

**Workers' Protection:  
The Case of  
Trinidad and Tobago**

**Dr. Roodal Moonilal**

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## Foreword

In 1998, the International Labour Conference discussed a newly proposed instrument that was intended to enhance the protection of workers working under conditions of “contract labour”. However, it proved difficult to reach international consensus on what precisely the term contract labour represented. Therefore the ILO was requested by its tripartite constituents to carry out more research in order to determine the status of workers’ protection. The outcome of this research should then inform future discussions about the need to introduce new international regulations to better protect workers with atypical employment contracts.

Twelve countries were selected globally to conduct this research, including Trinidad and Tobago. Upon the recommendation of the ILO Caribbean Office, Dr. Roodal Moonilal was awarded the research contract for Trinidad and Tobago in 1999.

The research outline required a comprehensive review of the existing worker protection system in Trinidad and Tobago, including conditions of employment and remuneration, occupational health and safety conditions, social security, freedom of association, collective bargaining and access to justice.

Dr. Moonilal’s research findings were accepted by ILO Headquarters and, in conjunction with the research results of other researchers participating in the global research project, now provide the background document for the next round of discussions on workers’ protection at the International Labour Conference in Geneva in 2003, under the title of “Employment Relationship (Scope).”

In the light of the relevance of these findings for workers’ protection policies in Trinidad and Tobago and other Caribbean countries and because of the dearth of information in this area, the ILO Caribbean Office decided to publish an edited version of Dr. Moonilal’s paper as part of its Studies and Working Papers series.

Dr. Moonilal has, in the meantime, been appointed as Senator and as Junior Minister in the Ministry of Labour, Manpower Development and Industrial Relations.

Willi Momm,  
Director  
ILO Caribbean Office

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# Introduction

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The objective of this country study is to present an analysis of the status of “worker protection” in Trinidad and Tobago. In so doing the study will identify and describe the main situations in which workers lack sufficient protection and identify the problem areas occasioned by a lack of or insufficient protection for workers. This is done with a view to making recommendations and suggestions towards better effecting policies, regulatory mechanisms and avenues for worker protection. While an appraisal of the law and procedures is critical to the requirements for this paper, matters pertaining to wider changes in labour, work and organization are also critical in so far as they demand fresh policy approaches to current labour market dilemmas.

Precious little information exists on worker protection in Trinidad and Tobago. A lot of primary material exists on several aspects of labour and industrial relations. Topics such as labour history, labour market analysis, trade unionism and industrial relations law have dominated the purview of policy and the academic treatment of labour. The extensive legal framework introduced in the mid-1960s inspired several studies on the efficacy of legislative interventions from the perspective of employment regulation and the containment of industrial conflict. Direct reference to the labour administration and protection was

sparse. Based on a review of available labour-related material, one can say that collectively the topics covered included labour history, labour legislation and state-union relations. The approach utilized was either an analysis of the political economy framework or legal research. Some scholars<sup>1</sup> focused on analyzing labour market imbalances and evaluating the structure and functioning of industrial relations procedures and institutions. Hitherto, there has been little work on aspects of industrial relations outside of the industrial relations sub-topics and within the mainstream collective relations framework.

This meant that, given this predicament, there is little research to depend on for guidelines on how to conceive an approach or a model to describe and analyze the state of worker protection. This paper, therefore, uses a mixture of legal research methods such as analyzing labour legislation and a qualitative methodology in obtaining data on workers.<sup>2</sup>

## 1.1 Methodology

The study utilizes qualitative data in the main. Figures and tables are drawn from Central Statistical Office’s (CSO) data and trends from firm level data. Interviews were conducted with trade union officers, Industrial Court judges, workers and employers. This method was useful in

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<sup>1</sup>See Henry 1972 and Thomas 1972

<sup>2</sup>For a thorough discussion on methodology in Industrial Relations, see Strauss and Whitfield 1998.

obtaining anecdotal evidence with sharper insights into the real life problems encountered by several categories of workers. Secondary research was done on key concepts and linkages to other research outputs. Data was gathered from several sources, including the following:

1. The National Union of Domestic Workers (NUDE).
2. The All Trinidad Sugar and General Workers' Union (ATS/GWTU).
3. The Oilfield Workers' Trade Union (OWTU).
4. The Steel Workers' Union of Trinidad and Tobago (SWUTT).
5. The Estate Police Association (EPA) for data on the private security workers
6. The library of the Industrial Court.
7. Officials of the Central Statistical Office (CSO).
8. The independent transport companies.

Small groups of workers such as private security employees, truck drivers and store attendants were interviewed to cross-check and corroborate data obtained from the unions and the employers. This gives a more authentic account of the conditions facing workers.

The case studies of truck drivers in the haulage industry, salespersons in large stores, construction workers and low-paid workers in the Private Security Industry (PSI) are placed within a framework of distinct employment relationships.

An analysis of the shortcomings within standard wage-earning employment is also given in so far as they relate to worker protection and the features of a typical collective agreement. Particular focus is placed on how non-standard employment is integrated alongside regular employment and the problems encountered with this juxtaposition, from the perspective of the worker. The trends in the use of non-standard employment within established and/or unionized workplaces are alluded to in the context of changing labour relations. Such insights were obtained from trade union data and interviews with industrial and labour relations officers in the field. This research line brings to the fore the problems of disguised employment or misclassification of workers.

An overview of the "triangular relationships" with reference to the construction industry is also presented, where the status of all three principal parties is examined in relation to the duties and responsibilities inherent in the employment relationship. In this context, one notices the rise of disguised employment relationships which seeks inadvertently or otherwise to undermine worker protection and the freedom to associate.

This study places particular emphasis on the legal and procedural avenues for worker protection, representation and redress of selected categories of workers in the labour market. To this effect, extensive research of legal texts, legislative provisions and administrative guidelines which seek to protect those workers in question was carried out at the Ministry of Labour and the Industrial Court.



## 2. Framework for Analysing Worker Protection

The matrix presented in Table 1 is meant to conceptualize an approach for examining “worker protection”. Worker protection can perhaps be structured in three levels. The first one is that of basic or fundamental human rights such as the freedom to associate and organize based upon the ILO conventions and national laws<sup>3</sup>. The constitution of Trinidad and Tobago, at section 4, guarantees certain fundamental human rights and freedoms. Section (4,j) in particular, guarantees the *freedom of association and assembly*. The constitution provides for a fundamental right, which can find expression at the level of the workplace. The economy-wide

The secondary level concerns rights at work as stipulated by labour law or collective agreements. Examples are health and safety legislation, maternity benefits, retrenchment and termination benefits.

The tertiary level concerns economic and financial protection, such as social security coverage as expressed in pension and saving plans, etc. One can thus match such levels of protection with the current status of workers, whether they are covered by collective (contractual) or individual arrangements.

A distinction must be made between social security and worker protection. Social security is a vast area that includes state

**Table 1: Levels of Worker Protection**

Levels of Protection	Collective Arrangements	Individual Arrangements	Source of Protection
Basic	Guaranteed	Exist but not effected	Constitution, Administrative Orders, New Laws
Secondary	Guaranteed	May or may not exist	Laws, Collective Agreements
Tertiary	Some protection	Absent	Minimal statutory mechanisms and private arrangements

legislative protection afforded to all workers will also constitute basic rights, such as, for example, minimum wage and maternity protection.

and private protective systems for social, economic and financial security for the various strata of the citizenry. Worker protection, on the other hand, may refer to

<sup>3</sup>Particularly Convention No. 87, *Freedom of Association and Protection of the Right to Organize*, 1948; and Convention No. 98, *Right to Organize and Collective Bargaining*, 1949

legal and industrial protective measures geared towards protecting and enhancing the quality of the working lives of all citizens. At the secondary level, the rights and protection afforded will more likely be located in the body of collective agreements at the enterprise level.

This study intends to locate workers from the sectors selected (the case studies) within the matrix in Table 1. In so doing, a

consistent general framework is employed which allows for some comparative analysis across local industrial sectors and even across national labour markets. In terms of collective rights, one may also wish to note the movement away from collectivization with the growth of non-union workplaces and non-standard employment practices. Such phenomenon will be discussed within the selected case studies.

# Review of the Labour Market and Economy

## 2

The Trinidad and Tobago labour market has been undergoing pressures associated with the employment impact of structural adjustment programmes (SAPs). These strains have made the labour market more fluid and prone to fragmentation. New methods of labour utilization and work organization have both colluded to influence changes, while at the same time, those processes have been subjected to influences due to a measure of labour market rigidity.

Worker protection, or lack thereof, can thus be placed within the context of structural adjustment imperatives and their impact upon labour market institutions (trade unions, collective bargaining, employers' associations, etc.). The social and economic changes embarked upon since 1983<sup>4</sup> have had a significant impact upon labour and industrial relations. In turn, levels of worker protection can also be linked to the changing social and economic policy framework. Trinidad and Tobago remains an energy- and oil-driven economy in the main. However, over the recent years specific government policies have resulted in a lessening of dependency on the oil and petrochemical sectors. In the early 1980s, the oil sector contributed on average 25% of the country's Gross Domestic Product (GDP). This has been reducing over the years to the point where

oil revenues were contributing around 16% of the country's foreign exchange earnings by the mid-1990s. A profile of Trinidad and Tobago's GDP composition over the period 1997-1998 is provided in Appendix 1.

### 2.1 Impact of Structural Adjustment Programmes

The explicit conditions of the adjustment packages impacted upon labour and created an employment fall out. Trinidad and Tobago entered into the International Monetary Fund (IMF)/World Bank arrangements in late 1988. The country's first loan arrangement with the IMF was for US \$85 million under the Fund's Compensatory Funding Facility (CFF) in November 1988; the second, a Stand-By Agreement, was for US \$99 million in 1989. A structural adjustment loan of US \$40 million was negotiated with the World Bank in January 1990.

By 1992 the Government's external debt was estimated at US \$1,354 million and domestic debt at US \$5,202.1 million (Review of the Economy 1992). Between 1982 and 1992 external debt service increased threefold to US \$329 million.

In 1993 alone, the Government paid back US \$652.5 million in debt; this would have been higher had it not been for the fact that

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<sup>4</sup> *The process of adjustment in Trinidad and Tobago begun in the early 1980s. The Government had established a Commission (the Demas Task Force) to undertake a multi-sectoral development plan for the period 1983-1986. The ensuing report "Imperatives of Adjustment" recommended the creation of new export industries, the development of tourism and greater investment in the agriculture sector. (Henry and Williams 1991:309).*

Government had rescheduled the payment of almost US \$800 million in 1988. While the level of recurrent expenditure remained approximately \$6,239 million from 1983 to 1992, interest payment on external debt soared from 3.2% in 1983 to 20.9% of recurrent expenditure in 1992. The debt service ratio crept up from 23% in 1988 to 37.7% in 1992 and stood at 34.8% in 1993.

While such a financial leakage was taking place, public sector workers were subjected to an across-the-board cut of 10% and a wage freeze from 1983. Government's expenditure in the period of adjustment on the social services fell by almost 10% from 1987 to 1989; for example, expenditure on health which was 17% of recurrent expenditure in 1982 fell to 8% in 1989. In other words, real per capita expenditure on health fell from \$519 million in 1981 to \$197 million in 1991.<sup>5</sup> Similar declines were registered in education, infrastructure and on public transportation.<sup>6</sup>

The major conditions focused on curbing government expenditure, monetary and exchange rate policy and on price and import control.<sup>7</sup> This paved the way for privatization and divestment of state assets, trade liberalization, removal of the negative

list and the lifting of restrictions on the importation of subsidized foreign goods.<sup>8</sup>

On the employment side there was an expected decline in employment levels through retrenchment, downsizing and a range of voluntary termination of employment programmes (VTEP), a contraction in the public service, sub-contracting of auxiliary functions and public sector management reform.

In the period 1988-93, employment contracted in the petroleum industries by 13.4%<sup>9</sup> and 12.1% in electricity, gas and water. An interesting phenomenon is observed when many established, unionized enterprises go out of business and new non-union enterprises are opened. Between 1985-1993, 1,694 businesses went out of operation and 6,698 workers were retrenched in the private and public sectors.<sup>10</sup> In 1992 the Minister of Labour reported to the International Labour Organization (ILO) that 10,000 cases of retrenchment were reported to his Ministry between 1986-1990<sup>11</sup>. The retrenchment would have been a result of both liquidation/receivership and company restructuring. Table 2 gives the summary of the status of severance payments (inclusive of voluntary

<sup>5</sup> IADB Working Papers Report 1993

<sup>6</sup> Maharaj 1992: 75-79

<sup>7</sup> Pantin 1989:15

<sup>8</sup> For a general discussion on the implications of SAPs on the Caribbean state sector, see J. Khan, 1994, "Adjustment Programmes and Public Sector Management" (pp. 88-99) in J.G. LaGuerre (ed.) *Structural Adjustment: Public Policy and Administration in the Caribbean*. Trinidad: School of Continuing Studies (UWI).

<sup>9</sup> The petroleum sector employs less than 4% of the labour force even though it generates the bulk of export earnings.

<sup>10</sup> National Report for the World Summit for Social Development 1995.

<sup>11</sup> International Labour Conference, Provisional Record, 79th Session, Geneva, 1992, 10/1.

**Table 2: Summary Status of Workers Severed and Severance Payments  
(Inclusive of Voluntary Separation Plans) 1984-1994.**

Research and Planning Division, Ministry of Labour.

Location of Establishment	Workers	Severance Due (\$ mn)
<b>STATE SECTOR</b>	11,201	605.9
<b>PRIVATE SECTOR</b>		
Receivership/Liquidation	5,292	68.9
Restructuring	1,242	28.0
<b>TOTAL</b>	17,735	702.9

separation plans) for the period 1984-1994. Job loss was almost doubled in the state sector as opposed to the private sector.

The situation for workers was further aggravated by measures such as the wage freeze (1983), the removal of cost of living allowance (COLA) (1987), a 10% cut in wages and salaries (1989), excessive retrenchment with or without severance pay, lockouts and the replacement of collective agreements by individual contracts.

A study conducted by the University of the West Indies (UWI) indicated that in 1991 almost 25% of the population was living below the poverty line. The figure for those living in absolute poverty moved from 3.5% in 1981-82 to 15% by 1988. In 1993 a

World Bank Report on Poverty and Income Distribution in Latin America and the Caribbean estimated that the number of people living below the poverty line quadrupled between 1980-1990. This translated into 105,000 people living under US \$60 per month as compared to 27,000 in 1980<sup>12</sup>.

