

THE INDUSTRIAL RELATIONS ACT, 2000

Date of commencement: 25th August, 2000.

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Arrangement of sections

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An Act to provide for the collective negotiation of terms and conditions of employment and for the provision of dispute resolution mechanisms and for matters incidental thereto.

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Industrial Relations Act, 2000.

Interpretation.

2. In this Act, unless the context otherwise requires —

“arbitration” means the process of settling a dispute provided under Part VIII;

“arbitrator” means a person who arbitrates under this Act;

“auditor” means an auditor registered and practising as such under the Accountants Act, 1985 or such other applicable law;

“automatically unfair dismissal” means a dismissal where the reason for the dismissal is —

- (a) that the employee participated in or supported, or indicated an intention to participate in or support, a strike or protest action that complies with the provisions of Part VIII;
- (b) that the employee refused, or indicated an intention to refuse, to do any work normally done by an employee who at the time was taking part in a strike that complies with the provisions of Part VIII or was locked out, unless that work is necessary to prevent an actual danger to life, personal safety or health;
- (c) to compel the employee to accept a demand in respect of any matter of mutual interest between the employer and employee;
- (d) that the employee took action, or indicated an intention to take action, against the employer by —
 - (i) exercising any right conferred by this Act; or
 - (ii) participating in any proceedings in terms of this Act;
- (e) the employee’s pregnancy, intended pregnancy, or any reason related to her pregnancy;
- (f) that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility;
- (g) Despite subsection (f) a dismissal may be fair if the reason for dismissal is based on an inherent requirement of the particular job;

“certificate of registration” means a certificate issued under section 27;

“collective agreement” means an agreement in writing covering terms and conditions of employment and procedures for the settlement of disputes and grievances, concluded by a Joint Negotiation Council, or by an employer, a group of employers, or an employers’ association on the one hand and a trade union or staff association on the other hand;

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- “collective employee representative” means a trade union or staff association which collectively represents employees or categories of employees in a particular industry or undertaking or which has been recognized as such under section 42;
- “collective employer representative” means an employers’ association which collectively represents employers in the industry or area;
- “collective representative” means collective employee representative or collective employer representative as the context may require;
- “Commission” means the Conciliation, Mediation and Arbitration Commission established under Part VIII;
- “Commissioner” means a person recruited or appointed under section 66;
- “Commissioner of Labour” means any person appointed Commissioner of Labour or any other person acting in the capacity of the Commissioner of Labour;
- “company” means a body corporate and includes a partnership;
- “conciliation” means the process of settling disputes under Part VIII;
- “conciliating officer” means an officer or person conciliating between two or more parties in a dispute under this Act whether from the office of the Commissioner of Labour or the Commission;
- “Court” means the Industrial Court established under section 6;
- “dispute” includes a grievance, a grievance over a practice, trade dispute and means any dispute over the —
- (a) entitlement of any person or group of persons to any benefit under an existing collective agreement, Joint Negotiation Council agreements or Works Council agreements;
 - (b) existence or non-existence of a collective agreement or Works Council agreement and Joint Negotiation Council agreement;
 - (c) disciplinary action, dismissal, employment, suspension from employment or re-engagement or reinstatement of any person or group of persons;
 - (d) recognition or non-recognition of an organization seeking to represent employees in the determination of their terms and conditions of employment;
 - (e) application or the interpretation of any law relating to employment; or
 - (f) terms and conditions of employment of any employee or the physical conditions under which such employee may be required to work;
- “employee” means a person, whether or not the person is an employee at common law, who works for pay or other remuneration under a contract of service or under any other arrangement involving control by, or sustained dependence for the provision of work upon, another person;
- “employer” means a person who employs another person as an employee or any person so acting on behalf of an employer;
- “employers’ association” means an association of employers which seeks to provide collective representation for employers in the negotiation and regulation of relations between employers and employees or between employers and employers;

“essential service” means —

- (a) a service, whose interruption would endanger the life, personal safety or health of the whole or part of the population;
- (b) a service determined as such by the Essential Services Committee which service is not inconsistent with a service referred to in paragraph (a);

“Essential Services Committee” means the Committee established under section 92;

“federation” means a body registered in terms of this Act which is wholly comprised of employers and/or a combination of employers’ associations, trade unions or staff associations as the case may be;

“immediate family” means, in relation to a person, such person’s father, mother, grandfather, grandmother, stepmother, stepfather, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, wife, husband, common law wife or common law husband;

“industry” means a sector of economic activity where the employers provide a similar service, or are engaged in the production, manufacture, processing, purchase or sale of a similar product or similar products;

“Industrial Court of Appeal” means the Industrial Court of Appeal established under section 20;

“Joint Negotiations Council” means a body constituted for an industry under section 45 and having the duty of negotiating terms and conditions of employment for all employees in that industry;

“Labour Advisory Board” means the Board established in terms of section 23;

“lockout” means a total or partial refusal by an employer or group of employers to allow his or their employees to work, if such refusal is done with a view to inducing compliance with any demand or with a view to inducing the abandonment or modification of any demand;

“mediation” means the process of settling a dispute through mediation as provided for in section 85;

“mediator” means a person who mediates in a dispute between two or more parties in a dispute under this Act;

“Minimum maintenance service” means a service whose interruption or cessation shall or is likely to result in a material physical destruction of the working area, plant or machinery;

“Minister” means the Minister responsible for Labour;

“national interest” means a matter which shall have or is likely to have the effect of endangering the life, health or personal safety of the whole or part of the population;

“office” means an official position or post in a trade union, staff association, employers’ association or federation as the case may be;

“officer” means a person who holds an office in a federation, a trade union, staff association, employers’ association and includes a member of a committee of a trade union, staff association or employers’ association, federation or a person employed by such a body in a full time or part time capacity;

- “organization” means a trade union, staff association or employers’ association in good standing as the context may require;
- “peaceful protest action” means the partial or complete concerted refusal to work, or the retardation of work, for the purpose of promoting or defending the socio-economic interests of workers, but not for a purpose referred to in the definition of strike;
- “President” means the President of the Court;
- “public policy and public administration” refers to matters of public interest but shall exclude matters of a purely political nature;
- “re-engagement” means an action or situation whereby the employee is engaged or re-engaged by the employer in the same or comparable or identical work to that which the employee was engaged in before the termination or purported termination of the employee’s work or service or employment, or such other reasonably suitable work or employment, from such date and on such terms of employment as may be agreed upon by mutual consent or by order of the Court or of an arbitrator;
- “recognition” means recognition as collective employee representative as provided by section 42;
- “Registrar” means the Registrar of the Industrial Court appointed in terms of section 7;
- “reinstatement” means an action or situation whereby an employee’s services or employment are treated as if the services or employment have never been terminated, including the payment of wages, salary and any remuneration payable by virtue of the services or employment;
- “repealed Act” means the Industrial Relations Act No. 1 of 1996;
- “remuneration” means wages or salary and any additional payments payable in cash or in kind directly or indirectly by the employer in connection with the employment of an employee;
- “sector” means an area of economic activity;
- “socio-economic interest” includes solutions to economic and social policy questions and problems which are of direct concern to the workers but shall not include matters of a purely political nature;
- “staff association” means any combination of staff, the principal purpose of which is the regulation of relations between staff and an employer or employers;
- “staff” means an employee who —
- (a) has authority on behalf of the employer to employ, transfer, suspend, lay off, recall, promote, dismiss, reward, discipline other employees or authorize such action, when the exercise thereof is not solely of a routine or clerical nature, but requires the use of independent judgment;
 - (b) participates in the making of general company policy; or
 - (c) works in a capacity which requires the employee to have full knowledge of the financial position of the employer; or
 - (d) has free personal access to other confidential information substantially affecting the conduct of the business of the employer;

“strike” means a complete or partial stoppage of work or slow down of work carried out in concert by two or more employees or any other concerted action on their part designed to restrict their output of work against their employer, if such action is done with a view to inducing compliance with any demand or with a view to inducing the abandonment or modification of any demand concerned with the employer-employee relationship;

“trade union” means a combination of employees, the principal purpose of which is the regulation of relations between employees and employers;

“undertaking” means —

- (a) mines, quarries or other works for the extraction of minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building and civil engineering work, including constructional repair, maintenance, alteration and demolition work;
- (d) undertakings engaged in the transport of passengers or goods by road, rail or air including the handling of goods at warehouses or airports;
- (e) any establishment or office, including establishments engaged wholly or mainly in the sale, purchase, distribution, insurance, negotiation, loan or administration of goods or services of any kind;
- (f) any establishment or administrative service in which the persons employed are mainly engaged in clerical work;
- (g) any newspaper undertaking;
- (h) any establishment for the treatment or care of children or aged, destitute, infirm, mentally unfit or sick persons;
- (i) any broadcasting, postal or telecommunication service or establishment for the production of cinematographic films;
- (j) any boarding house, cafe, club, hotel, restaurant, or other establishment for public refreshment or public entertainment;
- (k) any undertaking employing persons engaged in —
 - (i) the clearing, felling or stripping of trees, or the construction of roads, bridges or tunnels;
 - (ii) the cultivation of land and the use of land for the purpose of husbandry, horticulture, fruit growing, seed growing, dairy farming, livestock or poultry keeping, or breeding, grazing of livestock and the preparation of food for livestock, but shall not include —
 - (aa) any undertaking, other than an undertaking in which any harmful or dangerous trade or occupation is carried on, in which only members of the immediate family of the proprietors are employed, or
 - (bb) domestic service in a private house;

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“Works Council” means a body established under section 52;

“Works Council agreement” means an agreement reached by a works council under the provisions of Part VI;

“Workplace Forum” means a committee comprising representatives of an employer and employees established at a workplace for the purpose of facilitating consultations and the exchange of information on work related issues and for promoting the participation of employees in decision making.

Application.

3. This Act shall apply to employment by or under the Government in the same way and to the same extent as if the Government were a private person but shall not apply to —

- (a) any person serving the Umbutfo Swaziland Defence Force established by the Umbutfo Defence Force Order, 1977;
- (b) the Royal Swaziland Police Force; and
- (c) His Majesty’s Correctional Services established by Prison Act No. 40 of 1964.

Purpose.

4. (1) The purpose and objective of this Act is to —

- (a) promote harmonious industrial relations;
- (b) promote fairness and equity in labour relations;
- (c) promote freedom of association and expression in labour relations;
- (d) provide mechanisms and procedures for speedy resolution of conflicts in labour relations;
- (e) protect the right to collective bargaining;
- (f) provide a healthy and legally sound environment for the creation of smart partnerships between the government, labour and capital;
- (g) promote and create employment and investment;
- (h) stimulate economic growth, development and competitiveness;
- (i) stimulate a self regulatory system of industrial and labour relations and self governance;
- (j) ensure adherence to international labour standards; and
- (k) provide a friendly environment for both small and big business development.

(2) Any person applying or interpreting any provision of this shall take into account and give meaning and effect to the purposes and objectives referred to in subsection (1) and to the other provisions of this Act.

Power of Minister to exempt.

5. (1) Subject to subsection (2), the Minister after consulting the Labour Advisory Board and having earlier advised Parliament, may by notice published in the Gazette exempt any person or public authority or class of persons or a class of public authorities from the operation of all or any of the provisions of this Act or any regulation or rule made thereunder.

(2) The Minister shall not make any exemption incompatible with any international labour Convention to which Swaziland is a party.

PART II

THE ADMINISTRATION OF THE INDUSTRIAL COURT

Establishment and composition of Industrial Court.

6. (1) An Industrial Court is hereby established with all the powers and rights set out in this Act or any other law, for the furtherance, securing and maintenance of good industrial or labour relations and employment conditions in Swaziland.

(2) The Court shall consist of —

(a) a Judge, who shall be called the President;

(b) as many judges as the President may consider necessary; and

(c) two or more members or their alternates —

(i) who possess special skills and knowledge in industrial relations matters, and

(ii) who are nominated and appointed in terms of subsection (4).

(3) The President and Judges shall be qualified to be appointed judges of the High Court, and shall be appointed in the same manner as judges of the High Court.

(4) The nominated members or alternate members referred to in subsection (2)(c) shall, prior to appointment, be chosen by the President from a panel of six names nominated by employers' federation and from a panel of six names nominated by employees' federation.

(5) The President and any Judge of the Court shall not enter upon the duties of office unless such President or Judge of the Court has taken and subscribed the oath of allegiance for the due execution of office which oath shall be as near as possible to the oath set out in Schedule 2 to the Constitution of Swaziland, 1968.

(6) The Court shall be constituted before a judge and two members, one member nominated by the employees' federations and the other member nominated by the employers' federation.

(7) Notwithstanding subsection (6), a judge alone may hear and decide on a matter before the court if the parties to the dispute so agree.

(8) Nominated members and alternate members shall be —

(a) appointed by the President on such terms and conditions as approved by the Minister and shall hold office for a term of three years after which they may be eligible for re-nomination; and

(b) entitled to such fees as may be prescribed by regulation.

(9) Notwithstanding subsection (8), a nominated member or alternate member may be appointed for a remaining term of office left vacant by an appointed member or alternate member as the case may be.

(10) The Registrar shall at least three months before the expiration of the term of office of a member or an alternate member invite the nominating federations to either review or replace their nominees.

(11) The employer of the member referred to in subsection (8) shall permit such member during working hours to perform any of the duties of such a member, and the Court may make such order as it deems necessary to ensure compliance with this subsection.

Recruitment and Appointment of the Registrar.

7. (1) There shall be appointed a Registrar in accordance with the law relating to the recruitment and appointment of judicial officers.

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(2) The Registrar shall be a senior official and appointed by reason of that person's knowledge of the law relating to labour and of administration and shall be in charge of the administrative functions of the Industrial Court and the Industrial Court of Appeal.

(3) The Registrar shall for all purposes be the Registrar of the Industrial Court of Appeal.

(4) The Registrar shall be assisted by —

(a) one or more deputy Registrars; and

(b) so many other officers as the administration of justice requires.

(5) The officers, under the supervision of the Registrar, shall perform the administrative functions of the Court.

(6) A deputy Registrar may perform any of the functions of the Registrar that have been delegated generally or specifically by the Registrar.

(7) A deputy Registrar, or where there is more than one, the most senior, shall act as the Registrar whenever —

(a) the Registrar is absent from the country, duty, or for any reason is temporarily unable to perform the functions of the office; or

(b) the office is vacant.

Jurisdiction.

8. (1) The Court shall, subject to sections 17 and 65, have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this, the Employment Act, the Workmen's Compensation Act, or any other legislation which extends jurisdiction to the Court, or in respect of any matter which may arise at common law between an employer and employee in the course of employment or between an employer or employers' association and a trade union, or staff association or between an employees' association, a trade union, a staff association, a federation and a member thereof.

(2) (a) An application, claim or complaint may be lodged with the court by or against an employee, an employer, a trade union, staff association, an employers' association, an employees' association, a federation, the Commissioner of Labour or the Minister;

(b) The Court may consolidate claims for the purpose of hearing witnesses, as appropriate.

(3) In the discharge of its functions under this Act, the Court shall have all the powers of the High Court, including the power to grant injunctive relief.

(4) In deciding a matter, the Court may make any other order it deems reasonable which will promote the purpose and objects of this Act.

(5) Any decision or order by the Court shall have the same force and effect as a judgment of the High Court and a certificate signed by the Registrar shall be conclusive evidence of the existence of such decision or order.

(6) Any matter of law arising for decision at a sitting of the Court and any question as to whether a matter for decision is a matter of law or a matter of fact shall be decided by the presiding judge of the Court provided that on all other issues, the decision of the majority of the members shall be the decision of the Court.

