

11. MALAYSIAN INDUSTRIAL RELATIONS SYSTEM: ADVANTAGES AND DISADVANTAGES OF CURRENT SYSTEMS OF INDUSTRIAL RELATIONS TO BOTH EMPLOYERS AND EMPLOYEES

Introduction

- Trades Union Act 1959
- Registration
- Rights and liabilities of trade unions
- Industrial action
- Constitution
 - Funds and accounts
- Consultative bodies
- Miscellaneous
- Cases: Industrial Relations



TRADE UNIONS ACT 1959

The definition of a trade union as given in the TUA implies the following aspects:

- The name of a trade union may not include the word “union”.
- Union membership is restricted to specific geographical territories like Peninsular Malaysia, as separate from either Sabah or Sarawak. This requirement restricts the size of membership of a trade union for a specific industry, meaning that the strength of the union is reduced in physical number and financially. This restriction does not mean that the employee’s birthplace and that of his union location should be the same. This means that there are no laws that prevent foreign workers with legally processed work permits from becoming union members. Relatively few foreign workers join unions because of their short period of working time here before they return to their own country.
- Unions of a general nature are not allowed. The DGTU decides which trades, occupations or industries are similar. For example, the decision was made that the electrical industry and the electronic industry are not the same. This means that one union cannot represent workers in both areas. This requirement contributes to undermining the human and economic power of the trade union, and contributing to the multiplicity of trade unions in Malaysia.
- A trade union must be restricted to the private sector or the public sector, and not for both sectors.

continuation

- For the public sector, union membership is restricted to employees in the same occupation, department or ministry. This practice also causes the tendency of proliferation of trade unions.
- The TUA does not allow trade union funds to be used to pay any fine or penalty imposed on any person by sentence or order of a court. This means individual employees have to be responsible to pay court fines or penalty through their own means. This requirement means that individual employees will not readily bring their individual grievances to court for adjudication. At the same time, this is a restriction of union funds.
- Trade union funds are not allowed to be used to support a political party, or pay for costs incurred in the election of any member to Parliament or state legislature. This requirement restricts the power of the trade union to exercise power and/or influence the proposal and voting of amendments to any of the industrial labour laws.
- Similarly, the TUA does not permit those who are office-bearers or employees of a political party to become trade union officials. This restriction limits the power and/or influence to the trade union officials.
- Those union members who had previously been convicted of any criminal felony or declared bankrupt are disqualified from standing for election to executive posts in a trade union. This action serves to maintain the stature and respect for the trade union.

REGISTRATION

- Restriction of the minimum number of employees required to form a trade union
- Ensures that a trade union is a legally recognised entity. Under this condition, and following procedures as stated in the IRA, the trade union can take part in any trade dispute, or promote, organise or finance any strike, or give payment or other benefits for its members during a strike, without incurring punity.
- Ensures that a union member can only be represented by one union.
- Through the requirement of registration for trade unions, the DGTU is granted immense power to decide whether workers in a specific industry, like the electronics industry, or companies operating in Free-Trade Zones in the country, can establish registered trade unions.
- Given the power to register a trade union, the DGTU is also empowered the right to de-register trade union, for conducting an unlawful activity like encouraging its members to be engaged in an illegal strike.

RIGHTS AND LIABILITIES OF TRADE UNIONS

Rights

- Protect the interests of its members;
- Undertake collective bargaining with the employer to produce a collective agreement;
- Represent the workers in trade disputes with their employer;
- Represent the workers in the IC;
- Conduct activities to support the social, recreational and cultural interests of its members;
- Organise and engage in any legal industrial action, including strike activity, following guidelines provided by the TUA.



Liabilities

- Comply with all the industrial labour laws;
- Stopping any of its members in conducting any illegal acts, like strikes, go-slows, boycotting overtime, etc.;
- Administer union funds in accordance with the union rules and requirements of the TUA;
- Conduct a secret ballot to get the consent of a minimum of two-thirds of those eligible to vote to start, promote or engage in any strike or other forms of industrial action.

INDUSTRIAL ACTION

By individual workers or union members

- Go-slow or slowdown at work
 - deliberate delay of production by the pretense of the employees;
 - sabotage an employer's business;
 - associated with loss or damage to the industrial enterprise;
 - considered a serious type of misconduct;
 - pressurise the employer to yield to employee demands.
- Picketing
 - One of the lawful weapons that workers can use under certain conditions
 - conducted at workers' own time;
 - no disruption of the employer's business;
 - no commitment of offence during picketing.
- Strike
 - Stoppage of work by a group of workmen acting in combination;
 - Concerted refusal to continue working or to accept employment.

By the employer

- Closure of a place of employment;
- Suspension of work;
- Refuse to continue the employment of a number of workmen.

CONSTITUTION

Section 26 of the TUA states that

- A person below 21 years of age but above 16 years may be a member of a trade union, but shall not serve as an official or trustee of the registered trade union;
- No student of an education institution shall join or be a member of a trade union, unless he is— (a) genuinely employed as a workman; and
(b) above 18 years of age;
- No unemployed person can be a member of a registered trade union;
- A union member below 18 years old cannot vote on
 - (a) strikes and lock-outs and related matters;
 - (b) imposition of a levy;
 - (c) dissolution of the trade union;
 - (d) amendment of rules of the trade union.

