners, all of us, whether we are conciliators, employer or worker representatives, have a solemn duty — nay, a deep obligation as citizens to our broader national interests which overide the narrower interests of our own organisations. As technological changes, economic policies and governmental legislation influence the regulation of labour-management relations, there is all the more need to strengthen the voluntary system whereby direct labour and management confrontation can be substituted for liberal compromises in seeking solutions.

Should not then our industrial relations system take preventive measures to avoid conflicts by removing the causes at the source of the problem. Even in the best regulated of families, there is bound to be the odd conflict between husband and wife, son and daughter, parents and children and so on. Surely then in the place of employment where much of our working lives are spent we can also try to avoid conflicts that are bound to arise as in any area where human relations exist. No one man or woman is the same as another; our background, family, traditions, culture, education, mental attitudes, social beliefs, political affiliations — all of these influence our attitude in our work. Our very environment determines how irritable or enthusiastic we can be in the place of work. We bring our office/factory headaches to our homes just as we are affected by our home, social or other influences at work. So in this complexity of human relationships, tempers can be frayed and conflicts, if not nipped in the bud at source, can develop into ugly incidents.

The realisation of the interdependence these days between labour and capital has an enormous impact on the regulation of industrial relations. Government policies very largely dictate the manner in which both sides of industry have to regulate their industrial relations within the framework of legal guidelines. If we do not like the laws then we can through constitutional means attempt to amend those provisions which we think are barriers to our industrial relations. But until such time, Government which has a job to govern impartially, has to ensure that the boundaries it has set are not exceeded or trespassed into by labour or management as it is Government's obligation to protect public and national interests. In these days there is no such thing as absolute freedom and no such thing as being equal — some are always more equal than others.

So it is against this philosophy that we must remove the source of conflict that can damage and distrub industrial relations. And here I think that the source should be recognised as existing at the grass-root level.

WORKERS' OBLIGATIONS

(a) To give a fair day's work for a fair day's pay;

(b) To obey properly promalgated instructions of management on all matters concerning employment and in particular those relating to: (i) discipline, (ii) safety, (iii) production;

(c) To protect and advance affairs of the undertaking;

(d) To accept their role and obligations inherent in membership of a team;

(e) To understand and accept the need to make a profit sufficient to provide new capital for expansion and renewal, and improve the well-being of the total staff of thc undertaking;

(f) To understand and accept the need for planning, research, development, expansion, diversification, change, movement, discipline, the giving and taking of orders.

MANAGEMENT'S RIGHTS

(a) To expect acceptance of the need for ordered and disciplined regulation of commercial and industrial life;

(b) To expect acceptance of the need for organisation and control of the giving and taking of orders;

(c) To expect acceptance of the financial, production and other constraints of successful management operating in a competitive world.

MANAGEMENT'S OBLIGATIONS

(a) To provide useful, productive, remunerative and rewarding work for all employees;

(b) To conduct the affairs of the undertaking that employees are gainfully and continuously employed;

(c) To reward good service;

(d) To provide opportunities for advancement;

(e) To expand the enterprise in the interest of customers, employees and shareholders;

(f) To maintain a fair, just and stable working atmosphere;

(g) To keep employees well informed about the fortunes of the Company in which they have a vested interest".*

The above-enunciated principles from a good base to initiate industrial democracy and if followed sincerely can avoid industrial conflicts or at least reduce the conflicts to the base minimum. Above all if only each of us can before pointing an accusing finger at, remember

that there are 3 fingers pointing back at us, I think we will think twice before we accuse others and thus arrive at conflicts. I have emphasised on the solutions at grass-root level because these should be recognised by all industrial relations personnel in Malaysia, whichever side they are on.

And I look forward to the day when we all as industrial relations practioners from the Government, Employer and Worker groups can stabilise the tripartite cooperation and avoid industrial conflicts to the advantage of ourselves, our families, our organisations, our country and the international community.

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* Reference Donovan Report — United Kingdom

Causes of Industrial Conflicts and Solutions

by Seminar Participants

GROUP B

Remedies to reduce Industrial Conflicts:

1. Establish good communication.
2. Maintain the status of the supervisory staffs.
3. Handle grievances quickly.
4. Never give in to threats.
5. Co-operate with, but control shop stewards.
6. Be on guard on subversive elements.
7. Have sympathy and understanding of human problems.

GROUP C

Found the following major causes for industrial conflicts:

1. Faulty administration or lack of proper personnel management.
2. Lack of goodwill and common sense.
3. Employers forgetting that workers are day by day becoming aware of their rights and their might.
4. Employers' sense of value and lack of mental orientation towards the modern worker.

5. Lack of interest on the part of employers in the welfare and economic progress of their workers consistent with progress in the country.

6. Employers think that industries are developed for material and financial benefits of investors. They do not realise that the sweat and hard work of workers are the essential factors for productivity. Even knowing them, some employers deliberately refuse to share the profits.

7. Delaying tactics on the part of the management in bringing about early settlement over agreements and contracts.

8. Avaricious desires on the part of the workers for benefits beyond their eligibility.

9. A lack of human relationships.

10. Misinterpretation and incorrect implementation of collective agreements and contracts.

The following suggestions are made to minimise industrial conflicts:

1. Training to be given to both employers and employees on their rights and obligations as embodied in the Ordinances and Acts of the country.

2. To nip all issues in the bud.

3. Cultivate mutual understanding, goodwill, patience, and perseverance between both parties.

4. Introduction of acts by the government covering various aspects of workers and enforcing them in the correct and appropriate perspective Government in any country has responsibility to ensure that the welfare and progress of workers are safeguarded.

GROUP D

Identified the following causes for industrial conflicts:

(a) *Employers*

1. The anti-union attitude of the employers, is one of the major defects among the employers, which gives rise to numerous industrial conflicts.

2. The die-hard attitude of the employers that labour is just one of the factors of production and a commodity they pay for.

3. Introducing managerial policy and working conditions unilaterally even though there may be a union, without consulting them and with no regard to inconvenience it may cause to the employees.

4. Misinterpreting a collective agreement by reaching it in bad faith.

5. Victimisation of union officials for their participation in union activities for bogus reasons of misconduct etc.

6. The wide disparities in terms and conditions of service among the pioneer industries. This though does not erupt into a conflict of observable magnanimity contributes to productive attitude among the workers.

7. Unequal treatment of workers who are union members and non-union workers.

8. Lack of personnel management education among the employers and their sub-ordinates and ignorance of the legislations pertaining to labour and the implications of such legislations.

9. Adamently refusing to accede to the union's point of view due to personal egoism and the irrational superiority complex.

Further refusing to lend their ears to the union and the employees believing that to sit down and talk to the workers' representatives is a sign of weakness and questions their authority.

(b) *Unions*

While probing into the causes of conflicts, in good conscience the group observed though painfully, that the unions and their leaders are also to a certain extent been or can be the cause of unwarranted industrial conflicts. The following are some of the ways in which it can be so:

1. Misleading the workers by giving them false hopes and empty promises, which eventually will culminate in discontentment leading to an industrial conflict.

2. Acting and reacting on personal egos to boost themselves in the eyes of the fellow members.

3. Incompetency, lack of tact and authority to deal with a particular problem on the part of union officials but to resort to industrial action in order to compensate the defect.

4. Inability to put-off any unjustifiable claim by the fellow members and to convince them of the actual position and limitations. Instead to act on mere sentiments failing to look at the issue objectively.

5. The coup de data motives among some union officials thus spreading dissention among the members and instigating to disregard the agreement the other party could have reached with the management in good faith and advising them to take their own cause of action. (This happens at very minor instances).

(c) *Government (Ministry of Labour)*

The Government having its objective as reducing and remedying the industrial conflicts, to a certain extent directly or indirectly been the cause for industrial conflicts.

From the opinions expressed earlier and in the group's own opinion it is deduced that the unions though recognise the fact that strikes and other industrial actions should be a last resort, prefer to take one form of industrial action or the other to solve the problems

wherever legislation permits instead of referring the matter for conciliation or arbitration. This is so far one simple reason that it is very time consuming and unduly prolonged and the workers are frustrated and causes much hardship during the long waiting period.

One other factor apart from the foregoing responsible for industrial conflicts is the interference of external elements.

The Group recommends the following possible solutions:

(a) *Employers*

1. Adjust themselves to the present day realities and change their anti-union attitude. Accept the union as a body to be reckoned with which can contribute to industrial harmony.
2. Change their concept of regarding labour just as one of the commodities or factors of production and realise the feelings and aspirations of labour.
3. Be opened for meetings with the union officials in good faith to hear and consider matters of mutual interest or those matters affecting workers.
4. Standardize the terms and conditions of workers in pioneer industries.
5. Do not victimise or discriminate the union members and officials.
6. Extend the personnel management training to the line management as well as they are directly dealing with the workers, instead of confining it to the top level personnel staffs.

(b) *Unions*

1. Be objective — do not give false hopes to the members even though some talks inspiring the workers is necessary.
2. Maintain proper communication with the members.
3. Use tact and authority in dealing with disputes — concentrate more on research.
4. Do not allow personal egos overcome the real purpose of the union office.
5. Realise the limitation under the trade union has to function.
6. Educate the shop-stewards in industrial relations.

(c) *Government*

In this respect the group is of the opinion that steps should be taken to engage more conciliatory officers and set up more arbitration courts at regional levels, comprising of personnels who are noted for impartiality and social justice thus creating confidence among unions and employers alike to refer their matters to these third parties for conciliation or arbitration.

COLLECTIVE BARGAINING

course the Union members will speak on behalf of the Union but sometimes "experts" or "advisors" may be allowed to attend. Normally such persons do not act as "spokesmen" and are "in attendance" only.

Some factors which will help Collective Bargaining to be successful are:—

(a) Proposals for Collective Bargaining must be realistic and must create an impression that they are the result of serious consideration and deep thinking.

(b) The proposals for Collective Bargaining should be in keeping with general trends, in other words proposals which may be too much out of line and not compatible with national character, economy and interests will attract little sympathy and support of both the Company and the public at large. It is necessary to keep the proposals in harmony with the conditions prevailing in other industries similar to one in which a particular Collective Bargaining is to take place; and

(c) The members of the negotiating team should be courteous, tactful and whilst firm in the expression of their point of view, must not appear to be arrogant or insulting.

Most managements try for reanonable and sensible settlements as they believe that Collective Bargaining is like a marriage. Both parties should enjoy each other's company and some frictions may be unavoidable.

It is recommended that as the Collective Bargaining progresses a joint communique or report on progress should be prepared and issued to employees for their information. Unless we have good communication, employees may be misled.

Collective Bargaining is a process which imposes certain restriction upon the employer. Unilateral action is prevented. All employers within the jurisdiction must be treated equitably. The Collective Bargaining process is not easy and is often exasperating. It is however the best answer available for a problem that defies quantitative measurements and exact answers.

THE PROCESS OF COLLECTIVE BARGAINING

The actual conduct of the Collective Bargaining process is very complicated but very interesting. Despite wide variety of shapes that bargaining can take, there are certain fundamental procedures and stages of action that deserve consideration and these include the pre-negotiation phase and the selection of negotiators.

It is unfortunate that with growing frequency agreements concluded after Collective Bargaining are rejected by members thereby making such agreements less meaningful, less dependable, and such rejection leads to illegal work stoppages and slow-downs.

Does Collective Bargaining try to obtain industrial peace for a period of time for both management and Union? Many Collective Bargaining normally agree that whatever agreement they decide upon should not be varied, modified or annulled. But while this should provide an important aspect of Collective Bargaining, certain conditions have encouraged the violation of such Clause e.g. while most of the

companies had signed agreements with their Unions from 1972 — 1973 and technically there should be no violation of the agreements, the companies had to offer additional benefits i.e. Special Relief Allowances.

Should we not leave the agreement and negotiate at the expiry of it?

Recently there was a National Seminar at the National Productivity Centre on "Labour Laws and Industrial Relations". This was attended by Trade Union officials, government officers and representatives from the private and statutory sectors. Just to show you how unsettled human thoughts are on labour practices, I wish to quote here a question that was asked, debated and finally answered with three different views.

The question :

"Should government legislate certain rights as managerial rights and bar Trade Union of workers from including in their proposals for a Collective Agreement such rights — Section 12(3) of the Industrial Relations Act, 1967? Should a Trade Union of workers be prohibited on taking strike action on matters covered by Section 12 (3) of the Industrial Relations Act, 1967?"

(a) Section 12 (3) should be deleted in toto.

(b) Section 12 (3) should remain.

(c) Section 12 (3) should remain, but Union should be allowed to take industrial action on matters covered by this section.

1. It should be mandatory by means of legislation for an employer to supply information and figures to union. The national body like (MTUC) should also feed affiliates with information.

2. (a) Intensive training should be given to train negotiators

   (b) Drafting & proposals should be done with the employment site workers and national body.

3. (a) A minimum wage in accordance with cost of living by way of legislation.

   (b) The union should have the liberty to negotiate on any issue. As such the group also feels that Section 12 (3) of I.R.A. to be deleted.

4. (a) There should be agreed methods of job evaluation.

   (b) Communicating with the members during negotiations for advice and further information.

   (c) There should be legislation stating that the effective date of all collective agreements should be from the date of submitting the claims.

GROUP B

The problems faced by trade unions in collective bargaining are the following: —

(a) Lack of experience among trade union leaders.
This is applicable to union which have been newly formed because the officials of these union have inadequate experience in negotiating with the management.

(b) Lack of knowledge among the trade union leaders.
Some of the unions leaders are not well equipped with the labour laws and not in a position to substantiate their wants, in an effective manner.

(c) Lack of research work by the unions.
Many of the unions are unable to have their own research unit to look for facts and figures, study job evaluation, and to employ qualified full time officials.

(d) Lack of leadership.
Most of the union leaders lack the following qualities: —
(1) maturity (2) dedication and, (3) sincerity.

The following are the remedies: —

(a) Officials of unions who are involved in Collective Bargaining should be given proper training at local, national and international levels.

(b) Union Officials are not born trade union leaders as such they got to go through the mills to acquire the knowledge.

(c) Respective trade union could organise seminars and request MTUC to provide officials for the training of union leaders as well as rank and file members.

(d) Union subscriptions should be increased in order to maintain a research unit.

(e) There should be frequent education programmes to union leaders from newly formed unions.

GROUP C

The problems faced by the unions in Collective Bargaining are many folded. To cite the main problems: —

1. Delay in recognition of union and consequent delay in commencing collective bargaining.
2. Reluctance on the part of the employer to release negotiation panel representing the workers to attend negotiations punctually.
3. Non-accommodative and suspicious attitude of the employer in negotiations process.
4. Lack of mandate and flexibility on the part of the employers representative to decide on the proposals of the union.
5. Inaccessibility of union to the company records on finance and business activity.
6. Undue delay and postponements on collective bargaining schedule deliberately on the part of the employer which causes frustration among the members.
7. Lack of alternate representative personnels on employers side who can decide e.g. when an negotiating personnel goes on vacation the collective bargaining is postponed pending their return thereby causing delay in concluding the agreement.
8. Lack of membership strength, unity, and leadership and feed back from members and lack of know-how on the subject matter.
9. Fear of victimisation among negotiation panel members.

Suggestions to solve these problems: —

1. Prevalence and promotion of understanding between the union and the employer.
2. Realistic and well-thought proposals and presentations.
3. The negotiators on the side of the union and the employer should be given the mandate to be flexible and decide on the matter adequately.
4. Union should prepare themselves with facts and data to substantiate their claims.
5. Keep the membership informed on the negotiations and keep them unified.
6. More emphasis should be paid to the bargaining and conclusion of agreement as a collective agreement is an important document governing the terms and conditions of workmen.
7. The negotiators should be carefully selected — This negotiators should be educated in the techniques of negotiation.
8. There must be a give and take policy prevalent through the negotiation process.

GROUP D

Some of the main problems as pointed out by the group are as follows: —

(a) Poor communication of members by Union ie. lack of feed backs by grass root levels.

(b) Lack of responsibilities of negotiating officers.

(c) Misinterpretations of negotiating clauses.

(d) Limited proposals at negotiating tables ie I.R. Act 12 3 (a) — (f).

(e) Delaying tactics of employer regarding Collective Bargaining.

Some of the solutions to overcome the above problems are as follows: —

(a) Trade Union Education to the rank and file especially to the grass root levels through the medium of participants.

(b) Modification of the I.R. Act Section 12 para 3

(c) Provisions to be set up in the I.R. Act to compel the employer not to use delaying tactics to bring about any collective bargaining.

(d) Moderate agreement or demands especially at initial contract so as not to bring about antagonism.

(e) Strong sense of continuity of members and not carried away by impatience and emotions.

The Necessity of Collective Bargaining

by Seminar Participants

GROUP A

Feels that better solutions could be achieved by collective bargaining then by legislation.

The reason is that in most cases by legislation the minimum is provided by law whereas in collective agreement the scope and limits are much higher. Normally the collective bargaining where it is mutually agreed by 2 parties there will be a better understanding, industrial peace & increase in productivity. The collective bargaining normally takes care of the peculiar needs of a particular group of workers and the establishment. Futher the group also feels that more benefits should be implemented by legislation, so as to benefit the unorganised which forms about 90% of the working population.

GROUP B

There should be a minimum legislation, over and above for what is provided in the legislation should be left entirely to the union to negotiate with the undertakings depending on their productivity.

GROUP C

Is of the opinion that collective bargaining can achieve better solutions than legislation for the reason that:

1. Through Collective Bargaining each party is more aware of the situation and are able to see and recognise the view point of each other and could achieve a workable agreement.

2. Legislations are more often than not open to misinterpretations as neither parties are involved in legislating and are not always aware of its implications.

3. Agreements reached through Collective Bargaining are more practicable and effective.

4. The unions can claim for better terms and condition basing on the prosperity of the company.

5. Both parties can adopt a flexible attitude on the terms and conditions of service.

6. Legislations are bound to be limited in scope thus cannot provide the maximums.

In conclusion we recommend that workers must be given a greater share and responsibility in determining and observing the conditions under which their work are carried out, and therefore it is imperative that provisions in Industrial Relations Act 1967 such as Section 12 (3) are to be revoked, so that workers would be able to include all items for negotiation for collective agreements.

Further on the matter we do not see any reason that if both parties can agree to include certain provisions affecting those function categorised in the above section then the law should prevent including such matters.

LEGAL JOURNAL OF RESEARCH IN INDUSTRIAL RELATIONS

ESSENCE OF RESEARCH IN INDUSTRIAL RELATIONS

by Ruediger Slatell
FES Representative to Malaysia, Adviser to MTUC's Research and Library Department



The participants express their thanks to FES.

Essence of Research in Industrial Relations

by **Ruediger Sielaff**
FES Representative in Malaysia, Adviser to MTUC's Research and Library Department

Since more than 10 years there is a discussion on trade union research in Malaysia. Due to financial shortcomings and organisational problems there is only one full fledged research department at the NUPW besides the many casual results so far achieved. Therefore the discussion of a special area of trade union research, in our case industrial relations, has to consider organisational matters as well as matters regarding its contents. This paper will deal with the subject of research in industrial relations which are felt to be essential, but also with the organisational aspects though these are still to be solved by the MTUC and its affiliated unions. Probably the seminar can offer suggestions regarding the organisation and coordination of research.

Trade union research in academic terms is a special area of applied social sciences. In practice this means that trade union research is applying different social science methods and techniques e.g. economics, statistics, sociology, education etc. What is more important is that trade union research shall serve the trade unions and their objectives. Therefore trade union research should investigate labour problems, collect and analyse relevant information and communicate it without corrupting the constitutional processes of a union. This means that research supplies information on certain problems. But action and responsibility for actions and decisions rests with the constitutional authorities of the union.

AREAS OF RESEARCH IN INDUSTRIAL RELATIONS

The term industrial relations covers a wide field of activities in which the trade unions are involved. And facts and figures on all these fields are always appreciated. If one inquires what kind of research could first of all think of the system of industrial relations in general. This is in my belief of less concern for an active trade unionist than the day-to-day problems he is confronted with in protecting and impro-

Library and Research Facilities Available at Union Level

by Seminar Participants

GROUP A

Discussed the research carried but by the National Union of Petroleum & Chemicals Industry Workers (NUPCIW) and the National Union of Plantation Workers NUPW).

In case of NUPCIW the subjects of research is as follow:

1. Collection of collective agreement for comparative studies and this information is used for collective negotiating.
2. There is documentation of collective agreements covering all companies represented by the Petroleum and Chemical industries. A small library is maintained for this purpose.

The main structure of research of the NUPW is as follows:

1. General research on Plantation industries.
2. To work in coordination with I.R. Dept in relation to wage dispute and I.R. matters.
3. Conditions of service and wage payments to particular task or Cola.
4. To carry field investigation in rubber, oil palm, tea, coconut plantation etc.
5. To study economical position of the company for the purpose of concluding agreement at both National and Local levels.

GROUP B

Was aware of three unions during research.

These were:

NUTP — Dealing with salary scales and conditions of service.

ANULAE — Research on salary scale and conditions of service.

EIWU — Wages and condition of services for electronic workers, and also comparative study of similar industries in other countries.

Important Areas of Trade Unions Research

by Seminar Participants

GROUP A

The Group feels the following areas should be covered by MTUC in the field of research.

1. Wages, conditions of service, on health and occupational hazards.
2. Collection of information from various Ministry's monthly bulletin.
3. Preparation and research on important subjects relevant on Trade Unions (e.g. Cola, Housing, dismissal etc.)
4. MTUC should conduct its own research to ascertain information supplied by various Ministries as part of its long term research.
5. Research on labour laws and industrial disputes.

Coordination with Unions.

1. Unions should be encouraged to have its own research officials.
2. MTUC should have frequent contacts with this officers by holding seminars and other means.
3. This officers should take active part in the research activities of MTUC and vice versa.
4. Suara Buruh should provide a small column for research.

GROUP B

The areas of research in Industrial Relations which should be covered by the MTUC Research Department are :—

(a) Service Conditions and Wage Structure.
The MTUC should give not only local comparative studies but also internationally.

(b) Job Evaluation.

To determine the rate of payment and also to understand the employment situation.

(c) Trade Union Education Research
To cover not only labour problems but also to include employers' problems and labour economics.

(d) Price Indices

To collect up-to-date indices reflecting to cost of living. This will strengthen the Unions' hands in negotiating for changes or revisions of salary.

