

Industrial Relations in the Caribbean

Issues and Perspectives

Edited by Samuel J. Goolsarran

International Labour Office - Caribbean

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Foreword

One of the main challenges that Caribbean countries are facing and will continue to face, is that of the need to adjust their economic and social systems, in view of the process of globalization. Such an adjustment has no doubt necessitated a change in the traditional ways of doing business. Already these changes are manifest in the form of business mergers, restructuring and downsizing of businesses, new forms of employment contracts, and outsourcing, with the resultant implications for employer-employee relations and industrial relations as a whole.

It is within this context that this Reader on industrial relations is written. It presents a critical examination and analysis of contemporary industrial relations, from a Caribbean perspective. It is comprehensive, covering the entire scope of the field of industrial relations: history; law and practice in the public and private sector; the role of the state; trade unionism; social dialogue; and labour standards. New developments, such as the link between labour standards and trade in international trade agreements, and the inauguration of the CARICOM Single Market and Economy, are also examined.

This timely Reader is a product of regional and international cooperation. It includes contributions from twenty-five renowned industrial relations experts, lawyers, practitioners and academia. A debt of gratitude is owed to all our contributors, and I take this opportunity to thank them sincerely for their sterling contributions. This Reader will no doubt serve as a comprehensive reference text for anyone entering the field of industrial relations as well as for those acquainting themselves with new approaches and developments in the field.

I would like to extend special thanks to Samuel J. Goolsarran, Senior Specialist, Industrial Relations and Labour Administration, of the ILO

Subregional Office for the Caribbean, for his tireless efforts in bringing this Reader to fruition.

It is hoped that the views and perspectives presented will evoke new thinking and stimulate further dialogue and debate on the subject as we strive towards achieving decent work for all.

Ana Teresa Romero, Ph.D.

Director

ILO Subregional Office for the Caribbean

May 2006

Preface

Industrial Relations is one of the key elements in the system of labour administration and one which is being impacted by the rapid pace of social, economic and labour market changes. Its apparent inability to respond effectively to these changes is generating ongoing debates on the way forward in a participative and holistic way.

This Reader on industrial relations is intended to stimulate thinking and add to the debates over the future direction of national and regional labour policies leading to the transformation of labour relations as it pertains to the Caribbean reality.

The impetus for the reader emerged out of the ILO Caribbean Labour Administration Conference at its biennial meeting in Georgetown, Guyana, in September 2003, when it was agreed that the next conference in 2005 would focus on industrial relations. The conference also agreed that it would invite experts to contribute papers to be published in a Reader by the ILO. This decision was endorsed by the ILO Caribbean Labour Ministers' Meeting in April 2004 in the Bahamas.

The Reader presents the general perspective and overview of Industrial Relations, the active role of stakeholders and social partners, relevant labour institutions and agencies; reflects on labour law and regulations; and reviews procedures from the voluntary self-regulation to compulsory means for the institutional management of the system of industrial relations. Issues and challenges for a new direction are analyzed and discussed and point to a future for the Caribbean where greater national consensus and co-operation through participative social dialogue can be fostered to achieve national agreements on social and economic issues in the interest of the wider national, Caribbean Community.

A wide range of views written from the vantage points and expertise of the mix of contributors is presented. Contributors come from the wide spectrum of industrial relations in the public and private sectors and include national, regional and international experts and practitioners.

Given the social and political realities of Caribbean states, it is hoped that this Reader will contribute to the reform and transformation of labour relations. This is only possible with the full commitment of representatives of government and the social partners and the institutions of labour who share a common vision for change and new direction in the context of good governance in terms of participation, transparency, credibility and accountability.

The reader is organized according to the following thematic sections:

1. Industrial Relations in the context of Labour Administration

This section covers the historical context and development of the system of labour administration and industrial relations in the Caribbean region. It also highlights inter-related elements of labour administration which have nexus with industrial relations such as the central role of the State, and the scope of labour inspection as it obtains to improving working conditions. The improvements in the world of work are achieved largely as a result of the work of the ILO; the role of the ILO in setting and supervising labour standards is explored, as well as its decent work agenda - one in which productive and full employment is promoted simultaneously with fundamental rights at work, an adequate income from work and the security of social protection.

2. Labour Law and Institutions of Labour

This section reviews the development of labour laws, international norms, new forms of employment relationships, and explores the potential of labour law in promoting a new consensus-based approach in labour-management relations. The role of the State is analyzed from its traditional to a more active role of setting the social agenda, expanding constitutional and economic rights and protection. The role of adjudication in collective interest, and individual rights labour disputes is presented in the case examples of Trinidad and Tobago with its Industrial Court, and

Bermuda with its Industrial and Employment Tribunals. The future role of the Caribbean Court of Justice (CCJ) is reviewed as it relates to the final determination of labour issues in the CARICOM Single Market and Economy.

3. Labour Relations in the Public Service

The papers presented in this section provide a historical overview of industrial relations in the public service and examine the need for change and confidence in public service administration reform and the development of new models. A number of contemporary issues and problems are analyzed relating to the role of service commissions, salary review commissions, the influence of the ILO and the conduct of industrial relations drawing examples and lessons from the realities of Jamaica, Guyana and Trinidad and Tobago.

4. Employers and New Approaches in Management-Labour Relations

The papers introduce and review the global and international influences on labour-management relations. They reflect on the manifest lack of trust among government and the social partners, the need for greater efficiency and higher productivity, improved labour relations and corporate social responsibility, and offer a vision for the future. The role and mandates of national employer organizations are defined; and the experiences of Suriname and Guyana on labour-management co-operation at the national tripartite level are discussed. The accommodation of non-state actors from civil society is highlighted in negotiation encounters relating to COTONOU – Partnership Agreement between the EU and ACP-states.

5. Labour in a Changing Environment

Papers in this section look at the impact of structural adjustment and business reform on trade union activities and membership issues, democratization at the workplace, organizational efficiencies, and prudence in financial matters. Trade union strategies for change include the adoption of corporatism, tripartism and social dialogue, and retooling

its armory of collective bargaining and organizing strategies. Trade unions are called upon to replace trade union politics with industrial diplomacy and to be equipped for the era of further regionalization and globalization.

6. Industrial Relations as a Field of Study

The Papers in this section refer to the emergence of Industrial Relations as a field of study and as an academic discipline at universities and labour colleges. The discussion focuses on new and emerging issues in industrial relations: human resource management, political unionism and industrial relations scholarship, new forms of employment contracts, outsourcing, the informal sector, the future of trade unions, and the drift from collectivism to individualism.

The challenges faced today by labour colleges in fulfilling their mission and mandate to develop the leadership capabilities and skills competence in labour-management relations are explored highlighting the experience of the universities and labour education institutes in Jamaica and Trinidad and Tobago. Given the mutually reinforcing relationship between scholarship and practice, is the future of industrial relations as a field of study assured?

7. Paradigm Shifts for Development

The final section addresses a number of challenges facing industrial relations in the context of the new environment of global competitiveness and higher productivity. Under an adversarial industrial relations climate there are severe limitations to economic and social progress. The social partnership option which is proffered, offers enormous potential for national consensus through the combined efforts by government and the social partners, the political parties, and civil society to advance social partnership agreements on an agreed economic and social agenda for national transformation.

The section also looks at the management of the regional labour market within the context of the CARICOM Single Market and Economy and its labour and social security policies relating to the provisions of its *Treaty*, *Charter*, and *Declaration* on labour issues, the *Caribbean Court of Justice* (CCJ), and *CARICOM Social Security Agreement*

among member states. These instruments are in support of the elements and factors inherent in the Single Market and Economy.

This section further proposes a strategic approach to human resource management for productivity improvement. It calls attention to the ongoing pressure in international trade negotiations to link trade and labour standards in trade agreements, and the position of developing countries, to uphold fundamental principles and rights at work under ILO supervision without trade sanctions and protectionism and taking the special circumstances of small, vulnerable economies into account in such negotiations.

I wish to place on record my profound thanks and deep appreciation to all the writers for devoting so generously of their own time, energy and intellect to contribute to the twenty-six chapters of this Reader.

I am also especially grateful to my colleague, RomaWong Sang, for her diligent and invaluable work in providing editorial, design and publishing support.

Samuel J. Goolsarran
Editor
May 2006

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Section I

Industrial Relations in the context of Labour Administration

1

An Overview of Industrial Relations within the context of Labour Administration

Samuel J. Goolsarran

The development of labour and industrial relations in the English-speaking Caribbean can be traced to the emergence of trade unionism during British colonial rule, when trade unions had to struggle for political and social status in the post-slavery and indentured labour era. Trade unions originally had difficulty in establishing their legal position. Their legal existence was eventually based on Trade Union Laws enacted between 1919 -1950, with subsequent legislation incorporating and maintaining the original protection of their immunities from criminal prosecution for breach of contract, agreement or trust.

Trade Unions joined the political struggle for voting rights, public education and social legislation in a fight against the interests and prejudices of the traditional colonial society. They were initially, in essence, part of the nationalist political movements for political independence. In this context, where the trade unions had to fight for political and social status, the labour relations systems reflected a greater degree of political involvement and action to influence public policy. In many instances, their successes could be attributed to their combative and adversarial approaches in alliances with political forces.

Industrial politics, political unionism, and trade union-based political parties are rooted in the history and tradition of Caribbean societies. The tradition of pure industrial or business unionism, vis-à-vis political unionism, was therefore not part of the culture of trade unionism in the Caribbean. This reality still influences the dynamics of contemporary labour-management relations.

Labour relations were accordingly shaped by the authoritarian nature of social relations with the plantocracy, which controlled and dominated

the way in which labour issues were dealt with in major industries and enterprises. This was countered by political actions on the part of the trade unions. Their agitation and protests led to the enactment of labour legislation by the colonial power, which recognized and protected trade unions' rights, and established state institutions to promote a system of industrial relations designed to manage industrial conflicts, but without a corresponding emphasis and institutions to minimize such conflicts and promote the forging of greater consensus. However, given the nature and development of social and political systems, labour relations largely were conducted in an adversarial manner and this approach still persists in contemporary systems among Caribbean countries both in the political and industrial relations arenas.

Plantation life and poor social conditions for the national communities in the Caribbean provoked unrest and upheavals on a wide scale in the 1930's throughout the British West Indies. This led to the appointment of a Royal Commission under Lord Moyne in 1938 to investigate and report on the labour and social conditions in the British West Indian colonies. The Commission reported that the conditions were harsh and oppressive for workers whose employment and human rights were virtually unprotected. Among the Commission's recommendations was one for the enactment of labour laws. Labour Ordinances (Labour Acts) in the English-speaking Caribbean were consequently enacted in the 1940s and provided for the establishment of the Labour Departments under Commissioners of Labour "for the regulation of the relationship between employers and employees and for the settlement of differences between them". This was against a background of ongoing industrial conflicts and manifest adversarialism which continued, and still persist into the twenty-first century.

These developments contributed to the foundation and the institutionalized framework for the conduct of industrial relations. Industrial relations is therefore located and anchored within the system of labour administration. The Labour Departments and the social partners, represented by trade unions and employers and their organizations, constitute the tripartite pillars of the industrial relations system.

At the national level, the trade unions are organized under national congresses, while the employers are organized under the banner of national employers' federations. The Labour Departments are required

to provide effective labour administration services to workers, trade unions, employers and their organizations. This is done through the Labour Commissioners and the technical staff of the Departments of Labour in their technical and advisory services with respect to national labour policies, labour relations including conciliation/mediation, labour inspection, employment and labour market, tripartism and social dialogue, and other labour administration functions in terms of coordination with state and social partners' agencies.

The Voluntarist Tradition

The Caribbean inherited from the British, a “tradition of voluntarism” in industrial and labour relations, a tradition which enabled trade unions and employers to regulate their own relations, and one which is premised on fundamental freedoms. These were based on freedom of association and the right to collective bargaining, and initially on legal abstention in industrial and labour relations. There were however, in the post political independence era, significant deviations from the voluntary system through legislative interventions by many Caribbean states resulting in a mixture of voluntary and compulsory systems among Caribbean states. These started in 1965 when Trinidad and Tobago created a strong legalistic system with its *Industrial Stabilisation Act* and its successor, the *Industrial Relations Act* of 1972, which established the first Industrial Court in the English-speaking Caribbean.

The principles of voluntarism have therefore been substantially challenged and subsequently modified by other legislative interventions in the industrial relations arena in the Caribbean for the:

- regulation of collective bargaining relations;
- provision of mandatory dispute resolution means and procedures for the parties;
- determination of appropriate bargaining units;
- determination of trade union recognition;
- intervention of the state in the national/community interest;
- compulsory dispute resolution machinery in the essential services/ industries;
- statutory powers to establish arbitration tribunals or boards of inquiry;
- establishment of final adjudication machinery in the form of Industrial Courts and Standing Industrial Tribunals;

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- requirements for greater accountability by trade unions and employer organizations to their membership and for fulfilling their statutory obligations; and
- greater employment and other social protection including protection of fundamental rights in line with ILO's core Conventions, and occupational safety and health (OSH) at the workplace and the environment.

These interventions present a mixture of voluntary and compulsory systems: voluntary in the initial stages of consultations, negotiations, conciliation and mediation. It then becomes compulsory when final adjudication machinery is required. There is also a mixture of the use of the political method and the industrial or business method as expedient, and the continued encouragement by actors in some national systems to retain the political method along with the industrial method in the conduct of labour relations.

CARICOM Model Labour Laws

In 1995 and 1997, the Caribbean Community's (CARICOM) Standing Committee of Ministers with responsibility for Labour, in an effort to promote harmonization of essential labour standards through the enactment of a common floor of labour laws and regulations within the Community, adopted the following model labour laws on:

- *termination of employment*, which provides for protection of employment through contracts, redundancy, and severance pay;
- *equality of opportunity and non-discrimination in employment*, providing for protection against unlawful discrimination, and employment discrimination. It also provides for an equal remuneration for work of equal value;
- *registration, status and recognition of trade unions and employers' organizations* which provides for compulsory recognition and exclusive bargaining rights to majority unions, certified by an independent tripartite body; and
- *occupational safety and health at the workplace and the environment*, providing for the registration and regulation of industrial establishments, and for occupational safety and health of persons at work.

The model laws were presented to member states with the view to enactment in national laws where appropriate, as either new labour laws, in whole or in part, or as the basis for updating existing labour laws. Collectively, the model laws give effect to several ILO Conventions, in addition to the UN Convention on the Elimination of all Forms of Discrimination against Women. They balance the power of the employer with the rights of the employee and trade unions. They also reflect both the provisions of settled law, and law in the making.

The Caribbean Community's (CARICOM) labour policies commit member states to observe the labour policies of CARICOM as set out in its *Revised Treaty of Chaguaramas Establishing the Caribbean Community, 2001*; *Charter of Civil Society, 1997*; and its *Declaration of Labour and Industrial Relations Principles, 1998*.

Article 73 on Industrial Relations of the *Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy* requires the Council on Human and Social Development in consultation with the Council for Trade and Economic Development to promote the objectives of: full employment; adequate social security; cross-border mobility of labour; non-discrimination in the pursuit of employment; sound industrial relations through collective bargaining; the importance of international competitiveness for economic development; and consultations among governments and the social partners.

Article XIX of the *Charter of Civil Society* provides for the right and protection of every worker to:

- freely belong to and participate in trade union activities;
- negotiate and bargain collectively;
- be treated fairly at the workplace, and to enjoy a safe, hygienic and healthy working environment;
- reasonable remuneration, working conditions, and social security; and
- utilize/establish machinery for the effective conduct of labour relations.

CARICOM's Declaration of Labour and Industrial Relations Principles outlines the general labour and industrial relations policies to which the CARICOM states aspire. The Declaration is informed by ILO labour standards (Conventions and Recommendations) and reinforce

the standards relating to: consultation and tripartism, freedom of association, collective bargaining, non-discrimination in employment and occupation, employment policy, labour administration, and industrial dispute settlement.

Fundamental Principles and Rights

ILO's Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in 1998, marked a re-commitment and a re-affirmation of the obligations of member states to respect, realize and promote in good faith the principles concerning:

- the right of freedom of association and effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

These guiding principles and rights exert enormous influence in the conduct of industrial relations in the Caribbean.

The Millennium Development Goals

The Millennium Development Goals adopted by world leaders at the United Nations in September 2000 will no doubt also influence the agenda and approach to labour relations and collective bargaining. By 2015, all United Nations Member States pledged to:

eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; reduce child mortality; improve maternal health care; combat HIV/AIDS, malaria, and other diseases; ensure environmental sustainability; and develop a global partnership for development.

These goals are of interest to the human community and are consistent with the principles and the notion of social justice inherent in industrial relations and human development in the context of globalization of labour, social, and political relations.

Ministries/Departments of Labour

Ministries/Departments of Labour, which provide the core labour administration services in the Caribbean, are generally under-resourced with many staff vacancies on account of frequent staff turn over of the more experienced and qualified ones. This is largely attributable to the inability of the civil service to recruit, attract and retain high quality staff, and the comparative lower priority accorded to the labour administration function in relation to other public administration services.

The remuneration packages, which are considered unattractive for labour administration staff, are tied to the civil service pay structure and grading system apparently without adequate consideration for the importance, scope, nature and the responsibility inherent in labour administration. There is always bureaucratic justification, citing budgetary constraints and regulated rigidities in difficult economic circumstances in many instances.

This has impacted negatively on the capacity of the labour administration staff to assume the higher responsibilities inherent in an effective labour administration system of which the labour department personnel are the principal technical and advisory service providers. This situation has inhibited their capacity to be proactive players on national development issues. Departments of Labour deliver essentially the key elements of labour administration - in a “good industrial relations maintenance, housekeeping way” including effective dispute resolution and active tripartism in many countries. The prevailing view - that many Ministries of Labour/Departments of Labour are only carrying out the basic and routine service functions in labour administration with inadequate resources - must be reversed by appropriate corrective measures.

Many member states have expressed concern and are seeking measures for improvement. They recognize the need to improve the quality and output of the work of the Departments of Labour; to be departments with good work ethic, high productivity and quality customer-oriented service. Consequently, the International Labour Organization in collaboration with governments and the social partners and with the support of Ministers of Labour, conducted several studies in labour administration to better equip Departments of Labour to contribute to, and participate in national planning as key departments in public

administration. These studies point to the requirements for an adequate number of suitably qualified technical staff and other resources to enable the Department of Labour to contribute more to national social and economic development.

Kieran Mulvey, Chief Executive Officer of the Irish Labour Relations Commission, did one of the studies of labour administration in Barbados, Guyana, Jamaica, and Trinidad and Tobago. His report calls for a more strategic focus for Ministries of Labour for future developments in the Caribbean. He underscores the need for reform and the importance for ministries of labour to be equipped to respond to the rapid pace of change within the framework of globalization and market changes.

Mulvey advocates a wider strategic vision for social partnership and development in labour administrations, for public service reform to revitalize and provide for a more strategic policy, planning and functional role for Ministries of Labour. Ministries of Labour must be revitalized and upgraded in their role and status in a re-organized enterprise and employment-oriented direction to be responsible for industrial policy, manpower planning, and the development of new plans for national industries, and for the implementation and coordination of all existing and new labour market regulations and measures.

Strong labour administrations require that the Departments of Labour should assume the full responsibility of their mandates for an effective labour administration system and service as outlined in ILO standards with active tripartite arrangements for regular consultation on national labour policy and the labour market.

The Scope of Labour Administration

The scope of the system of labour administration is established within the framework of the architecture of ILO Convention No. 150 and ILO Recommendation No. 158 (1978) on labour administration. Both the Convention and Recommendation define labour administration as: “public administration activities in the field of national labour policy”.

These instruments also define the system of labour administration as:

all public administration bodies responsible for and/or engaged in labour administration - whether they are ministerial departments or public agencies or any other form of decentralized administration - and any institutional framework for the co-ordination of the activities of such bodies and for

consultation with and participation by employers and workers and their organizations.

The ILO Convention and Recommendation establish and provide essential guidelines, principles and organizational framework for effective labour administration within ILO member States. The guidelines permit the discretionary right to delegate certain activities of labour administration to non-governmental organizations, particularly workers' and employers' organizations. The principles require that employers' and workers' organizations participate in the formulation and regulation of national labour policy. The organizational framework calls for a system of coordination, monitoring, reviewing and reporting on the administration of national labour policy and in particular, employment policy and practices and international labour affairs.

The ILO Convention and Recommendation also underscore the importance of effective implementation of the applicable principles. In this regard, the Convention and Recommendation enjoin member States to provide an adequate number of suitably qualified persons with access to training and who are independent of improper external influences to be engaged in labour administration. In addition, member States are required to provide adequate material and financial resources for effective labour administration.

Labour administration is not isolated from the confines of public administration and government. It has a broader social and political function. According to Courdouan and Lecuyer, the efficacy of the labour administration system rests on its ability to achieve consensus between public authorities and employers' and workers' representatives; its relevance depends on its ability to reach all in the national community; and for ensuring that regulations are applied uniformly throughout national territory and within the structures making up the system. Crucial to its success is the participation of social partners, the reach of the system, and the resources made available to it.

Labour administration must take into account the evolving context within which it functions. It must function within the context of the new global economy and in particular the strategic response that is required for effective participation by the Caribbean economies in terms of labour and employment policies.

Accordingly, labour administration services in the Caribbean need to provide adequate institutional, administrative and organizational

arrangements to enable the formulation, development and management of decent work labour policies along with the supporting legal service in areas relating to:

- a. labour standards (industrial relations, labour administration, working conditions, wages, employment conditions, occupational health and safety, working environment, social security, labour inspection);
- b. research in the labour and the social fields (data collection, studies, background papers, surveys, forecast analyses, dissemination of information);
- c. employment (national employment policy, strategies for stimulating and generating new employment, employment protection, vocational guidance, vocational training programmes, employment services);
- d. industrial relations (services provided to employers and to workers, collective bargaining, settlement of labour disputes in conciliation/mediation);
- e. effective secretariat services for tripartite collaboration and consultation (national labour policy and standards); and
- f. regional, hemispheric, and international labour affairs (ILO Caribbean, CARICOM, Organisation of American States (OAS), International Labour Conference, Free Trade Area of the Americas (FTAA)).

The general consensus from several ILO studies and reports was that the Departments of Labour should be equipped with a full complement of suitably qualified staff, adequate office accommodation and conference facilities, modern technology, and training and exposure of staff to enable the Departments to undertake the broader and wider responsibilities inherent in a strong labour administration system with the active involvement of representatives of the workers and employers and their organizations. This would require an enhanced capability of the staff in the Departments of Labour to enable them to:

- contribute to national labour policy development and formulation including a review of labour legislation;
- actively promote tripartism and social dialogue leading to social accords at the national, sectoral and enterprise levels;
- participate in national employment/manpower planning, labour force surveys and investment initiatives; and embark, in collaboration with the relevant agencies, on a programme of human resource development, particularly in the field of technical and vocational training, retraining of the workforce and the training of new entrants

in keeping with the skills needs of the country;

- embark on a pro-active programme of advisory outreach to employers, trade unions, workers and the national community;
- undertake other preventive strategies in labour administration, as suitable to the national situation; and
- promote, advocate, and implement the ILO's principles of *Decent Work*.

The ILO General International Survey of 1997, dealing with ILO Convention No. 150 and ILO Recommendation No. 158 on *Labour Administration*, affirms that:

the appropriateness and relevance of these instruments continue intact to the extent that their flexibility permits and accompanies the various adaptations made in the structures and methods of work of numerous systems of labour administrations.

Industrial Relations Methods as Alternative Dispute Resolution (ADR)

Negotiation, conciliation, mediation, and arbitration in the settlement of industrial disputes have special significance for the social partners and are valued, effective dispute resolution methods in the context of labour relations. These tried and tested methods are frequently and extensively utilized in industrial relations as routine conciliation services of Ministries/ Departments of Labour, mediation services, and other labour dispute resolution institutions. Within the industrial relations context therefore, one cannot correctly refer to these methods as ADR. It is a misnomer, for the methods used in ADR, are essentially industrial relations methods – negotiations, conciliation, mediation, and arbitration. These methods and processes have had a long tradition and history of success in industrial relations.

When these methods are used in civil society matters, they are referred to as ADR – alternative to the protracted, expensive, judicial system. This is a valuable contribution of industrial relations to civil society. It is to be noted also that conciliation, mediation and arbitration have long been used in the field of international relations, civil society, family and community relations, and in the commercial world in place of the costly, protracted and time-consuming litigation through the judicial system.

Professional Relations between the Minister and Public Officers

The Ministries of Labour/Departments of Labour would need strong internal management support, oversight and direction from senior policymakers. This support naturally can come from the Permanent Secretary, the Deputy Permanent Secretary/Principal Assistant Secretary, and the Minister with responsibility for labour through an effective management system for labour administration.

The public administration system in the Caribbean, in line with national Constitutions and other laws, mandates that where any Minister has been charged with the responsibility for any department of government, he/she shall exercise general direction and control over that department and, subject to such direction and control, every department of government shall be under the supervision of a public officer whose office is referred to as the Permanent Secretary. This direction and control is of a general and policy nature.

While the Minister is primarily concerned with the determination of policy, the Permanent Secretary and the technical and other staff under the Permanent Secretary, particularly the Labour Commissioner/head of labour administration in line with his/her duties as defined by labour laws, are required to faithfully implement the policy decisions of the government of the day in an impartial and professional manner.

The Permanent Secretary prepares papers for Cabinet, and is also the accounting officer who manages the funds voted by Parliament for the ministerial departments, and is answerable to the Public Accounts Committee of Parliament for public expenditure. The Permanent Secretary and the Minister's principal technical staff are further concerned with providing advice and assistance in policy determination and formulation. This calls for a cordial working relationship between the Permanent Secretary and the Labour Commissioner/head of labour administration, and the Minister and the permanent staff of the civil service in a spirit of mutual respect and confidence between the Minister and the staff.

Industrial Relations and the Public Service

The climate of labour and industrial relations in any country has a direct impact on its economic and social development, which requires a

conducive environment in which labour relations can be conducted in an orderly and responsible manner. This means that industrial relations must be conducted within the norms of applicable International Labour Standards, relevant labour legislation, and agreed, established procedures at the enterprise and national levels. This also requires suitable institutional and procedural arrangements, along with adequate resources to enable the system of industrial relations to function effectively.

In the Civil Service, state corporations, and statutory bodies, industrial relations and collective bargaining had been more regulated and restricted by legislation or practice than in the private sector. With the introduction of structural adjustment measures in some countries, and the attempts by governments for greater control, industrial relations drifted from the traditional system of free collective bargaining.

Deviations and new practices by agencies of the state challenged the free collective bargaining model and autonomy of the parties through greater state direction, intervention, regulation, legislation, and wage policies. These developments were understood against the earlier emergence in some countries of dominant state enterprises, created largely through nationalization of the major companies in industry and commerce or through the creation of new national enterprises. In these situations, governments, as employers of the major portion of the national workforce, exercised a dominant influence and direction in industrial relations, under the notion of promoting the national community interest.

In some countries, government, both as a government and employer, promoted changes in the system without agreement with the social partners and without legislation within the context of an apparent voluntary framework in collective bargaining, much to the disquiet of trade unions and workers. In other cases, changes were introduced by legislation. In the state sector, greater control and regulation were imposed on collective bargaining. These affected wage fixing and remuneration settlements in particular; and as the state sector became more centralized, central government implemented unilateral wage policies through rigid wage guidelines. Both the trade unions and the managers of the state enterprises lost their autonomy in collective bargaining as a consequence.

In these situations, the right to bargain collectively as defined in ILO Conventions No. 98 and No. 151 raised several questions in connection with the attitude of public authorities. For example, an

administrative direction whereby the conclusion of an agreement is subject to prior approval of a government authority, or modifying conditions agreed and written in collective labour agreements or preventing negotiations of such conditions as may be considered desirable, constitute infringements of the right to bargain collectively. Restrictive measures, rendering it extremely difficult for wages to be settled freely through collective bargaining, can be justified on the grounds of exceptional circumstances of a serious economic nature. However, this could be justified only for a limited period and kept to a minimum.

Politics of Industrial Relations

Major industrial relations issues are politically sensitive once they affect any state agency, and especially if opposition-linked unions are involved. Inevitably, any labour issue must have a political dimension by the very nature of the relationship. Experience has shown that if an issue is perceived, deemed, or interpreted by governments as having political motives, or if it is seen as a challenge to governments, or if it would affect the national interest as defined by governments, then one can expect responses from the state and its machinery. In such a situation, traditional and established industrial relations principles and practices may be under severe strain.

That major issues in the public sector are not without their political dimensions and motives may be understood in terms of the history of Caribbean labour relations. In spite of genuine industrial issues which could be represented, their industrial nature may be overshadowed by partisan political considerations. Often controversial issues are seen as contests between the political parties; from the government's point of view, as attempts to destabilize the economy, to ferment unrest and civil disobedience, or to dislodge the government; from the opposition, non-government's point of view, as attempts by governments to muzzle, undermine, or keep the trade unions in line.

The important question impinging on industrial relations in the state sector is the extent to which management is authorized by the government, to take decisions committing the employer (the government). The margin of decisions, in the context of structural adjustment type measures may be fairly limited on the question of remuneration. This is

posing some problems in terms of collective bargaining negotiations, which imply increased costs to the public treasury. Governments as owners and employers may see it as their responsibility and not wish to give full independence to the management of state enterprises in industrial relations matters.

Governments, some argue, are politically responsible for the way public entities are managed, and that may influence governments' determination to maintain control and supervision, and retain certain decision-making powers, in particular those relating to wages and salaries administration. Collective bargaining, which places employers and unions on an equal basis at the bargaining table, may be considered as incompatible with governmental powers of decision, for ultimate accountability rests with the governments. To achieve other policy objectives, governments may consider that it is necessary to intervene in industrial relations, for industrial relations are seen as part of, and not separate from other aspects of governments' economic policy for development.

The government is the main actor; it is the only actor in the dual role of both government and public sector employer who can change the rules of the system; the unions are sometimes forced to take a passively defensive position, and accept the priorities and rules determined by government, and then impose the required restraint on their members. Pay in the public sector is subject to restraint since government has an overriding concern for the state of the economy and unions' collective bargaining activities have implications for the economy.

Industrial and Political Dilemma

The division between the industrial and political orientation has been one of the sources of difficulty for the union leaders in periods of crisis and active state intervention. There are concerns about union leaders acting with political motives when they threaten or use industrial power for political ends or in support of a political party's position. But it is just as political to support political action of a government or to accept wage restraints in favour of a presumed national interest.

Trade union leaders face a dilemma in responding to the challenges and opportunities of a political role without sacrificing their independence and their permanent mission of promoting and protecting their members'

immediate economic interests for improved wages and employment conditions. The dilemma is more pronounced given the central role of the government in wages regulation in the public sector. They are faced with the following options:

- engage in a determined struggle for the exercise of free collective bargaining;
- maintain a passive acceptance of government's position and the role circumscribed by government for the trade unions; or
- pursue their own independent, industrial and political demands.

Many trade union leaders are ambivalent and often vacillate on these options.

Challenges

A review of Caribbean labour laws reveals that there are substantial bodies of legislation on the statute books of member States. These seem to be adequate for the conduct of labour relations if used positively in a timely manner. The legislation in the Caribbean deals with (among other matters): protection of trade unions, employment protection, fundamental rights, labour institutions, and various methods and machinery for dispute resolution – a concentration on the management of conflict. The consensus-based mechanisms beyond the conciliation and mediation process are still to be widely promoted and institutionalized or incorporated into law. The systems accommodate and provide the avenues for effective dialogues, which can lead to national consensus.

However, under the current system, there are still compelling challenges, which require the governments and other actors in the labour relations systems to:

- proactively and strategically utilize the national labour policies, institutions, mechanisms, means and procedures available in a timely manner;
- consolidate, revise, rationalize and incorporate the fundamental principles and rights enshrined in international labour standards into a comprehensive national labour code to facilitate the effective conduct of labour relations;
- empower and strengthen the capability of the Labour Ministry and the Department of Labour, and the trade union and employers' organizations to enable the personnel of these institutions to

maximize the use of the consensus-based methods of good faith negotiations, and effective conciliation/mediation with its inherent problem-solving approaches; and

- equip labour administration to foster an active advisory outreach service, aimed at a reduction of conflict through preventive strategies, and development of partnerships at the enterprise, industry, and national levels. In particular, the Ministries and Departments of Labour should be:
 - provided with the requisite high-level specialist skills to enable research and their participation in national planning, enterprise development, investment initiatives, and a competitive economy within the context of fundamental principles and rights at work, which are essential for *decent work*.

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2

The State in Industrial Relations

Diana Mahabir-Wyatt

Industrial relations, as an aspect of trade and economic life in the Caribbean, has been a central concern of all states' governance throughout the history of the region, although it may not have been defined as "industrial relations" at the time. In the context of this thesis, industrial relations is defined as: "The relations between employers and those employed in an industrial setting, taking into account the resultant reaction from stakeholders directly affected, such as the State."

The State, therefore, has played a central, although not always controlling, role in the development of industrial relations patterns and trends, albeit in a manipulative and sometimes duplicitous way. The culture of the Caribbean, being what it is, however, the ability of the employed population to inventively sidestep and find ways around restrictions imposed by governments meant that the evolution of industrial relations has not always turned out the way the State planned or expected, resulting in State reactions and counter-moves that rather remind one of a game of live chess played out against a chessboard of history. While there are deep and fundamental differences in the cultures of different Caribbean territories, a common background in colonialism has imposed a certain superficial similarity on the emergence of industrial relations in the region.

The Legacy of Industrial Relations

The legacy of slavery, as one of the first overt systems of industrial relations that existed throughout the region followed in three of the larger territories by indentureship, has also ensured that certain patterns, once established in those seminal periods, remained. One of these patterns is the custom of exacting punishment for what are seen as

disciplinary infractions, rather than using these deviances as opportunities for learning and development. Another legacy is the combative nature of industrial relationships, sharply distinguishing between "interests" and struggling to establish and maintain what are seen to be "rights". Still another legacy is found in the authoritarian assumptions underlying the relationship of those in managerial positions to those who carry out the implementation of plans, rather than these relationships being seen as different but equal functions on the same team, and the subsequent valuing of these different, but equally necessary functions.

Yet another legacy of the colonial administration period is the concept of "ownership" of labour and the related gender perceptions and consequential attitudes towards the value of women's participation in the workforce and attitudes toward sexual orientation that are still a feature of industrial relations in the region. Sexual orientation in this context includes heterosexual orientation and the heterosexual male managerial assumption of the *droit de seigneur* in relation to subordinate female staff, as well as attitudes towards employees of same-sex orientation.

State governance has progressed through colonial administration to internal self-government to independence to regional integration via CARICOM to effective globalization rising beyond any specific overt political system when it comes to the role played by the state in industrial relations. Each stage has distinctive features of its own, leaving a residual legacy for the next to absorb and/or destroy. Each stage has been associated with a predominant economic system, but not limited to one as, with each accretion of state development, none of the economic systems has been totally superseded by the next. This makes the current manifestation of both state governance and economic systems a delightfully complex and, at times paradoxical one, and often confusing the practitioners and stakeholders in industrial relations. That is what is really meant by the often casually used term, "principles and practices of good industrial relations."

Colonial Rule

The period that starts the current understanding of industrial relations began with colonial domination of the territories of the Caribbean. Before that time, as near as can be ascertained from historical documents, (albeit biased documents largely written by "Christian" scribes and

"missionaries" needing to justify their exploitation and destruction of entire populations and cultures), the owners, producers and beneficiaries of the production process were one and the same. Property was communally held, and what was not needed for immediate or near foreseeable consumption, was held in abeyance until such time as was needed.

Enslavement of native populations, always a feature of aboriginal spoils of war traditions, took on a new dimension with the arrival of the larger, stronger and better-armed colonizers from Europe. The aboriginal population was neither accustomed to nor suited for the demands of the new colonial administrators when it came to labour; so state intervention really began when the colonial administrations, protecting the institution of slavery, began to regulate the mainly African slave trade. This was done in the interest of the occupying powers, as much as in the interests of the slave owners themselves, as a means of ensuring the survival and advancement of what Lloyd Best has definitively termed, the plantation economy, on which the economic life of the colonies, and significant aspects of its industrial relations, was founded.

Since the colonizing countries needed the raw materials produced in the colonies - sugar, cotton, spices - in order to fuel the production of their own consumer needs, protecting the transportation of slaves from pirates, providing regulated slave markets and ensuring rudimentary control over slave trading was in their interest. The concept of ownership of the human means of labour was not alien to their culture since it had existed in feudal times and continued in law and practice in the concept of a man's ownership of his wife and children of a non-majority age, as well as the usual livestock, goods and chattels and land. Those of these chattels who were human could be controlled by force if necessary, and while it was not really approved for a man to physically maim a wife or child of non-majority age, "appropriate" corporal punishment of them was approved, and unless it actually ended with the death of the offending person (and sometimes not even then) there would not be, indeed, could not be any interference by the state.

When it came to industrial relations and treatment of slaves, the ownership concept was complete. While the worst excesses of slave owners' treatment of slaves was eventually met by regulations drawn up by the colonial office on the care, feeding and treatment of slaves, as with most legislation passed by states in the Caribbean, implementation

of these regulations was not carefully supervised. The treatment of workers was oppressive, exploitative, expected unquestioning obedience, featured punishment as a means of discipline, (indeed, as the only means of discipline), and in the case of women, included the assumption that sexual use of their bodies was the automatic right of whichever male was in authority. This might be the overseer or one of his delegates as well as the owner. The homosexual abuse of male slaves has not been widely recorded, but this is not an indication it never happened.

Slavery, Human Rights and Productivity

The concept of human rights known since the codification of Roman law did not extend to slaves, women or children. The idea that they might have harboured normal feelings of anger as a result does not appear to have been understood. The effects, though, of how slaves felt over their treatment were evident in industrial relations terms where low productivity, avoidance of work wherever possible, manipulation and dissembling became characteristic non-violent means of worker protest while authoritarianism and /or paternalism characterized managerial styles. Questioning an order was seen as insubordination, an attitude that still lingers, as do so many other features of the master/servant relationship established at that time.

The division between manager and worker was marked, with all accountability centered on the former and little or no authority accorded to the latter, giving rise to a work pattern where workers are given responsibilities with no authority to match, a situation which became a typical feature of industrial life, discouraging any development of problem solving or creative initiative at work, and eliminating any channel for handling grievances. The sharp status distinctions also had the not unexpected feature of creating a pecking order where each stratum oppressed the one below it. Women and children were always on the lowest rung of whatever stratum one was in. They were refused even those rights accorded to the lowest ranking men and culturally according them little, if any legal or social value other than to fulfill the needs of those higher up on the pecking order. The social phenomenon of domestic violence and child abuse so marked in Caribbean culture is a direct legacy of this.

Where slaves were freed by their masters and where the laws allowed slaves to buy their own freedom, freed men frequently became

slave owners themselves and tended to mimic the managerial styles of their former owners. The former slaves treated their own slaves as property with the same mixture of paternalism and/or punitive authoritarianism that they had been subjected to. Women slaves were freed from the sexual demands of their former owners. Sexual harassment as a feature of the employment of women did not stop, and remains a feature of social interaction on the streets, in calypsoes and Caribbean rap. Sexual harassment exists, too, in institutions where positions of authority are predominantly filled by men, even where, as in the finance and service industries, the religious, medical, educational, trade union and legal professions, the vast majority of employees or members are female.

Strike Action in the Post-Slavery Era

After the abolition of slavery, the resentment which former slaves felt at their exploitation and the low wages plantation managers were prepared to pay, (which were below what a family could live on), turned the former plantation workers against work in agriculture in most Caribbean countries, Barbados being somewhat of an exception. This refusal to continue to work on the plantations became, in an industrial relations context, the first "withdrawal of labour" or strike action. The industrial relations response by the state, which was coeval with the mercantile class, co-operated in defeating the workers' protest action by establishing the indentured labour system, importing workers from China and India to take the place of the freed slaves.

Indentureship became a major labour relations system in Jamaica, Guyana and Trinidad, although not in Barbados, where workers continued to work in agriculture. Indentureship continued the tradition of coercion as a means of motivating productivity, along with the other manifestations of unchecked power, including the sexual harassment of women workers on the estates. As Professor Rhoda Reddock reported in *Women in Revolt*, referring to the Report of the Labour Disturbances Commission (1934), commenting on the disturbances on the sugar estates of Trinidad and Tobago "The commissioners also suggested that "the spark that set the tinder alight" may have been the sexual advances of one manager to a female labourer, a phenomenon identified by NWCSA (the Negro Welfare Cultural and Social

Association) members as a continuous source of dissatisfaction on sugar estates." As was the case during slavery, there was no objective channel of grievance handling, and corporal punishment was the response to rebellion and protest.

The Moyne Commission

The most noted of the State interventions at this time was the establishment and report of The Moyne Commission, set up to examine conditions of employment in the West Indian colonies following the riots and strikes of 1934-1939, which stretched from Jamaica in the north to Guyana in the south. The results of the recommendations of that Commission were to radically alter the direction that the industrial relations structure of the West Indies was to follow.

The riots started on the sugar estates in Trinidad and Tobago, largely instigated by East Indian women labourers who were paid less than male labourers and were then, as now, the ones responsible for making sure that their children were fed and looked after. These women found they simply could not feed them on the wages they were being paid. Their male coworkers soon joined them and the strikes spread throughout the region. For some time prior to this, however, during the period from 1917 to 1920, there had developed in the Caribbean several relevant populist political movements that provided to an increasingly literate and organized population the seeds of dissent. Among these were Garvism, originating in Jamaica and spread by seafarers and literature they brought with them throughout the rest of the islands and territories to the south.

Agitating for Workers' Rights

In Trinidad, in 1919 the Trinidad Workingman's Association (TWA), originally founded by a pharmacist, Walter Mills, in the 1890s was revived. Alfred Richards, a chemist, took over the T.W.A. The organization adopted the motto: "Agitate, Educate and Confederate" and became more of a trade union, seeking to further the interests of workers. {See Sahadeo Basdeo, *Labour Organization and Reform in Trinidad (1919-1939)*}. The Association accepted all classes and levels of employed people, including those from what is now called "the informal sector" - sno-cone vendors, higglers, domestic workers, market vendors and housewives.

There was an island-wide congress with delegates meeting once per quarter. By 1936, according to C.L.R. James, it had 125,000 members out of a population of perhaps 520,000, with 98 self-sustaining branches, annual conventions and other aspects of a well-organized political labour movement. The T.W.A. intervened, and won concessions for workers on the docks, in the oilfields and municipal workers in Port-of-Spain, among others, who had resorted to strike action for higher wages and better conditions in the period from 1919 to 1930 .

When the Moyne Commission Report recommended certain long overdue improvements in the lives of working people in the colonies, an intervention which served to release some of the tension in the territories and restore a certain measure of stability, which the improvements were intended to do, it also resulted in the enactment of trade union legislation. This also had the intended effect of effectively curtailing the powerful populist movements such as the Garveyist movement, (the Garveyite United African Improvement Association), and the Trinidad Workingman's Association, by turning them into pale copies of English trade unions. The colonial government was comfortable with these organizations, which it had learned to control within a certain state structure.

By 1937 the TWA had dwindled to less than 12,000 members and gradually faded into oblivion as trade unions were formed, exclusively for employed persons in well-defined categories, excluding informal sector workers, self-employed and most women, and the state structure began to deal with the trade union movement on its own terms. By 1939 there were 10 trade unions registered in Trinidad and Tobago with a total membership of 11,000 and the T.W.A. was dead. (See Zin Henry "Labour Relations and Industrial Conflict in Commonwealth Caribbean Countries.") The situation, as the Colonial Office in London might have said, "had been contained."

Legislating Labour

It is as well to remember that the Legislative Assemblies in the West Indies that were required to implement the directives of the colonial secretariat in the UK, were taken from the same elites that headed the plantocracy and mercantilist interests. "State" intervention, therefore, was not entirely disinterested. Paternalistic and protectionist legislation was passed, and such ordinances as "The Employment of Women, Night

Work Ordinance", no doubt very useful for women in the UK, but restrictive rather than protective for the very different needs of women workers in the Caribbean, were passed.

In the Caribbean, with a high percentage of female-headed households, many working mothers preferred night work. This left them free to cook and get their children off to school early in the morning, sleep themselves during the day while the children were at school and to leave them to sleep under the care of an older sibling or other relative at nights while they earned a living. The Employment of Women, Night Work Ordinance made this impossible.

In addition, as part of the 'protection' of the rights of workers, at the urging of the larger merchants, many individual states passed Shop Hours Ordinances. This legislation restricted the hours in which shops could sell to the public, effectively wiping out the livelihood of small informal sector family shops and vendors who opened in the evenings to catch the trade of returning workers. They could not compete during the day with the large, well-established merchants.

Most territories also passed Masters and Servant Ordinances, Recruiting of Workers Ordinances, Truck Ordinances, and eventually Workmen's Compensation Ordinances, all based on UK Ordinances carried over from the period before they had self-rule, and which had continued in force to regulate as well as protect the interests of the workers.

Self-Rule

During this period, after the Second World War, when internal self-government evolved into self-rule for most of the Caribbean territories, some of their emphases shifted. In many territories, trade union leaders formed the basis of populist political parties, which became successful at the polls, and when forming newly-elected governments, used the same authoritarian styles of governance that they had learned from their predecessors. There were successive waves of industrial unrest as workers protested low wages and conditions which the new governments treated with something less than sympathy. Their main *raison d'être*, not unnaturally, became social stability and governmental control of the social and economic development of their fledgling nation states.

The classic political science formula of political power change starting with labour unrest leading to social unrest leading in turn to political unrest leading to a challenge to existing political power and

leading to either suppression (if it is unsuccessful or overthrow and establishment of a new government (if the challenge was successful) was not unknown.

In order to forestall the labour unrest that was the traditional tinder to light the fire, and to consolidate their positions of power, the new self-governing states established the Labour Departments recommended by Lord Moyne. Samuel J. Goolsarran, in the ILO publication, "Caribbean Labour Relations Systems: An Overview," gives details of how and when this was done in the various territories, and gives as their mandate:

- To promote industrial peace
- To regulate the relations between workers, trade unions and employers
- To assist and advise trade unions and employers; and
- To protect the interests of workers.

Goolsarran's book cites Jamaica's Labour Officers Powers Act as having been passed in 1943. Guyana passed their Act in 1942, St Lucia in 1940, St Vincent and the Grenadines in 1953, and St Kitts and Nevis in 1956. Most of the others have been enacted and revised over the years, but they all follow a similar pattern and common purpose.

The Influence of the British on Labour

It is not unconnected that the UK government, during those formative years, dispatched labour attaches to the British High Commission offices in the Caribbean. These officers were usually retired and compliant trade unionists or UK labour party supporters, whose mission was to travel throughout the region giving advice to their trade union brethren to help them develop systems in accordance with those developed in the UK and with which they were familiar and which, for them, "worked". That these might not be the most appropriate for small emerging countries in the Caribbean was not dreamed of. They were quite sincere in believing that they knew best what was good for the ex-colonies, and carried out their missions and reported back to the colonial secretariat.

The new governments also inherited ratification of ILO Conventions which had been accepted on their behalf by the UK government during colonial rule. The Conventions established certain principles, such as the freedom of association, free collective bargaining and protection of

the right to organize as entrenched principles of the industrial relations systems in the region.

The UK pattern of voluntarism was the basis on which industrial relations was established, and nurtured by the good advice of the advisors in the region. It had worked for years in the UK and featured non-intervention by the state in collective bargaining, consistent with the legal traditions in the region and the social and educational structures established over the years. It overlooked, however, the differences between the political and economic realities in societies of small island states in the Caribbean and those of a large metropolitan power such as England. In small societies, those in political and monetary power generally merge into each other to form a new and very strong elite. Alliances and business deals between those with political power and those with commercial and financial power are the rule rather than the exception, which brings a totally different meaning to "non-intervention by the state" in industrial relations issues.

Labour Legislation in Trinidad and Tobago

A variation of this voluntary principle appeared as early as 1962 in Trinidad and Tobago where the country was beginning to experience the pressures of dealing with powerful multinational energy corporations. Such pressures drove Trinidad and Tobago to the beginnings of a strong legalistic system with the passage of the Industrial Stabilisation Act in 1965 which established the region's second Industrial Court, (a short-lived one had been established by law in Trinidad as early as Ordinance 26 of 1920 to deal with the waves of strikes and protests sweeping the territory). These pieces of legislation were strengthened over the years with the passage of the Industrial Relations Act, and the establishment of a Registration, Recognition and Certification Board to govern the recognition of trade unions.

It is significant that despite the strictures of the legal system, and the power of the trade unions in the oil industry in Trinidad and Tobago at the time, in the subsequent half a century, the union was never able to obtain recognition in the largest and most powerful of the energy corporations, a US-based multinational, which used the legal system to block, rather than facilitate recognition. The substitution, wholly or partially, of the voluntary system by a more legislated version followed in many of the other Caribbean jurisdictions to deal with the successive waves of industrial unrest that arose.

Antigua and Barbuda has its own industrial court, largely patterned on that of Trinidad and Tobago, as are Belize and Guyana's Recognition and Certification Boards. Other countries have legislation providing for the establishment of arbitration tribunals and boards of enquiry which serve a similar purpose. Belize, St Lucia, St Kitts and Nevis and St Vincent and the Grenadines all share similar legislation. Barbados' legislation shares some of the same features, but Barbados retained most of the voluntary system to a degree greater than any other country in the region.

Jamaica's well-established and well run Industrial Disputes Tribunal has been the pattern for several others in the region. Like Jamaica; Dominica, Bahamas, Bermuda and Cayman all have permanent industrial tribunals.

Political Independence

With the attainment of full political independence, the influence of colonialism has receded in many of the Caribbean territories. Membership of the United Nations and other international agencies moved to centre stage, making the role of the state even more influential in industrial relations. State decisions to enter into international financing and loan agreements, which are not subject to a democratic vote, or even to public discussion, have had profound influences on the lives of workers in the region. Such agreements generally come with certain conditionalities: strict tendering procedures accounting for expenditures excising duplication of services, cost cutting in social services and reducing the size of the public service itself.

Where these are not specifically mandated, and it is not necessarily the case that they are, the borrowing states see no other alternative to meeting the stringent cost control measures demanded other than to self-impose these strictures.

One of the results has been lowering the level of comparative salaries in the public service to that below the private sector. Lower salaries make public service positions less attractive to the better-educated middle-class, and paradoxically, leading to the feminization of the public services in many territories as men look for more lucrative employment. A recent conference held for judicial officers from five Caribbean countries, Bahamas, Jamaica, Barbados, Guyana and Trinidad and

Tobago, reported that in those countries, the staffing of the magistracy has become female-oriented since qualified men will not work for the low salaries being paid to magistrates, preferring to go into private practice.

The Feminization of Poverty

While the Caribbean Association of Feminist Research and Action has blamed structural adjustment consequent on these conditionalities for the feminization of poverty in the region, in fact, available UNIFEM statistics show the feminization of poverty was a fact long before the structural adjustment programs of the 1970s and 1980s were put in place. What structural adjustment has done in the region is to put a greater burden on women to provide social services once provided by the state. Since a majority of women, as of the 2000 statistics, are now employed this has a direct impact on the pressures of women workers to perform and to attain promotion.

Hospital stays, for example, which once allowed for recuperation time before the patient was sent home, are now truncated and patients are expected to be looked after by family during recovery from trauma or surgical procedures. That nursing work, as in the case of most other social and unpaid community services, is expected to be provided by women, as culturally, Caribbean men are not expected to perform such tasks. This extends to care of the aged and the handicapped, the very young, and the educationally and mentally challenged.

In a number of instances, both in the public and private sectors, where retrenchment is contemplated, efforts have been made to send female staff home first wherever possible on the assumption that men are the major support of families and women's income is only secondary. Since women are the heads of an estimated 40 per cent to 60 per cent of the region's families, this has added both to the statistical figures underlying the "feminization of poverty" concept as well as the growth of the numbers of women in the informal sector.

A May 2001 publication by the International Institute for Environment and Development (IIED) says: "Feminization of the labour force refers to the rapid and substantial increase in the proportions of women in paid employment over the past two decades. The deregulation of labour markets, fragmentation of production processes, de-

industrialization and new areas of export specialization have all generated an increased demand for low-paid, flexible female labour. (In parts of the Caribbean and Latin America... the feminization of poverty is not only a phenomenon of increasing numbers, but has been used to illustrate the links between the social and economic subordination of women. There is little evidence that women's increased involvement in paid work has significantly reduced poor women's share of unpaid work, in caring for households."

Positive regulative legislative measures such as Occupational Safety and Health (OSHA) ordinances regarding safety and environmental strictures have been taken by states to attract foreign investment, protect local industry and encourage local exports. State intervention in these areas has improved the working lives of many employed people. Ratification of United Nations conventions and support internationally for its programmes to promote the concept and observance of human rights have had a trickle-down effect on the rights of women, both at work and in society.

Raising the Glass Ceiling

While the glass ceiling is very firmly in place throughout the English-speaking Caribbean in the private sector, it is being worn down in the public sector to just below chief executive officer and board director in state enterprises and minister and junior minister level. Those positions are politically appointed, and political power remains a predominantly male prerogative in most Caribbean territories. This manifests itself in a number of ways, including the maintenance of the authoritarian and combative structures of the judicial system, the police and the parliamentary systems and the authoritarian hierarchical organizational structure of the civil services in each state in the region, the educational systems and most state-run medical institutions.

States that are signatories to the United Nations' Convention Against All Forms of Discrimination Against Women are obliged to submit reports on their progress in implementing the Convention's articles. Most have at least provided equal pay for men and women in the public service positions, and the trade union sector has pretty well eliminated the differential in men and women's wages in collective agreements. What has happened, however, is that work traditionally associated with

female employees has been comparatively valued less by both employers and trade unions than work traditionally filled by men, so employees of both genders will find their wages affected when they move into employment roles traditionally associated with the opposite gender. This is the case with male nurses, for example, or women computer programmers or masons.

With more women moving into positions traditionally in the male preserve such as engineering, law and medicine, it is noticeable that the relative value of these positions is affected. The example cited above of magistrates is a classic one. When most magistrates were male, the status and emoluments of magistrates were measured among the higher professional levels in the society. Now that most magistrates are women, these comparisons no longer hold true.

It is, perhaps, inevitable that the State, in independent countries should put as its first priority the promotion and protection of economic development, as the very existence of the State, and the continuance of whichever government is voted into power is contingent on that development, but it is unfortunate that the human rights and human needs issues should receive such a low priority in the calculation of most Caribbean States.

CARICOM

As membership in the Caribbean Community (CARICOM) became entrenched, and after decades of holding themselves apart from adopting regional positions where there was any possibility that holding out might lead to a single state's advantage over another, the growing trade and economic alliances taking place throughout the world, and in the western hemisphere urged Caribbean states to a greater unity and to developing CARICOM positions and policies. Included were CARICOM draft legislation or declarations and/or protocols on a number of topics, including those touching upon industrial relations. Among these was the CARICOM Declaration of Labour and Industrial Relations Principles (1999), in which Article 8 deals with the promotion of collective bargaining that recognizes equity, fairness and justice as essential for promoting stability in the region. The perception of what constitutes gender equity, however, can be a contentious issue. Article 43 commits member states to promote collective bargaining, consultation and

tripartism, all basic ILO principles, as essential to any system of industrial relations.

Since the leadership of trade unions in the region is heavily masculine in gender, as are the ranks of ministerial positions in government and top management among business and state corporations, such concerns as special needs of employees who are parents are rarely taken into consideration. Traditionally throughout the Caribbean, the responsibility for care of children is relegated to the female parent, even if both parents work. The majority of industrial relations policy makers, however, not having this responsibility themselves, have not generally recognized these needs as fit topics for industrial relations concerns.

Sexual Harassment

Likewise, sexual harassment seldom enters into collective agreements or into national legislation. CARICOM, to its credit, did include a section on sexual harassment in its Model Harmonisation Act Regarding Equality of Opportunity and Treatment in Employment and Occupation. CARICOM countries have, however, been slow to adopt the CARICOM legislative guides. Belize is the only country with a sexual harassment act, the Protection Against Sexual Harassment Act, No 10 of 1996 .

Other countries have addressed sexual harassment at the workplace directly in anti-discrimination legislation. The Sexual Offences and Domestic Violence Act, 1991 (Bahamas) s.26; Prevention of Discrimination Act, No 26 of 1997 (Guyana) s.8; Equality of Opportunity and Treatment in Employment and Occupation Act, No 9 of 2000 (Saint Lucia) are examples of this, and give workers a level of protection under the law that they had not had previously. Trinidad and Tobago has an Equal Opportunities Act, but sexual harassment is not directly addressed in it. Other than these, there are no laws in the Caribbean forbidding sexual harassment at the workplace. Very few cases have ever been taken to industrial courts or to arbitration tribunals, although many private firms, as a result of doing business with multinational firms where anti-harassment policies are mandatory, introduced them in the last decade of the 20th century.

The Industrial Court of Trinidad and Tobago, which is a creature of the Industrial Relations Act, has had a profound effect on the conduct

of industrial relations in that country. Judgments of the Court, particularly in matters of right, are used as precedent in matters sent to the Court subsequently, so are regarded as a form of "judge-made law" in the conduct of industrial relations. In a matter before the court in regard to sexual harassment, the court in that country ruled that sexual harassment is not defined by the intent of the perpetrator ("I didn't mean anything by it." "It was just a joke," etc), but by the perception of harassment on the part of the victim, and pointed out that employers have a duty of care toward their employees to provide them with a safe environment to work in, and any employer that condones or disregards sexual harassment is in default of this duty of care. The judgment advised that in the absence of specific legislation, such matters be treated as disciplinary matters of misconduct. (TD 17 of 1995. BEU/Republic Bank.)

The CARICOM Model Harmonisation Act, in its Definition of Discrimination states:

3. (1) For the purposes of this Act, a person discriminates against another person if the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

Prohibited Grounds of Discrimination

- (2) The grounds referred to in subsection (1) are -
 - a. race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy, marital status or age except for purposes of retirement and restrictions on work and employment of minors.
 - b. any characteristic which appertains generally or is generally imputed to persons of a particular race, sex, religion, colour, ethnic extraction, social origin, political opinion, disability, family responsibility, pregnant state, marital status, or age except for purposes of retirement and restrictions on work and employment of minors.

It is significant that grounds for discrimination do not exclude sexual orientation, although the United Nations Commission on Human Rights has commented on its omission from the anti-discrimination legislation in a number of Caribbean countries as being inconsistent with the ratification or adoption of United Nations instruments.

Extreme homophobia is, in fact, still characteristic of industrial relations in most of Caribbean. This will probably change, however over the next decade through the emergence of the region into the global economy and the resultant internationalism of trade in those organizations dealing with international counterparts where discrimination on the basis of sexual orientation has moved from being prohibited to being reversed, as in the case of BP worldwide, which now has a policy of actively recruiting diverse minorities, including those of same-sex orientation.

Industrial Relations and Globalization

Globalization cannot, of course, be termed a system of governance or a State system, but the effects of globalization have certainly affected the way in which state governance is managed in the Caribbean, and the role that the state plays in industrial relations. It is generally accepted in most Caribbean fora that the terms "globalization" and "US domination" are pretty well synonymous particularly where it comes to organizations such as the World Trade Organization (WTO) and General Agreement on Tariffs and Trade (GATT). The effect of the protection of US commercial interests by these "international" organizations has had a devastating effect in the Caribbean, virtually wiping out the economies of Dominica and other banana-growing countries and escalating joblessness and poverty.

In August, 2005, the latest WTO ruling against MFN status for banana exports from these countries renewed consternation among Caribbean States members. The individual states governments, the employers and the trade unions were powerless to prevent this. While the attempts of the ILO to promote various forms of social partnerships are admirable, and have led to at least some dialogue if not to industrial peace, in most areas where multinational interests are at stake, small Caribbean territory governments with all the tripartite support that they can command are, and will continue to be, powerless in the face of superpower interests.

The role of the state in industrial relations in this context ceases to be the role of the nation state, and becomes the reflected expression on the face of US interest and /or indifference. Where the US government perceives that the interests of one of its own national industries may be affected, individual states¹ governments usually know how they are

expected to intervene in industrial relations matters, which may or may not result in some bargaining leeway for the Caribbean. Bauxite, aluminium, oil and natural gas, methanol, lumber and diamonds are all of interest to the US markets, and insofar as US interests are concerned, some influence exerted by the superpower will affect those employed in the exploration or production thereof. Barbados continues to be the exception where social partnership agreements have kept wages controlled and prices, already higher than in the rest of the Caribbean, at a fairly stable rate.

The CARICOM Single Market and Economy

The projected CARICOM Single Market Economy with its promise of free movement of people will have the dual effect of attracting people to the areas where jobs are available and wages seen to be highest, a formula that has led, in the past, to depressed wages in lower-skilled positions as labour supply exceeds the demand. The intended phasing-in of particular skills to be allowed, such movement is intended to stave off any negative effects, and this will have to be carefully monitored. Lower-ranked service positions and jobs in the informal sector are already almost subject to free movement as illegal immigration is high in these areas, subjecting people working under such conditions to the usual abuses, including wages paid below the minimum stipulated, and substandard conditions, including sexual abuse of domestic and other female workers under the threat of reporting to the immigration authorities.

Trinidad and Tobago, because of its increased energy income, is already seeing an influx of Venezuelan, Chinese and Guyanese workers in construction and service positions. The government there does not seem to be actively pursuing these workers with any urgency, being more concerned to monitor and limit the number of technical, professional and managerial employees being granted work permits to work in the energy sector to protect the interests of qualified locals. That government has also insisted that energy-sector corporations entering into the country contribute substantially to the creation of technical education institutes, including the University of Trinidad and Tobago, to upgrade the skills base in the country. This has led to an impressive increase in the types and availability of tertiary education available for the local community.

At the same time, membership in trade unions has fallen throughout the region as well as in Trinidad and Tobago to somewhere between 12 per cent and 20 per cent of the workforce in 2005, depending on whether membership is counted as being paid-up and active membership or those still enrolled on the books.

The government continues to verbally promote the traditional tripartite principles, while proceeding to do whatever it has already decided to do. Agreements struck between the UN government and that of Trinidad and Tobago are leading to compulsory drug testing in some areas against union protest, for example. Since a substantial number of employed persons are employed by the government or by state-owned corporations in that country, it has also experienced the unusual phenomenon of government leading the private sector in establishing higher negotiated wage increases for its employees, which then become the norm for the private sector as well. All collective agreements negotiated for employees in the public sector must be vetted and approved by a Cabinet appointed Public Sector Negotiating Committee, which means that using that mechanism, the state keeps a very tight control over both public and private sector wage agreements, a key factor in industrial relations.

Keeping Industrial Peace

Since the multinational energy giants provide the Trinidad and Tobago government with the bulk of its income, and since the energy giants require industrial peace, images of direct placatory intervention by the prime minister and ministers of state in the energy-industry employees¹ protests and industrial action have become common in the local press, particularly where the industrial action is contrary to the law. Penalties under the law are not applied to the unlawfully protesting workers, which has led to similarly unlawful industrial action taking place with university academic staff, and doctors and pharmacists in the state hospitals, again with no penalties being applied by the state, either in its capacity of employer or upholder of public order.

Similar occurrences in Jamaica and Guyana of breaches of the industrial relations regulatory machinery with no penalization have also become more common. It is possible that none are realistically possible.

The Future of Industrial Relations

The future of industrial relations outside the regulatory provisions of the law seems inevitable as a result. Either that, or the regulatory provisions of labour legislation in the region are going to have to be revisited. The state in most Caribbean countries has also taken the lead in using the contract employee system in order to attract scarce skills that are only available on the market at salaries higher than those negotiated by the Public Services Association, thus further weakening the power of the trade unions generally. The use of contract labour in lower level positions is growing throughout the region to circumvent rigid union restrictive practices, particularly in the tourism and hospitality industry, and in construction and other seasonal or short-term projects, and may require specific legislation in the future to protect the rights of the contracted employees.

In Trinidad and Tobago, the Industrial Court is now also allowing disputes to be brought directly to it by individual workers rather than through trade unions in cases involving severance, retrenchment and maternity leave benefits as a result of government-led changes in legislation relevant to these categories, resulting in a further erosion of union power.

It would appear that the role of the state in industrial relations in the Caribbean is not likely to lessen in the foreseeable future. Whether this role is in reaction to the forces of globalization, or whether it is as a result of internal demands and pressures, that role is one that is certain to be recognized. Enacting legislation is only a small part of the state role, and even the enactment of protective legislation can have a negative effect where it is enacted and subsequently not enforced. It can, as in the case of Trinidad and Tobago where the state has condoned unlawful industrial action in the public sector, encourage similar action in other sectors. By either taking action or refusing or neglecting to do so when conditions change and regulative or protective legislation and implementation of that legislation is needed, that influence is felt.

Increasing violence, both at local and international levels is almost inevitably going to lead to greater attempts at state regularization and control, as happened in the decades following the Moyne Commission Report and the labour riots that swept the Caribbean region. In that century, a rash of industrial relations legislation swept through the region, much of it regulatory, and as we have seen, much of it overtly or covertly

intended to keep the existing power nexes in place and in power. The University of Chicago political philosopher Professor Leo Strauss, the guru of the US neo-conservative ideologues, regarded it as an elitism masked as policy expediency necessary to deal with the tyranny of modern civilization, a philosophy familiar to any student of industrial relations power politics in the Caribbean over the past 150 years. There is no indication that this will change in essence in the next couple of decades.

The faces change, those in power may change from plantation to industry, from colonial to local or neo-colonial, but the formula does not seem likely to change much. Professor Strauss believed in a language of philosophy that spoke on two levels, one to the student or, as the Caribbean press would put it, "the man in the street" or "the true son of the soil," the other speaks to the elite, to those who have the real power, who know that they have the real power and use it. This appears likely to continue to be the reality of industrial relations in the Caribbean for some time to come.

3

The Mission and Scope of Labour Inspection¹

Wolfgang Von Richthofen

Labour inspection's mission in the past often tended to be formulated in very broad, abstract terms. However, in the past two decades labour inspectorates the world over have begun seriously to question their assumed mission and to endeavour to redefine it, often in consultation with workers' and employers' organizations. It may seem self-evident that the process of inspection and its achievable results should be the primary mission of labour inspection. But what inspectors are to inspect, how they should inspect, and the results they should hope to seek from an inspection, are all issues that have been the subject of heated and controversial debate at an international level and within national inspection systems. This has increasingly led managers of inspection systems to aim for "mission statements" as part of their central strategy to give their inspection services a new orientation, to create a sense of corporate identity and to move the system forward. These mission statements are therefore intended to clearly define the purpose of all inspection activities that are undertaken. Such activities may cover all or only some of the core functions of labour inspection. A wide range of approaches can be noted, the variety of which is best illustrated by some random examples:

- The United States Occupational Safety and Health Act (OSHA) was enacted "to assure so far as is possible every man and woman in the Nation safe and healthful working conditions";
- The Government of Canada promotes a "fair, safe, healthy, stable, cooperative and productive work environment for workplaces under its jurisdiction". Some regional entities in that country go even further. As a result, the corporate motto for the Province of Ontario is "an environment that will make Ontario workplaces the safest in the world";

- Another similar statement, expanded to include the general public, has been issued by the United Kingdom's Safety and Health Executive (HSE), whose mission is to ensure that "risks to people's safety and health from work activities, including risks to the public, are properly controlled"; and some HSE departments envision their own (sectoral) mission statements;
- Finland takes the mission statement further when the Government includes justice and equality at work as cornerstones of its labour inspection mission; and the Netherlands uses an even wider interpretation in its statement, which includes the obligation to tackle abuse and to provide politically relevant information;
- The Swedish Work Environment Act encapsulates its country's inspection mission: "to prevent ill health and accidents at work and generally to achieve a good working environment". Another government agency has as its mission statement "to improve the performance and effectiveness of organizations by providing an independent and impartial service to prevent and resolve disputes and to build harmonious relationships at work";
- New Zealand's Occupational Safety and Health Service has a mission statement: "Together to Zero", which means that every preventive measure taken is a step nearer towards eliminating workplace-related deaths. This strategy will then result in the decrease and gradual elimination of other kinds of accidents and occupational diseases as well.

The above examples lead to a significant number of conclusions: thus, mission statements tend to be adopted more and more as a key element of strategy.

While not indispensable, such statements tend to focus the activities of labour inspection on issues central to its aims. The more succinct a mission statement, the easier it is for the management of inspection services to set objectives and standards against which to implement it, in order to reach the stated goal. Increasingly, therefore, governments see mission statements as central to the effective implementation of all labour inspection activities, or indeed to the reorientation of services towards new goals.

To succeed, a mission statement must be widely accepted by both the inspectorate and the client system it affects, necessitating consultation

with all parties concerned. Once accepted, it is necessary to publicize it widely, together with a set of continuously developed objectives, which further define its purpose. These are usually supported by medium-term aims (three to five years), combined with a procedure for setting annual priorities. Today, it is generally seen as insufficient merely to publish a mission statement containing broad aims and objectives, without establishing and publishing annual targets, as well as reports on outcomes as proof of the achievements of labour inspection activities.

The role and scope of labour inspection

As has been noted, the primary duties of practically every modern system of labour inspection are laid down in Article 3 of the Labour Inspection Convention, 1947 (No. 81). Today, it is generally considered better to prevent than merely to sanction or punish. This change of attitude is reflected in the more recent Labour Inspection (Agriculture) Convention, 1969 (No. 129), which states that inspectorates must be associated with the preventive control of new methods or processes that appear likely to constitute a threat to health or safety. Emphasis on preventive as against corrective intervention is gaining ground. Of course, “traditional” enforcement, namely the various aspects of technical inspection, still continues to contribute substantially to the prevention of accidents and health hazards, particularly if accompanied by advice and comments to employers and workers.

However, enforcement roles of labour inspectors vary greatly from one country to another. They may be general and apply to all labour and social legislation, as for instance in Belgium, Bulgaria, France, Greece, Spain, French-speaking Africa, and most Latin American countries. They may be restricted to certain fields, such as safety and health, and certain aspects of working conditions, such as the work of women and children, as in the Nordic countries, the United Kingdom and elsewhere. Or, conversely, certain matters such as wages may be expressly excluded from the inspectorate’s tasks as in the Federal Republic of Germany. Then again, inspectors may have specific responsibilities with regard to certain employers, for example in the case of public works contracts, as in Ghana, Tunisia or the United States (an important feature, since labourers on public works are, by law or practice, frequently exempt from minimum standards of protection).

The enforcement role may also be limited to particular sectors of the economy, often excluding mining and transport. While in this case other inspectorates, such as mining inspectorates, may have been established, certain sectors are sometimes not protected by any external labour inspection, for example offshore extraction industries or, more commonly, public sector activities such as railways, postal services, the police or the armed forces. However, more and more countries (e.g. the United Kingdom, the Nordic countries, most other European Union Member States and Switzerland) have extended the scope of labour inspection to the public sector, and specifically to public administration systems; this is an important development.

Advice, information and publicity provided by labour inspectors in most inspection systems today go far beyond the mere supply of technical counsel on safety and health matters. Clearly a modern inspectorate must command high technical expertise to be accepted as a partner by industry and the trade unions. The latter, particularly, often ask the experts of the labour inspectorate for assistance and advice. Some countries, following the French pattern, rely more on a corps of inspectors with broad enforcement functions. Others, like Germany, have created a dual system, with state labour inspectorates in each of the 16 *Länder* of the Federal Republic of Germany more inclined towards enforcement, and with a more technically specialized inspectorate, run by the Occupational Accident and Disease Insurance Bodies, more inclined towards advice, information and training (although also endowed with powers of sanction).

Many inspectorates experience difficulties in striking a proper balance between enforcement, on the one hand, and advice and information, on the other. Workers' and employers' organizations tend to expect a degree of flexibility and judgment not commonly found in any public service system. Some countries have attempted to solve the inspectors' dilemma: in Brazil, for example, an inspector has to draw employers' attention to the legal consequences of their action (or lack of it) before contemplating prosecution. In many countries, it is in practice left to individual inspectors to decide which remedial measures to take. And in times of economic difficulties, there is the temptation, often backed by public policy, to rely too much on advice and information and refrain from "unpopular" enforcement measures. This would not, of course, apply to cases of immediate danger to life and limb, but in some

countries it does jeopardize the effective enforcement of compliance with laws and regulations dealing with workers' health and welfare.

Participation in standard setting is a time-honoured role of labour inspection. Inspectors can provide ideas for new legislation and regulations by notifying the competent authority of defects or abuses not specifically covered by existing legal provisions, and by proposing to that same authority improvement in laws and regulations. In a large number of countries the labour inspectorate is represented on national tripartite advisory bodies, to which it can bring its knowledge of problems and deficiencies at the workplace to ensure that new laws and regulations are applicable in practice. Labour inspectorates are often also called upon to express their professional opinion or to make proposals for draft legislation on matters of employment or social security. Much as the association of labour inspectorates with standard setting highlights the importance that government authorities attach to their services, these demands can place a considerable burden on the lean resources of inspectorates. This is particularly true in cases where inspectors are required to carry out statistical surveys on wages or strikes, or to establish cost-benefit analyses in advance of new regulations, or even to make recommendations involving legal consequences (so-called regulatory impact statements), as for instance in Norway and other countries, a task for which they are often unqualified and lack resources.

Collaboration with workers' and employers' organizations is an important aspect of labour inspection. Most systems have made appropriate arrangements for promoting cooperation between the labour inspectorate and employers and workers or their organizations, in the form of conferences or joint committees at the plant, local, regional or national level. The effectiveness of any action by the labour inspectorate depends largely on the collaboration of employers and workers, preferably already at the stage of policy formulation and standard setting. National tripartite committees therefore exist in countries as varied as Belgium, the Czech Republic, Hungary, Italy, Cote d'Ivoire, the Netherlands, Nigeria, Pakistan, Sweden, Switzerland and the United Kingdom, to name but a few.

Legislation in many countries provides for the establishment, at the level of the enterprise, of safety and health committees, labour protection councils or similar bodies. Their role consists of actively promoting consciousness among the social partner actors, investigating incidents

and accidents and means of preventing them, and generally supervising the enforcement of all measures designed to make working conditions more human. These bodies, as a rule, cooperate closely with the labour inspectorate during inspection visits; they may also be empowered by law to request the labour inspectors to be present at their meetings. Such procedures ensure that the interests of workers and employers are safeguarded to the maximum.

In addition to these major roles of most labour inspection systems, other duties are sometimes entrusted to them. Where this is the case, ILO Convention No. 81 specifically provides that such duties should not interfere with the discharge of inspectors' primary duties, or prejudice in any way their authority or impartiality.

In practice, such additional duties abound. Many countries have established labour protection institutes, often under the direct control of, or at least attached to, the labour inspection system. Another duty of labour inspectorates often lies in their contribution to, or participation, in development planning; but this may be a double-edged sword. It may be desirable because it may enable the inspectorate to discourage the location of a potentially hazardous plant near residential areas and enhances the service's delivery capacity vis-à-vis other important government bodies. Similarly, involvement in examining building plans of new enterprises or in licensing hazardous processes can help to ensure that the end result is adequate – but only at the cost of much time and making the inspectorate in part responsible for the outcome. While these additional duties may seem superficially logical and valuable, giving inspectorates more recognition, status and possibly resources within the public administration system, they can also draw slender resources away from major responsibilities, which may already suffer from a lack of political and financial support. In any event, the benefits of positive approval or licensing should always be carefully assessed against the costs, and against the aspect of partial transfer of responsibility that it entails.

In some countries, labour inspectors are required to carry out, or contribute to labour market surveys. They may be called upon to supervise the payment of contributions to social security schemes. They may be asked to collect statistics on conditions of work, or they may be entrusted with a host of administrative duties. They may have responsibilities with regard to unemployment benefits, or they may

supervise vocational training centres or programmes. In terms of ILO Convention No. 81, some of these additional duties will be borderline cases, depending very much on the actual workload involved.

Opinion is divided on the role of labour inspectors in industrial relations, particularly their participation in collective bargaining procedures and the settlement of industrial disputes. In countries following the British system (Germany, the Nordic countries and others) negotiation of agreements is left entirely to labour and management. In countries influenced by the French tradition, and in most Latin American countries, collective bargaining procedures often require labour inspectors to attend, or even to chair, relevant meetings. These arrangements are found in Chile, France, Greece, Mexico and French-speaking African countries. While participation in collective bargaining is generally considered an acceptable additional charge, as labour inspectors may contribute to the improvement of industrial relations, their possible role in the settlement of industrial disputes is controversial. In France and countries following the French system, conciliation is one of the major functions of labour inspectors. The Labour Inspection Recommendation, 1947 (No. 81), however, states that the functions of labour inspectors should not include conciliation or arbitration, on the grounds that conciliation and inspection duties are incompatible with the main functions and obligations of inspectors, in particular, the need both to be, and to be seen by the parties to be, impartial in the exercise of their duties. The Labour Inspection (Agriculture) Recommendation, 1969 (No., 133), on the other hand, recognizes the possibility of labour inspectors acting as conciliators, at least on a temporary basis. If the ILO itself seems divided on this issue, so, indeed, is the rest of the world. At one end of the spectrum, one finds countries such as Cyprus, Denmark, Germany, India, Japan and the United Kingdom, where regulations prohibit inspectors from playing any role in dispute settlement, while at the other end, in France, Greece, Spain, Turkey and many other Latin American countries, disputes must be submitted to a labour inspector. In between, every variety of law and practice can be found.

It is noteworthy that in 1997 the European Union agreed on common working principles of labour inspection for Member States to supervise safety and health at work.²

Social promotion, social policing

Article 3, paragraph 1(c) of ILO Convention No. 81, in spite of its considerable, far-reaching importance, is a provision often ignored in the practice of labour inspection. It postulates that one of the functions of any system of labour inspection should be to bring to the notice of the competent authorities defects or abuses not specifically covered by existing legislation. A similar Article (6.1(c), in the Labour Inspection (Agriculture) Convention, 1969 (No. 129), goes even further, requiring labour inspectorates with agricultural competence to submit specific proposals on the improvement of laws and regulations.

This function, if dynamically managed, is an important factor in social progress. Properly understood, and properly carried out, it will promote new labour protection measures across the range of other inspection functions. Labour inspectors are the primary agents of government in the world of work. They alone can assure a regular state presence in enterprises. Some may feel that this, in fact, is not desirable. Liberalization, deregulation and other political trends tend to downgrade the importance and impact of this primary duty. But it is thanks to their direct knowledge of the working environment, continuously updated in the course of virtually all their activities, that labour inspectors are best situated to alert the competent authorities to the need for new, or the revision of existing, regulations that would be better adapted to meet the needs of workers and employers alike.

