DCE 5634
Employee, Organization and Community Relations

- Part One -

Prepared by:
Assoc. Prof. Dr. Raduan Che Rose
Graduate School of Management
Universiti Putra Malaysia
43400 UPM, Serdang
Selangor
rsc@pbra.upm.edu.my
03-89467438 / 019-3389446

© Universiti Putra Malaysia, July 2006
All rights reserved.
No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form
or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior
permission of Centre for External Education, UPM
# Table of Content

**Part One**: Employee, Organization and Community Relations: - Introduction, Actors and Context

<table>
<thead>
<tr>
<th>Reading</th>
<th>Topics</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading 1</td>
<td>Introduction to Industrial Relations</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>- (Employee, Organization and Community Relations)</td>
<td></td>
</tr>
<tr>
<td>Reading 2</td>
<td>The Dynamics of Industrial Relations</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>(Employee, Organization and Community Relations)</td>
<td></td>
</tr>
<tr>
<td>Reading 3</td>
<td>Malaysian Industrial Relations: - A Legal Framework</td>
<td>44</td>
</tr>
<tr>
<td>Reading 4</td>
<td>Trade Union in Malaysia: - Historical Perspectives</td>
<td>72</td>
</tr>
<tr>
<td>Reading 5</td>
<td>Trade Union in Malaysia: - The State of the Art</td>
<td>102</td>
</tr>
<tr>
<td>Reading 6</td>
<td>Employers' Association (MEF)</td>
<td>132</td>
</tr>
</tbody>
</table>
Introduction

Whether we are at work or at leisure, we are affected by the conditions under which we work and the rewards we receive for working. Work plays such a central role in our lives and in society that the study of relations between employee and employer cannot be ignored.

This chapter traces how employment relationships have been shaped and continue to be shaped through the perspective of Industrial Relations, an interdisciplinary field study that concentrates on individual workers, groups of workers and their unions and associations, employers and their organizations, and the environment in which these parties interact. The subject has more appeal because some aspect of industrial relations affects all workpeople, one way or another, for most of their working lives.

This chapter is divided into 4 parts. Part One gives the general background to industrial relations. First, we identify and describe how industrial come about and the development in the managing world. Part Two examines the main theories and some concepts of industrial relations to provide a framework for analyzing industrial institutions, practices activities.

Part Three focuses on the institutional framework organizational features. Initially we analyze the nature of employers and management and the ways in which to mange Industrial Relations. Part Four is concerned with the influence of bodies in Industrial Relations. For example, we look at the role of the government and the external and internal environment towards Industrial Relations.

What Are Industrial Relations?

The term 'Industrial Relation' is not easily defined. It broadly deals with the relationships encountered by workpeople in their working lives (as opposed to their private lives). The subject is very broad based, drawing on subject matter from economics, law, sociology, psychology, organizational theory and many others. The level covered by the subject range from individuals relationships in the office or on the factory to national and international bodies. The subject includes:

Institutions - trade unions union federations, employers’ association, the TUC, the CBI, trade councils, tribunals, courts ACAS. Wage councils’ joint industrial councils, government ministries and other organizations, which have input into industrial
relations activity, for example, college's universities and independent bodies such as Industrial Society.

**Characters** - shop stewards, conveyors, full-time officials of unions and employers' associations, personnel officers, director's conciliators, judges and ministers of state and other.

**Procedures** - bargaining, negotiating. Settling disputes, settling grievances, handling discipline, forming closed shop, policy making calling, strikes avoiding industrial action and referrals to conciliation or arbitration.

**Topics** - pay, hours, conditions of work, content of work, contracts of employment. Termination, union membership, political affiliation, picketing, strikes and lockouts plus recent additions safety, employee participation and technological change.

As defined above, in general, I.R. is "a set of phenomena operating within and outside the workplace, concerned with determining and regulating the employment relationship. According to Ayadurai (1996), industrial Relations are setting up the correct climate in which the organizations can be assumed of a successful future. It encompasses both the regulations of the relations between employers and unions, but concentrates on the latter than the former. Industrial relations are shaped by the political, economic and cultural context in each country and is reflected in a particular policy, legal and industrial framework and relationship between government and the social partner (De Silva, 1998)

In sum, for the purpose of our work, Industrial Relations should be defined as setting up the correct climate in which the organization can be assumed of a successful future. Industrial relations are not only broad but it is dynamic. It could also be a system develops of ideas and beliefs commonly held that could bind together and integrate regulations in correcting the unequal bargaining power (De Silva, 1997)

**Development of Industrial Relations (The Historical Perspective)**

Development of industrial relations from the historical perspective can refer Britain industrial relations historical development since the present structures of industrial relations that we recognized today was origin from Britain.

Development of industrial relations in Britain can be identified into different stages whereby each stage did not supersede and replace the previous stage but rather supplemented and modified it. Furthermore, the rate and the strength of these developments have varied from industry to industry and, therefore, the present industrial relations system in each industry is a unique mixture of these developments (Salamon, 1987).
Early Development

The first World War was a period of bitter industrial unrest. Wages began to rise, economic activities increased, labor shortage, fresh discontent. Industrial unrest was paralleled by lack of harmony and cohesion in the industry. Labor unrest continued throughout the war and the problems associated with dilution, the involvement of trade union leaders with government and, increasingly, food shortages rendered industrial relations difficult and volatile. The need to maintain the war effort increased government intervention in industrial relations and divided the trade union movement between a leadership more or less willingly collaborating with government and a militant rank and file led by shop stewards. This is the early development of industrial in the Britain (Shieldrake, 1988).

Increased Pressure

In the immediate post-war period, the orderly system of industrial relations based on Industry-level agreements came under pressure. The main pressures came from both employees and management. Both parties have focused their attention on different interests. The consequence of this shift in the locus of regulation was increased fragmentation and tension within many segments of the industrial relations system. Organizational level collective bargaining became largely informal, largely fragmented and largely autonomous. Industrial relations was the conflict between organizational-level and industry-level collective bargaining and their respective underlying assumptions of the formal system of industry-level bargaining and informal system of organizational bargaining.

The conflict between informal system and the formal system could resolved only by management and trade unions accepting the reality and importance of the organizational level and developing it on a more formal and orderly basis (Salamon, 1987).

Voluntary Reform

There was the stage of reforming a better system of industrial relations. Both management and trade unions expounded the nation of voluntarism and free to determine the nature and content of their relationship. The key for reform lay in the reform and extension of collective bargaining by management initiative and trade union agreement. The responsibility and onus for reform was placed on management. The most important element to management initiative was the systematic development of formal substantive and procedural agreements at the organizational level. The introduction or reform of procedural agreements provided a clearer identification that the necessarily for employers’ associations to adjust their role to become more of an advisor/coordinator than a regulator. Consequently, the national
agreements has become a minimum to be built upon and expanded at the organizational level.

At the same time, trade unions were involved in their own process of reform. The structure of British trade unionism has been simplified through the process of mergers. This reduced the number of trade unions, and simplified collective bargaining arrangements. The internal organization and government of trade unions have been amended to bridge the gap with their members. Trade unions also sought to increase their expertise through the employment of more specialists and the training of shop stewards (Salamon, 1987).

**Government and Legislative Intervention**

In the 1970s and 1980s, the extent of voluntarism has been reduced by government intervention. There was increased legal intervention into industrial relations such as setting out policy, Acts and Industrial Tribunals in attempting to establish a greater legal control of trade unions and industrial actions. Although some attempts of the government may be regarded as failures, nevertheless they mark an important point in the development of British industrial relations, a move towards a more legalistic control of industrial relations (Salamon, 1987).

**Realism or Confrontation**

In the 1980s, the government has sought to project an image of a new realism in industrial relations. However it has also been associated with increased confrontation in industrial relations. The new realism of the 1980s appears to be based not on a joint acceptance of management's and union's respective rights or any spirit of positive cooperation between them, but rather an employee/union acceptance that economic circumstances coupled with government attitude have curtailed their influence (Salamon, 1987).

**Growth of Industrial Relations**

Industrial relations has grown into a subject in its own right. Colleges and universities have recognized it as such and the subject can be studied. Organizations have evolved separate departments dealing with industrial relations. One of the reason for the growth of industrial relations as a topic is the increasing amount of law relating to the employer/employee relationship. Many organizations and people believe that it is a folly to try to create such a legal framework at all, but that it is better to leave organizations to develop industrial relations to fulfill the needs of each organization as they see fit.

The impetus that makes industrial relations grows is because industrial relations at the workplace is so important. If the relations between workforce and management
are good, then the enterprise has a good chance of being successful. By working towards good industrial relations, in all context, the objective is to motivate employees at all levels towards achieving a productive, successful enterprise. As industrial relations grow, it assumes greater importance. As an area of management concern, it has become increasingly important to ensure that industrial relations is managed correctly. Industrial relations has come of age as a subject in its own right and has been recognized as an important management function. This function occurs not only in the specialist personnel area but at all management levels (Green, 1991).

Area of Study

To study Industrial Relations is to study the regulation of the relationship between employers, employees and their trade unions with the work environment. Thus, the focus is:

- Laws and rules which impact on the work environment
- Items and conditions of work
- Rights and obligations of employers and employees; and
- Processes by which the rules and terms are made.

Work has been described as a "central feature of modern industrial society. For getting on for 50 years each of us spends over a third of our waking time at work. We demand to be treated with concern. Thus the working environment is very important. Most people work in organization, the characteristics of organization vary widely. They all operate in a particular environment, which impacts upon their system, structures, hence affecting their functioning. The practices, policies, attitudes and values of the differing variables in an organization's environment will affect the type of industrial relations system it has. Maimunah (1999) has a diagram showing the forces affecting a particular organization. It is shown in Figure 1.1

Actors in Industrial Relations System

An industrial relation system consists of three actors - management organizations, workers and the informal and formal ways they are organized, and the government agencies that play a role in the system.

The key participants involved in the process of Industrial Relations System are:

- The employer
- The employee
- The government
Figure 1.1
Impact of Specific Forces on the Organization

The first force is that employers have responsibilities at varying levels to issue instructions (to manage), and that workers at each corresponding level have the duty to follow such instructions (to work). Aminuddin (1991) added that the different ways these groups interact with one another account for the differences in the industrial relations system in varying countries.

The Employer

These encompass the owners and shareholders and the management who main duties are decision making in their work life to promote the goals of employers and their organizations. The hierarchy of employees not only imply to formal organizations such as works councils, unions and parties but also to informal organizations such as when work groups are formulated through norms of conduct and attitudes towards the management.

The Employee

Employees are at the center of industrial relations. Employees influence whether the firms that employ them achieve their objectives, and employees shape the growth and demands of unions. The hierarchy of employers need have no relationship to the
ownership of capital assets of the work place. The employers, also referred to as managers, may be public or private or a mixture in varying proportions.

The Government

The term government encompasses (1) the local state, and federal political processes (2) the government agencies responsible for passing and enforcing public policies that affect industrial relations and (3) the government as a representative of the public interest. Government policy shapes how industrial relations proceed by regulating, for example, how workers form unions and what rights unions may have.

The hierarchy of the government and agencies may have a broad function and decisive as to override the hierarchies of employers and employees. Sometimes it is so minor or constructed as to permit consideration of direct relationships between employers and employees without reference to governmental agencies.

Figure 1.2
Actors in Industrial Relations Systems
Who Needs To Study IR

According to Aminuddin (1999), there are at least five groups of people who need to understand the theory of industry relations. They are:

- Workers
- Trade union leaders
- Managers
- Lawyers
- Officers and executives in human resources and IR departments

Workers - Individual workers need to know their right under the labor laws and to be aware of the benefits they can gain by joining a trade union. At the same time, they should understand that there might be risks associated with such membership. They need to know to whom they can complain if their employers fail to provide them with the benefits provided under the law.

Trade unionists - above all else, know how to play their role effectively so employers will protect those workers from exploitation. It has been found that many employers are still breaching the labor laws by neglecting their workers' rights, many of them practice a biased personnel policy which caters to their own interest while the workers' interest is ignored.

Managers - In carrying the tasks, the manager is not a free agent. He is employed by an enterprise and in leading his team, he does so on behalf of his employers. However, being a leader of a team of people carries with it the responsibilities of ensuring that the work that the team does is which, as far as possible enhances their qualities as human beings. It is found that over a third of our waking hours are at work. It is up to the manager to ensure at least that work is not damaging, either physically or psychologically, and at best that it stretches us and is fun.

Lawyers - Lawyers need the knowledge when they are called upon to represent workers at the Industrial Court or other appealing cases in the Supreme and Federal courts.

Officers and Executives - A strong understanding of the principles, concepts and laws of industrial relations would enable them to carry out their duties effectively. As the saying goes, "Power in organizations lies today not in status, but in the task." Therefore, in the notion of managing, knowledge is the key element to ensure healthy working environment.
THEORIES OF INDUSTRIAL RELATIONS

Concepts and Values of Industrial Relations

There are no simple objective facts in industrial relations. The arguments involved in industrial relations are shot through with essentially moral terminology. Industrial relations are concerned with subjective, value judgments about concepts for which there are no universally accepted criteria. Different perceptions of individuals and groups provide the underlying dynamic tension within industrial relations. Perception of industrial relations is individual and value-laden: it is based primarly on a belief what is 'right' in respect of 'fairness' and the exercise of 'power' and 'authority'. The value laden concept has also been taken to understand what is meant by the term and its limitations in industrial relations.

Fairness and Equity

Fairness and equity implicitly underlies the entire conduct of industrial relations. It is explicitly most frequently associated with considerations of payment structures/levels and, more recently with the introduction of legislation, in relation to dismissals. There are arguments with the use of this concept. Firstly, the use of the term is confused by its close association with 'equality'. In this way, anything which creates or sustains inequality may be perceived as being 'unfair'. But the concept of 'fairness' and 'equity' does not automatically imply equality; equality is only one value or belief set that may be used to judge the existence and extent of fairness. Besides that, the idea of fairness is linked strongly with the best customs and the traditions and the best social rules. Therefore, it raises problems in how to identify what is 'the best'. Finally, fairness is relative, it is not constant. As situations and environments change, so the participants' notion of what is fair may change.

Power and Authority

The concept of power and authority occupy a central position in industrial relations, particularly with respect to its collective aspects. In practice, the two concepts are inextricably linked: authority is achieved through power and vice versa and they provide direction and control for collective objectives. Any collectively, exercise power and authority over its individual members in the establishment and achievement of the collectivity's objectives.

