
**CHAPTER 321
INDUSTRIAL RELATIONS**

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CHAPTER 321

INDUSTRIAL RELATIONS

An Act to provide for the registration and control of trade unions; for the recognition of trade unions by employers; for the registration of certain Industrial Agreements; for the establishment of an Industrial Tribunal and the regulation of trade disputes; for the repeal of certain parts of the Trade Union and Industrial Conciliation Act; and for other matters connected with or incidental to the aforesaid purposes.

14 of 1970
E.L.A.O., 1974
4 of 1979
4 of 1981
S.I. 75/1989
11 of 1994
25 of 1995
9 of 1996
1 of 1997
30 of 1999
1 of 1997
27 of 2001
28 of 2012

[Assent 26th August, 1970]

[Commencement 1st March, 1971]

PART I
PRELIMINARY

1. This Act may be cited as the Industrial Relations Act. Short title.

2. (1) In this Act, unless the context otherwise requires — Interpretation.

“bargaining agent” means a trade union that acts or is entitled to act on behalf of employees —

- (a) in collective bargaining; or
- (b) in connection with an industrial agreement with their employer;

“bargaining unit” means that unit of employees agreed upon between an employer and his employees or a trade union of employees or determined as an appropriate unit by the Minister under section 42 and comprising all the employees employed by that employer in a specific undertaking or any subdivision thereof;

“Code of Industrial Relations Practice” means the Code of Industrial Relations Practice set out in the Third Schedule; *9 of 1996, s. 2.*
Third Schedule.

“collective bargaining” means negotiating in good faith with a view to the conclusion of an industrial agreement or the renewal or revision

thereof as the case may be; and “bargaining collectively” and “bargain collectively” shall have corresponding meanings;

4 of 1979, s. 2.

“constitution” includes rules and bye-laws;

“day” includes every day other than a Saturday, a Sunday or a public holiday;

“employee” means any person who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, is expressed or implied, oral or in writing, and whether it is a contract of service or apprenticeship, and “employer” and any reference to employment shall be construed accordingly;

“general dispute” means a trade dispute between an employer and his employees or any of them over the creation of new terms or conditions of employment of any such employees;

28 of 2012, s. 2.

“illegality” includes any matter which is in contravention of or repugnant to common law or statute;

“industrial agreement” means an agreement made under section 46 between an employer on the one hand and a trade union acting on behalf of employees employed by such employer on the other hand containing provisions respecting any or all of the following matters, that is to say, the terms or conditions of employment of the employees or the rights, privileges or duties of the employer and the employees, and the prevention and settlement of trade disputes;

9 of 1996, s. 2.

“Industrial Tribunal” or “Tribunal” means the Industrial Tribunal established under section 54;

“limited dispute” means a trade dispute between an employer and one or more of his employees over the application to such employee or employees of existing terms or conditions of employment or the denial of any right applicable to such employee or employees in relation to his or their employment;

“lock-out” means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ

any number of persons employed by him in consequence of a trade dispute, done with a view to compelling those persons, or to aiding another employer in compelling persons employed by that other employer, to accept terms or conditions of or affecting employment;

“Minister” means the Minister responsible for Industrial Relations and “Ministry” shall be construed accordingly;

“officer” in relation to a trade union includes a trustee;

“printed” includes typed or mimeographed;

“register” means the register kept by the Registrar pursuant to section 5, and “registered” and cognate expressions shall be construed accordingly;

“Registrar” means the Registrar of Trade Unions and Industrial Agreements pursuant to sections 5(1) and 48; *28 of 2012, s. 2.*

“regulations” means regulations made under this Act and in the manner provided by this Act;

“remuneration” includes wages, benefits in kind and allowances;

“statutory objects” means —

(a) in relation to any trade union of employees, the regulation of the relations between employees and their employers, the protection and furtherance of the lawful interests of its members as employees and the provision of benefits to members;

(b) in relation to any trade union of employers, the regulation of the relations between its members and their employees, and the protection and furtherance of the lawful interests of its members as employers;

“strike” means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of

persons employed to continue to work for an employer in consequence of a trade dispute, done as a means of compelling their employer or any person or body of persons employed, or aiding other employees in compelling their employer, or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;

28 of 2012, s. 2.

“trade dispute” or “dispute” means —

- (a) any dispute or difference or apprehended dispute or difference between one or more employers and one or more employees, or between one or more employees and one or more other employees, which is connected with the employment or non-employment or the terms or conditions of employment, of any person, and includes a general dispute and a limited dispute; and
- (b) any dispute or difference or apprehended dispute or difference concerning the interpretation, application, administration or alleged violation of an industrial agreement affecting any employee and the failure and refusal of an employer to treat and enter into negotiations with the trade union which is the bargaining agent for employees in a bargaining unit;

“trade union” or “union” means any combination or association of employers or employees, whether temporary or permanent, the principal objects of which are statutory objects.

(2) In this Act, unless the contrary intention appears, references to a Part or section are references to a Part or section of this Act, and references to a subsection are references to a subsection of that section.

(3) For the purposes of this Act, a person shall be a member in good standing of a trade union if, at the date of application for recognition by that union as bargaining agent, he either —

- (a) has been a member of that union for the entire period of thirty days prior to that date, has paid in respect of that period at least some part of the

dues and his membership of the union is not suspended or;

- (b) has joined the union within that period —
 - (i) by making and signing an application for membership of the trade union in the appropriate form; and
 - (ii) by paying on his own behalf the admission fee prescribed in the constitution of the union or, if no admission fee is so prescribed, by paying on his own behalf by way of union dues an amount equal to the dues payable in respect of not less than thirty days; and
 - (iii) by being received into the union in the manner prescribed by the constitution of the union.

3. (1) This Act shall not apply to service or employment, or to persons serving or employed, in a disciplined force.

Act not to apply to disciplined force.

(2) In subsection (1) “disciplined force” has the meaning given to that expression in subsection (1) of Article 31 of the Constitution.

4. (1) The Minister shall appoint for a period not exceeding three years a Joint Advisory Committee which shall consist of not more than five public officers and not more than five members representing employers and not more than five members representing employees.

Joint Advisory Committee.
25 of 1995, s. 2
and Sch.

(2) A public officer shall be chairman of the Joint Advisory Committee.

(3) The Joint Advisory Committee shall advise the Minister on such matters as may be referred to it from time to time by the Minister concerning labour relations in The Bahamas.

PART II REGISTRATION AND CONTROL OF TRADE UNIONS

5. (1) There shall be compiled and maintained by an officer of the Ministry designated by the Minister (hereafter in this Act referred to as “the Registrar”) a register of trade unions in which shall be entered the several matters respecting trade unions that are authorised or required by this Act to be registered.

Register of trade unions.

(2) Any document in the register shall be open to inspection by, and copies thereof shall be available to, any public officer in connection with the discharge by him of any public duty, and any such document affecting any union shall also be open to inspection, and copies thereof shall be available for purchase, at such fees as may be prescribed, by any member of such union identifying himself as such to the Registrar.

Unregistered unions unlawful.

6. It shall not be lawful for any trade union to commence, or for any person to take part in, any activities of any trade union if such union is not a union registered under this Act, and every person who takes part in any activities of such a union shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty dollars; and every officer and every member of the executive committee or other governing body of a union which commences any activities as a union without being registered under this Act, shall also be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty dollars, and to a further fine of ten dollars for every day during which he remains a member of the committee or other governing body of such union after such conviction until such union either is dissolved or is registered under this Act.

Provisions relating to registration.

7. (1) Every application to register a trade union shall be sent to the Registrar and shall be accompanied by two printed copies of the constitution of the union (to each of which, in the case of a union of employers, not less than three members, and, in the case of a union of employees, not less than fifteen of the members shall have subscribed their names) and shall also be accompanied by a list of the titles, names, addresses and occupations of the officers of the union.

(2) If the Registrar is satisfied that any trade union applying for registration under this Act has complied with all the requirements of this Act and of all regulations respecting registration in force thereunder, he shall register such union and shall file one of the copies of its constitution in the register and shall certify on the other copy that the constitution has been registered and return that copy to the union; but, if the Registrar is not so satisfied, he shall send notice in writing to the union of his decision, stating his reasons therefor, and shall afford the union a reasonable opportunity of amending its constitution; and, if the union avails itself of that opportunity, he shall reconsider his de-

cision in the light of any amended constitution which is submitted to him.

8. (1) The Registrar shall refuse to register a trade union if he is satisfied —

Grounds of refusal to register.

- (a) having regard to the constitution of the union and to any other information furnished by it, that its principal objects are not statutory objects; or
- (b) that any one or more of the objects of the union are unlawful; or
- (c) that the union is seeking registration under a name identical with that under which an existing union has been registered or so nearly resembling that name as to be likely to deceive members of the public; or
- (d) that the constitution of the union does not comply with any of the provisions of the following sections of this Act, namely —
 - (i) of section 9 (which relates to the matters to be provided for in such constitution);
 - (ii) of section 10 (which relates to misleading names);
 - (iii) of section 20 (which relates to the taking of secret ballots); or
- (e) after applying the rules for the registration of trade unions under this Act, that the union should not be registered.

(2) For the purposes of paragraph (e) of subsection (1), the rules for the registration of trade unions under this Act are the rules set forth in Part I of the First Schedule, and it shall be the duty of the Registrar to act in accordance with the said rules in relation to the registration of trade unions.

First Schedule.

(3) In paragraph (e) of subsection (1), in subsection (2) and in Part I of the First Schedule “trade union” means trade union of employees.

First Schedule.

9. The constitution of every trade union which is registered under this Act, shall contain provisions in respect of all the matters prescribed in Part II or, as the case may be, Part III of the First Schedule.

Constitution of trade unions.

First Schedule.

10. (1) The Registrar shall not register any trade union under any name which, in his opinion —

Misleading names.

- (a) is deceptive or objectionable in that it contains a reference, direct or indirect, to any personage, practice or institution (whether imperial, national or of any other kind); or
- (b) is otherwise unsuitable as a name for a trade union.

(2) Before registering any trade union, the Registrar shall publish a notice in the *Gazette* stating the name by which he proposes to register the union, and if, within such time (not being less than one month) as may be limited by such notice, any person files an objection to that name on any of the grounds mentioned in subsection (1), the Registrar shall take the same into consideration and, if he considers the objection to be well founded, he shall refuse to register the union under that name.

Regulations regarding registration.

11. The Minister may make provision by regulations respecting any of the following matters —

- (a) the documents and information to be furnished by any applicant for the registration of a trade union under this Act;
- (b) the forms to be used for such registration;
- (c) the seal (if any) to be used for such registration;
- (d) the inspection of documents kept in the register under this Act;
- (e) the fees to be paid under this Act.

Certificate of registration.

12. The Registrar, upon registering a trade union under this Act, shall issue to the union a certificate of registration, which certificate, unless the registration of the union is proved to have been cancelled and subject to the provisions of section 13, shall be conclusive evidence that the provisions of this Act and of any regulations made thereunder with respect to registration have been complied with.

Appeals against decisions of the Registrar.

- 13.** Any person aggrieved —
- (a) by any decision of the Registrar —
 - (i) not to register a trade union under this Act; or
 - (ii) to cancel the registration of a union; or
 - (iii) not to register an amendment of the constitution, or a change of name, of a trade union; or

- (b) by the refusal of an officer of the Ministry to certify any ballot as having been properly taken,

may appeal in respect thereof to the Minister, who may, with effect from the date of the determination of the appeal, reverse the decision of the Registrar or officer or confirm it.

14. If, notwithstanding that any of the purposes of a trade union is unlawful, such union is registered under this Act, such registration shall be void.

Void registration.

15. (1) The Registrar shall cancel the registration of a trade union —

Cancellation of registration.

- (a) at the request of the union, to be evidenced in such manner as the Registrar shall from time to time direct; and
- (b) subject to the provisions of subsection (2), on proof to his satisfaction —
- (i) that the registration was obtained by fraud or mistake; or
 - (ii) that the Tribunal has made a determination against the union under subsection (2) of section 51; or
 - (iii) that the registration is void under section 14; or
 - (iv) that the union has wilfully and after notice in writing from the Registrar, violated any of the provisions of this Act or any regulations or, in the case of a union having a constitution making provision for the protection of the respective sectional inter-ests of its members, any such provision; or
 - (v) that the principal objects for which the union is actually carried on are not statutory objects; or
 - (vi) that the union has ceased to exist.

1 of 1997, s. 2.

(2) Before the registration of a union is cancelled under the provisions of paragraph (b) of subsection (1), not less than two months notice in writing, specifying the ground on which it is proposed to cancel the registration, shall be given by the Registrar by sending such notice to the registered office of the union concerned and, if the union before the expiry of the notice satisfies the Registrar, in any case where the matter complained of by the Registrar is capable of remedy by the union, that the matter has

been remedied or will be remedied within a period of time acceptable to the Registrar, the Registrar shall not cancel the certificate of registration.

(3) The Registrar shall as soon as may be after the decision has been taken to cancel the registration of a union under the provisions of this section cause notice of the fact to be published in the *Gazette*, and the cancellation shall take effect on the date of such publication in the *Gazette*.

Registered office
of trade unions.

16. (1) Every trade union which is registered under this Act shall have a registered office, to which all communications and notices may be sent; and if any such union is in operation at any time after the expiration of fourteen days after it is registered under this Act without having such an office, each of its officers and each member of its executive committee or other governing body shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five dollars for every day during which it is in operation without a registered office.

(2) Notice of the situation of such registered office and of any change thereof shall be given to the Registrar and registered by him, and shall be published by him in three successive numbers of the *Gazette*.

Amendment of
constitution of
trade unions.

17. (1) A trade union which is registered under this Act may, subject to the provisions of this section and in the manner directed by its constitution, alter its constitution.

(2) Two printed copies of every resolution for the alteration of the constitution of a registered trade union shall be sent to the Registrar by an officer of the union, together with a statutory declaration by such officer stating that the provisions of the constitution regarding the amendment of the constitution have been complied with, and until such resolution is registered the same shall not take effect.

(3) If the Registrar is satisfied that all the provisions of the union's constitution and all the provisions of this Act regarding amendment have been complied with, and that he would register such union if the constitution as now resolved to be amended were the subject of an original application for registration, he shall file one of the copies of the resolution in the register, and shall certify on the other copy that the resolution has been registered and return that copy to the officer of the union; but if he is not so satisfied the Registrar shall refuse to register that resolution.

18. (1) A trade union which is registered under this Act may, subject to the provisions of this section and in the manner directed by its constitution, change its name.

Change of name
of trade union.

(2) Two printed copies of every resolution for the change of name of a registered trade union shall be sent to the Registrar by an officer of the union, together with a statutory declaration by such officer stating that the provisions of the constitution of the union and the provisions of this Act regarding the changing of the name have been complied with, and until such resolution is registered the same shall not take effect; and, if the Registrar is satisfied that all such provisions have been complied with, he shall file one of the copies of the resolution in the register, and shall certify on the other copy that the resolution has been registered and return that copy to the officer of the union; but if he is not so satisfied the Registrar shall refuse to register that resolution.

(3) The Registrar shall not register a resolution for a change of name to a name identical with the name of any trade union which is registered under this Act and which has not been dissolved, or so nearly resembling such name as to be likely to deceive members of the public.

(4) The provisions of section 10 shall apply in relation to the registration of a change of name as those provisions apply in relation to the original registration of a union.

(5) No change of name shall affect any right or obligation of any trade union which is registered under this Act, or of any officer or member thereof, and any legal proceedings may be brought or continued by or against the union under its new name, or by or against any officer or member thereof, as if the change of name had not been made.