(7) In the exercise of its powers under this, the Court shall take into consideration any guidelines relating to wage and salary levels and other terms and conditions of employment that may from time to time be prevailing in Government and other related or relevant industries or enterprises.

Court practice and procedure.

9. The President, after consulting the Attorney-General and the Chief Justice shall, by notice in the Gazette, make rules, including rules in relation to the service of any court process, to govern the Court's practice and procedure.

Representation of the parties.

10. Subject to any rules made under section 9, any party to any proceedings brought under this Act before the Court may represent itself or be represented by a legal practitioner or any other person authorized by such party.

Evidence on technical irregularities.

11. (1) The Court shall not be strictly bound by the rules of evidence or procedure which apply in civil proceedings and may disregard any technical irregularity which does not or is not likely to result in a miscarriage of justice.

(2) Without restricting the generality of subsection (1), the Court may admit as *prima facie* evidence a report filed under this Act, or a written report prepared by the office of the Commissioner of Labour or the Commission.

Power of Court to remit matters to parties. order parties to attend. etc.

12. (1) Where in the Court's opinion the points at issue in any matter before it are not clearly defined to allow the matter to be heard or determined, the Court may remit the matter to the parties, with such directions and advice as it may deem appropriate.

(2) For the purpose of considering any matter before it, the Court may require a person to —

- (a) furnish, in writing or otherwise, such particulars as the Court may require in relation to any matter before it;
- (b) attend before it;
- (c) give evidence on oath or affirmation;
- (d) produce any relevant document.

(3) A person who, without reasonable cause, fails to comply with an order given under subsection (2), commits an offence.

(4) Any person who —

- (a) furnishes information, provides documents or particulars; or
- (b) gives evidence which he or she knows or has reasonable cause to believe is false or misleading;

commits an offence and shall, upon conviction, be liable to such penalties prescribed by this Act or to such penalties as the Court may determine.

(5) The witness fees and any rules laid down by the High Court in connection with such fees payable to any person subpoenaed to give evidence in a criminal case before the High Court shall, with the necessary modifications, apply to any person ordered to attend the Court in terms of subsection (2)(b).

Costs.

13. (1) The Court may make an order for payment of costs, according to the requirements of the law and fairness and in so doing, the Court may take into account the fact that a party acted frivolously, vexatiously or with deliberate delay bringing or defending a proceeding.

(2) Where the Court awards costs under this section, the Court may use the tariff of costs laid down under the Rules of the High Court with such modifications as the Court pleases or it may award any costs which the Court believes are just.

Enforcement of Court orders.

14. An order of the Court —

- (a) made under this Act and directing the payment of money or the delivery of any property shall be enforceable by execution in the same manner as an order of the High Court.
- (b) directing the performance or non-performance of any Act shall be enforceable by contempt proceedings in the Court in the same manner as an order of the High Court.

Fine may be ordered to be paid to persons suffering loss.

15. If the Court imposes a fine under this Act, and if the Court is satisfied that any person, federation or organization has suffered monetary loss as a result of the breach which led to the fine, the Court may order the whole or any part of the fine to be paid to that person, federation or organization.

Remedial powers of the Court in cases of dismissal, discipline or other unlawful disadvantage.

16. (1) If the Court finds that a dismissal is unfair, the Court may —

- (a) order the employer to reinstate the employee from any date not earlier than the date of dismissal; or
- (b) order the employer to re-engage the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or
- (c) order the employer to pay compensation to the employee.

(2) The Court shall require the employer to reinstate or re-engage the employee unless —

- (a) the employee does not wish to be reinstated or re-engaged;
- (b) the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;
- (c) it is not reasonably practicable for the employer to re-instate or re-engage the employee; or
- (d) the dismissal is unfair only because the employer did not follow a fair procedure.

(3) Where the Court finds that the dismissal was automatically unfair, the Court shall, in deciding which remedy to award, first consider the possibility of making an award of re-instatement.

(4) If a dismissal is unfair only because the employer did not follow a fair procedure, compensation payable may be varied as the court deems just and equitable and be calculated at the employee's rate of remuneration on the date of dismissal.

(5) Compensation may however not be awarded in respect of any unreasonable period of delay that was caused by the employee in initiating or prosecuting a claim.

(6) The compensation awarded to an employee whose dismissal is found to be unfair because the employer did not prove that the reason for dismissal was a fair reason related to the employee's conduct, capacity or based on the employer's operational requirements, must be just and equitable in all the circumstances, and not more than the equivalent of 12 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

(7) The compensation awarded to an employee whose dismissal is automatically unfair must be just and equitable in all the circumstances, but not more than the equivalent of twenty-four (24) months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

(8) Where the Court, in settling any dispute or grievance, finds that the employee has been disciplined or otherwise disadvantaged or prejudiced contrary to a registered collective agreement or any other law relating to employment, the Court shall make an order granting such remedy as it may deem just.

(9) Compensation awarded under this section is in addition to, and not in substitution for, any severance allowance or other payment payable to an employee under any law, including any payment to which an employee is entitled under his or her contract of employment or an applicable collective agreement.

Extension of remedial powers of the Court.

17. In hearing and determining any matter of dispute, an arbitrator shall have all the remedial powers of the Court referred to in section 16.

Housing and compensation.

18. (1) Where an employee's normal place of residence is provided by the employer, or is otherwise associated with the employment, an employee and the employee's family shall not be compelled to leave such residence until one calendar month from the day of the termination has elapsed.

(2) Where the Court or arbitrator awards compensation under section 16 to an employee covered by subsection (1) and whose services have been terminated, such award shall include compensation for loss of residence.

(3) Where an employee fails or refuses to leave the residence as stipulated in subsection (1), the employer shall be entitled to refer the matter for arbitration or adjudication and apply for compensation.

Right of appeal or review.

19. (1) There shall be a right of appeal against the decision of the Court on a question of law to the Industrial Court of Appeal.

(2) The Industrial Court of Appeal, in considering an appeal under this section, shall have regard to the fact that the Court is not strictly bound by the rules of evidence or procedure which apply in civil proceedings.

(3) An appeal against the decision of the Court to the Industrial Court of Appeal shall be lodged within three (3) months of the date of the decision.

(4) The noting of an appeal under subsection (1), shall not stay the execution of the Court's order unless the Court on application, directs otherwise.

(5) A decision or order of the Court or arbitrator shall, at the request of any interested party, be subject to review by the High Court on grounds permissible at common law.

Establishment and composition of the Industrial Court of Appeal.

20. (1) There is established an Industrial Court of Appeal which shall have the same powers and functions as the Court of Appeal but shall only deal with appeals from the Industrial Court.

(2) The Industrial Court of Appeal shall consist of a Judge President and two Justices of Appeal, all of whom shall have the same qualifications as judges of the Court of Appeal and shall be appointed in the same manner as the Judges of the Court of Appeal.

(3) The tenure of office of the Judge President and the Justices of Appeal of the Industrial Court of Appeal shall be similar to the tenure of the Judge President and Justices of Appeal of the Court of Appeal.

(4) The Judge President of the Industrial Court of Appeal and any Justice of Appeal shall not enter upon the duties of office unless such President or Justice has taken and subscribed to the oath of allegiance for the due execution of office which oath shall be as near as possible to the oath set out in Schedule 2 to the Constitution of Swaziland, 1968.

Jurisdiction of the Industrial Court of Appeal.

21. (1) Subject to section 19(1), the Industrial Court of Appeal shall have power to hear and determine any appeal from the Industrial Court.

(2) The Industrial Court of Appeal shall where possible, endeavour to determine an appeal referred to in subsection (1) within three (3) months from the date on which it was noted.

(3) After hearing an appeal, the Industrial Court of Appeal may confirm, amend or set aside the decision or order against which the appeal has been noted or make any other decision or order including an order as to costs, according to law and fairness.

(4) The decision of the majority of the judges hearing an appeal shall be the decision of the Court and such decision shall be final.

Rules and Procedure of the Industrial Court of Appeal.

22. The Judge President of the Industrial Court of Appeal in consultation with the Chief Justice and the Attorney-General shall, by notice in the Gazette, make rules to govern the court's practice and procedure.

PART III

LABOUR ADVISORY BOARD

Establishment and composition of the Labour Advisory Board.

23. (1) There is hereby established a Labour Advisory Board which shall consist of the following persons:

- (a) the Commissioner of Labour who shall be the chairperson and in the absence of the Commissioner of Labour, the Deputy Commissioner of Labour or one of the Vice Chairpersons shall act as Chairperson;

- (b) four members or their alternates who shall represent the interests of employees one of whom shall be a Vice Chairperson and shall be appointed by the Minister from a panel of names submitted by the employees' federations;
- (c) four members or their alternates who shall represent the interests of employers one of whom shall be a Vice Chairperson and shall be appointed by the Minister from a panel of names submitted by the employer's federation; and
- (d) five senior Government officials or their alternates including the chairperson appointed by the Minister.

(2) There shall be a Secretary to the Board who shall be designated from the Department of Labour by the Commissioner of Labour.

(3) The members of the Board shall be appointed by the Minister by notice in the Gazette for such period, not exceeding three years, and on such terms and conditions as the Minister shall determine and shall be eligible for reappointment in accordance with the procedure specified in subsection (1)(b), (c) or (d).

(4) The Minister may terminate the appointment of a member under the following circumstances:

- (a) the member's physical or mental incapacity;
- (b) due to the member's absence, from three consecutive meetings of the Board without notifying the chairperson;
- (c) a recommendation by the organisation that nominated the member that one of their nominees should be replaced;
- (d) in the case of a Government representative, at the instance of the Government.

(5) A member of the Board may, at any time resign from the Board by giving one month's notice in writing to the Minister.

(6) Where the Minister terminates the appointment of a member of the Board in terms of subsection (4) or a member resigns, the Minister shall appoint a person to replace that member in accordance with subsections (1) and (3).

(7) The employer of a person who is a member of the Board shall release that person from work to attend meetings of the Board and the Court may make such order as it deems necessary to ensure compliance with this section.

(8) Members of the Board, including the Secretary, shall receive such fees as may be established by the Minister by notice in the Gazette.

Duties of the Board.

24. (1) The duties of the Board shall be to consider and advise the Minister on any matter affecting employment initiative and without prejudice to the generality of the foregoing, such matters shall include —

- (a) proposals for any new legislation relating to employment or industrial relations;
- (b) amendments to this Act or any other law relating to employment or industrial relations, including the penalties for any offences contained therein;
- (c) proposed action in regard to:
 - (i) agenda items or texts to be discussed by International Labour Conference;

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- (ii) the submission of international conventions or recommendations to the authorities empowered to enact legislation;
- (iii) measures to provide for the implementation or recommendations or ratification of international labour conventions;
- (iv) questions arising out of reports submitted under articles 19 and 22 of the Constitution of the International Labour Organization;
- (v) the denunciation of ratified international labour conventions;
- (vi) the monitoring of implementation of occupational health and safety standards.

(2) The Minister shall consult the Board on all proposed new legislation or amendment to any legislation before such proposed legislation referred to in subsection (1) or amendment is brought before Parliament.

(3) The Board shall —

- (a) receive notice in terms of section 40;
- (b) in consultation with the Commission, set out rules of procedure for the Commission;
- (c) have power to set up subcommittees.

Meetings of the Board.

25. (1) A quorum for the Board shall be —

- (a) the Chairperson who shall only have a casting vote if that Chairperson is the Commissioner of Labour or the Deputy Commissioner of Labour;
- (b) two of the members representing employees' interests or their alternates;
- (c) two of the members representing employers' interests or their alternates;
- (d) two of the members representing the Government or their alternates.

(2) In the absence of an agreement, the Board shall carry out its decisions by the vote of the majority: Provided that in the case of the Government representatives, each one of them shall carry 2 votes.

(3) The Board shall have the power to co-opt other persons as members for any particular purpose approved by the Minister and such persons shall have all the rights and privileges accorded to Board members except the right to vote.

(4) The Board shall meet —

- (a) at the initiative of the Chairperson of the Board at least four times in a calendar year;
- (b) upon the petition of any six members and within ten working days from receipt of the petition by the Secretary.

(5) Subject to this section, the Board shall regulate its own procedure.

PART IV

EMPLOYEE, STAFF AND EMPLOYER ORGANIZATIONS, FEDERATIONS AND
INTERNATIONAL ORGANIZATIONS

Qualification for registration.

26. (1) An organization shall subject to section 34, prepare and adopt a written constitution within three months of its formation, which shall be submitted to the Commissioner of Labour for registration.

(2) An organization of employers shall be deemed to have been formed on the date on which two or more employers agree in writing to form such organization.

(3) An organization of employees shall be deemed to have been formed on the date on which six or more employees agree in writing to form such organization.

Registration of organizations.

27. (1) Any organization seeking registration shall apply by submitting to the Commissioner of Labour —

- (a) a prescribed form that has been properly completed;
- (b) a copy of its constitution; and
- (c) any other information that may assist the Commissioner of Labour to determine whether or not the organization meets the requirements for registration.

(2) The Commissioner of Labour may require further information in support of the application.

(3) The Commissioner of Labour —

- (a) shall consider the application and any further information provided by the applicant; and
- (b) if satisfied that the applicant meets the requirements for registration, shall register the applicant by entering the applicant's name in the register of organizations.

(4) Where the Commissioner of Labour is not satisfied that the applicant meets the requirements for registration, the Commissioner of Labour shall send the applicant a written notice of the decision and reasons for the decision and in that notice, shall inform the applicant that it has thirty days from the date of the notice to meet those requirements.

(5) If, within that thirty (30) day period, the applicant meets the requirements for registration, the Commissioner of Labour shall register the applicant by entering the applicant's name in the appropriate register.

(6) If, within the thirty day period or any reasonable period thereafter, an applicant has attempted to meet the requirements for registration but the Commissioner of Labour concludes that the applicant has failed to do so, the Commissioner of Labour shall —

- (a) refuse to register the applicant; and
- (b) notify the applicant in writing of that decision.

(7) After registering the applicant, the Commissioner of Labour shall —

- (a) issue a certificate of registration in the applicant's name; and
- (b) send the certificate and a certified copy of the registered constitution to the applicant.

(8) Any person who is aggrieved by the decision of the Commissioner of Labour under this section may make an application to the Court for the review of that decision.

Effect of registration of organizations.

28. (1) A certificate of registration is sufficient proof that a registered organization is a body corporate.

(2) On registration, no civil proceedings except those expressly allowed by this Act may be brought against an organization or against any officer, representative or member thereof, in respect of any *bona fide* act done by or on behalf of such an organization or in furtherance or purported furtherance of the interests of its members or of any one whose interests are substantially similar to those of its members.

(3) Subsection (2) shall not be construed to exempt an organization or any of its officers, representatives or members from contractual liability for goods or services, from obligations incurred in respect of property, from any civil liability for any criminal, malicious, negligent or omission.

(4) Service of any document directed to a registered organization at the address most recently provided to the Commissioner of Labour shall be for all purpose service of that document on that organization.

Constitutions.