Hardships were compounded in the 1980s by such measures as currency devaluation<sup>13</sup> and implementation of a 15% Value Added Tax (VAT). The IADB Working Paper Report (1993) on Social Policy reported that in the decade of the 1980s real per capita GNP decreased by 60%, government expenditure declined by 25% and unemployment doubled.

<sup>12</sup> *Trinidad Guardian*, 28th July 1993, p.1

<sup>13</sup> The TT dollar was devalued (in relation to 1US dollar) from a rate of \$2.40 in 1976 to \$3.60 in 1985 to \$4.25 in 1988. In 1993, the dollar was floated, it stabilized at around \$5.80 for a long time until the end of 1996 when the dollar reached \$6.19. The dollar now trades at around \$6.30.

## 2.2 Post-Structural Adjustment Period

A snapshot of the labour force in the early 1990s, inclusive of the informal sector labour force, is presented in Table 3. Over 75% of the workforce can still be found in the formal sector, with 34.4% in the public sector. The majority of informal sector workers are found in personal services, artisan and craft production and small business. Wages are the highest in the public service, 60% more than in the private sector and as much as 150% more than in the informal sector.

The salient characteristics of the unemployed is the prevalence of youth

unemployment (42% of the unemployed are youths). On the question of employment, it must be borne in mind that unemployment has traditionally been high in Trinidad and Tobago.

Figure 1 shows the unemployment trends for the period 1973-1997. Before the oil boom, unemployment was as high as 15.4% (1973) and under 10% only during the early 1980s. As the employment effects of adjustment policies began to take hold within the labour market in the late 1980s, the unemployment rate hit a high of over 22% in 1988-1989. This problem of unemployment has remained acute, notwithstanding economic growth,

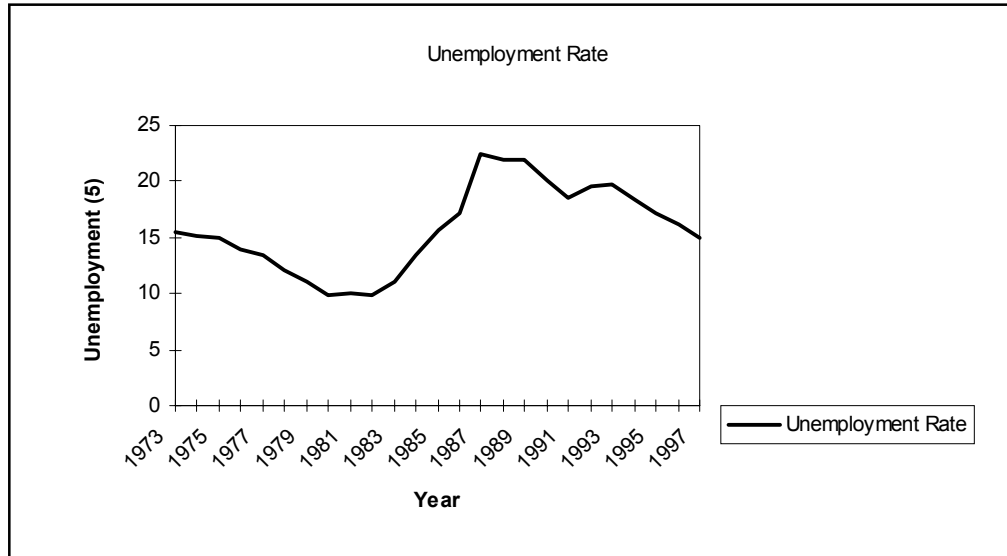
**Table 3: Characteristics of the Labour Force (1992)**

Characteristic	All T&T	Male	Female	Poor	Non Poor
<b>Labour Force Participation(%)</b>	60.2	74.8	44.7	56.4	61.1
<b>Employed:</b>					
Formal Public sector	34.4	34.1	34.6	20.6	36.6
Formal Private Sector	42.5	39.6	48.0	50.0	41.3
Informal Sector	23.1	26.2	17.6	29.4	22.1
<b>Unemployed (%)</b>	20.8	19.0	23.4	36.0	17.1
<b>Occupation:</b>					
Professional/Sr.Manager	8.8	9.4	7.7	2.0	9.7
Tech/Associate Professional	9.5	6.6	14.9	3.2	10.5
Clerks/Service	25.4	19.5	49.1	19.2	26.4
Agriculture	4.5	5.7	2.4	7.2	3.9
Craft	15.9	21.5	5.4	21.7	14.8
Elementary	35.9	40.0	28.2	46.6	34.7
<b>Mean Wages: (\$)</b>					
Formal Private	1500	1600	1300	700	1560
Formal Public	2300	2300	2300	1320	2360
Informal	900	1000	700	520	1170

Source: World Bank (1995) Report on *Trinidad and Tobago, Poverty and Unemployment in an Oil-based Economy*, p.16. This study used data from the 1992 Survey of Living Conditions (SLC) (N=4006 individuals).

<sup>14</sup> ILO Employment Promotion Report 1991

<sup>15</sup> Annual Statistical Digests, various issues

**Figure 1: Unemployment Rate 1973-1997 (Labour Force Reports, CSO).**

due to the traditional emphasis on investment in heavy industry and capital-intensive projects at the expense of investment in rural and smaller scale enterprises.<sup>14</sup>

in the late 1970s and early 1980s. Over 100 collective agreements were registered annually. However, the economic policy changes and the impact of industrial restructuring intrinsic to adjustment

**Table 4: Participation Rates By Sex (%) 1984-96.**

Years -	1984	1988	1993	1996
<b>Participation Rate</b>	61.6	57.9	59.5	60.5
Male	83.0	77.1	75.5	74.2
Female	40.8	39.0	43.7	46.8

**Table 5: Unemployment Rate by Sex (%) 1984-96.**

Years -	1984	1988	1993	1996
<b>Unemployment Rate</b>	13.4	22.0	19.8	16.2
Male	12.0	21.1	17.6	13.2
Female	16.2	23.7	23.4	21.0

Tables 4 and 5 show the participation rates for male and female in the labour market. Of significance is the increase in female labour force participation during the period 1984-1996.

### 2.3 Changing Status of Trade Unions

The trade unions were on the ascendancy

programmes meant that there were closures of businesses, retrenchment and downsizing in the public and private sector. In the early 1990s, the number of collective agreements registered at the Industrial Court often number less than 100.<sup>15</sup> By June 1988, there were 126 unions registered under the

Trade Union Act (1950). Only 25 of these were actively involved in representing workers by way of an enforceable collective agreement and dispute processing mechanisms.<sup>16</sup> As at December 1997, the Ministry of Labour listed the number of trade unions at 104.<sup>17</sup> Thirty unions/associations were dissolved or cancelled between 1992-1997. It is also interesting to note the new unions/associations that were registering in the period 1996-1997 - the Hospital Taxi Drivers' Association, two Maxi-taxi Drivers' Associations and a School Transport Association (operators of private school buses)<sup>18</sup>. Total trade union membership is difficult to ascertain since the majority of union/associations on the Ministry's list, do not submit membership figures.

Since Government's statistics on trade union density are generally poor, the membership records of the major unions must be relied upon in order to get a feel for the experience within the past two decades. The National Trade Union Centre, established in 1991 (NATUC) reported having 26 affiliates in 1992 and 27 by 1995.

<sup>16</sup> Ramsubeik 1990:99.

<sup>17</sup> Under the Ministry's classification "trade unions" include white collar staff associations, employee associations, producers' associations, retirees' associations and new associations of so-called "informal sector" workers (vendors' and maxi-taxi drivers' associations).

<sup>18</sup> Data from the Research and Planning Division, Ministry of Labour

<sup>19</sup> Labour Force Report 1996

<sup>20</sup> This is a general phenomenon, the falling number of union jobs was also observed in Britain, where there is a corresponding growth in non-union jobs, see "In the 1990s, the Union no longer makes us strong", *The Times* 13th September 1995, p.8. In OECD countries, the average union density dropped from 37% in 1975 to 28% in 1988 (*World Labour Report*, Vol. 5 ILO 1992, p.55). Between 1980-1990, density declined in Britain from 50.4% to 39.1%; in the United States density moved from a high of 35% in the 1950s to 17% in 1989 (Olney 1996:2).

<sup>21</sup> In the context of industrialized countries, several casual factors are advanced to explain union membership decline. They include factors such as the business cycle, the socio-political environment, public policy, employer avoidance strategies, inadequate union membership drives (the secondary organizer effect) and public opinion and attitudes (Chaison and Rose 1991: 10-40).

<sup>22</sup> Chaison and Rose 1991:13.

In the latter year, the NATUC claimed to represent 120,000 workers, which is approximately 30% of those actually employed (NATUC 1995).

In 1996 the country's labour force was registered at 530,400, with 444,200 employed.<sup>19</sup> Table 6 shows the membership figures compiled for the period 1980-1998. If we take membership levels as a visible indicator of a union's state of health, the situation is bleak. In the traditional unionized sectors, such as the transport and extractive industries and the public service, membership loss was dramatic.<sup>20</sup> One can debate the causes of such a decline in membership, however the scope of this study does not permit an intensive analysis of the reasons for the decline.<sup>21</sup> Among the several explanations, the structural shift hypothesis appears plausible. This asserts that membership decline is due to changes in employment.<sup>22</sup> However, this alone cannot explain the decline for several reasons.

Appendix 2 shows that although there has been a significant increase in the service



**Table 6 Membership Change for Major Trade Unions 1980-1998.**

Unions	Worker Area	Membership 1980	Membership 1993	Membership 1998	%Change 1980-98
Public Services Association (PSA)	civil servants	19,200	14,900	15,000	-21.9
Transport and Industrial Workers' Union (TIWU)	bus company manufacturing operations	5,500	3,000	1,300	-76.4
Oilfields Workers' Trade Union (OWTU)	oil, production and refining, chemical industries, manufacturing, agriculture	20,000	12,000	8,000	-60.0
National Union of Government and Federated Workers (NUGFW)	public utilities employees, government daily paid workers	45,000	20,000	20,000	-55.5
Trinidad & Tobago Unified Teachers' Association (TTUTA)	primary and secondary school teachers	7,000	8,800	8,000	+14.3
Communication Workers' Union (CWU)	airline employees, airport workers	2,550	2,200	2,024	-20.6
Bank and General Workers' Union (BGWU)	banks, finance, insurance and media employees	1,000	3,000	3,100	+210
All Trinidad Sugar and General Workers' Trade Union (ATS/GWTU)	sugar, range of workers in agriculture and manufacturing	18,000	10,000	8,000	-55.6
Steel Workers' Union of Trinidad & Tobago (SWUTT)	employees in the steel industry	500	900	833	+66.7
Total		118,750	74,800	66,257	-44.2

Source: Data based on NATUC's figures. Compiled by the Education Department, ATS/GWTU 1998.

sector, employment in manufacturing has not declined significantly relative to the labour force. It is also felt that with the "feminization"<sup>23</sup> of the labour force, many employees are located in industries not prone to unionization. One should, however, be careful of such a conclusion since women may not be doing jobs previously dominated by men, but increasing their presence in jobs of the type traditionally dominated by women.

Appendix 2 shows that the presence of women in the labour force increased markedly in the community service industry. However, this was always an area with a heavy concentration of women. When the increase in the labour force is taken into account, there has been little change in the pattern of the overall industrial composition of employment. Trade union membership levels have not been increasing although unemployment has been on the decline since 1989. The BGWU is the only union which appears on a growth path. This union grew by 200%, organizing the expanding finance industry workers<sup>24</sup>.

Table 6 presents a picture of the dramatic fall in membership of the major trade unions. This is further evidenced from the

fact that the number of collective agreements registered at the Industrial Court fell by 58.7% (from 600 in 1979-82 to 248 by 1993-95). It is also felt that the image of the trade unions has taken a battering during the 1980s<sup>25</sup>. This has been accentuated by organized business groups and a largely anti-trade union press. The new entrants to the workforce in the 1980s and early 1990s are generally young, female, part-time and in traditionally non-union areas such as the service sector. The union leaders believe that many new workers may not have an inclination to join a union. This may also be a result of the specific nature of their socialization at the home, workplace and within the wider society<sup>26</sup>.

While employment in the state and private sectors declined in the past decade, the Central Statistical Office (CSO) figures indicate that for the period 1989-1996 the number of employers increased by 51.3 % and the number of workers defining themselves as "own account workers"<sup>27</sup> (OAW) increased by 21.5%<sup>28</sup>. It is conceivable that many retrenched, voluntarily retired and severed workers started their own micro and small businesses in this period<sup>29</sup>.

<sup>23</sup> Defined as (i) the increase in female participation relative to men; (ii) the substitution of men by women over jobs traditionally done by men; (iii) the changing character of industrial work whereby jobs are decentralized with low pay and irregular with part time and temporary contracts (Chhachhi et al 1994:42).

<sup>24</sup> Unlike other unions the BGWU had adopted a policy of aggressively pursuing a membership drive. They then committed the financial and human resources specifically to organizing. Increasing union membership in the Banking, Insurance and Finance Sector has been a phenomenon observed in several European countries, see Sussex (1992:290).

<sup>25</sup> This was a position of all trade unionists interviewed. Generally the mainstream local media do not report positively on trade union actions and policies. This has led to numerous fights between trade unionists and the press. For insights into the biases of and techniques used by the press to construct and disseminate images of trade unions see Puette "Through Jaundiced Eyes" (1992).

<sup>26</sup> This view was expressed by the General Secretary of the NATUC and unionists from several member unions.

<sup>27</sup> A person who operates his or her own economic enterprise or engages independently in a profession or trade, and hires no employees (he/she may be assisted by unpaid workers).

<sup>28</sup> Labour Force Reports 1989, 1996, CSO, Port of Spain

<sup>29</sup> Between 1990-1995 the Small Business Development Company (SBDC) contributed to the establishment of over 1,000 small businesses.

