

JAMAICA EMPLOYERS' FEDERATION

AMENDMENT OF THE TRADE UNION ACT

In 1996 the Government appointed a committee on Labour Market Reform under the chairmanship of Dr. George Eaton. The Committee comprised representatives of Jamaica Employee Federation, Trade Unions, Ministry of Labour and Private Sector Organization. The Committee in its deliberations considered a number of areas falling under Labour Market Reforms which included:

1. Jamaica Industrial Relations systems and Legal and Institutional Framework
2. The current climate on Industrial Relation in Jamaica
3. Proposed revision of the Legal and Institutional framework of Collective Bargaining.
4. Basis for a new Industrial Relations order in Jamaica and,
5. Health and safety at the workplace.

The reported was submitted to the Prime Minister in March 1996.

Arising from the report a decision was taken to amend certain labour legislation. Among those on which discussion have been taken place at the level of the Labour Advisory Committee are the Trade union Act and the Labour Relation and Industrial Dispute Act. On each of these two pieces of legislation the Jamaica Employee Federation has made important recommendations on changes which are critical to reshaping the Jamaican Economy at both Macro and Sectoral levels.

The Employers Federation sees changes which are taking place in the International (Global) economy and the International Trade environment and their impact on labour market as having given rise to new and increase competitions, increase productivity, increased flexibility. The missing link to ensure growth in so many places is to increase corporation between social partners - Labour, Capital and Government. JEF is of the view that the combination of increased competition and the increased mode of investor capital undoubtedly have served to exhort strong pressure on employers, not only to lower cost, but is of the view that cost reduction ends up being directed at variable cost, the most important of which is labour.

The rapid introduction of technology encompassing product technology, equipment technology and process technology, have also fuelled management's demand for the flexibility to alter either output and/or work process associated with existing production. In the plant environment technology or machines have evolve from the capability to perform single task to multiple task with consequences for traditional occupational or task specialization of workers.

There is no question that in order to cope with short and medium term fluctuations in demand, suppliers want to hire people who will work variable hours on demand.

Flexibility is often achieve not only by reducing the number of permanent full time workers to a minimum, but by making the regular hours of work more variable, or increased reliance on people whose work can be changed easily, namely temporary worker, part-time worker and so called self employed contractors including home workers.

Because of the Global situation today, everywhere the once standard eight (8) hour-day – 5 days work week – is increasingly being pushed to the margin, and there is a constant ratcheting effect as enterprises and individuals operating on non standard hour demand goods and services from those who have not yet made the shift.

The predominance of the service sector and the shift towards educated professionally oriented knowledge workers, also has the potential to effect employer/employee relationships, efficiency and productivity, in that employees are seeking and expecting greater participation in decision making at both policy and operational levels in the work place and this appears to be true whether employees are unionized or nor.

It is clear from the foregoing, the amendments to our Labour Legislation should be in an effort to assist employers and employees to realistically meet the challenges which are presented, by the changes in the distribution and social competition of the labour force and the evolving economic and trading environment described above. The countries ability to create wealth, new jobs and to compete successfully will depend to a considerably extent on improved labour management relations and increased corporation between labour capital and government. This, of course will depend on Jamaica's ability to depart from the more adversarial approach being practiced today in the area of labour management relations.

If Jamaica is to go forward and to escape from its economic problems it is necessary for the labour relation climate to be investor friendly. Whatever labour legislation is therefore enacted must send a clear message to investors who might wish to invest their money in Jamaica, that they are welcome in the true sense of the word.

It is against this background that the Jamaica Employer Federation (JEF) is urging caution in how our labour laws are revised, and has made a number of recommendations to the Trade Union Act and Labour Relation and Industrial Dispute Act (LRIDA). The Government is therefore invited to rethink the introduction of the **Right to Strike** legislation as well as the amendments which has suggested. Whatever changes are made must take into consideration the fact that employers/investors have right to legal protection as much as labour does. The amendment to the Trade Union act and the Labour Relation and Industrial Dispute Act does not give the impression that employers/investors matter too much as long as the workers interest is served.

TRADE UNION ACT

The Trade Union Act has been in existence since 1990 and JEF is of the opinion that proposed changes to **this Act** should be meaning. JEF does not believe that the present amendment as it contains in the draft bill is sufficient.

The proposed changes in the draft bill relate only to the increasing of fines for offences. This is not enough. There should be amendment as well to deal with other provisions of the Act.

When the LRIDA was being processed for enactment the Government gave an undertaking to examine the Trade Union Act and to make necessary changes, but this was never done.

