Trade Disputes and Industrial Action

Any dispute between an employer and his workers which is connected with the employment or **non-employment** or the terms of employment or the condition of work of any such worker (S2 IRA 1967)

A dispute could be caused:

- An individual who has a grievance, is represented by his union and who has exhausted the grievance (worker’s complaint) procedure without getting a satisfactory result;
- A difference of opinion between a union and an employer as to the appropriate terms and conditions of service for the workers;
- A difference of opinion as to the interpretation of a collective agreement of Industrial Court awards; or
- The non-implementation of an agreement or award

**Non-employment**: arising from dismissal, refusal to give work, suspension, constructive dismissal.

Non-economic factors may also lead to dispute - victimisation
Cont.

- Definition of TD appear to be broad, but limited to TU except dismissal.
- Trade dispute
  - On the one side the employer involved in the dispute or an employer union acting for all or any of its members involved in the dispute
  - An employee union acting for all or any members involved in the dispute but NOT an employee or any number of them involved in the dispute
- Implication:
  - Trade dispute only by union except for dismissal (S20 IRA)

Trade Dispute Process

TRADE DISPUTE

- Refer to DGIR for conciliation
- Refer to IR court for arbitration
- Industrial action: Picket, Strike, Lock-out
Settlement of Trade Disputes

- **Direct negotiation**
  - The 2 parties involved are willing to come together for discussion until a satisfactory compromise is reached.
  - Encouraged by IRA. Eg. Grievance procedure in CA, or parties cannot apply for conciliation before negotiation.

- **Conciliation (Stated in IRA)**
  - Process of arriving at a settlement of a trade dispute with the help of a third, neutral party (officers from Department of Industrial Relations)
  - Can be voluntarily requested by either party
  - DG may intervene in the public interest = compulsory conciliation. Public utilities, banks etc.
  - Most important method for settling dispute

- **Mediation**
  - A neutral third party (not from government) is called in by the parties to a dispute to help them find a settlement.
  - Rarely used – probably because difficult to find mediator suitable to both parties

- **Arbitration (Stated in IRA)**
  - An impartial third party (only Industrial Court) is given the authority to settle the dispute by examining the information given by both sides and making a judgment.
Ways to resolve trade disputes Under the IRA

<table>
<thead>
<tr>
<th>Ways</th>
<th>Agencies</th>
<th>IRA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negotiation</td>
<td>Parties to dispute</td>
<td>-</td>
</tr>
<tr>
<td>Fact-finding</td>
<td>Board of Inquiry or</td>
<td>Part VIII</td>
</tr>
<tr>
<td></td>
<td>Committee of Investigation</td>
<td></td>
</tr>
<tr>
<td>Conciliation</td>
<td>Dept of IR</td>
<td>Part V</td>
</tr>
<tr>
<td>Arbitration</td>
<td>Industrial Court</td>
<td>Part VII</td>
</tr>
<tr>
<td>Industrial Action</td>
<td>Parties to Disputes</td>
<td>Part IX</td>
</tr>
</tbody>
</table>

Industrial action by employees

- Two types of industrial action permitted by the law are pickets and strikes
- Other forms of industrial action;
  - Wearing casual dress while working
  - Mass visit to the doctor
  - Visiting bathrooms far more frequently than usual
  - Boycott – refuse to use or by a company’s product
  - Sabotage the employer’s machines
**Picketing**

- The most common form of industrial action taken by workers
- Workers are allowed to attend at or near their workplace when they have a trade dispute for the purpose of peacefully giving information to the public and other workers and to persuade other workers not to work if a strike has already been declared [Section 40, Industrial Relations Act]
- Picketing is used both to communicate issues to the public and to embarrass the employer
- Picket in worker’s own time, no disruption of business often held at lunch time and before or after office hour; or throughout the day if a strike has been declared.
- The is a prior negotiation

**Strikes**

- “the cessation of work by a body of workmen acting in combination, or a concerted refusal or a refusal under a common understanding of a number of workmen to continue work or to accept employment, and includes any act or omission by a body of workmen acting in combination or under a common understanding, which is intended to or does result in any limitation, restriction, reduction or cessation of dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment.” [Section 2, Industrial Relations Act]
- Various forms of industrial action which are included under the above definition – go slow, work to rule and ban on overtime
Strikes are only legal if they comply with the regulations in the Industrial Relations Act and Trade Unions Act
- The right to strike is only extended to members of a registered trade union
- Strikes must be in furtherance of a trade union
- Only where a group of workers have a trade union with their employer can they take strike action
- Before a strike takes place a secret ballot must be held by those eligible to strike, clearly stating the issues leading to the proposed strike [Section 40, Trade Union Act]
  - 2/3 of union member agree to have strike
  - Secret ballot valid for 90 days
Illegal strikes in Malaysia:
- **Sympathy strike**
  - A group of workers who are not involved in a trade dispute decide to go on strike to show support and solidarity with another group of workers who are legitimately on strike
- **Political/general strike**
  - A strike aimed not an employer but at the government
- **Wildcat strike**
  - A strike which is called without taking any ballot

**Strikes in the Essential Services**
- Banking services
- Electricity services
- Fire services
- Port, harbour and airport services
- Postal and telecommunication services
- Prison service
- Public health service
- Water service
- Transport services
- Broadcasting (TV and Radio)
- Petroleum and gas industries
- Certain government departments:
  - Customs and excise, immigration, marine, meteorology, printing

Strikers must give 21 days notice of strike to employer. Cooling of period. Employer need to notify DG once received such notice. DG will intervene.
When a strike is not permitted?

- Over a collective agreement which has been deposited with and accepted by the Industrial Court – S56 IRA
- Over management prerogatives
- During and immediately after the proceedings of a Board of Inquiry appointed by the Minister
- After a trade dispute has been referred to the Industrial Court for arbitration
- Over a recognition dispute which is being resolved by the Minister
- When the YDP Agong has refused permission for a trade dispute in the public sector to be referred to the Industrial Court for arbitration

Penalties for illegal strikes

- The executives of the union can be fined or imprisoned or both
- Revocation of union membership
- Detention under Internal Security Act (ISA)
- Employers have the right to dismiss workers involved in illegal strikes
Right to strike

- Although workers have the right to strike if they fulfill the legal requirements, strikes are certainly not encouraged.
  - Economic reasons
  - Affect investment decision by multinational
  - Majority strikes lasted 1-3 days

Industrial Action by Employers

- Lock-out
  - The closing of a place of employment, the suspension of work, or the refusal by an employer to continue to employ any number of workers employed by him, in furtherance of a trade dispute, done with a view to compel those workers to accept terms or conditions of work or affecting employment [Industrial Relations Act, Section 2]
References