29. (1) The constitution of an organization shall include the following:

- (a) the name of the organization and the undertaking or industry or trade in which its activities, on behalf of its members, will be carried on;
- (b) the offices in the organization among which shall be the offices of Chairperson, Secretary and Treasurer;
- (c) provision for an election by secret ballot to all offices at least once every four years, and for the naming of a temporary replacement if an office holder is disqualified or incapacitated from holding office;
- (d) provision for a general meeting open to all members at least once a year and for the giving of at least twenty-one days' notice of that meeting to all members:

Provided that an extra-ordinary general meeting may be called giving at least 7 days' notice of that meeting to all members;

- (e) the number of terms a member is eligible for re-election into office;
- (f) a provision that any member may propose a resolution or question an officer at a general meeting;
- (g) a provision that —
 - (i) the general meeting shall be the forum for deciding the policies of the organization and for reviewing the officers' conduct and the organization's affairs;
 - (ii) the organization's officers and representatives are to be bound by decisions of a general meeting;
 - (iii) a general meeting may authorize a Committee of its members to on its behalf on all or any of the matters referred to in this paragraph for a specific period;
- (h) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses his good financial standing;

- (i) provision that subject to the terms of this Act and to the constitution of the organization, only a fully paid up member may vote in the election of officers, nominate a candidate for any office, be nominated for, or be elected to any office, or express views on candidates and other issues;
- (j) the grounds on which an officer or member may be suspended or expelled from office or from membership, each ground being specific;
- (k) the procedure for suspension or expulsion from office or from membership, including provision that the affected officer or member be fully informed in writing of the allegations against him, that the member shall have a reasonable opportunity to respond to those allegations; and that the member shall have a right of appeal to a special or general meeting of the organization;
- (l) provision for the keeping of full and accurate accounts by the treasurer or other appropriate officer, for the annual audit of those accounts by a competent auditor appointed by the organization who shall not be a member of that organization, and for the availability to all members of a fully audited annual statement of account;
- (m) provision for the banking and investment of the organization's funds;
- (n) provision for the paying out of the organization's funds; including the authority to sign cheques;
- (o) provision for terms and conditions of service including the payment of the expenses;
- (p) the conditions under which a member may become entitled to any financial benefit provided by the organization;
- (q) provision for amending the constitution;
- (r) the duration of its financial year;
- (s) provision for the appointment of trustees, if any;
- (t) the inspection of the register of members and other books of the organization by any member;
- (u) provision for informing members of the progress and result of any negotiations entered into by the organization aimed at the conclusion, alteration, amendment or abandonment of any collective agreement, such other agreements or other matters or issues to which the organization is, or is to be, a party;
- (v) the manner of dissolving the organization;
- (w) provision establishing or specifying how as an affiliate, a decision shall be reached in response to a decision by a federation to call peaceful protest action. (Added A.8/2000.)

(2) The treasurer or other officer responsible for the custody of the organization's funds and property shall hand over such funds and property to the organization when such treasurer leaves office, or earlier, if so directed by the Chairperson and Secretary of the organization or a general meeting.

Right to be or not to be a member and prohibited practices.

30. (1) A person eligible for membership in an organization under this Act has a right to membership in that organization if that person pays any fees that are properly payable to it, and has a right to remain a member as long as the person complies with the rules of the organization.

(2) A person eligible for membership of an organization has the right not to join such an organization.

(3) An employer shall not infringe on an employee's right to belong or not to belong to an organization of the employees' choice.

(4) An employer shall not require membership of any organization as a condition of employment or offer any form of inducement or deterrent to any employee or prospective employee designed to influence the employee's decision to join or not to join an organization.

(5) The constitution of an organization shall not impose any condition, obligation or restriction which is oppressive, unreasonable or unjust.

(6) Without restricting the generality of subsection (4), no organization shall discriminate, in its constitution, against any person on the grounds of race, colour, creed, marital status, sex, pregnancy, tribal, ethnic or clan extraction, political opinion or affiliation, or social status.

Annual returns from organizations.

31. (1) Within six calendar months after the end of each financial year, every registered organization shall submit to the Commissioner of Labour a return which shall include —

- (a) the organization's current postal address;
- (b) the names and postal addresses of its current officers;
- (c) the number of members;
- (d) the details of any amendments made to its constitution since the preceding return; and
- (e) a statement from a competent auditor that the organization's accounts were financially audited for the preceding financial year.

(2) A copy of the return shall be kept in the office of the organization and shall be made available for inspection at the annual general meeting.

(3) The Commissioner of Labour may apply to the Court for the suspension or withdrawal of registration of any organization which fails or refuses to submit a return in accordance with subsection (1) and after the directive referred to in section 33 has not been complied with.

Regulation of federations.

32. (1) Organizations and employers may form, participate in, be affiliated to or join a federation which has as its principal objects the functions of advice, consultation, collective bargaining, defence and promotion of the collective interest of members or any other issue that may be of interest to its members including matters of public policy and public administration.

(2) A federation referred to in subsection (1), shall provide to the Commissioner of Labour —

- (a) within three (3) months of its formation and after that within three months after the end of that federation's financial year, the names and addresses of its members and (the number of persons each member) in the federation represents;
- (b) within three (3) months of its formation, and after that within thirty days of any appointment or election of its national office bearers, the names and work addresses of those office bearers, even if their appointment or election did not result in any changes to its office bearers;

- (c) within three (3) months of its formation, a certified copy of its constitution and an address in Swaziland at which it shall accept service of any document that is directed to it;
- (d) within thirty (30) days of any change to its constitution, or of the address provided to the Commissioner of Labour as required in paragraph (c), notice of those changes; and
- (e) within fourteen (14) days after it has resolved to wind up, a copy of that resolution.

(3) Service of any document directed to a federation at the address most recently provided to the Commissioner of Labour shall be, for all purposes, service on the federation.

(4) The Commissioner of Labour shall apply to Court whenever the Commissioner of Labour intends to de-register a federation for non-compliance with the provisions of this section or if the Commissioner of Labour reasonably believes that the federation is wound up or sequestrated.

Powers of the Commissioner of Labour concerning constitutions and returns of organizations and federations.

33. (1) If the Commissioner of Labour is of the *bona fide* opinion that a registered organization's or federation's constitution, or any amendment thereto, or any return required by it under this Act does not comply with this Act, the Commissioner of Labour shall forthwith and in writing advise the organization or federation concerned of the Commissioner's opinion and direct the organization or federation to have the matter rectified in the manner indicated.

(2) Subject to subsection (3), in the event of the organization concerned failing to comply with the Commissioner of Labour's directive in terms of subsection (1) within the terms prescribed to the Commissioner of Labour's satisfaction, the Commissioner of Labour may refer the matter to Court for its determination.

(3) Before acting under subsection (2), the Commissioner of Labour shall give consideration to any representations, including counter proposals to the directive, made to the Commissioner of Labour by the organization.

Powers of the Court in regard to constitutions and returns etc.

34. (1) Upon application by an affected party or by the Commissioner of Labour, the Court may —

- (a) strike out any provision in the constitution of an organization or federation which violates any requirement of this Act, or amend the provision to bring it into compliance with this Act; or
- (b) alter or amend the constitution to provide any of the particulars required by section 29 which may be lacking.

(2) Notwithstanding subsection (1), an organization or federation registered under the repealed Act, on the date of coming into force of this Act shall have six months within which to bring its constitution into conformity with this Act, after the expiry of which period subsection (1) shall apply.

(3) Any alteration on or amendment of an organization's or federation's constitution ordered by the Court under subsection (1) shall take effect on a date specified by the Court.

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Compliance with constitutions.

35. (1) Subject to sections 33 and 34 and to any other provisions of this Act, an officer, member or employee of an organization or federation shall comply with the constitution of the organization or federation, and a former officer, member or employee of an organization or federation who is required to do or refrain from doing anything by such constitution shall comply with such requirement.

(2) Upon application by an affected party or by the Commissioner of Labour, the Court may make any order which it deems necessary to prevent or stop a violation of any provision of the constitution of an organization or federation.

Improper practices in election of officers.

36. (1) A person shall not attempt to affect the outcome of an election for any office in an organization or federation by fraud, threats, bribery or other improper means.

(2) Upon application by any member of the organization or federation affected by any unlawful conduct referred to in subsection (1), or by the Commissioner of Labour, the Court may declare such election null and void, determine a date for the holding of a fresh election and make provision for the filling of the office concerned, pending the outcome of such fresh election, or make such other order relating to such election or fresh election as it may deem fit.

Criminal conviction a disqualification from office.

37. (1) A person shall not hold office in an organization or federation if that person has been convicted, within two years prior to the date of that person's election, of a crime involving dishonesty for which the person was sentenced to imprisonment with or without the option of a fine, including a suspended sentence or imprisonment.

(2) A person who is convicted of an offence involving dishonesty while holding office in an organization or federation shall cease to hold office at the time of conviction.

Defunct organizations or federations.

38. (1) Upon application by an aggrieved person or by the Commissioner of Labour, the Court may, after making such enquiries as it may consider necessary, declare an organization or federation to be defunct where the Court is satisfied that the organization or federation is no longer carrying on any of the activities of the organization or federation.

(2) A declaration made under this section shall include such directions for the disposal of the organization's or federation's assets, if any, as the Court may deem just, having regard to the constitution of the organization or federation.

No compulsion to join or not to join and to support or not to support an organization.

39. Without prejudice to any other section of this Act, no person shall seek, by the use of any threat or intimidation, to compel or coerce any other person to join or not to join, or to support or not to support any organization.

Protest action to promote or defend socio-economic interests.

40. (1) An employee who is not engaged in an essential service has a right to take part in a peaceful protest action to promote socio-economic interests of workers if —

- (a) the protest action has been authorized by a registered organization or federation; and

(b) the organisation or federation has served notice to the Labour Advisory Board of its authorization in terms of paragraph (a) which notice shall contain or state —

- (i) the reason for the protest;
- (ii) the nature of the intended action;
- (iii) the steps taken to resolve the issues giving rise to the protest action;
- (iv) the notice given to the authorities responsible for public order so that the necessary measures can be taken to ensure the safety of protesters and the public; and

(c) the notice has been given at least 14 days before the commencement of the protest action.

(2) The Labour Advisory Board, shall within 7 days from the time it receives notice under subsection (1), put in place mechanisms to resolve the issues giving rise to the protest action, which issues shall not include purely political matters.

(3) Where the matter is not resolved within the 7 day period referred to in subsection (2), the period may be extended at the request of the parties concerned, or the period may be extended by the Labour Advisory Board where the party intending to take protest action fails without reasonable cause to attend meetings called by the Labour Advisory Board to resolve the matter pursuant to subsection (2).

(4) Where the matter is not resolved within the 7 day period referred to in subsection (2), or within any further period pursuant to subsection (3), the Labour Advisory Board shall inform the relevant employers' organizations and the Commission.

(5) Prior to taking protest action, the party intending to take such action shall conduct by secret ballot a vote of —

- (a) in the case of a federation authorizing the action, its affiliates, or
- (b) in the case of a registered organization authorizing the action, its members,

and the Commission and the Labour Advisory Board shall be informed of the results of the ballot within 24 hours of the holding of the ballot.

(6) The party intending to take protest action may request the Commission to conduct the secret ballot referred to in subsection (5), in which case the ballot must be completed within 5 days of such request being made and the parties and the Labour Advisory Board shall be informed of the results of the ballot within 24 hours of the holding of the ballot.

(7) Where a ballot has been conducted by the Commission under subsection (6) the results shall be deemed to be conclusive.

(8) The protest action shall be deemed to be in conformity with the Act where —

- (a) pursuant to a secret ballot undertaken in accordance with subsection (5)(a), a quorum of at least 40 per cent has been achieved, and over 50 per cent of those casting ballots have voted in favour of the protest action; or
- (b) pursuant to a secret ballot undertaken in accordance with subsection (5)(b), a quorum of at least 35 per cent has been achieved, and over 50 per cent of those casting ballots have voted in favour of the protest action; or
- (c) the Commission having been requested to conduct a ballot has failed to conduct the ballot or to notify the results of the ballot under subsection (6).

(9) Any interested party aggrieved by the decision to take protest action may refer the matter to the Court for an order which may be granted by the Court under subsection (10).

(10) The Court shall have exclusive jurisdiction —

- (a) to restrain an organisation or federation or any person from participating in a protest action or in any conduct in contemplation or in furtherance of protest action that does not comply with subsection (1); and
- (b) in respect of protest action that complies with subsection (1), to grant a declaratory order after having considered —
 - (i) the nature and duration of the protest action;
 - (ii) the steps taken by the registered trade union or federation to minimize the harm caused by the protest action; and
 - (iii) the conduct of the participants in the protest action.

(11) A person who, and an organisation or federation which, takes part in protest action or in any conduct in contemplation or in furtherance of a protest action that complies with subsection (1) enjoys the protection conferred in the case of a lawful strike.

(12) Notwithstanding the provision of subsection (11), an employee forfeits the protection against dismissal conferred by that subsection, if the employee —

- (a) takes part in a protest action or any conduct in contemplation or in furtherance of a protest action in breach of an order of the Court;
- (b) otherwise acts in contempt of an order of the Court made in terms of this section.

(13) Notwithstanding the provisions of subsection (11), a federation, organization or any of its officers, representatives or members shall not be exempt from any civil liability or any criminal, malicious or negligent acts.

(Replaced A.8/2000.)

Amalgamation and affiliation of organisations and federations.

41. (1) (a) An organization or a federation may affiliate with and or participate in the affairs of international workers' or employers' organizations, make financial and other contributions to such organizations, and receive financial and other assistance from them.

(b) An organisation which is registered under this Act may, in the manner provided for in its constitution and subject to the provisions of this Act, amalgamate with any other organisation.

(c) In the event of amalgamation, the newly constituted organisation shall assume all the rights and duties of its predecessor organisations unless the Court on good cause shown upon the application of an interested party directs otherwise.

(2) A person shall not interfere with or impede the exercise of any right recognized by this subsection.

(3) On application by an aggrieved party, the Court may make such order as it deems necessary to prevent a breach of any provision of this section.

Recognition as collective employee representatives.

42. (1) A trade union or staff association which has been issued with a certificate under section 27, may apply in writing to an employer for recognition as the employee representative for such categories of employees as are named in the application concerning all terms and conditions of employment including wages and hours of work.

(2) A trade union or staff association shall serve a copy of the application referred to in subsection (1) to the Commissioner of Labour.

(3) If less than fifty percent of the employees in respect of which the trade union or staff association seeks recognition are fully paid up members of the organization concerned, recognition shall be at the discretion of the employer and the employer shall, within thirty (30) days of the receipt of the application, reply in writing to the organization.

(4) Where an employer decides to recognize a trade union or staff association in terms of subsection (3), the conditions under which the employer agrees to recognize the organization shall form part of the reply to be given to the organization.

(5) If not less than fifty percent of the employees in respect of which the trade union or staff association seeks recognition are fully paid up members of the organization concerned, the employer shall, within thirty (30) days of the receipt of the application and in writing —

- (a) grant recognition to the organization; or
- (b) if the employer is in doubt, and advises the applicant so in writing, the parties shall go for a verification count;
- (c) if the employer decides not to grant such recognition, the employer shall lodge with the Court the reasons for the refusal to grant recognition and serve a copy thereof on the industry union or industry staff association, as the case may be.

(6) Where the thirty days of receipt of an application under subsection (5) has elapsed and the employer does not recognize the trade union or staff association, the trade union or staff association may lodge an application with the Court for an order that the employer recognize it.

(8) The Court may, on receipt of the application referred to in subsection (5)(c) and any submissions made to it by the parties concerned, make such order as it deems fit.

(9) Where for a continuous period of more than three months in any calendar year, the percentage of fully paid up members of an organization which has been granted recognition under subsection (5) falls below fifty percent of the employees concerned, the employer or the organisation may apply to the Court for the withdrawal of such recognition, and the Court may —

- (a) make such order as it deems fit, including an order containing terms of such withdrawal; and
- (b) adjudicate on the validity and duration of any collective agreement existing between the employer and the organisation affected by such withdrawal.

(11) Where an organisation has been granted recognition as the employee representative it shall be the duty of the organisation to provide full and proper representation of the interest of all employees covered by the recognition agreement whether or not they are fully paid up members of the organization.