19. The constitution of every trade union which is registered under this Act shall provide for the manner of its dissolution, and notice of every dissolution, signed by every person who was an officer or a member of the executive committee or other governing body of the union at the time of its dissolution, shall be sent within fourteen days of the date of such dissolution to the Registrar, and shall be registered by him.

Dissolution.

Supervision of
ballots by the
Registrar.

20. (1) The constitution of every trade union registered under this Act shall provide for the taking of a secret ballot for all of the following purposes, namely —

- (a) the election or removal of any officer or member of its executive committee or other governing body;
- (b) the amendment of its constitution, including any change of name;
- (c) where the union is a union of employees, the taking of strike action,

and the Registrar shall not approve any such constitution unless he is satisfied that every member of the union has thereunder an equal right and a reasonable opportunity of voting, and that the secrecy of the ballot is properly secured thereby.

4 of 1979, s. 3.

(2) Whenever any trade union proposes to take any ballot for any of the purposes referred to in paragraph (a) or (b) of subsection (1), not less than seven days' notice in writing shall be given to the Registrar of the intention to take the ballot, and of the time and place at which it will be taken and the ballot shall be taken under the supervision of the Registrar or a designated officer, who shall attend at the time and place; and unless the ballot is so taken and is certified by the Registrar or a designated officer as the case may be to have been properly taken, the ballot shall be void and of no effect and the Registrar or a designated officer shall direct a further ballot to be taken.

(3) Whenever a trade union proposes to take any ballot for the purpose of determining on strike action, not less than two days notice in writing and shall be given to the Minister of the intention to take the ballot, and of the time and place at which it will be taken, and the ballot shall be taken under the supervision of an officer of the Ministry, who shall attend at that time and place; and, unless the ballot is so taken and is certified by that officer to have been properly taken, the union concerned shall not be deemed to have determined upon strike action in accordance with the provisions of this section.

4 of 1979, s. 3.

(4) For the purposes of this section and section 21 “designated officer” means a public officer designated in writing by the Minister for the purpose.

21. (1) Where a trade union which is registered under this Act fails to take a secret ballot for the purpose of the election of any officer or member of its executive committee or other governing body at the time set forth in its constitution, the Registrar or a designated officer may direct that a ballot shall be taken under his supervision and cause notice of the ballot to be published in the *Gazette* and in at least one daily newspaper printed and circulated in The Bahamas.

Power of Registrar to hold elections of officers where trade union fails to do so.
4 of 1979, s. 4.

(2) A notice under subsection (1) shall specify the day on which and the time and place at which the ballot is to be taken.

(3) Every officer and every member of the executive committee or other governing body of any trade union who fails to comply with a directive of the Registrar or a designated officer issued pursuant to subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

22. (1) If any person, with intent to mislead or defraud, gives to any person a document purporting to be a copy of the constitution of a trade union on the pretence that such document is a true copy of the constitution of a trade union which is registered under this Act, when either —

Circulating false copies of constitution.

- (a) such document is not a true copy as aforesaid; or
- (b) such union is not so registered,

such person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

(2) For the purposes of this section, the expression “constitution” shall be deemed to include any part of a constitution or any alteration or amendment of a constitution, or any constitution of any branch of a union.

23. Every copy of a resolution of a registered trade union, certified by the Registrar as having been registered under this Act, shall be conclusive evidence that the provisions of this Act and of any regulations made thereunder with regard to registration have been complied with in relation to that resolution.

Evidence of registration.

Unions may own or lease land.

24. A trade union which is registered under this Act may, in the names of the trustees for the time being of the union, purchase or take upon lease any land, or sell, exchange, mortgage or let any land, and no purchaser, assignee, mortgagee or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage or letting, and the receipt of the trustees shall be a discharge in respect of any sum owing to the union and paid to the trustees.

Property of trade unions vested in trustees.

25. (1) All real and personal property whatsoever belonging to a trade union registered under this Act shall be vested in the trustees for the time being of the union and the members thereof.

(2) Upon the death or removal of any trustee of a registered trade union, the property of such union shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, except in the case of any stocks or securities, which shall be transferred into the names of the new trustees.

(3) In all proceedings before any court touching or concerning any property of a trade union which is registered under this Act, such property shall be stated to be the property of the persons for the time being holding the office of trustee, in their proper names, as trustees of such trade union, without any further description.

Absence or disability of trustees.

26. When any person being or having been a trustee of a trade union which is registered under this Act, whether appointed before or after the registration thereof, and in whose name is standing, either solely or jointly with others, stock, money or securities transferable at any bank in The Bahamas and belonging to such union, either —

- (a) is absent from The Bahamas; or
- (b) becomes bankrupt, or files any petition, or executes any deed, for the liquidation of his affairs by assignment or arrangement, or for composition with his creditors; or
- (c) becomes a lunatic; or
- (d) is dead; or
- (e) is removed from his office of trustee,

or if it be unknown whether such person is living or dead, the Registrar, on the application of two officers and of three members of the union and on proof satisfactory to him, may direct the transfer of the stock, money or securities into the names of any other persons as trustees for the union, and such transfer shall be made by the surviving and continuing trustees and, if there be no such trustees, or if such trustees refuse or are unable to make such transfer and if the Registrar so directs, then such transfer shall be made by the manager of the bank, and the bank and the manager of the bank are hereby indemnified for anything done by them or by any of the officers of the bank in pursuance of this provision against any claim or demand by any person injuriously affected thereby.

27. (1) The trustees of any trade union which is registered under this Act, or any other officer thereof duly authorised in that behalf, may in all cases touching or concerning the real or personal property, or the right or claim to any real or personal property, of the union, sue and be sued in any court in their proper names without other description than the title of their office.

Actions in respect of property of unions.

(2) No legal proceeding shall be discontinued or shall abate by reason of the death or removal from office of any trustee or other officer of any trade union which is registered under this Act, but all such proceedings may be continued by or against the holder for the time being of such office in all respects as if such proceedings had been commenced by or against him.

(3) Any damages, costs or other sums whatsoever ordered to be paid by any court in any such legal proceedings shall be ordered to be paid out of or into, as the case may be, the funds of the trade union by or against the trustees or officers of which such legal proceedings are brought.

(4) Any writ, summons or notice in any legal proceedings brought against any trustees or officers of a registered trade union in their respective capacities as such trustees or officers, may be served on such trustees or officers by leaving the same at the registered office of the union of which they are trustees or officers.

Membership of minors.

28. (1) No person under the age of sixteen may be a member of a trade union.

(2) No person under the age of eighteen may be a trustee or officer or member of any committee of a trade union.

(3) A person over the age of sixteen may be a member of a trade union and, notwithstanding that he is under the age of eighteen, shall enjoy all the rights of a member, and may execute all instruments and give all acquittances necessary to be executed or given under the constitution of the union.

Payments otherwise than to legal personal representatives of moneys due to deceased members of trade unions.

29. (1) A member of a trade union which is registered under this Act may, by writing under his hand delivered at or sent to the registered office of the union, nominate any person, not being an officer or servant of the union (unless such officer or servant is the husband, wife, father, mother, child, sister, brother, nephew or niece of the nominator), as the person to whom any moneys payable from the funds of the union on the death of such member, not exceeding five hundred dollars, shall be paid at his death; and any member of a union making a nomination as aforesaid may, from time to time, revoke or vary such nomination by writing under his hand similarly delivered or sent.

(2) Upon receiving satisfactory proof of the death of a member of a trade union making a nomination pursuant to subsection (1), the union shall pay to the person nominated the amount due to the deceased member as mentioned in that subsection.

(3) Any payment made by or on behalf of a trade union pursuant to subsection (2) shall be valid with respect to any claim of the legal representatives of a deceased member against the union or any officer thereof to any moneys the subject of such payment, and, instead, any such claim shall be prosecuted against the person receiving the same from the union.

Annual return.

30. (1) Every trade union which is registered under this Act shall keep proper accounts, lists of members and records of moneys (if any) paid to it by each member, and shall before the first day in June in every year send to the Registrar an annual return, which shall contain a general statement showing fully its assets and liabilities on the last day of the preceding year and all its receipts and

expenditure during that year, and shall show separately the expenditure in respect of its several objects and all the items in respect of which such expenditure is made, and which shall contain a return of the names and addresses and occupations of all its officers, and a statement showing the number of members who are fully paid-up members in accordance with the rules of the union; and the Minister may make regulations prescribing the form of such annual return and requiring the giving of such other particulars therein as the Minister may prescribe.

(2) Every annual return shall be certified by the chairman, treasurer and secretary and by each of the trustees of the union.

(3) The accounts of every union shall be audited annually by auditors to be appointed annually by the union with the approval of the Registrar, and every general statement shall be certified by such auditors, and they shall make a report on such accounts and general statement to the Registrar.

(4) Every officer and every member of the executive committee or other governing body of any trade union which fails to perform any of its duties under this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred and fifty dollars.

(5) Every person who wilfully makes, or orders to be made, any false entry in, or any omission from, any such annual return shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding three hundred dollars.

31. Every trade union shall retain —

- (a) for a period of three years reckoned from the last date to which they relate —
 - (i) all books of account, statements of income and expenditure, balance sheets and auditors' reports;
 - (ii) all registers of members and records of moneys (if any) paid by each member; and
 - (iii) all minutes of meetings; and
- (b) all vouchers, receipts, correspondence and other documents relating to the affairs of the union for

Records of trade unions.

a period of three years from the date of origin of each such voucher, receipt, item of correspondence or document.

Officers' accounts.

32. (1) Every treasurer of a trade union which is registered under this Act shall keep proper accounts of all moneys received and paid by him and all bonds and securities held by him on account of the union, and shall render a statement of accounts —

- (a) to the trustees of the union whenever required by them to do so; and
- (b) to the members of the union whenever required to do so at a meeting of the union; and
- (c) in respect of each year, to the trustees of the union; and such yearly statements of account shall be submitted at each annual general meeting of the union, and the trustees shall cause such yearly statements of account to be audited by the auditors appointed annually under section 30, and such auditors shall audit such accounts as part of their duties under that section and, if necessary, report thereon as part of their duties under that section.

(2) Upon rendering any such statement of account as aforesaid, every treasurer shall forthwith hand over to the trustees of the union, if required to do so by such trustees, and upon such trustees giving him a full and proper discharge therefor, the balance (whether showing on any such statement of accounts or not) of moneys due from him to the union, and all securities and all property whatsoever of the union in his possession or control.

(3) Every treasurer of a union which is registered under this Act who fails to comply with the provisions of subsection (2), may be sued in any competent court by the trustees of the union for the recovery of the balance of the moneys, securities or other property referred to in the said subsection (2) and for an account of all moneys, securities and other property received by him on account of the union, leaving such treasurer to set off in such action the sums, if any, which he may have paid on account of the union; and in such action the said trustees shall be entitled to recover their full costs of suit.

33. (1) Any person who —

- (a) by false representation or dishonesty obtains possession of any moneys, securities or any property whatsoever of a trade union which is registered under this Act; or
- (b) having the same in his possession —
 - (i) wilfully withholds the same; or
 - (ii) fraudulently misapplies the same; or
 - (iii) wilfully applies the same or any part thereof to purposes other than those expressed in the constitution of such union,

Withholding, etc., effects of trade union.

shall be guilty of an offence under this section.

(2) A magistrate's court for the district in which the registered office of a union is situate, upon complaint made by any person acting on behalf of such union or by the Registrar, may make all or any of the following orders against any person guilty of an offence under this section —

- (a) that he deliver up to the union all such moneys, securities or property;
- (b) that he repay to the union any moneys so misapplied or applied;
- (c) that he pay to the union a further sum of money not exceeding three hundred dollars;
- (d) that he pay to the person bringing the complaint costs not exceeding thirty dollars;
- (e) in default of delivery or repayment under paragraph (a) or (b) of this subsection, that he be imprisoned for a term not exceeding six months.

34. A trustee of any trade union which is registered under this Act shall not be liable to make good any deficiency in the funds of such union, but shall be liable only for the moneys which shall be actually received by him on account of such union.

Liability of trustees of unions.

35. The Friendly Societies Act and the Companies Act shall not apply to any trade union registered under this Act.

Chapters 313 and 308 not applicable to trade unions.

36. Subject to the provisions of this Part of this Act, the fact that any trade union has, under its constitution, objects other than statutory objects within the meaning of

Objects.

this Act, shall not prevent its being registered under this Act, so long as it is a trade union as defined in section 2, and any such union which is so registered shall have power to apply its funds for any lawful objects for the time being authorised under its constitution.

Immunity from criminal and civil responsibility.

37. (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 employees shall not be punishable as a conspiracy if such act committed by one person would not be punishable as a crime by any court.

(2) The purposes of any trade union duly registered under this Act shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

(3) The purposes of any trade union duly registered under this Act shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render void or voidable any agreement or trust.

(4) An act done by a person on behalf of a registered trade union in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person or with the rights of some other person to dispose of his capital or his labour as he wills.

(5) An action against a registered trade union, or against any members or officers thereof on behalf of themselves and all other members of the union, in respect of any tortious act alleged to have been committed by or on behalf of the union, shall not be entertained by any court:

Provided that nothing in this subsection shall affect the liability of the trustees of a union to be sued in the events provided for in section 27, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

Power to restrain certain convicted persons from managing unions.

38. (1) Where any person is convicted in any court of any offence involving fraud or dishonesty in connection with the formation or management of a trade union, the

court may make an order that that person shall not, without the leave of the Supreme Court, be an officer or member of the executive committee or other governing body of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a trade union for such period not exceeding five years as may be specified in the order.

(2) If any person acts in contravention of an order made under subsection (1), he shall, in respect of each offence, be liable, on conviction on information, to imprisonment for a term not exceeding two years or, on summary conviction 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.

39. (1) It shall not be lawful —

- (a) for a trade union; or
- (b) any combination or association of persons which under its constitution offers membership to any trade union,

Control of foreign connections of unions and federations.

without a licence in writing for the purpose from the Minister to be a member of any person or body of persons formed, constituted or organised outside The Bahamas.

(2) An application for the grant of a licence under subsection (1) shall be made to the Minister, who may, in his absolute discretion, grant the licence conditionally or without conditions, or may refuse to grant it.

(3) The Minister may in writing at any time cancel such a licence.

(4) Every officer and every member of the executive committee or governing body of a union or of a combination or association which contravenes the provisions of subsection (1), shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty dollars and to a further fine of ten dollars for every day for which he remains a member of such committee or governing body after such conviction while such union or combination or association continues in contravention of the said provisions.

40. (1) The Code of Industrial Relations Practice set out in the Third Schedule shall —

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

Practical guidance for promotion of good industrial relations.
4 of 1979, s. 5.
4 of 1979, s. 5.
9 of 1996, s. 3.
Third Schedule.

- (b) provide practical guidance for the grant of negotiating rights; and
- (c) assist employers and trade unions of employees to make effective collective agreements.

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

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

*9 of 1996, s. 3;
1 of 1997, s. 2.*

9 of 1996, s. 4.

PART III RECOGNITION OF TRADE UNIONS

41. (1) Every employer shall recognise, as the bargaining agent for employees employed by him, a trade union of which more than fifty per centum of the employees in his employment, or in a bargaining unit of such employees, are members in good standing or, in the event of there being more than one trade union claiming to have as members in good standing more than fifty per centum of such employees, that trade union which the Minister determines in accordance with subsection (5) or (6) of section 42 to be the union entitled to such recognition and, subject to the provisions of this Act, shall, when called upon by such union, treat and enter into negotiations with that trade union for the purposes of collective bargaining.

