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UNFAIR EMPLOYMENT PRACTICES
IN A CARIBBEAN INDUSTRY

CHUKS OKPALUBA*

INTRODUCTION

In his recent work on Labour Relations in the Commonwealth Caribbean, Dr. Zin Henry revealed that unfair and abusive employment practices of one kind or another are common and pervasive among the Caribbean employers. While some of these employers do not attempt to disguise their purpose, others do so by subtle means.

Dr. Henry is not alone in his observation for there are indications that most of the labour disputes in the region occur because of the attitude of the employers. The case of Trinidad and Tobago is in point. After recounting the experience of the Industrial Court over the first four years of its existence, the President stated:

Past experience over the years has made it tolerably plain that employers tend to allow too many avoidable disputes to reach the Court.

This statement is based on the fact that trade unions successfully established the justness of their grievances against employers in a large number of disputes determined by that Court as illustrated by the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Disputes Determined</th>
<th>No. wholly in favour of employers</th>
<th>No. partially in favour of employers</th>
<th>No. wholly against employers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>109</td>
<td>23</td>
<td>10</td>
<td>76</td>
</tr>
<tr>
<td>1968</td>
<td>188</td>
<td>26</td>
<td>2</td>
<td>160</td>
</tr>
<tr>
<td>1969</td>
<td>152</td>
<td>13</td>
<td>2</td>
<td>137</td>
</tr>
</tbody>
</table>

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Separate and apart from the Industrial Court's records of bad employment practices on the part of the employers there are other sources, i.e., reports of Boards of Enquiry. The most recent among a host of such Commissions of Enquiry Reports revealing acute and deplorable employment practices in the Commonwealth Caribbean are the following:

1. *The Denbow Report*\(^7\)

After many years of "discontent, distrust and disillusionment" at the Georgetown waterfront, the Minister of Labour and Social Security appointed a Board of Enquiry to investigate every aspect of the industry with a view to improving its efficiency. Among others, the Commission was to enquire into the adequacy of the existing machinery for dealing with industrial relations matters, investigate the system of employment of dock labour and the method and adequacy of remuneration of employees at the waterfront.

In its mammoth report,\(^8\) the Commission found, among other things, that one of the major grievances of the waterfront workers, and one that generated a great deal of ill-will and dissatisfaction, was the alleged "high-handedness" characterizing the attitude of employers. There was uncertainty and absence of job-security to the extent that persons already sixty-five felt compelled to continue working in order to be assured of their livelihood for fear of getting no pension income after retirement. There was inconsistency and absence of uniformity in the system of paying wages, conditions of employment, and status of workers. The method of remuneration of workers employed by the waterfront contractors was most unsatisfactory. Workers in many cases were not certain who was their employer — the member company of the Shipping Association or the private contractor. To register their dissatisfaction with these practices, the workers indulged in a number of restrictive practices the result of which was to slow down productivity in the industry.\(^9\)

2. *The Henry Report*\(^10\)

The Henry Report, tabled in the House of Representatives of Trinidad and Tobago by the Minister of Labour, Social Security and Co-operatives, Hon. Hector McLean on 16th March, 1973,\(^11\) is the latest report dealing with the kind of experiences under consideration. Since the revelation by this Commission of undesirable employment practices could
hardly pass unnoticed, this article discusses its findings and examines the recommendations which the Commission made for the purposes of remediying the highly unpalatable employment practices existing in the Trinidad and Tobago contracting industry.

EVENTS PRECEDING THE APPOINTMENT OF THE HENRY COMMISSION

Barely three years after its establishment, the facts of the unfair, undesirable and exploitative employment practices prevalent in the contracting industry of Trinidad and Tobago began to unfold in the proceedings before the Industrial Court. It is therefore not surprising that in a judgement delivered by the President on January 9, 1968, the Court observed that from experience it was clearly perceptible that:

Contractors can do virtually anything they please with persons seeking employment with them and nevertheless escape the consequences of their indulgence in anti-union activities and their perpetration of social injustice.12

The Court further observed that conditions of employment in contracting undertakings were most deplorable, exploitative and uncommendable, at any rate, in "a free, advanced and democratic society" whose Constitution expressly proclaims that labour should not be exploited.13 The Court thought that in order to eradicate and prevent further perpetration of such evils, social injustices and malpractices against the workers, the adequate and only remedy would be legislation. Accordingly, the Court very strongly recommended that Government:

... take urgent steps to investigate these evils fully and thereafter to introduce such legislation as may be appropriate.14

These views were reiterated in several and subsequent judgements of the Court.15

As a result of these remarks, the Cabinet on June 19th, 1969 appointed an ad hoc Committee headed by the Permanent Secretary of the Ministry of Labour and Social Security16 to

... investigate conditions of employment of workers employed by contractors and matters relevant thereto and to make recommendations.
Like the recommendations of the Industrial Courts, already noted, the ad hoc Committee urged that a Commission of Enquiry be appointed under the Commission of Enquiry Ordinance since such a Commission could investigate more authoritatively as well as the undesirable features of the system of contracting out of work, and the acute competition for contracts and their "adverse consequences" for workers especially those employed by small contractors.

These recommendations culminated in the appointment of a three-man Commission of Enquiry by the Governor-General of Trinidad and Tobago on September 23rd, 1971. The Commission, chaired by Dr. Zin Henry of the Industrial Court, was assigned the duty of inquiring

... into the consequences for workers, particularly those employed by small contractors, resulting from the acute competition for contracts; and other undesirable features of the system of contracting out work.

FACTORS GENERATING UNFAIR EMPLOYMENT PRACTICES IN THE INDUSTRY

In Trinidad and Tobago, there are two major systems of contracting out work, namely, in the public and in the private sectors. Contracting in the public sector is regulated by an Ordinance of 1961 as amended in 1965, and regulations made thereunder. These Ordinances enjoin the Tenders Board—a body established by the 1961 Ordinance—to award public contract work to the lowest tender unless it can show good reason for doing otherwise.

