



BERMUDA
1965 : 171

TRADE UNION ACT 1965

ARRANGEMENT OF SECTIONS

1	Interpretation	15	Registered office of trade union
2	Exclusions	16	Rules of trade unions
3	Objects	17	Circulating false copy of rules an offence
4	Purposes of trade unions; restraint of trade in relation to criminal law	18	Annual returns to be transmitted to Registrar
5	Purposes of trade unions; restraint of trade in relation to civil law	19	Registrar may institute proceedings
6	When trade union contracts unenforceable	20	Trade union may purchase land
7	Friendly Societies Act 1868 does not apply	21	Vesting of real and personal property in trustees of trade union
8	Registrar of trade unions	22	Trustees may bring and defend actions
9	Compulsory registration of trade unions	23	Limitation of liability of trustees
10	Membership in unregistered trade union an offence	24	Duty of officers of trade unions to render accounts
11	Registration procedure	25	Penalty for withholding money, securities or other effects of trade union
12	Certificate of registration	26	Falsification of accounts an offence
13	Cancellation or withdrawal of registration		
14	Connections outside Bermuda		

TRADE UNION ACT 1965

- 27 Restriction on application of funds for certain political purposes
- 28 Persons barred from holding office
- 29 No action in tort against trade union
- 30 Rights of worker in respect of trade union membership
- 30A Regulation of bargaining rights of certain trade unions
- 30B Application for certification
- 30C Application procedure
- 30D The bargaining unit
- 30E Response by the employer
- 30F Certification where there is agreement
- 30G Certification in other cases
- 30H Duties of employer in relation to conduct of ballot
- 30I Protection of voting in ballot
- 30J Duties of persons generally in relation to conduct of ballot
- 30K Grant or refusal of certification
- 30L Compulsory recognition and duty to treat
- 30M Closing of undertaking
- 30N Effect of certification
- 30O Access to employer's premises
- 30P Cancellation of certification
- 30Q Procedure on a ballot
- 30R Orders of the Labour Relations Officer and appeals
- 30S Offences
- 31 Modification of rights by agency shop
- 32 Appropriate contributions to trade union in lieu of membership
- 33 Contributions to charity instead of contributions to trade union
- 34 Setting up of agency shop by agreement
- 35 Report of agreement or failure to enter into agreement
- 36 Ballot on agency shop agreements and agency shop schemes
- 37 Effect of ballot under section 36
- 38 Duration of agency shop
- 39 Complaint of breach of duty under section 37(1)
- 40 Victimisation
- 41 Person under 18 but over 16 may become member of trade union
- 42 Member of trade union may nominate persons to receive moneys on his death
- 43 Change of name of trade union
- 44 Amalgamation of trade unions
- 45 Notice of change of name or amalgamation
- 46 Notice of dissolution must be sent to Registrar
- 47 Failure to give notice or send documents

48	Minister may make regulations	SCHEDULE
49	[omitted]	Maximum fees which may be required to be paid under regulations.
50	Commencement [omitted]	

[31 July 1965]

[preamble and words of enactment omitted]

Interpretation

- 1 (1) For the purposes of this Act—
- "agency shop" has the meaning assigned to it in subsection (2);
 - "agency shop agreement" has the meaning assigned to it in section 34;
 - "agency shop scheme" has the meaning assigned to it in section 36;
 - "appropriate contribution" shall be construed in accordance with section 32;
 - "charity" means any charitable organization registered under the Charities Act 1978 [title 13 item 10];
 - "collective agreement" means any agreement or arrangement made (in whatever way and in whatever form) between —
 - (a) a trade union and an employer; or
 - (b) a trade union and a trade union;
 - "labour dispute" means a dispute between —
 - (a) an employer, or trade union on his behalf, and one or more workers, or trade union on his or their behalf; or
 - (b) workers, or a trade union on their behalf, and workers, or a trade union on their behalf,where the dispute relates wholly or mainly to one or more of the following —
 - (i) terms and conditions of employment, or the physical conditions in which workers are required to work; or
 - (ii) engagement or non-engagement, or termination or suspension of employment, of one or more workers; or

TRADE UNION ACT 1965

(iii) allocation of work as between workers or groups of workers; or

(iv) a procedure agreement;

"lock-out" means action which, in contemplation or furtherance of a labour dispute, is taken by one or more employers, whether parties to the dispute or not, and which consists of the exclusion of workers from one or more work shops, offices or other places of employment or of the suspension of work in one or more such places or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of workers;

"Minister" means the Minister charged with responsibility for Labour;

"strike" means a concerted stoppage of work by a group of workers in contemplation or furtherance of a labour dispute, whether they are parties to the dispute or not, whether (in the case of all or any of those workers) the stoppage is or is not in breach of their terms and conditions of employment, and whether it is carried out during, or on the termination of their employment;

"trade union" means any combination whether temporary or permanent, the principal purposes of which are, under its constitution, the following purposes, hereinafter in this Act referred to as statutory purposes, that is to say, the regulation of the relations between workers and employers or between workers and workers, or between employers and employers, whether such combination would or would not, if this Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade and includes a federation of trade unions:

Provided that nothing in this Act shall affect—

(i) any agreement between partners as to their own business;

(ii) any agreement between an employer and those employed by him as to such employment; or

(iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft,

or shall preclude any trade union from providing benefits for its members; or from applying the funds of the trade union in furtherance of any charitable or educational purpose, or from affiliation with any other trade union, whether within or

outside Bermuda, or from defraying any initial payment or regular periodical subscription payable in connection with any such affiliation;

"worker" means an individual regarded in whichever (if any) of the following capacities is applicable to him, that is to say, as a person who works or normally works or seeks to work —

- (a) under a contract of employment; or
- (b) subject to section 2 of the Labour Relations Act 1975 [*title 18 item 1*], in employment under or for the purposes of the Crown, in so far as any such employment does not fall within paragraph (a).

(2) For the purposes of this Act, there shall be an agency shop where the terms and conditions of employment of any worker include a condition that such worker must either—

- (a) be a member of a trade union; or
- (b) agree to pay appropriate contributions to that trade union in lieu of membership,

whether or not a right to elect to pay equivalent contributions to charity is mentioned or referred to in such terms and conditions of employment.

[Section 1 amended by 2002:15 effective 12 July 2002]

Exclusions

2 This Act shall not apply in relation to—

- (a) persons in the naval, military or air forces of Her Majesty or of the United States of America or in the Police Service of Bermuda; or
- (b) a prison officer as defined for the purposes of the Prisons Act 1979 [*title 10 item 32*]; or
- (c) persons employed in civilian employment by or under the Government of the United Kingdom who have been engaged in a place outside Bermuda to take up employment in Bermuda; or
- (d) persons employed by or under the Government of the United States of America.

[Section 2 amended by 1997:37 effective 6 May 1999]

Objects

3 Subject to this Act, the fact that any trade union has under its constitution purposes or powers other than statutory purposes within

TRADE UNION ACT 1965

the meaning of this Act shall not prevent its being registered under this Act, and any such trade union which is so registered shall have power to apply its funds to any lawful objects for the time authorized under its constitution.

Purposes of trade unions; restraint of trade in relation to criminal law

4 The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

Purposes of trade unions; restraint of trade in relation to civil law

5 The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render voidable any agreement or trust.

When trade union contracts unenforceable

6 Subject to this Act, the courts shall not have power to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for, the breach of any of the following agreements, namely—

- (a) any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed; or
- (b) any agreement for the payment by any person of any subscription or penalty to a trade union; or
- (c) any agreement for the application of the funds of a trade union—
 - (i) to provide benefits to members; or
 - (ii) to furnish contributions to any employer or worker not a member of such trade union, in consideration of such employer or worker acting in conformity with the rules or resolutions of such trade union; or
 - (iii) to discharge any fine imposed upon any person by sentence of a court of law; or
- (d) any agreement made between one trade union and another; or
- (e) any collective agreement between a trade union and an employer or group of employers; or

(f) any bond to secure the performance of any of the abovementioned agreements:

Provided that nothing in this section shall be deemed to constitute any of the above mentioned agreements unlawful.

Friendly Societies Act 1868 does not apply

7 The Friendly Societies Act 1868 [*title 13 item 11*] shall not apply to any trade union, and the registration of any trade union thereunder shall be void.

Registrar of trade unions

8 The Registrar-General (hereinafter in this Act referred to as "the Registrar") shall be the Registrar of trade unions within the meaning and for the purposes of this Act.

Compulsory registration of trade unions

9 (1) Upon the establishment of a trade union, it shall be the duty of the committee of management or of trustees appointed in that behalf or, in default of any such appointment, of the directing authority (by whatever name it may be called) of the union, to make application in writing for registration within three months after the date of the establishment of the union:

Provided that any trade union which, on 31 July 1965, was registered under the Trade Union and Trade Disputes Act 1946 [*repealed*] shall be deemed to have been registered under this Act.

(2) In the case of a trade union established on or before 31 July 1965, but not registered under the Trade Union and Trade Disputes Act 1946 [*repealed*] this section shall apply as if 31 July 1965 were the date of the establishment of the union.

(3) Any person who fails to comply with the requirements of this section commits an offence against this Act:

Punishment on summary conviction: a fine of \$72 and a further fine of \$72 in respect of each week during which the offence continues after conviction.

(4) Where an offence against this section is committed jointly by a number of persons each of those persons shall be liable to the punishment provided by subsection (3).

(5) The Registrar may, if he thinks fit, from time to time grant an extension of the period specified in subsection (1), provided that such period shall not, in any particular case, be so extended as to exceed a period of one month in the aggregate.

TRADE UNION ACT 1965

Membership in unregistered trade union an offence

10 If an application for registration of a trade union has not been made as required by this Act, or if registration of a trade union has been refused, then every member of the trade union who continues as a member thereof, and every person who takes part in any meeting or proceedings thereof, knowing that such union is not registered under this Act, commits an offence against this Act;

Punishment on summary conviction: a fine of \$144;

Registration procedure

11 (1) With respect to the registration of a trade union and of the rules thereof, the following provisions shall have effect—

- (a) an application in writing to register the trade union and its rules shall be sent to the Registrar in the prescribed form and signed by seven or more members of the union, any of whom may be officers thereof, and shall be accompanied by two copies of the rules, signed by the seven members signing the application and a list of the titles and names of the officers of the trade union',
- (b) the Registrar may call for further information for the purposes of satisfying himself that any application complies with this Act or that the trade union is entitled to registration under this Act
- (c) no trade union shall be registered under a name identical with that under which any other existing trade union has been registered or so nearly resembling such name as to be likely to deceive the members or the public;
- (d) the Registrar shall refuse to register any trade union unless he is satisfied—
 - (i) that all the purposes of the trade union are lawful;
 - (ii) that, having regard to the constitution of the trade union, the principal purposes of the trade union are statutory purposes; and
 - (iii) that this section and of any regulations made under this Act with respect to registration have been complied with;
- (e) where the Registrar refuses to register a trade union he shall forthwith inform the applicants in writing of the grounds of his refusal;
- (f) an appeal shall lie to the Supreme Court from a refusal of the Registrar to register a trade union, and on such

appeal the Supreme Court may make any such order as it thinks proper, including any directions as to the costs of the appeal;

(g) the Supreme Court may make rules governing such appeals providing for the method of giving evidence, prescribing the time within which such appeals shall be brought, the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the appeal; and

(h) the Registrar shall be entitled to be heard on any appeal.