Dues deduction.

43. (1) An employee may deliver to an organization of which that employee is a member or of which the employee is eligible for membership, and which has been recognized under section 42, a written authorization for the periodic deduction from the employee's wages of fees duly payable by the employee to the organization, and such authorisation shall be renewable annually from the date first granted.

(2) An organization which has received an authorization under subsection (1) may request the employer in writing to make the authorized deduction and remit it to the organization.

(3) An employer who has received a request under subsection (2) may demand proof of the authorization referred to in subsection (1) in its original form or a certified copy thereof.

(4) An employer who receives a request in accordance with subsection (2) shall make the authorized deductions and shall promptly remit to the organization the funds so collected.

(5) Any dispute over the authenticity of a written authorization under this section may be determined by the Court.

(6) An employer shall not be required at any time to make deductions from the wages of any employee with respect to the fees to more than one organization.

(7) An employee may revoke that employee's authorization under this section by giving written notice to the organization and to the employer concerned and on the receipt of such notice, the employer shall make the deduction at the end of the month in which such notice is received but shall thereafter cease to make any deduction.

(8) The employer may retain a collection fee for purposes of operating administrative costs not exceeding five percent of the amount collected.

(9) With each remittance, the employer shall give the organization a full written account of the amounts collected and remitted.

(10) Upon application by an affected party, the Court may make such order as it deems necessary to ensure compliance with this section.

Agency shop agreements.

44. (1) A representative trade union, staff association and an employer or employers' organisation may conclude a collective agreement to be known as an agency shop agreement requiring the employer to deduct an agreed agency fee from the wages of its employees who are identified in the agreement and who are not members of the trade union.

(2) For the purposes of this section, "representative trade union" means a registered trade union, or two or more registered trade unions acting jointly, whose members are a majority of the employees employed —

- (a) by an employer in a workplace; or
 - (b) by the members of an employers' organisation in a sector and area in respect of which the agency shop agreement applies.
- (3) An agency shop agreement is binding only if it provides that —
- (a) employees who are not members of the representative trade union or staff association are not compelled to become members of that trade union;
 - (b) the agreed agency fee must be equivalent to, or less than —
 - (i) the amount of the subscription payable by the members of the representative trade union;
 - (ii) if the subscription of the representative trade union is calculated as a percentage of an employee's salary, that percentage; or
 - (iii) if there are two or more registered trade unions party to the agreement, the highest amount of the subscription that would apply to an employee;
 - (c) the amount deducted must be paid into a separate account administered by the representative trade union; and
 - (d) no part of the amount deducted may be —
 - (i) paid to a political party as an affiliation fee;

- (ii) contributed in cash or kind to a political party or a person standing for election to any political office; or
- (iii) used for any expenditure that does not advance or protect the socio-economic interests of employees.

(4) An employee shall not be bound by an Agency Agreement and no amount of that employee's wages shall be deducted under this section unless that employee has consented in writing.

PART V

NEGOTIATING MACHINERY

Joint Negotiation Councils.

45. (1) Subject to the provisions of this section, a Joint Negotiation Council may be formed, by a combination of employers, an employees' organization or a combination of employers and an employees' organization on the one hand and on the other hand with one or more trade unions or one or more staff associations, by —

- (a) drawing and signing an agreed upon constitution which shall govern the operations of the proposed Joint Negotiation Council; and
- (b) after satisfying the provisions of paragraph (a), applying in writing to, and obtaining the approval of, the Minister for the registration of the proposed Joint Negotiation Council.

(2) On receipt of the application for registration for a Council, which shall include a copy of the proposed constitution of the Council, the Minister, after consulting any interested party and, after being satisfied —

- (a) that the parties to the Council are sufficiently representative of employees and employers within the industry or area for which it seeks registration;
- (b) that it is desirable and practicable to establish a Council in the circumstances;
- (c) that the proposed constitution is suitable, with particular reference to the provisions of section 46,

shall publish a notice in the Gazette of the establishment of a Joint Negotiation Council for the industry or area concerned within sixty days of the submission of the application under subsection (1).

(3) If the Minister is not satisfied that the requirements in subsections (1) and (2) had been complied with or that the establishment of a Joint Negotiation Council is desirable or practicable, the Minister shall within thirty days of receiving the application so inform the applicant in writing, stating the reason for the Minister's decision, provided that where the reason for the decision is that the constitution is not suitable, the Minister shall indicate the amendments which, in the Minister's opinion, would make the constitution suitable and invite the parties to submit a fresh application which incorporates the amendments.

(4) If the Minister has taken action as provided in subsection (3) or the Minister has failed to publish the notice referred to in subsection (2) within sixty (60) days of the submission of the application under subsection (1) the party or parties which submitted the application may refer the matter to court.

(5) Upon receiving reference made to it under subsection (4) the court, after hearing any interested party and if it is satisfied that the requirement of subsections (1) and (2) have been complied with and that the establishment of a Joint Negotiation Council in the industry or area named in the reference is desirable and practicable, shall direct the Minister to establish a Joint Negotiation Council for the industry or area subject to any amendment the

court may make and the Minister shall thereupon establish such a Joint Negotiation Council by notice published in the Gazette.

(6) Any dispute or ambiguity over a Joint Negotiation Council's scope of registration and its applicability to any employer of ground of employers or industry may be referred by an affected party to the court for determination.

Amendment of Joint Negotiation Councils.

46. (1) The constitution of a Joint Negotiation Council shall provide for the following matters:

- (a) the industrial and territorial scope of the Council;
- (b) the appointment, number and method of selection of employer, staff association and trade union representatives, provided that there shall be a parity of employer and trade union votes on the Council;
- (c) the appointment and method of selection of a chairperson and deputy chairperson;
- (d) the appointment and method of selection of a secretary or joint secretaries of the Council;
- (e) the procedure for the appointment of alternate members of the Council;
- (f) the number of members required to form a quorum;
- (g) the procedure for the replacement of members;
- (h) the term of office of members appointed to the Council;
- (i) the procedure to be followed in the event of a dispute or deadlock in the Council;
- (j) the method by which persons affected by any collective agreement made or amended by the Council shall be informed thereof;
- (k) provision for the amendment of the constitution; and
- (l) such other matters as may be included in the constitution by the applicants to establish the Council and which may be approved by the Minister or the Court as the case may be.

(2) Subject to section 45, any amendment to the constitution of a registered Joint Negotiation Council shall take effect upon approval of the amendment by the Minister after the Minister is satisfied of the matter specified in paragraphs (a) to (c) of section 45(2).

(3) Where the Minister fails to give the approval mentioned in subsection (2) within thirty (30) days of the submission of the amendment, the party making the application may refer the matter to the Court.

Admission to Joint Negotiation Council of new party.

47. (1) If an organization applies for admission to a Joint Negotiation Council and such organization is not admitted within sixty days of the application, it may bring an application to the Court for admission to that Council.

(2) Upon receiving an application under subsection (1) the Court, after hearing any aggrieved party and any other affected party, may refuse to admit the applicant organization or may admit it on such terms and conditions as the Court sees fit and the constitution of the Council shall be amended accordingly.

Change to representation or voting rights of parties to Joint Negotiation Council.

48. (1) If at any stage a party to a Joint Negotiation Council believes that a provision of such Council's constitution relating to representation or voting rights is detrimental to effective collective bargaining it may apply to the Court for variation of that provision.

(2) Upon receiving an application under subsection (1) the Court, after hearing any aggrieved party and any other affected party, may dismiss the application or order the variation of the Joint Negotiation Council's constitution as it sees fit.

Joint Negotiation Council constitution and agreements to take precedence.

49. (1) A registered collective agreement concluded by a Joint Negotiation Council shall take precedence within its registered scope over any other collective agreement, which taken as a whole, provides less favourable terms and conditions of employment than those contained in the Council's registered collective agreement.

(2) Any disputes arising out of the relationship between Joint Negotiation Council matters and matters regulated at other levels between employers and registered trade unions, staff associations may be referred by any interested party to the Court or the Commission for determination.

(3) After hearing any interested party, the Court or the Commission shall determine the dispute in a manner which, where possible, gives effect to the expressed intentions of the parties to a Joint Negotiation Council constitution and collective agreements, and which promotes orderly and effective collective bargaining.

Extension and exemption of collective agreements.

50. (1) The parties to a registered collective agreement may jointly request the Minister who shall make some or all of its provisions binding upon employers and employees not otherwise subject to the agreement, if —

- (a) those employers and employees fall within the type of industry covered by the agreement; and
- (b) the parties to the agreement represent the majority of employers and employees in the industry or area.

(2) A Joint Negotiation Council may request the Minister to make some or all of the provisions of a registered collective agreement concluded by the Council binding upon all employers and employees within the industry or area in respect of which the Council is registered in terms of section 45.

(3) Upon receipt of a request under subsection (1) or (2) the Minister shall, in writing, notify the employers and registered trade unions representing employees within the scope of the request within fourteen days of receipt of the request and shall invite them to submit comments in writing within fourteen days of notification.

(4) The Minister shall give effect to a request made under subsection (1) or (2) unless the Minister has reason to believe that the extension of the agreement shall be oppressive and unjust, and in such event the Minister may refuse the extension or limit it as the Minister sees fit so as to mitigate any oppressive or unjust effects, giving reasons in writing for such refusal or limitation.

(5) The Minister shall cause notice of any extension or exemption to be published in the Gazette, and such extension or exemption shall take effect in respect of the parties to whom it is extended from the date specified in such notice.

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(6) Any person or organization may apply for exemption from the provisions of a binding collective agreement to the Joint Negotiation Council concerned and where no such Council exists to the Minister.

(7) Any person or organization aggrieved by a decision of the Minister not to comply with a request under subsection (1) or (2) may refer the matter to the Court, which may make such order as it deems just and equitable, including ordering the Minister to give effect to the request.

(8) Any person or organization aggrieved by a decision of a Joint Negotiation Council or the Minister not to grant an application for an extension under subsection (5) may appeal to the Court against such a decision, and the Court may make such order as it deems just and equitable.

(9) Notwithstanding the provisions of this section, the Minister shall exercise these powers after receiving recommendation from the Labour Advisory Board.

Submission of annual report by the Joint Negotiation Council.

51. The Joint Negotiation Council shall, within three (3) months of the expiry of the calendar year, submit an annual report to the Commissioner of Labour on the matters it has handled during that year.

PART VI

WORKS COUNCILS

Establishment of Works Councils.

52. (1) In the absence of a recognised or registered trade union or staff association an employer, in an undertaking employing twenty-five or more employees, may establish a Works Council.

(Amended A.8/2000.)

(2) A Works Council shall be established and conducted in accordance with a written constitution submitted to the Commissioner of Labour.

(3) The constitution shall provide for —

- (a) the name of the undertaking in which the Works Council is established;
- (b) equality of representation in the Works Council for employees and for the employer;
- (c) the appointment of a chairperson;
- (d) the functions and scope of the Works Council;
- (e) the class or classes of employees to be covered by the Council;
- (f) the procedures for dealing with disputes in the Works Council, and with individual or collective grievances in the undertaking;
- (g) the status and functions of employee representatives on the Works Council;
- (h) the appointment, number and method of selection of the employee representatives;
- (i) such other matters as may be agreed between employer and employee representatives.

(4) Where a Works Council is established in an undertaking operating within an industry wherein a Joint Negotiation Council has been established under Part V or in an undertaking where a trade union or staff association has been granted recognition under section 42 —

- (a) the functions and scope of the Works Council shall not include any of the matters dealing with rates of wages, hours of work or terms and conditions of employment which are included in the recognition agreement between the staff association, trade union and the employer, or which are included in the scope and functions of the Joint Negotiation Councils as the case may be;
- (b) the election or appointment of employee representatives on the Works Council shall be conducted under arrangements to be agreed in writing between the employees and the employer concerned.

(5) If a Works Council has been established in an undertaking in respect of which a trade union or staff association subsequently obtains recognition in terms of section 42 or which forms part of an industry in respect of which a Joint Negotiation Council is subsequently established, the Works Council shall, from the date on which recognition is granted, or the date on which the Joint Negotiation Council is established, as the case may be, cease to exercise any function in respect of any of the matters dealing with rates of wages, hours of work, or terms and conditions of employment which are included in the recognition agreement between the staff association, trade union and the employer, or which are included in the scope and functions of the Joint Negotiation Council.

(6) Notwithstanding any of the provisions of this section, a collective agreement made between a staff association, trade union or by a Joint Negotiation Council shall not provide for the diminution of any of the terms and conditions of employment agreed upon in a Works Council before the granting of recognition to a staff association, trade union or before the establishment of a Joint Negotiation Council.

(7) If such collective agreement does contain any such provision it shall be construed as if the relative provisions of the agreement made in the Works Council were substituted for it.

(8) (Repealed A.8/2000.).

Right to submit Works Council constitution to Court.

53. (1) If any party affected by the establishment of a Works Council considers that the constitution thereof does not comply with this Act, or does not sufficiently reflect the party's legitimate interests, the party may submit a copy of the constitution to the Court together with written reasons as to why it considers that the constitution should be changed.

(2) The Court shall, on receipt of the submission referred to in subsection (1), call upon the parties concerned to make such representations as may be deemed necessary by any of them and shall thereupon adjudicate on the matter, including making an order affecting such amendments to the constitution as it deemed fit.

(3) When the constitution of a Works Council has been submitted to the Court under subsection (1), the constitution, duly amended by the Court, or unamended as the case may be, shall be the substantive constitution of the Works Council.

Enforcement of agreements reached by a Works Council.

54. (1) An agreement made by a Works Council shall take effect from the date, and shall subsist for the period, stipulated in the agreement except as may otherwise be required by this Act or as may be agreed by the Works Council and registered by the Commissioner of Labour.

(2) Where any party fails to comply with the provisions of an agreement made by a Works Council, the Council or any employee or employer affected by the agreement may apply to the Court for redress and the Court, after considering all the circumstances of the matter may make an order that appears to it just and reasonable.

PART VII

COLLECTIVE AGREEMENTS

Collective agreements.

55. (1) A collective agreement shall —
- (a) be in writing and signed by the parties to the agreement;
 - (b) contain effective procedures for the avoidance and settlement of disputes within the industry and individual undertakings covered by the agreement;
 - (c) be for a specific period of not less than twelve months and not more than twenty-four months, unless modified by the parties by mutual consent;
 - (d) contain provision for the settlement of all differences arising out of the interpretation, application and administration of the agreement.
- (2) After a collective agreement has been signed by the parties, it shall be submitted to the Court with a copy to the Commissioner of Labour together with a request by the parties for the registration of the agreement by the Court.
- (3) A collective agreement shall take effect on any date agreed upon by the parties in writing and may contain retrospective provisions.
- (4) Nothing in this section shall affect or be deemed to affect the validity of a collective agreement which is valid and subsisting immediately before the coming into force of this Act and such agreement shall remain in force until it lapses by effluxion of time, or until it is replaced by a collective agreement registered under the provisions of section 56, whichever is the earlier.

Procedure by Court on receipt of agreement.

56. (1) On receipt of a collective agreement, the Court shall consider the agreement and within twenty-one days of receipt shall —
- (a) register the agreement without amendment; or
 - (b) with the consent of the parties thereto, register the agreement with such amendments or modifications as it may consider necessary in accordance with this;
 - (c) refer it back to the parties for further negotiation on matters which the Court considers sufficient ground under subsection (2) for refusal to register the agreement.
- (2) The Court may refuse to register a collective agreement on any of the following grounds:
- (a) that it conflicts with any of the provisions of this Act or any other law;
 - (b) that the agreement provides for terms and conditions of employment less favourable to employees than those provided by any law;
 - (c) that it discriminates against any person on the ground of race, colour, religion, creed, national extraction, tribal or clan extraction, political opinion or affiliation, social origin or social status, sex, pregnancy, marital status or disability;

- (d) without prejudice to the generality of paragraph (a), that it requires membership or non membership in any organizations as a condition for obtaining or retaining employment.