# Employment and Non-Employment Relationships

3

## 3.1 Employment Relationships

The criteria defining an employment relationship are:

*“that a person has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward. The contract may be expressed or implied, oral or in writing, or partly oral and partly in writing and it may be a contract of service or apprenticeship or a contract personally to do any work or labour”.*

Those criteria are set out in the Industrial Relations Act (IRA), Chap. 88:01 of the laws of Trinidad and Tobago, section 2 (1). The above definition, according to the law, has been addressed in trade disputes and resultant judgements of the Industrial Court. An example is the case of the *Oilfields Workers’ Trade Union and Schlumberger Trinidad Inc. (1997) RSBD No. 4 of 1996*.

Over the last decade the number and percentage of salaried workers have increased on a whole, but not uniformly across sectors. There has been a decline in the sugar cultivation and manufacturing sector, in forestry, hunting and fishing. However, there has been increases in petroleum and gas, including production, refining and in the service contracting sub-sector; in mining and quarrying; electricity

and water; construction; wholesale and retail trades; restaurants and hotels; transport and storage and communication; finance; insurance; real estate and business services; and in the community, social and personal services.

Having defined a *worker*, an *employer* is defined in the IRA 1972, Chap. 88:01 at section 2(1) as follows:

*“An employer is a person who employs a worker and includes persons acting jointly for the purposes of collective bargaining; an association or organization of employers which is registered as a trade union and a person for whose benefit work or duties are performed by a worker under a labour contract”.*

### Protection for Salaried Workers

The principal instruments which govern wage employment are the IRA of 1972, the Retrenchment and Severance Benefit Act, 1985 and the Maternity Protection Act 1998. Salaried workers are well-protected by law in terms of conditions of employment, health and safety, social security, freedom of association, collective bargaining and arrangements for dispute resolution. However, one finds that in practice such workers are *inadequately protected*. This may be due to the trend of declining collective representation, as shown earlier, excessive administrative and

bureaucratic obstacles within the dispute resolution machinery and the cost of justice (time, money and workplace repercussions).

The most important “new forms of wage employment” in the country are fixed-term contracts of employment and so-called “independent contractor relationships” which are really disguised employee relationships. At times, the so-called temporary relationship is intended to be long-term and indefinite.

#### **Determining a contract of service**

There are certain presumptions that provide evidence of the existence of an employment relationship. A contract of service may be identified if the following conditions are present:

1. The employee agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some work for his employer.
2. The employee agrees, either expressly or impliedly, that, in the performance of the service, he will be subject to the control of the employer in a sufficient degree to make the person for whom he works the employer.
3. The other provisions of the contract are consistent with it being a contract of service.

In this context, it is essential that there must be a wage or other remuneration. The employee must be obliged to provide his own work and skill. Absolute freedom to do a job either by one's own hands or by another's is inconsistent with a contract of

service; the employee must perform the service in accordance with the employer's instructions. Control by the employer includes the power of deciding the task to be done and the way in which it should be done. All of these aspects of control must be considered in deciding whether the right exists in a sufficient degree to make one party the employer and the other his employee. The right of control need not be unrestricted. In order to determine where the power of control resides, it is necessary to look firstly at the expressed terms of the contract. If the contract deals fully with the matter, then there is no necessity to look any further. If the contract does not expressly provide which party shall have the right of control, then the question must be answered in the ordinary way by an assessment of the relevant factual circumstances.

In deciding whether a contract of service exists, the Industrial Court will look at the realities of the relationship and will not be bound by the label or description which the parties give to the arrangement. The Court will be entitled to look at all the surrounding facts and come to its own conclusion on the facts. These principles are based on English common law, which is applicable in Trinidad and Tobago.

There are, however, advantages and disadvantages to the above method of presuming an employment relationship. Firstly, the Court is allowed to determine the real substance of the arrangement for the purpose of deciding whether or not the person employed is entitled to certain protection under the law or is excluded under the law. The main disadvantage is mainly evidential, in that problems arise in obtaining the

requisite documentation for presentation to the Court.

There are indicators (features of the employment relationship) set out in legislation and developed in jurisprudence which enable judges at the Industrial Court to determine the existence of an employment relationship. Various criteria have been used for distinguishing a direct employment relationship from an independent contractor relationship. This essentially means distinguishing between *a contract of service* and *a contract for services*. The principal indicia of a contract of service have already been dealt with above.

#### **Contract of service vs. contract for services**

The following criteria have been used by the Courts to discover whether the contract is a contract of service or a contract for services, i.e. a non-employment relationship. It has been stated that the difference between a contract of service and a contract for services resides, essentially, in the terms of the principal obligation agreed to be undertaken by the employee. In a contract of service, the principal obligation undertaken by the employee is to provide himself to serve; whereas in a contract for services the principal obligation is not to provide himself to serve the employer but to provide his services for the use of the employer.

The control test has been one of the oldest applicable tests. The basis of the control test is that if the employer has the right to control the employee in the manner in which the work is to be done, the latter will be his employee. The right of control is still an important test but other tests are used in addition to the control test in deciding whether or not an individual is an employee.

The organizational or integration test is also a useful test. Is the employee considered to be part of the employer's organization? If he is, then he is an employee. There is also the economic reality test. Is the employee in business on his own account or is he engaged on the employer's business?

The present view of the Court is that no test is conclusive on the matter and the Courts will look at all the various elements of the relationship. The following are some of the more important elements to be considered:

1. The employer's right of control.
2. Whether the employee is an integral part of the business.
3. Who gets profits or bears the loss of the risk involved in undertaking the work?
4. Ownership of the instrumentalia and the onus to provide them.
5. Who is entitled to the exclusive services of the employee?
6. Who is responsible for the payment of wages, sickness pay and holiday pay?
7. Who has the right to dismiss or suspend the employee?
8. Whether income tax (PAYE) and social security contributions are deducted from the individual's remuneration.
9. The intention of the parties.
10. The Court's objective view of the relationship, having regards to all of the relevant circumstances.

Notwithstanding this expressed criteria for determining an employment relationship at the Court, several employers persist in attempting to disguise such an employer-employee relationship. Naturally there is no hard (official) data available for disguised

employment relationships. However, judges at the Court and trade unionists in the field believe that such disguised relationships are on the rise. Qualitative data does exist on the increasing trend to use contract workers in such sectors as construction and in private security.<sup>30</sup> While Thomas looks at contract workers across sectors, Moonilal deals with specific industry data, which suggest that disguised employment relationships are on the rise.

Independent contractor relationships and so-called managerial relationships are the trade arrangements most frequently used to disguise the employment relationship. The case cited earlier i.e. *Oilfields Workers' Trade Union and Schlumberger Trinidad Inc. (1997) RSBD No. 4 of 1996* deals with a dispute over termination payments which were denied on the grounds of the worker being a temporary employee.

In the event of a dispute, a worker must first establish the fact that he/she is a worker within the meaning of the relevant Act i.e. the Industrial Relations Act, Retrenchment and Severance Benefits Act and the Maternity Protection Act. Normally this is not a problem where the worker belongs to a recognized bargaining unit and is represented by a majority recognized union. If he/she does not belong to a recognized bargaining unit, he/she may be represented by any trade union of which he/she is *a member in good financial standing*, and will be required to show that. Usually the Court will have little problem in establishing whether or not a bona fide employment relationship exists. In cases of doubt, the union's records can

be examined. That apart, the Court can also look at the reality of the arrangements, specifically using the criteria as set out above. The Court will examine them and look at the reality of the arrangement in order to decide what the true arrangement is and not necessarily be bound by what the parties or either of them allege the arrangement to be.

### 3.2 Triangular Employment Relationships

Triangular employment relationships have existed in Trinidad and Tobago for decades, particularly in the oil industry where service contractors and sub-contractors provide a host of support services and goods to that industry. There are several types of triangular relationships. Firstly, where one person provides services or performs work for another person using the former's own employees and secondly where one person provides to another person the services of workers only under a labour contract. The principal types of triangular relationships are part-time workers and temporary workers who provide work through an intermediary, for submission to a principal employer. Triangular employment relationships are an integral part of the wider feature of contract labour.

#### Contract Labour

The term "contract labour" has no internationally-accepted definition. Depending on the writer and country/regions under study, various terms are used to refer to contract work and workers such as atypical workers, indirect workers, contingent

<sup>30</sup> See Moonilal 1998, chapters 4,5,6 and Thomas 1998.

workers, casual or temporary workers and non-standard employment. Contracting and sub-contracting can also be used widely and interchangeably. Therefore it may be more helpful to discuss the *concept* rather than a definition of contract labour. The ILO Report (1996) on Contract Labour<sup>31</sup> suggests that:

*the concept of contract work seems mainly to relate to relationships (either direct relationships between worker and enterprise or indirect relationships involving an intermediary) in which (i) the form of the relationship between the user enterprise and the workers concerned is that of independence and autonomy; (ii) the substance of the relationship is nevertheless asymmetrical because of the dependency of the worker on the user enterprise, resulting from the worker's organizational and technical subordination to the user enterprise. Thus the term contract labour is most often used to refer to situations in which the substance of the relationship appears to be similar to an employment relationship while the form is a commercial one, or at least where there seems to be some combination of employment and commercial aspects to the relationship established.*

This description of “contract labour” is used for a workable understanding of the term for the purposes of this study.

Cordova<sup>32</sup> identifies three broad types of contract employment:

1. Self-employment: while this is not new, it is no longer the exclusive purview of skilled workers but can include unskilled manual workers and those on the marginal sectors of society.
2. Atypical employment contracts: those that deviate from contracts of full-time wage employment by establishing *triangular employment relationships* in which a worker establishes occupational connections with several employers. These would include employment with temporary work agencies, sub-contractors, labour pooling, etc. A range of job practices can be found within this format such as part-time employment, short-time working, alternating work and rest (traditionally used in mining and extractive industries), fixed-term contracts, trial employment-and-training-cum employment contract; in this model continuity in employment is discontinued.
3. Clandestine work: this is also a rising form of atypical work which can be further sub-divided into undeclared labour (carried out beyond the reach of labour, fiscal and administrative law), family work and micro enterprises which operate outside of industrial regulations.

#### **Job contracting vs. labour only contracting**

At industry, two categories of contract work are discernible: *job contracting* and *labour only contracting*. Both of these

<sup>31</sup> ILO (1996) *Contract Labour. Report VI (1) for International Labour Conference 85th Session 1997*. Geneva: International Labour Office.

<sup>32</sup> E. Cordova. 1986. “Full-time Wage Employment to Atypical Employment: A Major Shift in the Evolution of Labour Relations?”. *International Labour Review*, Vol. 125, No. 643-645

categories may involve *triangular relationships*. The former occurs when a contractor agrees with a *user* firm for the supply of goods and services and undertakes to carry out this work at his own risk and with his own financial, material and human resources. The workers employed to provide the goods or services remain under the control and supervision of the second firm (contractor), which is also responsible for fulfilling the other obligations of an employer. The user enterprise makes payments to the contractor on the basis of the work performed or services provided and not on the basis of the number of persons employed and hours of work provided. Job contracting is a legitimate commercial activity which is governed by the principles of commercial contract law.<sup>33</sup>

*Labour only contracting* takes place where the exclusive or dominant objective of the contractual relationship is the supply of labour (rather than goods and services) by the contractor to the user enterprise. For this purpose the user enterprise may bring the contract workers unto its premises to work alongside its regular workers or it may have the work performed elsewhere. There are many variants of this model but all are characterized by the absence of a formal direct employment relationship between the user enterprise and the workers concerned. Under this arrangement, the workers engaged are placed under the control and supervision of the user enterprise while they are on the property of the user enterprise. Contractors

are paid by the user enterprise on the basis of the number of persons employed, not the finished product expected. Wages are normally negotiated and settled directly between the contractor and the workers. The power to hire and fire remains with the contractor, although the final choice of actually having a worker on the premises of the user enterprise rest with the latter.<sup>34</sup> In some cases, agreements between a contractor and the user enterprise are approved or negotiated by the trade union.<sup>35</sup>

#### **Contracting in /Contracting out**

While two main categories can be highlighted, in reality a variety of contractual arrangements embody a mixture of job and labour contracting. Job contracting can be further sub-divided into *contracting in* or *contracting out*. These terms have different meanings - the former occurs when the contractors undertake to work or provide services on the premises of the user enterprise, while the latter occurs when the contractor performs the job outside of the compound of the user enterprise. These two forms also determine where responsibility for labour relations belong, for example, *contracting-in* arrangements place issues of collective labour relations, health and safety and conditions of work squarely in the hands of the user enterprise. *Contracting out* has implications for the job security of regular employees, in particular if jobs are moving out of the user enterprise on contract and threatening the security of regular employees.

<sup>33</sup> ILO (1996) *Contract Labour, Report VI (1) for International Labour Conference 85th Session 1997*, p.7. Geneva: International Labour Office.

<sup>34</sup> *ibid.*, pp.7-9

<sup>35</sup> *In several unionized firms the union and employer may have specific provisions in the collective agreement that set out the conditions within which contract labour can be sourced. For more detail on this, see Thomas 1998.*



Arrangements between a user enterprise and a contractor can embody a mixture of all forms of contract work. A contractor can provide labour, jobs or both and undertake work within and outside the premises of the user enterprise (contracting in and out). These patterns of labour utilization can be triangular or bilateral, involving individual or group arrangements, gangs and the self-employed.

There are no separate legal provisions outside of the laws identified above which govern this type of employment. Like in the case of full-salaried workers, the workers in triangular relationships are adequately protected in law, but inadequately protected in practice.

### 3.3 Self-Employment (outside economic or other dependency)

From the information obtained from CSO officials, it is difficult to get an accurate statistical account of trends of this type of self-employment according to data from the CSO. Even data on the self-employed is difficult to discern. The CSO data present figures for the category of “employer”, as defined earlier, while there is a category defined as “own account workers” (OAWs), also defined earlier.

In the national statistics, an employer can also be *self-employed*, i.e. owning and managing his/her own business and in so doing, hire workers. However, someone who is self-employed i.e. running his/her own business but not hiring workers is clearly not an employer but an OAW. In this way the category of *employer* does not give an accurate picture of the self-employed, who may fall within that category but are left out because they hire workers. On the other hand the OAW category is clearly the self-employed but maybe not all the self-

employed. Officials of the CSO support this view.