Certificate of registration

12 (1) On application being made for the registration of a trade union, the Registrar, if he is satisfied as to the matters mentioned in section 11(d), shall register the trade union and its rules, and shall issue a certificate of registration.

(2) A certificate of registration shall, unless proved to have been withdrawn or cancelled, as hereinafter in this Act provided, be conclusive evidence that the regulations made under this Act relating to registration have been complied with in respect of the matters certified in the certificate.

Cancellation or withdrawal of registration

13 (1) The Registrar may withdraw or cancel the certificate of registration of a trade union in the following cases—

(a) at the request of the trade union, to be evidenced in such manner as the Registrar may from time to time direct;

(b) on proof to the satisfaction of the Registrar that a certificate of registration has been obtained by fraud or mistake, or that the principal purposes of the trade union or any of them are not or are no longer statutory purposes, or that any one of the purposes of the trade union is unlawful, or that the trade union has wilfully and after notice from the Registrar violated any of the provisions of this Act, or has ceased to exist;

(c) as provided under section 14(2);

(d) if the Registrar is satisfied that the trade union is used for an unlawful purpose or a purpose inconsistent with the objects and the rules of the trade union or that the funds of the trade union are expended in an unlawful manner or on an unlawful object or on an object not authorized by the rules of the trade union.

TRADE UNION ACT 1965

(2) Not less than two months' previous notice in writing specifying briefly the ground of any proposed withdrawal or cancellation of a certificate of registration, shall be given by the Registrar to a trade union before the certificate is withdrawn or cancelled:

Provided that—

- (a) no notice need be given by the Registrar in any case where the withdrawal or cancellation of the certificate is at the request of the trade union, or where the trade union has ceased to exist;
- (b) if any one of the purposes of a trade union is proved to be unlawful it shall be the duty of the Registrar to cancel the certificate forthwith.

(3) An appeal from the decision of the Registrar under this section shall lie to the Supreme Court subject to the same conditions as are provided for an appeal against the refusal of the Registrar to register a trade union, and the Supreme Court may make rules providing for the same matters for which rules may be made in respect of such appeal.

(4) A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of the withdrawal or cancellation, cease absolutely to enjoy as such the privileges of a registered trade union and, subject to subsection (5), shall be dissolved, but without prejudice to any liability actually incurred by such trade union, which may be enforced as if the withdrawal or cancellation had not taken place:

Provided that where an appeal has been made under subsection (3) this subsection shall not apply until such appeal shall have been disposed of.

(5) If after the withdrawal or cancellation of its certificate of registration a trade union continues in active operation, except for the purpose of winding up its affairs, every member of the committee of management, every trustee and every officer of the trade union who takes any part in the operation of the trade union, except for the purpose aforesaid, commits an offence against this Act:

Punishment on summary conviction: a fine of \$36 for every day during which the trade union continues in active operation;

and every other person who, knowing that the certificate has been withdrawn or cancelled, takes part in any meeting or proceedings of the trade union, except for the purpose aforesaid, commits an offence against this Act:

Punishment on summary conviction: a fine of \$144.

Connections outside Bermuda

14 (1) No registered trade union shall be connected with or be a part of any trade union or other organization in such a manner as to place the trade union which is established within Bermuda, or any of its members, under the control of a trade union or other organization which is established outside Bermuda.

(2) The Registrar shall withdraw or cancel the certificate or registration of every trade union so connected.

Registered office of trade union

15 (1) Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed; and if any such trade union is in operation for seven days without having such an office every officer thereof commits an offence against this Act:

Punishment on summary conviction: a fine of \$36 for every day during which it is so in operation.

(2) Notice of the situation of the registered office of any trade union, and of any change therein, shall be given to the Registrar and recorded by him, and until such notice is given the trade union shall not be deemed to have complied with this Act.

Rules of trade unions

16 With respect to the rules of a trade union registered under this Act, the following provisions shall have effect—

- (a) the rules of each trade union shall contain provisions in respect of the following matters—
 - (i) the name of the trade union and place of meeting for the business of the trade union;
 - (ii) the whole of the purposes for which the trade union is to be established, the purpose for which the funds thereof shall be applicable, the conditions under which any member may become entitled to any benefit assured thereby, the subscriptions and contributions, if any, to be paid by any member and the form of receipt to be given to members therefor and the fines, forfeitures and other penalties to be paid by or imposed on members of the trade union;
 - (iii) the manner of making, altering, and rescinding rules;

TRADE UNION ACT 1965

- (iv) the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers;
- (v) the investment of the funds, and for an annual or periodical audit of accounts;
- (vi) the inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union;
- (vii) the taking of a secret ballot of members for all or any of the following purposes—
 - (1) the election or removal of officers or members of any executive committee or other governing body; or
 - (2) strike or lock-out action;
- (b) Every amendment or alteration of the rules shall be submitted to the Registrar for registration, and no such amendment or alteration shall have effect until the Registrar has issued a certificate of registration with respect thereto; and the Registrar shall refuse to register such amendment or alteration if it appears to him that by reason of the amendment or alteration the principal purposes of the trade union would no longer be statutory purposes, or any of the purposes of the union would be unlawful; or if the rules would cease to contain provisions in respect of the several matters set out in paragraph (a):

Provided that an appeal from the Registrar under this section shall lie to the Supreme Court subject to the same conditions as are provided for an appeal against the Registrar to register a trade union, and the Supreme Court may make rules providing for the same matters for which rules may be made in respect of such appeal;
- (c) a copy of the rules shall be delivered by the trade union to any person on demand on payment of a sum not exceeding twelve cents.

Circulating false copy of rules an offence

17 Any person—

- (a) who, with intent to mislead or defraud, gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of a trade union, a copy of the rules or of any alterations or

amendments thereof, other than those respectively which exist for the time being, on the pretence that they are the existing rules of the trade union, or that there are no other rules of such trade union; or

- (b) who, with the intent aforesaid, gives a copy of any rules to any person on the false pretence that those rules are the rules of a trade union registered under this Act,

commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$720.

Annual returns to be transmitted to Registrar

18 (1) A general audited statement of the receipts, funds, effects and expenditure of every trade union registered under this Act shall be submitted to the Registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several purposes of the trade union, and shall be prepared and made out up to such date in such form, And comprising such particulars, as the Registrar may from time to time require; and any member of and depositor in such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement without making any payment therefor. Such general statement shall be audited by some fit and proper person or persons appointed or approved by the Registrar.

(2) The account books of any trade union and all vouchers and other documents relating thereto shall, if the Registrar so requires, be produced to him for inspection and audit.

(3) Every trade union shall send to the Registrar within three months of the date to which the books of the trade union are made up in every year a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding such date, and a copy of the rules of the trade union as they exist at that date.

(4) Every officer of a trade union which fails to comply with this section commits an offence against this Act:

Punishment on summary conviction: a fine of \$72.

(5) Any person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, commits an offence against this Act:

TRADE UNION ACT 1965

Punishment on summary conviction: imprisonment for 3 months or a fine of \$360.

Registrar may institute proceedings

19 The Registrar may institute proceedings for an offence under any of the preceding sections or under section 26 and may conduct any such proceedings.

Trade union may purchase land

20 (1) It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the name of the trustees for the time being of the trade union any land not exceeding one acre, and to sell, exchange, mortgage or let any such land, and no purchaser, assignee, mortgagee or tenant shall be bound to inquire whether the trustees have authority for the sale, exchange, mortgage or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom.

(2) No member of a trade union shall be entitled to be registered as a freeholder in respect of any land held by the trade union so as to qualify him for election to any municipal, parochial or other public body or so as to confer upon him any parliamentary, municipal or parochial franchise.

Vesting of real and personal property in trustees of trade union

21 (1) All real and personal property whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of the trade union and the members thereof, and shall be under the control of the trustees, their respective executors or administrators, according to their respective claims and interests.

(2) Upon the death or removal of any such trustees the property shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, except in the case of stocks and securities in the public funds of Bermuda, which shall be transferred into the names of the new trustees.

(3) In all actions, or suits, or indictments, or summary proceedings before any court touching or concerning any such property, the property shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of the trade union, without any further description.

Trustees may bring and defend actions

22 The trustees of any trade union registered under this Act, or any other officer of any such trade union who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to

be brought or defended, any action, suit, prosecution or complaint in any court touching or concerning the property or right or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court in their proper names, without other description than the title of their office of such trade union, and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by death or removal from office of such persons or any of them, but shall and may be proceeded in by their successor or successors, as if such death, resignation or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of, or to be reimbursed from, the funds of the trade union, and the summons to be issued to such trustees or other officer may be served by leaving the same at the registered office of the trade union.

Limitation of liability of trustees

23 A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of the trade union, but shall be liable only for the moneys which are actually received by him on account of the trade union.

Duty of officers of trade unions to render accounts

24 (1) Every treasurer or other officer of a trade union registered under this Act at such time and in such manner as may be prescribed by the rules of the trade union, or at any time upon being required to do so by the trustees or by the committee of management or by the members of the trade union, shall render to the trustees, or to the committee of management, or to the members assembled at a meeting of the trade union (as the case may be) a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of the trade union, which account the said trade union shall cause to be audited by some fit or proper person or persons appointed or approved by the Registrar.

(2) The treasurer or other officer, if so required, upon the said account being audited, shall forthwith hand over to the trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to the trustees all securities and effects, books, papers and property of the trade union in his hands or custody.

(3) If the treasurer or other officer fails to do as in subsection (2) required, the trustees of the trade union may sue him in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the trade union, and for the securities and

TRADE UNION ACT 1965

effects, books, papers and property, in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the trade union.