(3) Where the Court has referred a collective agreement back under paragraph (c) of subsection (1) and the parties fail to reach agreement, then either or both of the parties may report a dispute under section 76.

(4) Notwithstanding the provisions of subsection (2), the Court shall not, by reason of a minor defect, refuse to register the agreement but shall order such defect to be corrected.

Status of registered collective agreements.

57. (1) The terms and conditions of a collective agreement registered under section 56 (referred to in this Part as a “registered agreement”) shall be binding on the parties.

(2) The terms and conditions of a registered agreement shall, where applicable, be deemed to be terms and conditions of the individual contract of employment in the case of an agreement reached —

- (a) in a Joint Negotiation Council, for all employees covered by the agreement in the industry or area in which the Joint Negotiation Council was established;
- (b) between a trade union or unions, and one or more individual employers, for all employees covered by the agreement who are employed by such employer or employers; and
- (c) between a staff association or associations and one or more individual employers, for all employees covered by the agreement who are employed by such employer or employers.

(3) Registration of a collective agreement shall be deemed to constitute usual notice to affected parties of all the provisions of the collective agreement.

Amendments to registered collective agreements.

58. Either of the parties may make an application to Court to amend a registered agreement for the purpose of —

- (a) correcting any obvious error or ambiguity occurring in the agreement;
- (b) incorporating any matter agreed upon at the time of the negotiation of the agreement but which has been inadvertently omitted;
- (c) deleting any matter contained in a registered agreement, not agreed to at the time of the negotiation of the agreement, but inadvertently included therein.

Coverage of registered agreements.

59. Upon application by an affected party, the Court shall determine whether any employer or employee, or any class of employers or employees is engaged or employed in a particular industry or trade or is covered or not covered by a registered agreement.

Terms more favourable to employees permitted.

60. (1) An employer may agree to or may grant, any term or condition of employment more favourable to an employee than the corresponding provision of a registered agreement applicable to the employee.

(2) Any dispute over whether a term or condition referred to in subsection (1) is more favourable to the employee involved shall be determined by the Court.

Application to abolish Wages Council.

61. Where a Joint Negotiation Council has been established in an industry and the Council reaches a collective agreement covering the terms and conditions of employment in the industry, the parties in the Joint Negotiation Council, may apply to the Minister for the abolition of any Wages Council established under the Wages Act, 1964 or any successor thereto applicable to the industry covered by the collective agreement.

PART VIII
DISPUTE PROCEDURE

Establishment of the Conciliation, Mediation and Arbitration Commission.

62. (1) There is established the Conciliation, Mediation and Arbitration Commission.
- (2) The Commission shall be a body corporate and may —
- (a) sue and be sued in its name;
 - (b) lease, hold, own, mortgage or dispose of property; and
 - (c) do all lawful things that bodies corporate may lawfully do.
- (3) The Commission may, where necessary, open and maintain regional offices within Swaziland.

Independence of the Commission.

63. Subject to the provisions of this, the Commission shall be independent of control of any person, including but not limited to, any statutory body, Government, political entity, employer, federation or organisation.

Functions and powers of the Commission.

64. (1) The Commission shall —
- (a) compile and maintain a list of persons with sufficient experience in Industrial Relations or Labour Law to serve as conciliators, mediators, and arbitrators under this Act;
 - (b) attempt to resolve, through conciliation, any dispute referred to it in terms of this Act;
 - (c) where a dispute referred to it remains unresolved after conciliation, arbitrate the dispute if —
 - (i) this Act requires arbitration;
 - (ii) this Act permits arbitration and both parties to the dispute have requested that the dispute be resolved through arbitration; or
 - (iii) the parties to a dispute in respect of which the Industrial Court has jurisdiction consent to arbitration under the auspices of the Commission; and
 - (d) annually compile and publish information and statistics about its activities;
 - (e) advise in the establishment of workplace fora;
 - (f) periodically conduct, oversee or scrutinize a ballot in terms of section 86(2).
- (2) The Commission may —

- (a) if requested, advise a party to a dispute on the procedure to follow in terms of this Act;
 - (b) if requested, assist a party to a dispute to obtain legal advice;
 - (c) if requested by the parties mediate any dispute referred to it;
 - (d) conduct, oversee or scrutinize any election or ballot of an organisation or federation if asked to do so by that organisation or federation;
 - (e) publish guidelines in relation to any matter dealt with in this Act;
 - (f) conduct and publish research into matters relevant to its functions.
- (3) The Commission may provide employees, employers, registered organizations, federations or councils with advice or training relating to the primary objects of this Act including but not limited to —
- (a) designing, establishing and electing workplace fora and creating deadlock breaking mechanisms;
 - (b) preventing and resolving disputes and employees' grievances;
 - (c) disciplinary procedures;
 - (d) procedures in relation to dismissals; and
 - (e) prevention of discrimination and the promotion of equal opportunity programmes.
- (4) The Commission shall perform other duties imposed, and may exercise other powers conferred, on it by or in terms of this Act and is competent to perform any other function entrusted to it by any other law.
- (5) The Commission shall have the following powers:
- (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
 - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the Commission to be questioned or to produce that book, document or object;
 - (c) call, and if necessary subpoena, any expert to appear before the Commission to give evidence relevant to the resolution of the dispute;
 - (d) call any person present at the conciliation or arbitration proceedings or who was or could have been subpoenaed for and for the purpose set out in this section, to be questioned about any matter relevant to the dispute;
 - (e) administer an oath or accept an affirmation from any person called to give evidence or be questioned.
- (6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce a book, document or object before a Court of law, applies to the questioning of any person or the production procedure of any document, book or object appearing before the Commission.
- (7) The Commission shall pay the prescribed witness fee to each person who appears before the Commission in response to a subpoena issued by the Commission.
- (8) A person commits contempt of the Commission by doing anything in relation to the Commission which, if done in relation to a Court of law, will have been contempt of Court.

(9) The Commission may refer any contempt to the Industrial Court for an appropriate order.

Governing Body of the Commission.

65. (1) There shall be a Governing Body of the Commission which shall be tripartite but may have, in addition, independent persons.

(2) The Governing Body shall exercise the powers and perform the functions vested in the Commission under this Act.

(3) The Governing Body shall consist of —

- (a) a chairperson and eight (8) other members, appointed in accordance with subsection (4) to hold office for a period not exceeding three years; and
- (b) the Executive Director of the Commission, who shall not vote at meetings of the governing body.

(4) The Labour Advisory Board shall nominate for appointment by the Minister to the Governing Body —

- (a) one independent person for the office of chairperson;
- (b) two persons proposed by those voting members of the Labour Advisory Board who represent organised labour;
- (c) two persons proposed by those voting members of the Labour Advisory Board who represent organised business;
- (d) two persons proposed by those voting members of the Labour Advisory Board who represent Government; and
- (e) two persons, proposed by the Labour Advisory Board, with special skills or knowledge relevant for the purpose of this Act.

Commissioners of the Commission.

66. (1) The Governing Body shall recruit and appoint as commissioners, as many competent persons as it considers necessary on the recommendation of or in consultation with the Executive Director, to perform the functions of commissioners in terms of this Act or any other relevant law.

(2) The Governing Body —

- (a) may appoint each commissioner on either a full time or part time basis;
- (b) shall appoint each commissioner for a fixed term determined by the Governing Body at the time of appointment;
- (c) may appoint a commissioner for a probationary period; and
- (d) when making appointments, shall have due regard to the need to constitute a Commission that is independent, competent and be gender sensitive.

(3) The Governing Body shall determine the commissioners' remuneration, allowances and other terms and conditions of appointment not contained in this section, in accordance with the prevailing norms.

(4) A commissioner may resign by giving written notice, which shall not be less than one month, to the Governing Body.

(5) The Governing Body shall prepare a code of conduct for the Commission and ensure that they comply with the code of conduct in performing their functions.

(6) The Governing Body may remove a commissioner from office for —

- (a) serious misconduct;
- (b) incapacity; or
- (c) material violation of the Commission's code of conduct.

(7) Each commissioner shall be responsible to the Executive Director for the performance of the commissioner's functions.

Executive Director of the Commission.

67. (1) The Governing Body in consultation with the Labour Advisory Board shall appoint as Executive Director a person who —

- (a) is skilled and experienced in labour or industrial relations and dispute resolution; and
- (b) has not been convicted of an offence involving dishonesty.

(2) The Executive Director shall —

- (a) perform the functions —
 - (i) conferred on the Executive Director by or in terms of this Act or by any other law;
 - (ii) delegated to the Executive Director by the Governing Body;
- (b) manage and direct the activities of the Commission;
- (c) supervise the staff of the Commission; and
- (d) act as secretary to the Governing Body.

(3) The Governing Body shall determine the Executive Director's remuneration, allowances and other terms and conditions of appointment, according to the prevailing norms.

(4) A person appointed Executive Director automatically holds the office of a commissioner.

(5) Notwithstanding subsection (4), the provisions of section 66 shall not apply to the Executive Director with the exception of subsection (6).

Acting Executive Director.

68. (1) The chairperson of the Governing Body may appoint any suitable person to act as Executive Director whenever —

- (a) the Executive Director is absent from the country or from duty or for any reason is temporarily unable to perform the functions of the Executive Director; or
- (b) the office of the Executive Director is vacant for a period which is temporary in nature.

(2) An acting Executive Director shall be competent to exercise and perform any of the powers and functions of the Executive Director.

Staff of the Commission.

69. (1) There shall be the Chief Financial Officer of the Commission who shall be appointed, and may be dismissed, by the Governing Body in consultation with the Labour Advisory Board.

(2) The Executive Director may appoint such staff as may be necessary, for the purpose of this Act, after consulting the Governing Body.

(3) Subject to any applicable law, the Governing Body shall determine the remuneration and allowances and other terms and conditions of appointment of staff members.

Establishment of Committees of the Commission.

70. (1) The Governing Body may establish committees to assist the Commission.
- (2) A committee may consist of any combination of the following persons:
- (a) a member of the Governing Body;
 - (b) the Executive Director;
 - (c) a Commissioner;
 - (d) staff member of the Commission; and
 - (e) any other person.
- (3) The Governing Body shall determine the remuneration and allowances and any other terms and conditions of appointment of committee members referred to in subsection 2(e), according to prevailing norms.
- (4) The Governing Body may dissolve any committee at any time.

Finances, financial year and auditors.

71. (1) The Commission shall be financed and provided with the working capital from —
- (a) the monies that Parliament may appropriate to the Commission from the time of the commencement of this Act and thereafter from time to time;
 - (b) fees payable to the Commission in terms of this Act;
 - (c) grants, donations and bequests made to it; and
 - (d) income from any other source.
- (2) The financial year of the Commission begins on 1st April of each year and ends on 31st March on the following year.
- (3) The Governing Body shall within four (4) months after the end of its financial year prepare a report on its operations which together with the copy of its annual audited accounts as well as any report by the auditors of its management and accounting practices, and submit to the Minister who shall cause such report to be laid before Parliament for examination, consideration and action.
- (4) The Commission shall submit to the Minister, at such time during its financial year as the Minister may determine, estimates of its financial requirements or expenditure projections in respect of its next financial year.
- (5) The Governing body shall submit to the Minister a list of three firms of auditors, one of whom shall be appointed by the Minister as a firm of auditors of the Commission after consultation with the Labour Advisory Board, for a period not exceeding three (3) years.
- (6) The firm of auditors may be removed by the Minister after consultation with the Labour Advisory Board.

Circumstances in which the Commission may charge fees.

72. (1) The Commission may charge a fee only for —
- (a) resolving disputes which are referred to it except for disputes in relation to industrial action which is compulsorily required by this Act to be referred to the Commission;

- (b) conducting, overseeing or scrutinizing any election or ballot at the request of an organisation or federation;
 - (c) providing training in terms of section 64(3); and
 - (d) other services as the Commission in agreement with the Labour Advisory Board may permit by notice published by the Minister in the Gazette.
- (2) The Commission shall not charge a fee unless —
- (a) the Governing body has established a tariff of fees; and
 - (b) the fee that is charged is in accordance with that tariff.
- (3) The Minister shall publish the tariff in the Gazette as recommended by the Commission.

Contracting by the Commission.

73. (1) The Governing Body shall contract with any competent person to do work for the Commission.
- (2) Every person with whom the Commission contracts is bound by the requirements of independence that binds the Commission.

Delegation of Governing Body's powers, function and duties.

74. (1) The Governing Body may delegate in writing any of its functions, other than the functions listed below in this section, to any member of the Governing Body, the Executive Director, a commissioner, or any committee established by the Commission.
- (2) The Governing Body shall not delegate the following functions:
- (a) appointing the Executive Director as provided in section 67(1);
 - (b) appointing the Commissioners as provided in section 66; or
 - (c) depositing or investing surplus monies as provided in section 71 or any other law.
- (3) The Governing Body may attach conditions to a delegation and may amend or revoke such delegation at any time.
- (4) A function delegated to the Executive Director may be performed by any commissioner or staff member of the Commission authorized by the Executive Director, unless the terms of that delegation prevent the Executive Director from doing so.
- (5) The Governing Body may vary or set aside any decision made by a person acting in terms of any delegation made in terms of subsection (1).
- (6) The Governing Body, by delegating any function, is not divested of any of its powers, nor is it relieved of any function or duty that it may have delegated and this provision shall also apply if the Executive Director sub-delegates the performance of a function in terms of subsection (3).

Limitation of liability and disclosure of information.

75. (1) No action or proceedings may be instituted against —
- (a) a member of the Governing Body;
 - (b) an employee of the Commission;
 - (c) a member of any committee established by the Governing Body; and
 - (d) any person whom the Governing Body has contracted to do work for the Commission;

for or in respect of any act done or omitted to be done in good faith in the exercise of that person's functions under this Act.

(2) The persons referred to in subsection (1)(a) to (d) shall not disclose to any person or in any Court any information, knowledge or document acquired in the course of performing their functions except on an order of any Court.

Reporting of disputes.

76. (1) Subject to subsection (2), a dispute may only be reported to the Commissioner of Labour by —

- (a) an employer;
- (b) an employee;
- (c) an organisation which has been recognized in accordance with section 42;
- (d) a member of a Works Council;
- (e) a member of a Joint Negotiation Council;
- (f) any other organisation concerned in the dispute and active in the undertaking where no organisation has been recognized in terms of section 42.

(2) If the matter referred to in subsection (1) is frivolous, vexatious or time wasting, the Commissioner of Labour shall reject the report and accordingly advise the parties and the party not satisfied by the decision of the Commissioner of Labour may appeal to the Commission and the decision of the Commission shall be final.

(3) If the Commission upholds the decision of the Commissioner of Labour it may charge costs against the party that has appealed.

(4) A dispute may not be reported to the Commissioner of Labour if more than six months have elapsed since the issue giving rise to the dispute first arose, but the Commissioner of Labour may, subject to subsection (5), in any case where justice requires, extend the time during which a dispute may be reported.

(5) The Commissioner of Labour shall not have the power to extend the time in which a dispute may be reported where a period of thirty-six (36) months has elapsed since the dispute first arose.

(6) Any person aggrieved by the decision of the Commissioner of Labour under subsection (4), may apply to the Court and the Court shall determine the issue taking into account any prejudice that may be suffered by any one of the parties to the dispute.

