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## AN APPRAISAL OF THE JAMAICA LABOUR RELATIONS AND DISPUTES ACT, 1975

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### BACKGROUND

In general, the principle underlying public policy in the area of labour relations has been based on the British system of voluntarism.<sup>1</sup> Utilization of this principle has meant that though many areas of concern for those involved in the process of labour relations have been legislated upon by successive governments, the effect, so far as actually forcing or tying hands of the parties, has been minimal.

A review of labour legislation from the earliest times reveals the usual development and evolution of workers' and trade unions' rights and collective bargaining procedure as exist in most Commonwealth Caribbean States.<sup>2</sup>

After the abolition of slavery in 1838, the first attempt to regularize conditions of employment took place under the Masters and Servants Law of 1842 and although many of its sections have fallen into disuse, it is still on the statute books and has not yet been repealed.

Under the Act, the term "employer" was widely defined to include foremen, agents, clerks and any persons engaged in the hiring, employing, or superintending of servants.<sup>3</sup> This definition, which included types of supervisory and technical persons<sup>4</sup> commonly accorded their own union rights in these times, is a reflection of the conditions existing just after emancipation when distinctions of this sort, based really upon the class divisions of the society, were more easily and strictly drawn.

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A contract, under section 2 of the Law, includes any type of arrangement, agreement or understanding on the subject of wages to which the parties have assented or by which they are mutually bound to each other or "whereby either of them shall be endeavoured to impose an obligation on the other," whether the agreement is written or oral and whether direct or indirect. The law also provides a minimum period of one month in contracts where there was no express agreement as to duration.<sup>5</sup> Contracts of service were terminable without notice by either party in cases of misconduct and ill usage<sup>6</sup>, but there were penalties for the illegal dismissal of servants.

Perhaps the most important provisions of this law were those that dealt with combinations amongst masters or servants.<sup>7</sup> The law confined the use of combinations to meetings for consulting upon and determining rates of wages. However, any formal association or attempt to implement rules of any such association was barred.

The provisions relating to combinations were superseded by the Trade Union Act, 1919, which made combinations of workers or employers legal, although intimidation and obstruction remained illegal.<sup>8</sup> Picketing was also made legal but it was to be "peaceful." What was of great importance, however, was the fact that unlike the English Trade Union Act (1871), the Jamaica Act did not bar the contractual effects of collective agreements and these were therefore rendered legally enforceable in Jamaica.<sup>9</sup>

Another interesting exemption is that unlike the law in Trinidad<sup>10</sup> there are no restrictions on the use of trade union funds for political objectives. The law in Jamaica has been amended a number of times<sup>11</sup> and the omission of restrictions on the use of funds for political purposes could be viewed, perhaps, as recognition and approval by the two political parties on the essentially political nature of their trade union arms. However, Stone<sup>12</sup> has pointed out that by the authority of Lord Atkinson<sup>13</sup> the use of its funds for political purposes by a trade union in Jamaica would seem to be unlawful since only objectives which could be included by fair implication from the statutory definition of trade union ought to be allowed. This view, though it expresses the proper and logical position does not, unfortunately, correspond with the observed legal and political reality existing in Jamaica.<sup>14</sup>

By the amendment of 1938<sup>15</sup> it became necessary for unions to be registered and it is an offence under the law for any person to attend or take part in any meeting or proceeding of a union which he knows is unregistered.

The Trade Disputes (Arbitration and Enquiry) Law occupied, in the area of labour relations, the very position which is proposed for the Labour Relations and Industrial Disputes Act and it is one of the two Acts that has been repealed.

The law did not apply to the military and the police. It also did not apply to employees of the Crown or Government, the Kingston and St. Andrew Corporation, the Water Commission and the parochial boards. The law provided for the reference by the Minister of any trade dispute to an arbitration tribunal<sup>16</sup> but only with the consent of both parties, and if there were no other arrangements existing for the settlement or if such arrangements had failed. There were no penalties laid down by the law for disregard by either party of the terms of any award of a tribunal.<sup>17</sup> Provision was also made for the setting up by the Minister (without any party's consent) of boards of inquiry<sup>18</sup> into any matter connected with trade disputes or industrial conditions. The Minister had sole responsibility for the composition of these boards. Penalties<sup>19</sup> could be incurred for misconduct on the part of witnesses or any person summoned before arbitration tribunals or boards of inquiry.

Coupled with the Trade Disputes Law was the Public Utility Undertakings and Public Services Arbitration Law which is the other piece of legislation that has been repealed by the Labour Relations and Industrial Disputes Act, 1975. The awards of tribunals, under that law, had far more serious consequences than under the Trade Disputes Law. Agreements, decisions or awards of tribunals were not only legally binding on the parties involved, but wherever the circumstances were such that terms of these awards related to rates of wages and conditions of employment, such terms became implied terms of the contract<sup>20</sup> between the parties until varied by a subsequent agreement, decision or award. Strikes and lockouts were prohibited except on the failure of the Minister to refer the dispute to the tribunal within fourteen days of its being reported to him, but prosecution for contravention of the provisions of the law in this respect could only be instituted by or with the consent of the Attorney General.<sup>21</sup> This last proviso was undoubtedly the reason why in the face of so many contraventions of this law prosecution of the offenders never took place. The Attorney General sat in the Cabinet and no Jamaican government had been willing to go against the unions on this matter, not even against the union affiliated to the opposition, as this would be setting a precedent.

The Emergency Powers (Amendment) Law and the Protection of Property Law are two laws which are of some relevance in this area. Under the Emergency Powers (Amendment) Law, the Governor General may, in situations of public emergency, authorize the takeover of any undertaking, but peaceful strikes and lockouts are not barred even in such circumstances. The Protection of Property Act, 1905, made it an offense punishable by fine and imprisonment<sup>22</sup> for a person employed in certain named essential services to wilfully, maliciously and without lawful excuse break his contract of service knowing or having reasonable cause to believe that the result of such action would lead to a disruption of the service. In addition, this law made it an offence to break a contract of service where the result would be to endanger human life or to expose valuable property to injury.<sup>23</sup> This tough sounding law is largely ignored as the authorities consider it outdated and prosecution of offenders rarely takes place.<sup>24</sup>

As can be seen from the increase in industrial disputes between 1964 and 1972,<sup>25</sup> the system of voluntarism backed up by labour legislation has proved ineffective in bringing about harmonious labour relations. In fact, workers and management are rapidly becoming more polarized and in certain sectors of the economy relationships are extremely acrimonious. Possible remedies have been put forward time and again, but the idea that gained most favour with some employers, certain sections of the press and a large proportion of the general public, was that work stoppages should be outlawed by legislation which would include some kind of compulsory bargaining. Such a suggestion was of course anathema to the union based governments but, as pressure mounted, first the Jamaica Labour Party and later the People's National Party responded with modified proposals for legislating industrial peace.