(2) For the purposes of the settlement of any limited disputes, an employer shall, when called upon by the trade union which is the bargaining agent for employees in a bargaining unit, treat and enter into negotiations with that union.

(3) An employer who, after a claim for recognition as bargaining agent has been established in accordance with section 42, fails or refuses to treat or enter into negotiations within a reasonable time with such bargaining agent in accordance with subsection (1) or (2) of this section, shall be guilty of an offence and liable, on

Duty of employers to recognise and treat with unions.

9 of 1996, s. 4.

summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(4) For the purpose of those provisions of this Act which relate to recognition by any employer of a trade union as a bargaining agent, only such persons shall be counted as employees of an employer who are entitled to be members of a trade union of employees and, where any question arises in any case whether or not any person is so entitled, that question shall be referred to the Minister and the decision of the Minister on that question shall be final.

42. (1) A trade union which seeks recognition by an employer as bargaining agent for employees employed by him, shall make its claim for such recognition in writing to the employer specifying the bargaining unit, if any, in respect of which recognition is sought, and shall serve a copy of such claim on the Minister.

Claims for recognition as bargaining agent. 9 of 1996, s. 4.

(2) Within fourteen days (or such longer period as the trade union and the employer may agree, a copy of which agreement shall be forwarded to the Minister) of the date of the receipt of such a claim, the employer shall give notice in writing to the union stating whether he accepts or rejects the claim and, where he rejects the claim, he shall state the reason for such rejection, and shall forward to the Minister a copy of the notice of acceptance or rejection at the time when the notice is given to the union.

(3) Where an employer fails to accept a claim for recognition within the period specified in subsection (2), he shall be deemed to have rejected the claim on the day following the expiry of that period.

(4) Where such a claim has been, or is deemed to have been, rejected, the union making the claim may, not later than fourteen days after the rejection or the receipt of notice of rejection of the claim, as the case may be, submit the matter to the Minister for determination.

(5) In the event of there being only one union claiming to have as members in good standing more than fifty per centum of the employees concerned, then the Minister shall determine, as soon as may be after the receipt of a submission under subsection (4), whether the union making the claim is entitled to recognition as the bargaining agent for the employees concerned, and for that purpose the Minister shall have the following powers, that is to say —

-
- (a) to determine the appropriate bargaining unit;
 - (b) to require the employer to submit to the Minister within fourteen days of the date of the receipt of such request particulars, in such form as the Minister may specify, with respect to the names of all persons employed by him and the capacities in which such persons are employed;
 - (c) to determine whether more than fifty per centum of the employees concerned desire the union making the claim to be their bargaining agent; and, for the purpose of so determining, the Minister —
 - (i) may require the union to submit the names of all the members of the union in good standing, employed by the employer concerned at the date of the union's application for recognition as a bargaining agent; and
 - (ii) shall not be restricted to an examination of the written records of the union but may take such steps and make such other enquiries as are in his opinion appropriate for the purpose of satisfying himself that more than fifty per centum of the employees concerned desire the union to act as their bargaining agent;
 - (d) when considering any matter submitted under subsection (4), to take into account any change in the circumstances which in his opinion occurred since he received the matter and which is relevant to the determination being made.
- (6) In the event of there being more than one union claiming to have as members in good standing more than fifty per centum of the employees concerned, then the Minister shall determine, as soon as may be after the receipt of a submission under subsection (4), whether the union making the claim or any other union is entitled to recognition as the bargaining agent for the employees concerned, and for that purpose the Minister shall have the following powers, that is to say —
- (a) to determine the appropriate bargaining unit;
 - (b) to require the employer to submit to the Minister within fourteen days of the date of the receipt of such request particulars, in such form as the

Minister may specify, with respect to the names of all persons employed by him and the capacities in which such persons are employed;

- (c) to determine whether more than fifty per centum of the employees concerned desire the union making the claim or any other union to be their bargaining agent; and, for the purpose of so determining, the Minister —
 - (i) may require the union to submit the names of all the members of the union in good standing, employed by the employer concerned at the date of the union's application for recognition as a bargaining agent; and
 - (ii) shall take a representational count by secret ballot in order to determine what union the employees desire to be their bargaining agent, and in the taking of such count the Minister may place on the ballot paper, in addition to the names of the unions making the claim; the name of the union recognised as the bargaining agent, if any;
- (d) when considering any matter submitted under subsection (4), to take into account any change in the circumstances which in his opinion occurred since he received the matter and which is relevant to the determination being made.

(7) Subject to subsection (1) of section 43, where the Minister has determined whether any union (and, if so, which) is entitled to be recognised as bargaining agent he shall notify in writing the parties concerned of his determination and such determination shall be final and shall not be enquired into in any court.

(8) Any employer who fails to comply with any request of the Minister made pursuant to subsection (5)(b) or subsection (6)(b) shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars for each day on which he fails to comply with the request.

43. (1) Where a union is recognised as bargaining agent pursuant to subsection (5) or (6) of section 42, not less than twenty-five *per centum* of the employees comprised in the bargaining unit may make written application to the Minister for a decision whether his determination

Application to Minister for determination and decision in relation to previous recognition of a trade union as bargaining agent.
28 of 2012, s. 2.

should not be revoked and another union recognised as bargaining agent or otherwise:

Provided that where there is —

- (a) no industrial agreement in force between a union and an employer no application shall be made until after the expiration of twelve months from the date when the union was so recognised;
- (b) an industrial agreement in force and registered under this Act between an employer and a union no application shall be made until after the expiration of two years from the date of the commencement of the agreement.

(2) Where there is an industrial agreement between an employer and a union in force and registered under this Act and the Minister decides under subsection (1) that his determination should be revoked and that no other union is entitled to recognition as bargaining agent in place of the union which was a party to the agreement, the employer and the employees in the bargaining unit for which the bargaining agent had been recognised shall be bound by that agreement, except in respect of those provisions (if any) of the agreement included in accordance with section 47, during its currency.

(3) The Minister when considering an application under subsection (1) —

- (a) may take into account any change in the material circumstances which appears to him to have occurred since the recognition or determination to which the application relates;
- (b) may investigate any question material to the application;
- (c) may require the employer to submit to him within fourteen days of the date of the receipt of such request particulars in such form as he may specify, with respect to the names of all persons employed by him and the capacities in which such persons are employed, as the case may be; and
- (d) may take such steps and make such other enquiries as are in his opinion appropriate in order to determine whether the recognition or determination should be revoked and which union, if any, is entitled to be recognised as bargaining agent.

(4) The Minister shall notify his determination or decision in writing to the employees who made the application, the employer and the trade union concerned and such determination or decision shall be final and shall not be enquired into in any court.

44. (1) Where there is no industrial agreement in force affecting employees employed by an employer and no union is recognised under the provisions of this Act as a bargaining agent, a claim for recognition as bargaining agent for such employees may be made at any time.

Time within which claim for recognition to be made.
9 of 1996, s. 4.

(2) Where a union is recognised as a bargaining agent under the provisions of this Act but there is no industrial agreement in force between the said union and the employer, a claim for recognition may not be made by another union until after the expiration of twelve months from the date when the said first-mentioned union was so recognised:

Provided that, if recognition of a union was granted by the employer without the representative status of the union having been determined by the Minister under subsection (5) or (6) of section 42, a claim for recognition as bargaining agent may be made by another union at any time after such recognition.

(3) Where an industrial agreement between an employer and a union is in force and registered under this Act, a claim for recognition as bargaining agent by another union may not be made by another union until after the expiration of two years from the date of the commencement of the said agreement:

Provided that a union which succeeds in gaining recognition in place of the union which is a party to the agreement, shall be bound by that agreement during its currency, so, however, that where the replaced union was recognised without its representative status having been determined by the Minister under subsection (5) or (6) of section 42, the union which last gained recognition shall be bound by that agreement for a period of not more than twelve months after it has gained recognition.

(4) Notwithstanding subsection (3), where an industrial agreement between an employer and a union is registered while a claim by another union for recognition

by that employer as a bargaining agent is pending, that other union, if it succeeds in its claim for recognition, shall not be bound by that agreement.

(5) Where in pursuance of subsection (5) or (6) of section 42 the Minister determines that a union is not entitled to be recognised as the bargaining agent of the employees concerned, or where a union, having made a claim for recognition, withdraws its claim, such union may not make another claim for such recognition until after the expiration of twelve months after being informed of the Minister's determination or after the withdrawal of its claim, as the case may be.

45. (1) An employer shall not intimidate or dismiss an employee, or adversely affect his employment (whether by the imposition of new terms and conditions of employment, or otherwise), or alter the position of an employee to his prejudice, by reason of the circumstance that the employee —

- (a) is an officer, delegate or member of a trade union;
- (b) is entitled to the benefit of an agreement or award under this Act;
- (c) has appeared as a witness or has given any evidence in a proceeding under this Act; or
- (d) has absented himself from work without leave after he has made an application for leave for the purpose of carrying out urgent and necessary duties as an officer or delegate of a trade union in connection with a trade dispute with the said employer and such leave has unreasonably been refused or withheld.

(2) An employer shall not intimidate an employee, or threaten to dismiss him or to affect adversely his employment (whether by the imposition of new terms and conditions of employment, or otherwise) or to alter the position of the employee to his prejudice —

- (a) by reason of the circumstance that the employee is, or proposes to become, an officer, delegate or member of a trade union or of an association that has applied to be registered as a trade union, or that the employee proposes to appear as a witness or to give evidence in a proceeding under this Act; or

Adversely affecting employee on account of trade union activity.

9 of 1996, s. 4.

(b) with intent to dissuade or prevent the employee from becoming such an officer, delegate or member or from so appearing or giving evidence.

(3) An employer who contravenes any of the provisions of subsection (1) or (2), shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment; and the court making the order for conviction may also order that the employee be reimbursed any wages lost by him and direct, if the case in the opinion of the court so requires, that the employee be reinstated in his former position or be employed in a similar position.

(4) Notwithstanding any rule of law to the contrary, the question whether an offence has been committed under this section shall be decided by the court on a balance of probabilities.

(5) In this section, the expression “to 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, and the expression “injury” includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong.

PART IV INDUSTRIAL AGREEMENTS AND OTHER AGREEMENTS

46. (1) Subject to the following provisions of this Part, any union which is the bargaining agent for employees employed by any employer, may make an industrial agreement under this section with that employer affecting those employees.

Industrial agree-
ments.

(2) Every industrial agreement under this section shall contain provisions for the setting up of effective machinery, including a procedure for conciliation, for the prevention and settlement of general disputes, for the reference of any question or difference arising out of the interpretation or application of any provision of an industrial agreement, in relation to an essential service or a non-essential service to the Tribunal, for final settlement, and

*1 of 1997, s. 2.
9 of 1996, s. 5.*

shall be for a term, to be specified therein, not being less than two years nor more than five years:

Provided that where, on the application of the parties to any industrial agreement, the Minister is satisfied in any particular case that it is in the public interest that such industrial agreement should have effect for a period less than two years, he may so determine, and thereupon such industrial agreement shall have effect for the lesser period so determined by the Minister.

Further provisions to be contained in industrial agreements.

4 of 1979, s. 10.

47. (1) Notwithstanding anything in this Act contained, every industrial agreement shall, subject to the prior agreement of not less than sixty per centum of the employees comprised in the bargaining unit to whom the agreement relates, also contain provisions —

- (a) for the payment by every employee in the employment of the employer with whom the agreement is made, and on whose behalf the agreement is made, comprised in the bargaining unit, of a contribution to the bargaining agent concerned;
- (b) specifying the amount payable as contribution by an employee, which amount shall be agreed on between the employer and the bargaining agent but shall, in the case of an employee who is a member of the union recognised as bargaining agent, be equivalent to the dues payable from time to time by such member in respect of his membership, and in the case of an employee who is not such a member ninety per centum of such dues, the times at which the contribution is payable by an employee, the procedure for the collection of the contribution from an employee and for the payment over of the contributions by the employer to the bargaining agent and for all other matters relating thereto.

(2) The Minister shall take a representational count by secret ballot in order to determine whether not less than sixty per centum of the employees concerned agree to the inclusion in the agreement of the provisions set out in subsection (1) and shall notify the result of the ballot to the employer and the bargaining agent.

(3) Notwithstanding anything in this Act contained, where the provisions set out in subsection (1) have been

included in the agreement, not less than twenty-five per centum of the employees concerned may make written application to the Minister for a representational count by secret ballot to determine whether the agreement should not be amended by the removal of the provisions:

Provided that no application shall be made until after the expiration of twelve months from the date of the commencement of the agreement.

(4) The Minister shall, on an application being made under subsection (3), take a representational count by secret ballot of employers comprised in the bargaining unit on the question whether the agreement should not be amended by the removal of the provisions.

(5) The Minister shall notify in writing the result of the ballot to the employees who made the application for a ballot, the employer and the bargaining agent.

(6) If, on a ballot taken under subsection (4), less than sixty per centum of the employees comprised in the bargaining unit vote in favour of the amendment of the agreement by the removal of the provisions, the Minister shall make an order accordingly and that order shall have effect on the last day of the month in which the ballot was taken.

48. Where a trade union and an employer propose to enter into an industrial agreement under section 46, they shall sign and send to the Registrar a draft of the industrial agreement with a request for its registration, and shall at the same time send a copy of the draft industrial agreement to the Minister for his information.

Procedure in relation to industrial agreements.

*1 of 1997, s. 2.
28 of 2012, s. 4.*

49. (1) Within fourteen days of receipt of any such copy of a draft industrial agreement, the Registrar shall make thereon such comments as he may think fit and if he is satisfied that the draft industrial agreement does not contain any illegality, the Registrar shall request the union and the employer to execute the industrial agreement in proper form and shall register such industrial agreement when so executed.

Registration of industrial agreements by the Registrar.

28 of 2012, s. 5.

(2) In every case in which the Registrar is not satisfied that the draft industrial agreement does not contain any illegality, the Registrar shall request the union and the employer (hereinafter in this section together referred to as “the parties”) in writing, to remove the illegality within a period of one month and upon the expiry of one month, the

parties shall immediately thereafter re-submit in writing, the amended industrial agreement to the Registrar for his review.

(3) If after reviewing the amended industrial agreement, the Registrar is satisfied that it no longer contains any illegality, he shall request the parties to execute the amended draft industrial agreement in proper form and thereafter, he shall register the same.

(4) Where the parties are aggrieved by the refusal of the Registrar to register any industrial agreement that contains any illegality, the parties shall be entitled to apply to the Court within the time and manner, and on the conditions required by the rules of the Court.

50. An industrial agreement under section 46 shall have effect only if it is registered by the Registrar in accordance with section 49.

51. (1) Every industrial agreement so registered shall during its continuance be binding on —

- (a) the bargaining agent and every employee in the bargaining unit for which the bargaining agent has been recognised;
- (b) the employer who has entered into the industrial agreement;
- (c) any person succeeding (whether by virtue of a sale or other disposition or by operation of law) to the ownership or control of the business for the purposes of which the employees in the bargaining unit are employed; and
- (d) any trade union that has been recognised in accordance with the provisions of section 44 as bargaining agent in place of the bargaining agent referred to in paragraph (a) of this section.

(2) No action shall be brought so as to charge the funds of any union or the goods or property of any member or officer of any union, in respect of any failure by such union to comply with an industrial agreement which is binding on such union by virtue of subsection (1), but the Tribunal shall have power to make a determination, if it thinks fit, against such a union, on the application of any person interested, that such union failed to take all reasonable steps in its power, in any case where any member or members of such union, being bound by the industrial agreement, acted in breach of any of its provisions, to

Validity of industrial agreements.
1 of 1997, s. 2.
28 of 2012, s. 6.