As the Henry Commission found, this statutory requirement is responsible for the acute and "cut-throat" competition that has developed in the industry. Tenders that are known to the Board to be "ridiculously low" are nevertheless accepted. The consequence is that the contractors tender terms knowing them to be unrealistic and below the average labour cost. The "lowest tender" principle has brought about the existence of a number of so-called "fly-by-night" contractors. These contractors are said to operate with the barest minimum of capital, if they have capital at all. They have no equipment and their ad-hoc workers are sometimes required to provide their own tools. The result is that the contractors indulge in all sorts of "oppressive and immoral" practices. In order to ensure some profit margin, they pay sub-marginal wages.
There is no legislative regulation of tender and award of contracts in the private sector. Therefore, each company or firm determines its own criteria for contracting out work but the Commission was able to find that the “lowest tender” rule is also applied in the private sector “as a matter of policy by private companies.”

As will be observed later in this article, the Commission’s investigation revealed that one of the principal generators of the exploitative practices complained of is the system of sub-contracting out work under which the contractor supplies only labour on request to the company awarding the contract, the so-called *Labour-Supply-Only Contract*.

The fact that a large number of contractors and sub-contractors are not only financially weak but are also “devoid of managerial or administrative experience,” is another factor contributing to undesirable labour conditions in the industry. The majority of the contractors who fall within this description have small businesses. In effect their survival, even on the face of the acute competitive market, must depend, therefore, not upon their efficiency but upon their ability to maneuver and manipulate labour through various unethical devices. For instance, they generally operate from home and therefore have no plant sites to maintain.

Although there are two organisations of contractors in Trinidad and Tobago, yet neither of these organisations exercises any effective control over its members. This absence of control aggravates the phenomenon of acute and “cut-throat” competition among the contractors. There is, therefore, no effective organisation in the industry to bring about improved and uniform working conditions for workers. Nor is there any evidence that any of these associations, or indeed, any of the contracting firms was in any way affiliated to the Trinidad and Tobago Employers’ Consultative Association.

Similarly, the absence of unionisation among the workers of the contracting industry,

... provide the other blade of the scissors which serves to carve out unstable industrial relations in the contracting industry.

The evidence before the Commission showed that out of the twenty-two relatively large contractors in the country, at least fifteen of them were found to be non-unionised and only four were fully unionised and operating collective agreements or in the process, as it were, of negotiating an agreement. But in the medium-sized and small contracting firms, there was a total absence of unionisation.
The impact of unionisation on human relations within these undertakings would not only be to minimise the number of employment grievances of the workers, but also to bring their employment grievances within the jurisdiction of the Industrial Court. It is necessary to note that the industrial relations law of Trinidad and Tobago thrives where there is unionisation since a worker as an individual cannot initiate trade dispute litigation in the Industrial Court even though the grievance concerns him personally. Thus, the trade disputes that have reached the Industrial Court have been processed by trade unions.

Quite apart from the fact that the Industrial Court is not per se open to the individual worker, there are regrettable omissions in the Industrial Relations Act, 1972, of Trinidad and Tobago, at least, from the individual worker's point of view. For instance, the Act makes no provision for the protection of the individual worker who is not a member of a trade union or whose employment undertaking is not unionised. Under these circumstances, his employment grievances could only be heard in the Industrial Court if he could get a trade union to take it up. In strict legalism this may appear to be contrary to the spirit of the Constitution for a citizen is free to join or not to join an association. In the context of the Act, the worker does not appear to have any choice for it seems that he is compelled directly or indirectly to associate. In practice however, he is the one to benefit, for trade unions bridge the gap between the bargaining might of the employer and the weak bargaining power of the individual employee. Trade unions bargain on behalf of their members for conditions and hours of work, and for holidays with pay. They bargain for virtually all sorts of fringe benefits (as illustrated by the agreement between Federation Chemicals Ltd. and the Oilfields Workers' Trade Union) whereas in non-unionised undertakings employment conditions tend to be dependent upon the whims, fancies and idiosyncracies of the individual employer. In this instance, the experiences of the contracting industry provide materials for case study.

Another point which is worthy of note in connection with the omissions in the Industrial Relations Act is that although its purport was... to make a better provision for the stabilization, improvement and promotion of industrial relations... it did not provide for a code of fair industrial relations nor did it authorise the compilation of such a code to assist in the achievements of its objects. There is similarly no minimum wage law operating in the contracting industry or indeed in any other industry in the country.
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absence of these obviously contribute to, if they are not the sole cause of, the kinds of exploitative labour practices which is the subject of the following sub-heading.

THE NATURE OF THE EXPLOITATIVE EMPLOYMENT PRACTICES

The Henry Commission, for the purposes of analysing the evidence in relation to the alleged exploitative employment practices in the industry, classified the contractors into three identifiable groups. In the first group, there is found a relatively small number of contractors whose employees are in most cases unionised and therefore operating under favourable terms and conditions of employment. These are the larger contractors.

The second group comprises the "medium-sized" contractors. Their employees may or may not be unionised. Conditions of employment within this group of contractors are less favourable than those of the former group but still better than those in the third category.

Within the third category are the small contractors whose group constitutes by far the majority. It is in this group that the employment atrocities occur in their widest scale. The employees of the contractors in this group are non-unionised, wages are low and sub-marginal, fringe benefits are often non-existent, number of hours worked per week are generally not specified, and overtime payments are never made.