Making the best use of this mandate presupposes an ongoing process of social dialogue at enterprise level, which labour inspectors must lead, encouraged by their hierarchy. It also assumes that labour inspectors have an active role in subsequent drafting of labour protection regulations. This involvement can sometimes be quite direct, as when representatives of the inspectorate are members of a national labour advisory board, or similar high-level tripartite consultative body. In quite a number of countries (for instance Denmark, Norway and others), the inspectorate is responsible for assisting the Minister of Labour in drafting subsidiary regulations for which he is mandated under the legislative framework (e.g. the Working Environment Act, the Labour Code, etc). In some cases, inspection bodies are even empowered to themselves adopt legally enforceable standards on prevention of occupational safety and health hazards (as in the case of OSHA in the United States, or that

of the *Berufs-genossenschaften*, the Mutual Accident Insurance Associations in Germany).

Whether inspectorates have such far-reaching powers or not, the basic issue is whether they define their mission as being promoters of social equity at the national level, and stimulators of social dialogue at the enterprise level. Are they being encouraged by the system to play such a role in a proactive manner? Do they play it with the indispensable, impartiality and openness that it requires? And can they reconcile, and integrate, this function with their core mission: to be, and to be perceived to be acting as, social police? In the final analysis, this is the essence of their mission. If it is compromised and dialogue is sought at the expense of authority and consistency, then this vital function of promoting social progress risks degenerating into little more than talk without any ensuing action. Striking an equitable, clearly defined balance between what to some appear to be conflicting interests, but which in fact are complementary, if intelligently managed, is one of the great challenges facing labour inspection today.

Prevention

Prevention in the context of labour protection, and the mission of labour inspection in this regard, is referred to in numerous international labour standards (notably ILO Conventions Nos. 81, 129, 155, 174 and others). In addition to the main inspection functions relating to the application of legislation, which already have an evident preventive objective, these instruments contain a number of provisions specifically outlining several important aspects of the preventive role of inspection services, such as the inspection of new establishments, materials or substances and work processes, and the prevention of occupational accidents and diseases.

Specifically, ILO Convention No. 129 (adopted some 20 years after ILO Convention No. 81, which contains several important new principles relevant also outside the sector, thus underlining significant developments in the international conception of, and approach to, prevention) provides that labour inspection services must be associated in the preventive control of new plants, new substances and new methods which appear likely to constitute a hazard. The Convention even contains some, albeit flexible, provisions as to how preventive action of this kind is to be ensured. Although relying essentially on national law and practice in

member States to give effect to them. Thus, the special international instruments on labour inspection (the above Conventions, and accompanying ILO Recommendations, No. 81 and 133) are generally conducive to promoting principles of prevention, envisaging a proactive role for labour inspection, and specifically addressing issues at the pre-workplace stage (more explicitly so in paras.1 to 3 of Recommendation No. 81, and para.11 of Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)).

As already mentioned, to speak of prevention in the context of labour protection implies, first of all, a determined effort to avoid incidents, disputes, accidents, conflicts and occupational diseases by assuring compliance with existing legislation. This approach, however, not only has its limitations but also reveals a basic dilemma with regard to preventive labour inspection activities. What has occurred, and has been the subject of analysis, intervention, control, advice and/or sanctions, is much more readily measured, documented and validated than what has not occurred, because it has been successfully avoided. How does one measure the number and effect of accidents that did not take place? How does one calculate the costs saved because of conflicts resolved before they erupt? How does one show evidence of effectiveness and efficiency as a result of one's actions, and therefore as proof of achievement of one's mission? Statistical evidence, by itself, is often not conclusive, because statistics tend by their nature to reflect quantity, not quality, concentrating on the number of activities carried out rather than on the actual results achieved, and also because labour inspection action is (and can only be) but one contributing factor in a usually highly complex cause-and-effect relationship. It is ironic that the more successful an inspectorate is in preventing disasters, the less evident it may appear that its activities are of vital importance.

Prevention in the world of work, to the extent that it concerns labour inspection, can have a considerable variety of meanings, depending on what particular area one looks at: working conditions; industrial relations; occupational safety and health; or even employment. Common to all definitions is the notion that prevention can avoid or eliminate risk: the risk of unfair treatment; the risk of physical or mental health damage; the risk of costly conflict; and increasingly also the risk of unemployment and exclusion. Underlying these different categories of risk is the realization that, if not prevented, they will lead to losses for the individual,

the enterprise, or society as a whole. It is therefore reasonable to say that loss control has developed as a common denominator to every kind of risk prevention.

Any prevention policy, to be effective, requires the participation of all the parties and individuals directly concerned. It must therefore be subject to regular review and scrutiny by organized social partner representatives and obtain their commitment to such policy initiatives. If these organizations are weak, or if they do not consider the development and application of labour protection related prevention policies at national, sectoral and enterprise levels to be a matter of priority, then the concept cannot be successfully promoted by labour inspection. It also, perhaps first and foremost, implies the active participation, sharing of responsibility, and indeed leadership, of management, with the ultimate goal of developing a consistent “prevention culture” at enterprise level.

Government must enable and promote the sharing of responsibility, and provide the impulse and legal framework necessary for relevant initiatives, whether within enterprises, within different economic sectors, or at the national level. At the same time, the State must maintain its role of guaranteeing the protection of workers through the enforcement of compliance with existing legislation and standards, thus maintaining the respect for principles which forms the basis of labour inspectorates’ utility and credibility. However, for a long time, labour inspection policies in many countries were placed within a framework of state control that was too rigid, aiming mainly at conformity with prescriptive and often overly detailed regulations and standards of working conditions without fulfilling this role in an effective manner. Indeed, this continues to be the situation in quite a number of countries.

In contrast, prevention today envisages a much more anticipatory and guiding role for labour inspection, combined with a higher degree of confidence in the actors directly involved in a preventive action. Such action on behalf of labour inspection requires a new system of relations between inspectors, on the one hand, and employers and workers (and their representatives), on the other. Inspectors must, in particular, be careful to follow closely and enhance all preventive initiatives developed in enterprises. To this end, rather than merely limiting their intervention to strictly checking the correct application of standards, labour inspectors must be attentive that their actions are complementary and supportive of initiatives taken at enterprise levels, and where necessary stimulate

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management to manage health, safety and employment policies proactively. This means that they must strengthen their presence at the enterprise level, or else forge relations with “partners/allies” within enterprises to allow them to develop this crucial anticipatory capacity. New prevention policies therefore cannot provide a substitute for the reduced presence of inspectors in the workplace.

NOTES

1. This chapter is extracted from *Labour Inspection - A Guide to the profession* by Wolfgang Von Richthofen, ILO, 2002
2. Commission of the European Union (DGV): *Common principles for labour inspectorates regarding inspection of health and safety at the workplace* and “questionnaire for evaluating the policies and practices in occupational health and safety inspection” (Luxembourg, 1997).

4

The International Labour Organization and the Caribbean

LeRoy Trotman

In its November 2005 meeting, the Governing Body of the International Labour Organization (ILO) decided after consultation to hold a general discussion at the International Labour Conference of June 2007 on strengthening the ILO with a view to making it more relevant in today's globalized world and more responsive to the needs of its constituents. Quite naturally representatives from Latin America and the Caribbean supported the proposal. Each region may have had a different reason for having such a subject dealt with at the International Labour Conference. This paper cannot shed any light on what may have driven governments globally; but it does seek to explore why the subject should hold relevance for the Caribbean, and how effectively the upcoming consultations, which will precede the 2007 debate, can be used to bring the ILO more closely into the thinking of the region.

Capacity-Building

For most people in the Caribbean, the ILO is associated with Technical Cooperation, international labour standards and advisory work. Reference can be made to the effective past and on-going Labour Administration Programmes, which did much to prepare labour officers especially for their very important regulatory, technical and advisory functions with their national Labour Departments or Ministries of Labour. Many persons may also recall the highly successful safety and health regime which most of the countries embarked upon in the 1980's with the technical assistance of the resident Health and Safety "expert" of the time. In short, the region is familiar with one kind of technical assistance or the other, and appreciates the ILO intervention.

In fact it is instructive to bear in mind that workers, employers and government officers have not only benefited at the level of basic training which has positioned them and their organizations to be able to deliver better service in the labour market and in the social development of our economies. They have also benefited from structural leadership training in the region, particularly through ILO programmes at the Trade Union Education Institute in Jamaica or Geneva at the International Institute for Labour Studies, or in Turin, Italy, at the International Training Centre of the ILO.

Higher Education

Beginning in 2004, and in association with the German Ministry for Development, the ILO was able to step up to another level of technical assistance to its constituents. A Masters' Programme in Labour Economics was developed to enhance the capacity of participants to research and to advise their principals on trade and labour market issues. The venue for the first two-year programmes has been Germany at the Universities of Kassel and of East Berlin. Additional programmes are being explored in Brazil and in South Africa. The Caribbean has already benefited from such participation. The hope is, however, that the University of the West Indies will show more than its initial interest in the programmes. Exchange programmes involving nominees of social partners from across the world would do much to enrich campus life and hopefully expand scholarships for all the campuses.

Social Engineering

So far it was shown how the ILO has steadily made a mark in terms of its technical support. But this has been in areas where limited, privileged numbers have been involved. There is however another, very critical area of technical support which has transformed our Caribbean social landscape. The significant role played here by the ILO in one of its core functions, the social engineering of national insurance/social security schemes, is often taken for granted.

These institutions are reviewed every three or so years and some people are flustered only if the result requires larger contributions to the insurance fund. It must be noted here that it was at the ILO where the

decision was originally taken, and it was the hands-on experience of ILO officials which got the Caribbean started and still provides some of the actuarial reviews. Many countries have now developed an in-house capacity for the daily operations of the social security scheme, and are able to draw from actuarial services from within the region; but never settled for this until the ILO experts gave the green light.

In like fashion, the region has made significant progress in the development of productivity enhancement programmes. These programmes are being demanded all over the world. For the Caribbean, they are the only life lines to competitiveness; since the region has very few natural resources, and it is not a cheap labour area. Much of the work that have been done in awareness-building, and in teaching and developing the productivity enhancement psyche, have been done with the technical assistance of ILO officials, or selected project officers.

It ought to be easy to reflect on the several examples of the work that the ILO has done to render technical assistance in the region. Some of the countries have been working on drafting new labour legislation, pension regulations, safety and health laws, codes of practice to guide businesses entering the region to invest, among others. In many of these initiatives, ILO norms and standards are the reference points, and ILO experts and consultants, including those in the ILO Subregional Office for the Caribbean in Port of Spain, are called upon to give technical assistance and provide advisory services.

HIV-AIDS

In recent years readers must have been pleasantly impressed by the dimension the ILO brought to the campaign against HIV-AIDS. AIDS was a disease seen and feared for the consequences it brought to the victims and their families, workplaces and the wider national community. The ILO introduced the world of work perspective to the pandemic. People were brought face to face with the severity of the destructiveness of AIDS, because the workforce in many communities was being wiped out and the hopes of rebuilding were forlorn since it was the sexually-active persons between 15 and 49 years who were vulnerable. Following the greater involvement of the ILO through its Technical Cooperation programmes, many governments have embarked on commendable donor-funded programmes from which the Caribbean is benefiting.

The Child Labour Issue

The position of benign indifference toward the incidence of school truancy or children fall out from classes to go to work, has changed to one of anxious concern. Two major reasons suggest themselves: one relates to the types of commercial activities that many of the very young population have been led to participate in (the worst forms of child labour), and the other to a recognition that our communities must educate themselves out of poverty. The ILO has to be given full credit for the programmes to eliminate the worst forms of child labour, and its overall insistence that there should be a minimum age below which persons should not be in the workforce.

The ILO has managed to provide substantial technical cooperation support and the Caribbean can take some slight satisfaction from the fact that it is managing to rescue some of the children from working as child prostitutes and/or as “mules” or “look-outs” for drug pushers. The region has, in some instances, got those who were working into schools; some whose lives were being wasted by dangerous lifestyles, are being rehabilitated. It is no doubt recognized that many of the social evils in society spring from poverty and the way it is exploited. In the Caribbean, as elsewhere, the ILO has been giving support and guidance by educating the communities which have been adversely affected and by assisting in poverty reduction strategy programmes intended to uplift the regions targeted.

Globalization and Decent Work

The reader may also wish to reflect on the rhetoric regarding the great transformation which was supposed to take place as a result of the present wave of globalization and trade liberalization and from the coming into being of the World Trade Organisation. The rhetoric seen from this writer’s viewpoint is just that – words! The truth is that the gap between the rich and the poor has widened; more persons have fallen below the poverty lines set by respectable bodies like the UNDP.

In all of this the ILO has consistently been the voice giving support to the calls from areas like the Caribbean, for a social dimension to the search for the economic models of governance which best please the G8 countries, but only promise the countries of the Third World. This effort to have a “fair globalizaton” is being resisted today, even after

the September 2005 Session of the General Assembly of the United Nations declared itself fully supportive of the goal of “Decent Work” and of fundamental principles and rights at work.

The Caribbean region should be in no doubt regarding the role the ILO plays in the development of communities through its technical cooperation function. The role is regrettably insufficiently marketed, and thus most Caribbean people have a very limited understanding of what the ILO is. Among those who do know something are many who do not understand the inter-connections in the functions.

ILO's Standard-Setting Process

The ILO is almost ninety years old. From its establishment in 1919 it has sought to pursue the goals of peace among all persons, of economic interaction which would provide employment and thus bread for all, and of justice and tolerance for others which were intended to ensure international harmony. The leaders of the eight founding nations believed that if observance of these values could be achieved at and around the world of work, then the spectre of a world destroying itself could be avoided. Centred as it was on the world of work, it thus committed to tripartitism as the basis of ILO structures and governance.

The ILO is the only global institution, the only member of the United Nations family which is structured to include representatives of the government of the day, representatives of employers chosen independently by the employers and representatives of workers, equally democratically chosen. The ratio in this structure is two government representatives, to one employer and one worker.

The ILO has annual constitutional conferences. At these labour conferences, held in June, the other two of the core functions of the organization are addressed: the setting of labour standards, and a review and analysis of the application of those standards. Generally a country has to ratify a standard in order to be held responsible for the observance of all obligations set by that standard.

However, there are certain core (or basic) conventions (akin to international labour laws) which a country is required, by virtue of being a member, to respect and promote. These relate to the right of workers to associate freely and to bargain collectively, the right to equality of treatment, protection from forced labour and the protection of children from work.

In some quarters there is the view that the standard-setting function of the ILO, as the adopting of conventions is called, is too restrictive and that the ILO should cease to set standards or indeed to lower those standards which have so far been set. Employers lead this debate, although there are some governments which see the lowering of standards as a means of capturing or maintaining their comparative advantages in some areas. Some of the bureaucrats in government object to new instruments because they require additional paperwork regarding the reporting which has to be done indicating whether the country is compliant.

There is machinery in the organization to allow for a review of conventions and ongoing action is taking place to revise some, to bring together and consolidate related ones and, in some instances, to retire some which do not enjoy much support. The Caribbean needs to be careful about its pursuit of any policy to remove or to soften conventions. In the first place it should be noted that conventions, more often than not represent minimal standards. Usually the standard-setting exercise begins with workers' representatives quite naturally calling for the highest level of safeguard that they consider likely. The employers, with equal justification, seek to dampen the demands made by the draft standard. For their part governments run the whole gamut: some want stronger measures, while some think that those minimal standards are too high.

The history of attendance and participation will show that the Caribbean governments do not attend the International Labour Conference in any large numbers or with any degree of consistency. This is a very bad error of judgement on their part, considering the significant benefit which the region has gained from the ILO. Secondly, the records will show that, except for Cuba, Caribbean countries have very low ratification levels; most countries have ratified fewer than thirty of the one hundred and eighty five (185) conventions

It would be most desirable for the workers of the Caribbean if the region would ratify more conventions, and following this, would upgrade their legislation to give full effect to the obligations of the standard. At the same time, it should be recognized that the ILO standards have brought great labour market enhancement to the region even when individual governments have not ratified the instruments. This is because several administrators do in fact use the terms of the conventions as the basis for the conditions of their labour law as well as some of their other

social legislation. The current efforts being made by the region to have an Occupational Safety and Health at Work and the Environment Act, based on the CARICOM–ILO model, is a splendid example of ILO’s technical support. And it is also worthy of notice that the ILO, on request, does endeavour to provide the technical assistance to bring the country’s legislation in line with the particular convention(s) being treated.

ILO’s Supervisory Machinery

The third of the major roles of the ILO is perhaps the least understood by the Caribbean and the one that is hardly ever used by the social partners. This third responsibility is that of ensuring that the rule and the spirit of the texts of the ILO Conventions are being properly respected and observed. Every year, during the conference, a standing item on the agenda is the Review of the Application of Standards over a twelve-month period, or where the concern has been around for longer, then for that longer period.

The review panel is called the Committee on the Application of Standards. Its work is based on a report which is submitted every year around the end of March. The persons who prepare the report are distinguished jurists taken from a panel of experts. The performance of governments in relation to the standards of the organization is examined by the experts in that report. At the Conference the Committee sits to hear the responses of governments as well as the comments and clarifications of employers or workers. The Committee reports to the Conference, which may thereupon use moral suasion, or such limited sanctions as the ILO has to seek to bring closure to the matter giving concern.

Sometimes the Conference, or the Governing Body, may determine that a special team should visit a country to conduct an enquiry into a matter which is the subject of a complaint. Such a commission will submit a report to the Governing Body for action between conferences. Additionally, the Governing Body has a standing committee named the Committee on Freedom of Association. This Committee is charged with examining charges of failure to respect certain conventions, especially those dealing with the freedom of association. Sometimes this Committee may also call for a commission of enquiry into an allegation. On most occasions the ILO hopes that moral suasion will

win the day, although sometimes it does ask member States to take certain action to respond to hostile or uncooperative members.

Where a member country is considered by the supervisory arm of the ILO to be in breach, the Governing Body may call upon its Technical Cooperation branch to render such technical assistance as may help the offending party to get back into good standing. In a sense therefore, technical cooperation and the setting and observance of standards represent important elements in the ILO's key objective to contribute to a world where men and women live in democracies where they can choose their work, raise their families without fear and plan for their own and their families' future.

The Caribbean does not know very much about these features of the ILO. Not even in the neighbourhood where the region's district office is located is there a clear understanding of the organization or its value to the region. It is equally clear that employers' organizations and workers' unions stand to benefit from a closer examination of what the organization offers them. There are many instances of severe disruptions in the relationship between governments in the region and the social partners. A better understanding could lead to the benefit of resolutions by the supervisory machinery. If this were a recourse taken on board, it could reduce the long-term recurrent nature of some disputes.

Throughout the Caribbean people are taking part in initiatives of wholesome and progressive dimensions. All too often they are doing so without giving credit where it is due. For example the legal officers at the bench and at the bar are currently advocating that the courts are being tied up in legal wrangling over some issues where alternative (to the judicial process) dispute resolutions procedures may be more effective. Chief among those alternatives are the industrial relations methods of consultations, negotiations, and conciliation/mediation which are being used on a daily basis by governments and representatives of employers and workers. These tripartite partners have honed their skills and perfected their use of these methods on account of their exposure to the mode of governance promoted, encouraged and practised by the ILO constituents.

Since it is and has been tripartite in structure from its foundations, the ILO has had to cultivate mechanisms to remove road blocks to debates and to reduce the moot involved to small series of barriers to be scaled or opportunities to be grasped. The development of "Social

Dialogue” as a major vehicle for advancing good governance must in great measure be credited to the ILO. This has helped the region to take positions on development matters which have had full ventilation, rather than mere government’s views. This approach has been salutary. The governments and the public must however be able to identify the ILO in this development. It would no doubt bring about a needed change in getting them to invest more time and funding to the social dimension of national development.

Reinforcing ILO Values and Decent Work

There are three recent developments which the Caribbean should find very useful in its interface with the world of work. These are, in chronological order, the development of the *Declaration on the Fundamental Principles and Rights at Work*, the crystallization of the *Principles of Decent Work*, and more recently the establishment of an ILO World Commission and its *Report on the Social Dimensions of Globalization*.

The people of the Caribbean need not go far back along memory lane to appreciate the value of the 1998 Declaration. This instrument demands that every ILO member State should respect the Declaration by virtue of its very membership. The instrument itself seeks to guarantee for all people, certain basic rights which are human rights and which should be within the entitlement of everyone. The reality however is that many of those rights, though fundamental, are denied millions of people all over the world, and are similarly liable to be denied our region, were there not safeguards provided by this Declaration and any statute law that would flow from it.

The Declaration underscores the call for the freedom of association of all workers and their right to bargain collectively; it demands equality of treatment and the removal of all vestiges of discrimination at work; it insists on the removal of all kinds of forced labour, and it proclaims that children shall be protected from all forms of labour until they qualify by their attainment of the appropriate age.

Everyone in our region over the age of twenty-five years of age is old enough to have experienced examples of child labour as well as examples of women being paid less than men for similar work. Even today, the region may face, in some cases, the dilemma of insisting on

the rights of workers to organize and to bargain collectively, at the expense of investment and new employment. The region should therefore be able to credit the efforts of the ILO to bring *decent work* to the centre of the labour market. It speaks to work freely chosen by the individual which adheres to the principles dealt with in the Declaration. The concept of *decent work* imposes certain other critical obligations on the government and, where the private sector is treated, on the private sector employer. It expects proper levels of corporate social responsibility; it requires a concern from the employer for the medical and social well-being of the workers during their working years, and for suitable safety net provisioning in their post-work years.

Although one will not find a specific Oxford dictionary definition, it should be recognized that *decent work* is described repeatedly in terms of ILO values, and the ILO constituencies have been persuaded to embrace the concept, and to apply it to their treatment of the labour market. Quite naturally it has been the trade union movement which has embraced and promoted the slogan *decent work*, the principles which it addresses, and the labour standards which it serves to highlight. Where there may otherwise have been maverick handling of workers' conditions at work, and where some businesses may have tried to employ exploitative, sub-standard conditions, the general corporate respect for, and adherence to *decent work* practices have significantly tempered what might otherwise have been unacceptable conditions. No one wants to be so far out of line with his/her associates that they would be forced to distance themselves from him/her. It is that aspect of peer pressure that permits causes like the "*decent work*" campaign to succeed. The ILO itself has very little statutory power to enforce any of its standards; but credit has to be given to its programme of moral suasion and the impressive record of success this has had on governments' treatment of labour and of trade unions.

The ILO's World Commission on the Social Dimension of Globalization was jointly chaired by Madam President Halonen of Finland and President Mkapa of Tanzania, and included distinguished scholars, business leaders, trade union leaders and retired politicians. The Commission's Report (March 2003) is subtitled "*Towards a Fair Globalization*", and represents an ILO initiative to bring human considerations, akin to the Millennium Development Goals into the global agenda, especially as these relate to the world of work and to working

out of poverty. The report has been well received and its programme endorsed by the United Nations.

The Caribbean stands to gain from the global call for a value system which views the world in terms other than finance and economics. Caribbean countries have become casualties in the free-trade-at-any-price game. Fortunately, there are persons and institutions including governments which are interested in providing opportunities for the exploited and the marginalized. Even in this realm therefore it may be concluded that the ILO's sphere of influence has worked for our region, and will continue to do so.

The Caribbean likes to draw practical examples from whatever it is studying. Anyone reflecting on what the ILO has contributed to the social well-being of our region should of course begin with practical matters like the role of the organization in areas like minimum wages, maximum daily hours of work, minimum rest periods and health and safety at the workplace. One has to recognize as well that those protection elements we now take for granted were hard fought gains won at International Labour Conferences. The fight for equal pay and general removal of discrimination, the application of workmen's compensation, the development of social security schemes, and the provision of redundancy payment legislation – all speak to the application of ILO standards.

What is particularly important and what should be embraced by people, is the new ILO guidance on dealing with migrant labour, with youth employment and with the use of lifelong learning as the means of educating our people out of poverty. These latter initiatives can only be addressed fully when the ILO (Caribbean) is more fully staffed and empowered to reach its very sophisticated constituency.

Section II

Labour Law and Institutions of Labour

5

Challenges to Labour Law in the Commonwealth Caribbean

Clive Pegus

This paper seeks to address the challenges of labour law within the Commonwealth Caribbean that derive from:

- its evolving multidisciplinary context;
- contemporary international and regional economic developments; and
- the progressive development of international labour standards.

The author holds the view that an appropriate starting point for an analysis of the challenges of labour law in the Commonwealth Caribbean must embrace not only its legal context, but also the economic character of the employment relationship and the broader labour market context.

Definition

Labour law consists of principles, rules and norms that regulate employment relations. Deakin and Morris argue that,

a broader perspective would see labour law as the normative framework for the existence and operation of all the institutions of the labour market: the business enterprise, trade unions, employers' associations and, in its capacity as regulator and as employer, the state. The starting point for analysis is the existence of the employment relationship as a distinct economic and legal category.¹

Labour law is primarily concerned with the rights of workers, trade unions and employers, standards applicable to employment relations, and the regulation of industrial relations and the labour market.

Background

Labour law in the Caribbean has traditionally been shaped by social, economic and political influences. Over the past 100 years, its major

challenge has been its response to social and political demands for workers' rights, justice and democracy at the workplace.

Its response resulted in the transition of the oppressive and archaic master-servant model to a legal framework based on fundamental labour standards and supported by a modern system of labour administration. A major influence, in this regard, has been the International Labour Organization, its tripartite approach and its development of the concept of decent work. Most of the development of modern labour law in the Caribbean has been influenced by international human rights concepts.

More recent developments facing labour law are essentially economic and global in character. Labour law has to be concerned not only with national labour market issues, but the regional and international context. To cite an example, the labour market for nurses and doctors internationally, and within the Caribbean, has become globalized, both from a demand and supply perspective. Some countries are wittingly or unwittingly training nurses for the overseas markets, while at the same time having to recruit from abroad. Within the Caribbean, Trinidad and Tobago has sourced nurses from Cuba, pharmacists from the Philippines and now considering proposals to recruit construction workers from Jamaica and the rest of the Caribbean. Barbados trains hospitality workers for local and overseas markets. Similar developments, though on a less intense scale, are happening in the hospitality and information technology. The Caribbean already has some limited form of movement of labour with the trend towards greater regionalization of the labour market.

Labour law requires a fundamental response to the growing phenomenon of globalization, regional integration and liberalization that are changing the character of the labour market and the employment relationship. The current situation requires a re-examination of the role and function of labour law. It also requires a fundamental re-examination of the economic and global issues that labour law must address. There must be appropriate a priori policy responses to shape the labour law agenda to provide the kind of framework required for employment relationships, labour market institutions and labour administration within the region.

The current situation also demands a re-examination of the roles of trade unions and employers within the global market space, which increasingly demands a greater focus on productivity and

competitiveness as survival imperatives. No longer can they afford to view each other as natural adversaries, especially when they confront the common threat of survival from increasing global competition and other restrictions.

Development of Labour Law

Before examining these challenges, it is necessary to understand the very character of labour law and its development in the Caribbean. Carl Rattray, in his paper entitled, “*Labour Law and Statutory Arbitration in the Caribbean*”, makes the important point that,

in order to understand properly the present state of the law in any jurisdiction, it is necessary to examine the social, economic and political influences. This is particularly so in the case of Caribbean labour law.²

Within the Commonwealth Caribbean, early labour law was essentially derived from the common law, which denied workers the right to organize themselves into trade unions or to engage in collective bargaining or to take industrial action. The common law had developed the legal doctrine of restraint of trade, which applied to trade union activities and imposed liability to criminal prosecution for conspiracy. Agreements in restraint of trade were considered to be unlawful. Labour law in these circumstances existed to protect the interests of employers.

As Hepple puts it, labour law stems from the idea of the subordination of the individual worker to the capitalist enterprise. Over the years, labour law has developed as a result of the struggle of workers for fundamental human rights, social justice and democracy to achieve a more balanced or less inequitable relationship between workers and employers. Its focus has been on workers’ rights. Labour law has developed as a means for the legal protection of workers. The early phase of the development of labour law witnessed the intervention of the state through the introduction of labour departments and the recognition of the right of workers to form trade unions, to engage in collective bargaining and to take industrial action in defence of their interests. This was the beginning of the modern system of labour administration in the Caribbean.

In Trinidad and Tobago, the ordinance to establish the Labour Bureau was enacted in 1919. The Bureau was set up to perform the functions of a labour exchange. At that time, the first Trade Union Act in the

Commonwealth Caribbean was enacted in Jamaica. Guyana (then British Guiana) followed in 1921 and Trinidad and Tobago and other countries in the 1930s.

The Trade Union Acts decriminalized trade union activity by declaring that trade unions were not, by reason that they were in restraint of trade, to be deemed to be unlawful so as to render their members liable to criminal prosecution for conspiracy. In addition, the Act provided that agreements negotiated by trade unions were not to be considered to be void or voidable by reason merely that they were in restraint of trade. The process of statutory protection for trade union activities was gradual, and at times, ambivalent. Even where laws were enacted, there was not the full implementation required for the adequate protection of trade unions. Dr Eric Williams, in *History of the People of Trinidad and Tobago*, noted that:

The Trade Union Ordinance of 1933 contained no provisions safeguarding the right for peaceful picketing or giving unions immunity against action in tort. Accordingly, the Trinidad Working Men's Association, which had two branches operating as trade unions, the Railway Union and the Stevedores Union, refused to register as trade unions.

Settlement of Disputes

The next phase of labour law development saw the establishment of the machinery for the settlement of disputes. The system of industrial relations, which emerged with the birth of trade unions in the Caribbean, was based on the British concept of voluntarism or collective *laissez faire* with the option to seek private arbitration. There was little or no state or legislative interference in the actual collective bargaining process. Pure voluntarism depended on the goodwill of the partners to succeed. This was not guaranteed and increasingly the state intervened through legislation to ensure that employers were compelled to recognize and treat in good faith with majority unions. The state also intervened to provide conciliation procedures and the establishment of statutory arbitration.

In Trinidad and Tobago, the Industrial Stabilization Act was enacted in 1965 to establish the Industrial Court and regulate workers' freedom to strike. In the case of Jamaica, the Labour Relations and Industrial Disputes Act was enacted to provide procedures for the settlement of

disputes by negotiation, conciliation and arbitration. Other Caribbean countries, with the notable exception of Barbados, passed legislation for compulsory arbitration. Labour Departments were assigned responsibility for conciliation.

The third phase introduced a range of social protection laws for the benefit of workers based on ILO labour standards. These included the right to maternity leave with pay, the right to vacation leave, the right to sick leave, minimum wages, protection against arbitrary dismissal, the right to severance pay in the event of redundancy, and health and safety standards.

These three phases coincided with particular political, social and economic circumstances. The first two phases occurred during the struggle for democracy and constitutional independence. Laws granting legitimacy to trade union organizations and their role in collective bargaining, the right to join unions and take part in strike and other forms of industrial action were enacted during the decolonization era. Also, many of the discriminatory and anti-worker practices were gradually outlawed. The culture of forced labour and total subjugation of labour by capital was gradually eroded.

The Militancy of Trade Unions

The second phase in the 1960s and 1970s saw a rise in trade union militancy. A number of factors contributed to this new wave of activism. The expectation of the workers was enhanced following independence. In most Caribbean countries the struggle for fundamental workers' rights was seen as an essential part of the programme of the decolonization movement.

In Trinidad and Tobago the message was that “*massa day done*.” This sent a signal to trade unions and workers that the relationship between workers and employers should change; that the exploitative and oppressive nature of the relationship should be abolished. That signal, however, was not grounded in reality. There was no tripartite discussion on this issue. The employers certainly did not willingly agree to any change in the employment relationship. The legislative change resulted from political activism and not tripartite consensus.

The economic policy orientation of governments contributed in some measure to the industrial relations environment at the time. Caribbean governments embraced the industrialization by invitation

model of development. This model encouraged fiscal incentives, protected markets and the promise of cheap available labour. This policy sent the wrong signal to foreign investors with regard to wage levels and industrial relations practice. In addition, the cultural predisposition of foreign investors tended to create special industrial relations difficulties. These conditions gave rise to a new phase in the evolution of the industrial relations environment and the rise of trade union militancy.

Businesses then operated in a very protected market. All Caribbean countries had very exhaustive negative lists, which prohibited free trade in products produced in these countries. And even with the negative lists, there were prohibitive tariffs to be imposed on imports. In this scenario, it was possible to concede to the high wage demands with the knowledge that the increased costs would be absorbed eventually by the captive consumer. This led to a cycle of hyperinflation and a continual struggle of workers to have their wages consistent with increases in the cost of living. Wage negotiations were determined primarily by cost of living indices and not productivity considerations.

A central objective of the Government's policy then was to ensure industrial relations stability. In response to an environment of increasingly industrial instability, Caribbean governments, with the notable exception of Barbados, introduced state-administered systems of settlement of industrial disputes identified by Goolsarran³ as: Conciliation/mediation/arbitration tribunal provided for in the laws of the Bahamas, Jamaica, Saint Lucia and Grenada; Conciliation/mediation services through the Department of Labour in the English-speaking countries; Independent mediation services in the Dutch-speaking countries of Suriname, Aruba and the Netherlands Antilles; the decisional officer appointed the Minister of Labour in Antigua and Barbuda to hear and determine certain matters; Hearing officer in Antigua and Barbuda, St Vincent and the Grenadines and St Kitts and Nevis to hear and adjudicate on referred matters; Standing or permanent tribunals in Dominica, Jamaica, the Bahamas, Bermuda, Cayman Islands and Antigua and Barbuda; Ad hoc or standing tribunal for essential services/industries and other services in Anguilla, Barbados, Belize, Bermuda, Dominica, Grenada, Guyana, Montserrat, St Kitts and Nevis and Suriname; Industrial Courts in Antigua and Barbuda and Trinidad and Tobago; Boards of inquiry in Anguilla, Barbados, Belize, Bermuda, Dominica, Jamaica, Saint Lucia, St Vincent

and the Grenadines and St Kitts and Nevis. In addition, workers' freedom to strike was regulated. In many jurisdictions, notice of strike action has to be served; strikes were prohibited in essential services, which are broadly interpreted contrary to international labour standards.

Organizing the Informal Sectors

Within more recent times, the structure of Caribbean economies is changing with implications for labour law. The services sector, such as tourism and offshore financial activities, has overtaken the manufacturing and agriculture sectors as the engine of growth. In addition, there is a large concentration of small businesses in the informal sector. Unions find these sectors to be difficult to organize. The labour laws that were developed in the Caribbean were not developed with the services sector in mind, for example, health and safety legislation, under the archaic Factories Act.

At the same time, the pervasive presence of an interventionist state, committed to full employment and to being a model employer and pursuing expansionary policies did not continue into the 1990s. In contrast, the state has been withdrawing from the domain of employment and income policies. Governments have been downsizing its workforce. The new policy is on governance of institutions to ensure the efficient functioning of the markets. Within this scenario, flexible markets are gaining legitimacy and political support. Practices such as sub-contracting, outsourcing and hiring of temporary and part-time workers are becoming more common, especially at the lower end of the labour market, and even within the state sector. The net outcome is an increased segmentation of labour markets.

In addition, worker commitment to unions appears to be weakening due to the rise of individualism. At the higher end of the spectrum, workers seem indifferent to a collective identity and are less dependent on unions. Their personal identity is defined less in terms of class and more in terms of social functions, autonomy and mobility. This phenomenon is characteristic not only of the Caribbean but is common throughout the world. Within this scenario, Caribbean countries are pursuing labour laws that seek to provide a greater level of social protection through mandatory minimum conditions for workers.

Globalization and Labour Law

More recent challenges of globalization, trade liberalization, economic structural adjustment and the need for modernized corporate structures have radically altered political and economic relations and orientations. There has been a decisive shift in the balance of power from the perceived paramountcy of nationalism and its attendant connections with the trade union movement to the unmitigated dictates of international capitalism.

Globalization has led to intense competitive pressure in the marketplace, accelerated the mobility of capital and added to the vulnerability of labour. Technological changes have made it possible to reshape production through new forms of industrial organization, including sub-contracting and outsourcing of production processes. Rapid technological changes have continually demanded changes in the skill composition of the workforce along with the entry of women in the workplace.

The challenge for the Caribbean is to ensure that labour law recognizes the need for a balance between workers' rights and the need to facilitate competitiveness. Issues of industrial democracy, workers' participation and consultation, flexible working arrangements, the role of trade unions, the role of labour standards, the primacy of market economics, the right to strike, the equitable distribution of national wealth, trade union weakening power base, the growth of the informal sector, rapid technological changes in the workplace are now demanding new attention in labour law reform.

Challenges of the Evolving Multi-Disciplinary Scope of Labour Law

Globally, the scope of labour law has deepened and widened over the years. It has transcended the historical confines of its legal discipline to include aspects of many other branches of law, including criminal law (e.g., worst forms of child labour); human rights law (e.g., forced labour; discrimination); social security law (national insurance, health insurance, pension, etc.); company law (duties of directors to employees, vicarious liability of employers); taxation law; immigration law; children/family law (child labour); intellectual property law (rights subsisting in works

of employees); tort (vicarious liability of employers); environmental law (standards for the operations of workers); and more recently, international trade law and international economic law (through the proposed incorporation of core labour standards in trading agreements and subjecting labour law to the scrutiny of trade arrangements). Labour conditions are also imposed in international financial agreements and sub-contracting arrangements and are becoming integrated within a number of other legal disciplines.

Labour Law and International Norms

The scope of labour law has also moved beyond national workplace issues to increasingly include international standards and norms as determined primarily by the concerns of developed countries. The trade unions, the employers' associations and the states in the Caribbean, therefore, have to consider labour law issues, not only emanating in local workplace conditions and in the International Labour Organization, but also in the United Nations and its other specialized agencies, in negotiating loan agreements with international financial institutions, in negotiating international trade agreements at the international, hemispheric, regional and bilateral levels. The traditional actors in labour law now have to interact in labour law matters with a broad range of persons who belong to different disciplines. The scope of labour law has moved from national borders to the global community; from limited workplace concerns to an ever-increasing range of disciplines. It has moved from essential human rights issues to social protection and now to economic, trade and environmental issues.

Such a progression of labour law raises many issues concerning its application. In particular, there is the challenge of ensuring that the increasing diversity of labour law is based on an integrated policy framework and properly co-ordinated and resourced administrative and institutional machinery for the monitoring and enforcement of the laws. Recent studies commissioned by the ILO on child labour laws in the Caribbean reveal a host of inconsistencies in various laws, the lack of co-ordinated policy and weak and disjointed monitoring and enforcement. The author has observed a trend within the Caribbean to develop labour law without any prior policy development. Conventions are signed and ratified and governments rush to enact enabling legislation without working out the policy framework.

An overarching concern in the increasingly globalized workplace relates to the conflict of law issues, both from a jurisdictional and substantive law perspective. Where child labour laws, for example, conflict with employment laws, which take precedence within the scheme of things?

Changing Nature of Employment Relationship

In terms of employment and job creation, labour law, which has been mainly concerned with factory and agriculture workers, now has to expand its scope and coverage to address the special concerns of workers in the services sector and the new forms of employment relationships that are developing. A feature of Caribbean economies is the shift in the sectoral structure of employment. As Dr Rose-Marie Antoine notes, previously labour law was concerned with agriculture, the banana workers and the sugar workers who formed the backbone of the economy. Today, with the rise of the services sector and because of the uniqueness of their work patterns, large numbers of the new workforce are excluded from the law because of its silence on their particular situations.⁴

This is particularly the case with labour laws relating to health and safety in some countries based on the archaic Factories Act, which excludes the great majority of workers from special statutory protection.

Triangular Employment: Who Protects Those Workers?

Labour law also has to be reformed to address new atypical forms of employment, which have tended to undermine worker protection laws. Increasingly, workers are providing services from home. In addition, there is the triangular employment relationship, which is becoming an important issue in the Caribbean. This occurs when employees of an enterprise perform work for a third party to whom their employer provides labour or services. This would include employment with temporary work agencies, sub-contractors, labour pooling, etc.

The issues here are who is the worker's employer; what are the rights of the workers and who is responsible for the workers' rights. As Constance Thomas notes, "all of the characteristics laid down in national law for the existence of an employment relationship between a worker and an employer are displayed, but in order to avoid legal obligations, an attempt is made to cloak that relationship in another form. The question

here is to establish criteria and procedures to identify whether an employment relationship, in fact, exists and, where it does, to ensure that adequate procedures exist for enforcing the law that governs.”⁵ In addition, there is undeclared work done outside the reach of industrial regulations, for example, family work. Labour law will have to ensure that there are mandatory standards especially in the area of health and safety and child labour applicable to family work.

Within this scenario, labour law has to reconsider the definition of the term “worker” and clarify the distinction between an employment relationship and a commercial relationship. The commercial relationship occurs where the two parties are on an equal footing and there is no condition of subordination and dependency.

The withering away of the protected markets imposed by the new rules of globalization and liberalization has led to major adjustments in the manner in which employers and trade unions negotiated agreements and related to each other. There are no longer negative lists and high tariffs; the region has to open up its markets to international competition.

Globalization has led to intense competitive pressure in the marketplace, accelerated the mobility of capital and added to the vulnerability of labour. Technological changes have made it possible to reshape production through new forms of industrial organisation, including sub-contracting and outsourcing of production processes. Rapid technological changes are continually demanding changes in the skill composition of the workforce along with the total assimilation of women in the workplace. There is now increasing international competition and employers are forced to continually retool and restructure their operations in an effort to cut costs and remain competitive. Companies were forced to become lean and mean, to right size. We have also witnessed a willingness of employees to assist employers in cost-cutting to preserve jobs.

The labour market has been thrown into constant change. Workers no longer have security of tenure. The future existence of companies could no longer be guaranteed. The need for flexible labour markets is gaining legitimacy and political support. Workers are increasingly being required and have now accepted the need to multitask. Within some developed countries, such as the UK, a policy of partial or selective deregulation was adopted on the grounds that this would promote labour market flexibility. Labour laws and regulations are seen as introducing

rigidities into the labour market. Labour flexibility, it is argued, is necessary for firms to deal effectively with increasingly competitive conditions in the market.

There will also be a greater focus on enhancing productivity and competitiveness and the adoption of international labour standards and a greater reliance on market signals leading to industrial restructuring. Labour law must not hinder the need for flexibility while at the same time protecting the rights of workers. As Rose-Marie Antoine observes:

in the language of labour law, the replacement of workers to meet the changed demands of a workplace is construed as a redundancy situation. I question whether this current legal concept of redundancy, which creates financial obligations in respect of termination benefits when employers need to replace untrained workers, is appropriate for today's context.... In current redundancy legislation, nowhere is there a requirement for retraining, only for rehiring. Why would an employer rehire an obsolete worker? The current laws are out of touch with the real reasons for redundancy today.

Dr Antoine also makes the point that national laws sensitive to productivity and competition must replace undesirable customs. Obsolete laws irrelevant to a competitive environment must be removed. There is need for the development of a policy regarding labour and productivity and competitiveness to inform the process of law reform in these areas.

Globalization is also facilitating a global labour market. This also creates the potential for conflict of laws issues, both from a jurisdictional and substantive law perspective. Some countries have mandatory legal provisions, particularly in health and safety, for their workers recruited from their home country to work on short-term assignments abroad.

The distinction between a domestic labour contract and an international labour contract must be taken into consideration within the Caribbean labour law framework. The Caribbean labour law framework has been largely restricted to dealing with domestic workplace issues. The laws relating to the rights of migrant workers need to be developed.

One of the major challenges is to ensure that reform is undertaken to ensure that the Caribbean region benefits to the fullest extent from the opportunities presented by globalization without any dilution of the

core labour standards. In addition, the Caribbean has to develop its own labour law diplomacy that recognises the unique strength of the Caribbean's respect for the core labour standards, which may be different from its natural political allies in international diplomacy.

Caricom Single Market and Economy

The CARICOM Single Market and Economy (CSME) will require greater harmonization of labour laws as the integration process deepens. Of relevance would not only be laws relating to fundamental rights of workers, and in particular migrant workers, but the removal of labour laws that may be construed as providing an unfair economic advantage to any particular country. Increasingly, the economic impact of labour laws would become relevant. One important issue to be resolved concerns the applicable law in cases of temporary migrant workers of pan-Caribbean companies and in particular, access to tribunals and industrial courts. At present in some jurisdictions, one must be a member in good standing of a trade union to access the tribunal or industrial court. Special provision in the labour law may have to be made to ensure that migrant workers are not denied access to trade dispute machinery.

The CSME will provide increasing opportunities for workers to be employed in Caribbean countries where they are not ordinarily resident. Workers may enter into employment contracts in one Caribbean country, with the law of the employment contract being another Caribbean country and the place of performance of the contract being other Caribbean countries. In a situation where the laws are not harmonized, conflicts of laws will arise. The Caribbean Court of Justice (CCJ) would be called upon to exercise jurisdiction on matters relating to conflict of laws in employment matters involving more than one Caribbean jurisdiction. Labour laws would also be relevant to trade and market access agreements of the region.

Increasingly, labour law is being developed not as a direct result of the internal dynamics of the industrial relations environment, but because of new labour standards developed by international processes and agencies, not only in labour specific fora, but also in trade negotiations

and economic integration agencies. In addition, the right of establishment and freedom of movement of labour within the Caribbean area will require special attention from a labour law perspective. There will also be the need for greater integration of social security mechanisms.

The Informal Economy

Labour law will increasingly have to be an instrument in the integration of the informal sector with the formal sector/economy. One major challenge with the vast informal economy in the region is that it operates outside the margins of the decent work concepts and the protective labour law. They also do not qualify for social security benefits. The workers in this sector are generally outside the reach of trade unions and access to the state administered tribunals and industrial courts. They are also not competitive and would not survive a trade-liberalized regime.

The state must assume some responsibility for the gradual integration of the informal sector. One strategy could be by promoting common services and incentives for those businesses that are incorporated into the formal sector.

Conclusion

Labour law has moved beyond the narrow confines of the employment contract and has had to address concerns in many different branches of the law. It has also widened its base of actors to include a broad range of social sectors. Its concerns have developed from the demands for social justice and democracy within the nation state to its adaptation to the economic phenomenon of globalization and trade liberalization. It now has to address fundamental changes in the structure of the economy and the very nature of the employment relationship and has to clarify precisely who is a worker in the maze of employment and commercial relationships that have developed. Issues of the migrant worker, non-discrimination and integration of the informal sector would assume central importance. Conflicts of laws will assume greater importance and the Caribbean Court of Justice would be called upon to pronounce on conflict of law issues in regional labour disputes.

The major challenge facing the Caribbean is to maintain its regional authority over the decision-making processes in the reform of labour law in the face of international pressure imposed by the demands of global capitalism and to facilitate greater competitiveness and productivity without dilution of core labour standards.

Labour law also has to address concerns other than the rights of workers and the regulation of industrial disputes within a territorial setting. Labour law must promote a new consensus, a new approach to building labour-management co-operation to the mutual interests of workers, managers and investors. Labour law has to reflect the new paradigm that the labour market for Caribbean workers and economy is becoming increasingly regional and globalized. It must provide standards and rules for the migrant worker and his employer.

NOTES

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2. Carl Rattray: *Labour Law and Statutory Arbitration in the Caribbean* published in *Human Resource Development and Workplace Governance in the Caribbean* edited by Cowell, Noel & Branche, Clement 2002.
3. Goolsarran, Samuel J.: *Caribbean Labour Relations Systems - An Overview*, Ch. 2.
4. Antoine, Rose-Marie B. *Labour Law in a Globalised Environment and the Failure of the Voluntary Model*, published in *Human Resource Development and Workplace Governance in the Caribbean* edited by Cowell, Noel & Branche, Clement 2002.
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6

Labour Law and the Role of the State in Industrial Relations and Employment

Rosemarie Antoine

For small states in the so called “Third World” limping along the path to development, the role of the State in industrial relations, and more generally, in employment matters, must necessarily be more difficult than in those countries controlling the reins of international industry and power. This is particularly in relation to defining an appropriate legal infrastructure for such a State, the thrust of this article. The fact that in the Commonwealth Caribbean there is a relatively well-educated workforce with great expectations makes the State’s role, somewhat paradoxically, even more arduous. In contemplation of the future of industrial relations in the region, the role of the State is considered.

As in earlier times, the State’s primary role through its laws is to balance conflicting interests in the industrial relations/ employment sphere, but in contemporary times, many more variables in what has become a complicated, sophisticated labour environment, have been thrown into the equation. Today, the face of industrial relations and employment has changed and the State is a key player in this arena. Yet, the State, even in the face of the buzz word “tripartism” remains ultimately, the all-powerful arbiter, attempting to bring fairness to the industrial relations process.

The State’s Traditional Role

Law is by nature an ideological construct and this is most evident in labour law or industrial relations law, for it is here that the very tenets of the society’s core beliefs of social organization and equity, as reflected in economics and politics, are ironed out. Traditionally, the State in common law legal environments, born out of the British experience, has

been non-interventionist where industrial relations and broader employment /labour issues are involved. This is hardly surprising, given the ethos of such a State, grounded in the industrial revolution, with its accompanying notions of a free market and capitalist domination. The British colonial experience ensured the continuity of this basic model in Commonwealth Caribbean countries. However, elements peculiar to economies driven by slavery, colonialism and, generally, by the dictates of plantation societies married to the needs of the “mother country”, further complicated this basic model.

The common law abstentionist State relied on the elusive market forces to balance the fundamental conflicts that a capitalist society brings, the imperatives of profit making of the employers as against the desire for some form of justice for the workers, a big enough bread for a fair day’s work. However, the market, dominated by workers who were previously “serfs” in the UK and slaves in the ex-colonies, without voice, clout or tools of self-determination, failed to secure even the most basic precept of justice for such workers. Justice was evasive in such societies and markets which were so clearly uneven, the might of the employers far overwhelming the fight of the workers. Indeed, in our early colonial societies, market forces fuelled by a steady influx of cheap immigrant labour only served to depress worker conditions further. Today, it is demonstrable and accepted that pure market forces cannot be relied on to bring either industrial peace or justice to the society. It is thus evident that the State can no longer afford to be non-interventionist and must assume a more direct role in the many aspects of industrial relations and employment.

A More Active Role for the State

Needless to say, violent confrontation was one of the earlier symptoms of the failure of the pure market forces theory in balancing the competing needs of employer and worker. The State thus found itself in a dilemma. It was forced to acknowledge its responsibilities and legislatively intervened to fulfill these. However, the very notion of unionism, the coming together of individually weak workers to compel a loosening of the ultimate and all pervasive power of the employer, was viewed as anathema by the State and the defenders of the status quo.¹ Thus, the early intervention of the State, in its recognition of the unequal forces at

play in the work environment, did not rob either the State or wider society of their philosophical underpinnings. Rather, it was, in effect, a compromise, the word which perhaps best describes industrial relations.

Intriguingly, workers' actions, even the most basic form of action, the strike, was viewed as violent, not merely or mainly because physical assault sometimes accompanied it, but because it was seen as constituting an act of violence and aggression against the very structure of social reorganization, the yet unchallenged assumption that entrepreneurship was priority and that power rightly resided in the entrepreneur, the employer. Consequently, aggression by workers, particularly when it began to be organized via unions, was wrongly rejected by the State and the law in the early days. Indeed, Samaroo notes that in Trinidad, the "official" view that there was no difference between industrial and seditious agitation provided the necessary blanket for government action against the agitators.²

This mirrored the industrial climate in the UK at the time. In fact, early British labour law cases treated strike action as a criminal act, a conspiracy to commit a crime, the crime here being to interrupt the work relationship, to obstruct trade, the heart of the society. Perhaps, there are vestiges still of such a notion, for not so long ago, at least one prime minister in the region described strike action by teachers as "criminal" and many other leaders and respected persons in our communities continue to view strike action as extreme and lightly used.

Judicial responses to these early State interventions are telling. Even where empathetic pro-labour governments in the UK, for example, passed laws to alleviate the plight of workers, the conservative judges, entrenched in the status quo, refused to accept such laws and were able to distort the clear intentions of the law. For example, the British Labour government's abolition by statute of the offence of criminal conspiracy when strike action by workers was undertaken, was met in the courts by the judicial creation of civil conspiracy.³ This was a civil wrong, a tort, where the mere act of coming together as a group to prevent work, was viewed as an unlawful act, in that its result was the restraint of trade. Many more torts were to ensue, late into the 20th century, as the courts became more and more activist, in their zeal to quell workers' attempts to carve out more power and ultimately, more social justice.

A superficial glance at some of these torts now identified by the

courts, betray the clear advantage given to employers. The tort of inducement to breach of contract, where the contract of employment was viewed as inviolable and sacrosanct with no possibility of the worker, a party to the contract, to negotiate to change its terms. Persuading a worker to strike necessarily had the effect of breaking the contract and this was sufficient to incur liability. So too was the tort of interference, the very name of the tort betraying the ideological assumptions made about work and the ownership of work. It was thus unlawful where someone, a third party, interfered in the contract by causing some interruption, damage to the smooth flow of the employer's work or trade. That the worker desired such interruption and indeed, viewed it as a viable tool, was deemed irrelevant by the law.

In the Commonwealth Caribbean, these torts have continued to frustrate strikers and unions. Even fairly recently, strikers whose actions prevented supplies from being delivered to the employer could be found liable for interference to contract and inducement to breach of contract.⁴ Parliament was to intervene further by way of statute to attempt to correct many of these ad hoc developments under the common law, but it remains a struggle between the inherent assumptions of the common law in a capitalist society clearly identified by elitist judges and the recognition by the State of the need to change at least some of these underlying assumptions. It is no accident that statutes entitled "Master and Servant" Acts remain on the statute books, and in other cases, were just recently removed.

Thus, we see that the first role of the State in speaking adequately to the industrial relations framework, is to intervene to protect against inherent and inherited injustices. Protection, more specifically, protection of workers in what is recognized as an imperfect market economy, is necessary to achieve a more balanced industrial relations environment. Indeed, employers often complain about labour law legislation, claiming that it is one-sided and pro-worker. This, of course, is sometimes true, but when one understands its proper context, its role in adjusting the harsh, unjust positions under the common law and the society from which it sprung, one understands that it is a necessary truth.

Setting the Social Agenda

When we juxtapose the variable elements of Commonwealth Caribbean society, we can argue that the State has even more complex and far-

reaching roles than in relatively homogenous societies such as those from which our labour law systems were inherited. There should be an understanding that the labour infrastructure is fundamental to defining the very identity and direction of the society. As such, in our infant nations, the *raison d'être* of labour law should perhaps be the transformation of our ex-slave societies in which work was harsh, unmotivated, alienating, unrewarding and demoralizing, into societies in which workers are empowered to become meaningful and valued partners in development.

In the Commonwealth Caribbean, the State recognized reluctantly that it had a role to bring some measure of equity and justice to the industrial relations environment and ultimately, to the wider society. But these States, defined as they were by the plantocracy, failed to recognize any serious role in re-modelling the shape of Caribbean society. Responses to worker agitation continued to be “smiles and blood”⁵, in essence, tokenism and conciliation over real reform. There was no real challenge to the assumptions made under the colonial regime and the existing system of social stratification remained intact. The interests of the State clearly represented the interests of the propertied, the framers of the status quo.

For example, in a region where race, colour and class were inextricably intertwined, and where the white planter class still controlled the reins of the economy, intervention by the State in the early days to bring fairness to the industrial relations sphere necessarily meant attempting to address structural racial inequities. This element of race in the early industrial relations movement in the region was sometimes acknowledged. It is reported, for example, that in 1920, some feared anti-white conspiracies. It was alleged that Marcus Garvey’s followers in Trinidad were “promoting strikes in order to foster black consciousness as a prelude to a general uprising against white domination.”⁶

Today, the role of the State in ensuring racial equity through creating a more even industrial relations structure is not often discussed as part of labour law jurisprudence. Yet, at least with respect to Indo-Caribbean/Afro-Caribbean rivalries, as evidenced for example, by claims of race discrimination against Indo-Caribbean persons in Trinidad and Tobago and Guyana, there is a need for the State to be more proactive and to re-assess its role.⁷ One should therefore, continue to question the extent to which the State, through its labour laws, has succeeded in bringing

about real social reform and justice, or indeed, whether this is important to its agenda. There are many who will argue that there has been more rhetoric than reform and the shadow of “smiles and blood”, “sweat and tears” still lurks overhead.

The Dampening of Industrial Conflict

The State, in redressing the balance of power between employer and union, must also be prepared to enact legislation to dampen industrial conflict. In some cases, this involves initiatives to quell the burgeoning power of the workers. In fact, much of the legal regulation in terms of industrial relations has been to curtail industrial action and there are those who argue that such legislation has gone in the wrong direction, making the hand of the employer even more powerful. The Industrial Relations Act of Trinidad and Tobago, for example, is one piece of legislation which has been criticized in this manner as it introduced a system of compulsory adjudication by the Industrial Court and strict regulation of industrial action. Indeed, its predecessor, the Industrial Stabilisation Act was challenged for being in breach of the Constitution.⁸

Further, government ministers retain power to intervene to prevent strikes which are considered major or detrimental to the public interest. That the public interest may be defined too expansively to mean merely whenever the employer's profits are threatened is clearly an issue and acts as an obstacle to a “well balanced” industrial relations infrastructure.⁹ In addition, all governments in the region have enacted legislation which seeks to prevent strike action in essential services. This of course, is acceptable and even necessary. The problem occurs when the concept of “essential services” is too broadly defined and encapsulates many industries where governments simply want to outlaw industrial action and not because of any real danger or threat to national security, public health or the fabric of the economy. This has been the constant, unheeded complaint of the ILO to essential services legislation in the region.

The number of avenues available to employers and even the government to prevent workers from taking industrial action, action which may be considered fundamental to the balance of power between the parties and their only effective tool, needs reflection. The State and its citizenry need to determine the true value of the strike weapon to the

society and ultimately, unionism. Is it, as is often lauded, a fundamental tool of democracy and justice? Consequently, it needs to be more adequately protected, even perhaps under the Constitution, a question already raised in the courts and discussed further below.

The Labour Rights Discourse

Increasingly, labour law and industrial relations have to involve a “rights” discourse. This is not simply a discussion of workers’ rights in a loose sense but a more formal understanding of the constitutional underpinnings of the independent State. Caribbean constitutions ushered in a new era of clearly defined fundamental human rights and it is the extent to which these constitutional rights can be relevant to the work environment which must concern the State, employers and workers.

In many respects these Constitutions have not fully assessed the new labour environment and ideals, changed from its early conception as inherited by the colonial policy-framers. In this endeavour, it is the State which must initiate the discussion and be the final decision-maker as to the substantive rights to be enshrined in the Constitution. Chief Justice Rattray, while not speaking from a constitutional perspective, recognized this new role in a dissenting judgment when he spoke of the need for the law in a modern society to “ameliorate the harsh conditions” of the common law, for the law to reflect the changed social imperatives within the society.¹⁰

This “rights” discourse has to take place on two levels. First, the issue of whether labour law rights, to be held in relation to employers, are to be addressed in the existing written constitutions must be examined. Assuming an affirmative to the first question, the second question becomes which, if any, labour law rights are to be enshrined in the Constitution? These two main issues involve an appreciation and acceptance of social responsibility by employers. They also necessitate an inquiry into fundamental assumptions of the society as to right and wrong, for example, about the meaning of equality, whether gender-based or otherwise, or about the meaning and ownership of property. They require too, an understanding of the impact and acceptance of international rights in relation to the domestic industrial relations sphere.

The goal of securing what may be viewed as basic human rights in the labour environment cannot be left to the market. Direct state

intervention by way of informed laws is a pre-requisite. Indeed, the constitution is the ultimate voice of the State and it is the State to which we must turn in proclaiming its message. In some cases, the State, via its law, must be proactive and educative, leading the way in desirable social reform. Laws against discrimination, sexual harassment and even concerning HIV in the workplace, easily come to mind.

An alternative approach to constitutional amendment in the “rights” arena is to enact specific laws which address well-defined rights which apply to all workers but which are really rights viewed as important to the entire society. Rights against discrimination fall easily into such a category and many countries in the world have taken this approach. Currently, very few countries in the region have such laws,¹¹ precisely because the societies in which such laws must spring, as yet have not recognized nor fully acknowledged the parallel societal problems and deficiencies which exist.

International Rights Discourse

In this respect, the influence of international rights discourse is to be noted. In matters concerning rights, international notions of what are acceptable often help in promulgating the necessary law reform. There is an identifiable basket of workers’ rights which can be said to be international in scope and apply or should apply to all nations. Rights afforded to women and minorities are easy examples. Here again, it is important for the State to be in touch with international norms, standards which all nations should aspire to and to import those values to all of the social partners.

Notably these international core values are being translated into international and regional trade arrangements and are no longer to be considered a luxury or some unattainable ideal. Caribbean employers are finding for example, that they are now required by major trade agreements to have policies against discrimination, if they are to participate in trade with international partners.

Expanding the Reach of Constitutions

The primary hurdle to overcome in the context of human rights is the limited reach of Commonwealth Caribbean Constitutions in relation to

employment. Although the Constitution is the supreme law in the region,¹² our Constitutions are typically poor, and in some cases, useless weapons against alleged violations of rights in the employment sphere, particularly in relation to private enterprise. This is so for a number of reasons. A major defect in these Constitutions is that, as in many other countries, they conform to the State action doctrine and are organs concerned with relations between private citizens and the State and not the relations between citizens. Such Constitutions do not extend outside of the boundaries of the public sphere into private workplaces except where expressly made to do so as in Guyana. This means that employment in the private sector will not be protected under the Constitutions, thereby excluding vast number of employees in the Caribbean.¹³

Thus, a worker who feels aggrieved that his or her rights have been violated by his or her employer cannot bring an action for constitutional redress against a private employer, as there is no standing to do so. However, it should be noted that although the Constitutions are unable to address directly concerns of workers in the private sphere, they may still assist such workers. A distinction must be made between actions arising in the private sphere and legislation which violates the Constitution. Where legislation is enacted by the State which breaches the Constitution, it may be struck down as *ultra vires* or unlawful. This is true regardless of whether such legislation offends workers in the private or public sphere. A worker in private employment thus has an equal right to protection from such legislation. Laws may be challenged not merely because their provisions, on the face, are discriminatory, but where their effects are discriminatory.

Certain rights which may be considered essential to the industrial relations and employment agenda are not covered or covered inadequately under Commonwealth Caribbean Constitutions. Of particular note, are rights against discrimination and toward equality. Broad anti-discrimination provisions are found in several Constitutions.¹⁴ The term “discriminatory” is defined, for example, in Jamaica and The Bahamas as “affording different treatment to different persons, attributable wholly or mainly to their respective descriptions. . .”¹⁵

However, under some constitutions, for example, section 24 of the Jamaican Constitution, and Article 26 of that of The Bahamas, the protection from discriminatory laws and practices extends only to those

described by “race, place of origin, political opinions, colour or creed.” The notion of gender is glaringly absent.¹⁶ Currently, Jamaica is undergoing constitutional reform to correct this anomaly. Religion is also absent from the broad anti-discrimination provision but the Constitutions make separate reference to the freedom of conscience. These are all serious abortions of expected constitutional entitlements against discrimination.

In some cases, such protection is offered only in the preamble to the Constitution and not in the body of the instrument, not a secure method.¹⁷ This leaves the court open to a finding that the right is in fact not protected. In addition, the preamble’s mention of certain grounds may be limited in application only to the fundamental rights mentioned immediately thereafter. Section 4 of the Trinidad and Tobago Constitution, for example, refers to protection against discrimination on grounds of “race, origin, colour, religion or sex” but confines that protection to certain specific rights and freedoms, among them under section 4(d) “the right of the individual to equality of treatment from any public authority in the exercise of any functions”. There is, therefore, no general anti-discrimination clause which can protect against other acts of discrimination.¹⁸

The vulnerability of gender in constitutional litigation where it is mentioned only in the preamble of the Constitution and not in its body was seen in the case of *Girard and the Saint Lucia Teachers Union v. A.G.*,¹⁹ where the Constitution of Saint Lucia was interpreted. In *Girard*, the Saint Lucian court refused to quash a decision by the Teaching Service Commission to dismiss a teacher for becoming pregnant while unmarried, pursuant to the Teaching Service regulations. The court did not view the statute (now repealed), which produced such a dismissal to be a violation of general constitutional rights such as the rights to equality or against discrimination. It saw the category of sex mentioned in the introduction to the Constitution as merely declaratory and not enforceable, as the Constitution did not go on to protect discrimination on the grounds of sex in its general anti-discrimination clause. Consequently, the relevant statute, Regulation 23 (3) of the Teaching Service Commission Regulations was not found to be *ultra vires* the Saint Lucia Constitution.²⁰

Further, the Constitutions, while they make general statements against discrimination or in favour of equality, have also been subject to

other restrictive interpretations unhelpful in protecting against discrimination generally, or, as discussed above, against certain forms of discrimination, such as gender. For example, in Trinidad and Tobago, the requirement of malice is necessary for a finding of discrimination.

Another significant gap in constitutional jurisprudence is its inability to protect industrial relations rights such as the right to strike despite provisions securing the right to associate. The former is, of course, a contentious right, and was fully discussed in the well-known case from the Supreme Court in Trinidad and Tobago, *Collymore v AG*,²¹ which held that the right to associate under the Constitution did not include the right to strike. This decision has been imported all over the Commonwealth, as it went to the Privy Council. The case arose out of an unsuccessful challenge to the newly instituted system of compulsory arbitration, established under the then Industrial Stabilisation Act (now Industrial Relations Act). Similarly, the Jamaican Constitution was found not to protect any right to collective bargaining.²²

It remains to be seen whether additional constitutional provisions protecting the right to “form and join a union,” such as is found under the Barbados Constitution, can reformulate the now well entrenched *Collymore* position against the right to strike. Certainly, the “right to strike” has been proclaimed loosely since the birth of modern day industrial relations law and is well understood by the layperson as being a fundamental tenet of democracy. Many can be forgiven for thinking that particularly where the Legislature has specifically laid down a fundamental right to form and join a union, that such membership is meaningless without the worker’s most essential tool, the strike.²³

Economic Rights

If one accepts that economic, social and cultural rights may be enshrined within a constitution and made justiciable, even broader rights may be available to workers. In the Commonwealth Caribbean, the Guyanese Constitution is unique in proclaiming such rights. Arising from the fact that the society is one of socialist orientation as proclaimed by the Constitution, it specifically mentions a number of economic, social and cultural rights. In the main these are enshrined under Chapter II, and entitled, “Principles and Bases of the Political, Economic and Social System”.

Of relevant significance are economic rights, such as the rights to work and to equal pay for work, found under Article 22. Further, under Article 11, “Cooperatives, trade unions and all socioeconomic organizations of a national character are entitled to participate in the various management and decision-making processes of the States and particularly in the political, economic, social and cultural sectors of national life.”

Despite the proclamation of these economic and social rights in the Guyanese Constitution, the question remains whether these are justiciable, or merely declaratory as unenforceable ideals. In a landmark case, *AG v Mohammed Ali*,²⁴ it was found that such rights were indeed enforceable. In particular, there was found to be a right to work and trade unions had a right to be consulted by employers. That decision, however, caused a rethinking of these rights provisions and today, it cannot be said that the right to work, as proclaimed under the Constitution, is automatically enforceable. Article 39 cautions that the rights contained under Chapter 11 are only to be enforceable by Act of Parliament.

Successful Constitutional Inroads

On the other side of the constitutional dilemma, for those workers who are protected directly under the constitution, i.e. employees of the State, the constitution has been found to create “new rights”. For example, public servants now enjoy greater freedom of expression after successful constitutional challenge to the strict rules against such employees speaking publicly or politically. Similarly, the British rule of “dismissal at pleasure” of civil servants has been abolished after constitutional challenges which pointed to the new constitutional arrangements for public service employment in the region.²⁵

What such constitutional directions mean for the State is that it has a duty to carefully scrutinize inherited employment practices, measuring them against the new ideals found under our constitutions. Any actions, practices or arrangements which are out of sync with the constitution will be considered *ultra vires* and struck down. This is a serious responsibility of the State, which at present, is being approached in an ad hoc manner, if and when the State is sued for breach of the constitution. It should however, be viewed as an important aspect of public service reform.

The problem faced by unmarried teachers in the Girard case has already been noted. That case, although unsuccessfully challenged in the courts, brought about a happy result, as the relevant public service regulation was abolished. Similar discriminatory provisions may be found in other public service regulations such as in Trinidad and Tobago where married female (but not male) teachers may be dismissed by the State if their family obligations affect the efficient performance of their duties.

Constitutional Protection

The constitutional challenges to presumed constitutional rights as evidenced by cases such as Collymore and Girard raise the important question of which rights understood as important workers' or employers' rights need constitutional protection. Commonwealth Caribbean Constitutions were a response to the newly independent nations of the region and seek to embody the essential values of liberty and justice sought by such new societies. The Constitution is the supreme law of the land, the most important value or ethic, the grand norm. As such, norms considered essential to the society should be incorporated into the Constitution. Yet, even as these constitutions continue to be interpreted purposively and expansively in many other areas of law, such as death penalty cases and freedom of expression cases, they remain relatively static in relation to workers' rights and industrial relations issues.

As we have seen, some of the most fundamental worker's rights are not protected under these Constitutions or protected inadequately. It is ironic that a convicted killer on death row can look forward to more protection from Commonwealth Caribbean Constitutions than the most hardworking employee.²⁶ These are not questions to be answered unilaterally or by employers, workers or perhaps even the courts. Rather, they are questions for which the State must assume prime responsibility. It is the State which must help shape the constitutional direction of the nation and harness all relevant voices in doing so.

The Economic Realities

It was noted earlier that pure market forces cannot be solely relied upon in modern economies seeking social and economic development

through satisfactory resolutions of industrial conflicts. In small, developing economies, there is also the need to question the extent to which market forces can operate evenly and efficiently, given the external economic and political pressures coming from international industry. Indeed, this introduces a criticism of international standard setting by institutions such as the ILO, which make assumptions based on the similarity of market conditions and agendas. This is an important question which must be addressed by the State, which alone understands fully such external pressures. The industrial and labour law environment must be sensitive to these constraints and differences. This is not to suggest that the solution must necessarily be merely a curtailment of workers' rights or wages, all too often the response. Indeed, in some respects it requires stricter measures against international industries, recognizing the additional risks that they pose for the economies. For example, the problem of foreign enterprises fleeing countries without honouring pension and other obligations perhaps requires severance pay funds or more strict supervision of existing NIS or social service obligations.

The State thus has both a duty to protect against the dangers wrought by uneven international trade and enterprise and to plan efficiently to attract and maintain such trade and enterprise where it is beneficial to the country. In this respect, the problems of the regional banana and sugar industries in relation to the World Trade Organization rulings are clear examples. These are not matters which can be left to the free market. Clearly, in these endeavours, the other social partners have to be understanding and knowledgeable about the particular environment in which small developing nations operate. Indeed, industrial stability and peace are dependent on a proper understanding of such issues.

Yet, there is recognition that often the solitary State has little power in attempting to balance what are essentially, international labour conflicts. It is here that the concept of regional unity has a role. The region must sell itself as united on all fronts to do with labour and industrial relations standards, hopefully something that the advent of the CSME will help to rectify, more fully discussed below. One can recall, for example, the attempt by Offshore Boarding Company in Barbados to by-pass union recognition practices in Barbados. The unions and its workers fought valiantly against this but the company relocated to a neighbouring country, ironically, one with strict union recognition procedures, Trinidad and Tobago. This demonstrates perhaps that a clearer, more unified position

might have produced a different result. It also demonstrates the value of having well defined labour relations standards since recognition in Barbados was not the subject of statute but of custom.

In contrast, the attempt by American Airlines in the late 1990s to impose more than a million dollars surcharge on OECS countries for its airline service was met with resistance by the St. Lucian Prime Minister and cries that this was extortion. He stood firm and his OECS brothers stood with him. The result was that American Airlines did not succeed and indeed, a few years later returned to the region with stronger business. These are examples of genuine international business pressure placed on small economies. These pressures have direct consequences for workers and for industrial harmony and the State must lead the way in confronting these challenges.

It is evident that in the new world of CSME, with its agenda of integrated regional trade, the CARICOM model labour laws – providing a common floor of rights- become an imperative if free trade is to ensue. It is not envisaged that “harmonization” of laws means identical laws in each country, but laws should be at least border-sensitive, aware of the differences and implications where they exist. As it stands, there is a myriad of labour laws in the region which often makes trade and free movement tedious, sometimes impossible and cross-border enterprise intimidating. Clearly, it is the State’s role to ensure that its laws are in sync with regional neighbours. Thus far, the region has paid only lip service to the goal of harmonization, and labour law reform has crept along in an individualistic manner despite the work of CARICOM several years earlier, buttressed by ILO model laws.²⁷

Some laws are more important to regional trade and movement. Laws concerning basic conditions such as dismissal law are good examples. Generally, laws which secure tangible benefits to workers, including retrenchment/ severance legislation, will be viewed as important to cross-border employers. Currently, some countries in the region, such as Saint Lucia, Jamaica and Barbados, allow employers to dismiss workers with impunity whereas others, such as Trinidad and Tobago and Antigua have strict legal norms requiring fair reasons for dismissal.

Educating the Workforce

In the face of economic and political realities which import complex issues to the modern state and its constituents, the State must also assume

the prime responsibility for educating those involved in the work environment about the new priorities and economic realities that exist. This is not merely a broad role assumed on behalf of the general citizenry. Rather, it is to be viewed as a necessity if well-informed, responsible choices are to be made by the social partners. Real partnership relies on awareness and knowledge. Such knowledge is necessary if the industrial relations climate is to reflect meaningfully the available choices and approaches.

The education of those involved in enterprise includes inquiry and discussion about the international challenges - financial, economic and political, which impact on the socio-economic environment. For example, sugar workers or banana workers cannot be expected to engage in meaningful dialogue about their respective industries without an appreciation of the challenges brought by the World Trade Organization's rulings on fair trade and their implications for agriculture and competition in the region. The era of top-down decision-making and solution finding by those who govern is at an end. Indeed, industrial peace and stability will only be sacrificed with an uninformed workforce.

World Trends in Industrial Issues

Despite laying out an agenda for industrial relations in the Commonwealth Caribbean, it is worth examining current world trends. In several major industrialized countries, we have seen policies reversing what may be described as workers' gains and rights over the years. In the UK, Thatcherism succeeded in "breaking the backs" of the unions, propelling in a movement which saw less job security and lower wages. More recently, in France and Australia, two countries known for generous workers' rights legislation, particularly in relation to dismissal law and the recognition of unions, legislation have been introduced by the conservative governments, seeking to make it easier for employers to dismiss workers and more difficult for unions to be recognized. The phenomenon of individual contracts, which strikes at the very heart of unionism, is also on the cards.

Ironically, these new initiatives to curtail the strength of workers and unions have been defended as necessary for industrialized nations to compete with "Third World" countries where labour is cheap. Yet, if the initiatives succeed, the labour laws in the Commonwealth Caribbean

will be far more generous than the richer neighbours. What implications would this have for competition?

It is too early to see how far such initiatives will go or whether they will succeed at all, for they have been accompanied by industrial unrest and outcry. However, Caribbean governments have to address these current events. Is it inevitable that to make the region even “cheaper” would mean lowering labour standards? The region will have to face the challenge of standing up for principled industrial relations norms and practices.

As mentioned previously, international standards may be questioned for not taking into account the economic limitations and disadvantageous positions faced by small developing nations. It is a paradox that while such international standards have done the most to move the “rights” agenda forward, importing better standards for workers, they also present the greatest danger. International organizations and standards run the risk of legislating only for the poor, disenfranchised voiceless nations while the powerful nations do what they please to maximize business and profit. Ultimately, it is left to the State to determine these issues and to define an adequate legal infrastructure to meet the existing challenges and demands.

Transferring Democratic Ideals

An often overlooked point is the extent to which the State has a responsibility to transfer the fundamental principles of democratic governance to those who manage the arms of enterprise, unions and employers. High on the list are principles of transparency and accountability, fairness and consultation. These are principles which governments are called upon to adhere to but they are no less valuable to the social partners. Such principles sit more comfortably with union and management. The region has grown up with unions actively involved in the political process. Indeed, unions have often gifted the region with great leaders born out of union leadership. This symbiotic relationship between unions and political power may be quite appropriate and is indeed, not seriously challenged in this article. With political power comes political responsibility; however, and there is a duty for those who claim to speak for the group to ensure that they truly represent that group. Indeed, in some countries in the region, such as in The Bahamas, direct

political activities by unions have been outlawed. This is clearly a political choice and one to be determined by the State.

Transparency and accountability speak, for example, to ensuring that union members are part of any direct political process. Strikes called for pure political purposes, or lobbying or campaigning in politically partisan fashion, must be acts of the union as a whole and not unilateral act of union leaders and their agendas. But transparency speaks to more than these overt or covert political acts and must have a broader compass to include all forms of industrial action. However, principles of democratic governance and transparency are also appropriate to employer practices. Consultation and sincere dialogue remain key components in successful industrial relations environments and deceptive employer tactics are inappropriate.

Back To Basics

It would seem that there is a need to return to basic principles to ascertain what is absolutely fundamental to the industrial relations climate. A set of core principles need to be identified and adhered to and the State has a role to play in helping to identify these fundamental principles.

There is no doubt, for example, that there is a rise of individualism in the employment relationship at this time. The decline of unions, the new patterns of work such as home working and temporary work which militate against union formation and strength, the promotion of individual work contracts, are all signs of the new thrust of individualism.

There needs to be a re-thinking of this basic principle. Is the region prepared to defend the principle of collectivism which is inherent in the concept of unionism? The vulnerability of industrial action both from a constitutional viewpoint and because of legislative curtailment, as discussed above, remains an issue in industrial relations. Even without such legal restraints, the strike weapon has been undermined because of weaker unions. What does this mean for long term fairness in the industrial relations process, and ultimately, development? Is there a need to replace well-established industrial relations tools with more appropriate ones such as real participation in the consultative process and more equitable wage structures? Other signs of the decline of collectivism and the rise of individualism are apparent, such as the abolition of the closed shop.²⁸ Yet, some progressive courts have found it necessary to

protect unions by giving constitutional validation to some aspects of compulsion, such as compelled union dues.²⁹ The basic thrust and direction of industrial relations, such as defining an appropriate role for unions, rests today with the State.

A Socio-Economic Vision

While we have enumerated several important roles and rationales for the modern Commonwealth Caribbean State, it should be reiterated that it is not envisaged that the State should be all encompassing. Traditionally, the State has attempted to maintain social distance, to be the “balancer”, stepping in merely to protect workers where the law and practice have been too harsh, or to rectify the employer’s role as “prime-mover” in the economy when the equilibrium appears upset. However, these initiatives have been response-driven. In view of the new challenges faced by the State, its role has to be more carefully thought out in relation to the country’s economic and social vision. The ad hoc strategy is not one well suited to the Commonwealth Caribbean. This role can only be achieved with real and meaningful input and information sharing with the social partners and between the social partners.