Effect of industrial agreement.

1 of 1997, s. 2.

prevent such breach; and where any such determination is made the Registrar shall cancel the registration of the union under paragraph (b) of subsection (1) of section 15.

52. (1) Notwithstanding section 51 but subject to subsection (2) of this section, a trade union and an employer may enter into a supplemental industrial agreement —

Supplemental industrial agreements.

- (a) to amend or modify an industrial agreement if during the continuance thereof there has been in their opinion a change of circumstances justifying such amendment or modification in the interest of good industrial relations; or
- (b) to add any provision not made in the existing provisions of the industrial agreement:

Provided that a matter shall not be provided for by any such amendment, modification or addition to an industrial agreement that could not have been included in that industrial agreement under section 46.

S.I. 75/1989.

(2) The provisions of sections 48 to 51 shall have effect in relation to any supplemental industrial agreement as they have effect in relation to the industrial agreement to which it is supplemental.

53. Nothing in this Act shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely —

Certain contracts of unions not enforceable.

- (a) any agreement between members of a trade union as such concerning the conditions on which any members for the time being of the union shall or shall not sell their goods, transact business, employ or be employed;
- (b) any agreement for the payment by any person of any subscription or penalty to a trade union;
- (c) any agreement for the application of the funds of any union —
 - (i) to provide benefits to members; or
 - (ii) to furnish contributions to any employer or employee not a member of that union, in consideration of the employer or employee acting in conformity with the constitution or resolutions of that union; or
 - (iii) to discharge any penalty or fine imposed upon any person by sentence of a court; or

- (d) any agreement made between one trade union and another; or
- (e) any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

9 of 1996, s. 6.

PART V INDUSTRIAL TRIBUNAL

Establishment of Industrial Tribunal.

54. (1) For the purposes of this Act, there shall be established an Industrial Tribunal.

9 of 1996, s. 6.

(2) The Tribunal shall have an official seal which shall be judicially noticed.

30 of 1999, s. 2.

(3) The Tribunal shall consist of three members or such other number of members as may be increased by order of the Governor-General, appointed by the Governor-General acting on the advice of the Judicial and Legal Service Commission, of whom —

- (a) one shall be so appointed President of the Tribunal; and
- (b) the others shall respectively be so appointed Vice-President of the Tribunal.

30 of 1999, s. 2.

(4) The President shall be the senior member of the Tribunal and shall be responsible for the administration of the affairs and business of the Tribunal.

(5) If the office of a member of the Tribunal is vacant or if such member is for any reason unable to perform the functions of his office, then, until a person has been appointed to that office and assumed its functions, or, as the case may be, until the member has resumed those functions, they shall be performed by such other person, qualified under paragraph 3 of the Fourth Schedule for appointment as a member of the Tribunal, as the Governor-General, acting on the advice of the Judicial and Legal Service Commission, may appoint for that purpose:

Fourth Schedule.

Provided that where the hearing of evidence has begun in a matter before a member of the Tribunal, the hearing of the evidence shall be restarted.

(6) The Tribunal shall be deemed to be fully constituted notwithstanding any vacancy in its membership.

(7) The provisions of the Fourth Schedule shall have effect as to the Tribunal, its members and staff, and otherwise in relation thereto.

(8) Subject to paragraph 5(2) of the Fourth Schedule, the Governor-General acting on the advice of the Judicial and Legal Service Commission may, by Order, amend paragraph 5(1) of that Schedule.

55. The Tribunal shall have jurisdiction —

(a) to hear and determine trade disputes within an essential service or a non-essential service;

(b) to hear and determine any other matter brought before the Tribunal in accordance with this Act.

Jurisdiction of
Tribunal.
1 of 1997, s. 2.

28 of 2012, s. 7.

56. (1) In any case where it appears to the President to be requisite in the public interest, the President may issue directions for —

(a) the Tribunal to sit comprised of three members; or

(b) one member of the Tribunal to sit together with two persons selected from a panel as provided in subsection (5),

Full Tribunal.
9 of 1996, s. 6.

30 of 1999, s. 3.

(any such sitting being in this Part referred to as a “Full Tribunal”), for the purpose of hearing and determining a general dispute within an essential service or a non-essential service.

1 of 1997, s. 2.

(2) The determination of any question before a Full Tribunal shall be according to the opinion of the majority of the persons bearing the matter before the Full Tribunal.

(3) A Full Tribunal may exercise any of the powers conferred by this Part on a Tribunal.

(4) The Director of Labour —

(a) after consultation with such associations of employers as the Director may deem fit, may by notice published in the *Gazette*, appoint a panel of not less than six persons; and

(b) after consultation with such associations of employees as the Director may deem fit, may by notice published in the *Gazette*, appoint a panel of not less than six persons,

from among persons having wide experience in trade, industry, financial or commercial matters, trade unionism or administration.

- (5) The President may from time to time select —
- (a) one person, from the panel appointed under subsection (4)(a); and
 - (b) one person, from the panel appointed under subsection (4)(b),

to sit on the Full Tribunal pursuant to the provisions of subsection (1)(b).

(6) Every appointment to a panel under subsection (4)(a) or (b) shall be for a period of three years but the Director may if he thinks it expedient so to do, at any time revoke an appointment.

(7) There shall be paid to any person appointed to a panel under subsection (4)(a) or (b), an annual honorarium of two thousand five hundred dollars or such other sum as the Minister may prescribe by Order.

57. (1) In the hearing and determination of any matter before it, the Tribunal —

- (a) shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings;
- (b) shall not be bound by any written law or rule of law relating to the admissibility of evidence in proceedings before courts;
- (c) shall make such enquiries of persons appearing before it and witnesses as it considers appropriate; and
- (d) shall otherwise conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Subject to subsection (1), at the hearing of a matter before the Tribunal, a party to the proceedings shall be entitled to give evidence, to call witnesses, to question any witness and to address the Tribunal, and any such party may appear in person or may be represented by a counsel and attorney or by any officer of a registered trade union (including a shop steward).

(3) The Tribunal shall expeditiously hear, inquire into and investigate every dispute which is before it and all matters affecting the merits of such dispute; and, without limiting the generality of subsection (2), the Tribunal shall in particular, notwithstanding any provision of the Legal Profession Act relating to the admission of persons to prac-

Ch. 64.

Scope of hearing
by Tribunal.
9 of 1996, s. 6.

tise as counsel and attorneys in the courts of The Bahamas, hear, receive and consider submissions, arguments and evidence made, presented or tendered (whether orally or in writing) —

- (a) by or on behalf of the employer or employee concerned;
- (b) by the trade union concerned, on behalf of the employees involved in the dispute; or
- (c) by any person having wide experience in trade unionism.

58. (1) The Tribunal may in relation to any matter before it —

Powers of Tribunal.

9 of 1996, s. 6.

27 of 2001, s. 80.

- (a) remit a dispute, subject to such conditions as the Tribunal may determine, to the parties for further consideration by them with a view to settling or reducing the several issues in dispute;
- (b) make an order or award (including a provisional or interim order or award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination;
- (c) award compensation on complaints brought and proved before the Tribunal by a party for whose benefit the order or award was made regarding any breach or non-observance of an order or award or any term thereof (other than an order or award for the payment of damages or compensation);
- (d) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter, if it appears that the matter or part thereof is trivial, or that further proceedings are unnecessary or undesirable in the public interest.

(2) The Tribunal in making its awards in trade disputes shall be guided by the following considerations, that is to say —

- (a) the necessity to maintain a high level of employment throughout The Bahamas;
- (b) the necessity to increase production and to assure to employees a fair share of any increases in productivity in any enterprise;
- (c) the necessity to preserve and promote the competitive position of Bahamian products in the domestic market as well as in export markets;

- (d) generally, the requirements of the public interest.

Additional powers of Tribunal.
9 of 1996, s. 6.

59. (1) In addition to the powers conferred on it under the foregoing provisions of this Act the Tribunal may

-
- (a) proceed to hear and determine any question arising in connection with a dispute in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so;
- (b) order any person —
- (i) who in the opinion of the Tribunal may be affected by an order or award; or
- (ii) who in any other case the Tribunal considers it just to be joined as a party, to be joined as a party to the proceedings under consideration on such terms and conditions as the Tribunal may direct;
- (c) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the dispute or any other matter before it.

(2) Without prejudice to the provisions of subsection (1), where in any proceedings before the Tribunal, the Tribunal makes an order or award for the payment of a sum as compensation or damages, the Tribunal may in addition if it thinks fit, order that there shall be included in the sum so ordered or awarded, interest at such rate as the Tribunal thinks fit on the whole or any part of the compensation or damages from the date of the order or award:

Provided that nothing in this subsection shall authorise the giving of interest upon interest.

Reconciliation.
9 of 1996, s. 6.

60. The Tribunal shall make all such suggestions and do all such things as appear to be right and proper for reconciling the differences between the parties.

Recovery of compensation or damages.
9 of 1996, s. 6.

61. The order or award of the Tribunal on reference by the Minister pursuant to section 73 shall not be enforceable by the Tribunal but such order or award may, by leave of the Supreme Court, be enforced in the same manner as a judgment or order to the same effect.

Order may be made retroactive.

62. An order or award in any matter referred to the Tribunal for determination may be made operative from

9 of 1996, s. 6.

such date as the Tribunal may consider fair and just having regard to all the circumstances of the case.

63. (1) Where any question arises as to the interpretation of any order or award of the Tribunal, the Minister or any party to the matter may apply to the Tribunal for a decision on such question and the Tribunal shall decide the matter either after hearing the parties or, without such hearing, where the consent of the parties has first been obtained, and the decision of the Tribunal shall be notified to the parties and shall be binding in the same manner as the decision on the original order or award.

Interpretation of orders and of industrial agreements.

9 of 1996, s. 6.

(2) Where there is any question as to the interpretation or application of the provisions of an industrial agreement registered under this Act, any employer, employee or trade union affected by the provisions, or the Minister, may refer the question, to the Tribunal for decision.

64. (1) Subject to this Act, any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal on any of the following grounds —

Appeal to Court of Appeal.

9 of 1996, s. 6.

- (a) that the Tribunal had no jurisdiction in the matter but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Tribunal had been formally taken at some time during the progress of the matter before the making of the order or award;
- (b) that the Tribunal has exceeded its jurisdiction on the matter;
- (c) that the order or award has been obtained by fraud;
- (d) that any finding or decision of the Tribunal in any matter is erroneous in point of law;
- (e) that the order or award of damages is inordinately high or inordinately low; or

(f) that some other specific illegality not mentioned in paragraphs (a) to (e) and substantially affecting the merits of the matter has been committed in the course of the proceedings.

(2) On the hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power —

- (a) to confirm, modify or reverse the order or award appealed against;
- (b) if the Court of Appeal confirms the order or award appealed against, to order that there shall be included in the sum which is the subject of the appeal, interest at the rate of ten per centum on the whole or any part of the sum, from the date of the order or award appealed against;
- (c) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or
- (d) to order a new hearing on any question without interfering with the finding or decision upon any other question,

and the Court of Appeal may make such final or other order (other than an order as to costs) as the circumstances of the matter may require.

(3) The Court of Appeal may in any matter brought on appeal before it, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

65. (1) An order or award of the Tribunal shall be binding on —

- (a) all parties to the dispute who appear or are represented before the Tribunal;
- (b) all persons who have been summoned to appear as parties to the dispute, whether they have appeared or not;
- (c) in the case of employers, any person who, at the relevant time, is conducting or carrying on the business of the employer (in this section referred to as the “agent of the employer”) or any successor to, or assignee of, the business of the

On whom award
to be binding.
9 of 1996, s. 6.

employer who is a party bound by such order or award, including any company that has acquired, or taken over the business of such a party;

- (d) any trade union on whom such order or award is at any time declared by the Tribunal to be binding, as well as on its successors; and
- (e) all employees belonging to a bargaining unit to which such order or award refers, in relation to general disputes.

(2) The Tribunal may, during the course of any dispute pending before it direct that any agents of the employer or any successors to or any assignees of, the business of the employer who is a party to the dispute shall be joined or substituted as a party to the dispute, and any order or award of the Tribunal in such dispute (whenever made) shall, save to the extent that it is otherwise expressly provided in such order or award, be binding on the successors or assignees of the employer.

(3) For the purposes of this section, any question whether a person is the agent of the employer or the successor to or an assignee of another shall be determined by the Tribunal from all the circumstances in accordance with good conscience and the Code of Industrial Relations Practice and shall be binding on the persons referred to in subsection (1) and is conclusive for all purposes connected with the order or award.

66. Subject to the provisions of this Act, the Tribunal may by rules regulate its own practice and procedure for the hearing and determination of matters before it and prescribe the fees of the Tribunal and the forms to be used before it.

Rules.
9 of 1996, s. 6.

67. In this Part, unless the context otherwise requires —

Interpretation in
Part V.
9 of 1996, s. 6.

“Full Tribunal” has the meaning assigned to that expression by section 56(1);

“member of the Tribunal” or “member” means a member of the Tribunal appointed under section 54(3);

“President” means the member appointed, under section 54(3)(a), as President of the Tribunal;

“Vice-President” means a member appointed, under section 54(3)(b), as a Vice-President of the Tribunal.

PART VI TRADE DISPUTE PROCEDURE

Trade dispute procedure.

68. (1) Any trade dispute existing or apprehended may, if not otherwise determined, be reported to the Minister —

- (a) by a trade union on behalf of employees in a bargaining unit for which it is recognised as bargaining agent, where the dispute is a general dispute;
- (b) by a trade union, on behalf of an employee who is a party to a limited dispute, where such employee was a member in good standing of such union at the time the dispute arose, and whether or not such employee is included in a bargaining unit;
- (c) by a trade union of employers on behalf of an employer who is a member of the trade union, where the dispute is between the employer and employees in employment of that employer;
- (d) by an employer or an employee, where the dispute is between that employer and that employee (whether alone or jointly with other employees in the employment of that employer).

(2) A trade dispute may not be reported to the Minister if a period of more than twelve months has elapsed since the dispute first arose, and any dispute not reported within that period shall be deemed to have been determined, so, however, that the Minister may in any case extend such period if he considers it just to do so.

(3) A report of a trade dispute shall be made in writing and shall specify —

- (a) the parties to the dispute;
- (b) the person or persons on behalf of whom the report is made;
- (c) the authority to act on behalf of the person desiring the dispute to be reported which the party reporting the dispute claims to have;
- (d) every issue relevant to the dispute;

(e) where there is a relevant agreement in being, what action has been taken for dealing with the dispute under that agreement.

(4) Every party reporting a trade dispute shall, without delay, furnish by hand or by registered post a copy of such report to the other party or parties to the dispute.

69. (1) The Minister shall consider any dispute reported to him under subsection (1) of section 68 and if, in his opinion, suitable machinery for settling the dispute already exists by virtue of the provisions of any agreement between the parties to the dispute, he may, as soon as is practicable after the receipt of the report, refer the matter for settlement in accordance with those provisions; and where there is a failure to reach a settlement within seven days after such a reference, the party reporting the dispute shall notify the Minister of such failure.

Action by Minister on report.

4 of 1979, s. 12.

(2) On receipt of a notification under subsection (1), the Minister shall, if it appears to him that the existing machinery for settling the dispute has not been exhausted, so inform the parties in writing and refer the matter back to them for further consideration; and, where there is a failure to reach a settlement within seven days after such a reference, the party reporting the dispute shall notify the Minister of such failure.

4 of 1979, s. 12.

