

**EMPLOYMENT RELATIONS ACT 2008**  
**Act No. 32 of 2008**

**The Collective Bargaining Process**

The Employment Relations Act, Act No. 32 of 2008 gives much prominence to the Collective bargaining process as a means to regulate jointly terms and conditions of employment. The Act lists the various steps involved in the collective bargaining process ranging from recognition of trade unions as bargaining agents to the negotiation and registration of collective agreements.

The **Employment Relations Act**, *Act No. 32 of 2008* has been proclaimed on 30 January 2009 and has come into operation with effect from 2 February 2009.

This Act replaces the **Industrial Relations Act**, *Act No. 67 of 1973*.

The Employment Relations Act provides a framework for the regulation of employment relations in Mauritius. It emphasises on the collective bargaining process as a means for the determination of terms and conditions under an employment relationship.

Part V of the Act relates to the Collective bargaining process. It covers inter alia the following issues:

- (a) The determination and granting of negotiating rights
- (b) The bargaining process
- (c) The negotiating of collective agreements.

**Selected Definitions**

**“collective bargaining”** means negotiations relating to terms and conditions of employment or to the subject-matter of a procedure agreement.

**“collective agreement”** means an agreement which relates to terms and conditions of employment, made between a recognised trade union of workers or a joint negotiating panel and an employer.

**“bargaining unit”** means workers or classes of workers, whether or not employed by the same employer, on whose behalf a collective agreement may be made.

**“bargaining agent”** means any trade union, or where there is a joint negotiating panel, such joint negotiating panel having negotiating rights to bargain collectively on behalf of the workers in a bargaining unit.

**“joint negotiating panel”** means the representatives of 2 or more trade unions of workers having negotiating rights.

**“negotiating rights”** means the right to participate in collective bargaining.

**“procedure agreement”** means an agreement which relates to:

- (a) machinery for negotiation with regard to, or for, the settlement of terms and conditions of employment;
- (b) negotiating rights;
- (c) facilities for officers in relation to trade unions activities;
- (d) the establishment of a minimum service as specified in section 81 of the Employment Relations Act.

## **Bargaining Unit**

Collective bargaining at the level of an enterprise is conducted in relation to defined groups of workers, commonly known as bargaining units. The interests of workers covered by a bargaining unit need not be identical but there should be a fairly large degree of common interest.

Factors which need to be taken into account in establishing a bargaining unit include inter alia :

- (a) the nature of work
- (b) the training, experience and professional or other qualifications of the workers concerned

- (c) the extent to which they have common interests
- (d) the matters to be bargained about
- (e) the need to avoid disruption of adequate existing collective bargaining arrangements which may be working well.

## **Recognition**

- (a) The interests of workers are best served by strong and effective trade unions.
- (b) A claim for recognition for negotiating purposes shall as far as possible be settled voluntarily between the parties.
- (c) In case of any claim, management is entitled to know the number but not the identities of the workers in the proposed bargaining unit who are members of the union making the claim.
- (d) A trade union shall be entitled to recognition on a bargaining agent for a bargaining unit where it had the support of not less than 30 per cent of the workers in the bargaining unit.
- (e) Two or more trade unions can be recognised as a joint negotiating panel of the bargaining unit when each has the support of 30 per cent or more but less than 50 percent in a bargaining unit.
- (f) The responsibility to avoid disputes on recognition matters between trade unions rests principally with the trade unions themselves.
- (g) Where recognition has not been granted voluntarily, the application for recognition should be made to the Tribunal.
- (h) The Tribunal has 30 days to determine the application.
- (i) The Tribunal, when satisfied that the trade union or group of trade unions are representative will grant recognition to undertake collective bargaining.
- (j) The Tribunal may also organise a secret ballot in the bargaining unit to determine the representativeness.
- (k) An order organising recognition made by the Tribunal shall include the following:
  - (i) specify the employer and the trade union to which it relates
  - (ii) specify the bargaining unit
  - (iii) declare whether the trade union has been granted bargaining agent or sole bargaining agent status

- (iv) define the interval, time, occasions as the circumstances may reasonably require for the trade union or joint negotiating panel and the employer to meet for the purposes of collective bargaining.

### **Revocation or Variation of Recognition**

- (a) Application for revocation or variation of recognition may be made by
  - (i) trade union or a group of trade unions
  - (ii) an employer
- (b) The application shall be made to the Tribunal and shall be determined within 30 days.
- (c) Where recognition has been granted by the Tribunal, no criteria for negotiation or revocation or variation of recognition in the same bargaining unit shall be entertained before the expiry of a period of 12 months starting on the date the order was made.

### **Check Off Agreements**

- (a) An employer whose workers are members of a registered trade union shall entertain to enter into a check off agreement with the registered trade union.
- (b) An order for check off agreement can be made to the Tribunal and shall be determined within 30 days of the date of receipt of the application.
- (c) An order made by the Tribunal shall be complied within 2 months of that order by an employer.

### **Procedure Agreement**

- (c) Once recognition has been granted parties shall draw up and sign up a procedure agreement to regulate their relations within 30 days or any such larger period as agreed by parties.
- (d) A procedure agreement shall bind the parties to the agreement.
- (e) Where any party refuses to draw up and sign a procedure agreement, the other party may apply to the Tribunal for the making of a procedure agreement by way of an award.
- (f) The application shall be determined with 60 days of the receipt of the application.