(7) Where the Court decides to grant an extension such extension shall not exceed thirty-six months since the dispute first arose.

Contents of report and notice of dispute.

77. (1) A report of a dispute shall be made in writing, signed by the person making the report and shall specify —

- (a) the parties to the dispute;
- (b) the address of each of the parties;
- (c) particulars of all the issues in dispute stating as precisely as possible their nature and scope; and
- (d) what steps, if any, have been taken for the settlement of the dispute either in accordance with the provisions of a Joint Negotiation Council constitution, a collective agreement registered under Part VII, a Works Council constitution or otherwise.

(2) A party reporting a dispute shall immediately deliver by hand or send by registered post a copy of the report to the other party or parties to the dispute.

Powers of the Commissioner of Labour on a report.

78. (1) Where a dispute is reported to the Commissioner of Labour under section 76, the Commissioner of Labour shall acknowledge receipt of the report, investigate the dispute and in writing —

- (a) request further particulars of any of the matters specified under section 77(1);
- (b) in so far as suitable procedures for settling disputes exist between the parties and have not been followed, refer the dispute back to the parties for the procedures to be followed.

(2) The Commissioner of Labour shall exercise the powers conferred by this section within ten (10) working days of the receipt of the dispute or further particulars as the case may be and shall thereafter transmit the dispute to the Commission within that ten (10) working days.

(3) Particulars supplied in pursuance of a request by the Commissioner of Labour under subsection (1)(a) shall be read as one with the matters reported under section 77(1).

(4) If the Commissioner of Labour makes a request for further particulars under subsection (1)(a), the dispute shall be treated as reported only on the date on which such particulars were supplied.

(5) A dispute referred to the parties pursuant to subsection (1)(b) shall be deemed not to have been reported to the Commissioner of Labour and shall be treated as reported to the Commissioner of Labour only on the date when the parties or either of them report that the dispute still exists and the Commissioner of Labour is satisfied that, subject to subsection (6), such suitable procedures as may exist for settling disputes have been followed.

(6) If the Commissioner of Labour is satisfied that either of the parties to a dispute reported under section 76 refuses to follow such suitable procedure for settling the dispute as may exist, after the dispute was referred to them under subsection (1)(b), he shall so state in writing to the parties, and thereupon section 82(2) shall apply as if the Commissioner of Labour had intervened in the dispute under that section.

Referral of questions as to nature of dispute to the Court.

79. (1) If there is any question as to whether a dispute that has been reported is one that concerns the —

- (a) application to any employee of existing terms and conditions of employment or the denial of any right applicable to any such employee in respect of the employment; or
- (b) dismissal, reinstatement or re-engagement of any employee,

either party may make an application to the Court for the determination thereof and the Court may determine the matter in summary manner, whether or not by way of hearing witnesses in the matter.

(2) Where a matter is determined by the Court under subsection (1), the dispute shall be deemed to have been first reported to the Commissioner of Labour on the date when the decision of the Court on the question is given.

Resolution of disputes by the Commission.

80. (1) On receipt of the dispute from the Commissioner of Labour in terms of section 78, the Commission shall appoint a commissioner to attempt to resolve the dispute through conciliation within a period of twenty one (21) days.

(2) In appointing a commissioner under subsection (1) the Commission shall use its best endeavors to appoint a commissioner who is best suited to the particular dispute in hand.

(3) Where a dispute remains unresolved after conciliation, the Commission shall arbitrate the dispute, if —

- (a) this Act requires arbitration;
- (b) this Act permits arbitration and the parties to the dispute have requested that the dispute be resolved through arbitration; or
- (c) the parties to the dispute in respect of which the Industrial Court has jurisdiction consent to arbitration under the auspices of the Commission.

Resolution of disputes through conciliation.

81. (1) Where a dispute has been referred to the Commission, the Commission shall appoint a commissioner to attempt to resolve it through conciliation.

(2) The appointed Commissioner shall attempt to resolve the dispute through conciliation within twenty-one (21) days of the date the Commissioner received the referral but the parties may agree to extend the twenty-one (21) day period.

(3) The Commissioner shall determine a process to attempt to resolve the dispute which may include —

- (a) mediation the dispute;
- (b) conducting a fact finding exercise; and
- (c) making recommendation to the parties, which may be in the form of an advisory arbitration award.

(4) In the conciliation proceedings a party to the dispute may appear in person or be represented only by a co-employee or by a member, an office bearer or official of that party's organisation and, if the party is a juristic person, by a Director or employee.

(5) Notwithstanding subsection (4), a party may be represented by another person in conciliation proceedings if the parties to such proceeding agree to such representation.

(6) At the end of the twenty-one (21) day period or any further period agreed between the parties —

- (a) the commissioner shall issue a certificate stating whether or not the dispute has been resolved;
- (b) the commissioner shall serve a copy of that certificate on the Commissioner of Labour and on each party to the dispute or the person who represented a party in the conciliation proceeding; and
- (c) the commissioner shall file the original of that certificate with the Commission.

Intervention by the Commissioner of Labour.

82. (1) The Commissioner of Labour may intervene in any dispute at any time before a report is made for the purpose of advising the parties thereto and may, where possible, attempt to reach a settlement between the parties within ten (10) days.

(2) If the Commissioner of Labour intervenes in a dispute pursuant to subsection (1), the Commissioner of Labour shall so advise the parties to the dispute expressly in writing.

(3) If the dispute remains unresolved within the ten (10) days specified in subsection (1) of this section, the Commissioner of Labour, subject to subsections (4), (5) or (6) of section 76, shall invoke the powers conferred by section 78 and the dispute shall be deemed to be reported in terms of section 78.

(4) Where the Commissioner of Labour has intervened in terms of this section and the operation of section 76(4) becomes an issue, the Commissioner of Labour or any of the parties shall refer such issue to the Court for determination.

Date of report in certain cases.

83. In the event of a dispute arising as to the date of reporting and which cannot be determined by the Commissioner of Labour, any of the parties concerned in the dispute may apply to the Commission for a decision on the dispute.

Resolved disputes.

84. (1) Where a dispute has been determined or resolved, either before or after conciliation, the parties shall prepare a memorandum of agreement setting out the terms upon which the agreement was reached and the memorandum shall be lodged with the Court for registration by any of the parties, or by the Commissioner of Labour at the request of the parties.

(2) Upon registration the memorandum shall have the same force and effect as a registered collective agreement.

Unresolved disputes.

85. (1) A dispute, reported pursuant to section 76 or deemed to have been so reported under section 82, which remains unresolved after the time stipulated under section 80(1) within which the Commission may take steps by means of conciliation to secure a settlement thereof, including any extension of such time under section 76 which has expired —

- (a) shall be certified as an “unresolved dispute” in writing by the Commission within seven (7) days;
- (b) the notice thereof served on the parties to the dispute; and
- (c) the conciliation officer shall also state any reasons which in the opinion of the conciliation officer have prevented a settlement.

(2) If the unresolved dispute concerns the application to any employee of existing terms and conditions of employment or the denial of any right applicable to any employee in respect of his dismissal, employment, reinstatement or re-engagement of any employee either party to such a dispute may make an application to the Court for determination of the dispute, or if the parties agree, refer the matter to the Commission for determination.

(3) If the unresolved dispute concerns matters other than those referred to in subsection (2) the parties may if they agree, refer the matter to arbitration or mediation.

(4) If the arbitration or mediation is before the Commission, the arbitrator or mediator shall complete the assignment within twenty-one (21) days of appointment.

(5) In the case of mediation the notice referred to in section 86(2) shall not be given before the fourteen (14) days of the mediation process expires.

(6) If the mediation fails, the parties may refer the matter to arbitration or Court, to strike action or lockout.

(7) The parties may by agreement extend the time limit referred to in subsection (4) or if the mediation is completed within a shorter period, the notice referred to in section 86(2) shall not be given unless the twenty-one (21) days period has expired.

(8) Where a matter has been referred to arbitration, the decision of the arbitrator shall be final.

(9) Where the matter has been referred to mediation or arbitration, the mediator or the arbitrator shall make available their report to the parties and to the Commissioner of Labour within two (2) days after the mediation or arbitration.

(10) The rights of the parties to take further action shall vest on the parties on the date when the process of mediation is concluded, or when one of the parties no longer intends to continue with mediation, and makes such fact known to the other party or parties.

(11) If the parties referred to in subsection (3) do not refer the unresolved dispute to arbitration or mediation a notice shall not be given in terms of section 86(2) before the expiration of twenty-one (21) days.

Strike or lockout procedures.

86. (1) Subject to the provisions of this Act, if there is a dispute which has been certified as an “unresolved dispute” within the meaning of section 85(1), either party may take lawful action by way of lockout or strike, provided the party has complied or respected the notice requirements applicable to such party under this section.

(2) A party to an unresolved dispute who intends to take strike action shall give written notice served on the employer or employers’ association, the Commissioner of Labour and have a copy served on the Commission, and the Commission shall, within seven (7) days of the notice given to the Commission arrange and supervise a secret ballot to determine whether the majority of employees whom it is proposed should take part in the strike action are in favour of taking such action.

(3) The Commission shall make all reasonable attempts to ensure that all employees who are within the terms of subsection (2) have an opportunity to vote in the ballot.

(4) There shall be a duty upon any employer of employees within the terms of subsection (2) to supply the Commission on request with the names of relevant employees, and any other information which the Commission may require, in order to conduct a ballot for the purposes of subsection (2).

(5) The Commission shall notify the result of a strike ballot to the parties within forty-eight hours of the holding of the ballot and failure by the Commission to organise a ballot in conformity with this section shall not deprive an otherwise lawful strike of the protection under this Act.

(6) Where a majority of employees voting in the ballot have voted in favour of the strike action, or where the Commission has failed to conduct or notify the result of a strike ballot under subsections (2) and (5) respectively, the strike shall be deemed to be in conformity with this Act and for the avoidance of doubt, in the event of a tie in votes, the majority shall not have been achieved.

(7) For a strike action to be lawful under subsection (6) a new written notice shall be given by the party intending to engage on a strike action to the other party or parties to the dispute and to the office of the Commissioner of Labour and the Commission at least forty-eight (48) hours before the commencement of such action.

(8) A party to an unresolved dispute who intends to take lockout action shall give written notice to the other party or parties, at least two (2) days before the commencement of such action, provided that no action in pursuance of a lockout notice shall be taken earlier than twenty-one (21) days after the date on which the dispute has been certified as unresolved within the meaning of section 85.

(9) Where, at any time, a dispute which has been certified as unresolved within the meaning of section 85 is resolved by agreement between the parties, the procedure specified in section 84 shall be followed.

Strike or lockout action in conformity with this.

87. (1) In this Part, a “protected strike” means a strike that complies with the provisions of this Part and “protected lockout” means a lockout that complies with the provisions of this Part.

(2) A person does not commit a delict or a breach of contract of employment by reason only of taking part in a protected strike or a protected lockout.

(3) Notwithstanding subsection (2), an employer is not obliged to remunerate an employee for services that the employee does not render during a protected strike or a protected lockout.

(4) Notwithstanding section 36(f) of the Employment Act, 1980 an employer may not dismiss an employee for participating in a protected strike or for any conduct in contemplation or in furtherance of a protected strike.

(5) Subsection (4) does not preclude an employer from fairly dismissing an employee for a reason related to the employee’s unlawful conduct during the strike, or for a reason based on the employer’s operational requirements, that is, requirements based on the economic, technological, structural or similar needs of an employer.

(6) Civil proceedings may not be instituted against any person for participating in a protected strike or a protected lockout or any conduct in contemplation or in furtherance of a protected strike or protected lockout.

Consequences for strike or lockout action not in conformity with this Part.

88. (1) In the case of any strike or lockout or any conduct in contemplation or in furtherance of the strike or lockout, that does not comply with the provision of this Act, an aggrieved party may apply and the Court shall have exclusive jurisdiction —

(a) to grant an interdict or order to restrain —

- (i) any person from participating in such a strike or any conduct in contemplation or in furtherance of the strike;
- (ii) any person from participating in the lockout or any conduct in contemplation or in furtherance of the lockout;

(b) to order the payment of just and equitable compensation for any loss attributable to the strike or lockout having regard to —

- (i) whether attempts were made to comply with the provisions of this Part and the extent of those attempts, and whether the strike or lockout was premeditated, and whether the strike or lockout was in response to unjustified conduct by another party to the dispute, and whether there was compliance with an order granted in terms of paragraph (a);
- (ii) the interest of orderly collective bargaining;
- (iii) the duration of the strike or lockout; and
- (iv) the financial position of the employer, trade union, staff association or employees respectively.

(2) The Court may not grant an order in subsection (1)(a) unless notice of the application has been given to the respondent.

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(3) If a lockout takes place other than in conformity with this Part an employer instigating the lockout shall be liable for the unpaid wages, salary and other remuneration that an employee may reasonably be expected to have obtained in respect of any period during which the lockout action took place.

(4) In pursuance to subsection (4), an employee may recover such wages, salary and other remuneration as if these were a civil debt, without prejudice to any other lawful manner in which proceeding may be taken for the recovery thereof.

(5) If any strike action takes place otherwise than in conformity with this Part, a trade union or staff association engaging in such strike action commits an offence.

(6) The employer may, where an employee takes part in a strike action which is not in conformity with this Part, treat such action as a breach of contract and may terminate the employee's services summarily.

Minister may apply for order in national interest.

89. (1) If any strike or lockout is threatened or taken, whether in conformity with this Act or otherwise, and the Minister considers that the national interest is threatened or affected thereby, he may make an application to the Court for an injunction restraining the parties from commencing or from continuing such action, and the Court may make such order thereon as it considers fit having regard to the national interest.

(2) Where the Court upon hearing such an application under subsection (1) makes an order, the parties bound by that order shall immediately refrain from or discontinue such action, and the matter which gave rise to the action shall be deemed to have been referred to the Court by the parties concerned for determination.

(3) An order made by the Court under subsection (1), shall be published in the Gazette and in a newspaper circulating in Swaziland and such publication shall be deemed to be service of notice thereof on all parties to the dispute, including all employees engaged in the action, whether threatened or taking place.

(4) Subject to this section, no order of the Court made under subsection (1) shall be deemed to have validated any action taken if such action was not otherwise in conformity with the provisions of this Part.

Strike action or lockout action prohibited during hearing.

90. (1) A person, organization, federation or party to a dispute shall not continue, or take strike action or institute a lockout while proceedings in relation to a dispute to which that action relates are pending before the Court.

(2) A person, organization or federation shall not engage in a strike action or institute a lockout as a result of disagreement or dissatisfaction with an order or award of the Court.

(3) A person, organization or federation who or which contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to such penalties as may be provided in this Act.

Strike action or lockout action prohibited in essential service.

91. An employer or employee carrying on or engaged in an essential service shall not take strike action or institute a lockout in connection with any such essential service and section 96 shall be applicable to such service.

Establishment of the Essential Services Committee.

92. (1) The Minister, after consulting the Labour Advisory Board, and in consultation with the Minister responsible for Public Service, shall establish the Essential Services Committee (hereinafter in this Part called the Committee) and appoint to the Committee, on such terms and conditions, persons who have knowledge and experience of labour law or industrial relations.

(2) The Committee shall consist of seven members constituted as follows:

- (a) a chairman appointed by the Minister;
- (b) two members representing Government;
- (c) two members representing employers; and
- (d) two members representing employees;

all of whom shall be appointed in the same manner and for the same duration as the Labour Advisory Board appointed in terms of this Act.

(3) There shall be a Secretary of the Committee who shall be designated by the Commissioner of Labour.