(3) Where, on receipt of a report of a dispute under subsection (1) of section 68 —

- (a) it appears to the Minister that no suitable machinery binding on the parties exists for the settlement of the dispute; or
- (b) the Minister does not choose to refer the dispute for settlement under subsection (1) of this section; or
- (c) the Minister has referred the dispute for settlement under subsection (1) or (2) of this section and the party reporting the dispute has notified him pursuant to that subsection of a failure to reach a settlement,

the Minister shall endeavour to secure, by means of conciliation, a settlement of the dispute within sixteen days after the receipt by him of such report or, in a case to which paragraph (c) of this subsection applies, such a

4 of 1979, s. 12.

notification as is mentioned in that paragraph, or within such longer period as may be agreed upon by the parties.

Parties to enter into conciliation and to attend meetings called by Minister.

4 of 1979, s. 13.

70. (1) For the purposes of assisting the Minister in his endeavour to secure a settlement of a dispute by means of conciliation under subsection (3) of section 69, the parties to the dispute shall enter into conciliation in good faith, and where the Minister serves written notice on the parties concerned requiring them to attend a meeting for that purpose, the parties concerned shall so attend.

- (2) Any party to a dispute who fails or refuses —
- (a) to enter into conciliation in good faith under subsection (1);
 - (b) to attend a meeting when required to do so by the Minister under subsection (1),

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five thousand dollars.

Settlements to be reported to Minister, to be filed with Tribunal, and to be binding.

1 of 1997, s. 2.

71. (1) Where steps taken by the Minister under section 69 to settle a dispute have resulted in a settlement, the parties to the dispute shall, without delay, transmit to the Minister a copy of the settlement signed by or on behalf of the said parties; and the Minister shall file such copy with the Tribunal.

(2) Any such settlement as aforesaid shall, as from the date thereof or as from such other date as may be specified therein, not being earlier than the date on which the dispute to which the settlement relates arose, be binding on the persons agreeing to the settlement until varied by a valid agreement concluded by or on behalf of those persons.

Minister may refer disputes in essential services to the Tribunal.

4 of 1979, s. 14.

1 of 1997, s. 2.

72. (1) Where the Minister has endeavoured under subsection (3) of section 69 to secure a settlement of a trade dispute within an essential service and such settlement has not been reached within the period of sixteen days mentioned in that subsection or, as the case may be, any longer period agreed upon by the parties pursuant to that subsection, then the Minister may forthwith upon the expiry of such period refer the dispute to the Tribunal if in his opinion the public interest so requires.

(2) In this section and section 74 “essential service” means any service declared by the Governor-General by order to be an essential service, so, however, that the services hereafter mentioned in this subsection, that is to say

- (a) the supply of electricity or water to the inhabitants of any town, village or place;
- (b) the disposal of sewage or of any other waste product dangerous to the health of the community;
- (c) the provision of any hospital service;
- (d) any service essential to the safety of aircraft;
- (e) the fire service, the telecommunications service, or the prison service,

shall be deemed to have been so declared by an order satisfying the requirements of subsections (3) and (4).

(3) The provisions of section 32 of the Interpretation and General Clauses Act shall not apply in relation to any order made by the Governor-General under subsection (2), but instead every such order shall be subject to affirmative resolution of both Houses of Parliament. Ch. 2.

(4) In subsection (3) the expression “subject to affirmative resolution of both Houses of Parliament”, in relation to an order, means that the order is not to come into operation unless and until approved by a resolution of each of those chambers.

73. Where the Minister has endeavoured under subsection (3) of section 69 to secure a settlement of a trade dispute within a non-essential service and such settlement has not been reached within the period of sixteen days mentioned in that subsection or, as the case may be, any longer period agreed upon by the parties pursuant to that subsection, then the Minister may if, in his opinion the public interest so requires, refer the dispute back to the parties for further consideration; and where there is a failure to reach a settlement within such reasonable period, after such a reference, as may be determined by the Minister, the party reporting the dispute shall notify the Minister of such failure and the Minister shall forthwith refer the dispute to the Tribunal.

Referral of disputes in non-essential services to Tribunal.
9 of 1996, s. 8.

74. (1) An employee shall not take part in a strike and an employer shall not declare or take part in a lock-out unless —

Strikes and lock-outs.

- (a) a report of a trade dispute, to which trade dispute that employee or that employer (as the case may be) is a party, has been made to the

Minister in accordance with the provisions of section 68; and

- (b) the time allowed by sections 69 and 71 has elapsed since the date of such report; and
- (c) as respects a dispute within an essential service, the dispute has not during the time allowed by sections 69 and 71 been referred by the Minister to the Tribunal pursuant to section 72; or
- (d) as regards a dispute within a non-essential service, the dispute has not during the time allowed by sections 69 and 71 been referred by the Minister to the Tribunal pursuant to section 73,

1 of 1997, s. 2.

9 of 1996, s. 10.

and, in addition, an employee shall not take part in a strike called by a trade union of employees of which he is a member unless such union has after the date of the report of the dispute made pursuant to section 68, taken action in accordance with the requirements of subsection (3) of section 20.

(2) It shall not be lawful for any person or any trade union to declare, instigate, incite others to take part in or otherwise act in furtherance of, a strike or lock-out when there is not in relation to the matter in question a trade dispute in relation to which all the conditions of subsection (1) have been satisfied.

(3) Any person, being an individual, who acts in contravention of any of the provisions of this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred and fifty dollars or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

(4) No prosecution for an offence under this section shall be instituted save by, or with the consent of, the Attorney-General.

Illegal strikes and
lock-outs.

75. (1) Notwithstanding anything in this Act, it is hereby declared —

- (a) that any strike is illegal if it —
 - (i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged; or

-
- (ii) is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community;
 - (b) that any lock-out is illegal if it —
 - (i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the employers locking-out are engaged; or
 - (ii) is a lock-out designed or calculated to coerce the Government either directly or by inflicting hardship upon the community,

and it is further declared that it is illegal to commence, or continue, or apply any sum in furtherance or support of, any such illegal strike or lock-out.

(2) For the purposes of this section, a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and employees, or between employees and employees, in that trade or industry, which is connected with the employment or non-employment, or the terms or conditions of employment, of persons in that trade or industry.

(3) If any person declares, instigates, incites others to take part in or otherwise acts in furtherance of, a strike or lock-out declared by this section to be illegal, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred and fifty dollars or to imprisonment for a term not exceeding three months or, on conviction on information, to imprisonment for a term not exceeding two years:

Provided that no person shall be deemed to have committed an offence under this section or at common law by reason only of his having ceased work or refused to continue to work or to accept employment.

(4) Where any person is charged before any court with an offence under this section, no further proceedings in respect thereof shall be taken against him without the consent of the Attorney-General except such as the court may think necessary by remand (whether in custody or on bail) or otherwise to secure the safe custody of the person charged.

(5) The provisions of section 37 shall not apply to any act done in contemplation or furtherance of a strike or

lock-out which is by this section declared to be illegal, and any such act shall not be deemed to be done in contemplation or furtherance of a trade dispute.

(6) For the purposes of this section, a strike or lock-out shall not be deemed to be calculated to coerce the Government unless such coercion ought reasonably to be expected as a consequence thereof.

Power of Minister to refer legal strike or lock-out to Tribunal.

1 of 1997, s. 2.

76. (1) When a strike or lock-out which is not in contravention of section 74 or 75 is in progress and the Minister considers that the public interest is affected or threatened thereby, he may refer the dispute which has given rise to the strike or lock-out, to the Tribunal for settlement and shall notify in writing the parties to the dispute accordingly; and thereupon it shall be the duty of any person participating in the strike or lock-out to discontinue the same forthwith.

(2) If within twenty-four hours of receipt of a notification under subsection (1) any person fails to discontinue his participation in a strike or lock-out, he shall be guilty of an offence and liable, on summary conviction —

- (a) in the case of an employer, to the penalties prescribed in subsection (3) of the said section 74;
- (b) in any other case, to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(3) For the purposes of this section, notification under subsection (1) of a trade union that has called a strike or declared a lock-out shall be deemed to be notification of every member thereof participating in such strike or lock-out, whether or not such member received a separate notification under that subsection.

Strikes and lock-outs prohibited during hearings.

1 of 1997, s. 2.

77. (1) No employee shall go on strike, and no employer shall declare a lock-out, and no union or member of the executive committee or other governing body of a union shall call a strike or declare a lock-out in consequence of a trade dispute while proceedings taken in relation to that dispute are pending before the Tribunal or the Court of Appeal.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable, on summary conviction —

- (a) in the case of an employee, to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment;
- (b) in the case of a union or a member of the executive committee or other governing body of a union, or an employer, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART VII MAINTENANCE OF LAW AND ORDER AND PROTECTION OF PRIVATE RIGHTS

78. (1) No employer shall make it a term or condition of the employment of any employee that that employee shall be or become, or shall not be or become, a member of any trade union; and any such term or condition in any contract of employment shall be void, and any such contract shall have effect as if such term or condition were not contained therein.

Freedom of association.
4 of 1979, s. 17.

(2) Any employer acting in contravention of the provisions of subsection (1) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred and fifty dollars.

4 of 1979, s. 17.

79. (1) No person refusing to take part or to continue to take part in, or otherwise to act in furtherance of, any trade dispute or strike or lock-out in relation to which any of the provisions of this Act have not been complied with, or which by virtue of any of the provisions of this Act is unlawful, shall by reason of such refusal be subject —

Protection of persons refusing to take part in illegal trade disputes, strikes or lock-outs.

- (a) to expulsion from any trade union which is registered under this Act; or
- (b) to removal from office in any such union; or
- (c) to any fine or penalty whatsoever; or
- (d) to deprivation of any right or benefit whatsoever to which he or his legal personal representatives would otherwise be entitled; or

- (e) to any disability or disadvantage whatsoever, whether direct or indirect, as compared with other members of any such union,

anything to the contrary in the constitution of any trade union notwithstanding.

(2) No provision of this Act limiting the proceedings which may be entertained by any court, and no provision in the constitution of any trade union which is registered under this Act, and no provision of any agreement, shall apply to any proceedings for enforcing any right or exemption secured by this section, and in any such proceedings a court of competent jurisdiction may —

- (a) order that a person be restored to membership of, or to office in, any trade union which is registered under this Act; and
- (b) order that a person be paid out of the funds of any such union such sum by way of compensation or damages as the court thinks fit.

Breach of contract involving danger to life or property.

80. Any person who wilfully and maliciously breaks a contract of employment, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to endanger human life or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, shall, notwithstanding that he may be acting in furtherance of a lawful trade dispute, be guilty of an offence and liable, on summary conviction, to a fine not exceeding three hundred dollars, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Picketing rules.

81. (1) Subject to the provisions of section 82, it shall be lawful for any person to picket if and for so long as he complies with the picketing rules.

Second Schedule.

(2) The Minister may from time to time make rules regulating picketing (in this Act referred to as picketing rules), so, however, that the rules set forth in the Second Schedule shall be deemed to have been made by the Minister under this subsection.

(3) Any person who, while picketing, fails to comply with any of the picketing rules shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty dollars.

82. (1) Every person who, 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, wrongfully and without legal authority —

Prevention of intimidation or annoyance by violence or otherwise.

- (a) uses violence to or intimidates such other person or his wife or children, or injures his property; or
- (b) persistently follows such other person about from place to place; or
- (c) hides any tools, clothes or other property owned or used by such other person, or deprives him, or hinders him in 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 other persons in a disorderly manner in or through any street or road,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months.

(2) It is hereby declared that it is unlawful for one or more persons to attend at or near a house or place where a person resides or works or carries on business or happens to be, notwithstanding that they may be so attending for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace, and any person who acts in contravention of this subsection, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months.

(3) In this section the expression “to 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, and the expression “injury” includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong.

(4) Notwithstanding anything in any enactment, it shall not be lawful for one or more persons, for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such a house or place, and any person who acts in contravention of this subsection, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months.

Relief by way of injunction against contravention of this Act.

Ch. 53.

83. (1) Notwithstanding any other provision of this Act, and without prejudice to any remedy or relief to which any person may be entitled apart from this section, any person having a sufficient interest in the relief sought, shall be entitled, upon making application to the Supreme Court in accordance with rules made under section 76 of the Supreme Court Act, and upon satisfying the court that there are reasonable grounds for apprehending a contravention of this Act by any person or by any trade union, to an injunction restraining that person or union from so contravening this Act.

- (2) For the purpose of this section —
- (a) “person having a sufficient interest in the relief sought” includes —
- (i) any person whose person, property or business or any right or interest of whom has been or is being or is likely to be injured or damaged by any act which is, or the continuation or repetition of which is, threatened or reasonably apprehended; and
- (ii) any person whose house or place of residence, working or business has been unlawfully watched, beset or picketed;
- (b) “injunction” includes an interlocutory, permanent or mandatory injunction, and any permanent or temporary relief by way of injunction;
- (c) a member or officer of a trade union shall be presumed to be acting on behalf of that union if he takes any step or action in contemplation or in furtherance of a trade dispute in combination or in company with any other member or officer of that union, unless the contrary is proved.

S.I. 75/1989.

(3) If the court is satisfied upon an *ex parte* application, made in accordance with any rules made under section 76 of the Supreme Court Act applicable thereto, that it is probable that the plaintiff is entitled to relief by way of injunction and that it is probable that unless an interlocutory order is made the plaintiff will suffer substantial injury or damage, the court shall make such an order subject to such terms and conditions as the court thinks just; and the court may at any time on reasonable cause shown discharge or vary such order.

Ch. 53.

(4) Proceedings for an injunction against a trade union may be brought against that union in its registered name, and an injunction, granted under this section against a trade union, shall be enforceable by attachment or committal of each officer and of each member of the executive committee or other governing body of the union, and by sequestration against the funds of the union.

(5) Subject to subsection (4), an injunction granted under this section against any person shall be enforceable by attachment or committal or otherwise as the court thinks just.

(6) Relief by way of injunction shall be granted under this section notwithstanding that no compensation or other relief is claimed or granted therewith.

(7) The power to make rules of the Supreme Court provided by section 76 of the Supreme Court Act shall include power to make rules for regulating, subject to, and for the purpose of giving effect to, the provisions of this section, the practice and procedure in all matters relating to the granting of relief under this section.

Ch. 53.

PART VIII MISCELLANEOUS AND GENERAL

84. Any person guilty of an offence under this Act or any regulations for which no penalty is provided elsewhere in this Act or in the regulations, shall be liable, on summary conviction, to a fine not exceeding three hundred dollars and, in default of payment thereof, to imprisonment for a term not exceeding twelve months.

Offences not otherwise provided for.

85. Subject as otherwise provided, all expenses incurred for the purposes of this Act shall be defrayed out of moneys provided by Parliament.

Expenses.

Labour Certificate.
11 of 1994, s. 7.

86. There shall be payable a fee of twenty-five dollars for the issue by the Ministry responsible for labour of a certificate evidencing the availability or non-availability of a Bahamian suitable for employment in a position for which application is being made by an employer to be filled by a non-Bahamian.

Fees.
11 of 1994, s. 7.

87. All fees received by the Minister under this Act or under any regulations shall be paid into the Consolidated Fund.

FIRST SCHEDULE (Section 8(2))

PART I

RULES FOR THE REGISTRATION OF TRADE UNIONS OF EMPLOYEES

Registrar to consider protection of separate industries, crafts and occupations.

1. In registering or refusing to register trade unions under this Act, the Registrar shall have regard to the desirability of securing the protection and promotion of the particular interests of employees employed in each industry, and of employees engaged in each craft and in each occupation, and in applying the rules set out in this Part of this Schedule the Registrar shall exercise his discretion accordingly.

