INDUSTRIAL RELATIONS LEGISLATION IN JAMAICA
SOME OBSERVATIONS

A lawyer seeks both from instinct and from training to bring to his profession the greatest degree of certainty in a given situation and therefore to some extent lawyers in labour negotiations, as distinct from arbitrations, are in a game the rules of which conflict with the rules by which they are accustomed to play. This is less true in the area of arbitration but is still a factor of importance.

A shortage of industrial relations personnel trained and experienced in that field, has meant that over the years as the labour movement has grown, the lawyer has been relied on more and more and as you will realize from my discussion of the legislative provisions later on, the lawyers position in the field has now become institutionalized and entrenched. It goes without saying that the legal presence has had a profound effect on the whole industrial relations field and I may be pardoned for wondering whether we would have achieved quite so orderly a development had that presence not been there.

It is possible to take several approaches to this topic: (1) To list the relevant legislation and give a brief explanation of each (2) To deal with the more commonly encountered provisions and the situations in which they arise (3) To deal purely with the practical aspects of the subject, mentioning only the cases where the law impinges on the relationship and dealings of the parties. After careful consideration, and bearing in mind the audience to which this is being addressed, I opted for the second approach and will deal with the more commonly encountered legislative provisions and the situations in which they arise, since I feel in this way we can get a feel for both the practical problems and the solutions, legislative or otherwise, which have been devised or have evolved to cope with these. I do not propose to be historical unless it is required to assist the presentation.

In recent times particularly, several bits of legislation have been in the forefront of the news. The first is the Labour Relations

and Industrial Disputes Act 1975 which among other things established a procedure for the taking of polls amongst employees to determine the question of Union representation and established the Industrial Disputes Tribunal. The second is The Employments (Termination and Redundancy Payments) Act 1974, which provides a measure of regulation in cases where employees are dismissed for redundancy as defined in the Act and prescribes minimum periods of notice of termination which must be given, as well as establishing the redundancy payment which must be made by the Employer to the redundant employee.

The National Minimum Wage Act, though now absorbed into the general background of industrial relations, was much debated at the time of its introduction and is of course the lower level guide for negotiators except in those areas such as Printing or Petroleum Filling Stations employees, where there exists Orders, (and these long pre-date the National Minimum Wage), specifying minimums for various trades or occupations.

Finally, there is the more recent Equal Pay Act, a measure designed by the Legislature to end or at least reduce the long standing discrimination in earnings between male and female employees doing comparable work. Thus far little has come out of this provision, but as more and more females enter the workforce alongside their male counterparts, I think we will be hearing of its provisions increasingly and I have little doubt that its provisions will be expanded in the years to come.

I would not wish to leave you with the impression that these are the only laws which bear on Industrial Relations, because there are many others which do. But as I said earlier, I am trying to focus on those which the Industrial Relations practitioner will commonly encounter and give some idea of how they work.

The lawyer is likely to become involved in an employers' industrial relations for the first time when a Union serves on the

employer a claim for recognition as the bargaining agent for specified categories of employees. The procedure to be followed is set out in the Labour Relations and Industrial Disputes Act and in Regulations made under Section 5 of the Act. Stated briefly, once such a claim is made an employer has two choices. He can either accord bargaining rights to the Union or he can request the intervention of the Minister of Labour and Employment with a view to establishing, by means of a poll of the employees, conducted by the Ministry of Labour & Employment, whether in fact the employees wish to be represented by the claimant Union and which employees would be so eligible to be represented. For many years a much disputed and debated point in this country was whether or not an employer was obliged to recognise a Union as bargaining agent for his employees. This culminated in the famous constitutional case of Banton v Alcoa, where it was held that whilst the employee has a right to be a member of a trade union of his choice, the employer was not obliged to recognise a Union as bargaining agent for the employee. Banton v Alcoa was decided prior to the passing of the Labour Relations and Industrial Disputes Act and the Act has now altered the position by providing that where a Union meets certain conditions and the Minister so certifies, the employer is obliged to recognise the Union as bargaining agent.