There is no universally accepted definition of power. Therefore, power has different meanings such as: (a) power meaning the ability to control or impose and (b) power meaning the ability to influence and thereby secure some modification in another party's decision or action. and it has differences between both. Power is used for a purpose, which in industrial relations is primarily as a resource (such as; reward, coercion, legitimised, referent and expertise) in the service of collective interests. The concept of authority is rest on the legitimization of power.

The notion of power being legitimised through authority has important implications for industrial relations, such as: (a) It induces a perception that the use of power is
unacceptable whilst the exercise of authority is acceptable, (b) The process of socialization which induces an acceptance of orders from those appointed to ‘govern’ has produced the so-called conflict of loyalty between the individual’s role as an employee and trade union member, and (c) The rights or entitlements of subordinates are closely bound up with the exercise of power and authority, or more particularly, its control.

**Individualism and Collectivism**

These concepts in industrial relations are concerned with the freedom of the individual and the collective basis to the employment relationship. A number of very important aspects of industrial relations center on the question of how much freedom should be allowed to the individual or how far the needs of a collective system should predominate.

On the management side, the organization is integrating, coordinating and regulating a variety of tasks and roles to achieve the effective operation of the organization. The management arrangement of it’s operations develop a collective basis to the employment relationship. Each employee fits within this systematized arrangement of tasks, roles, and operations as part of particular department, category of employee or operational activity. On the employees’ side, the fact that the individual is a member of a group subject that any improvement in their personal situation can be achieved only by improving the group’s situation; individualism has to be replaced by collectivism.

The emphasis on collectivism in the determination of the employment relationship is closely associated with the notion of voluntarism. Within this principle, both management and trade unions as the parties responsible for the conduct of collective relations, have an interest and responsibility to ensure that the individuals on either side do not, through their actions, challenge or undermine the operation and authority of the collective.

Finally, the concepts of individualism versus collectivism are closely bound up with perceptions regarding what is the legitimate exercise of power and authority within the employment relationship.

**Integrity and Trust**

Much concerned with the values of integrity and trust, whether between employee and supervisor; between shop steward and member, full-time official or manager; between industrial relations manager and other managers; or between negotiators.

Integrity is defined in terms of individual acting in accordance with his or her personal values and beliefs. There will be problem arise for the individual where his personal values and beliefs do not coincide with the organizational demands on the role he occupies. Therefore, it has the argument that the only ‘matter of principle’ The conduct of the personal relations which underpin industrial relations is very in industrial relations is the maintenance of personal integrity.
Trust may be established only between people rather than between organizational collectivities called ‘management’ and ‘union’; interorganizational trust stems from interpersonal trust. For the purpose of good industrial relations, it is important to establish interpersonal relationships between individuals as trust is based on it (Salamon, 1987).

Approaches to Industrial Relations

Industrial relations can be viewed from many different angles. These range from the political, sociological and economic to the legal, psychological and organizational. No one perspective gives a perfect view but each adds to our understanding of the subject. The views set out below are three of the main perspectives in industrial relations.

Unitary Perspective

This view of industrial relations is based on the assumptions that organization is, or if it is not then it should be, an integrated group of people with a single authority/loyalty structure and a set of common values, interests and objectives shared by all members of the organization. By this view, there is no conflict of interest between those supplying financial capital to the enterprise and their managerial representatives, and those contributing their labor and job skills. The underlying assumption is that the organizational system is basic harmony and conflict is unnecessary and exceptional (Salamon, 1987).

Team spirit and undivided management authority co-exist to the benefit of all. It emphasizes the cooperative nature of work and work relations. In such organizations conflict is not part of the system and any that does manifest itself is because the system is not working properly, not that the system itself is wrong (Green, 1991). Sanctions are needed to deal with troublemakers and deviants, and there is an emphasis on discipline at the work place and the need for stronger laws outside the work place (Burchill, 1992).

In this view, strikes are always pathological, either in the criminal or medical sense of work. They are destructive of the organization’s objectives. With ‘proper’ management, problems can be eliminated (Burchill, 1992). Trade unions are regarded as an intrusion into the organization from outside which competes with management for the loyalty of employees (Salamon, 1987). In turn this absence of conflict cannot entertain the existence of trade unions because they introduce a challenge to the organization as being the sole focus of loyalty (Green, 1991). There is no role for collective bargaining. Consequently industrial relations is assumed to be based on mutual co-operation and harmony of interest between management and managed within the organization (Farnham & Pimlott, 1995).

Pluralist Perspective

This perspective is based on the analysis that society is made up of a number of different groups all pursuing their own interests. The underlying assumption of this
approach, therefore, is that the organizations in a permanent state of dynamic tension resulting from the inherent conflict of interest between the various sectional groups and requires to be managed through a variety of role, institutions and processes (Salamon, 1987).

According to this perspective, the central feature of industrial relations is the potential conflict existing between employer and employed and between management and managed within the organization (Farnham & Pimlott, 1995). It views the institution of industrial relations as conflict identification and conflict resolving mechanism through soft pluralism emphasizes the use of joint problem solving techniques. Stability is achieved by accommodating all of these groups, usually by making agreements which involve a compromise between the conflicting views of groups. Necessarily, conflict is feature of this view and this is healthy, normal part of an organization providing that the system provides for the resolution of conflict (Green, 1991).

Trade unionism is accepted by the pluralists as having both a representative function and an important part in regulating this conflict, rather than causing it (Farnham & Pimlott, 1995). Trade unions are acknowledged as having a legitimate right to exist and to organize on behalf of employees who have an interest in the organization for which they work. Trade unions are the organizations that used to formalize the means of resolving conflict in an organization (Green, 1991). Collective bargaining is recognized as being the institutional means by which conflict between employers and employees. Collective bargaining is the process which organizations (employers and unions) use to formalize the reaching of agreement. Industrial conflict, therefore, is accepted not only as being inevitable, but also as requiring containment within the social mechanisms of collective bargaining, conciliation and arbitration (Farnham & Pimlott, 1995).

Radical Perspective

This is the Marxist view of industrial relations which reflects the Marxist view of society. It assumes, and emphasizes that the organization exists within a capitalist society (Salamon, 1987) that society is constantly changing and over the ages conflict between groups had brought about such change. Industrial system shows that the system produces conflict between the capitalist owner’s demand for labor and worker supplying labor. This arises because each party is trying to maximize their own position and strength within the economy. This struggle is continuous and will only be resolved by a change in the system, i.e., to a communist, classless society (Green, 1991).

Trade union organization is viewed as the inevitable consequence of the capitalist exploitation of wage labor. The vulnerability of employees as individuals invariably leads them to form collectivities or unions in order to protect their own class interests. Collective bargaining, however cannot resolve the problems of industrial relations in capitalist society. They merely accommodate temporarily the contradictions inherent within the capitalist mode of production and social relations (Farnham and Pimlott, 1995). The radical perspective, therefore, views and analyses industrial relations not
in organizational job regulation terms but in social, political and economic terms (Salamon, 1987).

THE INSTITUTIONAL FRAMEWORK OF INDUSTRIAL RELATIONS

Industrial Relations Vs Human Resource Management

Ayathurai, D. (1998) explained that as a discipline, Industrial Relations is affiliated to Human Resource Management (HRM). HRM is concerned with the management of employees (the human resource). From the management perspective, so is Industrial Relations. However, Industrial Relations assume that the employees are unionized, whereas HRM does not. Thus, while HRM deals with the management of employees in general, Industrial Relations concentrate on the management of unionized employees.

He further said that the principles governing the management of employees apply to all organizations all over the world and whatever the nature, size, etc. of the organization – public as well as private sector organizations, business and non-business organizations, large organizations and small ones, profit making organizations and loss suffering ones. Therefore, management is universal in scope. However, the regulation of the relations between employer, employees and their trade unions varies from country to country, and even within countries between the public and the private sectors. Consequently Industrial Relations are quite specific in scope. However this does not mean that industrial relations systems are impossible to be compared. It only implies that unlike HRM, Industrial Relations is not universal and is country and sometimes sector specific. This is due to the existence of trade union as the essential element in Industrial Relations and not in HRM

Employing Organizations

In our economy there are several forms of organisations: sole trader, partnership, private company, public company, Multinational Corporation, nationalised industries, government departments, local authority, public authority, cooperatives and industrial partnership. The exact nature, the aims and functions of the management side of the organisation will be somewhat different in all these organisations (Green, G. D., 1991).

Farham, D., (1995) explained that organizations can be divided into four main types of organizations, which are as follows:

Organisations produce goods and service demanded by the consumers. These consumers consist of domestic users as well as corporate consumers. Organisations can be classified by their orientation and ownership (Figure 3.1). An organization’s orientation reflects the primary goals it seeks to achieve. The basic goals of private businesses are to satisfy consumer demands in the market-place and gaining profit
and revenue while those of the public services are more prone into satisfying welfare and community goals (Farham, 1995).

<table>
<thead>
<tr>
<th>Capital Ownership</th>
<th>Welfare and community goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private</td>
<td>Voluntary Bodies</td>
</tr>
<tr>
<td>Private Businesses</td>
<td>Public Services</td>
</tr>
<tr>
<td>Public</td>
<td>Public Corporations</td>
</tr>
</tbody>
</table>

**Orientation**
Profit and revenue goals

**Figure 3.1.**
Source: D. Farham, Personnel in Context (IPM, 1990)

**Private Businesses**

There are two types of private business corporation, the *private limited* and the *public limited company*. Private companies are required to have at least two shareholders and maximum of 50 and are excluded from issuing shares to the general public. A public limited company is required to have a minimum of seven shareholders and its shares are bought and sold on the Stock Exchange.

**Public Corporations**

Public Corporation is defined as public trading bodies having substantial degree of financial independence of the public authority, which created them. They include nationalized industries such as the post office, the railways and other public bodies.

**Public Services**

The major public services are the civil service, including agencies and the local authority services, including the police. They provide a wide range of services to individuals, their families, the community and private businesses. Funds are provided through national insurance, taxation and local property taxes.
Voluntary Bodies

Voluntary bodies are usually small, private owned organisations providing specialised services to their own members or special interest groups. Being small scale organisations, and as they often have social rather than economic objectives, voluntary bodies do not usually have major industrial relations problem.

The Employer – Employee Relations

For centuries the common law referred to the two parties to the employment relationship (employer and employee) as that of ‘master’ and ‘servant’. The social gap between master and servant was even greater than the differences between them contractually, and the economic balance of power was severely weighted in favour of masters. During the last hundred years, the legal and, economic social contexts of the employment relationship have altered. Employees now have a number of significant statutory employment protection and trade union membership rights. The social and economic circumstances of the workplace have also generally improved to the advantage of employees through more enlightened employment policies, trade union organisation, improved working conditions and the welfare state (Farlam, D., 1993).

Ayathurai (1998), also said that employees are an employer’s most valuable as well as volatile resource. The management of these employees is both the most vital as well as most difficult task of the employer. Where the employees are not unionized, the task is less complex, as the employer does not have to contend with a trade union. He or she is free to manage his employees in his best interest and subject only to the laws of the land and the scarcity of labour. However, when the employees are unionized, the task of managing them is more complicated by the presence of a trade union. The employer cannot manage them freely in his best interest. The union will insist that their best interest is taken into consideration and safeguarded as well. Thus, a trade union makes the task of managing his employees more difficult for the employer. An employer who fails to manage his employees properly may forfeit their management to the union, resulting to the detriment of employer and even the employees as well.

The Employer – Union Relations

He further described the relations between employer and Trade Union. He said that the union does not exist to make it difficult for the employers to manage the employees. It is also not their function to manage employees by default when the employers fail to do so properly. It exists to champion, promote and protect the interests of employees. There is a possibility that the union could come into conflict with the employer over the management of employees in the course of justifying their existence and executing their functions. However, there is also potential for cooperation between these parties on the mentioned issue. Conflict is likely to happen only on issues where employees’ interests diverge from employer’s interests. But on issues where these interest converge, cooperation can be achieved.
The convergent issues are such as employees' safety and health, while the divergent ones are such as wages and working hours.

He explained that the extent to which employer-union relations are confrontational or consensual is determined by the framework established by the government to govern these relations (Figure 3.2). If the framework maximise the potential for cooperation between employer and unions, (by enlarging the sphere within which cooperation between them is feasible) and minimise the possibility of conflict between them (by providing for the prevention or settlement of any differences or disputes between them), then the level of conflict between employers and unions will be low. Thus, the
employer-union relations will be harmonious. However, if it does not, the reverse will be true.

He further commented that this framework is established by the government through its organs. There are three principal organs of state: the legislative, the executive and the judicial—each with its particular function. The framework constituted by the State reflects the philosophy of its government, the influence of its employers, the attitude of its unions, the aspirations of its employees, the culture of its people, its political history, economic status, etc. Consequently, this framework will vary from country to country, or even within the same country, between its public and the private sectors. No two countries will have the same framework, although they may have frameworks with similar features.

The Role of Management

G. D. Green (1991) said that the main feature of all organisations as opposed to social groups is that they have specific objectives and the prime reason of the existence of organisations is to achieve them. These objectives may vary depending on the type of the organisation. In the private sector the main objective is to make profit. Whereas in the public sector, it is to provide an adequate service. Charities have similar service objectives whilst other organisations such as clubs, societies and institutions exist to achieve some formal objectives.

The management has the fundamental role of achieving the organisation’s objectives. He also said that attached to this role are the concepts of authority, responsibility and accountability. These concepts bear some examination as they have relevance to industrial relations.

Authority

This is the legitimate power to get things done. Within an organisation, action is required to achieve objectives and this is accomplished by people being given authority and by them, in turn using this authority. Authority may be derived from position, personality or expertise. In most organisations, is a mixture of these? However traditionally, authority is derived from position within the organisation whereby someone holding a certain office is vested with a certain amount of authority by virtue of the position held.

Responsibility

It is a well-founded rule that arising naturally out of authority is responsibility, and that these should be co-equal. If someone is given authority to accomplish certain tasks then that person is responsible for ensuring that the tasks are completed satisfactorily.
Accountability

Directly arising out of responsibility is the concept of a manager being accountable to his superior for his actions. In the traditional for of organisation, accountability moves up the organisation from subordinate to superior and finally resides with the chief executive/chairman/managing director.