Treatment of small industries, etc.

2. (1) The Registrar shall encourage the formation and registration of trade unions each representing a particular industry (hereafter in this Schedule referred to as “industrial trade unions”), wherever it is practicable to form such unions, and where it seems to him to be in the interest of the employees concerned, he shall encourage the formation and registration of trade unions each representing a particular craft (hereafter in this Schedule referred to as “craft trade unions”).

(2) When acting under this rule, the Registrar may, for the purpose of meeting the cases of small industries and of crafts having few members —

- (a) treat any industry which in his opinion is by itself too small to be represented by an industrial trade union, as part of any other industry with which it has any affinity or connection; or
- (b) treat as one industry a sufficient number of allied or related industries, each of which in his opinion is by itself too small to be represented by an industrial trade union, for the purpose of forming and registering an industrial trade union of sufficient size to be able to protect and promote the interests of its members; or

- (c) treat any craft which in his opinion is by itself too small to be represented by a craft trade union, as part of any other craft with which it has any affinity or connection; or
- (d) treat as one craft a sufficient number of allied or related crafts, each of which in his opinion is by itself too small to be represented by a craft trade union of sufficient size to be able to protect and promote the interests of its members; or
- (e) treat as included in a craft any unskilled occupation which is allied or related to that craft, where in his opinion the craft or the occupation has by itself too few members to form a trade union, for the purpose of forming a craft trade union of sufficient size to be able to protect and promote the interests of persons engaged in that craft and in that occupation.

3. The Registrar shall not register any trade union unless the constitution of the union provides —

Safeguards for members and sectional interests.

- (a) for the effective representation of the members employed in each particular industry, craft or occupation for the purposes of union management and for the purposes of collective bargaining; and
- (b) adequate safeguards to secure that the members employed in each particular industry, craft or occupation enjoy full control of the funds subscribed by the members employed in that industry, craft or occupation to the union; and
- (c) generally, for the effective representation and protection of the various sectional interests of the members employed or engaged in each particular industry, craft and occupation.

4. The Registrar shall have regard to the differences between the proper functions of a trade union on the one hand, and of an association, federation or congress of trade unions on the other hand, and shall not register as a trade union any body, association, federation or congress which under its constitution offers membership to any other trade union, body or association.

Registrar not to register federations, etc.

5. For the purposes of this Schedule —

Interpretation.

“industry” includes any trade, business or undertaking, and the performance of its functions by any public board or authority, and means any industry which can in general terms be distinguished from other industries, either by reference to the materials, tools, plant or equipment in general use in that industry, or

to the larger categories of employees generally employed therein, or to the products or services usually produced or rendered by that industry;

“craft” includes any skilled trade or skilled calling and means any craft which can in general terms be distinguished from other crafts, either by reference to the materials, tools, plant or equipment in general use in that craft, or to the products or services usually produced or rendered by that craft, or to the character of the skill or training required for the exercise of that craft.

PART II (Section 9)

MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION OF A TRADE UNION OF EMPLOYEES

Name of union and place of meeting.
Objects, etc.

1. The name of the trade union and place of meeting for its business.

2. The whole of the objects for which the trade union is to be established, the purposes for which its funds shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, the subscriptions and dues, if any, to be paid by any member, and the fines and forfeitures to be imposed on any member of the trade union.

Membership.

3. (1) The qualifications for membership, which shall include the provision that no person shall be eligible for membership of the trade union unless he is, or has been, regularly and normally employed in the industry, or as a member of the craft or category of employees, which the union represents.

(2) The circumstances and manner in which the membership of a member may be terminated.

(3) Provision for the keeping of a nominal roll of members showing the usual occupation of each member and wherever possible the name of the employer.

Executive committee, trustees and officers.

4. (1) Provision for the appointment of an executive committee (by whatever name called), of two or more trustees, and of a chairman, treasurer and secretary at regular intervals not exceeding three years and the manner in which members of the executive committee and other officers of the union may be removed and that every appointment or removal of any officer of the union shall be notified in writing to the Registrar within fourteen days of the happening thereof.

(2) Provision that the executive committee (by whatever name called) shall be composed of persons, and that all the of-

4 of 1979, s. 19.

ficers shall be persons, who are members of the union, not being officers of any other union:

Provided that provision may be made that a person who is not a member or officer of any other trade union may be appointed chairman or secretary of the union, notwithstanding that he is not, and never has been, regularly employed in the industry, or as a member of the craft, or category of employees, which the union represents.

(3) Provision that every officer of the union must be a person who is legally entitled to be employed in The Bahamas in the industry, or as a member of the craft or category of employees, which the union represents and has not served a sentence of imprisonment such as is mentioned in paragraph (f) of subsection (1) of Article 48 of the Constitution.

5. Provision for the holding of meetings (including an annual general meeting), and for the keeping of minutes of the proceedings of all meetings. Meetings and minutes.

6. Provision for the inspection of the books and nominal roll of members of the union by any person having an interest in the funds of the trade union. Inspection.

7. Provision for the proper investment of the funds of the union, and for an internal quarterly audit. Investment and audit.

8. Provision for the taking of a secret ballot of members for all of the following purposes, namely — Ballot.

- (a) the election or removal of officers or members of the executive committee (by whatever name called);
- (b) the amendment of the constitution of the union, including any change of name;
- (c) the taking of strike action.

PART III (Section 9)

MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION OF A TRADE UNION OF EMPLOYERS

1. All the matters referred to in Part II of this Schedule (except the matters referred to in paragraphs 3 and 8(c) thereof) shall be provided as if references to a trade union of employees, to being employed and to employees were, respectively, references to a trade union of employers, to employing and to employers:

Provided that the requirements set forth in paragraph 2 of this Part of this Schedule shall have effect in respect of membership of a trade union of employers instead of those in paragraph 3 aforesaid.

2. (1) The qualifications for membership, which shall include the provision that no person shall be eligible for member-

ship of the union unless he is an employer in the industry which the union represents.

(2) The circumstances and manner in which the membership of a member may be terminated.

(3) Provision for the keeping of a nominal roll of members showing the trade or business of each member.

SECOND SCHEDULE (Section 81)

PICKETING RULES

A person shall be deemed to be complying with the picketing rules of and for so long as all the following rules are satisfied, namely, that —

1. He is picketing in furtherance of a trade dispute in respect of which a strike has been lawfully declared by a registered trade union of which he is a member.

2. He is carrying on his person a written authorisation, signed by an officer of the trade union of which he is a member on behalf of that trade union, which states his name and address and that he is authorised to picket on behalf of that trade union.

3. He produces that written authorisation for inspection when requested to do so by any police officer.

4. He is picketing alone or with not more than fourteen other individual persons.

5. He is picketing at or near a building or place where a person, being an employer who is a party to the trade dispute or who is a member of a union of employees which is a party to the trade dispute, works or carries on business.

6. He is picketing peacefully and without causing any obstruction, and merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person, being a person who may lawfully take a step or action in furtherance of that trade dispute, to abstain from working.

THIRD SCHEDULE (Section 40)

4 of 1979, s. 20.

CODE OF INDUSTRIAL RELATIONS PRACTICE

PART I

INTRODUCTION

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

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

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- (b) good industrial relations are the joint responsibility of management and employees and the trade unions representing them;
 - (c) collective bargaining, carried out in a reasonable and constructive manner between employers and representative trade unions, is the best method of conducting industrial relations;
 - (d) good human relations between employers and employees are essential to good industrial relations.

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

3. Good industrial relations are a joint responsibility.

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

PART II

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

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

6. Effective organisation of work is an important factor in good industrial relations. Management should therefore ensure that —

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

Trade Unions of Employees

7. The principal aim of trade unions of employees is to promote their members' interests. They can do this only if the undertakings in which their members are employed prosper.

They therefore have an interest in co-operating in measures to promote efficiency. They also share with management the responsibility for good industrial relations.

8. Trade unions of employees should therefore —

- (a) where appropriate, jointly with individual managements, maintain effective arrangements for negotiation, consultation and communication and for settling grievances and disputes;
- (b) where appropriate, jointly with employers' associations and others concerned, maintain effective arrangements at industry or other levels for settling disputes and for negotiating terms and conditions of employment;
- (c) take all reasonable steps to ensure that their officers and members observe collective agreements and use agreed procedures; and
- (d) maintain effective procedures for resolving particular issues with other trade unions and make full use of any procedures established for settling inter-union disputes.

9. Trade unions of employees should ensure that their officers —

- (a) understand the organisation, policies and rules of the union;
- (b) understand their powers and duties; and
- (c) are adequately trained to look after their members' interests in an efficient and responsible way.

10. To ensure that their organisation is effective, trade unions of employees should also —

- (a) employ enough full-time officers to maintain adequate contact with management and with their members in every establishment where the trade union has negotiating rights, and with any employers' association concerned;
- (b) encourage their members to attend union meetings and to take part fully in union activities by holding meetings at times and places convenient to the majority; and
- (c) maintain effective procedures for settling disputes within the union.

Trade Unions of Employers

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

12. Trade unions of employers should therefore —

- (a) where appropriate, jointly with the trade unions concerned maintain effective arrangements at industry or other levels

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

The Individual Employee

13. The individual employee has obligations to his employer, to his trade union if he belongs to one, and to his fellow employees. He shares responsibility for the state of industrial relations in the establishment where he works and his attitudes and conduct can have a decisive influence on them.

14. Every employee should —

- (a) satisfy himself that he understands the terms of his contract and abide by them; and
- (b) make himself familiar with any arrangements for dealing with grievances and other questions which may arise on his contract, and make use of them when the need arises.

15. Some employees have special obligations arising from membership of a profession and are liable to incur penalties if they disregard them. These may include obligations, for example in regard to health, safety and welfare, over and above those which are shared by the community as a whole.

16. A professional employee who belongs to a trade union should respect the obligations which he has voluntarily taken on by joining the union. But he should not, when acting in his professional capacity, be called upon by his trade union to take action which would conflict with the standards of work or conduct laid down for his profession, and in particular if that action would endanger —

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

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

PART III

EMPLOYMENT POLICIES

General

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

- 19.** Employment policies should include positive policies —
- (a) to avoid discrimination on grounds of race, place of origin, political opinions, sex, colour or creed; and
 - (b) to promote equal opportunity in employment.

Planning and Use of Manpower

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

- 21.** In operating its manpower policies management should —
- (a) avoid unnecessary fluctuations in manpower;
 - (b) where changes are necessary, make them with as little disruption as is practicable to the employees concerned;
 - (c) maintain arrangements for transferring employees from one job to another within the undertaking; and
 - (d) record information which will help it to identify the cause of, and to control absenteeism and labour turnover.

Recruitment and Selection

22. In recruiting and selecting employees management should —

- (a) decide the qualifications and experience needed by applicants;
- (b) consider filling vacancies by transfer or promotion from within the undertaking;
- (c) obtain as much information about applicants as is relevant to selection for the job, but avoid enquiries which are unnecessary for that purpose;
- (d) base selection on suitability for the job; and

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

Training

23. Management should ensure that new employees are given —

- (a) induction training, including information about the matters referred to in paragraph 43; and
- (b) training needed to supplement previous education, training and experience.

24. Management should ensure that young people entering employment for the first time are in addition given broader initial instruction covering —

- (a) a general introduction to their working life, including the importance of health and safety precautions; and
- (b) basic training in related skills, where appropriate, as well as specific training in their particular job.

25. Management should —

- (a) ensure that any necessary further education and training is provided when there is significant change in the content or level of the job; and
- (b) encourage employees to take advantage of relevant further education and training opportunities at all stages of their careers.

Relevant Systems

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

27. Payment systems should be —

- (a) kept as simple as possible, consistent with their purpose, so that employees can understand them;
- (b) based wherever applicable on some form of work measurement under which payment is linked to performance; and
- (c) jointly negotiated where trade unions have negotiating rights.

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

Status and Security of Employees

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

- (a) Provide stable employment, including reasonable job security for employees absent, through sickness or other causes beyond their control; and
- (b) avoid unnecessary fluctuations in the level of earnings of employees.

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

Reduction of Work-Force

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

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

32. If redundancy becomes necessary, management in consultation as appropriate, with the appropriate Ministry and with the employees or their trade unions, should —

- (a) give as much warning as practicable to the employees concerned and to the Ministry;
- (b) consider introducing schemes for voluntary redundancy, retirement, transfer to other establishments within the undertaking, and a phased rundown of employment;
- (c) establish which employees are to be made redundant and the order of discharge;
- (d) offer to help employees in finding other work, in co-operation with the Ministry; and

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

Working Conditions

33. Management should, on consultation and co-operation with employees and their trade union, aim at improving on the standards of working conditions.

34. Management and trade unions should —

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

PART IV

COMMUNICATION AND CONSULTATION

General

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

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

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

Communication

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

39. Personal contact should when appropriate be supplemented by written information and may be further supplemented

by training and induction lectures or courses, and special meetings.

40. Management should, as far as is reasonably possible, regularly provide employees with information about —

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

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

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

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

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

44. Trade unions should —

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

Consultation

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

46. Management should take the initiative in setting up and maintaining consultative arrangements best suited to the circumstances of the establishment, in co-operation with the trade

unions concerned. The arrangements should not be used to bypass or discourage trade unions.

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

PART V

COLLECTIVE BARGAINING

General

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

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

Bargaining Units

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

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

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

53. Factors which should be taken into account in defining a bargaining unit include —

(a) the nature of the work;

- (b) the training, experience and professional or other qualifications of the employees concerned;
- (c) the extent to which they have common interests;
- (d) the general wishes of the employees concerned;
- (e) the organisation and location of the work;
- (f) hours, working arrangements and payment systems;
- (g) the matters to be bargained about;
- (h) the need to fit the bargaining unit into the pattern of union and management organisation;
- (i) the need to avoid disruption of adequate existing bargaining arrangements which are working well;
- (j) whether separate bargaining arrangements are needed for particular categories of employees, such as supervisors or employees who represent management in negotiation.

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

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

1 of 1997, s. 2.

Recognition — General Consideration

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

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

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

Claims for Recognition

58. A claim for recognition by a trade union should not be entertained in so far as that claim is founded on the race, community, political opinions, creed or sex of the members of that union.

59. Claims by trade unions for recognition for negotiating purposes should, as far as possible, be settled voluntarily and expeditiously between parties.

60. In the case of any claim, management is entitled to know the number, but not the identities, of the employees covered by the proposed bargaining unit who are members of the union making the claim. Where the extent of support cannot be agreed, it should be determined by arrangements agreed between the parties, for example, by a secret ballot.

Dual Recognition

61. In general, it is in the interests of employees and of the industry that any given grade of employees in an undertaking should be represented by a single trade union.

62. The fact that conflicting claims are made by trade unions to represent a given grade of employee is not of itself justification for the employer to refuse to recognise any union for negotiating purposes.

63. Where two or more trade unions seek recognition in respect of the same grade of employees, those unions should examine the possibilities of an amalgamation, or of the formation of a joint negotiating panel, or of some other appropriate variation in the trade union structure in the industry in question.

64. An employer should be required to recognise as representing any given grade of his employees more than one trade union, where the trade unions concerned are or should be capable of working harmoniously through a joint negotiating panel.

65. Responsibility for avoiding disputes between trade unions about recognition lies principally with the trade unions themselves. Employers should not be put under any pressure to abandon a position of neutrality where rival claims are concerned, and a position of neutrality must include the honouring of all existing collective bargaining commitments. The parties should be willing to refer any differences between them to the Tribunal.

1 of 1997, s. 2.