NOTES

- 1 Thus, the decision in as late as the 1960’s, *Rookes v Barnard*[1964] 1 All ER 367, that intimidation, hitherto a criminal offence, could now properly be treated as a tort or legal wrong, merely where a worker induces another to take part in a strike, is understood in its proper context.
- 2 Brinsley Samaroo, “The Trinidad Disturbances of 1917-1937” in Thomas (ed.) *The Trinidad Labour Riots of 1937*, *ibid*, p. 41.
- 3 See, e.g. the early landmark case of *Lumley v. Gye* (1833) 2 E & B 216 (Q.B.) which traces such developments.
- 4 For example, in *Joseph & Co. Ltd v. Waterfront & Allied Workers Union* (Unreported), Suit No. 258 of 1990, decided Oct. 10th, 1990 (H.C. Dominica).
- 5 The phrase “smiles and blood” is taken from the title of an article entitled “Smiles and Blood: The Ruling Class Response to the Workers’ Rebellion of 1937 in Trinidad and Tobago” by Susan Craig-James, found in *The Trinidad Labour Riots of 1937 - Perspectives 50 Years Later*, Roy Thomas (ed.) Extra Mural Studies Unit, UWI, St. Augustine, Trinidad, 1987, p.82.. Craig-James credits the phrase to a comment made by the African leader Amilcar Cabral.
- 6 Brinsley Samaroo, above, p. 41.
- 7 For a study of such claims see *Ethnicity and Employment Practices in Trinidad and Tobago*, Centre for Ethnic Studies, St. Augustine, Trinidad, 1994. Recent cases have also highlighted the problem. See, e.g. *Rajkumar et al v Commissioner of Police*

- (Unreported) No. 945 of 1998 (H.C.)Trinidad and Tobago, decided October 26 1999, (Lucky, J.) which alleged racial discrimination. Rajkumar served in the Prisons Service for 32 years and was never promoted but several others who joined after him were promoted. He had also been acting in a post for ten years. This judgment was overturned on appeal on another point, the upholding of a constitutional ouster clause which precluded review of the decisions of the PSC. Rajkumar won his case before the Judicial Committee of the Privy Council on administrative law grounds of irrelevant considerations etc. The Republic of Guyana has also acknowledged such problems in its public service and is attempting to rectify it. See: Towards the Establishment of a Race Relations Committee in the Guyana Public Service Union Guyana Public Service Union, Guyana, 1996.
- 8 In the case of Collymore v AG, (1967) 12 W.I.R. 5, discussed below.
- 9 See, e.g. the power of the State under the Antigua Labour Code 1975.
- 10 In the case of Re Village Resorts Ltd. (Unreported.) No. 66/97 (Jamaica) decided August 4, 1998
- 11 Exceptions include Guyana, Equal Rights Act 1990 and the Prevention of Discrimination Act 1997 St. Lucia; under the Equality of Opportunity and Treatment Act 1999, Belize, Sexual Harassment Act and; in The Bahamas, which currently is the only country in the region with anti-discrimination laws in relation to HIV, under the Employment Act 2001.
- 12 The majority of Caribbean nations have acquired written Constitutions as a result of independence. Recently, some governments, such as Jamaica and Barbados have been seeking to address such gaps.
- 13 This is in direct contravention of the requirements under Article 2 of the UN Convention on the Elimination of All Forms of Discrimination Against Women, which, unusually for an international instrument, addresses not only the actions of the State but those of “any person, organisation or enterprise” in the requirements placed on the State to secure equality.
- 14 A notable exception is that of Trinidad and Tobago.
- 15 Jamaica, section 24(1),(2) and (3); The Bahamas, section 26(1),(2) and (3).
- 16 Ibid. See also comparable provisions under the Barbados Independence Order 1966, Articles 11 and 23.
- 17 In Jamaica, for example, the preamble provision reads: “Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex ... to each and all of the following, namely-
- (a) life, liberty, security of the person, the enjoyment of property and the protecting of the law;
 - (b) freedom of conscience, of expression and of peaceful assembly and association; and
 - (c) respect for his private and family life, ... [all civil and political rights].”
- The Jamaican (Constitution) Order in Council 1962, Article 13. See also the Constitution of The Bahamas, Article 15
- 18 In Guyana, the anti-discrimination clause, under Article 40, is specifically mentioned only in the context of the rights to association, assembly, privacy, conscience etc. and does not stand on its own, thereby making it questionable whether there is any general right against discrimination. However, the Guyanese constitution is easily the most generous when it comes to its table of rights, particularly those pertinent to labour issues. Between 2000 and 2001, important international human rights instruments containing substantial anti-discrimination rights were annexed and incorporated into the Guyanese Constitution. This means that the obligations under these international instruments are now part of domestic law. Courts, in the interpretation of fundamental human rights, are now mandated to have regard to

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these international law instruments. The constitutional amendments also established special Commissions to deal with the enforcement of these rights. An important change is the applicability of rights to the private sphere. CEDAW, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture, Convention on the Rights of the Child. This was effected by constitutional amendments under the Constitutional (Amendment) Act 20001, No.5 and Constitutional (Amendment) Act 2001, No.6. While the economic, social and cultural rights are subject to the availability of resources to achieve these rights they remain important guiding principles.

- 19 (Unreported Judgment) No. 371 of 1985, decided Dec. 17, 1986 (St. Lucia). See also the appeal judgment, Civil Appeals Nos. 12 & 13 of 1986 (January 25, 1988), Court of Appeal; St. Lucia.
- 20 The case was also lost before the ILO's Committee. It agreed with the St. Lucian government's stance that it had the duty and prerogative to set moral standards for its citizens. However, there was no pertinent discussion as to whether these moral standards could, or should come under the acceptable limitations of rights as held down in the Constitution, that is, whether they were "reasonably required in a democratic society", the standard threshold for limiting such rights. Report No. 270, Case No. 1447. The plaintiff had argued that there was a public interest in preventing illegal abortions. There was no attempt to balance this interest against the harm that the decision could do to the moral fabric of society if it appeared to encourage illegitimacy. In the final analysis, the two conflicting interests were not weighed in order to ascertain which was in the greater public interest.
- 21 (1967) 12 W.I.R. 5.
- 22 Banton v Alcoa Minerals of Jamaica (1971) 17 WIR 275
- 23 See, e.g. the European case of Cour de cassation SA Transports Seroul v Belleivaire 16 ILLR 17 where it was held that the constitutional right to strike could not be limited or abrogated by collective agreement.
- 24 [1989] LRC (Const) 474
- 25 Thomas v AG of Trinidad and Tobago. [1981] AC 61. Similarly, the power to transfer public servants has been closely scrutinized and severely limited under the ultra vires rule.
- 26 This springs from the now well know constitutional saga starting with Pratt and Morgan v AG of Jamaica (1993) 43 WIR 340, where prolonged delay of convicted persons on Death Row was held to be cruel and inhumane punishment and therefore unconstitutional. Since then, other issues such as the unconstitutionality of the mandatory death penalty and "inhumane' prison conditions have been successfully litigated in constitutional law.
- 27 See Antoine, R-M.B. The CARICOM Harmonization Report, CARICOM, 1992 and ILO Model Laws.
- 28 By legislation in some cases, such as in The Bahamas.
- 29 See, e.g. the Canadian case of Lavigne.

7

Adjudication in Industrial Disputes - the Case of Trinidad and Tobago

Addison M. Khan

A stable industrial relations climate is vitally important for the economic growth of any country. The peaceful settlement of industrial disputes is, therefore, of critical importance in maintaining a stable industrial relations climate. It is no less important than settling other civil disputes.

In 1965, Trinidad and Tobago made a conscious and deliberate decision to drastically overhaul its system for the resolution of industrial disputes. The reason for this overhaul was because the entirely voluntary system of industrial disputes (“the previous system”) had ceased to be effective in securing the peaceful resolution of such disputes. It therefore enacted the Industrial Stabilisation Act, 1965, (“the ISA”) which was later repealed and replaced by the Industrial Relations Act, 1972 (“the IRA”)¹.

Industrial Action

Under the previous system, there was no legal prohibition against industrial action and employers and trade unions were free to embark on industrial action if they failed to settle their disputes bilaterally, and trade unions frequently employed this approach. The ISA, however, curtailed the freedom to strike and provided for orderly and sensible procedures for the settlement of disputes between employers and trade unions. It also established an Industrial Court to hear and determine unresolved disputes that were reported to the Minister of Labour.

During the five-year period immediately preceding the enactment of the ISA, Trinidad and Tobago experienced an avalanche of industrial action and its horrific effects². 230 strikes occurred during that period,

an average of 46 per year. In 1962 alone, 75 strikes took place. 74,574 workers, an average of 15,000 per year, participated in these strikes. Of these 74,574 workers, 10,480 were employed in the sugar industry, 23,860 in the oil industry, 7,443 in construction, 8,461 in electricity, gas, water, and sanitary services, and 6,199 in transport, storage and communication. 803,899 work-days, an annual average of over 100,000, were lost as a result of these strikes. 144,363 work-days were lost in the sugar industry, 28,601 in the oil industry, 47,441 in construction, 20,114 in electricity, gas, water, and sanitary services, and 137,462 in transport, storage and communication. Workers lost a considerable amount of wages and the national treasury also suffered losses in revenues consequent upon the reduction in income and profit, taxes and indirect taxes and royalties.

The strikes were instituted mainly over such issues as recognition of trade unions, grievances, the negotiation or revision of collective agreements and sympathy strikes.

The result was chaos and confusion in industrial relations. The process of collective bargaining was frustrated and the industrial relations system was seriously challenged. Trade unions did not hesitate to use the ultimate weapon of strike to settle even the simplest disputes; however as noted:

A strike or lockout ... necessarily involves so much dislocation of industry; so much individual suffering; so much injury to third parties, and so much national loss, that it cannot, in my opinion, be accepted as the normal way of settling an intractable dispute ... I cannot believe that a civilised community will permanently continue to abandon the adjustment of industrial disputes – and, incidentally, the regulation of the conditions of life of the mass of the people – to, what is in reality, the arbitrament of private war. (Sydney Webb in his memorandum annexed to the Report of the Commission of Enquiry which led to the Trade Disputes Act, 1906, U.K.).

The Government of the day reacted to this situation by introducing legislation for the compulsory adjudication and determination of unresolved labour disputes by judicial process, and created the “new system”.

Benefits of the New System

This new system brought many benefits to workers, trade unions and employers as well as to the community as a whole. The benefits included

provisions for the compulsory recognition of trade unions, registration of collective agreements, an orderly system for the resolution of trade disputes and the establishment of an Industrial Court. These were all measures designed to ensure peace and stability in industrial relations.

In the First Annual Report of the President of the Industrial Court, Justice Isaac Hyatali emphasized the advantages of judicial machinery to settle trade disputes. After referring to the number of trade disputes that had been referred to the Court between April 24, 1965 and April 18, 1966, Hyatali, P. observed:

In the ordinary course this would probably have resulted in an almost equal number of stoppages of work in a variety of industries and undertakings throughout the nation. The extent to which our small country ... would have been paralysed by so many strikes in a single year and the extent to which the well-being of our citizens, the stability of the country and the public welfare would have been damaged or destroyed are better left to the imagination since they are incapable of precise calculation.

The compulsory, expeditious, and if I may venture to say, just settlement of trade disputes in a peaceful and orderly manner has rescued the country from the crippling catastrophes which so many stoppages of work would otherwise have inflicted upon it. It is a comforting thought that both the essential interests of the country and the vital principle of social justice for its workers have been served and advanced by the enactment of the legislation and the due administration of its provisions and this lends support to the observation that the wisdom which inspired the establishment of a judicial system to stabilize the industrial life of the nation cannot now be questioned.

Recognition of Trade Unions

The foundation of the right of a trade union to represent workers in any undertaking is recognition by the employer. Recognition as a bargaining agent is a condition precedent to entering into a binding collective agreement with an employer. As the Judicial Committee of the Privy Council observed in *Collymore and Another v Attorney General of Trinidad and Tobago*:³ “Recognition by the employer must be obtained as a prelude to collective bargaining.”

Under the previous system, employers and trade unions were at liberty to agree on terms of employment, which were included in individual contracts of employment. Where the workers of an employer organized

themselves into or joined a trade union and such trade union made a claim for recognition on that employer, there was no legal requirement that the employer should grant that trade union recognition or deal with it. Very few employers voluntarily recognized trade unions for the purposes of collective bargaining. In the majority of instances, employers recognized trade unions as bargaining agents for their workers only after such trade unions took industrial action.

The record of industrial relations in Trinidad and Tobago is replete with numerous instances of absolute refusal by employers to accord formal recognition to trade unions representing workers. Recognition meant restrictions on the freedom of employers to determine and regulate the terms and conditions of employment of their employees. It led to the negotiation of collective agreements that imposed limitations on the unrestricted exercise of the employers' common law rights. Employers, therefore, granted recognition to trade unions with great reluctance and after much resistance. Recognition was granted only as a last resort and even after recognition was granted employers continued to regard the trade union with suspicion. In any event, disputes over recognition not only consumed much time, but very often led to a souring of the relations between workers and employers to the detriment of good industrial relations. In *Beetham and Another v Trinidad Cement Ltd.*,⁴ the Judicial Committee of the Privy Council severely criticized the Company for refusing to grant recognition to the trade union, saying, "Here is this union knocking at the door of the company asking to be let in to negotiate; and the company time and time again refusing to open it, nay more, keeping it locked and barred against the union."

In presenting the Industrial Stabilisation Bill, 1965, to the House of Representatives, Prime Minister Dr. Eric Williams noted that a substantial number of the strikes and stoppages of work, which occurred during the period 1960 to 1964, concerned the recognition of trade unions.

The new system sought to redress the problem of recognition. There is now an independent Registration, Recognition and Certification Board which is comprised of a chairman and eight (8) other members nominated by employers and trade unions. The duty of the Board is to ensure that a trade union with more than fifty percent of the workers comprised in an appropriate bargaining unit as members in good standing is certified as a recognized majority union for that bargaining unit. Where a trade union is duly certified as the recognized majority union for workers in a bargaining unit, the employer must recognize that trade union as the

recognized majority union and the recognized majority union and the employer shall, subject to the IRA, treat and enter into negotiations in good faith with each other for the purposes of collective bargaining. A recognized majority union or an employer that fails to comply with this section is guilty of an industrial relations offence and liable to a fine of four thousand dollars.

Freedom of Association

The IRA not only accepts the principle of freedom of association. Section 2. (7) of the IRA declares: “Nothing in this Act shall be construed so as to abrogate, abridge or infringe the principle of freedom of association, whether of workers or of employers in trade unions or other associations or organisations, respectively”, but also enshrines certain rights of workers concerning their trade union membership and activities. Section 71 of the IRA states:

Every worker as between himself, his employer and co-workers shall have the following rights, that is to say –

- a. the right to be a member of any trade union or any number of trade unions of his choice;
- b. the right not to be a member of any trade union or other organization of workers or to refuse to be a member of any particular trade union or other organization of workers;
- c. where he is a member of a trade union, the right, subject to this Act, to take part in the activities of the trade union (including any activities as, or with a view to becoming an official of the trade union) and (if appointed or elected) to hold office as such an official.

There are also provisions in the IRA prohibiting employers from victimising workers on account of their trade union activities Section 42 of IRA states,

1. An employer shall not dismiss a worker, or adversely affect his or alter his position to his prejudice, by reason only of the circumstance that the worker –
 - a. is an officer, delegate or member of a trade union;
 - b. is entitled to the benefit of an order or award under this Act;
 - c. has appeared as a witness or has given any evidence in a proceeding under this Act; or

- d has absented himself from work without leave after he has made an application for leave for the purpose of carrying out his duties as an officer or delegate of a trade union and the leave has been unreasonably refused or withheld.
- 2. An employer shall not –
 - a. make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - b. dismiss or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours;
 - c. with intent to dissuade or prevent the worker from becoming such officer, delegate or member or from so appearing or giving evidence, threaten to dismiss a worker, or to affect adversely his employment, or to alter his position to his prejudice by reason of the circumstance that the worker is, or proposes to become an officer, delegate or member of a trade union or that the worker proposes to appear as a witness or to give evidence in any proceeding under this Act.”

In *Collymore and Abraham v The Attorney General*⁵, the Judicial Committee of the Privy Council observed that a similar provision for the compulsory recognition of trade unions in the ISA: “strengthens the position of trade unions in relation to collective bargaining by imposing on employers an obligation to recognize and negotiate with a union representing 51 per cent or more of his workers.”

Prior to the new system, collective agreements in Trinidad and Tobago had no legal force and both employers and trade unions violated them without compunction. This was because of the common law under which collective agreements were binding in honour only. As Professor Kahn-Freund⁶ observed:

In the long history of British collective bargaining it does not ever seem to have happened that either a trade union or an employer or an employers’ association attempted to prevent the violation of a collective agreement by an action for an injunction or to seek compensation by an action for damages. The reason can certainly not be found in the absence of such violations ... The true reason for the complete absence of any attempts legally to enforce the mutual obligations created by collective agreements can, in the writer’s opinion, only be found in the intention of the parties themselves. An agreement is a contract in the legal sense only if the parties look upon it as something capable of yielding legal rights and obligations. Agreements expressly or implicitly intended to exist in the

‘social’ sphere only are not enforced as contracts by the courts. This appears to be the case of collective agreements. They are intended to yield ‘rights’ and ‘duties’ but not in the legal sense; they are intended, as it is sometimes put, to be “binding in honour” only, or (which amounts to very much the same thing) to be enforceable through social sanctions but not through legal sanctions.

In a Paper entitled, “*A Law for Peace, Order and Good Government*”, Hyatali, P. explained the difference in treatment of collective agreements between the previous and new systems saying:

With respect to the observance of collective agreements it is to be noted that as such, they have never been legally enforceable because the means by which they came into being were such that it could not be said that the parties intended that they should have legal effect. Consequently, the weapon of economic coercion had to be brandished and used if necessary to secure their enforcement. Now, however, no weapon need be brandished. The Act solves the problem of enforcement by providing machinery for the registration of collective agreements and for making them legally enforceable as between the immediate parties thereto as well as their successors and assigns. The obvious advantages which accrue to both trade unions and employers in consequence of these provisions amply justify the conclusion that the processes of collective bargaining in relation to the enforcement of collective agreements have been advanced and fortified by the Act.

The terms and conditions of a collective agreement registered in the Industrial Court are binding on the parties and are directly enforceable in the Court. The Industrial Court may make orders interpreting and applying the provisions of collective agreements. The new system thus gives a new respected status to registered collective agreements.

The new system also provided orderly procedures for the settlement of trade disputes. Trade disputes were traditionally settled either by strike or lockout action or by the appointment by the Governor of an Arbitration Tribunal or a Board of Inquiry pursuant to the Trade Disputes Arbitration and Inquiry Ordinance which was repealed by the ISA. The new system substituted compulsory adjudication of unresolved disputes for the previously unsatisfactory means of resolving trade disputes by industrial action and established a permanent Industrial Court for this purpose.

The Industrial Court

The Industrial Court of Trinidad and Tobago, which the ISA established, continues under the IRA. The Industrial Court is a superior court of record and the Court possesses all the powers inherent in such a court as well as the jurisdiction and powers conferred on it by the IRA. In a Paper entitled “*A Law for Peace, Order and Good Government*” Hyatali, P. correctly described the status of the Industrial Court when he wrote,

The Court is a superior court of record and has all the powers inherent in such a court. This means that it has a status equivalent to that of the High Court of Justice and that, by virtue of being a superior court, the President and all members thereof enjoy absolute immunity from any suit or proceedings in respect of anything done or omitted to be done in the course of their duties.

The Industrial Court has all the powers, rights and privileges which are vested in the High Court of Justice in relation to an action concerning the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction⁷. The principal role of the Court is to hear and determine unresolved disputes and other differences which arise between trade unions and employers under the Industrial Relations Act, Chap. 88: 01, the Retrenchment and Severance Benefits Act, 1965, the Maternity Protection Act, 1998 and the Minimum Wages (Amendment) Act, 2000.

In a case before it, the Industrial Court must make a decision that is fair and just, not only to the worker or workers involved, but also to the trade union and the employer concerned as well as the community as a whole. The Court is required to act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations. This provision in the IRA liberates the Industrial Court from slavishly following the common law in determining cases before it Section 10. (3) of the IRA states:

Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall –
a. make such order or award in relation to a dispute before it as it

considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;

- b. act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.

In determining cases, the Industrial Court must also take into account the interest of the community as a whole. An Australian judge, Justice Isaacs⁸, has suggested that the real justification for the existence of labour courts is not merely for the purpose of deciding disputes between two contesting parties, but to safeguard the interest of the community when such disputes threaten to interrupt the flow of goods and services to it.

Composition of the industrial Court

The Industrial Court consists of:

- a. a President who must be either a Judge of the Supreme Court of Judicature designated with his consent by the President of Trinidad and Tobago after consultation with the Chief Justice or a person who has the qualification with the exception of age to be appointed a Judge of the Supreme Court of Judicature and is appointed by the President of Trinidad and Tobago after consultation with the Chief Justice;
- b. a Vice – President, who must be an Attorney at Law of not less than ten (10) years’ standing;
- c. a Chairman, Essential Services Division; and
- d. other members (currently 18 ordinary members) who have been appointed from persons experienced in industrial relations or qualified as economists or accountants or attorneys at law of not less than five years’ standing.

Jurisdiction of the Court

The Court possesses both inherent and statutory jurisdiction. In addition to the powers inherent in it as a superior court of record, the Court has jurisdiction:

- a. to hear and determine trade disputes;
- b. to register collective agreements and to hear and determine matters relating to the registration of collective agreements;

- c. to enjoin a trade union or other organisation of workers or other persons or an employer from taking or continuing industrial action;
- d. to hear and determine proceedings for industrial relations offences created by the IRA;
- e. to hear and determine applications for the interpretation and application of registered collective agreements;
- f. to hear and determine any other matter brought before it in accordance with the provisions of the IRA;
- g. to hear and determine cases under the Retrenchment and Severance Benefits Act, 1985;
- h. to hear and determine cases under the Maternity Protection Act, 1998; and
- i. to hear and determine cases under the Minimum Wages (Amendment) Act, 2000.

The IRA also allows for conciliation by a Member of the Court before a dispute is sent for hearing and determination in open court.

Notwithstanding any rule of law to the contrary, the Industrial Court may, in any dispute concerning the dismissal of a worker, order his re-employment or re-instatement in his former or a similar position, subject to such conditions as the Court thinks fit to impose. The Court may order re-instatement or re-employment where a worker, in the opinion of the Court, has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice.

The Court may also order the payment of compensation or damages to such a worker, whether or not in lieu of his re-employment or re-instatement, or the payment of exemplary damages in lieu of such re-employment or re-instatement. Where the Court makes an order for the payment of compensation or damages to a dismissed worker, the Court is not bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that, in its opinion, is fair and appropriate.

The opinion of the Court as to whether a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice, and any order of the Court for compensation or damages, including the assessment of such compensation or damages, is not appealable or challengeable or

reviewable nor may it be quashed or called into question in any court on any account.

Appeals

Subject to certain specified exceptions, the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award):

- a. shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever; and
- b. shall not be subject to prohibition, mandamus, or injunction in any court on any account whatever

Subject to the provisions of the IRA, any party to a matter before the Court is entitled, as of right, to appeal to the Court of Appeal on any of the following grounds, but no other:

- a. that the Court had no jurisdiction in the matter. The Court of Appeal may not entertain such a ground of appeal unless objection to the jurisdiction of the Court has been formally taken at some time during the course of the hearing of the matter before the Court has made an order or award;
- b. that the Court has exceeded its jurisdiction in the matter;
- c. that the order or award has been obtained by fraud;
- d. that any finding or decision of the Court in any matter is erroneous in point of law; or
- e. that some other specific illegality not mentioned in (a) to (d), and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

On the hearing of an appeal from the Court in any matter, the Court of Appeal is empowered -

- a. if it appears to that Court that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or
- b. to order a new hearing on any question without interfering with the finding or decision of the Court on any other question;
- c. to make such final or other order as the circumstances of the matter may require;

- d. to dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any point raised in the appeal should have been decided in favour of the appellant.

The services of the Industrial Court are available free of charge to trade unions and employers. No fees such as are payable in the High Court of Justice on the filing of process in that Court are payable by the parties to trade disputes or other proceedings in the Industrial Court. The expenses incurred in the operation of the Court are borne wholly by the State.

If the parties retain attorneys at law or other professionals to assist them in the conduct of their cases before the Court, they must pay them out of their own resources. For the preservation of industrial peace and stability in the country, it is preferable for the State to maintain the Court at public expense rather than permit trade unions and employers to settle their disputes by what has been appropriately described as “private warfare”, i.e. strikes and lockouts. The Industrial Court plays an essential and pivotal role in safeguarding the economy of the country as a whole by maintaining industrial peace.

There is no doubt that the new system brought a substantial measure of stability to industrial relations in Trinidad and Tobago. Both trade unions and employers prefer to utilize the procedures in the IRA for settlement of their disputes instead of resorting to industrial action. The judgments of the Industrial Court are well respected and constitute a body of principles that are used by employers, trade unions and workers for guidance in their daily relations.

CARICOM

There is no uniform system for the settlement of labour and employment disputes in all CARICOM states. Trinidad and Tobago is the only CARICOM country where such disputes are heard and determined by a superior court of record. There is an Industrial Court in Antigua and Barbuda but it is not a superior court of record. Some other states have industrial tribunals.

There is no valid reason why industrial disputes should not receive the same kind of attention as other types of civil disputes. Of course,

economic factors as well as the number of disputes occurring will determine the quality and nature of the tribunal required. There is, however, an opportunity to establish an itinerant Industrial Court with a status similar to the Caribbean Court of Justice in its original jurisdiction to hear and determine labour and employment disputes in all CARICOM countries. This Court could be a branch of the Caribbean Court of Justice.

NOTES

1. Industrial Relations Act of Trinidad and Tobago 19722.
2. See speech of Prime Minister, Dr. Eric Williams, on the second reading of Stabilisation Bill, 1965 in the House of Representatives – Trinidad and Tobago Hansard dated March 18, 1965.
3. [1969] 2 All ER 12 07 at p. 1212 – D
4. [1960] 1 All ER at page 279 – F (P.C.)
5. op. cit. at page 1211 – E
6. Quoted by Geoffrey Lane, J. in *Ford Motor Co. Ltd. v Amalgamated Union of Engineering and Foundry Workers and Others* [1969] 2 All E.R. 481 at p. 494
7. Section 8. (1) of IRA. See also the judgment of the Court of Appeal of Antigua and Barbuda in Civil Appeal No. 20 of 1990 between Liat (1974) Limited and Leonard Tomlinson dated June 17, 1991 in which the Court of Appeal interpreted a similarly worded subsection in the Antigua Industrial Relations Act.
8. Justice Isaacs said, in *Australian Journalists' Association and Sydney Newspapers Association* [1917] CAR 67, "The real *raison d'être* of the arbitration power is not the mere decision between two contesting parties, but the desirability, sometimes amounting to public necessity, that the community may be served uninterruptedly, and not be compelled, when threatened with deprivation of perhaps the essentials of existence, to look on helplessly while those whose function it is to supply them stop their work to quarrel."

8

Adjudication in Industrial Disputes - the Case of Bermuda

Arlene Brock

With no significant manufacturing or agriculture, Bermuda is essentially a service economy. Its evolving financial sector has eclipsed the hospitality industry in terms of its contribution to gross domestic product. Trust, investment services and reinsurance are the primary components of the international financial sector.

There are, as at January 2005 approximately 38,363 full-time jobs in Bermuda, of which more than 9,100 are unionized and 8,300 are held by guest workers. Some 4,024 jobs are in the financial sector, and 5,500 in hospitality and 3,600 in retail. The Civil Service has become one of the largest sector employers with over 4,000 persons.

Just as in Trinidad and Tobago, legislation was introduced in Bermuda to create mechanisms to resolve labour disputes after considerable, prolonged and repeated strife in the unionized sector. The threat of strikes, for even the simplest disputes, had become untenable. Equally, the flaunting of decent working conditions by certain employers and attempts to limit union recognition dictated that some system of resolving labour disputes was necessary in order to ensure an environment conducive to economic growth.

Adjudication of Disputes

The Department of Labour and Training within the Ministry of Labour, Home Affairs and Public Safety is the first port of call when disputes cannot be handled on site. The labour relations officers are charged with the conciliation of complaints of any employee, whether unionized or non-unionized, Bermudian or non-Bermudian, individual or represented.

The adjudication of disputes is carried out in three distinct fora: the Supreme Court, the Employment Tribunal (pursuant to the Employment Act 2000), the Permanent Arbitration Tribunal and other ad hoc labour tribunals (pursuant to the Labour Relations Act 1975 and the Trade Disputes Act 1992). Arbitration is available to the unionized sector, and with the enactment of the Employment Tribunal, all employees in Bermuda, including the non-unionized sector, now have access to free and fair third party adjudication.

The Labour Relations Act 1975 governs three categories of dispute: essential industries, essential services and all other union disputes (interest and rights). Pursuant to this Act, any labour dispute, whether existing or apprehended, may be reported to the labour relations officer. Provided that existing dispute resolution machinery in the trade or industry has been exhausted, the labour relations officer “shall endeavour to conciliate the parties and to effect a settlement by all means at his disposal”.

If the labour relations officer is unable to effect a settlement, then s/he shall report the dispute to the minister. Only upon the consent of the parties, may the minister then refer the dispute to either a single arbitrator acting alone, or a single arbitrator acting with two assessors (one each nominated by the parties), or a three-person arbitration panel. Assessors, who ideally have particular skill or experience in the industry subject of the dispute, sit throughout the hearings and participate in decision-making, but the award is the sole responsibility of the arbitrator/ chairman.

Arbitrators are usually (but not exclusively) drawn from a pool constituting the Permanent Arbitration Tribunal. This Tribunal consists of a chairman, deputy-chairman (appointed for three-year terms) and not more than 12 members (appointed for two-year terms). All members of the Permanent Arbitration Tribunal are vetted and agreed by both labour and employer representatives before appointment.

Proceedings and awards pursuant to the Labour Relations Act are voluntarily binding on the parties. That is, the parties consent beforehand to participate and be bound by the award. This process helps to ensure buy-in and implementation of awards by the parties, but is not always fail-safe. The process is administered and paid for out of the budget of the Department of Labour.

There is wry speculation that if arbitration in Bermuda was administered as it is in the United States - where each party contributes

to the cost of arbitration - then there might be more discipline and incentive to conciliate disputes. Nevertheless, the system is certainly operational and manageable as is - in 2004 there were 52 formal mediations in the unionized sector, of which only five were referred to arbitration.

Understanding the Labour Relations Act

Part II (A) of the Labour Relations Act deals with essential industries. The Essential Industries Disputes Settlement Board was established in 1991 to forestall industrial action or disruption of services in industries deemed to be essential in the Schedule to the Act. To date, only the “Business of an Hotel” has been so designated.

The composition and proceedings of this board are substantially similar to arbitration panels under the Labour Relations Act with the exception that awards are binding, whether or not the parties consented beforehand, and the existing collective bargaining agreement shall remain in force until replaced by a new agreement, notwithstanding that the termination date has passed.

Part III deals with essential services: as scheduled in the Labour Relations Act, such services include hospital and nursing, air and marine traffic control, fire, telephone and telecommunications.

The strict conditions governing industrial action in essential services aim at protecting the national interest. Before industrial action can be taken in any essential service, there must be a 21-day notice of intent to take industrial action that specifies type of action intended, which employees would participate in such action and the commencement date. Any lock-out, strike or irregular industrial action short of a strike within that period is illegal.

An essential service award is binding on the parties for the duration stipulated in the award or for not more than two years after the date of publication of the award.

The Trade Disputes Tribunal

Under the Trade Disputes Act 1992, the minister may declare that a labour dispute exists or is apprehended in a trade or an industry. The minister may then appoint an autonomous ad hoc, three-person Trade Disputes Tribunal to hear the dispute and make a binding award. Consent

of the parties is not required. Appointment of the Trade Disputes Tribunal effectively stays any further industrial action.

The chairman of the Tribunal must possess legal qualifications. The Act provides that the minister shall consult with the parties before exercising his powers to select the other two members. The members of the Tribunal hold office until the award is given and may be reconstituted only if questions arise as to interpretation of or non-compliance with the award.

The Tribunal has the power to compel evidence and attendance for questioning under oath and is not bound by civil or criminal rules of evidence. Any person who fails to attend or refuses to produce evidence may be liable on summary conviction to a fine of \$5,000 or imprisonment for six months or both.

The award or decision of the tribunal is binding on all parties and may be made retrospectively to the first date on which the dispute arose. The Tribunal may award costs in addition to payment of compensation when an employee cannot be reinstated (recoverable by civil suit in the Supreme or Magistrates Court). Further, until replaced by a new contract, agreement or award, ongoing terms and conditions of employment must be in accordance with the award of the Tribunal.

This Act has rarely been invoked because the voluntary culture of labour relations abhors mandatory participation in the adjudicative process. Although there is no express provision that the public interest be considered (as in Jamaica), the Trade Disputes Act has been an effective mechanism when it becomes clear that continued industrial action would severely disrupt national interests (e.g., public school teachers' strike) or impair significant economic projects (e.g., the time-sensitive construction schedule for one of the two largest insurance companies in the island).

Prior to the Employment Act 2000 coming into effect, there were no statutory employment standards in Bermuda. The 1995 Code of Good Industrial Relations Practice, based on voluntary best practices, and ILO Conventions and Recommendations and principles developed in collective bargaining agreements, offered guidelines on matters such as discipline, trade union recognition and employee's rights. These guidelines, however, did not stem complaints to the department about arbitrary, inconsistent and oppressive decisions of employers.

The Employment Act is derived from the CARICOM model

legislation regarding the Termination of Employment which is based on ILO Convention No. 158, the Employment Standards Act 1992 of Prince Edward Island, and a number of UK employment statutes. Drafting of the Act was a consultative process spearheaded by the Labour Advisory Council (the tripartite body that advises the Minister of Labour, Home Affairs and Public Safety). This iterative process (entailing some eight drafts) produced real buy-in from a broad brush of stakeholders, including employers, who, by and large, are accepting the minimum standards with respect to entitlements as well as termination procedures. Indeed, many of the larger employers had already provided benefits that are beyond the minimum standards set out in the Employment Act.

Entitlements Under the Employment Act

The Act provides for basic entitlements such as eight days paid sick leave; three days paid bereavement leave; eight weeks paid and a further four weeks unpaid maternity leave; administrative standards, such as the right to a statement of employment within one week of starting the job; an itemized pay statement; a certificate of termination setting out the reasons for termination; and certain termination procedures, such as notice periods; severance pay in defined situations; and provisions for unfair and constructive dismissal.

The Act established an independent Employment Tribunal with real teeth - failure to abide by an award of the tribunal is a summary offence liable to a \$10,000 fine. As with the Permanent Arbitration Tribunal, the minister appointed the members of the Employment Tribunal after consulting with the tripartite Labour Advisory Council. The chairman and deputy chairman must be either attorneys of at least five years' standing or have considerable experience in labour relations.

Each tribunal hearing is presided over by the chairman or deputy chairman and two or four members selected by the chairman to represent (but not advocate) the interests of employers and employees. The Employment Tribunal machinery is available to both the unionized and the non-unionized sectors, individuals and representative groups. However, the Act does preclude forum shopping. Once a complaint has been settled under the Act by conciliation or the Tribunal, it cannot become the subject of a labour dispute under the Labour Relations Act.

Categories of Industrial Complaints in Bermuda

Unlike Barbados, where tribunals have been accepted for severance disputes, but not for terminations, discipline and termination form the largest category of current complaints in Bermuda. The vast majority of the 333 non-unionized complaints made to the Department of Labour during 2004 were resolved by conciliation.

Since its first case in November 2002 through to December 2004, only eight complaints were referred to the Employment Tribunal. One was settled at sidebar during the hearing and the Tribunal issued seven final awards, which established the following principles:

- that a period of warning and appropriate instructions as to how to improve performance must be given prior to termination; that an employee may be summarily terminated for;
- (i) profane language and insubordination; and
- (ii) failure to admit mistake that caused serious business interruption; that a position has not been made redundant if someone else is hired subsequently for essentially the same work;
- that severance payment is due if a position is made redundant by reason of (i) business reorganization; and (ii) a downturn in business such that the employee's services are no longer required; and
- that an employer's unilateral change to the terms of employment so as to reduce the employee's responsibilities constitutes constructive dismissal.

Employers' Responsibility under the Employment Act

Notably, the Act codifies the principles of progressive discipline typical of collective agreements. After initial warnings for misconduct or unsatisfactory performance, employers are required to give employees up to six months to remediate their conduct.

In the case of performance, employers ought to provide appropriate instructions as to how to improve performance. Some ambiguity in the current Act has allowed a few employers to elude the spirit of the law by strict adherence to the technical notice provisions only. Further to a recommendation from the Employment Tribunal, Bermuda is now in the process of amending the Act to ensure that progressive discipline is attempted prior to a termination notice.

Another significant feature of the Act is that it prioritizes all obligations under the Act over all other creditors, including the Crown upon a winding-up of the employer. There was considerable consultation amongst the Labour Advisory Council about whether secured creditors were intended to be included. This issue has been agreed that secured creditors will retain priority of their security.

Before resort to the Tribunal, the complaint must be made in writing to a labour inspector who first attempts to conciliate, provided that job site resolution processes have been exhausted. If the inspector is unable to effect a settlement and if s/he has reasonable grounds to believe that an employer has failed to comply with any provision of the Act, then s/he shall refer the complaint to the Employment Tribunal.

The Powers and Authority of the Employment Tribunal

As with the Industrial Court in Trinidad and Tobago, the Employment Tribunal may order re-instatement, re-engagement or compensation for dismissal. Such compensation must be just and equitable in the circumstances and shall take into account the loss sustained by the employee as well as the employee's own contribution to his dismissal.

Failure to abide by an award of the Employment Tribunal is punishable with up to a \$10,000 fine on summary conviction. Unlike the arbitration machinery, submission to the Employment Tribunal is not voluntary. Whereas parties may challenge, flout or delay implementation of arbitral awards (even when they had previously agreed to be bound), the summary conviction mechanism of the Employment Act has already proven to be most useful for encouraging parties to abide by the awards of the Employment Tribunal. Indeed, there is anecdotal evidence that the mere possibility of summary conviction has motivated parties to conciliate disputes.

Awards of the Tribunal may be appealed within 21 days to the Supreme Court, thus staying the awards. Bermuda's Employment Act provides that appeals may be on points of law only. There is no explicitly provided right of appeal of the jurisdiction of the Employment Tribunal. However, in the very early days of the Tribunal, an errant employer was successful in obtaining an injunction to stop the Tribunal from hearing a complaint on the basis that the Tribunal had no jurisdiction by virtue of the transitional provisions. Although arguable, this matter was never

ultimately decided. As the transitional period has expired, this jurisdictional challenge is no longer available.

Appeals under the Employment Act

With respect to points of law, there has not yet been an appeal to the Supreme Court. It will be interesting to see how any such appeals would be decided in light of case precedent prior to the enactment of the Employment Act. A most salient and often interpreted provision of the Employment Act states that, “where any of the rights of an employee established by any other Act, agreement, contract of employment, custom or practice are more favourable than this Act requires, the provisions so established prevail over this Act.”

Matters such as adequate notice, constructive dismissal and the basis for calculating severance have been decided in the recent past by the Supreme Court, prior to the Employment Act being enacted. As in most jurisdictions, the judicial process is protracted, expensive and not amenable to creative resolution of disputes. The Employment Act affords a degree of latitude suited to the circumstances that potentially could be appealed. For example, with respect to notice of termination, the Employment Act provides for one month’s notice where the employee is paid by the month, or such longer period as “is customary, given the nature and functions of the work performed by the employee.”

The Supreme Court

The Supreme Court has previously determined that, in the absence of a contractual term to the contrary, the appropriate termination notice period for a professional without seniority or managerial responsibility is three months [Perinchief v. Vaucrosson No. 338 (1990)]. Since the Supreme Court purported to set out the custom for such employees, it is arguable that the Employment Tribunal may be precluded from awarding the statutory minimum once it has ascertained that an employee is entitled to rely on custom.

Another Supreme Court case [Doughty v. Coral Petroleum Company Ltd. (Trading as Esso Bermuda) No. 45 (1998)] awarded seven months’ pay in lieu of termination notice. This case, however, blended the concepts of redundancy and notice that are now clarified in

the Employment Act. The complainant was found to have been wrongfully and constructively dismissed (rather than made redundant) when he was offered a position of lower rank and responsibilities.

The Court took note that “there is no law in Bermuda requiring employers to make severance payments to faithful employees when their jobs cease to exist.” The Court did not order severance but rather characterized compensation to the complainant as pay in lieu of notice, which, in that case, amounted to approximately three weeks’ pay for each year of work. The Employment Act has since established the law and standard for severance.

No doubt, the Supreme Court decision will be called upon to determine matters for which the Employment Act is silent. For example, the Department of Labour receives frequent inquiries and complaints on the issue of whether women must return to work after taking maternity leave. It is generally accepted amongst both the employers and employees who constitute the Labour Advisory Council that maternity is an earned leave.

Employees’ Rights

In any event, employer policies that require women to work after maternity leave (or return their pay received during the leave) have been notoriously tedious to enforce. The Supreme Court (Appellate Jurisdiction) decided that if an employers’ handbook does not clearly stipulate the obligation and time period that a woman must return to work, then she is not required to do so [Fashion Fabrics Ltd. v. Mackay, No. 18, (1995)]. This leaves open the question of the mother’s obligation if a handbook is clear.

Constructive dismissal is provided for in the Act: “an employee is entitled to terminate his contract of employment without notice where the employer’s conduct has made it unreasonable to expect the employee to continue the employment relationship, having regard to the employee’s duties, length of service and circumstances.”

The Court of Appeal set out the common law of constructive dismissal in *Interpetrol Bermuda Ltd. v. Levin* [Civil Appeal No. 23 (1986)]: “if the conduct of the employer (such as unilateral change to job duties, working hours or reduction in pay) amounts to a basic refusal to continue the servant on the agreed terms of the employment, then

there is at once a wrongful dismissal and a repudiation of the contract.” Further, there is no necessary inference of acquiescence to an ongoing contract if an employee continues to work for a short period after the employer’s repudiation.

Conceivably, the Tribunal will be able to interpret constructive dismissal somewhat more broadly than the Bermuda Court of Appeal did, especially since the evolution of the concept post the Anita Hill case in the United States.

The Tribunal may well decide, for example, that harassment constitutes a condition of employment that fundamentally changes the contractual employment relationship. Should there be an appeal of the Employment Tribunal to the Supreme Court, the interesting question is whether the Court would uphold a broader interpretation. To date, Supreme Court cases and arbitration awards have been guided more by common law and natural justice principles than by reference to international labour standards.

Although the Employment Tribunal operates much like arbitration tribunals in that it is not restricted to common law precedent, the Tribunal will have to exercise some caution as it may be appealed to the Supreme Court on points of law. It is imperative that the Employment Tribunal be assigned independent legal resources.

Harmonizing Labour Laws

The incorporation of the CARICOM Model Labour Law on the Termination of Employment, which in turn codifies ILO Convention No. 158, is a pivotal first step in the recognition of international labour standards in Bermuda law. As the Employment Tribunal evolves, it will no doubt be guided and informed directly by the principles enunciated in ILO meetings and comments by the Committee of Experts, especially with regard to interpretation of ILO Convention No. 158.

The great benefit of the Employment Act is that all employees, including the non-unionized sector, now have access to fair adjudication of employment complaints. Of particular note, the Employment Act extends to non-unionized employees the principle of progressive discipline, typically set out in collective bargaining agreements. Caribbean jurisdictions would do well to assess the value of the CARICOM Model Labour Laws in order to provide an avenue of redress to the non-unionized sector.

Notwithstanding perceived or real problems with the adjudicative machinery in Bermuda, both arbitrations pursuant to the Labour Relations and Trade Disputes Acts, and awards pursuant to the Employment Act, have resulted in relatively efficient resolution of labour disputes and complaints. However, this dispute resolution machinery cannot operate in a vacuum. A fundamental lack of trust continues to characterize most of the disputes that are not settled by the parties, especially in the unionized sector.

Too often the poor history of labour relations casts a long and heavy shadow over communication. Invariably, parties on either side are stuck in their perceptions that the other lacks respect and understanding of fundamental realities. This tends to feed an adversarial approach to resolving disputes, even in the non-unionized sector. The underlying labour relations culture must evolve in order to ensure that conciliation has a chance, thus reserving adjudication for only the most serious issues.

Section III

Employment Relations Issues in the Public Service

9

New Approaches in Public Management and Industrial Relations

Kieran Mulvey

This Chapter is based on a study of *Labour Relations in the Caribbean Public Service* of Antigua and Barbuda, Grenada, Jamaica, Barbados, Guyana and Trinidad and Tobago.

It is important in the context of considering both the size and structure of the civil service in the Caribbean region to place it in the wider scenario of the evolution of the public service in both developed and developing countries. The public services of the Caribbean countries included in this study are based largely on the functions and administrative structure formed by the previous British colonial experience, and adapted since independence to suit the particular requirements and exigencies of the respective independent nations.

In summary, it could be described as the “Whitehall or Westminster Model,” reflecting the administrative/political structures of the British form of government. The region is not unique in this regard. Several former colonial countries in disparate parts of the world adopted a similar form of administrative and parliamentary government and maintained the previous legislative arrangements, which were enacted under the colonial administration.

The State is the largest employer in each of the countries studied, both as a direct employer in terms of civil administration, health, security and education services, and indirectly through its ownership of many commercial, industrial and agriculturally-based enterprises, which are retained under public ownership or control. Though, in the case of the latter, this is changing because of market liberalization policies.

More particularly, and not unlike many other countries, the creation of public employment by Caribbean governments in a diverse range of services and industries became an aspect of government strategy and policy to alleviate rising unemployment and its attendant social problems.

This was necessary in a situation where resources were not available to provide an elaborate European level of social welfare assistance or unemployment hedges. It is imperative, also, to understand the necessity to pursue such a policy in a sometime volatile mix of race, culture and politics in the region. The maintenance in such political situations of the process of administrative government itself and internal political and social stability are considered paramount.

Again, the situation is not unique, since a similar structure of state ownership and public administration exists or existed in many of the developing countries in Europe and Latin America. It is important to remember that in many countries, the State remains the largest indigenous employer. In Europe, for example, almost 20 per cent of the workforce is still in the Public Service and, in some countries, it reaches almost 30 per cent (Sweden).

What has been happening, however, is that the direct role of the State as employer is diminishing through a process of government service re-organization, deregulation and privatization of public enterprises - (electricity, gas, oil, banking, steel, air transport, insurance, telecommunications and agricultural enterprises- sugar, fertilizers). Added to these developments is the establishment of new executive agencies on public service contract and service delivery models.

Structural Adjustments

Throughout the late 1970s and into the 1980s/1990s, a significant degree of fiscal retrenchment has occurred in most countries and which, in turn, has created significant strains upon previously accepted structural relationships between the unions and government in bargaining arrangements. It is vital to stress that no country has been immune from this process - developed or developing - in Europe, the Americas, Africa or Asia.

The overall effects of such structural adjustments have been truly global - hence the term “the globalized economy” can be applied equally in terms of public administration as it is to the revolutionary product and market changes in the private sector. It must be emphasized the maxim that no country is immune from this process, that “no man is an island,” and, further, that adopting a “laissez-faire” attitude to change and its effects in a global economy will result in serious consequences.

In various countries of the Caribbean, a not dissimilar process is taking place both as part of government policy and initiatives, or through the various requirements of loan arrangements with the International Monetary Fund, the World Bank, the Inter-American Development Bank or other funding and donor agencies. However, for these countries, the process is more intense given adverse economic indicators, currency pressures, limited export markets and the fluctuating prices for agricultural, fruit and mineral resources on the world market and the emergent effects of World Trade Organisation decisions (e.g., USA v European Union - Re: Caribbean banana imports).

International Labour Standards and Public Service Labour Relations

The principal ILO Conventions governing the rights of Public Service and other workers are:

- *ILO Convention No. 87: Freedom of Association and Protection of the Right to Organize.* This Convention guarantees the basic right to form and join organizations of their own choosing to all workers “without distinction whatsoever” including all public servants, whatever the nature of their functions. (The only limitations permitted concerned members of the armed forces and the police. In some countries, these categories have been allowed to form staff associations and have been granted a conciliation and arbitration system or a pay commission.)
- *ILO Convention No. 98: Application of the Principles of the Right to Organize and to Bargain Collectively.* Article 6 states: “whereas this Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.”
- *ILO Convention No. 151: “Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service.”* Specifically, Articles 7 and 8 state:

Measures appropriate to national condition shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employers’ organizations, or, of such other methods as will allow representatives of public employees to participate in the determination of these matters.(Article 7)

The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought as may be appropriate to national conditions, through negotiation between the parties, or, through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.(Article 8)

- *ILO Convention No. 154: Collective Bargaining*
Article 1(3) of this Convention states:“As regards the Public Service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.”

Collective Bargaining in the Public Service

It would appear from most available evidence that the general form of civil/public service bargaining in the region centres on what was defined as the “Whitley Model”, or the institutional consensual structure, which incorporated the general principles of pay, and which, in effect, was the standard form of pay bargaining for the British Civil Service until its replacement by the principles recommended by the Priestly Royal Commission (1955). To a degree, similar structures/concepts/principles were adopted to suit civil administrative structures, not only in the Caribbean, but also in Ireland, Australia, New Zealand and certain African states. Again, this is not unusual given the shared historical background of these states. What should be of concern, however, is the extent to which the system(s) themselves in the Caribbean have not appreciably changed over the period since independence and the degree to which, in some cases, the system or structure has fallen into procedural disuse.

Attempts at reform, both legislative and structural, are taking place in some Caribbean countries. Trinidad and Tobago has a separate industrial court-type system with a division which has specific responsibility for public service pay issues and disputes in essential services and industries. It is important that the pay bargaining system in the Public Service evolves with the demands of changing circumstances because if a pay bargaining/determination system or mechanism is allowed to exist unchanged or unreformed for too long, it tends to reinforce itself. Its retention can then become an ideological article of faith for certain parties and which, in time, leads to repeated upheavals

if the system is not enforced or honoured. It can lead, also, to a lengthy and tendentious process of administrative or legislative reform when the system requires fundamental adjustment of change.

Again, international experience points to the necessity of maintaining a certain degree of flexibility in pay bargaining procedures which can take account of economic, political and international developments at any given time. The important consideration for such change is achieving agreement among the central actors in this process. In some countries, the process of pay bargaining in the Public Service is now being aligned to the system of collective bargaining in the private sector, e.g., the UK - the Megaw Commission (1992) and New Zealand, where the separate State pay-fixing system has been dismantled.

There have been considerable changes in recent years at individual country level in the process, structures, and legislative arrangements for pay bargaining, not only in the public sector, but in the private sector as well. Neither have all these changes emerged from a certain or singular political/ideological perspective. Substantive changes have taken place in the UK, Australia, New Zealand, Ireland, Sweden and other European countries. These changes range from the uniformly positive support for collective bargaining to the negative removal of pay bargaining mechanisms.

In Latin America, collective bargaining structures have been restored/reinstated in some countries, e.g., Panama, Chile, Uruguay, El Salvador and collective negotiation has been made easier in Argentina, Peru and Venezuela in recent years.

The State and New Developments Impacting on Labour

“The Role of the State in Industrial Relations” Proceedings of the Fifth International Industrial Relations Association (IIRA), European Regional Industrial Relations Congress (Dublin 1997) suggests a varied degree of substantive changes, not only in the structure and legislative format of pay bargaining systems, but also in the approaches to the principles and issues involved in pay bargaining itself. For example, a series of anti-trade union legislation and the abolition of established pay systems was a feature of various conservative administrations in the UK, including the removal from ACAS (State Advisory, Conciliation and Arbitration Service) of its statutory duty to promote and support

collective bargaining. (Trade Union and Employment Rights Act, 1993). In Australia, the Industrial Relations Reform Act, 1994, emphasized a return to direct collective bargaining over access to arbitration. In addition, there were limitations placed on the right to strike. Some of its federal states went even further by abolishing the right to compulsory arbitration (Victoria, Western Australia and Tasmania). In New Zealand, the Labour Relations Commission was abolished as part of a sweeping programme of Public Service change. In the USA, successive Democratic Party presidents have had modest labour relations reforms stymied by Congress (Workplace Fairness Bill).

In Europe, Article 118(b) of the Single European Act 1987, and, more recently, the Maastricht and Amsterdam Treaties (1997), have legitimized at pan-European level, the institution of the “social dialogue” and the “social chapter”. The “social partners” have been consulted in regard to the directives introduced by the European Commission on individual employment rights, works councils, gender/discrimination legislation, information disclosure at company level, control of working hours and health and safety regulations. This has been described, in effect, as an emerging European industrial relations model. All of these measures have been given statutory effect in the countries of the European Union.

In Ireland, the Industrial Relations Act, 1990, strengthened the voluntary collective bargaining procedures by the creation of a Labour Relations Commission, and several active “social partnership agreements” have been negotiated since 1987. In Holland (1997), a new national agreement on the future of collective bargaining, emphasizing wage moderation and new employment measures, was reached between the State and the social partners. Social partnership type agreements have also been negotiated in the 1990s in Portugal, Italy, Austria, Spain and Finland.

At the World Bank level, there are increasing signs that the Bank itself sees advantage for social and economic development in positive and structured links between economic improvements, trade unions and collective bargaining. The 18th World Bank Development Report, “*Workers in an Integrating World*,” (1995) assesses the role for labour policy and trade unions in an increasingly market-driven and integrated world. The report finds, inter alia, that there is an important role for public policy in defining basic standards, and in providing the

basis for individual and collective contracts. It also recognizes that trade unions can contribute to “sound development paths” in the right economic and political environment.

A similar type view is reflected in recent observations by the Inter-American Development Bank in its *Labour Market Development Strategy - Draft Report*. The IADB suggests in this draft report that, “improving the operational capabilities of the labour ministries” is an important arm in developing better labour market employment strategies. Such a development was also emphasized by this author in an earlier “Report to the ILO Caribbean Office on Labour Administration” in 1997 and presented at the Caribbean Labour Ministers’ meeting in Guyana in April 1998.

The Draft IADB Report further states:

There is a strong need to strengthen the systems of compliance and enforcement of labour standards. Only a more efficient labour ministry can develop a strategic approach to enforcement and compliance that takes into account the country’s relative level of development while at the same time preserving important workers’ rights. The widespread evasion that results from the combination of outdated regulations, awkward procedures, and weak enforcing capacity of governments can be solved by the development of mechanisms and institutions to establish more adequate standards, create incentives towards its compliance, and establish more efficient mechanisms for enforcement.

Compliance and enforcing of ILO Conventions regarding freedom of association and wage bargaining, and decentralization of collective bargaining are one of the most important tools towards creating a more adaptable labour market environment for both firms and workers to profit from the expanded opportunities arising from economic restructuring. A balanced approach that, while recognizing the existence of conflicting interests among the social partners, encourages the development of co-operative agreements is the crucial role of the government in this reform. Governments can help by establishing mechanisms that promote co-operative conducts, be it through the facilitation of social pacts that establishes national and/or regional guidelines for wage and working conditions arrangements, or by credibly establishing themselves as bona fide mediators. It is important to recognize that unions, acting as the collective voice of workers, are and will continue to be essential actors in the collective effort to raise productivity and living standards. Therefore, governments need to be active in defending and promoting worker’s rights to organize in unions through a vigilant enforcement of the legal framework.

The streamlining of compliance and registration procedures are very important tools in enhancing the ability of governments to carry out labour market policies and, therefore, to enable them to fulfill a facilitation role for unions' and firms' actions geared towards productivity enhancement.

In the case of the *North American Free Trade Agreement* (NAFTA), the side agreement on labour, officially referred to as the North American Agreement on Labour Co-operation (NAALC) commits the signatories to the promotion of a number of basic principles, including freedom of association and the right to collective bargaining. Whether this agreement will lead to any arrangements for trans-national bargaining remains unclear and somewhat aspirational at the moment. However, a number of developments worldwide - the internationalization of capital, the social clause/labour standards/child labour debate and the impact of regional trading blocs - have provided those involved in the organized labour movement with a context and platform for greater involvement in ILO-organized activities.

Again, at the WTO level, a re-affirmation of the necessity of maintaining close links with the ILO was made at the second ministerial meeting in Geneva in May 1998. These were outlined in the final Declaration:

We renew our commitment to the observance of internationally-recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. The comparative advantage of countries, particularly low wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue the existing collaboration.

New Public Management

The position of the State as a major employer in many countries in the Caribbean requires it to assume a highly interventionist role in the industrial relations of the public sector. This process is accentuated by the historical nature of the development of individual states, accessibility to ministers and the highly politicized position of some trade unions. This sometimes

makes it difficult for the parties to distinguish between the role of the State, as employer, and its role as sovereign authority. There are many instances in which governments have decided to conduct its industrial relations policies and personnel functions in a manner which seeks to protect its position both as employer and its political authority.

Individual states, for national fiscal reasons, must make decisions through the political processes that impact quite considerably on their employer role. This is particularly true in cases where the level of non-established civil servants have reached such a high proportion of staff that special measures are necessary to address their grievances. In other situations, public service pay continues to be adjusted at irregular intervals and after long delays. This in turn has the effect of creating a sense of grievance regarding equity in pay levels, vis-à-vis, the private sector, and are seen as an abuse of the principles of the ILO Conventions. Both unions and governments bear a responsibility in this matter, for, in some cases, and for different reasons, it can suit both sides at certain intervals.

The circumstances of such decisions are based less on market or service criteria than on political and macro-economic circumstances and can fundamentally affect the structure of collective bargaining itself. Such practices, procedures and, to some degree, ad hoc policies, have a major and significant bearing on confidence in the collective bargaining process and its dynamics, and, more particularly, has clear implications for the take-up and exercise of strategic and reforming human resource management practice in the civil and public administration systems.

In this context, there appears, in some cases, to be close links between the political context/situation of the countries and the process of determining pay and other conditions. Again, as Ozaki observes, in some developing countries, “unions tend to act through political channels rather than through labour relations machinery.”¹

This, however, can be a universal predicament and it is not easy to make any specific pronouncement on the “real politick” of any given situation. Both parties (unions/government) play a similar end-game for very clear, definable and understandable reasons; unions to maximize their bargaining power at crucial intervals, and to satisfy internal pressures and even electoral positions; governments to ensure a continuity of service, avoidance of politically damaging or socially harmful disputes, and the maintenance and control of public expenditure.

As John Dunlop (Prof Emeritus - Harvard University, Former US Secretary of Labour) aptly describes it: “An industrial relations system is a subsystem of the social system” and that “an industrial relations system and its larger setting create an ideology or a commonly shared body of ideas and beliefs regarding the interaction and roles of the actors that helps bind the system together.”

Change and Confidence in the Public Service

In each of the countries surveyed, the collective bargaining system for the civil service requires considerable review and updating and specifically from the viewpoint of creating and maintaining a structure which operates within agreed time-scales and which addresses issues to a certain degree of finality. This can be achieved through an enhancement of the conciliation process itself, through arbitration or tribunal decision and through procedures and processes which have the support and confidence of the parties concerned. Both government, as employer, and trade unions need to be equally convinced of such objectives and commit themselves to make such procedures work. Otherwise, confidence in the existing systems will continue to be eroded and continuous upheavals on public pay and public employment issues will occur without a sufficiently clear or agreed method for their resolution.

This objective will become more important in the context of new public management (NPM) policies, which are emerging in many of the Caribbean countries. These are being funded by various development agencies with specific and strict guidelines in regard to such funding and the delivery of targets on a wide ranging agenda of reform, re-organization and restructuring of not only direct public services, but State-controlled/owned industries as well.

One of the most significant developments in public sector management internationally over the last decade has been the adoption of private sector models of human resource management. In some respects, there appears to be a combination or utilization of the variants of “soft”, “hard” and “dualist/neo pluralist” approaches in human resource management in all of the selected countries in this study. There is considerable evidence and examples of the application by governments of varying political standpoints/ideology of new models of bargaining and management as part of a broader process of public sector reform.²

Public Sector Reform

Public sector reform programmes, in many OECD countries, involve and reflect common pressures and manifest similar themes and issues. It can nevertheless be argued that the most comprehensive programmes of reform in the Public Service and public sector human resource management internationally, have been driven “externally” by political programmes and ideologies. This is not to argue that the specific objectives of such programmes are inherently superior, nor that those objectives have always been realized in practice. It is important to emphasize that far-reaching and sustained programmes of change have originated from political decisions and have been sustained by wider political programmes, which contain a clearly articulated vision of public service reform and delivery.

Other significant influences have been “new right” ideas as they relate to the role of the State, economic growth, and the role of “consumerism” with its demands for better services. Citizen charters are most notably promulgated in the UK and New Zealand. In most of the countries covered by this study, respective governments have undertaken a review of their own public services, either as part of a funded project or with the assistance of the Caribbean Centre for Development Administration, an agency of the Caribbean Community (CARICOM). Inevitably, it would appear that many private international companies have been engaged to assist in carrying out this function e.g., Peat Marwick, Coopers and Lybrand, PriceWaterhouse (now known as Price Watershouse Coopers), KPMG Consulting . Invariably, their proposals have followed models developed elsewhere in more developed and sophisticated economies with wider public service systems and with longer histories of infrastructural development, including state, social, health and educational services.

These public sector management reforms can be identified under a number of elements:

- Introduction of strategic and business planning
- Diffusion of the human resource management function
- Cost-cutting and greater transparency in resource allocation
- Separation of certain civil/public services into new agencies
- Reform of management structures
- Separating the functions of providing services from purchasing them

Industrial Relations in the Caribbean: Issues and Perspectives

- Outsourcing and new charges
- Reform of revenue-generating services
- Performance management, appraisal and merit pay systems
- Departure from national systems of determining pay and conditions to more local determination within ministries/executive agencies/ State enterprises
- Customer awareness, focus and service quality.

The new models of employee management associated with new public management, challenge existing systems of pluralist relations based on adversarial collective bargaining as well as traditional models of personnel management.

The current difficulty for some Caribbean countries, as well as for other countries, is the extent and degree to which existing bargaining structures can be reformed in the direction of a more consensual/ partnership/mutual gains model when some unions still wish to retain the old adversarial structures of collective bargaining in the civil service. Can both systems co-exist and can public service management reform continue while fundamental issues of pay and associated factors are still determined in the traditional adversarial bargaining way?

The specific problem therefore, which needs to be addressed, is how the traditional core public services can now face and undertake the challenge of implementing incremental or radical reform programmes within a co-operative industrial relations framework involving workplace union-management co-operation and partnership.

Challenges and New Initiatives

Finality in Pay Disputes

There is a clear and obvious requirement in some countries for a more effective dispute resolution mechanism within the public service – this applies not alone in the context of those public officers in central government services but also for other public services as well – nurses, teachers, police and other staff in various agencies/services.

The issue of negotiating matters of pay to finality calls for serious attention to be devoted to creating and gaining acceptance in some countries – and this applies to both Government and unions alike – of a nationally agreed system or structure for the final independent

determination of pay disputes in the public service. Invariably, the issue of protecting the “national interest” or “national finances” arises but there are many acceptable models which incorporate such concepts within a final arbitration structure. e.g. administrative budget limits for Government Departments; reference to Parliament for approval of a pay arbitration award; culture of acceptance of independent third party pay decisions; acceptance of outcome of special pay review bodies or pay commissions. Even in some cases where such pay determination mechanisms are voluntary and non-binding, they generally bring claims to a degree of finality.

A 1993 OECD Report entitled “*Pay Flexibility in the Public Sector*” identified three elements of pay flexibility and most countries have sought, in recent years, to meet those criteria in their respective approaches to the determination of public service pay:

- The adaptation of pay systems to match the operational requirements of the civil administration/individual public organizations and the maximization of the performance and motivation of employees.
- The control of growth in pay costs and an increase in the collective bargaining systems, responsiveness to inflation, unemployment levels and changes in economic circumstances.
- The ability to adjust pay structures to respond to labour market conditions.

It has also to be noted that most public servants and their respective pay levels in the region have suffered from a period of fiscal retrenchment and have lost ground vis-à-vis comparable levels in the private sector. Some Governments have given commitments in recent times to re-adjust these levels to a certain median level of private sector earnings. Others have made settlements on outstanding arrears in order to re-establish a “current date” in the bargaining process.

Professional Negotiating Agencies

The negotiation units of both the Personnel Departments and the Conciliation/Mediation services require enhancement. This enhancement is necessary if they are to acquire the authority, capacity and skill to negotiate in the developing and widening collective bargaining agenda arising from reorganization, change and the new public management programmes already in place in many countries. Many of the current systems appear to have both limitations and shortcomings with respect

to the degree of flexibility available to negotiators to make individual or category level pay adjustments or in making adjustments in pay scales to meet external labour market pressures and to meet internal demands arising from skill requirements/changes affecting particular groups. This is, to a degree, understandable when such situations could and may lead to claims for consequential pay adjustments or involve broader political and fiscal implications or industrial confrontation. Most countries have continued to adopt a policy of maintaining an integrated civil administration and thereby are committed to the retention of generic grading and salary systems throughout that system, while at the same time making some adjustments to meet re-organizational or commercialization requirements or indeed to prevent the loss of highly qualified staff in key areas to the private sector.

There is, however, an emerging trend and increasing pressure in most of the countries to delegate some of the key issues involved in public management developments to quasi autonomous agencies. These agencies in turn seek to pursue a policy of “flexible options” in pay structures. The objectives of such a policy is to provide for more favourable pay treatment for certain categories of new senior management, the use of fixed-term contracts, outsourcing or contracting out of some services and a level of “pay or grade drift” in response to organizational needs. This inevitably has led to dissatisfaction from some senior and middle managers in the civil/public services from what they perceive as unfair treatment and from the unions/associations which represent the staff affected or who may have to work with newly recruited staff at differing levels of pay and conditions.

There is a need to undertake an initiative to address some of the most serious issues by revitalizing and reviewing current bargaining structures both at central civil administration level within individual Ministries/Departments and in any executive agencies which are established as a result of the re-organization agenda.

Parliamentary Supremacy and Pay Disputes

It recognized that since the Government is the major employer in the context of public service pay there are important and sovereign concerns on their part regarding the national interest and the viability of the state at any given budgetary period. However, there is an obligation upon

them to allow pay claims to be eventually arbitrated upon to finality while, at the same time, ensuring parliament remains sovereign in the final determination of public expenditure and the national budget.

On the unions/associations side, there is a requirement to commit themselves to negotiating pay claims through the pay of determination structures and equally to ensure the process itself operates to a level of finality without accumulating an “arrears” syndrome in the context of pay determination. It is accepted that wider issues of public service reform and change may require different or parallel structures revolving around issues of consultation, co-operation and partnership.

There is always a tendency in issues of pay determination in the civil and public services for Government Ministers at some stage to become involved in disputes (this occurs sometimes in relation to private sector disputes as well, particularly, where there could be widespread national economic disruption). Most modern legislative developments in this area seek to separate direct Government involvement from the pay determination machinery. Political reality sometimes requires or forces Ministers to become involved in aspects of negotiations but this should be as infrequently as possible so as not to undermine or bypass legislative or structural provisions for pay determination. This, of course, is a matter of political judgment in any of the particular countries concerned. Their role should primarily be one of delegation in the actual process itself.

There is considerable promise in adopting a new strategy. Unions are particularly strong in the Caribbean public service and are capable of blocking or delaying change if their members feel excluded or threatened. The engagement of, and endorsement by, trade unions in the process of change will considerably assist management in realizing the changes sought and in delivering them when agreed. Industrial relations issues will undoubtedly continue to be processed through existing or normal procedures. It is to be expected, however, that as trust and confidence grows in a newer and better partnership process it would enable non-contentious industrial relations issues to be resolved through senior department representatives or eventually through Ministers in the case of legal administrative arrangements.

It is also imperative at this stage to ask the question as to whether or not the old ways of doing our business in the collective bargaining process is relevant or responsive to our future needs. The conclusion

to that question must largely weigh in the direction of the negative and new models which first and foremost seek to create an agenda for mutual self respect and interest, must be sought. In addition, it must be one which identifies existing structures/attitudes impeding solutions, and on the other hand, seeks options and structures, including new adventures, which could and will lead to solutions. At the end of the day, such a process is essentially about working together to achieve a better service for all constituent bodies.

Public Service Commissions: Recruitment/Promotion/Discipline

The extensive existence of constitutionally established Public Service Commissions and their appellate systems is a major feature of Caribbean civil administration. Opinions are divided on their necessity and effectiveness in a modern constitutional democracy. Obviously, the historical evolution of these institutions and their respective roles and functions in many countries over many years have attracted diverse opinions as to whether they should continue as currently constituted or be replaced by individual Ministry functions or new legislation.

Most individual Commission members felt that they perform an important independent role in the appointment, promotion and discipline of staff and which, if not performed by them, would lead to a deluge of charges of political favoritism, potential legal challenges and unacceptable Government influence on civil service performance and policy delivery. On the other hand, many civil service managers have queried their efficiency, performance and co-operation in the new public management policies which require specific performance requirements of all staff. They also see such Commissions as delaying the implementation of new policy initiatives in human resource management.

The unions for their part have varying views on their effectiveness – seeing them, on the one hand, as defenders of individual civil servants rights and, on the other hand, as requiring reform in their procedures and greater transparency in their operations particularly, in regard to disciplinary matters. Overall the system itself appears to suffer from an excessive degree of legality in its operation and deliberations and a reliance on legal opinion or expertise in many matters.

Some countries have begun to undertake a review of current civil service regulations while other countries are reviewing these regulations

in the context of public management reform programmes. Overall, however, there needs to be co-operation in the performance of these exercises/reviews and not a retention of institutional jealousy of the independence of the Commissions' functions and authority. The extent to which in some countries the role of Public Commissioners have been bypassed and the existence and level of either "ghost" or non-established appointments, indicates the need for reform, an updating of procedures and constitutional review. This need was recognized by CARICAD when in December 1997, it organized a consultation on "*Public Service Commissioners – Imperatives and Challenges for Leading Reform*".

It is necessary, at this stage, in the light of political development of the region that the Caribbean Governments would collectively review the experiences of other countries on how legislatively they have dealt with the issues of civil service management as opposed to the Constitutional structures for such management. This would assist in avoiding the controversies which have arisen recently in some Caribbean countries regarding the appointment/dismissal of public servants. In addition, most modern public service management proposals and the human resource aspects of such changes are in large measure different from the centralized constitutional function and role of such Commissions. This is not to state that centralized recruitment through publicly organized competition or an organizing agency for such competitions may not continue to be necessary, particularly, given the population size of the countries involved.

Structures for Consultation and Partnership

Many new public management processes are explicitly committed to making public services more community/customer/consumer-focused and are geared towards promoting continuous quality improvement in the delivery and management of services. These are predicated on better performance management criteria and on more flexible working practices. Creating the conditions for the delivery of such objectives are likely to require a more radical set of changes in the positions being adopted by traditional managerial and union representatives. The achievement of the level of change envisaged will be considerably complicated in civil and public service-type organizations by a vertically organized trade union representation, by the strong identities and vested

interests of administrative and professional categories, by the limited flexibility in pay bargaining approaches available to personnel departments and Governments, and by the inbuilt rigidities of civil service/public organization collective bargaining structures.

A new approach is therefore required to involve both civil service managers, unions and staff in the strategy for achieving the policy and performance changes required. Initially, most consultative processes or policies in the area of reform have been built around discussions with trade unions and direct staff involvement. The form, structure and fundamental nature of the changes in public service management and delivery of service, both to citizens and private enterprises, requires a deeper process of involvement and engagement of unions and staff interests.

There is a veritable tidal wave of change occurring not only in the private sector but also extending into the area of public services. Such change needs to be managed carefully and with successful outcomes. Successful models for change management and agreed policy objectives can be achieved by the joint ownership of the process i.e. a joint commitment by management (Government) and union/staff. In achieving this goal the adversarial approach needs to adapt to one where there is an open, co-operative, consultative and participative involvement by all concerned.

This approach is both novel and innovative and presents some major challenges to long-held relationships and positions and indeed to ways of working and negotiating together. In effect, to a way of managing our industrial relations/human resources agenda in a business-like fashion. As a result, successful change can be based on a partnership approach which can be seen as a means of generating a pro-active, productive and collective approach by management, union and staff to sharing ideas and decision-making in relation to resolving problems and addressing challenges. The policy objective of which is to reach a consensus on what is to be achieved and how it can be implemented and concluded to the mutual benefit of all concerned.

Through this approach unions and their representatives can play an effective role in developing and shaping strategy and policy at the highest level and in a manner which it is difficult to envisage being achieved through reliance upon direct staff involvement and consultation alone. Initiatives in direct employee involvement and consultation are also likely

to be more effective in a context of a high unionization culture and where it is necessary to engage the unions at all levels in jointly steering the change programme.

The development of Partnership Committees in public service change management programmes incorporate and embrace a number of significant factors:

- An active structured relationship between the parties which implies positive actions being undertaken by all involved to develop and enhance their relationships and the creation of a climate/culture of trust.
- Commitment by all employees – from management and staff at all levels – to improve performance in terms of quality and efficiency.
- Acceptance by senior managers/policy makers to treating staff as stakeholders and, therefore, adequate consideration of their views in the context of all major decisions affecting their work and livelihood.
- Common interest in and ownership of the process thus reflecting the need for partnership to be a mutually beneficial relationship demanding an active response from all in seeking the resolution of problems and in addressing challenges and changes.
- Clear recognition of the need for investment in training and development and the creation of a better working environment.
- Creation of a shared vision and mutual respect for each other's goals and a joint commitment to work together.

The primary advantage for unions in this approach is their entry to and participation in strategic and operational decision-making outside of the sometimes narrow confines of established collective bargaining channels. For unions to remain wedded to narrow collective bargaining issues in the new re-organization of the public service reduces or restricts unions to a residual role in protecting, defending, or obtaining the best terms available in a diminishing public service. However, to pursue the partnership route opens up the possibility of being at least able to influence the shape, direction, timescale and structure of future developments. This in turn could lead to new forms of industrial relations practices which could generate a level of goodwill towards change on both sides.

The alternative downside is to allow inertia and the continuation of established adversarial collective bargaining to dictate the agenda and result in the loss of influence and position. The real challenge for both

managers and unions it to think in a longer-term strategic mould and to change their positions and behaviour in profoundly major ways and sometimes in difficult fiscal circumstances where factors are not always favourable for such innovation and initiatives.

For such a partnership approach to be successful, it is necessary that apart from an overall central co-ordinating committee at the national level, there exists a specific need for partnership committees at Ministry/departmental level. This would ensure that the policy and strategy objectives adopted at the national level can be translated into active implementation at the local level. Such committees should also be used for “bottom up” suggestions and recommendations for discussion and action.

Staff Training, Development and Morale

There is a clear recognition that change in the public services require training, staff development and the rebuilding of morale and reward after more than a decade of retrenchment and salary erosion. Staff representatives have consistently emphasized the necessity to increase the status, standing and pay levels of public servants. Governments, in more recent times, have begun to re-evaluate their approaches to public service pay and pay systems. They must also give equal priority to the rebuilding of morale through training and skill development and the active involvement of union representatives as advocates in this process.

Many training/development programmes are being put in place in some countries to enhance public employees’ perceptions and performance levels. Much requires to be done if the ambitious policies and programmes are to be sustained. Change is difficult, time consuming and requires a higher level of commitment from all involved. It is vital, therefore, that an overall structure is established to oversee the change management programme as is evidenced in the initiatives and structures put in place by CARICAD. The precise mix for the successful conclusion of such policies will be dependent on the particular commitment given to the process by the major players in each country and, indeed, the shift in political, union, institutional, and in cultural attitudes necessary to achieve such change.

Such strategic programmes must include the following elements and a management/co-ordinating structure for monitoring, developing

and achieving the objectives of such programmes across the civil and public administrations:

- commitment from Government, senior managers and union leaders;
- setting clear objectives and priorities;
- ensuring they are met within distinct timeframes;
- obtaining the resources for the tasks;
- developing the technical knowledge/expertise to improve the quality of decision making;
- seeking means of improving the quality, capability, and competence of staff;
- monitoring the quality and necessity of the work being undertaken;
- planning to avoid crisis situations;
- working to achieve Government/Ministry policies;
- introducing good human resource practices; and
- building new structures/teams to achieve public policy goals.

In summary, Table 1 outlines the main thrust of the Current Industrial Relations Systems/Public Sector Bargaining and the New Approaches in Public Management.

Conclusion

The observations and recommendations made in this paper should assist Government, public service management, unions and their members to respond to the myriad challenges involved in redefining and re-organizing the public services. This is a process affecting every developed and developing nation in varying ways. In many countries, that change is being managed in a confrontational way, and in others in a more consensual way. The common thread is the fact that change is unrelenting and affects all of the parties in a profound fashion.

In the Caribbean region, many Governments can learn from the more successful models in other countries and if they so choose they have the advantage of avoiding their respective mistakes. For all it is a learning process and one which requires sensitive and careful management. It cannot be achieved by confrontation but where radical change is necessary, the structures necessary to engage the unions in that direction must be put in place. If they are approached on the basis recommended in this paper, such reform programmes have at least a reasonable chance of being successful and will commit all involved to

the objectives of the process itself – a better delivery of Government services by a quality and motivated staff.

Table 1 : Current Public Sector Industrial Relations Systems and New Approaches in Public Management

Current Systems	Development of New Models
(i) Highly adversarial culture and low levels of trust/outmoded or inadequate negotiation machinery and the involvement of Ministers/ Cabinet in the Pay bargaining process.	Need to provide (in some cases) for an independent final adjudication process/improved conflict resolution machinery/reduction of direct political involvement.
(ii) Central function of recruitment/ promotions and discipline through Public Service Commissions/ Appellate Bodies.	Need to update Civil Service rules, greater flexibility and possible change from constitutional to legislative/administrative powers.
(iii) Non-existent/or fledgling systems for consultation and negotiations	Need to develop modern formal mechanisms/structures for greater consultation and participation by public servants in the change process. Need to introduce partnership structures.
(iv) In some countries low levels of innovation in work organization and job design. Union and staff resistance to agency developments and transfer of services.	Encourage innovation and public service management and governance. Review of rewards system.
(v) In some countries low levels of staff training, development and morale.	Increase policy priority and spending in this area.