Coordination with the affiliated unions could be done by:—

(a) Communication through the medium of Suara Buruh.

(b) Research should be part of Seminars and participants on returning, should impart their knowledge to the rank and file.

(c) Unions should play the role of collecting and feeding information to MTUC.

INDUSTRIAL COURT
TOWARDS
TRADE DISPUTES

APPROACH OF INDUSTRIAL COURT TOWARDS TRADE DISPUTES

function of the Industrial Court. If this point is missed, if this understanding is lacking the Industrial Court would be just another forum where dry problems of law are discussed with no disputes settled.

What is a trade dispute? This term is amply defined in the Industrial Relations Act, 1967. A unique feature of "trade dispute" is that it can arise even when an employer exercised his legal right. It will be no answer to say that since the employer has exercised his "legal rights" there could be no "trade dispute". It is to be investigated whether such exercise "rights" though legal are equitable or not.

It thus follows that the Industrial Court is a Court of Equity and good conscience which should consider the substantial merits of the case without indulging in technicalities or legal forms. There is specific provision in the Act itself (Section 27 (5) of the Act). It need not follow strictly the rules of procedure and evidence but this does not mean that those rules must be totally ignored. While a technical flaw could spell the doom of one's case in the ordinary courts, such lapses would not and should not decide the fate of a case in the Industrial Court.

That is the machinery. What about the "personnel" that operate this machinery? What are the attributes they should possess? what are the pitfalls they should avoid? The performance depends not only on the "song" but the singer.

In this connection I cite from an admirable Australian book entitled 'Industrial Conciliation and Arbitration in Australia' by Orwell De R. Foenander. In this book the author has dealt with the attributes, qualities and character of an industrial tribunal. The temptation to abridge is great but I would be doing so only by violation to the author's views and I shall quote: (Page 55-56)

"Of industrial tribunals more is to be expected than conscientiousness, integrity of aim and technical efficiency in dealing with the problems of industrial justice and the public interest. An attitude that is characterised by a pedantic narrowness of purpose and inflexibility of action can, as a matter of fact, have unlooked-for consequences in the actual deprivation or denial, of what is rightly the portion of a litigant, and disadvantage or prejudice to the general welfare. Good intentions and a conventionally correct approach in the settlement of a matter, form an incomplete equipment for an arbitrator in the absences of imagination and a recognition that, in the framing of awards, the facts of industrial progress and mutation must be accorded their full weight and significance. An arbitrator should eschew logomachy, and be prepared on the proper occasion or in fitting circumstances, to proceed beyond the strictly syllogistic concept of the law and to resort to different principles or formulae. While temerity and impetuousity in decision are to be deprecated, there should be no fearful timidity, on his part, in regard to the introduction of innovations and the application of adjustments which, on calculated assessment, are believed to be sound. Principles which as Mr. Justice Kinsella of the Industrial Commission of New South Wales said, "may have been fair and just in the light of social, economic and industrial circumstances at the time of their pronouncement may be rendered absolute and inappropriate within a relatively short period by the rapid changes of those circumstances which are characteristic of modern times". A tribunal that is ready to abandon principles deemed by it to have proved unsa-

tisfactory in their practice and to adopt, in replacement other considered more suitable for its purposes does not necessarily expose itself to a charge of capriciousness or irresponsibility; on the contrary the rejection could be evidence of strength and sound sense. Nevertheless there is always this to be said: any departures decided upon should be reconcilable with a conviction, unshakeably held, that attempted diversions of, or tamperings with the forces of demand and supply in their economic setting are unwise in the absence of a clear vision that positive and measurable advantages are the consequence of the proposed steps — an awareness of the fact that, inexorably pressing and ceaselessly flowing is the "deep silent strong stream of the tendencies of normal distribution and exchange which "are not seen" but which control the course of those episodes which are seen".

"The Federal Arbitration Court of Australia adopted certain principles from time to time and observed them for purposes of adjudication and the general discharge of its responsibilities but while fully conscious of the need for certainty and stability in the industrial law, did not regard these principles as 'immutable or irrevocable — as rigid, cast-iron, or static". On the contrary that tribunal always showed a "readiness to reconsider and review these principles — and their application in the light of social developments, altering economic conditions, and general changes in community opinion". — (Page 57).

It was on this principle that although earlier decisions of Industrial Court though not actually binding are entitled to deep respect and not highly to be disregarded but the industrial tribunal or court could and should be prepared to depart from its earlier decision after it has given due weight and must come to its own determination in each case. Hence the principle of binding precedents does not seem to apply in the Industrial Courts. If one seeks authority for this proposition, the Australian award in Iron and Steel Work Employees (Australia Iron and Steel Limited — Port Kembly and other award (1945) N.S.W. A. R. cited at page 57 of Foenander's book is on point.

The functions of an Industrial Court has been laid in two admirable judgements of the Indian Supreme Court.

The Indian Supreme Court Case of *Kaye Construction Co. vs.* Its Workmen (A. I. R. S. C. 1959 P. 208 @ 212 para 14) P. B. Gajendragadkar J. said:

> "The decision is the appeal has emphasized that in dealing with industrial disputes the tribunals should not be unduly influenced by academic questions of law and that they should make an attempt to deal with the **merits** of each case according to its facts and circumstances. As pointed out in Niemla Textile Finishing Mills Ltd v. The 2nd Punjab Industrial Tribunal, 1957 S. C. R. 335; ((S) AIR 1957 SC 329) "the functions of industrial tribunals while adjudicating upon disputes referred to them for adjudication are quite different from those of arbitration tribunals that deal in matters of commercial dispute". This Court then held an industrial dispute did arise between the respondent purchaser and the appellants and that the Labour Appellate Tribunal was in error

in reversing the award principally on the consideration of the abstract point of law as to the rights and liabilities of the successor like the respondent."

In the case of R. B. Diwan vs. Industrial Tribunal (AIR. 1963) S. C. p. 630 @ paras. 6, 7, 8 and 9) Gajendragadkar J. said:—

"In the case of industrial adjudication, the claims of the employer based on the freedom of contract have to be adjusted with the claims of industrial employees for social justice. The process of making a reasonable adjustment is not always easy and so in reaching conclusions in such a matter, it is essential *not to decide more than is necessary. If industrial adjudication purports to lay down broad general principles, it is likely to make its approach in future cases inflexible and that must always be avoided. In order that industrial adjudication should be completely free from the tyranny of dogmas or the sub-conscious pressure of preconveived notions, it is of utmost importance that the temptation to lay down broad principles should be avoided.* In these matters there are no absolutes and no formula can be evolved which would invariably give an answer to different problems which may be posed in different cases on different facts." — (stress mine).

The Australian Courts have also declared the same concept in a different manner: The Commonwealth Arbitration Report (77 C. A. R. at page 509) states: The court is not ... a social or an economic legislature and we are of opinion that theories and policies should play no part in its determinations". In simple language it means that an industrial Court should not take upon itself the task of enlarging the scope and frontiers of the dispute.

A decade is a short period to judge any institution. The life and history of our Industrial Court in its present from starts from 1964 — an offshoot of the emergency. But it is the record of our Court that in its short span of 10 years of existence it had laid down certain guide lines and principles. The approach of the Industrial Court in disputes over wage claims, victimisation, promotion transfer discipline, wrongful termination, retrenchment, collective bargaining had been the subject matter of an illuminating paper presented by the former President of the Industrial Court, Tan Sri S. Chelvasingam MacIntyre PMN. at a Seminar on 'Industrial Relations and Labour Laws' at the National Productivity Council in October 1973. In this paper he has reviewed several awards. For the pruposes of my paper I would broadly deal with 3 different approaches of an Industrial Court towards trade disputes and I would term them as legal approach, 'equitable approach' and the 'clinical approach'.

I shall cite only very recent awards.

The legal approach is to state legal precepts and refusing to see the equitable facet of a trade dispute. I have said earlier that a legal exercise of the employers right could lead to inequitable results. A striking example is the right to contract system by the employer. Contract system under our Malaysian Law is perfectly legal but the question is, is it equitable? Is not labour reduced to 'chattels' under a contract system. Are they not exploited and denied many benefits which they would get under a non-contract or direct employment system. Advocates or defenders of contract system will ask "What is wrong with contract system. This same argument can be used with respect

to 'prostitution'. 'Prostitution' is not illegal but only living on immoral earnings is illegal. But can it be honestly asked "What is wrong with prostitution?".

The Industrial Court in a recent case took this strictly legal approach. This was a case between the National Union of Plantation Workers and Effingham Estate (case No. 9 of 1973 Award No. 27/73). Here the court, besides holding that the dismissal of Vadiveloo, the Complainant was justified, proceeded to make a conditional award that the two wives of Vadiveloo would be entitled to reinstatement only if Vadiveloo vacated the labour lines. Here the court wore blinkers and refused to look into the 'equitable aspect' of the case and the sufferings that would entail for the entire family. Here the Court lent itself (and unnecessary so) to be an agency to help the Estate to evict the families.

I quoted earlier two judgements of the Indian Supreme Court In an epoch-making award handed down by Mr. M. Abraham the President of the Malaysian Industrial Court in the case of All Malayan Estate Staff Union and Socfin Company Berhad (Industrial Court case No. 52 of 1973. Award 25 of 1974) the Court was persuaded to take the Indian Supreme Court's view on certain problems. This was a case on the payment of certain 'special allowances' to the staff of the Estate. The Estate took up a preliminary point that since the 'special allowances' are not part of the contract between the workers and the Estate, they are ex-gratia discretionary and extra-contractual and paid without any legal liability and hence deprived the court of jurisdiction to hear the dispute.

The Learned President in his award rejected the Estate's contention. He said:

> "It is apparent that the Company has taken a strictly legal stand on the question of negotiability of the allowances based on the conditions of the contract referred to above. But in the industrial jurisdiction, where it is claimed that the agreement is inequitable, it is no answer to say that the parties have so agreed. That would be merely saying that no agreement could be ever inequitable unless there was fraud or overreaching. If that were the position, industrial tribunals would have no functions to perform, for all the issues that might arise between employers and employees could be settled by the ordinary Courts according to the terms of the contract of employment". (C. P. Mills on Industrial Disputes Law in Malaysia at page 157) Whether or not certain payments are made ex-gratia would depend on the nature of such payments and the circumstances of that particular case."

"The Court is further persuaded to take this view by the authority of Rai Bahadur Diwan Badri Das v. Industrial Tribunal, Punjab (1962, II L. L. J.) which assigned a more positive role to the concept of social justice in Industrial adjudication when it emphasised as follows: —

> "....the doctrine of the absolute freedom of contract has thus to yield to the higher claims for social jus-

tice .... under the impact of the demand of social justice, the doctrine of absolute freedom of contract has been regulated."

"Again in Rashtriya Mill Mazadour Sangh v. Appollo Mills Ltd. (1960 II L. L. J.) it was said as follows: —

"....Social justice is not based on contractual relations and is not to be enforced on the principles of contract of service, it is something outside these principles, and is invoked to do justice without a contract to back it."

On the question as to whether bonus payments if made over a long period of time, can become an implied term in the contract and so become available to the workman as of right rather than as ex-gratia payments, he cited the comments of C. P. Mills in "Industrial Disputes Law in Malaysia" at pages 188 and 189.

"It is clear that a long-standing custom may become an implied term in the contract, but only if it is well known and certain where the amount of the bonus is determined each year by the management, in amounts varying from one year to the next and on no fixed basis, it would be difficult to imply in the contract any term relating to such bonus; in that case the payment of a bonus would appear to be a matter within the discretion of the management. But providing the practice is well known, certain and not contrary to law, then it would be regarded as a term of the contract of service."

He ruled that the payment of special allowances had become an 'implied term' of the contract.

The equitable approach is where it deals with the substantial merits of the case without regard to technicality and legal form. In short a party going to court for certain relief should not fail merely because of a technicality. This is what the Indian Court called 'tyranny of dogmas.' In the All Malayan Estates Staff Union award cited earlier, the Learned President refused to subject the dispute to the tyranny of dogmas. It shunned the legal approach and followed the 'equitable approach'.

The Industrial Court adopted this 'equitable approach in one of the cases before it. It was the case between Hotel Merlin (K. L.) Sdn. Bhd. and the National Union of Hotel Bar and Restaurant Workers (Case No. 21 of 1973 Award No. 48 of 1973).

In this case a point arose whether the Union is entitled to go into the accounts of the Hotel, whether the Union Counsel is entitled to cross examine the salaries of its top executives. The Hotel strenuously opposed the application but the Learned President Mr. Abraham allowed the application of the Union. He ruled:

"It is quite clear from the above that this Court can take into consideration the salaries paid to executive managerial and supervisory staff to find out if they are disproportionate to the wage scales of the workers in question and the court has accordingly done so".

The Court in this instant followed the reasoning of the Indian case of Lipton Ltd. v. Their Employees (Supreme Court Report 1959 at page 177 and 178). This Malaysian award has unmistakably laid the principle that when an employer pleads 'financial incapacity' to pay claims for increased wages, his accounts can be subjected to the miximum scrutiny to find out whether its plea is justified.

This is a clearly equitable approach as the books of accounts and other related documents are within knowledge and custody of the employer and the Unions have no 'legal' right to demand such documents, when it enters into negotiations with the employer.

The clinical approach is one where an industrial court takes a giant microscope and passes it over the whole case to discover 'germs' and 'flaws'. It splits hairs, over-stretches arguments, upholds technicalities and goes on an academic excursion into dry legal points. It denies relief purely on technical grounds and subjects itself to the 'tyranny of dogmas'. This, any industrial tribunal or court, must avoid. A clinical approach may result in an admirably worded award, but the dispute will be there without being resolved and this defeats the very purpose and function of an industrial court. Instead of solving disputes it will have the effect of creating new ones, thus exacerbating the situation.

In this context it is very relevant to point out that the 'problem of control and conduct of industry demands a solution of its own'. It does not need dry pronouncements of law which solves no disputes. It is for this reason the award of Industrial Courts' are in the nature of minima not maxima. Moreover they do not pretend (and indeed should not) to extend to a coverage of all situations that arise between employees and employers. It does not 'encompass every aspect and phase of behaviour in the employment relationship....."

The observation of Dixon C. J. of Australia in the case of *"The Queen v. Kelly and Others; Ex parte Australian Railways Union:* is apt in this context. He states: "While an arbitral tribunal deriving its authority under an exercise of the legislative power ... must confine itself to conciliation and arbitration for the settlement of industrial disputes including what is incidental thereto and *cannot have in its hands the general control or direction of industrial social or economic policies, it would be absurd to suppose that it was to proceed blindly in its work of industrial arbitration and ignore the industrial social and economic consequences of what it was invited to do....."* (stress mine). These are some of my reflections on the subject.

Industrial Courts as an institution has come to stay. Its activities are part and parcel of the course of daily industrial life. As Malaysian economy undergoes a change from agricultural to industrial, the challenge the Industrial court faces is greater than ever. It has a significant role to play and this requires cooperation from all parties workers, employers and the Government. Periodical seminar of this nature will help to accentuate problems and offer remedies to prevent particular ills in the shape of amendment to the law.

Nomination and Role of the Workers Panel Member in the Industrial Court

by Seminar Participants

GROUP A

The list of members of the Workers Panel should be nominated by the MTUC and there should not be any discretionary power for the Minister to go out of the list submitted. The list should also include some women members who have the right qualification.

We suggest the following criteria:

(a) the person selected should be a dynamic trade unionist with wide experience, who is actively involved with trade union affairs.

(b) he should be selected from as wide a range of industries as possible.

(c) he should be one who has been specially trained in the field of industrial relations.

(d) the list of members selected should be reviewed annually.

GROUP B

We have unanimously agreed that the right to nominate the workers panel member should belong to MTUC. And we have also unanimously agreed in the hope that the MTUC could be sensible and responsible in making its nominations.

There is unanimity in opinion that the system of selection is far from being satisfactory. We learned with horror that the MTUC has nominated someone with no knowledge of the English Language. If this is a fact, then it is absurd!

No member in the group is aware of ever seeing a circular from MTUC inviting for nominations. However, there is a growing sense of frustration over the fact that such nominations are restricted to Council members, and we are of the opinion that the MTUC is unnecessarily limiting its scope of selection.

We would urge that the MTUC selects at least one member from each industry, occupation or profession. The present system seems to favour certain groups only, excluding and disqualifying a majority of industries and occupations.

Perhaps the MTUC should publicise the system it adopts in selecting its candidates, and the Suara Buruh could be made use of for this purpose.

The MTUC has nominated people, in the words of a colleague "who are interested in world problems rather than local problems", resulting in their inability to attend and fullfil the role expected of them.

We notice that MTUC, in spite of its vociferous championing of the cause of woman had not nominated a single lady. We do not know if the women's section of the MTUC felt outraged, but certainly our sense of justice was outraged. When the law does not discriminate against women, why should mortal men in the MTUC discriminate against them?

People selected should be reasonably educated to be able to follow the proceedings of the court intelligently.

Equal opportunity to be considered for selection should be extended to the rank and file, and should not be confined to the officials of the union only.

Union experience should not be a criterion for selection.

Maturity of a person should be taken into account. We are aware that maturity cannot be easily defined or measured, but it is possible to exercise the commonly accepted norms in determining it.

A strong sense of justice and integrity are qualities absolutely necessary. Though these qualities cannot be measured, they are identifiable: a person's code of conduct, views, case and concern for social issues, his sympathy for the underdog — all these will help!

GROUP C

We have carefully considered the scope and functions of the Industrial Court and its various aspects of components and we are inclined to conclude an unanimous view that we are satisfied with the role of workers panel member in the Industrial Court, in the context the equal status and regard is given to them as for other panels representing employers or independant person.

Workers panel member in an Industrial Court should contribute towards the Court to act according to equity, good conscience, integrity of aim and substantial merits of the case. It is his role to look at the case from the point of view of the worker to see the equitable facet of the dispute and should be able to substantiate his stand with facts presented at the hearing.

The national body i.e. MTUC should nominate the panel members in consultation with the affiliates.

The present practise of the Minister of Labour appointing members of panels not nominated by the MTUC is not proper as they do not hold a real representation of worker's views.

(a) Professional or non-professional people with vast experience in Trade Union activities.

(b) Since the nomination is being done by MTUC the personnel nominated should be given adequate training.

(c) The panel members so nominated should possess a sense of responsibility.

(d) Nominations of panel members should be from various working career or employment.

GROUP D

The Group is not satisfied with the role of the workers panel member as we felt that: —

(a) Most of the members are not aware of the problems of the workers.

(b) They are also not well used to that particular trade dispute.

We are of the opinion that the workers panel member should have the following role: —

(a) To be an Impartial man.

(b) A capacity for dynamic approach to the problem confronted at by both parties.

(c) Better knowledge of employees rights, that is I. R. Act.

The Group then feels it proper that MTUC should be delegated the power to nominate the workers' panel members in collaboration with the affiliated Unions.

Criteria that should be used in the selection of the workers' panel member should be as follows: —

(a) All affiliated Union should be given an opportunity to nominate any candidates who have sufficient trade union movement background and be of sincerity, and integrity.

(b) Selection of the workers' panel members should be of rotation basis, basing on the nature of the case that is to be heard at the Industrial Court, and the MTUC's general council should be given the power to select the required numbers of workers panel members, from the list as submitted in by the Affiliated Unions.

In consideration of the above the Group feels that the selected workers' panel member should be briefed on the subject of approach to the Industrial Court as often as required.

CASE STUDY ON VICTIMISATION

Fact Sheet

by MTUC Secretariat

FC Company vs. Union B

17th June 1971 — Trade Union A seeks the Registrar of Trade Unions (RTU) permission to organise the workers of the Food Canning Company Sendirian Berhad (FC Company).

22nd June 1971 — The RTU replies that Union A has no jurisdiction over workers of FC Company, but that FC Company workers could form a separate union.

2nd July 1971 — General Secretary of Trade Union A informs his Branch Secretary to convey this to the FC Company Workers and sends also a copy to the Secretary General of the MTUC.

8th July 1971 — Secretary General of MTUC informs Trade Union B that workers of FC Company are within its fold and Trade Union B could organise these workers.

14th July 1971 — Trade Union B gives confirmation to the MTUC and seeks ruling of the RTU.

22nd July 1971 — RTU confirms that workers of FC Company come within the scope of Trade Union B.

27th July 1971	—	Trade Union B informs MTUC accordingly.
28th September 1971	—	Union B seeks assistance of MTUC and Union A to organise the workers of FC Company.
24th October 1971	—	Union A convenes a meeting for FC Company workers which is attended by 8 workers of FC Company (Aa, Bb, Cc, Dd, Ee, Ff, Gg, Hh).
26th January 1972	—	20 Workers attend meeting with Union B, 15 workers join Union B, membership forms are handed over to Aa.
27th January 1972	—	Aa (cook employed since 1970) retrenched Gg (store supervisor employed since March 1969) retrenched.
		Jj (cook department employee since October 1971) retrenched.
28th January 1972	—	Cc (store worker since October 1971) retrenched.
29th January 1972	—	Ee (raw worker since April 1971) retrenched. Bb (store worker since June 1971) retrenched.
30th January 1972	—	Dd (store keeper since October 1971) retrenched.
4th February 1972	—	Ff (quality control worker since July 1971) dismissed.
15th February 1972	—	Hh (raw worker since January 1971) dismissed. Ii (kitchen worker since 1971) dismissed.
26th February 1972	—	Kk (cleaner since April 1971) retrenched.
3rd March 1972	—	Ll (cleaner since October 1971) retrenched.

FC Company was employing 117 workers in December 1971, 112 in January 1972, 109 in February 1972, 102 in March 1972. The employer argued that he had to retrench workers because there was a shortage of raw materials and that this was affecting production.

FC Company's Arguments

Aa was unsatisfactory, lazy, walking around, splashing water. He once had been warned and given a reply promising to abide to the restriction.

Bb was wearing long hair and refused to abide by the management's request to cut his hair. He appeared to be lazy.

Cc was alleged to have been given only light work by the foreman, his brother. He had been caught several times sitting idle or listening to the Rediffusion in the kitchen though he was supposed to work in the stores.

Dd was also alleged to be lazy and was caught wandering around. He talked a lot.

Ee was often found to wear no cap. When once questioned by a female member of the management he used abusive language.

Gg did not satisfactorialy keep records of the stock in the stores. The management had warned him on several occasionn. He was once almost dismissed but because of his pleadings he was allowed to stay on.