66. The responsibility of a trade union for the failure of an existing negotiating panel, or for the failure of a proposed panel to gain acceptance, should weigh heavily against any claim by that trade union for individual recognition.

67. Where there is any uncertainty as to the prospect of a joint negotiating panel acting as a single entity and behaving responsibly towards the employer, the formation of that panel may be recommended or agreed for a trial period, or for more than one trial period.

After Recognition

68. Relations between management and trade unions which it recognises for negotiating purposes should be based on agreed procedures which can provide a clear set of rules and a sound basis for resolving conflicts of interests.

69. Management should agree with recognised trade unions on the provision of reasonable facilities to enable them to keep in touch with their members and to represent them effectively.

70. Management and recognised trade unions should facilitate and encourage personal contact and discussion between managers and officers of the trade unions at all appropriate levels. Contact should not be left until difficulty arises.

Withdrawal of Recognition

71. The recognition of a new trade union may give rise to the question of the withdrawal of the recognition of another trade union. Although dual recognition is undesirable, it does not follow that the recognition of a new trade union must inevitably result in the withdrawal of the recognition of the old trade union. If both trade unions are deserving of recognition, the decision should be influenced, not only by the numerical support currently shown for each trade union, but by the past history and record and likely future record of the trade union, and particularly by the willingness of each trade union to co-operate with the other and with the employer in resolving the issue, whether by forming a joint negotiating panel or otherwise.

72. A trade union claiming to take the place of an existing recognised trade union should first prove that the latter has failed and is unable adequately to represent the interests of the grade or grades of employees concerned. The case should be fully substantiated, and great weight should not be attached to faults that could have been remedied by discussion within the existing trade union in accordance with ordinary trade union practice.

73. It is in the joint interest of employers and employees that allegations of inadequate trade union organisation should be fully investigated.

74. If the failure and inadequacy of an existing recognised trade union has been substantiated in accordance with paragraph 72, the next question to be examined is the adequacy of the organisation of the trade union claiming recognition in its place. The claimant trade union should be required to prove that it is better fitted, and therefore more likely to serve the interests of its members, than the existing recognised trade union.

Collective Agreements

75. Collective agreements deal with matters of procedure and matters of substance which are of joint concern to management and employees. A single agreement may contain provisions of both kinds or they may be dealt with in separate agreements. In either case, the agreement should be in writing and there should be arrangements for checking that procedural provisions have not become out of date.

76. Procedural provisions should lay down the constitution of any joint negotiating body or specify the parties to the procedure. They should also cover —

- (a) the matters to be bargained about and the levels at which bargaining should take place;
- (b) arrangements for negotiating terms and conditions of employment, and the circumstances in which either party can give notice of their wish to re-negotiate them;
- (c) facilities for trade union activities in the establishment and the appointment, status and functions of union officers;
- (d) procedures for settling collective disputes and individual grievances and for dealing with disciplinary matters; and
- (e) the constitution and scope of any consultative committees.

77. Substantive provisions settle terms and conditions of employment. They should indicate the period for which they are to apply and cover —

- (a) wages and salaries, where appropriate, overtime rates, bonuses, piecework and other systems relating earnings to performance;
- (b) hours of work, and, where appropriate, provisions for overtime, and shift working; and
- (c) public holiday and vacation entitlement and pay.

78. Agreements may also cover such matters as —

- (a) techniques for determining levels of performance and job grading, for example, work measurement and job evaluation;
- (b) procedures for handling redundancy and temporary lay-off;
- (c) the deduction by management of trade union dues from the pay of members.

79. There is advantage in agreeing at industry level as much as suitable for adoption over the industry as a whole, including —

- (a) terms and conditions of employment suitable for general application;

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- (b) general guide-lines for negotiating at a lower level matters which cannot be decided satisfactorily at industry level; and
 - (c) a procedure for settling disputes, either for the industry as a whole or as a model for individual undertakings to adopt by agreement.

Disclosure of Information

80. Collective bargaining can be conducted responsibly only if management and trade unions of employees have adequate information on the matters being negotiated.

81. Management should endeavour to meet all reasonable requests from trade unions of employees for information which is relevant to the negotiations in hand. In particular, it should, in the most convenient form, make available, the information which is supplied to shareholders or published in annual reports.

PART VI

**EMPLOYEE REPRESENTATION AT
THE PLACE OF WORK**

82. Employees need work-place representatives to put forward their collective views to management and to safeguard their interests. It is also an advantage for management to deal with representatives who can speak for their fellow employees.

83. A work-place representative is the representative of the members of his trade union in the place of work, but the trade union of which he is an officer is responsible for his actions as its officer. Accordingly, trade unions should clearly define the powers and duties of work-place representatives, and the circumstances and manner in which they can be removed from office.

84. Trade unions and management should seek agreement on —

- (a) the number of work-place representatives needed in the establishment; and
- (b) the work group for which each representative is responsible.

85. To encourage trade union members to vote in elections of work-place representatives, management should offer the trade union facilities to conduct elections in the establishment and to publicise the dates and details.

86. Trade unions should notify management promptly in writing when official work-place representatives are appointed and when changes are made.

87. Trade unions should —

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- (i) give each work-place representative written credentials setting out his powers and duties within the trade union, the work group he represents and his term of office; and
 - (ii) seek agreement with management on the issue of joint written credentials setting out the relevant rights and obligations of such representatives and of management.

88. When more than one trade union is recognised but each trade union has only a small number of members, the trade unions should seek to agree on the election of one representative to represent all their members in the establishment.

89. Where there are a number of senior representatives of different trade unions which negotiate jointly, the trade unions should seek to agree on the election of one of them to co-ordinate their activities in the establishment.

90. In each of these cases trade unions should seek agreement with management on the co-ordinating functions of the representative concerned.

91. The facilities needed by work-place representatives will depend on their functions. The nature and extent of these facilities should be agreed between trade unions and management. As a minimum, they should be given —

- (a) time off from the job to the extent reasonably required for their relations functions, permission not being unreasonably withheld; and
- (b) maintenance of earnings while carrying out those functions.

92. Management should also make available other facilities appropriate to the circumstances. They may include —

- (a) lists of new employees;
- (b) accommodation for meetings with the employees whom they represent, with other representatives and with officers;
- (c) access to a telephone and the provision of notice boards; and
- (d) the use of office facilities where the volume of the representative's work justifies it.

93. Each trade union should ensure that its own representatives are adequately informed about its policies and organisation and about the agreements to which it is a party, Management should ensure that the representatives are adequately informed about its objectives and employment policies.

PART VII**GRIEVANCES AND DISPUTES PROCEDURES***General*

94. All employees have a right to seek redress for grievances relating to their employment. Each employee must be told how he can do so.

95. Management should establish, with the trade unions of employees concerned, agreements under which individual employees can raise grievances and have them settled fairly and promptly. There should be a formal procedure, except in very small establishments where there is close personal contact between the employer and his employees.

96. Where trade unions are recognised, management should establish with them a procedure for settling collective disputes.

97. Individual grievances and collective disputes are often dealt with through the same procedure. Where there are separate procedures they should be linked so that an issue can, if necessary, pass from one to the other, since a grievance may develop into a dispute.

Individual Grievance Procedure

98. The aim of the procedure should be to settle the grievance fairly and as near as possible to the point of origin. It should be simple and rapid in operation.

- 99.** The procedure should be in writing and provide that —
- (a) the grievance should normally be discussed first between the employee and his immediate superior;
 - (b) the employee should be accompanied at the next stage of discussion with management by his work-place representative if he so wishes;
 - (c) there should be a right of appeal.

Collective Disputes Procedures

- 100.** Disputes are broadly of two kinds —
- (a) disputes of right, which relate to the application of existing collective agreements or contracts of employment; and
 - (b) disputes of interest which relate to claims by employees or proposals by management about terms and conditions of employment.

101. A procedure for settling collective disputes should be in writing and should —

- (a) state the level at which an issue should first be raised;

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- (b) lay down time limits for each stage of the procedure, with provision for extension by agreement; and
 - (c) preclude a strike, lock-out, or other form of industrial action until all stages of the procedure have been completed and a failure-to-agree formally recorded.

102. The procedure should have the following stages —

- (a) work-place representatives should raise the issue in dispute with management at the level directly concerned;
- (b) failing settlement, it should be referred to further agreed stages, for example, to a stage of an industry-wide procedure, or to a higher level within the undertaking.

103. The procedure should include agreement to make use of the independent reconciliation service provided by the Minister before considering resort to any industrial action.

PART VIII

DISCIPLINARY PROCEDURES

104. Management should ensure that fair and effective arrangements exist for dealing with disciplinary matters. These should be agreed with the trade unions concerned and should provide for full and speedy consideration by management of all the relevant facts. There should be a formal procedure except in very small establishments where there is close personal contact between the employer and his employees.

105. Management should make known to each employee —

- (a) its disciplinary rules and the agreed procedure; and
- (b) the type of circumstances which can lead to suspension or dismissal.

106. The procedure should be in writing and should —

- (a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;
- (b) give the employee the opportunity to state his case and the right to be accompanied by an officer of his trade union;
- (c) provide for a right of appeal, wherever practicable, to a level of management not previously involved; and
- (d) provide for independent arbitration if the parties to the procedure wish it.

107. Where there has been misconduct, the disciplinary action to be taken will depend on the circumstances, including the nature of the misconduct. But normally the procedure should operate as follows —

- (a) the first step should be an oral warning or, in the case of more serious misconduct, a written warning setting out the circumstances;
- (b) no employee should be dismissed for a first breach of discipline except in the case of gross misconduct;
- (c) action on any further misconduct, for example, final warning suspension without pay or dismissal, should be recorded in writing;
- (d) details of any disciplinary action should be given in writing to the employees and to his work-place representative;
- (e) no disciplinary action should be taken against a workplace representative until the circumstances of the case have been discussed with a full-time official of the trade union concerned.

FOURTH SCHEDULE (Section 54(7))

9 of 1996, s. 11.

INDUSTRIAL TRIBUNAL

Exercise of jurisdiction of Tribunal.

1. Save as otherwise provided in this Act, all members shall have and enjoy in all respects equal power, authority and jurisdiction and each member sitting alone shall be qualified to exercise all the jurisdiction, authority and powers of the Tribunal.

Places of sitting of Tribunal.

2. Sittings of the Tribunal shall be held in Nassau and in Freeport and in such other places, in any part of The Bahamas, as the President may direct, and such sittings shall be presided over by such member, or members, of the Tribunal as the President may specify in such directions.

Qualification of members.

3. Any counsel and attorney called to The Bahamas Bar who has previously practised thereat as counsel for a period of not less than ten years or any member of the English, Scottish or Irish Bars of not less than ten years' standing, shall be qualified to be appointed a member of the Tribunal.

Tenure of office of members.

4. (1) Subject to the provisions of this paragraph, a member of the Tribunal shall hold office until he attains the age of sixty-five years:

Provided that the Governor-General, acting on the advice of the Judicial and Legal Service Commission, may permit a member who attains the age of sixty-five years to continue in office until he has attained such later age, not exceeding sixty-seven years, as may (before the member has attained the age of sixty-five years) have been agreed between them.

(2) Notwithstanding that he has attained the age at which he is required by or under the provisions of this paragraph to vacate his office, a person holding the office of member of the Tribunal may, with the permission of the Governor-General acting

on the advice of the Judicial and Legal Service Commission, continue in office for such period after attaining that age as may be necessary to enable him to hear and determine any dispute or to do any other thing in relation to matters that were commenced before him before he attained that age.

(3) Nothing done by a member of the Tribunal shall be invalid by reason only that he has attained the age at which he is required by this paragraph to vacate his office.

(4) A member of the Tribunal may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of subparagraph (5).

(5) A member shall be removed from office by the Governor-General if the question of his removal from office has been referred to a committee appointed under subparagraph (6) and the committee has recommended to the Governor-General that he ought to be removed from office.

(6) If the Judicial and Legal Service Commission represents to the Governor-General that the question of removing a member from office ought to be investigated, then —

- (a) the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission shall suspend the member from performing the functions of his office;
- (b) the Governor-General shall appoint a committee, which shall consist of a chairman and not less than two other members, selected by the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission, from among persons who hold or have held or are eligible to hold the office of a Judge; and
- (c) the committee shall enquire into the matter and report on the facts thereof to the Governor-General whether the member ought to be removed from office.

(7) If the question of removing the member from office has been referred to a committee under subparagraph (6) the Governor-General shall revoke any such suspension if the committee recommends to the Governor-General that the member should not be removed from office.

(8) No office of President of the Tribunal or Vice-President of the Tribunal shall be abolished while there is a substantive holder thereof.

5. (1) There shall be paid —

- (a) to the person holding the Tribunal office of President —
 - (i) a salary of sixty-five thousand dollars per annum; and

Remuneration of members.

- (ii) a responsibility allowance of five thousand dollars per annum; and
- (b) to the respective persons holding the Tribunal office of Vice-President, a salary of sixty thousand dollars per annum.

(2) The salary of the holder of a Tribunal office shall not be altered to the disadvantage of any such holder during his continuance in office.

Members' entitlement to pension on retirement.

6. (1) There shall be charged on and paid out of the Consolidated Fund all such sums of money as may from time to time be granted by way of pensions or gratuities in accordance with this Schedule to persons on their retirement from a Tribunal office.

(2) Subject to subparagraph (3), a pension or gratuity shall be paid in accordance with this Schedule to a person on his retirement from a Tribunal office —

- (a) on or after attaining the age of sixty-five years having held Tribunal office for not less than five years; or
- (b) on medical evidence to the satisfaction of the Governor-General that he is unable by reason of any infirmity of body or mind to discharge the functions of his office and that such infirmity is likely to be permanent.

(3) Any person who is the holder of a Tribunal office and whose service in that office was immediately preceded by other public service shall be entitled to retire from a Tribunal office in such circumstances as would have rendered him eligible to retire under the provisions of the Pensions Act and, on such retirement, there shall be paid to such person a pension or gratuity computed in accordance with this Schedule.

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Removal of member in certain circumstances deemed retirement.

7. (1) A person who, in accordance with paragraph 4, is removed from a Tribunal office for inability, arising from infirmity of body or mind, to discharge the functions of his office is deemed to have retired from that office under paragraph 6.

(2) A person who in accordance with paragraph 4, is removed from a Tribunal office for any cause, other than inability arising from infirmity of body or mind, to discharge the functions of his office may be granted such pension and gratuity as the Governor-General may decide, not exceeding one-half of the pension and gratuity to which he would have been entitled had he retired from such office under paragraph 6.

Rate of pension.

8. Subject to this Schedule, there shall be paid to a person who retires from a Tribunal office, a pension at the annual rate of two-fifths of his pensionable emoluments plus one three-hundredths of his pensionable emoluments in respect of each completed month, save that the pension payable to that person pursuant to this paragraph shall not exceed those pensionable emoluments.

Determination of length of pensionable service.

9. In determining, for the purposes of paragraph 8, the length of pensionable service of a person who retires from a Tribunal office, account shall be taken of —

- (a) the full period during which such person was the substantive holder of a Tribunal office; and
- (b) any other period of public service which immediately preceded the period of service referred to in paragraph (a) and was pensionable service under the Pensions Act.

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10. (1) A person to whom a pension is payable under this Schedule shall, at his option exercisable in accordance with this paragraph, be paid instead of such pension, a pension at the rate of three-fourths of the first-mentioned pension together with a gratuity equal to eleven and one-half times the amount of the annual reduction so made in the first-mentioned pension.

Gratuity and reduced pension.