That there is little or no unionisation in the medium-sized and small contracting firms is not surprising because the resentful attitude of the contractors in these two groups toward unionisation is commonplace. They make no secret of their anti-union attitude. Instant dismissal of employees for engaging in trade union activities or for merely indicating their interests in trade unionism is rampant. An illustration is found in the Industrial Court case of Motilal Moonan Ltd. v. Transport and Industrial Workers' Union where a transport contractor refused an employee any further work after an unsuccessful unionisation drive by the Transport and Industrial Workers' Union. The reason for the refusal was that the contractor alleged that the employee was the chief union organiser in his business undertaking and he accordingly asked the employee to let his union find him work. Since the dismissed employee was a member of the union his grievance was ventilated in the Industrial Court, which held that the contractor had acted "unfairly and oppressively" towards him. These contractors go about this practice simply
by curtailment of work made available to persons known or suspected to be actively involved in bringing about unionism in a particular business.¹⁰

This practice frustrates, at the incubative stage, the efforts of workers to organise, and is evidently responsible for the absence of unionisation in these undertakings. So the Commission found.

Further, it was found that the practices of these contractors could not be complained of by their employees for fear of losing their jobs. This point arose from the fact that some contractors, in an endeavour to rationalise their practices of subcontracting work in small units to foremen and charge-hands told the Commission that their employees were quite happy with the practice since they had never heard any complaints to the contrary. Under this system, the foreman or charge-hand employs a few workers to accomplish the task assigned to him. In other words, he, at that stage, ceases to be an employee but an employer. In this way, observed the Commission,

a . . . vicious and confused situation develops where on a single work project, employees—be they foremen or general workers—alternate between being hourly and piece workers with consequential changes from one employer to another. The natural consequences which flow from a situation of the kind are loose and unstable employment relationships and an extremely wide scope for abusive employment practices.¹¹

The most striking exploitative employment practices discovered by the Commission existed under the system of Labour-Supply-Only Contracts. To borrow the Commission's expression this system of subcontracting is

...nothing but an undisguised conduit through which temporary and casual employment is channelled.³²

Under this system, the relationship of employer-employee is found to be virtually absent.³³ The principal company controls the subcontractor to the point of determining who and when the latter shall fire an employee.³⁴ The employee is lost in this circuitous process and is without an employer.³⁵ Although he may be employed from time to time, it could not be properly said that he has any contract of employment in the strict sense of that term.

The element of uncertainty was also one of the sources of the "distrust, fear, hatred and mutual disregard" in the Guyana waterfront as found by the Denbow Commission. The employees at the waterfront
were uncertain as to who their employer was at any given time—whether they were employees of member-companies of the Shipping Association or of private contractors. They were often uncertain also as to whether they would get work on any given day. Even where an employee has been employed by a single contractor for a number of years, he will still be required to report daily to ascertain whether or not he will be offered employment for the day. This experience is also shared by employees of the contracting industry in Trinidad and Tobago where employees of up to fifteen years experience with a particular contractor are subjected to such uncertain conditions of work.36

Certainly, this kind of arrangement will inevitably breed abuses of varying dimensions. In this connection, the Industrial Court's observations in Paramount Transport Ltd. v. Amalgamated Workers' Union37 is instructive. In that case the President opined:

This system of employment lent itself readily to discriminatory offers and allocations of work on the principle of "rewarding friends and punishing enemies."38

On page four of that judgment the President went on to state that:

The system of employment which [the contractors] practice contains most of the undesirable elements to which we have drawn attention and we fear that these are becoming widespread that there is justification for saying that in the present state of unemployment in the country39 the very existence of thousands of workers has of necessity become dependent upon the foibles, idiosyncracies and prejudices of these contractors in a way and to a degree that was unknown even in the days of yore when serfs were said to be tied to the soil, for the lord of manor, at least, had a duty to maintain and protect his serf.

The social injustice visited on an individual worker by this practice manifested itself in the results of the decision under discussion. The Paramounts' case concerned a claim by the union that the contractor dismissed twenty-four of his employees, members of the union. The Union asked the Industrial Court to order the reinstatement of these workers in accordance with the powers conferred upon it by the Industrial Stabilization Act, 1965, section 11(4)(e) under which the Court is empowered to give such directions and do all such things as it thinks necessary or expedient for the just determination of any trade dispute before it, and also on the basis of the court's previous orders of reinstatement where dismissals had appeared to it to be unfair and oppressive.40 The Court
thought that in the circumstances there could be no dismissal since the relationship of employer and employee only comes into existence when the contractor offers work to the workers. It is only then that the provisions of the Industrial Stabilization Act could be invoked. Similarly no reinstatement could be ordered since reinstatement implies the restoration of a worker to a regular or continuing job on which he was previously employed before the dismissal. Thus these persons could not be described as employees for the purposes of the Act, and could therefore not avail themselves of the statute.\textsuperscript{41}

In addition to the above, there is the practice whereby an employee may be required to make "gifts of gratitude" to foremen or other supervisory personnel in order that he be kept employed. The method of payment of wages is, as in the case of the Georgetown waterfront workers,\textsuperscript{42} amazingly unsatisfactory. It is said that contractors sometimes make the employees sign pay sheets with the understanding that they will be paid less than the sum they have signed for. On other occasions, the employees are made to append their signatures to pay sheets without the amount receivable stated thereon. Some contractors are in the habit of not paying wages in envelopes with the object of not giving the worker any documentary evidence of the amount of wages actually paid to him. Where envelopes are used it is understood that they carry incomplete information. With regard to these, employees receive subsistence and sub-marginal wages, work long hours without receiving premium rates for overtime,\textsuperscript{43} receive no holiday pay or sickness benefit, nor severance or redundancy payments, regardless of length of service or reason for termination—indeed they receive no fringe benefits.

Despite the explicit stipulations of the \textit{Fair Wages Clauses}, contractors engaged in public works provide no better conditions of employment for their employees than those of the private contractors. By the \textit{Fair Wages Clauses}—apparently fashioned on the United Kingdom’s Fair Wages Resolution of the House of Commons—the Government states its policy that contractors engaged in public projects must observe certain conditions of employment, pay minimum rates of wages under specified guidelines, keep proper Wages and Time Books and Work-sheets, and are expected to recognise the freedom of workers to join trade unions.\textsuperscript{44} Further, they are required not to sub-contract work without the written permission of a person authorised by Government.