10

Industrial Relations in the Civil Service in the Caribbean

Harold Lutchman

The current emphasis on change in the role of the State, and interest in reforming its civil service arise, in part, from concern that existing state institutions are not necessarily equipped to address the needs of contemporary society. The evolution of the colonial State and its structures and functions were invariably correlated with developments in its social, economic and political systems, and were in many respects significantly different from their successors on the achievement of independence. The primary law and order role of the colonial State was reflected in the administrative arrangements then in vogue.¹

The reaction against colonialism, and constitutional development were accompanied by forms, arrangements and practices intended as far as possible to mirror those of the mother country. There were, though, many serious obstacles in achieving this result. The basically autocratic nature of the colonial system made efforts to gradually introduce democratic practices and values into it problematic, and patterns of behaviour grounded in the colonial experience still exert a powerful influence on government in more contemporary times.

The series of industrial unrests during the 1930s were among the catalysts for change in the British West Indies. The resulting recommendations of the West Indian Royal Commission² which investigated the sources of these disturbances had a major impact on the future role of Government, and as Mills has summarized:

... the countries of the (British) Commonwealth Caribbean have experienced significant political and constitutional changes in passing from the stage of Crown Colony Government through a transitional phase of internal self-government, towards independence. Concurrently, the

period since the Second World War has been an era of social and economic change unparalleled in the history of the region. These two major trends have had an impact on the machinery of Government and public administration, with important consequences for the operation of the administrative systems³

The measures (legislative and others) implemented to change and improve the relationship between employers and employees; the work environment; conditions of service and, in general, to enable the latter and their representative organizations to participate meaningfully in the industrial relations process; were fruits of the Commission and its report.⁴ Prior to this, the balance of power in industrial relations was heavily tilted against workers, with employers enjoying the sympathetic support of the State, its servants and agents.

At least two changes were required to redress this situation: empowering workers to organize collectively, i.e. to form trade unions, which necessitated departure from their position and status at common law; and as crucial, the recognition of trade unions as legitimate entities to negotiate and enter into collective agreements with employers on behalf of workers. In the wake of the implementation of the Commission's recommendations, important changes were made to collective bargaining, and parties negotiated to reach agreement with a role for the Government to assist them to overcome any difficulty or impasse that arose during their interaction. The resulting agreement was not binding as a contract enforceable in a court of law, but it enjoyed the status of a good faith agreement.⁵

These developments mainly affected the practice of industrial relations in the private sector. Civil servants vis-à-vis their employers (i.e. the State or Government) were in a different situation and were governed by different rules and considerations. The legal status of the Government conferred on it distinct privileges and immunities which were not available to the private employer. Nevertheless, the Government was expected to serve as a model employer for the rest of society and in some states, industrial relations practices in the public and private sectors tended to converge at critical points. State patterns could not altogether be insulated from the influence of systems and practices in the private sector, especially in light of the dynamic environment in which industrial relations processes were taking place.⁶

Colonial Patterns and Features

The appropriateness of describing earlier employment interactions between the colonial state and its employees or servants as “industrial relations” may well be questioned, especially in the context of a comparison with the private sector. Civil servants, like others, had to be recruited; appointed; promoted; remunerated; disciplined; transferred, etc., and their employers also had to be concerned with matters such as performance, levels of remuneration, and morale among their employees. The latter too, had strong ideas about fair and equitable treatment and reacted when they believed that they were the victims of unfair treatment from their employers.

However, such matters were dealt with in controlled circumstances within a framework of strict rules, regulations and customs. When civil service employees felt the need to organize to promote and protect their interests, they did so under those constraints. They enjoyed no right to form or belong to trade unions for collective bargaining purposes; and according to Chase, General Orders and Colonial Regulations constituted the legally unenforceable rights of the civil servant. The unwritten convention behind them was important and as a rule, they were scrupulously observed by Government. They were in honour bound and that honour was observed to the letter. The common law privileges enjoyed by the Crown in its relationship with its servants included the right to “dismiss them at will in the public interest which in effect meant that they could be dismissed at pleasure. The victim of such treatment ...cannot sue the Government”⁷

The rules and procedures by which persons were recruited into the civil service were not always regarded as satisfactory in the colonies, especially among those who, although well qualified, saw themselves overlooked, and preference accorded to lesser qualified persons on the basis of the latter’s race, colour, social position and connections. Higher level appointments, which included generalist administrators, such as the Colonial Secretary; and specialists such as the Surgeon Specialist, the Attorney General, Director of Public Works and Director of Agriculture; were made by the British Colonial Office. Local persons, particularly non-Europeans, were rarely appointed to such posts and were confined to clerical grades. Appointments at that level of the colonial administration, were within the jurisdiction of the Governor as advised

or recommended by the Colonial Secretary, and there was very little redress against the exercise of this power.⁸

The movement towards self-government and eventual independence involved attempts to replace the subjective criteria by which persons were judged and received, or denied opportunities, by more objective or universalistic ones judged to be fairer in their effects and consequences, in providing opportunities to larger numbers. Before then, those preferred tended to be associated with distinctive forms of behaviour. They enjoyed relatively high status in society as part of a select group, exhibited passionate loyalty to the Crown and Sovereign, and deference to authority, which later was demonstrated in the manner in which they presented and represented their grievances and concerns. The approach was not to demand or assert rights to which they felt entitled but to request favours or acts of grace, as supplicants.

When, for example, senior civil servants on the Fixed Establishment in then British Guiana decided to organize to represent their concerns to the Government over their remuneration and other benefits, they chose the form of an association based on precedents in Ceylon (now Sri Lanka) and Jamaica, but the approval of the Government first had to be sought and obtained. It was necessary for them to point out that their intention was to provide a responsible central body to keep in touch with matters affecting the interests of members of the service and to ensure that any representations made were in the best interests of the service as a whole, and in accordance with the tradition and discipline of the service.

Additionally, they intended to promote mutual respect and goodwill among the various grades and branches of the service, and encourage a spirit of loyalty and cooperation in the interests of the service of the public. Also they intended to cooperate loyally with Government in all measures for the improvement of the service.⁹

The Government's response was equally revealing in setting the limits within which such organizations expected to be permitted to operate and influence the decisions of Government. As the then Colonial Secretary stated, the Governor was "heartily in favour of the proposal and readily accords his sanction to its adoption." Further, he wished the Association every success, and desired its members to know that he would always be glad to consult with them or their representatives whenever they desired.¹⁰ The Governor's approval operated to extend

“recognition” to the Association to exist but not to bargain or negotiate collectively with the Government, as a matter of right; they had gained a privilege to be consulted, also with the permission of the Governor.

Prima facie, this somewhat paternalistic approach in dealing with civil servants and their interests operated in a lopsided manner against civil servants and their interests. Such as it was, the entire personnel function was vested in the Government or state employer with a limited capacity in employees to influence decisions taken. There was, even in the private sector, no generally accepted notion that the personnel function could benefit from constructive inputs and interaction between the two sides of “industry,” which was to become a major thrust later.

According to Chase, the terms governing the relationship between civil servants were of “artificial character.” They applied to all “employment contracts” and provided that officers to whom they applied, held their office at the pleasure of the Crown. The pleasure of the Crown that they should no longer hold it could be signaled through the appropriate authority, in which case no special formalities were required to terminate the employment.¹¹

The actual position of officers was however, not as precarious as suggested. For, there “were very important regulatory prescriptions” in regard to such matters:

... the Colonial Regulations extended the rules and principles of natural justice to civil servants. They also encompassed the principles that no man should be punished twice for the same offence. The principles of natural justice ensure the right to a fair and impartial hearing and no condemnation without an opportunity to exculpate oneself. This involved knowing the case the civil servant had to meet, the allegations made against him and being given a chance to make a defence....¹²

As a result: “the disciplinary procedure – of which those outside the service were envious – was specifically incorporated in ... General Orders.” Inscrutably followed in ‘colonial times,’ although they did not confer a legal right on civil servants, they bore the equivalent of such a right.¹³ The West Indian Royal Commission highlighted the need to strengthen the status and role of trade unions, emphasized the importance of meaningful and harmonious relationship between the two sides (employer and employees), and a conciliating role for Government in the negotiation process.

The founding of Whitley Councils was a positive development, effecting as they did a qualitative shift in the industrial relations process in the direction of rights rather than privileges. Whitley Councils “were to secure the greatest measure of cooperation between the Government in its capacity as employer and civil servants in matters affecting the civil service.” This had a salutary effect on promoting industrial relations; increasing efficiency in the service and the well being of the employed; and, most important, provided machinery to deal with grievances and bring together the experience and different points of view of representatives of the various branches of the service. The functions and scope of their operations were defined in their constitutions which contained both constraining and liberating elements. Thus, Whitley Councils could not consider any matter on which there had been a decision of Government unless it was referred to them by direction of Government. And noticeably,

a council may consider any matter which affects the conditions of service of the staff but only if it has been the subject of discussion between a trade union or association recognised by Government and the head of department concerned. (The Honourable Chief Secretary in the case of matters affecting more than one department).

The Whitley Council could also make “recommendations with regard to the general principles governing conditions of service, e.g. recruitment, hours, promotion, discipline, tenure, remuneration and superannuation;” and suggest “any legislation concerning the position of civil servants in relation to their employment.”¹⁴ These were all matters that in the past, were treated as falling within the exclusive jurisdiction or province of the public employer, but the introduction of Whitley Councils at least suggested an intention to introduce a more open and participatory system with a right (though limited) of the civil servant, through his representative organization, to be part of a process which nonetheless was still mainly under the control of the employer.

The Changing Scenario

Recognition of trade unions or associations to participate in the industrial relations process was invariably a thorny issue with the employer claiming the right to decide with whom it was prepared to have dealings.¹⁵

The preference was for a voluntary system unregulated by law, and attempts by trade unions to gain “recognition” by resorting to industrial action were regarded as highly irregular and as a serious violation of industrial relations principles. It was therefore not altogether surprising when in 1953 the British Government advanced the breach of this principle as among the reasons for suspending the constitution of then British Guiana.

The proposal of the Peoples Progressive Party (PPP) Ministers to deal with the issue of recognition by legislative enactment evoked the criticism that:

... such legislation is contrary to policy and practice in British industry because it imposes an element of compulsion in a field where the principle of mutual consent which is inherent in collective bargaining can alone yield satisfactory results. It is claimed to be based on a United States law, but in fact reflects only one feature of the general code of industrial law in the United States, which imposes restrictions and obligations not only upon employers but also on trade unions¹⁶

But there was increasing appreciation that change and modification in these “fundamental principles” had to be effected in response to political and constitutional development. Ironically, legislation was destined to be an important instrument in this regard. As colonial officials were relinquishing or losing power which was falling under the control of elected politicians, it was deemed necessary to establish mechanisms to ensure that it was exercised with integrity, and was not abused. Existing privileges had to yield to rights and other means of protecting civil servants in their careers.

The personnel function, its organization and execution became matters of concern in the development towards self-government and independence. Arrangements which had previously sufficed were subjected to critical examination, and demands for new approaches, innovations, and personnel with skills more responsive to and in consonance with the evolving and expanding role of the state. The system of appointment to the bureaucracy needed to be changed and as important, were perceived threats to civil servants from politicians whose presence in government was becoming ubiquitous. While there was confidence in the bureaucracy, and elsewhere, that the British Governor and other officials could be trusted to be fair-minded and

place the public interest at the centre of their focus and priorities, politicians were thought to be in a different position.

Officials serving as nominated members of the legislature, who were often targeted for criticism by politicians, were decidedly uneasy in political roles, preferring to see themselves, and to be seen, as neutral and above politics. Thus, attempts by elected ministers to gain control or influence over the public service were also among the reasons advanced to suspend the constitution of British Guiana in 1953, for violation of fundamental principles. As the argument was put:

It is fundamental, as it is in this country, and it is written into all colonial constitutions that the public services should be free from all political influences. Accordingly, under the constitution responsibility for the public service is reserved to the Governor who is advised on the matters by an independent Public Service Commission. Ministers clearly showed that they resented that Dr. Jagan said: "They have appointed a Civil Service Commission because they do not want us to have anything to do with the appointment of civil servants. We would like to have power to appoint our own people to do our work."¹⁷

Much of the foregoing resonates with contemporary issues and problems to be addressed as the environment within which industrial relations occurs, undergoes change and is challenged by new issues and problems.

Contemporary Issues and Problems

The issues and problems confronting the states of the Commonwealth Caribbean in more contemporary times have required a re-examination of the suitability of institutions and their underlying values, to contribute to these states' continued existence even as viable entities.¹⁸ After years of discussion, experimentation and practice, the stage in the region and, indeed elsewhere, has been reached where perceptions on the path to development have undergone far-reaching changes.

A re-thinking of the survival strategies in the increasingly globalized world is also the subject of focus, as has been usefully summarized:

Caribbean countries are now faced with the imminent loss of preferential treatment for main agricultural exports, and in short order, they must diversify their economic base and in a way which provides social safety nets for workers. This requires the formulation of a suitable strategy

for promoting growth with equity that emphasizes the generation of higher levels of employment and the eradication of poverty. In this context, special attention needs to be given to the requirements for the expansion of production consistent with workers' aspirations for decent working conditions. This is an absolute necessity, if the economies of the region are to participate effectively in an increasingly competitive global economic system....¹⁹

Strong public sector leadership (including in the administrative arm of Government) is identified among the requirements to successfully cope with these and similar challenges.²⁰

All of this implies that greater flexibility, change in and adaptability of existing institutions and associated practices are imperative if articulated goals and objectives are to be achieved. While their role as advisers to the political directorate and implementers of public policy place civil servants at the centre-stage of activities, their contribution cannot, as is often the case, be taken for granted. Unlike in the heyday of colonialism when their co-operation with government could be guaranteed, that situation has virtually disappeared.

Trade unionism among civil servants is now not uncommon. It has transformed the relationship between the public employer and employee and their role in the industrial relations and collective bargaining processes.²¹ Co-operative relationships have to be striven for and earned. The combined effects of constitutional provisions, legislative enactments and, in addition, judicial decisions have extended greater protection to civil servants in their status as employees, and modified the "command position" previously occupied by the State. Responses from civil servants to national problems are likely to be influenced as much by their preparation in the form of their skills, as by their willingness to contribute inputs in so far as these are perceived to be in harmony with their own interests.²² The prevailing morale among civil servants has become a crucial factor.

Where unemployment is widespread, employers are generally strongly placed to influence, if not exercise dominant control over terms and conditions of service. However, the loss of skilled personnel, (who are crucial to the development effort), to states such as the United States of America, Canada and the United Kingdom, has mitigated this influence and conferred a relatively high scarcity value on remaining personnel, and strengthened their position.

Intra-regional mobility and the introduction of the CARICOM Single Market and Economy (CSME) also impact on industrial relations and require the adoption of appropriate strategies to manage resulting consequences. These and other challenges demonstrate the need for “good governance” by state actors, a concept which is now elevated to a high level of importance in judging the performance of governments. Its link with elements such as responsibility, accountability, sensitivity, fairness and equity in dealing with citizens is also emphasized in the relationship between governments and their employees.²³ One of its measures is the extent to which innovative changes relevant to the problems and compatible with the environmental factors of the region are introduced.

The slavish replication of systems from other environments does not guarantee success. In the Commonwealth Caribbean there has to be sensitivity to the influence of its historical evolution and development, constitutional arrangements and political practice; and, indeed, the social structure in terms of its configuration and cohesion; its racial/ethnic characteristics; all of which impact the form and content of industrial relations in the public sector.²⁴ Although arrangements to manage human resources during the colonial period constituted an ongoing enterprise of change, a persistent problem was the extent to which those changes were sufficient and productive of positive results. The shifting of the key functions of appointment and discipline etc. from the executive to independent bodies entrenched in the constitutions, was one such problem.

The Role of Service Commissions

The mechanism of the Public Service Commission in all of the constitutions of the independent states of the Commonwealth Caribbean was established with the objective of insulating members of the civil service” from political influence exercised directly upon them by the government of the day.” This was done by vesting in autonomous commissions, to the exclusion of any other person or authority, power to make appointments ... promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service.”²⁵ Public Service Commissions have therefore influenced the development of industrial relations in the public service, operating as they do, inter alia, as limits on the power of the state to manage its

workforce with the same degree of freedom of its colonial predecessor.

The spread of collective bargaining and agreements, and the role of the representative organizations beyond what was deemed acceptable during the colonial period, has undoubtedly provided additional protection for workers. However, Public Service Commissions have been associated with certain limitations linked to their composition, manner of appointment, and the scope of their powers and operations. As has been stated, “when they are weak they fail to protect (public officers) from political interference and where they are strong they undermine the management functions of senior public service officers.” They were described by Collins as “anomalous constitutional relics,” and another source claimed that they had “virtually become mechanisms for promoting political patronage.”²⁶

Chase has contested the once strongly held view “that the Public Service Commission is an authority unto itself, is subject to none, and cannot be influenced by trade unions (or entertain representation from them in the Commission’s constitutional authority). . . .” While acknowledging its independent status, he argued persuasively that the courts could enquire whether a function was vested in the Public Service Commission and whether the Commission in the exercise of its functions acted in accordance with the law. In sum, “the independence of the Commission is not derogated from if it entertains representation from a trade union on any matter within its functions . . . once the representation does not seek to improperly influence the Commission it does not come within the realms of impropriety. . . .”²⁷

Public Service Commissions are however not the panaceas which many expected them to be, in part because politicians and other sections of the population although paying lip-service to them, did not necessarily accept the norms and principles intended to underpin their status and operations. This is not peculiar to them and other institutions entrenched in constitutions have also not proved difficult to manipulate or influence in politically partisan ways. Resort to practices such as delaying action on the processes by which they are brought into being, and initiating action in the full knowledge that those opposed would experience inordinate delays and high costs in seeking redress in the courts are not unusual in some states.²⁸

The concept of a neutral civil service, willing and able to serve a government of any ideological persuasion in whose development and

preservation the Public Service Commission would have a vital role has also been questioned as the appropriate basis on which to structure management systems involved in change and development. Political commitment and dedication are seen as superior values, of course, on the assumption that the levels of expertise possessed by functionaries in both situations are similar or equivalent.²⁹ Such thinking in part explains the tendency to recruit advisers and others outside of the traditional civil service. This development is usually a source of grievance by civil servants, where they feel disadvantaged by marked differences in levels of remuneration and other conditions of service, in favour of others.

Other problems were associated with concerns about the capacity of the Commission to contribute meaningfully to the expertise and skills required in the new dispensation. Its limitations in this vital area of human resource management were acknowledged, as was the need for civil service reform, which stimulated the search for alternative arrangements beyond the framework of the Commission.

The Jamaica Experience

In this context, developments in Jamaica, where it is claimed that the Commission in carrying out its functions has had no disputes with the Jamaica Civil Service Association (JCSA), are instructive because the usual pattern in other jurisdictions is one of conflict.

Interestingly, the harmony claimed in Jamaica is attributed to “constant dialogue on matters of concern and mutual interest with the President and Executive of the Association both at the Commission and Office level.” In addition, the involvement of the JCSA is always sought “in the planning process for any change or modification of the existing *modus operandi*,” and the inclusion of a member of the JCSA or the Public Service Commission.³⁰

The approach in Jamaica is also interpreted as exemplifying the importance of change and adjustment in structures and roles of both the PSC and the civil service as a response, since independence, to developments such as growth in size and task, in which the public service is performing “a greater diversity of tasks placing strain on original centralized management structures;” greater complexity resulting in extension of the responsibilities of the public service beyond the core functions of law and order; basic infrastructure development; and social, economic and technological developments requiring public services of

growing complexity and sophistication, with consequential strain on management structures.

In addition, workforce or labour-related issues; social change; increased mobility; and the development of the private sector, which have produced “an increasingly fluid labour market” resulting in problems in attracting and retaining qualified staff in the public service, have also generated a number of challenges. In this context “centralized management makes it difficult to adjust personnel policy in step with the changing labour market.”³¹

Other effects of these developments are summarized as follows:-

These challenges coupled with changes in the global arena have led to a heightened emphasis on accountability for results rather than process, responsiveness to policy directions and client needs and a commitment to efficiency, quality and transparency. These values advocate that systematic efforts have to be made in the area of Public Sector reform in order to ensure that the current situation of administrative delays and general inefficiency and effectiveness in public service delivery, which create difficulties for ordinary citizens and are a source of disincentives to the conduct of business activities, is ameliorated....³²

Undoubtedly, the Jamaican approach with a focus on reducing the level of centralization through the “Executive Agency Model” as part of a reform programme to achieve “greater effectiveness, efficiency and accountability in public service delivery,” contains a number of useful innovations. New organizational structures, human resource management systems, business process improvement and the delegation of functions to Chief Executive Officers are all critical features of the Model. Delegation affects all categories of staff below the level of Permanent Secretary and Chief Executive Officer, and include appointments; discipline; training; voluntary separation; separation for cause, and on grounds of age, reorganization and abolition of post.

A core concern is to operationalize the principle of accountability, i.e. in order for managers to be held accountable for outputs, it is desirable that they have control over resources needed to produce them. Thus, where the Permanent Secretary and Chief Executive Officer have greater autonomy over human resources they could be held fully accountable.³³

The participation of staff associations in working committees executing developmental work as an integral part of the process is also

a positive development. Also important as part of “the communication strategy” is the involvement of employees in pilot ministries to provide feedback on a draft “Accountability Agreement and Guidelines” developed by the working group to ensure the quality of management of the delegated functions, all of which resulted in radical changes in the role and functions of the Public Service Commission, and its reshaping and restructuring.

Among the new functions which evolved for the Commission are the auditing and monitoring of the delegated human resource management functions; examining requests for recourse and redress; public education; training and development in relation to the delegated functions; advice and consultation in regard to delegated functions; and the development of job selection tools.³⁴

The issues and problems addressed in Jamaica have much in common with, and are of relevance to other states, but noted divergences are to be expected, including differences in conceptualization, and approaches to problem-solving. The Jamaican case represents an interesting attempt to rationalize and marry the relative roles and functions of the Public Service Commission and of those charged with responsibility for other human resource functions; and to eliminate the conflict which generally characterizes that relationship.³⁵ But there are other areas of tension to be addressed for, given the nature of industrial relations, problems and issues, whether locally or externally generated, adversely affect the interests of both employers and employees.

At the same time, not unlike in the private sector, it has often proved difficult for government (as employer) and civil servants (as employees) and their representative organizations to agree or compromise, and be even polite in their dealings with each other. The case of Guyana, where conflict has deep historical and political roots, is an outstanding example in this respect.³⁶

Role of the ILO

Recognition of these realities has pointed to the importance of basic codes and guidelines to govern employer/employee relationships such as the international standards grounded in the Conventions of the International Labour Organization (ILO).³⁷ There is the assumption or implication that where both sides faithfully adhere to such standards conflict would be eliminated or minimized. Thus, the adoption at the

1998 International Labour Conference of the Declaration of Fundamental Principles and Rights at Work is regarded as crucial, placing as it does an obligation on all member states of the ILO “to respect, to promote and to realize in good faith and in accordance with the constitution of the ILO,” basic principles concerning fundamental rights including “Freedom of Association and recognition of the right to collective bargaining.”

Also emphasized are ILO Convention No. 151 and ILO Recommendation No. 159 concerning Protection of the Right to Organize and Procedures for determining conditions of employment in the Public Service. It is instructive that the Convention provides for the protection of the right of public employees to organize and join unions/associations of their own choosing; non-interference by public authorities in the establishment, functioning or administration of public employees’ organizations; negotiation or participating in determining terms and conditions of employment; and the establishment of approved measures for settling disputes. Public servants and officials also have the same freedom of association and rights of representation and negotiation as private sector workers; and the need for a healthy relationship between the public authorities and public service unions is encouraged.³⁸

However, in practice, behaviour is not always consistent with these standards and principles even where lip-service is paid to them, and they are not specifically repudiated. The bugbears of delays, and non-response to requests for information by the ILO to deal with complaints feature prominently among the elements which undermine their effectiveness. In many instances the behaviour of the political directorate does not suggest that they recognize the importance of the role of organized labour and the extent to which their co-operation or non-co-operation could promote or frustrate the achievement of national goals and objectives.

In light of the problems posed by globalization, and articulation of the need for new forms of production involving the use of innovations and technologies which may involve re-deployment; redundancies; restraint or even reduction in wages and conditions of service, not always perceived as to the advantage or benefit of workers; the latter and their representative organizations tend to be assertive in defence and protection of their interests, thereby exacerbating conflict with their employers. Conflict is also often generated by arrangements and agreements by

governments with international financial institutions with conditionalities which operate as limits on increases in remuneration and other benefits without proper or any communication with workers and their representative organizations on the issues involved.³⁹

The record discloses a number of attempts to build constructive and co-operative relationships born of appreciation of the potential negative consequences of failure to do so. As is stated in a recent report, the contribution of the series of activities of the ILO project for Promotion of Management – Labour Co-operation (PROMALCO), organized and conducted by the ILO Caribbean Office in collaboration with the Caribbean Employers' Confederation and the Caribbean Congress of Labour (CCL), is an important development in this regard; "both trade union and non-trade union groups, including public sector personnel, were laudatory of the exercises...."

Among the declarations associated with the ILO/PROMALCO activities was a commitment to overcome "the legacy of adversarial relationships and to work together in the transformation of Caribbean enterprises into high performing and competitive entities." Further, there was recognition of the need "to achieve higher levels of management – worker co-operation and to engage in a process of building trust, mutual respect and productivity partnerships." And, extremely important, is the statement that new forms of collective agreements were necessary to create "the conditions for true stakeholdership in enterprise development and other mechanisms of consultation, participation and information as common platform for achieving economic viability and highest possible levels of employment security and decent work."⁴⁰

Dealing with Political Reality

The achievement of these ideals if not their acceptance as expected, differs from state to state with a suggested relationship between the quality of governance and results. Barbados, with a history of relatively peaceful politics, good governance and fairly settled industrial relations climate, both in the private and public sectors, may be compared with others, Guyana, for example, with a history of very potent political problems - governance characterized by conflict; and an industrial relations climate of hostility between the Government and its employees, especially during periods when the People's Progressive Party forms the Government.⁴¹

Goolsarran usefully underlines the nexus between industrial relations and politics when he draws attention to the politically-sensitive nature of major industrial relations issues where “they affect any state sector/ state funded agency, and especially if opposition-linked unions are involved.” Then, any labour issue must inevitably have a political dimension with experience showing that where an issue is perceived, deemed, or interpreted by governments to be politically motivated, or is seen as a challenge to governments, or as likely to affect the national interests, as defined by governments, hostile reactions from the state and its machinery could be anticipated.

“Traditional and established industrial relations principles and practices” may suffer and come under severe strain. In these circumstances, there is always the danger of “genuine industrial relations” being overshadowed by partisan political considerations. Also controversial issues are often seen as contests between political parties and, from the perspective of government, “as attempts to destabilize the economy to ferment unrest and civil disobedience, or to dislodge the government; from the opposition, non-government point of view, as attempts ... to muzzle, undermine, or keep the trade union in line.”⁴²

The validity of these statements, portraying as they do with accuracy, much of the reality of public service industrial relations and the elements which contribute to their form and substance would be difficult to contest. They help to explain why even constitutional provisions and legislative enactments, addressing subjects such as the rights of workers; the recognition of trade unions; tribunals and like agencies with important roles in the industrial relations process, have not always yielded satisfactory results.

Although well crafted from a technical perspective, with generous borrowings or duplications from environments in which they successfully function, important aspects of their environment and culture are different from those of the host states of the Commonwealth Caribbean. Changes and innovations, considered rational in terms of their underlying assumptions and the problems which they are designed to address, are frustrated in the interaction with politics, and in the struggle for ascendancy or hegemony. As has been stated in explanation of this phenomenon:

Governments ... are politically responsible for the way public entities are managed, and that may influence government’s determination to

maintain control and supervision, and retain certain decision-making powers. Collective bargaining which places employers and unions on an equal basis at the bargaining table may be considered as incompatible with government powers of decision; for supreme authority of countries are vested in governments. To achieve other policy objectives, governments may consider that it is necessary to intervene in industrial relations, for industrial relations are seen as part of, and not separate from other aspects of governments' economic policy for development.⁴³

In practice, the reach of government extends beyond institutions directly involved in industrial relations and economic development, and results from commitment to ideologies which advocate the supremacy of the party and government in power, over public institutions. But because of the historical and colonial experience, politicians may be challenged to come to terms with forms of government embodying checks and balances on the exercise of state power, as a means of preventing its abuse. Yet, at the same time, government generally requires co-operation, constructive inputs from even non-supporters of the party in control of the state machinery, and meaningful consultation for its successful operation as epitomized in constitutions specifically recognizing the importance of these elements or principles; for example the emphasis in all state constitutions on the need for an independent judiciary safeguarded by a Judicial Service Commission constituted after discussion with important stakeholders who may also have representation among its membership.

Other institutions are treated likewise, but the reality is that elaborate protective constitutional mechanisms do not always result in unqualified public confidence in institutions and free them from suspicion of the taint of political influence in particular. Similar concerns and reservations are heard in connection with the nascent Caribbean Court of Justice which is proposed as, *inter alia*, replacement for the British Judicial Committee of the Privy Council as the final court of appeal for states in the Commonwealth Caribbean.

How to balance if not control the potentially pervasive influence of government and politics and to ensure that employees and their representative organizations are also effective participants is a key problem of public sector industrial relations. The power of ultimate decision-making in most matters resides in the Government and one or other of its agencies, and is seen where collective bargaining agreements,

containing conditions and benefits for civil servants with financial implications depend on the public treasury making the requisite resources available, for their effectiveness. No doubt, many governments frequently wish for a return to the “command position” of their colonial predecessors when the loyalty of civil servants was almost always a given even when they were not satisfied with their conditions of service and benefits.

Politicians, if given a choice, would undoubtedly prefer to have a hand free of the complications which result from the activities of civil servants and their representative organizations, in dealing with conditions of service, etc., or would prefer that such organizations be pliable and controllable by them. Many tend to treat them as impediments and irritants standing in the way of progress. However, more enlightened opinion sees employee representative organizations as necessary with the potential to contribute positively to both the setting and achieving of national goals and objectives.

And, as has been claimed:

the real challenge is a government's wish to maintain freedom to organize and the right to collective bargaining and at the same time to regulate collective action so that trade unions could play a more constructive role in labour relations. The expectation is that there will be higher labour productivity, fewer industrial disputes and disruptions, more labour peace, and a climate of labour relations that will be more conducive to development and investment. This raises the question of social dialogue among the players who should determine the road map for more consensus and co-operation in labour relations....⁴⁴

Dialogue and consultation are therefore seen as preferable to prescription and coercion in the search for viable approaches to industrial relations. Implied is a role for participants to strive to achieve harmonious working relations after due consideration and appreciation of the elements involved, which must also be of concern to the public who are invariably affected by the results and consequences of interaction between employers and employees. Conflict resolution and the promotion of harmony in industrial relations are however complicated when the government itself is involved as employer.

The effectiveness with which the government through its policies is able to promote good working relationships with its employees, may be viewed as an aspect of governance. The achievement of these ends also depends on responses from employees and their representative

organizations, and the quality of the inputs which they feed into this interactive process. They have to be prepared, as far as possible, to face-off with their employers “on an equal basis at the bargaining table,” a need which has not been altogether overlooked by the trade union movement.

With support from international agencies and other organizations, the movement has invested time and resources in education and training in the quest of coming to terms with the problems and issues of contemporary industrial relations and to effectively respond to them, which represents a departure from the portrayal of the movement in some quarters as primarily concerned with strikes as the most effective solution to problems.

As pointed out above, joint approaches with employers are now institutionalized in some states; of equal importance is the concern to have trade union education and training institutions contribute to this effort. These matters are comprehensively addressed in the report by Lutchman and Nurse which contains recommendations designed to enhance contributions from trade unions and workers representative organizations.⁴⁵ In the inter-face between workers and their employers, it is increasingly being recognized that the former have to possess the competencies to strategize to gain maximum possible benefits for their members with, of course, due regard for the survival of the enterprise in which they are employed, and the public interest. In particular, they have to develop an appreciation for the models and approaches most likely to maximize benefits to their members; whether aggression and militancy, co-operation and compromise, or some combination thereof would be the appropriate policy or strategy.

The admonition of Nurse and Best that collaborative and co-operative relationships between employers and employees are not easily achieved and that no single approach may be appropriate to address all problems should always be consciously in mind.⁴⁶ Public service employment, based as it is on important constitutional and statutory provisions, provide civil servants with access to public remedies before the courts, which are not necessarily available to private sector employees.⁴⁷

Issues of Conflict in the Guyana Public Service

Civil servants and their representative organizations have boldly resorted to these remedies in vindication of their protection and rights in some

jurisdictions, markedly so in Guyana. The Guyana Public Service Union (GPSU) has initiated court action to combat what they perceive as threats to their very right to exist and operate effectively, or at all, by both acts of commission and omission by the executive branch of Government. One such action was brought against the Trade Union Recognition and Certification Board for failing to issue a certificate of recognition within the terms of the Trade Union Recognition Act, for workers employed by the Guyana Forestry Commission.

The legal process was also initiated for alleged contravention of the GPSU's rights and freedoms guaranteed by the Constitution of Guyana, viz the protection of the law and a fair hearing by an independent tribunal. Further, a declaration was sought for the Chief Justice to be disqualified from sitting in a case on grounds of bias, in breaching established procedure when dealing with an application for prerogative writ.

A decision by the Government through its agencies not to deduct agency fees or union dues from the salaries of employees of the public service on behalf of the GPSU and remit the same to the union was also seen as threatening to the very existence of the union and challenged in court. The allegation was that the decision was made in bad faith, was politically motivated, discriminatory and in contravention of the Constitution. Further, the failure to hand over to the union sums already deducted from employees' salaries was interpreted as a deprivation of property of the union under the Constitution. A similar case was brought against the Minister and Permanent Secretary of the Ministry of Home Affairs for contempt in refusing to deduct and remit to the union, dues from the salaries of fire service officers who were longstanding members of the union, in defiance of the terms of a court order. The Minister's contention was that fire service officers were not public servants but part of the disciplined forces, who were not entitled to be represented by the unions.

Then there was the case in which malfeasance in public office by exercising public power for an improper purpose was brought against the Permanent Secretary of the Public Service Ministry (PSM). He had instructed other Permanent Secretaries and Heads of Departments not to deduct union dues from employees who were members of the GPSU knowing that his instruction would injure the plaintiff and cause the union irreparable loss.

Cases for unfair or illegal dismissal or termination of employment were also brought by the GPSU in defence of its members. Outstanding

in this respect was the dismissal of marshals of the Supreme Court by the Registrar of the Court. The allegation was that the dismissals were unconstitutional and in breach of the rules of natural justice. Further, issues pertaining to payment of salaries and other benefits, reinstatement and contempt by the Registrar were also involved, which ultimately engaged the attention of the Court of Appeal, although issues originally in dispute remain unsettled and continue to fester.

An action was brought by the GPSU, through one of its members, contending that a circular issued by the Permanent Secretary of the PSM was an attempt to abridge the powers of the Public Service Commission and undermine its independence since it sought to amend the constitution. It was alleged to be unconstitutional and null and void.

Employees of the Human Services Ministry, who were removed by the Permanent Secretary of that Ministry, applied for a declaration that their removal was unconstitutional, wrong in law, null and void, and for an order of reinstatement and payment of salaries and allowances. This case was on appeal to the Court of Appeal. Another case for wrongful dismissal of six employees by the Permanent Secretary of that Ministry was also before the courts.

Finally, the GPSU instituted legal process to challenge the appointment of the Chairman of the Trade Union Recognition and Certification Board as unlawful, ultra vires, null and void, and sought inter alia, to prohibit his participation in the work of the Board.⁴⁸

There are therefore a wide range of important industrial relations related issues in the civil service, capable of engaging the attention of the judiciary. However, considerations of delay and cost apart, the judicial approach has proved not to be without its disadvantages.

It does not always finally settle matters in the sense that a losing party may still harbour a sense of grievance after a decision is given. Courts of law are not institutions which decide issues to the satisfaction of all parties in dispute. The usual outcome is that one side in dispute wins and the other loses, which is unlike under some other dispute resolution mechanisms, especially mediation, frequently referred to as a “win-win” process, in that the parties themselves with assistance from the mediator, strive to reach agreement satisfactory to them, and they are free at any time to withdraw from the process.

Mediation then, and other voluntary ADR processes are generally regarded as more in consonance with achieving agreement and consensus.⁴⁹ It may well be that the extent to which courts feature in

industrial relations disputes provides a good measure of the state of the relationship between the parties, as fewer cases tend to be taken to court when relations are healthy than when they are not. This proposition would appear to be clearly supported by experience from Guyana.

A state's membership of the ILO provides an additional dimension and forum at which the resolution of disputes, grievances and complaints may be sought. It is resorted to by some unions with varying degrees of success and effectiveness as illustrated by the experience of the GPSU. The relevant process was initiated by the Public Service International (of which the GPSU is a member) on behalf of the GPSU, and demonstrates the ILO's concern to be fully briefed and supplied with information to facilitate its deliberation and decision-making. As it admonished in one case, "...governments should recognize the importance for their own reputation of formulating detailed replies to the allegations brought by complainant organizations, so as to allow the committee to undertake an objective examination" in full knowledge of the facts.⁵⁰

Apart from indicating the sanction that is likely to induce a state to remain true to its obligations under ILO Conventions, i.e. concern for its reputation the admonition evidences a desire to act in strict conformity with the rules of natural justice, the violation of which frequently features in grievances between employers and employees, and in public employment cases.⁵¹ Although the ILO generally appears reluctant to pronounce on matters while they are engaging the attention of the courts it fully appreciates that strict adherence to such a rule could well be self-defeating for as stated: "...although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration,... in view of its responsibilities its competence to examine allegations is not subject to the exhaustion of national procedures."⁵²

This is an important caveat which could be applied to ensure that cases are not lost in the inordinate time usually taken to conclude judicial proceedings. A delay in justice could be equated to a denial of justice, a condition which more often than not results in deterioration in relationship. Requests by the ILO to be kept informed of the progress of judicial proceedings, when complied with in a timely manner, are potentially useful safeguards against such tendencies. Also where judicial decisions are consistent with the terms of conventions, the ILO is cast in the role of advocate of faithful and timely implementation since equivocation, refusal to act and delay in implementation (complaints that are frequently

addressed to the ILO) could equally result in situations of injustice.

In general then, the ILO serves as, *inter alia*, an important forum outside of the state machinery where justice is sought by and between the public employer and its employees. The danger of the abuse of power is ever present in governmental operations and processes. Institutions which appear to be theoretically pure on paper not infrequently yield unintended and unexpected results in their interface with human beings. The ILO helps to “keep the parties honest” and consistent in their relationship by directing attention to the conventions to which they subscribe and their obligations under them. A direction such as the need for impartiality, fairness, constructive participation in resolving conflict and differences on issues, where acknowledged and adhered to, could enrich the industrial relations process⁵³

But state parties do not all treat the ILO with the same level of respect and urgency and in some instances do not fully appreciate the implications of their membership of it. Thus, on one noted occasion, the ILO found it necessary to remind a government that its “comment that it responds to the complainant’s allegations purely out of respect for the ILO, the Committee notes that, when a state decides to become a Member of the Organization, it accepts the fundamental principles embodied in the constitution and the Declaration of Philadelphia including the principles of freedom of association....”⁵⁴

This should not be altogether surprising as even at the domestic level some governments more readily than others, accept and implement judicial decisions even where they are adverse to them. This is naturally a powerful influence on public attitude to law and order. The state machinery and those in control of it carry a heavy burden to set the tone of industrial relations in the civil service and to obedience to the law generally. In brief, good industrial relations tend to be correlated with good governance of which may be considered a subset.

Conflict and Power

The need for institutions to be relevant and functional to the requirements of the states of the Commonwealth Caribbean is readily appreciated in a field such as industrial relations which is prone to conflict. The task of reconciling and harmonizing the interests and claims of employers and employees, to their benefit and, of course, that of the public, is at the

centre of industrial relations, and poses a number of serious challenges and problems. As Gomes has stated,

The need to understand power relations as they pertain to the pursuit of national interests, goals and objectives, or between social classes, segments or interest groups in various social formations at distinct periods of history, is indispensable for adequate discussion on how management-labour relations manifest themselves – whether in the public sector or private enterprise.⁵⁵

As seen above, problems are accentuated where political considerations are an essential feature of the process, especially where the contest for political power is intensive and divisive. The role of the civil service in the formulation and implementation of public policy and in the delivery of social goods and services remains important to the system of public administration and the implementation of public policy. Notwithstanding changes in thinking and approaches to development, from emphasis on dominant or, at any rate, significant involvement by state and governmental agencies in economic enterprises, to emphasis on the private sector as “the engine of growth and development,” the public service remains among the national institutions with the capacity to either facilitate or frustrate the achievement of national goals and objectives. Hence, the importance of promoting and maintaining good and healthy industrial relations in the public service.

The shift in the relationship between the public employer and public employee and the need to redress the balance in favour of the latter by introducing constitutional, legislative and other institutional frameworks, while restricting the powers and discretion of the former, have not always benefited or satisfied the aspirations of workers, for the introduction of innovation and change usually comes at a price.

Thus, conflict resolution and avoidance mechanisms, such as commissions and tribunals have, in some cases, compounded rather than solved problems. Issues related to their constitution, composition and appointment apart, they often fall victim to pressures similar to those which plague others they were designed to protect. Pressures from the environment in which they have their being and function may be so powerful as to have a distorting and dysfunctional effect on them and the results which they produce, thereby necessitating a re-examination of their original purpose.

Differences in performance levels of civil servants among states may be explained by differences in environmental factors. The impressive results achieved by some may be attributed in large measure to the ability of their governments to come to terms with, and successfully manage the effects of their historical, social, economic and political realities.

Such states also generally appear to be innovative and inventive in dealing with their problems, but it has to be acknowledged that the environmental settings of some states are infinitely more complex and challenging than those of others. Constitutional and other formal mechanisms to address these issues, and create an order more conducive to promoting national rather than sectional or partisan interests has not always yielded satisfactory results as may be illustrated from Guyana in the context of industrial relations, and more generally.⁵⁶

Attempts at constitutional reform have been more thoroughgoing in Guyana than in other Commonwealth Caribbean states, and the claim is made that the state now has the most advanced and progressive Constitution in the region, if not in the world. However, the hyperbole of this claim is readily apparent when the true test of the utility or effectiveness of institutions is applied to the Guyanese reality.

The differences between institutions on paper, (i.e. in a static state), as opposed to them in action, (i.e. in a dynamic state), can be quite stark; and it is only after an institution is involved with concrete problems that its attributes may be truly revealed. Judged by results achieved and other manifestations, so far, there are strong grounds for concluding that institutional changes through constitutional reform has not been an unqualified success. Admittedly, reform has addressed and improved important facets of public business and practice in Guyana, but it has at the same time spawned a number of serious, previously non-existent, problems. Further, the reform exercise remains incomplete as important provisions of the Constitution are yet to be put in place and activated.

The bugbear of delays which is a major cause of frustration is very much alive, with potentially serious consequences. In this respect, it is well to bear in mind the following admonition: "... when the state's recognizably public institutions such as law enforcement, the military and the judiciary are rendered or even perceived to be impotent, instability is fuelled and society's ethnic cleavages are exposed and widened ... particularly in plural societies with fractured ethnic relations simmering just below the surface."⁵⁷

One clear lesson from this is that expectations that desired behaviour could be fashioned by or emerge from changes in institutions alone may be misplaced. In practice, the opposite usually occurs, i.e. the existing culture; social structure and codes of the society; and social groups (both racial and ethnic and others) with which persons identify; the interests of those who are required to provide inputs (human) into state institutions etc, help to shape them and determine the extent to which they remain faithful to their original design and purpose.

The adoption of more structured, formal mechanisms and means of defining rights and obligations, and procedures to resolve differences between parties in dispute, offers no single or simple blue-print that can be successfully applied throughout the region. It is therefore prudent to factor into the working of institutions these less formal elements.

The political culture of the region is at times identified with hostile or ambivalent relationships, which are not conducive to cooperation and collaboration even where commonalities of interest, history, culture and language appear to favour closer working relations and where, in other settings, differences of greater magnitude do not militate against such relationships.

The tendency to adopt hard and uncompromising positions on issues, and failure to compromise to settle differences in a timely manner, are blamed on historical factors and inherited institutions which are premised and structured on the existence of differences and divisions – of roles and of behaviour-on the part of those who occupy and function in them; but to some this is a mark of immaturity and underdevelopment.

Increasingly, within recent times, the suitability of the very foundation of the system of government, i.e. the Westminster system with its emphasis on separation and differences between the party which forms the government, and the one in opposition, based on a plurality of approach in conceptualizing and dealing with public issues is criticized for its contribution to the exacerbation and accentuation of social and political divisions which flow naturally from its configuration.

The exploration of alternative forms which advocate the sharing of power, more inclusionary forms of government and propose that after an election the “winner does not take all,” is actively undertaken in some states. In this context, the following statement on weakness of the two party Westminster system is worth noting:

What is actually being manifested ... are the effects of deep-seated distrust despite past attempts between the two parties to work together. What is even more disturbing is that the two major parties behave as though governing the nation is more a right than a privilege after elections are over, with the winner being declared sole-owner – not occupant – of the government, to do whatever it feels like doing. The people are mere spectators, who are sometimes (mis)used as supporters⁵⁷

The dissipation of energies in sterile discussion, fault-finding, blaming others for failures, and the scoring of debating points rather than striving for agreement and consensus on matters of national import are all identified as part of this posture. In the process, suggestions of narrow self-interest are effectively rationalized and masked, but are never a remote possibility. Institutions tend to be relevant and efficacious, or otherwise, to the extent that they accord with the prevailing political and/or social culture, and as is stated:

When the participants in the process are prepared to assume their role of being accountable, and the institutions are resourced properly, the framework will work in practice; In weak states “policies decided on are often not enforced, if they are enacted at all;” “...just because state legislation exists it does not necessarily mean that it is enforced.” O’Brien ...refers to this process as a ‘state of nothingness’ in which rulers have become adept in the ‘show’ and ‘display’ of “the symbols of the rational – legal which give legitimacy or the appearance of substance to the regime and state....⁵⁸

Cultural influences permeate the society at all levels and few, if any, institutions can be effectively insulated from them. It is unlikely that where serious divisions, tensions, conflict, disagreements, the absence of cohesion, and such like, exist at the national level, they would not be replicated, and influence behaviour and activities at other levels of society.

One implication from this would appear non-controversial, that is, that reform and improvement efforts should be directed at all levels; the nexus and interaction between institutions make this imperative. By way of illustration, because as noted above, in some systems the presence of the courts looms large in the industrial relations process, the culture of delay which generally characterizes judicial activity would inevitably contribute to the unhealthy state of industrial relations, and the frustration of workers and their representative organization. Courts and other

“higher level institutions” are expected to serve as exemplars, and set standards worthy of emulation by those in subordinate positions; when they fail to do so, the consequences are usually negative.

Emphasizing democracy

Reform of formal systems to improve efficiency and effectiveness is often emphasized to the neglect of these less tangible elements, and to the detriment of the industrial relations process and the public interest. The danger of emphasis by the political directorate on their possession and exercise of formal state power to the exclusion of effective consultation and participation by stakeholders (including the public bureaucracy) in decision making resulting in isolation and hostile relations between government and these groups is ever present, and needs careful handling.

The belief that a civil service should be compliant and susceptible to the influence and control of the political party in government may be considered more consistent with the requirements of the colonial period than those of present-day circumstances. Arguably, acts which weaken and undermine public servants and their representative organizations in the belief that this is more in keeping with the effective exercise of political power are to be questioned.

The emphasis on democracy is not only ubiquitous but its associated values are interpreted as having connotations for dialogue, consultation and participation. The unilateral exercise of governmental power is increasingly questioned on grounds of both legitimacy and effectiveness. At any rate, a unilateralist approach does little to promote good relations and is, of course, not peculiar to relations with the civil service. It arises in part from notions such as that power should be used to govern effectively, with little or no appreciation of the need for counter-balancing forces to prevent its abuse.

It should be borne in mind however, that the civil service is not intended to merely be the handmaiden of government but at some levels is expected to serve as a realistic and enlightened check on the exercise and likely abuse of power, and help to promote and perpetuate best practices in governance. These include values such as good faith; mutual respect; trust; truthfulness; accountability; respect for the rule of law; consultation and participation in decision-making; and appreciation that

public service, whether at the political or administrative level, is not intended to provide opportunities for self-aggrandizement. They are all identified as elements of good governance, and have, in part, to be under the guardianship of the public bureaucracy, especially in circumstances where the relinquishing or loss of office seriously disadvantages political incumbents with few options to earn a livelihood.

Community Interest and Industrial Relations

Good and harmonious industrial relations in the civil service, as elsewhere, requires that the inevitability of conflict be appreciated but also that any such situation could be overcome or assuaged where the parties in disagreement are imbued with a sense of community and commonality of interest, and appreciate that the alternative to collaborative and co-operative relations may be the continued festering of wounds and the ultimate loss or destruction of the very entity which the protagonists profess to be struggling to preserve or develop as the case may be.

Many in society, including those in public life, remain focused on the past to the point where this effectively dominates how problems and issues are addressed. Lessons of history are, of course, always relevant and important because of their likely contribution to a better understanding of present and future. But in some instances persons appear to be frozen in time to the extent where past events unduly influence their perceptions.

Rather than, for example, using historical events as a base on which to ground understanding of past errors and mistakes to be avoided in future dealings and moving situations progressively forward, policies or strategies are followed of anchoring the future in the past to rationalize and explain away current failures or shortcomings, even when the past reaches back to decades, and could only at best be considered as having a remote, spurious or tenuous connection with the present.

Charges and counter-charges may be freely exchanged even to the extent of putting the patriotism and integrity of others in issue, all of which reduce the possibility of co-operation and collaboration even where it may be represented that the very survival of the state or nation is at stake. In such circumstances, dialogue is hardly a viable strategy or option as it is problematic for parties in disagreement to meet to identify, define and demarcate their differences even with the assistance of

neutral third parties. Many such attempts falter and fail because of the inflexibility engendered by inherent political expediency, opportunism and vested interests.

Industrial relations, involving as it does both formal and behavioural elements with deep roots in the political system and its related culture, values and processes, of which it is considered a subset, must of necessity mirror the dominant characteristics of that system. This correlation suggests that the search for improvement in industrial relations in the public service is unlikely to succeed if the focus is exclusively on personalities; their interaction and activities as participants in the process; and the appropriateness of formal arrangements or structures.

Reform and improvement at the wider political level and system are required as prelude and prerequisite for change and improvement at the sub-system level. The persistent problem is for this to be recognized and accepted as a challenge in the management of public affairs including, inter alia, the identification of national goals and objectives; the achievement of broad consensus around them; and the mobilization of resources to achieve the goals and objectives, in which process citizens feel that they are treated fairly and with justice. Where these somewhat ideal conditions and patterns obtain, other institutions tend to follow suit, and disharmony and conflict are minimized and a good environment is provided in which industrial relations could thrive.

NOTES

1. See, generally, "Public Administration in the Commonwealth Caribbean: Evolution, Conflicts and Challenges" by G.E. Mills; and "Towards the Reform of the Public Service: Some problems of Transitional Bureaucracies in Commonwealth Caribbean States" in G.E. Mills, editor, *A Reader in Public Policy and Administration* (Institute of Social and Economic Research: University of the West Indies, Mona, Jamaica, February 1990), pp. 1-21, and pp. 72-81, respectively.
2. West Indian Royal Commission Report (HMSO, London, 1945), Cmd. 6607. See also O. Nigel Bolland, *The Politics of Labour in the British Caribbean: The Social Origins of Authoritarianism and Democracy in the Labour Movement* (Ian Randle Publishers; Kingston, Jamaica; James Currey, Oxford; Markus Wiener Publishers, Princeton, 2001), Cap. 5.
3. Mills, *op.cit.*, p.1
4. See, generally, Bolland, *op.cit.*, Cap., 6
5. See, for example, Ashton Chase, *Industrial Relations* (Guyana Trades Union Congress, Georgetown, Guyana, 1982), pp. 70-72. This position at common law was however alterable by legislation.

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6. Chase, *Ibid.*, cap. v
7. *Ibid.*, pp. 84-85
8. See, generally, Harold A. Lutchman, *Interest Representation in the Public Service: A History of the Guyana Public Service Association* (GPSA, Guyana, 1973), pp.9, et seq.
9. *Ibid.*, pp. 2-3
10. *Ibid.*, p. 3
11. Chase, *op. cit.*, p. 84
12. *Ibid.*, p.90
13. *Ibid.*
14. Chase, *op. cit.*, pp 85, et seq.
15. *Guyanese Workers 1961 – 1991 with emphasis on the sugar industry* (Inside News Publications Inc. New York, 1997), pp. 16, et seq.; and British Government White Paper on the suspension of the Constitution of British Guiana (20 October, 1953) paras. 15-21 in *Stabroek News*, 14 May, 2005, p. 19.
16. *Ibid.*, para. 19. The proposed legislation required that employers “recognize for purposes of negotiation any union which obtained the support of 52 percent of the workers in an industry by ballot.”
17. *Ibid.*, para 12 in *Stabroek News*, May 13, 2005, p. 19.
18. This criticism of institutions has extended to the relevance of what is at times referred to as “the majoritarian Westminster system of government “as embodied in the independence constitutions of the states of the region. Some have introduced changes in their constitutions (Guyana being outstanding in this respect) ostensibly to more appropriately address problems peculiar to their social, economic systems. However, the results obtained have not always been encouraging. See, for example, R. James and H. Lutchman, *Law and the Political Environment in Guyana* (IDS, University of Guyana, 1994), Cap. 4 et seq.; H. Lutchman, “An Experiment that Failed: Issues and Problems of Constitutional Change and Reform in Guyana;” *Transition*, Issue 19, 1992; H. Lutchman, “The Westminster system in the Commonwealth Caribbean: Some Issues and Problems;” *Transition*, Issue 24, February, 1995, pp. 1-23.
19. Grace Strachan, Director, ILO Sub-regional Office for the Caribbean, Introductory Remarks at the *Caribbean Sub-regional seminar on Employment and Collective Bargaining in the Civil Service*, Antigua and Barbuda, May 19-23, 2003, p. 2.
20. *Ibid.*
21. See, for example, Lutchman, *Interest Representation in the Public Service*, *op. cit.*, caps. III – V
22. See, generally, “Employment and Collective Bargaining in the Civil service,” *op. cit.*
23. The IMF and Good Governance: A Factsheet – April 2003
24. See, for example, Lutchman, *The Westminster system in the Commonwealth Caribbean*, *op. cit.*, pp. 22-23.
25. See the *Commonwealth of Dominica Constitution Review Commission Report*, February, 1999, p. 34.
26. *Ibid.*, p. 34.
27. Chase, *op. cit.*, p. 91.
28. In the case of Guyana such delays may be exacerbated by the effects of constitutional provisions requiring that certain appointments, such as those of Chancellor of the Judiciary and Chief Justice, be made by the President with the agreement of the Leader of the Opposition in which case securing the relevant agreement may be a protracted exercise in a society characterized by divisive politics. Because of unexplained reasons a particular appointment, such as that of Ombudsman, as is at present the case, is not made notwithstanding its constitutional status. See

- Constitution of the Co-operative Republic of Guyana* (with Amendments to 12th August 2003), Art. 127 (1) and R. James and H. Lutchman, *Law and the Political Environment in Guyana* (IDS, University of Guyana, 1994), Cap. 8.
29. See, for example, F.E. Nunes, "The Nonsense of Neutrality:" Mills, *op. cit.*, pp. 313. et seq.
 30. See, "The Public Service Commission of Jamaica: Past, Present and Future Challenges" by Charles A. Jones, Chief Personnel Officer, Office of the Services Commissions, Jamaica, May 2003, presented at the *ILO Caribbean Sub-regional Seminar on Employment and Collective Bargaining in the Civil Service, Antigua and Barbuda 19-23, May 2003*, p.5.
 31. *Ibid.*, pp. 5-6.
 32. *Ibid.*, p. 6.
 33. *Ibid.*, pp. 7, et seq.
 34. *Ibid.*
 35. See, for example, "Delegation of Powers of the Public Services Commission to Chief Executive Officers: The Belize Experience" by Orton M. Clarke, Deputy Chairman, Public Services Commission (n.d).
 36. As the GPSU has recorded: '... when the People's Progressive Party returned to office (October 1992) a letter of congratulations from the GPSU to President Dr. C.B. Jagan, extending warmest congratulations "and assuring the just elected President of the Union's commitment to a healthy and peaceful industrial climate in pursuance of the best interest of both our membership and the country" remained unacknowledged for five months and only after the omission was brought to President Jagan's attention by the TUC at a meeting with the President.' – *Country Report to the International Labour Organisation on Employment and Collective Bargaining in the Civil Service, Antigua and Barbuda, 19-23 May 2003*, p. 4, and more generally pp. 3-6. For the origins of the difficult relationship between the PPP in government and the trade union movement in Guyana see, Lutchman, Interest Representation in the Public Service, *op. cit.*, caps. iv, et seq.
 37. See, generally, *International Labour Standards: A workers' education manual* (fourth revised edition) ILO, Geneva.
 38. See S.J. Goolsarran, (Senior Specialist on Industrial Relations and Labour Administration, ILO Caribbean Office), "International Labour Standards and Labour Relations in the Caribbean Public Service," (A Presentation at the Caribbean Sub-regional Seminar on Employment and Collective Bargaining in the Civil Service, Antigua and Barbuda, May 19-23, 2003), pp. 3, et seq.
 39. As the GPSU states, among the two major challenges confronting it in its relationship with the Government of Guyana, "... are Agreements entered into by the government with International Financial Agency affecting the conditions of service of our members without any prior consultation with the GPSU." The union describes this as "the most grievous." – GPSU Country Report to the ILO, *op. cit.*, p. 5.
 40. *Report on a Strategic and Operational Review of Caribbean Labour Colleges Commissioned by the International Labour Organisation and the Inter-American Development Bank*, prepared by Professor Harold A. Lutchman and Dr. Lawrence Nurse (submitted to the ILO Caribbean Office, Port of Spain, Trinidad and the IDB, Washington, DC, March 2002), p. 62.
 41. As it stated in one of the government's responses to complaints made against it by the GPSU: "... historically, the GPSU has only called strikes when the currently ruling party has been in office and never went on strike while the previous regime was in power, despite anti-worker legislation adopted during that time" – vide Complaint against the Government of Guyana presented by PSI on behalf of the GPSU, para., 705.

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42. Goolsarran, "International Labour standards" etc., *op. cit.*, p. 6.
43. *Ibid.*
44. *Ibid.*, p3.
45. Lutchman and Nurse, report, *op. cit.*, pp. 57, et seq.
46. L. Nurse and S. Best, "Public Policy and Consensus Building in Workplace Management: Barbados," in Noel Cowell and Clement Branche (editors), *Human Resource Development and Workplace Governance in the Caribbean* (Ian Randle Publishers, Kingston, Jamaica, 2002), p. 200.
47. See Carl Rattray, "Labour Law and Statutory Arbitration in the Caribbean" in Cowell and Branche, *Ibid.*, pp. 390, et seq.
48. Many of these cases were also deliberated upon by the ILO and its competent organs whose reports contain the Government's response to the union's allegations and the findings and the recommendations of the ILO thereon. – see Complaint against the Government of Guyana, etc., para. 703, et seq.
49. See, generally, Albert Fiadjoe, *Alternative Dispute Resolution: A Developing World Perspective* (Cavendish Publishing, Ltd, London, 2004); George Kirkaldy, *Industrial Relations Law and Practice in Jamaica* (The Caribbean Law Publishing Company, Kingston, Jamaica, 1998), pp. 47, et seq.
50. See, Complaint against the Government of Guyana presented by the Public Service International (PSI) on behalf of the Guyana Public Service Union – Report, Case No. 2187, para 116. According to one source Guyana became a member of the ILO in 1966 – see Samuel J. Goolsarran, *The System of Industrial Relations in Guyana* (ILO – Caribbean, 2003). Also listed in this publication are the ILO Conventions which have been ratified by Guyana. The reference in the text is to the work and activities of The Committee on Freedom of Association – vide Eric Gravel et al, *The Committee on Freedom of Association: Its impact over 50 years* (ILO, 2001).
51. See Report of Committee.
52. *Ibid.*, para 116.
53. *Ibid.*, para. 721.
54. Case No. 2187, para 116.
55. P.I. Gomes, "The Government as Employer: Challenges and Prospects" (Programme for the Promotion of Management – Labour Cooperation, 2nd Caribbean Enterprise Forum, 23-25 January 2003, Jamaica), p. 1.
56. The industrial relations systems in both Guyana and the Commonwealth Caribbean are admirably described by Goolsarran. See Samuel J. Goolsarran, *The System of Industrial Relations in Guyana*, *op. cit.*, and by the same author *Caribbean Labour Relations Systems: An Overview* (ILO Office – Caribbean, 2002).
57. "Guyanese are becoming more aware of the role of foreign involvement" – A letter by Emile Mervin: *Stabroek News*, 30 August, 2005, p. 17.
58. Letter by Dr. Claude Chang, "Rulers have become adept in the display of the symbols of rational policies," *Stabroek News*, August 31, 2005, pp. 8 and 27.

11

Industrial Relations in the Public Service of Trinidad and Tobago

Sandra Marchack

Industrial Relations practice in the public service of Trinidad and Tobago can be said to have commenced with the signing on 22 November 1962 of the Civil Service Arbitration Agreement between the Government and the then Civil Service Association. At that time the civil service comprised the monthly-paid employees in the following areas of the government service:-

- Staff members of the Ministries and Departments.
- Police Officers of the First Division; i.e., those of the rank of Assistant Superintendent and above.
- Teachers in Government Secondary Schools.
- Officers of the Prison Service.
- Officers of the Fire Service.

The Civil Service Association was accorded recognition a decade earlier as the representative body for the above-mentioned categories of employees, but the scope of recognition had been so limited as not to constitute anything more than a right to make representations which might or might not receive any consideration. Salaries and other terms and conditions of employment were fixed by the Governor based on recommendations of a Commission of Enquiry, headed by an official from the United Kingdom and appointed by the Governor for this purpose, such as the Ritson Commission named after its Chairman, Sir Edward Ritson, which reported in August 1954, in line with its Terms of Reference as follows:-

- To review and make recommendations on changes in remuneration in all grades of the Public Service including Primary School Teachers which are necessary for an efficient and contented Administration.
- To review and make recommendations on changes in the structure,

recruitment and training of the Civil Service in order to improve efficiency and economy in Administration.

- To review and make recommendations on any other matters relevant to the efficient, economical and contented administration of the Public Service.

This Commission's recommendations were generally accepted and implemented by the Government. The practice had developed of regularly appointing such Commissions at five-yearly intervals, so that quinquennial salary reviews in the public service had become the norm and in this regard were to have an impact on the legislation which was to follow.

The 1950s saw significant changes in the political environment characterized by the upsurge of aspirations towards full independence after the introduction, at the start of the decade, of a system of internal self-government. In addition, the Government that was in power in 1959 when the post-Ritson salary revision was due, was strongly advocating a process of indigenization while the country's trade unions, watching the political developments and, to a great extent, participating in them, saw the opportunity to advance their own agendas.

Against this background the recommendations of the Commission of Enquiry that was appointed in 1959 were severely criticized and the Government set up another Commission to do a further review. In the event, certain temporary "interim" arrangements were made in view of the failure to effect salary adjustments for the civil service after the usual five-year interval. It was as the result of disagreement over these interim arrangements, and in the context of the new relationship between Government and the representatives of its employees, that the arbitration agreement referred to in the opening paragraph above was entered into.

While the Commission-of-Enquiry method of fixing salaries and other terms and conditions had been working, the most significant role played by the Civil Service Association had been in the development of the process of Whitleyism in the country. The system of Whitley Councils had been transported from the United Kingdom where it had been introduced during the war as a method of improving the output of workers in munition factories. It was a system of consultation between representatives of management and of employees through which the latter's concerns regarding work arrangements and facilities were addressed.

The method instituted among British Caribbean colonies was to have a Departmental Whitley Council which dealt with matters peculiar to each department of government and a Central Whitley Council to which issues that remained unresolved at the departmental level could be referred. The various heads of departments chaired proceedings at the departmental level while the Colonial Secretary was Chairman of the central body which met with the President and Executive Officers of the Civil Service Association. However, there was no finality attaching to the deliberations of the Central Whitley Council as its decisions were subject to approval by the Governor.

The impact of the International Labour Organization

The political changes alluded to above were to have their culmination in the attainment of Independence in August 1962. The Government of the newly independent Trinidad and Tobago applied at once for membership of the United Nations and various Agencies including the International Labour Organization (ILO). Action was immediately taken to ratify those ILO Conventions, the application of which had been extended to Trinidad and Tobago by the United Kingdom when it had the power to do so in accordance with the Constitution of the ILO. The most important of these were, of course, ILO Convention No. 87 which was concerned with the Freedom of Association and Protection of the Right to Organize, and ILO Convention No. 98, which was concerned with the Right to Organise and Collective Bargaining.

Acting in accordance with its acknowledgement of the importance of these conventions, the Government of newly-independent Trinidad and Tobago, in the absence of any formal procedures for the conduct of negotiations with the trade union that represented the civil service, had entered into the aforementioned Arbitration Agreement of November, 1962. This agreement turned out to be quite short-lived.

The introduction of Industrial Relations Legislation

Notwithstanding its recognition of the importance of ILO Conventions No. 87 and No. 98, the Government incurred the wrath of the trade union movement when, in the pursuit of economic development and seeking to achieve industrialization by encouraging investments from

economically advanced countries, it introduced into Parliament and passed in 1965 the Industrial Stabilization Act (ISA). This Act was designed to ensure the maintenance of an industrial relations climate favourable to overseas investors but was considered by the trade unions to be very unfavourable to their interests.

The ISA, brought an end to the voluntary system of industrial relations which had been adopted from the English practice. It gave legal status to the conciliatory role of the Minister of Labour and also formalized a system that provided for what are regarded as the cornerstones of industrial relations, namely:-

- Trade Union Recognition;
- Collective Bargaining;
- Binding Agreements; and
- Procedures for the resolution of disputes including final adjudication.

However, this Act also included restrictions against industrial action either by employers or trade unions and this aspect made it extremely objectionable to the labour movement which commenced proceeding against it both through the law courts, on the basis of a constitutional motion, and to the ILO claiming that it infringed ILO Conventions No. 87 and No. 98. The constitutional motion reached the Privy Council which ruled against the claimant, but the ILO's Governing Body Committee on Freedom of Association considered that certain provisions of the Act were not consistent with the relevant conventions. The Act was subsequently repealed and replaced by the Industrial Relations Act, (the IRA). With respect to the civil service, the Act excluded its members, as public officers, from its provisions. This was done by excluding such persons from the definition of "workers" in the interpretation section of the Act.

Notwithstanding the strong objections to the ISA, expressed by the umbrella body for the country's trade unions, the Trinidad and Tobago Labour Congress, the very Congress presented the argument to the Government that those of its employees who were public officers and as such were specifically excluded from the scope of the ISA, should have the benefit of a law-based system of industrial relations as was provided for workers in the private sector. It was put forward that legal arrangements for collective bargaining should be introduced into the Civil Service with an appropriate mechanism for the final resolution of

disputes, similar to the Industrial Court established by the ISA, making it possible to rescind the Arbitration Agreement of November, 1962.

Legislation for the Public Service

The Government acceded to the request for legislation to govern the conduct of industrial relations in the civil service. In doing so, it took the opportunity to separate the various services which, until then, had together been regarded – without being prescribed by law – as the Civil Service. The relevant legislative enactments by Parliament in 1966 were:

- The Civil Service Act;
- The Education Act;
- The Police Service Act;
- The Prisons Service Act; and
- The Fire Service Act.

The Civil Service Act established the Personnel Department, with the Chief Personnel Officer (CPO) as its Head, and the long title of the Act sets out its scope in the following words:-

An Act to make provision for the establishment and the classification of the Civil Service, for the establishment of a Personnel Department, for the establishment of procedures for negotiation and consultation between the Government and members of the Civil Service for the settlement of disputes, and for other matters concerning the relationship between the Government and the Civil Service.

Section 13, which establishes the Personnel Department, states:-

- 13.(1) There is hereby established for the purposes of this act a Personnel Department, which shall be under the general direction and control of the Minister to whom is assigned responsibility for the administration of that Department.
- (2) The staff of the Personnel Department shall comprise:-
 - (a) the Chief Personnel Officer who shall be the Head of the Personnel Department; and
 - (b) such number of civil servants as may be assigned to the Personnel Department.

The powers and duties of the department are given by Section 14 (1) of the Act which reads:-

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14. (1) The Department shall carry out such duties as are imposed on it by this Act and the regulations and in addition shall have the following duties:
- (a) to maintain the classification of the Civil Service and to keep under review the remuneration payable to civil servants;
 - (b) to administer the general regulations respecting the Civil Service;
 - (c) to provide for and establish procedures for consultation and negotiation between the Personnel Department and an appropriate recognized association or associations in respect of:-
 - (i) the classification of offices;
 - (ii) any grievances;
 - (iii) remuneration; and
 - (iv) the terms and conditions of employment.

It is particularly important to take note of Section 15 which states:-

15. Notwithstanding Section 13(1) in the exercise of its duties and functions under Sections 14, 16, 17, 18 and 19 (1) the Personnel Department shall be subject to the direction of the Minister of Finance.

Sections 16, 17, 18 and 19(1) outline processes relating to consultation and negotiation; the management of disagreements and the recording of agreements.

The significance of recorded agreements is shown by Section 19(2) which reads:-

19. (2) Any agreement recorded and signed in accordance with subsection (1) shall be binding upon the Government and the civil servants to whom the agreement relates.

The four (4) other Acts listed above impose the same powers and duties on the Personnel Department in relation to the respective Services and, like the Civil Service Act, provide for “consultation and negotiation between the Personnel Department and an appropriate recognized association or associations” over the matters shown in Section 14.(1), (c), (i) to (iv) quoted above.

The use of standard industrial relations expressions such as “collective bargaining” “collective agreement” and “recognized union” have been avoided in these Acts in which the procedures for the resolution of disputes differ from those in the ISA or IRA. These distinctions were by the peculiar status of the employer of the persons concerned, that is, the Government, which could neither “hire” nor “fire” its employees and was therefore in a very different position from private sector employers whose functioning in the field of industrial relations was governed first by the ISA then the IRA.

The role of the Service Commissions

The need to distinguish between Government, as employer, and the employer in the private sector arises from the existence of the Service Commissions established under the Constitution of Trinidad and Tobago. There are four (4) of these Service Commissions, namely:-

- The Judicial and Legal Service Commission;
- The Public Service Commission;
- The Police Service Commission; and
- The Teaching Service Commission.

Each of these Service Commissions is given “Power to appoint persons to hold or act in public offices... including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices”. By an amendment made to the Constitution in 2000, the Public, Police and Teaching Service Commissions were empowered, in addition, “to enforce standards of conduct on such officers”. The expansion in 2000 of the functions of the three Commissions named above did not extend to the Judicial and Legal Service Commission and it must be pointed out that the Judicial and Legal Service Act which was passed in 1977 establishing that Service, makes no reference to the Personnel Department or the Chief Personnel Officer. The Legal Officers of Government had previously fallen within the Civil Service but were removed by the 1977 Act.

The review of salaries and other conditions of service of the holders of the judicial offices and legal offices that fall under the Judicial and Legal Service Act is the responsibility of the Salaries Review

Commission. This body was established by the Republican Constitution in 1976 and is empowered to perform these functions in respect of the office of the President and the holders of such other offices as may be prescribed.

The range of responsibilities of the Service Commissions clearly indicate the possibility for overlapping of their functions with those of the Personnel Department. This must raise concerns over the relationship existing between the Personnel Department and the Service Commissions Department (which is the civil service supporting organization for the Service Commissions) and particularly gives rise to the question of whether there is conflict between these two Departments.

A particularly important aspect of the interfacing between the two departments stems from the need for the Personnel Department to provide criteria to be used by the Service Commissions in the decision-making process. For example, the Personnel Department is responsible for drawing up the job specifications used in the selection process for making appointments. In addition, the rules governing the behaviour of officers are the responsibility of the Personnel Department and are used by the Commissions in discharging functions relating to the exercise of disciplinary control and removal from office.

While the nature of their respective functions can produce a measure of friction, these Departments have avoided the development of any undue conflict largely by lubricating their inevitable interaction with a great deal of understanding and professionalism. Due credit for this must be given to their respective and successive Heads: the Director of Personnel Administration who heads the Service Commissions Department and the Chief Personnel Officer mentioned above.

The Salaries Review Commission - Scope and Procedure

The Chief Personnel Officer, as Head of the Personnel Department, serves as the Secretary to the Salaries Review Commission (SRC). Section 141 of the Constitution provides for the Salaries Review Commission, “with the approval of the President”, to “review the salaries and other conditions of service” of the holders of certain offices mentioned in the section – including that of President – as well as “the holders of such other offices as may be prescribed”. As mentioned earlier, the offices in the Judicial and Legal Service have been so

prescribed by the Judicial and Legal Service Act.

The other offices that are prescribed can be divided into three (3) categories, as follows:-

- (i) Political offices - being those of the national parliament and of local government bodies covered by legislation governing the representation of the citizenry;
- (ii) Offices of the management of the public service, the holders of which are employees of the government; and
- (iii) Offices of the management of statutory agencies, the holders of which are employees of the particular agencies.

The holders of the offices at (ii) and (iii) above are those defined by Article 1.2 of the Labour Relations (Public Service) Convention, 1978, ILO Convention No. 151, as “high level employees whose functions are normally considered as policy-making or managerial” and who can be regarded as having the status of exceptions from the guarantees provided for in the said Convention. Particular attention needs to be given to the position of the members of the Legal Service, of whom a minority would be categorized as on par with those at (ii) above while the majority are in the position of being entitled to the guarantees provided for in ILO Convention No. 151.

In carrying out its reviews, the SRC invites office holders to submit such proposals as they wish to make regarding their salaries and other terms and conditions of service together with the rationale for such proposals with supporting data. The SRC sometimes invites office holders to hold discussions on their proposals, mainly for purposes of clarification. After due consideration, and having made requisite analyses and comparisons, the SRC submits a report to the President embodying its recommendations on the salaries and other terms and conditions of service to be applicable to the respective office holders. Such report, after consideration by the Cabinet, is laid on the table of both Houses of Parliament, in accordance with the provisions of Section 141 (2) of the Constitution.

Where the recommendations of the SRC do not find acceptance among office holders, there is no established legal process through which the issue may be addressed. However, as has been done in a number of cases, office holders may communicate their concerns to the SRC through the relevant Ministry, which may seek the approval of the

President for the SRC to review the matter. There is, of course, no guarantee that the particular terms and conditions would be varied or varied to the satisfaction of the office holder/s.

In the case of the non-managerial personnel of the Legal Service i.e. the general body of lawyers employed by the State, there have been occasional “sick-outs” and withdrawal of enthusiasm to demonstrate dissatisfaction over terms and conditions of employment. This notwithstanding, the normal procedure by which the SRC would review terms and conditions is strictly observed and unless so directed by the President, no review of the matter would be undertaken.

On the Scope of work of the Personnel Department

The previously mentioned five Acts relating to the public service all require that upon reaching agreement after consultation and negotiation on any of the matters falling within the scope given to them by the Acts, the Personnel Department and the appropriate recognized association are to prepare a written agreement to be signed by the CPO on behalf of the Minister of Finance and by a designated representative of the appropriate recognized association. The Acts also specify that such a signed agreement is binding upon the Government and the Public Officers to whom it relates.

The Civil Service Act established a Special Tribunal, membership of which is drawn from the Industrial Court. The Tribunal is empowered to “hear and determine any dispute” referred to it under the Act which states in part: “An award made by the Special Tribunal shall be final.” The Tribunal is also required to take into consideration certain economic criteria included in the IRA relating to expanding the level of employment, the well-being of relevant employees and the need for sustained development. The four other Acts mentioned above all provide for referral to be made to the said Special Tribunal of matters in dispute and in such cases for identical procedures to be applied.

The first salary agreements were signed under the respective Acts in 1971 and continued for a period of three years. Since then, salary revisions have been effected by agreement at intervals of three years – with one period of four years. This pattern of agreements was broken in 1985 when the severe downturn in the economy, which resulted in a considerable decline in government revenue, necessitated the Special

Tribunal having to make a determination on rates of pay. This was followed by legislation that stayed the pay increase awarded by the Special Tribunal and also imposed, for two years, a ten 10 percent reduction in pay. These new developments inevitably had an adverse effect on the industrial relations atmosphere. However, the Personnel Department exerted itself to maintain smooth working relationships with all the appropriate recognised associations and recognised majority unions representing the various employees of Government and no damage was done to the management/employee relationship in the public service.

The CPO also has responsibility for the conduct of industrial relations in respect of employees of Government, other than those covered by the five Acts abovementioned, as the result of provisions in the IRA by which the CPO is deemed to be the employer of any worker employed by the Government or by a municipal corporation, but in respect of the latter, only one who is not monthly paid. Collective bargaining among these employees of Government and Municipal Corporations, who can be described as industrial-type workers, and who receive wages calculated on a daily basis, had begun shortly before the country had become independent and therefore before the industrial relations legislation referred to in this paper was first introduced. As with public officers, negotiations have always been concluded at the bi-partite level except during the period of structural adjustment of the 1980s when the Industrial Court needed to make a determination.

Other legislation involving the Personnel Department

Another fundamental change that was effected in the middle 1960s soon after the new political status of independence had come into being, was the transformation of certain civil service departments or parts of departments into statutory authorities. These had a large measure of autonomy but were answerable to respective ministers of Government. Principal among these new bodies were the Public Transport Service Corporation which replaced the Trinidad Government Railway and the Water and Sewerage Authority which took over the water-winning role performed by the Hydrology Service of the Ministry of Works and Hydraulics.

In the areas of industrial relations and human resource management, these statutory authorities were integrated into the central government

system, notwithstanding that each was established by its own legislation. This was done by making them subject to a Statutory Authorities Act which created a Statutory Authorities Service Commission, similar to those established under the Constitution. This Act also provides for a personnel organization to perform, in respect of these authorities, the identical functions carried out by the Personnel Department under the Civil Service Act, and stated that the Personnel Department which had responsibility for the Civil Service should take the place of the personnel organization until the latter could be established. In the event the Personnel Department has continued to function for designated Statutory Authorities as for the public service, no personnel organization having been established.