Given the definition of an OAW, the CSO personnel agrees that one can use the figures for OAWs and cross-tabulate with figures for occupational and industrial groups to get a somewhat workable insight into trends in the category of the self-employed. By observing the self-employed – *outside economic or other dependency*, it is reasonable to assume that the self-employed in the categories of professional and technical workers would be subject to less dependency from those within elementary occupations. For example, a city lawyer or medical doctor or consultant (hiring no staff) would be an OAW in the *professional* category, while an OAW in an *elementary* occupational group may include street and stall vendors, domestic helpers, watchers and helpers.

What do the figures show? Over the period 1987-1997, OAWs in the elementary grades increased from 1,200 to 1,400. However, in terms of the structure of the group, it remained on average 1-2% of the population of elementary occupational workers. In the professional cadre, the movement was from 2,500 OAWs in 1987 to 4,400 by 1997, clearly a significant increase. However, this meant a movement from 5% to 6.5% in the population of those professional workers. These are the workers who would be *outside of economic dependence*. They are not dependent on a client or middleman for materials to produce a product. It is worth repeating that an employer may or may not be self-employed, while the category of OAWs includes more than the self-employed. However, these categories may suggest wider labour market trends and patterns in work organization and industrial relations.

While there is no particular definition of “self-employment”, as far as labour law is concerned, there are several accepted categories or circumstances of employment, which are regarded as self-employment. Some of these circumstances are where:

1. An individual carries on a business in which he himself is personally involved as a worker, e.g. he operates a shop or store selling articles or products to members of the public generally or provides some required service to members of the public e.g. travel agency service.
2. An individual personally provides a service to other individuals or persons and charges a fee for the services rendered, e.g. a licensed electrician or a skilled technician or a carpenter.
3. An individual who himself makes articles or products at home e.g. he makes hammocks, chairs, benches, food, etc. which he sells generally to the public.
4. An individual who is an owner – driver of his own motor vehicle which he uses for the provision of services to members of the public, e.g. a taxi operator, a tour operator or a small equipment operator.
5. An individual who is an independent contractor and offers certain services that he performs personally to another person under an independent-contractor relationship.

Except in the case of individuals acting as independent contractors, specific criteria of

self-employment have not been specifically defined anywhere and the categories of self-employment are not closed. The principal criterion of self-employment is that the self-employed individual must provide the work or services himself and not through others. These criteria are not set out in any particular text, body of laws or cases. However, as the case arises, and the status of a worker is questioned, oral evidence can be heard at the Court to establish whether an aggrieved person is a worker or self-employed.

Some of the main forms of self-employment in Trinidad and Tobago are: motor vehicle operators; food salespersons; gardeners; market vendors; newspaper carriers; those in professions such as medical doctors, consultants, lawyers, dentists; and others in the private practice of their professions. Self-employed persons can be called entrepreneurs and independent contractors in the local labour market. The number of self-employed persons is generally felt to be on the rise, but again no hard data are available. However, the trends in OAWs and individual entrepreneurs suggest that self-employment is on the rise.<sup>36</sup>

The self-employed person has a duty to comply with statutory regulations for payment of income taxes, health surcharge and national insurance. In terms of rights, it is possible, in an appropriate case, for a self-employed person to be included in the last segment of the definition of “worker” in section 2 (1) of the IRA by claiming that he/she is a person who works under “a contract personally to execute any work or labour” for another person, but such a case has never arisen. If he is so regarded by the Industrial Court, then the Court may

<sup>36</sup> Moonilal 1998. Chapter 5.

give him the required protection under the Act. If he is not so regarded, then he can only look to be protected under the normal law of contract. Unlike salaried workers and even workers in triangular relationships, self-employed workers are unprotected in law and in practice on all scores. While dispute resolution mechanisms are available at the Ministry of Labour, very few self-employed workers avail themselves of these avenues which are deemed to be costly and too lengthy.

Self-employed workers are also free to organize and associate. The fundamental rights illustrated in Table 1, are provided to all self-employed workers. While employers belong to employers' associations, Chambers of Commerce and an Employers' Consultative Association, the self-employed can and do form their own associations. In Trinidad, there are, among others, associations of vendors and taxi drivers.

### 3.4 Self-Employment in situations of economic or other dependency

Although not watertight, one can locate this type of worker within the national statistics. The self-employed in the "community, social and personal services" (which include such workers in repair, laundry and domestic services and personal household services) moved from 15,900 in 1987 to 21,700 by 1997, an increase of 36%. When one looks at a gender breakdown, we find that in 1987 there were 5,700 women in this industrial group. By 1997, this figure soared to 9,600, an increase of 40.1%.

In the group "wholesale, retail trade, restaurants and hotels" (which include workers at guest houses, hotels, restaurants and drinking places), it was found that there

was an overall increase of 7% between 1987-1997, among the self-employed. However, the figures for women increased by 12%, almost double the overall increase.

It is felt that much more workers opted for self-employment in the last decade. In this sub-category of the self-employed in economic dependency can be found persons who are theoretically self-employed but dependent on one employer or client for their supply of either raw materials and market or contracts to provide a service. The term "independent contractor" is often associated with this form of labour utilization. The peculiarities and problems associated with the misuse of the designation of "independent contractor" has been the subject of several Industrial Court judgements in Trinidad.

This also presents some labour and industrial relations problems. Over the years, employers have used this situation to keep workers on the payroll, yet claim that the workers are self-employed, and so avoid certain labour-related costs (benefits of collective agreements) and statutory liabilities (severance payments). In turn, the major issues have revolved around certain legal issues pertaining to the legal definition of a *worker* and the issues of a *contract for service* as opposed to a *contract of service*.

The burning question has been: When is a *contract worker* recognized in law as a *worker*? In the Caribbean, legal definitions of both employee and employer are based on nineteenth-century British common law i.e. the *master and servant* relationship and the formulation of legal concepts arising out of that bond. This is wholly unrelated to

contemporary employment relationships in the Caribbean and elsewhere. Indeed labour law has been slow to change in relation to the changes in the composition of the labour market and the changing organization of work.

A form of *legal flexibility* is discerned whereby firms are increasingly trying to gain legal recognition for a work relationship in which the principal employer is devoid of all responsibility as an employer and the worker is judged to be an independent contractor. The worker in this case has few legal rights as an employee and at the same time, has very little role as an employer since he neither sets the rates of pay nor conditions of work and work process.

As the contract for service becomes more of a norm than a contract of service, there are many implications for labour relations and the workers deemed self-employed or independent contractors. The Industrial Court is increasingly being called upon to determine the employment status of a worker and his/her ensuing rights to employment and termination benefits. Firms often attempt to prove that workers are independent contractors or "entrepreneurs" acting outside of the user firm. In Trinidad and Tobago's labour law, a "worker" is defined under the IRA Section 2 (1), CH 88:01 as:

*(a) any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward, whether the contract is expressed or implied, oral or in writing, or partly oral and partly in writing, and whether it is a contract of service or apprenticeship or a contract*

*personally to execute any work or labour;*

*(b) any person who by any trade usage or custom or as a result of any established pattern of employment or recruitment of labour in any business or industry is usually employed or offers himself for and accepts employment accordingly; or*

*(c) any person who provides services or performs duties for an employer under a labour only contract, within the meaning of subsection (4) (b); and includes*

*(d) any such person who -*

*(i) has been dismissed, discharged, retrenched, refused employment, or not employed, whether or not in connection with, or in consequence of, a dispute; or*

*(ii) whose dismissal, discharge, retrenchment or refusal of employment has led to a dispute; or*

*(e) any such person who has ceased to work as a result of a lockout or of a strike, whether or not in contravention of Part 5.*

While this definition is broad, it is also important to identify who is not a worker under the Act. Subsection 3 states:

*For the purposes of this Act, no person shall be regarded as a worker, if he is -*

*(a) a public officer, as defined by section 3 of the Constitution;*

*(b) a member of the Defence Force or any ancillary force or service thereof, or of the Police, Fire or Prison Service or of the Police Service of any Municipality,*

*or a person who is employed as a rural constable or estate constable;*

- (c) a member of the Teaching Service as defined in the Education Act, or is employed in a Teaching capacity by a university or other institution of higher learning;*
- (d) a member of the staff and an employee of the Central Bank established under the Central Bank Act;*
- (e) a person who, in the opinion of the Board*
  - (i) is responsible for the formulation of policy in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or*
  - (ii) has an effective voice in the formulation of policy in any undertaking or business;*
- (f) employed in any capacity of a domestic nature, including that of a chauffeur, gardener or handyman in or about a private dwelling house and paid by the householder;*
- (g) an apprentice within the meaning of the Industrial Training Act.*

Subsection 4 also states that *For the purposes of this Act -*

*4 (b) where a person engages the services of a worker for the purpose of providing those services to another; then, such other person shall be deemed to be the employer of the worker under a labour only contract.*

For the discussion on the status of a worker under the law, one must also examine the Retrenchment and Severance Benefit Act

(RSBA) No. 32 of 1985. Section 3. 1 states:

*This Act applies to persons falling within the definition of "workers" under the Industrial Relations Act with the exception of -*

- (a) subject to paragraph (d), workers who have not had more than one completed year of service;*
- (b) workers serving a known pre-determined probationary or qualifying period of employment;*
- (c) casual workers;*
- (d) seasonal workers, unless such workers are employed as part of the regular work force for at least three consecutive seasons with the same employer and for at least one hundred days each season;*
- (e) workers employed on a specified fixed-term basis or workers engaged to perform a specific task over an estimated period of time where these conditions are made known to the worker at the time of the engagement, and does not apply to independent contractors.*

Employers have therefore, five major categories within which they can manoeuvre and side-step the law. Not surprisingly, many cases going to the Industrial Court concerning contract workers relate to whether they are workers under the IRA (1972) and whether they qualify for severance payments under the RSBA (1985). In an early case, prior to the RSBA, No. 14 of 1970 *C.A. Correia*

*(Trinidad) Limited and Amalgamated Workers Union* (1972) the Court, in determining whether an employment relationship existed, asked the fundamental question; “*Is the person who has engaged himself to perform these services performing them as a person in business on his own account?*” If the answer is “yes” then it is a contract for service. If not, then it is a contract of service.

In two cases, Retrenchment and Severance Benefits Division (RSBD) No. 15 of 1992 *Communications Workers' Union and Besplate Trinidad Limited* (1994) and No. 47 of 1994 *Contractors and General Workers' Trade Union and Lake Asphalt of Trinidad and Tobago (1978) Limited* (1995), the Court ruled that the workers in question operated as independent contractors on a contract for services and as such were not entitled to severance benefits. Subsection 3 (1) (e) above was tested in the case RSBD No. 67 of 1986 *Premchand Ramsankar and Endeco (Trinidad) Limited* (1995) where the Court ordered the company to pay severance to the worker since the company failed in 2 years to “make known to the worker” or particularize the terms and conditions of its employment offer to the worker.

In other Commonwealth jurisdictions when the Courts were asked to determine the employment status of workers to adjudicate on severance payments, it appears that they did not attach much significance to the number of hours worked by an employee.

The Courts were conscious of contemporary employment practices whereby employers are well disposed to hire part-timers and casual labour. The more frequent the re-engagement and the greater its duration seem to be significant factors in establishing an employment relationship. Two Canadian cases, *Jaremko v A. E. Le Page Real Estate Services Ltd* (1987) and *Goldberg et al v Western Approaches Ltd* (1985)<sup>37</sup> brought to the fore the question of employment status. These judgements suggested that the Courts relied on such factors as subordination, the right to command, economic reality and social policy as opposed to semantic tests to arrive at a decision.<sup>38</sup> The Courts were in the process accepting that newer forms of work organization, home working and flexible work practices were changing the traditional nature of the employment relationship. Control could no longer be the single decisive test.

The above is meant to demonstrate that the category of self-employed can be the subject of abuse, where employers designate workers as “independent contractors” and seek to avoid the responsibilities of an employer. The criteria defining “independent-dependent” employment can be summed up as “where a person engages the services of a worker for the purpose of providing those services to another”. The criteria are set out in section 2 (4) (b) of the Industrial Relations Act. Other terms used in the local context are: contract worker, temporary worker, part-time worker and casual worker. These workers

<sup>37</sup> Both cases are quoted in *Marcelle* (1996). The full citations are: *Jaremko v A.E. Le Page Real Estate Services Ltd* (1987) 17 C.C.E.L. 262 (Ont.H.C.J.); *affd* 69 O.R. (2d) 323 (CA); *Goldberg et al v Western Approaches Ltd.* (1985) 7 C.C.E.L. 127 (B.C.S.C.)

<sup>38</sup> *Marcelle* 1996: 19-22.

can be found mainly in construction providing a range of services in oilfield engineering and general labour supply. They are usually recruited to supplement the regular workforce of the employer for whom they service, perform specific services or do special tasks which the employer cannot do using his own employees. In several cases, the “independent contractors” do seasonal work such as maintenance tasks during periods of shutdown. Therefore it is not in the financial interest of the employer to keep a permanent staff for such seasonal work. At times the work or service needed may be specialized and there may exist no in-house expertise in such areas (such as systems specialists, IT technicians, etc.).

These workers are generally regarded as part of the self-employed category. Where “independent-dependent” workers form a separate category, they differ from self-employed workers, in that their contract of employment is with one identifiable employer who pays them but another employer arranges their work and supervises them. These workers do not form a separate and stable category with any juridical status or instruments governing their work, thus they are by and large inadequately protected on all scores.<sup>39</sup> While actual figures are not available, it is the view of leading industrial relations practitioners that such categories of workers are on the rise.

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<sup>39</sup> *That is, the six areas identified in the ILO's outline - conditions of employment and remuneration, occupational safety and health, social security, freedom of association, collective bargaining and access to justice.*

# 4

## Case Studies

### 4.1 The Case of Truck Drivers

The number of truck drivers, like self-employed persons, is difficult to glean from the official statistics. As an occupation, truck drivers can be located in transport, service and sales. However, as an industrial group, they can be found in the workforces across all industries. One can report that based on the expansion in the construction industry and the mini-boom in that sector, recruitment of truck drivers has been on the increase. Interview data obtained from contractors in the construction road repair and building sub-sector suggest that the demand for truck drivers has increased over the past 3-8 years. The physical sight of innumerable heavy equipment on the nation's roads also suggests intuitively that truck drivers are on the increase.

#### Increased demand

The demand for truck drivers, like construction workers, is related to levels of investment in capital works and social infrastructure. The levels of activity in the building industry will also affect the demand for truck drivers. Thus it is likely that employers will keep drivers on a temporary basis. A lot of road works and residential construction projects will also be done in the dry season, thus demand is also seasonal. Construction companies usually keep a roster of drivers and simply call on them as the demand increases.