The Commission gave two explanations for the permeation of bad employment practices into the system of awarding contracts in the public sector. In the first instance, medium-sized and small contracts carry no
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fair wages clauses especially as these contracts are generally not entered into on the basis of written agreements between contractors and the Government. The second explanation goes to enforcement. The Commission found that even where a Fair Wages stipulation is written into a contract or agreed to orally, the principal companies are not generally concerned with the enforcement of the conditions. Nor does the Tenders Board undertake the duty of the supervision of the contract after its award. There is no other body or person charged with the duty of seeing that the Fair Wages Clauses are enforced, hence contractors easily evade them.45

After giving "very serious consideration" to the proposal put before them that legislation be introduced which will place greater restraint on the right to contract out work, the Commission refrained from making such recommendation since it considered that contracting out of work was a "perfectly legitimate form of business the world over,"46 and it could not think of a better alternative with which to replace the system.47

Since, therefore, the Commission was committed to the system of contracting out work they were not prepared to recommend its abolition as they found that the present undesirable features of contracting out work were not "in terms of the basic system itself," but were caused by abusive practices which have permeated into the system. These practices have been made possible through institutional deficiencies, lack of enforcement machinery or because of certain inherent features of contract work.48 The consequences of these are that the interest and welfare of workers suffer. It is in this connection that the Commission made their recommendations which now call for discussion.

RECOMMENDATIONS OF THE COMMISSION

It may be recalled that earlier in this article it was contended that the undesirable and exploitative employment practices that were found in the contracting industry of Trinidad and Tobago have been made possible because of the absence of laws regulating the conduct of the contractors and conditions of employment generally, and also the absence of a code of industrial relations practice setting out guidelines for the parties. It was also observed that the Industrial Relations Act, 1972, omitted to do so and that although it required the Industrial Court when determining a trade dispute to do so in accordance with the principles and practices of good industrial relations, it did not explain what the phrase means.49 It has, however, been observed elsewhere that such guiding principles
could be extracted and compiled from the experiences of the Industrial Court as decipherable from its numerous written judgements over the past eight years.\textsuperscript{50}

It is then not surprising that these omissions engaged the attention of the Commission. Firstly, the Commission had to consider the proposal urged upon them that the industry needs Minimum Wages legislation. Under the Labour (Minimum Wages) Ordinance of 1935\textsuperscript{51} (not referred to by the Commission), the Governor in Council, where he is satisfied that the wages paid in any occupation in the country are unreasonably low, may, by proclamation, fix a minimum rate of wages for that occupation.\textsuperscript{52} In effect the Commission was persuaded to recommend that a minimum wage proclamation be made in relation to the contracting industry, and with stiff penalties for breaches.\textsuperscript{53} But a minimum wages legislation as proposed was rejected since the Commission thought that such approach would

\[\ldots\] barely scratch the surface of the problem because the undesirable features of contract work in the economy extend far beyond sub-standard and marginal wages.\textsuperscript{54}

Rather, it would prefer a "multi-faceted" approach if the various exploitative practices it encountered were to be effectively obliterated, and if lasting results were to be aimed at. Accordingly, the Commission recommended the enactment of a more comprehensive \textit{Minimum Terms and Conditions of Employment Act},\textsuperscript{55} which will provide for a national minimum wages, vacation with pay and sick-leave benefits for all workers throughout the country. In addition, the Commission thought that it would be desirable also that an \textit{Unfair Employment Practices Act} with appropriate sanctions be legislated.

Furthermore, the Commission saw the need for a build-up of vibrant trade unionism in the contracting industry. Unionisation by both the workers and the contractors is most desirable and would inevitably achieve a more stable and healthier employment atmosphere within the industry. Foreseeing the springing up of numerous such associations in due course, the Commission recommended the eventual formation of \textit{Joint Negotiating Machinery} for the bilateral determination of terms and conditions of employment and for the handling of grievances in the industry.\textsuperscript{56}

To ensure the effective observation of the \textit{Fair Wages Clauses}, and other regulatory clauses in collective agreements, the Commission recommended that a \textit{Contract Labour Inspection and Enforcement Unit} be
established in the Ministry of Labour, Social Security and Co-operatives with the specific duty of dealing with contract matters. The Labour Inspector would have powers comparable to those of the already existing Factory Inspector.\footnote{7}

As far as the practice of Labour-Supply-Only Contract is concerned, the Commission recommended that it be "totally out-lawed in Trinidad and Tobago."\footnote{8} But they were not certain about the combined effect of sub-sections (1) (i) (iii) and (4) (b) of Section 2 of the Industrial Relations Act, 1972 on that practice. Subsection (1) (i) (iii) defined an employer to include

\[\ldots a \text{ person for whose benefit work or duties is or are performed by a worker under a labour only contract within the meaning of subsection (4) (b).}\]

Subsection (4) (b) provided that if a person engages the services of a worker for the purpose of providing those services to another, then, such other person shall be deemed to be the employer of the worker under a labour-only contract. From the above definitions it becomes clear that a worker whose employer is engaged in a labour-only contract now knows who is his employer, and there is no other indication that the Act has cured the ills of that practice. What these subsections have done is recognise the existence of a contract between the parties to a labour-only contract. In other words, no judicial construction by any stroke of imagination, nor however broad, could eradicate the mal-practices inherent in the system. The only remedy, whether the labour-only contract practice is retained or not, will lie on the proposed Minimum Terms and Conditions of Employment\footnote{9} law and the Unfair Employment Practices Act.

