

A BILL

ENTITLED

AN ACT to Amend the Labour Relations and Industrial Disputes Act.

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Labour Relations and Industrial Disputes (Amendment) Act, 1998 and shall be read and construed as one with the Labour Relations and Industrial Disputes Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and con-
struction.

Amendment
of section 2
of principal Act.

2. Section 2 of the principal Act is amended—

- (a) in the definition of “industrial dispute” by inserting next after paragraph (d) the following as paragraph (e)—

“ (e) any matter relating to the bargaining rights of any worker;”;

- (b) in the definition of “worker” by inserting immediately after the word “employment” the words “or under such arrangements as may be prescribed, as the case may be, and includes an individual—

- (a) whose contract of employment is terminated by reason of redundancy and who is subsequently re-engaged by the employer under a new contract, whether or not in writing, within three months of the date of such redundancy; or

- (b) whose dismissal is the subject of an industrial dispute”.

Amendment
of section 4
of principal Act.

3. Section 4 of the principal Act is amended—

- (a) in subsection (1)—

- (i) by deleting the fullstop at the end of paragraph (b) and substituting therefor a semicolon; and

- (ii) by inserting next after paragraph (b) the following as paragraph (c)—

“ (c) not to be a member of a trade union.”;

- (b) in subsection (2) by deleting the words “two thousand” and substituting therefor the words “five hundred thousand”.

4. The principal Act is amended by inserting next after section 4 the following as section 4A—

Insertion of
new section
4A of prin-
cipal Act.

"Employer
may recog-
nize trade
union with-
out ballot
being taken.

4A. Where all the workers or a particular category of workers, in the employment of an employer, agree among themselves for a trade union to have bargaining rights in relation to them, the employer may recognize that trade union as having bargaining rights in relation to those workers without a ballot being taken for the purpose of determining the matter."

5. Section 5 of the principal Act is amended—

Amendment
of section
5 of princi-
pal Act.

(a) in subsection (1) by deleting the words ", may cause" and substituting therefor the words "shall cause";

(b) by inserting next after subsection (3) the following as subsection (3A)—

" (3A) Where under subsection (3) the Minister refers a dispute to the Tribunal, it shall be lawful for the Tribunal, in determining the dispute, to determine the bargaining unit in which the workers concerned may, for the time being, be included.";

(c) in subsection (7) by deleting the words "one thousand" and substituting therefor the words "two hundred and fifty thousand";

(d) in subsection (8)—

(i) by deleting the words "two thousand" and substituting therefor the words "five hundred thousand"; and

(ii) by deleting the word "fifty" and substituting therefor the words "ten thousand";

- (e) by inserting next after subsection (9) the following as subsection (10)—

“(10) Where, whether before or after the 8th April, 1975, bargaining rights were granted, with or without the taking of a ballot, to a trade union in respect of workers or a particular category of workers in the employment of any employer and those rights were in existence immediately before the date of the coming into operation of the Labour Relations and Industrial Disputes (Amendment) Act, 1998, those rights shall continue to be exercised by that trade union after that date.”.

Insertion of
new sections
5A, 5B, 5C
and 5D in
principal
Act.

6. The principal Act is amended by inserting next after section 5 the following as sections 5A, 5B, 5C and 5D—

“Bargain-
ing in
good faith.

5A.—(1) Where pursuant to section 5 (5) or (6), a trade union is recognized as having bargaining rights in relation to workers or a category of workers, the trade union shall give to the employer, within fifteen days of being so recognized or such longer period as the trade union and the employer may agree, a notice in writing stating that the trade union is desirous of making a collective agreement with the employer.

(2) Where a trade union serves on an employer a claim in relation to wages and fringe benefits or other conditions of service, the employer and the trade union shall, within thirty days of the notice being served on the employer, conduct negotiations in good faith and make every reasonable effort to conclude a collective agreement.

Decertification
of
trade
union.

5B. (1) Workers or a category of workers may, on their own initiative in circumstances specified in subsection (3), petition the Minister, in such form as may be prescribed, to decertify the trade union which, pursuant to section 5 (5) or (6) is recognized as the trade union having bargaining rights in relation to those workers.