Managing Industrial Relations

Farham, D., (1995), explained that how management handles the complex organisational and human resources problem arising in industrial relations is a debatable and contentious issue. On one side, in small scale enterprises, a relatively unstructured and ad hoc approach may be adopted. On the other hand, there is a tendency for industrial relations and employment matters to be standardised and administered bureaucratically in larger private and public enterprises. However senior management in some larger enterprises now view the managing of industrial relations with their employees and representative bodies as both a necessary and a vital management task.

The traditional approach of management has been to accord a low priority to the managing of industrial relation. Because of this, and its consequences, the industrial relations reformists have advocated that managerial initiative in the formalisation of effective policies, procedures and practices in industrial relations is a necessary condition for improving the quality and the effectiveness of industrial relations decision making and in reducing the incidence of industrial conflict at work.

He further said that there are many reasons managers are reluctant to become deeply involved in industrial relations. First, many management especially in the private sector, continue to view the prospect of power sharing with trade unions as threatening their decision making authority and organisational legitimacy. Second, industrial relations are only a part of the overall management function. Most management can never be totally expert in the field of industrial relations since, unlike the trade union, it is not the very essence of their organisational role. Thirdly, the continued practice of concluding industry-wide or national collective agreements in few industries.

He explained that for these reasons, therefore, industrial relations has had a fairly low priority within the overall corporate strategy of many enterprises, especially in small and medium sized private sector ones. Industrial relations have also been poorly managed because many management have often lacked the skills, confidence and commitment for dealing with the trade unions effectively at plant or operational levels.
Managerial Approaches to Industrial Relations

Managerial approaches to industrial relations have traditionally been characterised by inconsistency, informality and lack of structure. Managers have also tended to be reactive in industrial relations situations rather than proactive. Farham, D., (1995), said that in analysing the ways in which management approach industrial relations we need to examine three key concepts: managerial styles, strategies and policies.

Managerial Styles

Managerial Managerial style in industrial relations is related to a number of organisational and managerial variables and different classificatory systems have been used to analyse them. A typology of managerial styles relates employer frames of reference to levels of employee involvement (Figure 3.3).

![Figure 3.3: Managerial Styles](image)

Source: D. Farham, Personnel in Context (IPM, 1990)

This provides four major managerial styles in industrial relations: 'participative', 'paternalistic' consultative' and 'authoritarian'. The participative style, for instance, incorporate pluralistic employer frames of reference and relatively high levels of
employer involvement. Authoritarian managerial styles, on the other hand, are related to unitary frames of reference and low employee involvement. Consultative and paternalistic styles, in turn, are connected with unitary frames of reference and high employee involvement, and pluralistic frames of reference and low employee involvement respectively. As in all typological classifications these are ‘pure’ or ‘ideal’ types. In practice, managerial styles in industrial relations can vary within enterprises between different operational areas, locations or time. Each has specific implications for the ways employers manage industrial relations.

Strategies

Industrial relations strategies are defined as long term goals developed by management to preserve or change the procedures, practice or results of industrial relations activities over time. That some organisations have such strategies is based on a number of assumption and, for examples: that corporate management usually determine overall strategies to achieve their corporate goals; that strategies thinking is necessary for corporate goals; that strategic thinking is necessary for corporate success; that corporate leaders have some choice in the matter; and that choosing their industrial relations policies rationally implies they be linked to other objectives and policies. Management developing strategic approaches is influenced by a number of factor, which include: union strength; price competitiveness of their products; ratios of labour to capital costs; labour market trends; technology; and union policy and organisation.

Policies

One of the first formal definition of industrial relations policy was provided by the Commission on Industrial Relations (CIR). The CIR argued that a corporate industrial relations policy should form an integral part of the total strategy through which enterprises pursue their corporate objectives. The CIR believed that since industrial relations takes account of all aspects of relationship between employer and employees, a corporate policy on industrial relations should be conceived in the broadest possible way. Accordingly it recommended that such policies should cover trade union recognition, collective bargaining, grievance procedures and consultative arrangements.
THE POLITICS AND POLICY OF INDUSTRIAL RELATION

Background

Public policy is the term used to describe the mixture of legislation, current government political priorities and the broad policy directives pursued by the civil service and public agencies at any given time (Farnham et. al, 1995). The existence of a clear policy on industrial relations is important for all those concerned with developing and maintaining good relations between employers and trade unions and between managers and employees. While the public policy, is the changing political opinion and emerging political policies over comparatively long period of time. Government plays an important role in controlling the politic and policy in industrial relation.

The Role of Government

The Traditional Role of Government in Industrial Relations

At the old days, the state plays a very important industrial relation. For example, in several South-East Asian countries, the State regarded itself as the protector of workers and their welfare (S.R. de Silva, 1998), the Republic of Korea was favored with an educated workforce but lack capital (John R. Niland et. al., 1994) and the State at Japan as pointed out by Kazuo Sugeno, promoted labor-management dialog, cooperation and stability through procedures for labor dispute adjudication (Sriyan, 1997).

However, the state intervenes in industrial relations in basically by four main methods.

Through the law and the courts;

Day by day, the public policy has been increasingly shape and determined by EC (and later EU) law and policy. The principle purpose of labor law though the traditional view of the role of the State and the law in industrial relations emphasizes the abstentions or voluntarism tradition. This contends that public or legal interference in the practical conduct of industrial relations rarely benefits the parties concern. However, since 1980, the freedom to strike and trade union immunities have been effectively narrowed and constrained by legal intervention from the State. The law, government and its agencies have also been interventionist in other aspects of industrial relations for many years (David Fernham et. al, 1995).

Through its economic policies;

The second intervention by the State is through its economic policies. Attitudes to government and States intervention in economic affairs and industrial relations depend largely upon differing philosophies of the State. They think that government
should create only a few of its own institutions and should employ as few people as possible.

Until recently, State intervention in industrial relations and the legal regulation of trade union activities owed much more to judicial interpretations of the common law than they did to Acts of Parliament. Till the passing of the Industrial relations Act 1971 and the considerable volume of other labor law enacted in the 1970s, conclude that most parliamentary statutes in the area of collective labor law did little more than restore to the trade unions, and their members, some of the legal rights which had previously been taken away from them by judicial decisions. Less government is equated with good government is neutral in the application of its power.

**Through its industrial relations institutions or agencies;**

The case of continuing the traditional policy of non-intervention in industrial relations by the State and its agencies is no longer practicable or tenable. The State plays a passive and residual role in industrial relations stems from the fact that there is little legislation in controlling collective bargaining. But this is no longer true in relation to trade union organization and membership, the freedom to strike, the operation of closed shops or the taking of industrial action.

**The regulations way for employees**

Whenever to introduce laws or State regulation over the activities are introduced the trade union movement normally presents vehement and united opposition against such proposals. Having Gained most of their legal rights and collective freedoms after long and difficult struggles against the common law, criminal and civil liability, bitterly hostile employers, and adverse decisions of judges, trade unionists intuitively resist any form of legal or State limitation on their freedom to bargain collectively, to take part in industrial action and on their freedom to organize.

Therefore, the role of State in industrial relations remains a problematic one. Where the State’s role is perceived to be bipartisan and balanced, it is legitimized and non-controversial and vice versa.

**Model Employer**

The government being responsible directly or indirectly for about 20 per cent of the workforce. Government or public employees are amongst the first to be provided with pension schemes, sick pay and work-place procedural agreements covering the discipline, grievance handling and grading appeals. After the First World war, the government accepted the recommendations of the Whitley Committee, that is good employer-employee relations and industrial peace, joint industrial councils (JICs) should be establishes as representative of both employers and trade unions (David Fernham et. Al, 1995).
However, the Second World War resulted that trade union memberships and the joint
determination of terms and conditions of employment for most public sector workers
was far more advanced than private sector. In term of public policy, a succession of
governments from the end of the First World War to the late 1970s continued to foster
the essential characteristics of public sector industrial relations. By the late 1970s, the
position of the government as a model employer was generally acknowledged. The
government’s chief characteristics as a model employer were the automatic
recognition of the right of trade unions to represent the government’s employees, the
acceptance of collective bargaining, and the wide-spread use of joint consultation
procedures (David Fernham et al, 1995).

**Industrial Peacekeeper**

Substantial sections of the general public have seen the settlement of damaging and
socially disruptive industrial disputes as a direct responsibility of government and the
prime minister of the day. There has been a long tradition of government and prime
ministers taking direct steps to seek a satisfactory outcome to bitter strikes.
Governments seeking to secure the settlement of disputes have sometimes in the past
successfully used courts of inquiry or appointed leading non-political public figures to
direct investigations and make recommendations.

In previous decades other highly respected figures had been appointed to conduct
inquiries into the circumstances, which had given rise to large-scale strike in the
docks, railways and coalmines. This traditional approach by government to their
perceived responsibility for setting large-scale industrial disputes came to an abrupt
end after 1979 (David Fernham et al, 1995).

**The Changing Role of Government in Industrial Relations**

**Individualizing Employee Relations**

Political and legal systems have been defenders of individual freedom and rights but
hard critics of collectivities seeking advantages for groups of people sharing common
interests. Individualism and individual rights are commonly associated with free
market capitalist enterprise. (David Fernham et al, 1995). The collectivist tradition
emphasizes the value of co-operation, shared beliefs and values, and the need to use
the State to achieve collective improvements. However, the governments have
preserved and enhanced both individualist and collectivist values and traditions.

After the general election of 1979, and during the 1980s, the emphasis shifted sharply
towards the individualist tradition and it involved a process of individualizing
employee relations. The breakdown of collectivist working-class culture was also
hastened during the 1980s by important social changes.
During the first two or three years of the 1980s, employers, managers and trade unions were very uncertain on what was taking place other than that it involved recession, redundancies, factory closures and high unemployment. Therefore, some leading organization seized the opportunity to marginalize or by-pass trade unionism at work.

The trade union legislation introduced by the 1984, 1988 and 1993 Acts reinforced the individualist tendencies brought about the workplace by management practices and the values of the enterprise culture. It was no longer possible for elections of union leaders to be held at branch meetings or for strike to be agreed by a show of hands at mass meetings. This further undermined the traditional collectivist practices of trade unions.

On the other hand, some unions have now openly embraced the enterprise culture, and the new economic realism, and have abandoned some of the traditional collectivist patterns of behavior of the old trade unionism (David Fernham et. al, 1995).

Depoliticizing Industrial Relations

Since 1979 it has been public policy to reduce the elements of politics in both activities of trade unions and the conduct of industrial relations. It was belief by government not only that the handling of relationships between employers and employees had become too political in itself but also that the role of the trade unions in society was unnecessarily infused with politics (David Fernham et. al, 1995).

Therefore, government hope that the ideological culture of industrial relations could be change, so that employees and the unions would identify more closely with the objectives and methods of capitalism operating within a dynamic enterprise culture of innovation and competitive markets. While during the 35-year period between the end of the Second World and the general election of 1979, the TUC had played an increasing powerful role in the economic and welfare state decisions made by central governments. The TUC was consulted on all major issues affecting the economy, and successive chancellors, regardless of political party. Somehow, powerful union general secretaries were seen entering and leaving Downing Street during economic crises and the media eagerly sought their views on events.

However, after the general election of 1979, this pattern of government changes abruptly, with the TUC frozen out of the governmental process. Successive Conservative chancellors did not even consult the decisions. Union leaders were no longer invited to Downing Street and only rarely did they meet formally with members of the government.

The second path taken towards the depoliticization of industrial relations lay in Prime Minister Thatcher’s ideological campaign throughout the 1980s to convince the nation that economic prosperity and national revival were only possible if everybody accepted the need to create an enterprise culture. Finally the third policy for reducing the political significance of industrial relations after 1979 lay in the government’s
complete rejection of any form of prices and incomes policy (David Fernham et. al, 1995).

**The Influence of International Bodies**

The establishment of a sound or harmonious industrial system is a central theme for governments, employers, worker and their representative, in their endeavors to achieve economic and social development (S.R. de Silva, 1998). Therefore, the changes in the international scene presently exert a major influence on how industrial relations need to be viewed. The influence of international bodies can divide into two categories, which are internal and external environment influences (Raduan, 2001).

**Internal environment**

**Intense competition and rapid change in technology**

The new information technology, the limits of which are not known in terms of its potential to effect change, is exerting a tremendous impact on the structure of organizations, the nature of work and the way it is organized, and even on the location where work is done. In societies of the future information and knowledge will be as in fact they are already are crucial to competitiveness (S.R. de Silva, 1998).

**Product and markets**

In terms of the organization of production, new technologies are increasing the scope for greater flexibility in production processes, and are resolving information or coordination difficulties, which previously limited the capacity for production by enterprises at different locations around the world (S.R. de Silva, 1998).

Where enterprises are servicing more specialized markets, smaller and more limited production processes are now involved. New technology has also made it possible to produce the same level of output with fewer workers. In both situations, there is increased emphasis on workers having higher value capacities and skills to perform a variety of jobs. In addition, efforts to improve products have led enterprises to establish cross-functional development teams. The erosion of the standardized, segmented, stable production process, which had facilitated collective HR, has accompanied these developments.

**Power relations and status of the actors**

The role of the unions is changing. During the cold war, political considerations sometimes dominated union activities, attitudes and their role, especially in some of the developing countries. Unions are now gradually concentrating more on their traditional role in industrial relations, which is to improve the working conditions of their members and to protect their interests through negotiation (S.R. de Silva, 1998).
External context

Social-politic

In essence, many countries are undergoing a process of industrial restructuring which, in some cases, include privatization of public sector undertakings and others. These processes have resulted in several social consequences such as redundancy, all of which have sometimes strained the relationship employers and workers (and union) and between the latter and government.

Economic development

Another feature is the changes occurring in the workforces, to varying degrees, in both industrialized market economies and developing economies. Therefore, many countries have witnessed the emergence of workforces with higher levels of education and skills which need to be managed in a manner different from the way in which employees, especially blue collar employees, have hitherto been managed. According to S.R. de Silva (1998), this factor will assume more critical proportions in knowledge-intensive industries. Consequently, there is a greater need than before for a cooperative and participative system of industrial relations.

Freedom of Association

The freedom of Association is recognition of workers and employers and employees as autonomous, independent bodies, subject neither to their domination by each other or by the government. This freedom is including recognition of organizations of workers and employers as autonomous, independent bodies, subject neither to their domination by each other or by the government (S.R. de Silva, 1998). According to ILO Convention, Freedom of Association is the yardstick by which a country's recognition of this freedom is measured.