CONCLUSION

The foregoing discussion brought into focus the question of law-making in the realm of employment. Despite the fact that the bargaining inequality between the employer and the employee is well known, few laws exist for the protection of the weaker of the two—the worker. Perhaps modern law-makers tend to assume that the emergence of trade unions and the practice of trade unionism have cured all employment ills. This they do in apparent oblivion of those employees whose employment places are not unionised or, for one reason or another, are non-unionisable. Again this is responsible for the continued existence of the so-called Masters and Servants Acts in the Statute books of most of the Caribbean
Countries. The Masters and Servants Acts were passed after the collapse of the apprenticeship system in the West Indies; no doubt they are now out of touch with contemporary social reality.

The history of the employer-employee relationship shows that legislation has been—apart from the effects of modern trade unionism—the only way of affording the employee protection from the might and over-zealous aspirations to maximise profits of some employers. Experience, however, shows that such legislation is often not forthcoming or only provided as need arises and in most instances when things have gone “radically wrong.” The Commonwealth Caribbean Countries are, by far generally lagging behind in the enactment of protective labour legislation irrespective of the influence of the International Labour Organisation. This means, therefore, that in the absence of protective labour legislation the employee is left to the unsympathetic hands of the common law.

In the Commonwealth Caribbean, Barbados is the only country with a Severance Payments Act. The four independent countries all have National Insurance laws but none of them makes provision for unemployment benefits. Only Trinidad and Tobago, among the independent nations, and Antigua and Dominica among the Associated States, and the Bahamas have introduced legislation incorporating the I.L.O. recommendation on unfair dismissals. Nowhere in the Commonwealth Caribbean is there a Code of Industrial Relations in operation. To date the Bahamas is the only country of the Commonwealth Caribbean with a fair labour standards law, which though termed Fair Labour Standards Act, embraces the provisions which the Henry Commission had in mind in connection with its suggested enactment of a Minimum Terms and Conditions of Employment Act. A summary of the Bahamas Act will therefore be of assistance.

Sections 5-7 of that Act provide for standard hours of work. Thus no employer in the Commonwealth of the Bahama Islands shall “cause or permit” any employee to work in excess of eight and a half hours in any day or forty-eight hours in any week without payment for overtime. The hours of work must be arranged in order to ensure that the employee is allowed at least one day off in every week. Where he is required to work in excess of the statutory number of hours, he must be paid overtime for that excess at the following rates:

(a) in the case of overtime work performed on any public holiday or day off, twice his regular rate of wages;
(b) in any other case, one and one-half times his regular rate of wages.

Minimum wages provisions form the subject of Part Three of this Act. The Minister of Labour is empowered to establish a Wages Council for any industry or part of an industry if he thinks that no adequate machinery exists for the effective regulation of wages and conditions of employment, or that it is expedient having regard to the wages existing amongst those employees. Section 9 deals with the appointment and constitution of Wages Councils. The main functions of these councils are to submit proposals for fixing minimum wages and to render advice to the Minister on any matter relating to conditions of employment of specified employees referred to it by the Minister. On receipt of such proposals the Minister will send the proposals to the Governor who may make a wages order giving effect to the proposals. Thereupon the duty to pay the statutory minimum wages falls on the employer and this duty cannot be contracted out. It is an offence to pay wages less than the statutory minimum. Section 14 gives direction as to the computation of wages under the minimum wages order. Where in any industry or part of an industry a minimum wages order is made, the employer is also under a duty to keep records which will show whether or not the provisions of the Act are being complied with. Omission to do so is an offence.

Part four deals with vacations with pay. Every employee is entitled to, at least, one week’s holiday with pay in respect of every completed year of employment, in addition to payment of wages for each public holiday occurring during the vacation. Rules relating to the calculation of vacation pay where the employment is terminated during the course of the year are also specified.

The Fair Labour Standards Act also deals with the administration of the matters discussed above. The Minister of Labour may designate any public officer as the Inspector whose functions will concern the enforcement of the Act or regulations made under it. The duties of this functionary are outlined in sections 27 to 33 and they include the power to inspect and examine all books, payrolls and records of an employer relating to wages, hours of work and other conditions of employment affecting the employees. The Minister is expected to make an annual report on the administration of this Act to the Legislature.

The concept of a code of industrial relations is not new in the Commonwealth Caribbean for in 1956 a Labour Code was prepared for the Government of Barbados through the technical assistance programme...
Similarly, a Fair Labour Code was drafted in Jamaica in 1962 after a tripartite agreement was reached. But like the Barbados Code, the Jamaican Fair Labour Code did not come into operation. The enquiries of the writer reveal that arrangements are being made in both Dominica and Guyana for the compilation of Labour Codes to guide the employment relationship in those countries.

Among the most recent Labour Codes that have been introduced in member-countries of the International Labour Organisation is the United Kingdom Code of Industrial Relations Practice. The United Kingdom Code, compiled in accordance with section 2 of the country's Industrial Relations Act, 1971, was laid before the U.K. Parliament on January 19th, 1972 and came into operation a month after. The Code is not supposed to be a binding legal document but it is intended to give practical guidance to the employers, trade unions and individual employees. It stresses the four cardinal principles of good industrial relations embodied in the Act itself, namely: free conduct of collective bargaining, orderly procedures for settling labour disputes, free association of workers and employers, and freedom and security for workers.

Furthermore, the purport of the Code is to encourage and assist the parties concerned with the day-to-day problems of labour relations to achieve co-operation, the essence of good industrial relations. It emphasises the importance of good human relations based on trust and confidence as essential ingredients of productivity in the industry. One essential feature of the Code is that it applies wherever people are employed, that is to say, in unionised as well as non-unionised employment places. But as Heppel and O'Higgins point out, some of its details may need to be adapted to suit the particular circumstances of, especially, small establishments. In any event, such adaptations must not be contrary to the spirit of the Code.