(4) The functions of the Committee are to —

- (a) conduct investigations as to whether or not the whole or a part of any service is an essential service, and to decide whether or not to designate the whole or a part of a service an essential service;
- (b) determine disputes as to whether or not the whole or a part of any service is an essential service; and
- (c) determine whether or not the whole or a part of any service is a minimum maintenance service.

(5) At the request directed to the Secretary by an interested party, the Committee shall conduct an investigation in terms of subsection (4).

(6) The Committee shall regulate its own rules of procedure.

Designating a service as an essential service.

93. (1) Before the Committee conducts an investigation in terms of section 92, it shall publish in the Gazette and in a newspaper circulating in Swaziland a notice indicating the service that shall be the subject of investigation.

(2) The notice shall indicate the service or the part of the service that shall be the subject of the investigation, and shall invite interested parties, within a period stated in the notice —

- (a) to submit written representations; and
- (b) to indicate whether or not they require an opportunity to make oral representation.

(3) Any interested party may inspect any written representations made pursuant to the notice at the place and time indicated in the notice.

(4) The Secretary shall provide a certified copy of an extract from any written presentations to any person who has paid a fee which shall be prescribed by the Committee.

(6) The Committee shall consider any written and oral representation and make a decision thereon in accordance with the provisions of section 25(2):

Provided that the chairperson shall have a casting vote notwithstanding the provisions of section 25(1).

(7) The Committee shall after deciding whether the whole or part of a service is an essential service, designate that whole or that part of such service as an essential service and cause the Minister to publish that fact in the Gazette and in a newspaper circulating in Swaziland.

(8) The Committee may vary or cancel a designation of a whole or a part of a service as an essential service, by following the provisions set out in subsections (1) to (7) read with such changes as may be required by the context.

(9) The following services shall be deemed to have been designated as essential services as defined in section 2:

- (a) water services;
- (b) electricity services;
- (c) fire services;
- (d) health services;
- (e) sanitary services; and
- (f) telephone and telegraphic services.

(10) An employer in an essential service shall cause to be posted up, on the premises used for the purpose of such service, the printed notice containing the provisions of sections 91, 93(9) and 96 stating that service is an essential service.

(11) The Minister may, on the advice of the Committee, amend the list of essential services and shall publish that in the Gazette.

Minimum maintenance services.

94. (1) Nothing in this Act shall preclude the parties from entering into an agreement designating a service to be a minimum maintenance service.

(2) Strikes and lockouts shall be prohibited in respect of any service that has been designated as a minimum maintenance service in terms of subsection (1).

Disputes on whether a service is an essential service.

95. (1) Any party to a dispute about any of the following issues may refer the dispute in writing to the Committee —

- (a) whether or not a service is an essential service; or
- (b) whether or not an employee is engaged in a service designated as an essential service.

(2) The party who refers the dispute to the Committee shall satisfy the Committee that a copy of the referral has been served on all other parties to the dispute.

(3) The Committee shall determine the dispute immediately or as soon as it is practicable.

Disputes in essential services.

96. (1) Any party to a dispute that is precluded from participating in a strike or lockout by reason that party is engaged in an essential service may refer the dispute in writing to the Commission which shall immediately call the parties involved in the dispute and conciliate.

(2) The conciliator shall attempt to resolve the dispute within the next seven (7) days from the date of appointment but the parties may extend by agreement the period of conciliation.

(3) If the dispute remains unresolved in terms of section 85(1) after conciliation —

(a) the parties may refer the matter to mediation; or

(b) any party to the dispute may refer the matter to arbitration by the Commission.

(4) The costs in relation to conciliation, mediation or arbitration under this section shall be borne by Government.

Criminal liability of officers of corporate bodies.

97. (1) Where there is reasonable cause to believe that an offence under this Act has been committed by a body corporate, criminal proceeding may be instituted against any person who at the time of the commission of the offence was a director, manager, secretary or other office bearer of such body who was purporting to act in any such capacity.

(2) Without prejudice to any other defence, where criminal proceeding are instituted against a person referred to in subsection (1), it shall be a defence if such person proves that the offence was committed without that person's consent or connivance or that person exercised all such diligence to prevent the commission of the offence.

PART IX

FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANISE

Basic employee rights.

98. An employee may —

(a) take part in the formation of any trade union or staff association or federation as the case may be;

(b) be a member of any trade union or staff association and take part in its lawful activities outside working hours or, with the consent of the employer, within working hours;

(c) hold office in any trade union, staff association or federation;

(d) take part in the election of work place trade union representative or staff association representative, or be a candidate for such election;

(e) in the capacity of the workplace trade union representative or staff association representative;

(f) exercise any right conferred or recognized by this Act, and assist any employee, staff association or trade union to exercise such rights.

Basic employer rights.

99. An employer may —

(a) take part in the formation of any employers' association or federation;

(b) be a member of any such association or federation, and take part in its lawful activities;

(c) hold office in any such association or federation;

(d) exercise any and all rights conferred or recognised by the Act, and assist any employer or employers' association to exercise such rights.

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Prohibited employer prices.

100. (1) An employer or employers' association, and a person acting on behalf of an employer or employers' association, shall not, with respect to any employee or any person seeking employment —

- (a) discriminate against such employee or person because of that person's exercise or anticipated exercise of any right conferred or recognised by the Act, or because of the person's participation in any capacity in any proceeding under this Act;
- (b) threaten such employee or person that person shall or may suffer any disadvantage from exercising any right conferred or recognised by this Act, or from participating in any capacity in any proceeding under this Act;
- (c) promise such person any benefit or disadvantage for not exercising any right conferred or recognised by this Act, or for not participating in any capacity in any proceeding under this Act;
- (d) restrain or seek to restrain such an employee or person, by a contract of employment or otherwise, from exercising any right conferred or recognised by this Act, or from participating in any capacity in any proceeding under this Act, and any contractual term which purports to exert any such restraint shall be null and void, whether agreed to before or after the coming into force of this Act;
- (e) impose any discipline or disadvantage upon an employee for refusing to do work normally done by an employee who is lawfully on strike or who is locked out, unless such work must be done to prevent an actual danger to life, health or property.

(2) Nothing in this section shall be interpreted as preventing an employer from fairly terminating the services of an employee in accordance with the Employment Act, 1980 or any successor thereto, or from disciplining an employee for a just cause.

Lawful striker's right to return to employment.

101. If an employee who has been lawfully on strike, or who has been locked out by his employer, presents himself for work not more than two working days after the end of the strike or lockout, the employer shall accept such employee in the employment which the employee held immediately before the beginning of the strike or lockout, unless material changes to the employer's operations have resulted in the abolition of such employment.

Refusal to do strikers' work.

102. (1) An employee or a number of employees acting in concert, may refuse to do any work normally done by an employee or employees who are lawfully on strike.

(2) An employee or a number of employees shall not refuse to do any such work if such refusal will endanger the life, health and safety of persons or property.

Interference by public officers prohibited.

103. (1) A person holding a public office, or acting or purporting to act on behalf of anyone holding such office, shall not exercise any power conferred by or under any law in such a way as to impede the exercise of rights conferred or recognised by this Act.

Access to employer's premises.

104. (1) An employer shall not deny to an officer or authorized representative of a trade union or staff association or Joint Negotiation Council such access to the employer's work premises as is reasonable and necessary for the lawful activities of the trade union, staff association or Joint Negotiation Council as the case may be.

(2) In granting the access required by subsection (1), an employer may impose any restrictions as to time and place which are reasonable and necessary to avoid undue disruption of operations, or in the interests of safety and it shall not be deemed unreasonable for an employer to refuse permission for a trade union or staff association to hold meetings of its members on the premises of the employer during working hours.

(3) Upon application, if the Court is satisfied that an employer has unreasonably refused or limited any access required by this section, it may make an order directing the granting of such access, subject to such conditions as it may deem appropriate.

Representative's credentials and requirements as to representation etc.

105. (1) A representative appointed or elected to membership of a Joint Negotiation Council shall present that representative's credentials to the chairman of such Council.

(2) A representative appointed or elected to office in a trade union or staff association or Joint Negotiation Council shall provide proof of that representative's identity and credentials when required by an employer whose premises the representative wishes to visit.

(3) A representative appointed at the representative's place of employment shall observe the terms of that representative's contract of employment, work competently and with due diligence, have proper regard for the safety and well-being of the representative's fellow employees, and observe the established rules, conditions and standards of employment.

(4) An employer shall allow —

- (a) reasonable time for internal consultation with members of the organization, provided that permission to be excused from normal duties for this purpose has been obtained;
- (b) accredited representative of employee organizations reasonable time off, with or without pay, in the employer's discretion, to deal with business affairs of employee organizations;
- (c) time off, with or without pay, in the employer's discretion, for official attendance at formal meetings of appropriate employee organizations or associations, and for training courses relevant thereto.

Encouragement of violence prohibited.

106. (1) A person who or an organization which encourages or causes violence, intimidation or damage to property commits an offence.

(2) Without derogating from the generality of subsection (1), a person who or an organisation which intimidates or directly or indirectly causes violence or threatens with violence any employer or owner of any business or business premises of the property of such an employer or owner or any employee or any other person commits an offence.

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PART X
MISCELLANEOUS

Peaceful picketing.

107. (1) Notwithstanding anything to the contrary contained in this Act or any other law, it shall be lawful for any person to be near or at that person's place of work for the purposes of peacefully communicating or peacefully persuading any other person to work or not to work, provided that such presence is in furtherance of a strike or lockout which is in compliance with this Act.

(2) The right contained in subsection (1) shall extend to any officer of a union whose members are acting in furtherance of such a strike or lockout.

Expenses.

108. (1) The Minister shall determine the remuneration, including any allowance payable to any persons appointed for the purposes of this Act, and the expenses so incurred shall, unless provided for in this Act, be charged to the Consolidated Fund.

Code of practice.

109. (1) The Code of Practice set out in the Schedule (hereinafter called the Code) shall come into operation on the day this Act comes into operation.

(2) Nothing in the Code shall be legally binding on any person, organization or federation and it shall not be an offence not to comply with its provisions.

(3) Notwithstanding subsection (2), the Court, Commission or any other person may take the Code into account in arriving at its decision in proceeding under this Act.

(4) The Minister may, after consultations with the Labour Advisory Board, amend the Code.

Penalties.

110. A person who, an organization or a federation which commits an offence under this Act is liable, on conviction to a fine not exceeding ten thousand Emalangeni (E10,000.00).

Regulations.

111. The Minister may prescribe anything under this Act which requires to be prescribed and may make regulations for giving effect generally to the purposes and provisions of this Act.

Transitional provisions.

112. (1) All legal proceeding pending before the Court established under the repealed Act shall, on the day this Act comes into force, be continued by the Court established under this Act as if they had been initiated under it.

(2) Any process, matter or thing initiated under the provisions of the repealed Act shall, on the day this Act comes into force, be continued as if it had been initiated under this Act.

(3) Any person appointed under the provisions of the repealed Act shall, on the day this Act comes into force continue to perform such duties under this Act as if the person had been appointed under the provisions of this Act.

Repeal.

113. (1) The Industrial Relations Act, 1996 is hereby repealed.

(2) Notwithstanding such repeal, any rules or regulations made or issued under the repealed Act, shall, to the extent that they are not inconsistent with this Act, continue to be valid unless otherwise revoked under this Act.

SCHEDULE
CODE OF PRACTICE
(Section 109)

Introduction.

1. The purpose of this Code is to provide practical guidance for the day to day conduct of good industrial relations. It has been prepared in consultation with the Labour Advisory Board and complements the legislative provisions of the Industrial Relations Act. The Code is not legally binding and it is designed to interpret industrial relations in the widest sense. Although some of the detailed provisions of the Code may need to be adapted to suit particular circumstances, especially in small establishments, or in certain types of employment, such adaptations should be consistent with the Code's general intentions. Failure to observe the Code will not, in itself, render anyone liable to prosecution; at the same time, the Industrial Court may take the Code into account in any proceeding before it. Any changes necessary to the Code of Practice will be made by the Minister responsible for Labour in consultation with the Labour Advisory Board.

Management Responsibilities.

2. The principal aim of management is to conduct the business of the undertaking successfully. To achieve this aim it is necessary to have a good working relationship between management and employees. The achievement of these relationships is the joint responsibility of management and employees and the organisations which represent them. At the same time, the prime responsibility for the promotion of good working relationships rests with management, who should take the initiative in their development and pay as much attention to them as they pay to such management responsibilities as finance, marketing or production.

3. When an organisation has been recognised for negotiating purposes, management should, in conjunction with the organisation, maintain effective arrangements for negotiation, consultation and communication and for the settlement of disputes and grievances, and take steps to ensure that agreements are complied with, and that agreed procedures are observed and used.

4. Where no organisation has been recognised for negotiating purposes, management should maintain effective arrangement for consultation and communication and for the settlement of grievances and ensure that these arrangements are used.

5. Management should ensure that managers and supervisors are properly selected and trained, and that —
- (a) their responsibilities and authority are clearly defined;
 - (b) they know and understand the procedure for the treatment and settlement of disputes and grievances;
 - (c) they are responsible for working units or groups that they can manage or supervise effectively;
 - (d) they are fully conversant with management policies insofar as they affect their working units or groups;

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- (e) they have a good general knowledge of the labour legislation affecting the employees for whom they are responsible.
- (f) Due recognition is hereby given to the role and functions of Liaison Officers (bo-Ndabazabantu) for purposes of promoting culture, customary values and harmony in industry or underking.

Employee organisations and federations.

6. The principal aim of employee organisations is to promote the interests of their members. To do this effectively they must try and ensure that the undertakings in which their members are employed prosper.

Their contribution is to assist in the promotion of efficiency in those undertakings. They share with management the responsibility for good industrial relations.

Employee organisations should —

- (a) maintain, together with employers associations or individual employers, as appropriate, effective arrangements for negotiation, consultation and the settlement of disputes and grievances;
- (b) take steps to ensure that officials, representatives and members observe agreements and follow agreed procedures and understand the policies and rules of the organisation;
- (c) ensure that officials understand their powers and duties and are properly trained to carry them out efficiently and responsibly;
- (d) maintain effective communication within the organisation and encourage members to attend meetings and participate in the work of the organisation.

Employers associations and federations.

7. The principal aim of employers associations is to promote the interests of their members. To do so they should —

- (a) where appropriate, maintain jointly with employee organisations, effective arrangements at industry or other levels for the settlement of disputes and grievances and the negotiation of terms and conditions of employment;
- (b) take steps to ensure that members develop effective arrangements for the settlement of disputes and grievances at the level of the individual undertaking, and that they are conversant with and observe agreements and agreed procedures;
- (c) provide advice to members on employer/employee relations, including the collection and distribution of information on legislative and other changes which affect these relations.

The individual employee.

8. The individual employee has obligations to his employer, to his trade union or staff association if he belongs to one, and to his fellow employees. His legal relationship with his employer derives from his individual contract of employment. Some of its terms may be fixed by collective agreement, others by law. He should ensure that he understands the terms of his contract and complies with them. He should be familiar with the arrangements for dealing with grievances arising out of his contract and make use of them. Employees working in an essential service for example health, sanitary, or electricity services, should ensure that they know the special obligations placed upon them because of their work in these services.

Labour Department.

9. The formal responsibilities of the Commissioner of Labour and his staff are contained in the various laws dealing with labour matters. In effect, they go further than this. The Labour Department is a public service for the benefit of individual employees and employers and the organisations or associations to which they may belong. The Department can advise all parties on labour matters, provide a conciliation service and obtain information on legislative and other trends both within Swaziland and outside its borders. All parties should avail themselves of the services offered by the Department.