Industrial Relations Activity – Outside of Legislation

The Personnel Department is required to carry out functions in the industrial relations field, outside of the area covered by legislation, as the Secretariat of a Sub-Committee of Cabinet appointed to maintain oversight in respect of salary and wage fixing by various bodies that operate wholly or mainly with public funds. This arrangement was introduced when the Government took note, during the economic upsurge of the mid-1970's – brought about by the unusual rise in the price of oil – that some state enterprises and statutory corporations were awarding very high levels of pay to both unionized and non-unionized employees and considered that some measure of control was necessary. Successive administrations have maintained the arrangement whereby a Committee of Cabinet Ministers reviews proposals for management salaries as well as for presentations to be made to trade unions during the collective bargaining process. The Personnel Department has been given responsibility for providing technical and secretarial services to the Committee.

Review of the Classification System

The difficulties resulting from reduced government revenues had had the effect of diverting appropriate recognized associations from making claims for higher pay, as such, to seeking re-assignment to higher positions in the classification plans for various categories of officers.

This served as the catalyst for bringing about a critical change in the system of compensation administration. There was growing recognition by the Personnel Department of the primacy of the human resource factor in achieving desired objectives and this led to the realization that the attainment of higher levels of efficiency, effectiveness and productivity rested heavily on improvement in levels of compensation particularly in the context of the public service which traditionally had lagged behind the private sector in its reward system.

After due consideration, and having obtained approval so to do, the Personnel Department engages in discussions with all the appropriate recognized associations regarding the system of classification then in use. In 1993, in collaboration with these associations, a firm of consultants was selected to carry out a Job Evaluation Exercise throughout the public service. It was decided to utilize a points system as being a more scientific method of creating a salary structure that was unlikely to be subject to frequent claims for upgrading of posts to higher salary levels. The exercise was to include appropriate salary surveys with the view of making the pay of public service employees comparable with that of employees doing similar work in other organizations and so ensuring that the public service employee received equal pay for equal work while enabling the Service to compete in the market place for the best available talent.

So far, work has been completed in respect of the teaching service, the police, prison and fire services, and is in progress in respect of the Civil Service. This is a completely new approach to job classification and pay determination in the public service of this country and represents a fundamental change from the method in use over the thirty and more years that the Personnel Department has been negotiating salaries with appropriate recognized associations.

Recognition of the need for expertise that did not reside within the Personnel Department in this area of operation had caused the Department to seek the services of Consultants but at all times the role of the appropriate recognized associations was respected and they were fully involved in all aspects of the exercise. They participated in the selection of the consultants and were represented on the Classification and Steering Committees that were set up for the conduct of the exercise.

The principal result of the exercise will be the introduction of a modern methodology for the management of compensation. One of

the outcomes will be that the opportunity to work alongside the consultants will have the effect of enabling staff members of the Department to carry out similar exercises in the future.

Transformation of the Personnel Department

Careful note was taken by the Personnel Department of the statements in the Government's Medium-Term Policy Framework 2001-2003 that:

Government will continue to place emphasis on public service transformation. In this regard, greater attention will be given to improving the quality of service delivery in terms of customer satisfaction, timeliness and access. In addition to ensuring that the principles of good human resource management in the public service are firmly grounded in practice, programmes and projects will be developed to inculcate the culture of strategic management, assess and benchmark organizational performance and increase consultation and collaboration among stakeholders.

The Department recognized that the national objectives of Government challenged it to position itself as the central agency that would be largely responsible for transformation of the public service. This realization brought with it awareness of the need for the Department to first look within itself and to effect such changes in its approach to carrying out its duties and responsibilities as would facilitate its fulfillment of the objectives of Government.

In order to advance the process of redirecting and maximizing the thrust of the Department, the CPO and Senior Officers arranged for the holding of a Strategic Planning Workshop involving all staff members so as to be able to utilize their skills and talents in charting the way forward.

In the course of the strategic planning process a variety of methods were employed including a SWOT analysis, and having regard to the importance of the stakeholders with whom we constantly need to interact; stakeholder analysis was also utilized. Arising out of the workshop, draft statements of Vision, Mission and Core Values were generated. Subsequently, these were examined and refined within each of the Divisions of the Department and submitted for further study by a Strategic Planning Team.

The outcome of the process was a new concept of the Personnel Department with expanded functions and a wider role in the field of

Human Resource Management, serving as the advisory, consultative and monitoring agency for Human Resource Management Units which were being established in line agencies throughout the Public Service. In line with the new outlook, the Vision, Mission and Core Values of the Department were encapsulated as follows:-

VISION

To be the model provider of contemporary Human Resource Management and Industrial Relations Solutions in the Public Sector.

MISSION

To excel in the development of quality Human Resource Management policies, and in the application of industrial relations best practices and people management solutions for the well-being of the Public Service and the nation.

CORE VALUES

The Practice of Equity:

We are firmly committed to the practice of equity in our dealings with all stakeholders.

The Provision of Quality Service:

We believe in working together to provide consistently high quality service to all our clients.

A Caring Organization:

We care about the well-being and development of every member of the Personnel Department.

A Pro-active and Innovative Approach:

We strive to be pro-active and innovative in meeting the needs of our clients and in finding creative ways of satisfying those needs.

The CPO and Senior Officers of the Personnel Department are sensitive to the need for promoting the well-being of the Department's Human Resources on whom the duty falls of discharging the day-to-day functions inherent in the Mission and Vision reflected above. Every opportunity is grasped to provide staff with training and exposure to

new concepts and theories by participation in seminars, workshops and similar developmental exercises.

Contract Employment

The Department has accepted that the growth of contract employment is an important development in the field of industrial relations/human resource management in the public service. This development has been noted outside of the public service where it has taken, broadly, two very distinct forms. One form which does not exist in our public service is that, for which a few private sector employees have been excoriated by the local Industrial Court, in which the employer uses individual contracts in an effort to exclude unionization of employees. In fact the public service is virtually 100 percent unionized. The other form of contract employment, which obtains in the public service, is one where functions need to be performed for which there are no existing job offices or suitable personnel in the agency within which the functions would fall.

By virtue of the fact that the CPO is deemed by the IRA to be the employer of workers employed by the Government, and these contract employees are workers under the IRA, the Department has the responsibility of managing all aspects of contract employment. In discharging this responsibility current guidelines are used. These guidelines set out:-

- (i) the circumstances under which such employees are to be hired;
- (ii) the method of determining salaries and other terms and conditions of employment; and
- (iii) the rules for the administration of such employment.

Human Resource Units and Delegation/Transfer of Functions

In considering its role in the transformation of the public service, the Personnel Department recognizes that it has an obligation to provide advice and support to the Human Resource Units (HRUs) in Ministries and Departments to which various human resource management functions previously performed by the Department have been delegated. In addition, certain functions which had been vested in the CPO by the Civil Service Regulations have been legally devolved to respective

Permanent Secretaries (PSs) and the Department has conducted briefing sessions for staff of HRUs to ensure that PSs are correctly advised by these officers regarding the administration of these functions. To fulfill this aspect of its responsibility to the public service, the Department has embarked on programmes of training and round-table discussions in addition to conducting seminars and workshops. There is also continuous overseeing, monitoring and auditing of the work done by HRUs to ensure adherence to established standards.

The Personnel Department and the ILO

Reference has been made to the substantial change in the industrial relations legislation that resulted directly from the rulings given by the ILO's Governing Body Committee on Freedom of Association following representations based on ILO Conventions No. 87 and No. 98. It is instructive to consider the effect of two other Conventions ratified by this country, action on which involved the Personnel Department. The two Conventions are:-

- The Discrimination (Employment and Occupation) Convention 1958 (No. 111), ratified in 1970; and
- The Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified in 1995.

In seeking to bring the law and practice into line with the standards set by ILO Convention No. 111 concerning Discrimination, the Department, with Government's approval, effected two very significant changes in matters relating to female public officers by agreement with the appropriate recognized associations. In one instance a condition adversely affecting unmarried teachers who became single mothers was done away with and in the other, a provision in the pension law which accorded special treatment to female officers who married, was repealed. However, as public officers' pensions are protected by the Constitution this repeal could only apply to persons becoming public officers after the date the law was repealed.

ILO Convention No. 144 on Tripartite Consultation was ratified by Trinidad and Tobago in 1995, and in 1996 a Committee formed in order to comply with the requirement of Article 2 of the Convention, was inaugurated by the Minister of Labour. The Personnel Department has been represented on this Committee from its inception and has played

and continues to play an active part in its work, particularly by way of contributing to government replies and comments that are required by Article 5.1.(a) of the Convention.

More recently, the Personnel Department has received information on the Programme for the Promotion of Management – Labour Co-operation (PROMALCO) initiated by the ILO. The Department takes a positive view of this initiative and while it has always sought to achieve full co-operation with the associations and unions representing public employees, it looks forward to gaining new insights into methods of maximizing such co-operation.

Caribbean Collaboration

So far, no arrangement exists for regular meetings among industrial relations/human resource management personnel employed by Caribbean governments. Some contact does take place from time to time however, at seminars, conferences and similar occasions. A recent example of such a gathering was the Caribbean Sub-regional Seminar on Employment and Collective Bargaining in the Civil Service organized by the ILO Subregional Office for the Caribbean, in collaboration with the Government of Antigua and Barbuda and the Caribbean Centre for Development Administration (CARICAD). This seminar took place in Antigua and Barbuda in May, 2003 and the Personnel Department was represented. Participants shared information on employment and industrial relations practices in their respective countries and apparently all benefited from the healthy exchanges which took place and especially from the papers presented by representatives of the ILO and CARICAD.

Particularly noted was the Social Partnership model developed in Barbados out of which had come four Protocols for the Implementation of a Prices and Incomes Policy. The first of these, entered into in 1993 between the Government, the Private Sector and the Trade Unions and Staff Associations was recognized as opening a new path which the rest of the Caribbean could follow with advantage.

Vision 2020 and the Challenge to the Personnel Department

In whatever respect the realization of Vision 2020 requires support contributions from the public service, the Personnel Department considers itself to be called upon to have the particular public service agency or agencies prepared and motivated to provide whatever is required. The

Department has recently agreed with representative associations and unions on Group Health Plans for public officers as well as for daily-rated workers and these plans have been working very satisfactorily. Consultation has also taken place on matters of: -

- Occupational Safety and Health; and
- Employee Assistance Programmes.

It is intended to finalize and publish throughout the service, policy statements on the above matters that have been agreed upon with the representative bodies together with agreed procedures for implementing these policies.

The Department will continue to make its best efforts to develop the policies and mechanisms to foster the working environment conducive to the attainment of national goals by taking action in the areas of: -

- human resource planning;
- the management of compensation;
- the management of employee benefits;
- industrial and labour relations; and
- human resource development.

The Personnel Department is confident that by these means it will be able to fulfill its mission and realize its vision set out above in the interest not only of the public service but of the people of the country as a whole.

Section IV

Employers and a New Approaches in Labour-Management Relations

12

Employers and New Initiatives in Industrial Relations

Neville Ying

“The trouble with traditional industrial relations is that it has nothing to do with excellent business results nor with managing people effectively”

- Freemantle as quoted in Ackers (1994)

In this new arena of globalization and international competition, new paradigms for labour and industrial relations are emerging. Labour is now more about intellectual capital and the free and flexible movement of this capital. When combined with the possibilities of information and communication technologies, the workplace is different than what it used to be. It can be the home, the office, the factory or the street corner. We can physically reside in a particular country such as Jamaica, Barbados or Trinidad and Tobago but through the use of technology, our workplace can be any place in the world.¹

Research done by the Society for Human Resource Management (SHRM, 2002), U.S.A. points to the following factors that will have implications for the Human resources:

A 24/7 work culture is blurring the lines between work and non-work, creating new challenges for workers and for employers. Compensation, benefits, ownership of work, liability for workplace safety, stress and productivity are all issues facing drastic change for those without defined work hours². (SHRM, 2002, 12)

Labour and management relations must therefore be positioned to deal with the new forces related to critical elements such as the technological revolution, the knowledge society, the competitive ethos and trading blocks. In addition, pressing social issues facing organizations worldwide include ethical issues related to organizations such as

ENRON and WorldCOM, vigorous international debate on decent work, vulnerable groups and social protection and human development indicators related to education and health.

The tragic events of September 11, 2001 in the U.S.A. have also refocused attention on social and people issues which are part of the world scene - poverty, unemployment – particularly youth unemployment, poverty alleviation, crime and violence, terrorism, Worst Forms of Child Labour and chronic diseases such as HIV/AIDS. Two meetings recently focused on some of these issues. The first one was the International Labour Conference, 93rd Session, Geneva, and June 2005. Two important items on which this conference focused were Youth Employment and Health and Safety. A central theme at this ILO Conference in the discussions on Youth Employment was the importance of debt reduction and cancellation for developing countries. Two significant points were made in this regard:

1. Of the world's over 1 billion young people, 85 per cent live in developing countries with a high incidence of poverty and inadequate employment opportunities. The scourge of HIV/AIDS, the weight of external debt, armed conflict, poor governance, unstable institutions and gender inequality compound weak economic growth and deter the public and private investment necessary to create jobs.
2. The ILO should play a role in promoting the resolution of the international debt problem and advocate increased resource flows into developing countries³.

(Report for Committee on Youth Employment, 2005, 114-115, 127)

The recently concluded G8 Summit, July 2005, also dealt with debt reduction and millennium goals related to poverty, health and education in developing countries with particular emphasis on Africa.

These social issues put the spotlight on the key role of the business sector, as a major social partner, in the tackling of social problems in the society. Internationally, this role is being considered under the banner of Corporate Social Responsibility (CSR). Very simply put, CSR is concerned with how businesses, while ensuring economic value added contributions such as profits, work in partnership with government, trade unions, non –government based organizations, (NGOs), community based organizations (CBOs), the church and civil society work in meaningful partnership to tackle social problems in the society as well as to ensure that human rights are not violated at the workplace.

The Emerging Landscape

In this new scenario, labour - management relations must be viewed through global and international lenses while focusing on the local and regional cultural economic realities. Labour-management relations must therefore be closely aligned to the strategic response of organizations in both the public and private sector to deal with the agenda of social problems⁴.

In discussing some challenges related to industrial relations, Kochan (2003) indicates that:

The crisis in international relations is matched by an equivalent crisis in our profession [of industrial relations]. ... The challenge of our generation is to work to update these policies [and practices] to reflect the knowledge based economies of the 21st century. To do so we must take a very broad definition and approach, one that goes beyond the traditional industrial relations or human resource, management by linking them to education, family, trade, development, security and international relations policies and initiatives. (Kochan, 2003, 2)

This means that the development of new initiatives for industrial relations by employers must take into consideration the following imperatives:

1. There must be effective responses to the changing nature of the workplace.
2. Relationships must address broad social issues in the communities in which businesses operate as well as workplace issues.
3. Industrial relations strategies must accommodate the impact of Information and Communication Technologies on human relations.

This paper examines some of the challenges facing employers as they seek to develop new initiatives in industrial relations and also looks at how the 'new' Caribbean economy will influence labour and employment policies and practices. An overview of the role of employers' organizations in promoting sound industrial relations is then discussed. The paper then explores some initiatives taken by employers to foster improved industrial relations and concludes with views on prospects and vision for the future.

Challenges

In developing new initiatives for industrial relations, employers need to be aware of certain important challenges. Foremost among these are issues related to:

- a. diversity of the workforce as well as diversity of business operations and organizational arrangements;
- b. differences in perceptions between what employees consider important needs and goals compared to what are priority areas of importance for employers; and
- c. Historical antecedents of mistrust.

Diversity and diversity management are critical areas that affect relationships at the workplace. Some of the differences are related to educational levels, age, gender, religion and culture. In the globalized business environment diversity issues take on added importance. This is so because especially multinational corporations operate in worldwide locations including the Caribbean region. In addition, CARICOM companies in countries such as Trinidad and Tobago, Barbados, and Jamaica operate throughout the region and internationally. In these situations, cultural differences such as those related to work ethics, industrial relations practices and communication and management styles pose creative tension for labour-management relations.

In order to maximize efficiency and effectiveness it is critical that people within organizations contribute to the shared goals and their activities should be directed to this end (King, 1991). Unfortunately, in any group comprised of diverse individuals it is often the case that the same objectives and priorities are not understood or commonly shared. Therefore, an important challenge for effective and mutually beneficial relationships in organizations is to achieve both congruence of views and perceptions of employees and employers concerning needs, goals and objectives.

Additionally, considering this diversity and the culture of the nations in the region - which is traditionally authoritarian and paternalistic - creating an atmosphere of cooperation between employers and employees in the Caribbean has proven difficult (Munroe, 1993a). Lindo (1991) comments on this culture by explaining that the “Afro-Caribbean man’s work experience has been quite different from that of his counterpart in the United States or Europe.”

This situation has its roots in the institution of slavery's "master-servant" relationship (Gates, 1993) and consequently the development of an orientation of alienation and a tendency to resist organizational efforts. Lindo (1991) cites a 1982 Carl Stone survey which reveals that only twenty-three percent (23%) of Jamaican firms had workers who had a high level of trust in management. Prior to and subsequent to this study the historical antecedent of mistrust has continued to be a significant challenge for achieving harmonious relationships at the workplace.

This challenge is significant because it creates and sustains a situation in which mistrust and disharmony lead to demotivated workers and thus reduced quality and quantity of production. It is therefore important to note that the authoritarian approach to management not only amplifies mistrust but also deprives the organization of valuable employee experience, expertise and creativity (Munroe, op. cit. 1993a). It has become critical that old paradigms and concepts of industrial relations are replaced in order to facilitate greater efficiency and increased productivity.

The New Caribbean Economy

The 'new' Caribbean economy will exercise an important influence on labour and employment relations policies and practices. Initiatives in labour and employment relation policies and practices in the Caribbean must therefore be in response to the international forces and challenges which will shape the 'new' Caribbean economy.

These forces include those related to the CARICOM Single Market & Economy (CSME), the Free Trade Area of the Americas (FTAA) and the ACP-EU Cotonou agreement. Downes (2003, 4-5) points to some salient features of the 'new' Caribbean Economy which will have an impact on labour issues –

...a diversified services sector with a number of sunrise industries using developments in ICT; growth of 'regional enterprises'; an increase in foreign direct investment.....which can intensify competition in the domestic market; [adoption] of international standards established in the commodity and labour markets in order to survive in the export market (e.g., core labour standards, adoption of workplace standards, ISO 9000 standards, etc.); and a greater reliance on market signals to guide the provision of goods and services.

In this 'new' and constantly changing Caribbean economy, Antoine (2003, 2) asks this pertinent question. "How can trade unions and traditional industrial relations systems challenge or even address the several changes occurring when these changes are being decided, not by the 'social partners' but by international institutions often far removed by social realities?"

It is therefore important for employers to be involved in initiatives that will bridge the gap between the employers' and workers' representatives. This should include "building and institutionalization of essential elements of social capital – trust, cooperation, teamwork and consensual problem identification and problem-solving." (Ying, 2003, 25)

The Promotion of Sound Industrial Relations

Today's environment is characterized by increased trends towards the decentralization of industrial relations to the enterprise level; increasing frequency in the development of agreements between management and workers at the plant level; trends showing the growth of enterprise unions and simultaneous decline of central trade unions; and employers' organizations facing increased competition from information and service providers such as consultants and academics (Crowe, 1997, 9).

In their accustomed role as representatives for employers, employers' organizations must move from a reactive and/or confrontational approach in their dealings with government and the unions to one which is preventative and proactive (MacDonald, 1997, 28). Such an approach will see these organizations "primarily concerned with promoting among their members (and with government and trade unions) the need for sound workplace relations, which emphasize the importance of improved cooperation and consultation and effective negotiation to address workplace issues, thereby avoiding (or, at least, limiting) industrial disputes and providing a basis for achieving sustainable improvements in enterprise performance." (MacDonald, 1997, 28)

Employers' organizations must also have as part of their strategic response the efficient provision of services their members need in order to thrive. These services, which must be customized to individual employers and backed up by expert advice, include labour market information, specialized training, advice on productivity improvements, quality improvement and management, benchmarking and also the

promotion of sound industrial relations in the workplace (Crowe, 1997, 2). In today's dynamic global economy, all these services are crucial in order for employers to maintain optimum labour-management relations. In order to influence the industrial relations climate in countries, employers' organizations in the region are represented on boards and committees such as HIV/AIDS commissions and Labour Advisory Committees. These employers' organizations provide intellectual support in areas such as research, training and development as well as advocate and lobby on issues affecting employers.

New Initiatives in Labour-Management Cooperation

There are some initiatives which have been introduced which both require and enhance labour- management relationships and cooperation. These include:

- Performance-related Pay
- Employee Share Ownership Plans (ESOPs)
- Training
- Alternative Dispute Resolution
- Non –Traditional Benefits

Performance-related Pay

The idea of relating salary to performance continues to gain support in today's industry where competition is global and profitability crucial. There are a number of types of these performance-related pay systems but the main ones are production incentives, performance bonuses and profit sharing. The design of performance-related pay and other incentive programmes is crucial. Incentives and rewards must be relevant to company objectives and must focus employees' attention as such. A crucial element in the design of performance-related pay and other incentive programmes has been ensuring the participation of all the concerned parties.

Hussey (1991) explains that the success of these programmes depends on extensive consultation and trust between the various stakeholders in the organization in ensuring that the defined goals are practical, achievable and sustainable. Arjoon (1999) also explains that these programmes emphasize performance and improve motivation and

in doing so foster a performance-oriented culture. Properly designed and implemented performance-related pay programmes have been found to encourage a participatory and consultative approach to management and have facilitated a cultural change that has profound effects on the industrial relations climate of the region as well as the productivity of the organizations. For example, a case study of a manufacturing company in Jamaica indicated that performance-related pay had a significant impact on labour productivity.

Employee Share Ownership Plans (ESOPs)

Enlisting the cooperation and participation of the employee is crucial in today's business environment. According to Gates (1992), worker participation in ownership is a proven concept in numerous nations. Indeed, what better way to enlist worker interest in and cooperation for the success of business than to grant them part ownership? For management, the main advantage of ESOPs lies in the logic that by providing employees with a stake in the ownership of the business it will encourage them to be more productive and efficient and contribute their hands on knowledge to efforts to improve business processes.

Gates (1992) indicates that in addition to facilitating improvements in productivity and profitability, ESOPs can strengthen the bargaining position of trade union members, allowing workers a greater say in how companies are run and can ensure that productive capital stays in the country rather than being taken abroad by foreigners.

Training

Effective management is crucial for the achievement and maintenance of good industrial relations. Coke (1991a) explains that management's interaction with the workforce is critical in the creation of a work environment conducive to "co-operative relationships and productivity." In addition, participation and consultative management techniques are the current buzzwords and modern management paradigms focus on the creation of a team atmosphere in the workplace which encourages the contributions of workers and managers to create a better industrial relations climate. (Coke, 1991b).

To this end, many organizations have been facilitating training for both their employees and managers in areas such as Team Work and Organizational Development and Change. Employers utilize various

training methodologies, including customized training courses and formal courses at training institutions. In addition, many employers are also increasingly using non-traditional approaches to training such as the use of e-learning technologies.

Katz et. al. (1993) argue that training and retraining are of increasing importance throughout the industrialized world as this is in response to the rapid pace of technological advance and the need for adaptability in today's global economy. Providing training for employees will not only make them more efficient and productive but will also have a positive impact on employee motivation and employer-employee relations (Dundon, 1998). Katz (et. al. op. cit.) argue that employee involvement in appropriate training and retraining programmes "can encourage cooperative labour-management relations" and encourages productivity improvements.

Alternative Dispute Resolution (ADR)

Good industrial relations practices include the prevention or reduction of disputes. Traditionally, labour disputes are primarily settled through the collective bargaining process and statutory regulations (Goolsarran, 2003). However, increasingly employers have been using initiatives that seek not only to resolve disputes but to prevent them.

The use of Alternative Dispute Resolution as a means of reducing and resolving conflict at the workplace has been widely explored in many developed and developing countries and usually involves the inclusion of independent mediators. ADR methods are essentially industrial relations methods which are used in civil society and as an alternative to the judicial process.

In discussing the role of independent mediators in modern industrial systems, Katz et. al. (op.cit., 14) posits that "a very constructive role can be played by independent mediation entities in a modern industrial relations system [and that the] proper role of mediation is to facilitate communication between labour and management and provide advice.... In the United States, such mediation comes through the Federal Mediation and Conciliation Service while in Britain the Advisory Conciliation and Arbitration service meets these needs."

Goolsarran (op.cit.) points out that social partners value the use of conciliation, mediation and arbitration in the settlement of industrial disputes and that these methods are widely and effectively used in

industrial relations. The Dispute Resolution Foundation in Jamaica provides an avenue for alternative settlement of various types of disputes, including those related to industrial and labour relations. Hines (cited in Ying 2003, op. cit.) indicates that one of the actions that could facilitate relationship-building mechanism in ADR is the inclusion of mediation in individual and labour contracts.

Non-Traditional Benefits

Employers in many industrialized and developing countries have long recognized the value of introducing non-traditional benefits for their employees in order to improve the industrial relations climate in organizations. Consideration therefore has been given to the changing needs of the employees in order to determine the most suitable benefits. Research done by the Society for Human Resource Management (op. cit., 27) reveals that employers are now introducing benefit programmes that are better suited to the needs of the workforce. These include, 'family friendly benefits, health care benefits, financial benefits and leave benefits.' Some of the benefits that increased at least 5 % in 2002 compared to 1998 include lactation programme/designated area, vision insurance, long term care insurance and dependent care flexible spending accounts. Other initiatives introduced by employers to improve industrial relations include:

- introducing wellness programmes in order to achieve lower health care costs as well as improve the returns to the company;
- providing increased workplace security; and
- focusing on issues related to team-building, trust, pride and respect at the workplace.

Partnerships and Participation

At the workplace, the area of labour-management cooperation has been getting increased attention. Here is where the power of partnerships and social dialogue is key as only authentic partnerships can produce real changes in the workplace. Roberts (in Cowell and Branche, 2002, 290) argues that the struggle for socio-economic progress must be undertaken by not only unions and international organizations such as the ILO but also by the private sector, civil society and governments. In

the past two decades, the effectiveness of the collaborative relationship that the tripartite model represents has begun to be explored in the Caribbean. A number of regional governments are looking to act as what Nurse and Best (in Cowell and Branche, 2002, 205) call “the hub of a network of social partners”. These partners would include trade unions, relevant NGOs and employers’ organizations.

Katz et. al. (1993) explains that participatory approaches to Industrial Relations should be implemented on three levels in order to maximize their chances for success: at the strategic level in negotiations between top management and union leadership; at the functional level in collective bargaining and contract enforcement and; at the workplace level in the organization of the workers in teams and workgroups.

The trend is now for major industrial enterprises to sign agreements as indicated by Graham, 2003:

In what is a growing trend, major global industrial enterprises are signing “framework agreements” with their employees which commit them to respecting minimum labour standards around the world. They recognize that for global corporations today, adhering to bedrock labour.

Case studies done by ILO/PROMALCO (2005) indicate a number of factors that have been instrumental in the success of labour/management partnerships. These include top management commitment, efforts to build trust and a philosophy and a new set of values and joint commitment to the success of the enterprise. Another type of partnership is social partnership which “mainly involve the coming together of the social partners to address critical industrial relations issues. ...The protocol defines expected levels of conduct during the life of the agreement, and defines the various ways by which conflict can be resolved. An important element of conflict handling is the strengthening of the relationship between the partners.” (ILO/PROMALCO, 2005, “A Practical Guide for Managers and Unions on how to Build Trust,” 3)

In this regard Goolsarran (2003, 10) discusses initiatives related to the social partnership option in the Caribbean. He states that “...social dialogue leading to partnership agreements at the enterprise, sectoral or national level, is emerging as an important development and trend in the Caribbean.”

Goolsarran (op. cit.) provides information on countries in the Caribbean that have introduced initiatives towards partnership. These include Barbados, (*The National Protocols of Barbados*); Jamaica

(*Sectoral Agreements*, Curacao (*Vision Curacao 2020*); Trinidad & Tobago (*Compact 2000*); Grenada (*Memorandum of Understanding*); Suriname (*Joint Declaration: Labour & Management*); Guyana (*Draft First Protocol 2000– GTUC/CAGI*); Bahamas (TRIFOR – *National Tripartite Forum*); and St Vincent and the Grenadines (*National Social and Economic Council*).

Worker participation on boards of directors is mandated in a number of European countries such as Sweden, Denmark and Germany. At the workplace level, Katz et. al. (1993) point to examples of Japanese and German Industrial Relations systems to highlight certain critical focus areas for consideration when facilitating greater employee participation.

1. Workers and their unions are allowed to contribute their ideas to the productivity improvement process.
2. Workers and their unions receive information concerning company plans in advance and are allowed to participate in the decision-making process. In doing so they are allowed to support company plans and assist in smooth implementation.

A further example of best practice from the German experience involves the formation of works councils. Katz et. al., op. cit. explain that these factory and firm level works councils are elected white and blue collar representatives of the workforce who act to help enforce existing agreements and engage in ongoing discourse and negotiations regarding factory or firm specific issues. According to Streeck (1984) (cited by Katz et. al. op. cit.), when works councils function well they facilitate employee input on crucial issues, comprehensive representation, employee-management cooperation, increased trust and better relations between workers and management and the formation of effective “productivity coalitions” between workers and management.

Prospects and Vision for the Future

The strategic business decisions and policies undertaken by employers have direct and significant consequences for employer-employee relations. Modern industrial relations must be seen as an integral part of business development (Moonilal in Cowell and Branche, 2002, 190). The prospects and vision for employers and new initiatives in industrial relations include the following:

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- Greater emphasis on decent work
- Greater emphasis on training and development – eradication of illiteracy, continuing emphasis on professional technical, entrepreneurial and social skills for sustained employability
- Emphasis on healthy lifestyles and healthy living in the face of increasing rates of drug abuse and increased incidence of HIV/AIDS
- Greater emphasis on transformational leadership which is critical at the political, trade union and corporate levels. This will enable management and labour to respond effectively through collaborative and harmonious relationships to the imperatives of the globalized and competitive world.
- Clarity of vision with strategies for the empowerment of people and the effective use of their competencies and talents.
- Focusing more on corporate social responsibility issues such as human rights at the workplace, partnerships to tackle social problems, ethical issues and protection of the internal and external environment
- Integrating the work of the ILO project for the Promotion of Management-Labour Cooperation (PROMALCO), into the organizational work of the ILO Subregional Office for the Caribbean, to increase significantly the number of business enterprises demonstrating good practices in management- labour cooperation.

Moonilal (op cit) explains that whereas traditional industrial relations was concerned with “distribution, conflict mediation and fire-fighting” what is needed today and in the future is an industrial relations that is more focused on “productivity, competitiveness and quality” while promoting employment policies that support workers’ rights and job security.

Conclusion

With fiercely competitive economies and limited and costly resources, improved efficiency and productivity are of paramount importance to organizations in developing countries, particularly in the Caribbean. New initiatives for industrial relations have been developed within the framework of “creating, maintaining and enhancing a spirit of understanding and good human relations” (Lindo, 1991, 8) through

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changes in the workplace culture, improved communication, greater motivation for and increased participation of staff and appropriate training interventions.

In addition, key principles related to Corporate Social Responsibility (CSR) are increasingly being considered by employers as these help to foster improved industrial relations in organizations. Some of these principles include attention to corporate governance with emphasis on ethical behavior and accountability; increased integration of core labour standards in business operations; meaningful partnerships between public and private sectors to address urgent social problems and the focus of human rights issues at the workplace. The implementation of CSR principles and practices together with the continuous building and maintenance of social capital can be the wave of the future towards the destination of effective industrial relations.

NOTES

1. See Introduction by Neville Ying to Grace Kennedy Foundation Lecture, 2002, p. 3-5, on *Changing with change Workplace Dynamics Today and Tomorrow*, for fuller discussion.
2. See Dave Patel (2002). SHRM Workplace Forecast - A Strategic Outlook, 2002 – 2003, SHRM Research p.12
3. See Report for Committee on Youth Employment, International Labour Conference, 93rd Session, Geneva, June 2005, p. 114 -115 and 127.
4. Taken from article by Ian Graham entitled “*Global labour agreements: A framework for rights.*” The World of Work, No. 45, December 2002 cited in PROMALCO News; Issue No. 2 July to December 2003 p.3.

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13

Employers and Labour-Management Relations: the Guyana Experience

David Yankana

Employers in Guyana since 1992 have been mainly private sector in nature, as prior to that date, state-owned enterprises dominated the industrial and commercial landscape. Private sector interests are represented by some 13 umbrella private sector organizations including the well-known Chambers of Commerce, and the Manufacturers' Association. In addition, there are sectoral representative agencies catering for the rice, forestry and the hospitality industries to name the well-known ones. It is common practice for a company, because of its range of business activities, to hold membership in more than one organization.

The Establishment of the Employers' Organization

Private employers did not have much confidence in the ability of the Georgetown Chamber of Commerce, then, the only private sector organization, to handle the upsurge of industrial and labour relations issues during the 1958 – 1966 turbulent period. It was a period of intense political instability, and hundreds of industrial strikes and work stoppages, as rival unions, some with a sympathy for the political party in power, and others for the political party in opposition, tested their popularity and concomitantly created industrial havoc, much to the discomfort of employers.

The Consultative Association of Guyanese Industries Ltd. (CAGI) was consequently incorporated, as a company without share capital in 1962, by a group of locally-owned entities. But soon after, it was able to attract many foreign-owned enterprises into active membership. The emergence of CAGI coincided with a general strike

of over 80 days, which by every measure was a serious impediment to economic progress, and caused substantial loss of capital assets. CAGI was considerably instrumental in brokering a return to normalcy, and out of that turbulent beginning, the Association grew to be recognized as an employers' organization on industrial relations matters.

Advancing Employers' Interests

The incorporation of CAGI was also in response to organized labour under the umbrella of the Guyana Trades Union Congress (GTUC). Like the GTUC, it fielded the employers' representative to the annual International Labour Conference in Geneva after independent Guyana became a member of the ILO, and represents the Association at regional and international fora and events. CAGI undoubtedly became the guardian of private sector interests to ensure that Government would have prior consultations with the Association, as one of the social partners, on national labour policy and before the enactment of any labour legislation at the national level; and at the international meetings and conferences, it would take a broader view of the interests of the private sector.

CAGI's mandate is, and was the delivery of advisory industrial relations services, interconnected with labour-management training courses based on the needs of the member enterprises. It assumed an advocacy role for employers' interest at the national level, representing the employers at the level of government on issues of national community interest, and providing policy guidance on labour-management relations to its members through committees drawn from among its members or professionals from the member enterprises. One such committee is the National Tripartite Labour Advisory Committee under the chairmanship of the Minister with responsibility for labour.

CAGI also provides consultancy support to collective bargaining negotiating teams in member companies; and in the event of major industrial disputes or in a deadlock at conciliation/mediation or a difficult situation concerning labour, the Association would approach the GTUC to jointly promote a resolution of any disputes, or a restoration of normalcy in employment and business operations or establish an environment conducive to further negotiations. CAGI seeks to deepen national consultation and social dialogue on issues of national interest leading to partnerships. This is in line with the provisions of the Guyana Constitution,

Chapter 1:01 of the Laws of Guyana which entitled trade unions to participate in the management and decision-making processes of the State and particularly in the national economic, social and cultural sectors of national life. However, the on-going encounters with representatives of Government and the GTUC in an effort to forge such a partnership are major tests and challenges for the parties in the Guyana social and political context.

Early Trade Union Activities

Hubert Nathaniel Critchlow was a trade unionist of unrivalled popularity. He organized the British Guiana Labour Union (now the Guyana Labour Union) in March of 1922. In his early working life he fought to improve the working conditions of workers, and was consequently involved in many industrial disputes, protests, strikes, and controversies over dismissals at the waterfront (shipping ports), and the commercial sector in the city businesses of Georgetown from the first decade of the twentieth century. Critchlow was concerned also about workers in the rural areas, in particular those in the sugar industry where there was dissatisfaction over working conditions. The harsh conditions of work on the sugar estates, at times, provoked mass protests and unrest, which often involved the intervention of the colonial state police with resulting worker fatalities in 1924, 1939 and 1948 on the Demerara sugar belts.

Critchlow's leadership in Georgetown and in the rural areas won him the confidence of a wide cross section of workers, irrespective of ethnic boundaries. The enactment of the Trade Unions Ordinance (the Trade Union Act of 1921) facilitated the registration of the first trade union in 1922 – the British Guiana Labour Union (the Guyana Labour Union), one of the first trade unions organized in the British Colonial Empire under the leadership of Critchlow.

The confrontational protests and discontent over working conditions in British Guiana influenced the emergence of trade unions. It is equally true that the growing, early independence movements in the Caribbean and in Guyana were led by political leaders who became wedded to trade unions in order to build a political base in their drive to gain political power. This marriage of politics and trade union support eventually led to the link between trade unions and political parties in power and/or in the opposition.

This alliance created in the minds of private business a dislike for the voluntary recognition of trade unions, a dislike that exists into this current period despite the enactment in 1997 of the Trade Unions Recognition Act, which provides for compulsory recognition of the trade unions, certified by the Trade Union Recognition and Certification Board. Since the promulgation of the legislation, the Association has promoted an understanding of the legislative provisions of the Trade Union Recognition Act. By reference to “best practices”, it actively encourages new employers to recognize and treat with trade unions.

Planning and Development

Kieran Mulvey, Chief Executive of the Irish Labour Relations Commission, and ILO Consultant, in an article which appeared in an ILO Publication: *Strategic Visions for Labour Administration in the Caribbean, 2003*, authored with Samuel J. Goolsarran & Patrick I. Gomes, observed with reference to planning in Caribbean countries, that:

Individual countries have, at times, attempted to put in place in a piecemeal fashion such a centrally planned approach but either politics, divisions among or within the social partners, external economic or financial forces have all served to arrest such a development. Where plans have emerged, it was not clear if any central co-ordinating group has, on a continuing and on a planned basis, committed itself to an incremental implementation of the national development policy. This is a major barrier to preparing, not alone the Labour and other Ministries concerned, but also national Governments, for an essential and agreed strategy to meet the challenge of global market change and broader macro-economic and social challenges.

Some Governments or agencies of governments have prepared impressive draft national strategies or sectoral policies but delivery on these objectives and plans remain somewhat tentative. Some specific agencies have been created in individual countries to manage and prepare for changes either in the economic, training or social fields and are undertaking admirable work. Where these efforts are undertaken, they need continued support and encouragement. However, it is the lack of a co-coordinated national strategy that should be of concern and the effective agreement upon delivery of that strategy.

There is considerable merit in the concept and importance of national planning and development as an essential strategy for development. It must be noted however, that Guyana, in the long period of the Peoples National Congress administration (1966-1991), had in place an elaborate, centrally planned development strategy. But central planning was not a recipe for success as was the experience of Guyana, which over that period went into rapid economic and social decline. The Commonwealth Study Group headed by Sir Alister Mc Intyre noted in its report in 1989 that the Guyana economy was confronted by low growth and a high debt service ratio. The economic development and growth of the country was arrested by political divisions, divisions among the social partners, and external economic and financial forces.

The experience in Guyana reveals that the centrally-planned development strategy allocated little resources and recognition to the portfolio of labour administration. The political administrations often included the labour portfolio with several other portfolio matters that obscured the importance of industrial relations. As a consequence, very little attention was paid to sound labour and industrial relations and social partnerships, despite confrontational industrial relations, and the rapid decline of the economy and the need for national consensus on development issues. The continuing challenge of the social partners, in line with their responsibility flowing from ratified ILO Conventions, are to advocate for a strong labour administration system, well resourced with adequately trained staff, suitable office and conference facilities, modern technology, research capability, and other means to enable the effective conduct of labour and industrial relations.

The Widening Economic Space

Pre-independent British Guiana did not espouse any noticeable push to be part of the British-sponsored West Indian Federation of the late fifties. This was seen as a British strategy to delay political independence to the territories. The political development of British Guiana between 1953 and 1961 was described as “*forbidden freedom*” by Dr. Cheddi Jagan, the first Premier of the country whose socialist ideology caused grave concern to the USA and the UK Governments, which successfully engineered constitutional and electoral changes to frustrate the early popular movement for political independence. The recent release by the US authorities of classified documentary evidence concerning the

political developments in Guyana in 1958-1964 reveals possible linkages which were sought by British Government to incorporate Guyana into the then British West Indian Federation of 1958, which within a few years collapsed.

However by 1966, the Peoples National Congress Government began the drive for a Caribbean Free Trade Area (CARIFTA), which was eventually launched in 1971 with the Governments of Barbados, Antigua and Guyana signing on to the CARIFTA Agreement. In 1973 the Treaty of Chaguaramas provided for the creation of a Common Market with a Common External Tariff, and the Caribbean Community, and now the CARICOM Single Market and Economy (CSME) which was launched in 2006 with Guyana very much on board.

As expressed by one of Guyana's ambassadors at a private sector/public sector CSME workshop in Georgetown in 2004, there ought to be no greater difficulty for a Guyanese businessman extending his business in any CSME state from Belize to Suriname, than he would experience if he was moving that part of his business around Guyana. Businessmen might counter by quoting Dr Vaughan Lewis who in a 1997 symposium noted that, unlike the European Union, the politicians retained complete control, hence implementation of the CSME lagged behind CARICOM decisions.

Corporate enterprises in Guyana have responded positively in the face of external competition and are preparing to take advantage of the expanded economic space. A notable company is Demerara Distillers Limited, the producer of world famous El Dorado Rums. The rice and sugar industries have also found outlets in CARICOM States. Proprietary-owned enterprises, facing the growing global environment, are placing greater emphasis on the development of human resources and through institutional training, are re-equipping their enterprises to take advantage of the expanded markets. Government and the social partners have a continuing common interest in working together to take advantage of the expanded regional trade, and the full potential of the CSME.

The Employers' Perspectives

The objective of declaring a profit at the end of an accounting period becomes the measure of achievement, which managers present to shareholders. Dividend payments attract shareholders to investment, and profits determine dividends. Boards of directors have recently come to the acceptance of a more embracing mandate which requires

enterprises to conform to economic and financial standards as well as to labour standards.

Boards of directors have to steer enterprises through the economic fundamentals of a small state, and the regulatory requirements of financial administration mixed with constant tax reform. The global environment also demands competitive strategies, but trade union demands may typically raise labour costs affecting competition and reducing employment. In that environment, consultative collective agreements or framework agreements, as distinct from negotiating collective labour agreements, become the only “win-win” situation which CAGI is advocating with the trade unions.

The collective agreement on which the social partners spend much time and effort must become the consultative blue print that takes into account the issues of sustainable business. Gone are the days when collective agreements can be frustrated by “sick out”, “go slow” and full strikes. Gone should be the day also when management and workers are required to agree and place the welfare of the enterprises in the hand of the third party arbitrators. CAGI supports self-determination, and advocates for social accords beyond the confines of traditional collective bargaining.

Return to Privatization

A striking occurrence of this philosophy is the role the employers’ representative played in the privatization process. Prior to 1992, the commanding heights of the economy were state-owned and managed. The Economic Recovery Programme (ERP) embarked upon with the concurrence of the International Monetary Fund (I.M.F), and subject to the Fund’s surveillance, ordered the reduction of the size of the state’s economic assets by a programme of privatization. A Privatization Unit was established with a secretariat and a board of selected, capable persons, including employers and trade union representatives, to undertake a programme of privatization of state enterprises, as endorsed by the national Parliament.

Several entities were auctioned for private acquisition. In one particular major enterprise, which carried on the business of port handling, ship building and ship repairs together with support outlets, was sold to a new entity created out of the management and the workers of the

former state enterprise. Substantial financial and property leasing conditions were made to the new owners to facilitate the ownership of the assets. The new owners subsequently attracted a local private sector group to acquire part of the assets. This entity is now one of the successful businesses in Guyana.

The employer's and trade union's representatives were influential in the establishment of this worker-management owned enterprise. The support which the employers' and trade union's representatives on the Privatization Board gave to the new owners was a practical demonstration of the potential of meaningful tripartite dialogue, underpinning the social harmony through which an enterprise social compact is realized.

The Challenge of Social Dialogue

The consequences of globalization, trade liberalization, the removal of access to markets with preferential prices, and WTO rules have impacted negatively on both employers and workers. A clear example of this is the reduction of the preferential price by the EU on sugar exported from ACP countries and the ultimate removal of a preferential market. These developments present an opportunity for the government and the social partners to embrace social dialogue and partnerships in order to enable enterprises to be competitive while restraining retrenchment and redundancy.

The social dialogue approach in Guyana has been in practice for several years through a tripartite mechanism of representatives, equal in membership of labour, employers and government under the chairmanship of the Minister of Labour which meets monthly to discuss labour issues. The employers' thrust for social dialogue and social compact on a wider range of social and economic issues has been frustrated by one faction of the divided trade union body on grounds, which relate to full disclosure of information which should come from the government side. The Tripartite group has undertaken to facilitate progress on this issue and to bring all the stakeholders together in further dialogue. However, mutual respect, lack of trust, a common vision, leadership, and full commitment of government and the social partners are compelling issues to be addressed and facilitated in order to advance social partnership. Trade unions themselves are willing to engage the

employer in a co-operative approach based on disclosure of information, trust and a commitment to the dialogue process.

CAGI is committed and ready to enter good faith encounters to achieve national accords; and has underpinned all its training courses with the philosophy of dialogue at the worksite. In this regard it has been greatly assisted by its involvement with ILO in the Benchmarking and Global Compact Exercises, and the promotion of a sound labour and industrial relations system through tripartism, social dialogue, decent work, and occupational safety and health based on international labour standards. These challenge the inherent traditional confrontational and adversarial postures in labour-management relations. It is a challenge for the government and the social partners to foster a paradigm shift to consensus and cooperation in the national interest of the country.

14

The Role of Social Dialogue for Social and Economic Progress

Marcel Mayer

The world is constantly changing under the influence of global forces, and “globalization” is continuing with its impact on all structures and institutions of the world. Employers and employers’ organizations are also experiencing the effects of global changes - ongoing regional, hemispheric and global economic integration processes together with the effects of trade liberalization.

The governments and the social partners – employers’ and workers’ organizations – are now confronted with a number of “new” issues, that are not directly within the core mandate of the tripartite constituents, challenging the three partners to enter into “strategic alliances” with other actors at the national, regional and global scene, when dealing with industrial relations, productivity, employers’ organizations and trade-related issues, or the effects of global changes on small and medium enterprises.

Historical Background

During the first half of the 20th century, and even before, the role of the social partners in the Caribbean was minimal in the development of social and economic policies. Labour matters were an integral part of other major issues which were attracting more attention in the post-colonial era: declining economies, unavailability of cheap labour, unemployment, economic crises, human rights and others. Employers’ organizations were created as a reaction to the strong influence of trade union organizations in the process to arrive at regulations for improving industrial relations under the guidance of the ILO.

The employers were constantly under attack and labeled as “the continuation of slave masters, indentured labour bosses, colonial masters,

past colonial tough bosses” and “the owners of capital that was earned by the exploitation of labour, often maintaining adversarial positions at the workplace and during negotiations”. The situation in the Caribbean countries evolved differently from the European experience because of the fact that the local workers, as well as the national political leaders, were fighting for the same issues: human rights, higher wages, less unemployment, overall improvement of the social and economic situation in the different countries. This was not the case in Europe.

Out of the historical background, one can draw the conclusion that employers’ organizations were established out of a necessity to create a unified or well-structured force against the trade unions which, often in co-operation with governments, were able to formulate regulations, which were often in favour of the interests of labour.

An organized labour force and organized employers were under international and national pressures to be recognised as “social partners” of the governments to partially share power in the area of socio-economic development of the states. Tripartite bodies were established, socio-economic councils followed and social contracts were signed in a few countries.

But the situation changed since the 1950s, and the three partners were constantly questioned about their role as social partners and their influence in the socio-economic development of the countries. Also in the 1950s, labour regulations were necessary to protect the workers against exploitation by enterprises when producing for economies outside the region. The present situation however, calls for pro-active measures to secure training and skills development for quality improvement, efficiency, productivity and competitiveness of all layers of economic production namely: large, medium, small and micro-enterprises.

The New Players

In the contemporary world, “national socio-economic policies” are no longer shaped by politicians alone or politicians in an alliance with trade unions, or politicians acting together with their social partners. Other “non-state actors” have appeared on the scene and are increasingly demanding a role in formulating and implementing the aforementioned policies. The results of over emphasizing “economics” during the first

decade of modern globalization (1990s), motivated “non-state actors” to form strategic alliances to be heard at the “Battle of Seattle” in 1999. When analyzing the position of the actors in the second decade of globalization (2000- 2010), account must be taken of the national and regional responses to global changes and the impact as a result of globalization, hemispheric integration and trade liberalization.

The prospects are, however, very promising, because of several events. The world is now looking forward to another equilibrium, during which more attention will be paid to the environment, social policies, human rights, decent work, human dignity, poverty alleviation, human resource development at all levels and economic growth for all. The issues, which were normally taken on board by the bipartite and tripartite consultations and negotiations, were, among others:

- Social economic policy
- Collective bargaining agreements
- Prices and incomes policies
- Social security
- Skills development
- Productivity/Competitiveness
- Employment and job creation
- Safety and health at the workplace -HIV/AIDS
- Corporate social responsibility.

The Mandate of Employers’ Organizations

The core mandate / business of an employers’ organization in the tripartite relations requires a great solidarity and representation from the members. These requirements are necessary in order to strengthen their position in the negotiations of the complex regulations in industrial relations with the trade unions and the governments. The employers’ organizations constantly monitor the developments and actions of the other partners of the tripartite body, and would take proactive measures/actions to protect and defend their interest. This is the way an employers’ organization operates, when fulfilling the major part of the needs of their constituents through employer solidarity, joint actions, expertise, funds, and international backing. It is only under these circumstances one is able to judge the strength and/or the position of an employers’ organization on the national scene.

Apart from the “core business”, the employers’ organizations are involved in “representational” activities, which are part of the functioning of the regulations with regard to national issues in such bodies as Educational Councils, Mediation Boards, State Councils, Socio-Economic Councils, National Insurance Boards, and others. A great part of these activities is delegated to standing committees, which are co-ordinated by the secretariat of the organization. In its advocacy role, the employers’ organization is represented by an executive board, which is responsible for the public relations and high level representation of the organization. As member companies seek improvements in their own sphere of existence, the employers’ organization may expect new demands in the areas of:

- Small- and medium-sized enterprise development
- Economic production
- Productivity
- Investment climate
- Business environment
- Regional integration (FTAA)
- ACP/EU joint ventures
- Use of EU instruments
- Global Trade Agreements (WTO)

The employers’ organizations are obliged to represent their members and seek to maximize the use of opportunities for them. The above listed issues are often also the core activities of other private sector organizations, for instance, chambers of commerce, manufacturers’ associations and others. Employers must understand that crises and negative situations trigger the core business of national employers’ organizations and that the other activities are often far more attractive, when looking at short-term benefits. The longer term gains are sometimes not even quantifiable. However, the unionized enterprises are able to appreciate these, when dealing with the unions about “the way forward.”

The following conclusions can be made:

- An employer organization originates from and has its core business in the area of sound industrial relations and modern employment policy;
- Although there are common needs, the employers’ organization does not have to be compared with other private bodies; and

- Sustainable development can only be arrived at through decent employment that integrates the three major goals: economic growth, social progress and environmental protection.

The Suriname experience

The manner in which the consultative process in Suriname was organized, for instance, is a direct result of the COTONOU Agreement, signed in 2000 between the ACP and the EU states, also known as the COTONOU Partnership Agreement (CPA). In this agreement, the EU and the ACP states have agreed to increase the role of non-state actors in the preparation and the implementation of the partnership agreement.

Non-State Actors

Non-state actors are defined in Article 6 of the COTONOU Partnership Agreement as comprising:

- a. The private sector
- b. Economic and social partners (such as trade unions), and employers
- c. Civil society in all its forms according to national characteristics.
In the ACP context, “civil society” comprises only the following: human rights groups and agencies, grassroot organizations, women’s associations, youth organizations, child protection organizations, indigenous peoples’ representatives, environmental movements, farmers’ organizations, consumer associations, religious organizations, development support structures (NGOs, teaching and research establishments), cultural associations and the media.

The COTONOU Agreement also clearly recognizes the distinct role of “local governments” as new actors in development and co-operation processes. The wide-ranging role foreseen for non-state actors is laid down in Article 4 of the Agreement, which indicates in particular that they are to be:

- informed and consulted on co-operation policies and strategies on priorities for co-operation, especially in areas that concern or directly affect them, and on the political dialogue;
- provided with financial resources in appropriate circumstances;
- involved in the implementation of co-operation projects and

programmes in areas that concern them or where they have a comparative advantage;

- provided with capacity-building support in critical areas to reinforce their capabilities, particularly as regards organization and representation, the establishment of consultation mechanisms, including channels of communication and dialogue and to promote strategic alliances.

In the COTONOU Partnership Agreement, it is explicitly stated that the non-state actors will be provided with financial resources in appropriate circumstances. The strategies for the involvement of the different categories of non-state actors are contained in: Article 21 on private sector development, and Article 25 on social development. Because of the different mandates and roles, the three clusters of non-state actors must firstly dialogue amongst themselves, and, secondly, form strategic alliances with the other clusters to participate in the dialogue of others. In other words, consultation takes place at three levels of the non-state actors - in a social and economic partner's forum at the level of the unionized private sector, in a business forum at the level of the domestic private sector, and in an NGO forum at the grassroots level. The functioning of the three fora requires that:

- At the level of the social and economic partners, the other actors will have to be involved in special committees to be heard on issues which are of importance to their mandate. Enterprises should link up with the private sector.
- At the level of the domestic private sector, employers must participate actively in a business forum to defend the interest of smaller enterprises in particular. Know-how, training possibilities and code of ethics can be transferred from the social and economic partners.
- At the level of the civil society, private sector organizations must be enhanced with appropriate linkages.

The business forum may be constituted as a public-private-partnership in the first phase of operation, due to the large influences of some governments. The establishment of a non-state actors' platform is necessary to deal with cross-cutting issues and linkages on a wide range of social, economic, environmental and governance issues of

interest to all parties - the non-state actors of the business forum and NGO's. In Suriname the triangle of stability has come under pressure since the 1980s, when other partners presented themselves in the arena for national development and democracy. The political government decided to involve the non- state actors at different levels:

- LEVEL I: The Social Economic Council (SEC) whose role is essentially advisory. This is a high level platform in active social dialogue to discuss the long-term problems and to issue important advice to the president, the council of ministers and the national assembly. The participants include:
 1. Government appointees;
 2. Trade unions' representatives on the basis of representativity (number of workers, GDP and tax contribution);
 3. Employers' representatives on the basis of representativity (contribution to GDP, number of workers, sectors and International network);
 4. Ad hoc participation from other actors as observers, when the issues are at stake within their interest or fall within their mandate;

The President of the Republic of Suriname heads the Social-Economic-Council, which includes several experts. Separate or incorporated as a committee from the SEC, the two other social partners platforms are in place:

- a. The Tripartite Negotiating Body for dialogue on short-term economic and social questions. Minister of Labour heads this committee, which comprises of representatives of Government, workers, employers.
 - b. The Labour Advisory Committee (LAC) for long-term labour regulations including ILO conventions, recommendation, etc.
- LEVEL II: The Business Forum which interacts with several government agencies and senior officials. It is a platform where the public sector and the private sector have dialogues to arrive at a national strategy for the sustainable development of the private sector with respect to:
 - to improving the environment for the business sector at the government side;

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- institutional strengthening of the business sector organization;
 - to strengthen the SME sector of Suriname at the enterprise level through business development services, efficient use of the financial instruments, and investment facilities, which are available for business.
-
- Level III: National platform for NGOs comprising:
 1. Government (Ministry of Planning, Social Affairs, Agriculture, Regional Development);
 2. NGO forum, together with advisors;
 3. Other relevant NGOs.

In order to streamline the consultations with the NGOs, the Minister of Planning and Development Co-operation heads the NGO which may discuss regional and hemispheric issues- CARICOM, ACS, MERCUSOR, FTAA and regional integration:

Some conclusions are:

- a. Only by active participation at all levels and in all sectors/segments of the community can the consultative function become a force for democratization, development and good governance.
- b. The three categories of non-state actors must be strengthened institutionally to be better able to play their role in the process towards democracy, good governance, etc.
- c. The SBF will participate in international activities.
- d. In order to sustain its role, each of the three clusters must enter in a strategic partnership to cope with large and national issues. Once the structure is in place, co-operation can only improve.

A non-state actors platform is finally the broadest umbrella of consultation, wherein representatives of the three clusters meet to dialogue about broad issues.

The Imperative of Social Dialogue

The parties place strong emphasis on social dialogue. The capacity to dialogue and manage conflict internally is an eloquent indicator of reliability in any organized body, whether at the enterprise, sectoral or national level. Social dialogue is a set of procedures that aim to establish

mechanisms for dialogue, mediation, and conflict management, in which the interests of each party are respected. It therefore covers all forms of negotiation, consultation and information-sharing among the representatives of government, workers and employers on issues of mutual interest tied to social and economic policy.

Social dialogue is central to social harmony. It is an instrument for solving problems and managing conflict and a tool for building consensus. The ILO provides a unique framework where governments and social partners can share ideas and experience in a free and open manner. In conformity with the ILO's tripartite structure, its constituents - representatives of employers and workers on an equal basis with governments - decide its policy and programmes. Through social dialogue, the ILO seeks to reinforce the organization's tripartite initiatives and the role of its constituents so that their capacity to initiate and promote permanent mechanisms for dialogue is strengthened.

Promoting social dialogue is necessary to support the efforts of social partners and governments. In most countries, efforts by social partners come up against the inefficiency of mechanisms for conflict resolution that paralyse social dialogue. The labour codes in these countries, however, make provision for structures for dialogue. These structures do not function well due to a number of problems tied, in particular, to weak representation of workers' and employers' organizations, a lack of trust among the partners, and poor support measures for case management and follow-up.

This climate of perpetual conflict naturally affects the quality of relations between workers' unions, employers' organizations and governments.

Strengthening social dialogue institutions and the capacity to participate effectively is one sure way of instituting a natural reflex for dialogue and consultation among the three partners in order to achieve labour peace, a key factor for increasing productivity in the world of work and promoting economic and social development in developing countries.

To support this process of sustainable social and economic development in these countries and address their needs in the preparation of development strategies, the social partners and authorities in these countries are guided by the ILO in setting up suitable mechanisms for consultation and dialogue. The aim is to reinforce the democratic process

underway in political institutions, and in tripartite fora to contribute in consolidating democratization and participatory development through regular dialogue and concrete involvement of social partners in designing and implementing social and economic development policies.

Social Dialogue in the Caribbean context

The Caribbean Community (CARICOM) has adopted in 1992 the Charter of Civil Society upon the recommendation of the West Indian Commission. All member states, by virtue of their membership of the Community are committed to promote economic growth and sustainable development through the wise use of the human and natural resources.

Apart from safeguarding the workers' rights, the role of the social partners is explicitly been stated in the Charter in which:

The states undertake to establish within their respective states a framework for genuine consultation among the social partners in order to reach common understandings on and support for the objective, contents and implementation of national economic and social programmes and their respective roles and responsibilities in good governance.

The Caribbean states have recognized since the establishment of CARICOM that social dialogue can be a driving force for innovation and change, when complemented by the quality of industrial relations.

The tripartite partners: governments, employers and workers are aware of the fact that social dialogue plays a key role at all levels of economic production in promoting modernization and competitiveness. In the past decade, much emphasis was placed in the Caribbean region by the governments, the ILO Caribbean office, the regional and national social partners on the future role of social dialogue as key to improved governance and social reform, during the era of globalization, economic integration and trade liberalization.

Measures were taken to strengthen the social dialogue at different levels. The key challenges to be addressed by the tripartite partners are, among others:

- the promotion of social dialogue at all levels - enterprise, national, regional and the wider Caribbean;
- enhancing skills and qualifications,
- modernizing work organizations;

- equal opportunities and diversity;
- productivity and gain sharing;
- active ageing policies; and
- modernization and management of change.

The states recognize that good governance relies on the involvement of all actors in decision-making and also in the implementation process. The social partners have a unique position within the civil society (non-state actors), because they are best placed to address issues related to work and can negotiate agreements which include commitments.

The awareness of this fact should be promoted actively. The vital role of social dialogue is known and has been underlined by all parties involved, but one weakness has surfaced, being the urgent need to strengthen the capacity of the social partners at all levels so that they can involve themselves in a meaningful way in the dialogue process.

In the Caribbean region, two major and highly successful activities took place in the strengthening of social dialogue in this part of the world.

At the regional level, in 1998, the European Union (DG VIII and DG V) decided to fund a pilot project: *Promotion of Social Dialogue in the Wider Caribbean as an example of decentralized co-operation*. The project was jointly carried out by the Caribbean Employers' Confederation (CEC) and the Caribbean Congress of Labour (CCL); in close co-operation with the ILO Caribbean office, during the period 1999 and 2000.

At the enterprise level, during the period 2000-2005, a project was executed as: Promotion of Human-Resource Oriented Enterprise Strategies and Workplace Partnerships in the Caribbean, better known as the Promotion of Management-Labour Co-operation.(PROMALCO). The US Department of Labor, through the ILO, funded this project and the ILO Caribbean office established a PROMALCO Unit within their organization to manage the project in close co-operation with the regional social partners (CEC, CCL), the Caribbean governments, the Barbados Productivity Centre, the Caribbean Centre for Development Administration, and the University of the West Indies.

These two projects inform the bases of a third proposed project titled "*Promoting Social Dialogue for Enhanced Productivity and Competitiveness in Caribbean Regional Integration.*" The project

will in broad lines follow the same management structure and aims primarily at strengthening the social partners in their capacity to participate in the enterprise, national and regional social dialogue far more meaningful than before.

By integrating the effects of social dialogue, the social partners are able to contribute in a structured way towards enhancement of the national competitiveness and the socio-economic progress of the Caribbean states. In the next decade, the Caribbean region will encounter the full consequences of regional and global economic integration, which will require, more than before, the necessity to transform the labour force into a more skilled and competitive one.

Rapid transformation will only be possible if structures are in place at the regional, national and enterprise level, for meaningful social dialogue to take place on an equal footing between Government and social partners.

Section V

Labour in a Changing Environment

15

From Trade Union Politics to Industrial Diplomacy

Robert L. Morris

The last two decades of the twentieth century seemed to be a period during which the trade union movement in the Caribbean was under threat in the face of the Washington Consensus which resulted in structural adjustments in most of the territories with resulting privatizations, downsizing and loss of membership.

The renewed thrust of economic liberalism with its focus on the market, and the post industrial shift to services and technology, accompanied by the removal of protectionism, buttressed by the various new trading policies, caused a great deal of angst to most trade unions. As late as 1997, a leading Caribbean academic stated “the trade union movement was under heavy pressure to deliver, to demonstrate its relevance”, and further, noted the same scholar “the skeptics had a field day wondering whether the trade union had not outlived its usefulness, whether it had not become an anachronism”.¹

Unfortunately, much of the intellectual comment on the Caribbean economy and on industrial relations is tainted by a pseudo Marxist and a negative assessment based on idealistic and romantic news of world reality. This view sometimes paints all agencies of capitalism and neo-colonialism as devilish, and condemns trade unionists as collaborators with the market and capitalism to keep workers in thrall.

It is extremely refreshing to hear an alternative view from Professor Clive Y. Thomas who, whilst admitting that he has been a long standing critic of the region’s developmental policies and practices, openly states that in general much economic development has been achieved in the region, while acknowledging that many gaps and deficits remain. Professor Thomas has always been supportive of the trade union, and the labour movement. According to the Professor, labour is more than

a productive asset of the region. It defines what the region is about. Thus the importance of the trade union movement to the future of the Caribbean.

Structural Adjustments

Half way into the first decade of the twenty first century, the world view about trade unions has changed dramatically. Even the chief instruments of the Washington Consensus, the World Bank and the International Monetary Fund have yielded from their former caveats against trade unions, and have come to embrace the role which trade unions can play to ensure sustainable development.

These institutions have grown to accept that no single strategy can be used to fix the problems which hinder development in any country. They have also recognized that many of their policies led to massive unemployment and under employment, which might weaken the trade union movement, but at the same time threaten the very sustainability of the economies. The short-lived tactic of downsizing, which had a very deleterious impact on the trade union movement was strenuously resisted and now resides in the graveyard of other failed policies aimed at derailing the labour movement.

While it is true that at the height of the structural adjustment period the trade union movement in the Caribbean lost membership, the impact on the sustainability of the movement has not been critical.

As would be expected, those unions with membership in sunset or declining areas such as sugar and agriculture, screw driver industries, garments, and similar areas experienced some difficulties. However, as the local economies changed their structure and embraced the growing or sunrise areas of economic activity, trade unions shifted into new areas and established new bases for representation. Thus there were thrusts by trade unions into the financial services sector, the security and janitorial sectors, the hospitality sector, call centres, and other growing areas of the private sector, together with renewed bursts of organizational efforts in the government and parastatal areas.

Membership Impact

Still, there are particular areas where the impact of change has been traumatic for trade unions. For instance, the closure of the sugar factories

in Trinidad and Tobago and in St Kitts-Nevis. Jamaica seems set on following in the same direction. Barbados and Guyana have adopted different strategies, with the former attempting to restructure the industry in conjunction with trade union support. Guyana has engaged in discussions with its Barbados counterparts and seems committed to keeping the integrity of the industry while examining labour market strategies and policies to introduce some flexibilization and to encourage greater emphasis on productivity.

In both cases the trade union is expected to maintain its role as representative of labour in the restructured industries even though the numbers and quality of the labour input may change dramatically. Trade unions in those territories where the banana industry plays an important role in employment have also had some impact on their membership. However, as the countries shifted to expand their tourism base, trade unions have expanded their membership in this area.

The reality is that trade union membership may not be increasing dramatically, but it has been holding its own. Members have been lost in some areas, but gained in others. Trade union representation is still strong in the Caribbean in the government sector, in the large corporate sector and medium sized businesses, and even among small enterprises. While there has been some drift towards micro enterprises and the informalization of the economy, this has not occurred to the extent of undermining the viability of trade unions and the labour movement.

Democratization

For most Caribbean people, the trade union retains its relevance as the instrument best suited to ensure the democratization of the workplace, and indeed of the wider society. In the last decade, and increasingly into the twenty-first century, trade unions have begun to move away from traditional adversarial approaches towards collaboration at the regional, national and workplace level to a degree that is unprecedented. Far greater emphasis is being placed on social dialogue, the establishment of national protocols, social partnerships, compacts, memoranda of understanding and similar strategies to encourage a corporatist approach to industrial relations.

Trade unions have settled on a policy of engagement within negotiated parameters for mutual benefit, while maintaining trade union independence, rather than the dated approach of perceiving industrial

relations as a contested terrain, an economic battle zone, where scorched earth policies lead to a downward spiral of low economic growth rates, unemployment and wastage of the human resources.

This emphasizes an extension of democracy which begins with safeguarding the importance of freedom of association and protection of the right to organize, and continues with an emphasis on the value of collective bargaining and dispute settlement, based on employee participation, cooperation and communication.

Within this renewed thrust towards greater democracy in the trade union movement there have been heartening tendencies towards the formation of national trade union centres. The establishment of such bodies in Barbados, Antigua and Jamaica has seen remarkable contributions to industrial relations in the host countries.

In areas such as Trinidad and Tobago and Guyana, while the final achievement of consolidation has been elusive, both have old trade union councils, and the fact that there is no single umbrella coverage, must not be used to gainsay the level of cooperation which exists in these countries, especially when examined against factors of history and culture.

There is no Caribbean country which does not have an existing mechanism for tripartite consultation between the social partners, even though the process varies in terms of the degree of formalization and institutionalization.

At the workplace level, trade union democracy remains vibrant through the process of collective bargaining which is still based on the development of proposals by the membership, the use of the institution of negotiation teams which incorporate shop stewards and workplace representatives, and the use of the general meetings to keep workers informed of developments, and to ratify agreements reached on their behalf.

Indeed there are still concerns often expressed by the anti-trade union lobby about the continued capacity of trade unions to demonstrate militancy in all of the sectors in which they are represented, even though trade unions in recent times have chosen to exercise the strike less frequently than it has been used before. The strident militancy which once characterized industrial relations in Caribbean docks, sometimes as an adjunct to the use of the general strike has not been apparent for some time.

New approaches

Indeed, institutionalized approaches to labour-management cooperation seem to have transformed areas of industrial relations. Case studies relating to Trinidad Cement Company Limited, Alcan Jamaica Limited, and St Vincent Electricity Company, are examples of how the “high road” approach to labour-management relations pay high dividends to all the social partners.² There are several other similar cases which can be documented at the workplace level.

On the regional level, the Framework Agreement signed by the FirstCaribbean International Bank and the trade unions and staff associations representing its members, followed up by an agreement of Partnership Principles, establishes a new direction for trade union democracy and worker participation on a regional scale.

This development presages the need for strengthening union to union cooperation in sectors and in businesses which have branches and companies across the Caribbean, and indeed, with the advance of the CARICOM Single Market and Economy, and the anticipated increase in CARICOM enterprises, the need for cross border, collaborative trade union contacts must increase.

Historically there have been occasional meetings of trade unions representing LIAT to discuss problems encountered by the airline. This has not been the case with trade unions representing BWIA. There are several large businesses which have branches throughout the Caribbean such as McEneaney Alstons Limited, Grace Kennedy, Goddard’s Enterprises Limited, Sagicor Limited, and several other companies in the financial sector.

Caribbean trade unionists have been accustomed to meeting, but generally in furtherance of educational and policy issues, through sponsored programmes mainly organized by international trade secretariats and the International Labour Organization. The international trade secretariats, like the UNI and the IFBWW have recently shown a trend towards focusing on organizing and negotiation strategies, and the negotiation of framework agreements, a trend which must be encouraged.

Productivity

The formation of the Barbados National Productivity Council, and its vibrant impact on industrial relations has led to a greater focus on the

role of productivity in the workplace and in the country. Trinidad and Tobago's Council existed before the Barbados entity. In recent times Jamaica has also taken on the productivity challenge. The ILO's Programme for Labour-Management Cooperation in association with the Caribbean Congress of Labour, at the centre of a drive to train labour relations practitioners in productivity bargaining. The challenge of this type of bargaining has been readily grasped by leading trade union practitioners. Several agreements on job evaluation, performance-related pay systems, and profit-sharing arrangements, and the existence of productivity committees in the workplace are evidence of this new feature of industrial relations which is likely to intensify in the future.

There is a clear need to tie wages and salaries to workplace performance, financial results and economic policy. There is a clear difficulty, however, where there are several workplaces outside of the responsible influence of trade unions. In many cases this can be baneful to the work of trade unions, either through paying salaries/wages higher than those negotiated by the union to prevent unionisation or through using exploitative approaches which impact negatively on the concept of decent wages. The role of labour departments must be associated with productivity councils to monitor salaries/wages and other standards across our economies.

Business Reform

There has been an increasing incidence in business mergers and consolidation in the quest for efficiency, increased market share, productivity and profitability. The market is witnessing interesting phenomena in this growth of large companies. At the same time WTO regulations are militating against monopolies and this has led to changes in areas such as telecommunications, where existing companies have undergone restructuring and new companies have come on to the market. This type of economic activity has posed challenges to the trade union movement, especially in terms of membership losses.

In addition, many firms are engaging in constant business process reform, especially associated with the use of technology. In the case of companies that operate regionally and internationally, movement to international IT platforms is a certainty. This has ramifications for staff training and numbers.

In the public sector business reform is ongoing. Public Sector Reform has taken the direction of process reform, as well as privatization in its many reforms.

Trade union reform has not been as noticeable, with the outstanding case of a merger of banking unions in Trinidad and Tobago. This case of a trade union merger may serve as a useful model for guiding other unions which may have to consider a similar development.

More efficient organization

Trade unions must place organizing and collective bargaining at the centre of all of their activities. While the institutions can best serve their members by adopting multi-functional and multifocal approaches, the emphasis on internal and external organizing, and the development of new competencies at the bargaining table must be complementary.

In those countries which are not constrained by legal impediments, trade unions must concentrate on wall to wall, and on vertical organization. Every possible bargaining unit in an enterprise, from the managers down to the support and ancillary staff must be brought into the labour movement. Obviously, however, the skill sets required to service a bargaining unit of support staff and one of managers are significantly different. Furthermore, one of the fastest growing industries in the Caribbean is that of human resources advisors and industrial relations consultants, drawn from a cadre of persons trained in management science and in law.

The bargaining table, both in those countries which have highly regulated industrial relations with Industrial Courts and Tribunals, and those which have remained relatively highly voluntaristic, is witnessing a greater professionalization and modernization of collective bargaining processes. This will continue to place pressure on trade unions, as success at the bargaining table is a very important component in organizing strategy.

Professionalism

Trade unions which cannot afford to retain well-paid professional trained officers, and which rely heavily on volunteerism will be under constant pressure. The reality is that the government and the “significant” private sector are able to purchase industrial relations resources from the market at prices with which trade unions would find it difficult to compete.

The reality is that apart from their paid, professional staff members, trade unions have to use the wealth of talent which resides within the wider membership to develop functional committees and teams to assist in trade union work. However, this must be done to supplement professional staff employed in organizing, negotiating, research, administration, education, safety and health, and public relations, among the most significant areas of trade union operations.

It goes without saying that the modern trade union office must be well equipped with computers, and that all their records should be maintained at the highest levels. Trade union leaders should have up-to-date information on their membership, agreements, finances, and other data. Their filing, library and archival arrangements should also be modern, efficient and up-to-date.

Focus on Financing

To afford these resources, it must be recognized that trade unions are organizations representing the waged and unwaged, with some extending to include the salaried members of the working class. Trade unions which are heavily public sector oriented, especially among the established employees, enjoy success in a check off system, and a guarantee of a constant flow of income as there is little chance that an increase in dues will affect membership and finances drastically.

This is not so in the case of many trade unions in the private sector, where a difficulty in having a check off system, or in having dues collected and not passed on to the union, or in increasing dues only to find an exit from the union, can pose significant problems to sustainability. Trade unions face significant challenges in providing services to their members including new and modern office buildings with the required level of technological sophistication, as well as providing education programmes, and welfare services often demanded by their members.

In those countries where trade union density remains relatively high, in the region of 20 – 30 per cent, unions have been able to present their audited financial statements to their members at their general meetings, showing modest surpluses. Those that have better than moderate returns have utilised these funds to empower their workers in various ways. Some of the more conservative have invested in shares and in stocks, while others more creative, have used investment opportunities to better the institution's finances, and those of the members.

At one extreme, trade unions and their members are share holders in the sugar industry in Belize and in Barbados a mechanical workshop servicing the transport board and other customers has been in existence for sometime. Trade unions across the Caribbean have controlled supermarkets, cooperatives, cinemas, laundries, taxi companies, housing developments and several other enterprises on behalf of their members. Still there are areas of economic activity, which can use the membership base of trade unions to ensure the financial stability and sustainability of trade unions, which have not been broached to a significant extent. Most Caribbean countries have had to restructure their social security systems to ensure that they can maintain themselves in the future. Emphasis is being placed on the development of workplace based pensions to take the burden off the national insurance schemes.

This provides significant windows of opportunity for trade unions in terms of negotiating as many Medicare and pension schemes as possible, while at the same time embracing the expertise and competence to own companies selling Medicare and pension products and solutions to members.

Unfortunately, trade unions have not by and large, been able to organise the professionals in these areas into their ranks, thus providing an in-house source of advice and expertise. Where there has been success in organizing activities, the membership is largely drawn from the clerical and administrative rather than the sales element of the staff.

Currently, there is a move to have a clear determination from the courts, of whether insurance sales persons and agents are holders of contracts of services, or of contracts for service. A determination of this issue may open up an area of tremendous potential for the trade union movement, not only in terms of membership numbers, but also in terms of added value for embarking on investment opportunities in the business of welfare schemes for workers.

As it is, the trade union financial base of contributions from members, and a small government subvention, is inadequate for the work to be done by these organizations which are fundamental to good governance in our countries. Except for a small group of confused individuals, the Caribbean people accept that the region, without an enlightened trade union movement would regress rapidly into a zone of chaos, rather than continue as a zone of peace which it currently exemplifies.

This is the basis for which trade unions have to continue to expect

subsistence from the state for well articulated and managed programmes which can sustain full scrutiny by the public. The days of hand outs from foreign donors, and from the state, are long in the past. However, trade unions must not be so mired in political rhetoric, anti-statism, and adversarial relations, that they cannot approach existing governmental regimes for assistance in programmes aimed at poverty alleviation, resisting the spread of HIV/AIDS and other life threatening chronic diseases, or any projects which contribute to the national good.

Reforming Trade Union Politics

Trade union diplomacy must replace trade union politics, within a new paradigm based on social partnership and tripartism. The adage of governments holding a policy of being “friends of all and satellites of none” can be adapted to the advantage of the trade union movement. Trade unions of the new era are less likely to be involved in alliances with political parties than they have been in the past, recognizing the potential divisiveness of such alliances among the rank and file members.

While the society retains tolerance for the strike as a tool of industrial action, it will have little tolerance for its use as an instrument of political change. Indeed, some trade union constitutions deliberately restrict the extent to which trade union funds can be utilized for political purposes. To the extent that trade unions engage in industrial diplomacy rather than national politics, at the party level, its strength and relevance must grow. Indeed, a tendency to ally integrally and organically with an individual political party can tie a trade union into a win-lose syndrome which can sometimes lead to near annihilation. In the same vein, trade unions which concentrate on over flown anti-free market rhetoric while seeking to exist within free market structures, and which try to destroy the business firm, the very root of the free market are destined to compromise their own existence.

Trade unions have a legitimate vision of their role as attempting to monitor and mitigate the excesses of both the state and the market. The trade union’s old role of being a countervailing force on behalf of the masses which it represents is still valid. It needs to recognise the significance of the difference between the old estates and the new state; between, the old family dominated, monopolistic companies, and the expansion of the public limited liability company, where trade union members are often shareholders.

Indeed trade unions should embark on a concerted policy of ensuring that its members gain from the profitability of companies, and that part of their value added should be compensation in the form of share ownership. In a real sense the highest form of socialism, supposedly the predominant philosophical and ideological underpinning to trade unions, is achieved when workers are able to share in the real wealth of the community both through collective and individual ownership.

The major form of collective ownership in our community is that of the public company, and the more private companies become public, the better will it be for economic democracy in the region. Trade unions must play a role in the expansion of public companies as well as of cooperative type ventures, and must ensure that its members are owners in such ventures.