(2) The Minister shall, on the receipt of a petition under subsection (1), cause a ballot of such workers or category of workers to be taken for the purpose of determining the matter, and the provisions of subsections (2), (3), (4), (5), (7), (8) and (9) of section 5 shall, with such modifications as may be necessary, apply to the taking of such a ballot.

(3) The circumstances in which workers or a category of workers may petition the Minister to decertify a trade union are—

- (a) that the majority of the workers in the bargaining unit no longer support the trade union; or
- (b) that the trade union obtained certification by fraud.

PART IIA. *Industrial Action*

Provisions
regarding
industrial
action.

5C.—(1) Industrial action taken by workers or a category of workers in contemplation or furtherance of an industrial dispute with an employer shall not be construed as a repudiation of the contract of employment either on the part of those workers or their

employer except in the circumstances specified in subsection (2).

(2) The circumstances in which a contract of employment shall be regarded as having been repudiated by a worker are that—

- (a) subject to section 9 (5), the worker is employed in an essential service and the worker takes industrial action in that essential service;
- (b) the worker disobeys an order under paragraph (a) of subsection (5) of section 12 (order to cease or not to take industrial action);
- (c) the worker has disobeyed an order of a court of competent jurisdiction;
- (d) the worker, in taking industrial action, is in breach of the contractually specified grievance procedures;
- (e) the worker took industrial action in the absence of a democratic vote by members of the bargaining unit on the decision to take such action.

Notice of
industrial
action.
Fifth
Schedule.

5D.—(1) Where industrial action is contemplated to be taken in any of the services specified in the Fifth Schedule, notice in writing of such industrial action shall be given to the Minister by any party to the dispute or by any person acting on behalf of such party not less than seventy-two hours before the commencement of such industrial action.

(2) Where no notice is given pursuant to subsection (1) or notice is not given within the period specified in that subsection, the industrial action taken shall be deemed to be unlawful.”.

7. Subsection (4) of section 8 of the principal Act is amended—

Amendment
of section 8
of principal
Act.

- (a) by inserting immediately after the word “incapacitated” the words “or ceases to be a member thereof for any other reason”;
- (b) by inserting immediately after the word “incapacity” the words “or cessation”.

8. Section 9 of the principal Act is amended by inserting next after subsection (4) the following as subsection (4A)—

Amendment
of section 9
of principal
Act.

“ (4A) Where the Minister is satisfied that an industrial dispute exists in an undertaking which provides an essential service but no report thereof has been made to the Minister pursuant to subsection (1), the Minister may take such action under paragraph (a) or (b) of subsection (3) as he thinks fit; and where he takes action under paragraph (b), subsection (4) shall apply in relation thereto.”.

9. The principal Act is amended by inserting next after section 11A the following as section 11B—

Insertion of
new section
11B in principal
Act.

“Reference
of dispute
of disciplinary
nature
by Minister
to the
Tribunal.

11B. Notwithstanding the provisions of sections 9, 10, 11 and 11A, where an industrial dispute exists in any undertaking which relates to disciplinary action taken against a worker, the Minister shall not refer that dispute to the Tribunal unless, within twelve months of the date on which the disciplinary action became effective, the worker lodged a complaint against such action with the Minister.”.

10. Section 12 of the principal Act is amended—

- (a) by inserting next after subsection (4) the following as subsections (4A) and (4B)—

“(4A) Notwithstanding the provisions of paragraph (a) of subsection (4), an award made in respect of an industrial dispute referred to the Tribunal for settlement may be made with retrospective effect from a date earlier than the date on which the dispute first arose, in accordance with subsection (4B)—

(4B) For the purposes of subsection (4A), where the dispute arose from—

- (a) the re-negotiation of a collective agreement which has expired, the award may be made with effect from the date of the expiry of that agreement;
- (b) the dismissal of a worker which is found to be unjustifiable, the award may be made with effect from the date of the dismissal;
- (c) any claim made with respect to a new bargaining unit, the award may be made with effect from such date as the Tribunal may determine.”;

- (b) in paragraph (c) of subsection (5)—

- (i) in sub-paragraph (i) [—

(AA) by deleting the word “shall” and substituting therefor the word “may”; and

(BB)] by inserting immediately after the word “reinstated,” the words “then subject to sub-paragraph (iv),”;