Three workers were dismissed on the grounds of misconduct or inefficiency.

Hh and Ii were dismissed because Ii clocked his own as well as Hh's clocking card. There was evidence that Hh handed over his clocking card to Ii. They gave no satisfactory explanation.

Ff was dismissed because he kept irregular working hours which was inconsistent with his work. Since he was in the quality centre his frequent absence affected the quality control. On 14th February 1972 he left 16 minutes before dinner break and 3 hours before the shift was due to end. Since he gave no explanation he was immediately dismissed.

The *Union B* found out that the company immediately recruited new workers. There were also some internal transfers. So the Union B came to the conclusion that FC Company only wanted to get rid of the workers being active in organising themselves into a Union. The Union stated that FC Company had victimised the workers and asked for an Award of the Industrial Court to reinstate the 12 workers.

Award by the "Seminar Court"

Note: The Seminar participants had a mock session on the case FC Company vs. Union B. The "Seminar Court" held a hearing during which seminar participants acted as Court as well as witnesses, union representatives and employer's representatives. Since the hearing was improvised not all fact could be established as in the real case.

1. *The case is* between Food Canning Company Sendirian Berhad (hereinafter mentioned as 'Company') and Trade Union 'B' (hereinafter mentioned as 'Union')

2. *Before:* Chairman : Encik K. S. Maniam
   Employers Panel Member: Encik Vasudevan
   Employees Panel Member: Encik Pereira
   Independent Panel Member: Puan Gomes

   The Court was assisted by: Encik Navaratnam
   Encik Peh Hock Chye
   Encik Mohd. Hamzah
   Encik Chok Ein Lai
   Encik Samiveloo
   Encik Ling Hew Ting
   Encik Gopalan

3. *Venue:* MTUC Building

4. *Date of Hearing:* 20th July, 1974

5. *Representation at Hearing:*

For Company: Encik Ramakrishnan (Council)
Encik Doraisamy Mathews
Cik Anne Khee Kim See
Encik Ponnusamy
Encik Kamaruddin
Encik Tharuman
Encik Selvaraj
Encik A. R. Velu
Encik Mohd. Ismail
Encik Richard Phang Thiang Sung
Encik Khoo Ooi Seng

For Trade Union 'B': Encik K. R. Krishnan (Council)
Encik A. Narayanan
Encik Mohd Idris bin Mutahirin
Encik Thomas Lee
Encik Ng Seng Ho
Encik Mohd Nordin bin Abd. Rahman
Cik Chan Bee Chin
Encik Mahathevan
Encik Kasinathan
Encik Kamarulzaman bin Osman
Encik Yin Chow Chai
Encik Mohd. Badri bin Hashim

Reference

The dispute referred to the Court by Trade Union 'B' is whether or not the retrenchment of 9 workers and the dismissal of 3 workers by the Company is without just cause or reasonable excuse. The Union contends that the Company had victimised the workers for being active in organising themselves into a Union, whereas the Company contends that the 9 workers were retrenched because there was a shortage of raw materials and this had affected production and 3 workers were dismissed on the grounds of misconduct or inefficiency.

Facts & Findings

The Court, in deciding the case, had relied, as a general rule, on the facts as contained in the paper on 'Victimisation' as circulated to the groups but any evidence presented at the hearing relevant to the case has been taken into consideration.

The management contends that 9 workers were retrenched because there was a shortage of raw materials and this had affected production. The management did argue that this resulted in financial losses to the Company and no evidence was produced in Court to say that this was not true. The Union could have asked the Court to request the Company to produce their accounts for the relevant period but for reasons unknown it did not do so. The Court did not request for the accounts for valid reasons of its own.

However, the Court, while accepting that was doubtful as to whether it was so serious to warrant retrenchment of 9 workers. The Court is of the view that if the financial losses are heavy and production has been badly affected as claimed by the Company than there should have been retrenchment in the Company Department because the volume of work in the stores and cook department are related to the volume of work in the productive Department/Cannery Department. Because of this and other factors the Court is convinced that there is no justification in some of the retrenchment cases. In this connection, the Court, after reviewing the retrenchment case, is unable to agree with the Union that the management should have followed the Industrial principle of *last come first go* because in a few cases there is sound and valid reasons for a departure from this principle.

The Union contends that the Company had victimised the workers for being active in organising themselves into a Union. They claim the Company was aware of the formulation of a Union and it started to retrench and dismiss the workers after the meeting of 26th Jan. 1972 where 15 workers had joined the Union. The union also felt that this must be true as the Company had also recruited new workers.

The Company on the other hand contended that it was not aware of the formation of the Union as no claim for recognition had been submitted to the Company, there was grounds for retrenchment, the dismissals had taken place after due inquiry had been held on the grounds of misconduct or inefficiency, new recruits were taken in to replace only those who had been dismissed and that it was only a coincidence that some of the workers who had attended the meeting of 26th Jan. 1972 had been retrenched or dismissed.

In the opinion of the Court, victimisation means the punishment by way of dismissal of an innocent workman who has in some way incurred the displeasure of his employer i.e. being an active member of the Union.

The Court is of the view that no victimisation had taken place for the following reasons: —

(a) a meeting was held on 24th October, 1971 to organise the workers of the Company, but till the second meeting held on 26th Jan. 1972 there was no retrenchment or dismissal thereby justifying the fact that the Company was not aware of the formation of the Union.

(b) the Union did not produce enough facts that the workers were retrenched or dismissed solely on the grounds of victimisation.

(c) moreover the company has not retrenched or dismissed all the 15 workers who had become members of the Union at the meeting held on 26th Jan. 1972.

However, the Court in deciding the case have taken the following factors into consideration.

(a) the misconduct or inefficiency must be sufficiently serious to warrant the grave penalty dismissal.

(b) although the employer has the right to dismiss, the employee also should have the right to security of tenure.

(c) whether the Company has acted in good faith and upon fair investigation.

The Court after considering all aspects of the case makes the following awards: —

AWARD

(a) The Court orders the reinstatement of Bb, Dd. Jj, Cc, Kk, Ll,

(b) The Court upholds the retrenchment order of Aa, Gg, Ee.

(c) Hh and Ii should be reinstated.

(d) Ff should be retrenched and not dismissed.

Award of the Industrial Court in the Real Case

Note: The award in the real case was based on additional facts. Therefore it is different. All names of the real case have been changed to the names of the case study.

Retrenchment

On this issue, it is a general principle that the Management has a right to determine the size of its work force for the requirements of its business and organisation. When the Management decides to retrench some of its workers on the grounds of redundancy, the decision cannot be disputed unless it can be shown that it was done mala fide or without reason or was actuated by motives of victimisation or unfair labour practice. Bearing this in mind, the Court proceeded to examine the reasons which caused the Company to retrench the six Complainants named above.

In his written submission, Counsel for the Company stated that seven of the Complainants were casual workmen in that they were daily paid and reported for work when they liked. Because they were casual workmen, the Compay did not include their names in the register of employees. Further, their contract of service was only for the day and their services could be terminated at the end of the day. The Court is unable to accept this contention for reasons given hereinafter.

Firstly, this issue was not raised in the Statement in Reply and no substantive evidence was led at the hearing. The Company chose to reply on redundancy, misconduct and/or inefficiency as the reason for retrenching and dismissing the Complainants and it is not proper to bring up this fresh issue at such a late stage.

Secondly, even if the issue had been raised and considered there are other circumtances to show that the Complainants were not casual workmen. All of them, expect one who had been working for about 3 months, had been in the continuous employ of the Company for more than six months. Contributions to the Employees Provident Fund had been made and they enjoyed 5 public holidays in one year. The employees held regular positions in the Company which, in the view of the Court, cannot easily be filled by casual workmen. For example, it is difficult to accept the suggestion that quality control or cooking or store-keeping in connection with food could be carried out by casual workmen. In quite a number of cases, overtime had been paid regularly and the management appears to have been rather strict about hours of work. Also the fact that they were under a contract of employment would, in the view of the Court, bring them within the meaning of "Workmen" in Section 2 of the Act.

The Company alleges that the real cause of the retrenchment was due to acute shortage of raw materials and, in support referred the Court to Exhibit "A" in the Statement in Reply. The graph in Exhibit "A" indicated the amout of raw material purchased by the Cook Department for the period therein shown. A perusal of the Stock Book, marked as Court Exhibit C4, revealed that the figures shown therein for the corresponding period under the heading "Raw Material" do not tally with the figures of the graph. Whereas the purchase of raw material between mid-January 1972 did not exceed 2,000 katis per day. the Stock Book showed purchase exceeding 4,900 katis for the same period.

The Court is not satisfied with the further explanation that the shortage of supply could not have been supplemented from the supply of other raw materials. As this evidence was not given at the hearing, the Court is unable to give much weight to it. In the above circumstances, the Court can only conclude that the graph does not present an accurate picture of the purchasing of raw material during the relevant period.

As for the workmen, the Court recognises the fact that the Company is carrying on a business which by its very nature would have to employ a number of casual workmen. But what the Court cannot understand is why the Company should have such a large number, almost half the total work force, of its employees omitted from the register of employees. For example, the Daily Register of Employees from April 1971 to September 1971, marked as Court Exhibit C5D, shows 41 employees whereas Exhibit "J" for the same period shows a figure of 95 to 212. Counsel for the Company explains this away by saying that those omitted from the Register of Employees are classified as casual workmen. The Court views this proportion with some surprise because it is an accepted fact that casual workmen normally form a small minority in any undertaking or organisation.

While it is true that the output of the Company would vary with the supply of raw material which in turn would mean that there may be a monthly fluctuation in the number of workmen employed, the Court finds there is a discrepancy in the figures given in Exhibit "J" for the months of January and February, 1972. If a total of 12 workmen were retrenched and dismissed during these two months. then the figures of 112 and 109 respectively do not appear to be correct unless there had been some recruitment in the meantime. This recruit-

ment would not have been justified if in fact there was a redundancy of labour. However, the Company has admitted there was replacement of some of the Complainants by other workmen employed by the Company.

The Court also found that the turn over in workmen has been going on for sometime. The Company had been laying off a number of workmen almost every month depending on the supply of raw material. This appears to have been the practice of the Company all along and no strict rules as to who should be laid off were followed. Apparently the workmen themselves who were laid off seemed to have accepted this practice. However, in answer to a question by the Court as to whether the Company had carried out a similar retrenchment exercise before, Mr. C stated that, as far as he can remember, there was a retrenchment of five or six workers sometime between 1964 and 1966 for the same reason. The Court considered his answer rather vague and concluded that in fact no such similar retrenchment was ever carried out previously.

The Court has considered the evidence of the Complainants on the question of victimisation. Almost all of them were emphatic in their evidence that Mr. C must have known about their union activity as he had discussed it with some of them. There was also the meeting on 26th January, 1972 where two officials from the Union A spoke. Counsel for the Company pointed to the discrepancy in the date being different from that in the Statement in Reply and also asked the Court to draw an adverse presumption, under Section 114 of the Evidence Ordinance, against the Complainants for failure to call at least one of the two officials as a witness. The Court agrees with Counsel's contention as to the discrepancy in dates which had not been explained by Counsel for the Complainants. As to the failure to call the officials, or one of them, the Court agrees that more weight would have been given if either of them had been called but..., at the same time, the Court cannot ignore the evidence of some of the Complainants themselves who referred to such a meeting where there was distribution of membership forms and collection of subscriptions.

The Court takes particular note of the evidence of "Ff" who remembered details of his interviews with Mr. C regarding union activities and was unshaken in cross-examination on such details. Also there is the evidence of Mr. D called as a witness said he signed a membership form submitted by "Aa" sometime in January 1972. Further, he remembered being asked about union membership before August 1971 but he was unable to say definitely whether he had been so asked by the management. The Court has also taken judicial notice of the letter dated 22nd July, 1971 from the Ministry of Labour giving approval to the Union to take the workmen of the Company as members. It is not necessary to have called the Registrar of Trade Unions to prove this letter. The Court is entitled to infer, from the above, that the Company must have known, either directly or indirectly, that there was some kind of active campaigning being carried on.

Having concluded earlier that there was no previous retrenchment exercise of a similar nature, the Court observes that there is a coincidence between the first retrenchment exercise carried out by the Company and the steps taken by the Complainants, or at least by a majority of them, to enrol members for the Union. In view of this and the above circumstances, the Court does not accept the Company's reasons for redundancy as sufficient and, accordingly, finds that the

retrenchment of the six Complainants was due to their Union activities. Pursuant to such finding, the Court is of the view that there is no necessity to decide on the principle of "last in, first out" and the evidence adduced thereon.

Dismissals

The Court has considered the law regarding dismissals, as enunciated in the case of the Chartered Bank, Kuching VS. Kuching Bank Employees Union reported in M. L. J. 1966. The Court has now to examine whether there was in fact such misconduct as to extitle dismissal of the three Complainants or whether they were being victimised for wanting to become members of the Union.

In the case of "Hh" and "Ii", the Court believes the evidence of the jaga Mr. E and the witness Mr. F, supported by the clocking cards themselves, marked as Court Exhibits C7 and C6 which to a large extent discredited the evidence of the two Complainants, Counsel for the Complainants referred to the written regulations but these relate to the period of working hours for which only wages will be paid. It was admitted that most of the workers knew the regulations and the penalty for infringement of same. The Court takes notice of the seriousness of such offence and finds that the Company was justified in dismissing the two Complainants as they did.

As to "Ff", there is some admission on the part of the Company that he had prior to his dismissal, attempted to discuss with the Management as to terms and conditions of service. The act complained of was his absence from work for two days without obtaining permission but "Ff" informed the Court that he was ill when he absented himself. He had been suffering from bronchial asthma and fell ill on the 31st January, 1972. A medical chit, marked as court exhibit U3, was produced showing his admission into the General Hospital earlier in or about October, 1971 to show proof of his ailment. The Court accepted his explanation. From this and other aspects of the evidence adduced, the Court finds that he had been dismissed for trying to organise membership of the Union and his dismissal, therefore, amounted to victimisation.

Award

The Court, accordingly, awards as follows:—

(1) The Company do reinstate Aa, Bb, Cc, Dd, Ee, Ff and Gg, not later than 1st October, 1972 in its employment in their former jobs or in any other jobs suitable to their experience upon the same terms and conditions.

(2) The Company, not later than the 28th September, 1972 do inform the seven Complainants above named in writing the date and place each of them has to report for duty.

(3) The Company upon the seven Complainants reporting for duty as aforesaid, to pay to each of them the sum of $400/- by way of compensation in lieu of back pay.

(4) In the event of any of the seven Complainants, without reasonable excuse, failing to report for duty as specified in the Company's communication, then such Complainants or Complainant shall lose all benefits under this Award.

(5) That the dismissals of "Hh" and "Ii" do stand.

CASE FOR A REVIEW OF THE SYSTEM OF INDUSTRIAL RELATIONS IN MALAYSIA

MALAYSIA

IN

INDUSTRIAL RELATIONS

SYSTEM OF

CASE FOR A REVIEW

OF THE

The Trade Union Position

by S. J. H. Zaidi
Secretary General
MTUC

If it is to be accepted and recognized that the purpose of any type of rules and laws governing "Industrial Relations", must of necessity be to maintain peace, cordiality, understanding and harmony in an industry, then it becomes necessary for all those who are concerned with and involved in such a process to ensure that the machinery and channels available to workers, employers and their organisations are not only adequate and effective but these also enjoy their full confidence. Therefore, any case for a review of the system of industrial relations in Malaysia must be looked at from such a point of objectivity. Nor must one overlook the need for such an examination from the point of view of all concerned, taking due note of their expectations and rights. A parochial and one sided approach to the problem is unlikely to reveal a true situation and in such an event the steps necessary to improve the position will always suffer from biased and prejudiced thinking. Consequently the importance of an impartial and opened minded approach to the problem of industrial relations cannot be over-emphasised. Nor it is to be concluded that any one organisation or institution, whether public or private can be placed in a position to decide what is best for all the parties involved unless they or their accredited representatives agreed beforehand to give mandate to such effect to the institutions concerned.

So far as the situation in Malaysia is concerned, industrial relations continue to remain unsatisfactory, simply because those responsible for maintaining them in a healthy and correct form have failed to appreciate the basic principles which are pre-requisite to any such goal. They have always tackled the problem from the assumption that they alone know what is best for all and have accordingly provided an infrastructure to deal with industrial relations, which has failed to fairly

meet the needs and desires of the two parties which are directly involved, i.e. the workers and employers.

Now it is not for me to explain Employers dissatisfaction over the present system of industrial relations. Of all you know, they may not have any dissatisfaction at all, or at least not all of them may feel the same way,because some of the employers, particularly those representing multinational companies, are more influential and powerful than the Government itself.

I will therefore confine myself to the point of view which we in MTUC have concerning the present system of Industrial Relations. At the sametime I also want to emphasise that our concern is not so much influenced by the actual implementation of the system as it is by the rules governing such a system. Because we believe that merits and demerits of a system must be examined on the basis of the procedures governing it rather than the persons designated for its implementation. And it is because of this approach that we are here not concerned with personalities and it is for this reason that we believe that any organisation, whether it belonged to employers or workers, ought not to draw its conclusions from the treatment which it might have received at the hands of those who are responsible for the administration of the Industrial Relations system.

Government Officials very often make statements to stress that their own experience does not call for a change in the rules governing industrial relations. It may be so because any system is after all operated by human beings, who could always be guided or advised as to how to run it. Sometimes such a personal interference with the system may be of benefit to one party and sometime to other, but the fact remains that personalities do change and there can therefore be no guarantee that the understanding and comprehension shown by an official on one occasion would be the same as may be displayed by another on another occasion.

In fact we in MTUC have seen this happening on many occasions. There was a time when its constitution was taken for granted to have necessary authority for it to intervene in the industrial relations of its affiliated unions. However, in recent years, although the constitution has not altered, attitudes and opinions of the officials concerned have changed, resulting in the issue of remainders that it is not for the MTUC to actively participate in the industrial relations and more particularly in the industrial disputes of unions. The fact that MTUC have not re-acted in a similar manner does not of course alter the real situation.

Therefore, the answer to any question which one might well ask at this point as to why MTUC is not happy with the present industrial relations system can be found through comparison between its purpose and the capability of the rules designed to achieve it. And to do this we must look at the framework of the system at all levels and draw our own conclusions.

What are the procedures or avenues which can be used within the context of the existing system which, as you all are well aware, can legally be based in a broad sense, to the Industrial Relations Act 1967 (as amended). Under this section (Part IV). there is a list which contains provisions placed outside the purview of collective bargaining. Therefore, so far as the relations in an industry between Employers and

conditions, in Italy. In referring to the largest industrial enterprise in the country, the article says as follows, "The more avant-garde a company becomes in its labour relations the more the unions demand and the less chance there is for enlightened free enterprise to survive". It is also says "The government of Premier Mariano Rumor controls almost everything but runs nothing. Private industries run something but moan that they control virtually nothing. And unions are ready at a moment's notice to strike against just about anything". Further, the article goes on to say "That in turn has led to a wild rise in prices and wide-spread labour unrest. And in the face of a weak and indecisive government, the unions have been able to chalk up one victory after another at the negotiating table thereby adding more fuel to the inflationary spiral." The quotations which I have just given illustrate the importance that government policy plays in industrial relations. In other words, it is for the government to decide what sort of economic policy the country should have and labour policy it adopts must be a part of that policy. If, therefore, the relations between most of you re-presenting labour and people like me representing employers are not good, we can put the blame, fairly and squarely, on people like Mr. ..... representing government.

5. This will be the situation until workers and employers can get together and realize that in spite of government's intervention, we have a part to play for our mutually long period benefit. In looking at long period benefits, we should be prepared to sacrifice immediate short-term gains. While it is possible for an employers' organisation to do this, I appreciate that with the domestic manner in which trade unions are run, it would be difficult to induce its members to give up short periods gains for long period benefits.

6. We must, therefore, accept the position that major disagreements between workers and employers must continue to exist. These disagreements would arise from two sources. First, there would be those disputes arising out of laws made by government and second, would be the disputes arising out of difference of view-point between labour and management.

7. As an example of the disputes of the first type, we may quote difficulties which may arise from the fact that the Employment Ordinance was originally drafted to meet the particular circumstances arising from important industries existing in the country at that time, namely, planting and mining. Subsequently, when the amendments to the Ordinance came to be passed in 1971, these amendments and particularly para 12, related to the country's modern industries needs, those of factories.

8. Another difficulty which has arisen is the application of Section 16A to the Industrial Relations Act which enables a dismissed employee to appeal to the Minister when he feels that the dismissal is wrongful. There was a time when some dismissed people felt that they were being dismissed with some justification.

However, the manner in which the Ministry of Labour handles appeals under Section 16A has convinced everybody who is dismissed that he has been wrongfully dismissed with the result that every dismissal now results in an appeal to the Minister. Neither the MTUC nor the MCEO are completely satisfied with the manner in which these enquiries are being carried under Section 16A and both parties have made representations to Government. We hope that consideration would be given to our representation in the matter.

forgetting all other considerations. These amendments should take place within the framework of the general policy of the Government.

(b) Government should declare its policy with regards to labour relations so that both sides knew where it stood.

(c) Government should attach due importance to the need for good labour relations and should add to its compliment of able and well-balanced Officers to handle the responsible posts in the Ministry.

(d) If management and labour could give up their traditional out-moded policy of regarding each other as sworn opponents, they should look upon each other as partners in an undertaking which is to prosper to their mutual benefits.

(e) Labour and management leaders should be able to treat each other with trust and mutual respect, so that they could understand one another's problems easier.

(f) Finally, when other things fail, matters are referred to the Ministry of Labour or the Industrial Court. Cases should be decided on the basis of sheer merit so that adjudicators could look upon their decisions with pride for all time.

I. An Economist's Position

by **Dr. Harcharan Singh Khera**
Chairman
Div. of Analytical Economics
Faculty of Economics and Administration
University of Malaya

(*NOTE*:- The author wishes to thank Mr. Dunston Ayadurai, Lecturer in Industrial Relation in the University of Malaya for his valuable comments. Any errors are mine.)