It must immediately occur to you that this is an area ripe for conflict and it has indeed been fruitful of conflict over the years even prior to the passing of the Act. Problems have arisen over claims for categories of employees which the employer considers arms of management; or of a confidential nature; or ..... and there are lots of other "ors"; and which it is contended by the Employer should not properly be Unionized. Or there may be two claims for the same categories of employees by rival unions. Or there may be a dispute as to whether a particular individual in one of the categories, for example a probationer, is eligible to be included on a voter's list for a ballot. Just this

preliminary area of determining bargaining rights could be the subject of a full length discussion which unfortunately cannot be undertaken here.

If any of these conflicts arise between employer and the claimant Union, the Minister is under a duty to try to settle the dispute by conciliation. If that fails - and it sometimes does - then the matter has to be referred to the Industrial Disputes Tribunal for resolution.

Once bargaining rights are accorded, whether by a poll or otherwise, the next step is normally a claim by the Union for improvements in wages and in the working conditions of the employees, known commonly as "fringe benefits". These claims take all shapes and forms depending on the individual circumstance of each case, and quite ofter are of a very generalised nature. And it is not unusual to find a claim for an 80% wage increase in say, one furniture factory and a claim of a 40% wage increase, by the same Union, in another furniture factory not too far away; situations like that arise because of the different wage rates which may exist in the two factories - the wage base from which the Union is negotiating improvements.

When the claim is made, it is for the accountants and the businessmen first to consider it, quantify the claims, consider what the business can afford in the way of increases and the areas in which imporvements can be granted - and then ofter the lawyer enters the picture again at this stage. He brings to the situation a number of useful skills apart from his knowledge of the relevant laws and regulations. He has amassed statistical information of various kinds, such as cost of living indices; he is aware of current trends in industrial relations and of recent settlements or awards; he brings to the situation his negotiating skill which of course includes his knowledge of Union negotiating tactics. He should also bring to it the personal element which comes from his past dealings with the Union and with employee delegates and therefore a

knowledge of the very human problems which arise in each negotiation, and how best to effect the compromises necessary to meet these employee problems and at the same time not exceed his clients limitations. At this stage the legal points are peripheral; the major role the lawyer has is as a negotiator but a rather special kind of negotiator, attempting to balance economic and practical realities against human needs and aspirations, often in a very tense emotional atmosphere.

It is not possible to give a microcosmic description of an average type of negotiation - there is no such thing. Negotiations sometimes take 2 or 3 meetings to conclude and sometimes they go on for as long as a year or more. Sometimes they are smooth and calm; in other instances emotions may run high and several strikes, go-slows and other forms of "industrial action" as the statute calls it, may occur during the course of the negotiations.

The negotiations themselves may be conducted on two levels. The first stage, the local level, is where the employer, employees and the Union meet to attempt to reach agreement. If this fails, the next stage is normally to seek help from a conciliation officer of the Ministry of Labour & Employment. That Ministry maintains an Industrial Relations Division staffed by a dedicated, stalwart group of experienced officers, who act as chairmen in convening meetings at that level and, by a little judicious "arm-twisting" of both the employer and the Union, try to effect a compromise settlement between the parties. It is not unusual for the Minister himself to intervene and personally act as conciliator in an effort to achieve agreement. I will have more to say about the Ministry's role later on.

If the Ministry is unable to achieve a settlement then a dead-lock exists and peculiar though it may seem, except in cases of those undertakings, such as Water Commission, Bank of Jamaica and so on, which are classified as "essential" undertakings in the Labour Relations and Industrial Disputes Act, or where the Minister is able to say that a

dispute is injurious to the national interest, the law at this point leaves the matter largely in the hands of the parties. The only power given to the Minister in such a situation is the establishment of a Board of Enquiry, and since the findings of such a Board are not binding on the parties, it is really only an instrument of persuasion. If the parties agree however, they may either have a private arbitration tribunal to adjudicate or they may under Section 11 of the Act, request the Minister to refer the dispute to the Industrial Disputes Tribunal for settlement. The private tribunal has all but disappeared since the establishment of the Industrial Disputes Tribunal and the usual course now is to proceed to the Industrial Disputes Tribunal by consent of the parties.