#### ATTEMPTS TO ENACT NEW INDUSTRIAL RELATIONS LEGISLATION

There had been two previous attempts at Legislation before the Labour Relations and Industrial Disputes bill was introduced. The first attempt was a bill entitled the Industrial Disputes Act, 1970.<sup>26</sup> The preamble to this bill stated that the act was intended to repeal the Public Utility Undertakings and Public Services Arbitration Law, the Trade Disputes (Arbitration and Enquiry) Law and to set up an industrial arbitration tribunal as well as to provide for boards of inquiry in connection with trade disputes. The bill did not propose to bring any new

area of concern for legislation, rather it was the government's intention to tighten up in the areas already governed by the legislation that was slated for repeal, in particular the area of essential services.

The bill sought to introduce a new term into industrial relations—"industrial matter" which was defined as "any matter affecting or relating to work done or to be done by workers, or the privileges, rights and duties of employers or workers, not involving questions which are or may be the subject of proceedings for an indictable offence and includes any matter affecting the privileges, rights and duties of trade unions or the officers of any trade union." In conjunction with this, a trade dispute was now defined as "any dispute or difference between employers and workers or between workers and workers in relation to any industrial matter." The definitions of these two terms could have formed the basis for arguing that it was intended to include recognition disputes in trade disputes but, since the provisions can hardly be called express, the matter would have been in some doubt.

As is the case in the Labour Relations and Industrial Disputes Act, 1975, the provisions centered mainly around the setting up of an industrial tribunal. Reference, by the Minister, of disputes to this tribunal was to take place after voluntary efforts at settlement had failed, a proviso which would have been in keeping with the system of voluntarism. The two categories of disputes which would have been referable by the Minister coincide with the categories proposed by the Labour Relations and Industrial Disputes Act, 1975. These categories include (1) disputes in the essential services, and (2) wherever industrial action by one of the parties would be detrimental to the "national interest". In the latter case the Minister would have been able to order a resumption of work and also to guide the parties to the areas in which the dispute could be settled. Proposals for the composition of the tribunal provided for four permanent members appointed by the Governor General, on the recommendation of the Prime Minister on advice by the Judicial Service Commission. In addition, as the need arose the Minister would have been able to appoint temporary members.

Under the bill only one of the permanent members was required to be experienced in labour relations and surprisingly this member would not necessarily have been the chairman. In determining disputes, the tribunal could be assisted by assessors nominated by both employers and workers but there was no provision for representation of either employers or workers among the permanent members of the tribunal. However, under

the provisions regarding disputes affecting the "national interest" other than essential services, a special arbitration tribunal, consisting of an independent chairman and members representing the employers and workers respectively, could have been appointed. If the parties failed to agree on the composition of the tribunal, responsibility for the selection of its members rested with the Minister. In addition to the two categories already mentioned, the Minister could refer to any other dispute to the tribunal but only with the consent of all parties.

Decisions or awards of the tribunal were to be given the same binding effect as the tribunal under the Public Utility Undertakings and Public Services Arbitration Law,<sup>27</sup> that is, such awards would be incorporated into contracts of service. The tribunal would also have been able to demand the reinstatement of workers or require that a worker be compensated or afforded any appropriate relief. Perhaps most important, where the general public was concerned, was the fact that as soon as a dispute was referred to the tribunal all strikes or lockouts at the place of business or industry concerned were immediately outlawed. Strikes and lockouts were generally prohibited in the essential services except upon the delay or failure of the Minister to refer a dispute to the tribunal after voluntary efforts at settlement had failed. As will be seen later, the general scope and aim of this bill was similar to that which is now proposed by the Labour Relations and Industrial Disputes Act, 1975. Nevertheless there was much opposition by the People's National Party (PNP) and its union arm, the National Workers Union. The government of the day, apparently fearful of the effect the controversy would have had on the electors, declined enactment of the proposals.

Within a few months of its accession to power the new PNP government came under strong pressure from "influential" sections of the public and press in relation to the need for new legislation on industrial relations. As the months rolled by without any sign of the imminent birth of the desired legislation, disgust was expressed over the tardiness of the government.<sup>28</sup> Finally, at the end of 1973, draft proposals were presented to the public. These proposals entailed the repeal of the Trade Disputes (Arbitration and Enquiry) Law and of the Public Utilities Undertakings and Public Service Arbitration Law by an Industrial Relations Act and a Public Service Relations Act. The ambit of the proposed Industrial Relations Act<sup>29</sup> included the creation of a permanent industrial tribunal which would settle disputes in the essential services and disputes which jeopardized the "national interest". The proposed tribunal would have jurisdiction over "rights" and "interests" disputes and would have the

power to order reinstatement. There were also provisions for compulsory poll-taking, boards of enquiry, and the establishment of a fair labour code.

The Public Service Relations Act was to cover essentially the same areas for government employees as the Industrial Relations Act would for other workers. However, under the Public Service Relations Act the government would have been able to refuse to allow a dispute to go to arbitration and the fair labour code would not have been applicable either to the government or its workers.