On the other hand, the Convention put forward that workers and employers, without distinction whatsoever, have the right to establish and to join organizations of their own choosing (S.R. de Silva, 1998). It is such a view to defending their respective interests, subject to national legislation, that determines the extent to which the guarantees in the Convention will apply to the armed forces and the police. Furthermore, such organizations have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. However, the public authorities are required to refrain from any interference, which would restrict this right or impede the lawful exercise of this right.

Therefore, organizations have the rights and guarantees, and to affiliate with international organizations. The acquisition of legal personality by these organizations shall not be subject to restrict conditions. In exercising the right provided for in the Convention, employers and workers and their respective
organizations are required to respect the law of the land, which should not impair the guarantees in the Convention both in respect of its content and its application.

CONCLUSION

As the chapter is an introduction to Industrial Relations, we have included the four major parts, which had given us a broad view of industrial relations as one of the many disciplines in the field of management studies. Generally, we have come to conclusion that industrial relations are the relations created by the employment between the parties who are concerned with employer.

However, it could also embrace all the parties who are concerned with employment. There is definite meaning as industrial relations are very dynamic and it is not only influenced by the types of organizations but it varies from country to country. In short, industrial relations subject deal with certain regulated or institutionalised relationship with industry. Industrial relations seek to balance this relationship.

The four chapters provide a comprehensive introduction to Industrial Relations. It is definitely useful for students who are new to the subject and it is more meaningful to those who needs the knowledge in practice as understanding the context in which it takes place serve as the basis for further exploration. Our purpose throughout is meant more to describe and give explanation to some of the most important aspects in industrial relations. We hope by having introduced the subject in the descriptive style would enable us to get an insight into the rich diversity and yet coherence underlying of industrial relations.
REFERENCES:

- International Labor Organisation, ACT/EMP Publications.
The Dynamics of Industrial Relations (Employee, Organization and Community Relations)

Introduction

This chapter gives an overview of the dynamics of labour relations in Malaysia. Industrial Relations framework including the government regulations, the role of management and the process will first be briefly examined. Central to the discussion are the impact of the unionization, union structures and functions, leadership of labour unions as well as contemporary challenges to labour organizations. The current trend in labour relations, mainly a union-free environment and discussion on certain similar characteristics help organizations remain union free will also be included. Students need to consider the implications of this shift as well as the dynamics driving the shift. A look into the future of unionism is also attempted.

Industrial Relations Framework

John Dunlop, former secretary of labour and a leading industrial relations scholar, suggested in his book Industrial Relations Systems (1958) that such a system consists of four elements: 1) environmental context (technology, market pressures, and the legal framework); 2) participants, or actors including employee and their unions, management, and government; 3) a 'web of rules' (i.e., rules of the game) that describe by which labor and management interact and resolve disagreements (e.g., the steps followed in settling contract grievances); and 4) ideology.

For the industrial relations system to operate properly, the three participants must, to some degree, have a common ideology (i.e., acceptance of the current system) and must accept the roles of the other participants. Acceptance does not translate into convergence of interests, however. To the contrary, some degree of worker-management conflict is inevitable because, although the interests of the two parties overlap, they also diverge in key respects (e.g., how to divide the economic profits, etc.).

Government Regulation of Labour Relations

As mentioned earlier, the 'third force' in the industrial relations systems that is dominant in many countries is indisputably the government or state. Even in laissez-faire political economies of the nineteenth and twentieth century, there was some legal regulation of hours and conditions of work. But with the governments assuming overall responsibility for the economy this influence has expanded considerably. Under the current situation the state's role in Malaysian industrial relations is very substantial indeed as is the case in most of the developing countries.

Like other aspects of HR, labor relations is heavily controlled by government regulations. Public policy concerning labor relations comes from federal and state
legislation, executive orders, court decisions, and the administrative ruling handed down by the Ministry of Human Resources.

Management and Labour Relations

Of the three principal actors in industrial relations, management are arguably the most important. In particular, management holds the 'balance of power' in employment relations and managers are proactive (stakeholders tend to 'facilitate' while unions tend to 'react' or 'respond' to management initiatives). This raises the question of management strategy in industrial relations.

One of management's most basic decisions is whether to encourage and discourage the unionization of its employees. It may discourage unions because it fears higher wage and benefit costs, the disruptions caused by strikes, and an adversarial relationship with its employees or, more generally, greater constraints placed on its decision-making flexibility and discretion.

Generally, management has used two basic strategies to avoid unionization:

1.) It may seek to provide employment terms and conditions that employees will perceive as sufficiently attractive and equitable so that they see little gain from union representation.

2.) Management may aggressively oppose union representation, even where there is significant employee interest to form a union. The use of these strategy has increased significantly especially during the last few decades (refer to notes provided earlier).

If management voluntarily recognizes a union or if employees are already represented by union, the focus is shifted from dealing with employees as individuals to employees as a group. Still, certain basic management objectives remain: controlling labor costs and increasing productivity (by keeping wages and benefits in check) and maintaining management prerogatives in important areas such as staffing levels and work rules. At the same time, management always has the option of trying to decertify a union (i.e. to encourage employees to vote out the union in a decertification) if it believes that the majority of employees no longer wish to be represented by the union.

For further readings on 'The Management of Employee Relations', please refer to the following books:

- R. Bean, Comparative Industrial Relations, Chapter 3
- R. Mansfield and M. Poole, British Management in the Thatcher Years, London, British Institute of Management.
The Labour Relations Process

Employees may experience little power when they have to bargain individually with the employer. To correct this situation, they may elect to unionize. When workers pursue this direction, the labor relations process begins.

Figure 1 illustrates the four events that make up the labour relations process: (1) the desire of workers for collective representation, (2) the union organizing campaign, (3) contract negotiations, and (4) contract administration.

![Diagram of the labour relations process]

**Figure 1: The Labour Relations Process**

The labor relations process begins when individual employees perceive that their best interests are better served through organized collective bargaining than through one-on-one negotiation with management for improved wages and benefits.

As illustrated in figure 1, this logical sequence of events can be broken down into four steps:

a. **Workers Seek Collective Representation:** Usually due to a perceived need to shift power to a more equal footing, this desire motivates individuals to organize to bargain collectively.

b. **Union Begins Organizing Process:** A union begins its efforts to persuade a majority of employees that it can better serve their interests in negotiation with management than other alternatives.

c. **Collective Negotiations Lead to a Contract:** In this stage the invested union bargains collectively with management to receive a contract. [Note: this is a two-edged sword for management. On the one hand, management resents the loss of control brought on by collective bargaining. On the other hand, the labor force is
typically more predictable and manageable when its accepts a collectively bargained agreement).

d. Contract Is Administered: The signing of a contract helps to reduce uncertainty for both sides as clear policies and procedures are set forth for the activities of labor and management during the length of the new contract.

Union Objectives

The labor movement has a long history in most developed countries but not in Malaysia as discussed in previous notes. Although each union is unique organization seeking its own objectives, several broad objectives characterize the labor movement as a whole:

- To secure, if possible, improve the living standards and economic status of its members.
- To enhance and, if possible, guarantee individual security against threats and contingencies that might result from market fluctuations, technological change, or management decisions.
- To influence power relations in the social system in ways that favor and do not threaten union gains and goals.
- To advance the welfare of all who work for a living, whether union members or not.
- To create mechanisms to guard against the use of arbitrary and capricious policies and practices in the workplace.

The underlying philosophy of the labor movement is that of organizational democracy and an atmosphere of social dignity for working men and women. To accomplish these objectives, most unions realize that they must strive for continued growth and power.

Union Growth

To maximize its effectiveness, a union must strive for continual growth. Members pay dues, which are vital to promoting and achieving union objectives. Obviously, the more members the union enlists, the more dues they pay to support the union and the labor movement. Thus, an overall goal of most unions is continued growth.

However, the percentage of union members in the workforce seems to be declining. Most union leaders are concerned about this trend. Much of union's ability to accomplish its objectives is derived from strength in numbers. For this reason, union must continue to explore new sources of potential members. Union are now directing much of their attention to organizing the service industries, professional employees, as well as government and semi-government employees.

Union Power

Every indication is that management continues to improve its power base in relation to organized labor. Most observers agree that the power base of organized labor will continue to erode. A union's power is influenced to a large extent by the

1 We define power here as the amount of external control an organization is able to exert.
size of its membership and the possibility of future growth. However, we also have to consider other factors when assessing the future power base of unions.

The importance of the jobs held by union members significantly affects union power. For instance, an entire plant may have to be shut down if unionized machinists performing critical jobs decide to strike. Thus, a few strategically located union members may exert a disproportionate amount of power. A union’s power can also be determined by the type of the firm that is unionized. Through control of key industries, a union’s power may extend to firms that are not unionized. By achieving power, a union is capable of exerting its force in the political arena.

Why Employees Unionize

Individuals join unions for many different reasons, which tend to change over time. The reasons may involve job, personal, social, or political considerations. It would be impossible to discuss them all, but some of the major ones are dissatisfaction with management, compensation, job security, management’s attitude, the need for a social outlet, the opportunity for leadership, forced unionization, and peer pressure.

a. The Attitude of Management

People like to feel that they are important. They do not like to be considered a commodity that can be bought and sold. Thus employees do not like to be subjected to arbitrary and capricious actions by management. In some firms, management is insensitive to the needs of its employees. In such situations, employee may perceive that they have little or no influence in job-related matters. Workers who feel that they are not really part of an organization are prime targets for unionization.

Management’s attitude may be reflected in such small actions as how bulletin board notices are written. For example, memos addressed ‘to all employees’ instead of ‘to our employees’ may indicate managers that are indifferent to employee needs. Such attitudes likely stem from top management, but they are noticed initially by employees in the action of first-line supervisors.

b. Economic Needs

Dissatisfaction with wages, benefits, and working conditions is the strongest motive for employees to unionize. When employees believe that their economic need is greater than they can fill in individual negotiations, then chances for successful unionization are enhanced.

c. Dissatisfaction with Management

Employees may unionize when they believe that managerial practices are unfair and/ or administered in a biased way. This is true particularly of those issues that greatly affect the employment conditions of employees. Issues here include those involving transfer, promotion, discipline, performance appraisal, and salary increases.
Organizational behavior (OB) studies show that employees want to have some voice in the decisions affecting their employment conditions. The failure of managers to allow employees a chance to become involved in decisions affecting their jobs also may encourage unionization.

d. Social and Status Concerns

Union organizations promote social and leadership opportunities to members. When and employer denies the social and leadership needs of employees, they may turn to the union. The union becomes a conduit for fraternization and sharing feelings about the job in a safe environment. It also provides the basis for developing off-work friendships based on shared interests.

Although studies on public-sector unionization are not as prevalent as those in the private sector, those that have been conducted find public-sector employees unionizing for reasons similar to those of their private-sector counterparts.

e. Opportunity For Leadership

Some individuals aspire to leadership roles, but it is not always easy for an active employee to progress into management. However, employees with leadership aspirations can often satisfy them through union membership. As with the firm, the union also has a hierarchy of leadership, and individual members have the opportunity to work their way up through its various levels. Employers often notice employees who are leaders in the union, and it is not uncommon for them to promote such employees into managerial ranks as supervisors.

f. Peer Pressure

Some individuals will join a union simply because they are urged to do so by other members of the work group. Friends and associates may constantly remind an employee that he or she is not a member of the union. In the past, this social pressure from peers was difficult to resist, but as the age gap between workers increases and the educational gap broadens, peer pressure becomes less and less of an issue. Quite possibly, rejection of these employees by current union members has less influence than in the past. In extreme cases, union members threaten nonmembers with physical violence and sometimes carry out these threats.

g. A Social Outlet

By nature, people have strong social needs. They generally enjoy being around others who have similar interests and desires. Some employees join a union for no other reason than to take advantage of union-sponsored recreational and social activities that members and their families find fulfilling. Some union now offer day care centers and other services that appeal to working men and women and increase their sense of solidarity with other union members. People who develop close personal relationships, either a unionized or union-free organization, will likely stand together in difficult times.
Organizing Campaigns

Workers in Malaysia have the right to form or joining trade unions. This right is known as the freedom of association, as described in the Industrial Relations Act (Part II.4), 1967.

In general, union organizing campaigns begin (1) when union organizers contact employees, (2) when employees initiate the action by contacting the union, (3) through research-based organizing drives, or (4) by accident through a chance meeting between an employee and a union organizer.

Organizing Steps

While not all organizing drives are alike, most organizing campaigns follow a set series of steps that, when carried out successfully, can lead to unionization.

Step 1. The first step of the drive takes place when employees and the union organizer meet to discuss the possibilities of unionization. The organizer will obtain information about the employer, such as employee wages and benefit levels, working conditions, the financial picture of the organization, and supervisory practices. This information will be used to build a case against the employer and for the union.

Step 2. If the organizer believes that enough workers desire to unionize, meetings will be set up to build additional support for the union. During these organizational meetings, the organizer will find employees who can help the organizer direct the campaign, and a communication chain will be established to reach other employees.

Step 3. Once the campaign is successfully under way, the organizer will form an in-house organizing committee made up of supportive employees. It is the job of this committee to pass out literature, gather additional information about the employer, watch for management unfair labor practices, and get authorization cards signed.

Step 4. Once the authorization cards are obtained, the organizer will petition the D.G. of Trade Unions to hold a secret-ballot election. The time before the election is an emotional period, as each side will go all out to persuade employees to adopt its point of view.

Step 5. If the union wins the election, the D.G. of Trade Unions will certify the union as the bargaining representative of employees. The employer is now obligated to negotiate with union representatives for the formation of a labor agreement. The employer, however, is not required to reach a final agreement with the union.

Employer Tactics

Employers must be careful not to engage in unfair labor practices. However, the law does permit the employer to actively campaign against the union, including expressing unfavorable views about the union. Employers are likely to stress past
favorable relations between employees and management and that employees already enjoy employment conditions equal to or better than conditions existing in present labor contracts.

An employer is likely to point out various unfavorable aspects of the union, including its strike record, any corruption on the part of labor officials, or other bad union publicity.

**Impact of Unionization on Managers**

The unionization of employees can affect managers in several ways. Perhaps the most significant is the effect it can have on the prerogatives exercised by management in making decisions about employees. Furthermore, unionization restricts the freedom of management to formulate policy unilaterally and can challenge the authority of supervisors.