Engaging the Challenges

Trade unions in the Caribbean are currently dealing with some challenges to the industrial relations system, such as the growth of atypical forms of employment, the problems being posed by the process of establishing a single market and economy and the wider changes in the society reflecting the globalization process. Most of these challenges represent change - a feature of human existence. To combat change, the trade union itself must be a change agent and an institution that is willing to change.

That the trade union has changed significantly is certain. The fact that both the IMF and the World Bank now speak encouragingly of the trade union as an institution, must give trade unionists pause for reflection, on whether these agencies have made a tactical volte face because of trade union action, or whether they are taking new strategic directions. The shift from structural adjustment and its downsizing approach is being replaced by a new approach, the old strategy of flexibilization. The aim is the same as always, placing control of the workplace within the concept of management rights. The challenge continues, but the trade union movement will prevail as it is too deeply rooted in our Caribbean reality to be damaged without serious negative effects on our entire existence.

Any attempt at reversing the forward progress of the trade union movement would lead to social consequences equivalent to a tsunami, or massive hurricane, to use an environmental equivalent.

Industrial Relations in the Caribbean: Issues and Perspectives

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Trade Unions in the Caribbean: Perspectives for the Future

Claris Charles

Trade unions in the Caribbean before the 1940s were few. The planter class ensured that their interests were protected and the United Kingdom did not provide legal protection for human rights, social justice and democracy in any of its dependencies. There were even laws banning combined actions of labour unions in furthering the interests of workers. However, in the 1930s, workers throughout the Caribbean revolted. This was due to low wages, and harsh working conditions especially on the plantations in the islands and the inhumane treatment of workers almost akin to those existing during slavery. The high level of illiteracy and extreme poverty also fuelled discontent and social unrest which gave rise to the British Government setting up a commission of inquiry chaired by Lord Moyne. The Moyne Commission in 1945 recommended several changes, among them trade union recognition, and a system of dispute resolution by means of conciliation through the creation of departments of labour.

Trade Unions and Political Parties

Soon, trade union leaders recognized that in spite of the consciousness of workers with respect to their rights, their commitment to labour, their understanding of their plight and their willingness to take industrial and other forms of protest, they still did not have executive and legislative power. It must be noted that in the Caribbean, several unions existed before 1940. For example, the Guyana Teachers' Union from 1885, the Grenada Union of Teachers from 1913, the Bustamante Industrial Trade Union from around 1938, and the St Kitts Trades and Labour Union from 1940.

Trade Union and workers realized that the social situation would only change if they had political power and were in charge of the government. Thus, out of the labour movement came the birth of several political parties in the Caribbean, most of them incorporating the words "labour" or "workers", for example, the "Jamaica Labour Party," the "Antigua Workers Party", the "Barbados Labour Party," the "Grenada United Labour Party." These political parties deliberately chose their names to show their affinity to the workers' movement. As the 20th century progressed, several unions emerged and the trend towards national unions representing mainly the working-class digressed. Unions were formed to represent particular groups of workers such as teachers, public officers, bank workers, those in essential services, agricultural workers. In other words, instead of one union representing several groups of workers, there was the tendency for each group in a specific profession to form a union. Even in a single profession, there might be more than one union. There sometimes was one union for rank and file teachers, another for principals and still another for university lecturers.

This rise in trade unions after World War II, as well as that of political parties affiliated to unions, enabled changes in a number of laws and the growth of institutions, which helped to change the educational and socio-economic status of workers. Arising out of these changes was the growth of a new middle-class in the Caribbean; these were the sons and daughters of the working-class who became professionals - teachers, nurses and civil servants.

Labour Laws and Globalization

Laws were passed in several Caribbean countries, which recognized the role of trade unions to bargain and enter into contract on behalf of its members. The Trade Union Recognition Act, the Right to Strike, Maternity Leave Law, Freedom of Association, among others, are some of the legal benefits that workers have fought for. ILO Conventions ratified by governments and the endorsements of various standards all influenced basic and fundamental rights.

The advent of globalization and its impact on small, vulnerable economies has brought about the free movement of capital as trade and investment barriers are being removed. The developed world, through globalization, has retained the monopolies of technology, finance, natural

resources, weapons of mass destruction, media and communication systems. The free market has benefited the developed world, which is now more affluent, while the developing countries are becoming more dependent. Many of them, the Caribbean included, are seeing stagnation and regression in their economies. Across the Caribbean, countries are facing marginalization, growing vulnerability, exploitation and increased dependence.

Attempts by Caribbean governments to diversify and improve their economies have not succeeded, since they are receiving virtually no inward investment. Economies like The Bahamas and Barbados are considered too good to receive concessionary financial help. There is neither fair trade nor social justice. Multinational companies are exploiting the developing world by taking incentives and hardly giving back anything to the poor. There appears to be no corporate social responsibility, including equitable partnerships with workers.

Changing Trade Rules

Therefore, fair trade rules should incorporate programmes aimed at strengthening democracy, raising living standards for the poor, end the exploitation of workers and protect the environment. The poor cannot save the environment when their children are starving.

The trade union movement in the 21st century is operating in an atmosphere where developed nations maintain barriers against imported textiles, agricultural products and other goods which developing countries cannot produce competitively. In the Windward Islands, the loss of banana market preferences has increased unemployment especially in the rural areas. Trade unions in the Caribbean need to understand the purpose of the free market system, globalization and its impact on workers.

Trade Unions and New Initiatives

Unemployment caused by market reforms would inevitably produce cheap labour that is easily exploitable. In the United States, for example, workers are told, "If you demand higher wages, then we will go to Mexico or Thailand or the Philippines". Governments in the Caribbean are often told by investors that wages are too high, and returns on their investments are too low. They, therefore demand substantial incentives

and tax free concessions which further erode the tax revenue base in the country.

The trade union movements are challenged to demand urgently, common tax and incentive regimes for the Caribbean so that companies would not use one country against another in their haste to make quick profits at the expense of workers and the countries involved. The trade union movement in the Caribbean is facing exceptional challenges with the coming into being of free trade, free market system and globalization, but there are other issues which will come to the fore in the coming years. Its survival will depend on its ability to firstly accept and understand the global realities, and, secondly, to adapt quickly and effectively.

Traditionally, trade union members have come from organized labour in the public and private sectors. Today, there is an increase in the informal sector. What will be the relationship between the trade unions and the informal sectors, that see themselves not as workers, but as entrepreneurs /owners of business. These growing micro-business sectors, owned and run by family members, pose a serious threat to an increase in union membership. Trade unions must therefore offer other benefits, if they intend to survive in an environment which demands more than just bargaining for salaries and wages and changes to labour codes and labour legislation.

Labour in the Information Age

The second area which would affect the trade union movement would be the impact of information and communication technology (ICT) on the service sector. Businesses are now heavily reliant on computer - based systems. Electronic commerce totaled billions of dollars in the first decade of this century, and the number of websites are growing daily in this era. Persons are able to conduct business at home and work from their residences. How will these persons be involved in the labour movement, and how will unions survive when recruiting new members becomes more elusive?

Unions need to create their own websites, and find out what other roles they can play and what unique benefits they can develop and offer to workers who work from their homes and who might be employed by several employers, not necessarily in the Caribbean, but in any part of the globe. The Internet has made this possible, and although there is

not a preponderance of e-jobs in the Caribbean, the potential is enormous; we are just on the edge, and this possibility would certainly encompass the Caribbean. It should be noted that already customers, calling Cable and Wireless in Grenada, get a response from someone in Barbados.

Labour Migration within CARICOM

The third challenge which would affect the future of trade unions is the CARICOM Single Market and Economy, which would involve the free movement of skills in the region. Preparations are also in train for the movement of social benefits and pension contributions. The matter to be addressed would be whether a member, who has left Trinidad to work in Grenada, would continue to pay dues to the union in Trinidad or will he join a similar union in Grenada. Questions would arise as to whether union benefits, such as membership in credit unions and health insurance, would be transferable or will they be put in a separate fund or be invested in case the member returns.

These are matters which the labour movement in the Caribbean should address and present governments with suggestions with respect to the way forward. To wait until the problem arise and then blame the authorities would be to sign the union's death warrant and then wonder if and when it will die.

Contract Labour

Fourthly, there is the issue of contract work; persons signing individual contracts are becoming an important aspect of a new form of employment with business. It is sometimes sold as a partnership between the worker and the employer with each having a stake in the success of the business. Unfortunately, many businesses in the Caribbean and beyond do not see trade unions as partners, but as antagonists. The trade union is of the opinion that profits are placed before people, while the employer feels that higher wages cannot be paid if workers do not produce and, thus, ensure higher profits. Employers also believe that in workplaces where there are strong unions, workers are more difficult to manage. They feel unions are there to protect workers even when they are in the wrong.

There is a high level of mistrust between some employers and unions, and although there are good relationships between workers, their unions

and employers, there is always that underlying mistrust with respect to each other's motives. This mistrust is based on these traditional antagonisms that many employers chose to contract work either to single individuals or groups. For example, the plumbing might be done by contract using a small co-operative or business partners or by one person. In some companies, most of the work is contracted out. Even the management of the company is done through a management contract. All these changes in the way business is conducted worldwide will seriously impact on the future of trade unions, since the membership base will be seriously eroded.

How will contract workers be incorporated in the labour movement? Will unions offer new services that will help independent contractors negotiate their individual contract, or will they help in the formulation of such contracts? How many businesses in the future will hire persons using only individual contracts? What would be the role of the Ministry of Labour with respect to this? What changes will have to be made to the labour laws to protect persons who will now be forced to sign individual employment contracts with their employers. ? How will unions change their mode of operation to deal with a new industrial relations environment where individual bargaining is done by each worker and not by unions representing groups of workers in the collective bargaining process? These are questions both unions and governments in the region should address and find common ground with which they can agree in order to deal with a dynamic work environment.

HIV/AIDS and the Workforce

Fifthly, following closely on the heels of Africa, statistics show that AIDS is fast becoming a Caribbean problem. Already, the disease is now affecting more than 65 million people worldwide. We now live in an inter-connected world where diseases do not need a visa to cross borders. Millions of people travel everyday and in a disease-ridden world, this affects all of us. If national health systems in the Caribbean do not curb the spread, this would have drastic effects on the working population and eventually on the trade union movement.

Trade unions in the Caribbean, apart from negotiating for salaries, wages and other conditions of employment will need to join national governments in the fight against the spread of HIV/AIDS. Their future

and survival depends on a healthy and productive workforce. Apart from loss of trade union membership, government financial resources would be severely strained to provide medical and social services. This can remove scarce revenue from going into the productive sector, business reactivation and the creation of employment.

Industrial relations must therefore take into account the special needs of AIDS victims, the responsibility of employers, the role of government and how the trade unions and employers can change their strategies for the benefit of all parties concerned. Articles in collective agreements must take into account the rights of such persons; how to deal with the problems of loss in productive time, the issue of who pays for professional counseling, the high cost of medication and how to deal with social prejudices at the workplace by both employers and workers. Since one cannot legislate changes in attitude, safeguards must be included in all industrial relations agreements to curb the effects of misinformation and misguided fear, that persons living with AIDS are forced to face at their place of employment.

Unions must understand that their future lies in a steady flow of new members, as well as a stable investment climate, which would enable sustainable jobs and the creation of new ones. Therefore, the curbing of the AIDS pandemic is a government as well as a trade union and employer problem.

Structural Adjustment Measures and Social Consensus

Another area of focus is that countries of the Caribbean especially those in the Eastern Caribbean States are heavily indebted. A large percentage of their gross domestic product goes to pay multilateral, bilateral and commercial debts. Trade unions in many cases do not take into account the effects of high debt repayment on economic activity in a country when they are bargaining. For instance, structural adjustment measures were imposed on Dominica, which created severe stress on government expenditure. If the external debt burden is not managed, and measures are not taken by Caribbean governments to alleviate poverty, too many workers will be competing for too few jobs.

What kind of co-operative activities can trade unions undertake with governments and civil society to save jobs and create new forms of employment and investment opportunities? Will the trade union

movement in the Caribbean continue to represent workers recruited from the private and public sector only? Or will the trade union movement's future lie in its ability to have a paradigm shift and be part of the productive forces? The labour movement also must decide whether to save jobs or to improve the lot of those workers who manage to keep their jobs. This is a difficult decision to make in light of the International Monetary Fund and World Bank structural adjustment policies.

Strikes and industrial unrest do little to change the economic landscape. If anything, it exacerbates the situation, creating an environment of instability and one that hinders investment. Unemployment statistics soar as companies sever staff and move on to more favourable low wage countries. Added to structural adjustment and structural reforms, governments in the region have in the main relinquished control of the productive sectors. Major public companies were privatized and banks deregulated. Many new companies entering the market are not in favour of trade unions. They now tend to contract and subcontract services, thus severely cutting down on the number of potential unionized workers. Unless the labour movement can find ways and means to involve these contract workers by offering other incentives and services apart from salary negotiations, and forge enterprise and national partnerships, the future is not bright.

Governments and Industrial Relations

Governments, on the other hand, in their efforts to attract investors - in wanting to assure them that the labour and industrial relations climate is stable and will not be hampered by trade unions - may tend to pass laws aimed at regulating trade union activities. Such a situation would be unfortunate, since trade union rights and human rights are synonymous and are enshrined in most constitutions in the region, and the ILO Conventions. Uncertainty in the job market will make workers very reluctant to join trade unions. It appears, therefore, that industrial relations as we know it must change. A major part of trade union activities may be, inventing measures to save and create jobs. Trade unions serve the workers whom they represent; employers serve the shareholders, while governments aim to satisfy the voting public. Labour negotiations must therefore take into account the aspirations of different interest groups

and their constituents in the context of the global realities and the national economic reality.

There will always be trade unions, for their role in collective bargaining and the part they play in protecting workers' rights cannot be minimized or understated. However, their scope of influence and their levels of membership will be severely challenged if innovative ways are not found to sustain the movement.

The Trade Unions and Industrial Relations

Industrial relations which revolve only around traditional workers, and established bargaining procedures are just not sustainable in the 21st century. Trade unions in the Caribbean should venture into ownership of the means of production; invest in the stock market, banks, housing, supermarket, insurance companies and the hotel industry.

Labour negotiations should now concentrate on better investment portfolios for workers; trade unions must be involved in active advisory and consultancy services to their members and the public with respect to insurance coverage. They must include bargaining for better mortgage rates at the banks and national insurance schemes on behalf of members; seeking a total package for a better standard of living for workers in particular who are part of the broader society and the national community in general.

Trade unions must enter into partnership with governments and employers to keep inflation and prices at a level that will not erode the gains of negotiations and the standard of living. Partnership agreements must include better health, educational and training facilities as well as opportunities for workers and their families to improve their status. In particular, for workers in the informal sectors, bargaining on their behalf for concessions, training in marketing and ensuring that there is a link between production and marketing, and addressing the issues of quality control and packaging, are important issues. Trade unions also have a part to play in a form of industrial relations that do not include an employer. It means bargaining for clients in all spheres of society to create a better standard of living for all, even the small business in the informal sector.

With respect to the contracting out of services, which is a new form of employer and employee relationship, unions will do well to help persons interpret contracts before they are signed so that contract

workers will be able to decide whether such arrangements are beneficial to them. Too often, persons sign contracts that they have not read or do not understand. Unfortunately for them, the law states that if someone signs something of his or her own free will, it means that he or she has understood and agreed.

Negotiating for persons who work at home will also involve new benefits that unions can offer to these persons who might appear to be outside the realm of union activities. Government will be tested also to enact laws which will protect citizens who find themselves working outside of the normal industrial relations environment. The global challenges may force unions, governments and employers to find avenues to co-operate as each struggle to survive the effects of globalization, national debt, shrinking grants and low investments. As the international community turns its eyes towards the Far East and Africa, the future of industrial relations calls for a survival strategy encompassing workers, unions, employers, civil society and governments. No one entity will survive on its own, nor will we survive in an atmosphere where industrial relations matters put trade unions, governments and employers on a collision course. The future of industrial relations in the Caribbean, therefore, lies in the maturity of the three parties to understand that the national community either survive together or drown in the sea of globalization, free market, and trade liberalization.

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Trade Unions and Globalization

Lloyd Goodleigh

From their inception, Caribbean trade unions have been forced to operate on multiple fronts; “labour against capital; the employed versus the jobless; and poor developing countries against rich industrialized nations.”¹ This observation by William Demas remains relevant in the 21st century. Caribbean unions must continue to operate on multiple fronts, but in drastically altered circumstances, circumstances that present challenges that are more complex and more subtle than those of the last century.

Political debate, over the last two centuries, has centered around the question of the democratic rights of the individual. That debate would ultimately seep into the world’s workplaces, raising questions of autocracy, the denial of basic human rights and civil rights at the workplace. The continuing debate would evolve into the current search for achieving efficiency, equity, productivity and social justice at the workplace.

The original rights issue at the workplace spawned two different approaches: The European continental assertion that the rights issue was a “social problem” that called into question all of a society’s social systems, and, the Anglo-American view, that confined the debate to relations between employer and the employee or what can be viewed as industrial relations.

Caribbean unions have never recognized those supposed differences and have been willing to fight on both fronts. These are best exemplified by, the critical role that Caribbean unions have played in the Regional Uprising of 1936-38:

- The formation of modern political parties in the region
- The independence struggles of the region
- The push for Caribbean integration
- Formation of the University of the West Indies
- Formation of modern unions
- The right of Caribbean workers to join union of choice

- The right to collective bargaining
- Promotion of health and safety at the workplace
- Establishment social protection systems in the region
- Promotion of modern labour laws in the region

This prompted Barbadian writer George Lamming to observe:

It is organized labour that has really democratized Caribbean society. Until 1935 or 1936, there really wasn't much difference between the way most people lived in the 1920s and how they lived just after emancipation 100-odd years or so before; and it was the eruption of labour, coming into direct confrontation with the colonial power, that created the new political directorates which we see now.²

Lamming's observations are supported by Demas: "Most political parties in pre-independent Caribbean founded, or were based on, trade unions. If an ideology of West Indian unity existed during colonial times, then this was due largely to the influence of trade unions."³

Trade Unions as Symbols of Social Protest

In essence, Caribbean unions have always questioned the functionality and legitimacy of the social system in the region, whilst pursuing a range of issues at the workplace, designed to promote and protect Caribbean workers.

Currently, in the political sphere internationally, the traditional distinctions are also becoming blurred as attempts to establish correlations between social justice and democracy are being pursued. Basically, the argument asserts that liberal constitutional democracies are more prone to deal with questions of social justice, i.e., amelioration of poverty - access to education and training; inclusive labour markets, i.e., labour markets that have a high rate of employment; even distribution of income - fair distribution of life chances; gender equality and the provision of social protection for its citizens.

That political debate is paralleled with a historic development at the world's workplaces, where the cost-based/static efficiencies theories poised in the early 1990's are being replaced by value added/high road strategies of the 21st century - strategies seeking to establish a correlation between new ways of organizing work/and rewarding performance, lifelong training and education, building employee involvement in decision making and the objectives of productivity, profitability, equity and social justice in labour markets.

At the workplace, the Caribbean is far down the road to making those correlations having undertaken the necessary research.⁴ The challenge faced by the region's unions, therefore, is how best to take advantage of this convergence of all their concerns in order to ensure that social justice exists in and outside the workplace.

Finding the right mix of answers is made even more complex because of the international forces that have been taken into account. The region's unions are confronted by an international environment that is characterized by globalization - a process of rapid economic integration between nations - described as "the inexorable integration of markets, nation states and technologies to a degree never witnessed before, and in a way that is enabling the world to reach into individuals, corporations and the nation states, further, faster, deeper, cheaper than ever before."⁵

Globalization: A Recurring Phenomenon

Globalization is not a new phenomenon; it has occurred at varying periods, with varying levels of intensity, over the last 100 years. What has accelerated its intensity, are the new technologies of speed, computers, the internet, satellites, fibre optics and digitalization. Gordon Moore, founder of Intel, has argued that the processing power of computer chips will double every 18 months and that the price will at least remain stable, implying that the technologies are increasing their capacity exponentially. Falk and Strauss commented:

Thanks to trade, foreign direct investment and capital flows, globalization is dispersing political authority throughout the international order. International governance is no longer limited to such traditional fare as defining international borders, protecting diplomats and prescribing the use of force. Many issues of global policy that directly affect citizens are now being shaped by the international system. Workers can lose their jobs as a result of decisions made at the WTO, or within regional trade regimes.⁶

The geopolitical issues in the world have shifted from the divisions of the Cold War to questions of the integration of markets, cultures and political systems. Small nations have to be cognizant of these developments, because in a supposedly interdependent world, some nations are more equal than some; there is an asymmetry of power in the economic, technological and military spheres. The developed parts

of the world have been the major proponents and major beneficiaries of globalization. As a consequence, small nations and their unions must find the right answers to protect their interests.

Changes in World Economy and World Trade

It is not only geopolitical concerns that have dramatically shifted. The world economy is no longer a rational arrangement consisting merely of the exchange of goods and services between nations. It is structural; a basic irreversible change in industry structure, a reorganization in economic activity as exemplified by the spectacular growth in services:

more and more, cutting-edge commerce in the future will involve the marketing of a vast array of cultural experiences rather than of just traditional industry-based goods and services. Global travel and tourism, theme cities and parks, destination entertainment centers, wellness, fashion, cuisine, professional sports and games, gambling, music, film, television, the virtual world of cyberspace and electronically mediated entertainment of every kind, are fast becoming the center of a new hypercapitalism.⁷

The Power of Transnationals

If the world economy is changing, so is world trade. It is no longer uni-dimensional trade between nations; it is multidimensional. Increasingly, decisions about factors of production are being made by transnational corporations and the funding of economic activity is by transnational banks that do not fall within the purview of national central banks. Of the world's largest economies, 49 are transnational corporations. Five hundred transnationals are responsible for one-third of all manufacturing, two-thirds of commodity trade, four-fifths of all trades in technology and management services:

Businesses are shifting from being multinational to being transnational. The traditional multinational was a national company with foreign subsidiaries. The subsidiaries were clones of the parent company. In a transnational company, there is only one economic unit - the world. Selling, serving, public relations and legal affairs are local, but parts, machinery, planning, research, finance, marketing, pricing and management are conducted in the world. Successful transnational companies see themselves as separate non-national entities for moral, legal and economic rules that are accepted and enforced throughout the global economy. A

central challenge, therefore, is the development of international law and supranational organizations that can make and enforce rules for the global economy.⁸

As transnationals emerge as major players in questions of investment, trade and the world economy, there are increasing initiatives for them to subscribe to minimum ethical, labour and environmental standards. Some of the major initiatives are:

- The universality of the basic labour rights was highlighted in the conclusions of the World Social Summit. In addition, three United Nations acts - the Covenant on Economics, Social and Cultural Rights, the Covenant on Civil and Political Rights and the Convention on the Rights of the Child, which contain relatively detailed provisions on core labour standards, have been ratified by 120 countries.
- The US Generalized System of Preferences and the European Union's Version. Both systems refer explicitly to internationally-recognized labour standards.
- The development of the United Nations Code of Conduct for Multinational Enterprises
- ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
- The OECD Guidelines for Multinational Enterprises.

The establishment of a permanent relationship between the United Nations Secretary General and the corporate community - a partnership proposal. Civil society made up of non-government organizations and voluntary associations dedicated to civic, cultural, humanitarian and social causes, have established a permanent assembly of civil society organizations within the context of the UN.

Worldwide, there are other initiatives - voluntary, private sector agreements, boycotts and the social labeling of products. If transnationals have grown in power and influence, the world's multilaterals have resorted to policies that, for all intents and purposes, are not worker-friendly. The Bretton Woods Institutions have resorted to orthodox economic policies.

They argue that stabilization, adjustment and liberalization were the answers to the challenges of globalization: stabilization through the tightening of monetary and fiscal policies, in order to reduce inflation and improve balance of payments; adjustment by changing relative prices,

primarily through devaluation, with the aim of improving balance of payments; and finally, the liberalization of capital, labour and external transactions.

The demand for the liberalization of labour markets was to promote greater flexibility in real and money wage:

These policies were influential because they were simple and universal. They brought necessary macro-economic discipline and a new spirit of competition and creativity to the economy. They opened the way for the application of new technologies and new management practices; but they confused technical means of action, such as privatization and deregulation, with the social and economic ends of development. They became inflexible and did not take the social and political context of markets sufficiently into account. Their impact on people and their families was sometimes devastating.⁹

The World Bank, the WTO and the Power of Sanctions

The World Bank sought to address those concerns when, in 1955, it called for a balance between enterprise competitiveness and the workers' aspirations for higher standards of living. Whatever the opinions of Bretton Woods twins, they lack the power of sanctions.

It is the WTO - the first multilateral of the globalized world - that has the power of sanctions. The WTO represents a legally-binding commercial treaty, based on a single principle:

the obligation of free access to markets. The WTO represents the tension between a globalizing process, at odds with the nation state and the interests of political constituencies within the nation state, that turn to the democratic political process for attention to their interests. If an international institution, whose decisions are not transparent and open to review, can render decisions at odd with laws passed by national legislatures, then where does sovereignty reside?¹⁰

Given its power of sanctions, there are increasing attempts to expand the concerns of the WTO beyond the sole "precautionary" issue it takes into consideration the protection of health and safety, to other issues of labour standards and the environment. In a real sense, the WTO is already exerting influence on the world's workplaces and the environment by its ruling on the "free access" in issues of trade.

These developments have extraordinary implications for the traditional nation states, their economies, trade arrangements and

technological developments and for economic theory and the world's workplaces.

Harmonizing Labour Laws and Trade Unions

When it comes to globalization, technological revolution, new capitalism, transnationals, multilaterals; stabilization, adjustment; liberalization, flexible labour markets, it is trade that is gluing all these factors together.

In the Americas, there are nine trade integration treaties with provisions impacting on workers' issues and welfare. Of these nine trade integration treaties, CARICOM has 31 labour provisions; the OAS 28; Mercusor 17, NAFTA 15, Canada/Chile 15; the Andean Community 14; the Free Trade Area of the Americas 6; and G3 has one.

In the CARICOM Single Market, the issues addressed trade union rights, collective bargaining; the right to work, the working day, fair and adequate remuneration, stability in employment, promotion and upward mobility, standards for women workers, vacation and holidays, occupational health and safety, disabled persons, mechanisms for settlement of disputes and labour mobility.

There are also undertakings within the CARICOM Single Market and Economy for the harmonization of the region's labour laws in order to ensure that no glaring imbalance exist in CARICOM's economic space.

The Caribbean is a party to the Free Trade Area of the Americas (FTAA) that was to have a start-up date of 2005. It is a process being facilitated by the OAS and the IDB. Given the prevalence of workplace issues in the trade treaties of the hemisphere, in its final form, the FTAA Treaty must address some workplace issues. The trade unions in the Caribbean must be committed to ensuring that the ILO's core labour standards are part of the treaty.

At this juncture, in the political debates and the workplace debates, there is an opportunity for unions to intellectually and organizationally promote questions of social justice in and out of the region's workplaces and in the world's international systems.

Defending workers' concern in a globalized world

If it is true, that a globalized world has a low tolerance for systems divergence, then the crucial factor is what systems are put in place, their values and consequence. Caribbean unions, in conjunction with

the unions of the world and their allies, must continue to ensure that workers' concerns are reflected in those systems. From the evidence that work has started, it must be intensified. There are some specific course of actions that must be undertaken by Caribbean unions:

- Intensify the fight against the imposition of unfettered flexibility of the region's and world's workplaces. Unfettered flexibility is not sustainable. It does not enhance productivity and destroys the social cohesion of a society and in the long run, destroys the trust and mutual commitment needed in the region's workplaces.
- Given the issues of globalization, the need for the Caribbean labour market to adapt to those circumstances and our own regional priorities, we must move beyond a reliance on the World Bank's objective for labour markets, i.e., efficiency and adopt the following objectives namely:
 - Efficiency - meaning maximum returns to human resources, maximum output and maximum income - corresponding to the economist criterion for judging the allocation function of labour markets
 - Equity - meaning equality of opportunity for all in excess to jobs and training, equal pay for work of equal value, a concept which contributes to a more equitable distribution of income
 - Growth - meaning that labour market operations today, should contribute to, not impede, higher productivity, income and improved employment in the future
 - Social justice - meaning that since labour market outcomes may have positive or negative impact on workers' welfare - society should under certain circumstances act to minimize negative outcomes and redress their impacts when they occur.

It is instructive that the OECD has always relied on efficiency and equity as the objectives of its labour markets.

Beyond the fight against unfettered flexibility and the adoption of the ILO objectives for the region's labour markets, Caribbean unions must promote a value-added response to the challenges posed by globalization. Regionalization adds the need for the region's workplaces to be competitive.

In a broad sense, we need to:

- Encourage collaborative institutions and collaborative societies

- Stress teamwork -education/training/productivity/quality
- Reconfigure institutions in labour market
- Pursue new industrial relations models
- Stress co-operation between labour/management through framework agreements/memorandum of understandings. The goal is to pursue strategies, designed to achieve fundamental transformation in employment relations - transformation intended to achieve outcomes of mutual benefit to enterprises and their employees.

Finally, in the past, Caribbean unions, because of their close relationship with traditional political parties, had relied on those relationships to protect the social justice gains that the region has made over the decades.

Given the complexities of the extra-regional forces that have been identified, Caribbean unions must join in the fight by civil organizations worldwide, to ensure that citizens have access to the Internet or the promotion of the concept of “citizens’ communication rights” because in the final analysis, unions must ensure that the region’s citizens can circumvent what Hoffman calls: “the filter of established media, thereby ensuring the democratization of the public sphere.” This is critical as media in the Caribbean is either owned by the state or status quo interests. In the final analysis, an informed people are the best defense of their own social rights.

NOTES

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2. George Lamming - Caribbean Contact - Bridgetown, Barbados. December 1987 - p.14.
3. William Demas - ibid - p. 46.
4. See final report on Case Studies on the Implementation of High Road Business Strategies in the Caribbean Vol.1 & 2, Promalco, ILO Caribbean Office.
5. Thomas Friedman: The Lexus and the Olive Tree - Anchor Books, 2000. p.9
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7. Jeremy Rifkin - The Age of Access - New York Penguin Putman Inc. 2001 - p. 7.
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Section VI

Industrial Relations as a Field of Study

18

Industrial Relations - Theory and Practice with reference to Jamaica

Noel M. Cowell

Industrial relations emerged in tandem with the dawn of industrial capitalism in Europe as a way of managing the conflict arising from the development of a relationship between the nascent capitalist and working classes.

At the start, its scope was defined by the issues raised by fledgling workers' organizations and was concerned essentially with the way in which employees were compensated and treated at work. As collective bargaining developed however the scope of the industrial relations expanded and it evolved from the object of general commentary by observers of industrial capitalism to becoming a subject of scholarly attention in its own right.

The Emergence of Industrial Relations

Industrial relations emerged during the industrial revolution which took place between the late 18th century (in Britain) and the early 19th century (in the rest of Europe and the United States) when trade unions came into being as a means of combating exploitative wages and working conditions faced by workers in the fledgling industrial society.

As it emerged, industrial relations acquired practitioners on both sides of the industrial divide. Firstly there were trade unionists whose job was to organize working people at particular workplaces, within industrial sectors, at the national, regional and international levels in order to address the issues that affected them at work.

From the very onset, trade unions were political organizations in at least two senses. In the first place they were positioned as democratic structures, whose leaders were elected by the rank and file membership. They were also very conscious of the need to acquire and exercise

power. As such they established close linkages with political parties and emergent democratic movements.

Differing models of unionism emerged ranging from somewhat reluctant alliances between the union and political parties (as in the “business union model” between the Democratic Party of the United States and the national union movement), to still tentative, but closer alliances, such as those between the political parties and the unions of European liberal democratic parties to the highly integrated models that emerged in the Caribbean and parts of Africa, in which the union movement became almost indistinguishable from the political parties (political unionism).

The work of trade unions at the “macro-political” level not only contributed significantly to the development of western liberal democracy, but to the promulgation of legislation governing the relationship between employers and employees, essentially limiting managerial prerogative while expanding and entrenching workers’ rights, primarily in relation to the establishment and functioning of trade unions and collective bargaining.

On the management side, industrial relations specialists developed mainly as a foil to trade unionists. At no stage in the history of industrial society did management ever quietly acquiesce to the workers’ drive to organize. The job of the IR specialist on the management side was essentially to defend managerial prerogative, to “manage discontent” and in the process ensure that the business of the enterprise could be carried out with the minimum of disruption. They worked to frustrate organizational drives, engaged in collective bargaining and when this became necessary managed the grievance process.

Industrial relations as it developed then and as it survived until well past the middle of the 20th century was viewed as being fundamentally adversarial in nature and little scope was seen for cooperation among the parties. Both sides perceived a fundamental disjuncture in the interest of management and that of labour. Barbash best expressed the notion by suggesting that while the role of management was to ensure efficiency (minimize cost, while maximizing production, and profits), that of the trade union was to ensure equity (dignity at work, due process, fair wages, equity in grievance resolution and a voice at work).

Underpinned largely by union demands, industrial relations led to the establishment of rules (e.g. disciplinary rules), and formal processes

(e.g. a grievance procedure, negotiation, arbitration, conciliation) to govern the relationship between management of labour both inside and outside of the workplace.

There are several definitions for industrial relations. For example some of the key figures in British industrial relations (e.g. Flanders, 1965; Clegg, 1990) writing in the 1960s, suggested that it was fundamentally concerned with “institutions of job regulation” or “rule making at work”. The definition appears at first blush to be terse and somewhat cryptic, but on closer examination it is revealed to be tremendously insightful. Flanders for example made the distinction between internal and external sources of regulation.

While internal sources of regulation focused primarily on the efforts of management to assert control over the “labour process”, external regulation was concerned with a mechanism for the protection of workers and to place reasonable boundaries upon the conflict that was seen as an inevitable outcome of the relationship between labour and management at the workplace.

Perhaps the best known American Industrial Relations scholar, John Dunlop (1991 cited in Salamon, 1998) applied the notion of a system to industrial relations. For him, the system of industrial relations, which could exist at a workplace, sectoral or a national level, embodies four elements. Firstly it involves a set of actors. The main protagonists were labour (workers and their organizations) employers and their associations and the government. These functioned according to a set of rules (the third element) that were determined unilaterally (usually by the employer alone), bilaterally (usually by the employer or employers’ organization and the workers organization) or “tri-laterally”, by all three “social partners”. The latter approach is generally referred to as tripartism. The third element of an industrial relations system, according to Dunlop was a context.

While existing outside of an industrial relations system, the context (technological, social, “locus and distribution of power” and economic) was crucial in determining the kinds of rules that emerged to govern the system. For example, as we shall see, the “locus and distribution of power” has had considerable influence on the pattern of labour legislation as well as on the practice of industrial relations in Jamaica and the Caribbean. Another great American industrial relations scholar saw the discipline as fundamentally concerned with the balance between equity

(issues pursued in the interest of fairness, dignity and justice at work – essential to workers in a context of substantial imbalance of power) and efficiency (issues peculiarly of concern to management and directed at maximizing the profits of an enterprise for example).

Like the early British scholars, the focus of Dunlop, Barbash and their compatriots was chiefly on the institutions engaged in and arising as a consequence of this crucial process of bi-lateral rule-making. Collective bargaining would then be seen as the central element of that rule making process. Within the workplace, unions and management would work out the manner in which joint decision-making was to take place between employers' and workers' representatives or the way in which they were going to behave in relation to each other in any work-related circumstance (procedural rules). In addition they would work out the substantive terms and conditions under which employees were to work (substantive rules).

According to Dunlop (1991 cited in Salamon, 1998), procedural rules define the conduct of the relationship (grievance, discipline, union recognition, consultation, collective bargaining) while substantive rules define the rights and obligations of employer and employee in the employment relationship. The latter would cover wages and other terms and conditions of employment, performance standards as well as work rules governing workers' rights.

Collective bargaining then represents a shift from unilateral regulation to bi-lateral regulation. Trade unions and employers took a radically different perspective to workplace relationship. From the standpoint of management it was their right to rule the workplace. Though somewhat diminished this so-called managerial prerogative is still strongly asserted today as is illustrated by the following clause for a Jamaican collective labour agreement: "Subject to the provision of the Agreement, the Company has the right to exercise all functions of management in the operation of its business and in the direction of its working forces . . .". Implicit in this clause as well is an assertion of the so-called "residual rights principle". This principle basically affirms that management has exclusive right to manage the workplace relationship and save and except for those "rights, powers and authority" explicitly abridged by the collective labour agreement all others are retained.

As time went by however, strong trade union advocacy led to a larger and larger set of issues emerging from the realms of employers'

prerogative and coming to fall within the framework of bilateral rule-making or regulation. At the same time governments, especially those operating within the framework of liberal democracy, became more alert to the workers' perspectives through closer alliances with the emerging mass movements of workers and begun to take a more active role in the regulation of the labour market.

Between the beginning and the early decades of the 20th century, countries which could be so characterized were busy establishing a framework of labour market regulation born from a system of tripartite regulation, strongly advocated and supported by the International Labour Organization.

Thus, in 1919, Jamaica under British colonial rule promulgated the Trade Union Act, which for the first time de-criminalized the formation of collective workers' organizations. The amendment of that Act, followed by the passing of a number of other pieces of legislation in the wake of the issuing of the Moyne Commission Report in 1938, inaugurated the modern phase of Jamaica's industrial relations and gave a strong fiat to the collectivization process (Phelps, 1960; Bolland, 2001; Cowell, 2002). The emergence of institutions of collective representation in close association with the struggle for national self-determination and the formation of political parties created an industrial relations system dominated by what came to be known as political unions (Eaton, 1969).

Before examining more closely the impact of these institutions on industrial relations scholarship however, we turn to consider the development of human resource management.

Industrial Relations and Human Resource Management

Emerging into the 20th century a second discipline developed to focus on worker management interaction. Personnel management was motivated by a need to control such functions as the administration of wages and employee benefits, recruitment and selection, counselling and employee welfare (Quinn Mills, 1970). Where no union existed, it had the potential to play a further strategic role of staving off the "union threat" or the prospect of unionization. The literature of the 1950s and 60s therefore paid considerable attention to the impact of the "union threat effect" in reducing the difference in benefits, degree of formalization and the overall quality of workplace relations between union and non-union enterprises.

The strategic intervention of personnel management was greatly assisted by the emergence of the human relations movement pioneered by Elton Mayo, in the 1920s and 1930s. Drawing from extensive research carried out at the Hawthorne Works of the Western Electric Company in Chicago, Mayo drew the conclusion that work is a social activity and the levels of productivity have a lot more to do with social and psychological conditions than with the physical conditions under which persons work.

Further inspiration drew from the work of a group of behavioural scientists under the leadership of Douglas McGregor (1960). McGregor is perhaps more than any other credited with launching the human resource management revolution. His book, *The Human Side of Enterprise*, was published in 1960. In it he outlines two alternative sets of assumptions about the nature of workers in an enterprise. The first, referred to as theory X, assumes that employees are lazy, uncreative, and uncooperative and require strict discipline and reward if appropriate results are to be obtained at the workplace. The alternative, founded on the research of the human relations school, asserts that employees are capable of showing drive and initiative where they function in relation to objectives to which they are committed.

The views of McGregor and his colleagues had important implications for industrial relations, particularly in the United States, which was the main focus for McGregor's work. Quinn Mills (1970) identifies two such implications: (a) that an organization should be managed in such a way as to engender as much labour-management participation as possible and (b) that where unions exist a problem-solving approach should be used to resolving labour management conflict. These seemingly basic observations were to have a profound impact on the theory and practice of industrial relations.

First of all, the "problem-solving approach" may be said to have generated a kinder, gentler form of industrial relations. On the one hand, it came to underpin a unitary philosophy of management connected to the research and practice of team-building. In this sense it contributed to the development of the human resource management paradigm as an alternative to industrial relations as a mode of intellectual inquiry and as a way of addressing the challenges posed by the labour management relationship.

On the other hand it has come to underpin an alternative approach to negotiation, variously referred to as collaborative bargaining, mutual

gains bargaining or integrative bargaining. Where the parties adopt such an approach in their problem solving, they are likely to obtain more efficient and more sustainable agreements (Kochan and Osterman, 1994).

But, as late as 1970, Quinn Mills (1970, p. 2) was able to identify three distinct disciplinary trends, each seeking to come to grips with the conundrum of labour management relations, but whose adherents failed to talk to the other. Importantly, however, personnel management and organization development were both underpinned by a “human resource theory of management” and both placed considerable attention on the “problem of managing change” in work organizations.

By the middle of the 1970s, Jamaican management practitioners had taken tentative steps in the establishment of human resource management departments in larger companies. In cases where the personnel management function had co-existed with the industrial relations function the latter now assumed the role of a junior partner. In other cases, primarily in non-union enterprises, the function of personnel management changed to that of human resource management. Often, however, this was in name only.

In 1980, a group of individuals who saw themselves as human resource development professionals established an association known as the Jamaica Association for Training and Development (JATAD). This organization came of age in November of 2005 when its name was changed to the Human Resource Management Association of Jamaica.

Political Unionism and Industrial Relations Scholarship

The study of industrial relations in Jamaica and the Caribbean was naturally influenced by international developments in the disciplines that sought to examine labour management relations, but it was also closely connected to the evolving reality of Caribbean labour management relations. And, this particular reality is closely connected to the fact that the struggle for political independence and as such the foundation of the nation states of the English-speaking Caribbean rests heavily on the labour movements that emerged in the region between 1935 and 1938 (Bolland, 2001).

In the case of Jamaica, it is often said that except for Edward Seaga, there has been to date, no prime minister who has not had some historical connection with the labour movement. All other prime ministers, except

for P. J. Patterson, were also former trade unionists. This was symbolic of a particularly deep brand of political unionism (Eaton 1983) which went well beyond the casual association typical of Western Europe or the United Kingdom but stopped well short of the deeply ideological approach discarded by the Samuel Gompers, then leader of the American union movement in the late 19th century (Mann, 1993, Ruff, 1997).

In Jamaica, as in a number of other Caribbean countries, trade unions and political parties emerged hand in hand as part of a combined struggle against a colonial ruling class. After 1952 with the founding of the National Workers' Union (NWU) the union/political nexus in Jamaica coalesced into two union/party dyads; the National Workers' Union and the People's National Party founded in September 1938 by Norman Washington Manley and the Bustamante Industrial Trade Union (BITU) and the Jamaica Labour Party (JLP) founded in 1943 by Alexander Bustamante. The BITU had itself been founded in May 1938.

Opinions on the efficacy of this union/political nexus in Jamaica and the Caribbean as a whole are mixed. Nurse (1992) looks on the positive side, emphasizing the fact that this relationship has produced legislation and social policy that has been of lasting benefit to working people. D. H. F. Stone (1972) on the other hand is concerned that it created a power imbalance that severely distorted the relationship between the employers and workers, over-compensated for the deficiencies in workers' power and by implication generated irrational management decisions.

Carl Stone (1986) suggests that in any event the honeymoon phase of political unionism was short-lived and that while it persisted, the ability of the unions to pursue working class objectives through workplace collective bargaining (the business union capability) was severely impaired. Thus in his view, by the middle of the 1950s political unionism was in decline and by the middle of the 1980s, Jamaican unions were rendered ineffectual by their inability to influence any of the major levers of power in the society (1986, p. 2).

Even if we argue that Jamaican workers continued to benefit from their political/union connection after the mid-1950s, it is clear that these benefits must be balanced against a number of limitations posed by the model. These include the impairment of leadership coming from the junior partner status with the political parties, the high level of union competition that consumed much of the energies of the movement until

well into the 1980s, as well as the fragmented and proprietary nature of the smaller unions not falling directly within the main power nexus.

While the union infrastructure was weakening, the employers' side, whose role had been for decades confined to reacting to trade union demands, became increasingly proactive. One of the most significant events in this regard was the formation of the Private Sector Organization of Jamaica (PSOJ) in the late 1970 as an umbrella body for private sector enterprises and groupings. While not itself an industrial relations organization, as economic changes led to a transformation in the context of practice and scholarship, the PSOJ was to emerge as a significant source of political support for the work of the Jamaica Employers' Federation.

The Changing Context of Industrial Relations

During the first three or four decades following the late 1930s, the study of industrial relations in Jamaica (and to some extent the remainder of the English-speaking Caribbean) was dominated by political unionism. The last two decades, however have seen substantial changes in the economic, social, legal, technological and political context of industrial relations and have shifted attention somewhat to encompass legislation, the role of the state (Cowell, 1992, 2002, Taylor, 2002) and issues concerned with the situation of non-unionized workers. This shift has been largely influenced by the process of globalization.

Globalization and Industrial Relations

During the last two decades, globalization has become the definitive concept in socio-economic analysis particularly in assessing the relationship between nation states and the international economy. There is no consensus as to when globalization began, nor indeed on what globalization is. However, most scholars would probably agree that the spread of businesses across the globe is a central feature of the phenomenon and that a combination of factors occurring over the last two decades has dramatically concentrated its effect.

These factors include a rapid expansion in international trade and in foreign direct investment, the emergence of liberal economic ideology in support of free trade (promoted by the large western economies in

combination with the World Bank and the International Monetary Fund) the establishment of additional infrastructure to promote trade liberalization in the form of the World Trade Organization (WTO) and rapid developments in technology, particularly as it relates to communication.

Globalization has had a direct impact on work and on industrial relations in Jamaica and the Caribbean. Under globalization, national economies have become exposed to an increasingly competitive international environment. This in turn compels all enterprises within the country to make the choice between achieving world class standards of efficiency or going out of business. The need to face these harsh realities has direct implications for employment practices. Decisions about the intensity of work, the levels of compensation and benefits, levels of training and so on, can no longer be made in a purely national context. In an effort to achieve greater efficiency, enterprises have engaged in extensive restructuring that has severely fractured the “psychological contract” inherent in the traditional employment relationship.

This restructuring has involved among other things, the dismissal on the grounds of redundancy of large numbers of people. In Jamaica, a number of major enterprises have dismissed their entire corps of permanent staff, replacing them with persons who work under one or another type of contingent contract. In some cases, enterprises cease to be direct employers of all or the majority of their staff. The strategy of outsourcing has also become popular. While these represent legitimate steps to cope with globalization, one of the important and not entirely incidental spin-offs is de-unionization. In all cases, these strategies are accompanied by the removal of the trade union or the serious diminution of its power.

Globalization has laid the basis for an unprecedented increase in the mobility of capital. Business is increasingly conducted across national boundaries and vertically integrated transnational corporations have been progressively being replaced by more loosely integrated global value chains in which the functions of manufacturing takes place in specialized corporations at various points in the emerging economies while that of design and marketing takes place in the developed market economies.

With the removal of barriers to trade, enterprises are provided with an extended range of choices over where to locate production. The modern transnational corporation takes advantage of such opportunities

to expand the bottom-line without regard for putative national loyalties. This trend has been a significant cause for concern for developed market economies where working people's organizations complain of the export of manufacturing and service jobs primarily to low-wage locations like China and India.

The Caribbean has benefited little from these moves. Attempts to develop free-zone based garment and electronic industries in the 1980s met with little success as by the beginning of the 1990s most of these companies had moved to more low cost locations in other areas such as the Dominican Republic and Mexico.

The Caribbean has also suffered from globalization in other ways. In Jamaica, trade liberalization has driven some industries to locate their manufacturing activities overseas while selling in the local market (offshore outsourcing). Others have dramatically re-structured and turned to domestic outsourcing. In this regard, the impact of globalization on Jamaica is not dramatically different from its impact on advanced market economies such as the United States. Finally, the new trading rules of the World Trade Organization are threatening to bring an end to the sugar and banana industries in the Caribbean. The levels of dislocation have been extreme and while some enterprises have been able to survive by re-structuring, this very act of re-structuring has marginalized working people and undermined the power of working people's organizations.

Contract Employment and Outsourcing

On the domestic front, one of the most significant trends has been the tussle between traditional equity values of job security, employment security and income security on the one hand and the increasingly imperative concerns of wage and employment flexibility in the workplace. As noted earlier, one element of the drive towards increased workplace flexibility has been the increased use of contract employment combined with the increasing frequency of contracting out or outsourcing.

These developments began to take shape in Jamaica during the 1980s and have emerged in two forms: (a) the employment of sub-contractors or third-party contractors who in turn provide the labour input (b) the direct employment of individual workers under contracts of fixed term.

As in other parts of the world, sub-contracting involves a divestment of non-core activities by business and public sector organizations. Coincident with the growth of the private security industry, plant security

was one of the first areas to be divested. Another substantial area is the janitorial and related services around which an important sub-industry is emerging. The “new” businesses operate on the basis of contracts which are, for the most part, renewable from year to year. In order to service these contracts, they maintain a workforce which is also contracted from year to year.

The implications of this approach are several. Firstly, competitive bidding means that the third-party service provider must operate at the highest level of efficiency. These services are therefore available to the end user at highly attractive rates. The implications are that labour is priced “competitively” and is relatively inflexible upwards. Secondly, the concept of job security as traditionally defined in industrial relations, ceases to exist. Workers operate on short term (labour) contracts, renewable at the discretion of the employer and dependent on the renewal of its own (commercial) contract. Thirdly, the employer finds it more profitable and convenient to define workers as “independent contractors”. The relationship between them then takes the form of a business to business or “commercial contract” rather than a contract of employment. It therefore follows that the legislation that has been put in place for the protection of employees or workers does not apply to these new business persons.

Specifically, workers under fixed-term contracts do not qualify for redundancy payments and (at the extreme) may neither qualify for sick leave nor vacation leave. In addition, benefits which are generally accessed through a combination of employer and employee contributions can only be accessed on the sole initiative of employees. The approach of directly hiring independent contractors has been most aggressively pursued in the Bauxite sector, where at least one employer requires that prospective employees incorporate themselves as a pre-condition for employment. In so doing the employer makes it abundantly clear that the relationship that they form with the worker is of a commercial nature rather than any form of contract of employment.

While the relatively new private security and janitorial service industries have been built around contracting practices and have been the focus of greatest attention by trade unions and government policy-makers, subcontracting has been going on in the bauxite sector for many years. Arguably, it has had some beneficial impacts on entrepreneurship and income distribution. In some cases, workers who have been

dismissed on the grounds of redundancy, have been the beneficiaries of highly enriched “redundancy formulae” and have been assisted by means of grants and sub-contracts from their former employers to establish businesses.

Perhaps the most significant impact of shift from employment to contracting is the re-assertion of managerial prerogative as the role of the trade union in the labour management relationship declines. Despite the efforts of the trade unions and government over the last two decades, an increasing number of individuals have had no option but to offer their services on a fixed-term basis. It is practically impossible to organize such individuals as an effective trade union force, because their contracts would typically expire before the recognition process has been completed. The absence of a union therefore leaves the employer in full control of the levers of the labour process. By and large he is able to establish wages, conditions of work, work processes, as well as the overall disciplinary framework of the operation. The result is that an increasing proportion of workers have become dependent contractors of one sort or another and like those persons employed in the informal sector are moving increasingly outside of the framework of labour protection elaborately constructed by the industrial relations system over the years.

Industrial Relations and the Informal Sector

A substantial proportion of economic activity in Jamaica, as in most less developed countries, takes place in the informal sector. Yet, because of the institutional bias of traditional industrial relations, little attention has been paid to this sector or the industrial relations issues that arise therein.

Recent studies suggest that the Jamaican informal sector is equivalent in value to about 45% of Gross Domestic Product. The informal sector comprises small business enterprises and own-account businesses that are substantially un-enumerated and substantially unregulated. In general, where employment relationships exist among businesses in the informal sector, the tenure is generally too insecure and the number of employees insufficient to attract unionization. Traditionally therefore, trade unions have had no direct impact upon the terms and conditions of employment within this sector. Even labour legislation has traditionally had a limited impact on the working lives of such individuals.

In Jamaica, there are two distinct structures for the adjudication of disputes relating to the employment relationship; one concerns employees who are unionized and the other with employees who are not unionized.

While the fairly comprehensive framework of labour legislation applies equally to all workers, it is practically unenforceable outside of a trade union. So, for example, unionized workers who have a problem with their employer are able to pursue this matter through the grievance procedure that invariably accompanies a collective labour agreement, has access to state-sponsored arbitration and in the case of a dismissal, may even be able to secure re-instatement. The non-union worker, on the other hand, notably one in the informal sector has recourse only to the Pay and Conditions of Employment Branch (PCEB) of the Ministry of Labour, whose role is advisory and whose powers are largely confined to “moral suasion”.

The particular perspective taken by industrial relations as a field of study largely ignores the workers of the non-union sector. Union density in Jamaica is low and declining. There is no reliable data on the rate of unionization, but it is doubtful that the rate within the private sector is higher than 10%. But even if it were as high as 50%, the tendency to confined scholarly attention to formal sector unionized relationships reflects a substantial limitation. It may be, however, that this situation is about to change. The limitations of institutional industrial relations are being increasingly exposed by the systematic dismantling of workplace union organization. A recent proposal to bring non-unionized workers within the ambit of the Labour Relations and Industrial Relations Act for purposes of dispute resolution apparently recognizes this problem.

Industrial Relations and the Future of Trade Unions

One of the defining features of modern industrial relations has been the decline of trade unions. In major countries like the United States, trade union density has fallen from around 35% in the immediate post-war period to about 12.5% or so at the present time. Similar trends have been evident in Canada, Australia and the United Kingdom. The latter is particularly significant.

In 1979, during the so-called “winter of discontent”, a period marked by dramatic and intense trade industrial action, union density had peaked at about 59%. By the end of the Thatcher period in 1990, it had fallen to

just above 30%. While there is no reliable data on union density in the Caribbean, there is strong anecdotal evidence that the figure is declining.

The fall in trade union density has shifted the emphasis in the field from a study of rule making specifically and more generally from a study of institutions and their impact on employment relations, to a focus on employment relations itself. This is certainly one of the factors motivating the new designation of the discipline. Two of the more prescient scholars in the field (Kochan and Katz) noted this trend when they defined industrial relations as “a broad, interdisciplinary field of study and practice that encompasses all aspects of the employment relationship . . . [including] the study of individual workers, groups of workers and their unions and associations, employer and union organizations, and the environment in which these parties interact.” (1988: 1).

The study and practice of industrial relations is likely to be influenced considerably by the fate of trade unions within the industrial relations system. Traditionally, industrial relations has focused heavily on the institutions of labour market regulation. Central to this orientation was the study of trade unions. In fact, the dominant schools of industrial relations (based in North America) have always operated with a conception of “labour relations” that focuses on collective bargaining (Edwards, 1995) and while Edwards sees the British tradition as being somewhat more holistic, others argue that it is precisely the strong institutional bias that has been responsible for the recent questions raised about its long-term survival (MacLachlin, 1994).

The more recent conceptions of labour management relations evident in the “employee relations school” operate with a wider compass and seek to place as much stress on individual as on collective relations (see Blyton and Turnbull, 2004). On the other hand, the Human Resource Management school raises a set of questions that are more explicitly focused on the management of an enterprise, it allows for little direct focus on trade unions and some books on the subject tend to relegate labour relations, employment relations or employee relations to no more than a single chapter (e.g. Fisher, Schoenfeldt and Shaw, 1999).

Despite this, trade unions or independent workers’ organizations remain a fundamental element of a balanced conception of the relationship between employers and their employees. And while this is not by any means the sole determinant of the prospects of industrial relations, the

attitude of workers towards trade unions should give an indication as to the possible shape of future industrial relations.

Based on research carried out over the last few years to assess the attitude of Jamaican's managers, workers and potential workers towards trade unions, the position can be briefly summarized as follows:

- Aside from a few companies that may be characterized as union accepting, Jamaican management thinks unions have a negative impact on production, low instrumental value in fostering better labour management relations and in bringing benefits for employees and would much prefer not to have to deal with them.
- Workers are a bit more sanguine about the instrumental value of trade unions. The majority of non-managerial workers desire trade union representation but are concerned about its effectiveness in preserving jobs and securing improved benefits. However, it would seem fair to conclude that workers in general would prefer to be represented than not to be.
- Workers are concerned about the political connection between trade unions and political parties and highly skeptical about the advantages that accrue from it. (Cowell, 1999a, Cowell 1999b, Stone 1987)

Based on data recently collected but not yet analyzed, it appears that potential workers - students at secondary and tertiary levels of the educational system - have a positive attitude towards trade unions but, they do not know much about them. While they are aware of union history and the role played by past leadership, they are generally unaware of contemporary leadership. It seems clear from the Jamaican data therefore, that while management (rather unsurprisingly) would prefer a union free environment and from the evidence is actively working to create it, workers want representation, though they may have a problem with trade unions as they are currently configured.

If unions continue to decline, the significance of industrial relations as a discipline will certainly decline and/or become further absorbed into human resource management. But despite all the trends we have noted there is no certainty that the union movement will disappear anytime soon.

In other parts of the world, unions have set out to remake themselves through strategies like amalgamation, aggressive organizing strategies, greater attention to particular groups of membership and potential

membership (such as women and the young) and re-defining their bargaining agenda. Some of that is taking place in the Caribbean.

For example, overall there has been a greater attention to cooperative or interest-based bargaining at both sectoral and workplace levels in Jamaica and a two-year Memorandum of Understanding for the Public Sector was signed in 2004. Such moves are important in keeping trade unions and their leadership relevant in the face of a systematic dismantling on traditional industrial relations. Ironically, the aggressive anti-union drive of some employers may very well precipitate the kind of backlash that will draw additional membership to trade unions. For example, trade unions in Jamaica have been working assiduously to organize large blocks of employees in the private security sector. Success in that sector will certainly lay the basis for efforts to organize other workers who currently operate on fixed-term contracts of employment.

From Collective to Individual Relations

As trade unions decline in the Caribbean and as the agenda of employment relations is increasingly set by the employer, important changes have begun to take place in industrial relations. In Jamaica, recent proposals have emerged to enable non-unionized workers to gain access to the Industrial Disputes Tribunal. This is an important step to accord to the majority of workers' rights created by the Labour Relations and Industrial Disputes Act of 1975 but currently restricted to unionized workers.

It represents an important shift in the ethos of industrial relations as well, because where once it was assumed that the majority of workers were unionized or potentially unionized, this seems to reflect an acknowledgement of the fact that not only are the majority not unionized but they are not likely to be unionized.

The discussion of the rise of Human Resource Management, the greater use of contingent employment, the decline of trade unionism and even proposals to strengthen the individual contract of employment by enabling individual workers to take their cases to the Industrial Disputes Tribunal, all signal what researchers in other parts of the world have described as a trend towards de-collectivization (Cowell and Singh 2003) or individualism (Warring, 1999, Hegewisch et al., 1997) in industrial relations. There are different perspectives on this trend.

Hegewisch et al. (p. 1) see it as the positive outcome of innovative human resource management strategy. Individualism, they report, “has been characterized by recognizing the resource value of employees and encouraging employee commitment; it is associated with the development of a comprehensive internal labour market, performance (individual) related pay and a focus on management employee relationship as opposed to management-trade union communication”.

In contrast, low individualism on the other hand which is embodied in a “utilitarian perspective on human resources” is associated with a “strong managerial focus on labour control” and “an overriding goal of cost minimization”. By implication, it also encourages direct union-worker communication, to the detriment of the workers’ commitment to the employing organization.

Some scholars argue that Human Resource Management is a strategy directed at attacking or neutralizing trade unions by either substituting management-led initiatives for benefits that would have normally emerged from collective bargaining (union substitution) or by engaging in tactics (such as plant-relocation or contracting out) directed at making unionization impossible (union avoidance).

Beaumont, for example, (1992, cited in Hegewisch, 1997) describes HRM strategies as “anti-union and anti-collective bargaining” and Keenoy (1990, cited in Hegewisch, 1997) argued that it is “a wolf in sheep’s clothing”. On the other hand, the research of John Storey (a prominent British scholar) suggests that HRM strategies employed in Britain showed little evidence of a “direct attack on trade unions” (Storey, 1992, cited in Hegewisch et al, p. 2). Others (e.g. Purcell and Ahlstrand, 1994, cited in Hegewisch et al, 1997) argue that the strategies of “individualization” inherent in HRM are not necessarily incompatible with the existence and functioning of collective labour organizations.

The evidence is no more conclusive in the Caribbean but anecdotal evidence suggests that both groups are right. On the one hand it is true that the rise of HRM strategies of individuation has been associated with de-collectivization, but few managers admit that this is the objective. There are instances where trade unions have been dismantled but no substantial human resource management initiatives to focus on empowerment, enhanced commitment and enhanced individual performance have been put in place. And there is evidence of strong human resource management initiatives taking place in a context of

union acceptance. In some organizations, the workers and the union leadership enjoy respect and acceptance, there is frequent and ongoing dialogue and there is little or no over manifestation of adversarialism.

It would seem therefore, that HRM and more direct management communication with the individual employee are not incompatible with the existence of a union and with collective relationships. In fact, it may be the case that if enterprises and other organizations wish to truly benefit from initiatives aimed at increasing productivity and efficiency, then the “structural changes” inherent in HRM initiatives need to be matched by the important pre-conditions of “cultural transformation”, which aligns the objectives of the workforce with those of the organization through a common understanding and acceptance of the purpose as well as the approach to change (Stevens, 1995).

From an industrial relations point of view however, such initiatives must respect the interest and perspective of the employee and offer genuine opportunities for employee involvement in the governance of the workplace.

Industrial Relations as a Field of Study

The developments of the last three decades or so have driven scholars to re-conceptualize industrial relations as a field of study. These developments have also forced the parties to the industrial relations system to re-conceptualize their role. In spite of this, however, it seems fair to say that the more things change the more they remain the same.

While Blyton and Turnbull assert that they name their book *The Dynamics of Employee Relations* for a purpose, they quickly concede that they see no “hard and fast distinction” between industrial relations and employee relations. And when they go deeper into their purpose it is clear that this is (a) to escape the prior public perception of industrial relations as being primarily concerned with industrial disputes between labour and management (b) to escape from a strong institutional bias in academic enquiry (c) to take account of the fact that the majority of employees are not unionized.

While recognizing the changing context of labour management relations and abandoning the old skin (of industrial relations), however, Blyton and Turnbull are careful to point out that the “new wine” of Human Resource Management is simply not up to the task of covering the field of study in a balanced way. As they point out, “HRM has been

centred squarely on the individual and the way in which individuals may be managed to enhance the achievement of broader organizational objectives” (p. 11). They then go on to agree with Kaufman (2001) that HRM emphasizes the employers solution to labour problems, excluding the worker and the community, focuses on forces internal to the firm while excluding important external considerations, gives more attention to firm competitiveness than to employee welfare, adopts a unitary perspective that downplays the role of conflicting interests and emphasize the role of management to the exclusion of government and the trade union.

One tentative move towards the re-conceptualization of industrial relations as a field of study has been to focus more closely on the field as “ethics at work”. In fact, industrial relations has always had at its core an ethical dimension and strong normative dimensions have been evident in the classic works of writers like Barbash (1989). Trade unions have, from the very beginning, stressed notions such as “dignity at work”, fairness, and a voice in the workplace for working people.

At the core of the work of the International Labour Organization are views about the values that ought to underpin the relations between employers and employees. The preamble to the ILO was founded on the precept that: “universal and lasting peace can be established only if it is based upon social justice” and that conditions existed in the world so marked by “injustice hardship and privation” that it threatened to imperil the peace and harmony of the world and that such conditions needed urgently to be addressed by means of:

. . . the regulation of the hours of work. . . the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures. (<http://www.ilo.org/public/english/about/iloconst.htm>, retrieved, November 10, 2005.)

At the core of the little known early involvement of the Church in industrial relations are similar normative concerns. In 1891, Pope Leo

XII, issued a papal encyclical, famously known as the *Rerum Novarum*. In it, the Pope flailed employers who were guilty of imposing excessively high intensity of work and low pay. As a remedy he called for state regulation of the employment relationship:

Labour which is too long and too hard and which is believed to be paid inadequately, frequently give workers cause to strike and become voluntarily idle. This evil, which is frequent and serious, ought to be remedied by public authority (http://www.osjspm.org/cst/q_rn.htm, retrieved, November 10, 2005)

Conclusion

Industrial relations in Jamaica as elsewhere, has faced numerous challenges during the last two decades or so. Some of these challenges derive from the inherent character of the discipline or from trends within the international economy and affect all countries to a greater or lesser degree. Others however, are peculiar to the Caribbean and to particular countries such as Jamaica. Among the global/generic challenges are the decline of trade unions, the new managerialism, and the “threat” of human resource management with its increasingly all-embracing scope and its deliberate strategic alignment with business objectives of the organization.

Locally, important changes have taken place. In Jamaica, the industrial relations system, like that of most of the countries of the English-speaking Caribbean was founded on political unionism. During the first two decades following 1938, this fact had a decided impact on the balance of power within industrial relations. By the end of the 1970s, this system was clearly in decline. Simultaneously, the unions were in decline. The passing of the Labour Relations and Industrial Disputes Act (LRIDA) in 1975 marked a shift from a voluntary to a more regulated system of industrial relations. These developments have had an important bearing on industrial relations as a field of study.

For instance, the role of law in Jamaican labour relations had been up to the late 1970s extremely minor. The very tentative legislative intervention designed to govern the arbitration of disputes in the public sector had done very little to disturb the voluntary nature of labour relations and to blunt the overarching power of the political unions (Cowell, 2002, Taylor, 2002). For the last two decades, however, the law has played a much more robust role. The numerous court cases

brought under the LRIDA (primarily by the employers) have served to substantially re-define the way in which Jamaican practitioners look at labour relations.

In more recent times, the unions have also been using the law as a means of asserting workers' rights, a good example being the case of the Jamaica Flour Mills v. National Workers Union. The recent Privy Council ruling on that case unequivocally established the right of trade unions to be consulted when a redundancy is contemplated and renders dismissals under these circumstances that take place without consultation, unjustifiable.

Other significant changes have also taken place on the local level (mostly paralleling international changes) - a generally more assertive stance on the part of management, increasing calls for flexibility, increasing use of non-standard contracts of employment and as a development with distinct positive elements, a rise in professional human resource management.

As these changes emerge in practice, industrial relations as a field of study also changes. For example, considerable international scholarship of the last two decades has been devoted to questions about the future of industrial relations. In the Caribbean (as in other parts of the world) a greater emphasis is being placed on the study of Human Resource Management as a discipline. Some scholars argued that there was in this trend a conscious shift away from the more balanced academic analysis of the aspirations of employers and employees to one which focused more explicitly on the agenda of the employer. Thus issues of efficiency, productivity and flexibility have come to the forefront of those relating to fair pay, safe working conditions, job security and industrial democracy (see MacLachlin, 1994).

The future of industrial relations as a field of study in the Caribbean is uncertain. It is clear that while at the best of times there is a mutually reinforcing relationship between scholarship and practice it is the latter that takes the lead. It is also clear that while Caribbean management has scrambled to re-configure employment relations in the context of globalization and while trade unions in many other countries have been equally strategic, the same cannot be said of Caribbean trade unions. In other words, while both employers and trade unions still operate on a day to day basis with methods that are artifacts of a bygone era, it is clearly evident that major corporations are on a path of change.

In Jamaica, except in cases where death has intervened, the trade union movement operates with significant elements of the same leadership that it has had since the 1960s and has been slow to emerge with new strategic foundations for the future. In contrast, unions in other parts of the world have stepped up their research programmes in order to understand the changing economy and labour market; have developed educational, training and public relations programmes targeting the changing demographics of the labour market and have developed new approaches to organizing and attracting new membership (Marieka, 2002).

Since management is driving workplace practice in the direction of Human Resource Management then the only hope for industrial relations as discipline is union renewal. It is left to be seen if and how this can take place.

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19

Attitudinal Transformation of Industrial Relations in Trinidad and Tobago

Natalie Persadie and Rajendra Ramlogan

If we take industrial relations in the wide sense of the term... as referring to the interplay between interest groups which participate directly or indirectly in or act upon the employment relationship, then we must include in our comparative evaluation of industrial relations such non-economic factors as attitudes, values and patterns of behaviour; we must include in it the way in which in different societies' decisions are taken and rules are established. In fact, industrial relations is but an expression of the power structure in a given society and of the way in which opposing interests between workers, employers and governments are reconciled and accommodated.¹

The above definition indicates a dynamism inherent in the industrial relations process which is perhaps not always reflected in the current teaching methods or practices in the Commonwealth Caribbean.

As this paper will seek to show, the non-economic factors of industrial relations, which continually evolve over time, (such as culture), are assuming a new significance in the practical application of industrial relations. These changes “run against the deeply ingrained traditions, practices and values of industrial relations”² and will therefore affect how it should be approached from a theoretical / academic perspective as well as by those involved in its practice.

The main textbooks currently used for teaching industrial relations particularly in the Caribbean, while not geared specifically toward industrial relations practices in the Caribbean, provide a strong foundation for understanding the main principles and practices of industrial relations but nevertheless fail to examine issues of culture as it may affect workplace relations.

Other texts dealing with industrial relations in the Caribbean also focus, in various permutations and combinations, on the historical development of industrial relations and trade unionism in the Caribbean,

industrial relations theory, and the theories and practices associated with collective bargaining, grievance handling and social partnership.³

A recent ILO publication by a former Barbadian trade unionist follows a similar format.⁴ These texts all provide ample reviews of the areas that they are designed to cover, in some cases examining statute law and using case law to reiterate points made in text. The point here is that while all these texts focus on the theoretical aspects of industrial relations, they have not yet taken into account issues which are changing the face of industrial relations theory at the practical level.⁵

It may even be argued that such issues (for example, sexual harassment, sexual orientation, transvestitism, socially stigmatized diseases [although this is gaining importance], substance abuse and the impact of technological advances in the workplace, to name a few) are and should be given separate focus elsewhere.

The authors would argue that, notwithstanding the importance of the traditional approaches to industrial relations, the marginalization of contemporary issues, which continue to assume increasingly greater importance, would mean that they would not be conferred the same prominence as are the more traditional areas and would perhaps not even be addressed, especially in a formal learning setting.⁶

Issues pertaining to attitude are of key significance to the improvement of industrial relations. Threading most of this paper is the call for attitudinal changes by all the stakeholders in the industrial relations process in response to the inexorable evolution of industrial relations.

Some of the issues to be discussed in this paper include the adversarial nature of the trade union movement and the need for change; the role of government as a major employer in the Caribbean; the role of the Industrial Court and judges in adjusting judgments in the face of cultural evolution; and the role of employers in facilitating harmonious industrial relations at the workplace, all of which require some degree of attitudinal change for the promotion of more comprehensive and sound industrial relations practices by all stakeholders.

Trade Unions

Trade unions were born in response to the capitalist exploitation of workers by their employers⁷ and tend to be fairly belligerent in their dealings with employers. The movement in Trinidad and Tobago had its shaky beginnings in the 1919 waterfront strike and riots in objection to rising prices and reduction in real wages.⁸

Riots and strikes continued during this period in objection to low wages, appalling working conditions and police brutality in suppressing worker protests.⁹ It was only in 1937 after the Butler riots that the trade union movement truly began to take form. This development was actively encouraged by the British government which hoped that it would have the ultimate goal of maintaining, or at least establishing, industrial peace.¹⁰ This was further coupled with the legalization of trade union activity.

There were several pieces of legislation that were passed in this general period with a view to affording the worker rights at the workplace and the right of trade union membership and representation. Among these were:

- Labour (Minimum Wage) Ordinance, Ch. 22 No. 3 [02 May 1935]
- Masters and Servants Ordinance, Ch. 22 No. 4 [10 September 1846]¹¹
- Employment of Women (Night Work) Ordinance, Ch. 22 No 5 [20 April 1939]
- Recruitment of Workers Ordinance, Ch. 22 No 6 [1938]
- Foreign Labour Contracts Ordinance, Ch. 22 No 7 [10 February 1900]
- Trade Unions Ordinance, Ch. 22 No 8 [01 July 1933]
- Trade Disputes (Arbitration and Inquiry) Ordinance, Ch. 22 No 9 [12 May 1938]
- Truck Ordinance, Ch. 22 No 10 [01 January 1920]
- Workmen's Wages (Protection) Ordinance, Ch. 22 No 11 [14 November 1929]
- Workmen's Compensation Ordinance, Ch. 22 No 12 [01 January 1927]

While the trade union movement generally strengthened and forged political alliances, the desired effect of maintaining industrial peace simply did not occur. An "industrialization by invitation" scheme by the Trinidad and Tobago government in the mid-1960s did not yield any real benefits to workers; in fact, unemployment increased from 6% in 1956 to 15% in 1966, despite a labour market that was growing 4% a year.¹² Strikes once again became the order of the day in industries such as sugar, oil, the public utilities, construction and the transport and communications sectors.¹³ In response to this industrial conflict, the state decided to intervene legislatively. In 1965, the government passed the controversial

Industrial Stabilization Act, No. 8 of 1965 (“the ISA”) to:

provide for the compulsory recognition by employers of trade unions and organizations representative of a majority of workers, for the establishment of an expeditious system for the settlement of trade disputes, for the regulation of prices of commodities, for the constitution of a court to regulate matters relating to the foregoing and incidental thereto..

It also provided for the protection of workers against victimization for union activity. Its controversial nature lies in the fact that it was highly regulatory.¹⁴ Moonilal makes the point that the “ISA represented the state’s attempt to regain social control by institutionalizing industrial relations”.¹⁵

Unfortunately, the ISA provided only fleeting relief. The socio-economic climate worsened, trade union activity intensified and parliamentary opposition and university students led the Black Power movement of 1970. The social unrest which characterized this period led the state to declare a state of emergency. Government decided to call national elections in 1971, defeating a “token” opposition.¹⁶

After this victory, attention was given to labour legislation with a view to regulating industrial relations. The government introduced the Industrial Relations Act, No 23 of 1972, now Chapter 88:01 of the revised laws of Trinidad and Tobago (“the IRA”) to replace the ISA.

The IRA, which is less regulatory and more auxiliary than the ISA, was meant “to make better provision for the stabilization, improvement and promotion of industrial relations”.

While much more comprehensive and restructured, the IRA retained many of the key provisions of the ISA. Some of the most important provisions added to the IRA were what Thomas refers to as “restrictive” provisions.

An example of such a restrictive provision is section 7(1)(c) of the IRA which confers upon the Industrial Court the power “to enjoin a trade union or other organization or workers or other persons or an employer from taking or continuing industrial action”. The IRA also contains “auxiliary” provisions designed to further enhance the Act. Part II, for example, establishes the Registration, Recognition and Certification Board, a power which previously lay at the Minister’s discretion (section 3 of the ISA); Part V introduces very clear guidelines as to the reporting of trade disputes and circumscribes instances of legal industrial action to very specific circumstances (the latter being

restrictive); and Part VI, *inter alia*, introduces agency shop orders which deals with the mandatory payment of contributions and the issuance of fraudulent medical certificates.

With a much stronger Act in hand outlining various procedural requirements, the IRA should have had the effect of institutionalizing industrial relations and introducing a much less adversarial forum for its expression. This, however, is not the case, as the relationships borne out of industrial relations continue to be antagonistic, as evidenced by the ongoing struggles between unions and employers.

The continuing antagonistic approach to industrial relations by key stakeholders has created a serious conundrum for trade unions attempting to maintain their role as guardians of workers' rights in the 21st century.

The belligerence of the 20th century trade union must be replaced by an approach that is both flexible and effective depending on the specific circumstances of the industrial relations climate. Developing a style of industrial relations that eschew rancour and virulence requires the cultural transformation of the leadership of the trade union movement so as to ensure that the 21st century would not judge the trade union movement as relics of a past that no longer bears relevance to the future.

In the case of the *Oilfields Workers' Trade Union v. Nestle Trinidad and Tobago Limited*,¹⁷ His Honour Mr. Herbert Soverall, Member, Industrial Court of Trinidad and Tobago, stated:

There is no place in industrial relations for a trade union to take the adversarial approach that it took on the facts of this case. Good industrial relations practice and procedure require a more mature and good faith approach to industrial relations in the interest of all concerned.¹⁸

Government

In the post-independence era in the Caribbean, "the State became the major employer, both in terms of the public service and the newly nationalized public enterprises".¹⁹ What followed in the post-independent period was that countries, such as Jamaica and Guyana which adopted socialist philosophies, began to nationalize companies.

In Trinidad, the government began to take control of its natural resource base by establishing state enterprises²⁰ and so assumed responsibility for the generation of employment in the various sectors. Consequently, the State now became an active participant in the industrial

relations system albeit with a peculiar slant: it was simultaneously employer, rule maker, judge and adjudicator. Moonilal holds that industrial relations in former British colonies have inherited colonial forms of institutions and culture and that the industrial relations systems, like the legal system, are inherently conflictual.²¹

The inescapable conclusion is that the Government is trapped in a dilemma of being the main employer in Trinidad and Tobago and the primary facilitator of developing good industrial relations practices that would redound to the benefit of the entire nation. Therefore, the conduct of Government as employer is always depicted in the context of the Government as the regulator responsible for promoting good industrial relations practices in Trinidad and Tobago.

The dualistic approach of the Government to industrial relations is clearly seen in existing case law. The case of the *Communications Workers' Union ("CWU") v. Trinidad and Tobago External Telecommunications Company Limited ("TEXTEL")*²² aptly illustrates the challenges facing a Government.

TEXTEL, as a state enterprise, was engaged in collective bargaining negotiations with the union representing the workers, CWU. Delays were being experienced because of the failure of the Government to provide guidelines to TEXTEL as to how to proceed with the negotiations. The Industrial Court was unimpressed by the tardiness of the Government in providing the requisite guidelines and made it clear that the Government as employer operated within the same regulatory confines as private employers. According to Her Honour Mrs. C.E.E. Riley-Hayes, Chairman of the Industrial Court of Trinidad and Tobago:

The evidence adduced by the Company reveals nothing short of disregard by the Government not only for the industrial relations process but also the consequences that flow therefrom... Inter-Ministerial Committees or Ministries if they are to achieve their functions in respect of influencing negotiations of State Enterprises or other concerns, must function within the legislative framework. They cannot by their actions or inactions occasion breaches of the provisions of the Act or indeed any other Statute... In these cases therefore...the Inter-Ministerial Committee and...the Cabinet acting through the Minister of Industry, Enterprise and Tourism do not reign supreme over the provisions of the Act.²³

The Industrial Court of Trinidad and Tobago returned to the special status of Government as an employer and firmly rejected that proposition

in the case of the *National Union of Government and Federated Workers v. The Chief Personnel Officer*.²⁴ In a judgment of His Honour J.A.M. Braithwaite, Chairman and C.S.E Beckles, Member, the Industrial Court of Trinidad and Tobago, it was stated that:

We do not consider that a case has been made out that the Government, as an employer, enjoys any special privileges not applicable to other employers... The Act makes strict and specific provisions for the establishment and enforcement of terms of employment. It is expressly stated in Section 87 that the Act binds the State so that these provisions apply equally to Government as employer as they do to any other employer.²⁵

The arrogant approach at times of the Government to industrial relations practices has survived well into the 21st century as clearly seen in the closure of Caroni (1975) Limited (“Caroni”).