The provisions under both proposed statutes with regard to the essential services would undoubtedly have left a very confused and uncertain situation. Under the proposed Industrial Relations Act the list of essential services was to be reduced to include only Electricity and Hospitals. Certain services which were operated by the private sector would have been removed from the schedule. These "liberated" services were Public Passenger Transport, Operations on the Waterfront, Cable and Wireless, the construction of electrical plant and works for public electricity services and gas.<sup>30</sup> Strange as it may seem, there was another list of essential services under the proposed Public Relations Act and this included Water, Hospitals, Sanitation, Health and the Fire Brigade. Most important of all, under either Act the Minister would have had power to add to or reduce the list of essential services, subject to a negative resolution. In some countries perhaps such a power would be merely convenient and its exercise would probably reflect real changes in a government's policy towards essential services. In the Jamaican situation and in the context of the union-political party tie-up, such power could be used to aid the government's union operating in an essential service by removing that industry from the list, and conversely to hinder the opposition's union by adding a particular service or industry to the list of essential services. Further, the services which would have been removed from the list were not truly "liberated" but would remain "in limbo" since the main reason for their removal was that they could easily be dealt with under the "national interest" provisions of the proposed Industrial Relations Act.<sup>31</sup> The "national interest" provisions in the draft were similar to those of the Industrial Disputes bill, and the levels of protest both sets of provisions elicited were identical.

The term "industrial matter" introduced by the Industrial Disputes bill was retained<sup>32</sup> along with the corresponding definition of trade dispute, but there were new definitions of strike and lockout.<sup>33</sup> The main

effect of the new definition of strike was twofold. First, strikes would no longer be limited to disputes over terms and conditions of employment; secondly, actions such as "slow downs" were now considered strikes. In the Minister's comments on the proposals,<sup>34</sup> the explanation for these changes was that the old definition of strike did not cover situations where, for example, workers were demanding to inspect the books of an employer and that sometimes actions such as "slow downs" could be even more disruptive than strikes. Concerning the definition of lockout, it appeared that proof of intent by the employer was now necessary and the proposals obligingly provided another avenue of escape by allowing the employer to close his business to protect equipment or staff.

The draft proposal purported to introduce compulsory poll-taking into labour relations but this was quite illusory since such poll-taking was to be subject to the Minister's discretion. Further, if the Minister was convinced that a particular union was "subversive,"<sup>35</sup> or that the workers did not genuinely wish to be represented by that union, he could refuse to order a poll, a refusal which could not be the subject of review by any authority. To complete the "mirage" the Minister stated in his comments that the order for compulsory poll-taking would not be automatically binding on the employer to accept a successful union as bargaining agent.

Howls of protest from opposing poles of the socio-political spectrum greeted the appearance of the proposals.<sup>36</sup> The Bustamante Industrial Trade Union showed no embarrassment in vigorously protesting against proposed legislation very similar to what its own party had intended to carry out. The protests centered around what was seen as an attempt to restrict the worker's right to withdraw his labour when faced with injustice, victimization and deprivation on the part of his employer. Early in 1974, the draft proposals were withdrawn, changes were made and in February 1974 a new bill was laid before Parliament; it was entitled the Labour Relations and Industrial Disputes Act.

## LABOUR RELATIONS AND INDUSTRIAL DISPUTES ACT, 1975

### *Introduction and Interpretation.*

The main objects of this new bill were "to provide for the regulation of relations between employers and workers, to establish an Industrial Dispute Tribunal for the settlement of industrial disputes, to provide for Boards of Inquiry to inquire into industrial disputes and matters connected with labour relations or economic conditions, and for purposes incidental

to or consequential on the foregoing.” There was, therefore, to be no radical departure from the scope of the original proposals but where before there had been two bills now there was only one. By way of explanation the Minister of Labour and Employment, Mr. Ernest Peart, mentioned in his statement to the House<sup>37</sup> that because of the powers granted to the Public Service Commission, such as in relation to matters of discipline by the Jamaica Constitution, it would be unconstitutional to vest similar powers in a tribunal.<sup>38</sup> This also applied to the Kingston and St. Andrew Corporation workers and the Parish Councils’ workers because of the Municipal Services Commission Act, 1956<sup>39</sup>, and the Parish Councils’ (unified services) Act, 1956.<sup>40</sup> The Minister then suggested that the proper approach was to amend the above-mentioned laws relating to workers in the public sector and secure for them the following:

- (a) the right to collective bargaining,
- (b) the right to union representation before the Service Commission,
- (c) the right to arbitration as in the private sector.

The Minister also mentioned the intention of the government to make a general review of Jamaica’s system of labour laws. In particular, as a result of the introduction of compulsory poll-taking and recognition, it would be necessary for certain amendments to the Trade Union Act to take place. These amendments, the Minister added, would involve administrative reforms in favour of the members and would be in the interest of better management, but would not constitute undue interference in the activities of trade unions. The bill was passed in its final stages in March 1975, as the Labour Relations and Industrial Disputes Act, 1975.

### *Definitions*

A number of changes in the definition of certain words and phrases is proposed by the new Act.<sup>41</sup> The phrase “industrial action” has been introduced into the terminology of Labour Relations. “Action” includes any refusal or failure to act, whilst “industrial action” is an all-embracing term which covers (1) strikes, (2) lockouts, and (3) “any course of conduct (other than a lockout or strike) which, in contemplation or furtherance of an industrial dispute, is carried on by one or more employers or by one or more groups of workers, whether they are parties to the dispute or not, with the intention of preventing or reducing the production of goods or the provision of services.” This, it is submitted, is an improvement on the original proposals where strike was rather clumsily de-

defined so as to include actions such as "slow downs." Despite the comprehensiveness of the new definition, one wonders what course of conduct by an employer would come under the third type of industrial action. The example, given by the minister in the original proposals, was one pertaining to workers, that is a "slow down", and one suspects whether the draftsmen really had in mind only actions by the workers.

"Strike" as a consequence of the inclusion of "industrial action" is now defined as "a concerted stoppage of work by a group of workers in contemplation or furtherance of an industrial dispute, whether these workers are parties to the dispute or not, and whether it is carried out during, or on the termination of, their employment." The definition of strike does not include those work-stoppages generally known as "go slow", "sit-down strike", or "sick-out". The fact that such work-stoppages are excluded from the definition of strike in relation to the Act does not mean that these acts are deemed lawful. In fact they would fall under the definition of "industrial action".

"Lock-out" is also re-defined and now means an "action which, in contemplation or furtherance of an industrial dispute, is taken by one or more employers, whether parties to the dispute or not, and which consists of the exclusion of workers from one or more places of employment or of the suspension of work in one or more such places or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of workers." This re-definition appears to put employers and workers back on the same level and removes the advantage which the employer seemed to have gained in the original proposals.