Penalty for withholding money, securities or other effects of trade union

25 If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtains possession of any moneys, securities, books, papers or other effects of such trade union, or having the same in his possession, wilfully withholds or fraudulently misapplies the same or any part thereof to purposes other than those expressed or directed in the rules of such trade union, then a court of summary jurisdiction, upon a complaint made by any person on behalf of such trade union or by the Registrar, may, by summary order, order such officer, member or other person to deliver up all such moneys, securities, books, papers or other effects to the trade union or to repay the amount of the money applied improperly, and to pay, if the court thinks fit, a further sum of money not exceeding fortyeight dollars, together with costs and in default of such delivery of effects or repayment of such amount of money or payment of such penalty and costs aforesaid, the court may order the offender to be imprisoned for a term not exceeding three months:

Provided that nothing in this section shall affect any liability of such person to be proceeded against by indictment, instead of summarily, in respect of any indictable offence.

Falsification of accounts an offence

26 If any officer or member of a trade union or any person employed by a trade union does any of the following acts with intent to defraud—

- (a) destroys, alters, mutilates or falsifies any book, document, account or valuable security which belongs to the trade union or has been received by him on account of the trade union, or any entry in any such book, document or account, or is privy to any such act; or
- (b) makes, or is privy to making, any false entry in any such book, document or account; or
- (c) omits, or is privy to omitting, any material particulars from any such book, document, or account,

he commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months;

Punishment on conviction on indictment: imprisonment for 2 years.

Restriction on application of funds for certain political purposes

27 (1) The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects).

(2) The political objects to which this section applies are the expenditure of money—

- (a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to the House of Assembly or to any public office, before, during, or after the election in connection with his candidature or election; or
- (b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
- (c) on the maintenance of any person, other than an officer of a trade union, who is a member of the House of Assembly or who holds a public office; or
- (d) in connection with the registration of electors or the selection of a candidate for the House of Assembly or any public office; or
- (e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory purposes within the meaning of this Act.

(3) In this section "public office" means the office of member of any municipal council, or parish council, or of any public body who have power to raise money, either directly or indirectly, by means of a rate, fee, charge or tax.

Persons barred from holding office

28 No person who has been convicted of any offence involving fraud or dishonesty or who is an undischarged bankrupt shall within five years of the date of such conviction or until he is discharged, as the case may be, be an officer or a person employed in administering or collecting funds of a trade union and any such officer or person who is convicted or who is an undischarged bankrupt shall forthwith vacate his office or cease to be so employed, as the case may be.

TRADE UNION ACT 1965

No action in tort against trade union

29 (1) An action against a trade union, whether of workers or employers, or against any member or official thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by section 22, except in respect of any tortious act committed by or on behalf of the union in contemplation or furtherance of a labour dispute.

Rights of worker in respect of trade union membership

30 (1) As between himself and his employer, every worker shall have the following rights—

- (a) the right to be a member of such trade union as he may choose;
- (b) subject to section 31, the right not to be a member of any trade union or to refuse to be a member of a particular trade union;
- (c) where he is a member of a trade union, the right, at any appropriate time, to take part in the activities of the trade union (including any activities as, or with a view to becoming, an official of the trade union) and the right to seek or accept appointment or election, and (if appointed or elected) to hold office, as such an official.

(2) Any employer, or any person acting on behalf of an employer who—

- (a) prevents or deters a worker from exercising any of the rights conferred on him by subsection (1); or
- (b) dismisses, penalizes or otherwise discriminates against a worker by reason of his exercising any such right; or
- (c) subject to section 31, refuses to engage a worker on the grounds that, at the time when he applied for engagement—
 - (i) he was a member of a trade union or of a particular trade union; or
 - (ii) that he was not then a member of a trade union or of a particular trade union or of any of two or more particular trade unions,

commits an offence:

Punishment on summary conviction: a fine of \$1,500.

(3) For the purposes of subsection (2)(a) an employer, or a person acting on behalf of an employer, shall not be regarded as preventing or deterring a worker from exercising the rights conferred on the worker by subsection (1)(a) by reason only that (without any suggestion or reward for compliance or penalty for non-compliance) he seeks to encourage the worker to join a trade union which the employer recognises as having negotiating rights in respect of him.

(4) Where an employer offers a benefit of any kind to any workers as an inducement to refrain from exercising a right conferred on them by subsection (1), and the employer—

- (a) confers that benefit on one or more of those workers who agree to refrain from exercising that right; and
- (b) withholds it from one or more of them who do not agree to do so,

the employer shall for the purposes of this section be regarded, in relation to any such worker as is mentioned in paragraph (b), as having thereby discriminated against him by reason of his exercising that right.

(5) In this section "appropriate time", in relation to a worker taking part in any activities of a trade union, means time which either—

- (a) is outside his working hours; or
- (b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by or on behalf of, his employer, it is permissible for him to take part in those activities,

and in this subsection "working hours", in relation to a worker, means any time when, in accordance with his contract with his employer, he is required to be at work.

Regulation of bargaining rights of certain trade unions

30A (1) This section and sections 30B to 30S shall have effect for the purpose of regulating the recognition of collective bargaining rights.

(2) In sections 30B to 30S—

"ballot" means a secret ballot;

"bargaining agent" means a union that acts on behalf of workers;

"bargaining unit" means, except in section 30F(3) and (4)(b), a group of two or more workers (all being non-management persons) in an undertaking, on behalf of whom collective bargaining may take place;

"to certify", in relation to a union, means to certify that union under section 30F or 30G, as the case may require, as the

TRADE UNION ACT 1965

exclusive bargaining agent in respect of a bargaining unit; and "certification" and other cognates of "certify" have corresponding meanings;

"management person" means a person who in the course of his employment in an undertaking—

- (a) is responsible for the direction and management of the undertaking; or
- (b) has authority to appoint or dismiss or exercise disciplinary control over workers in the undertaking;

"non-management person" means a person who is not a management person;

"this Part" means this section and sections 30B to 30S, including the First and Second Schedules;

"the Tribunal" means the Tribunal for which provision is made in section 30R;

"union" means a trade union whose principal purposes are the representation and promotion of workers' interests and the regulation of relations between workers and employers, and includes a federation of trade unions but not an organization or association that is dominated by an employer or by an employers' organization.

[Section 30A inserted by 1998:41 effective 1 May 2000]

Application for certification

30B (1) A union claiming to have as members in good standing 35 per cent or more of the workers in a proposed bargaining unit may, subject to the provisions of this Part, make application to the Labour Relations Officer to be certified in respect of that proposed bargaining unit.

(2) Where there is no union certified as mentioned in subsection (1), the application may be made at any time.

(3) Where there is a union certified as mentioned in subsection (1), the application shall not be made before the expiry of 24 months beginning on the date of that certification.

(4) Where a union has made an application under subsection (1) and has failed for whatever reason to gain certification in respect of a bargaining unit, that union may not make another application to be certified before the expiry of 12 months beginning on the date of the previous application.

[Section 30B inserted by 1998:41 effective 1 May 2000]

Application procedure

30C An application under section 30B shall—

- (a) be in writing;
- (b) include—
 - (i) a description of the proposed bargaining unit; and
 - (ii) a statement of the facts upon which the union relies as showing that 35 per cent or more of the workers in that unit wish to have the union as their exclusive bargaining agent; and
- (c) be served on the employer.

[Section 30C inserted by 1998:41 effective 1 May 2000]

The bargaining unit

30D (1) On receipt of an application under section 30B, the Labour Relations Officer shall assist the union and the employer to determine the bargaining unit that is appropriate in the circumstances ("the appropriate bargaining unit"), having regard to the following factors—

- (a) the community of interest among the workers in the proposed bargaining unit;
- (b) the nature and scope of the duties of those workers;
- (c) the views of the employer and of the union as to the appropriateness of the proposed bargaining unit;
- (d) the historical development, if any, of collective bargaining in the undertaking.

(2) If the union and the employer are not able to agree on the determination of the appropriate bargaining unit within such reasonable period as the Labour Relations Officer may allow, the Labour Relations Officer shall so advise the Minister and the Minister shall refer the issue to the Tribunal for determination; and the order of the Tribunal determining the issue shall be final and shall not be subject to any appeal.

(3) The date of an application under section 30B is the relevant date in respect of which the appropriateness of the bargaining unit shall be considered.

Response by the employer

30E (1) Within fourteen days after receipt of service of an application under section 30B, the employer shall give notice either—

TRADE UNION ACT 1965

- (a) that he agrees to the application, in which event the Labour Relations Officer shall, subject to section 30F, certify the union; or
- (b) that he opposes it, in which event the Labour Relations Officer shall conduct a ballot under section 30G.

(2) A notice under subsection (1) shall be in writing addressed to the Labour Relations Officer and, where it is given under paragraph (b) of that subsection, shall specify the employer's reasons.

(3) If an employer on whom an application under section 30B has been served does not give notice under subsection (1) within the fourteen days allowed by that subsection, he shall be deemed to have agreed to the application.

Certification where there is agreement

30F (1) This section applies where one union only has made application under section 30B and the employer has agreed to the application.

(2) If the Labour Relations Officer is satisfied that more than 50 per cent of the workers in the bargaining unit support the union, he shall certify that union as the exclusive bargaining agent in respect of that unit.

(3) A union party to an agreement to which subsection (4) applies shall be deemed to have been certified under this section, on the date of commencement of the Trade Union Amendment Act 1998, as the exclusive bargaining agent in respect of any bargaining unit of workers in respect of which the agreement designates that union as the exclusive agent for collective bargaining purposes.

(4) This subsection applies to any agreement between a union and an employer—

- (a) which was in existence immediately before the date of commencement of the Trade Union Amendment Act 1998;
- (b) which designates a union for collective bargaining purposes as the exclusive agent of workers in a bargaining unit in that employer's undertaking, whether or not that bargaining unit includes management persons; and
- (c) a copy of which immediately before that date was held by the Minister in a register of such agreements.

Certification in other cases

30G (1) This section applies where either—

- (a) one union only has made application under section 30B and the employer has opposed the application; or
- (b) more than one union has made such an application.

(2) In a case to which subsection (1)(a) applies, the Labour Relations Officer shall conduct a ballot among the workers in the bargaining unit and, if the ballot shows that more than 50 per cent of the workers voting in the ballot support that union, he shall certify the union as the exclusive bargaining agent in respect of that bargaining unit.