The conditions of work and terms of employment of drivers would differ

immensely depending on whether those workers are organized and protected or not. For example, drivers in the public service (for example, in the Ministry of Works) would be unionized and enjoy terms and conditions far superior than drivers employed by private contractors. There will also be differentiation within the private sector between workers in the employ of a firm that has a union and those where the union is absent. Table 7 gives a list of the non-wage benefits available to workers through a collective agreement in the service contracting sub-sector. This is based upon agreements in existence. These negotiated conditions are available to truck drivers in the employ of unionized firms.

#### Non-unionized settings

The conditions for drivers in non-unionized settings however, can be bad to horrible. The employment relationship is tenuous. Drivers are recruited with verbal agreements which spell out their wage only, and no other conditions of employment. Thus employers ask drivers to do any and everything from washing the trucks to doing private chores for the employer.

Management is distinctly authoritarian and workers are vulnerable. In some cases, certainly not all, employers will deduct monies for statutory payments of income tax, national insurance and health surcharge. However, the benefits outlined above are absent in the main. Workers can be fired



**Table 7: Non-wage benefits accruing to organized workers, according to Collective Agreements**

1. Medical benefits	17. Productivity allowance
2. Saving plan	18. Disturbance allowance, if worker has to move residence due to work
3. Paid sick leave and benefits	19. Subsistence allowance for travelling outside of place of work
4. Benefits for surgical operation and leave entitlement	20. Shift bonus
5. Good health bonus for unused sick leave	21. Completion bonus, when a job is completed before contracted date
6. Overtime pay, normally time and a half for first 4 hours, two times for next 4 hours and three times thereafter	22. Provision of all protective gear
7. Rest day pay	23. Protective clothing
8. Call back pay	24. Meal allowance when working away from firm
9. Frustrated work, guaranteed income if company ceases work	25. Acting allowances
10. Paid public holidays and rest days	26. Funeral leave
11. Paid annual vacation leave, entitlement for sickness leave when on annual leave	27. Leave for union business
12. Annual wage increment	28. Emergency business leave
13. Annual bonus	29. Study leave
14. Cost of living bonus	30. Jury leave
15. Fringe benefit bonus	31. Special leave - for sportsmen, artists, special reserve police, etc.
16. Incentive allowance	32. Severance service pay in event of retrenchment

without just cause (unfair dismissal), and if retrenched, severance payments are not forthcoming.<sup>40</sup>

Truck drivers can operate as dependent workers, within triangular relationships, as self-employed workers or as independent-dependent workers. Their employment relationship is secured if they are employed as *workers* within the meaning of the IRA 1972. However, their employment status is uncertain if they work in any other category or situation. The principal instruments

governing their work would be the Workmen's Compensation Act and their duties and responsibilities would be provided for in the Motor Vehicles and Road Transport Act.

Truck drivers are considered to be workers under the law if they work under a contract of employment with an employer. There are, however, truck drivers who own their own trucks and provide transport and haulage services for other individuals or companies. The latter category of truck drivers is not

<sup>40</sup>During the fieldwork phase for this study, the author learnt of a case where a prominent contractor in South Trinidad retrenched 14 truck drivers without paying severance payments. Those workers were organizing to take their grievance to the Ministry of Labour.

considered as workers but rather as self-employed persons. If they are workers, they are protected in the same way as other workers under the law. If they are independent contractors, they are only subjected to the terms and conditions of the particular contract into which they have entered and to the normal remedies for breach of contract. They are, of course, required to conform with the general laws of the country relating to the licensing and operating of vehicles and the transportation of cargo.

If truck drivers are workers, they are adequately protected under the law. However, in practice, they may be inadequately protected on all scores since many are without a bargaining agent or trade union. Unlike the situation in several other countries, the majority of truck drivers are not unionized in Trinidad and Tobago. If truck drivers belong to a recognized bargaining unit, their terms and conditions of employment will be contained in a collective agreement between the employer and the recognized majority union. If registered at the Industrial Court, the agreement is binding in law and may be enforced by the Court. If they are not in a recognized bargaining unit, then the only requirement is that they must be paid the minimum wage and other conditions of employment stipulated in the Minimum Wage Order.

#### **Conditions and Concerns**

There are several problems associated with truck drivers. Many drivers are required to drive defective trucks and to work in unsafe environmental conditions which could be detrimental to their health. Nevertheless, they sometimes prefer this state of affairs

rather than risk being unemployed. In interviews with drivers, one heard of stories whereby employers do not issue any terms of employment or give precise job descriptions. In this scenario, the employer can demand that drivers do any and everything. Drivers are often asked to take home the trucks to wash and polish on their own free time. Drivers also complained about doing tasks outside of driving such as loading.

If drivers are workers under the IRA, they will be subject to normal social security laws and will enjoy freedom of association and the right to bargaining collectively. However, this is in theory. In practice, workers are actively dissuaded from joining a union and assembling for the purpose of pursuing their interest. In the real world, most workers know that a trade union is considered a proscribed organization and an employer can find some means to retrench or dismiss an employee who appears pro-trade union. While truck drivers are in theory provided with the basic right to organize, in practice the fulfilment of that right is hampered by a system that allows for victimization and harassment.

#### **Procedure for resolving disputes**

If the truck drivers in question are workers under the law, administrative and judicial mechanisms are in place to resolve disputes. In the event of a dispute arising in the case of a person who is a worker, he is normally free to raise the grievance with his employer. If he is a member of a bargaining unit represented by a recognized majority trade union, there will usually be a formal grievance procedure in a registered collective agreement between the employer and the recognized majority union. There

are normally three or four stages in such a grievance procedure, depending on the provisions of the collective agreement. Union representation will also be allowed at the various stages. The employer or his assigned representative will listen to the worker's complaint and may or may not resolve it.

If the worker's complaint is not resolved, then the recognized majority union may report the matter as a trade dispute to the Minister of Labour under the IRA. When the Minister receives the report he will attempt to resolve the dispute by conciliation, provided that he is satisfied that the worker is a member in good standing of the union which reports the dispute. For this purpose, the Minister will invite the employer or his representative to attend a joint meeting with the worker and his union at which the matter of the worker's complaint will be fully discussed. If the dispute is resolved at the Ministry, the parties will execute a Memorandum of Agreement which is forwarded to the Industrial Court established under the Act, for entry as an Order or Award of the Court. When so entered, the agreement becomes legally binding on the parties.

If the dispute remains unresolved by the Minister, the Minister will issue an unresolved certificate in which he will certify that the dispute reported by the union on the worker's behalf continues to be unresolved. Either party may, in the case of an unresolved dispute, seek the intervention of the Industrial Court in resolving the dispute compulsorily. Upon receipt of a request by either party, the Industrial Court will then summon the parties before the Court, and after the observance of preliminary procedures, the

Court will hear and determine the matter by making a Compulsory Order for the determination of the dispute.

Where the worker is not included in a bargaining unit which is represented by a majority recognized union, there may be no formal grievance procedure which may be followed but he can still raise his grievance with his employer informally. In such a case, he will not normally be allowed to have a union representative present at the hearing of his complaint. If the grievance is not resolved and he wishes it to be determined by the Industrial Court, he may do so through any trade union of which he is a member in good standing. Such a union (a minority union) may report a trade dispute to the Minister under the Act. The same procedure as outlined above will then be followed for the resolution of the dispute by conciliation, failing which the dispute may be forwarded to the Industrial Court for hearing and determination. There is a right of appeal on a point of law, only, from decisions of the Industrial Court to the Court of Appeal, and, in certain cases thereafter, to the Judicial Committee of the Privy Council.

#### **4.2 The Case of Sales Persons in Department Stores**

Such workers normally operate as dependent workers. Consequently, their terms of employment are either fixed by an individual contract of employment or by a collective agreement if the workers belong to a unionized bargaining unit. In either case, they are subjected to the economy-wide Minimum Wage Order. The principal instruments governing their work are collective agreements, individual agreements

and the Minimum Wage and Overtime Orders. There exists no jurisprudence as guidelines governing their work. As a result, they remain inadequately protected in law and in practice on all grounds. An actual copy of an individual contract obtained from a store worker is attached (Appendix 3A). It is astonishing that while the duties of the workers are clearly spelt out, there is absolutely no reference to wages to be paid and provisions for overtime payment. Even the stipulation which involve "a lunch break" is in direct violation of recent minimum wage legislation which spells out the following conditions concerning meal break and lunch break:

*"A Worker is entitled to a meal break of no less than three-quarters of an hour after no more than four and a half consecutive hours calculated from the scheduled time of commencing duty and an additional rest break of no less than a quarter of an hour after a subsequent period of no more than three hours".* Section 4 (1), Minimum Wage Order 1999.

Clearly, the individual agreement does not recognize the provisions established in law that protect workers. The agreement is also silent on payments for working overtime and on Sundays and public holidays. In practice, workers are paid a "flat rate" for working on any day and any time. Many of the workers are employed in small stores which are subjected only to the Minimum Wage Order. Invariably, they are paid the minimum wage, and in some cases, less than the minimum wage. Such workers

generally work within safe environments, but in event of accidents, they are not aware of their rights. They should be covered by social security measures but their employers often discourage them (since the employer pays the costs) from registering with the national security authorities and so many of them are denied the benefit of social security legislation.

In theory, these workers are free to associate and are protected in doing so by the law. However, in practice they are actively discouraged with the fear of victimization and dismissals. They are therefore unwilling to join and participate in trade union activities. The majority of workers in this sector have no collective bargaining rights because they are not unionized. Again these workers have the basic rights as described in Table 1, however, in practice they cannot exercise those rights. Employers are also versed in adopting several union-avoiding and union-busting strategies which further frustrate the efforts of low-waged workers to organize.<sup>41</sup>

In terms of administrative arrangements for dispute resolution, they can avail themselves of the same procedures that are available to truck drivers, as described above. In practice, the store workers will not take up a dispute with their employer, since more likely than not, the employer will dismiss the worker, who will then be on the breadline for a long period without any source of income. The grievance handling machinery grinds on at a snail's pace. As one worker said, "reporting a dispute to the Ministry of Labour is as good as getting fired".

<sup>41</sup> See Moonilal 1994 for more union-busting techniques.

Several store workers and officials of the union that organizes this category of workers (the National Union of Domestic Workers -NUDE) were interviewed. It was amazing that the meetings with the NUDE were held in a cloak of secrecy, almost like an underground meeting. The workers, the majority being women, meet clandestinely at the office/home of the union's leaders. It was revealed that the members would hide from employers and will not disclose that they are members of the NUDE, for fear of victimization. Not surprisingly, the union has a very high turnover. Many women are afraid to openly join the union or participate in union activities.

### Conditions and Concerns

Workers raised several complaints during the meetings:

1. There is a dependent-independent relationship between the worker and her employer; she is dependent on him for orders, in the case of the seamstresses in the group.
2. When the Minimum Wage was introduced, several employers severed the relationship with workers and then re-hired them as independent contractors. Some even paid under the minimum wage.
3. Workers actually administrate themselves in that they do not receive pay slips and any official notification of statutory deductions. The women must keep private records of their hours and pay. In so doing the women do not sign for receiving monies. They are never certain that the employer makes the statutory payments (as opposed to deductions) to the government authorities.
4. Store workers often work excessive hours. When they work overtime on public holidays and Sundays, no payments are made for such work. There is a case of one such employee who works Monday to Thursday 8.00 am to 5.00 pm; Fridays 8.00 am to 6.30 pm and Saturdays 8.00 am to 2.30 pm. Of course during any holiday period, such as Christmas, employees in stores often have to work late into the night, until 10.00 pm. The women complain that they often work extra time at the flat rate, yet if they are five minutes late, the employer cuts their salaries. Incredibly, an employer pays a flat salary to one worker of \$56 per day, the minimum wage for 8 hours, yet the worker in question works over 10 hours per day. The employer deemed this "showing commitment to the business".
5. One employer had a novel way of offering a reward for working on public holidays, something to the effect of asking the worker to work on all but one of the national holidays. She was paid flat time for all the holidays worked and gained the one not worked as an off-day with full/flat salary. This is an unlawful rostering for the purpose of denying workers their overtime and premium rates for working on holidays and Sundays.
6. Workers often have to punch a time card for every break. At one store the employer was giving a twenty-minute lunch break; again this is in violation of the Order, which deals with conditions for lunch breaks.

7. The women in stores often have to wear uniforms to work, yet they are not provided with such uniforms. They must buy this out of their meagre salaries or if the employer provides the uniforms, he deducts monies for this purpose.
8. As can be seen from the agreement attached, workers simply do not have a job description. In such a situation, the employer can ask the worker to do any and everything. Women complain that employers hire them to sell in the stores, yet they often do cleaning of shelves, toilets and warehouses.
9. The women are also denied social security; there are no pension plans, medical coverage, sick leave or vacation leave.
10. The union also complains about the labour inspectorate at the Ministry of Labour, as being ineffectual and counter-productive. A case was told of workers and activists who actually got fired after the labour inspector visited their place of work.
11. The union's leadership also complained that even when an employer is found guilty of violating a labour code, he is not penalized as opposed to when the worker is found guilty of an offence.

### 4.3 The Case of Construction Workers

Construction workers can operate in several categories such as dependent workers, in "triangular relationships", as self-employed

workers and as independent-dependent workers. It depends on the nature of the individual arrangement into which they have entered. Many such workers are party to individual arrangements with their employers and very few construction companies have collective agreements with a recognized majority trade union. Therefore, it is either the individual contract of employment or the collective agreement which will govern their work. There are no jurisprudence guides relating to construction work, consequently construction workers remain unprotected in law and in practice on all scores. Accordingly, except in those cases where there are collective agreements, the rates of pay and other terms and conditions of employment are determined solely by their employers.

#### Health and Safety Conditions

It is in respect of health and safety where construction workers face the harshest of conditions. There is very little means of ensuring that the health and safety of construction workers are protected on a daily basis. In many cases, they are not provided with adequate safety gear. This issue of health and safety, as it relates to construction workers in the petroleum industry, has occupied the attention of the ILO since the early 1970s.<sup>42</sup> They are, of course, traditional problem areas but with a new and expanded scope. For example, health and safety associated with the use of information technology and state-of-the-art machinery.