The term "industrial matter" is abandoned, and "trade dispute" is replaced by "industrial dispute." The term "industrial dispute" has been re-defined. It means "a dispute between one or more employers or organisations representing employers and one or more workers or organisations representing workers, where such dispute relates wholly or partly to:

- (a) terms and conditions of employment, or physical conditions in which any workers are required to work; or
- (b) engagement or non-engagement, or termination or suspension of employment, of one or more workers; or
- (c) allocation of work as between workers or group of workers; or
- (d) any matter affecting the privileges, rights and duties of any employer or organisation representing employers or of any worker or organisation representing workers.

The parties to a collective agreement under the Act may be one or more employers or one or more organisations representing employers or a combination of one or more employers and one or more organisations representing workers. Any agreement made between the above-mentioned parties which relates to (wholly or in part) the terms and conditions of employment of workers is a collective agreement.

“Worker” remains an individual working under a contract of employment and “employer” the person for whom such an individual works, that is, the other party to the contract of employment.

### *Compulsory Recognition and Poll-taking*

In his statement to the House,<sup>42</sup> the Minister of Labour and Employment noted that the original proposals had envisaged a system of recognition and compulsory poll-taking, subject to the Minister’s discretion. However, it was decided to forego the discretionary power of the Minister and to introduce compulsory recognition of trade unions based on certification procedure and compulsory poll-taking. This was an express declaration of policy by the Minister. Nevertheless, the Act states that “. . . the Minister *may* cause a ballot of such workers or category of workers to be taken for the purpose of determining the matter.”<sup>43</sup> If the wording of this section had been, “the Minister shall . . .,” there would have been no grounds for argument but there is a difference, it is submitted, between a discretionary “*may*” and an imperative “*shall*.”<sup>44</sup> It may be remembered that the original proposals sought to give the Minister power to refuse to order a poll in circumstances where he thought the union in question was subversive. This is no longer expressly provided for, but if the discretionary power of the Minister remains then he can still exercise it to the exclusion of “subversive” unions. This is the way the Independent Trade Union Movement saw it and they expressed the view that the law would give “the Minister of Labour and Employment the power to refuse to take a poll whenever the government did not approve of the union the workers chose.”<sup>45</sup> It is interesting that the major unions did not perceive this section as being of any threat to themselves and accordingly have made no comments. Even more interesting is the fact that the Editor of the *Daily Gleaner* did not view the section as being a threat to anyone! Having noted the objection of the Independent Trade Union Movement, the Editor declared, “nowhere have we been able to find such a provision in the proposed act. It does not appear to us that the intention of section 5 on the taking of a representation poll, was to give the Minister such an

arbitrary power but if such an interpretation is possible then amendments to remove any doubt would doubtless be made."<sup>46</sup> The importance as to the true meaning of this section cannot be overemphasized for, although there is provision for compulsory recognition of a trade union,<sup>47</sup> this is subject to the taking of a poll and if this poll-taking is discretionary, one cannot insist that either compulsory poll-taking or compulsory recognition has been introduced into the law of labour relations.

A suggestion has been made by the Jamaica Council on Human Rights that in the absence of competing claims for bargaining rights employers should not be allowed to request polls since the efforts of a union could be defeated by the ordering of a poll before the workers have been canvassed.<sup>48</sup> There is merit in this argument but the difficulty is that a union which has not won bargaining rights by way of a poll is far less secure than one which has and may find itself preyed upon more easily by rival unions on the grounds that its claim to representation has never been tested. Perhaps the matter could be resolved by providing for a delay in poll-taking if a sole contender can prove that it has not had sufficient time to canvass for support. A sinister-minded employer could, of course, still influence the outcome of a poll by dismissing some part of the work force when a poll is due.<sup>49</sup> The Council on Human Rights suggests that the Act should have specifically provided that all persons who were employed at the time when the representation dispute arose, as well as those employed when the date for the poll is fixed, should be able to vote.<sup>50</sup> This suggestion would be rather difficult to implement because of a number of factors. Firstly, the exact time when the dispute arose as well as the numbers employed at such time would have to be ascertained. Secondly, all dismissed employees might have to be brought back from wherever they are to take part in the poll. There is also the question whether all dismissed employees should take part or only those who were unfairly or wrongly dismissed. In any case the Minister is given power to refer a dispute over the group of workers or persons who should vote, to the tribunal.<sup>51</sup> This power does not appear to be discretionary, and it is submitted that this would provide ample opportunity for the union to make out its case.

The Council on Human Rights also took objection to the provision relating to joint bargaining.<sup>52</sup> The Act provides that two or more competing unions which gain at least 30% each of the votes cast may request joint bargaining rights.<sup>53</sup> A situation could result, the Council pointed out, where a union with 40% of the vote is left "out in the cold" while two

other unions with 30% each gain joint bargaining rights. Such a situation, the Council maintains, is consistent with the workers' freedom of association and right to collective bargaining and it suggests that a union with 40% should be entitled to represent its members. Ordinarily the Council would be absolutely right but the politics of the Jamaica situation means that co-operation will not be easy between unions of different political persuasion. Joint bargaining rights do not preclude any union from taking industrial action unilaterally and the other union will usually be forced to go along or risk losing its members — a situation which may be politically embarrassing. Thus unions do not like having partners and the fewer the better. Then too, an employer facing unions of different political persuasion is often confused and will find it difficult to maintain good relations with all his workers at any time. There is no easy solution to this problem and there is little doubt that the wording of the section is a result of the difficulties encountered in joint bargaining.

“Compulsory recognition” follows on the success of a union or unions at the poll.<sup>54</sup> The Act provides for all parties to be issued with certificates setting out the results of the ballot.<sup>55</sup> The employer “shall” recognise the successful union or unions and “shall” inform the Minister and the union or unions of that recognition. This is a substantial change from the original proposals where it will be remembered the Minister had stated categorically that polls would not bind employers.<sup>56</sup> However, as has already been pointed out, recognition is subject to the Minister's discretionary power in relation to poll-taking in the first place. Penalties for contraventions of this section are included and consist of fines on summary conviction before a Resident Magistrate.<sup>57</sup>

### *Collective Agreements*

The Act provides for collective agreements to last for any specified period.<sup>58</sup> In cases where there is no specified period, a minimum period of two years will be implied but the agreement will end earlier if the expiration of the employment of all the relevant workers occurs within two years. One can argue that two years is too long a period in these days of inflation and rapidly rising cost of living, but this is not really too important since in practice the parties will most likely specify a minimum period. Similarly, if a collective agreement does not contain express procedure for settlement of disputes without stoppage of work there is provision for an implied procedure.<sup>59</sup> This procedure consists of negotiation; next, conciliation; and, finally reference to the tribunal.