(3) In a case to which subsection (1)(b) applies, the Labour Relations Officer shall conduct a ballot among the workers in the bargaining unit and if the ballot shows that none of the unions in question is supported by more than 50 per cent of the workers voting in the ballot, the Labour Relations Officer shall conduct a second ballot.

(4) If, in a case to which subsections (1)(b) and (3) apply, there are only two unions competing in the second ballot, the Labour Relations Officer shall certify as the exclusive bargaining agent in respect of the bargaining unit that union which is shown by that ballot as having the support of more than 50 per cent of the workers voting in that ballot.

(5) If, in a case to which subsections (1)(b) and (3) apply, there are more than two unions competing in the second ballot and none of those unions is supported by more than 50 per cent of the workers voting in the ballot, then the Labour Relations Officer shall conduct a third ballot, in which the only union in support of which votes may be cast shall be the union which obtained the highest number of votes in the second ballot; and in that third ballot that union shall be certified as the exclusive bargaining agent in respect of the bargaining unit if, but only if, that ballot shows that more than 50 per cent of the workers voting in that ballot support that union.

Duties of employer in relation to conduct of ballot

30H In relation to the conduct of such a ballot, the employer—

- (a) shall take all necessary steps to ensure that every worker who is eligible to vote in the ballot has the opportunity to do so; and
- (b) shall permit every such worker to be absent from work, for a reasonable time and without deduction of pay, for the purpose of so voting.

Protection of voting in ballot

30I (1) In relation to the conduct of such a ballot, a person—

- (a) shall not offer or receive, or agree to offer or receive, any money, loan, reward, office or place of employment for

TRADE UNION ACT 1965

voting, or agreeing to vote, or for refraining or agreeing to refrain from voting, for a union;

(b) shall not offer to any person, or accept or take from any person, any food or drink or provision as an inducement to vote or refrain from voting, or as a reward for having voted or refrained from voting; or

(c) shall not threaten, intimidate, restrain, or use any physical force upon, any person to induce or compel that person to vote or refrain from voting.

(2) A person who contravenes subsection (1) commits an offence.

Duties of persons generally in relation to conduct of ballot

30J (1) In relation to the conduct of such a ballot, a person shall not—

(a) in or at the premises on which the ballot is held on the day of the ballot, seek to influence a worker affected by the ballot to vote, or refrain from voting, for a union; or

(b) wilfully obstruct or hinder any person in the course of voting by that person or the carrying out by him of any other function that he has under this Part.

(2) A person who contravenes subsection (1) commits an offence.

Grant or refusal of certification

30K (1) Within a reasonable period (which however shall not exceed 3 months or such longer time as the union and the employer may agree) after receipt of an application under section 30B, the Labour Relations Officer shall determine either—

(a) that he certifies the union as the exclusive bargaining agent in respect of the bargaining unit; or

(b) that he refuses to do so.

(2) A refusal by the Labour Relations Officer under paragraph (b) of subsection (1) shall be expressed to have been made on the ground that he is not satisfied that more than 50 per cent of the workers in the bargaining unit support the certification of the union.

(3) A determination by the Labour Relations Officer under this section shall be made by order; and section 30R shall have effect as respects service and the time of taking effect of the order and any appeal from the order, and otherwise in relation to the order.

Compulsory recognition and duty to treat

30L Where a union has obtained certification in respect of a bargaining unit and the certification remains in force, the employer shall deal with that union accordingly; and the union and the employer shall, subject to this Part, in good faith treat and enter into negotiations with each other for the purposes of collective bargaining.

Closing of undertaking

30M (1) Where, in relation to an employer, a union either—

- (a) has made an application under section 30B which has not been determined; or
- (b) has been certified in respect of a bargaining unit in his undertaking and the certification remains in force,

the employer, if he decides to discontinue the undertaking, shall give to the Labour Relations Officer and to the union notice in writing of—

- (c) the time when the undertaking is to be discontinued (being a reasonable time after the giving of the notice);
- (d) the reasons why the undertaking is being discontinued; and
- (e) the number and categories of workers that will be affected.

(2) An employer who contravenes subsection (1) commits an offence.

(3) In proceedings for an offence of contravening subsection (1) it is for the employer to prove that any notice given by him was reasonable within paragraph (c) of that subsection.

Effect of certification

30N Where a union gains certification in respect of a bargaining unit—

- (a) that union replaces any other union that had previously been so certified in respect of that unit, and has exclusive authority to bargain collectively on behalf of that unit; and
- (b) the certification of that other union is deemed to be cancelled.

Access to employer's premises

30O (1) An employer shall not deny to an authorized representative of a union that is certified in respect of a bargaining unit in that employer's undertaking such access to the employer's premises as is reasonable and necessary for the purposes of the activities of the union, being lawful activities of the union arising out of its certification.

TRADE UNION ACT 1965

(2) A grant of access complies with subsection (1) notwithstanding that it may be subjected to restrictions as to time or place which are necessary or reasonable in the interest of safety or of avoiding undue disruption of the employer's business.

(3) An employer may, by notice in writing addressed to a union that is certified in respect of a bargaining unit in that employer's undertaking, require that a representative of the union shall not engage in activities of the union which are to take place on the employer's premises except with the permission of the employer; and, where such a requirement has been made of a union, a representative of the union shall not engage in any such activities except in accordance with the requirement.

(4) If a person—

(a) contravenes subsection (1); or

(b) engages in activities on premises in contravention of a requirement under subsection (3) applying to him,

he commits an offence.

Cancellation of certification

30P (1) A worker in a bargaining unit ("the existing unit") may, at any time after the expiration of one year after a union has been certified in respect of that unit, make application in writing to the Labour Relations Officer for the cancellation of the certification on the ground that 35 per cent or more of the workers in that unit no longer support the union.

(2) An application under subsection (1) shall be accompanied by evidence substantiating the ground mentioned in that subsection.

(3) On receipt of an application under subsection (1), the Labour Relations Officer shall enquire into the appropriateness of the existing unit in light of the following factors—

(a) the community of interest among the workers in the existing unit;

(b) the nature and scope of the duties of those workers;

(c) the views of the employer and of the union as to any changes that ought to be made in the existing unit,

and shall assist the union and the employer to determine the bargaining unit that is appropriate in the circumstances.

(4) If the union and the employer are not able to agree on the determination of the appropriate bargaining unit within such reasonable period as the Labour Relations Officer may allow, the Labour Relations Officer shall so advise the Minister and the Minister shall refer the issue to the Tribunal for determination; and the order of the Tribunal

determining the issue shall be final and shall not be subject to any appeal.

(5) Within 30 days after receiving notice of a determination of the appropriate bargaining unit, the Labour Relations Officer shall conduct a ballot of the workers in the bargaining unit as reconstituted (if the circumstances require) pursuant to subsections (3) and (4).

(6) If on such a ballot it is shown that more than 50 per cent of the workers voting in the ballot do not support the union, the Labour Relations Officer shall cancel the certification of the union; and, subject to subsection (7), the union shall cease to be the exclusive bargaining agent in respect of that unit in accordance with the order.

(7) Cancellation of the certification of a union by the Labour Relations Officer under subsection (6) shall be made by order; and section 30R shall have effect as respects service and the time of taking effect of the order and any appeal from the order, and otherwise in relation to the order.

(8) Where the certification of a union is cancelled, that union may not make application under section 30B in respect of the bargaining unit in question until a period of 12 months has expired.

(9) If on a ballot under subsection (5) it is shown that more than 50 per cent of the workers voting in the ballot support the union, the Labour Relations Officer shall by order reject the application under subsection (1); and section 30R shall have effect as respects service and the time of taking effect of the order and any appeal from the order, and otherwise in relation to the order.

(10) Where an application under subsection (1) is rejected under subsection (9), another such application shall not be made until a period of 12 months has expired.

Procedure on a ballot

30Q The First Schedule shall have effect as to the procedure to be followed in the conduct of a ballot pursuant to section 30G or section 30P(5).

Orders of the Labour Relations Officer and appeals

30R (1) This section applies to an order made by the Labour Relations Officer under section 30K(3) or 30P(7) or (9).

(2) The order shall be in writing, signed by the Labour Relations Officer and dated, and addressed to the union and the employer.

(3) A copy of the order shall be delivered to the union and the employer on the day of the date of the order and, subject to this section,

TRADE UNION ACT 1965

the order shall take effect on the fourteenth day next following the day of delivery or such later day, if any, as is specified in the order.

(4) The union or the employer may appeal to the Minister by notice in writing—

(a) addressed to the Minister and delivered to him before the day on which the order would take effect under subsection (3); and

(b) stating the appellant's grounds of appeal.

(5) Where the Minister receives a notice of appeal within the time allowed by subsection (4)—

(a) the Minister shall cause an appeal to be conducted pursuant to the provisions of subsection (7); and

(b) the order is suspended pending the determination of the appeal.

(6) If the Minister does not receive a notice of appeal within the time allowed by subsection (4), the order takes effect on the day provided for in subsection (3).

(7) The provisions referred to in paragraph (a) of subsection (5) are as follows—

(a) the Minister shall in writing refer the issue or issues raised by the notice of appeal to the Tribunal;

(b) the Tribunal shall as soon as may be determine the issue or issues in question and by order either confirm the order the subject of the appeal or modify that latter order as the Tribunal sees fit;

(c) the order of the Tribunal shall be final and shall not be subject to any appeal, and shall have effect in substitution for the order the subject of the appeal.

(8) The Second Schedule shall have effect as to the constitution and procedures of the Tribunal, and otherwise as to the operation of the Tribunal.

Offences

30S A person who commits an offence against a provision of this Part is liable on summary conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding six months.

Modification of rights by agency shop

31 (1) Where an agency shop is for the time being in force, a worker in relation to whom the agency shop applies shall not have the right, as between himself and an employer in relation to whom the agency shop applies, to refuse to be a member of the trade union for

whose benefit the agency shop exists unless he agrees to pay appropriate contributions to the trade union in lieu of membership of it.

(2) Notwithstanding section 30 it shall be lawful for an employer who is required to set up and continue in being an agency shop under section 37, or for a person acting on behalf of such an employer—

- (a) to dismiss, penalize or otherwise discriminate against a worker in relation to whom such agency shop applies on the grounds that he is not a member of the trade union for whose benefit the agency shop exists and has not agreed, or has refused or failed, to pay appropriate contributions to the trade union or as provided in section 33 to a charity; or
- (b) to refuse to engage a worker who, if engaged by the employer, would be a worker in relation to whom the agency shop applies, on the grounds that he is not a member of that trade union and refuses to become a member of it and also refuses to pay appropriate contributions to the trade union or as provided in section 33 to a charity.