**Challenges to Management Prerogative**

Union typically attempt to achieve greater participation in management decisions that affect their members. Specifically, these decisions may involve such issues as the subcontracting of work, productivity standards, and job content. Employers quite naturally seek to claim many of these decisions as their exclusive management prerogatives – decisions over which management claims exclusive rights. However, these prerogatives are subject to challenge and erosion by the union. They can be challenged at the bargaining table, through the grievance procedure, and through strikes.

**Loss of Supervisory Authority**

The labor agreement will set forth the condition of employment under which employees will work. These employment conditions are normally defined as wages, hours, and working conditions. The employer is free to set HR policies in other areas not covered in the agreement as long as these policies are not inconsistent with the terms of the contract.

Supervisors play a key role in labor-management relations because they must administer the labor agreement on a daily basis. Since a primary responsibility of a supervisor’s job is to direct the workforce, the supervisor must be careful and have just cause for his or her actions. When the union believes that a supervisor’s actions were not just, these actions will be grieved through the grievance procedure.

**Structures, Functions and Leadership of Labour Unions**

A necessary step in discussing labor-management interactions is a basic knowledge of how labor and management are organized and how they function.

The labor movement has developed a multilevel organization structure over time. This complex of organizations ranges from local unions to the principal federation. Each level has its own officers and ways of managing its affairs.
The National Union

The most powerful level in the union structure is the national union. Most locals are affiliated with national unions. The national union is governed by a national constitution and a national convention of local unions, which usually meet every two or five years. The day to day operation of the national union is conducted by elected officers, aided by an administrative staff.

The national union is active in organizing workers within its jurisdiction, engaging a collective bargaining at the national level, and assisting its local unions in negotiations. In addition, the national union may provide numerous educational and research services for its locals, publish the union newsletter, provide legal counsel, and actively lobby at national and state levels.

Structure and Functions of National Unions

National unions represent the center of power in the labor movement. Each national union is responsible for conducting its own affairs, much as business organizations do. National unions charter local unions to carry on the union’s purpose of representing workers at the shop or office level. Local unions support the national structure by paying a per capita tax established by the national union. In return, the locals receive various services from the nationals, such as those listed in the textbook.

National unions govern themselves through conventions held on a periodic basis. Locals send delegates to the convention in order to have a say in the governance of the union.

The Local Union

The basic element in the structure of Malaysian labor movement is the local union (enterprise or in-house union). To the individual union member, it is the most important level in the structure of organized labor. Through the local, the individual deals with the employer on a day-to-day basis. Some of them are affiliated with the national union.

In general, there are two kind of local union: craft and industrial. A craft union is typically composed of members of particular trade or skills in specific locality. Members usually acquire their job skills through an apprenticeship program. An industrial union generally consists of all the workers in a particular plant or group of plants. The type of work they do and the level of skill they possess are not a condition for membership in the union.

Structure and Functions of Local Unions

Local unions carry out the daily functions of business unionism. The two primary tasks of the local are to (1) negotiate the labor agreement and (2) represent member rights through enforcing the contract by way of the grievance procedure.

The local union is run by elected officials. These officers, except in very big locals or in certain craft unions, are normally workers of the unionized organization.
Role of the Union Steward

It is the union steward who works closely with supervisors to resolve formal employee grievances of daily concerns regarding the labor agreement. It is, therefore, extremely important that the steward and the supervisor enjoy a good working relationship.

Role of the Business Representative

The business representative plays a key role in local union affairs. This person is primarily responsible for negotiating the agreement and handling labor grievances. The business representative will normally play a large part in the day-to-day administration of the local union.

Union Leadership Approaches and Philosophies

To work effectively with union officials, it is important for managers to understand their approaches and philosophies. The following points will help to achieve this positive relationship. Remember:

- Union officials are elected and, therefore, subject to the political pressures of a local following.
- Union officials may seek to represent their members on issues that managers may believe are not in the best interest of the organization.
- Rank-and-file members exert strong pressures on union officials.
- Union officials often hold a strong belief in the ideals of unionism and how unionism can help employees.

Contemporary Challenges to Labour Organizations

Labor relations is in a time of change. Present challenges include foreign competition, technological changes, public policy changes, the decline in labor’s image, the decline in union membership, and union avoidance by employers.

Foreign Competition and Technological Change

Foreign competition includes imports of automobiles, electronics, textiles, clothing, and steel. This causes a competition in these industries in the country and a loss of jobs for workers. Technological changes have also reduced the need for workers; in addition, they have the effect of lowering the effectiveness of strikes.

Labor’s Unfavorable Public Image

Recent studies have shown that the image of labor is quite low. Reasons cited for this are:

- restrictive work practices of unions and their negative effect on productivity,
- strikes by employees,
- incidents of union leader’s involvement in political (opposition) party, and
- the image of labor leaders as out of touch with employer and employee needs and goals.
Decrease in Union Membership

In general, the size and density of unions are decreasing. Reasons for the decrease include the points discussed earlier plus the fact that unions have not been highly successful in organizing new members, particularly those in white-collar occupations.

Energized Organizing

To halt the large decline in union membership, labor organizations and their officials have become more proactive in organizing and recruiting employees. Many union officials see the need to become more aggressive if the labor movement is to prosper in the next century.

Many textbook discusses various examples of how the labor movement seeks to renew its organizing efforts. These include large commitments of money, training new union organizers, and targeting specific industries or organizations for organizing drives.

With the proportion of the labor force becoming increasingly service-oriented, unions realize that they need to concentrate on organizing white-collar employees. This has been difficult for unions to do because (1) white-collar employees often identify with managers, (2) certain white-collar jobs (clerks, clerical) have high turnover rates, (3) white-collar employees often work in small service establishments, which are difficult to organize, and (4) managers may offer some white-collar employees good wages and benefits to lower their desire to unionize.

Employers’ Focus on Maintaining Nonunion Status

During the decade of the 1980s, managers assumed a tougher stance against employee unionization. Their goal was to maintain a union-free workplace. To counteract the threat of unionization, employers offered their employees wages, benefits, and working conditions similar to those offered to workers under a union-negotiated contract.

Researchers predict that union avoidance by employers will continue during the 1990s. This projection is based on the belief that organizations will shun unionization as a means to stay competitive at home and abroad while seeking the freedom needed to manage a dynamic, ever-changing business environment.

Union-Free Strategies and Tactics

Employers who adhere to certain union-free strategies and tactics can remain or become union free. Some managers believe that the presence of a union is evidence of management’s failure to treat employees fairly. This is true in certain cases, but the factors that believed will significantly reduce the chances of unionization are notable, are therefore listed below:

- A conviction by employees that the boss is not taking advantage of them.
- Employees who have pride on their work.
Good performance records kept by the company. Employees feel more secure on the jobs when they know their efforts are recognized and appreciated.

- No claims of high-handed treatment. Employee's respect firm but fair discipline.
- No claims of favoritism that's not earned through work performance.
- Supervisors who have good relationships with subordinates.

According to a report published in *Unions in Transition*, certain similar characteristics help organizations remain union free: competitive pay and strong benefits, a team environment, open communication, a pleasant work environment, and the avoidance of layoffs. Currently, both organized labor and progressive management realize that these positive characteristics will be part of future work environments regardless of the union status of a company.

If a firm's goal is to remain union free, it should establish its strategy long before a union-organizing attempts begins. The development of long-term strategies and effective tactics for the purpose of remaining union free is crucial because the employees' decision to consider forming a union is usually not made overnight. Negative attitudes regarding the company are typically formed over a period of time and well in advance of any attempt at unionization.

If a firm desires to remain union free, it must borrow some of the union's philosophy. Basically, management must be able and willing to offer workers equal or better conditions than they could expect with a union; this is becoming easier and easier to do. Weakness in any critical area may be an open invitation to a union. As shown in Figure 2, all aspects of an organization's operation are involved in maintaining its union-free status.

**a. Effective First-line Supervisors**

Supervisors can be considered as the first line of defense against unionization. Their supervisory ability often determines whether unionization will be successful. The supervisor assigns work, evaluates each individual's performance, and provide praise and punishment. The manner in which he or she communicates with the employee in these and other matters can affect the individual's attitude toward the firm. Even though the first-line supervisor is the lowest level of management in the workplace, this person usually has more influence over employees than any other manager.

**b. Union-Free Policy**

When the organization has a goal of remaining union free, this should be clearly and forcefully communicate to all its members. For example:

'Our success as a company is founded on the skill and efforts of our employees. Our policy is to deal with employees as effectively as possible, respecting and recognizing each of them as individual'.

---


40
This type of policy evolves into a philosophy that affects everyone in the organization. All employees must understand it. The union-free policy should be communicated repeatedly to every worker. They must be told why the company advocates the policy and how it affects them. This involves much more than sending a memo each year to all employees stating that the company’s goal is to remain union-free. Every means of effective communication may be needed to convince employees that the organization intends to remain union free.

e. Effective Communication

For an organization that wants to remain union-free, one of the most important actions the company can take is to establish credible and effective communication. A very positive by-product of the movement toward participative management, cooperation, and teamwork is open and effective communication. Employees must be given the information they need to perform the jobs and then provided feedback on their performance. Management should openly share information with workers concerning activities taking place within the organization.

One approach that encourages open communication is the open-door policy. It will give employees the right to take any grievance to the person next in the chain of command if the problem cannot be resolved by the immediate supervisor.

d. Trust and Openness

Openness and trust on the part of managers and employees alike are important for a company to remain union-free. The old expression, ‘Actions speak louder than words’, is certainly valid for such an organization.

Credibility, based on trust, must exist between labor and management, and this trust develops over time. If employees perceive that the manager is being open and receptive to ideas, feedback is likely to be encouraged. Managers need this feedback to do their job effectively. However, if managers give the impression that their directives should never be questioned, communication will be stifled and credibility lost. Here again, the participative style that is becoming more pervasive will enhance trust, openness, and employee involvement and participation, helping management to maintain a union-free organization.

e. Effective Compensation Programs

The financial compensation that employees receive is the most tangible measure they have of their worth to the organization. If an individual’s pay is substantially below that provided for similar work in the area, the employee will soon become dissatisfied. Compensation must be relatively competitive if the organization expects to remain union-free.

f. A Healthy and Safe Work Environment

An organization that gains a reputation for failing to maintain a safe and healthy work environment leaves itself wide open for unionization. For years, unions have campaigned successfully by convincing workers that the union will provide them with a safer work environment. In fact, labor organizations were leading advocates
of the Occupational Safety and Health Act, and they continue to support this type of legislation.

g. Effective Employee and Labor Relations

No organization is free from employee disagreements and dissatisfaction. Therefore, a way to resolve employee complaints, whether actual or perceived, should be available. The grievance procedure is a formal process that permits employees to complain about matters affecting them.

In most developed countries, one way to resolve grievances in union-free organizations is through the use of ombudspersons.³

DISCUSSION QUESTIONS

The following questions are related to the topic discussed in the chapter. (Please note that the questions in the final examination are closely related to discussion questions in each chapter).

Based on your reading in this chapter as well as by referring to other sources (i.e. journal articles, books, etc.), prepare the answer for the following questions.

1. Carefully outline the approaches that management may take in their relationship with trade unions.

2. Discuss the concept of "good Industrial Relations". Evaluate the extent to which good industrial relations strategy could contribute to organizational efficiency, profitability, and industrial harmony;

3. "The elements of a good industrial relations system are closely linked to a progressive human resource management (HRM) practices". Carefully examine and discuss this statement.

APPLICATIONS

By now, it is expected that you already understand the topic discussed in this chapter. To strengthen you understanding on the topics discussed, choose one of the following questions and prepare the answer.

1. Assume that you are a union recruitment officer. Prepare a one-hour presentation setting out the case for joining your union.

OR

3 Ombudsperson – is a complaint officer with access to top management who hears employees’ complaints, investigates them, and sometimes recommends appropriate action.
Assume that you are a HR Manager of a joint-venture (local/U.K.) manufacturing company with 500 production workers. Prepare a one-hour presentation justifying why the management of the company wish the employees not to form a trade union.

2. J.T. Dunlop (1958) contended that the central task of theory of industrial relations is to explain why particular rules are established in particular systems and how they change in response to changes affecting the system. He describe the “system model” in industrial relations as follows:

\[ R = f(a,t,e,s,i), \]

where:
- \( R \) = rules of the I.R system
- \( a \) = the actors
- \( t \) = the technical context of the workplace
- \( e \) = the market context or budgetary constraints
- \( s \) = the power context and the status of the parties
- \( i \) = the ideology of the system.

Discuss

3. Explain the implications of each of the following trends on industrial relations systems and approaches:
- technological advancement
- workforce diversity
- globalization and trade liberalization
- outsourcing

Further Reading

There are a number of other texts available that are aimed at human resource management and industrial relations specialists and therefore explore the issues introduced here in more detail. These include Aminuddin (2004), Salamon (2003), and Marchington and Wilkinson (2000).
This chapter gives an overview of a legal framework of Industrial Relations System in Malaysia. Discussions will be focusing on the main Acts, namely Trade Union Act, 1959, Industrial Relations Act, 1967, and some provisions and interpretations of the Act. The implication of the Act will also be briefly discussed.

Introduction

The industrial relations system in Malaysia is largely shaped by the statutory provisions in three Acts namely the Industrial Relations Act, 1967, the Trade Unions Act, 1959 and the Employment Act, 1955. These three Acts very much determines the conditions and procedures in the relationships between the employers and the employees.

To say whether the industrial relations system in Malaysia is advantageous or disadvantageous to the employees and the employers would be too superficial. First we will have to look at the Trade Unions Act, 1959, the Industrial Relations Act, 1967 and from the judicial perspective.

Trade Union Act, 1959

According to the Trade Unions Act, 1959, section 2, "trade union" or "union" means any association or combination of workmen or employers, being workmen whose place of work is in West Malaysia, Sabah and Sarawak, as the case may be, or employers employing workmen in West Malaysia, Sabah and Sarawak, as the case may...