*Labour Relations Code and Freedom of Association*

The Act envisages the preparation of a labour relations code within a year of the enactment of the Labour Relations and Industrial Disputes Act.<sup>60</sup> The code will consist of those guidelines which the Minister believes will help in promoting good labour relations and will relate to:

- (a) the principle of collective bargaining freely conducted on behalf of workers and employers and with due regard to the general interests of the public;
- (b) the principle of developing and maintaining orderly procedures in industry for the peaceful and expeditious settlement of disputes by negotiation, conciliation or arbitration;
- (c) the principle of developing and maintaining good personnel management techniques designed to secure effective co-operation between workers and their employers and to protect workers and employers against unfair labour practices.<sup>61</sup>

The code would be brought into operation subsequent to its approval by the Houses of Parliament. The principles outlined which are to be enshrined in the code are admirable. One could hardly quarrel with such principles but one wonders just what is the rationale behind enacting the legislation before the commencement of the code. This is a clear case, it is submitted, of putting the cart before the horse. Finally, it is provided that infringements of the code will not be punishable but may be taken into account by the tribunal or a board of inquiry in any relevant proceedings.

The Act purports to give the worker the right to membership of any trade union and the right to take part in his union's activities at the appropriate time and penalties are laid down for contravention of these rights.<sup>62</sup> The possible offences here include dismissal or discrimination by an employer against a worker who exercises these rights. The "appropriate time" for a worker taking part in the activities of a trade union is defined as time which either (1) is outside his working hours; or (2) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by the employer, it is permissible for him to take part in those activities. Here, "working hours" means any time when the contract of employment requires the employee to be at work.

As the Jamaican Council on Human Rights points out, the section does not in fact confer any new rights on the worker since freedom of association is already enshrined in the Constitution.<sup>63</sup> The real intention

appears to be to put a limitation on the worker's right to association within working hours so as not to interfere with the production and distribution of goods and services. For some reason the draftsmen appear reluctant to express this intention and have employed instead a rather circuitous device.

### *The Industrial Disputes Tribunal*

The major part of the Labour Relations and Industrial Disputes Act deals with the functions and powers of the proposed Industrial Disputes Tribunal. Two brief sections deal with boards of enquiry whose mode of appointment and functions remain essentially the same as under previous legislation.<sup>64</sup> The Tribunal is to consist of (1) a chairman and two deputies, (2) not less than two members representing employers and an equal number representing workers, and (3) such special members as may be appointed under the "national interest" provisions of the Act.<sup>65</sup> The Minister has power to constitute the panels on the failure of either employers or workers to do so.<sup>66</sup> It is proposed for the Tribunal to sit in divisions and each division will normally consist of three members chaired by either the chairman or one of his deputies with two members drawn from the panels supplied by the employers and workers.<sup>67</sup> In any matter concerning collective agreements a division may also consist of one member chosen from among the chairman and his deputies. The Minister has power, in situations of numerous disputes, to increase the number of members of the Tribunal temporarily.

The chairman and his deputies must be persons who have sufficient knowledge of, or experience in, labour relations and they are to be appointed solely by the Minister of Labour.<sup>68</sup> There is no provision for consultation on these important appointments with employers or unions. There could be some difficulty in reaching an agreement as to these appointments if employers and unions are consulted, but this can be no excuse for leaving these parties out of the selection process. Employers and unions are always suspicious of ministerial appointments and in the light of political experience in Jamaica their suspicions are perhaps well founded. Employing both parties in the selection of these important functionaries would do much to build confidence in the Tribunal. Interestingly, under the "national interest" provisions the parties are allowed "to meet and jointly nominate" the persons who will preside over their dispute as well as their respective representatives on the Tribunal.<sup>69</sup> Members of the Tribunal may be assisted by assessors representing employers and workers. Proceedings of the Tribunal are not to be affected by vacancies among the assessors

but, upon the filling of a vacancy on the Tribunal, the proceedings must be started all over again unless otherwise agreed to (in writing) by the parties to the dispute.<sup>70</sup>

Awards of the Tribunal are to be handed down within twenty-one days, but this period may be extended if necessary. The Act further states, "the Tribunal may, in any award made by it, set out the reasons for such award if it thinks it necessary or expedient to do so."<sup>71</sup> It is to be hoped that the Tribunal will *always* find it necessary or expedient to state the reasons for any award it gives, for if the Tribunal is to be respected and if the parties are to have confidence in its decisions then its reasoning should be set down on paper. The earliest date specified in the Act from which an award may take effect is the date on which the dispute first arose. If no date is specified in an award of the Tribunal, the effective date will be the date of the award. Unlike the awards of the Tribunal under the Trade Disputes (Arbitration and Enquiry) Law, the awards of this Tribunal are clearly enforceable. They are final and conclusive and may only be challenged in court on a point of law.<sup>72</sup>

Where the dismissal of a worker was unjustified and the worker wishes to be reinstated, the Tribunal must order the reinstatement of that worker with payment of wages due. But if a worker does not wish to be reinstated, the Tribunal must order the employer to pay the worker such compensation as it may determine. In any other case the Tribunal may, if it considers the circumstances appropriate, order that, unless the worker is reinstated by the employer within a specified period, the employer must, at the end of that period, pay the worker such compensation as it may determine.<sup>73</sup> The unions have argued that penalties should be provided in law for employers who disobey the order of the Tribunal in this respect.<sup>74</sup> It is submitted that the unions' fear is groundless since the Act provides penalties for disregard of any award of the Tribunal. As was the case under the Public Utility Undertakings and Public Services Arbitration Law, awards become implied terms of the contract of employment. Provision is also made for the Tribunal to hand down a decision on the interpretation of a previous award when applied for such an interpretation by a union, employer or any worker involved.<sup>75</sup>