Introduction

The Industrial Relation system in Malaysia is governed by 4 pieces of legislation. The first of these is the Industrial Relation Act of 1967 which is an act designed to (i) regulate the relation between employers-workmen and their trade unions (ii) to prevent and/or settle any differences or disputes. This Act was subject to significant amendment in 1971. The second major piece of legislation is the Trade Union Ordinance of 1959. This ordinance is concerned inter alia with the registration of unions, their rights and liabilities, their constitution, administration of their funds etc. This ordinance was amended in 1965 and again, significantly, in 1971. The other major piece of legislation is the Employment Ordinance of 1955. This ordinance deals among other things with contracts of service, and wages, hours and terms and conditions of service. Again this ordinance was subject to significant amendment in 1971. Finally or 4th major piece of legislation is the S.S.A. of 1969 which act provides for invalidity and accident benefits. Eventually the S.S.A. 1969 will replace the workmens Compensation Ordinance of 1952 and together with the E.P.F. Ordinance of 1951 will be the basis of the social security legislation in the country. At the moment however the 3 earlier pieces of legislation constitute the major segment of the Industrial Relation system in Malaysia.

There are many causes of industrial disputes. In general industrial conflicts arise out of arguments concerning trade union recognition, payment of wages, overtime rates allowances and other

benefits, recruitment and training schemes, pension plans, working conditions, control of the job, job security and a host of other causes (Table I). It is important to note that once a dispute exists, many emotional factors tend to aggreavate the situation.

It seems strange that, in this enlightened 20th century, we have to resort so often to coercive measures, such as strikes and lockouts, to settle disputes over wages and working conditions. If none but the two disputing parties were concerned in these affairs, the matter might be left to them to work out as best they can; but usually the public suffers more or less inconvenience from the interruption to production involved, and sometimes a very serious situation is created. Traffic can be paralysed and normal business very much impeded by a railway or bus strike; and a nation wide strike on the ports, which would cut off the movement of food supplies and other essentials, would be intolerable. So interdependent are the various parts of an industrial sector that no disturbance can occur in one field without affecting other groups of producers and the consuming public.

In order to promote mutual understanding and cooperation between employers, and workers in industry so as to increase the economic stability and prosperity of the country and the well being of its people as a whole it is necessary to have a sound industrial policy. An attempt is made in this paper to examine and promote discussion on some of the more important factors which can lead to the attainment of the above objectives.

1. *Trade Union Recognition*

A large number of disputes arise out of the stubborn refusal of employers to recognise unions and in some instances victimising those who try to form unions. The existence of unemployment and under-employment enable management to dismiss their workers with impunity, for workers can be fairly easily replaced. The Amended Industrial Relations Act prohibits strikes and dismissals relating to union recognition (i) strikes are prohibited after a dispute over recognition has been referred to the Industrial Court (ii) nor may an employer dismiss workmen (accept on disciplinary grounds) once a union representing workman has served a claim for recognition to employer (S9(2)).

Even where recognition can be sought the process is rather slow and by the time the recognition is accorded, the whole membership is wiped out by subversive practices. The present system of giving recognition based on percentage of workers who join the union is rather outmoded and obsolete.

It is important to note that the damaging aspects of strikes have often been exaggerated out of proportion. Table 2 shows that the greatest number of strikes took place in 1947 but even at that time the loss working time was only 0.12% of the total amount of estimated working time available. In fact, losses from unemployment, industrial accidents, absenteeism, labour turnovers and illness are greater than those resulting from strikes. It is important to remember that strikes can sometimes play a useful function in industrial relations. The strike or the threat of a strike is one way of inducing early agreement.

The Government's legislation to clamp down on strikes activities with fairly drastic steps is a rather short sighted view. Such legislation seemed to have tackled merely the "symptons" rather than the "causes" of strikes. It is doubtful whether these restrictions will be effective

TABLE 2

NUMBER OF STRIKES, WORKERS INVOLVED, UNION MEMBERSHIP AND MAN-DAYS LOST IN PENINSULAR MALAYSIA 1947 — 1972

Year	No. of Strikes	No. of Workers Involved	No. of Man-Days Lost	Union Member-ship	Member-ship Involve-ment Ratio
1947	295	59,477	696.036	195,113	0.30
1948	190	34,037	370,464	69,134	0.49
1949	29	2,292	5,391	41,305	0.06
1950	48	n.a.	37,067	54,579	n.a.
1951	58	n.a.	41,365	107,171	n.a.
1952	98	12,801	44,489	127,946	0.10
1953	48	7,524	38,957	109,557	0.07
1954	78	10,011	50,831	113,470	0.09
1955	72	15,386	79,931	145,749	0.11
1956	213	48,677	562,125	232,174	0.21
1957	113	14,067	218,962	222,044	0.06
1958	69	9,467	59,211	210,688	0.05
1959	39	6,946	38,523	174,804	0.04
1960	37	4,596	41,947	183,876	0.03
1961	58	9,045	59,730	211,110	0.04
1962	95	232,912	449,856	256,821	0.91
1963	72	30,542	305,168	275,341	0.11
1964	85	227,090	508,439	322,554	0.70
1965	46	14,684	152,666	327,673	0.05
1966	60	14,673	109,915	316,609	0.05
1967	45	9,452	157,980	307,663	0.03
1968	103	31,062	280,417	300,183	0.10
1969	49	8,750	76,779	290,549	0.03
1970	17	1,216	1,867	275,238	0.01
1971	45	5,311	20,265	283,594	0.02
1972	66	9,701	33,455	n.a.	n.a.

n.a. not available

Source : K.S. Nijhar and C.P. Lim "*Industrial Relations in Malaysia*", seminar organised by the National Productivity Centre, Petaling Jaya, 1973.

as long term solutions. It is felt that if workers are not allowed to go on strike over the issue of recognition, they will still go on strike on other issues, as long as the fundamental cause of discontent remains.

As the rate of unionisation (about 12%) is rather low in this country, the government should play a more positive role rather than a negative one. Instead of clamping down on strikes, delaying tactics in trade union recognition, etc. it should encourage the formation of unions in all industrial units irrespective of their side and accelerate the process of recognition.

2. *Failure to take into account the growing Manufacturing Sector.*

Table 3 shows the percentage of strikes by industry. The plantation industry accounted for the majority of strikes in all the years. This is mainly because the plantation workers are the best organised labour force in the country. The manufacturing industry also has high propensity to strike. Table 4 shows that the manufacturing sector is expected to show the highest average annual growth rate of 11.7% between 1970 and 1975. The governments various incentive schemes are aimed at accelerating the pace of industrialisation. It is in the rapidly growing manufacturing sector in which more industrial unrest may be anticipated in the future. It is indeed rather unfortunate that the government seems to have decided that the interests of the investors, particularly foreign investors in this sector are much more important than the workers.

Under the provisions of the Act pioneer industries are safeguarded for a period of at least 5 years from the date of commencement of operation in that the approval of the Minister of Labour and Manpower is required for any collective agreement which is to contain terms and conditions of service that are more favourable to workmen that those contained in the Employment Ordinance 1955. This is certainly not the best way to handle the situation. Some of the pioneer companies are not really worse off than the established ones. at least. where earnings are concerned. In fact, they enjoy a variety of benefits under the Investment Incentives (Amendment) Act 1971. Under these circumstances, workers in such companies should be allowed to share the rewards of their effort. In fact, the right and sensible thing for the government to do would be to encourage workers in the manufacturing sector to form a national union. The rising trend in the number of strikes in the rapidly growing manufacturing sector calls for more urgent steps to be taken to deal with the problems of workers in the country.

3. *Enforcement.*

The primary function of the enforcement agencies should be to provide a just. efficient and adequate machinery for the implementation of various labour laws. The Department of Labour and Industrial Relations functions in two sections:

1. the Labour and Enforcement section dealing with matters pertaining to labour and enforcement of various labour laws under the control of the Director General of Labour.
2. the Industrial Relations section dealing with industrial relations under the Control of the Director General of Industrial Relations.

There has been widespread criticism of the above agencies because of the unsatisfactory enforcement of the labour laws and the inadequate penalties currently in force which are not severe enough to deter deliberate infringement of the labour laws by the employers. We need something along the lines of anti-hoarding agency — speedy and effective mechanism. Evidence suggests that officers of the Labour Office visit and investigate offences only after they have risen. It is suggested that spot checks and more regular visits, particularly where labour is not well unionised will be effective and more meaningful.

Quite often when there is a dispute politicians tend to intervene and exploit the situation for their own political ends. Quite a number of these politicians are ignorent and have no knowledge whatsoever of the procedures and the existing laws. It would be best to keep the politicians out in arriving at a solution. It is suggested that the Industrial Relations officers should seek the cooperation and assistance of MTUC which has experienced and competent personnel to bring about early settlement of a dispute. Further, the worker's faith and confidence is greater in MTUC than many other parties.

4. *Wages and Productivity.*

It is important that wages be linked to productivity. Any demand for increased wages without corresponding increase in productivity will lead to rising costs and add to inflationary tendencies. Hence the trade unions should ensure that any demand for higher wages is justified on account of higher productivity. However, more often than not, the fruits of higher productivity go to the employers in the form of higher profits. It is felt that the fruits of any innovation leading to higher productivity and profits should be shared fairly amongst all who have expanded effort in this direction.

In order to link wages to productivity, it is necessary to carry out research in the various sectors of the economy. Hence it is suggested that the MTUC with the support of the government engage in some form of research in this direction so that any wages policy will be based on true facts of the case. The University of Malaya offers Courses in Industrial Relations and Industrial Economics. With the cooperation of the University and the increased supply of graduates, there is no reason why we cannot make any headway in this direction.

Conclusion

From our very brief discussion it is clear that the Industrial Relations System needs to be reviewed. The Industrial relations policy should be designed for the promotion of mutual respect, harmonious relations and fruitful cooperation between the employers and employees to ensure the maintenance of just industrial peace and favourable conditions for sustained economic growth and productivity improvements to bring about the realisation of the New Economic Policy. It could do this by:

1. encouraging the growth and development of democratic and responsible trade unions of workers and employers.
2. encouraging and assisting in the conduce of voluntary negotiations between employers and employee (through their own trade unions and assistance of MTUC) on wages, terms and conditions of employment and other matters of mutual interest in the world of work.

TABLE 3

PERCENTAGE OF STRIKES BY INDUSTRY, 1947 — 1972

Year	Agriculture	Agricultural products Requiring Substantial Processing	Mining & Quarrying	Manufacturing	Building & Construction	Electricity Water etc.	Commerce	Transport Communications	Services	Activities Omitted	Total
1947	—	78.0	3.7	11.5	—	0.3	0.7	2.4	3.4	—	100.0
1948	—	88.9	4.2	0.5	0.5	—	—	1.1	0.5	4.2	100.0
1949	—	65.5	—	3.4	—	—	—	—	3.4	27.6	100.0
1950	—	77.1	2.1	—	—	—	—	—	—	20.8	100.0
1951	—	79.3	1.7	—	—	—	—	—	—	19.0	100.0
1952	—	90.8	—	6.1	—	—	—	3.1	—	—	100.0
1953	4.2	87.5	—	6.3	—	—	—	—	2.1	—	100.0
1954	—	82.1	3.8	—	—	—	—	—	—	14.1	100.0
1955	—	68.1	6.9	—	—	—	—	—	—	25.0	100.0
1956	0.5	77.0	4.7	6.6	0.9	—	—	8.5	—	1.0	100.0
1957	—	62.8	3.5	19.5	0.9	—	1.8	8.8	—	2.7	100.0
1958	—	55.1	8.7	26.1	—	—	1.4	7.2	1.4	—	100.0
1959	—	74.4	—	23.1	—	—	2.6	—	—	—	100.0
1960	—	81.1	—	5.4	8.1	—	5.4	—	—	—	100.0
1961	—	87.9	3.4	3.4	3.4	—	1.7	—	—	—	100.0
1962	—	82.1	—	7.4	—	—	5.3	5.3	—	—	100.0
1963	—	83.3	1.4	4.2	1.4	2.8	2.8	1.4	—	—	100.0
1964	—	76.5	—	9.4	—	—	1.2	5.9	7.1	—	100.0
1965	—	71.1	2.2	2.2	2.2	—	6.7	6.7	8.9	—	100.0
1966	—	65.0	3.0	25.0	1.5	—	3.0	—	1.5	—	100.0
1967	—	58.0	4.0	20.0	9.0	—	4.0	—	2.0	—	100.0
1968	—	87.0	—	8.0	1.0	—	1.0	—	3.0	—	100.0
1969	—	80.0	2.0	8.0	—	—	6.0	—	4.0	—	100.0
1970	—	70.0	—	30.0	—	—	—	—	—	—	100.0
1971	—	68.7	—	28.7	—	—	2.6	—	—	—	100.0
1972	—	46.8	3.4	33.3	—	—	4.5	7.5	4.5	—	100.0

Source: K.S. Nijhar and C.P. Lim, *"Industrial Relations in Malaysia"*, Seminar organised by the National Productivity Centre, Petaling Jaya, 1973.

3. encouraging the establishment of jointly agreed machinery in places of employment for resolving employer/employee differences.

4. providing conciliation and arbitration services as necessary for the peaceful and orderly settlement of disputes.

5. fostering good labour-management relations in consent with other agencies like MTUC.

SYSTEM OF INDUSTRIAL RELATIONS IN OTHER COUNTRIES

SYSTEM OF INDUSTRIAL RELATIONS IN OTHER COUNTRIES



Dr. John Hutchinson delivering his talk.

System of Industrial Relations in the Federal Republic of Germany

by Ruediger Sielaff,
FES Representative in Malaysia,
Adviser to MTUC's Research and Library Department

A paper on Industrial Relations summarising the systems of another country obviously serves the purpose to provide some ideas about foreign experiences. Through this readers might be enabled to compare and might be better prepared to assess their own situation.

But to present a brief summary how the German and also the Austrian system of industrial relations, which are closely related, work is very difficult. These systems are very unique and much less known in Malaysia than the Anglo-American systems, though the German has become famous the world over because of a few coinciding and for some people — but not for the Germans — astonishing facts: there are strong trade unions, big flourishing and largely export-oriented industries, hardly any strikes, but also pretty high wages. This does not mean that there is too much peculiarity about Germany and the Germans, but that obviously the whole system seems to fit — at least the Germans and at least for the last 25 years.

On the other hand the German system of industrial relations is also very unique. Besides Austria there is no country with a similar pattern. As most people know the wide participation of trade unions in management, the absence of any legal provision for arbitration and the existence of works councils (Betriebsraete) are outstanding in the German/Austrian industrial relations system. It is also well known that in this system not only collective bargaining and joint consultation prevail but also known under the term co-determination — some kind of collaboration of trade unions and employers.

This paper will deal with the situation as it is to-day and will not discuss the history of industrial relations in Germany in order to

avoid confusion, although the history might focus much better on the developmental aspects.

EARLY EFFORTS TO IMPROVE INDUSTRIAL RELATIONS IN GERMANY

When Germany entered the Industrial Revolution in the 19th century almost immediately many workers' organisations were founded articulating the unrest about exploitation and the bad working and living conditions. During this time, mainly the 1840s and 1850s, many revolutionary ideas were born, but also a few concepts of social reform were developed. In 1848, the year Marx and Engels published their "Communist Manifesto", Germany was experiencing a short-lived liberal revolution. At that time a few social reformers drafted a law for consideration by the National Assembly according to which the workers should have a voice in the factories. At a time when there were only a few small unions it was advised to form at each factory a board compromising workers and employers who should be responsible for the work rules. The draft was never adopted nor did the National Assembly survive the attacks of our conservative state governments. But since this time we are used to have a social reform movement even of employers more or less inspired by liberals and a growing trade union movement looking for changes.

Between 1850 and 1918 the trade union movement was not able to change the industrial relations' system considerably, because it was weaker than the conservative governments. But during this time many changes were introduced: legal changes to fix minimum standards for service contracts, to set safety standards etc; single employers established workers' councils to give them a voice. Of course there was no regulation on collective bargaining etc., because in this era of classical capitalism government did not interfere into such affairs and left them almost completely at the discretion of employers. In the 1880s Ernst Abbe, co-founder and later sole proprietor of the ZEISS works, introduced a new company constitution in order to achieve his ideas of a "factory republic". In this "factory republic" workers should own part of the company and get a share of the profit (this was later on, when ZEISS was changed into a foundation, one third — with another third for a university and the final third for investment in the enterprise). In order to maintain a minimum dignity for workers and a maximum gain for managers it was laid down in the company constitution that in no case the salary of managers should exceed ten times the average workers' wage.

Reforms and plans like this were outstanding but remained rare examples. So it was no wonder that the trade union movement grew though being still unsuccessful with its demands. During World War I when the co-operation of workers was necessary government reviewed many laws to meet partly demands of the unions. After the revolution of 1918, during which our Kaiser and his government had to go and the Weimar Republic was founded, the situation improved. A Law on Works Councils was introduced catering for a joint consultation of labour and management. Laws on Collective Wage Regulation, on protection against dismissal etc. were introduced. In 1933 the Nazis suspended the joint consultation as well as the representation of workers in the supervisory board of companies.

After 1945 our unions, which before 1933 had always been aligned to political parties (though the biggest were always with the

Social Democratic Party), were re-born as a united movement and immediately set out to re-introduce and develop further the regulations of the Weimar Republic.

UNDERLYING PRINCIPLES OF INDUSTRIAL RELATIONS IN WEST GERMANY

The principle that workers should have a say in the economy is accepted by the German public and also guaranteed by law. Different legal provisions leave the industrial relations largely at the joint disposal of trade unions and employers who both are sanctioned as well as protected by law.

Under Article 9 of the German Constitution of 1949 (Grundgesetz) the freedom of association for all trades and professions is guaranteed, any attempt to restrict or hinder this right is declared illegal. This is a very general basis. What does it mean in practice ?

Organisations of employers or workers can be formed without any sanction by government. The drawing up of programmes, adoption of a constitution or regulation of finances is completely up to them. Principally they enjoy also the freedom of action unless they restrict themselves by concluding agreements in accordance with our Law on Collective Agreements.

This Law on Collective Agreement of 1949 lays down that employers' organisations and trade unions may conclude collective agreements. In this law it is simply stated that all those may do so who are "legally entitled to reach collective agreements" (tariffaehige Verbaende). According to our legal and constitutional conditions this means in practice that there are the following minimum requirements to be fulfilled:

The organisations concerned

* must represent employers *or* workers only
* must be organised on a free basis
* must not be limited to a single firm
* must not be dependent on the opposing party
* must aim at influencing conditions of employment
* must recognize the German Wage Contract (as stated in the Civil Law)
* must in principle be prepared to conduct an industrial dispute in the interest of its members.

After an agreement has been reached there are two obligations to be observed by the parties to the agreement:

1. they have to maintain industrial peace during the currency of the agreement and are forbidden to organise or even threaten an industrial dispute nor may they support any action by members or non-members which aims towards a disturbance of existing conditions;
2. they are under mutual obligation to ensure that all the members of their respective organisations make the wage rates and conditions set out in the agreement effective.

On the other hand trade unions and employers have joint consultations and even co-operation inside the companies (co-determination in supervisory boards, joint consultation and co-determination between Works Councils and management). For this purpose it is stated in the German "Works Constitution Law" (Betriebsverfassungsgesetz) that employers and works councils shall co-operate for the benefit of the workers *and* the enterprise and that they shall co-operate closely with the trade unions and the employers' organisation represented in the enterprise. This important principle which implicates that workers shall always act within the interest of the enterprise points out the responsibilities the workers have for their jobs. During the last 25 years this principle was hardly discussed but all the time practically adhered to by the trade unions.

In order to provide workers with the best chances to protect their interests trade unions (and employers too) have the right to represent their members in individual disputes and at the Social and Labour Courts (with the exception only of the Federal Labour Court).

For practical purposes the practice of industrial relations shall be discussed on three different levels: the co-determination on the top of the enterprises, the collective bargaining with the employers and the consultation and co-determination inside the enterprises (works councils). Before doing this I shall briefly describe the organisational pattern of trade unions and employers organisation.

EMPLOYERS' ASSOCIATIONS

Most of the German employers have joint employers' associations. In the average they form regional organisations which are members of state employers organisations as well as federal industrial employers organisations. Their top organisation is the Federal Union of German Employers' Associations (Bundesvereinigung Deutscher Arbeitgeberverbaende — BDA), under which there are 14 state associations (e.g. Federation of Employers' Associations in Bavaria) as well as the 8 branch associations, among which the factory branch comprises approximately 30 different associations (e.g. National Association of the German Building Industry). Altogether there are about 550 different employers associations. Collective bargaining is normally left to the state associations.

TRADE UNIONS

After the Second World War the German Trade Union Movement was formed on a new basis. 16 industrial unions joined a united German Trade Union Federation (Deutscher Gewerkschaftsbund — DGB), which is not aligned to any political party. The DGB altogether has approximately 7 million members.

TRADE UNIONS IN THE DGB AND THEIR MEMBERSHIP (1973)

Metal Workers Union (IG Metall)	2,312,294
Union for Public Services, Transport and Communications (Gewerkschaft Oeffentliche Dienste, Transport and Verkehr)	993,879
Chemical and Paper Workers Union (IG Chemie, Papier, Keramik)	613,057

Union of Construction and Quarry Workers (IG Bau, Steine, Erden)	511,699
Railwaymen's Union of Germany (Gewerkschaft der Eisenbahner Deutschlands)	425,693
Union of Mining and Energy Workers (IG Bergbau und Energie)	392,571
Postal Workers' Union (Deutsche Postgewerkschaft)	373,184
Textile Workers' Union (IG Textil — Bekleidung)	287,388
Food, Drink and Tobacco Workers Union (Gewerkschaft Nahrung, Genuss, Gaststaetten)	244,829
Union of Bank, Insurance and Commercial Workers (Gewerkschaft Handel, Banken and Versicherungen)	171,341
Union of Printing Workers (IG Druck und Papier)	150,831
Union of Wood and Plastics Workers (Gewerkschaft Holz und Kunststoff)	129,830
Union of Teachers and Scientific Workers (Gewerkschaft Erziehung und Wissenschaft)	124,819
Union of Leather Workers (Gewerkschaft Leder)	59,066
Union of Horticultural, Agricultural and Forest Workers (Gewerkschaft Gartenbau, Land und Forstwirtschaft)	43,403
Union of Artists (Gewerkschaft Kunst)	34,778
Total	6,985,548

Outside the fold of the DGB are a few unions. The White Collar Union (Deutsche Angestelltengewerksdraft — DAG) has about 450,000 members from technical and clerical staffs, whilst the DGB in its different industrial unions organises in this professional group approximately 1.5 million people. The Christian Trade Union Federation (Chistlicher Gewerkschaftsbund — CGB) with 190,000 members is rather insignificant. In the civil service the Permant Civil Servants Association (Deutscher Beamtenbund — DBB), a non-bargaining body with 600,000 members, needs to be mentioned.