Caroni, a state enterprise, was closed in 2004 as a result of a massive voluntary severance programme orchestrated by the Government. The issue of the voluntary severance programme reached the Industrial Court due to the failure of Caroni to consult with the majority union for its employees on the introduction of the voluntary severance programme.

It would have seemed obvious that the closure of a state enterprise that could have direct and indirect implications for almost 25 percent of the population should have at least involved appropriate consultations with key stakeholders but this was not so. The majority of the Industrial Court hearing the dispute of *All Trinidad Sugar and General Workers’ Trade Union v. Caroni (1975) Limited*²⁶ stated:

However, it is clear that the nature of the VSEP is such that, albeit ostensibly a voluntary arrangement, whereby the employee is not obliged to accept the package, even an enhanced package, over and above what he is legally entitled to, it would at least have been prudent for the Company to have consulted with the Union given that the offer has been extended to the entire work force of the daily paid workers ... We are further of the view that, notwithstanding the fact that an enhanced package is on offer, the parties are, in accordance with Section 40, obligated to act in good faith. Quite frankly, officially notifying the Union on the eve of its intention to circulate the VSEP package to its Workers can hardly, in our view, be construed or regarded as an act of good faith on the part of the Company.²⁷

Thus, a case analysis of the continuing attitude of the Government as employer does not provide optimism for viewing positively the role of

Government as an agent of change in creating a harmonious national climate for good industrial relations practices. This conflict has not, however, stopped the Government from attempting to deal with its role as the main agent of change for industrial relations practices at the national level.

Attempts have been made at the policy level seeking to change the very nature of the practice of industrial relations in the Caribbean. Social dialogue has been discussed in Trinidad and Tobago as a means of effecting non-adversarial relationships and changes in the formulation of industrial relations policy with the end goal of raising competitiveness and accomplishing social objectives.²⁸ The impetus for this participatory approach came from the International Labour Organization (“the ILO”) as well as its successful implementation in Barbados.

The ILO has been working with 21 Caribbean countries and territories to promote strong workplace partnerships between labour and management through its project entitled *Promotion of Management-Labour Cooperation* (“*PROMALCO*”). The project, funded by the United States Department of Labor, ended in 2005, but helped to create a framework that would encourage businesses to be based on a collaborative and cooperative approach.²⁹

The primary aim of the project was to increase respect for fundamental rights at work and to improve labour relations for the establishment of a collaborative work culture. It is believed that disputes can be quickly resolved through effective communication and transparent mechanisms designed to involve all stakeholders at all levels.

In 2000, the tripartite actors representing government, employers and employees of Trinidad and Tobago signed a declaration - “Compact 2000 and beyond”³⁰ - recognizing the need for the promotion of a sound industrial relations climate as well as for consultation and cooperation on social and economic issues of national concern.³¹

The declaration included the principles of collaboration and transparency and the need for policies reflecting a basic “people-centred” philosophy. It was hailed as a major milestone in the history of industrial relations in Trinidad and Tobago as a means of dealing with industrial relations issues in a “more effective and mature” manner.³²

Fayoshin correctly wonders whether the desire for social dialogue in Trinidad and Tobago would continue to enjoy support from the key decision makers and to what extent the declaration would actually be put into action. While the declaration was debated in parliament one

month before it was signed,³³ albeit after 18 months of discussion between the stakeholders, there would appear to be no real commitment to implement this declaration five years after.

One writer suggests that the reason for leaving the declaration in “idle storage” was a (political) refusal on the part of the new administration “to acknowledge that the previous government was able to construct a useful and workable partnership agreement”.³⁴

Can this concept of tripartism be put into effect? It has been successfully implemented in Barbados as a result of an unprecedented economic crisis in the early 1990s but their socio-political climate was much more accommodating than most other Caribbean countries to this power sharing type of arrangement.

It is only by recognizing each of the partners in the social dialogue process as true partners, allowing for the growth of trust and consensus, will this concept ever be able to work in a polarized socio-political climate such as exists in Trinidad and Tobago.

Unless the Government as employer starts to lead by example in its industrial relations practices, it is doomed to be viewed with much skepticism as it attempts to chart a future for a new dispensation in industrial relations harmony predicated on a foundation of tripartism.

Consistency in policy and practice can only occur with Government's recognition of its unique role and the reality that it must operate in a different paradigm. Such a paradigm would require the repudiation of its traditional conflictual role as employer and its policy role as an agent of change for creating a society with institutions and practices that foster an industrial relations climate that minimizes asperity and belligerence.

Industrial Court and Judges

Perhaps the pivotal stakeholder in forging a progressive environment for industrial relations is the already institutionalized specialized tribunal for addressing industrial relations matters. It is hardly surprising that there are high expectations that the specialized industrial relations tribunals would provide a prominent source of learning to guide the other stakeholders in the industrial relations matrix.

In Trinidad and Tobago, the Industrial Court is a superior court of record. As a superior court of record, it has a status that is equivalent to that of the High Court of Justice. It is a specialist court and because of its specialized jurisdiction, it is not comprised solely of lawyers but has

other members who possess a variety of skills, particularly in industrial relations, economics and accountancy.³⁵

This is significant as it allows the court to bring into its decision-making process, a wide range of skills not normally available in the mainstream judicial institutions. The unique nature of the Industrial Court was highlighted in the case of *NUGFW v. The Chief Personnel Officer*, where the Court stated:

In any event this is not a common law court. It is a Court of Industrial Relations and matters that come before it are confined to matters between trade unions and employers. It is for this purpose endowed with extraordinary powers, beyond those of courts of common law and empowered to award remedies developed under the voluntary system of industrial relations, which are far in excess of those available in courts of common law.³⁶

According to the former President of the Industrial Court, its principal role is to settle unresolved disputes and other matters which arise between trade unions and/or workers and employers under the Industrial Relations Act, the Retrenchment and Severance Benefits Act, the Maternity Protection Act and the Minimum Wages (Amendment) Act.³⁷

In determining a matter, judges of the Industrial Court are not bound by the rules of evidence or by the common law. This gives them greater discretion in formulating judicial pronouncements. Section 10(3) of the IR Act states that the Court shall:

- (a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;
- (b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.

The flexibility of the Industrial Court to examine matters without regard for the rigidity of procedure cannot be underestimated and is a significant weapon in its arsenal for achieving justice in the realm of industrial relations. This was emphasized by the Industrial Court in the matter of *Bank Employees Union v. Scotia Bank of Trinidad and Tobago Limited*.³⁸ According to the Industrial Court in its unanimous decision:

...we have had due regard to all the circumstances including the fact that this Court is empowered by Parliament to act in accordance with the

principles and practices of good industrial relations and is therefore not to be bound by legal technicalities...³⁹

It is important that a Court with such powers give due regard to issues of equity, justness, fairness, good conscience (although arguably this should be the case in any court) and sound industrial relations practices and not focus solely on legal principles. This is particularly crucial in the face of the emerging problems which are now facing industrial relations.

The Court now requires even greater flexibility to deal with the newly emerging conflicts in the field of industrial relations. However, it must be borne in mind that the Industrial Court of Trinidad and Tobago has been careful to emphasize that it is not guided by principles founded on notions of sympathy. This position was succinctly articulated by the Industrial Court in the case of *Public Services Association v. Airports Authority of Trinidad and Tobago*⁴⁰ where it was asserted that:

We feel a great deal of sympathy for the Worker but this is a Court of equity and good conscience, not a Court of sympathy. Our judgment cannot be based on sympathy...⁴¹

Despite the clear statement of intent that sympathy would not sway the Industrial Court, there is room in the decision-making process for consideration of the well-being of the national community and the social and economic forces dominating the national landscape. This was the view of Mr. L.D. Elcock, Member, Industrial Court of Trinidad and Tobago, in the matter of *ATWGTU v. Caroni*.⁴² The Honourable Member stated:

In my opinion it is self evident that in this particular case, we should give overriding importance to the interests of the community as a whole - the entire national community in general, and in particular, the ¼ million citizens who are in one way or another, dependent upon the sugar industry. This Court cannot close its eyes to the monumental social and economic effects this large-scale restructuring will have on the lives of many thousands of citizens of this country who live and work within the region where the Company's operations are centred.⁴³

Yet the importance of the Industrial Court and similar tribunals can be undermined by the failure of the judges in these tribunals to adapt to the changing imperatives of the 21st century. Fossilized viewpoints cannot

provide succour to those whose special vulnerabilities are being assaulted in current industrial relations practices.

There is a driving need for change of entrenched patriarchal beliefs and attitudes to allow for truly equitable judicial pronouncements. Despite the greater discretion conferred upon courts of this type, there is still a need for not simply equitable and just judgments but also objectivity, particularly in cases dealing with a matter as delicate as sexual harassment. The issue of deeply ingrained gender bias is clearly demonstrated in an appalling analogy by a Jamaican judge attempting to define gross misconduct in the context of industrial relations. To quote Parnell J.:

If the foreman in the factory should merely pinch the alluring hip of the newly appointed technician while on the job, that would not necessarily be ground for instant dismissal. He should be warned if the lady did reject his advance. But if during the lunch break and against her will she was forcefully held in the restroom of the canteen and dragged or lifted to a corner with the intention to ravish her the worker or workers responsible would have been guilty of gross misconduct.⁴⁴

The sensitivity required by this judge was plainly lacking and the only way around this type of male behaviour in the judicial process is through re-education and retraining of the judiciary and workforces generally.

Ideally, this education and training would begin in the early formal education process to help combat the negative effects of deeply entrenched patriarchal cultural attitudes that are regarded as 'normal' and acceptable, attitudes that may have a deleterious effect on the potential of industrial relations tribunals to dispense a brand of justice capable of addressing the constantly evolving challenges of industrial relations practices in the 21st century.

Employers

Employers have an equally vital role to play in improving industrial relations. It is said that the goals of employer and employees are intrinsically divergent: employers concentrate on increasing production while employees focus on increasing wages.

In management schemes where employees are treated merely as a cog in the organizational wheel and where the information flow is from

the top down, there will necessarily be a conflictual relationship. Management's relationship with unions will also affect workplace relations. The Industrial Court of Trinidad and Tobago has had to forcefully remind employers of their responsibilities in promoting sound industrial relations practices and of the fact that employers are not above the law.

The Industrial Court in *Communications Workers' Union v. Snooker World Recreation Club*⁴⁵ delivered a stern warning to employers.

Every employer, no matter what the nature of the business he operates, whether it be Bank, Insurance Company, Manufacturing concern, commercial enterprise or indeed Recreation Club, is obligated in conducting his business and in employing workers, to act in accordance with the rules of national Law and the Principles and Practices of good Industrial Relations. He cannot use ignorance as a shield against the consequences of a breach of any of these rules. It cannot be acceptable in Law or in Industrial Relations practice, for any employer to keep absolutely no record of the employment of workers or of the wages paid to them. It cannot be acceptable in Law or Industrial Relations practice, for any employer, to casually ignore the requirement to make statutory deductions and payments from the wages of his employees and keep appropriate records of such deductions and payment; and it certainly cannot be acceptable Industrial Relations practice, that any employer could dismiss a worker on the "flimsiest" of excuses or without giving the worker an opportunity to be heard in her defense.⁴⁶

In order to effect harmonious relationships at the workplace, there is a need for employers to embrace a more participatory approach and open up two way communication channels. As with tripartite agreements as discussed above, employers must see employees as equal stakeholders with rights and interests to be considered in major decisions that may affect their employment. This would lead to a reciprocal duty on the employees to commit themselves to improvements in quality and efficiency.

Social dialogue is an important feature in the achievement of harmony at work. By allowing workers the facility of contributing to workplace procedures and decisions they will feel a sense of ownership and a motivation to enhance the prosperity of their company to the benefit of everyone.

This is of course quite theoretical. Authoritarianism and adversarial management styles which lead to distrust, low motivation and general job dissatisfaction seem to dominate Caribbean businesses. The challenge

lies in creating a culture of teamwork and collaboration which requires the dissolution of hierarchical management structures and the opening up of two way channels of communication.

Employees must feel comfortable enough to approach employers with problems or ideas. Whether managers in the Caribbean have the ability to relinquish the power bestowed upon them by their title is a serious difficulty that would have to be overcome.

Conclusion

Industrial relations practices and procedures require a new approach if they are to be improved. All stakeholders in the industrial relations process have an integral role to play if industrial relations is to become cooperative and consultative. The constantly evolving character of industrial relations and the need for flexibility was succinctly captured by Cooke J. in the Jamaican case of *The Labour Relations and Industrial Disputes Act and in the Matter of the Grand Lido Negril* at p.27:

Labour relations seems always to be in a state of evolution. It is not static. Changes will occur influenced by technological advancement, the impact of international economic trends and government policy to name but a few factors. This demands that the Tribunal must be flexible but always independent in the performance of its functions.⁴⁷

This call for flexibility on the part of an industrial tribunal echoes for all other stakeholders.

At the 2005 “National Conference and Consultation on Industrial Relations in Trinidad and Tobago”, the various stakeholders in the industrial relations process made themselves heard. The current attitudes of some of the stakeholders, however, leave much to be desired. While the forum was meant to allow for consultation, the tones were accusatory and belligerent, clearly reflecting distrust and anger. Many of the speakers took the opportunity to accuse, attack and point fingers with no attempt to offer solutions.

The only way around this conflict which has come to characterize industrial relations is through continuous education to change patriarchal and colonial attitudes; political will and commitment at the level of the government; and a general willingness to be more trusting of the other stakeholders in the industrial relations process.

This would require a radical overhaul of the current socio-political backdrop against which industrial relations processes unfold. To this

end, the teaching of industrial relations must metamorphose into something more relevant to the transformation of the attitude of the major stakeholders.

While one ought not to diminish the significance of the philosophical underpinnings of industrial relations and related subjects, space must be found for beginning the re-education of the key stakeholders to facilitate the attitudinal transformation that is critical to a 21st century vision of industrial relations practices founded on a more harmonious platform than currently exists.

NOTES

1. J. Schregle, "In search of Alternative Models for Asian Industrial Relations: A Discussion Paper", in *Agenda for Industrial Relations in Asian Development*, Proceedings of the 1981 Asian Regional Conference on Industrial Relations, (Tokyo: The Japan Institute of Labour, 1981). Emphasis added. Quoted in S.R. de Silva, "Elements of a Sound Industrial Relations System", [cited 03 May 2005]. Last updated 13 July 1998. Available from Internet: <http://www.ilo.org/public/english/dialogue/actemp/papers/1998/srseleme.htm>.
2. Roodal Monilal, "Harmonization of Industrial Relations Systems and Practices", paper presented at the National Conference and Consultation on Industrial Relations in Trinidad and Tobago, hosted by the Ministry of Labour and Small and Micro Enterprise Development, at the Cascadia Hotel, Port of Spain, Trinidad 01-03 March 2005, p. 2.
3. Books reviewed include Michael Salamon, *Industrial Relations: Theory and Practice* (London: Prentice Hall Financial Times, 2000); Lawrence Nurse, *Trade Unionism and Industrial Relations in the Commonwealth Caribbean: History, Contemporary Practice and Prospect* (London: Greenwood Press, 1992); Samuel Goolsarran, *Caribbean Labour Relations Systems: An Overview* (Port of Spain, Trinidad: International Labour Office, 2002); Roy Thomas, *The Development of Labour Law in Trinidad and Tobago* (Wellesley, Mass.: Calaloux Publications, 1989); Roodal Moonilal, *Changing Labour Relations and the Future of Trade Unions: A Case-Study of Trinidad and Tobago*, PhD Dissertation, The Institute of Social Studies, The Hague, The Netherlands, November 1998. One of the main textbooks currently used for teaching industrial relations at the University of the West Indies is the English textbook *Industrial Relations: Theory and Practice* by Michael Salamon. It is the prescribed text at two of the three Campuses of the university. It is also prescribed by practitioners in the field of industrial relations. This text provides a comprehensive approach to the study of industrial relations. It deals with the conceptual approaches of industrial relations; the key players; the various processes (such as collective bargaining, industrial action and alternative dispute resolution); and practices (such as collective bargaining and grievance, disciplinary and redundancy procedures).
4. Robert Morris, *New Issues in Collective Bargaining: A Caribbean Worker's Education Guide* (Port of Spain, Trinidad: International Labour Office, 2002).
5. There is however, one notable exception: George Kirkaldy, *Industrial Relations*

- Law and Practice in Jamaica* (The Caribbean Law Publishing Company, 1998), in which he discusses, apart from the mainstream industrial relations issues, the phenomenon of sexual harassment in Jamaica despite the scant empirical data and suggests preventative measures for implementation at the workplace.
- 6 This is commonly the case in the industrial relations courses currently offered.
 - 7 Nurse, *Trade Unionism and Industrial Relations*, p. 59.
 - 8 Thomas, *The Development of Labour Law in Trinidad and Tobago*, p. 16.
 - 9 Roodal Moonilal, *Trade Unionism in Trinidad and Tobago, Crisis and Prospects* (St. Augustine, Trinidad: University of the West Indies, 1999), p. 13.
 - 10 Moonilal, *Trade Unionism in Trinidad and Tobago*, p.16.
 - 11 While this particular one was passed nearly one century before it is important to note as it was the very first piece of legislation regulating labour. The key provisions were concerned with breach of the employment contract (no reasonable cause; wilful absence; failure to fulfill contractual obligations; negligence; improper conduct; causing damage to the employer's property).
 - 12 Moonilal, *Trade Unionism in Trinidad and Tobago*, p. 18.
 13. Moonilal, *Trade Unionism in Trinidad and Tobago*, p. 18.
 14. L.P.E. Ramchand, former President of the Industrial Court, "The Role, Functioning and Challenges of the Industrial Court", paper presented to the Employer's Consultative Association, p. 4.
 15. Moonilal, *Trade Unionism in Trinidad and Tobago*, p. 22.
 16. Thomas, *The Development of Labour Law in Trinidad and Tobago*, p. 48.
 17. *OWTU v Nestle*, IRO No. 9 of 2003.
 18. *OWTU v Nestle*, p. 4.
 19. Moonilal, "Harmonization of Industrial Relations Systems and Practices", p. 5.
 20. Natalie Persadie, "Environmental Protection and Economic Development: Prospects for the Building of an International Environmental Legal Regime", Unpublished M.Phil Thesis, (St. Augustine, Trinidad: University of the West Indies, 2002), p. 172.
 21. Moonilal, "Harmonization of Industrial Relations Systems and Practices", p. 6.
 22. *CWU v TEXTEL*, ESD. IRO 16 of 1987 and IRO 10 of 1987.
 23. *CWU v TEXTEL*, pp.12, 17 and 18.
 24. *NUGFW v The Chief Personnel Officer*, TD No. 190 of 1987 (consolidated with other related actions).
 25. *NUGFW v The Chief Personnel Officer*, p.13.
 26. *ATSGWTU v Caroni*, IRO No. 9 of 2003.
 27. *ATSGWTU v Caroni*, pp. 34 and 35.
 28. ILO, "The ILO in the Caribbean: its objectives and activities: Strengthening Tripartism and Social Dialogue", [cited 02 May 2005]. Last updated June 2001. Available from Internet: http://www.ilocarib.org.tt/ilo_objectives/social_dialogue/background_old.htm
 29. ILO, "Caribbean: Promotion of Management-Labour Co-Operation (PROMALCO)", [cited 02 May 2005]. Available from Internet:http://www.ilo.org/dyn/declaris/DECLARATIONWEB.ProjectDetails?var_Language=EN&var_ID=184
 30. See ILO, "Compact 2000 and Beyond - Declaration of the Social Partners to Address Economic and Social Issues", 31 October 2000. Available from Internet: <http://www.ilocarib.org.tt/speeches/compact2000/declaration.htm>
 31. Tayo Fashoyin, "Fostering Economic Development through Social Partnership in Barbados", InFocus Programme on Strengthening Social Dialogue: Working Paper, (Geneva: International Labour Office, 2001), pp. 53-54.
 32. Willi Momm, "Remarks on occasion of the signing of the tripartite Declaration "Compact 2000 and beyond" of Trinidad and Tobago - 31 October 2000", delivered

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- by the Director of the ILO Caribbean Office. [cited 03 May 2005]. Posted October 2000. Available from Internet:<http://www.ilocarib.org.tt/speeches/compact2000/compact.htm>
33. See Senate debates, Monday 11 September 2000. Available from Internet: <http://www.ttparliament.org/hansard/senate/2000/hs20000911.pdf>
 34. Tony Fraser, "Bringing Stability to T&T", *The Trinidad Guardian*, Thursday 18 March 2004. [cited 03 May 2005]. Available from Internet: <http://www.guardian.co.tt/archives/2004-03-18/Tonyfraser.html>
 35. Addison Khan, President of the Industrial Court, "The Structure, Role and Impact of the Industrial Court on the Industrial Relations Process", paper presented at NUGFW Seminar, 18 May 2001, p. 1.
 36. *NUGFW v. The Chief Personnel Officer*, p. 27.
 37. Khan, "The Structure, Role and Impact of the Industrial Court", p. 3.
 38. *Bank Employees Union v Scotia Bank*, TD No. 176-178 and 180 & 181 of 1999.
 39. *Bank Employees Union v Scotia Bank*, p. 9.
 40. *PSA v AATT*, TD No. 8 of 1999.
 41. *PSA v AATT*, p. 13.
 42. *ATWGTU v. Caroni*.
 43. *ATWGTU v. Caroni*, p. 24-25.
 44. *R. v. Industrial Disputes Tribunal, Ex Parte Egbert A. Dawes* (1984) 21 JLR 49 at p. 57.
 45. *CWU v Snooker World*, TD No. 116 of 1998.
 46. *CWU v Snooker World*, pp. 9-10.
 47. *In the Matter of the Labour Relations and Industrial Disputes Act and in the Matter of the Grand Lido Negril*, Suit No. M-98 of 1995.

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The Labour Education Challenge: the Trinidad and Tobago model

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This paper explores the challenges to labour colleges in the English-speaking Caribbean in fulfilling their mission of educating and training industrial relations practitioners. The English-speaking Caribbean has four labour colleges.¹ The oldest, the Trade Union Education Institute, was established in Jamaica in 1959 as a unit of the Extra-Mural Department of the University College of the West Indies,² followed by the Cipriani Labour College in Trinidad and Tobago (1966), the Critchlow Labour College in Guyana (1967), and the Barbados Workers' Union College in Barbados (1974). It is fair to say that these institutions have been quite successful in carrying out their mission.

Background

The basic mission of labour colleges is to provide educational facilities and courses of study for trade union officials and members and non-unionized workers and, to a lesser extent, the general public. Some sections of the education programmes are designed to raise awareness on issues that have a bearing on the interests and well-being of workers as a social grouping. This is in keeping with the view that trade union representatives ought to have some philosophical reference points for projecting a labour point of view in discussions with management. The objective of labour college education and training is to develop the leadership capabilities of the trade union officials and to improve their competence and skills in labour-management relations, particularly grievance handling and pay negotiations.

Considerable amounts of financial resources are required to fulfill the education and training mission of labour colleges. The recurrent budgets of workers' education institutions must provide for classroom

accommodation, salaries of administrators and teachers as well as support staff and goods and services required for day-to-day operations. The capital budget must provide for non-recurrent and development expenditure.

The problem of limited financial resources has been a formidable obstacle in the way of establishment of labour colleges in developing countries. Only programmes of modest scope are within the financial reach of their trade unions. Usually the centrepiece of these programmes is a series of short courses repeated two or three times each year. Even such limited programmes are only possible by trimming expenditures in order to keep them in line with budgetary allocations. The lecturers are drawn from the ranks of the trade unions and outside professionals, including university lecturers, who are sympathetic to trade unions. The outside professionals accept rates of remuneration that are below their normal professional rates and the trade union officials, for the most part, do not charge for their teaching services. The regular staff members of the trade unions handle the secretarial work. The budgetary allocations for the programmes are occasionally supplemented by grants from international organizations, notably, the ILO, the British Trades Union Congress, international branches of trade unions, and by programme-specific subventions by the state.

Another feature of these programmes is that they are organized on a part-time basis, with the sessions scheduled outside of normal working hours, i.e. in the evenings and on weekends. This arrangement facilitates the availability of students and teachers.

The labour colleges of the four Caribbean countries – Barbados, Jamaica, Guyana and Trinidad and Tobago – are examples of institutions that have developed labour education programmes from the modest beginnings outlined above. The beginnings are similar, but paths of development have been different in some important respects.

The Critical Importance of Funding

Labour colleges are either funded by the trade unions that establish them or from the coffers of the state. In some instances, both these sources contribute to the funding of such institutions. The source of funding is linked to some significant differences in the features of trade union-funded and state-funded labour colleges. There are differences

in (1) degree of autonomy in planning and strategizing (2) access and affordability of the programmes (3) relevance of the training for the development of trade union administration and leadership skills (4) level of national acceptance of the diplomas and (5) scope for responding to the changing needs and expectations of the primary stakeholders of the institution, namely, trade unions and their members.

Generally speaking, a trade union-funded labour college is in a position to retain a high degree of autonomy in matters of strategy and planning. The trade union-funded institution is also in a position to follow a strict policy of giving priority to programmes of training to enhance leadership and administration skills of trade union officials and to make changes in programmes in response to requests from its trade union-based student body. On the other hand, recognition of diplomas by the national accreditation body is not routinely granted, and in the absence of state funding, the institutions find it difficult to expand the number of programmes and student enrollment without charging substantial tuition fees.

By contrast, in state-funded labour colleges, there is less pressure to limit expansion of programmes and enrollment, and the national accreditation body more readily recognizes the diplomas. However, the funding of a labour college by the state carries with it a measure of restriction in 3 areas, namely, autonomy in planning, policies of giving priority to trade union programmes and responding to the changing needs and expectations of the students and the sponsoring trade unions.

. The four labour colleges present interesting variations and combinations of the features outlined above. The operations of the Barbados Workers' Union Labour College are financed by its trade union. The British Guyana Labour Union (later renamed the Guyana Labour Union) originally financed the Critchlow Labour College.³ The college is currently administered by the Ministry of Education of Guyana as an integral part of the country's adult education programme. The Cipriani Labour College in Trinidad and Tobago is directly financed from the public purse, and the Trade Union Educational Institute, which is a unit of the University of the West Indies, Jamaica campus, is indirectly state-financed through Jamaica government appropriations to the UWI Jamaica campus.

Using the Cipriani Labour College as a country study, this paper will trace the development of the college by examination of (1) financing

of current operations and development plans, (2) relevance of the programmes in relation to objectives, (3) accreditation and acceptance of diplomas, (4) student access to the programmes, and (5) responses to demands for changes in programmes and the content of courses. The final section of the study is an appraisal of the performance of the college in the light of its mission and objectives and a brief discussion of the challenges facing the institution and the prospects for further development.

Cipriani Labour College⁴

The Cipriani Labour College was established by Act No 4 of 1972 of the Parliament of Trinidad and Tobago. The mandate of the college as stated in section 12 of the Act is to provide educational facilities and courses for trade unions and co-operatives and workers generally, in fields approved by the Board of Governors. Under the Act, the College was empowered to issue certificates and diplomas and it was required to cooperate with other educational institutions for the advancement of workers' education generally and to cooperate with labour movements in the Caribbean. Included in the mandate of the College was the power to pursue charitable objects and undertake charitable trusts that are incidental or conducive to the performance of its duties.

One feature of the Cipriani College, which sets it apart from the other Caribbean labour colleges, is its mandate to provide facilities and courses for the Co-operative Movement of Trinidad and Tobago. This means that the institution does not serve the trade union movement exclusively. The explanation of this dual responsibility is that in the 1960s both the trade union movement and the co-operative movement were calling on the Government of the day for state assistance in their development as social institutions. Both movements felt that the most beneficial form of assistance would be in the area of specialized education and training for their officials and members.

The response of the Government was informed by the view that better trained trade unionists would be more effective in labour-management relations including negotiations. The cooperative societies were seen as an important and rapidly growing social sector which urgently needed training for its administrators.

Three other features of duties and powers may be noted. First, the development of the curricula and programmes is the responsibility of

the Board of Governors. Second, the College is empowered to issue its own diplomas and certificates. Third, the College is permitted to set up charitable trusts. The legal implication of this concession is that surpluses generated from the operations of the College would not be subject to taxation and could be put into reserve funds for development.

The above features cast light on the locus of control of the operations of the College. The responsibility for managing the operations of the College was delegated to the Board of Governors. In the words of section 4 (1) of the Act: “The affairs of the College shall be managed by the Board of Governors...” Furthermore, section 13 indicated that the responsibility to manage was an exclusive province of the Board: “In the formulation of policies for the performance of duties and the exercise of the powers of the College under this Act, the Board shall be subject to no other person or authority.” A 1976 Amendment of the original Act (No 35 of 1976) modified these powers somewhat with a provision that the Board of Governors in exercising and performing its powers, duties and functions, was required to act in accordance with any general directions of the Government, given to it by the Minister of Labour.

The composition of the Board also indicates that the intention of the framers of the Act was that the trade union representatives should hold a majority position. Section 4 sets out the representation of interests on the Board of eleven members: Five members were to be nominated by the Trinidad and Tobago Labour Congress; three government representatives in the person of the Permanent Secretary, Ministry of Labour, the Permanent Secretary, Ministry of Education, and the Commissioner of Co-operative Development (or their representatives); and three members from the general public. An amendment, No 1 of 1994, reduced the membership of the Board (from 11 to 9) and changed its composition. The number of trade union nominees was reduced from 5 to 4 and the number of nominees from the general public from 3 to 2. Part of the explanation of the reduction in trade union nominees was the split of the Trinidad and Tobago Labour Congress into 2 rival factions - the faction that retained the name and the breakaway Congress of Progressive Trade Unions. Each faction was allowed 2 nominees.

The only other amendment of the original Act is No 15 of 1997, which authorized the name change of the institution from Cipriani Labour College to Cipriani College of Labour and Cooperative Studies (CCLCS).

This change took account of the reality that the College is engaged in education and training for both trade union and cooperative societies.

Section 17 of the Act sets out the protocol relating to the finance functions of the Board, beginning with the basic directive that revenue must cover expenditure. The expenditure categories consist of (1) maintenance, depreciation and interest on borrowings, (2) repayment of long-term indebtedness, and (3) reserves created for future expansion. Next, revenue sources are listed as (1) annual appropriations by Parliament, (2) income from operations of the College and (3) other miscellaneous income. The funds of the College are to be expended on remuneration, fees and allowances for Board members, (2) salaries and superannuation payments for all staff (administrative, academic, technical, clerical etc.) (3) interest on any loans raised by the College (4) depreciation allowances and (5) any other authorized expenditure properly chargeable to revenue.

Two important clauses complement the regulatory framework for the finance functions of the College. Government undertakes to guarantee any loans negotiated by the College. Also, the College is permitted to convert surpluses into reserves for the purpose of future expansion. Clearly, the arrangements for the funding of the College are in line with the model of an institution fully and directly funded by the state.⁵ Moreover, the provisions respect the canons of adequacy of funding and independence in implementing financial decisions. The extent of the financial support goes even further. Scholarships are awarded for studies in the programmes of the College. This point will be elaborated in the discussion of student access to the programmes.

While Cipriani College can be considered as an example of a state-funded model, to date, however, the College has been required to contribute about 25% of its recurrent expenditure from income derived largely from tuition fees and specialized training programmes carried out by the institution for organizations, industries, government ministries, credit unions, trade unions and other private and public institutions. Capital expenditure is borne solely by the state, although there have been times when the College has been able to carry out some limited capital activities by using the surpluses set aside from the more lucrative programmes.

As the College seeks to provide adequate educational, support and recreational facilities, the state is financing some of the major development work. Following up on a study by a firm of consultants to

develop a plan for the physical expansion of the College, the state once again stepped in to continue construction of facilities started in 2001 with the authorization of the previous Board of Governors. The buildings under construction are part of Phase I of the existing plans for upgrade of facilities.

The upgrading will provide some new classrooms, computer laboratories, office space, conference facilities and student amenities. Most of the structures are already completed. By December 2005, the remaining ones will also be ready for occupancy. State of the art equipment is also being provided to enable lecturers to keep pace with developments in their respective fields.

In the second phase, recreational facilities and student dormitory facilities will be completed. This development will enable CCLCS to cater to students regionally and internationally. In recent years, there has been a small enrolment of students from Eastern Caribbean states. It is envisaged that with dormitory facilities, the College will be able to offer a quota of places to students from Eastern Caribbean states.⁶ In the past, offers of places could not be made because of the absence of dormitory accommodation and the problems of finding suitable off-campus accommodation.

In recent years, CCLCS has also had problems with meeting the demand by qualified applicants for classroom places. An explicit national policy of making tertiary education more accessible to the population has of course stimulated this demand. The problem of shortfall in available places has been particularly acute in the San Fernando and Tobago programmes. The recent expansion of classroom accommodation at the Tobago centre for the 2005-2006 academic year is therefore a significant step in tackling the problem. Similar advances will have to be made for the San Fernando centre, which must meet the considerable and growing demand from applicants in the industrial heartland of Trinidad. Because the state has been willing to provide the additional resources for expansion, the college has not had to approach non-governmental sources for that purpose.

Noteworthy features of CCLCS as a Labour College have been the designing of the programmes to meet the special needs of working people, the philosophy behind the sequence and structure of the programmes and the pegging of tuition fees in an affordable range. While continuing to be innovative and adaptable to the changing

circumstances of the workforce, CCLCS has remained faithful to its original mission of servicing the educational and training needs of the trade unions and the wider labour movement.

Accordingly, the College, as it worked out its Strategic Plan, found it necessary to restate its commitment to the labour and cooperative movements in clear and unmistakable terms: “With a proud tradition of accessible quality education, we exceed the expectations of our Stakeholders, Staff and Students as the premier tertiary educational institution in the Caribbean, in areas of Labour, Cooperative Studies and a dynamic range of other training programmes.”⁷

Arguably, the main determinant of access to the programmes is the level of tuition fees. A deliberate policy of keeping student fees low (relative to other educational institutions) has been maintained. Starting with the beginning level, in the Introductory/Outreach programmes for Industrial Relations, the tuition fee is \$750 for a course of forty (40) contact hours. Then, the tuition fee for the ten-week, full-time programme in Industrial Relations, specifically for members of trade unions, is \$1000 and for the one-year Certificate in Industrial Relations, the fee is \$1500. For the Associate Degree in Labour Studies, the fee is \$2000 for each year of the two-year (full-time) programme. All these tuition fees are considerably lower than those of other programmes of similar scope and level in private sector institutions.

Beginning around 2001, the part of these fees actually paid by students has been progressively reduced with the introduction of two financial assistance programmes for students. The Dollar for Dollar (DfD) facility was introduced in 2001 and the Government Assistance for Tertiary Education (GATE) facility in 2003. The DfD facility cut the fees by fifty percent.⁸ The GATE programme went even further. Students who could not afford to pay their fifty percent of the tuition fee and who could satisfy a “Means Test” were provided with full tuition. With the announcement recently in the Trinidad & Tobago, 2005-2006 Budget Statement that free tertiary education will be introduced from January 2006, the constraints on accessibility (as they relate to financial consideration) have been reduced.

It is worth noting that even before the advent of the DfD and GATE arrangements, CCLCS students had been benefiting from tuition-free scholarships for full-time programmes. These scholarships were offered by the trade unions, by the Board of Governors of the College and (in the case of civil servants) by the State.

While cost is a determinant of access, it is equally true that the “convenience” aspects of the programmes are important considerations.⁹ All the CCLCS programmes are offered at times convenient to trade union members, workers and working people. While some are offered during the day, all are offered on either evenings or Saturdays. Lecture hours are scheduled at times that take account of the time required to travel from work to classroom. The positioning of the teaching centres (South, East, Central-North and Tobago) also facilitates attendance.

Accessibility involves more than the level tuition fees and the convenience of the lecture hours and locations of the classrooms. It also involves arrangements to facilitate entry into the programmes of persons who initially do not hold the standard academic certification for entry into tertiary level programmes.

CCLCS has always embraced the notion that learning takes place inside as well as outside the classroom, including the world of work. In keeping with this philosophy, the Labour Relations programmes at the College make provisions for persons who have acquired a certain level of competence outside of the classroom and are therefore capable of pursuing the academic programmes successfully even though they do not have the traditional entry requirements. One sub-set of this category is defined as mature persons (i.e. 25 years and older) with experience as a Trade Union/Industrial Relations Officer, Labour Relations Manager, Health and Safety Officer, and Personnel/ Human Resource Manager.

Access is also offered to those who, while not being a mature person, have reached the age of eighteen and older and have left secondary school without the traditional passes at the CXC or GCE Ordinary Level examinations. These individuals are required to complete a relevant programme or set courses at the College’s Introductory/Outreach or Ten weeks Full-time programme. From this level, students can move on to the next level, which is the One-Year Certificate in Industrial Relations or the One-Year Certificate in Occupational Safety and Health. From this level, the student can proceed to the One-Year Diploma, and then the Associate Degree, which takes two years full-time and three years part-time to complete.

Significance of the Associate Degree

The core areas of the College’s Associate degree are Grievance Handling and Arbitration, Collective Bargaining, Principles of Industrial

Relations, Principles of Human Resource Management, History of the Caribbean Labour Movement and Labour Law.

Additionally, these core areas are complemented by related and relevant material from the disciplines of Sociology, Psychology, Political Science, Mathematics, Accounting and Law. In other words, the programmes cater for the variety of knowledge and skills trade union personnel are likely to need for the performance of their responsibilities. Writing, communication and critical thinking skills are also included in the programme with the aim of producing a rounded and socially committed trade unionist capable of standing up to the challenges of a more complex industrial relations climate.

Two features of the CCLCS Associate Degree programmes which stand out and which play a critical role in preparing participants for their role within the labour movement and the broader industrial relations environment are the Internship and Research requirements of the programme. In the case of the Internship requirement, the College is of the firm belief that internships make it possible for students to combine work experience with academic study. Students are placed in organizations or institutions where they can apply classroom training to real world situations. These internships are supervised by both the facilitating organization and the head of the department to which the student is enrolled. College credits are earned for this work-based learning. These internships are particularly useful in the case of the younger students who may have come straight out of high school without any experience either in the workplace or in trade unions administration.

For the award of the Associate Degree in Labour Studies or the other Associate degrees, the student is required to complete a satisfactory Research paper. The student is thus able to research any approved topic in industrial relations as it applies particularly to current practice within organizations and institutions. This research element gives rise to many creative and innovative ideas that are useful to industrial relations practitioners. The work on the research papers benefits from the existence of the specialized holdings of the library including an ILO collection of more than 5,000 items, facilitated through a Cooperation Agreement between the ILO Caribbean Office and the CCLCS.

For students who wish to pursue a degree in Labour Studies at the Bachelor's Degree level, Cipriani offers access through its Articulation Agreement with the National Labor College of the George Meany Center

for Labor Studies in Maryland, USA. Also, for Master's level degrees, students can enter the Masters degree programme in Labour Studies at the University of Baltimore as an extension of the Articulation Agreement with the National Labor College. A few CCLCS graduates have travelled the course just outlined and some of them have in fact become the first academic staff hired with subject-specific qualifications in Labour Studies.

In addition to all of the above programmes, which can be seen as “vertical” extensions of the standard offerings, (i.e. Certificates, Diplomas and Associate Degrees), the College has committed itself to offering a number of shorter duration, specially-tailored programmes. These include specially tailored programmes to trade unions that cover a wide range of issues affecting workers in the country. Also, the College has more recently offered training to some trade unions at their premises, and has undertaken to provide a yearly leadership training programme specifically for the leadership cadres of trade unions. Significantly, these programmes have included as participants, personnel from the Ministry of Labour and kindred ministries.

Ensuring Quality

With its emphasis on Total Quality Education, Cipriani College engages in regular assessments and reviews of programmes and output. Students are requested to carry out independent written assessments of the performance of their lecturers once per semester, in the absence of the lecturer. The purpose of the assessment is to obtain the candid views of the student so that improvements can be made to the quality of the teaching offered by the College. Additionally, most programmes are reviewed almost on an annual basis and on the basis of the findings, appropriate changes are made. The recently formed Programme Approval and Review Committee (PARC) guarantees that this practice will continue into the future.

In the past, many of the students who enrolled in CCLCS programmes were attracted by the relevance of the training offered. However, they often questioned whether the education and training that they received would be accepted at face value not only within Trinidad and Tobago but also regionally and internationally. The concern was often expressed in discussions on whether CCLCS diplomas would

be accorded the same level of accreditation as other tertiary level institutions in applications for jobs and for places in academic programmes.

It was in this context that the College in 1998 took its core programmes of Labour Studies and Cooperative Studies to the Committee on Recognition of Degrees, which was the Trinidad and Tobago accreditation body at that time. The CCLCS programmes were granted provisional accreditation and the College was advised as to what deficiencies needed to be corrected in order to qualify for full accreditation. The usefulness of the recommendations of the evaluation team is reflected in the many changes subsequently made to the configuration of CCLCS.

While accreditation became a major focus of the institution, it was felt that the issues of quality and level could be pursued within the context of its articulation strategy. To this end, CCLCS sought to enter into strategic Articulation Agreements with selected institutions of higher learning in order to provide the students with the opportunities to complete the Bachelor's and Master's degrees in some of the core areas. In the area of Labour Studies, a number of the College's students who have graduated with the Associate degree have completed the Bachelor degree in Labour Studies at the National Labour College of the George Meany Center for Labour Studies in Maryland, USA.

Similarly, in the area of Co-operative Studies, an Articulation Agreement with Leicester University provides the opportunity for CCLCS Associate degree holders in Co-operative Studies to pursue Bachelor degrees and postgraduate degrees in Co-operative Development and Management at Leicester University.

In the case of the University of the West Indies, agreement has been reached in the acceptance of the Associate degree not only as matriculation but also as allowing for advanced entry into the Bachelor of Social Science with specific exemptions for those who have completed the Cipriani Associate degree. This relationship between the College and the University of the West Indies was essentially worked out under the guidance of the Tertiary Level Institute Unit (TLIU) of the University of the West Indies, based on the Barbados campus. This acceptance of the qualifications of the College by the University of the West Indies put to rest long-standing concerns about whether CCLCS certification would qualify holders for acceptance into UWI programmes.

In December 2004, CCLCS and Monroe College of New York, USA signed an Articulation Agreement which allows students of Cipriani College to gain advanced admission into some of their Bachelor degrees. This agreement means that CCLCS students can complete the Monroe College Baccalaureate degrees in approximately two years.

Prospects for Development

The prospects for further development of CCLCS look very good at this juncture. Driven by both its vision and mission, the College has achieved many of its objectives for the first phase of its Strategic Plan and is in the process of completing others. One major objective that remains outstanding is the official approval and subsequent implementation of a new Organizational Structure. Most of the stakeholders, however, have already agreed on this structure which now awaits the approval of the Government of Trinidad and Tobago before it can be implemented.

Side by side with the organizational structure is the development and fostering of an organizational culture which must seek to cultivate and promote high staff performance, job satisfaction, and teamwork, thereby improving employee morale and organizational effectiveness. Both the organizational structure and culture must facilitate the empowerment of the workers reflected in their involvement in the decision-making process.

Phase II (2005-2007) of the development plan of CCLCS has already recorded some completions. In the area of student support services, a student common room with appropriate offices for the guild will be completed by the first quarter of 2006. Recreational facilities in the form of soccer and cricket pitches will also be completed at the same time.

The amendment of the 33 year old Act is on the priority list of all stakeholders. When the necessary amendments are completed the institution can be in line with the current position of other tertiary education institutions. This in turn will allow for general improvement in systems and processes of the College.

Finally, Cipriani College of Labour and Cooperative Studies seeks to create an atmosphere in which the focus of the institution is wider than turning out graduates in the various programmes. The College

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aims to focus on the stimulation of intellectual debate and enquiry on topical social issues. This kind of activity could be a useful contribution to the social development of Trinidad and Tobago and the Caribbean region.

NOTES

1. Not counting the departments in community colleges, e.g. the Arthur Lewis Community College in St. Lucia, which include industrial relations courses among their offerings.
2. For an account see, Rawle Farley, *Labour Education in the British Caribbean*, UCWI, Department of Extra Mural Studies, Jamaica, 1959.
3. The College was named for Hubert Nathaniel Critchlow, founder of the first trade union established in Guyana. For an account of Critchlow's contribution to trade unionism in Guyana, see Carlyle Harry, *Hubert Nathaniel Critchlow: His Main Tasks and Achievements*, Guyana National Service Publishing Centre, 1977.
4. For a short survey of the historical background of the institution, see the *Catalogue and Students Handbook, 2004-2005*, pp.4-7.
5. It should also be noted that the buildings on the campus were constructed in 1972 on state lands with state funds. Ownership was transferred to the College in 1998.
6. One of the major listed objectives of the *Strategic Plan, 2003-2007*, is the provision of adequate residential accommodation for some Trinidad and Tobago students as well as students from the Eastern Caribbean.
7. CCLCS, *Strategic Plan, 2003-2007*, p.
8. For details, see B. Tewarie, M. Franklin and R. Hosein, *Dollar for Dollar and Tertiary Level Education in Trinidad and Tobago*, Working Paper, Faculty of Social Sciences, University of the West Indies, St Augustine, n.d.
9. Convenience aspects would include lectures being scheduled outside of normal working hours and proximity of lecture locations to workplaces.

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Training Labour Practitioners for Leadership

Marva A. Phillips

More than 50 years ago, it was recognized by several academics regionally and internationally that there was an urgent need for a structured industrial relations education system in the Caribbean. The process to formally structure labour/management relations education and training in the region was initiated by the University College of the West Indies (UCWI) through its Department of Extra-Mural Studies.

In 1959, when the request was made to the British West Indies Federal Government for its support in strengthening labour/management relations by instituting “a survey of the labour education needs of the British Caribbean...”, the UCWI had already been offering programmes in industrial relations. A staff tutor in industrial relations was among the first employees of the UCWI in 1948 when the College was established.

The programmes offered by the UCWI through its Extra-Mural Department had “met with widespread responses from labour, management and governments throughout the area.”¹

The response of the social partners to the work of the Extra-Mural Department was encouraging, and motivated the Department to propose a regional survey of the labour education needs in the British Caribbean, to be followed by a conference to study and discuss the report of the survey.

It would appear that during the 1950s, the social partners considered relationships between groups and individuals as crucial for the survival of the nationalist and independence movements. Moreso, the importance of each group’s contribution and the value of the UCWI through the Extra-Mural Department were recognized. Clearly, the concern during the period was the advancement of the Caribbean region, and, therefore, co-operation and collaboration were paramount.

The survey was conducted between June and July 1959, and the conference was held at the UCWI between August 3 and 8, 1959. The conference resolved that:

a satisfactory system of industrial relations can only be developed if all parties are aware of the implications of their mutual relationships and skilled in the techniques of negotiations, and as we would welcome an opportunity of studying the problems of industrial relations in a rapidly changing social situation employers and their associations together with the University College and governments should recognize the need to develop a parallel, but distinct, programme of education for management concurrently with the projected workers' educational programmes.²

Although the conference focused on workers' problems and their needs, there was sensitivity to the magnitude of the continued positive relationship between employers, government and workers. The conference's primary goal was to foster good industrial relations in the British Caribbean.

Emerging from the conference was the recommendation for the formation of a labour education institute. Again, no time was lost as the conference recommendations were promptly acted on. In September 1959, a conference was held in British Guiana - later renamed Guyana - to address the pedagogical approaches and teaching methods for the labour institute.

Role of the Trade Union Education Institute

The institutional result of the UCWI Extra-Mural Department's effort was the establishment in 1963 of the Trade Union Education Institute (TUEI), that was designed to promote and improve labour/management relations. The Institute was located in the Extra-Mural Department of the now University of the West Indies' Mona campus, under the direction of a director of studies with the endorsement of the "founding unions" - the Bustamante Industrials Trade Union, the National Workers' Union and the Trades Union Congress of Jamaica - three leading Jamaican trade unions. It was funded by the USAID, with the American Institute for Free Labour Development (AIFLD) acting as executing agency.

The TUEI was to spawn several labour colleges in both the Dutch-speaking and Anglophone Caribbean: The University of the West Indies, to its credit, continues to support the development of the Caribbean trade union movement through the TUEI.

It is of significance that the designation for the assistant to the director of studies should have been staff tutor in industrial relations and not staff tutor in trade union education. Such a title validates the initiators' intent and commitment to the Institute's goal, which was "to foster good industrial relations in the British Caribbean."

It also suggests that they did not anticipate the exclusion of any group of industrial relations practitioners from the Institute's activities, but rather to continue the co-operative, collaborative relationships between the social partners that took place during the pre-TUEI UWI-sponsored phase of labour education. Informing and educating practitioners in the field of industrial relations, and workers generally about the workers' dilemma due to the socio-economic inequities that pervade society, would seem to have been an intelligent plan.

It is likely that such an approach would have eventually lead to an amiable approach to industrial relations rather than the confrontational antagonistic approach generally associated with the process.

Since the early 1960s, the course which distinguishes the TUEI and for which it is well known, is the Regional One-Month Course (ROMC). It is designed to ensure a balanced approach to teaching and promoting labour/management relations in the Caribbean. Specifically, the course considered the rapid increase in technological advancement and is a perfect example of long-term planning guided by foresight and the need for constant relevance. Among the areas of study addressed are trade unionism, theory and practice of collective bargaining and industrial relations. Its content covers a variety of subjects, and the field of application is constantly extended to address the challenges that labour/management practitioners must constantly confront.

A remarkable feature of the ROMC is the selection of teaching staff. Tutors reflect the broad spectrum of Caribbean society, including representatives from among the social partners and UWI faculty members. Its programme content is reviewed and modernized to ensure and maintain relevance and new persons are frequently invited as guest lecturers. This course was in the past used as a model by the American Institute of Free Labour (AIFLD) for similar programmes in Latin America.

The TUEI's broad based mandate is to:

- provide training courses, lectures and classes in trade union and labour education;

- promote research into industrial relations;
- foster the development of healthy industrial relations in the region;
- arrange, where possible, international, regional and local conferences on labour education;

Other courses of a longer duration that are offered by the TUEI are the Advanced Leadership Course for Trade Unionists, and the newly-developed Certificate in Labour Studies. The Certificate in Labour studies is intended to certify labour/management practitioners and matriculate students into the social sciences and the humanities.

The Future of Industrial Relations

In 1965, in his discourse on *Industrial Relations: What is Wrong With the System?*³ the renowned industrial relations scholar, Allan Flanders, talking about the future of industrial relations, noted: “it mirrors too much of the past and too little of the future,” and recommended that the system be reconstructed to accommodate more planning.

The system in the 21st century also requires more planning, but for different reasons. In 1965 Flanders referred to the move from mass unemployment to full employment. Today, the concerns centre on unemployment, decent work, equality and equity. For these issues to be adequately addressed, concerted planning is obligatory. The preparation has begun at the level of the international trade union movement towards an integrated movement. The hope is that all national trade union centres will recognize the significance and engage in the dialogue.

The New Reality: Globalization, Mergers and Integration

The exclusive and inclusive nature of globalization could suggest that it is a new phenomenon. However, it has been identified as a new label for a process that seeks to strengthen and maintain the status quo in the interest of the owners of capital.

Globalization, directly and without hesitation, openly demands the removal of barriers, free trade and the survival of the fittest. With this understanding, labour has no option but to review its *modus operandi*. The objective of the review must be to examine labour’s procedures with a view to developing a refined strategic plan that is as direct and open as capital’s globalization and one that meets the needs of labour.

Labour's new objectives must be clear about whose interest is being served. The interest of the worker, the company or organization and the nation state will all have to be considered.

Capital has gone the route of mergers, and conglomerates are consuming small family-owned business. The individualistic nature of labour's organizations will therefore not survive. Consequently, labour must consider a more unified approach to unionism to quickly create an integrated trade union movement.

An integrated movement can be labour's only response to the challenges of the new imperialism, globalization. The explanations offered by Girvan (1990)⁴ for Caribbean regional integration remain relevant and can be applied within a wider integrative context. He identified four broad sets of issues, the implications of which should be analyzed in their application to the integration process. The issues recognized by Girvan as essential for analysis are: "accumulation, survival, political dimension, cultural dimension."

The trade unions have begun the analysis as they work towards the integration and unification of the movement. However, the analysis must be continuous in order for the integration process to remain relevant and stable. An integrated trade union movement will have to be cognizant of the social, cultural, economic and political differences between workers and be prepared to objectively take on board, without prejudice, what will enhance the process and disregard the destructive elements. A system that keeps track of and identifies the disintegrative forces must be central to the process.

Globalization has so far done nothing to prevent increases in poverty, inequality and instability supported by diminishing democracy, all of which have engendered fear, insecurity and a sense of hopelessness among workers.

An element within labour's response must therefore be the preparation of workers, through lifelong learning for jobs and better jobs. Education can lead the way to empowerment, self-respect, confidence and self-actualization. The concept of lifelong learning must therefore move from rhetoric to reality and be given precedence on the trade union agenda.

Further, the trade union organization's ability to engage in continuous analysis and watchfulness, as integration requires, will demand that the education of its members receive priority. Achieving the standards vital

for survival brings to the fore labour education at various levels and through various institutions.

Labour Colleges

Today, with worker education becoming essential, the role of the labour college is again important. For the purpose of this exercise, I will seek to define the labour college as an institution established for the purpose of providing qualification for persons in paid employment, and for assisting the worker to understand social, political and working relations, and to examine and respond appropriately to change as it occurs.

The purpose of labour education institutions is, in effect, to enhance the industrial relations system. Both the integrated trade union and expanded merging corporations will have to function in the new industrial relations system. Labour studies must therefore be the primary focus of the college, which must be determined by workplace needs as students are prepared for entry into higher education institutions.

In keeping with the requirements of the labour market and developing technology, the labour college will need to provide both vocational training and education for its target group in preparation for upward mobility both occupationally and educationally. The appropriate preparation of all workers for the labour market must naturally be a consideration of the trade union movement. Training institutions for workers will therefore have to be re-evaluated as it is now emerging that labour is likely to require two types of institutions; an additional institution that prepares union members for entry into labour colleges.

Concerning labour colleges, the pertinent question is whether capital develops new labour education institutions or whether they work with labour as labour seeks to improve and modernize its offerings for working people? Universities will continue to meet the needs of the social partners bringing to industrial relations the relevant philosophy and approaches.

In the interest of survival, labour colleges will have to follow the example of capital, and as labour is presently planning, take an integrative approach to labour education and labour studies. They will have to concentrate on the development of the individual student's capacity in the interest of a new industrial relations arrangement, and like labour unions, must let go of the individualistic manner of managing the institution.

Labour colleges as adult education institutions must be required to meet specific standards at the various levels in order to be designated a

labour college. An important question is: should the labour college be for the development of trade unionists or for the preparation of representatives of the three social partners. If the labour college is a trade union college, then trade unions must have standard criteria that apply to all labour colleges within the integrated movement.

If it is for the preparation of labour/management practitioners, then the criteria for standardizing the entity must be the responsibility of the three social partners.

The Adult Education Institution

Educational institutions require, first of all, a well-defined strategic plan, which, when developed, requires the requisite funds to meet the objectives for which they are designed. The critical elements that attract budgetary allocations in a labour college are physical plant, staff, equipment, and curriculum. Labour colleges are adult education institutions and must be recognized and accepted as professional organizations. This, therefore, demands that labour education institutions move to andragogy. The foundation for the successes of labour colleges will be a clear understanding of andragogy and the teaching methods appropriate for adult education.

The method of teaching adults is different from that of teaching children, which is pedagogy. The selection of staff is therefore an important procedure in the development and survival of the labour college. The main characteristic of the adult educator is flexibility, followed by a respect for the ability of the adult learner to be self-directing. The adult educator must also recognize and value the fact that adults enter the learning environment with experiences. They are willing to take risks and even accept failure as a part of the learning process.

Among the comparisons provided about the assumptions of pedagogy and andragogy by Malcolm Knowles (1980:43) is a concept of the learner regarding:⁵

Pedagogy

The role of the learner is, by definition, a dependent one. The teacher is expected by society to take full responsibility for determining what is to be learned, when it is to be learned, how it is to be learned, and if it has been learned.

Andragogy

It is a normal aspect of the process of maturation for a person to move from dependency toward increasing self-directedness, but at different rates for

different people and in different dimensions of life. Teachers have a responsibility to encourage and nurture this movement. Adults have a deep psychological need to be generally self-directing, although they may be dependent in particular temporary situations.

The labour education institution must ensure that the process engaged in by students does not destroy free will by preventing the students from going outside of the thinking of the college's benefactors. The method must allow for, as Freire (1972) notes, acts of cognition and not transferral of information.

A generic strategic plan should be prepared for Caribbean labour colleges, within which will be identified the specific needs of the labour/management practitioner and the incentives for attending the labour college. It is the identified needs that will determine course content and curricula.

The consideration for developing the curriculum for each course within the various programmes must centre on the individual's capacity to learn and change within the industry or organization. Preparing the individual for relevance is the role of the labour college, with the understanding that relevance is the ability to change in keeping with the times. Planning for change becomes the theme in the development of the curricula.

Programme Development

Programme content should be guided by the notion of professionalism, with the primary objective being the provision of professional training in labour studies and industrial relations. Concomitantly, the strengthening of the capacity of labour/management practitioners and the streamlining of the approach to labour education will occur. Other related factors are the provision of a uniform set of basic principles and skills that will lead to a well-structured and defined professional approach to certifying labour/management practitioners.

Curriculum Development

The curriculum can be two-fold: for certifying labour/management practitioners and for matriculation into undergraduate degrees in higher education institutions. To satisfy the requirements for entry into higher

education institutions, the curriculum must be guided by the standards of the institution to which the labour college is associated, and the identified needs of the particular field. An example of a programme specifically developed for labour/-management practitioners is the Certificate in Labour Studies now offered by the TUEI.

The Certificate in Labour Studies has its genesis in the 1995 and 1996 Inter-American Regional Organization of Workers (ORIT), initiated IDB-sponsored Labour Economics Courses. The topics for the Labour Economics courses were identified by the Inter-American Regional Organization of Workers (ORIT) and discussed with the TUEI based on an assessment of the needs of Latin American and Caribbean workers. Throughout the four labour economics courses, participants from the Dutch- and English-speaking Caribbean urged the TUEI to consider the importance of certifying Caribbean labour/management practitioners.

Participants in the courses expressed the strong desire for the certification of industrial relations and labour/management practitioners. Their request led to workshops and focus groups to identify the needs that would in turn set the stage for the content of the Certificate in Labour Studies, and, ultimately, certification. Once the participants agreed to the content of the programme, meetings were held and curriculum writers were identified. Finally, the proposal was sent to the director of the School of Continuing Studies for submission to the UWI Board of Undergraduate Studies for approval.

The Board of Undergraduate Studies approved the Certificate in Labour Studies for matriculation and offer at the level of the associate degree. Methodology workshops were held in Jamaica and Trinidad and Tobago in order to ensure that the programme was understood and presented using the learner-centred approach. The duration of the programme is two-and-a-half years part-time. In Jamaica, for example, classes are held on Friday evenings and on Saturday so as not to request time-off from work at this stage.

Invariably, individuals attending labour colleges are working adults seeking to find ways to improve themselves and often have been away from the classroom for some time. It is helpful to begin the course with introductory courses in writing and basic investigative skills. Starting the programme with these two courses gives the student the foundation on which to build as they proceed through the programme. A start with

the introductory courses of writing and basic research helps in the building of confidence.

There are a number of courses that must shape any programme that seeks to certify labour/management practitioners; however, the job of designing the programme must not be understated. It is important that time be taken to develop a properly designed programme so that students benefit from the order and balance necessary for comprehension. Of major significance is the inclusion of a gender studies component in all programmes. This cannot be regarded as a discussion inside other topics, but must be able to stand on its own and must be taught by a gender studies specialist with a background in both women and development and women in development issues.

Among the courses, there must be an understanding of labour economics within the context of the particular society and its culture. Included must be issues related to globalization, income distribution and economic concepts. Within the Caribbean, there must be an examination of Caribbean society and its attendant systems. So issues of race, class, culture and politics are all very relevant for labour/management practitioners.

The inclusion of labour law, industrial relations and the historical and contemporary context of Caribbean unionism, along with human resource management cannot be excluded. Another most important inclusion is human relations and interpersonal communication. The inclusion of this course in the labour studies programme is unquestionable. The work of the labour/management practitioner is to a great degree the ability to manage behaviour in the interest of workers, management and government and the state generally. It follows that human relations and interpersonal communication must be offered in the first semester of the labour studies programme, along with the introductory courses of writing and basic research.

Some principles and techniques of management must be introduced along with the inclusion of practice in the use of skills required for proficiency in the field. This can be done by organizing assignments to include presentations at specific times during the course, which allows for the presentation of self. Finally, group projects and special individual projects must form a part of the programme.

The Future of Labour Colleges

At this juncture, the question is not if labour colleges are a necessity, but rather, how will they be administrated and located.

Will central colleges transmit to smaller locations via teleconference and online programmes?

With the use of information technology, the initial response would be that larger, more central colleges should support students at smaller less accessible locations through the use of the new technologies. However, will the cost of accessing the Internet service be affordable, and to what percentage of the population will it be affordable?

Will all colleges provide similar curricula?

Considering that plans are now afoot to integrate the trade union movement, the curriculum of labour colleges must be standardized. This would suggest that specific guidelines for teaching in the form of an academic guide must be developed by a team of labour educators.

Will specific colleges have special responsibilities for particular programmes?

The idea of a regional labour college is exciting. However, the cost for students and their organizations would have to be examined. Several years ago, in the zeal for the development of six Caribbean Labour Colleges, it was suggested that specific colleges, such as the SSK in Suriname, would have responsibility for the teaching of foreign languages.

How many labour colleges are feasible and affordable for the Caribbean?

The discussion arising out of ILO heads of labour colleges meetings were that the Caribbean region required six labour colleges. It might be helpful if the ILO reopened the discussions.

The next step is an examination of the curriculum content to be offered at the labour college. It must demonstrate the college's mandate, and therefore requires awareness of the knowledge, skills and attitudes needed in the workplace and in the community. It is apparent that the new forces of production demand changes in the organisation, and that includes the trade union organization, beginning with the individual's understanding of the new workplace systems that are now focused on

productivity and the survival of the fittest. The curriculum and methodology must therefore be designed to foster critical thinking and self-actualization.

Curriculum writers will have to be well selected and must be recognised in the particular field of study, while facilitators/teachers must be trained in the use of the learner-centred approach, which is formulated within the framework of andragogy.

Paulo Freire (1998:565),⁶ in his discussion on education as the practice of freedom, recommends that:

in educating adults, to avoid a rote, mechanical process, one must make it possible for them to achieve critical consciousness so that they can teach themselves to read and write.” He continues, “As an active educational method helps a person to become consciously aware of his context and his conditions as a human being as subject, it will become an instrument of choice.

The labour college must be the vehicle of motivation for workers to continuously choose lifelong learning as a part of their repertoire of activities.

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Section VII

Paradigm Shifts for Development

22

The Potential of Social Dialogue

Samuel J. Goolsarran

Social dialogue is integral to the industrial relations systems. Tripartite labour advisory bodies are common features of the system of industrial relations in the Caribbean both through legislation and practice since colonial times. They were established to deal largely with national labour policy including the regulation of wages, labour legislation and dispute resolution. It provided the opportunity for labour and management to express their views, and they are now discussing macro-economic and social issues.

Social dialogue on economic and social matters involving the governments, the representatives of trade unions and of employers' organizations, and civil society within Caribbean States, is emerging as a matter of priority, and several attempts are being made to engage in social dialogue to forge national, sectoral and enterprise agreements beyond the confines of the traditional collective bargaining.

The ILO and Social Dialogue

Effective social dialogues are premised on strong tripartite organizations to facilitate sustained higher-level dialogue. This is re-affirmed by Juan Somavia, Director General of the International Labour Organization in the following statement:

there is no influential social dialogue without strong employers' and workers' organizations; there is no effective tripartism without strong labour ministries and strong labour administrations.

The ILO since its establishment in 1919, set the pace, standard, and example in tripartite deliberations in social dialogue resulting in the development and adoption of the international labour code of

Conventions and Recommendations; and their ratification, implementation and monitoring through the ILO supervisory machinery. Such tripartite deliberations also produce international declarations and resolutions. One such resolution was considered by the 90th Session of the International Labour Conference in 2002, which adopted a resolution concerning tripartism and social dialogue. The resolution affirms:

- that social dialogue and tripartism have proved to be a valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues on which the social partners play a direct, legitimate and irreplaceable role;
- the importance of strengthening the collaboration between the social partners and governments in order to achieve appropriate solutions at the national, regional and international levels; and
- that social dialogue and tripartism are modern and dynamic processes that have unique capacity and great potential to contribute to progress in many difficult and challenging situations and issues, including those related to globalization, regional integration and transition.

This resolution of the International Labour Conference invites governments to ensure that the necessary preconditions exist for social dialogue, and also calls on governments and workers' and employers' organizations to promote and enhance tripartism and social dialogue in all sectors. The ILO defines social dialogue:

... to include all types of negotiation, consultation or simply the exchange of information between, or among representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.

The foregoing resolution recalls ILO Convention No. 144 – *Tripartite Consultation (International Labour Standards)*, 1976. This Convention requires effective and meaningful consultation among the representatives of government, employers and trade unions on international labour standards and related matters. Specifically, under this Convention, tripartite consultations are required on:

- items on the agenda for the annual International Labour Conference;
- consideration and submission of ILO Conventions and Recommendations to the competent authority with appropriate recommendations;

- re-examination of Conventions, and Recommendations for appropriate action;
- reports on ratified Conventions, and other reports to the ILO; and
- proposals, if any, for denunciation of ratified Conventions.

Tripartite consultation is integral for an effective system of Labour Administration and Social Policy as required by ILO Convention No. 150 on Labour Administration, 1978. This Convention provides for an effective system of labour administration whose functions and responsibilities are properly coordinated with the participation of workers and employers and their organizations. The functions and responsibilities include: national labour policy and labour standards; industrial and labour relations including social dialogue and tripartism; labour and OSH inspections; employment, manpower planning, and employment services; research, labour statistics, and HRD; and regional and international affairs.

CARICOM and Tripartism and Social Dialogue

The principles of tripartism and social dialogue have been enshrined in the principal instruments of CARICOM as policy commitments to be adhered to by Member States as follows:

The Revised Treaty of Chaguaramas Establishing The Caribbean Community, Article 73: Industrial Relations, requires the Council on Human and Social Development to promote:

- tripartite consultations among governments, workers' and employers' organizations; and
- the awareness of the requirements for collaboration of employers and workers for increased production and productivity in Community enterprises.

Charter of Civil Society for the Caribbean Community, adopted by a resolution which was signed by Heads of Government in February 1997, is an expression of the commitment of the Member States to observe the provisions of the Charter including workers' rights (Article xix); and affirms that :

The States undertake to establish within their respective States a framework for genuine consultations among the social partners in order to reach common understandings on and support for the objectives, contents

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and implementation of national economic and social programmes and their respective roles and responsibilities in good governance. (Article xxii)

Declaration of Labour and Industrial Relations Principles on Consultation and Tripartism, states:

The Member States undertake to promote collective bargaining, consultation and tripartism as essential elements of the system of industrial relations in the CARICOM region (Article 43):

The Member States shall employ their best endeavours to consult with the Social Partners in establishing the relevant principles and policies to be applied in conditions and situations of financial stringencies.(Article 44)

Potential and Initiatives in Social Dialogue

The enormous potential of social dialogue to improve the social system and contribute to the creation of an inclusive national community must be tapped. The realization is that social dialogue, can, in good faith, promote national, social and political stability, and a more just society. The involvement of government and the social partners and civil society in national decision-making can promote greater consensus and contribute to national development, stronger democracy and good governance, which is expressed in representative inclusive participation, transparency in national policy implementation in a credible manner, and strict accountability to the national community.

Social Partnership in Ireland and Barbados

While there are many obstacles and challenges relating to information sharing, mutual trust, political will, leadership and national vision, Caribbean States are impressed by the achievements of social accords of Barbados, which drew from the successful model of social partnership from Ireland. The institutionalized national consultation resulted in the transformation of the then declining economies of Ireland and Barbados to ones of steady growth. Barbados is the pacesetter on national dialogue and consensus, and stands out as a Caribbean country which has successfully negotiated and concluded five tripartite protocols on Prices and Incomes Policy and Social Partnership, since 1993. These protocols receive parliamentary endorsement consequent upon negotiations.

Accords of these types can offer examples of new possibilities for national development strategies for the Caribbean. It is for the governments of the region to concede with maturity in forging genuine dialogue by involving not only the established social partners of representatives of the trade unions and the employers, but the parliamentary political parties, and representative interest groups in civil society. This means governments sharing governance through pertinent information and joint decision-making on an agreed agenda in institutionalized, consultative negotiations and constructive engagements.

Social partnership can transform a debt-ridden, stagnant, declining economy to one of success in growth, higher employment, and industrial stability as demonstrated in Ireland and Barbados. It can result in a paradigm shift in industrial and social relations from adversarial approaches and confrontation to one of consensus and cooperation. The essential objectives of wider social dialogue on social and economic issues are to achieve national economic recovery, social progress, industrial stability, competitiveness, new investments, employment creation, decent work, prosperity, and social justice.

Other Initiatives towards Social Partnership

Other initiatives towards social partnership have been taken in the following countries:

Jamaica. Jamaica, through its *Sectoral Agreements*, demonstrates commitment to the principle of social partnership pursued in bi-lateral and tripartite encounters. These resulted in Memoranda of Agreements in the bauxite, banana, water, shipping industries, and public services for the pursuit of strategies aimed at fundamental transformation in employment relations and to forge greater consensus at the enterprise level. These agreements are also influencing positively corporate social responsibility, human resource development, productivity, competitiveness, and investments.

In February 2004, representatives of the Government of Jamaica and the Jamaica Confederation of Trade Unions entered into a *Memorandum of Understanding for the Public Sector* in the national interest. The public sector embraces central and local government, and all other Government entities, commissions, companies, corporations, institutions, and statutory bodies. The aim is to address the prevailing

high debt in relation to the GDP, fiscal deficit, low economic growth, and low employment creation in a combined effort by the parties to restore national economic growth. The parties recognize the need for improved labour-management relations, and the pursuance of policies and strategies for sustained growth and development of the public sector in particular and the country in general and accordingly agreed on a general policy of:

- wage restraint in the public sector for the period 1 April to 31 March 2006;
- employment constraint with certain exceptions; and
- expenditure restraint.

The memorandum also requires the Government to pursue complementary fiscal and monetary policies to sustain real economic growth over the medium to long term. The parties are further committed to the development of a modern, efficient public sector, adequately staffed, properly equipped, and suitably rewarded.

St Vincent and the Grenadines. The incoming Government in 2000, based on its declaration that the time for a social pact and productive social partnership was a strategic imperative to manage globalization, established a broad-based multipartite *National Economic and Social Development Council* (NESDC) to provide advice on an on-going basis in genuine consultations, and as an exercise in good governance in the management of the resources of the country. This body has been established by law - Act No. 29 of 2003.

It has also appointed a tripartite committee on the economy to address crisis management, review wages, prices, investment, employment and productivity issues to improve the country's competitiveness. The government has further provided financial resources and personnel to cover the costs to enable the effective functioning of the Council and the Committee. The work of these two bodies continues to inform national social and economic policies.

Suriname. Suriname's *Joint Labour - Management Declaration*, 1999 affirms the need for constructive engagement on socio-economic matters, and measures to stimulate the private sector.

In 2002, the Government established a high level National Tripartite Consultative Body comprising of six Ministers, and six representatives

each of trade unions and employers' organizations to consider policy matters. In 2004, the National Assembly, by legislation, established a national, tripartite Social and Economic Council (SER) to advise the government on macro-economic and social issues through dialogue and consensus. The objectives are to promote social peace and stability, social justice and economic growth.

Curacao. Curacao in its *Vision Curacao 2020*, (September 1999) the social partners are jointly endeavouring to develop social partnership for synergies among the social interest groups for improvement in education, sustainable economic and social development, new investment climate, good governance, and the creation of a modern state. The identification of core values, priority issues, and annual benchmarks for review and evaluation, are the pillars of *Vishon Korsou*.

Trinidad and Tobago. Trinidad & Tobago's *Compact 2000* recognizes the potential of tripartism and deeper social dialogue on social and economic issues for the advancement of national economic and social development.

Its *Vision 2020* (October 2003), on labour and social security, foresees adequate social protection for all to enable a decent standard of living from the 'cradle to the grave'; full and sustainable employment and the development of the full human potential; and a harmonious industrial relations environment in line with fundamental principles and rights at work.

Interest in national dialogue has motivated an influential, broad-based group in civil society to articulate *The Principles of Fairness* (2005) for constructive engagement in promoting these Principles. It is proffered that *The Principles of Fairness* provide the bases for a more just society, eliminating discrimination in employment; education, health, and security; access to facilities provided including the supply of goods and services; state development and poverty relief programmes; allocation of housing; and the award of contracts, concessions or licences.

Bahamas: TRIFOR – *The National Tripartite Forum* of Bahamas provides the opportunity for the social partners and civil society to discuss and debate national issues, as a means of consultation and social dialogue.

The forum aims at improving the labour relations climate, at fostering greater labour-management cooperation, and at improving corporate and national productivity, and at raising awareness of the potential of social dialogue to national development.

Guyana. Guyana's *Tripartitism*, and *Draft Protocol 2000*, recognized the need for consultation on national issues. Since 1993, a national tripartite committee with six tripartite sub-committees on specialized labour issues and national labour policies was established. They are actively influencing national labour policies.

In 2000, the national trade union and employer organizations, drawing from the Barbados model, articulated the bases for a protocol on social partnership in an effort to engage the government in dialogue on social and economic matters.

Grenada. Grenada, in its *Memorandum of Understanding (MOU)* with the Government, the social partners and civic society, expresses the commitment of the parties to achieve consensus on national development issues, and the establishment of national tripartite consultation committees. The MOU provides for the committee to articulate a vision for national development, and for the ongoing review and assessment of the economy.

The above initiatives are signed commitments to the principle of active dialogue and social partnership. They are the first steps, dialogue in progress, in the pursuit of national accords. The challenge is to translate these commitments into more consensus on a wider range of social, economic, and political issues in each country.

Government as Facilitator

Government is a strategic actor clothed with legislative authority and the only actor that can change the rules by legislation. The government commands the necessary resources to engage the social partners and civil society, in good faith encounters, in the development of national economic and social policy. It can establish a well-resourced secretariat to provide the required research and technical support. This requires political will and leadership on the part of government, and the commitment of the key stakeholders.

Government also has the ability to create an enabling environment to foster sustained social dialogue and partnership at the national, enterprise, and industry levels. As an employer in the civil service and state sector, it can lead in consensus-building by developing partnerships with its employees and their trade unions and state agencies. By setting the example, it will have moral authority to advance and facilitate national social dialogue leading to enterprise-based partnerships.

The government can also engage national tripartite bodies to achieve meaningful and purposeful outcomes of their deliberations. The composition, functions, and scope of the involvement of tripartite bodies can be given statutory force. Government can equip the Department of Labour with the required resources and suitably trained and qualified personnel to carry out intensive advisory services with employers, trade unions and employees to prevent disputes from arising, and to develop appropriate forms of partnership at the enterprise, industry and national levels.

At the national level, the Government should be inclusive in its governance. It can promote and practice the concept of good governance in the management of a country's economic and social resources for national development. It can commit itself under the notion of good governance to govern society in a transparent, credible, participative, and accountable manner. Government can commit itself to engage a fully representative tripartite constituency, civil society, non-governmental organizations, the political parties and other key stakeholders in society in the task of forging national consensus on social, economic policy, and on other matters of national interest. These can be expressed in signed social contract agreements with effective implementation and monitoring measures, debated and endorsed by the national Parliament.

With political will, high trust, shared vision, and leadership by Government, and the full commitment of the social partners and civil society, the goal should be to achieve national agreements in the direction of the Barbados social contract model. This would be an exercise of good governance in the management of economic and social resources for national development and the good of the people.

The challenges for governments and the social partners are:

- to ensure that the Ministries of Labour are equipped with a secretariat for the promotion and fostering of higher-level social

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- dialogue - beyond the routines in the collective bargaining process - leading to national, sectoral, and enterprise agreements; and
- to be committed to transform the industrial relations climate and the social system from an adversarial model to a consensus-based model through sustained social dialogue which can lead to national social accords on economic and social issues within the framework of *decent work* defined by Juan Somavia, Director General of the International Labour Organization, as:

productive work in which rights are protected, which generates an adequate income, with adequate social security protection. It also means sufficient work...It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers' rights and social standards.

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23

The Management Challenge of the Regional Labour Market

Steven Mac Andrew

In July 1989, the Conference of Heads of Government of the Caribbean Community (CARICOM) decided to establish a single market and economy, because of the recognition that the deepening and strengthening of the regional integration process was the most feasible option for survival in the changing global economic environment.

The establishment of the CARICOM Single Market and Economy (CSME) has since been the flagship activity of the Community and through the revision of the Treaty of Chaguaramas by nine protocols, the legal architecture of the CSME was established.

The process of the establishment of the CSME is an evolutionary one as the arrangements will continue to evolve or new arrangements will be introduced. Nevertheless there are certain critical deadlines, which Member States set themselves, namely 1 January 2006 for the start up of the CARICOM Single Market, by which time all existing restrictions would have been removed on the key elements of the market; and 1 January 2009 for the start up of the CARICOM Single Economy.

The Regional Labour Market

An integral part of the CARICOM Single Market and Economy is a regional labour market, which in effect is the integration of all national labour markets. The integrated labour market currently has five major components, namely:

- the free movement of skills;
- the CARICOM Agreement on Social Security;
- the harmonization of labour legislation and recognition of labour standards.

- the Regional Accreditation Body;
- a Protocol on Contingent Rights.

The key element of the regional labour market is the free movement of skills / labour, which is one of the main pillars of the CSME. All other elements are meant to support and facilitate the movement of skills. Although the free movement of skills/labour is critical to the CSME, the developed regime presently only gives selected categories the right to move to that part of the single market, where the opportunities for productive employment, be it as a wage earner or non wage earner, are the greatest.

One can thus argue that even though the Community decided to implement a CSME based on the principles of the free market, Member States at the same time have taken a decision that will lead to limited and restricted competition in the regional labour market with respect to wage earners. Nevertheless the ultimate goal as articulated in Article 45 of the Revised Treaty of Chaguaramas is free movement of all persons and in 2006 Heads of Government will consider concrete proposals for the expansion of the eligible categories.