In a nutshell, the United Kingdom Code deals with the following matters:

(a) The responsibilities of management, trade unions, employers' associations and the individual employees towards a healthy industrial relations atmosphere;

(b) guidelines for the planning and use of manpower, recruitment and selection, training, payment systems, status of employees and their job security and working conditions;
communication and consultation being essential and necessary to promote operational efficiency and mutual understanding, the code outlines under what circumstances communication and consultation must be made;

the rules and procedures to be followed for the purpose of free collective bargaining, the bargaining unit, recognition, collective agreements and the requirement that the employer disclose information relevant to the negotiations in hand;  

the appointment, qualifications, status and functions of the workers' representatives in the industry, facilities and training of such persons are also regulated;

guidelines for the establishment of individual grievance procedures and collective disputes procedures in every establishment; and

disciplinary procedures in every employment undertaking.

The findings of the Henry Enquiry reveal, beyond doubt, the lacunae in the law relating to the relationship of employer-employee in the Commonwealth Caribbean, thus making it absolutely clear and necessary that legislative intervention is urgently needed. In fact, Commonwealth Caribbean countries need to make a fresh start by statutorily regulating their respective laws of employment. The employment circumstances above described—which are perhaps not necessarily peculiar to the Trinidad and Tobago industry for similar practices may well be in operation in various industries in the region—have underscored the need for the introduction of effective measures to curb undesirable practices thereby giving the worker the protection he needs for a continued subsistence and a better standard of life in accordance with the spirit of the constitution. The first step should be: the repeal of the now obsolete Masters and Servants laws, the antiquated Minimum Wages legislation and Wages Councils Ordinances and their replacement with a *Minimum Terms and Conditions of Employment Act* which will include, as part of its provisions, the worker's right to recover for severance or redundancy payments, provide for minimum length of notice to terminate the employment contract and the regulation of these and other matters recommended by the Henry Commission. These provisions will set minimum terms and conditions while the parties will be at liberty to bargain for higher terms. A compilation of labour codes laying down basic principles of good indus-
trial relations and for the guidance of the parties in industry should be undertaken in Commonwealth Caribbean Countries. Although one should not be taken as saying that what is good industrial relations in the Bahamas or the United Kingdom will necessarily be regarded as such in either Trinidad and Tobago or Guyana, it is necessary that if reform of the kind advocated is acceptable, a study of the Bahamas Act and the United Kingdom Code of Industrial Relations Practice will serve as starting point to these ends. In the final analysis, however, any legislation introduced or code compiled must be based on the local industrial relations experience of the particular country.

NOTES

1Henry, Z., _Labour Relations and Industrial Conflict in Commonwealth Caribbean Countries_, Port of Spain, Trinidad, 1972.

2Ibid, p. 240.

3_Trinidad Express_, 6th April, 1972 quoted a statement by an Industrial Relations consultant to the effect that “many of the problems of industrial relations occur because of the attitude of the employers.”

4Fourth Annual Report of the President of the Industrial Court of Trinidad and Tobago, 1969, para. 15.

5The table is that of the writer. The figures are extracted from the Second, Third and Fourth Annual Reports of the President of the Industrial Court. No figures for 1970, 1971 and 1972 were available at the time of writing.

6The genesis of the Commissions of Enquiry reports in connection with the industrial relations practices was the celebrated Moyne Commission Report, 1945 whose recommendation was responsible for the establishment of the present machinery for the settlement of labour disputes and most of the trade union laws of the Caribbean countries. Since then many a Commission of Enquiry has been appointed and has reported the state of industrial relations in various Caribbean industries and sometimes generally. Without attempting to exhaust the list, reference may be made to the following informative sources:

- Guyana: Report of the Advisory Committee in the Sugar Industry of British Guiana, 1965;

  1966—Douglas Report;
  1967—Mordecai Report;

- Trinidad and Tobago: Report on Trade Union Organisation and Industrial Relations, Trinidad, 1947—Dalley Report;
  Waterfront Enquiry Report, 1962—Hyatali Report; and

8This report covers some 284 pages.
12In Paramount Transport Limited v Amalgamated Workers' Union (consolidated actions), Nos. 3 and 5 of 1966.

13Indeed the preamble to the Constitution of Trinidad and Tobago (1962) proclaims that the nation of Trinidad and Tobago is founded, inter alia, upon "respect . . . [for] the principles of social justice and believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity."

14See the Paramount case, note 12.

16This department is now called the Ministry of Labour, Social Security and Co-operatives.
17Cap. 7, No. 2, Laws of Trinidad and Tobago.
18The other members of the Commission were Messrs. Gaston Benjamin, Secretary/Treasurer of the Caribbean Congress of Labour and Shafeek Sultan-Khan, an Industrial Relations Consultant. Mr. Neville Roach, a Labour Officer of the Ministry of Labour served the Commission as Secretary.
19Section 2 of the Commission of Enquiry Ordinance empowers the Governor-General whenever he deems it advisable to appoint one or more Commissioners to enquire into any matter if the Governor-General thinks it necessary for the public welfare.

20Central Tenders Board Ordinance, No. 22 of 1961, as amended by No. 18 of 1965. The Regulations made in accordance with section 35 of this Ordinance were the Central Tenders Board Order, No. 93 of 1965 and Central Tenders Board Regulations No. 137 of 1965 as amended by Nos. 41 of 1967, 44 of 1968 and 139 of 1969.
21The two associations are: The Trinidad and Tobago General Contractors' Association and the Trinidad and Tobago Petty Contractors' Association of Local Government.

22See Chuks Okpaluba, Statutory Regulation of Collective Bargaining in the Caribbean: A Review of the Industrial Relations Act of Trinidad and Tobago.

23In addition to the cases discussed in this article reference may be made to the following decisions of the Industrial Court which involved disputes between contractors and trade unions: George Williams & Co. v Building Construction & Contractor Workers' Union, No. 85 of 1966; Roopchant & Moses v National Union of Govt. and Federated Workers, No. 170 of 1969; Trinidad Lake Asphalt Co. Ltd. v Contractors and General Workers' Trade Union et al., No. 15 of 1969; and Southern Drilling Contractors Ltd. v O.W.T.U., No. 196 of 1967.