I said earlier that the place of the lawyer in industrial relations has now become institutionalised and a quick glance at the Labour Relations and Industrial Disputes Act will make it clear why this is so. The Tribunal is in fact a court, rules of evidence apply, they can summon witnesses and subpoena documents and their awards are binding on the parties. The Tribunal which sits in three divisions each with a Chairman, an employer's representative and an employee's representative, is composed of laymen experienced in the field of industrial relations and whilst in practice by mutual consent the rules of evidence and so on are not enforced, obviously since an award can be challenged on a point of law in the Supreme Court, attention has to be paid to this fact. A number of challenges have in fact taken place and in one instance, Seprod v The Industrial Disputes Tribunal, the Supreme Court in an application for Writs of Certorari and Mandamus, granted both, resulting in a section of an award being struck out and ordering the Tribunal to insert in its award a date from which the award is effective, as required by Section 12(4) of the Act. This is clearly lawyer's ground and the increasing employment of lawyers by the Union's themselves at this level makes it clear that it is so viewed by both employers and Unions.

It should by now be clear that the Labour Relations and Industrial Disputes Act is really the most important legislation affecting the field since it to a large extent lays down the parameters within which the parties must seek to settle their differences. Two important questions therefore arise:

(i) What does the Act set out to achieve?

(ii) To what extent has it been successful?

The answer to the first question is fairly simple to state. The aims of the legislature were to establish an orderly procedure for the establishment and maintenance of harmonious relationships between employers and employees and to provide the rules and machinery for settling conflicts which do arise, with the least possible disruption. It is simple to state, but so many factors are involved that quite obviously legislation cannot hope to cover the myriad situations which arise in practice and the end product has been a law which is a blend of guidance, mandatory and coercive provisions and a reliance on the parties themselves in the process of negotiation, to achieve its aims. Ultimately it is the latter, the process of negotiation, which predominates, simply because of the intensely human and personal nature of industrial relations.

To a large extent, the Act has merely formalized the system and the practices which have evolved in the field over the years and has only minimally impinged on the process of free negotiation and bargaining. In one very important respect however the result has been less than desirable. Prior to the passing of the Act the Industrial Relations Division of the Ministry of Labour & Employment through its conciliation officers, played a key role in the whole process of industrial relations. A small dedicated and highly experienced group of public officers, completely impartial and with the respect and confidence of employers, employees and Union alike, toiled long hours and in the vast majority of cases hammered out settlements and compromises on the vast range of problems which arise in industrial relations, ranging from settlement of claims for increased wages and improved working conditions,

employee discipline, disputes over rights of management and employee and even purely personal conflicts between employees and management or employees and employees. There are numerous occasions when I personally have left the Ministry of Labour's offices in the late hours of the night or early hours of the morning, having hammered out compromise settlements after long and sometimes bitter hours of negotiation under a conciliation officer's guidance. But now a change is taking place. It commenced with the passing of the Act and has been accelerated by a series of extra-legal Wage and Salary Guidelines set out in Ministry Papers from the Ministry of Finance. Conciliation officers of the Ministry are no longer free to promote compromise settlements unless those are within the limits laid down by the Guidelines and although these Guidelines are not law, if an employer breaches the provisions he faces sanctions; for example, he cannot get a price increase necessitated by increased labour costs if and to the extent that his increase in labour costs exceed the limits in the Guidelines. The exception to this is if such excess is the result of an award by the Industrial Disputes Tribunal. The result is that almost inevitably such disputes now have to be referred to the Tribunal, since the Ministry is precluded from promoting a settlement in excess of the Guidelines and the employer will not take the risk of sanctions being applied for breaching them. To this extent and really through no inherent fault in the legislation itself the Act has failed to operate in the manner originally intended in achieving its objective and has resulted in at least the partial erosion of the effectiveness of one of the key areas in the industrial relations process of achieving harmony through mutually acceptable compromise rather than imposed settlement; because just as in the "purer" realms of law, so too in industrial relations, a compromise settlement is to be preferred to an imposed one. It remains to be seen whether, when the crisis is past and the Guidelines disappear, the process of conciliation will again assume its prior place of importance in the Industrial Relations field.