(3) Where a worker in relation to whom an agency shop applies has agreed to pay appropriate contributions to the trade union for whose benefit the agency shop exists, and requests his employer to deduct the contributions from his remuneration and pay them on his behalf, then so long as that request remains in force—

- (a) he shall not be regarded for the purposes of subsection (2)(a) as having refused to pay contributions to the trade union; and
- (b) any failure on the part of the employer to comply with the request shall not be regarded as a failure on the part of the worker to pay contributions.

(4) In relation to a person who, in accordance with section 33 elects to pay contributions to a charity instead of contributions to a trade union, subsections (1) to (3) shall have effect as if any reference to appropriate contributions to a trade union were a reference to equivalent contributions to that charity.

Appropriate contributions to trade union in lieu of membership

32 (1) Any reference in this Act to appropriate contributions to a trade union in lieu of membership of the trade union shall be construed in accordance with the following provisions of this section.

(2) Appropriate contributions to a trade union in lieu of membership may be either—

TRADE UNION ACT 1965

- (a) periodical payments only; or
- (b) periodical payments and an initial payment,

as any particular agency shop agreement or agency shop scheme may provide; and, subject to the following provisions of this section, the amount of any such contribution payable by any person under an agency shop agreement or agency shop scheme shall be such amount as may be determined in accordance with such agreement or scheme.

(3) In so far as they consist of periodical payments, appropriate contributions payable to a trade union by a worker in relation to whom an agency shop applies for any year in pursuance of an agency shop agreement or under an agency shop scheme shall not in the aggregate exceed the aggregate amount which he would be required to pay for that year by way of periodical contributions in respect of membership dues only if he were a member of the trade union.

(4) An agency shop agreement or an agency shop scheme may provide that appropriate contributions payable to a trade union by a worker in relation to whom an agency shop applies may include an initial payment to a trade union where, under the rules of the trade union, a new member of the trade union would be required, on joining the union, to pay an initial contribution in addition to any periodical contribution; but any initial payment for which the agency shop agreement or agency shop scheme provides shall not exceed the initial contribution so required by such rules.

Contributions to charity instead of contributions to trade union

33 Any worker who—

- (a) in accordance with an agency shop agreement or an agency shop scheme would, unless otherwise permitted under this section, be required to agree to pay appropriate contributions to a trade union in lieu of membership of it; but
- (b) objects both to being a member of a trade union and to paying contributions to a trade union in lieu of membership of it,

may inform his employer that, instead of paying such contributions, he elects to pay equivalent contributions to a charity selected by him.

Setting up of agency shop by agreement

34 (1) In this section and sections 35 and 36 "collective agreement", means a collective bargaining agreement between a workers' trade union and an employer or an employers' trade union.

(2) The parties to a collective agreement may agree to set up an agency shop (such agreement being termed, for the purposes of this Act, an "agency shop agreement") in respect of workers of one or more

descriptions specified in the agency shop agreement, being workers in respect of whom the trade union party to the agency shop agreement has negotiating rights under the collective agreement.

(3) The parties to an agency shop agreement may, by a further agency shop agreement, vary or terminate an agency shop set up by a previous agency shop agreement.

(4) No agency shop agreement shall take effect unless it is approved by the workers in respect of whom it is to apply by ballot in pursuance of the order of the Minister under section 35(3).

(5) An agency shop agreement shall not contain any provision at variance with this Act, and an agency shop agreement under subsection (2) shall specify—

- (a) the employer or employers to be included within the agency shop;
- (b) the categories of workers to be included in the agency shop;
- (c) the manner in which the appropriate contributions for the purposes of section 32 are to be determined, and whether or not new members of the trade union are required to pay an initial payment on joining the union;
- (d) the manner in which the appropriate contributions referred to in paragraph (c) are to be collected;
- (e) the period during which the agency shop is to be in force or whether the agency shop is to continue in force indefinitely.

Report of agreement or failure to enter into agreement

35 (1) Where the parties to a collective agreement have—

- (a) entered into an agency shop agreement in accordance with section 34; or
- (b) failed to enter into such an agreement,

then any party to such collective agreement may report the matter to the Labour Relations Officer, and such report shall, where the parties have entered into an agency shop agreement, be accompanied by a copy of the agreement.

(2) Where a failure to enter into an agency shop agreement is reported under subsection (1), the Labour Relations Officer shall endeavour to conciliate the parties concerned and to assist them to reach agreement, and if he is unable so to do, shall report the matter to the Minister.

TRADE UNION ACT 1965

(3) Subject to section 36, the Minister shall as soon as practicable after—

- (a) the entering into of an agency shop agreement is reported to the Labour Relations Officer under subsection (1);
- (b) the failure of conciliation is reported to him by the Labour Relations Officer under subsection (2),

order a secret ballot to be taken in accordance with section 36.

(4) Part II of the Labour Relations Act 1975 [*title 18 item 1*] shall not apply to a labour dispute arising out of a failure of any party to a collective agreement to enter into an agency shop agreement or to agree to any proposal as to the provisions thereof or to commence negotiations with the object of entering into an agency shop agreement.

Ballot on agency shop agreements and agency shop schemes

36 (1) The order of the Minister under section 35(3) shall specify—

- (a) the area of employment in relation to which the ballot is to be taken, that area being defined in the order by reference to (or to any combination of) any of the following, that is to say, one or more industries specified in the order, one or more undertakings or parts of undertakings so specified, and one or more descriptions of workers so specified;
- (b) the question upon which the ballot is to be taken being—
 - (i) in the case of a ballot upon an agency shop agreement, the approval of that agreement;
 - (ii) in the case of a ballot following the failure of conciliation under section 35(2), the approval of the scheme prepared by the Minister under subsection (3) (such scheme being termed, for the purposes of this Act, an "agency shop scheme");
- (c) the manner in which the ballot is to be conducted, including the supervision thereof by the Labour Relations Officer or some person specified by him;
- (d) the time within which the ballot is to be taken; and
- (e) the period within which the result of the ballot is to be reported to the Minister.

(2) The order shall include provisions for enabling the workers eligible to vote in the ballot to be determined; and those provisions shall

be formulated in such manner as in the opinion of the Minister will secure that all workers falling within the area of employment specified in the order in accordance with subsection (1)(a) will be eligible to vote.

(3) Where a ballot follows the failure of conciliation under section 35(2) the Minister shall prepare the agency shop scheme after considering such representations as the parties to the collective agreement may make to him.

(4) Representations to the Minister under subsection (3) shall be made in such manner and within such time as the Minister may determine.

(5) An agency shop scheme shall specify the matters listed in paragraphs (a) to (e) of section 34(5).

(6) An order under section 35(3) shall be published in such manner as the Minister may consider best calculated to bring its contents to the notice of the persons affected thereby.

(7) Any employer, trade union or worker affected by a ballot for an agency shop which he alleges has been irregularly conducted may within four weeks of the ballot apply to the Supreme Court for the setting aside of the ballot, and the Supreme Court may make such order therein as it thinks just, but subject thereto, the result of a ballot as declared to the Minister shall not be questioned in any court of law.

Effect of ballot under section 36

37 (1) If the result of a ballot as reported to the Minister in accordance with his order under section 36 is that a majority of the workers eligible to vote in the ballot have voted in favour of the agency shop, then it shall be the duty of the employer to take all such action as is requisite on his part for setting up the agency shop in accordance with the agency shop agreement or agency shop scheme in respect of the description or descriptions of workers comprised in the ballot and for continuing it in being for so long as it shall remain in force.

(2) If the result of a ballot as reported to the Minister in accordance with his order under section 35(3) is that a majority of the workers eligible to vote in the ballot have not voted in favour of the agency shop then the agency shop agreement providing for the setting up of such a shop shall, to the extent that it so provides, be void.

(3) No report shall be made to the Labour Relations Officer under section 35(1) in respect of a proposed agency shop which will apply in respect of workers eligible to vote in the ballot until the expiration of a period of one year from the date of the ballot.

TRADE UNION ACT 1965

Duration of agency shop

38 (1) An agency shop shall last for the duration of the period during which the agency shop is to be in force under the agency shop agreement or agency shop scheme unless it is sooner terminated—

- (a) by a subsequent agency shop agreement taking effect under this Act; or
- (b) under this section.

(2) Subject to the following provisions of this section, any worker in respect of whom an agency shop applies may make an application to the Minister under this section.

(3) The Minister shall not entertain such an application as is mentioned in subsection (2)—

- (a) unless he is satisfied that not less than one-tenth of the workers to whom the agency shop for the time being applies have signified in writing their concurrence in the application; or
- (b) if the application is made before the end of a period of two years beginning with the date upon which the result of the ballot giving effect to or continuing in being the agency shop was reported to the Minister under section 36 or this section.

(4) Subject to subsection (3) the Minister shall, upon receiving an application under subsection (2), order that a secret ballot shall be taken and such order shall specify—

- (a) the manner in which the ballot is to be conducted, including supervision thereof by the Labour Relations Officer or some person specified by him;
- (b) the time within which the ballot is to be taken; and
- (c) the period within which the result of the ballot is to be reported to the Minister.

(5) The persons eligible to vote in the ballot shall be the workers in respect of whom the agency shop applies.

(6) If the result of the ballot, as reported in accordance with the order of the Minister under subsection (4), is that the majority of the workers eligible to vote in the ballot have voted against the continuance of the agency shop, the agency shop shall cease to be lawful and section 30 shall apply accordingly.

Complaint of breach of duty under section 37(1)

39 (1) Application may be made to the Supreme Court by a trade union where the trade union alleges that an employer in contravention of

his duty under section 37(1) has not taken all such action as was requisite on his part for the purpose of setting up an agency shop in relation to such trade union, or for the purpose of continuing such agency shop in being for so long as the shop is in force.

(2) If, on such a complaint, the Court finds that the grounds of the complaint are well founded, the Court may, if it considers that it would be just and equitable to do so, make any one or more of the following orders—

- (a) an order determining the rights of the trade union and of the employer in relation to the matters to which the complaint relates;
- (b) an order directing the employer to take such action in fulfilment of the duty in question as, in the opinion of the Court, it would be within the power of the employer to take and is action which in the circumstances he ought to be required to take.

(3) The power to make rules of the Supreme Court provided by section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall include power to make rules regulating, subject to, and for the purpose of, giving effect to, this section, the practice and procedure on all matters relating to the granting of relief under this section.