CO-DETERMINATION

In the Works Council Law of 1920 it was ruled for the first time that there should be representatives of the workers in the supervisory board, board of directors of joint stock companies. Nowadays, the workers have a one-third representation in it. The representatives are elected by the employees of the company concerned. At least two of the elected must work in the company concerned, the others

(c) agreements between one factory and an industrial union, e.g. Volkswagen Company and Metalworkers Union.

There is a vast number of collective agreements. It is estimated that from 1949 to 1974 there were approximately 85,000 collective agreements, among which about 10,000 should be standard agreements, the rest being wage and salary agreements and amending agreements (affecting working hours, paid leave, pay of apprentices, bonuses etc). The average duration of standard agreements is very long, about 10 — 15 years, whilst wages agreements last for one year only. During inflationary times we even have had wage agreements of three, six or nine month duration only. At least 99% of all agreements are settled without any industrial action.

As was mentioned before industrial action is allowed only after an agreement has expired or has been recalled. There is one case in 1957 where a strike was declared illegal and our Metal Workers Union was sentenced to pay 40 million marks to substitute the losses of the employers (employers and the union were smart enough to settle this issue before the next collective negotiation so that the money was saved). In case of an industrial action the workers will not get any assistance unless they are union members. Trade unions maintain easy available strike funds. The rules for industrial actions and the strike funds are set by the unions.

WORK COUNCILS

The implementation of all legal regulations safeguarding the interest of workers, the handling of grievances, welfare for the workers and other arrangements on the level of an industrial establishment is handled by works councils or — in the Public Service by the Staff Representation. For reasons of better understanding I will not touch on the Staff Representation in the Public Service because of the peculiar Public Service conditions in Germany. But generally there are only minor principal differences between works councils and staff representations.

1. *ORGANISATIONAL AND ADMINISTRATIVE PATTERN OF WORKS COUNCIL*

According to our Works Constitution Law of 1952 there shall be established Works Councils (Betriebsrat) in all industrial and commercial establishments with more than five and in all agricultural establishments with more than ten people above the age of 18 employed. These works councils are elected by all the employees and are formed in a singly located factory, workshop, shop, farm or estate. When several factories belong to a single company the members of the different factory works councils form a General Works Council, e.g. in the Volkswagen Company the works councils of the factories in Wolfsburg, Emden, Hannover and Kassel form such a General Works Council. In case a company has got subsidiaries all the different works councils may form a Combined Works Council, e.g. in the case of the Volkswagen Company the above-mentioned works councils and the works council of the Audi — NSU company in Ingolstadt and Heilbronn form such a Combined Works Council.

The size of works councils corresponds with the number of employees:

5	— 20	employees:	1	works council member
21	— 50	employees:	3	works council members
51	— 150	employees:	5	works council members
151	— 300	employees:	7	works council members
301	— 600	employees:	9	works council members
601	— 1000	employees:	11	works council members
1001	— 2000	employees:	15	works council members

etc.

There are big companies having works councils with 50 or 60 members.

Each works council elects a chairman who together with a special working committee is guiding the administration. Most works councils form sub-committees which deal with the different duties. Normally works councils meet twice a month. Their tour of duty is three years and they are protected against retrenchment and transfer for four years.

The membership in a works council is honorary. Only in big works councils one or a few members have to be exempted from work to be free for their works council duties (among 9 members: 1; among 11: 2; among 15: 3 etc.). To all other members the appropriate leave must be granted to enable them to attend meetings or do other duties. All expenses must be covered by the employer — but only as long as they are within the essence of works council work. Every three month the works council has to call a works assembly to which a report on the activities of the works council is given. The employer must be invited to this meeting. Once a year the employer must give a report to this assembly on the business situation and on social and personnel developments. Such a meeting can be called by the employees if 25% of them do wish. These meetings are to be called for during working hours.

2. *WORKS COUNCIL RELATIONS WITH THE TRADE UNIONS*

According to the law works councils shall co-operate closely with the trade unions represented in the company. They may be invited to works council meetings and to works assemblies. And, of course, they may participate in the deliberations.

In practice the co-operation is very close, because approximately 85% of all works council members in West Germany are members of the DGB, whilst a further 10% is organised in other unions. They do not only co-operate with their respective union, but get also a continuous training by their unions. The trade unions also hold regular conferences for their works council members, by this safeguarding close co-operation and an exchange of information among representatives of different companies of the same industry. Thanks to this practice the trade unions themselves get a continuous flow of information from the different establishments.

3. *CO-DETERMINATION AND CO-OPERATION IN PERSONNEL MATTERS*

Most of the time of a works council probably is spent to deal with personnel matters as we call it in Germany: employment of people retrenchments, dismissals, transfers, promotion, grading of

workers, working hours or leave arrangements, grievances etc. In this field the works council has got many duties and many rights to be consulted and even to co-determine the matters concerned. A comprehensive list might show the rights of the works council regarding different issues:

Personnel Planning: the employers has to inform the works council completely about long term plans; the works council may make his own suggestions; the works council must be consulted if any hardship for individuals might occur in order to avoid them as far as possible.

New Jobs: on request of the works council all new jobs must be advertised inside the company first in order to give the staff chances for promotion.

Personnel questionnaries: personnel questionnaires as well as principles for the judgement of services must be agreed to by the works council.

Selection procedures: for employment, transfers, promotions, retrenchments and dismissals must be agreed to by the works council; in case there is no joint solution a compulsory decision is made by the arbitration committee.

Vocational training: shall be promoted; on request of the works council the employer has to discuss related matters in order to promote further training of all employees inside and outside the company; the employer has to consult the works council in all matters regarding to company training schemes etc; the works council can ask for the dismissal of unsuited training personnel and (if the employer does not comply) approach the Labour Court.

On all Personnel Matters: the works council must be informed in time by giving access to the personnel records of the people concerned.

Employment, Grading, Promotions and Transfers: are co-determined by the works council; but the works council can withhold his consent only on certain reasons:

(a) there might be a breach of law

(b) there might be a breach of the jointly agreed selection procedure

(c) there might follow hardship or even retrenchment of workers in the company

(d) there might be a unjustified prejudice against certain workers

(e) there was no advertisement for a job in the company

(f) there is a justified suspicion that the person concerned might create industrial unrest or even might be prejudiced against colleagues because of their origin, their religion, their nationality or their political or trade union activity;

this is of course a very handy list for capable people and in practice there is hardly any example that employers challenged

the reasoning of the works council; but according to the law the missing consent of a works council can be substituted by the labour court.

Retrenchments and Dismissal: in any case the employer has to consult the works council; the works council can disagree on five reasons:

(a) that the employer did not consider the social aspects

(b) that the employer did not comply with the selection procedures

(c) that the person concerned could be employed on some other job in the company

(d) that the person concerned could be employed further after some additional training

(e) that the person concerned probably would have agreed to remain employed under changed contract conditions.

In case, the works council disagrees on one of these reasons, the employer can approach the Labour Court to substitute the consent of the works council. But until the Labour Court decides the worker concerned remains employed and gets the usual wages.

4. *CO-DETERMINATION AND CO-OPERATION IN ECONOMIC MATTERS*

In all companies employing more than 100 employees an Economic Committee must be formed. This is either a sub-committee of the works council or a three to seven member committee elected by the works council. The management of the company by law has to attend the monthly meetings of the economic committee. By tabling the necessary material in writing the management has to inform the economic committee on the following issues:

(a) business and financial situation of the company

(b) production and sales

(c) production and investment planning

(d) rationalisation projects

(e) production procedures, particularly changes in the production procedure

(f) curtailment or shut down of a factory, a workshop or whatsoever

(g) shifting of the factory or a workshop

(h) all other affairs which have an impact on the workers' interest.

The economic committee is convened monthly. In companies with more than one thousand employees the management must give a quarterly economic report to all employees in writing.

In all companies employing more than 20 employees the management has to consult the works council on any change in the company which might cause hardship for the workers or for a few only, this is in particular on:

(a) curtailment or shut down of the establishment or parts thereof

(b) shift of the establishment or parts thereof

(c) amalgamation with other establishments

(d) major changes in the organisational set up, in the factory premises or the business objectives

(e) introduction of new working or production procedures.

If there is no joint solution between management and works council the President of the State Labour Court might be invited for conciliation. In case he is unable to conciliate both parties the arbitration committee shall decide.

5. *CO-DETERMINATION AND CO-OPERATION IN SOCIAL AFFAIRS*

The works council co-determines all the following matters unless they are regulated by law:

(a) internal order in an establishment

(b) arrangement of working hours and breaks

(c) temporary curtailment or extension of the usual working time

(d) time, place and method of wage payment

(e) arrangement of leave

(f) introduction of new supervisory techniques

(g) regulations on industrial safety and health protection

(h) arrangement and administration of social and welfare institutions of the establishment

(i) leasing and termination of company houses

(j) all question of wage formation

(k) determination of piece rate systems and incentives

(l) principles for internal improvement suggestions.

In case there is no joint solution the decision rests again with the arbitration committee.

6. *ARBITRATION BETWEEN MANAGEMENT AND WORKS COUNCIL*

All disputes between management and works council may be decided on by the arbitration committee. A few examples were mentioned. The arbitration committee may be formed permanently or on each issue. This is up to an agreement between management and works council. The arbitration committee is constituted by an equal number of representatives nominated by the management and by the works council plus a "neutral" chairman who must be agreed to by both parties. If both parties are unable to agree to a neutral chairman in a certain period he may be nominated by a Labour Court. For this reasons mostly there are permanent arbitration committees.

In all the cases cited so far where the final decision rests with the arbitration committee either side may appeal to the arbitration committee. In all other cases both sides have to appeal to the arbitration committee jointly.

The arbitration committee decides on a majority vote, which means in practice that the decision is made by the "neutral" chairman.

LABOUR COURTS

It would be boring as well as a special exercise to list out all the duties of our Labour Courts, a few of which were mentioned so far.

At present there are 113 local Labour Courts which are approached on any case asking for a judgement. An appeal against the awards of these courts may be made to the 12 State Labour Courts. Supreme is the Federal Labour Courts whose decisions are final.

The Labour Courts mainly deal with problems arising from contract of service, from collective agreements, from breach of the labour laws or from disputes over the interpretation of the law. In all cases related to wages, employment, promotions, transfers, retrenchments, dismissals, the procedure of the labour courts is different from other courts. Before taking up a case there has to be a conciliatory session during which the President of the Court tries to reach an amicable settlement between the parties involved. Only after this has failed the matter is taken up by the court.

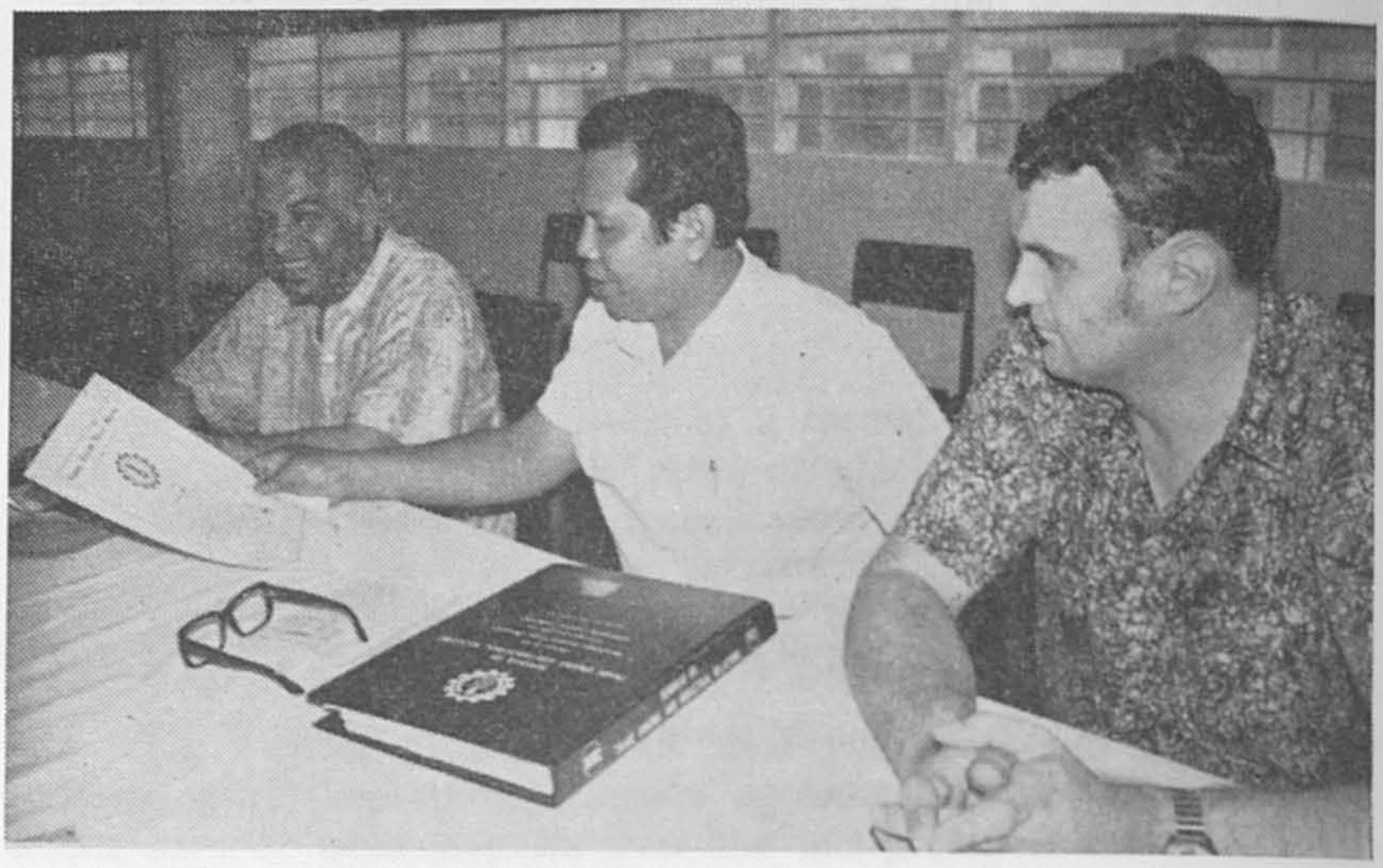
CONCLUSIONS

A very broad and in some respect very detailed information on the system of industrial relations in West Germany might give the impression as if the German System is rather perfect. In practice it is not. Almost daily there are attempts to avoid the legal standards. In many companies there are still no works councils and there is still victimisation. But in most industrial establishments the legal tools as well as the trade unions power can be used for the benefit of the workers. There is also room for improvement.

On the other hand the German system is quite peculiar. Its achievements are based on the historic traditions of Germany and sometimes were even promoted only after terrifying wars had taken place. This unique national experiences of Germany has created a social outlook or even philosophy among the people which possibly makes Germany much different from other Western countries.

Sometimes the question is raised if the German achievements of very smooth industrial relations are not an ideal model for other, especially for developing countries. For a few reasons which I mentioned just now I would like to caution anybody. Each country has got its own tradition, its own history and its own political culture. And it is within this political culture that socio-economic development is taking place. This means that the whole development and the responsibility for it rests within the country concerned. Any import of "foreign institutions" might create more unrest than solutions, because the cultural and historical background of a certain institution cannot be exported.

RECOMMENDATIONS OF THE SEMINAR PARTICIPANTS



Getting ready for the graduation ceremony! Tuan Haji Ramli admiring the certificate



Y. B. Tuan Haji Ramli Omar presenting certificate to one of the participants

Recommendations of Seminar Participants

The two-week Seminar organised by the MTUC in co-operation with the FES, to study the Industrial Relations System in Malaysia and mabe the necessary recommendations to bring about better and healthier Industrial Relations, was held from 8th — 21st July 1974, at MTUC Hall, Petaling Jaya, Malaysia.

For the participants this seminar has been a rich and rewarding experience. The interesting talks, wide-ranging topics and stimulating discussions have given the participants a greater exposure to the problems and a broader knowledge of the various labour laws governing and regulating trade unions and industrial relations.

Though it has not been possible to study the various laws in their entirety — perhaps this wasn't necessary as the participants were generally aware of these laws — an attempt has been made in all seriousness to study in depth certain sections of:—

(a) Trade Unions Ordinance 1959.

(b) Industrial Relations Act 1967.

(c) The Employment Ordinance 1955.

The recommendations contained herein are the outcome of this study.

This is not an attempt to leave behind evidence that we had attended this seminar, but this is definitely an attempt to justify that the seminar was fruitful and that the aims of the seminar were achieved.

At all the times, the participants had tried to be responsible, as was expected of them, and decisions were arrived at only after much thought and debate, as it should be.

This is our sincere and honest contribution to the dignity of the worker, who is the backbone of the nation, and to better industrial relations, which is necessary for greater growth and progress.

Towards the achievement of these great goals, if we had successfully contributed our little bit, the MTUC and FES would have contributed a great deal in the march towards a brighter future.

TRADE UNIONS ORDINANCE 1959

PREAMBLE

In the opinion of the participants, the following re-definitions, amendments, deletions, and enforcements are necessary and imperative to encourage the growth and formation of large trade unions in the country.

The labour laws must not only seen to be fair, but must be just and applicable without fear or favour. There shouldn't be too much arbitrary powers, or provisions that go against the very principles of natural justice, within the law which, in practice had shown to be the main cause for delays, denials and frustrations.

Stringent enforcement of the law is a prerequisite to maintain the harmony and peace in the industrial field. Many of the disputes are the result of non-enforcement or wrong application of the law — often times the direct results of staffing shortage; sometimes due to the ambiguity of the law.

The laws themselves need to be reviewed and brought up to date to keep up with the times and reflect the changing circumstances where labour and management must work hand in hand, both sharing their rights and responsibilities, impartially and adequately.

There is a dire need to shed out-moded and archaic ideas and attitudes and project a more enlightened and liberal image of both labour and management.

RECOMMENDATIONS:

PART I: SECTION 2: INTERPRETATION

"2(1) In this Ordinance, except in so far as the context otherwise requires or it is otherwise expressly provided —

"strike" means the cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal or a refusal under a common understanding of a number of persons who are or who have been so employed to continue to work or to accept employment, and includes any act or omission by a body of workmen employed in any industry acting in combination or under a common understanding, which is intended to or does result in any limitation or restriction or cessation of or dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment.

The present definition of "strike" is too wide and far reaching and definitely weighted against the workers. The definition should be more precise and concise and should read thus:

"STRIKE" means the cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal under a common understanding to work.

"2(1)(a) within any particular trade, occupation or industry or within any similar trade, occupations or industry"

should be amended to read:

"within any one industry".

Any further classification according to trade and occupation splinters the workmen and hinders the formation of larger unions.

PART III: SECTION 8: NECESSITY FOR REGISTRATION

"8(1) Every trade union established after the commencement of this Ordinance shall apply to be registered under this Ordinance within a period of one month reckoned from the date on which it is so established."

should be amended to "a period of three months", instead of one month, to allow more time for unions to prepare for registration.

There should be a provision for the RTU to respond to the application within a month to state whether such application has been allowed or rejected.

SECTION 10: APPLICATION FOR REGISTRATION

"10(1) Every application for registration of any association, combination or society as a trade union shall be made to the Registrar in the prescribed form, and shall be signed by at least seven members of the union, any of whom may be officers thereof."

Has been quoted as encouraging the formation of "pea nut" unions. However, in our opinion, we beg to differ.

It is the non-enforcement of sections 2 and 3 of Trade Unions Act, 1965 (No. 81 of 1965), that has contributed to the multiplicity of unions and the abuse of section 10(1) of Trade Unions Ordinance 1959.

"10(2) Every application under sub-section (1) of this section shall be accompanied by such fee as may be prescribed, and by a printed copy of the rules of the trade union signed by the members of the trade union making the application under sub-section (1) of this section and a statement of the following particulars, namely:

(a) the names, occupations and addresses of the members making the application;

(b) the name of the trade union and the address of its head office; and

(c) the titles, names, ages, addresses and occupations of the officers of the trade union, and such other information regarding such officers as the Registrar may in any particular case require to be furnished.

It should be amended to read "and by a printed copy/ cyclostyled copy of the rules".

To insist on a printed copy of the rules is to hinder and delay the registration of a trade union.

SECTION 12: REGISTRATION

"12(2)(c) The Registrar may refuse to register a trade union if:-

(c) he is of the opinion that the trade union is likely to be used for unlawful purposes or for purposes contrary to or inconsistent with its objects and rules.

It should be deleted.

This provision gives to much discretionary power to the RTU. Besides, this provision is too subjective and does not require the RTU to act on definite evidence.

It is also unnecessary as the RTU has the powers under Section 15(1)(b)(iv) to cancel the registration of a trade union if it has been used for any unlawful purpose.

To act on evidence would be just, but to act on assumption would be a travesty of justice.

SECTION 15: CANCELLATION OF REGISTRATION

"15(1)(b)(iv) that the union has been or is being or is likely to be used for any unlawful purpose or for any purpose contrary to its objects or rules"

It should be amended to read:

"that the union has been or is being used for any unlawful purpose or for any purpose contrary to its objects or rules"

To delete "or is likely to be".

The law should only act on definite proof. If the law is allowed to be presumptuous, it will only lead to the abuse of power and justice.

PART V: SECTION 26: MEMBERSHIP OF MINORS

"26(3) Any group of employees being members of a trade union, who take any form of industrial action in contravention of this Ordinance or the rules of such union, shall cease to be members of the union and thereafter such members shall not be eligible from becoming members of a trade union unless approved by the Registrar".

The penalty for members of a trade union who take any form of industrial action in contravention of this Ordinance is too harsh and severe.

It does not take into account a situation where ignorant leaders mislead and misguide innocent members of a union into taking industrial action not consistent with this Ordinance.

It correctly punishes the guilty and blindly penalizes the innocent.

We are of the opinion that it would be fair and just to prohibit/ suspend such recalcitrant members from being members of any union for a period of not more than a year.

Any action taken should, besides acting as a deterrent, be corrective in its effect.