The unions have also objected to a provision of the Act which reads, "where any industrial dispute referred to the Tribunal involves questions as to wages, or as to hours of work, or as to any other terms and conditions of employment which are regulated by or under any enactment other than this Act, the Tribunal shall not make any award which is inconsistent

with such enactment.”<sup>76</sup> This provision, the unions claim, denies the rights and benefits of the Tribunal to the workers even if the employer and the union agree to voluntary arbitration. The Tribunal, say the unions, should be completely free to decide on wages and working hours, and unions must be able to press for changes in conditions of service without having to wait for amendments to other laws. Any hope by the unions that they would be heeded in this area is a vain one for it is clear that the government does not intend to grant complete and unfettered freedom to the Tribunal in its determination of matters affecting the national economy. Proof of this resolution of the government, in addition to the offending provision in itself, is the mode of appointment of the chairman and deputy chairman of the Tribunal and, most important of all, the fact that the Attorney General has an unrestricted right to appear before the Tribunal or a board of enquiry whenever he deems it expedient to do so.<sup>77</sup> It would appear that government intends to ensure conformity with whatever wage and income policy it chooses to implement.

Offences, such as disobedience of awards of the Tribunal, refusal to attend and give evidence and disclosing the evidence heard at a private sitting of the Tribunal, may be made punishable by not more than six months' imprisonment on failure to pay fines.<sup>78</sup> The Resident Magistrate may give time or order payment to be made in instalments. It would appear that unlawful industrial action is now punishable by fine before a Resident Magistrate in the exercise of the civil jurisdiction assigned under the Judicature (Resident Magistrate) Law. A failure to pay will result in distraint of goods. What is unclear, however, is whether the provision which provides for imprisonment of a judgment debtor could be applied. Under the section any worker who proves that he participated in an unlawful industrial action under duress or for any other mitigating reasons will escape liability.<sup>79</sup> As could be expected, the unions also found fault with this provision contending that this would support and encourage strike breakers.<sup>80</sup> Such a contention is manifestly wrong: the section refers to those who are forced to strike and not those who break the strike.

### *Essential Services, National Interest and Public Employees*

The Labour Relations and Industrial Disputes Act seeks to provide heavier penalties for unlawful industrial action in the area of essential services. Under the Public Utility Undertakings and Public Services Arbitration Law strikes and lockouts were generally prohibited unless the dispute had been reported to the Minister and had not been referred to the Public Service Tribunal within fourteen days.<sup>81</sup> The penalty under

the law was a fine not exceeding ten pounds and, in default of payment, imprisonment for a term not exceeding thirty days.<sup>82</sup> The penalties under the Act of 1975 represent a drastic increase. A worker who participates in unlawful industrial action may be fined up to two hundred dollars, an employer on the other hand may be fined up to two hundred dollars in respect of every worker employed immediately before the employer's unlawful industrial action.<sup>83</sup> Anyone, including an employer or a trade union, found guilty of inciting, procuring, organising or promoting any unlawful industrial action will be liable for a fine not exceeding two thousand dollars. This is all very well but it remains to be seen just what will happen if, for instance, the hundreds of workers employed in Public Transport go on strike. It will be remembered that the problem encountered under the Public Utility Undertakings and Public Services Arbitration Law was not the amount of punishment but whether anyone could be punished at all. It would appear that now there should be no bar to prosecutions since the consent of the Attorney General is no longer required.

The first schedule to the Act lists the essential services as Water, Electricity, Health, Hospitals, Sanitary Services, Public Passenger Transport, Fire Brigade, Prison Services, services connected with the loading and unloading of ships and with the storage and delivery of goods at docks, wharves and warehouses operated in connection with docks and wharves and services connected with oil refining and with the loading, distribution, transportation or retailing of petroleum fuel for engines or motor vehicles or aircraft. The services now removed from the list are Gas, Civil Aviation, Postal and Telegraph, Cable and Wireless Services transmitting to or receiving from overseas telegraphic messages for reward and "services connected with the construction of any electrical plant or works within the meaning of those expressions in the Electric Lighting Law cap.108 by or on behalf of any local authority or other person (not being a private supplier as defined in the Electricity Frequency Conversion Law, 1957), who by the Electricity Lighting Law is authorised to generate electricity and supply it to the public."<sup>84</sup> Despite the removal of so many services from what must have been one of the longest lists of essential services in the world, the list cannot still be considered short.<sup>85</sup>

It had been proposed to remove the Public Passenger Transport but this was finally decided against and the Minister gave two reasons.<sup>86</sup> First there is the need to transport workers to their jobs, particularly those employed in the essential services, and secondly it is deemed necessary to curtail the activities of illegal "robots" whose passengers are not protected

by insurance and whose vehicles may not have been given the necessary road safety certificates. It is submitted that these reasons do not justify the retention of Public Passenger Transport as an essential service. In the first place industrial action in this service does not prevent urban commuters from getting to work since the buses are usually quickly replaced by private operators. In the second place there is no necessity to curtail the activities of these operators; instead the government should endeavour, perhaps through utilisation of the police traffic department, to have these vehicles adequately insured and rendered safe for the road. The private illegal operators or "robots" are needed because the Public Passenger Transport Service is far from adequate and it might be advisable to license certain operators to operate on certain routes in conjunction with the buses. Then, too, this is a service from which the public has come to expect at least one work stoppage per year and with two major and politically opposed unions sharing bargaining rights, problems in the administration of the law will certainly arise.

The Jamaica Council on Human Rights indicated that the very existence of essential services can be called into question.<sup>87</sup> Many large areas of Jamaica are denied water, electricity, hospitals and health services. The reason quite often centers around considerations of profit. Is it fair then that the operators of some services should be able to deny these services indefinitely to large sections of the community, chiefly because of lack of earnings, while their employees cannot temporarily do the same thing for the same reason?