The Trade Unions Act, 1959 has tremendous power and means of control over organized labour in Malaysia. These controls cover unions of employees as well as unions of employers. However we will come to realize that it is an Act more to curb organized labour in Malaysia than otherwise. They include matters such as:

- Registration
- Rights and Liabilities of Trade Unions
- Industrial Action
- Constitution
- Funds and Accounts
- Consultative Bodies
- Miscellaneous
Registration

The process of registration is tedious and very much depends on the discretion of the Director General of Trade Unions (DGTU). Provisions in the Trade Unions Act, 1959 governing registration include:

- Section 8(1) which says that every trade union must apply to be registered within a period of one month from the date it was established.
- Section 10(1) which says that every application for registration must be made to the DGTU and must be signed by at least seven members of the union, any of whom may be officers.
- Section 2 also specifies that the trade union must have among its objects one or more of the following objects:
  - the regulation between workmen and employers, for the purpose of promoting good industrial relations between workmen and employers, improving the working conditions of workmen or enhancing productivity.
  - the regulation of relations between workmen and workmen, or between employers and employers.
  - the representation of either workmen or employers in trade disputes.
  - the conducting of, or dealing with, trade disputes and matters related.
  - the promotion or organization or financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lock-out.

Section 12(2) which says that the DGTU may refuse to register a trade union if he is satisfied that there is an existence a trade union representing the workmen and it is not in the best interest of the workmen concerned that there be another trade union.

Section 12(3) which says that it is mandatory for the DGTU to refuse to register a trade union if:

- he is in the opinion that the trade union is likely to be used for unlawful purposes.
- any of the objects of the trade union is unlawful.
- he is not satisfied that the trade union has complied with the Trade Unions Act, 1959.
- he is satisfied that the objects, rules, and constitution of the trade union conflicts with the Trade Unions Act, 1959.
- the name of the trade union is identical to any other existing trade union or in the opinion of the DGTU is likely to be deceiving.
- the name of the trade union in the opinion of the DGTU, undesirable.
- This section with statements like “in the opinion of the DGTU, he is satisfied, likely and etc.” gives the DGTU tremendous power to refuse registration.

Section 15(1) which says that the registration of a trade union may be cancelled or withdrawn by the DGTU if he is satisfied:

- that the certificate of registration was obtained or issued by fraud or mistake.
- that any objects or rules of the trade union is unlawful.
- that the constitution of the trade union or of its executive is unlawful.
that the union has been or is being or is likely to be used for any unlawful purpose.
that the trade union has contravened with the Trade Unions Act, 1959.
that the funds of the trade union are or have been expended in an unlawful manner.
that the trade union has ceased to exist

Again this section provides the DGTU with discretionary power to register a trade union. It also assumes that the DGTU has predictor powers to predict whether a union is likely to be used for any unlawful purpose which is rather uncanny and disadvantageous to trade unions.

Section 15(4) which says the DGTU may cancel the registration of any trade union which has failed to show cause or which having shown cause, failed to satisfy the DGTU why its certification should not be cancelled.

Section 17 gives the DGTU the power to suspend a branch of a trade union, if he is satisfied that the branch of a trade union has contravened the provisions of the Trade Unions Act, 1959 or the rules of the union. And the order of suspension may at any time be revoked by the DGTU and until it is revoked, the branch is prohibited from carrying on any activity.

Section 18 gives the Minister of Human Resources absolute discretionary power but with the concurrence of the Minister responsible for internal security and public order to suspend a trade union for a period not exceeding six months, which in his opinion is, or is being used for purposes prejudicial to or incompatible with the interests of the security of, or public order in, Malaysia.

Section 19 which says that any trade union which does not apply registration in due time, or if its registration has been refused, withdrawn or cancelled will be deemed to be an unlawful association and shall cease to enjoy any of the rights, immunities, or privileges of a registered trade union.

The definition of a "trade union" under section 2 which includes "within any particular establishment trade, occupation or industry or within any similar trades, occupations or industries" restricts the organization of big and effective unions and also promotes the establishment of in-house unions. Besides "similar" here is quite subjective and is normally based on the opinion of the DGTU. And this definition is also the main reason why MTUC cannot be registered under the Trade Unions Act, 1959 but is registered under the Societies Act.

Rights and Liabilities of Trade Unions

There are several provisions in the Trade Unions Act, 1959 which protects the rights of the trade unions and its members in engaging in lawful trade union activities.

Section 21 guarantees the trade unions and its members immunity from civil suit of any acts done in contemplation or in furtherance of a trade dispute.
Section 22 guarantees the trade unions and its members immunity from liability in tort of any tortuous acts done in contemplation or in furtherance of a trade dispute.

Section 24 guarantees the trade unions and its members immunity from criminal prosecution for conspiracy of any acts done in contemplation or in furtherance of a trade dispute.

**Industrial Action**

Industrial action can either be a lock-out undertaken by the employers or a strike undertaken by employees. A "lock-out" under the Trade Unions Act, 1959 means

- the closing of a place of employment;
- the suspension of work; or
- the refusal by an employer to continue to employ any number of workmen employed by him;
- in furtherance of a trade dispute, done with a view to compelling those workmen to accept terms or conditions of or affecting employment.

A "strike" under the Trade Unions Act, 1959 means 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 to 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 or dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment.

The elaborate definition of "strike" also takes work to rule or go-slow under its wings.

In Malaysia, the right to industrial action (strike or lock-out) is very much restricted. However on the other hand it is implied that it is also recognized as the right of the trade unions in a number of provisions in the Trade Unions Act, 1959.

Section 2 provides for among the objects of a trade union, the promotion or organization or financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lock-out.

Section 25(A) prescribes the proper procedures to be taken before a trade union of workmen can call for a strike or a trade union of employers can declare a lock-out including:

- a consent by secret ballot of at least two third of its total number of members who are entitled vote. The right to strike or lock-out is implied in this section.
- before the expiry of seven days after submitting to the DGTU the results of the secret ballot.
Constitution

Among other things that comes under constitution includes membership, officers, rules and secret ballot. Section 26 and section 27 of the Trade Unions Act, 1959 deals with the membership of trade unions. Section 28 deals with the officers of a trade union. The qualification to be a member of the executive of a trade union is restrictive and is probably to ensure that there are no other intentions other than to represent the workmen of a trade union. The Trade Unions Act, 1959 among other things also includes in its powers the right to determine the rules of trade unions. The Trade Unions Act, 1959 also sets out the procedures and circumstances in which secret ballots should be conducted under section 40. Section 28(1) says that in order to qualify for election as a member of the executive of a trade union, the person:-

- must be a Malaysian citizen.
- must have been engaged or employed for a period of at least one year in any establishment, trade, occupation or industry with which the trade union or federation is connected.
- must not have been a member of the executive of any trade union the registration of which has been cancelled or withdrawn.
- must not be an office bearer or employee of a political party.
- must not have been convicted by any court of law of criminal breach of trust, extortion or intimidation or of any offence which in the opinion of the DGTU renders him unfit to be an officer of a trade union.
- must not be a bankrupt.

Section 28(1) which say that the rules of every registered trade union must make provision for all the matters specified in the First Schedule. The First Schedule consists of 12 items whereby all the items listed are governed by one or more provisions in the Trade Unions Act, 1959. This shows that the Trade Unions Act, 1959 plays a big role in determining and controlling the rules of the union inclusive of its internal matters.

- First Schedule (Trade Unions Act, 1959)
- Item 1: name and place of meeting
- Item 2: objects, purposes of funds (Section 2)
- Item 3: manner of making, altering, amending and rescinding rules
- Item 4: election of members of the executive (Section 28)
- Item 5: the custody and investment of the funds of the trade union, the designation of the person responsible and the annual and periodical audit of its accounts (Sec. 49-53)
- Item 6: the inspection of books and names of members of the trade union by any person
- having an interest in the funds of the trade union. (Section 55-57)
- Item 7: the manner of dissolution of the trade union and the disposal of funds
- Item 8: the manner of establishing and dissolving any branch
- Item 9: the taking of decisions by secret ballot (Section 40)
- Item 10: the procedure for holding ballots (Section 40)
- Item 11: the manner in which disputes must be decided (Section 44)
- Item 12: Cessation of membership
Section 40(1) states that a trade union must take a secret ballot to make a decision on any of the following matters:

- the election of delegates to a general meeting, if the rules of the trade union provide for meetings of delegates, or to a federation of trade unions;
- the election of officers (other than trustees) by the members in accordance with the rules of the union;
- all matters relating to strikes or lock-outs;
- the imposition of a levy;
- dissolution of the trade union or federation of trade unions;
- amendment of the rules where such amendment results in increasing the liability of the members to contribute or in decreasing the benefits to which members are entitled;
- amalgamation with another trade union or transfer of engagements to another trade union.

Section 40(2) also states that where a secret ballot is taken on any matter relating to a strike or a lock-out, it must contain a resolution setting out clearly the issues leading to the proposed strike or lock-out and describing clearly the issues leading to the proposed strike or lock-out and describing clearly the nature of the acts which are to be done or omitted to be done in the course of the strike or lock-out.

Section 40(3) also restricts the validity period of a secret ballot whereby a secret ballot taken relating to a strike or lock-out will cease to have effect upon the expiry of 90 days. Thus a new secret ballot will have to be taken.

Section 40(5) also states that the results of a secret ballot taken on matters relating to a strike or lock-out must be submitted to the DGTU within fourteen days after the taking of the secret ballot.

Funds and Accounts

This section of the Trade Unions Act, 1959 specifically spells out where and how the applications of union funds are allowed or otherwise.

Section 50(1) which says the funds of a trade union be expended only for the following matters:

- the payment of salaries, allowances and expenses to officers and employees of the trade union;
- the payment of costs and expenses of the administration of the trade union including audit of the account of the funds of the trade union;
- the prosecution or defense of any legal proceeding to which the trade union or any member is a party for the purpose of securing or protecting any right of the trade union or its members;
- the expenses incurred in the settlement of disputes;
- the conduct of trade disputes on behalf of the trade union or any member;
- allowances to members or their dependants on the account of death, old age, sickness, accidents or unemployment of such members;
- the payment of fees in respect of affiliation with or membership of, any federation of trade unions or consultative body.
the payment of travel expenses, actual wages lost and other expenditure;
- publishing expenses;
- expenses for the conduct of social, sporting, educational and charitable activities of the members;
- the payment of premium to insurance companies.

Section 51 prohibits the payment of fines or penalties imposed upon any person by sentence or order of a court.

Section 52 prohibits the use of funds in any payment whatsoever to a political party or in furtherance of any political object.

Section 56 also makes it the duty of the trade union to submit its yearly audited accounts ending on the thirty-first day of March to the DGTU before the first day of October in every year. Section 56 also states that no trade union shall cause its general statement to be audited by the same person successively for a period of more than three years.

Section 57 allows for the inspection of the accounts and records at all reasonable times by any member of the trade union, or any person having an interest in the funds of the trade union, or the DGTU.

Consultative Bodies

This part of the Trade Unions Act, 1959 restricts the formation of or affiliation with consultative or similar bodies.

Section 76(A) which says that no trade union shall affiliate with, or be a member of, any consultative or similar body established outside Malaysia, except with prior permission in writing of the DGTU.

Miscellaneous

The power invested in the DGTU and the Minister of Human Resources is enormous. Section 71A of the Trade Unions Act, 1959 is the only means of appeal against the DGTU’s discretionary power. Section 71A says that any person who is dissatisfied with any opinion, order, declaration, refusal, cancellation, withdrawal, direction or decision, as the case may be, given, made or effected by the DGTU under any of the following provisions:

- Section 2(2);
- Section 12;
- Section 15(2)(b) or section 15(4);
- Section 16(1);
- Section 17(1);
- Section 25A(4);
- Section 28(1)(d), or section 29(2)(d);
- Section 34(2);
- Section 40(6) or 40(9);
may within thirty days appeal to the Minister of Human Resources. Section 71A
also states that the direction or decision of the Minister of Human Resources in
the above mentioned matters shall be final and conclusive.

**Industrial Relations Act, 1967**

"An Act to provide for the regulation of the relations between employers and
workmen and their trade unions and the prevention and settlement of any
differences or disputes arising from their relationship and generally to deal with
trade disputes and matters arising therefrom."

[7th August 1967]

The Industrial Relations Act, 1967 is one of the means of regulating the relations
between employers and workmen and their trade unions. The provisions in the Act
include matters such as:-

- Protection of Rights of Workmen and Employers and their Trade Unions
- Recognition and Scope of Representation of Trade Unions
- Collective Bargaining and Collective Agreements
- Conciliation
- Representations on Dismissals
- Industrial Court
- Trade Disputes, Strikes and Lock-outs and matters arising therefrom.

**Protection of Rights of Workmen and Employers and their Trade Unions**

The Malaysian industrial law recognizes the right and the freedom of workmen to
form and join a trade union and participate in its lawful activities by prescribing
several provisions in the Industrial Relations Act, 1967 to deter unfair labour
practices particularly by the employer.

Section 4(1) prohibits any person from interfering with, restrain or coerce a
workmen or an employer in the exercise of his rights to form and assist in the
formation of and join a trade union and to participate in its lawful activities.

Section 4(2) also prohibits any trade union of workmen and trade union of
employers from interfering with each other in the establishment, functioning or
administration of the trade union.

Section 4(3) prohibits any employer or trade union of employers and any person
acting on behalf of such employer or such trade union from supporting any trade
union of workmen financially or by other means with the object of placing it under
the control or influence of the employer or trade union of employers.
Section 5(1) forbids the employer or trade union of employers or any person acting on behalf of an employer or such trade union:-

- from imposing any condition in the contract of employment seeking to restrain the right of the person who is a party to the contract to join a trade union or to continue his membership in a trade union;
- from refusal to employ, discrimination regards to employment, promotion, and any conditions of employment or working conditions on the grounds of membership of a trade union;
- from discriminating against any person in regard to employment, promotion, any conditions of employment or working conditions on the ground that he is or is not a member or officer of a trade union;
- to dismiss or threaten to dismiss, injure or threaten to injure, alter or threaten to alter his position to his prejudice by reason that the workman is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union or participates in the promotion, formation or activities of a trade union;
- induce a person to refrain or cease to be a member or officer of the trade union by offering bribes.

Section 5(2) gives the employer the right to:-

- refuse to employ a person for proper cause, or not promoting a workman for proper cause, or suspending, transferring, laying-off or discharging a workman for proper cause;
- require at any time a person who has been appointed or promoted to a managerial position to cease to be or not to become a member or officer of a trade union catering for workmen other than those in a managerial position;
- require that any workman employed in confidential capacity in matters relating to staff relations to cease to be or not become a member or officer of a trade union.