Section 27 of the TUA states that

- Public officers from the police force, fire services, armed services, or engaged in confidential or security capacity, or in the managerial and professional group (unless exempted by the Chief Secretary to the Government), are not permitted to be members of trade unions.

continuation

- **Funds and Accounts (Part VIII of the TUA)**

- **50. Application of funds.**

- (a) Payment of salaries, allowances and expenses of trade union officials and employees;
- (b) Payment of costs and expenses of trade union administration;
- (c) Prosecution or defence of any trade union or union member involved proceedings;
- (d) Expenses caused by the settlement of disputes;
- (e) Conduct of trade disputes on trade union or union member behalf;
- (f) Members' compensation for loss incurred from trade disputes;
- (g) Social allowances of dependents of members;
- (h) Payment of fees for affiliation with, or membership of, any registered federation of trade unions;
- (i) Payment of transport expenses, wages lost for union and industrial relations activities, expenses for establishment/maintenance of registered federation of trade unions;
- (j) Publication expenses;
- (k) Conduct of social, sporting, educational and charitable activities of the members;
- (l) Payment of officially approved insurance premiums as required.

CONSULTATIVE BODIES

Covered under Part XIIA of the TUA

76A. Restriction on the formation of or affiliation with consultative or similar bodies.

- (1) A registered trade union is not permitted to affiliate or be a member of such body, established outside Malaysia unless given written approval by the DGTU.
- (2) (a) A registered trade union with another trade union may form, affiliate with, or be a member of such body, established within Malaysia, provided consent of membership, or meeting of delegates, by majority voting was obtained, with not less than 14 days of prior notice. The trade union shall inform the DGTU in writing within 60 days of the conduct of the voting along with the relevant particulars.

76B. Application for permission to form or affiliate with consultative bodies.

- (1) Application to be made to the Registrar in the required form and signed by a minimum of 3 principal officers of the union.
- (2) Each application shall be accompanied with a copy of such body's constitution and rules, and general particulars pertaining to it.

continuation

76C. Power of Director General to withdraw permission or declare affiliation invalid.

- Non-approval of the application can be due to previous acts or acting against any provision of the TUA, any other written law or any condition imposed by the DGTU.

76D. Duty to inform the Director General of appointment to an office or employment in consultative bodies.

- (1) When such body within or outside Malaysia, appoints to office or recruited as an employee, of any trade union member, officer or employee such appointment or recruitment shall be notified to the DGTU within 60 days of such appointment or recruitment.
- (2) A member of the executive of the trade union with registration cancelled under the TUA shall not hold office in or be employed by such body unless written permission is given by the MHR, subject to any conditions he may impose.

MISCELLANEOUS

Part XI of the TUA

66. Act not to affect certain agreements or authorize action outside rules.

- The Act does not affect (a) any partnership business agreement; (b) agreement between employer and those employed by him to such employment; (c) agreement in sale of goodwill of a business or instruction in any profession, trade or handicraft.

67. Legislation relating to societies and companies not applicable to trade unions.

- (1) Not applicable to the Societies Act 1966;
- (2) No trade union can be registered as a society;
- (3) No registered company can apply to register as a trade union, and neither can a trade union register as a company.

68. Service of legal process

- Every summons, notice or other document to be served on a trade union shall be considered duly served if delivered to the union's registered office, or if it is handed personally to the union's president/treasurer/secretary/any other officer of the union.

continuation

69. Notification in *Gazette*

- The DGTU shall notify through the *Gazette* information about any trade union registration, the withdrawal or cancellation of the certificate of registration of a registered trade union, any change of name or amalgamation, change in the location of the registered office or the dissolution of the trade union.

70. Inspection, production and evidence of documents of the Director General.

- (1) Documents include the certificate of union registration or other document held by the Registrar. Such documents can be inspected, or a photocopy supplied for a fee. DGTU may refuse to give permission for such inspection or supply a copy.

70. Power of Director General to summon witnesses.

- (2) The summoned person shall be present at the hour, place specified, produce documents required, and answer questions posed by the DGTU truthfully;
- (4) Refusal to comply with such order or obstruct the compliance of such order may be arrested and detained, and shall on conviction, be fined for not more than RM500.

71A. Appeal to Minister.

- Any person, dissatisfied with the actions of the DGTU, may appeal to the MHR within 30 days.

CASES: INDUSTRIAL RELATIONS

Case studies from D'Cruz, M.N. (2003), A Handbook of MALAYSIAN LABOUR LAWS, Petaling Jaya, Leeds Publications, pp. 419 – 422.

REVIEW

- Trades Union Act 1959
- Registration
- Rights and liabilities of trade unions
- Industrial action
- Constitution
 - Funds and accounts
- Consultative bodies
- Miscellaneous
- Cases: Industrial Relations