24See the industrial agreement between Federation Chemicals Ltd. and the Oilfields Workers' Trade Union reproduced in the Industrial Court judgment No. 5 of 1968.
25Searches to find any minimum wage regulation in accordance with s.2 of the Labour (Minimum Wages) Ordinance of 1935 proved to be a colossal failure. But some wages regulations have been made on the basis of the Wages Councils Ordinance No. 20 of 1949, Cap. 22, No. 16, which was never referred to by the Henry Commission.

26The evidence before the Donovan Commission also showed a marked resentment to unionisation by small employers in the U.K. See Report of Royal Commission on Trade Unions and Employers' Associations 1965-1968, Cmnd. 3623 at paras. 214-224.

27No. 86 of 1966.

28See also Bird of Paradise Inn v Union of Commercial and Industrial Workers, No. 206A of 1967; and Gabriel & Son v Un. of Com. & Ind. W., No. 35 of 1968.

29That case was decided on the basis of section 4 of the now repealed Industrial Stabilization Acts 1965-1967, which provided that a worker shall not be dismissed from his employment or prejudiced in any way just because he is a member of a trade union or that he so intends to become or because he is an official of a trade union. See now the Industrial Relations Act, 1972 section 42. See also the Bahamas Industrial Relations Act s. 42; and the Dominica Trade Disputes (Arbitration & Inquiry) (Amendment) Act, 1967, s. 5. On the whole subject of victimization, dismissals and reinstatement under the Trinidad & Tobago ISA, see the forthcoming article on “Dismissal & Reinstatement: A West Indian Experience” by Chuks Okpaluba and Dale Rubin.


31Ibid, p. 38.

32Ibid, p. 43.

33See the Paramount case, infra.

34The loci classici of this experience is illustrated by the facts of Achaibar Jagdeo v Transport & Industrial Workers' Union, No. 12 of 1968.

35But see now section 2 subsections (1) (i) (iii) and (4) (b) of the Industrial Relations Act discussed, infra.

36This practice as described by the Industrial Court in the Paramount case (infra) goes thus: employees seeking employment would report at the contractor's premises daily as early as 5:45 a.m. to ascertain if they were required for work. If any work were offered, it would be for the day and for a specified wage, if not offered work they would go away without receiving any sort of payment. The amount of work available would depend on the transportation order received by the contractor for the day. Thus the employment relationship was on an ad hoc basis.

37Note 12, supra.

38Ibid, p. 3.

39For the state of unemployment in Trinidad & Tobago referred to, see the Appendix at the end of this article.

40 See e.g. in the National Union of Government Employees v The Permanent Sec. Ministry of Works, No. 5 of 1965; and, Transport and Industrial Workers' Union v Trinidad Transport Enterprise, Ltd., No. 7 of 1965. But note that the Court of Appeal of Trinidad and Tobago held in Trinidad Bakerties, Ltd. v National Union of Foods, Hotels, Beverages, and Allied Workers, and the Attorney Gen. of Trinidad & Tobago (1967) 12 W.I.R. 320, that the Industrial Stabilization Act, 1965, did not confer on the Industrial Court the power to order the reinstatement of a dismissed worker. Then the Act was amended in 1967 (I.S. (Amendment) (No. 2) Act) to give
the Court that power. And see the Court of Appeal’s subsequent interpretation of
the phrase “harsh or oppressive” in Fernandes (Distillers) Ltd. v Transport and
Industrial Workers’ Union (1968) 13 W.I.R. 336. For a full discussion of this aspect
of the subject, see Okpaluba & Rubin, supra.

This unhappy state of affairs has now been remedied by the Industrial Rela-
tions Act, 1972, which in s.2 (1) (x) (ii) defines a worker as including any person
who by trade usage or custom or as a result of any established pattern of employ-
ment or recruitment of labour in any business or industry is usually employed or
usually offers himself for and accepts employment accordingly. The following sub-
section (2) (1) (x) (iv) (A) states that the definition applies even when such
person is refused employment. So too is a person employed under a labour-only
contract (s. 2. (1) (x) (iii)).

42Denbow Report, p. 69. For the various methods adopted by one of the con-
tacting firms, see the Industrial Court case of Trinidad Transport Enterprises Ltd. v
Transport & Industrial Workers’ Union, No. 2 of 1967.

In the Trinidad Transport Enterprises case, ante, the Court found that neither
the drivers nor the loaders employed by a transport contractor received premium rate
for work performed beyond normal hours or on Sundays or Public Holidays, nor did
either receive any payment for time occupied by the vehicles on which they work in
travelling from the contractor’s garage to the premises of the principal for the pur-
pose of loading merchandise to be transported nor were they paid for the time taken
in returning to the garage from the point at which the merchandise is delivered.

44Similar clauses are inserted into collective agreements between trade unions and
principal companies. Such agreements sometimes stipulate that the principal company
would not contract out work normally performed by its employees if it would result
in lay-off or demotion of any of its employees. See the Agreement between Texaco
Trinidad Inc. and the Oilfields Workers’ Trade Union, reproduced at p. 49 of the


43Ibid, p. 64.


48Ibid, pp. 71-72.

49Cf. the United Kingdom Industrial Relations Act, 1971, and see C. G. Heath,
A Guide to the Industrial Relations Act 1971 at p. 59 for a Summary of Unfair
Industrial Practices under the Act.

50Chuks Okpaluba, The Dawn of a New Era in the Caribbean Industrial Rela-

51Cap. 22, No. 4. Laws of Trinidad and Tobago.

52Ibid, s.2.

53Cf. s. 4 of the 1935 Act.

54Henry Commission Report, p. 82.

55Ibid, p. 83.

56Ibid, p. 76.

57A Factory Inspectorate is attached to the Labour Division of the Ministry of
Labour, Social Security and Co-operatives.