A just law should not and cannot be vengerful but should provide every opportunity for people to reform and be useful and productive members of a community.

SECTION 27: MEMBERSHIP OF PUBLIC OFFICERS

"27 (1) Subject to the provisions of sub-section (2) of this section, no public officer shall join or be a member of any trade union or shall be accepted as a member of any trade union

(2) The Yang DiPertuan Agong may by notification in the Gazettee exempt from the provisions of sub-section (1) either wholly or subject to such conditions as are in such notification specified any public officer or any category, class or description of public officers and thereupon such public officers shall be deemed to be workmen for the purposes of this Ordinance".

These should be deleted.

Any categorisation of workers into divisive forces should be discouraged, as this goes against the formation of large unions.

There should only be one union for one industry. In this connection we recommend one union for the Public Sector, one for the Quasi-Government body and one for the Local Authorities.

SECTION 28: OFFICERS

"28(1)(b) A person shall not act as a member of the executive of a trade union or any branch thereof, or of any federation of trade unions, and shall be disqualified for election as such member, if —

(b) he has not been engaged or employed for a period of at least three years in any trade, occupation or industry with which the trade union or federation is connected

It should be amended to read:
"he has not been engaged or employed for a period of at least one year in any industry"

The present provision of three years unfairly restricts the establishment of a union and denies the workmen the right to organise themselves any earlier. We are reminded of the maxim, "Justice delayed is justice denied".

PART VIII: FUNDS AND ACCOUNTS

There must be provision to make it mandatory for the employer to deduct union dues of members of a registered trade union, provided such request is made by the members.

This must be an inherent right and must be guaranteed by law. Only then can there be larger and effective unions in the country; only then can there be a viable and meaningful participation by the unions in the economy of the country; only then can there be a greater contribution to the growth of the economy.

The Government's often repeated pronouncements — need for larger and effective unions; it encourages the growth and formation of unions — are just words which are mouth-filling and impressive but will come to nought if it does not take action to give credence to such pronouncements.

SECTION 56: ANNUAL RETURNS TO BE PREPARED AS REGISTRAR MAY DIRECT

"56(1) A general statement of the receipts, funds, effects, and expenditure of every registered trade union in respect of the period of twelve months ending on the thirty-first day of March in each year shall be transmitted by the secretary of the union to the Registrar before the first day of July in every year, and shall show fully the assets and liabilities at that date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union, and shall show separately

the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the Registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same".

It should be amended to read "before the 1st day of September in every year" instead of July.

The period between the closing of accounts and transmission of the general statement of the receipts, funds, effects and expenditure is too short and inadequate for most unions to observe the provision.

The extended period of time should allow Headquarters to have more time to collect accounts from Branches and prepare the consolidated accounts for submission to the RTU.

APPEALS TO THE MINISTER

Provisions for appeals, as provided under sections 17 and 35, are inadequate and go against the principles of natural justice.

The Minister is not a neutral person and evidence seem to indicate that in almost all cases he has upheld the decision of the RTU.

It would be in the interest of justice that such appeals be referred to the Labour Appellate Tribunal.

INDUSTRIAL RELATIONS ACT, 1967

Herewith we submit our recommendations, as we see fit, pertaining to the relevant sections of the Industrial Relations Act, 1967.

PART I: SECTION 2: INTERPRETATION

(a) "industry means any business, trade, undertaking, manufacture or calling of employers, and includes any calling, service, employment, handicraft or industrial occupation or a vocation of workmen"

The term "industry" must be redefined so as not to encourage the fragmentation of workers into ineffective smaller groups. We therefore recommend:

"INDUSTRY" means any undertaking or service.

(b) "strike means the cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal or a refusal under a common understanding of a number of persons who are or who have been so employed to continue to work or to accept employment and includes any act or ommission by a body of workmen employed in any industry acting in combination or under a common uderstanding, which is intended to or does result in any limitation or restriction or cessation of or dilatoriness in the performance or execution of the

whole or any part of the duties connected with their employment".

"STRIKE" means the cessation of work of a body of persons persons employed in any industry acting in combination, or a concerted refusal or a refusal under the common understanding to work.

This definition is the same as and is in common with the definition proposed for the Trade Union Ordinance, 1959.

PART II: SECTION 5A

"5A (1) A workman intending to carry out his duties or to exercise his rights as an officer of a trade union shall apply in writing to his employer for leave of absence stating the duration of and the purposes for which such leave is applied for and the employer shall grant such application for leave if the duration of the leave applied for is for a period that is no longer than what is reasonably required for the purposes stated in the application:

Provided that a workman shall not be entitled to leave with pay for the duration of his absence if the purposes for which he is absent from work are not to represent the members of his trade union in relation to industrial matters concerning his employer."

To add, "Workmen are eligible for leave with pay to attend seminars/courses that are approved as educational courses by the Minister of Labour and Manpower".

PART II: SECTION 6: PROHIBITION ON WORKMEN AND THEIR TRADE UNIONS IN RESPECT OF CERTAIN ACTS

"6(a) No workmen or trade union of workmen and no person acting on behalf of such trade union shall —

except with the consent of the employer, persuade at the employer's place of business during working hours a workman of the employer to join or refrain from joining a trade union:

Provided that the provisions of this paragraph shall not be deemed to apply to any act by a workman employed in the same undertaking where such act does not interfere with his normal duties".

To insert after the words "except with the consent of the employer," "which consent shall be given".

PART III: SECTION 8: CLAIM FOR RECOGNITION

Many disputes have arisen with respect to the issue of recognition. The present provisions are unsatisfactory and inadequate, frustrating and disappointing.

We, therefore, urge a review of this section and recommend that it be re-written thus:

(1) A trade union of workmen shall serve on an employer or on a trade union of employers in writing a claim for recognition in respect of the workers.

(2) The Registrar of Trade Unions upon receipt of a copy of the claim for recognition, as mentioned in 1 above, shall within 30 days from the date of such claim conduct a membership check to verify the claim of the union. If the check confirms that the union represents a majority of workmen, the Registrar shall direct the employer to accord recognition and the employer shall forthwith comply with the directive.

(3) When a membership check reveals that the union has only a minority representation the employer shall accord a limited recognition. A limited recognition shall not entitle a union to commence collective bargaining.

PART IV: SECTION 12: COLLECTIVE BARGAINING

"12(3) Notwithstanding the provisions of subsection (1), no trade union of workmen may include in its proposals for collective agreement a proposal in relation to any of the following matters that is to say —

(a) the promotion by an employer of any workman from a lower grade or category to a higher grade or category;

(b) the transfer by an employer of a workman within the organisation of an employer's profession, business, trade or work, provided that such transfer does not entail a change to the detriment of a workman in regard to his terms of employment;

(c) the employment by an employer of any person that he may appoint in the event of a vacancy arising in his establishment;

(d) the termination by an employer of the services of a workmen by reason of redundacy of by reason of the re-organisation of an employer's criteria for such termination.

(e) the dicmissal and reinstatement of a workmen by an employer in circumtances in which subsection (l) of section 16A applies;

(f) the assignment or allocation by an employer of duties or specific tasks to a workmen that are consistent or compatible with the terms of his employment.

Provided that nothing in this sub-section shall prohibit a trade union of workmen to raise in the course of any discussion with an employer or trade union of employers (whether or not the discussion is in the course of any collective bargaining) questions

of a general character relating to the precedure of promotions of workmen notwithstanding that such question do not form part of the proposals aforesaid".

This section should be deleted.

We maintain the right of workmen to collective bargaining and there should be no restriction in scope for such agreement.

PART IV: SECTION 12: COLLECTIVE BARGAINING

"12(8) Where a trade union of workmen considers that an employer or a trade union employers has refused to allow without just cause or excuse any question referred to under the proviso to subsection (3) to be raised in the cause of any discussion, the trade union of workmen may, within one month of such refusal, make representations in writing to the Minister who may, before giving any direction thereon, give on opportunity to the employer or his trade union and the trade union of workmen to be heard; and the direction of the Minister shall be final and conclusive."

To be deleted in view of our recommendation that 12(3) be deleted.

PART IV: SECTION 13A: COLLECTIVE BARGAINING

"13A No collective agreement to which this section applies shall contain provisions with regard to terms and conditions of service that are more favourable to workmen than those contained in Part XII of the Employment Ordinance, 1955. unless such provisions are approved by the Minister after considering any representations in that regard made by an employer and a trade union representing his workmen.

Provided that the Minister may amend or modify such provisions before approving them."

We are of the view that where unions and managements agree. and where managements can afford to pay more than what has been laid down as minimum there should be no restrictions whatsoever to better benefits under these circumtances.

PART V: SECTION 16A

"16A (1) Where a workmen considers that he has been dismissed without just cause or excuse by his employer, in circumtances other than those arising out of a contravention of section 46A he may within one month of such dismissal. make representations in writing to the Minister to be reinstated in this former employment".

In the question of dismissal, representation in writing should be made to the respective State Director of Industrial Relations, and not to the Minister.

This method will save time and minimise red tape and delay.

"16A(5) The decision of the Minister on any representations made under this section shall be final and conclusive and shall not be challenged in any Court or in a Court established under this Act".

The issue should not end with the Miniter's decision, if the principles of natural justice are to be respected.

There should be provision for appeal to the Labour Appellate Tribunal.

PART VI: SECTION 18

"18(1) (b) For the purpose of this Act, there shall be an Industrial Court which shall consist of —

a panel of independent persons, a panel of persons representing employers and a panel of persons representing workmen all of whom shall be appointed by the Minister: Provided that before appointing the panals the Minister may consult such organisation representing employers and workmen respectively as he may think fit"

There is no need for an independent member, particularly when this member is not an involved party in the dispute. Bringing in an outsider may not be the best solution. Further, we believe that the Chairman is independent and neutral enough and as such should be acceptable to both the disputing parties.

It is not sufficient for the Minister to consult, when he chooses to, the organisation representing workers, but he should consult and shall confirm the nominee submitted by such organisation. Workers must be satisfied that they are their representatives.

PART VI: SECTION 29: EFFECT OF AN INDUSTRIAL COURT AWARD

The Court can err sometimes in its awards, and there must be provisions to appeal against such wrong awards.

We recommend that a Labour Appellate Tribunal should be set up and which should be headed by a High Court Judge with assessors to assist. They should only go through the proceedings of the Industrial Court in giving their decision.

Lawyers should be barred from arguing the case further at this level. The issue to settle is equity and not the principles and finer points of law.

PART VIII: SECTION 43: PENALTY FOR ILLEGAL STRIKES & LOCK-OUTS

"43(1) Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine, and a further fine of fifty dollars for every day during which such offence may continue."

This provision is lopsided and is weighted against the workers when compared with 43(2)

> "42(2) A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal".

We are of the opinion that irrespective of the number of workmen involved, the fine should be collective and should not exceed the sum imposed on the employer for a similar offence.

CONFIDENTIAL, EXECUTIVE, SECURITY CAPACITIES

The above terms, as referred to under Section 5(2)(b) and (c) and Section 2(1) and (5), are vague and ambiguous, and unnecessarily excludes those who do not strictly come within the ambit of these terms.

The definition of the above terms should be specific and definite and must only include those persons actually involved in handling confidential and security matters of an industry.

EMPLOYMENT ORDINANCE, 1955

SECTION 12(3): NOTICE OF TERMINATION OF CONTRACT

It is recommended that the notice period should be not less than one month irrespective of the length of service and therefore Section 12(3) should be accordingly amended.

SECTION 14: TERMINATION OF CONTRACT FOR SPECIAL REASONS

(1) It is recommended that:—

Provisions be made in this Section of the Ordinance, for the employer to serve a show cause letter to employee concerned, allowing him to give an explaination in two weeks time prior to instituting an enquiry.

Provision should also be made to the effect that the workmen concerned should be allowed representation at any enquiry.

Further, the order of the disciplinary action is to be re-arranged in the following order:—

(a) Suspend him from work without payment of wages for a period not exceeding one week;
or
(b) down-grade the labourer; or

(c) dismiss without notice a labourer employed by him on the grounds of misconduct inconsistent with the fulfillment of the expressed or implied conditions of his service.

SECTION 17: TERMINATION OF CONTRACT OF SPOUSE OF LABOURER WHOSE CONTRACT IS TERMINATED

It is strongly recommended that this section of the Ordinance should be deleted without any reservation as this is basically wrong in principle as it encroaches into the individual's right to work and further two are penalised for the fault of one.

SECTION 23: WAGES NOT DUE FOR ABSENCE FROM WORK THROUGH IMPRISONMENT OR ATTENDANCE IN COURT

It is recommended that an employee who is held under custody and released subsequently being found not guilty, should be paid his salary for the period the employee was held in custody.

Further, an employee who appears as a witness in any court for any party, should be paid his salary for the day.

SECTION 60E: ANNUAL LEAVE

It is recommended that the quantum of annual leave should be as follws:—

(a) 0 — 3 years of service — 10 days

3 — 5 years of service — 14 days

5 years and above — 21 days

It is also recommended that provision be made in this section that employees having less than 12 months service should be given proportionate leave for the period he has been in service with the employer. This provision is recommended because there are employers who engage workers on a 3 or 6 months contract and renew their contract on the expiry of such contract thereby denying the workers of their annual leave entitlement.

SECTION 60F: SICK LEAVE

It is recommended that all employees should be entitled for sick-leave from the date of engagement and not after 12 months of service, as sickness is part of life and no one will voluntarily want to fall ill and it is not just to deny sick leave to an employee who has not completed 12 months of service.

The quantum of sick leave should be three months with full pay, whether hospitalised or not. This is also in line with the sick leave benefit enjoyed by the government employees.

SECTION 60G: RETRENCHMENT BENEFIT

As this section does not provide for any retrenchment benefit and further prohibits an employer from giving such benefit to employees who have less than 3 years of service it is recommended that provision be made in this section to make it compulsory for employers to pay a retrenchment benefit of one month salary for each year of service, based on the average of last drawn annual salary.

SECTION 60H: RETIREMENT BENEFIT

It is recommended that in this section as in section 60G it be made compulsory for employer to pay a retirement benefit of one month last drawn salary for every year of completed service.

SECTION 60 J (2)

It is recommended that, on the last line "other than sections 60 G and 60 Hu be deleted, as it is ridiculous to declare it illegal to provide retirement and retrenchment benefit under terms which are more favourable than the ordinance.



Mr. P. Ramakrishnan speaking on behalf of the participants at the closing session.

Appendix I

PROGRAMME OF MTUC/FES SEMINAR ON INDUSTRIAL RELATIONS

Petaling Jaya, 8th — 21st July, 1974

8th July, 1974

10.00 Inauguration
Address by Mr. S. Radhakrishnan, MTUC Director of Education.
Address by Mr. Ruediger Sielaff, FES Representative in Malaysia
Address by the Hon'ble Mr. Yeoh Teck Chye, MP, President MTUC
Address by the Hon'ble Tan Sri Dato V. Manickavasagam. PMN; SPMS; PJK; Minister of Labour and Manpower

11.00 Panel Discussion on the Trade Union Ordinance 1959
Panel: Abdul Wahab bin Mohd Othman, Registrar of Trade Unions
N. S. Wigneswaran, Asst. Secretary, MTUC
G. Vadiveloo, Barrister-at-Law
Chairman: Dunston Ayadurai

2.30 Group Discussion

9th July, 1974

9.00 Plenary Discussion
11.00 Panel Discussion on the Industrial Relations Act 1967
Panel: K. P. Gengadharan, Barrister-at-Law
G. Rajasekaran, General Secretary, MIEU
B. Kumaran, Director of Industrial Relations for Selangor and Pahang, Ministry of Labour.
Chairman: Dr. I. Lourdesamy

2.30 Group Discussion

10th July, 1974

9.00 Plenary Discussion
11.00 Panel Discussion on the Employment Ordinance 1955
Panel: E. Sreedharan, Ministry of Labour and Manpower
John R. Gurusamy, Deputy Secretary General, MTUC
Chairman: Lee Thong Cheong

2.30 Group Discussion

11th July, 1974

9.00 Plenary Discussion
11.00 Panel Discussion on Grievance Handling
Panel: Ministry of Labour and Manpower
A. M. Dali Ravindran, Head of Organisation Department, MTUC

Boniface Lobo, Dpty, Director of Industrial Relations, NUPW
W. Fernando, Director, MAPA
Chairman: Dr. Leonard Nadler

2.30 Group Discussion

12th July, 1974

9.00 Plenary Discussion

11.00 Panel Discussion on Industrial Conflicts

Panel: G. Joseph, Barrister-at-Law
Prakas A. Patrick Rao, Head of Industrial Relations Department, MTUC
B. Kumaran, Director of Industrial Relations for Selangor and Pahang
Sam Abishegam,
Chairman: John Doraisamy

2.30 Group Discussion

13th July, 1974

9.00 Plenary Discussion

11.00 System of Industrial Relations in the Federal Republic of Germany
Lecture by Ruediger Sielaff, FES Representative in Malaysia

2.30 System of Industrial Relations in the United States
Lecture by Dr. John E. Hutchinson, John Hopkins School, Washington

15th July, 1974

9.00 Panel Discussion on Collective Bargaining

Panel: John R. Gurusamy, Deputy Secretary General, MTUC
M. G. Doraisamy, Asst. Secretary, Industrial Court Tuan Syed Ahmad Idid, Personnel Manager, Dunlop Industries
R. R. Chelvarajah, Barrister-at-Law
Chairman: Michael Greaves

11.15 Group Discussion

4.15 Plenary Discussion

16th July, 1974

9.00 Visit to the Industrial Court

2.30 Discussion on the Visit to the Industrial Court

17th July, 1974

9.00 Panel Discussion on the Approach of Industrial Court towards Trade Disputes

Panel: D. P. Xavier, Barrister-at-Law
John R. Gurusamy, Deputy Secretary General, MTUC
Chairman: Rev. Father Joseph Garland, SJ

11.15 Group Discussion
4.15 Plenary Discussion

18th July, 1974

9.00 Essence of Research in Industrial Relations
Lecture by Ruediger Sielaff, FES Representative in Malaysia
11.00 Group Discussion
4.15 Plenary Discussion

19th July, 1974

9.00 Panel Discussion on the Case for a Review of the System of Industrial Relations in Malaysia

Panel: S. J. H. Zaidi, Secretary General, MTUC
Dr. Harcharan Singh Khera, Lecturer, University of Malaya
B. Kumaran, Director of Industrial Relations for Selangor and Pahang
W. Fernando, Director, MAPA

Chairman: Datuk Dr. Arshad Ayub

11.15 Group Discussion
4.15 Plenary Discussion

20th July, 1974

9.00 Case Study: Victimisation
2.30 Mock Session of Court Hearing
6.00 Award of the Court

21st July, 1974

9.00 Group Discussion on Evaluation
11.00 Plenary Discussion on Evaluation and Recommendations
2.30 Closing Ceremony

Address by Mr. S. Radhakrishnan, Director of Education, MTUC
Address by Mr. Ruediger Sielaff, FES Representative in Malaysia
Address by Mr. S. J. H. Zaidi, Secretary General, MTUC
Address by Y.B. Tuan Haji Ramli bin Haji Omar, KMN, Parliamentary Secretary, Ministery of Labour and Manpower.

Appendix II

LIST OF PARTICIPANTS OF THE MTUC/FES SEMINAR ON INDUSTRIAL RELATIONS

Petaling Jaya, 8th — 21st July, 1974

Compositions of Groups dealing with subject 1 — 5 (Trade Union Ordinance, Industrial Relations Act, Employment Ordinance, Grievance Handling, Industrial Conflicts)

Group A

Kamarulzaman bin Osman	(NUPCIW)
Anne Khee Kim See	(MNU)
A. E. Pereira	(NUPW)
Thomas Lee Nyuk Theng	(SBEU)
Mohamed bin Ismail	(ANULAE)
Yin Chew Chai	(BSEU)
K. Navaratnam	(AUEGCAS)
P. Ramakrishnan	(NUT)

Group B

B. K. Kamaruddin	(AMMISU)
Mohd Idris bin Mutaharin	(UPUS)
P. Ponnusamy	(NUPW)
K. S. Maniam	(NEBTSU)
S. Gopalan	(ANULAE)
Y. Tharuman	(RUM)
Khoo Ooi Seng	(DIEU)
A. R. Velu	(NUBE)
C. N. E. Gomes	(NUT)

Group C

K. R. Krishnan	(PIEU)
Peh Hock Chye	(NUTE)
T. K. Vasudevan	(PACSU)
Chok Ein Lai	(UOMCE)
Ng Seng Ho	(KPPMTDPP)
Mohd Nordin bin Abd Rahman	(NMEU)
Mohd Hamzah Aminuddin	(S & TIWU)
A. Narayanan	(NUPW)
Chan Bee Chin	(NUT)

Group D

Richard Phang Thien Sung	(SCEU)
Liew Juen Keh	(NUTE)
Ling Hew Ting	(SBEU)
Mahathevan s/o Sivaguru	(KPPHU)
Duraisamy Mathews	(EIWU)
Selvaraju s/o Murugiah	(NUCW)
P. K. Samiveloo	(MSMEU)
M. Kasinathan	(CSEU)
Badri Hashim	(NEBTSU)

Composition of Groups dealing with subjects 6 — 8 (Collective Bargaining, Essence of Research, Approach of Industrial Court towards Trade Disputes)

Group A

K. S. Maniam	(NEBTSU)
P. Ponnusamy	(NUPW)
Kamarulzaman bin Osman	(NUPCIW)
K. Navaratnam	(AUEGACS)
Chan Bee Chin	(NUT)
Chok Ein Lai	(UOMCE)
Richard Phang Thien Seng	(SCEU)
S. Gopalan	(ANULAE)

Group B

Ng Seng Ho	(KPPMTDP)
C. N. E. Gomes	(NUT)
P. Ramakrishnan	(NUT)
Duraisamy Mathews	(EIWU)
Mohamed Ismail	(ANULAE)
Ling How Ting	(SBEU)
Peh Hock Chye	(NUTE)
Mohd Hamzah Aminuddin	(S & TIWU)
Ang Seng Chai	(Representative of MMEA)

Group C

T. K. Vasudevan	(PACSU)
Selvaraju	(NUCW)
A. Narayanan	(NUPW)
B. Kamaruddin	(AMMISU)
V. Tharuman	(RUM)
Khoo Ooi Seng	(DIEU)
Badri Hashim	(NEBTSU)
M. Kasinathan	(CSEU)
Mahathevan	(KPPHU)

Group D

A. E. Pereira	(NUPW)
K. R. Krishnan	(PIEU)
Thomas Lee Nyuk Thong	(SBEU)
Yin Chew Chai	(BSEU)
Mohd Idris bin Mutaharin	(UPUS)
A. R. Velu	(NUBE)
Mohd Nordin bin Abd Rahman	(NMEU)
P. K. Samiveloo	(MSMEU)
Anne Khoo Kim See	(MNU)

Appendix III

MALAYSIA

ACT OF PARLIAMENT

No. 35 OF 1967

INDUSTRIAL RELATIONS

ACT 1967

MALAYSIA

Act of Parliament

No: 35 of 1967

INDUSTRIAL RELATIONS ACT, 1967

ARRANGEMENT OF SECTIONS

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Section

1. Short title and commencement.
2. Interpretation.

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RIGHTS OF WORKMEN AND EMPLOYERS AND THEIR TRADE UNIONS

3. Expression "trade union".
4. Rights of workmen and employers.
5. Prohibition on employers and their trade unions in respect of certain acts.
6. Prohibition on workmen and their trade unions in respect of certain acts.
7. Reference of complaint to Industrial Court.