The power of the Minister to amend the schedule of essential services has already been commented upon. The Act now subjects this power to an affirmative resolution of the House instead of a negative one but the position cannot be said to have changed significantly.<sup>88</sup>

The right to industrial action revives if the Minister fails to carry out the proper procedures in relation to a reported dispute or if the Tribunal fails to make an award within twenty-one days of the agreed period. This provision and the provision that disputes are referable to the Tribunal only on the failure of voluntary attempts at settlement are retentions from the Public Utility Undertakings and Public Services Arbitration Law. The Minister may also refer a dispute to the Tribunal as soon as it is apparent that unlawful industrial action has begun. Finally, the Act states that where alternative procedures for settlement of disputes exist, under the Constitution or some other enactment, the dispute must not be referred to

the Tribunal.<sup>89</sup> It is the existence of such alternative procedures, it will be remembered, which was responsible for the demise of the proposal for a separate Public Service Act.

*“National Interest” Provisions*

These provisions constitute one of the more controversial features of the Act. The concept had its genesis in the Industrial Disputes bill of 1970. The present Act states that the Minister may publish in the Gazette a notice to the effect that industrial action taken in contemplation or furtherance of a particular dispute in a specified undertaking is likely to be gravely injurious to the national interest.<sup>90</sup> At the same time or before, the parties to the dispute will be directed in writing to discontinue or refrain from any industrial action. They will also be directed to utilise such voluntary procedures for settlement as are available, within thirty days. After being informed, in writing, by any of the parties of the failure of voluntary attempts at settlement, the Minister will invite the parties to meet and nominate the three special members of the Tribunal to whom the dispute will be referred. If the parties fail to nominate the special members within seven days, the Minister may proceed without further consideration to refer the dispute to the Tribunal. Of course, if there are alternative procedures under the Constitution or any other enactment the parties will utilise them instead. Any industrial action in contemplation or furtherance of a dispute is unlawful if taken or continued after the parties have been served directions.<sup>91</sup>

The phrase “national interest” is not a term of art and the power of the Minister in this regard could undoubtedly be dangerous. The Jamaica Council on Human Rights considered it its “imperative duty to warn against the continued trend to confer wide discretionary powers on ministers to restrict our basic freedoms and fundamental rights.”<sup>92</sup> The danger apprehended is not only to the right of withdrawal of labour by workers but also to political stability for this power can be used to hinder the progress of opposition unions. There is no doubt that it is necessary somehow to prevent industrial action which could dangerously cripple the economy but whether it should be done in this manner is another matter. It would be preferable, it is submitted, if before the enactment of the Act of 1975 a proper case was made out and proved to the public for these “national interest” provisions. In other words, perhaps the government should have produced facts and figures showing the man-hours, goods and services lost because of industrial action in undertakings which cannot be made essential services. A list could also be drawn up, utilising facts and

figures, indicating those areas or industries in which it might be necessary in the future to apply the "national interest" provisions. However, in face of criticism, provisions have been introduced by which the Minister's "national interest" powers have become subject to Parliamentary control.<sup>93</sup>

## NOTES

<sup>1</sup>For detailed information see Henry, Zin: *Labour Relations and Industrial Conflicts in Commonwealth Caribbean Countries*, Chapter 1, Trinidad, 1972.

<sup>2</sup>For an outline of Jamaica's labour legislation see Cumper, Gloria: *Survey of Social Legislation in Jamaica*, Jamaica, 1972.

<sup>3</sup>Master and Servants Law, 1842, S. 2.

<sup>4</sup>The struggle by supervisory workers for union representation has been a hard and bitter one. Though victory for these workers is by no means complete, unions, such as the Union for Technical and Supervisory Personnel (U.T.A.S.P.), continue to flourish and grow in influence.

<sup>5</sup>*Supra*, note 3, S. 3.

<sup>6</sup>*Ibid.*, Ss. 6 & 7.

<sup>7</sup>*Ibid.*, S. 15.

<sup>8</sup>Trade Union Act, 1919, Ss. 30 & 31.

<sup>9</sup>Similar statutory provisions exist in Bahamas, Dominica, Grenada and St. Vincent.

<sup>10</sup>Trinidad & Tobago Trade Unions Ordinance, Ss. 33 & 34.

<sup>11</sup>No. 35 of 1938, No. 36 of 1940, No. 1 of 1952.

<sup>12</sup>Stone, D.H.F.: *The System of Industrial Relations in Jamaica*, Jamaica, 1972, p. 22.

<sup>13</sup>*Osborne v. Amalgamated Society of Railway Servants* [1910] A.C. 87.

<sup>14</sup>Indeed the tie-up, financial or otherwise, between trade unions and political parties is traditional and was especially strong in the early days of adult suffrage. Before the advent of "Big Money" into the political parties there was heavy dependence on trade union support. In addition, membership of either of the two major trade unions is considered synonymous with support for the affiliated political party. None of the parties concerned, that is the legislature, the political parties, or unions seem to be aware of the "unlawfulness" of the tradition.

<sup>15</sup>Act No. 35 of 1938, S. 4.

<sup>16</sup>Trade Disputes (Arbitration and Enquiry) Law, S. 3(2).

<sup>17</sup>Normally all agreements to arbitrate fall under the Arbitration Act which provides for the enforcement of awards by the Courts. However, section 3(4) of the Trade Disputes (Arbitration and Enquiry) Law stated explicitly that "the arbitration law shall not apply to any proceeding of an arbitration tribunal under this law or to any award issued by it."

<sup>18</sup>*Supra*, footnote 16, S. 8(1).

<sup>19</sup>*Ibid.*, S. 10B.

<sup>20</sup>Public Utility Undertakings and Public Services Arbitration Law, 1952, S. 10(5).

<sup>21</sup>*Ibid.*, S. 18.

<sup>22</sup>Protection of Property Act, S.2.

<sup>23</sup>*Ibid.*, S. 3.

<sup>24</sup>There has been only one recent prosecution, that of the May Pen firemen whose failure to answer a call resulted in serious destruction of property.

25 <i>Labour Disputes in Jamaica</i>					
Year	Wages and Improved Working Conditions	Dismissal and Suspension	Representational Rights	Misc.	Total
1964	89	58	59	7	213
1965	89	36	47	2	174
1966	115	49	46	22	232
1967	136	42	74	16	262
1968	166	55	71	13	305
1969	154	52	126	10	342
1970	174	57	68	10	329
1971	121	48	82	18	269
1972	157	58	156	24	395

Source: Ministry of Labour and Employment (Statistical Yearbook of Jamaica 1973)

<sup>26</sup>For an insight into the more important provisions of the bill see Stone, D.H.F.: *The System of Industrial Relations in Jamaica*. Ch. 3, 1972, pp. 82-87.