(2) The option referred to in subparagraph (1) shall be exercisable, and if it is exercised, may be revoked, not later than the day immediately preceding the date of such person's retirement, but the Governor-General may, if it appears equitable so to do, allow such person to exercise the option or revoke an option previously exercised at any time between that day and the actual date on which the first payment of any pension is made under this Schedule.

(3) Except as provided in subparagraph (2), if any such person exercises the option referred to in subparagraph (1), his decision shall be irrevocable so far as it concerns any pension paid to him under this Schedule.

(4) The date of the exercise by any such person of an option under this paragraph shall be the date of the receipt of his written notification addressed to the Secretary of the Tribunal.

11. A pension, gratuity or other allowance granted under this Schedule shall not be assignable or transferable except for the purpose of satisfying —

Pensions not assignable.

- (a) a debt due to the Crown;
- (b) an order of any court for the periodical payment of money towards the maintenance of the wife or former wife or minor child of the person to whom the pension, gratuity or other allowance has been granted,

and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the Crown.

12. Where a person dies, without leaving a widow, while holding a Tribunal office there shall be granted to his legal personal representative a gratuity of an amount equal to his pensionable emoluments.

Gratuity on death of member.

Widow of member.

13. (1) Where a person dies while he is entitled to a pension in respect of his service as a member and he leaves a widow, the widow shall be paid a pension at an annual rate equivalent to three-fourths of the pension that would have been or was payable to him at the date of his death.

(2) Where a person dies while holding a Tribunal office and leaves a widow, the widow shall be paid —

- (a) a gratuity of an amount equivalent to his pensionable emoluments; and
- (b) an annual pension equivalent to three-fourths of the amount which that person would have been entitled to as pension pursuant to paragraph 8 had the date of his death been the date upon which he would have been entitled to retire in receipt of a pension and he had so retired.

(3) Notwithstanding anything to the contrary in subparagraph (2)(b) the annual pension payable to a widow under the said subparagraph (2)(b) shall, in respect of any period after her marriage, be reduced by fifty per cent and for that purpose in any year be prorated accordingly.

(4) In this paragraph, a reference to “widow” includes a reference to “widower”.

Application of Ch. 43.

14. Subject to this Schedule, the Pensions Act shall apply for the purpose of computing pension and gratuity payable under this Schedule to a person who retires from a Tribunal office in the same manner as it applies for the purpose of computing the pension and gratuity payable to a public officer who retires from a pensionable office under that Act.

Exercise of Governor-General’s powers.

15. Unless otherwise expressly stated in this Schedule, in the exercise of his powers under this Schedule, the Governor-General shall act on the recommendation of the Judicial and Legal Service Commission.

Exercise of option by members.

16. (1) Any person who after the date of commencement of this paragraph is appointed to a Tribunal office and immediately before the date of his appointment was in the public service shall be entitled to exercise, within forty-five days of the date of his appointment, an option as to whether the provisions of the Pensions Act or the provisions of this Schedule shall apply in his case.

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(2) Where the holder of a Tribunal office referred to in subparagraph (1) fails to specify within the said forty-five days which law shall apply in his case, the provisions of the law applicable to the grant and payment of pensions and gratuities in force on the date on which the holder was appointed to such office shall continue to apply in his case.

(3) Notwithstanding the foregoing provisions of this paragraph or any provisions of the Pensions Act, the provisions of this Schedule shall apply to any person appointed to a Tribunal office after the date of commencement of this paragraph who, immediately before the date of his appointment, was not in the public service.

(4) For the purposes of subparagraph (1), the holder of a Tribunal office shall exercise his option as to which law shall apply in this case by written notification of his decision addressed to the Secretary of the Tribunal.

17. (1) The office of the Tribunal shall be kept open for the transaction of business on every day of the year except Saturdays, Sundays and public holidays, from the hour of nine-thirty o'clock in the morning until the hour of three o'clock in the afternoon, unless the President directs that the office hours shall be otherwise than as aforesaid.

Office hours.

(2) The office of the Tribunal shall be located in Nassau and in Freeport, and save as may otherwise be provided by rules made by the Tribunal under section 66, documents in respect of —

- (a) trade disputes in which the majority of the parties thereto respect or have their principal place of business in the northern region; and
- (b) trade disputes which arose in, or have a close connection with, the northern region,

shall be filed in the office located in Freeport.

(3) Trade disputes to which subparagraph (2) does not apply shall be filed in the office located in Nassau.

(4) In this paragraph a reference to the “northern region” is a reference to the Family Islands of Grand Bahama, the Abacos and the Biminis.

18. (1) Sittings of the Tribunal shall be held in Nassau and in Freeport, respectively, and in such other place, in any part of The Bahamas as the President may direct by notice published in the *Gazette*.

Tribunal's places of sitting.

(2) Unless otherwise directed by the President or provided by rules made by the Tribunal under section 66, matters referred, by the Minister, to the Tribunal sitting in Freeport shall be heard by the Tribunal sitting in Freeport, and other matters shall be heard by the Tribunal sitting in Nassau.

19. There shall be appointed a Secretary and other officers and servants of the Tribunal, who shall be public officers.

Secretary and other officers.

20. In this Schedule, unless the context otherwise requires —

Interpretation in Fourth Schedule.

“member of the Tribunal” or “member” means a member of the Tribunal appointed under section 54(3);

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“other public service” means public service recognised as pensionable service under the Pensions Act, other than service in a Tribunal office;

“pensionable emoluments” means the annual salary paid to a member of the Tribunal in respect of his substantive office;

“pensionable office” means any office which is pensionable under any written law relating to the pensions of public officers;

“pensionable service” means service which may be taken in to account in computing pension under this Schedule;

“President” means the member appointed, under section 54(3)(a), as President of the Tribunal;

“public service” means service of the Crown in a civil capacity in respect of the Government of The Bahamas;

“Tribunal office” means the office of the President or of the Vice-President, as the case may be;

“Vice-President” means a member appointed, under section 54(3)(b), as a Vice-President of the Tribunal.

ADDENDUM

Section 4 of Act 1 of 1997 reads as follows —

“4. (1) Subject to this section, the former Part V shall continue to apply on and after the date of commencement of this Act —

- (a) in relation to matters pending before the Industrial Relations Board established by the former Part V, as well as to matters pending on appeal therefrom to the Court of Appeal under the former Part V; and
- (b) in relation to appointments and designations made, notices given, documents delivered, decisions and determinations made (including orders or awards of the said Industrial Relations Board) and other things done under the former Part V,

as if this Act had not been passed.

(2) Industrial agreements registered under the former Part V, as applied by subsection (1) and in force immediately prior to the date of commencement of this Act, shall be deemed to have been registered under and in conformity with the Industrial Relations Act as amended by this Act, and the Industrial Relations Act as so amended shall apply to the agreements.

(3) In this section, “former Part V” means Part V of the Industrial Relations Act, which Part is repealed by virtue of section 2 and the Schedule of this Act.”

This “former Part V” is reproduced below for the convenience of users.

PART V INDUSTRIAL RELATIONS BOARD

54. (1) For the purposes of this Act there shall be established an Industrial Relations Board.

Establishment of Industrial Relations Board.

(2) The Board shall have an official seal which shall be judicially noticed.

(3) The Board shall consist of such number of persons not being less than three nor more than seven as may be appointed by the Minister, of whom one shall be so appointed chairman.

E.L.A.O., 1974.

(4) Where for any reason the Chairman is unable to carry out his functions under this Act, the Minister may appoint another member of the Board to act in his place until the Chairman is again able to carry out such functions.

E.L.A.O., 1974.

(5) The members of the Board shall be appointed for a period of not less than two and not more than four years.

(6) The Board shall be deemed to be fully constituted notwithstanding any vacancy in its membership.

(7) The functions of the Board in any matter before it shall be exercised by a quorum of the Board consisting of a majority of the members of the Board.

4 of 1979, s. 11.

(8) The Board may appoint committees from amongst its members to examine and report to it on any matter connected with its functions under this Act.

4 of 1979, s. 11.

(9) Whenever any vacancy occurs in the Board, the Board may continue to hear and determine any matter before it notwithstanding such vacancy, and no act, proceeding or determination of the Board shall be called in question or invalidated by reason of any such vacancy.

4 of 1979, s. 11.

55. There shall be paid to the Chairman and other members of the Board such remuneration (if any) whether by way of honorarium, salary or fees and such allowances (if any) as may be fixed by the Minister with the approval of the Minister of Finance.

Remuneration of members of the Board.

E.L.A.O., 1974.

56. There shall be appointed a secretary and other officers and servants of the Board, who shall be public officers.

Secretary and other officers.

57. (1) It shall be the function of the Board —

General function of the Board.

(a) to hear and determine trade disputes;

- (b) to register industrial agreements and to hear and determine matters relating to the registration of such agreements;
- (c) to hear and determine any other matter brought before the Board in accordance with this Act.

Conciliation.

58. The Board shall make all such suggestions and do all such things as appear to it to be right and proper for reconciling the parties in any matter before the Board.

Powers of the Board.

59. The Board may in relation to a trade dispute —

- (a) remit the trade dispute, subject to such conditions as it may determine, to the parties for further consideration by them with a view to reducing the issues in dispute;
- (b) make an order or award (including a provisional or interim order or award relating to any or all of the matters in the dispute) or give a direction in pursuance of the hearing or determination;
- (c) dismiss any matter or part of a matter or refrain from further hearing or from determining the dispute if it appears that the dispute, matter or part is trivial, or that further proceedings are unnecessary or undesirable in the public interest;
- (d) order any party to the dispute to pay to any other party such costs and expenses (including the expenses of the witnesses) as are specified in the order, and such costs and expenses may be sued for and be recoverable summarily as a civil debt.

Procedure of Board in relation to trade disputes.

60. (1) The Board shall expeditiously hear, inquire into and investigate every trade dispute which is before it and all matters affecting the merits of such dispute and, without limiting the generality of the foregoing, shall in particular hear, receive and consider submissions, arguments and evidence made, presented or tendered —

- (a) by or on behalf of the employer concerned;
- (b) by or on behalf of the employee concerned; and
- (c) by the Attorney-General on behalf of the Commonwealth of The Bahamas (whether or not the dispute relates to employees of the Government), who, for such purpose, may instruct such persons as he thinks fit to present the case for the Commonwealth; and any expenses thereby incurred shall be defrayed out of funds provided by Parliament.

(2) The case for the Commonwealth shall include the presentation of arguments, submissions and evidence generally reflecting the public interest in the issues involved in the dispute.

(3) Notwithstanding any other law, and in addition to its powers under subsection (1), the Board shall, in relation to trade disputes, have power —

- (a) to make such award in relation to a trade dispute before it as it considers fair and just having regard to the interests of the persons immediately concerned and the community as a whole;
- (b) to act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.

(4) Without prejudice to the generality of its powers under subsection (3), the Board may, in making any award, order the re-employment of any employee in his former position, or his reinstatement in a similar position, or the payment of compensation in lieu of such re-employment or reinstatement, and, in making the assessment of such compensation, the Board shall make an assessment that is consistent with the principles of good industrial relations.

(5) Nothing in paragraph (c) of subsection (1) shall be construed as requiring the Attorney-General to be or to be deemed to be a party to trade dispute, and the Attorney-General may, in his discretion, at any stage of the hearing of any such dispute by the Board, intervene by giving notice in writing to the secretary of the Board of his intention so to do.

61. The Board in making its awards in trade disputes shall be guided by the following considerations, that is to say —

- (a) the necessity to maintain a high level of employment throughout The Bahamas;
- (b) the necessity to increase production and to assure to employees a fair share of any increases in productivity in any enterprise;
- (c) the necessity to preserve and promote the competitive position of Bahamian products in the domestic market as well as in export markets;
- (d) generally, the requirements of the public interest.

Matters to be considered by Board.

62. (1) The Board, as respects the attendance and examination of witnesses, the production and inspection of documents and all other matters incidental to its jurisdiction shall, subject to the provisions of this Act, have all such privileges and authority as are vested in the Supreme Court on the occasion of an action.

Procedure of Board generally.

(2) For the purpose of dealing with any matter before it, the Board may, of its own motion, summon any person who in the opinion of the Board is able to give any information that it may consider necessary, and require such person to produce that information, and the Board may, in its discretion, disclose so

much as it thinks fit of the information so produced or prohibit the publication of any portion thereof.

(3) Any person properly summoned to attend before the Board or required to produce any document or information to the Board or to do any other act or thing which the Board may lawfully require him to do under this Act, shall be bound to comply with such summons or requirement and any person refusing or omitting without sufficient cause to comply with any lawful requirement made of him by the Board, or on its behalf, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five hundred dollars.

(4) The Board may require evidence or argument to be presented in writing and may decide the matters upon which it will hear oral testimony or argument.

Additional procedural powers of Board.

63. In addition to the powers conferred upon it by section 59 the Board may —

- (a) proceed to hear and determine a trade dispute in the absence of any party who has been duly summoned to appear before the Board and has failed to do so;
- (b) order any person to be joined as a party to the matter under consideration by the Board on such terms and conditions as the Board may determine;
- (c) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter before the Board.

Board not bound by rules of evidence.

64. In the hearing and determination of any matter before it the Board shall not be bound by the rules of evidence applicable in a court of law but may inform itself on any matter in such manner as it thinks just and may take into account such facts and opinion evidence as it considers relevant and material:

Provided that any party to a matter before the Board shall be given the opportunity, if he so desires, of adducing evidence in regard thereto.

Representation.

65. Any party to a matter before the Board may appear in person, or may be represented by a counsel and attorney or by any other person, as he may deem fit.

Residual power of Board to regulate its own procedure. Orders and awards may be retroactive.

66. Subject to the provisions of this Act, the Board may by rules regulate its own practice and procedure for the hearing and determination of matters before it.

67. An order or award on any matter determined by the Board may be made retroactive to such date not being earlier than the date on which the dispute or question to which the order or award relates first arose.

68. If any question arises as to the interpretation of any order or award of the Board, the Minister or any party to the matter may apply to the Board for a decision on such question; and the Board shall decide the matter either after hearing the parties or, where the consent of the parties has first been obtained, without such hearing, and shall notify to the parties such decision, which shall be binding in the same manner as the decision in an original order or award.

Interpretation of orders and awards.

69. (1) On the day following the expiration of any period specified in an award for complying with an order for the payment of any compensation awarded under subsection (4) of section 60, the amount specified in such order shall become due and payable to the employee for whose benefit the order was made.

Payment of compensation.

(2) Where any compensation awarded under subsection (4) of the said section 60 has not been paid within fourteen days after payment thereof became due, the employee for whose benefit the order was made, may apply to the secretary to the Board for the issue to him of a certificate stating that the amount specified therein is due and payable under an order of the Board to the employee by the person named in the order.

(3) A certificate issued under subsection (2) shall, on production thereof to the Registrar of the Supreme Court, be filed by him in the Supreme Court and, when so filed, shall have the same force and effect, and all proceedings may be taken thereon, as if the said certificate were a judgment obtained in the said Supreme Court for a debt of the amount specified in the certificate.

(4) All reasonable costs and charges incident to the registration of the certificate by the Registrar shall be recoverable in like manner as if they had been included in the certificate.

70. (1) Subject to subsection (2), a decision of the Board in any matter before it under this Act —

Appeals.

(a) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever; and

(b) shall not be subject to prohibition, *mandamus* or injunction in any court on any account whatever,

and as respects any trade dispute referred to it under this Act shall be binding on the employers and employees to whom the award relates.

(2) Any party to a matter brought before the Board shall be entitled, as of right, to appeal to the Court of Appeal on a point of law from any decision, order or award of the Board, and the decision of the Court of Appeal on any such appeal shall be final.