- (g) A procedure agreement may be varied by mutual consent of parties or by the Tribunal when an application has been made when there is no agreement.
- (h) A procedure agreement shall contain the following provisions inter alia:
  - (i) the bargaining scope
  - (ii) levels at which bargaining shall take place
  - (iii) arrangements for the negotiation of terms and conditions of employment
  - (iv) Circumstances and length of notice to be given by parties for renegotiation of terms and conditions
  - (v) Disputes resolution procedures
  - (vi) Consultation procedures in cases where reduction of workforce or the transfer of ownership of an enterprise or cessation of business is contemplated.
  - (vii) Establishment of minimum service
  - (viii) Time off facilities
  - (ix) Access to information
  - (x) Access to the workplace.

This list is not exhaustive. Parties may wish to include any provision relating to the specificity and nature of their work.

### **Access to Workplace**

- (a) Prior notice and authorisation as to the time, place and purpose of his visit should be sought before a trade union official of a recognised trade union enters the employer's premises.
- (b) Any trade union official shall before entering the workplace:
  - (i) disclose the purpose of his entry
  - (ii) produce evidence of his authority to represent the trade union.
- (c) Prior notice as to the time and purpose of his visit should be sought before a trade union official of a registered trade union enters the employer's premises.
- (d) Application to the Tribunal can be made in cases of unreasonable denial of entry to a workplace by the trade union.
- (e) The Tribunal shall determine the matter within 30 days of the receipt of the application.

## **Access to Information**

- (a) Either party shall provide to the other party all relevant information required for the purposes of collective bargaining.
- (b) Request for information should be made in writing specifying the nature of the information and the reasonable time frame within which the information is to be provided.
- (c) No information is to be disclosed when:
  - (i) it is prohibited to be disclosed by law or by order of any court
  - (ii) it may cause prejudice to the interest of the enterprise or to a worker
  - (iii) it is personal information relating to the privacy of a worker, unless the workers consents to the disclosure of the information.
- (d) Application in case of refusal to provide information is to be made to the Tribunal.
- (e) The Tribunal shall determine the application within 30 days of the receipt of the application.

## **Time of Facilities**

- (a) Time off should be granted without loss of pay for the purpose of performing trade union functions and activities subject to exigencies of the employment and in a manner which does not impair the smooth operation of the work at the enterprise.
- (b) The issue of granting of time off is best dealt through agreement and its extent, duration and condition are provided in the procedure agreement.
- (c) Agreement for a time off facility is for a minimum of 2 years.

## **Bargaining Procedure**

- (a) A recognised trade union or recognised group of trade unions or an employer may initiate negotiations with a view to reaching a collective agreement by giving written notice to the other party.
- (b) The notice should be
  - (i) signed by the party giving it
  - (ii) specify parties to be involved in the negotiations
  - (iii) set out a summary of issues to be discussed
  - (iv) specify the bargaining unit.

- (c) The party on which the notice has been served has the duty to start negotiations within 30 days of the receipt of the notice or such longer period as may be agreed by the parties.
- (d) Application in a case of refusal to start negotiations may be made to the Tribunal.
- (e) The Tribunal shall determine the application within 30 days of the receipt of the application.

### **Unfair Labour Practices**

- (a) No employer or trade union shall have recourse to any form of acts or omissions which undermines the bargaining process.
- (b) In a case of alleged unfair labour practice the aggrieved party may apply to the Tribunal for redress.
- (c) The Tribunal shall determine the application within 30 days of the receipt of the application.

### **Collective Agreements**

- (a) A collective agreement shall contain substantive provisions relating to terms and conditions of employment.
- (b) Collective agreements shall inter alia cover:
  - (i) wages or salaries, overtime rates, bonuses and other remuneration systems relating earnings to performance
  - (ii) hours of work, overtime, shift work and working patterns
  - (iii) leave entitlement
  - (iv) techniques for determining levels of performance.
- (c) A collective agreement shall bind the parties to the agreement and all workers in the bargaining unit.
- (d) Where there is a joint negotiating panel or a group of recognised trade unions, a collective agreement signed by one or more trade unions representing more than 50 per cent by the workers in a bargaining unit, shall bind any other trade union in the joint negotiating panel.
- (e) A collective bargaining shall be of 2 years duration or of such duration as agreed by the parties.

- (f) A collective agreement shall become effective :
  - (i) On the date of the signing of the agreement or
  - (ii) On such date as specified in the agreement.

### **Scope of a Collective Agreement**

- (a) A collective agreement shall not contain any provision inconsistent with the Employment Relation Act, any other enactment and sections 4, 6, 12, 20, 22, 30, 31 Part VIII, Part IX, Part X and Part XI of the Employment Rights Act.
- (b) A collective agreement may contain any provision inconsistent with a Remuneration Regulation.

### **Variation of Collective Agreement**

A collective agreement may be varied when there is a substantial change in circumstances which warrants such variation and in such manner as provided in the agreement.

### **Extension of Collective Agreement to another Employer**

- (a) Application for an order to extend the collective agreement or part thereof to another employer in the industry by whom the trade union is recognised shall be made to the Tribunal.
- (b) The Tribunal should satisfy inter alia that:
  - (i) workers and the employer to whom the collective agreement is to be extended are engaged in same type of activity
  - (ii) the extension of the collective agreement is desirable in the interest of uniformity of terms and conditions of employment
  - (iii) the terms of the collective agreement are not prejudicial to the viability of the enterprise concerned.

### **Registration of Collective Agreement**

Any collective agreement concluded shall be registered with the Tribunal and with the Ministry of Labour, Industrial Relations and Employment by all the parties signing the agreement within 30 days of the date of signing of agreement.

*4 February 2009*