Conciliation, Mediation and Arbitration Commission.

10. Speedy and effective dispute resolution mechanisms are imperative for harmonious industrial relations. The Industrial Relations Act sets up an infrastructure for alternative dispute resolution called Conciliation, Mediation and Arbitration Commission whose functions are:

- (a) to resolve disputes mainly through conciliation but also by mediation and arbitration;
- (b) the Commission also has other functions, among them —
 - (i) providing advice and assistance,
 - (ii) training,
 - (iii) conducting ballots,
 - (iv) conducting research.

The social partners are encouraged to avail themselves to these services in the interest of harmonious industrial relations.

Employment policies.

11. The prime responsibility for employment policies rests with management; at the same time, they should be developed, as appropriate, by consultation or negotiation with employee representatives. Employment policies should be gender sensitive, having regard to the legislative requirements relating to non-discrimination in employment.

Manpower planning.

12. Manpower planning should take account of existing manpower resources, present and future manpower needs and the necessity of matching manpower resources to these needs. It is essential that manpower planning should be an integrated part of the planning process, backed by management and based on adequate and up to date personnel records. In the evolution of a manpower policy care should be taken to —

- (a) avoid unnecessary fluctuations in the labour force, and where changes are necessary, make them with as little disruption as possible;
- (b) maintain arrangements for the transfer of employees between jobs;
- (c) maintain consultation and negotiating procedure aimed at identifying the causes of absenteeism and labour turnover with a view to controlling these aspects.

Engagement and selection of employees.

13. In engaging and selecting employees, management should have a clear knowledge of the terms and conditions of employment relative to the vacancy and explain them to applicants. The person responsible for engagements should be aware of the qualifications and experience called for, and where possible should consider applicants from within the undertaking where promotion is involved. Management should carry out periodic checks on engagement and selection methods and ensure that persons charged with the responsibility for engagement and selection of employees are competent to carry out the task.

Training.

14. Management should ensure that new employees are given induction training and are properly informed about their conditions of employment. Where necessary, on the job training should be given to supplement previous experience and training. When young people are entering employment for the first time, they should be given a general introduction to the working environment, basic training in regard to working requirements and specific training in their particular job; they should also be taught the importance of health and safety precautions. All employees should be encouraged to improve their education and skills by taking advantage of training facilities and educational opportunities, both inside and outside their place of employment.

Payment systems.

15. Payment systems should be kept as simple as possible consistent with their purpose; where payment is linked to performance they should be based on some form of work measurement. Where an employee organisation has been recognized, the payment system should be reflected in an agreement between the parties.

Differentials should be rational and related to the job content, preferably they should be mutually agreed. Employees should normally be paid during working hours.

Status and security of employees.

16. Compatible with the successful operation of the undertaking, management should provide stable employment, including reasonable job security for employees absent through sickness or other causes beyond their control. Unnecessary fluctuations in the level of earnings of an individual employee should be avoided by arranging his work so that he receives broadly equitable payments for each pay period. Status of employees and the facilities available to them should be based on the requirements of the job; where this is not so, the aim should be to progressively reduce and ultimately eliminate differences not so based.

17. Responsibility for deciding the size of the work force rests with management. A policy for dealing with retrenchments in the work force, should they become necessary, should be worked out in advance, and where applicable, in conjunction with employee organisations. They should form part of the undertaking's employment policies. Insofar as is possible, management should seek to avoid retrenchments by such means as restricting engagements; reducing overtime; retiring employees who are beyond the normal retiring age; retraining employees for transfer to other work, and, as a last resort, short time working.

18. Where retrenchment is inevitable, management in consultation with employees and their representatives, should give as much warning as possible to everyone concerned. At the same time consideration should be given to the introduction of a scheme for voluntary retirement, retrenchment or transfer. A decision should be taken as to which employees are to be retrenched, ensuring that no public announcement is made before the employees involved and their representatives have been informed.

Working conditions.

19. Minimum standards relative to working conditions are contained in the labour laws. Management should, in co-operation with their employees, aim at improving these standards by better housekeeping, cleanliness in the work place, improved lighting and ventilation etc. Noise levels should be reduced as far as possible and the standards of safety and hygiene kept at a high level. Where protective equipment is provided, e.g. safety helmets, goggles and machinery guards etc., management and employee representatives should take steps to ensure that they are properly used. For their part, employees should ensure that they understand the health and safety precautions in use, that they observe them and also that they make use of protective equipment.

Communication and consultation.

20. Management, employee representatives and organisations share a responsibility for ensuring that there is effective communication and consultation in all establishments. Communication and consultation are essential at any time, but they are particularly important in times of change. For example, major changes in working conditions should not take place without prior discussion between management and employees or their representatives.

21. Effective arrangements should be introduced to ensure a flow of information between management and employees. Personal contact between each manager or supervisor and the working group they control should be supplemented, where practicable, by written information, e.g. on notice boards or by training courses and meetings. Employees should be regularly informed about the performance of the undertaking and organizational or management changes which affect them.

22. Management should ensure that managers and supervisors know that it is an important part of their duties to explain management policies and convey work instructions clearly and that they have the requisite information to do so. Opportunities should be provided for employees to discuss matters affecting their employment and management should ensure that they are kept informed of these discussions.

23. Every employee should be given information about the requirements of his job and to whom he is directly responsible, disciplinary procedures and the circumstances which can lead to suspension and dismissal, any arrangements which exist relative to an employee organisation, opportunities for promotion and necessary training to achieve promotion, social and welfare facilities and fire prevention, safety and health rules.

24. Employee representatives and employee organisations should ensure that they have the means of communicating effectively with those they represent, whilst, at the same time, recognizing that management has a responsibility for communicating directly with the employees. All parties should co-operate in keeping employees informed of the results of any negotiations or consultations affecting them.

Consultation.

25. Management should take the initiative in setting up and maintaining consultative arrangements best suited to the circumstances of the establishment, bearing in mind the requirements of the Industrial Relations Act relative to the recognition of employee organisations, collective bargaining and the introduction of works councils. In setting up these consultative arrangements, management should ensure that —

- (a) the arrangements provide opportunities for the free expression of views on matters affecting employment, without incurring the risk of discrimination against persons expressing such views;
- (b) senior staff take part in the consultation;
- (c) all parties have all the information they require in order that they may participate effectively in the consultation; and
- (d) the arrangements include effective means of reporting back to employees.

Recognition of employee organisations.

26. Section 43 of the Industrial Relations Act establishes the procedure for the recognition of an employee organisation as a collective bargaining representative. Preferably, this process should be voluntary, but in the event of a dispute the matter can be referred to the Industrial Court or the Conciliation, Mediation and Arbitration Commission. In replying to an application for recognition, management is entitled to know how many employees in the undertaking are members of the trade union or staff association, but not their identities. When the extent of support cannot be agreed, the Court can make a decision as to how the support can be determined. A recognition agreement should establish the categories of employees covered by the agreement, and once an organisation is recognized, management should be prepared, within agreed procedures, to receive representations from the organisation on behalf of its members about grievances which cannot be dealt with on an individual basis. A clear procedure is necessary for the resolution of conflicts of interest.

27. An essential ingredient for sound industrial relations is mutual trust and respect between an employer and any organisation representing the employees. To establish this trust and respect there should be regular contracts between the parties. Such contracts should not be left until there is a problem. Equally, employee organisations should be provided with facilities to meet members in order that they may represent them effectively.

Collective bargaining.

28. The procedure for the conduct of collective bargaining is set out in Part V of the Industrial Relations Act. Ideally, collective bargaining should cover as wide a group as possible within the same industry. Too many small units make it difficult to ensure consistent treatment for related groups of employees, although there may be a need to take into account the interests of minority groups within the industry. Whilst negotiating arrangements need periodic review, arrangements which are working well should not be disturbed without good reason.

Collective agreements.

29. Collective agreement deal with matters of procedure and matters of substance which are of joint concern to management and employees. A collective agreement may contain provisions of both kinds or they may be dealt with in separate agreements. In either case the agreement should be in writing and should contain arrangements for the periodic review of procedures etc. In addition to the matters covered in Part VII of the Industrial Relations Act, the agreement may contain provisions for:

- (a) facilities for the organisation's activities in the undertaking and the appointment, status and functions of shop stewards;
- (b) the constitution and scope of any consultation committees;

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- (c) techniques for determining levels of performance including job grading, work measurement and job evaluation;
- (d) guaranteed pay, sick pay, maternity leave and other special kinds of leave;
- (e) procedures for handling retrenchments;
- (f) general guide lines for negotiating at a lower level matters which cannot be decided satisfactorily at industry-level;
- (g) the relevance of an agreement made at establishment or undertaking level to an industry wide agreement.

Disclosure of information.

30. For collective bargaining to be conducted realistically, responsibly and in good faith, it is necessary for both parties to have adequate information on the matters being discussed. Management should be prepared to meet all reasonable requests from employee organisations for information relative to planned negotiations. In particular, it should make available, in convenient form, information supplied to shareholders or published in annual reports.

Employee representation at the place of work.

31. It is an advantage for all parties for management to deal with representatives of employees who can put forward their collective views. This function is normally carried out by employees who are accredited to act on behalf of members of an employees' organisation in the establishment where they themselves are employed. They are usually called "shop stewards".

32. A shop steward has responsibilities both to fellow members in the establishment and to the organisation outside it, in addition to the responsibilities as an employee. Most shop stewards spend only a part of their time on shop steward's duties, but their role in the effective conduct of industrial relations at the place of work is always important. Where there are shop stewards, trade unions should provide for their election and appointment, define the manner in which they can be removed from office and specify their powers and duties within the employee organisation.

Functions of a shop steward.

33. A shop steward's functions at the place of work cover such matters as the recruitment of members of the organisation, maintenance of membership, the collection of dues and contributions and the handling of members' grievances, etc. This role varies according to the industrial relations system in which the shop steward operates. Agreements at the level of the industry may lay down, or provide guide lines on some of his functions. Others are best determined in the individual establishment. But all the functions of a shop steward should be clearly defined and those relating to industrial relations should be agreed between the parties. A shop steward must observe all agreements to which the organisation is a party and should take all reasonable steps to ensure that those who are represented also observe them.

Appointment and qualifications of shop stewards.

34. When recognition has been accorded to an organisation, management and the organisation should agree on the number of shop stewards needed in the establishment and the work groups for which each steward is responsible. In conjunction with management, organisations should decide on the conditions and eligibility for election and appointment. For example, minimum age, grade and length of service in the establishment. Members of organisations should be encouraged to vote in the election of shop stewards, and management should be informed promptly when shop stewards are appointed and when changes are made.

Status of shop stewards.

35. Shop stewards should be provided with written credentials setting out their powers, duties and authority, which shall not include the right to call for industrial action. All credentials should state the period of office and the work group represented. In an establishment where there are a number of shop stewards, they should consider electing a senior steward to co-ordinate their activities.

Facilities for shop stewards.

36. The facilities needed by shop stewards will depend on their functions and the nature and extent of these facilities should be agreed between organisations and management. They may include time off from the job, to the extent reasonably required, for their industrial relations functions, permission for which should be sought from the appropriate manager and should not be unreasonably withheld. They may also include maintenance of earnings while carrying out these functions, lists of new employees, accommodation for meetings with the employees whom they represent, with other shop stewards and with full-time organisation officials, access to a telephone and the provision of notice boards, provided that the employer should always have the right to see any notice before it is put up.

Training of shop stewards.

37. Employee organisations and management should review the type of training most appropriate for the shop stewards' needs and take all reasonable steps to ensure that shop stewards receive the training they require; seek to agree on the arrangements for leave from the job to attend training courses and seminars, including compensation for loss of earnings; and accept joint responsibility for training in the use of arrangements for communication and consultation and for handling grievances.

Grievance and dispute procedure.

38. All employees have a right to seek redress for grievances and management should establish, with employee representatives of organisations concerned, or where no organisation has been recognized, through other means, arrangements under which individual employees can raise grievances and have them settled fairly and promptly. There should be a formal procedure, except in very small establishments where there is close personal contact between the employer and employees. Where organisations are recognized, management should establish a procedure with them for settling collective disputes. Individual grievances and collective disputes are often dealt with through the same procedure. Where there are separate procedures they should be linked so that an issue can, if necessary, pass from one to the other, since a grievance may develop into a dispute.

Individual grievance procedure.

39. The aim of the procedure should be to settle the grievance fairly and as near as possible to the point of origin. It should be simple and rapid in operation. The procedure should be in writing and provide that —

- (a) the grievance should normally be discussed first between the employee and the immediate superior;
- (b) the employee should be accompanied at the next stage of the discussion with management by an employee representative if he or she so wishes and, if there is a collective representative, and the employee concerned belongs to that organisation, a representative of the organisation should be allowed to be present at this stage if he or she so wishes; and
- (c) there should be a right of appeal.

Collective disputes procedure.

40. Disputes are broadly of two kinds:

- (a) disputes of right, which relate to the application or interpretation of existing agreements or contracts of employment; and
- (b) disputes of interest, which relate to claims by employees or proposals by management about terms and conditions of employment.

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

- (a) state the level at which an issue should first be raised;
- (b) lay down time limits for each stage of the procedure with provision for extension by agreement; and
- (c) reflect the requirements of the Industrial Relations Act in regard to strikes and lockouts.

42. The procedure should have the following stages:

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- (a) employee representatives should raise the issue in dispute with management at the level directly concerned;
- (b) failing settlement, it should be referred to a higher level within the establishment;
- (c) if still unsettled, it should be referred to further agreed stage, for example, to a stage of an industry-wide procedure, or to a higher level within the undertaking; and
- (d) it should be treated in terms of the Industrial Relations Act.

Disciplinary procedures.

43. It is a basic principle that an employee should not be dismissed from a job without reason. At the same time, it is difficult to protect an employee after that employee has been dismissed, and the usual question relative to an employee proved to be unfairly dismissed is the amount of compensation due.

It is rare for an employer to be willing to reinstate a dismissed employee, and clearly, therefore, dismissal should be a last resort. Every employer should ensure that fair and effective arrangements exist for dealing with disciplinary matters, if an organisation has been recognized, the organisation should be associated with the disciplinary procedure.

44. Whatever procedure is decided upon, it should provide for full consideration of all the relevant circumstances by someone with authority to take the necessary decisions. The procedure should be formal except in very small establishments where there is close personal contract between the employer and the employee. Management should make known to each employee —

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

The procedure should whenever possible be put into effect only after consultation with a collective representative. It should be in writing and should either be given to each individual employee or displayed where it can be conveniently read. It should —

- (a) state the fact that it has been agreed with an employee organisation;
- (b) specify, by name or by job, who has authority to take various forms of disciplinary action and ensure that only senior management has the power to dismiss;
- (c) give the employee the right to state his or her case and to be accompanied by an employee representative;
- (d) ensure that, so far as is practicable, the final decision on disciplinary action is taken by a level of management not previously involved; and
- (e) provide for independent conciliation if the parties to the procedure so wish.

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

- (a) the first step should be an oral warning or, in the case of more serious misconduct, a written warning setting out the circumstances;
- (b) no employee should be dismissed for a first breach of discipline except in the case of serious misconduct;
- (c) a written record should be kept by the employer of all disciplinary actions other than oral warnings and any entry in that record regarding an employee should be shown to them and, if they wish, their representative; and
- (d) great care should be taken when shop stewards are disciplined as they, clearly, are in a very vulnerable situation with regard to discrimination. A shop steward should never be dismissed until the circumstances of the case have been discussed with a full-time official of his organisation, though he may be suspended pending such discussions.