While the national statistics on industrial accidents compiled by the Ministry of Labour does not provide any disaggregation

<sup>42</sup> See *Social Problems of Contract, Sub Contract and Casual Labour in the Petroleum Industry. Report II, International Labour Organization, Programme of Industrial Activities. 1972. Geneva: International Labour Office.*

by status of workers involved, the reports from trade unions suggest that accidents involving contract workers are also increasing in relation to construction employees. Trade union officers interviewed report that more and more accidents occur involving construction workers on contract. However, these often go unreported or unpublicized since no union is present to “make a big deal out of it”. They also testify that many contractors simply do not put aside financial resources to ensure a safer workplace. They will make the investment only if they are convinced that a safer working environment will save money. The unionized companies take safety seriously, since they pay for accident leave, medical expenses and loss-time injury. Other companies also promote safety policies as part of ISO9002 criteria.

Many contract construction workers in Trinidad and Tobago are generally younger and may lack the high degree of training and experience of standard employees. Some contractors do not appear to have the incentive to train workers since they complain about the turnover rates among trained workers and secondly, very few contractors have the overall facility-specific knowledge required to provide training.

Within the firms contacted, several would just require contract workers to have a certificate in their specific skill, a letter of recommendation testifying to experience, and such forms as a medical certificate. In a few cases, workers would have to pass a physical and take a drug test.

At the user enterprise, however, in addition to those tests, new workers usually work for 3-6 months as an apprentice with senior employees and do periodic examinations and refresher courses to upgrade skills and knowledge in health and safety, human resources, communications and even hygienic standards.

It was found that health and safety was more of a concern for those contracting companies specializing in technical work than for the general contractors. Stringent safety policies and practices obtain in the specialized companies; they often replicate the safety programs of user firms. Consistency with ISO requirements also dictate safety training initiatives.

#### **The case of a steel company**

The case of a steel company is instructive in any discussion on health and safety at the workplace. Data obtained by Moonilal<sup>43</sup> over a four-year period of field research can illustrate the problem.

Notwithstanding a massive investment in safety, the company was dogged by health and safety issues, which naturally became grave industrial relations concerns. The status of safety on the plant has been a perennial complaint of the union and a useful whipping horse in times of industrial tension. The year 1996 had been one defined by much industrial upheaval surrounding health and safety and environmental issues. Between December 1995 to the end of January 1996 there were no fewer than 3 serious cases of injury to groups of workers.

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<sup>43</sup> Moonilal 1998: 143-147

Several accidents occurred in the short period December 1995 to July 1996. Due to their severity, further suspicion was cast upon safety conditions at that company. A

following unsafe work practices, working without proper safety gear) to meet demanding production targets and earn extra income. Additionally, construction

**Table 8: Company Safety Records 1989-1995 (from Annual Reports).**

<i>Year</i>	<i>1989</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>
No. of First Aid Cases	1285	1335	1359	1319	1015	1781	1371
No. of Loss Time Injuries	181	151	141	110	86	106	109
<b>Total</b>	<b>1466</b>	<b>1486</b>	<b>1500</b>	<b>1429</b>	<b>1101</b>	<b>1887</b>	<b>1480</b>

catalogue of the accidents read as follows:

2<sup>nd</sup> December 1995 - three contract workers are injured when a heat shield falls from an overhead crane.

27<sup>th</sup> December 1995 - an explosion, two contract workers burnt, no compensation forthcoming, one contract worker files a civil suit against the company claiming compensation.

8<sup>th</sup> January 1996 - an explosion, two contract workers incur burns.

8<sup>th</sup> May 1996 - an explosion, four workers (two contract workers) injured, the union claimed that seven workers were involved but only four were treated for injuries.

6<sup>th</sup> July 1996 - a welder is burnt while working on heating a gear for extraction in the central services welding shop.

8<sup>th</sup> July 1996 - a contract worker's finger is severed when a barrel falls on his hand; he was trying to move the barrel manually.

9<sup>th</sup> July 1996 - a fatal accident kills one contract worker.

The union claimed that workers, in a bid to earn the production incentives, were taking undue risk (using defective equipment,

workers on contract were exposed to greater risk since they were called in to perform jobs that regular workers shun due to safety concerns. The contract workers were coerced to undertake these jobs since refusal often meant dismissal.

Not surprisingly, many of the accidents during the year involved contract workers. Contract workers interviewed indicated that a practice existed whereby workers would wear safety boots and helmets to get onto the plant, (a requirement at the gate) then take it off and pass it out through a hole in the fence or via one worker going out for other contract workers to get in. Therefore, at any one time, many contract workers were without safety boots and helmets.

Even the safety figures are also a source of dispute. The company can and does marshal data (Table 8) to suggest that accidents (in different classifications) have been reducing over the years. Although the company's international rating in terms of accidents in the steel industry is above average, the union claims that they are using "statistical conmanship", since the company's figures do not include accidents of construction



(contract) workers. The union adds that loss time due to accidents is calculated if the injured worker takes accident leave. In many cases, workers are influenced to take sick leave to cover loss time due to accidents. Furthermore, an accident only qualifies as loss time if the worker is home on accident leave for three consecutive days and over, but workers, the union contends, are forced out to work before the three days expire. What this means is that the company's safety data may be significantly deflated.

Several employers of construction workers are also small scale or roving contractors who recruit labourers and pay an agreed wage for the day work or task work. The employer regards the worker as temporary and do not conform to social safety laws.

### Organization of Work

In terms of work organization for construction workers, outside of a bargaining unit, one can think of the following areas:

1. **The duration of the contract** - Employment relationships are neither of a continuous nor unspecified duration. Instead, the relationship has a specific termination date and/or the job performance is interrupted. The social relationship underlying the contractual tie is also time-specific.
2. **The duration of work** - The increase in part-time work, the hiring of peripheral workers within the wider labour market and its increased propensity within the contracting sector is indicative of attempts to alter the employment relationship. It may include a reduction in normal working hours (*horizontal* part-time), or by full-time work being done on alternate days

(*vertical* part-time) or job sharing and job alternation in combination with an unemployed worker.

3. **The place of work** - Work is carried out outside the central place of production (i.e. the plant or firm). Due to the nature of work and the technical capability of managers today, one cannot depend on control (in terms of *what, how and when* work is performed) to indicate subordination but increasingly, subordination has to be measured in terms of the link between work and organization. Again, an abundance of case laws on contract disputes in the Caribbean and on both sides of the Atlantic seek to address this contemporary dilemma. Increasingly, the relationships became bilateral between the employer and the individual concerned. In the case of *triangular* relationships involving the worker, the user enterprise and the contractor - the worker is usually legally bound to the latter although socially and economically dependent on the former.
  4. **The bilateral individualistic relationship** - Increasingly the relationship becomes bilateral and individualized, as there is a movement away from collective relations.
  5. **The availability to work** - In the classic model of employment, subordination consist of being both materially and legally available to work (a worker is still bound on contract even though on holidays or ill). In the new model a *pre-contractual* situation arises whereby the worker promises to work (labour on call). There is no legal protection to such workers since such subordination is not juridical but socio-economic.
- The impact of these processes on labour

organizations and the terms and conditions of workers is a significant development in labour-management relations. The adoption of any form of labour utilization depends upon the production process (including technological innovations) and the product and labour markets within the given industry.

### **Product Market**

The central characteristics of the product market for construction firms, which affect freedom to organize, are:

1. **Fierce competition among firms** -

This means that employers are prone to cost reduction strategies in an industry where firm size ranges from multinational subsidiaries to self-employed contractors. When interviewed, managers were quick to point out that competition from newcomers in the industry led to a greater need to use labour only on demand. They also bemoaned the fact that this affects training, since companies are reluctant to invest heavily in training when the beneficiaries would rapidly move on to competitor firms either for better terms and conditions or when another firm gets a bigger share of the local contracts. In this scenario, workers must seek to upgrade their skills outside of the firm via state and private training programmes since the employer may not deliver much skill transfer apart from narrow job-specific training.

2. **Demand is highly volatile** - The level of foreign investment reflects the state of the construction sector at any given time. Investment levels have fluctuated sharply over the last decade and so has employment levels in construction. The

large companies are insulated from this effect since they also operate within the regional market and are less affected by fluctuations in the local market. The large firms can then encourage company loyalty and offer good terms and conditions of work in line with trade union demands. Therefore it is the smaller firms which have a disincentive to maintain a stable, permanent workforce. Generally, the construction sector is highly localized and labour demand depends upon government's investment policies, conditions of welcome for foreign investors (price of gas, preferential rates for infrastructural requirements) and the flow of contracts.

The volatility of demand is compounded by weather dependence and seasonality, in that construction work escalates during the dry season. Even then unexpected rainfall can hinder work. Additionally, many of the user enterprises take advantage of long holiday weekends such as the annual Carnival holidays in February or March and the Easter weekend to embark upon planned shutdown and maintenance operations. Many contract workers are not entitled to overtime or premium or triple time rates for working on such holidays.

3. **The ease of entry** - The industry is characterized by ease of entry at the lower end resulting in a large number of small firms. This leads to price competition, pressure for cost reduction and an associated preference for using casual labour as opposed to permanent workers. The volatility of labour demand means that contract labour is well-suited for this industry. Because of this ease of entry, new, inexperienced contractors

can quickly register a firm, outbid traditional firms and make a quick profit. This condition encourages fly-by-night operators. These companies leave behind unpaid wages and redundancy liabilities. They often change names, relocate and begin operations anew.

Indeed, the character of the product market lends itself to the use of non-standard employment. Furthermore, work organization and work processes dictate that contract workers in the construction sector are by definition fluid and difficult to organize. The following characteristics are noted:

1. The processes are highly sequential, differentiated and discrete, each requiring distinct trade skills and tools. Beginning with site preparation (excavation - demand for backhoe operators, heavy equipment drivers, very few labourers), moving onto construction (requiring builders, fabricators, masons, carpenters), then to electrical and instrumentation specialists all the way to mechanical and piping works. Even when the construction phase is completed, many contractors retain agreements to do “shut downs”<sup>44</sup> and maintenance operations. Because of this production process each specialist tradesman is only employed and needed for a relatively short period of time. They then make way for the next group of tradesmen for another specific role in the production process. This can also mean making way for an altogether new contracting firm which specializes in the next production process, for example,

from site preparation to plant construction. Hiring is therefore for a limited time. Workers may remain employed by a firm only if more contracts are forthcoming.

2. Production processes are mainly skill - intensive. The use of unskilled labourers is limited to particular aspects of production such as dredging, loading materials and watchman services.

### **Labour Market**

Features within the labour market also militate against organization.

1. During boom periods, the construction industry attracts a host of newcomer firms each looking to make use of ties to the large contractors or state enterprises. Employment is transitory. Workers move in and out of jobs as demand requires. These workers are therefore not prone to agitating for employment security, unionism or even industry safety standards which core workers are concerned with. Their main concerns are offers of work and quick pay by cash. The workers constitute an itinerant workforce of contract workers. A high labour turnover again does not lend itself to stable and secure employment with any corresponding desire for worker organizations. Interestingly, many workers have also given up on the prospect of getting stable, full-time jobs with all the benefits of unionism. Construction workers seem to feel that such ambitions are unrealistic when every day they see union members being retrenched and the large unionized firms

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<sup>44</sup> Referred to in the United States as “renovation and turnaround jobs.”

- closing down or downsizing. They place a high value on a series of short-term jobs.
2. Low job security and fluctuations in wages also characterize construction work.
  3. Workers, by virtue of being transient, do not develop a collective consciousness. Many workers are not only uninterested in organization, but their individualistic nature also makes them anti-union. In addition, workers are deployed at several locations simultaneously; little contact is possible even among workers within a firm. It was revealed that at times, workers did not know if co-workers are even in the country since they may be abroad on job contracts. Historically, the rapid mobility and isolation of the workforce also account for their propensity to remain non-unionized.<sup>45</sup>

With collective bargaining in the construction industry almost non-existent, workers must avail themselves of the dispute resolution machinery described earlier, which is available to all workers.

#### 4.4 The Case of the Private Security Industry Workers<sup>46</sup>

The private security industry (PSI) workers are today a mainstream workforce in most industrial societies. This industry has

expanded rapidly in the developing Caribbean states. There are several reasons advanced for the growth of the PSI. The industry can be seen as a result of the global demand for security commodities and services. In the late 1980s one witnessed the escalation in insecurity within Trinidad and Tobago as tight budgetary conditions impacted upon the effectiveness of the state protective agencies. Industrial restructuring at the level of the enterprise also heralded in such an escalation in the use of private policing. Many firms, faced with the prospect of competition and the need to enhance efficiency and productivity levels within the organization, were determined to cut employment costs by resorting to the casual/contract systems to provide ancillary services previously done in-house. In this regard, such services as cleaning, mail rooms, and security were contracted out. Internal security departments were closed down and security was either outsourced from established private firms or by offering individual contracts to previously full-time staff. Such security contracts are provided by an assortment of large and small firms catering to different segments of the market.

A profile of one large firm will give an indication of the magnitude of the private security industry. Securicor is a joint venture between the largest conglomerate (Neal and Massy Holdings Limited), Securicor

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<sup>45</sup> Report II for Petroleum Committee Meeting ILO: 1972:32.

<sup>46</sup> For the following discussion on the case of the Private Security Industry (PSI) workers, fieldwork which was conducted by Moonilal in the period 1996-1998 in Trinidad was relied upon. Data obtained was used for a chapter in a thesis "Changing Labour Relations and the Future of Trade Unions: A Case Study of Trinidad and Tobago". PhD thesis, 1998, Institute of Social Studies, The Hague.

<sup>47</sup> Neal and Massy Holdings Limited is the largest private sector company in Trinidad and Tobago, ranked by number of employees (6,736). It has an asset base of US\$82mn, 16 subsidiaries and 10 associates (August 1992).

International of England and the Republic Bank of Trinidad and Tobago (the largest commercial bank in Trinidad and Tobago).<sup>47</sup> The second largest commercial bank, the Royal Bank, also has its own security company subsidiary. As of 1995, Securicor provided guard service at 146 sites throughout Trinidad and Tobago. The company monitors alarms at 746 premises and provides patrol and/or response service to 702 properties. Its cash-in-transit service handles cash movements for several major commercial banks and collects cash from over 435 customer sites each day. The company employs 800 workers and has a fleet of 70 vehicles.<sup>48</sup> Sixty-five percent of Securicor's workers are *casual*.