Victimisation

40 (1) Any employer who dismisses any worker employed by him or reduces the rate of his remuneration or alters the terms or conditions of his employment to terms or conditions less favourable to him or alters his position relatively to other workers employed by him to that worker's disadvantage on the grounds that that worker has given information which by or under any of the provisions of this Act he is required to give, or which relates to the terms or conditions of his employment or of the employment of other workers employed by his employer, to any conciliator or Arbitration Tribunal acting in relation to any labour dispute, or to any registered trade union of which he is a member or to any officer of any such trade union, or has given evidence before any court of law, commits an offence against this Act:

Punishment on summary conviction: a fine of \$720.

(2) The Court which tries any such offence may, in addition to imposing a penalty, order that the worker concerned, unless reinstated, where appropriate with payment of unpaid wages, shall be awarded damages not exceeding two hundred and forty dollars proved to have been suffered by him and, failing payment of such damages, may sentence the employer to imprisonment for a term of one month in addition to any other penalty which the court has imposed upon him.

TRADE UNION ACT 1965

(3) For the purposes of this section "employer" includes any servant or agent of an employer who is authorized by that employer to engage or dismiss workers on his behalf.

Person under 18 but over 16 may become member of trade union

41 A person under the age of eighteen years, but above the age of sixteen years, may be a member of a trade union unless provisions are made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and may execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustees, or treasurer of the trade union.

[Section 41 amended by 2001:20 effective 1 November 2001]

Member of trade union may nominate persons to receive moneys on his death

42 (1) A member of a trade union may, by writing under his hand, delivered at, or sent to, the registered office of the trade union nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator), to whom any moneys payable on the death of such member, not exceeding one hundred and twenty dollars, shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the amount aforesaid.

(2) Every trade union shall keep a record or, register of all nominations made under subsection (1) and of all revocations and variations of any such nominations.

Change of name of trade union

43 (1) A trade union may, with the approval in writing of the Registrar, change its name by the consent of not less than two thirds of the total number of members.

(2) No change of name shall affect any rights or obligations of the trade union or of any member thereof and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue and be sued on behalf of the trade union notwithstanding its new name.

Amalgamation of trade unions

44 Any two or more trade unions may become amalgamated together as one trade union if in the case of each or every such trade union, on a ballot being taken, the votes of at least fifty per centum of

the members entitled to vote thereat are recorded, and of the votes recorded those in favour of the proposal exceed by twenty per centum or more the votes against the proposal; and such amalgamation may be effected with or without any dissolution or division of the funds of such trade unions, or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any trade union party thereto.

Notice of change of name or amalgamation

45 Notice in writing of every change of name or amalgamation, signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a certificate under the hand of the secretary certifying that the provisions of this Act in respect of changes of name have been complied with, and, in the case of an amalgamation, signed by seven members, and countersigned by the secretary of each and every trade union party thereto, and accompanied by a certificate under the hand of each such secretary that the provisions of this Act in respect of amalgamation have been complied with, shall be sent to the Registrar for registration and until such change of name or amalgamation is so registered it shall not take effect.

Notice of dissolution must be sent to Registrar

46 Notice of the dissolution of any trade union shall be sent under the hand of the secretary and seven members of the trade union to the Registrar within fourteen days of the dissolution and shall be registered by him.

Failure to give notice or send documents

47 (1) Any trade union which fails to give any notice or send or produce any document which it is required by this Act, to give, send or produce and every officer or other person bound by the rules thereof to give send or produce the notice or document, or if there is no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or have attempted to prevent the omission, shall be liable to forfeit a sum not exceeding twelve dollars recoverable before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 [*title 8 item 15*] at the suit of the Registrar or of any person aggrieved, and to an additional forfeiture of the like amount for each week during which the omission continues.

(2) Nothing in this section shall be construed so as to prejudice the effect of any of the foregoing provisions of this Act under which criminal proceedings may be taken against an officer of a trade union or other person for an omission to give any notice or send or produce any document:

TRADE UNION ACT 1965

Provided that no such officer or other person shall be liable both to criminal proceedings and to proceedings under this section in respect of the same omission.

Minister may make regulations

48 (1) The Minister may make regulations with respect to all or any of the following matters—

- (a) the registration of a trade union under this Act and the documents and information to be furnished by any applicant for such registration;
- (b) the seal (if any) to be used for such registration;
- (c) the forms to be used for such registration;
- (d) the inspection of documents kept by the Registrar under this Act;
- (e) the fees to be paid on registration, not exceeding the fees specified in the Schedule; and in respect of any service, matter or thing falling to be performed by the Registrar for the purposes of this Act or of any regulations made thereunder; and
- (f) generally, for carrying this Act into effect,

and may revoke or vary such regulation.

(2) The negative resolution procedure shall apply to regulations made under this Act.

Repeal

49 [omitted]

Commencement

50 [omitted]

[This Act was brought into operation on 1 August 1965]

FIRST SCHEDULE (Section 30Q)

Conduct of a Ballot

1. (1) The Labour Relations Officer shall be in charge of the ballot and have responsibility for its orderly conduct.

(2) Where any matter occurs in relation to the ballot which is not regulated by this Schedule, the Labour Relations Officer shall deal with the matter in his discretion.

2. The ballot shall be conducted at a convenient place on the premises where a majority of workers are employed at such time as the Labour Relations Officer, after consultation with the employer and the union, may determine.

3. The Labour Relations Officer shall formulate the question to be decided on the ballot, shall prepare voting forms, which shall state that question and make provision for answering it, and shall give a voting form to each person who in his opinion is entitled to vote in the ballot.

4. Before any person votes, the Labour Relations Officer shall explain to him in simple language the purpose of the ballot and the procedures to be followed.

5. The Labour Relations Officer shall, subject to his responsibility under sub-paragraph (1) of paragraph 1 for the orderly conduct of the ballot, allow such representatives of the union or unions concerned and the employer as the Labour Relations Officer sees fit to be present in the voting-place to observe the ballot.

6. The Labour Relations Officer may use such persons as he sees fit to assist him in the conduct of the ballot.

7. As soon as all persons entitled to vote in the ballot and who wish to do so have voted, the Labour Relations Officer shall count the votes and record the result on a standard certification form.

8. The decision of the Labour Relations Officer as to the result of a ballot shall be final and not be subject to any appeal.

[First schedule inserted by 1998:41 effective 1 May 2000]

TRADE UNION ACT 1965

SECOND SCHEDULE (Section 30R(8))

The Tribunal

1. In this Schedule—

"the issue" means the issue or issues referred by the Minister to the Tribunal under subsection (2) of section 30D, subsection (4) of section 30P or subsection (7) of section 30R;

"the 1992 Act" means the Trade Disputes Act 1992.
2. On receipt of advice of the Labour Relations Officer that the union and the employer are unable to agree on the determination of the appropriate bargaining unit or on receipt of a notice of appeal under subsection (5) of section 30R, the Minister shall by instrument in writing appoint three persons to be members of, and to form, the Tribunal, and one of those members to be its Chairman.
3. Before appointing a member of the Tribunal other than the Chairman, the Minister shall consult the employer and a representative of workers.
4. The members of the Tribunal shall hold office until the Tribunal hands down its order determining the issue.
5. The Minister may appoint such officers and servants to serve the Tribunal as he may consider necessary.
6. Sections 7 to 10, 12 and 13 of the 1992 Act shall have effect, with the necessary changes, in relation to the Tribunal as those sections have effect in relation a Trade Disputes Tribunal constituted under the 1992 Act.
7. (1) If a question arises as to the interpretation of the Tribunal's order determining the issue, then the Minister, upon being notified by any person aggrieved by the order, shall re-appoint the Tribunal and shall, for that purpose, re-appoint the original Chairman and members if they are available; and paragraphs 1 to 6 of this Schedule shall have effect, with the necessary changes, for the purposes of any such re-appointment.

(2) Where a Tribunal is re-appointed under sub-paragraph (1), subsections (2) to (4) of section 17 of the 1992 Act shall have effect, with the necessary changes, for the purposes of sub-paragraph (1) as those subsections have effect for the purposes of subsection (1) of section 17 of the 1992 Act.

[Second schedule inserted by 1998:41 effective 1 May 2000]

THIRD SCHEDULE

Maximum Fees which may be required to be paid under Regulations

For registering trade unions	12.00
For registering alterations in rules	1.20
For inspection of documents	0.30

[Third schedule amended by 1998:41 effective 1 May 2000]

[Amended by

1969 : 673

1973 : 95

1975 : 15

1977 : 35

1997 : 37

1998 : 41

2001 : 20

2002 : 15]

TRADE UNION AMENDMENT ACT 1998



BERMUDA
1998 : 41

"THE TRADE UNION AMENDMENT ACT 1998"

[Date of Assent 7 October 1998]

[Operative Date]

WHEREAS it is expedient to amend the Trade Union Act 1965:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Short title

1 This Act may be cited as the Trade Union Amendment Act 1998.

General amendment of Act No 171 of 1965

2 The Trade Union Act 1965 ("the Act") is amended generally by deleting the words "workman", "workman's", "workmen" and "workmen's" wherever they occur and substituting the words "worker", "worker's", "workers" and "workers' " respectively.

Insertion of new provisions in Act

3 The following provisions are inserted in the Act next after section 30—

"Regulation of bargaining rights of certain trade unions

30A (1) This section and sections 30B to 30S shall have effect for the purpose of regulating the recognition of collective bargaining rights.

TRADE UNION AMENDMENT ACT 1998

(2) In sections 30B to 30S—

"ballot" means a secret ballot;

"bargaining agent" means a union that acts on behalf of workers;

"bargaining unit" means, except in section 30F(3) and (4)(b), a group of two or more workers (all being non-management persons) in an undertaking, on behalf of whom collective bargaining may take place;

"to certify", in relation to a union, means to certify that union under section 30F or 30G, as the case may require, as the exclusive bargaining agent in respect of a bargaining unit; and "certification" and other cognates of "certify" have corresponding meanings;

"management person" means a person who in the course of his employment in an undertaking—

(a) is responsible for the direction and management of the undertaking; or

(b) has authority to appoint or dismiss or exercise disciplinary control over workers in the undertaking;

"non-management person" means a person who is not a management person;

"this Part" means this section and sections 30B to 30S, including the First and Second Schedules;

"the Tribunal" means the Tribunal for which provision is made in section 30R;

"union" means a trade union whose principal purposes are the representation and promotion of workers' interests and the regulation of relations between workers and employers, and includes a federation of trade unions but not an organization or association that is dominated by an employer or by an employers' organization.