The following amendments are therefore proposed to this Act which was passed as far back as 1919.

1. There should be new definitions of a trade union to differentiate between workers organizations and employers organizations as under:

- (a) an organization of workmen whether temporary or permanent, the principal purpose of which are, under its constitution, the regulation of the relations between workmen and employers, or between workmen & workmen: and

- (b) an "employers' association" as defined under the Act

The definition of and "employer association" should be an association whether temporary or permanent which either

- (i) consist wholly or mainly of employers or individual proprietor of one or more descriptions and is an association whose principal object is the regulation of relations between employees or individual proprietors of that description or those descriptions and workers or associations of workers ,or
- (ii) as a federation of employers' associations.

- (2) The words "trade dispute should be redefined to correspond with the definition in the labour Relations & Individual Disputes Act (LRIDA) and include "any claim for bargaining rights"

- (3) **Section 7**

This section states that a trade union may deal in real estate not exceeding one acre in extent. This restriction should be repealed.

- (4) **Section 8**

This section should be amended to say that real and personal estate vested in a trustee shall pass on his death to the remaining Trustee jointly and NOT to the Trustee's executors or administrators as is presently the position in the law.

- (5) **Section 14**

This section states that a copy of the rules of the trade union shall be delivered to any person on payment of one shilling. Amend to say;

- (i) "A copy of the rules of the Trade Union may be obtained by any member on demand, on payment of such amount as may be determined from time to time at a general meetin gof the Trade Union", and
- (ii) "A copy of the rules may be delivered to any person not being a member of the Trade Union on payment of such amount, not exceeding thrice the charge for a member. As may be determined from time to time at a general meeting".

(6) **Section 16 (e) (ii)**

This sub-section requires all changes in the officers of the trade union to be included in the return to be made to the Registrar. Add the words "including Trustees" at the end of the sentence.

(7) **Section 23**

This section states that a person under the age of 21, but above the age of 16, may be a member of a trade union, but cannot be a member of the Committee of Management, Trustee or Treasurer. Amend the age limit of 21 to read 18.

(8) **Section 31**

This section deals with intimidation and peaceful picketing. The following amendments are proposed:-

- (i) strikers may attend at or near the house or place where a person resides in contemplation or furtherance of a trade dispute if they attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

It is proposed that the right to picket a home be removed unless the employer carries on his business on the said premises. It is further proposed that if an employer carries on his business from home, then peaceful picketing should be restricted to the hours of 8:00 a.m. to 4:30 p.m. daily. It is unfair to expose his family, particularly his wife and children, to the dangers of the type of picketing which takes place today.

- (i) the Act permits not more than 8 trade union officers to be present at the site of picketing (Section 31 (2) (d). It does not, however, prescribe the number of pickets although it describes what peaceful picketing means and legislates against intimidation. The police have the right to control the number of pickets.

In order, however, to assist the police in keeping order, as well as the trade union officers themselves, it is suggested that there should not be more than [ten] workers in addition to trade union officers at each entrance to the employer's premises. Mass picketing only causes confusion, heated arguments and encourages intimidation.

Additional new proposals

- (a) the alteration, amendment etc of rules shall have no effect unless registered by the Registrar.
- (b) the Registrar may strike out rules which are regarded as oppressive or against natural justice. There must however, be provision for appeal against the decision of the Registrar
- (c) any person convicted of fraud shall not be eligible to be a trustee or treasurer
- (d) there should not be less than 5 or more than 10 Trustees.
- (e) to provide a penalty for persons impersonating a trade union officer.
- (f) create an offence for persons tampering with machinery or destroying or damaging property of an employer or anyone attempting to enter the premises which is the site of a dispute for unlawful purpose.
- (g) Provide for the protection of anyone who refuse to take part in an unlawful industrial action, against discrimination in membership etc of a trade union.
- (h) Provide legal action to be taken against Trade Unions and their members found guilty of unlawful picketing and any other breach of the Labour Relation and Industrial Dispute Act.

- (i) provide for office of Registrar of Trade Unions to be answerable to the Minister of Labour.
- (j) provision should be made for real estate of a trade union to be vested either in Trustee or a registered company. The difficult here is that everytime new Trustees are voted in, the real estate has to be transferred a new Transfer Tax of 7½%, and Stamp Duty of 5% is payable. Additionally, Government should waive the above tax as no money is being passed.
- (k) to provide for the Minister to make Regulations for the better carrying out of the provision of the Act. Presently there is no such provision.

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