It is a consummation devoutly to be wished.

Obviously no consideration of the extent to which the aims of this Act has been successful would be complete without an examination of the Industrial Disputes Tribunal which has now assumed a role that I do not think was envisaged or intended by the legislature when the Act was passed.

I have previously pointed out that the Tribunal is composed of experienced laymen; this is only partially true, because the Chairman of one of present three divisions is a lawyer, a fact which I believe however to be only co-incidental to his appointment. They are all persons experienced in the field of industrial relations which is perhaps the same thing as saying that they are pragmatic in their approach to the work of the Tribunals.

It was perhaps inevitable that immediately following the establishment of the Industrial Disputes Tribunal there would have been a testing period when both employers and Unions were seeking to establish whether there would be a pattern, favouring either side, to awards handed down by the Tribunal. Clearly if either side were able to rely on such a pattern, if for example the odds were in favour of the Unions getting an award higher than could be achieved by negotiating a compromise settlement; or if employers were to feel that Tribunals would make awards that resulted in less cost than could be hoped for in a negotiated settlement, then the Tribunal would in any event have assumed the importance which it now has for other reasons which I have mentioned.

I have examined a great number of awards handed down since the Tribunal was established and it is my view that no such pattern exists and that had extraordinary conditions in the economy not arisen, the Tribunal would have been, as I think was intended by the legislature, merely the Court of last resort for hard cases. This is not to say that there are not patterns apparent, but such as these may be, and this is merely a personal observation, they seem to be the result of influences

of economic conditions generally, applied to the particular dispute being dealt with. It is my impression for example that wage awards by the Tribunal during the period when the inflationary spiral was at its peak, were higher than they are now that inflation has been partially contained and economic strategy is to some extent based on holding wages and salaries down.

An area of great concern for both employers and Unions is the question of the acceptability and acceptance of awards handed down by the Tribunals and it is in this area that the real surprise lies because not withstanding the fact that these are imposed settlements, in my experience there has been a high level of acceptance on all sides of the awards handed down. Whilst it is true that the award is <u>legally</u> binding on the parties, the fact is that the whole system will fail if either side does not accept that the settlement imposed is fair, reasonable and just in the circumstances. It would be idle for me to speculate on the reasons for this high level of acceptance and I will therefore only repeat my earlier observation that the approach of the Tribunals to the matters dealt with by them has in the main been pragmatic rather than technical or legalistic. What the future holds in this respect is a matter of serious concern because with the existing reliance on the Tribunals which I have outlined, if the acceptance of awards disappears, the whole system of industrial relations could very rapidly break down.

What then of the future? At present the emphasis is on trying to get greater co-operation between employer and employee to reduce disruption of production, by asking both sides to make sacrifices in the national interest. This approach appears to have achieved a lull in the field but this could end quickly as well as it could last through the period of crisis; industrial relations is like that, unpredictable and dynamic. From the viewpoint of legislation, it is still early to say whether the course that has been adopted will be successful and whether the future will be one of increasing legislation or will

continue to rely as it presently does, on the rationality of the parties to keep the industrial peace and settle differences in their own way. No one for example can at this juncture even guess at the course which the Worker Participation programme is going to take, or the effect it will have on the course of industrial relations. My own view is that whichever way the path leads, the lawyer will continue to play an important role, not just as an interpreter so to speak, but as an active participant in shaping that future course.

I have attempted in this paper to give some idea of the law, procedures and problems with which the lawyer engaged in an industrial relations practise must cope. No doubt my approach to the subject has serious shortcomings and the presentation even more serious defects. One such is the fact that I have merely mentioned in passing some of the more important areas of the practise and others I have not even raised. I apologise for these shortcomings but it is not possible to deal with the specifics of this vastly interesting and complicated area of practise without running the risk of being boring or worse still, expressing personal prejudices. I hope that at the worst I have provided an interesting introduction to the subject for the uninitiated.

JEFFREY F. PATTINSON
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