TRADE UNION AMENDMENT ACT 1998

Application for certification

30B (1) A union claiming to have as members in good standing 35 per cent or more of the workers in a proposed bargaining unit may, subject to the provisions of this Part, make application to the Labour Relations Officer to be certified in respect of that proposed bargaining unit.

(2) Where there is no union certified as mentioned in subsection (1), the application may be made at any time.

(3) Where there is a union certified as mentioned in subsection (1), the application shall not be made before the expiry of 24 months beginning on the date of that certification.

(4) Where a union has made an application under subsection (1) and has failed for whatever reason to gain certification in respect of a bargaining unit, that union may not make another application to be certified before the expiry of 12 months beginning on the date of the previous application.

Application procedure

30C An application under section 30B shall—

(a) be in writing;

(b) include—

(i) a description of the proposed bargaining unit; and

(ii) a statement of the facts upon which the union relies as showing that 35 per cent or more of the workers in that unit wish to have the union as their exclusive bargaining agent; and

(c) be served on the employer.

The bargaining unit

30D (1) On receipt of an application under section 30B, the Labour Relations Officer shall assist the union and the employer to determine the bargaining unit that is appropriate in the circumstances ("the appropriate bargaining unit"), having regard to the following factors—

(a) the community of interest among the workers in the proposed bargaining unit;

TRADE UNION AMENDMENT ACT 1998

- (b) the nature and scope of the duties of those workers;
- (c) the views of the employer and of the union as to the appropriateness of the proposed bargaining unit;
- (d) the historical development, if any, of collective bargaining in the undertaking.

(2) If the union and the employer are not able to agree on the determination of the appropriate bargaining unit within such reasonable period as the Labour Relations Officer may allow, the Labour Relations Officer shall so advise the Minister and the Minister shall refer the issue to the Tribunal for determination; and the order of the Tribunal determining the issue shall be final and shall not be subject to any appeal.

(3) The date of an application under section 30B is the relevant date in respect of which the appropriateness of the bargaining unit shall be considered.

Response by the employer

30E (1) Within fourteen days after receipt of service of an application under section 30B, the employer shall give notice either—

- (a) that he agrees to the application, in which event the Labour Relations Officer shall, subject to section 30F, certify the union; or
- (b) that he opposes it, in which event the Labour Relations Officer shall conduct a ballot under section 30G.

(2) A notice under subsection (1) shall be in writing addressed to the Labour Relations Officer and, where it is given under paragraph (b) of that subsection, shall specify the employer's reasons.

(3) If an employer on whom an application under section 30B has been served does not give notice under subsection (1) within the fourteen days allowed by that subsection, he shall be deemed to have agreed to the application.

TRADE UNION AMENDMENT ACT 1998

Certification where there is agreement

30F (1) This section applies where one union only has made application under section 30B and the employer has agreed to the application.

(2) If the Labour Relations Officer is satisfied that more than 50 per cent of the workers in the bargaining unit support the union, he shall certify that union as the exclusive bargaining agent in respect of that unit.

(3) A union party to an agreement to which subsection (4) applies shall be deemed to have been certified under this section, on the date of commencement of the Trade Union Amendment Act 1998, as the exclusive bargaining agent in respect of any bargaining unit of workers in respect of which the agreement designates that union as the exclusive agent for collective bargaining purposes.

(4) This subsection applies to any agreement between a union and an employer—

- (a) which was in existence immediately before the date of commencement of the Trade Union Amendment Act 1998;
- (b) which designates a union for collective bargaining purposes as the exclusive agent of workers in a bargaining unit in that employer's undertaking, whether or not that bargaining unit includes management persons; and
- (c) a copy of which immediately before that date was held by the Minister in a register of such agreements.

Certification in other cases

30G (1) This section applies where either—

- (a) one union only has made application under section 30B and the employer has opposed the application; or
- (b) more than one union has made such an application.

(2) In a case to which subsection (1)(a) applies, the Labour Relations Officer shall conduct a ballot among the workers in the bargaining unit and, if the ballot shows that more than 50 per cent of the workers voting in the ballot

TRADE UNION AMENDMENT ACT 1998

support that union, he shall certify the union as the exclusive bargaining agent in respect of that bargaining unit.

(3) In a case to which subsection (1)(b) applies, the Labour Relations Officer shall conduct a ballot among the workers in the bargaining unit and if the ballot shows that none of the unions in question is supported by more than 50 per cent of the workers voting in the ballot, the Labour Relations Officer shall conduct a second ballot.

(4) If, in a case to which subsections (1)(b) and (3) apply, there are only two unions competing in the second ballot, the Labour Relations Officer shall certify as the exclusive bargaining agent in respect of the bargaining unit that union which is shown by that ballot as having the support of more than 50 per cent of the workers voting in that ballot.

(5) If, in a case to which subsections (1)(b) and (3) apply, there are more than two unions competing in the second ballot and none of those unions is supported by more than 50 per cent of the workers voting in the ballot, then the Labour Relations Officer shall conduct a third ballot, in which the only union in support of which votes may be cast shall be the union which obtained the highest number of votes in the second ballot; and in that third ballot that union shall be certified as the exclusive bargaining agent in respect of the bargaining unit if, but only if, that ballot shows that more than 50 per cent of the workers voting in that ballot support that union.

Duties of employer in relation to conduct of ballot

30H In relation to the conduct of such a ballot, the employer—

- (a) shall take all necessary steps to ensure that every worker who is eligible to vote in the ballot has the opportunity to do so; and
- (b) shall permit every such worker to be absent from work, for a reasonable time and without deduction of pay, for the purpose of so voting.

Protection of voting in ballot

30I (1) In relation to the conduct of such a ballot, a person—

TRADE UNION AMENDMENT ACT 1998

- (a) shall not offer or receive, or agree to offer or receive, any money, loan, reward, office or place of employment for voting, or agreeing to vote, or for refraining or agreeing to refrain from voting, for a union;
- (b) shall not offer to any person, or accept or take from any person, any food or drink or provision as an inducement to vote or refrain from voting, or as a reward for having voted or refrained from voting; or
- (c) shall not threaten, intimidate, restrain, or use any physical force upon, any person to induce or compel that person to vote or refrain from voting.

(2) A person who contravenes subsection (1) commits an offence.

Duties of persons generally in relation to conduct of ballot

30J (1) In relation to the conduct of such a ballot, a person shall not—

- (a) in or at the premises on which the ballot is held on the day of the ballot, seek to influence a worker affected by the ballot to vote, or refrain from voting, for a union; or
- (b) wilfully obstruct or hinder any person in the course of voting by that person or the carrying out by him of any other function that he has under this Part.

(2) A person who contravenes subsection (1) commits an offence.

Grant or refusal of certification

30K (1) Within a reasonable period (which however shall not exceed 3 months or such longer time as the union and the employer may agree) after receipt of an application under section 30B, the Labour Relations Officer shall determine either—

- (a) that he certifies the union as the exclusive bargaining agent in respect of the bargaining unit; or
- (b) that he refuses to do so.

TRADE UNION AMENDMENT ACT 1998

(2) A refusal by the Labour Relations Officer under paragraph (b) of subsection (1) shall be expressed to have been made on the ground that he is not satisfied that more than 50 per cent of the workers in the bargaining unit support the certification of the union.

(3) A determination by the Labour Relations Officer under this section shall be made by order; and section 30R shall have effect as respects service and the time of taking effect of the order and any appeal from the order, and otherwise in relation to the order.

Compulsory recognition and duty to treat

30L Where a union has obtained certification in respect of a bargaining unit and the certification remains in force, the employer shall deal with that union accordingly; and the union and the employer shall, subject to this Part, in good faith treat and enter into negotiations with each other for the purposes of collective bargaining.

Closing of undertaking

30M (1) Where, in relation to an employer, a union either—

- (a) has made an application under section 30B which has not been determined; or
- (b) has been certified in respect of a bargaining unit in his undertaking and the certification remains in force,

the employer, if he decides to discontinue the undertaking, shall give to the Labour Relations Officer and to the union notice in writing of—

- (c) the time when the undertaking is to be discontinued (being a reasonable time after the giving of the notice);
- (d) the reasons why the undertaking is being discontinued; and
- (e) the number and categories of workers that will be affected.

(2) An employer who contravenes subsection (1) commits an offence.

TRADE UNION AMENDMENT ACT 1998

(3) In proceedings for an offence of contravening subsection (1) it is for the employer to prove that any notice given by him was reasonable within paragraph (c) of that subsection.

Effect of certification

30N Where a union gains certification in respect of a bargaining unit—

- (a) that union replaces any other union that had previously been so certified in respect of that unit, and has exclusive authority to bargain collectively on behalf of that unit; and
- (b) the certification of that other union is deemed to be cancelled.

Access to employer's premises

30O (1) An employer shall not deny to an authorized representative of a union that is certified in respect of a bargaining unit in that employer's undertaking such access to the employer's premises as is reasonable and necessary for the purposes of the activities of the union, being lawful activities of the union arising out of its certification.

(2) A grant of access complies with subsection (1) notwithstanding that it may be subjected to restrictions as to time or place which are necessary or reasonable in the interest of safety or of avoiding undue disruption of the employer's business.

(3) An employer may, by notice in writing addressed to a union that is certified in respect of a bargaining unit in that employer's undertaking, require that a representative of the union shall not engage in activities of the union which are to take place on the employer's premises except with the permission of the employer; and, where such a requirement has been made of a union, a representative of the union shall not engage in any such activities except in accordance with the requirement.

- (4) If a person—
 - (a) contravenes subsection (1); or
 - (b) engages in activities on premises in contravention of a requirement under subsection (3) applying to him,

he commits an offence.

Cancellation of certification

30P (1) A worker in a bargaining unit ("the existing unit") may, at any time after the expiration of one year after a union has been certified in respect of that unit, make application in writing to the Labour Relations Officer for the cancellation of the certification on the ground that 35 per cent or more of the workers in that unit no longer support the union.

(2) An application under subsection (1) shall be accompanied by evidence substantiating the ground mentioned in that subsection.

(3) On receipt of an application under subsection (1), the Labour Relations Officer shall enquire into the appropriateness of the existing unit in light of the following factors—

- (a) the community of interest among the workers in the existing unit;
- (b) the nature and scope of the duties of those workers;
- (c) the views of the employer and of the union as to any changes that ought to be made in the existing unit,

and shall assist the union and the employer to determine the bargaining unit that is appropriate in the circumstances.