Section 6 provides for the right of an officer of a trade union reasonable leave to carry out trade union duties whereby the employer must grant.

Section 7 prohibits workmen or trade union of workmen and no person on behalf of the trade union to:-

- except with the consent of the employer, persuade at the employer's place of business during working hours of the workman to join or refrain from joining the trade union;
- intimidate any person to become or refrain from becoming or continue to be or to cease to be a member or officer of a trade union;
- induce a person to refrain or cease to be a member or officer of the trade union by offering bribes.

Recognition and Scope Of Representation Of Trade Unions

A trade union of workmen seeking recognition must first comply with a number of conditions.
Section 9(1) which says that a trade union of workmen seeking recognition must not have members consisting of those who are employed in managerial, executive, confidential and security capacity.

Section 9(2) which says that a trade union of workmen may serve on an employer or on a trade union of employers in writing in the prescribed form a claim for recognition in respect of the workmen or any class of workmen employed by such employer or by the members of such trade union of employers.

Section 9(3) which say that an employer or a trade union of employers must respond to a recognition claim within 21 days. The employer can:

- accord recognition;
- not accord recognition and notify the trade union of workmen in writing the grounds for not according recognition;
- apply to the Director General Industrial Relations (DGIR) to ascertain the membership strength of the trade union of workmen concerned and give a written notice to the trade union of workmen.

Under section 9(4B) the DGIR upon notification of reference, refer to the DGTU concerning the strength of the trade union.

Finally if the matter of recognition is not resolved, then under section 9(4C) the DGIR must notify the Minister of Human Resources.

Under section 9(5) and 9(6), upon notification by the DGIR, the Minister of Human Resources will decide whether to accord recognition and this decision will be final and conclusive.

Under section 11, once recognition has been accorded to the trade union of workmen, no other trade union can make any claim for recognition in respect of the same workman or class of workmen for a period of three years.

Under Section 12, if the matter of recognition has been referred to the Minister of Human Resources and was decided that the trade union of workmen not being accorded recognition, then the trade union cannot make any further claim for recognition for another six months.

Collective Bargaining And Collective Agreement

Under section 2 of the Industrial Relations Act, 1967, “collective agreement” means an agreement in writing concluded between an employer or a trade union of employers on the one hand and a trade union of workmen on the other relating to the terms and conditions of employment and work of workmen or concerning relations between such parties and “collective bargaining” means negotiating with a view to the conclusion of a collective agreement. Under this provision anything that comes under the definition of collective agreement can be negotiated. However this has been very much curtailed.
Under section 13(1) a trade union of workmen which has been accorded recognition by an employer or a trade union of employers may invite the employer of trade union of employers to commence collective bargaining or vice versa.

Section 13(3) prohibits a trade union of workmen from raising any bargaining demands on the following matters:

- the promotion by an employer of any workman from a lower grade or category to a higher grade or category;
- the transfer by an employer of any workman within the organization of an employer's profession, business, trade or work, provided that such transfer does not entail a change to the detriment of a workman in regard to his terms of employment;
- the employment by an employer of any person that he may appoint in the event of a vacancy arising in his establishment;
- the termination by an employer of the services of a workman by reason of redundancy or by reason of the reorganization of an employer's profession, business, trade or work or the criteria for such termination;
- the dismissal and reinstatement of a workman by an employer;
- the assignment or allocation by an employer of duties or specific tasks to a workman that are consistent or compatible with the terms of his employment.

However these conditions do not prohibit the trade union of workmen from raising questions relating to the procedural matters.

Under section 13(4), 13(5), 13(6) and 13(7) the trade union of employers or trade union of workmen upon receiving invitation to commence bargaining must within 14 days reply in writing notifying acceptance or otherwise. A reply notifying acceptance must be followed by the commencement of collective bargaining within 30 days.

However if an invitation has been refused or not been accepted within 14 days, or no collective bargaining has commenced within thirty days, the party making the invitation may notify the DGIR in writing. And the DGIR will try to bring the parties to commence collective bargaining. If the DGIR fails in his attempts, a trade dispute will be deemed to exist upon matters set out in the invitation.

Section 14(2) specifies the necessary item that should be included in a collective agreement.

These include the names of the parties, the effective period of the collective agreement which should not be less than three years, prescribe the procedure for its modification and termination. And one of the most important factors that must be included into the effective agreement is that it must prescribe a procedure for the adjustment of any question that may arise as to the implementation or interpretation of the agreement and reference of any such question to the Industrial Court for a decision.

Under section 14(3), the collective agreement must not contain any terms and condition of employment which is less favorable or in contravention of any written law covering the workmen for example the Employment Act, 1955.
Section 15 applies to new undertakings such as pioneer companies. Collective agreement under such circumstances must not contain any term and condition of employment which is more favorable to workmen than those contained in the Employment Act, 1955. Once the collective agreement has been signed, it is a binding contract between the employer and the union. However it is not a binding agreement between the individual workman and his employer. Thus in order to make it binding, there are two provisions in the Industrial Relations Act, 1967 specifically for this purpose.

Section 16(1) specifies that a signed copy of the collective agreement must be jointly deposited by the parties with the Registrar within one month and the Registrar notify the Industrial Court for its cognizance.

Section 16(2) says that the Industrial Court may in its discretion refuse to take cognizance if it is of the opinion that the agreement does not comply with section 14.

Section 17(1) which says that a collective agreement which has been taken cognizance of by the Industrial Court will be deemed to be an award and will be binding on the parties to the agreement including where a party is a trade union of employers, all members of the trade union to whom the agreement relates and their successors, assignees or transferees and all workmen who are employed or subsequently employed.

Conciliation

The Industrial Relations Act, 1967 also sets out the procedures to take in the event a trade dispute is not resolved by the parties themselves.

Under section 18, where a trade dispute exists or is apprehended, that dispute may be reported to the DGIR by an employer or a trade union of employers or a trade union of workmen, both whom are parties to the dispute. If conciliation efforts fail, the DGIR must notify the Minister of Human Resources.

Section 19A allows the Minister of Human Resources may at any time if he considers it necessary to conciliate in any trade dispute.

Representations on Dismissals

Dismissal is part the management’s prerogative included under section 13(3) where the trade union cannot include such matter in the collective agreement. However this does not mean that the employer can dismiss any employee as he pleases. There are provisions in the Industrial Relations Act, 1967 under section 20 which provides for a representation on dismissals.

Under section 20, any workmen who considers that he has been dismissed without just cause or excuse by his employer may make representation in writing to the DGIR to be reinstated. This has to be done within sixty days of the dismissal. The DGIR upon failing to come to a settlement must notify the Minister of Human Resources.
Resources and the Minister of Human Resources upon notification at his discretion may refer the representation to the Industrial Court for an award.

**Industrial Court**

The definition for "Court" under section 2 of the Industrial Relations Act, 1967 means the Industrial Court appointed under Part VII and includes, unless the contrary intention appears, any Court under section 22 constituted for the purpose of dealing with any trade dispute or matter referred to it, and any division thereof.

Under section 26(1), where a trade dispute exists or is apprehended, the Minister of Human Resources may refer the dispute to the Industrial Court on the joint request in writing to the Minister of Human Resources by both parties to the dispute.

Under section 26(2), the Minister of Human Resources may on his own motion refer any trade dispute to the Court if he is satisfied that it is expedient to do so.

Under section 30, in making its awards, the Industrial Court is required to follow a number of guidelines. These include:

- the power in relation to a trade dispute referred to it or in relation to a reference to it under section 20(3), to make an award (including an interim award) relating to all or any of the issues.
- where there is no unanimous decision on any question or matter to be determined, a decision shall be taken by a majority of members and, if there is no majority decision, by the President or Chairman.
- making its award without delay and where practicable within thirty days from the date of reference to it of the trade dispute or of reference to it under section 20(3).
- in making its award in respect of a trade dispute, shall have regard to the public interest, the financial implications and the effect of the award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries.
- shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.
- in making its award, may take into consideration any agreement or code relating to employment practices between organizations representative of employers and workmen respectively where such agreement or code has been approved by the Minister of Human Resources.
- in making its award, shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute or in the matter of the reference to it under section 20(3) but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute or the reference to it under section 20(3).
- may specify the period during which it shall continue in force, and may be retrospective except in the case of the decision under section 33 or an order under section 56(2)(c) or for the reinstatement of a workman, be earlier than six months from the date on which the dispute was referred to it.
Under section 39(1), if any question arises as to the interpretation of any award or collective agreement taken cognizance by the Industrial Court, the Minister of Human Resources may refer the question or any party bound by the award or agreement may apply to the Industrial Court for a decision on the question.

**Trade Disputes, Strikes and Lock-outs and Matters Arising Therefrom**

Just as in the Trade Unions Act, 1959, there are several provisions in the Industrial Relations Act, 1967 though tedious and restrictive which further recognizes the right to industrial action.

Section 40(1) allows controlled picketing, whereby the picketing must be in furtherance of a trade dispute and solely for the purpose of obtaining or communicating information or persuading or inducing any workman to work or abstain from working. Intimidation, obstruction of approach or egress therefrom and acts leading to breach of peace is punishable by law.

Section 43 implies recognition to industrial action even in the essential services but prohibits any workman in any essential service to go on a strike without giving to the employer notice of the strike, within forty-two days before striking and within twenty-one days of giving such notice and before the expiry of the date of strike specified in the notice. Employers in essential service are also governed by the same conditions in regard to a lock-out.

Section 44 prohibits strikes and lock-outs under these conditions:-

- during the pendency of the proceedings of a Board of Inquiry and seven days after the conclusion of such proceedings.
- after a trade dispute has been referred to the industrial court and the parties concerned have been notified of such a reference.
- where the Yang di-Pertuan Agong or State Authority has witheld consent to refer in trade disputes concerning Government service or the service of any statutory authority.
- in respect of matters covered in a collective agreement taken cognizance of by the Industrial Court or by an award.
- in respect of matters covered in the management prerogative clause under section 13(3)

Section 45(1)(b) also says that a strike or lock-out will be deemed to be illegal if the motives behind the strike or lock-out are other than the furtherance of a trade dispute. Ex. General strikes and sympathy strikes. However under Section 45(2), a lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out, is not illegal.

Section 46 imposes a penalty in the form of imprisonment for a term not exceeding one year or to a fine not exceeding one thousand ringgit or to both to any workmen or employer who commences, continues or otherwise acts in furtherance of an illegal strike or lock-out.
Section 47 imposes a penalty in the form of imprisonment for a term not exceeding one year or to a fine not exceeding one thousand ringgit or to both to any person who instigates or incites others to take part in or otherwise acts in furtherance of an illegal strike or lock-out.

Section 48 imposes a penalty in the form of imprisonment for a term not exceeding six months or to a fine not exceeding five hundred ringgit or to both to any person who provides financial aid in furtherance or support of an illegal strike or lock-out.

Section 49 protects the persons refusing to take part in illegal strikes or lock-outs.

The Practices of the Industrial Court

The Industrial Court is a quasi-judicial authority which has to adopt a judicial approach in discharge of its functions. The Industrial Court derives its jurisdiction from several statutory provisions in the Industrial Relations Act, 1967:-

- under section 8(2A), in respect of any complaint under section 4, 5 or 7, upon notification by the DGIR that it cannot be resolved.
- section 10(2) that prohibits the employer from terminating the services of a workman during the pendency of recognition proceedings. Such termination is considered as dismissal, and may be referred to the Industrial Court under section 20(3).
- under section 13(2), where a trade dispute is deemed to exist when the efforts of the DGIR fail to bring the parties to commence collective bargaining; the Minister may then refer the dispute under section 26(2) to the Industrial Court.
- under section 20(1), a workman makes a representation for reinstatement when he alleges unfair dismissal, and upon the failure of the conciliation efforts by the DGIR the Minister may, if he thinks fit, refer the representation to the Industrial Court for an award.
- under section 26(1), where a trade dispute exists or is apprehended, the Minister of Human Resources may refer the dispute to the Industrial Court on the joint request in writing to the Minister of Human Resources by both parties to the dispute.
- under section 26(2), the Minister of Human Resources may on his own motion refer any trade dispute to the Industrial Court if he is satisfied that it is expedient to do so.
- under section 33(1), if any questions arises as to the interpretation of any award or collective agreement, the Minister may refer the question or any party bound by the award or agreement may apply to the Court for a decision on the question.
- under section 56(1) any complaint that any term of any award or of any collective agreement which has been taken cognizance of by the Industrial Court has not been complied with may be lodged with the Industrial Court in writing by an trade union or person bound by such award and agreement. The Minister has no role to play in this dispute going before the Industrial Court.
under section 33A, the Industrial Court derives its jurisdiction to grant or not to grant leave to the aggrieved party when it applies for its leave to refer a question of law to the High court.

Interpretation and Non-compliance with awards and agreements

Section 33 deals with the interpretation and variation of awards and agreements and section 56 deals with non-compliance with award or collective agreement. Regarding inappropriate reference to the Industrial Court, the Supreme Court in the case of Dragon and Phoenix Bhd. v. Kesatuan Pekerja-Pekerja Perusahaan Membuat Texstil dan Pakaian Pulau Pinang & Anor (1991) 1 MLJ 89, held that the interpretative function that the Industrial Court performs under section 33 is entirely different from the enforcement function if discharges when a complaint of non-compliance is made to it under section 56.

The Supreme Court further stated in this particular case, there should be two separate applications to the Industrial Court, the first under section 33 to invite the Industrial Court to exercise its interpretative function and if there is still non-compliance, a second application for enforcement under section 56. Nevertheless, the current Court of Appeal in the case of Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers’ Union (1995) 2 MLJ 317 ruled that the question whether the Industrial Court when entertaining a complaint under section 56(1) has indeed acted in excess of its jurisdiction by exercising its power under section 33(1), is one that depends upon the peculiar circumstances of a particular case, thus section 33(1) and section 56 cannot be treated as being housed in watertight compartments with no permissible overlap under any circumstances.

Reference of Trade Disputes to the Court

Under section 26(1), where a trade dispute exists or is apprehended, the Minister of Human Resources may refer the dispute to the Industrial Court on joint request of the parties. Under section 26(2), the Minister of Human Resources may on his own motion refer any trade dispute to the Industrial Court if he is satisfied that it is expedient to do so.

Under section 2, a “trade dispute” means any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workmen. Due to the ruling in the Federal Court in the case of Non-metallic Mineral Products Manufacturing Employees Union v. Malaya Glass Factory. (1985) 2 MLJ 129 check-off of union dues does not come within the statutory definition of trade dispute.