PART III

RECOGNITION OF TRADE UNIONS

8. Claim for recognition.
9. Powers of the Court.
10. Trade unions accorded recognition.
11. Trade unions not accorded recognition.

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COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENTS

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13. Collective agreements.
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Section

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Section

18. Industrial Court.
19. Constitution of the Court.
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22. Secretary and Officers.
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25. Power of President to regulate procedure and proceedings.
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42. Illegal strikes and lock-outs.
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44. Penalty for instigation.
45. Penalty for giving financial aid to illegal strikes and lock-outs.
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47. Offences seizable and non-bailable.
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"Court" means the Industrial Court appointed under Part VI and includes, unless the contrary intention appears, any Court under section 19 constituted for the purpose of dealing with any trade dispute or matter referred to it, and any division thereof;

"Division" means a division of the Court as constituted under section 20;

"employer" means any person or body of persons whether or not statutory or incorporated, who employs a workman under a contract of employment and includes the Government unless otherwise expressly stated in this Act, and any local authority;

"government" means the Federal Government or the Government of a State;

"industry" means any business, trade, undertaking, manufacture or calling of employers, and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen;

"injury" includes injury to a person in respect of his business, occupation, employment or other source of income and any actionable wrong;

"intimidate" means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants, or of violence or damage to any person or property;

"lock-out" means the closing of a place of employment or the suspension of work by an employer or the refusal by an employer to continue to employ any number of persons employed by him in furtherance of a trade dispute;

"maliciously" means the doing of a wrongful act intentionally without just cause or excuse, whether or not in furtherance of a trade dispute;

"Minister" means the Minister charged with responsibility for labour and industrial relations.

"party", with reference to any trade dispute, includes a trade union of employers representing an employer who is a party to the dispute or a trade union of workmen representing workmen who are parties to the dispute;

"President" means the President of the Court appointed under this Act;

"public health service" means any medical or health service and includes any hospital, clinic, sanatorium or other related institution for the care of the sick or any system of public conservancy or sanitation;

"Public utility service" means any service specified in the Schedule;

"Secretary" means the Secretary of the Court appointed under this Act and includes any Deputy or Assistant Secretary;

"strike" means the cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal or a refusal under a common understanding of a number of persons who are or who have been so employed to continue to work or to accept employment and includes any act or omission by a body of workmen employed in any industry acting in combination or under a common understanding, which is intended to or does result in any limitation or restriction or cessation of or dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment;

"trade dispute" means any dispute between employers and workmen, or between workmen and workmen or between employers and employers, which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person;

"trade union" means any trade union registered under the provisions of any law relating to the registration of trade unions;

"workman" means any person, including an apprentice, employed by an employer under a contract of employment to work for hire or reward and for the purposes of any proceedings in relation to a trade dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute.

PART II

RIGHTS OF WORKMEN AND EMPLOYERS AND THEIR TRADE UNIONS

Expression "trade union".

3. For the purposes of this Part, the expression "trade union" includes an association that has applied to be registered as a trade union.

Rights of workmen and employers.

4. (1) No person shall interfere with, restrain or coerce a workman or an employer in the exercise of his rights to form and assist in the formation of and join a trade union and to participate in its lawful activities.

(2) No trade union of workmen and no trade union of employers shall interfere with each other in the establishment, functioning or administration of that trade union.

(3) No employer or trade union of employers and no person acting on behalf of such employer or such trade union shall support any trade union of workmen by financial or other means, with the object of placing it under the control or influence of such employer or such trade union of employers.

5A. (1) A workman intending to carry out his duties or to exercise his rights as an officer of a trade union shall apply in writing to his employer for leave of absence stating the duration of and the purposes for which such leave is applied for and the employer shall grant such application for leave if the duration of the leave applied for is for a period that is no longer than what is reasonably required for the purpose stated in the application:

Provided that a workman shall not be entitled to leave with pay for the duration of his absence if the purposes for which he is absent from work are not to represent the members of his trade union in relation to industrial matters concerning his employer.

Prohibition on workmen and their trade unions in respect of certain acts.

6. No workman or trade union of workmen and no person acting on behalf of such trade unions shall:—

(a) except with the consent of the employer, persuade at the employer's place of business during working hours a workman of the employer to join or refrain from joining a trade union:

Provided that the provisions of this paragraph shall not be deemed to apply to any act by a workman employed in the same undertaking where such act does not interfere with his normal duties; or

(b) intimidate any person to become or refrain from becoming or to continue to be or to cease to be a member or officer of a trade union; or

(c) induce any person to refrain from becoming or cease to be a member or officer of a trade union by conferring or offering to confer on any person or by procuring or offering to procure any advantage.

Reference of complaint to Industrial Court.

7. (1) Any complaint of any contravention of the provision of section 4, 5, or 6 may be lodged in writing to the Minister setting out all the facts and circumstances constituting the complaint.

(2) The Minister, upon receiving any complaint under sub-section (1), may, if he thinks fit, refer such complaint to the Court for hearing.

(3) The Court shall thereupon conduct a hearing in accordance with the provisions of this Act and may make such award as may be deemed necessary or appropriate.

PART III

RECOGNITION OF TRADE UNIONS

Claim for recognition.

8. (1) No trade union of workmen the majority of whose membership consists of workmen in non-managerial or non-executive positions, excluding persons employed in confidential capacity or engaged in security work may seek recognition in respect of workmen in managerial or executive positions or workmen employed in confidential capacity or engaged in security work, or serve an invitation under section 12 in respect of such workmen.

(2) A trade union of workmen may serve on an employer or on a trade union of employers in writing a claim for recognition in respect of the workmen or any class of workmen employed by such employer or by the members of such trade union of employers.

(3) An employer or a trade union of employers upon whom a claim for recognition has been served shall, within thirty days after the service of such claim, either accord recognition or, if recognition is not accorded, notify the trade union of workmen concerned in writing the grounds therefor.

(4) Upon receipt of a notification under sub-section (3) or where an employer or a trade union of employers has failed to comply with the provisions of sub-section (3), the trade union of workmen may report the matter in writing to the Minister.

(5) The Minister, upon receipt of a report under sub-section (4) may take such steps as may be necessary or expedient to resolve the matter and shall, if the matter is not resolved, give a decision; and the Minister's decision as to who shall be workmen in managerial or executive positions or employed in confidential capacity or engaged in security work made under sub-section (1) of this section and any decision made by him under this section shall be final and shall not be questioned in any Court.

Powers of the Court

9. (1) No workman shall go on strike for whatever reason during the pendency of proceedings under section 8 of this Act or after the Minister has decided that the trade union should not be accorded recognition by the employer of such workman.

(2) An employer shall not dismiss a workman once a trade union of workmen has served in

writing on the employer or a trade union of employers to which the employer belongs acclaim for recognition in respect of the workman or class of workmen.

Provided that a dismissal may be effected on disciplinary grounds and that this restriction shall no longer apply once the Minister has made a decision on the claim.

Trade union accorded recognition.

10. Where a trade union has been accorded recognition in respect of any workman or class of workmen whether by a decision of the Minister or otherwise no other trade union shall make any claim for recognition in respect of the same workman or class or workmen unless a period of two years has elapsed after such recognition has been accorded or the trade union which has been accorded recognition is no longer in existence.

Trade unions not accorded recognition

11. Where the Minister has decided that a trade union of workmen shall not be accorded recognition, such trade union shall not make any further claim for recognition until three months have elapsed after the decision.

PART IV

COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENTS

Collective bargaining.

12. (1) Where a trade union of workmen has been accorded recognition by an employer or a trade union of employers : -

(a) the trade union of workmen may invite the employer or trade union of employers to commence collective bargaining; or

(b) the employer or the trade union of employers may invite the trade union of workmen to commence collective bargaining.

(2) The invitation under sub-section (1) shall be in writing and shall set out the proposals for a collective agreement.

(3) Notwithstanding the provisions of subsection (1), no trade union of workmen may include in its proposals for collective agreement a proposal in relation to any of the following matters that is to say : -

(a) the promotion by an employer of any workman from a lower grade or category to a higher grade or category;

(b) the transfer by an employer of a workman within the organisation of an employer's profession, business, trade or work, provided that such transfer does not entail a change to the detriment of a workman in regard to his terms of employment;

(c) the employment by an employer of any person that he may appoint in the event of a vacancy arising in his establishment;

(d) the termination by an employer of the services of a workman by reason of redundancy or by reason of the re-organisation of an employer's profession, business, trade or work or the criteria for such termination;

(e) the dismissal and reinstatement of a workman by an employer in circumstances in which sub-section (1) of section 16A applies

(f) the assignment or allocation by an employer of duties or specific tasks to a workman that are consistent or compatible with the terms of his employment.

Provided that nothing in this sub-section shall prohibit a trade union of workmen to raise in the course of any discussion with an employer or trade union of employers (whether or not the discussion is in the course of any collective bargaining) questions of a general character relating to the procedures of promotion of workmen notwithstanding that such question do not form part of the proposals aforesaid.

(4) The employer, trade union of employers or trade union of workmen to whom invitation under sub-section (1) has been made shall, within fourteen days from the receipt of the invitation, reply in writing to the party who has made the invitation notifying acceptance or otherwise of the invitation.

(5) Where an invitation to commence collective bargaining has been made and a reply notifying acceptance has been given the parties shall commence collective bargaining without undue delay.

(6) Where an invitation to commence collective bargaining has been made and such invitation has been refused or not been accepted within fourteen days, the party making the invitation may notify the Minister in writing, whereupon the Minister may take such steps as may be necessary or expedient with a view to bring the parties to commence collective bargaining within thirty days.

(7) If after such steps, as aforesaid, have been taken, there is still refusal to commence collective bargaining, a trade dispute shall be deemed to exist upon the matters set out in the invitation.

(8) Where a trade union of workmen considers that an empoyer or a trade union of employers

has refused to allow without just cause or excuse any question referred to under the proviso to sub-section (3) to be raised in the cause of any discussion the trade union of workmen may, within one month of such refusal, make representations in writing to the Minister who may, before giving any direction thereon, give an opportunity to the employer or his trade union and the trade union of workmen to be heard; and the direction of the Minister shall be final and conclusive.

Collective agreements

13. (1) A collective agreement shall be in writing and signed by the parties to the agreement or by persons authorised in that behalf.

(2) A collective agreement shall set out the terms of such agreement and shall, where appropriate : -

(a) name the parties thereto;

(b) specify the period it shall continue in force which shall not be less than two years from the date of commencement of the agreement;

(c) precribe the procedure for its modification and termination; and

(d) unless there exists appropriate machinery established by virtue of an agreement between the parties for the settlement of disputes, prescribe the procedure for the adjustment of any question that may arise as to the implementation or interpretation of the agreement and reference of such question to the Court for a decision.

13A (1) No collective agreement to which this section applies shall contain provisions with regard to terms and conditions of service that are more favourable to workmen than those contained in Part XII of the Employment Ordinance, 1955, unless such provisions are approved by the Minister after considering any representations in that regard made by an employer and a trade union representing his workmen;

Provided that the Minister may amend or modify such provisions before approving them.

(2) This section applies to collective agreements made between an employer and a trade union representing his workmen in respect of, or in relation to : -

(a) a pioneer enterprise as defined under section 2 of the Investment Incentives Act, 1968;

(b) any other industry in respect of which the Minister may by notification in the Gazette declare that this section shall apply.

(3) The provisions of this section shall apply to industries specified in sub-section (2) for a period of five years from the date such industries commence, or have commenced operation in Malaysia;

Provided that the Minister may from time to time by notification in the Gazette extend such period for such further period or periods as the Minister may decide.

Deposit of collective agreements.

14. (1) The parties to collective agreement may deposit with the secretary to the Court within one month from the date on which the agreement has been entered into, and the Secretary shall thereupon bring it to the notice of the Court for its cognizance.

(2) The Court may in its discretion : -

(a) refuse to take cognizance of the collective agreement deposited under sub-section (1) if it is of the opinion that the agreement does not comply with section 13; or

(b) before taking cognizance of the collective agreement deposited under sub-section (1) require that such part thereof as does not comply with section 13 shall be amended in such manner as the Court may direct.

(3) If any party to the collective agreement fails to carry out such direction the Court may, notwithstanding any other power exercisable under this Act, amend the copy of the collective agreement in the manner directed after giving the parties a reasonable opportunity of being heard and the agreement so amended shall be deemed to be the collective agreement between the parties.

(4) The parties to collective agreement which is in force at the date this Act comes into force may within two months of such date jointly deposit such agreement with the Secretary and the provisions of this Act shall thereupon apply, with modifications as may be necessary, to such collective agreement.

(5) Except in the case provided under sub-section (2) or (3), the powers of the Court under this section may be exercised by the President sitting alone or, in the case of a Division, by the Chairman sitting alone.

Effect of collective agreement.

15. (1) A collective agreement which has been taken cognizance of by the Court shall be deemed to be an award and shall be binding on : -

(a) the parties to the agreement including in any case where a party is a trade union of employers, all members of such trade union to whom the agreement relates and their successors, assignees or transferees;

(b) all workman who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates.

(2) As from such date and for such period as may be specified in the collective agreement, it shall be an implied term of the contract between the workmen and employers bound by the Agreement that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with such agreement unless varied by a subsequent agreement or decision of the Court.

PART V
CONCILIATION

Reference of Disputes for conciliation.

16. (1) Where a trade dispute exists or is apprehended that dispute, if not otherwise resolved, may be reported to the Minister by : -

(a) an employer who is a party to the dispute or a trade union of employers representing him in the dispute; or

(b) a trade union of workmen representing the workmen who are parties to the dispute.

(2) The Minister shall consider any dispute report to him under sub-section (1) and take such steps as may be necessary or expedient for promoting an expeditious settlement thereof.

(3) Where a trade dispute exists or is apprehended, which in his opinion is not likely to be settled by negotiations between the parties, the Miniter may, if he deems it necessary in the public interest, take such steps as may be necessary or expedient for promoting a settlement thereof whether or not such trade dispute has been reported to him.

(4) The steps taken by the Minister under subsection (2) or (3) shall include reference of the dispute for settlement to an appropriate machinery which already exists by virtue of an agreement between or applicable to the parties to the dispute unless : -

(a) the dispute has already been referred to such machinery and there has been a failure to reach a settlement; or

(b) in his opinion it is unlikely that the dispute will be promptly settled through such machinery.

16A (1) Where a workman considers that he has been dismissed without just cause or excuse by his employer, in circumstances other than those arising out of a contravention of section 46A he may, within one month of such dismissal, make representations in writing to the Minister to be reinstated in his former employment.

(2) The Minister may, before making a decision on any such representations, request the Commissioner to enquire into the dismissal and report whether in his opinion the dismissal is without just cause or excuse, and in such an enquiry the workman may be represented by his trade union.

(3) The Minister, if he decides to deal with the representations himself, may before making a dicision thereon give an opportunity to the employer and to a trade union representing the workman to be heard;

(4) If, after considering the representations of the workman and of the employer (if any) and any report made by the Commissioner under sub-section (2) the Minister is satisfied that the workman has been dismissed without just cause or excuse he may, notwithstanding any rule of law or agreement to the contrary : -

(a) direct the employer to reinstate the workman in his former employment and to pay the workman an amount that is equivalent to the wages that he would have earned had he not been dismissed by the employer; or

(b) direct the employer to pay such amount of wages as compensation as may be determined by the Minister, and the employer shall comply with the Minister's direction.

(5) The decision of the Minister on any reprentations made under this section shall be final and conclusive and shall not be challenged in any Court or in a Court estabished uder this Act.

(6) Any direction by the Minister under sub-section (4) shall operate as a bar to any action for damages by the workman in any Court in respect of the wrongful dismissal.

(7) An employer who fails to comply with the direction of the Minister under sub-section (4) shall be guilty of an offence under this Act and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(8) Where an amount to be paid under sub-section (4) is not paid in accordance with the Minister's direction and the employer has been convicted of an offence under sub-section (7) the amount, or so much thereof as remains unpaid, shall be recoverable as if it were a fine and the amount so recovered shall be paid to the workman entitled under the direction.

(9) Notwithstanding the provisions of the foregoing sub-sections, the Minister may of own motion if he is satisfied that it is expedient so to do or on the joint request of the trade union representing the workmen and his employer refer any dismissal to the Court for settleceding section or where the Minister has taken ments.

Information, documents and compulsory conference for conciliation.

17. (1) Where a trade dispute has been reported to the Minister under sub-section (1) of the presteps under sub-section (3) of the preceding section, the part reporting the dispute and, if directed to do so by the Minister, the other party shall furnish to the Minister within such period as may be specified in the direction all the necessary information relating to the matters in dispute, together with, wherever possible and appropriate, an agreed statement setting out the points, if any, on which they have already reached agreement and the points on which there is still disagreement.

(2) The Minister may, if he deems it necessary or expedient, direct any person engaged in or connected directly or indirectly with the trade dispute in respect of which steps have been taken under the preceding section to attend a conference to be presided over by the Minister or such person as he may appoint at such time and place as he may be specified in the direction.

PART VI

INDUSTRIAL COURT

18. (1) For the purposes of this Act, there shall be an Industrial Court which shall consist of : -

(a) a President who shall be appointed by the Yang di-Pertuan Agong and

(b) a panel of independent persons, a panel of persons representing employers and a panel of persons representing workmen all of whom shall be appointed by the Minister:

Provided that before appointing the panels the Minister may consult such organisation representing employers and workmen respectively as he may think fit.

(2) During the absence of or inability to act from illness or any other cause by the President, the Yang di-Pertuan Agong may appoint another person to exercise the powers or perform the functions of the President and, notwithstanding that the President may have resumed the duties of his office, such person may continue to exercise such powers or per-

form such functions for the purpose of completing the hearing of and determining any trade dispute or matter commenced before such person.

(3) The appointments made in the preceding sub-section shall be published in the Gazette and shall specify, if any, the terms and conditions upon which they are made.

Constitution of the Court.

19. (1) For the purpose of dealing with any trade dispute referred to it, the Court, except where otherwise provided by this Act, shall be constituted of the President and three members selected by the Minister, one from each of the panels specified in sub-section (1) of section 18.

(2) If any member other then the President is unable to attend or continue to attend any proceedings of the Court or ceases to be a member, the Minister may select another member from the appropriate panel to fill the vacancy.

(3) The Court may with the consent of the parties to the dispute act notwithstanding any vacancy in its number or in the absence of any member other than the President from any hearing or any part thereof and no act, proceeding or award of the Court shall be called in question or invalidated by reason of any such vacancy or absence.

(4) Any member of the Court constituted under this section whose appointment expires during the proceedings of the Court shall for the purpose of such proceedings continue to be a member of the Court and the term of his appointment shall be deemed to have been extended until the final disposal of the trade dispute or matter.

Division of the Court

20. (1) The Court may sit in two or more Divisions with the same or different Chairman. dispute or matter.

(2) The Yang di Pertuan Agong may by notification in the Gazette appoint any person to be a Chairman of any division of the Court.

(3) Any Division shall be constituted of a Chairman and three members selected by the Minister, one from each of the panels specified in sub-section (1) of section 18.

Protection and immunity to members of the Court F.M.S. Cap. 45

21. (1) Every person appointed under sections 18 and 20, in the performance of his duties and functions, shall be deemed to be a public servant within the meaning of the Penal Code.

(2) Notwithstanding anything to the contrary in any written law, no member of the Court shall be compelled by any court of law to appear as a witness or party in any proceedings before

that Court in relation to any act, matter or thing performed by him as a member of the Court under this Act.

Secretary and officers

22. (1) The Minister shall appoint a Secretary to the Court and may appoint such other officers and staff as he may consider necessary.

(2) The duties of the Secretary and other officers and staff of the Court shall subject to this Act and any regulations made thereunder, be as the President directs.

Reference of trade disputes to the Court.

23. (1) Where a trade dispute exists or is apprehended, the Minister may, if that dispute is not otherwise resolved, refer the dispute to the Court on the joint request in writing to the Minister by the trade union representing the workmen who are parties to the dispute and the employer who is a party to the dispute or a trade union representing the employer.

(2) The Minister may of his own motion refer any trade dispute to the court if he is satisfied that it is expedient so to do:

Provided that in the case of a trade dispute in any Govt. service or in the service of any statutory authority, such reference shall not be made except with the consent of the Yang di-Pertuan Agong or State Authority as the case may require.

For the purpose of this section and section 41 (c), the expression 'statutory authority' shall mean an authority or body established, appointed or constituted under a Federal State law.

(3) If there exists in any industry any arrangements for the settlement of trade dispute made in pursuance of an agreement between an employer or a trade union of employers and a trade union of workmen, the Minister shall not refer the trade dispute to the Court in accordance with the foregoing provisions unless there has been a failure to obtain a settlement by means of those arrangements or in his opinion it is unlikely that the dispute will be expeditiously settled through such arrangements

Representation at proceedings before the Court.

24. A party to any trade dispute may be represented, at the proceedings before the Court, by any official of a trade union, or of such organisation of employers or workmen in Malaysia as may be approved by the Minister or, with the permission of the President, by a legal practitioner.

Power of President to regulate procedure and proceedings.