- (ii) by deleting the comma appearing at the end of sub-paragraph (iii) and substituting therefor a semi-colon;
- (iii) by inserting next after sub-paragraph (iii) the following as sub-paragraph (iv)—

“(iv) shall, if the worker is employed under a contract for personal service, whether oral or in writing, order the employer to pay the worker such compensation or to grant him such other relief as the Tribunal may determine, other than reinstatement,”;

(c) in subsection (9)—

- (i) by deleting from paragraph (a) the words “five thousand” and “two hundred” and substituting therefor the words “five hundred thousand” and “twenty thousand” respectively;
- (ii) by deleting from paragraph (b) the words “five hundred” and “twenty” and substituting therefor the words “fifty thousand” and “two thousand” respectively.

11. Section 13 of the principal Act is amended—

Amendment
of section 13
of principal
Act.

(a) in subsection (1)—

- (i) by deleting from paragraph (a) the words “five hundred” and substituting therefor the words “five thousand”;
- (ii) by deleting from paragraph (b) the words “fifty thousand” and substituting therefor the words “five hundred thousand”;
- (iii) by deleting the word “twenty” and substituting therefor the words “two hundred”;

- (b) in subsection (2) by deleting the words "five hundred" and "twenty" and substituting therefor the words "five thousand" and "two hundred" respectively.

Amendment
of section 18
of principal
Act.

12. Subsection (2) of section 18 of the principal Act is amended by deleting the words "two hundred" and substituting therefor the words "twenty thousand".

Amendment
of section 19
of principal
Act.

13. Subsection (3) of section 19 of the principal Act is amended by deleting the words "one thousand" and substituting therefor the words "one hundred thousand".

Amendment
of section 25
of principal
Act.

14. Section 25 of the principal Act is amended in subsections (3) and (4) by deleting the words "Section 5 does" wherever they appear and substituting therefor in each case the words "Sections 5, 5A and 5B do".

Amendment
of section 27
of principal
Act.

15. Subsection (2) of section 27 of the principal Act is amended—

- (a) by deleting the words "two thousand" and substituting therefor the words "five hundred thousand";
- (b) by inserting immediately after the word "therein" the words "; and where the breach continues after conviction, the offender shall be guilty of a further offence and liable to a further fine not exceeding five thousand dollars for each day on which the breach continues after conviction".

Amendment
of section 28
of principal
Act.

16. Section 28 of the principal Act is amended in the marginal note thereto and subsection (1) by deleting the words "First Schedule" wherever they appear and substituting therefor in each case the words "First and Fifth Schedules".

Amendment
of section 29
of principal
Act.

17. Subsection (4) of section 29 of the principal Act is amended by deleting the words "one thousand" and "one

hundred" and substituting therefor the words "one hundred thousand" and "one thousand" respectively.

18. Subsection (3) of section 30 of the principal Act is amended by deleting the words "five thousand" and "one thousand" and substituting therefor the words "fifty thousand" and "ten thousand" respectively.

Amendment
of section 30
of principal
Act.

19. The First Schedule to the principal Act is amended—

Amendment
of First
Schedule
to principal
Act.

(a) by deleting from the heading the words "(Section 2)" and substituting therefor the words "(Sections 2 and 28)";

(b) by deleting the following services—

"Public passenger transport services";

"Telephone services";

"Any business whose main functions consisted of—

(a) the issue and redemption of currency;

(b) the issue and redemption of Government Securities and the trading in such securities;

(c) management of the official reserves of the country;

(d) administration of exchange control; and

(e) providing banking services to the Government.";

"Air Transport services for the carriage of passengers, baggage, mail or cargo destined to or from Jamaica or within Jamaica."

20. The Second Schedule to the principal Act is amended by inserting in paragraph 1 (1) (a) immediately after the word "Minister" where it first appears the words ", after

Amendment
of Second
Schedule
to principal
Act.

consultation with organizations representing employers and organizations representing workers.”.

Insertion of
new Fifth
Schedule
in principal
Act.