The exact number of firms operating in the PSI is unknown. An estimate based upon information from those interviewed suggests that there may be between 150-200 firms in existence. The yellow pages of the Trinidad and Tobago telephone directory lists over 200 such firms. It is conceivable that there may be other firms in existence but not advertised.

On the supply side, the surplus of young, relatively unskilled (and without much formal education) male labour lent itself to the establishment of a cheap pool of recruits eager to earn small salaries. The guarding sector of the PSI is labour-intensive and often provide a haven for young, untrained, early entrants to the labour market. The PSI employs approximately 40,000 workers, a

significant 9% of the employed labour force. The workers are predominantly young men without much formal education.<sup>49</sup> Women are employed in fewer numbers for guarding, female searches and clerical functions. The larger companies have around 20% female employees.

### **The Supplemental Police Act**

In Trinidad and Tobago the majority of PSI workers are unorganized. The Supplemental Police Act (SPA) stipulates that only precepted officers may join an Estate Police Association (EPA). The vast majority of officers in the sector are unprecepted. This piece of legislation also prohibits precepted officers from joining a trade union and places issues of discipline, promotion or transfers (burning issues to guards) outside the purview of the EPA.<sup>50</sup> Security guards are governed by the SPA which does not define guards as *workers* under the purview of the IRA (1972) and creates another conflict as to which Ministry has responsibility for the operations of the industry.

Under the colonial system, the Minister of Home Affairs assumed responsibility for the police. However, after Independence this Act was not amended to clarify whether the Ministry of National Security or the Ministry of Labour would be responsible for the industry. Whereas the Police Service Commission (PSC) is responsible for grievance handling and promotions for the state police, private security workers have

<sup>48</sup> "Securicor Delivers Peace of Mind", *Sunday Express*, 29th January, 1995, p.18.

<sup>49</sup> This is an unofficial figure that has been used by the Ministry of National Security. It is difficult to gauge precisely how many persons are employed in the PSI, since many are found in own account employment and with small firms which are unregistered with the Ministry of National Security.

<sup>50</sup> Section 38:2 of the SPA (1906, 1950) states that, "No representations shall be made by the Estate Police Association in relation to any question of discipline, promotion or transfer affecting individuals".

no such recourse to appeal, and unless organized, are outside of the jurisdiction of the Industrial Court.

The EPA represents a fraction of precepted officers mainly in the large parastatals. Organized workers, covered by the EPA, enjoy negotiated and respectable terms and conditions of work. These officers are themselves employees of the security department of the corporations or parastatals. But this is changing. Many companies prefer to contract out for security rather than maintain a security department. Unionizing security workers on the whole is a difficult proposition. The obstacles are numerous. They include legislation, work organization, management's overt hostility to labour organizations and firm size. In the PSI, firm size and their unregulated status make it even more difficult for unions to organize for membership.

It is not surprising that organized workers benefit from higher wages, standard hours of work, overtime payments, public holidays, annual vacation leave, sick and casual leave, maternity leave, bereavement leave, time-off to attend EPA meetings, reimbursement for injury and loss of property in the line of duty, and a host of allowances for subsistence, driving and call back.<sup>51</sup> Accordingly, depending on the firm's wage structure, compensation received by association members is from 25% to 200% higher than that of unorganized officers.

The PSI employees can operate as dependent or independent-dependent workers. For the majority, their terms and conditions of work

are agreed by individual contracts. A typical contract is attached to this study. (See Appendix 3B). In many cases, workers are recruited by verbal agreements which outline *only* their rate of pay and the extensive rules and regulations governing their work. The individual contracts are bereft of all other terms of employment. Such workers are also protected against abuse by the Minimum Wage Order 1999 and the provisions therein regarding overtime payments and meal/lunch breaks. Since the majority of such workers are unorganized, very few cases of trade disputes have reached the Industrial Court and thus little jurisprudential authorities have evolved.

PSI workers, like other workers deemed *low-waged workers*, suffer many of the grievances of truck drivers and store attendants dealt with earlier. Their wages are at times under the minimum. The recent introduction of a Minimum Wage Order has attempted to curb the wage exploitation suffered by the PSI employees. However, the EPA still maintains that while the law is in effect, employers continue to violate such measures. The enforcement machinery of the Ministry of Labour appears weak and ineffective.

### **Working Conditions**

In the PSI, low wage rates appear even more abhorrent when one takes into account the long hours of work imposed upon workers. Low wages and long hours are the twin evils of employment in the PSI. While it is understandable that security must, by definition, involve unsocial hours (like all essential services), the propensity of

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<sup>51</sup> For example, see "Memorandum of Collective Agreement between Securicor Trinidad Limited and the Estate Police Association" 1992-1994.

employers to exploit workers by paying low wages and demanding excess hours without commensurate compensation or even rest periods, parallel those conditions in the Export Processing Zones (EPZs). For many PSI employees, a 12-hour shift per 24 hours is the norm. However, many instances of officers working 12-18 hours per day for 6-7 weeks occur. Working over 60 hours per week is also common, as well as working continuously for over two weeks without rest. The hours of work can vary from 36 to 72 per week.

In many work situations, employees do accept long and exhausting hours of work. However, when to these requirements are added the unbearable state of working double shifts at 12 hours, the mentally draining nature of security work, the emotional side of risking limb and life at any moment, it makes for high stress and a frustrating existence compounded by low wages and unfair conditions of work. Very soon this work has an adverse effect upon the officer, his/her family and their quality of life. A passionate plea was heard from a corporal at one security firm which read:

I myself have worked eighteen days straight (in 12-hour shifts) to be given one day off. I slept for the entire day and had to go to work the next day. If I didn't go I would be fired. Who should I turn to? I am not lazy, I am willing to work but I am being advantaged. Pay is late in coming, family time nil and I leave and return in the dark. Married men have to leave their wives and children at nights for weeks at a time, thereby putting them at risk. As I am finishing this

letter, I am hearing about a guard who has been working 36 hours straight and has just arrived to work another 12 hours on the post. Can this man truly guard anything? Does he care about anything else but rest and sleep? Complaining about our situation could get us fired or demoted. There is no one to turn to.<sup>52</sup>

A sergeant also complains about the long hours, as much as 20 hours per day, after working such hours for 6-7 days a week. The sergeant asked, "What good is that man to himself, his family or to anyone? This is causing a breakdown in family life and the community as a whole?" Similar stories were heard from several officers of the absentee father and fed-up wife and children. This has a long-term impact upon stability at the home and wider social ills. A chilling and well-articulated account from the wife of one security guard reads as follows:

...as a wife of a security officer, who by experience knows the pressures of being underpaid, and the effects it has had on me personally, physically, emotionally, mentally and otherwise, to the point of being deeply troubled depressed and frustrated, the unbearable agony of being exploited... There is no form of recreation as a family due to my husband's lengthy working hours - 12 hours each day. As for me when my husband has to work the a.m. shift, my day starts at 4.00 a.m. and when he is gone the kids need attention, plus my household chores. In the evening I see to their lessons etc. My husband returns

<sup>52</sup> Moonilal 1998:227

home at 6.50 p.m. exhausted after leaving home at 5.15 a.m., to cool off, bathe and eat. By 9.30 p.m. I am out of order for that is when my domestic programme is completed. It is the same with the p.m. shift. It's not worth the sacrifice. I don't even know what it's like to enjoy an evening out as a form of relaxation with my family, no form of recreation whatever, not even the pleasure of a movie with my husband much less the luxury of an ice cream. Security officers and their families only exist for the purpose of keeping the managers of security companies rich in abundance, while many have been forced to submit themselves to poverty which has been ruling our homes causing domestic conflicts that are destructive by nature, resulting very often in shame and embarrassment...

This succinct account also tells an important story of the domestic burden that befalls the female members of households when their male partners are in security work. The women are called upon to father the children and attend to all household chores. But this also leads to the breakdown of family life. One security guard confessed that "as a result of these disadvantages, we have a very poor family life and some of us have even lost our spouse to this cause".

In the field, stories were also heard about the effects of long hours and double shifts on the health and safety of security guards (and by extension the safety of the public) as it relates to officers developing medical problems such as exhaustion, hypertension, having blackouts and temporary loss of vision. One officer from a large firm (with over 400 employees) reveals that:

At (firm name mentioned) blackouts and

other overwork- related health problems are very common but are rarely reported. A few months ago I prevented one of my co-workers' Officer \*\*\*\*\* from obtaining serious injury when he was falling face down after working more than 9 hours continuous shift at the \*\*\*\*\* Shopping Plaza. Several officers were not as fortunate as \*\*\* including \*\*\* and \*\*\*\*\* who have received serious injuries due to blackouts on the job, after working abnormal hours...

### **Fining in the PSI**

There is in the PSI a widespread practice of *fining* i.e. deducting fines for alleged violation of company rules and policies. In effect, managers can haphazardly cut the pay package of workers in the name of rules and regulations. Without any possibility of appeal, labour representation or for that matter any element of natural justice, the majority of PSI workers must accept without objection this practice whereby their already meagre salaries are unlawfully reduced. The fact that it is accepted, demonstrates the apparent malleability of security workers. The recurring irony of insecurity among security workers is again evident.

A more chilling and intimate understanding of how this state of affairs affects the lives of real people and families is gleaned from interviews with officers and their relatives. One officer in a large firm complains about wages and fines in the following manner:

I am employed with (firm name mentioned) for the past three years as a security officer, my wages are \$3.75 per hour. I work one hundred and twenty eight hours a fortnight. The company has absolutely no benefits at all, only fines. You have to pay \$300 for uniform, \$100



for sleeping, \$45 for not reporting to work, \$45 for not saluting the visiting officer and many other fines.

The exploitation of such workers can lead many to consider unlawful means to remedy their plight, says one worker (a dog handler) who called himself a “vex and disgusted guard”:

I work from 5.00 p.m. to 7.00 a.m. every night without any day off for \$3.75 per hour. My grievances are many, but I still have to work to put food on the table for my family. I have to work under conditions like, no proper place to secure oneself, have to pay for uniform, for boots, no days off... and if I am found with my eyes closed or even not alert, the charge is \$50 dollars. So imagine working all nights from 5.00 p.m. to 7.00 am and being charged \$50 dollars and you are only working for \$52.50 per night.

This only leaves someone with no other choice but to commit an unlawful act to put food on his table.

### **Work Facilities**

Additionally, PSI employees complain about the lack of proper facilities on the job, for example when posted at a client’s compound. One female officer at the medical complex complains that “we have no tea break and our lunch time is 15 minutes to eat”. This is not atypical for the PSI. Other types of complaints were received such as the failure of companies to provide basic equipment such as notebooks, pens, batons, a clock, etc. to officers working on industrial sites. In isolated job sites officers are prevented from having radios or tape recorders with which to alleviate the boredom and monotony of such work.

In some cases, officers are exposed to the elements when working outdoors. There is no proper shelter, neither are raincoats or boots provided. At some postings, officers remain with no drinking water and toilet facilities. Officers in a mall complained that they were in the embarrassing position of “begging” a mall tenant to use his washroom facilities on a daily basis. In many cases, workers complain that employers do not provide dependable transport to and from the work site.

Security guards can be critically injured during robberies, hijacks, civil unrest, industrial protest, etc. Minor injuries are also routinely incurred such as dog bites, vehicular accidents and injuries sustained during training. Guards are often without any insurance and get no compensation to cover ensuing medical bills.

One disgusted worker complained that at his firm the workers are not covered for injuries and medical treatment while the manager recently took out insurance policies for the dogs. Of course risk and security go together, however many PSI workers appear to suffer from a double blow of incurring injuries and having little or no compensation. If employers do pay the state’s national insurance compensation and health surcharge, the Workmen’s Compensation Act allows for a minimal compensation to injured workers or to the family of a worker who dies on the job.

Another area of contention revolves around the rights of PSI employees to what might be considered as normal vacation and sick leave. Without any form of labour protection, many security workers can find themselves devoid of leave entitlements.

Worker organization in the PSI is at its lowest in both large and small firms, regrettably, in an industry where collective action is most needed. The EPA represents approximately 5% of all private security workers. It means that the provisions in labour law and the protection of the Industrial Court are absent for the vast majority of the workforce. So for all the high sounding affirmations of the Court, workers to whom such protection is needed are outside of the corridors of justice. If they do report a grievance to the Ministry of Labour, they do so at the risk of victimization.

This industry is characterized by low levels of worker interaction on and off the job. The very rigorous shift system with long hours of work by atomized groups of workers on isolated job sites impedes worker interaction on the job. Many workers only see each other very briefly at the start of a shift when they assemble at the company's headquarters awaiting orders and transport.

There are also occupational features of security work which militate against solidarity. If a guard must always be suspicious of everyone to be alert to offenders, then he/she also becomes suspicious of fellow workers as well. The very nature of security work does not lend itself to conversation between officers who are often scared of exchanging views for fear that the listener will "carry news" to the management. A guard declared, "*some employers want you to become news carriers or Nazi's to fellow workers which is very prevalent*". On the job they are not expected to converse with a client's staff since this may breed familiarity and undermine their role as a watchman over these workers. In fact, one manager explained that as soon as a security guard

becomes too close to his staff he will request a transfer for the guard, as in the case of a guard who was beseeched to play a cricket match with his client's company workers. This was not in the best interest of security. Off the job, workers seldom meet on social occasions and prefer to spend those few precious moments with their families. This makes collective action and building worker solidarity all the more difficult.

### **Women in the PSI**

Several complaints from female officers were aired during the interview sessions. It must first be noted that both male and female employees of the PSI suffer side by side as regards wages and general conditions of employment described above. However, female employees are subjected to particular hardships such as sexual harassment and assault and discriminatory treatment in assigning tasks which impede promotional opportunities.

Female employees often complain of being harassed by managers making unwelcome sexual advances. One respondent told of a certain manager who had repeatedly attempted to rape female officers. He further terrorized them by withholding their pay packages if they did not comply with his requests for sexual favours. It is understood that this manager was excessively abusive when rejected. The women can be the victims of bosses or co-workers, this being a male-dominated industry. Women report that harassment can take the form of unwelcome pestering, touching, comments and suggestive jokes and offensive remarks made about their appearances. Other frequent complaints of female security personnel include inhibited access to the few benefits given to male workers (overtime and training) and differential deployment (relegated to

office duties) due to the perception of having physical limitations.