(4) If the union and the employer are not able to agree on the determination of the appropriate bargaining unit within such reasonable period as the Labour Relations Officer may allow, the Labour Relations Officer shall so advise the Minister and the Minister shall refer the issue to the Tribunal for determination; and the order of the Tribunal determining the issue shall be final and shall not be subject to any appeal.

(5) Within 30 days after receiving notice of a determination of the appropriate bargaining unit, the Labour Relations Officer shall conduct a ballot of the workers in the bargaining unit as reconstituted (if the circumstances require) pursuant to subsections (3) and (4).

TRADE UNION AMENDMENT ACT 1998

(6) If on such a ballot it is shown that more than 50 per cent of the workers voting in the ballot do not support the union, the Labour Relations Officer shall cancel the certification of the union; and, subject to subsection (7), the union shall cease to be the exclusive bargaining agent in respect of that unit in accordance with the order.

(7) Cancellation of the certification of a union by the Labour Relations Officer under subsection (6) shall be made by order; and section 30R shall have effect as respects service and the time of taking effect of the order and any appeal from the order, and otherwise in relation to the order.

(8) Where the certification of a union is cancelled, that union may not make application under section 30B in respect of the bargaining unit in question until a period of 12 months has expired.

(9) If on a ballot under subsection (5) it is shown that more than 50 per cent of the workers, voting in the ballot support the union, the Labour Relations Officer shall by order reject the application under subsection (1); and section 30R shall have effect as respects service and the time of taking effect of the order and any appeal from the order, and otherwise in relation to the order.

(10) Where an application under subsection (1) is rejected under subsection (9), another such application shall not be made until a period of 12 months has expired.

Procedure on a ballot

30Q The First Schedule shall have effect as to the procedure to be followed in the conduct of a ballot pursuant to section 30G or section 30P(5).

Orders of the Labour Relations Officer and appeals

30R (1) This section applies to an order made by the Labour Relations Officer under section 30K(3) or 30P(7) or (9).

(2) The order shall be in writing, signed by the Labour Relations Officer and dated, and addressed to the union and the employer.

(3) A copy of the order shall be delivered to the union and the employer on the day of the date of the order and, subject to this section, the order shall take effect on the fourteenth day next following the day of delivery or such later day, if any, as is specified in the order.

TRADE UNION AMENDMENT ACT 1998

(4) The union or the employer may appeal to the Minister by notice in writing—

(a) addressed to the Minister and delivered to him before the day on which the order would take effect under subsection (3); and

(b) stating the appellant's grounds of appeal.

(5) Where the Minister receives a notice of appeal within the time allowed by subsection (4)—

(a) the Minister shall cause an appeal to be conducted pursuant to the provisions of subsection (7); and

(b) the order is suspended pending the determination of the appeal.

(6) If the Minister does not receive a notice of appeal within the time allowed by subsection (4), the order takes effect on the day provided for in subsection (3).

(7) The provisions referred to in paragraph (a) of subsection (5) are as follows—

(a) the Minister shall in writing refer the issue or issues raised by the notice of appeal to the Tribunal;

(b) the Tribunal shall as soon as may be determine the issue or issues in question and by order either confirm the order the subject of the appeal or modify that latter order as the Tribunal sees fit;

(c) the order of the Tribunal shall be final and shall not be subject to any appeal, and shall have effect in substitution for the order the subject of the appeal.

(8) The Second Schedule shall have effect as to the constitution and procedures of the Tribunal, and otherwise as to the operation of the Tribunal.

TRADE UNION AMENDMENT ACT 1998

Offences

30S A person who commits an offence against a provision of this Part is liable on summary conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding six months."

Addition of Schedules to Act

4 (1) The Schedules set forth in the Schedule to this Act are added to the Act as respectively the First Schedule and the Second Schedule to the Act.

(2) Consequentially upon subsection (1)—

(a) the expression "the Schedule" in section 48(1)(e) of the Act is replaced by the expression "the Third Schedule"; and

(b) the word "Third" is inserted next before the word "Schedule" in the heading to the Schedule to the Act.

Commencement

5 This Act comes into operation on such date as the Minister responsible for Labour may appoint for the purpose by notice published in the Gazette.

THE SCHEDULE (Section 4(1))

"FIRST SCHEDULE (Section 30G)

Conduct of a Ballot

1. (1) The Labour Relations Officer shall be in charge of the ballot and have responsibility for its orderly conduct.

(2) Where any matter occurs in relation to the ballot which is not regulated by this Schedule, the Labour Relations Officer shall deal with the matter in his discretion.

2. The ballot shall be conducted at a convenient place on the premises where a majority of workers are employed at such time as the Labour Relations Officer, after consultation with the employer and the union, may determine.

3. The Labour Relations Officer shall formulate the question to be decided on the ballot, shall prepare voting forms,

TRADE UNION AMENDMENT ACT 1998

which shall state that question and make provision for answering it, and shall give a voting form to each person who in his opinion is entitled to vote in the ballot.

4. Before any person votes, the Labour Relations Officer shall explain to him in simple language the purpose of the ballot and the procedures to be followed.

5. The Labour Relations Officer shall, subject to his responsibility under sub-paragraph (1) of paragraph 1 for the orderly conduct of the ballot, allow such representatives of the union or unions concerned and the employer as the Labour Relations Officer sees fit to be present in the voting-place to observe the ballot.

6. The Labour Relations Officer may use such persons as he sees fit to assist him in the conduct of the ballot.

7. As soon as all persons entitled to vote in the ballot and who wish to do so have voted, the Labour Relations Officer shall count the votes and record the result on a standard certification form.

8. The decision of the Labour Relations Officer as to the result of a ballot shall be final and not be subject to any appeal.

SECOND SCHEDULE (Section 30R(8))

The Tribunal

1. In this Schedule—

"the issue" means the issue or issues referred by the Minister to the Tribunal under subsection (2) of section 30D, subsection (4) of section 30P or subsection (7) of section 30R;

"the 1992 Act" means the Trade Disputes Act 1992.

2. On receipt of advice of the Labour Relations Officer that the union and the employer are unable to agree on the determination of the appropriate bargaining unit or on receipt of

TRADE UNION AMENDMENT ACT 1998

a notice of appeal under subsection (5) of section 30R, the Minister shall by instrument in writing appoint three persons to be members of, and to form, the Tribunal, and one of those members to be its Chairman.

3. Before appointing a member of the Tribunal other than the Chairman, the Minister shall consult the employer and a representative of workers.

4. The members of the Tribunal shall hold office until the Tribunal hands down its order determining the issue.

5. The Minister may appoint such officers and servants to serve the Tribunal as he may consider necessary.

6. Sections 7 to 10, 12 and 13 of the 1992 Act shall have effect, with the necessary changes, in relation to the Tribunal as those sections have effect in relation a Trade Disputes Tribunal constituted under the 1992 Act.

7. (1) If a question arises as to the interpretation of the Tribunal's order determining the issue, then the Minister, upon being notified by any person aggrieved by the order, shall re-appoint the Tribunal and shall, for that purpose, re-appoint the original Chairman and members if they are available; and paragraphs 1 to 6 of this Schedule shall have effect, with the necessary changes, for the purposes of any such re-appointment.

(2) Where a Tribunal is re-appointed under sub-paragraph (1), subsections (2) to (4) of section 17 of the 1992 Act shall have effect, with the necessary changes, for the purposes of sub-paragraph (1) as those subsections have effect for the purposes of subsection (1) of section 17 of the 1992 Act."

LAYMAN'S GUIDE TO UNION RECOGNITION PROCEDURES

The Minister of Labour, Home Affairs & Public Safety has decided to Gazette the Trade Union Amendment Act 1998. This step means that the Bill that was passed by the last Government, will take effect, as of 1st May, 2000.

First Steps

In the event that a group of workers wishes to be represented by a **union**, the following measures must be taken:

1. An application for **certification** must be made in writing by the union to the **Labour Relations Officer** with confidential documentation demonstrating that more than 35% of the workers in the defined **bargaining unit**, wish to be represented by the union in question.
2. A copy of that application must be served on the **employer** in question as well, since the date of application marks the "snap shot" for determining the membership of the **bargaining unit**; that is, it identifies those who have a *right to vote*.
3. The **employer** is obliged to respond in writing within **14 days**, to the L.R.O. that, either:
 - (a) there is agreement that the union can represent the bargaining unit, leading to *automatic certification* of the union; or
 - (b) they wish a **ballot** to be held.
4. **Failure** to respond within **14 days** means that the employer has agreed to *automatic certification*.
5. The composition of the **bargaining unit** will be based on the following:
 - *The community of interest among the workers in the proposed bargaining unit.*
 - *The nature and scope of the duties of those workers.*
 - *The views of the employer and union as to the appropriateness of the proposed bargaining unit.*
 - *The historical development, if any, of collective bargaining in the undertaking.*
6. If the parties cannot agree on the make-up of the bargaining unit, the Labour Relations Officer will attempt to **conciliate**.
7. In the event the parties' differences cannot be conciliated, the matter of the make-up of the bargaining unit will be placed by the Minister, before a **Tribunal**, for a final settlement.

Ballot Process

- a) A **date** and **time** for balloting will be determined which is **suitable** to both the employer and the union.
- b) A venue is selected which will provide **easy access** to those voting.
- c) The Labour Relations Officer will be advised who will **represent** the parties at the ballot site **prior** to the voting day.
- d) The ballot will be conducted by the L.R.O. in an **atmosphere** which must be seen to be **free and fair**; the employer will allow a **reasonable time** period for all those eligible, to cast their ballots.
- e) **Attempts to coerce or bribe** in order to influence the ballot result one way or the other, is **an offence**. There is to be no **'canvassing'** at the site of the balloting on the day of the vote.
- f) The **count** of the votes will be conducted by the L.R.O. immediately following the balloting. **Certification** of the union will occur as soon as possible, if they receive more than 50% of the votes cast.
- g) The **certification order** made by the L.R.O. **takes effect 14 days** after delivery of a copy of the order to the employer and the union.
- h) There may be an appeal to the Tribunal from a decision of the L.R.O. to certify a union or to refuse to certify and the appeal must be addressed to the Minister and be made within **14 days** of receipt of the order. The appeal must set out the grounds upon which the appeal is being made.
- i) The whole process must be completed within **3 months** of receipt of the application, unless the Parties mutually agree to an extension.
- j) Where a union has been **certified** under the Act, the union and employer are obliged by law to enter into negotiations **in good faith** to conclude a collective bargaining agreement.

This guide is not an authoritative statement of the Law, nor is it intended to derogate from the actual text of the Trade Union Amendment ACT 1998. This is not a substitute for independent legal advice.