<sup>27</sup>*Supra*, note 20.

<sup>28</sup>See, for example, comments by Mr. William Strong in *Daily Gleaner*, August 24, 1973.

<sup>29</sup>Details of the proposed Industrial Relations Act were published in the *Jamaica Daily News*, December 20, 1973.

<sup>30</sup>*Ibid.*

<sup>31</sup>For comments by the Minister of Labour and Employment, see *Jamaica Daily News*, December 20, 1973.

<sup>32</sup>The wording of the definition was changed slightly but the meaning remained the same.

<sup>33</sup>The term "strike" included "a cessation of work or a refusal to work or to continue to work by employees or persons who were employed immediately prior to such cessation or refusal, acting in combination or in concert or in accordance with a common understanding whether expressed or implied, or a slow-down or other concerted activity designed to restrict or limit output or work." The term "lock-out" meant "a closing of a place of employment or part thereof or a suspension of work, or a refusal by an employer to continue to employ any member of his employees with a view to compelling or inducing any of his employees to agree to terms of employment or comply with any demands made upon them by him."

<sup>34</sup>*Supra*, note 31.

<sup>35</sup>This was tantamount to a declaration of war on the small progressive trade unions, such as the University & Allied Workers Union. There could be no justification for the inclusion of such a provision, since subversive activities of any

kind fall within the purview of the Ministry of Home Affairs and Justice. Government, having made its hostility towards small progressive unions quite clear, could hardly expect any cooperation from these unions.

<sup>36</sup>In addition to labour leaders and concerned citizens, the Jamaica Council of Churches voiced its reservations to various provisions of the bill. See *Jamaica Daily News*, December 20, 1973.

<sup>37</sup>*Daily Gleaner*, March 1, 1974.

<sup>38</sup>Jamaica (Constitution) Order in Council, 1962, Ch. 9, part I.

<sup>39</sup>Municipal Services Commission Act, 1956, S. 3.

<sup>40</sup>Parish Councils (Unified Services) Act, 1956, S. 10.

<sup>41</sup>Labour Relations and Industrial Disputes Act, 1975, S. 2.

<sup>42</sup>*Daily Gleaner*, March 1, 1974.

<sup>43</sup>*Supra*, note 41, S. 5(1).

<sup>44</sup>On the use of "shall and "may" in statutes, see Fairclough, Roy: "Some Thoughts on the Labour Relations and Industrial Disputes Act, 1974 (now 1975)," *Jamaica Justice*, June 1974.

<sup>45</sup>*Daily Gleaner*, March 18, 1975.

<sup>46</sup>*Ibid.*

<sup>47</sup>*Supra*, note 41, S. 5(5).

<sup>48</sup>Submissions by the Jamaica Council on Human Rights to the Select Committee of Parliament.

<sup>49</sup>*Vide* claim by "blue book" dockers that they have been declared redundant because of their efforts to obtain the recognition of the University and Allied Workers Union as bargaining agent. *Weekly Gleaner*, February 18, 1975; *Daily Gleaner*, February 10, 1975.

<sup>50</sup>*Supra*, note 48.

<sup>51</sup>*Supra*, note 41, S. 5(3).

<sup>52</sup>*Supra*, note 48.

<sup>53</sup>*Supra*, note 41, S. 5(6).

<sup>54</sup>*Ibid.*, S. 5(5).

<sup>55</sup>*Ibid.*, S. 5(4).

<sup>56</sup>*Jamaica Daily News*, December 20, 1973.

<sup>57</sup>*Supra*, note 41, Ss. 5(7)(8).

<sup>58</sup>*Ibid.*, S. 6(1).

<sup>59</sup>*Ibid.*, S. 6(2).

<sup>60</sup>*Ibid.*, S. 3(1).

<sup>61</sup>*Ibid.*

<sup>62</sup>*Ibid.*, S. 4.

<sup>63</sup>*Supra*, note 38, S. 23.

<sup>64</sup>*Supra*, note 41, Ss. 14 & 15.

<sup>65</sup>*Ibid.*, Second Schedule.

<sup>66</sup>*Ibid.*

<sup>67</sup>*Ibid.*, S. 8.

<sup>68</sup>*Ibid.*, Second Schedule.

<sup>69</sup>*Ibid.*, S. 10(4).

<sup>70</sup>*Ibid.*, S. 8(4).

<sup>71</sup>*Ibid.*, S. 12(3).

<sup>72</sup>*Ibid.*, S. 12(4).

<sup>73</sup>*Ibid.*, S. 12(5).

<sup>74</sup>For joint memorandum of major trade unions, see *Daily Gleaner*, March 13, 1974.

<sup>75</sup>*Supra*, note 41, S. 12(10).

<sup>76</sup>*Ibid.*, S. 12(7).

<sup>77</sup>*Ibid.*, S. 16(2).

<sup>78</sup>*Ibid.*, S. 24(2). See also Judicature (Resident Magistrates) Act, 1928, S. 195(1).

<sup>79</sup>*Supra*, note 41, S. 13(3).

<sup>80</sup>*Supra*, note 74.

<sup>81</sup>*Supra*, note 20, S. 17.

<sup>82</sup>*Ibid.*, S. 18.

<sup>83</sup>*Supra*, note 41, S. 13.

<sup>84</sup>*Supra*, note 20, First Schedule.

<sup>85</sup>For a documentation of Prime Minister Manley as a labour leader, to the long list of essential services and the concomitant arbitrary ministerial power, see Fairclough, Roy: "Some Thoughts on the Labour Relations and Industrial Disputes Act, 1974 (now 1975)," *Jamaica Justice*, June 1974.

<sup>86</sup>Statement to the House of Representatives. *Daily Gleaner*, March 1, 1974.

<sup>87</sup>*Supra*, note 48.

<sup>88</sup>*Supra*, note 41, S. 28.

<sup>89</sup>*Ibid.*, S. 9(7).

<sup>90</sup>*Ibid.*, S. 10(1).

<sup>91</sup>*Ibid.*, S. 10(8).

<sup>92</sup>*Supra*, note 48.

<sup>93</sup>*Supra*, note 41, S. 10(1)(c).