When women are given outside postings, they often have to work at locations with inaccessible transportation to and from their homes. This situation is made even more alarming when we recall that security firms are negligent in providing transport for workers to and from isolated job sites. A bold headline in a weekly newspaper turned this scare into reality. It read: **“Female Security Guard Raped”**, and reported that “A female security officer returning home from work was savagely raped by an unknown assailant”.<sup>53</sup>

Pregnancy can also mean dismissal. Security companies are known to discourage women from having children by a policy of laying-off officers when they are pregnant or stipulating a time frame within which no maternity leave will be granted.<sup>54</sup> One female officer pleaded as follows:

Presently I am pregnant, fortunately I am working but any day I could be sent

home because the minute your uniform cannot fit, I am not allowed to wear any maternity clothing to work in. I will be sent home without salary or without maternity benefits. NIS will pay for 3 months maternity leave at half my monthly salary. Most of us women officers are single parents, (with) no extra means of income, telephone bill, light bill, water rate, food prices, we are barely making it...<sup>55</sup>

This complaint is apparently so prevalent in the PSI that the Minimum Wages Board, under the Ministry of Labour, was forced to recommend specifically that “in order to ensure that female security officers are equitably treated, provision must be made for appropriate uniforms for pregnant officers”.<sup>56</sup> Although a Maternity Protection Act has been introduced, the EPA still complains that in practice the female workers are inadequately protected since the Ministry of Labour seems unable to monitor employers effectively.

<sup>53</sup> *The Bomb*, 26th April 1996, p.32. In the same newspaper report, another employee related a story of a fellow officer who was raped while waiting in the night for transport from a secluded job site.

<sup>54</sup> One prominent firm only granted maternity leave to married women who worked two consecutive years before pregnancy.

<sup>55</sup> The maximum benefits paid by the National Insurance Board (NIB) can vary from \$24 to \$138 per week depending on the earning class of the worker; they are substantially lower than average weekly earnings.

<sup>56</sup> Letter to the Minister of Labour from the Minimum Wages Board on Recommendations and Proposed Order on Minimum Wages and Other Terms and Conditions of Service for Security Industry Employees, 27th October, 1992.

# 5

## Conclusion

This study was meant to give an account of the status of worker protection in Trinidad and Tobago and to identify and describe the main situations in which workers lack sufficient protection and to identify the problems caused by a lack or insufficient degree of worker protection.

Returning to Table 1, the matrix to conceptualize worker protection, one can conclude that in Trinidad and Tobago there exists a measure of labour market wide protection in terms of fundamental or basic rights which protect workers. Unlike situations in several developing countries in Africa, Asia and Latin America, workers in the local market are protected by the national constitution in so far as the right to assembly and freedom to associate are concerned. These rights are unchallengeable in jurisprudence and usually a law can only override this constitutional provision if it has the support of two-thirds of the full complement of lawmakers in the Parliament. Within all the cases surveyed, those workers still have the fundamental rights as enshrined in the constitution.

At the secondary level, the number of workers enjoying protection guaranteed by collective agreements and the existing labour laws is on the decline. Therefore the mass of workers is devoid of the protection afforded by the IRA 1972 and the Industrial Court. The organized workers in the formal sector (approximately 20%) remain fully protected and in an advantageous position.

However, problems abound for those workers who are unprotected and unorganized. In all the categories (cases) selected, the majority of workers therein are in many cases unaware of their rights, and in some cases outside of the scope of protective administrative arrangements and devoid of protection in law. At the tertiary level, as a rule, low-waged workers are also without private insurance and depend on minimal assistance from the state's social security system.

It is the considered opinion of several industrial and labour relations practitioners interviewed that the solution lies not with drafting more laws, legislation, or creating new standards for the workplace. On the contrary, what is required is greater institutional capacity-building to monitor the implementation of laws and administrative Orders. The state also needs to exhibit greater political will in addressing issues of implementation. It seemed to many that employers can get away with avoiding their obligations to workers. Indeed policing the existing laws is a serious national problem on the whole, not only at the workplace. Until and unless the will and capacity required are brought to the fore, passing laws, ratifying conventions and observing standards will mean little for the working men and women of Trinidad and Tobago.

Notwithstanding the above, certain realities in the labour market stand out. Protective standards at the secondary and tertiary

levels are weak and narrow in scope and catch. It is also clear that the policy of pursuing collective relations in labour management relations cannot respond to recent trends in work organization and labour utilization. Collectivization was a deliberate policy enshrined in the post-independence labour legislation which recognized trade unions and sought to protect unions and increase their strength and propensity to attract members. For example, recognizing only trade unions (and not individual workers) before the Industrial Court was a means to increase collective relations within the labour market. In the current scenario, the emphasis is on individual relationships. This has implications for labour organizations.

Equally important is the realities facing low-waged workers, many of whom are found in the amorphous *informal sector*. What is required is more economy-wide and labour market-wide standards which guarantee basic protection to all. Like the Minimum Wage Orders and Maternity Protection Act, the state, with the technical assistance of

the ILO, must introduce more safety and protective measures which target the low-waged workers. In this context, the Ministry of Labour has taken initiatives to introduce blanket labour legislation that seeks to cover all workers. For example, the Occupational Safety and Health Bill, now before the country's Parliament is a case in point. The Basic Floor of Rights Bill (or Labour Code) that seeks to provide for basic conditions to prevail at all workplaces is another attempt to grant protection to all participants in the labour market and not only to the organized sector.

Another critical question is obeying the codes. How will countries introduce and implement protective measures? In this regard, Ministries of Labour must be endowed with the technical, human and financial means to design modern institutions and structures for enforcing labour market policy. Without such strengthened capacity, even when the protective measures become law, there is no guarantee that the workers will benefit from such protection.

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The Minimum Wages Order, 1999

The Maternity Protection Act, 1998

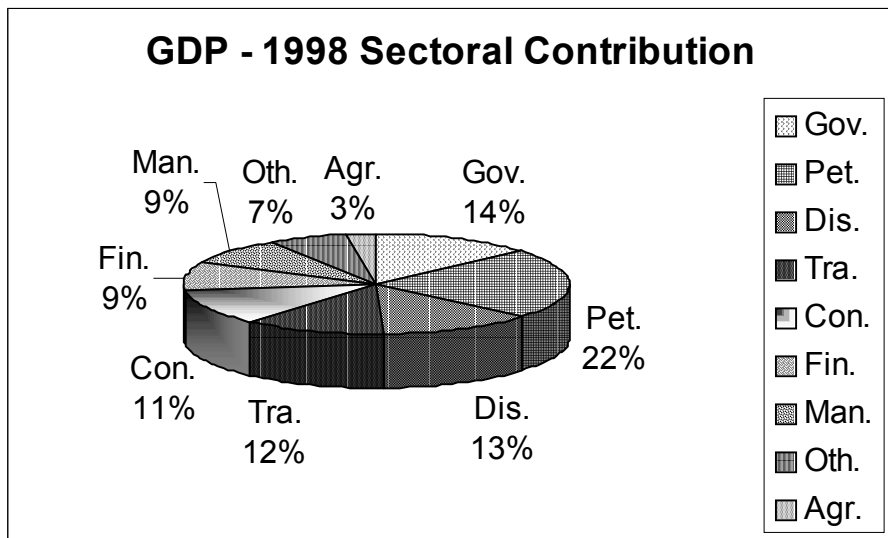
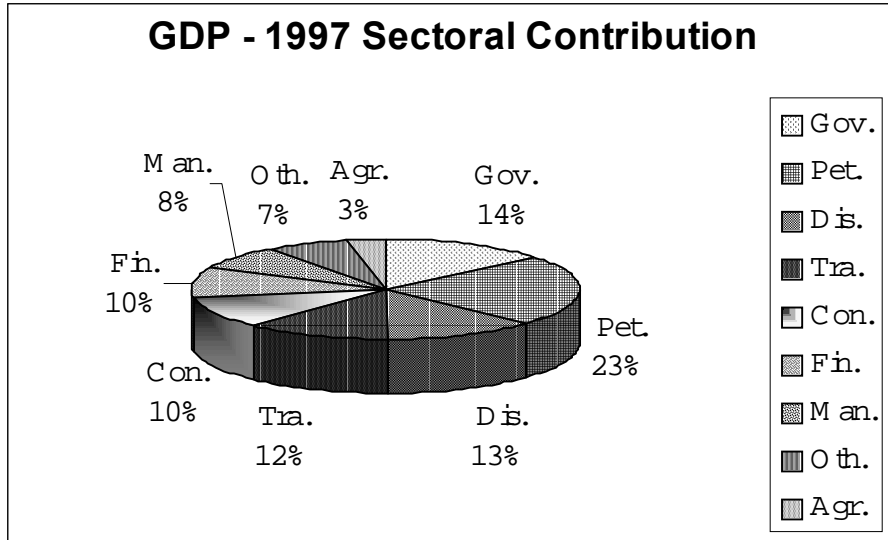
The Retrenchment and Severance Benefits Act, 1985



# Appendices

# Appendix I

## GDP Composition - 1997 and 1998



Source - Ministry of Finance, Review of the Economy 1998, CSO, Port of Spain.

Gov. - Government  
 Pet. - Petroleum  
 Dis. - Distribution  
 Tra. - Transport  
 Con. - Construction  
 Fin. - Finance  
 Man. - Manufacturing  
 Oth. - Other  
 Agr. - Agriculture

## Appendix 2

### Distribution of Persons with Jobs by Industry Group and Sex, 1987-1996

Industrial Group	Both Sexes%				Male %				Female %			
	87	89	93	96	87	89	93	96	87	89	93	96
Sugar <sup>1</sup>	2.6	3.5	3.0	2.5	3.4	4.8	4.2	3.6	1.0	0.8	0.9	0.7
Other Agriculture <sup>2</sup>	9.0	10.3	8.3	7.1	10.3	12.0	10.2	8.9	6.3	6.8	4.5	3.8
Petroleum and Gas <sup>3</sup>	4.1	4.6	3.6	3.7	5.6	6.3	4.9	5.1	1.0	1.0	1.3	1.3
Other Manufacturing <sup>4</sup>	9.5	9.9	10.0	10.1	10.6	10.7	10.7	11.3	7.1	8.4	8.5	7.9
Electricity and Water	2.3	1.9	1.8	1.7	3.1	2.7	2.4	2.1	0.5	0.5	0.6	1.1
Construction	12.9	10.4	10.4	10.0	17.4	14.1	15.2	14.2	3.4	2.7	3.2	2.4
Wholesale and Retail Trade, Hotels, Restaurants	15.9	16.8	17.6	18.4	11.3	12.8	13.6	13.8	25.5	25.0	25.0	26.3
Transport, Storage and Communication	7.7	7.4	7.4	7.0	9.6	9.2	9.6	8.8	3.7	3.8	3.4	3.5
Financing, Insurance, Real Estate and Business Services	6.2	6.3	6.9	8.2	4.7	4.9	5.9	6.8	9.3	9.3	8.8	10.6
Community, social and personal services	29.3	28.6	30.4	31.4	23.3	22.4	23.1	25.2	41.6	41.4	43.6	42.2

Source: CSO Labour Force Reports (various years)

	1987	1996	% Change
Labour Force -	478,700	530,400	10.8% growth
Persons with jobs -	372,200	444,200	19.3% growth
Male Labour Force -	316,700	325,700	2.8% growth
Males with jobs	251,000	282,500	12.5% growth
Female Labour Force -	162,000	204,700	26.4% growth
Females with jobs -	121,100	161,700	33.5% growth

<sup>1</sup> Cultivation and Manufacture

<sup>2</sup> Forestry, hunting and fishing

<sup>3</sup> Including production, refining and service contractors

<sup>4</sup> Excluding sugar and oil



# Appendix 3A (Cont'd)

## Sample Employment Contract for a Store Attendant

**NORMAL WORK**

**PERIODS:** Mondays to Saturdays -  
From time to time you may be required to work in accordance with any special sales promotional activities arranged by the company including Sundays.

**LUNCH BREAK:** One half of an hour to be taken as scheduled by management.

**OVERTIME:** You may be required to work overtime from time to time, upon reasonable notice.

**TIME CARDS:** Time cards must be punched personally by you. Punching of time cards by other contractors on your behalf is strictly prohibited and can result in your dismissal.

**REMUNERATION** A fortnightly remuneration less all National Insurance, Health Surcharge and Income Tax Deductions.

**CLOTHING & APPEARANCE** You are required to maintain a clean, tidy and neat appearance at all times and to wear clothes which are suitable for the workplace.

**GENERAL BEHAVIOUR** You are required to show interest in the job, always willing to assist management and other members of staff when necessary. You should be alert, observant and attentive.

**STORAGE** All personal items must be secured in the storage areas allocated to you. Contractors are required to properly secure their personal belongings.

**SECURITY:** Contractors' bags may be checked from time to time.

**PILFERAGE:** Unauthorized removal of company property and/or the aiding or abetting of such unauthorized removal will result in your dismissal.

**TERMINATION OF CONTRACT:** This contract can be terminated by either party giving one day's notice in writing.

I certify that I have read and understood the main terms and conditions associated with this offer of employment and I agree to be bound by them and accept the job.

Signed on behalf of

Signed by the Contractor

\_\_\_\_\_

\_\_\_\_\_

Dated this ----- day of -----.

# Appendix 3B

## Sample Individual Employment Contract for PSI Employees

### EMPLOYMENT CONTRACT

AN AGREEMENT made between ----- (hereafter called “the Employer”) and -----(hereafter called “the Employee”).

I expressly agree to the Wage and Conditions as laid down by the Company for the period ----- 1992 to -----1995.

By virtue of this Agreement and during the continuance of my employment with the Employer, I expressly agree that I will not pursue through any avenue whatsoever, further wage increases for the period under reference.

Finally, I agree that I will continue to work under all other current existing terms and conditions as they apply to me during the said period.

**THIS AGREEMENT** has been executed this ----- in the year of our Lord, One thousand Nine hundred and Ninety Two.

\_\_\_\_\_

\_\_\_\_\_

**FOR THE EMPLOYER**

**FOR THE EMPLOYEE**