There is a "Terms and Conditions of Employment Act, 1959" in the U.K. (now amended by the I.R.A., 1971). There is also the contracts of Employment Act, 1963 (as amended by IRA 1971) which deals with notice of termination of employment contracts.

Barbados repealed its Masters and Servants Act in 1942. Jamaica attempted a similar repeal in 1971 and a substitution with "The Termination of Employment Act," Part II of which was to deal with the making by employers of payments to employees in respect of redundancy. This Bill was never passed.

See D. G. Hall et al., Apprenticeship and Emancipation, reprints of The Extra-Mural Department of U.W.I.

The common law of master and servant is particularly unsatisfactory. For instance there is nothing like unfair dismissal under the common law. Dismissal is either wrongful or lawful however inequitable. There is no remedy of reinstatement or reemployment and no inherent right of the employee to receive redundancy payments unless previously agreed upon by the parties. On this see especially, Batt, Master and Servant; Hepple & O'Higgins, Individual Employment Law and, Cooper, Outlines of Industrial Law.

Severance Payments Act, No. 24 of 1971 as amended by No. 27 of 1972 (Barbados). This Act, with modifications and variations, follows the United Kingdom Redundancy Payments Act, 1965.

National Insurance Act, 1965 (Jamaica); National Insurance and Social Security Act, 1966, as amended by No. 1 of 1971 (Barbados); National Insurance Act, No. 15 of 1969 (Guyana); National Insurance Act, No. 35 of 1971 (Trinidad and Tobago).

See Industrial Relations Act, 1972 (Trinidad and Tobago); Trade Disputes (Arbitration and Settlement) (Amendment) Acts, 1967-71 (Antigua); Trade Disputes (Arbitration and Enquiry) (Amendment) Acts 1967-69 (Dominica); Industrial Relations Act, 1970 (Bahamas).

Recommendation 119 of 1963.

Draft Labour Code for Barbados and Jamaica, infra.


The Bahamas Employers' Confederation strongly opposed the Fair Labour Standards Bill during its journey through Parliament. They argued that this type of legislation is usually introduced in areas where large-scale unemployment has resulted in exploitation or "sweated labour" by unscrupulous employers. And that by no stretch of imagination could these conditions be said to exist in the Bahamas. It was said that certain provisions of the Act will affect seriously the economic structure of certain industries which work on a 24-hour basis, and such industries were said to be the hotel and the construction. Consequently to the repeated representations which the Confederation made to the Minister of Labour and Order (The Fair Labour Standards (Exceptions) Order 1971) was made exempting certain categories of persons employed in certain industries and certain grades of employees. See Bahamas Employers Review No. 34, May 14, 1971.

Ibid, s. 8. See also the Wages Councils Act, 1959 (UK) which deals with the establishment of wages councils (ss. 1-10), wages regulation orders (ss. 11-21) and other supplementary matters (ss. 22-27).

Section 10.

Section 11.

Section 12 (1).

Section 12 (2).
UNFAIR EMPLOYMENT PRACTICES

75Section 16.

76Section 20.

77Section 23.

78Section 35.


81See e.g., Ghana Labour Decree, 1970; and Mexico Labour Code, 1970. These codes are reproduced in the I.L.O. Legislative Series of 1970. These codes are fashioned, as well as the United Kingdom Code, on various I.L.O. recommendations on employment practices and relations within the undertaking. Note for example, Recommendation No. 129 concerning communication between management and workers within the undertaking. This recommendation was adopted in 1967;

No. 130 adopted in 1967 concerning the examination of grievances within the undertaking with a view to their settlement; and

No. 143 adopted 1971 concerning protection and facilities to be afforded to worker's representatives.

82U.K. Industrial Relations Act, 1971, s. 4. Note that the Code could be tendered in evidence in proceedings before the Industrial Court and the Industrial Tribunals.


84Under section 8 (2) of the Industrial Relations Act of Trinidad and Tobago, the Industrial Court in dealing with any matter before it may summon any person who in the opinion of the Court is able to supply such information as it considers relevant to the proceedings before it. In addition, the Court may require the Board of Inland Revenue or a Commissioner thereof or any other public officer to produce or make available any information which the Court may consider necessary. But nowhere in the Act is there provision relating to the disclosure of information by employers of trade unions during negotiation.
APPENDIX

The incidence of unemployment in Trinidad and Tobago between the period December, 1966 and June, 1971 can be illustrated by the following table:

<table>
<thead>
<tr>
<th>Period</th>
<th>Total Labour Force</th>
<th>Total Unemployed</th>
<th>Unemployed as a % of Labour Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.12.66</td>
<td>350,600</td>
<td>50,800</td>
<td>14</td>
</tr>
<tr>
<td>30.6.67</td>
<td>368,200</td>
<td>51,200</td>
<td>14</td>
</tr>
<tr>
<td>31.12.67</td>
<td>363,700</td>
<td>56,200</td>
<td>15</td>
</tr>
<tr>
<td>30.6.68</td>
<td>363,800</td>
<td>52,700</td>
<td>14</td>
</tr>
<tr>
<td>31.12.68</td>
<td>360,200</td>
<td>55,400</td>
<td>15</td>
</tr>
<tr>
<td>30.6.69</td>
<td>368,400</td>
<td>50,100</td>
<td>14</td>
</tr>
<tr>
<td>31.12.69</td>
<td>360,900</td>
<td>46,000</td>
<td>13</td>
</tr>
<tr>
<td>30.6.70</td>
<td>366,200</td>
<td>45,800</td>
<td>12</td>
</tr>
<tr>
<td>31.12.70</td>
<td>360,900</td>
<td>47,000</td>
<td>13</td>
</tr>
<tr>
<td>30.6.71</td>
<td>367,800</td>
<td>46,400</td>
<td>13</td>
</tr>
</tbody>
</table>

Source: Central Statistical Office of Trinidad & Tobago