21. The principal Act is amended by inserting next after the Fourth Schedule the following as the Fifth Schedule—

“ FIFTH SCHEDULE (Sections 5D and 28)

Air transport services for the carriage of passengers, baggage, mail or cargo destined to or from or within Jamaica
Banana services

Any business whose main function consists of—

- (a) the issue and redemption of currency;
- (b) the issue and redemption of Government Securities and the trading in such securities;
- (c) management of the official reserves of the Island;
- (d) administration of exchange control; and
- (e) providing banking services to the Government.

Banking services

Bauxite and alumina services

Marine services

Public passenger transport services

Sugar and its by-products services

Telephone services

Tourism services”.

Amendment
of the
Labour
Relations and
Industrial
Disputes
Regulations,
1975.

22. The Labour Relations and Industrial Disputes Regulations, 1975 are hereby amended—

- (a) by deleting paragraph (6) of regulation 3 and substituting therefor the following—

“ (6) Any person—

- (a) who refuses to supply the Minister any information which the Minister, pur-

suant to this regulation, requires him in writing to supply; or

- (b) who willfully gives false information in a certificate referred to in sub-paragraph (a) of paragraph (I),

shall be guilty of an offence and be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars, and where in the case of an offence under paragraph (a) the offence is continued after conviction the person commits an offence and is liable on summary conviction before a Resident Magistrate to a fine of five thousand dollars for every day on which the offence is continued after the first conviction.”;

- (b) in regulation 14 by deleting the words “two hundred” and substituting therefor the words “two hundred and fifty thousand”.

MEMORANDUM OF OBJECTS AND REASONS

As a part of the Labour Market Reform a decision was taken to amend the Labour Relations and Industrial Disputes Act in order to keep pace with the changes which have taken place over the years. In the labour relations environment which now exists, it is necessary to strengthen the capacity of the Industrial Disputes Tribunal to function adequately.

The Committee on Labour Market Reform in its interim report made recommendations for changes to the Act. Some of these recommendations have been adopted.

Consequently, this Bill seeks to amend the Labour Relations and Industrial Disputes Act—

- (a) to include in the definition of worker an individual—
 - (i) who works under a contract for services;
 - (ii) whose contract of employment is terminated by reason of redundancy and is subsequently re-employed by the employer on contract and also whose dismissal is the subject of an industrial dispute;
- (b) to give a worker the right not to join a trade union;
- (c) to make provision for an employer to recognize a trade union without taking a ballot;
- (d) to make it lawful for the Industrial Disputes Tribunal to determine the composition of a bargaining unit;
- (e) to make provision for the continued exercise of bargaining rights granted with or without a ballot and which are now in existence;
- (f) to make it mandatory for the Minister to cause a ballot to be taken where there is a dispute as to representation;
- (g) to make provision for bargaining in good faith;
- (h) to specify the circumstances in which workers can have a trade union decertified;
- (i) to specify the circumstances in which a contract of employment can be repudiated by a worker;
- (j) to require notice to be given of industrial action in specified services;
- (k) to extend the circumstances in which proceedings of a division of the Industrial Disputes Tribunal would have to start anew;
- (l) to make provision for the Minister to take action where a dispute exists in an essential service even though no report thereof is made to the Minister;
- (m) to make provisions, regarding the Minister's power in respect of a dispute relating to disciplinary action;

- (n) to specify the circumstances in which an award can be made with retrospective effect to a date prior to the date a dispute arose;
- (o) to empower the Industrial Disputes Tribunal not to order reinstatement of a worker who is unjustifiably dismissed where that worker was employed under a contract for personal services;
- (p) to remove certain services from the category of essential services;
- (q) to specify certain non-essential services in respect of which notice of an industrial dispute is to be given;
- (r) to make provision for the Minister to appoint a chairman and deputy chairmen of the Industrial Disputes Tribunal after consultation with organizations representing both employers and employees;
- (s) to increase the penalties under the Act.

The opportunity is also being taken to amend the Labour Relations and Industrial Disputes Regulations, 1975.

PORTIA SIMPSON-MILLER,
Minister of Labour, Social Security and Sport.

A BILL

ENTITLED

**AN ACT to Amend the Labour Relations
and Industrial Disputes Act.**

**As introduced by the Honourable Minister of
Labour, Social Security and Sport.**

**PRINTED BY JAMAICA PRINTING SERVICES (1992) LTD.,
(GOVERNMENT PRINTERS), DUKE ST., KGN., JAMAICA.**