The CARICOM Agreement on Social Security caters for the totalization of all contributions made to social security organizations in various Member States in order to determine long term benefits. The Agreement came into effect on 1 April 1997 and is applicable to all CARICOM nationals, not only the eligible categories of skills in almost all Member States.

For quite some time Member States have decided to harmonize their labour legislation, and model legislation was developed in the following areas:

- Recognition of Trade Unions and Employers' Organizations;
- Termination of Employment;
- Non-discrimination and Equality in Employment;
- Occupational Health, Safety and the Working Environment

Member States had to ensure that the principles contained in these models were included in the labour laws of their respective countries by amending legislation or enacting these four model laws. Community law and regulations on labour and industrial relations will have to be introduced in order to enable the regional labour market to function effectively.

The Regional Accreditation Body is still to be established, though this was targeted to be done by the end of 2005. The challenge is the funding of this body.

Work with respect to the Protocol on Contingent Rights will continue in 2006 as funding was secured for the start up phase of a project, which must lead to a negotiated and agreed Protocol on Contingent Rights.

The Management Challenge

The creation of the regional labour market brings with it the challenge of managing this market. Key questions to ask in this regard are:

- a. What are the labour and industrial relations objectives of the Community?
- b. What kind of structure has been put in place to manage the regional labour market?
- c. What institutional mechanism is in place to support the management of the regional labour market?
- d. What are the difficulties faced when managing the regional labour market?
- e. Is the structure appropriate for the management of the regional labour market?

When trying to answer these questions it is necessary to bear in mind the fact that the Caribbean Community is an association of sovereign states, which so far have opted not to endow Community organs and institutions with supra-national decision-making and executive powers. A major consequence of the absence of executive powers is that the management of the regional labour market will be basically limited to the promotion and development of policies and programmes and the facilitation of the implementation of these. Member States are thus still solely responsible for the implementation of the policies, programmes, legislation, regulations and enforcement of the rules of the labour market.

Labour and Industrial Relations Objectives

The objectives of the Community with respect to labour and industrial relations are crucial in order to determine if the developed and approved

structure is appropriate for the management of the regional labour market. The Revised Treaty of Chaguaramas, which was signed on 5 July 2005 in Nassau, The Bahamas by Heads of Government, establishes the CARICOM Single and Economy and as such it must be the first legal instrument to consider when one tries to determine the labour and industrial relations objectives of the Community.

Article 73 of the Revised Treaty of Chaguaramas indicates that the Community will strive to establish a harmonious, stable and enlightened industrial relations climate in order to attract investment and increase the productivity of producers of goods and services.

In this context, the Community shall take into consideration:

- a. the objectives of full employment, improved living and working conditions; adequate social security policies and programmes; tripartite consultations among governments, workers' and employers' organizations; and cross-border mobility of labour;
- b. recognition of the principle of non-discriminatory treatment among Community workers in the pursuit of employment within the Community;
- c. the establishment and maintenance of effective mechanisms for the enhancement of industrial relations, particularly that of collective bargaining; and
- d. awareness among Community workers and employers that international competitiveness is essential for social and economic development of Member States and requires collaboration of employers and workers for increased production and productivity in Community enterprises.¹

The provisions mentioned in Article 73 of the Revised Treaty of Chaguaramas must be considered an important part of the regional labour agenda, because just like the other provisions of the Revised Treaty, this Article must be implemented by all Member States. However the Community can agree to add other issues to the agenda.

The Charter of Civil Society

On 19 February 1997 the Heads of Government of the Caribbean Community signed a Resolution adopting the Charter of Civil Society in St. Johns, Antigua and Barbuda in order to give the Community a qualitative character.

Article XIX of the Charter of Civil Society is dedicated to Worker's Rights and outlines the rights which every worker has, namely:

- a. to form or belong to and participate in the activities of trade unions or other associations for the promotion and protection of his or her interest or the right not to belong to and participate in the activities of any such trade union or association;
- b. to negotiate or bargain collectively;
- c. not to be subjected to unfair labour practices, including intimidation and victimization;
- d. to work under safe, hygienic and healthy conditions;
- e. to reasonable hours of work, rest, periodic holidays with pay and remuneration for public holidays;
- f. to receive reasonable remuneration for his or her labour and to withhold his or her labour subject to such reasonable restrictions as may be imposed by national law in the public interest.²

The Charter is definitely more detailed as it includes rights which are not mentioned in the Revised Treaty.

Article XIX also highlights what the States will undertake in order to guarantee the outlined rights, in particular:

- a. to safeguard the right of workers to earn their living in freely chosen lawful occupations;
- b. to recognize the desirability of workers earning a level of remuneration which would afford them and their families the enjoyment of a decent standard of living;
- c. in recognition of the right of workers to collective bargaining, the responsibility to provide adequate machinery for the recognition and certification of trade unions enjoying the support of a majority of the workers based on the free choice of the workers concerned;
- d. to foster and promote a harmonious and productive working environment by sensitizing workers, trade unions and employers as to their respective and mutual obligations;
- e. to provide protection for workers against arbitrary dismissal;
- f. to provide adequate machinery for the speedy resolution of industrial disputes and the restoration of normalcy in the event of strikes, lock-outs and other forms of industrial action;
- g. to provide an adequate period of leave with pay, or with adequate social security benefits for women before and after childbirth and to make it unlawful for an employer to terminate a woman's employment or take any other action that would unfavourably affect her status or promotion by reason of her pregnancy;

- h. to establish standards to be observed by employers in providing workers with a safe and healthy working environment;
- i. to provide workers with adequate social security benefits;
- j. to ensure that every person who has attained the age of retirement and does not have adequate means of subsistence is provided with social and medical assistance.

The Charter however is a non-binding Community instrument and as such adherence to the rights is completely left to the goodwill of Member States. In recent times however, there have been frequent calls to elevate the Charter to a binding Community instrument. Notwithstanding this status, the Charter of Civil Society is a key supportive document and certainly in the area of labour and industrial relations it can help to clarify in detail provisions mentioned in the Revised Treaty and also detail other provisions, which must also be included in the regional labour agenda.

The Declaration of Labour and Industrial Relations Principles

The Declaration of Labour and Industrial Relations Principles was approved by Ministers of Labour on 26 – 28 April 1995 during the Thirteenth Meeting of the Standing Committee of Ministers of Labour in Nassau, The Bahamas.

In the foreword, the Secretary-General, Caribbean Community, indicated that:

The Declaration sets out the general Labour Policy to which the Region aspires, consistent with international standards and other international instruments. It is an important policy guide on labour matters for the Social Partners and will contribute to the development of a healthy industrial relations climate, and enhanced social partnership. It underscores the rights and responsibilities of the Social Partners, and provides the bases for the development of national labour policies, and informs the enactment of labour legislation.

The Standing Committee of Ministers of Labour, in approving this policy guide on labour matters, has given tangible expression of its commitment to equity and social justice through the adoption of common labour standards and principles. This is an important pillar in the creation of the CARICOM Single Market, inherent in which is a CARICOM Labour Market.³

Just like the *Charter of Civil Society, the Declaration of Labour and Industrial Relations Principles* is a non-binding document and it is not very clear whether the social partners are indeed using the Declaration as a policy guide on labour and industrial relations matters. The Declaration however is a very detailed document and the Community must consider urgently using it as a policy guide in the CSME in order to assist in the implementation of the Treaty provisions.

Management Structure of the Regional Labour Market

Since the establishment of the Caribbean Community in 1973, functional cooperation has been the mode for the discussion and implementation of labour issues by Member States. A Standing Committee of Ministers of Labour was tasked up to 1997 with the responsibility for labour issues with the assistance of the regional social partners, namely the Caribbean Congress of Labour (CCL) and the Caribbean Employers' Confederation (CEC) and labour officials.

The first protocol amending the Treaty of Chaguaramas catered for a new structure, which subsequently was incorporated in the Revised Treaty of Chaguaramas. The decision of the Conference of Heads of Government to form a Quasi Cabinet also impacted on the previous management structure. The new management structure caters for:

- a Council of Social Sector Ministers;
- a Head of Government with responsibility for Labour.

Council for Human and Social Development

In the Revised Treaty, the Community has given the Council for Human and Social Development (COHSOD) the responsibility for the management of human and social development, including all labour issues. The COHSOD was formed and given this responsibility, because of the fact that individual social sector meetings were putting undue pressure on the scarce resources of countries. Furthermore, Member States recognized that in order to achieve human and social development a holistic and integrative approach had to be adopted instead of a piecemeal approach. In certain instances, Member States mandated the COHSOD to consult with the Council for Trade and Economic Development (COTED) in order to formulate and adopt appropriate measures. This

was done obviously in recognition of the fact that the COTED has overall responsibility for CSME issues, but also because labour and industrial relations can impact on the efforts of the Community to achieve higher levels of productivity and competitiveness.

The regional representative organizations of employers and trade unions are always invited to the meetings of the COHSOD and the COTED in order to enable them to give their perspective on the items on the agenda.

Ministers of Labour will usually participate in a meeting of the COHSOD when the agenda is predominantly labour and industrial relations related or in case a Special Meeting of the COHSOD is being convened on labour.

From the onset of the introduction of the COHSOD structure it has been recognized that for the Council to do its work effectively, Member States had to establish National COHSOD's in order to have a similar discussion, decision-making, but more importantly implementation platform. Ministries of Labour are, at the national level, responsible for the implementation of the labour and industrial relations-related COHSOD mandates and as such, are critical in the COHSOD apparatus. Sometimes the responsibility is shared with other Ministries, for example with Ministries of Education in case of Human Resource Development or Ministries of Health in matters relating to workers' health.

After seven years of operations the Community should review the COHSOD structure in order to determine if it remedied the pressure on resources and if it resulted in a more holistic and integrative approach to human and social development in Member States and the Community as a whole. Furthermore the Community should review if the COHSOD resulted in a better quality of decisions and subsequent implementation of these decisions at the regional and national levels.

The Lead Head on Labour

Heads of Government decided in October 1999 in Chaguaramas, Trinidad and Tobago to form a quasi cabinet, in which individual Heads have the responsibility to lead on specific issues, because it was recognized at that time that several goals were yet to be achieved and also that significant progress was needed.

The role and functions of the Lead Head are not defined, and as such, Heads have much room to perform the role and functions as

desired. In the quasi cabinet the Prime Minister of Dominica has the responsibility for labour issues, including the free movement of skills.

In the context of the establishment of the CSME and the management of the regional market, the role of the Lead Head on labour could be to advance labour, industrial relations and free movement of persons in the CSME. Possible functions for the Lead Head on labour could be:

- to spearhead the implementation and monitor the operation of the elements of the integrated market;
- to spearhead the implementation and monitor the functioning of other critical labour and industrial relations measures in the Community;
- to advance the labour principles contained in the Treaty of Chaguaramas, Charter of Civil Society and the Declaration of Labour and Industrial Relations Principles.

The importance of having a Lead Head on Labour cannot be underscored enough, because it provides an excellent opportunity to focus on and have labour issues represented, discussed and advanced at the political level, especially during the meetings of the Conference of Heads of Government.

Institutional Support

The CARICOM Secretariat is the principal administrative organ of the Community. One of the main functions of the Secretariat is to assist Community organs with their work. As such the Secretariat has the responsibility for assisting the COHSOD with the development of labour and industrial relations policies and programmes.

Similarly the Secretariat must support and facilitate the work of the Lead Head on Labour administratively.

Within the Secretariat the Human Development Directorate has overall responsibility for labour issues. The labour and manpower development programme focuses specifically on regional, hemispheric and international labour and industrial relations issues in order to assist the Community as much as possible to formulate and adopt appropriate responses.

In certain instances the Community can establish a committee or a task force for support or to focus on specific tasks that must be done.

The Caribbean Court of Justice

The Caribbean Court of Justice (CCJ), which was inaugurated in April 2005, has been vested with an original jurisdiction in respect of the interpretation and application of the Revised Treaty of Chaguaramas.

Member States with a common law system can also subscribe to the appellate jurisdiction of the CCJ, if so desired, which means that the CCJ will also be the court of last resort in civil and criminal cases.

In both jurisdictions the CCJ will impact on the management of the regional labour market and thus on labour and industrial relations in the Community as it has the powers to make binding decisions.

The CCJ will impact on its original jurisdiction on the management of the regional labour market, because Article 73 of the Revised Treaty, which was indicated earlier, focuses solely on industrial relations.

In its appellate jurisdiction it will be through the determination of labour and industrial relations related civil cases. In certain instances it might be even criminal cases, which originates in the labour and industrial relations sphere.

One will gather from the above that in its appellate jurisdiction, the CCJ can be appealed to determine cases based on applicable domestic labour laws. This includes ratified ILO Conventions, which have been enacted into domestic legislation.

Some Difficulties

First of all it should be noted that the regional labour market is a work in progress. It is not yet fully established and still evolving. This is not only due to the fact that only selected categories of skills are currently allowed to move freely, but more importantly, because other key issues must still be dealt with, such as the further harmonization of labour legislation and the establishment of a regional labour market information system.

At this point in time the CARICOM Agreement on Social Security and the free movement of skills regime are in place in Member States, even though the latter in some cases must be further fine-tuned to comply with the decisions taken by the COHSOD, the COTED and the Conference of Heads of Government, but CARICOM Nationals are able to move under the regime.

The fact that the Community is an association of sovereign states also impacts on the management of the regional labour market, because

implementation is the sole prerogative of Member States. This, in effect means that the chain will be as strong as the weakest link, because if regional decisions are not implemented by some Member States the whole purpose is being defeated. Furthermore it means that for implementation all Member States must be dealt with individually.

The absence of Community law and regulations on labour and industrial relations will be a major difficulty when trying to manage the regional labour market, because the current differences at the national level must be taken into account and can hamper implementation sometimes.

Another difficulty is the fact that the policy-making process is not yet fully resolved, since Member States still cater for national labour market plans rather than regional.

Resource constraints at the regional and national levels are also impacting on the management of the regional labour market, because of the fierce competition that labour issues face, when vying for scarce resources. Often a decision on the allocation of resources will boil down to what is perceived as most urgent.

Appropriateness

It is very difficult to gauge the appropriateness of the management structure at this stage of the deepening and strengthening of the integration process, especially since the regional labour market has not yet been fully established. Furthermore the reasons to move from the previous structure to the new structure are still very much valid, namely the pressure on the scarce resources of Member States if too many meetings are convened and the fact that only a holistic and integrative approach to social and human development will bring tangible benefits.

However, as already alluded to, a review of the functioning of the COHSOD system should be undertaken as a matter of urgency in order to determine the impact of the work of this Council in the past seven years. Crucial during such a review should be the impact on all social sectors. The views of relevant stakeholders should also be taken into account during the review process. The review of the work of the Council should also be accompanied by an evaluation of the functioning of national COHSOD's, because these bodies are an integral part of the system, especially since Member States have sole responsibility for the implementation of decisions, policies and programmes.

Having a Lead Head on Labour can result in various benefits, but to reap these benefits it will be necessary for Ministers of Labour to meet regularly to discuss critical labour and industrial relations matters in order to agree on issues, which should be brought to the attention of the Lead Head for discussion with his colleagues.

It should be noted that neither the COHSOD nor the Lead Head can deal with certain issues, which are the sole competency of national governments, such as the allocation of resources to Ministries of Labour. Of course a plea can be made for the modernization of Ministries of Labour, but that is as far as the competency of the COHSOD and Lead Head goes.

Conclusion

The importance of labour and industrial relations in the Community will only grow in the period ahead in light of the fact that CARICOM producers of goods and services must ensure a growth in productivity and competitiveness in order to survive in a highly competitive global environment. In order to achieve a growth in productivity and competitiveness all relevant stakeholders will have to be on the same page in order to create an environment that is conducive to the achievement of the stated objectives.

A harmonious, stable and enlightened labour and industrial relations climate will be required amongst other critical conditions in order to support the objectives of the Community relating to productivity and competitiveness growth. The Community has committed itself to promote the establishment of such a climate in Article 73 of the Revised Treaty of Chaguaramas and has mandated the COHSOD and COTED to work together in order to develop relevant proposals and programmes.

The establishment of effective social dialogue mechanisms to achieve consensus at the regional and national levels should be given a high priority in order to ensure that a culture of results-based cooperation is established amongst the social partners. For quite some time Barbados has served as an international best practice model with respect to social dialogue, but various international and / or national efforts to stimulate social dialogue in other Member States have proven to be futile with the positive exemption of Jamaica, where social dialogue seems to be rooting itself as the mechanism to maintain and / or further progress development.

Given the Treaty obligation to promote a harmonious, stable and enlightened industrial relations climate and the fact that the establishment of the CSME will result in an integrated labour market, one can imagine that labour and industrial relations in the Community will have to be managed properly. Treaty provisions and decisions of the Conference of Heads of Government have resulted in the current management structure of labour and industrial relations in the CSME, which currently consists of the COHSOD and a Lead Head on Labour.

It should be noted immediately that decisions of the CCJ in labour and industrial relations-related cases in both jurisdictions of the Court can impact on the management of the regional labour market, especially since the CCJ can make binding determinations.

The management of the regional labour market will be a real challenge, especially since the mindset in Member States is still predominantly national and not as yet regional, but nevertheless the Community will have to ensure its proper management, even if it means that structures will have to be adjusted in due time in order to remain relevant in a changing and challenging environment.

For now, until Member States decide otherwise, the COHSOD and the Lead Head on Labour will shoulder the responsibility for the management of the regional labour market. Of course assisted by Ministries of Labour and other relevant Ministries at the national level, especially since implementation of mandates is still the sole responsibility of Member States, notwithstanding technical assistance that the CARICOM Secretariat might provide.

NOTES

1. Revised Treaty Of Chaguaramas Establishing The Caribbean Community Including The CARICOM Single Market And Economy, CARICOM, 2001;
2. Charter of Civil Society for the Caribbean Community, CARICOM, 1997;
3. The CARICOM Declaration of Labour and Industrial Relations Principles, CARICOM, 1995

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The CSME and the Implications for Social Security

Steven Mac Andrew

The Caribbean Community (CARICOM) is in the process of establishing the CARICOM Single Market and Economy (CSME), which basically means the evolution from a Common Market for Goods to a genuine single market and economy. The Common Market for Goods was very simple to grasp and comprehend, because it only catered for the movement of goods, which qualified as goods of Community Origin and the utilization of a Common External Tariff (CET).

The CARICOM Single Market and Economy, which in essence is an economic and trading framework, is far more difficult to grasp and comprehend, especially since its impact will without doubt transcend the economic and trading spheres and influence other critical areas and sectors as well, such as the social sectors. This impact will be the result of the fact that the CSME is an integral part of the Caribbean Community, but also because of the far reaching consequences of the key principles and rules, which will have to be adhered to in the CSME.

It is therefore no wonder that throughout the Community a question which is raised very frequently is what the implications of the CSME will be for individual countries, sectors, social services and juridical and natural persons. In this context the issue of the implications of the CSME for social security surfaced as social security practitioners wanted to have comprehensive information about the possible impact of the CSME in order to be in a position to deal pro-actively with the emerging situation.

From the onset it must be clear that any paper or discussion on the implications of the CSME at this point in time is highly theoretical, since only a few elements of the CSME are currently in place and operational as many elements are yet to be implemented legally and administratively. This paper is thus an attempt to highlight the possible implications of the CSME for social security, thereby focusing on a number of key questions, namely :

- What are the relevant principles dealing with social security as enshrined in the Revised Treaty of Chaguaramas?
- What are the relevant social security principles in other supportive agreements?
- What might be the impact of the key elements of the CSME on social security?
- What are some other CSME related issues that might impact on social security in our Community ?

Without the CSME there would have been no impact at all on social security institutions in Member States, so the overarching questions are:

- What changes, positive, negative or none, has the CSME occasioned in the system of social security?
- Has it resulted in an erosion or enhancement of the social security function or will there be no noticeable change? and
- Will the CSME weaken or strengthen the purpose of social security or will it have not effect at all ?

The CSME

In July 1989 in Grand Anse, Grenada, the Conference of Heads of Government decided to deepen and strengthen the Community in all its dimensions in order to respond to the challenges and opportunities brought by changes in the global economy. The establishment of a single market and economy was viewed as the only option to deepen and strengthen the Community, because of the recognition that all Member States are too small and too vulnerable to survive alone in a competitive global environment. The vulnerability of Member States does not refer only to economic and social shocks, but also to natural disasters.

The principal purpose of the CARICOM Single Market and Economy (CSME) is to boost the productivity and competitiveness of CARICOM nationals, juridical or natural persons, who are producing goods or services for the intra-regional as well as the extra-regional markets, since they will have to create the wealth to sustain and further advance development in not only Member States, but the region as a whole.

The CSME has two broad components, namely:

- the Single Market; and
- the Single Economy

The Single Market came into effect on 1 January 2006 with Barbados, Belize, Guyana, Jamaica, Suriname and Trinidad and Tobago being the founding countries. The key elements of the Single Market are:

- Free Movement of Goods;
- Free Movement of Skills;
- Provision of Services;
- Right of Establishment; and
- Free Movement of Capital

Other Member States are currently in the process of removing existing restrictions on the right of establishment, the provision of services, the movement of capital and the movement of eligible categories of skilled persons.

The Single Economy must be in place by 31 December 2008. The major elements of the Single Economy are:

- Monetary integration;
- Harmonization of Fiscal Policies;
- Harmonization of Investment Regimes;
- Production Integration; and
- Capital market integration and development.

Notwithstanding the mentioning of specific target dates one should bear in mind that the CSME will continue to evolve well past these target dates as integration can never be considered a finished product, but should be viewed as a dynamic process.

In order to establish the legal framework for the CSME the Treaty of Chaguaramas, which basically catered for the establishment of the Caribbean Community and the establishment of a Common Market for Goods, was amended by nine protocols. These protocols have all been incorporated in the Revised Treaty of Chaguaramas, which is being applied provisionally pending ratification by all Member States. However all Member States are required to not only sign and ratify the Treaty, but also to enact it into domestic legislation in order to put the Treaty on a solid legal foundation.

Purpose of social security

The purpose of social security historically has been one of protection against loss of income due to the occurrence of certain social risks,

such as illness, retirement and invalidity. Through protection against these social risks, countries wanted to ensure, through collective solidarity, that persons did not end up in undesirable social situations, mainly poverty. This original purpose is still valid in the contemporary world, even though social security means different things to different people. In the European Union for example the scope of social security is much broader than in the Caribbean Community, nevertheless the purpose remains the same.

In order to fulfill its purpose, social security is based on a number of key principles, namely:

- the system is universal as all wage earners are covered;
- contributions to the system are compulsory;
- there is a pooling of risks;
- the system ensures redistribution; and
- benefits should not exceed income

Social security in the Caribbean Community remains the most important social safety net at this point in time and has contributed significantly to a reduction of the social vulnerability of the Community and the maintenance of social stability in Member States. It is therefore critical that a determination is made if the CSME will impact in any way on the purpose of social security.

Relevant social security principles in the Revised Treaty of Chaguaramas

The Revised Treaty of Chaguaramas¹ contains a number of Articles, which are highlighting social security issues and which must be discussed for a better understanding of what the Community envisaged for social security in the CSME. There are however also many broad Treaty provisions, which are also relevant, since these provisions relate to the key elements of the CSME and thus will help to shape the environment in which social security organizations will have to operate. Just like the specific provisions, there is need to discuss these issues, because they will without doubt be very relevant for the day-to-day operations of social security organizations.

Activities involving the exercise of Governmental Authority

Article 30.1 and 2 of the Revised Treaty indicates that the provisions of Chapter Three, dealing with the right of establishment, the right to provide services and the right to move capital in the Community, will not apply to activities involving the exercise of governmental authority. Article 30.3 states that activities that form part of a statutory system of social security or public retirement plans are considered activities involving the exercise of governmental authority.

These provisions basically mean that activities that form part of a social security system will be excluded from competition and that as a result social security institutions will remain the only organizations that can execute a compulsory social security system in Member States. There will be no competition from economic enterprises. The fact that social security institutions will face no competition with respect to compulsory social security is without doubt the major implication of the CSME for social security. However, social security institutions will still face fierce competition from private companies, which are offering private social security packages and therefore must still prepare to compete for contributors, especially since private insurance companies usually target the self-employed. A group, which in some countries is not required to pay social security contributions and thus has a low coverage, while in compulsory systems evasion of contributions by the self-employed, is very much prevalent.

Noteworthy is also the fact that competition by private insurers will not only come from within the region, but also from outside the region as all Member States are members of the World Trade Organization (WTO) and furthermore party to the General Agreement on Trade in Services (GATS). The GATS gives parties to the Agreement the right to provide services in Member States according to four modes:

- Mode I : cross border supply;
- Mode II : consumption abroad;
- Mode III : commercial presence;
- Mode IV : temporary movement of natural persons.

Cross border supply, commercial presence and temporary movement are the relevant modes through which social security might be confronted with extra-regional competition.

The fact that social security is an activity that involves governmental authority and thus is shielded from competition with respect to compulsory social security does not mean that the CSME will result in no changes for social security institutions. On contrary social security institutions will have to become more market-driven and efficient in order to compete effectively with private insurers. Market-driven management always result in increased expenses, so initially an increase in costs might be experienced, but in the long run organizations stand to benefit, especially if social security institutions manage to make their benefits package more attractive.

Harmonious, stable and enlightened industrial relations

Article 73 highlights the fact that a harmonious, stable and enlightened industrial relations climate is conducive to the realization of international competitiveness, which is essential if the Community is to achieve higher levels of economic and social development. Adequate social security policies and programmes are viewed in Article 73. (a) as one of the ways in which the desired industrial relations climate can be achieved. Article 73 thus points to the critical role social security can play in securing social peace in the Community.

The fact that globalization and trade liberalization are highly unpredictable and have severe effects, coupled with the high vulnerability of Member States, will make social security even more critical in the future as one of the mechanisms to maintain social peace, but also as one of the mechanisms to reduce the social vulnerability of the Community. In this regard, the dialogue concerning the introduction of unemployment benefits and the introduction of health insurance must be continued urgently as globalization and trade liberalization have the potential to cause dislocations in the Community.

Striving for harmonious, stable and enlightened industrial relations in the Community by developing adequate social security policies and programmes has the potential to impact severely on social security institutions as expenses and costs may increase significantly, especially if social security institutions are called upon to deal with the possible fall out of increased competition and the introduction of health insurance. However, the adoption of appropriate strategies and good project management with respect to the introduction of unemployment benefits

and health insurance can ensure an efficient and effective transition to providing these benefits, for which there might be an increasing demand in the near future.

Development of social infrastructure

The Community commits itself in Article 75 to establish an adequate social infrastructure and to secure social stability in Member States. Article 75.(a) indicates that the establishment and promotion of social security institutions and facilities is an important step to establish an adequate social infrastructure, while Article 75.(b) deems the conclusion of reciprocal social security agreements critical for the facilitation of the movement of skills.

In Article 75, just like in Article 73, it is recognized that social security is a critical element of the social infrastructure, however Article 75 is pointing to some concrete steps to ensure the needed social infrastructure is being put in place. In Article 75 it is also recognized that social security is a supportive measure for one of the key elements of the CSME, namely the free movement of skills.

Social security will become an even more important component of the social infrastructure in the CSME, because the Community will have to respond to certain social challenges, some of which are CSME related, such as movement of labour. As an important component of the social infrastructure in the CSME, social security institutions will have to ensure that their systems are efficient and effective in order to respond in a timely manner to clients / claimants.

Social security principles in other supportive Agreements

The Charter of Civil Society for the Caribbean Community² and the CARICOM Agreement on Social Security³ are the main supportive Agreements, in which social security principles are underpinned. The Charter of Civil Society, while being a very important Community instrument, at this point in time is a non - binding instrument and as such adherence to the enshrined principles is left solely to the goodwill of Member States.

The CARICOM Agreement on Social Security on the other hand, is an Inter-Governmental Agreement, which has been placed on a solid

legal foundation by all Member States, since it has been signed, ratified and enacted into domestic legislation by these countries except Suriname, which currently does not have a comparable social security system.

The Principles in the Charter of Civil Society

Article XIX.3.(i) Worker's Rights, indicates that adequate social security benefits must be provided to workers, while in point (j) it is indicated that all retired persons must be provided with social and medical means if they do not have sufficient means of subsistence. These principles and their focus / intention are more or less similar to the ones mentioned in Articles 73 and 75 of the Revised Treaty.

The only real addition is the reference to the assistance that must be provided to retired persons, whose standard of living is no longer tied to income from employment. This principle is one that will become increasingly relevant in our Community, especially for some Member States, which will be confronted with an ageing population in the immediate period up to 2025 -/2030. Until it becomes a binding document, the *Charter of Civil Society* may not lead to any real change to social security in the CSME.

The CARICOM Agreement on Social Security

The CARICOM Agreement on Social Security is the main instrument dealing with social security in the Community. The purpose of the Agreement, which came into effect on 1 April 1997, is to ensure that persons who moved during their career can still qualify for a benefit under the applicable domestic legislation of Member States through the tantalization of contribution periods made to various Schemes in the Community and the payment of full or partial pensions by the Schemes involved. Though the Agreement is considered a key supportive measure for the Free Movement of Skills / Labour, all CARICOM nationals can benefit from it, even if they currently do not qualify currently for Free Movement of Skills.

The Agreement, which provides for the transfer of pension without deductions for administrative costs to any Member State and also for the payment in the currency of the Member State where the beneficiary lives, covers the following long-term benefits :

- invalidity pensions
- disablement pensions
- old age / retirement pensions
- survivors' pensions
- death benefits in the form of pensions

The CARICOM Agreement on Social Security must be considered an effective mechanism to ensure that persons, who moved during their working life can still qualify for benefits. However, it may lead to an increase of costs for social security institutions as a result of the tantalization principle and the payment of partial pensions, but one must bear in mind that at the same time it also ensures that undesirable social situations are prevented, which in the end might have necessitated financial interventions by Governments.

Impact of the Key Elements of the CSME on Social Security

Free movement of goods

At first instance there appears to be no relationship at all between the free movement of goods and social security, but even though there is no obvious direct link, the free movement of goods might impact indirectly on social security as it can influence the cost of living in countries, certainly the consumer price index. If a good that is produced in the Community satisfies the rules regarding Community Origin, then it can be imported into other Member States free of duties, which will result in a lower retail price and thus cheaper products for the consumer. Cheaper prices will benefit persons, whose income and purchasing power are more or less fixed, such as retired persons living on a pension from social security.

An increase over time in retail prices of consumer goods, better a positive change of the consumer price index will affect these persons negatively and might lead to calls for inflation correction. If these calls are honoured then social security organizations will be required to compensate and will thus have to adjust benefits, which are being paid out.

Free movement of goods generally leads to increased competition in the market of goods, which in turn offers consumers a greater choice

and lower prices. The free movement of goods thus has the potential to be a stabilizing factor with respect to the consumer price index, even though it is recognized that consumer prices can be impacted by other factors, such as foreign exchange rate fluctuations and general inflation.

Having the potential to stabilize the consumer prices index means that the free movement of goods can have a positive impact, even though not direct, on social security as inflation corrections can be kept within reasonable percentages. Furthermore the free movement of goods will not require social security organizations to adjust their operations or to incur costs and as such the real impact will be limited, even though positive.

Free movement of services

The free movement of services offers similar advantages as the free movement of goods as consumers again will have a greater choice against lower prices. The same stabilization of the consumer price index thus also applies. The free movement of services however offers other advantages as well for social security, because service providers from other Member States can be engaged to provide a particular service according to one of the four modes.

Social security organizations are thus in a position to look for “best value for money”. Furthermore subsidiaries of social security institutions themselves might provide services in other Member States in accordance with the four modes of services supply. In some cases this will require legislative and regulatory adjustments.

Besides, the free movement of services will also result in greater competition as private insurers can enter the market and offer similar packages to customers, especially the self-employed. However social security will have the competitive advantage that it is a compulsory system, while competitors will only be able to use persuasion.

The free movement of services may require social security organizations to adjust their operations in order to withstand the greater competition by private insurers. Social security organizations may have to adopt appropriate strategies and implement organizational reforms in order to put themselves in a position to compete effectively and efficiently. This, of course may have cost implications. Free movement of services also means that social security organizations will have to adjust their

operations to utilize the opportunities offered by a regional services market, which can result in costs savings and revenue generation.

Besides, just like the free movement of goods, the stabilization of the consumer price index will be a limited, even though positive consequence of the CSME. Notwithstanding the possible operational, strategic and organizational adjustments that social security organizations may have to go through, the overall impact of the free movement of services has the potential to be very positive as the benefits can outweigh the costs.

Right of establishment

The right of establishment refers to the setting up of a business in another Member State. It is similar as commercial presence under free movement of services regime and will thus have the same benefits, opportunities, but also challenges, mainly an increase in competition from private insurers. It should be noted that social security organizations can establish subsidiaries in any Member State with the specific purpose to make profits. Of course it will require an amendment of social security legislation in many, if not all Member States, to allow organizations to establish a subsidiary in another Member State.

The right of establishment without doubt may require changes in the operations of social security organizations as a result of increased competition. Changes will also be required to enable social security organizations, especially their subsidiaries, to operate in the CSME, but much will depend on legislative and regulatory arrangements, which must be put in place in order to enable organizations to invest beyond the borders of their respective countries. Competition and establishment will initially lead to an increase of costs, but in the long run the impact or benefits of the right of establishment can be very positive, because through established subsidiaries, revenues can be generated.

Free movement of skills

The free movement of skills will without doubt impact directly on social security as social security organizations may be confronted with either an increase or a reduction of the number of contributors. Free movement of skills is currently limited to graduates, artistes, musicians,

sportspersons, media workers and the self-employed, including their managerial, supervisory and technical staff.

The conference of Heads of Government however decided in November 2004 in Trinidad and Tobago that the eligible categories must be expanded. Work on the development of proposals for the expansion of the eligible categories has started and early 2006 the Conference will consider these concrete proposals with the specific purpose to take a decision.

So far the movement of skills has not resulted in significant inflows or outflows in any Member State. One reason is the fact that most countries have only recently started with the free movement of skills. Furthermore migration as a result of the discretionary migration policies of Member States, whereby persons must obtain a work permit, currently outweighs the free movement of skills in all Member States.

The free movement of skills will also impact on social security in the area of human resource management, because organizations for recruitment purposes can enter the regional market in order to find the best person to fill vacancies in their respective organizations. The free movement of skills will not require adjustments to the operations of social security institutions, because migrants who are wage earners and in some cases self-employed will have to contribute to social security in accordance with the applicable domestic legislation of the receiving country. This has been the case historically, so even before national treatment was introduced in the integration arrangements of the Community social security institutions were already applying this concept.

The financial impact of the free movement of skills on the operations of social security organizations will have to be determined individually, because it may have a positive impact on organizations in countries where the inflow of migrants and thus contributors is greater than the outflow of migrants and contributors. The financial impact of the free movement of skills will be negative if the outflow of migrants, who were contributing to social security, exceeds the inflow as the contributors base will be eroded. This will result in significant financial concerns for social security institutions.

Internally social security organizations will have to deal with regionally recruited employees and thus put in place appropriate human resource management policies in order to enable persons with a different cultural background to function in their respective organizations. The real impact

of the free movement of skills will have to be determined individually by social security organizations.

Free movement of capital

The free movement of capital according to Article 40.3 of the Revised Treaty of Chaguaramas relates to:

- equity and portfolio investments;
- short term bank and credit transactions;
- payment of interest on loans and amortization;
- dividends and other income on investments after taxes;
- repatriation of proceeds from the sale of assets; and
- other transfers and payments relating to investment flows

The free movement of capital will not only impact on social security, but is also critical for the survival of social security organizations, since investments are for most organizations the only way to increase their financial resources significantly in order to remain financially sound.

In some Member States legislation will have to be adjusted in order to enable organizations to invest outside their home country and thus to take full advantage of the investment opportunities offered by the CSME.

The operations of social security organizations will have to be adjusted as applicable to take advantage of the free movement of capital, but this does not have to be very cost intensive and as such the benefits of the free movement of capital can easily outweigh the costs. It can not be emphasized enough that due diligence will be very critical, especially if organizations do not have prior experience with regional / international investments.

Single Economy

Work in the area of the Single Economy is still very much in the early stages of development and any discussion on the impact of the key elements of this component is even more theoretical than a discussion of the key elements of the Single Market. However it is never too early to flag the possible impact the Single Economy may have on social security.

Monetary Integration

In a Community with various currencies and exchange rate regimes, monetary integration will without doubt eliminate the negative effect of

conversion. This fact is of particular interest to social security organizations, because benefits will be paid in only one currency and the costs associated with converting from one currency to another are thus eliminated. The same applies to investments, which organizations will make in other Member States, and payments to regional producers of goods and services.

Monetary integration will also substantially reduce or eliminate the risk of devaluation, which has the potential to be very catastrophic for social security institutions and of course beneficiaries. Monetary integration will without doubt lead to some administrative adjustments as organizations will have to convert to the common currency, but these adjustments do not have to be costly, especially if systems are automated, but overall the impact can be very positive.

Harmonization of fiscal policies

The harmonization of fiscal policies will lead to a harmonized fiscal regime in the region and thus eliminate advantages, which Member States might have over other Member States in the fiscal sphere or disadvantages for that matter. It will also lead to clarity about what to expect fiscally in Member States. However fiscal policy harmonization in the region is expected to be a minimum package rather than a maximum package of harmonized fiscal policy measures.

The harmonization of fiscal policies should be of particular interest to social security organizations which are investing, or in the future, will be in a position to invest in other Member States as the fiscal implications will be very clear, when decisions must be taken. Harmonization of fiscal policies should also be of interest, because fiscal policies can impact on unemployment levels thus leading to an increase or decrease of contributors, which in turn impacts on the financial resources received through direct contributions. Furthermore, social security institutions have always invested in bonds issued by Government and in the CSME organizations could invest in bonds issued by other Member States, if they are permitted to invest beyond their national borders.

The impact of the harmonization of fiscal policies will positively affect social security operations as the economic environment will be more predictable, which will facilitate investment decisions. In certain instances however, the impact can be negative and have severe cost

implications, especially when fiscal policies do not decrease unemployment levels. In such a scenario social security institutions on top of generating less financial resources may be tasked to provide unemployment benefits. This scenario is not unlikely in our region, which experiences the negative effects of globalization.

Harmonization of investment regimes

The reasons for the harmonization of investment regimes are similar to the ones for opting to harmonize fiscal policies, namely the elimination of perceived advantages or disadvantages and clarity about the regime upfront, regardless where you go in the CSME. Given the importance of investments to ensure financial viability of the various organizations this element of the Single Economy should be of particular interest to social security organizations.

Harmonization of investment regimes can have a positive impact on the operations of social security institutions, because it might result in more regional investment opportunities, thus enabling organizations to diversify their investment portfolio. Some administrative cost will have to be made in order to engage the services of an investment manager, either as a permanent member of staff or as a consultant.

Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) which has been vested with an original and appellate jurisdiction will be responsible for the final interpretation and application of the Revised Treaty of Chaguaramas, which contains a number of social security-related provisions. The CCJ can therefore pronounce definitely on social security matters that fall within the ambit of the Revised Treaty. This in effect means that the CCJ has the power to issue legally binding decisions whenever a case, which concerns social security, is sent to the Court both in its original and appellate jurisdictions as applicable.

Legal issues arising out of the operations of the CARICOM Agreement on Social Security are also subjected to a ruling of the Court, because a provision in the Revised Treaty, namely Article 75.(b) calls for the conclusion of reciprocal social security agreements and even though the Agreement came into effect before the operationalization of

the Revised Treaty, it must still be considered the developed regime to implement this Article.

Future Initiatives

The Community has committed itself in the Revised Treaty to deal with social security issues in the CSME by developing and implementing adequate social security institutions, policies and programmes and by concluding Inter-Governmental social security agreements. The Community has also committed itself in the Revised Treaty to shield social security from competition by not allowing CARICOM nationals, juridical or natural, to establish compulsory social security organizations or allowing them to provide compulsory social security services through other modes of services supply. Nevertheless social security organizations will still face competition from private insurers.

Even before the Revised Treaty was signed, the Community had already agreed on the CARICOM Agreement on Social Security, which has been in effect since 1 April 1997. The Agreement is applicable to all CARICOM nationals and not only the categories of skills, which are currently eligible for free movement.

The CSME and its key elements have the potential to have positive implications for social security. It is up to social security organizations to utilize these elements once they are in place, because the real impact of the CSME will come from increasing competition and increased mobility of factors of production, capital and labour.

The competitiveness drive of the Community might impact on social security organizations, because contribution rates might come under pressure from producers of goods and services, who are confronted with low productivity ratios as a result of high production costs, including labour costs. This might be a cause of problems, but should be dealt with through dialogue between the social partners.

Even the institutions, which have or are being set up to support the operations of the CSME, such as the Caribbean Court of Justice and the Development Fund, might have positive implications for social security. In the case of the Development Fund it will be critical that some kind of working relationship is established shortly after the Fund becomes operational.

The CSME will also offer social security organizations the opportunity to further evolve their cooperation in various ways and to benefit from

the “scale effect”. The pooling of resources for investment purposes within and outside the region is one area that must be considered urgently and the discussion on this issue must be continued.

With respect to the purpose of social security it is envisaged that the combined effect of the CSME and other challenges will result in a strengthening of the purpose and social security organizations must prepare to ensure that they are able to respond to these challenges as part of a multi-dimensional, multi-sectoral, multi-faceted response.

Social security institutions must continue with their intensive human resource development activities, but consideration should be given to investment management and marketing, including social marketing.

Heads of social security must also explore in cooperation with the International Labour Organization and other international organizations the possibility of having every four / five years a Masters Programme in Social Security / Social Protection Management conducted in the region in order to have a sufficient pool of highly-skilled persons.

NOTES

1. *Revised Treaty Of Chaguaramas Establishing The Caribbean Community Including The CARICOM Single Market And Economy*, CARICOM, 2001;
2. *Charter of Civil Society for the Caribbean Community*, CARICOM, 1997;
3. *The CARICOM Agreement on Social Security*, web-edition

Productivity improvement is a subject that excites employers but scares workers and their trade unions. To the average employer, it means getting more returns for less expenditure. At the slightest threat to profitability, the first cost strategy to implement is staff reduction. But a popular cliché states that the human resource is an organization's most important resource. Do you throw away your most important resource first? For the worker, productivity connotes speeding up work for less pay. The role of the trade union is to protect the worker against any arbitrary actions by the employer, such as staff reduction in times of economic hardship. Yet, the percentage of unionized workers is dropping. Does one avoid an organization that protects one's interest? The Human Resource Management (HRM) department is always caught in the middle of the argument. If it speaks in favour of workers' rights under ILO Conventions, the employer may question its loyalty. On the other hand, if HRM goes with the employer, the workers and their trade unions feel betrayed!

This paper will demonstrate that within the framework of the modern concept of productivity, the HRM function has a unique opportunity to play a strategic role along with the other business functions, such as operations, finance and marketing. When the stakeholders in the work environment share a common vision, or pursue objectives that will benefit all the stakeholders, the chances of cooperation and collaboration are enhanced. That is called the High-Road strategy to productivity improvement that we shall discuss presently.

The paper begins with a brief review of the evolution of the status of the human resource management (HRM) function and of labour (or human resource). The impact of the two developments on corporate strategy, and hence productivity, will be identified. Then, using empirical

evidence from the Caribbean, the strategic link between HRM and productivity improvement will be underlined, as a basis for a new paradigm in management-labour relations, especially in the Caribbean.

A brief historical perspective

The late Harvard professor, John Kenneth Galbraith propounded over 30 years ago that power in any organization belongs to the factor that is most difficult to obtain or to replace.¹ Production, marketing, finance and human resource management are generally regarded as the four basic business functions. Appointments to top management positions and the Board of Directors are made from those functions.

During the earlier stages of industrial development, production management was the bottleneck. This was because demand for goods and services far exceeded the ability to supply them. Emphasis was on mass production, and efficiency was the buzz word. Therefore, engineers and production technicians and technologists were the most sought after. That was the era of Frederick Taylor and scientific management. Consequently, the CEOs and Board members in those days tended to come through production and operations management.

Following the productivity successes of the scientific management revolution, higher-paid workers had more money to spend but their tastes and social choices had changed. In response, business strategy changed from production to marketing orientation. It was discovered that consumers were neither patriotic nor brand loyal unless their tastes were adequately catered for. Marketing then became the new bottleneck and the 'whiz kids' had to come through that function.

In good and bad times, one needs money to invest and for working capital. The capital providers and auditors come from the finance function. So, that function has always been adequately represented at the top and on the Board of enterprises.

Until quite recently, when globalization and the Information and Communication Technology (ICT) revolution started to point to the human resource as the new bottleneck, the HRM function has hardly been seen as deserving of Board status. Therefore, it has largely been treated as an appendage to the other three functions. If a vital business function is down played, it affects its staffing and public perception.

An analysis of the traditional factors of production will yield a similar result. Land, labour, capital and entrepreneurship have traditionally been

regarded as the factors of production. In the industrialized world, control of organizations has shifted historically from the landlords to the capital-owners and entrepreneurs (or owner-managers) and lately to professional managers. Even among this group, power has been cornered by what Galbraith has called the “technostructure,” that is, the small proportion of managers and professionals who contribute information to group decisions.²

Power has never shifted to labour, probably because it has always been abundant and dispensable. Consequently, trade unions have evolved to fill the void and protect workers from exploitation.

Implications

As a result of those historical developments, the workplace has been characterized by the following perceptions:

1. The trade unions are militant and pay more attention to their members' welfare than to the well-being of the organization;
2. The HR managers are only important when there is industrial unrest or during collective bargaining;
3. Workers are seen as 'resources' or 'assets' which can be dispensed with as and when necessary; and
4. In return, the workers do not owe any loyalty or commitment to the organization beyond mere mechanical compliance.

Understandably, a low-road corporate strategy emerged, characterized by³:

1. A poor organization design which can hardly deliver satisfactory customer services;
2. Poor productivity that delivers uncompetitive product and service costs;
3. Poor performance where people's potentials are underused;
4. A poor reward system marked by the inability to recruit or retain scarce skills; and
5. Poor employee relations based on hostile adversarial union-management relations.

The glaring missing link is the absence of a strategic HRM approach. The impact has been a poor conception of productivity improvement and poor working conditions.

A High-Road Strategy

As the saying goes ‘when two elephants fight, it is the ground that suffers’. Similarly, productivity suffers when labour-management relations are unhealthy. Therefore, if employers and their workers/trade unions, supported by government, can work together in an atmosphere of mutual trust and respect, two things can happen: (a) the organization becomes more effectively run and, hence, more profitably so; and (b) the employees earn more while also doing decent work.

That phenomenon has been called creating “a human workplace” where “the company looks after its employees and the employees look after their company.”⁴ That is a high-road strategy that can only work under certain conditions (see Table 1). Working together for productivity improvement provides one unique opportunity for an enterprise or a country to create such a human workplace.

Table 1: Principles of the “High Road” to Productivity	
Integrated and Holistic	Productivity improvement explicitly part of company mission and philosophy, the achievement of which is integral to its management systems and processes. Total organization view Value-chain improvement
Focus on Total Productivity	Productivity improvement of all inputs not just on labour productivity
Focus on outputs and results	Customers needs and improved customer values Minimized negative impact on the environment Concern for the social impacts Improvement in the quality of work life Maximizing stakeholders’ value
Participation, consultation and involvement, social partnership	Employee involvement Labour-management partnership
Communication and information sharing	Communicating productivity improvement priorities Sharing of company performance measures and results
Enable the human resource / focus on people	Continuous development of skills and competencies Work organization and design encourages learning and creativity Mechanisms for individual and group-based participation in improvement Good working condition and environment Enabling management styles and practices Sharing of information
Good monitoring and feedback	Productivity monitoring and measurement system whose results are available to all
Share productivity gains among employees, owners, customers, community and other stakeholders	Financial Non-financial

[Source: Arturo L.Tolentino, “Enterprise Productivity and Competitiveness-Factors for Success,” Paper presented at the Slovak National Productivity Forum, 18-19 September 2001 [The Slovak National Productivity Centre]; p. 4

The modern concept of Productivity

Globalization and the rapid advance of information and telecommunication technology have created as much challenges as opportunities for the modern organization. For example, we now have to deal with both the physical and the *cyber* space. Therefore, we now have physical and virtual enterprises and markets. Market forces are pushing enterprises to adopt new forms of production and distribution, with extensive outsourcing, marketing and supply and value-chains and networks. Radical changes have come to the work place, some of which are as follows:⁵

1. Permanent employment contracts with cradle-to-grave job security are giving way to flexible, fixed-term contracts according to corporate need;
2. Fixed costs are being kept low, with more emphasis on leasing than owning;
3. Regular work scheduling is being replaced with flexible schedules that can react quickly to external markets; and
4. Focus is now on core competency.

However, the collapse of Dot.com enterprises a few years ago has suggested that a quick-fix or the traditional response to changes in the workplace cannot produce lasting or sustainable results. According to Professor Fred Bienefeld, a research associate at the Canadian Centre for Policy Alternatives, the growth in the GDP of the United States in recent times has been associated with a steady decline in real wages and average family incomes for the great majority of the population.⁶ *Newsweek* columnist, Robert J. Samuelson adds, "It is tempting to believe that rising efficiency will rescue the economy. But the surge reflects more bad news, such as mass layoffs, than good."⁷ By contrast, the performances of countries like Norway and Iceland are more sustainable because due attention has been paid to total productivity which consists of economic performance, social equity and environmental protection.⁸ Given that scenario, it can no longer be business as usual for employers and trade unions if they are to survive. That is why they have to see productivity in a new light, namely, working smarter, not necessarily harder.

Productivity is no longer looked upon as purely efficiency (output/inputs). Increasingly, the effectiveness aspect (ability of products and

services to meet customers' demands and expectations) is coming strongly to the fore. The importance of the learning experience as well as the team building and partnership effects in the course of the productivity improvement process is also now being recognized. Attention is also being given to the social and environmental impacts. Finally, productivity improvement no longer depends on just what is done inside the factory gates. It is becoming an integral aspect of the work culture of a country.

In a recent ILO-sponsored workshop, the following factors were identified as the major factors hindering/constraining productivity improvement in an important Caribbean country⁹:

Environment/Culture

- i. Lack of widespread and general awareness and understanding of productivity and its importance to national economic and social development.
- ii. In the policy and regulatory environment, there is lack of information and data on national and sectoral productivity performance.
- iii. Distrust between managers and their employees.
- iv. A general lack of confidence in the system and economy, arising from (among others): (a) perception of inequity at the workplace as there is an absence of a clear link between effort and reward; (b) lack of meaningful worker participation in the decision-making process; and (c) entrenched political favouritism or nepotism which results in endemic corruption.
- v. *Paradigm paralysis* whereby the parties do not react readily to change, a cultural attitude of taking things "easy;"
- vi. Weak infrastructures, such as poor roads, inadequate transportation and lack of security of people, goods and services.
- vii. Outdated plant and machinery and inability to use available technology to access information and improve the process of productivity improvement.

Blurred Picture of the Human Resource Component

- i. In general, the workforce is perceived as merely a cost, not an investment or asset. Therefore, while staff reduction is a ready tool

for productivity improvement, retraining or reskilling is hardly so considered.

- ii. It is yet to catch on that productivity/competitiveness is fueled by economic, human and social capital.
- iii. Social harmony through industrial democracy, mutual trust and trade union rights is yet to be entrenched.

Interestingly, those findings can easily apply to any developing economy. They suggest the need for social dialogue, consultation, collaboration and cooperation among the social partners. In the workplace, these will mainly be employers and workers (and their representative organizations). Happily, they are already familiar with those concepts within the context of industrial relations. All that they are required to do is to build on that existing strength to take productivity improvement on board. Thus, building human competencies and social capital (mutual trust) is the *foundation* of the “high-road” approach to productivity improvement, which is based on the following principles:

1. a focus on creating value;
2. clear links between objectives, strategies, organizations, etc: a managed process;
3. a holistic perspective (total productivity, total organization, value-chain improvement);
4. participation, consultation, involvement, partnership, mutual respect and understanding;
5. communication and sharing of information;
6. enabling the human resource: skills and competence development; enabling work organization; good working environment; knowledge and information sharing; participation mechanisms and processes; and
7. Sharing of productivity gains; pay and remuneration; social services.

Some empirical evidence from the Caribbean

Under the auspices of the Programme for the Promotion of Management-Labour Cooperation (PROMALCO) project (see Box 1), the ILO Subregional Office for the Caribbean examined eight successful cases of productivity improvement based on management-labour cooperation

at national, sectoral and enterprise levels.¹⁰ Productivity was measured by looking at the following aspects:

- *Economic performance*, such as growth in per capita GDP (at national level), growth in profits, dividends and wages;
- *Quality of life*, such as creation of more decent jobs, improvement in living standards, more investment in human and social capital, and higher quality of human capital;
- *Environmental protection*, such as environment-friendly business practices, waste management at all levels, clean, safe and decent environment.

The key findings of the study are summarized in Table 2 and are in line with similar studies that have been undertaken in other parts of the world. The key points are as follows:¹¹

1. Productivity is increased not at the expense of the quality of working life and growing exploitation, but as a result of improving the quality of human resources.
2. Productivity is increased as a result of promoting creativity and

Box 1

The ILO Programme for the Promotion of Management-Labour Cooperation (PROMALCO)

PROMALCO was a project formulated by the International Labour Organization, Caribbean Office and funded by the United States Department of Labor, January 2001–October 2005. PROMALCO is the acronym for this ILO project *Programme for the Promotion of Management and Labour Cooperation*.

The purpose of PROMALCO was to initiate a change process that would overcome the legacy of adversarial industrial relations in the Caribbean and create conditions for cooperation, trust and partnership in the interest of safeguarding the competitiveness of Caribbean enterprises and creating opportunities for employment and decent work.

There has been widespread acceptance throughout the Caribbean region that changes in the international economic system have demanded that countries and enterprises address the issues of productivity and competitiveness as a matter of urgency, if the region is to secure a better quality of life for its citizens. In this context, a central purpose of PROMALCO was to assist the countries of the region to realize the full potential of its human resources, notably through work place partnerships and social dialogue.

- innovations, not excessive labour intensification.
3. There is sound and professional management providing good vision and leadership, running effective processes and empowering people.
 4. The human resources are considered as the precious assets to invest and develop, not as a cost item.
 5. There are sound workers' organizations with cooperative attitudes and good industrial relations.

Summary of Findings from Caribbean Studies

ISSUES		LEVEL OF ANALYSIS		
		National (3 cases)	Sectoral (2 cases)	Enterprise (3 cases)
1. Factors that prompted multipartite productivity improvement effort		- Poor economic performance - Global competition - Unacceptable IMF economic reform proposals	- Uncompetitive local mines and plants - Need to make public sector more enabling	- Failure of a pure technical approach to productivity improvement - Inefficient operations making huge losses - Need for socially-sensible restructuring
2. Stakeholders		Government, Private Sector, Trade Unions, Media, etc.	Government, Employers, Workers/ Trade Unions	Employers, Workers/Trade Unions
3. Process of strengthening partnerships		National Protocols	Memorandum of Understanding, Labour-management Committees	Joint Consultation
4. Key Results	Economic	Sustained growth in per capita GDP	ISO 14001 & 14002 certification, profitable operations	Customers per employee, Sales per employee
	Social	Growth in employment, improved pay, gain-sharing schemes	Employment growth, gain-sharing schemes, investment in staff development	ESOPs, growth in employment, staff development, education of children of ex-staff
	Environmental	Not reported	Reclamation, Restoration & Certification of mined-out lands	Waste control
5. Key success factors		- Champions - Trust	- Leadership commitment - Union cooperation	- Management commitment - Mutual trust - Labour leadership

[Source: Imoisili & Henry, *Op. Cit.*, p. 106]

- 6. There are strong institutions, transparency, democracy and participation in decision making at all levels, and involvement of all parties concerned.
- 7. There are good and attractive gains sharing and incentive systems, which reward achievements and contribution to productivity.
- 8. The macro- and micro-economic policies are sound, and there is a *high or at least acceptable quality of public administration and institutions.*

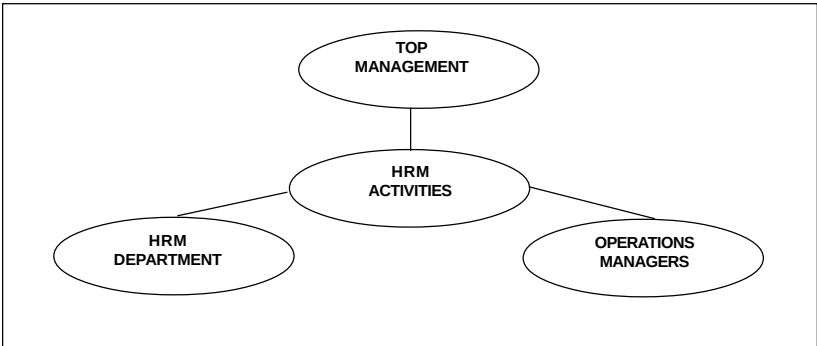
The Role of the HRM function

The foregoing suggests that the HRM function is no longer consigned to a lonely department but is now *an integral part of the management process with responsibility even up to the boardroom.*¹³ Consequently, top managers have to necessarily become involved in HRM matters in that the HRM function is now aimed at building and sustaining the human and social capital *for productivity improvement* (see Chart 1).

In order to promote the productivity culture in any economy, HRM practitioners must see themselves as champions, no matter on which side of the IR tripod they find themselves. The following roles are proposed:

- a. *HRM in Government should:*
 - 1. facilitate the process of mobilizing all the government departments that will be involved in productivity promotion activities;
 - 2. lobby Parliament and the Executive arm to create an enabling

Chart 1: New Human Resource Management Function



- regulatory environment to enhance productivity awareness and culture; and
3. lead in the promotion of ethical conduct and integrity.
- b. *HRM in Private Sector/NGOs should:*
1. network with trainers and consultants to assist micro, small and medium enterprises and entrepreneurs to set up/upgrade employee records, retrain or acquire new skills (notably IT skills), link up with markets, suppliers or work spaces (such as *cyber cafés*);
 2. lobby government to accelerate the regulatory framework to set up a National Productivity Council;
 3. work closely with the trade unions and workers' representatives and government agencies/departments to agree on protocols/memoranda of understanding aimed at harmonious industrial relations and productivity improvement;
 4. prevail on members with non-unionized staff to promote fair employment practices, occupational safety and health, and social dialogue.
- c. *HRM in Trade Unions should*
1. Work with the government and the employers to agree on protocols for establishing an national productivity organization as expeditiously as possible or strengthening an existing one.
 2. Develop new services and products to attract membership based on value-for check-off dues. That strengthens the union's influence over its members.
 3. Train members and leaders in strategic management, IT and productivity bargaining.

Conclusion

A nation's ability to compete globally is derived from the state and growth of its productivity, a great deal of it coming from how well the human and social capital are being employed. Enterprises should now see their employees as "human capital" (a growing asset) while the employees should see the survival and prosperity of their organizations as their own responsibility. As a *reward*, both the organization and its employees share in the ensuing prosperity brought about through improved productivity.

NOTES

1. Galbraith, John K., *The New Industrial State* [New York: The New American Library, Inc.; 1968], p.67
2. *Op. Cit.*, p. 82
3. Manpower, "Once more with feeling-People really are our greatest asset", *A new spirit of enterprise: Articles and Cases*(from the *ILO Enterprise Forum 99*) [Geneva: ILO, 1999], pp. 13-16
4. Perderson Jannick B. and Kjaergaard Birgitte, "Corporate Citizenship-The human workplace dimension," *ILO Enterprise Forum 99*, *Op. Cit.*, p. 63.
5. Manpower, *op. Cit.* , p.14
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Linking Trade and Labour Standards in an Era of Free Trade

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As the negotiations for the creation of an era of free trade continue, developed and developing countries maintain opposing views on the linkage of labour standards and free trade. Developed countries have been advocating such a link in response to pressures from domestic organized labour since 1996, when the United States of America (USA) and France proposed the incorporation of a social clause- the linking of labour standards with trade liberalization, in the World Trade Organization (WTO) agreement. Organized labour in the developed countries fear the loss of jobs to lower-wage developing countries. In the Americas, the USA and Canada are the leading advocates of the trade and labour linkage.

Many developing countries have refused to support the link of labour standards in trade agreements of multilateral trade negotiations. Despite the potential benefits of free trade in raising living standards, many countries fear that the wealthy developed countries with their stronger economies can easily use trade sanctions and protective measures to the disadvantage of the smaller countries in their export trade. Such a situation will lead to growing inequalities between the developed rich countries and the developing poor countries, and create insecurity in the labour market. Governments and the social partners - representatives of employers and workers, together can exploit the benefits of free trade to offset disadvantages associated with unrestricted free trade.

While they oppose the labour-trade linkage, Caribbean countries in the Americas have already committed themselves to complying with the International Labour Organization's (ILO) core labour standards embodied in its *Fundamental Principles and Rights at Work 1998*, attested to by their ratification of the relevant ILO Conventions. In order to promote and monitor compliance, a regional mechanism, the

Inter-American Conference of Ministers of Labour, was given the mandate at the Third Summit of the Americas held in 2001, to provide for appropriate consultations on labour matters pertaining to the FTAA.

A Government's responsibility through its Minister of Labour is to ensure *decent work* and adequate labour protection at the workplace through social dialogue. It is the responsibility of governments, as managers of the national economies, to take the necessary combined actions to advance economic growth, social equity and fairness in the creation of the Free Trade of the Americas (FTAA). In the spirit of good governance, that of ensuring participation, transparency, credibility and accountability, governments should proactively involve the social partners and civil society to obtain national consensus on measures for balanced economic and social development without sacrificing universally-acceptable fundamental principles and rights at work.

The Heads of Governments at the Third Summit of the Americas in the *Declaration of Quebec City*, agreed as follows:

We will promote compliance with internationally-recognized core labour standards as embodied in the ILO's Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted in 1998. We will consider the ratification of or accession to the fundamental agreements of the ILO, as appropriate.

In line with the position of the Heads of Governments, developing countries in the Americas, to which CARICOM States belong, recognize and uphold basic workers' rights as set out in ILO's core labour standards. It is argued that the monitoring and enforcement of these standards should remain within the domain of the ILO and its supervisory machinery, and that labour standards should not be integrated in trade agreements. The fear is that the linkage will be used to introduce new trade barriers, which can deny market access, and result in the loss of jobs through the collapse of vulnerable industries and enterprises.

In such circumstances, poverty will prevail, thus impacting on and endangering the prosperity of the whole region. In the words of the ILO Constitution: "Universal and permanent peace may be based only on social justice". The hemispheric community must also be mindful of the injunction of the ILO's Declaration of Philadelphia, which affirms that: "poverty anywhere constitutes a danger to prosperity everywhere". Persistent poverty is a threat to peace and stability. Poverty alleviation

and its rapid reduction is one of the testing challenges for the Americas in this era of free trade. The *Declaration of Quebec City* affirmed that free trade, without subsidies or unfair practices, along with an increasing stream of productive investments and greater economic integration, would promote regional prosperity, thus raising the standard of living and improving the working conditions of the people of the Americas.

The Caribbean Community (CARICOM)

The Caribbean Community (CARICOM) is comprised of member States, which are among the smallest and most vulnerable states in the world. They are described as “*small states*” from the perspective of the Commonwealth Secretariat and the World Bank Taskforce. These States are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Montserrat, Jamaica, St. Kitts-Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. Ten of these countries fit the definition of “*micro-states*” with a population of fewer than 300,000. They face enormous “development challenges in the global economy” relating to factors beyond their control, according to the *Commonwealth Secretariat/World Bank Task Force Report*. Such factors include:

- remoteness and isolation;
- openness;
- susceptibility to natural disasters and environmental change;
- limited resource, production and export diversification;
- limited capacity; and
- limited access to global capital markets.

The economies of the small States of CARICOM in particular, are vulnerable given the reality of their openness to trade, high export dependence, and adverse terms of trade for primary products. This severely limits their capacity for economic and social development. Their increasing loss of market access and job security as a consequence of international trade policy has exacerbated the situation which is compounded by the constant risk of natural disasters. Such disasters absorb a disproportionate amount of the States’ limited resources to

repair needed infrastructure. These are conditions deserving special consideration. Such special consideration includes the provision of resources for national development for these “*small states*” and “*small island developing states*” through a more equitable and just international trading system, which promotes economic and social justice in the global community.

CARICOM States are mindful that the USA has been enjoying a significant advantage in its balance of trade with the Caribbean, since the establishment of the Caribbean Basin Initiative (CBI) in the mid-1980s. Significantly, the Caribbean is the sixth largest export market for the USA. Hemispheric equity demands the implementation of measures to improve the Caribbean trade and investment position with the USA.

The tragic events of 11 September 2001, and their ripple effects on Caribbean economies, continue to severely impact on the Caribbean tourism and travel industry. These have also resulted in the diversion of scarce resources to meet new airport and other national security requirements, thereby putting further strain on their economies.

Challenges for the CARICOM

The Caribbean Community (CARICOM) faces urgent and compelling challenges:

- the challenge to deepen regional economic integration in the creation of the *CARICOM Single Market and Economy*, inaugurated in 2006;
- the challenge to establish new relationships with countries in the Americas under the process leading to Free Trade of the Americas;
- the challenge to maintain and forge new relationships with Europe; and
- the challenge of the global community in the World Trade Organization (WTO).

These challenges are compounded by global competition, trade liberalization, deregulation and privatization which exert tremendous pressure on established employment relations, job security and labour relations both in the private and public sectors.

The small, vulnerable economies of CARICOM States face the challenge to compete with large and strong economies, and to mediate the process of hemispheric integration - the *Free Trade Area of the*

Americas (FTAA). The FTAA challenges small, less developed countries to come to grips with the need for increasing competitiveness in the new international environment. These countries are constrained to prepare their economies for increasing competition in response to international trends favouring an increasing globalization of production and liberalization of trade. It is critical that they strengthen their internal capacity so as to improve their prospects for participation in the FTAA.

Many States have expressed concerns over the processes of globalization and the social consequences of trade liberalization referred to as the social dimension of the liberalization of trade. The Director General of the ILO, in his 1999 report to the International Labour Conference, noted that “Globalization has brought prosperity and inequalities, which are testing the limits of collective social responsibility”. These developments have implications for economic, social and human development.

Fundamental Human Rights and Development

Universal human rights constitute yardsticks to measure respect for human rights; and the State, with the support of the social partners and civil society, should at all times act as guarantor, protector, and promoter of the human rights of its citizens and persons residing within its borders and territories, including migrant and foreign workers. The ideals and principles of basic human rights are of enduring relevance and will continue to impact on employment relations in terms of opportunities and problems in the context of globalization, free trade, and the ever changing production systems with new technology.

The Governments of CARICOM States and their social partners are seeking to build national consensus on economic and social policy, with the view to develop a system of labour and social relations consistent with international standards, norms and principles. These standards and principles are reflected in policy, legislation and practice by corporate enterprises in these States. The principles are set out in international and regional instruments, in particular, the fundamental labour Conventions of the ILO. These fundamental labour standards are embodied in the *ILO Declaration on Fundamental Principles and Rights at Work*, adopted by the International Labour Conference in June 1998. The adoption of this ILO Declaration marked a re-commitment, a re-affirmation of the obligation of its 178 member States,

by virtue of their membership in the ILO, to respect, to promote and realize in good faith the principles concerning:

- a. *the rights of freedom of association and effective recognition of the right to collective bargaining:* ILO Convention No. 87 and ILO Convention No. 98.
- b. *the elimination of all forms of forced or compulsory labour:* ILO Convention No.29 and ILO Convention No.105.
- c. *the effective abolition of child labour:* ILO Convention No. 138 and ILO Convention No.182.
- d. *the elimination of discrimination in respect of employment and occupation:* ILO Convention No.100 and ILO Convention No. 111.

The principles of these core ILO Conventions establish a social minimum at the global level. Under the ILO Declaration, all member States of the ILO have an obligation to respect the fundamental principles involved, whether or not they have ratified the relevant ILO Conventions. These are internationally-recognized labour standards in social development, which will continue to impact on the conduct of labour and social relations in the future. Support for these labour standards was expressed in other international fora in recent years, notably at the UN World Summit for Social Development (Copenhagen, 1995), and the Ministerial Conference of the World Trade Organization (WTO) in Singapore (1996). The WTO Ministerial Conference unequivocally renewed global commitment to internationally-recognized core labour standards. The Conference also identified the ILO as the competent body to deal with, and set such standards, and further rejected the use of labour standards for protectionist purposes.

The ILO Declaration stresses that labour standards should not be used for protectionist trade purposes in any way. The expansion of free trade must not be premised on violations of fundamental human rights of employees. No link should therefore be placed between international labour standards and trade sanctions. The challenge is for the Government and the social partners in each country to ensure that there is a balance between economic growth, and social progress and human development.

The commitment to ILO Conventions by CARICOM States signals the desire of the Governments and the social partners in these States to:

- improve labour conditions;
- regulate in an equitable manner international mobility of labour;
- enact labour legislation in line with ILO standards; and to
- demonstrate an open commitment to international labour standards.

CARICOM States also recognize and accept that international labour standards serve as global benchmarks to:

- promote social justice;
- show the way to social and economic progress;
- influence corporate employment policies and practices;
- influence national policy and law;
- help prevent the danger of slipping backwards into the adoption of repressive legislation, policies and practices; and
- provide a good framework for the conduct of labour and social relations in an era of free trade.

The Caribbean Community envisions a conducive labour relations climate for economic development and articulates this through its *Protocol III on Industrial Policy – Article 49 (b)*, which calls for measures and proposals that will promote:

the objectives of full employment, improved living and working conditions, adequate social security policies and programmes, tripartite consultations among governments, workers' and employers' organizations, and cross-border mobility of labour.

This Protocol also calls for a greater awareness among community workers and employers that international competitiveness is essential for social and economic development and requires collaboration of employers and workers for increased production and productivity in enterprises. These are incorporated in the *CARICOM Revised Treaty of Chaguaramas Establishing the Caribbean Community and Single Market & Economy – Article 73 on Industrial Relations*

In February 1997, Heads of Governments of CARICOM signed a resolution adopting a *Charter of Civil Society for the Caribbean Community*. The *Charter* is adopted as an important element of CARICOM covering several matters of governance including:

free press; an open democratic process; the effective functioning of the parliamentary system; morality in public affairs; respect for fundamental civil, political, economic, social and cultural rights; the rights of women and children; respect for religious diversity; and greater accountability

and transparency in government.

(Charter of Civil Society for the Caribbean Community 1997).

CARICOM also in its *Declaration of Labour and Industrial Relations Principles* (April 1995) outlined the general labour and industrial relations policy to which the Caribbean sub-region should aspire. The CARICOM Declaration is consistent with international labour standards and other international instruments. It is an expression of CARICOM States' commitment to equity, social justice and fundamental rights and principles at the workplace.

CARICOM Member States' Record of Ratification

CARICOM Member States have a good record on the ratification and observance of the fundamental labour standards of the ILO. Their record on the ratification of ILO Conventions, as at 30 April 2006, shows that:

- **thirteen** member States ratified ILO Conventions Nos. 29; 87; 98; 105; and 182.
- **twelve** member States ratified ILO Conventions Nos. 100 and 111;
- **ten** member States ratified ILO Convention No. 138; and

These fundamental labour standards and principles are incorporated in the legislation of most States in CARICOM while in practice, all CARICOM States observe these standards.

The FTAA and CARICOM

Thirteen (13) independent CARICOM States are included in the thirty-four (34) democratic states of the Americas in the comprehensive trade negotiation to operationalize the FTAA. The aim of the FTAA in the series of negotiations by the various groups is to reach a balanced, comprehensive agreement in line with WTO rules on regional agreements. It is premised on enabling prosperity with the view to raising standards of living through increased economic integration and free trade via the reduction of tariffs, and the progressive elimination of other barriers to trade in goods and services and investment.

The FTAA negotiations, which are overseen by a Trade Negotiating Committee (TNC), have the potential for creating one of the largest free trade areas in the world with some 800 million people. Of relevance

to CARICOM States is the expressed commitment to actively facilitate the integration of the “smaller economies” in the FTAA process to enable them to increase their level of development. The *Ministerial Declaration* of the Sixth Meeting of Ministers of Trade of the Americas in 2001 reaffirmed their commitment to take into account the differences in the levels of development and the size of the economies in the design of the FTAA. This is to ensure that opportunities are created for the full participation of the smaller economies and that their levels of development are increased to enable them to enjoy the benefits of the FTAA.

Overcoming the Challenges

CARICOM States recognize the need for international cooperation and initiated action to address the situation. The sub-region created a free trade area since 1968 which has evolved in 2006 into the *CARICOM Single Market and Economy* to achieve free trade in goods (fully in force), free movement of capital, and free trade in service as well as the right to establish, own and operate business anywhere in the community by 2006. By Treaty commitment, the CARICOM countries have agreed to remove all restrictions to facilitate a fully operational *CARICOM Single Market and Economy* in a strategy to increase the resources to each member State for development. Simultaneously, CARICOM has been preparing to participate in the wider hemispheric free trade by negotiating trade cooperation and reciprocal agreements with other developing countries in the Americas to increase markets and stimulate competition in a strategy of open regionalism as follows:

- free trade with the Dominican Republic; and
- reciprocal trade and economic agreements with Columbia, Cuba, and Venezuela.

CARICOM is also pursuing negotiations for an *enhanced trade arrangement* with Canada, and is similarly preparing to engage the USA. These and other negotiations are facilitated by the Caribbean Regional Negotiating Machinery (CRNM), an agency of Caribbean Community (CARICOM) created in 1997 by CARICOM Heads of Government, to coordinate the participation of the Community in the external negotiations in which it is involved. It serves as the technical secretariat for the negotiating process.

Many CARICOM States have also been looking at the management and performance of their own economies and have taken actions to

adjust their policies. Accordingly, fiscal deficits, accumulated debt, and the need to manage public expenditure and balance the national budget, influenced public policy in these States to reform the state sector for greater efficiency. Governments have consequently attempted to stabilize public finances, review fiscal and tax measures, and adopt various policies and strategies to promote economic development and improvement in private sector performance to strengthen their national economies. But a strong national economy can only be sustained in growth if it is built on sound social and human development pillars, which can be supported by the benefits of free trade.

At the national level, the social partnership option adopted by the Government and social partners of Barbados is an excellent model for national consensus on social and economic matters. It has resulted in a series of national agreements or Protocols for social partnerships since 1993. These Protocols provided a solid foundation for economic growth and development for Barbados. This is the direction CARICOM States are attempting to pursue in order to balance social, economic and human development while upholding the fundamental principles and rights of workers.

Conclusion

CARICOM States will have no difficulty in considering support for the trade-labour linkage, as long as it is not in the context of trade sanctions or used as a pretext for new or disguised forms of trade barriers and protectionism, whether at the bi-lateral or multi-lateral levels. The ILO supervisory body should continue to be used to promote, monitor and ensure compliance in line with the mandate of the ILO and the position of the Ministerial meeting of Trade Ministers of the WTO (Singapore 1996). This can be supported and complemented by the regional mechanism – the *Inter-American Conference of Ministers of Labour* mandated to consult on labour matters pertaining to the FTAA.

The emphasis should be on the promotion of compliance with international labour Conventions, or the *Fundamental Principles and Rights at Work*; not on trade sanctions but on inducements, incentives, and rewards, taking into account the economic vulnerability of *small States* and *small island economies*. A transition period and preferential terms of trade should be part of FTAA negotiations and agreement to

enable all countries in the Americas to integrate in such a manner that hardship for the population would be minimized. The FTAA agreement should provide development support to ensure that there is prosperity for all the people in a more equitable manner, thereby reducing poverty. These countries need easy access to financial resources for development to meet the employment challenges arising from free trade. This is in line with the Ministerial Declaration of the Sixth Meeting of Ministers of Trade of the Americas referred to above, in which there was an expressed commitment to take into account the differences in the level of development and size of the economies of the States in the design of the FTAA. Additionally, it was agreed that consideration would be given to increasing levels of development to enable small States to enjoy the benefits of the FTAA. This was the case with the development of the European Union and integration of their weaker economies and certainly consistent with the subsidies provided to North American enterprises and industries.

The developed countries will be investing in their own and in global security by supporting in a more direct way the vulnerable economies of developing countries. The strengthening of vulnerable economies will enable support for human and social development, decent employment, improved income and living standards, and poverty alleviation. There will therefore be less pressure for migration, illicit drugs, and support for, or involvement in extreme activities affecting the security of all States. In the long term, developed countries will spend less to suppress illicit activities should they invest in greater economic and social equity in the Americas. This can be done by incorporating development-support trade rules in the FTAA agreement, which can provide the means and resources to enable balanced and rapid development of the small, weaker economies in the hemisphere.

At the UN Conference on *Financing for Development*, at Monterrey, Mexico, in March 2002, it was reported that Kofi Annan, the UN Secretary-General stated “We live in one world, not two”. The report also stated that the September 11 attacks on the USA underlined the links between poverty and terrorism. “No one” according to Kofi Annan “can feel comfortable or safe while so many are suffering and deprived”. Even President George Bush was reported to have acknowledged at the Monterrey Conference that terrorism drew many of its recruits from the vast pool of the world’s poor, and that military,

economic and diplomatic pressures alone could not succeed in putting an end to terrorism.

In line with the commitment to put in place measures to strengthen the economies of the less developed countries in the Americas as part of the FTAA process, it is expected that the wealthy developed countries in the hemisphere will use their tremendous economic power and resources to progressively reduce poverty, want and hunger in the American hemispheric community through a productive stream of investments and trade. The greater challenge is to create a more just world order for economic, social and human development. This new world order may require less military expenditure, thereby freeing up more resources for development.

The FTAA Agreement must provide the resources and strategies for rapid development and economic integration to facilitate the promotion of *decent work*, which is defined by the Director General of the ILO, Juan Somavia as follows:

Decent work means productive work in which rights are protected, which generates an adequate income, with adequate social security protection. It also means sufficient work...It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers' rights and social standards. (Report of the DG to the 87th Session of the ILC-Geneva 1999)

Decent work should be made available to workers of all members of the FTAA by the incorporation of the movement of labour in the FTAA agreement in a negotiated and regulated way, in the same way that other factors in economic integration are regulated by rules of trade agreements.

All States in the Americas are challenged to enforce the implementation of the core ILO Conventions and to bring their national, corporate and enterprise policies and practices more in line with these core international labour standards. The Governments, the social partners and civil society are aware of the new environment that requires approaches that will enable global competitiveness, attractiveness to investors, the creation of new employment opportunities, and which at the same time, meet the social minimum in labour standards. This requires a new consensus among developed and developing States in the Americas

- that of negotiating and fashioning an equitable FTAA agreement, that takes into account the special situation of small, vulnerable economies.

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