25. Save as otherwise expressly herein provided and subject to any regulations that may be made in that behalf, the President may regulate the procedure and proceedings of the Court as he thinks fit and, with the approval of the Minister, make rules governing such procedure and proceedings.

Power of the Court.

26. The Court may, in relation to any trade dispute before it : -

(a) order that any party be joined, substituted or struck off;

(b) summon before it the parties to the trade dispute and any other person who in its opinion is connected with the proceedings;

(c) take evidence on both or affirmation and compel the production before it of books, papers, documents and things;

(d) hear and determine the trade dispute notwithstanding the failure of any party to submit any written statement whether of case or reply to the Court within such time as may be prescribed by the President or in the absence of any party to the dispute who has been served with a notice or summons to appear;

(e) conduct its proceedings or any part thereof in private;

(f) after consultation with the Minister, call in the aid of one or more experts; and

(g) generally direct and do all such things as are necessary or expedient for the expeditious determination of the trade dispute.

Awards.

27. (1) The Court shall have power in relation to a trade dispute referred to it to make an award (including an interim award) relating to all or any of the issues in dispute.

(2) Where the Court is not unanimous on any question or matter to be determined, a decision shall be taken by a majority of members and, in the event of the votes being equal, by the President or Chairman.

(3) The Court shall make its award without delay and where practicable within thirty days from the date of reference to it of the trade dispute.

(4) The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

(6) In making its award, the Court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute.

(7) An award may specify the period during which it shall continue in force and may be retrospective to such date as it is specified in the award:

Provided that such retrospective date of the award may not, except in the case of a decision of the Court under section 30 and an order of the Court under paragraph (c) of sub-

section (4) of section 53, be earlier than six months from the date on which the dispute was referred to the Court.

(8) The award of the Court shall be signed by the President or the Chairman of any Division or in the event of the President or the Chairman for any reason being unable to sign the award by the remaining members.

(9) The Court may rectify in any award any clerical error or mistake arising from any accidental slip or omission.

Agreement during proceedings

28. In the event of an agreement being reached during the proceedings before the Court, the Court in making its award may, subject to the provisions of this Act, have regard to the terms of such agreement.

Effect of an award.

29. (1) Any award made by the Court under the provisions of this Act shall be binding on : -

(a) all parties to the dispute appearing or represented before the Court and all parties joined or substituted or summoned to appear or be represented before the Court as parties to the dispute;

(b) any successor, assignee or transferee of any employer or trade union of employers and any successor to any trade union of workmen who are parties to the dispute as aforesaid.

(c) all workmen who were employed in the undertaking or part of the undertaking to which the dispute relates on the date of the dispute and all workmen who subsequently became employed in that undertaking or part thereof; and

(d) all members of a trade union of employers to whom the dispute relate and to which dispute such trade union is a party and the successors, assignees or transferees of such members.

(2) As from the date of such award or as from such date and for such period as may be specified therein, it shall be an implied term of the contract between the workmen and employers bound by the award that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with such award or decision unless varied by a subsequent award of agreement between the parties.

(3) (a) Subject to this Act, an award of the Court shall be final and conclusive, and no award shall be challenged, appealed against, reviewed, quashed or called in question in any Court of law.

(b) No award of the Court for the reinstatement or re-employment of a workman shall be subject to any stay of proceedings by any Court of law.

Interpretation and variation of awards and agreements.

30. (1) If any question arises as to the interpretation of any award or collective agreement taken cognizance of by the Court, the Minister may refer the question, or any party bound by such award or agreement may apply, to the Court for a decision on such question.

(2) The Court may, upon the application of any party, by order vary any of the terms of any award, if it considers it desirable so to do for the purpose solely of removing ambiguity or uncertainty.

(3) The parties bound by the award or agreement shall be afforded a reasonable opportunity of being heard.

(4) The decision of the Court shall be binding in the same manner as the original award or agreement.

(5) The expression "Court" for the purpose of this section, means the Court by which the award was made or any other Court specially constituted under section 19 for the purpose.

PART VII

INVESTIGATION AND INQUIRY

Investigation and Inquiry into trade disputes.

31. Where any trade dispute exists or is apprehended, the Minister may, without prejudice to the provisions of Parts V and VI, appoint a Committee of Investigation or a Board of Inquiry and may refer to such Committee or Board any matter appearing to him to be connected with or relevant to the dispute.

Committee.

32. (1) A Committee may consist of one or more persons appointed by the Minister.

(2) A committee shall as soon as possible after its appointment investigate the causes and circumtances of any trade dispute or matter referred to it and report thereon to the Minister.

Board.

33. (1) A Board may consist of a Chairman and such other persons as the Minister thinks fit or may consist of one person.

(2) A Board may act notwithstanding any vacancy in its number.

(3) The Minister may make rules regulating the procedure of any Board, including rules as to the summoning and payment of expenses of witnesses quorum and calling for documents.

(4) A person may be represented by a legal practitioner in proceeding before a Board with the permission of the Chairman.

(5) A Board may, subject to the rules made under this section, require any person to furnish, in writing or otherwise, such particulars as the Board may require and to attend before the Board and give evidence on oath or affirmation.

Reports.

34. (1) A Board shall, either in public or in private at its discretion, inquire into any matter referred to it and report thereon to the Minister.

(2) A Board may, if it thinks fit, make interim reports.

(3) Any report of a Board shall be laid as soon as may be before the Dewan Ra'ayat.

(4) The Minister may, whether before or after any such report has been laid before the Dewan Ra'ayat, publish or cause to be published from time to time, in such manner as he thinks fit, any information obtained or conclusions arrived at by the Board as a result or in the course of its enquiry:

Provided that there shall not be included in any report or publication made or authorised by the Board or the Minister any information obtain by the Board in the course of its inquiry as to any trade union, business or organisation which is not available otherwise than through evidence given the inquiry, except with the consent of the trade union, business or organisation in question, nor shall any individual member of the Board or any person concerned in the inquiry, without such consent, disclose any such information.

(5) Any member of a Board or other person concerned in any inquiry who disclose any information in contravention of the provisions of sub-section (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand dollars.

PART VIII

TRADE DISPUTES, STRIKES AND LOCK-OUTS AND MATTERS ARISING THEREFROM

Pupils not to take part in trade disputes 43 of 1961.

35. (1) No pupil as defined in the Education Act, 1961, other than a lawful member of a trade union, shall : -

(a) do any act in contemplation or furtherance of a trade dispute; or

(b) instigate or incite any other person to take part in or continue or to support by money or otherwise or to do any other act in contemplation or furtherance of any strike or lock-out or

(c) take part in or be a member of any meeting or assembly of more than five persons called for the purpose of instigating or inciting any person to take part in or continue or to support by money or otherwise or to do any other act in contemplation to futherance of any strike or lock-out.

(2) The Minister of Education may, by notice in writing require the governors or managers of any school to expel any pupil convicted or found guilty of an offence against the provisions of this section and thereupon the governors or managers shall expel such pupil or cause him to be expelled accordingly.

(3) A pupil who has been expelled from a school by the governors or managers thereof in pursuance of a notice given under this section shall not thereafter : -

(a) enter the premises of such school; or

(b) become a pupil of any other school without the permission of the Minister of Education.

Intimidation.

36. Any person who in furtherance of a trade dispute and with a view to compelling any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, fully and without legal authority : -

(a) uses violence to or intimidates such other person or any member of his household, or injures his property; or

(b) persistently follows such other person about from place to place; or

(c) hides any tool, clothes, or other property owned or used by such other person, or deprives him of or hinders him the use thereof; or

(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 be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine.

Picketing.

37. (1); Without prejudice to the provisions of section 36, it shall be unlawful for one or more persons acting on his or their own behalf or on behalf of a trade union or of an employer or firm in furtherance of a trade dispute —

(a) to attend at or near any place:

Provided that it shall not be unlawful if such person or persons so attend at or near the place where a workman works and where a trade dispute exists merely for the purpose of peacefully —

(i) obtaining or communicating information; or

(ii) persuading or inducing any person to work or to abstain from working; or

(b) to attend at or near the place where a workman works and where a trade dispute exists if such person or persons so attend or attend in such numbers or otherwise in such manner as to be calculated —

(i) to intimidate any person in that place; or

(ii) to obstruct the approach thereto or digress therefrom; or

(iii) to lead to a breach of the peace.

(2) If any person acts in contravention of subsection (1) he shall be deemed to have committed an offence under section 36 and liable to the punishment provided thereunder.

Breach of contract liable to injure persons or property.

38. Any person who wilfully and maliciously breaks a contract of service or of hiring knowing or having reason to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life or the efficient operation of any public health service, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious damage, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine.

Conspiracy in trade disputes.

39. (1) An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be punishable as a conspiracy if such act committed by one person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or combination by two or more persons, if done in contemplation or furtherance of a trade dispute, shall not be actionable unless the act, if done without any such agreement or combination, would be actionable.

(3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any written law.

(4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition or any offence against the Yang diPertuan Agung or any State Authority.

(5) A crime for the purposes of this section means an offence for the commission of which the offender is liable under the law making the offence punishable, to be imprisoned either absolutely or at the discretion of the Court of law as an alternative for some other punishment.

Restriction on strikes and lock-outs in public utility services.

40. (1) No person employed in a public utility service shall go on strike in breach of contract —

(a) without giving to the employer notice of

strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid.

(2) No employer carrying on any public utility service shall lock-out any of his workmen —

(a) without giving him notice of lock-out, as hereinafter provided, within six weeks before locking out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid.

(3) The notice referred to in sub-section (1) and sub-section (2) shall be given in such manner as may be prescribed.

(4) An employer who received from any person employed by him any notice referred to in sub-section (1) or gives to any person employed by him any notice referred to in sub-section (2), shall forthwith report to the Minister the particulars of such notice received or given.

Prohibition on strikes and lock-outs.

41. No workman shall go on strike and no employer of any such workman shall declare a lock-out —

(a) during the pendency of the proceedings of a Board of Inquiry appointed by the Minister under Part VII involving such workman and employer and seven days after the conclusion of such proceedings; or

(b) after a trade dispute or matter involving such workman and such employer has been referred to the Court and the parties concerned have been notified of such reference; or

(c) after the Yang diPertuan Agung or State Authority, in the case of a trade dispute relating to any Government service or the services of any statutory authority, has withheld consent to the reference of the dispute to the Court under sub-section (2) of Section 23; or

(d) in respect of any of the matters covered by a collective agreement taken cognizance of by the Court in accordance with section 14 or by an award; or

(e) in respect of any of the matters covered under sub-section (3) of section 12.

Illegal strikes and lock-outs.

42. (1) A strike or a lock-out shall be deemed to be illegal if —

(a) it is declared or commenced or continued in contravention of any provision of section 40 or section 41 or of any provision of any other written law; or

(b) it has any other object than the furthe rance of a trade dispute.

(2) A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Penalty for illegal strikes and lock-outs.

43. (1) Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine, and a further fine of fifty dollars for every day during which such offence may continue.

(2) Any employer who commences, continues or otherwise acts in furtherance of a lock-out which is illegal under this Act shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine, and a further fine of fifty dollars for every day during which such offence may continue.

Penalty for instigation

44. Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, or who instigates or incites others to withhold their labour or services knowing or having reason to believe that the probable consequences of such action will be to endanger human life or the efficient operation of any public health service or cause serious bodily injury or expose valuable property whether real or personal to destruction or serious damage shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine.

Penalty for giving financial aid to illegal strikes and lock-outs.

45. Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding five hundred dollars, or to both such imprisonment and fine.

Protection of persons refusing to take part in illegal strikes or lock-outs.

46. No person refusing to take part or to continue to take part in any strike or lock-out which is by this Act declared to be illegal shall be, by reason of such refusal or by reason of any action taken by him under this section, subject to expulsion from any trade union, or to any fine or penalty, or to the deprivation of any right or benefit to which he or his legal personal representatives would otherwise be entitled, or be liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union, anything to the contrary in the rules of a trade union notwithstanding.

46A. (1) Notwithstanding the provisions of section 5, it shall be an offence to dismiss or threaten to dismiss a workman or injure or threaten to injur him in his employment or alter or threaten to alter his position to his prejudice, by reason of the circumstances that the workman —

(a) is, or proposes to become, an officer or member of a trade union or association that has applied to be registered as a trade union;

(b) is entitled to the benefit of a collective agreement or an award;

(c) has appeared or proposed to appear as a witness, or has given or proposes to give any evidence, in any proceeding under this Act;

(d) being a member of a trade union which is seeking to improve working condition, is dissatisfied with such working condition;

(e) is a member of a trade union which has served an invitation under section 12 or which is a party to negotiations under this Act or to a trade dispute which has been reported to the Minister in accordance with Part V or Part VI;

(f) has absented himself from work without leave for the purpose of carrying out his duties or exercising his rights as an officer of a trade union where he applied for leave in accordance with section 5A before he absented himself and leave was unreasonably deferred or withheld; or

(g) being a member of a Panel appointed under section 18 has absented himself from work for the purpose of performing his functions and duties as a member of the Court and has notified the employer before he absented himself.

(2) An employer who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand dollars or both such imprisonment and fine.

(3) Where an employer has been convicted of an offence punishable under subsection (2) the Court by which the employer is convicted may order the employer to pay the workman the amount of any wages lost by him and also direct the employer to reinstate the workman in his former position or a similar position.

(4) Where an amount ordered to be paid under sub-section (3) is not paid in accordance with the order, the amount or so much thereof as remains unpaid shall

be recoverable as if it were a fine and the amount so recovered shall be paid to the workman entitled under the order.

(5) An employer who fails to comply with a direction given under sub-section (3) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

(6) Nothing in this section shall be construed as prohibiting the Minister from enquiring into the dismissal of or the reinstatement of a workman who has been allegedly dismissed in contravention of the provisions of this section before any proceedings have commenced in a Court of law; and any inquiry so made by the Minister shall be deemed to be a proceeding under section 16A and any decision made by him shall be construed as if it were made under the provisions of that section.

Offences seizable and non-bailable

47. Every offence against the provisions of this Part other than an offence against the provisions of section 43 shall be seizable and non-bailable for the purposes of any written law for the time being in force relating to criminal precedure.

Prosecution of offences under this part.

48. (1) A prosecution under this Part shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until that consent has been obtained.

(2) When a person is brought before a Court of law under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

PART IX

MISCELLANEOUS

49. (1) The provisions of Parts II, III, IV and V shall not apply to any Government service or to any workmen employed by Government.

(2) The provisions of this Act relating to trade dispute other than sub-section (2) of section 23 and sub-section (4) of section 27 shall apply to any matter referred to or brought to the notice of the Court under the provisions of this Act.

Appointment of Public officer.

50. The Minister may appoint any public officer as he thinks fit to exercise any power vested in him or to perform any duty imposed on him under the provisions of this Act.

Exclusion of evidence as to certain matters.

51. (1) Where a trade dispute relates to matters as to which negotiation or conciliation proceedings have taken place under the provisions of this Act, no evidence shall be given in the proceedings before the Court as to such negotiation or conciliation proceedings other than a written statement in relation thereto agreed to and signed by the parties to the dispute.

(2) No evidence shall be given in proceedings before the Court with regard to any offer relating to any matter connected with the trade dispute made without prejudice by any person or trade union except with the consent of that person or trade union.

Secrecy.

52. (1) The Court may in any proceedings direct that—

(a) any information, book, paper, document or thing tendered in evidence shall not be disclosed or published in any newspaper or otherwise, and

(b) any such evidence be taken in private and no person not expressly permitted by the Court to be present shall be present during the taking of that evidence.

(2) Any person who discloses or publishes any information, book, paper, document or thing in contravention of this section shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars or to both such imprisonment and fine.

Non-compliance with award or collective agreement.

53. (1) Any complaint that any term of any award or collective agreement which has been taken cognizance of by the Court has not been complied with may be lodged with the Minister in writing by any trade union or person bound by such award or agreement.

(2) Upon receipt of such complaint, the Minister may summon any person whom he has reason to believe can give information in respect of the matter and such person shall attend at the time and place specified to answer any question which may be put to him and to produce any book, document or thing.

(3) The Minister shall, unless the party concerned complies with any term of the award or collective agreement within such period as he may specify, refer the matter to the Court for consideration.

(4) The Court may, upon such reference—

(a) make an order directing any party—

(i) to comply with any term of the award or collective agreement; or

(ii) to cease or desist from doing any act in contravention of any term of the award or collective agreement; or

(b) make such order as it deems fit to make proper rectification or restitution for any contravention of any term of such award or collective agreement; or

(c) make such order as it considers desirable to vary or set aside upon special circumstances any term of award or collective agreement.

53A (1) The Court may and shall, if so directed by the Attorney-General, refer a question of law arising in any proceeding before it to the Attorney General for his opinion.

(2) Before referring a question of law to the Attorney General in accordance with sub-section (1) the Court shall inform the parties to the proceeding in relation to which the question arises of the question which it proposes to refer and allow the parties a reasonable opportunity to make written submission relating to the question.

(3) Submission made in accordance with sub-section (2) shall be referred to the Attorney General and the Attorney General shall, after considering those submissions, furnish his opinion to the Court.

(4) Notwithstanding a reference of a question of law to the Attorney General (not being a question whether the Court may exercise powers under this Act in relation to a trade dispute or matter), the Court may make an award in relation to the proceeding in which the question arose.

(5) Upon receiving the opinion of the Attorney General the Court —

(a) may, if it has not made an award with respect to the parties of the proceeding in which the question arose, make an award not inconsistent with the opinion; or

(b) shall, if it has made an award as aforesaid vary the award in such a way as will make it consistent with the opinion.

Contempt. F.M.S. Cap. 45

54. (1) Where any such offence as is described in sections 174, 175, 176, 177, 178, 179, 181 or 228 of the Penal Code is committed in the view or presence of the Court, or where any person misbehaves himself in Court, the Court may cause the offender to be detained in custody or direct any police officer or public officer to remove such offender from the Court.

(2) At any time before rising on the same day, the Court may take cognizance and punish the offender with a fine not exceeding one hundred dollars, or, in default of payment of such fine, with imprisonment for a term not exceeding one month, unless such fine is sooner paid.

(3) In every such case the Court shall record the facts constituting the offence, the statement, if any, made by the offender, and the finding and sentence.

(4) The Court dealing with an offender under this section may discharge the offender or remit the punishment on his submission to the order of the Court or on his making an apology to the satisfaction of the Court.

(5) No appeal shall lie from the decision of the Court under this section.

(6) In this section the expression "Court" includes any Board appointed under the provision of Part VII.

General Penalties.

55. (1) Any person who contravenes or failed to comply with —

(a) any provision of this Act or of any rule or regulation made thereunder;

(b) any summons, order or direction given or made under this Act or any rule or regulation made thereunder;

shall be guilty of an offence and shall, on conviction, where no express penalty is provided, be liable to imprisonment for a period not exceeding one year or to a fine not exceeding one thousand dollars or to both such imprisonment and fine:

Provided that no contravention of or failure to comply with any provision of Parts II, III (other than section 8 and 9) or IV (other than section 8 of Section 12) shall be deemed to be an offence punishable under this section.

(2) Any person who attempts to commit any offence punishable under this Act, or abets the commission of such offence, shall be punished with the punishment provided for such offence.

Regulations.

57. Subject to the provisions of this Act, the Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act and in particular without prejudice to the generality of the foregoing, such regulations may —

(a) prescribe fees to be charged in respect of all proceedings under this Act;

(b) authorise the making of orders with respect to the cost and expenses including the expenses of witnesses of proceedings before the Court or Board;

(c) prescribe allowances payable to members of the Court, a Committee or a Board;

(d) provide for the exhibiting of any of the terms of an order award on the premises of an employer bound by the order or award;

(e) provide for the manner in which and the persons by and to whom notice of strike or lock-out may be given, and the manner in which such notices shall be communicated;

(f) regulate the procedure and proceedings of the Court; and

(g) provide for anything which may be prescribed under this Act.

58. The under mentioned Ordinance, Rules and Regulations are hereby repealed: Repeal and Savings.

No.	*Short Title*
Sarawak Cap. 75	— Essential Services Arbitration Ordinance.
Sarawak Cap. 77	— Trade Disputes Ordinance.
Sabah 9 of 1959	— Essential Services Arbitration Ordinance 1959.
Sabah Cap. 143	— Trade Disputes Ordinance.
the following:—	
P.U. 94/1967	— Modification of Laws (Trade Disputes) (Extention to Borneo States) Order 1967.
P.U. 95/1967	— Modification of Laws (Industrial Courts) (Modification and Extension to Borneo States) Order 1967.

(2) The amendment effected by this section shall be deemed to have come into force on the date of the coming into force of the principal Act.

Provided that all proceedings, acts and awards commenced, done or made under the Ordinances, Rules or Regulations hereby repealed shall have effect for all purposes as if such proceedings, acts or awards had been commenced, done or made under the provisions of this Act and as if this Act had then been in force.

Provided further that the Court or Tribunal before which such proceedings had been commenced shall continue in existence and the terms of appointment of all the members thereof, including the President and the Chairman, shall be deemed to have been extended until the final disposal of the subject matter of such proceeding and that any vacancies in such Court or Tribunal shall be filled in accordance with the provisions of this Act as if such Court or Tribunal had been appointed under the provisions of this Act.

And provided further that all agreements deposited under the provisions of the Regulations repealed shall be deemed to be collective agreements deposited with and taken cognizance of by the Court under the provisions of this Act.

SCHEDULE

PUBLIC UTILITY SERVICES

Section 2

(i) any public railway service;

(ii) any section of a Government or industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry or Government undertaking which generates or supplies gas, electricity or water to the public;

(v) any public health service;

(vi) any public fire service;

(vii) any public ferry service;

(viii) any public service for the transport of passengers or goods;

(ix) any industry or Government undertaking which is principally engaged in the refining, storage, transport or supply of petrol or petroleum products;

(x) any port, dock or harbour service including stevedoring, lighterage and cargo handling whether provided by any port authority or not;

(xi) any pilotage service including employees of pilotage services, approved under Part XII of the Merchant Shipping Ordinance, 1952 (No. 70 of 1952);

(xii) any service provided by any of the following Departments of Government : -

Customs and Excise
Marine
Immigration
Broadcasting
Printing
Chemistry.

(Received the Royal Assent on the
20th day of July, 1967)

Co-op. Ptg., P.J. 220-75.