Interpretations of the Act

Under section 20(1), a workman makes a representation for reinstatement when he alleges unfair dismissal, and upon the failure of conciliation efforts by the DGIR
the Minister of Human Resources may, if he thinks fit, refers the representation to
the Industrial Court for an award.

Under section 2, a “workman” means any person, including an apprentice,
employed by an employer under a contract of employment to work for hire or
reward and for the purpose of any proceedings in relation to a trade dispute
includes any such person who has been dismissed, discharged or retrenched in
connection with or as a consequence of that dispute or whose dismissal, discharge
or retrenchment has led to that dispute.

But the main issue is who is a workman? There are a number of cases which tries
to find a solution to this question namely:-

- Dr. A Dutt v. Assunta Hospital [1981] 1 MLJ 304
- Inchcape Malaysia Holdings Bhd. v. R. B. Gray & Anor. [1985] 2 MLJ 297

In the case of Dr. A Dutt v. Assunta Hospital [1981] 1 MLJ 304, the Federal Court
held that the question whether Dr. A. Dutt was a workman within the meaning of
the Industrial Relations Act, 1967 was a mixed question of law and fact. The fact is
the ascertaining of the relevant conduct of the parties under their contract and
the inference proper to be drawn therefrom as to the terms of the contract and the
question of law, once the terms have been ascertained, is the classification of the
contract for services or of services.

In the case of Inchcape Malaysia Holdings Bhd. v. R. B. Gray & Anor. [1985] 2
MLJ 297, the Supreme Court held that the definition of a “contract of
employment” in the Industrial Relations Act, 1967 requires that to be a workman a
person must be employed as a workman. If he is employed in any other capacity
he cannot be a workman. The Supreme Court also held that under the law as a
director R. B. Gray is the very brain of the companies or their directing mind
determining and formulating the companies’ policy. In the circumstances of this
case he could not be held to be a workman.

In the case of Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1995]
3 MLJ 369, the Federal Court held that the expression “workman” in the
Industrial Relations Act, 1967 should be liberally interpreted and flexible with a
view of being worked out on a case by case basis. The flexible and correct approach
to determine whether a claimant is a workman is to ascertain whether the contract
is one of service or for services.

A workman is one who is engaged under a contract of service whereas an
independent contractor engaged under a contract for service is not. Where it is
necessary to determine whether a contract is one of service or for services, the
degree of control which an employer exercises over a claimant is an important
factor, although not the sole criterion.

The terms of the contract between the parties must first be ascertained to
determine the nature, degree and extent of control, and these include the conduct
of the parties at all relevant times. The true principle is that it is incorrect to state
in absolute terms that a company director can never be a workman. An
examination of the functions of the claimant is always necessary to decide this question.

**Predismissal Inquiry**

There is no statutory requirement of due inquiry before dismissal in the Industrial Relations Act, 1967. However there is provision under section 14(1) of the Employment Act which was introduced in 1971. Nevertheless, the rule requiring predismissal inquiry in dismissal cases lodged under section 20(i) of the Industrial Relations Act, 1967 is a rule of the Industrial Court's own devising.

In the case of Great Eastern Life Assurance Bhd. v. Kesatuan Sekerja Kebangsaan Pekerja-Pekerja Perdagangan Award No. 21 of 1969, the Industrial Court held that before the services of an employee may be terminated on the ground that he has committed some misconduct which deserves the punishment of dismissal he should be adequately informed of the accusations against him and be given a fair opportunity to correct or contradict them.

The standards of predismissal inquiry proceedings are rather loose which includes the twin rules of natural justice, namely rule against bias and reasonable opportunity of being heard. In the case of Aliah bte Hj. Mohd. Yassin v. The Chartered Bank Award No. 93 of 1981, the Industrial Court held that failure to give an oral hearing was not a denial of natural justice for what is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed.

The Supreme Court's ruling in the case of Dreamland Corporation (M) Sdn. Bhd. v. Choong Chin Sooi & Anor [1988] 1 MLJ 111 made the predismissal inquiry redundant based on the curable principle in precedent to two other cases namely Workmen of the Motipur Sugar Factory Private Limited v. The Motipur Sugar Factory Private Limited (Indian Supreme Court)

"**Where an employer has failed to make an inquiry before dismissing or discharging a workman it is open to him to justify his action before the Tribunal by leading all relevant evidence before it. The entire matter would be open before the Tribunal.**"

and British Labour Pump Co. Ltd. v. Byrne (Employment Appeal Tribunal)

"**Where an employer has not followed a proper procedure, the right approach is for the Industrial Tribunal to ask two questions. First, have the employers shown on the balance of probabilities that they would have taken the same course had they held an inquiry, and had they received the same information which that inquiry would have produced? Secondly, have the employers shown that in the light of the information which they would have had had they gone through the proper procedure, they would have been behaving reasonably in still deciding to dismiss.**"

principle and even argued that it applied to all cases regardless of whether the claimant is an employee within the meaning of the Employment Act, 1955 or not on the ground that the application of the curable principle must not depend on the salary of the workman. The Federal Court held that the defect in natural justice could and ought to be cured by the inquiry in the Industrial Court.

The Industrial Court is an independent quasi-judicial statutory body capable of reaching fair result by fair method. Despite the initial defect in dismissing, the hearing before the Industrial Court should be taken as sufficient opportunity to being heard to satisfy natural justice and thereby rectify the omission to hold domestic inquiry. There is no ground for the Industrial Court to complain that for it to inquire into the merits of the question of just cause and excuse would be grossly unfair.

The principle that an initial breach of natural justice by the employer could be cured by the Industrial Court applies to all cases irrespective of whether the claimant is or is not an employee within the meaning of the Employment Act, 1955. The right to due inquiry accorded to certain category of "employees" under section 14(1) of the Employment Act, 1955 does not alter the law affecting "workmen" under section 20 of the Industrial Relations Act, 1967. The statutory requirement does not therefore excuse the Industrial Court from discharging its duty to enquire into the question of just cause or excuse as required under section 20 of the Industrial Relations Act, 1967.

Relief For Unfair Dismissal

The Industrial Court, once it is satisfied that the dismissal has not been for a just cause or excuse, it has to consider one of the two forms of remedy for the unfairly dismissed workman:

- either an order of reinstatement which restores to the workman his former position and status in the organization as if he has not been dismissed; or
- payment of compensation in lieu of reinstatement which in effect is intended to compensate the dismissed workman for the loss of future earnings on the job from which he has been dismissed.

The Industrial Relations Act, 1967 is silent on payment of compensation in lieu of reinstatement.

In the case of Dr. A Dutt v. Assunta Hospital [1981] 1 MLJ 304, the Federal Court held that the right to compensation must be an issue in representations for reinstatement and necessarily arises where the Industrial Court would not order reinstatement. The Industrial Court may therefore properly award compensation where the dismissal is without just cause or excuse, if in its considered view, it does not think reinstatement should be ordered. Judging from the award the Industrial Court would appear to be guided by what is considered to be its power under section 30(5) which provides that the Industrial Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.
Under section 30(6), in making its award, the Industrial Court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of a trade dispute or in the matter of the reference to it under section 20(3), but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute or the reference to it under section 20(3).

This was further endorsed in the case of Goon Kwee Phoy v. J & P Coats (M) Bhd. [1981] 2 MLJ 129, where the Federal Court held that where a dismissal is without just cause or excuse, the Industrial Court can make an order for reinstatement or an award of compensation in lieu of reinstatement.

Extension of Judicial Review

Normally the review jurisdiction of the superior courts ends with the quashing of the decision and remitting back the case to the Industrial Court to act according to law, that is, decide to reinstate the dismissed workman or order compensation in lieu of reinstatement.

The Federal Court in R Rama Chandran v. The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 however held that the jurisdiction of the High Court does not end as soon as the impugned order is quashed but can also be extended to ordering consequential relief.

Based on this case alone, it was made clear that the reviewing courts have been bestowed with the following three new powers:-

☐ Power to review the decision on merits
☐ Power to substitute a different decision in place of such challenged decision without remitting the same for readjudication by the original decision-maker
☐ Power to order consequential relief

It is a cardinal principle of administrative law that the court in judicial review proceedings exercises a purely supervisory jurisdiction and is therefore confined to reviewing the decision-making process and not the decision itself. In this particular case, the Federal Court justified its power to review the decision on merits when it held that a decision susceptible to judicial review is not only open to challenge on the ground of procedural impropriety but also on the grounds of illegality and irrationality; and in practice this permits the court to scrutinize such decisions not only for process but also for substance.

When the Federal Court substituted a different decision in place of such challenged decision without remitting the same for readjudication by the original decision-maker, it provided several grounds in support of the power to substitute the award of the Industrial Court with a different conclusion. The Federal Court held that whilst the general principle may be that the validity of a dismissal is a question of fact entrusted to the Industrial Court, there are two relevant exceptions to this principle i.e. where an erroneous factual conclusion is reached by it or where there is no evidence to support such conclusion.
Another further ground to justify the power to substitute the quashed award with his own conclusion on the dismissal is the wider power of courts in judicial review proceedings conferred by section 25 of the Courts of Judicature Act 1964 which reads:-

**Power to issue to any person or authority directions, orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them for any purpose.**

In this particular case, the Federal Court hastened to clarify that the extent of the court's inherent supervisory review jurisdiction may be determined not merely by judicial development but also by legislative intervention. Based on the interpretation given to the provisions in article 226 by the Supreme Court of India which reads:-

...strongly support the proposition that the power of the courts there, in the field of Public Law remedies, is not limited, as in England, but much wider, so much so that in certain circumstances, they have the power to review the decision of the authority on its merits and mould the relief according to the exigencies of the situation in order to satisfy the insistent demands of justice.

It was in the view of that likewise should be enjoyed by the Malaysian courts.

And to further support this enhanced power, there is no provision in the Courts of Judicature Act 1964, the Rules of the High Court 1980 or the Industrial Relations Act, 1967 expressly or impliedly prohibiting the High Court from granting any relief as provided for in the Industrial Relations Act, 1967 when quashing an award of the Industrial Court.

The court cannot override an express provision of the law, but if there is no express provision in the statute, then the court can exercise its powers in a suitable case. And O 92 r 4 of the Rules of the High Court 1960, further supports the proposition that the court had the power to grant consequential relief.

**Executive Discretion**

Under section 26(3), upon notification of the DGIR under sub-section (2), the Minister of Human Resources may, if he thinks fit, refer the representation to the Industrial Court for the award. Under section 26(2), the Minister of Human Resources may on his own motion or upon receiving the notification of the DGIR under section 18(3) refer any trade dispute to the Industrial Court if he is satisfied that it is expedient to do so. However section 9(6) makes the Minister of Human Resources the final arbiter in recognition disputes

So long as the exercise of discretion is without improper motive, the High Court can only interfere with an act of an executive authority if it could be shown that:-

- he had misdirected himself in point of law;
- he had taken into account some wholly irrelevant or extraneous consideration;
he had wholly omitted to take into account a relevant consideration;  
*his* decision contravened the object of the statute.

An executive authority is said to have misdirected himself in law when, in applying a statutory provision, it has misinterpreted, misunderstood or misapplied it. In the case of Metal Industry Employees Union v. Registrar of Trade Unions [1982] 1 MLJ 46, the Registrar ordered the union to remove the names of 61 members who were alleged to be involved in illegal industrial action from the union register. It was held that it was not within the power of the Registrar to order cessation of membership of any member of a trade union when he seemed to have assumed jurisdiction in the mistaken belief that section 26(3) of the Trade Unions Act, 1959 (before the 1980 amendments) gave him the power to order the removal of the names of the members.

In the case of Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia v. Minister of Labour, Malaysia [1989] 1 MLJ 30, the Registrar registered the Association of Malayan Bank Officers as an in-house union relying on section 12(2), stating in his affidavit that he was satisfied that it is in the interest of the officers of the Malayan Banking Bhd. to register the association as a trade union.

The Supreme Court held that the registration of the association as a trade union was a nullity as the Registrar had failed to take into consideration the interest of the workmen in the particular occupation which he was required to under section 12(2) of the Trade Unions Act, 1959 and he had no power to register the association without considering their interest.

Subsequently section 26(3) was amended empowering the Registrar to order for the removal of union members and section 12(2) was also amended to include an establishment to enable the Registrar to register an in-house union.

There is no requirement under the Industrial Relations Act, 1967, that the Minister of Human Resources should give reasons for the exercise of his discretion. Such that, the minister is not expected to give reasons when he exercises his discretion not to refer a trade dispute under section 26 or an employee’s representation for reinstatement under section 20.

Sometimes the Minister gave reasons and on some other times when his discretion was challenged, he filed an affidavit comprising his reasons for his action. In the case of Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor [1990] 1 MLJ 112, the Supreme Court held that the Minister of Labour is not required to give any reasons when he exercises his discretion under section 20(3) of the Industrial Relations Act, 1967.

In the case of Hong Leong Equipment Sdn. Bhd. v. Liew Fook Chuan and another appeal [1996] 1 MLJ 491, the Court of Appeal held that:-

*the* exercise of discretion under section 20(3) may be quashed, if the Minister commits an 'Anisminic error' or if his decision is tainted with 'Wednesbury unreasonableness'. However it is necessary to identify the parameters of the discretion with precision. As a very general guide, the Minister ought to ask himself whether the way he exercises his discretion has the effect of preventing...
or settling the particular dispute; for that is what the Industrial Relations Act, 1967 is primarily aimed at. Next, the Minister must ask himself whether, objectively speaking, the representations made under section 20(1) are frivolous or vexatious. His determination upon the question is not conclusive and may be reopened in judicial review.

Thus, when a question arises to whether the Minister has correctly exercised his discretion under section 20(3) of the Industrial Relations Act, it is the duty of the court to undertake a meticulous examination of the facts that were made available to the Minister. If the examination reveals that the representations made under section 20(1) are neither frivolous nor vexatious, a decision not to refer is liable to be quashed by certiorari.

- as a general rule, procedural fairness, which includes the giving of reasons for a decision, must be extended to all cases where a fundamental liberty guaranteed by the Federal Constitution is adversely affected in consequence of a decision taken by a public decision-maker.

- whether a particular right is a fundamental liberty is a question that has to be dealt with on a case by case basis. This case concerned with the right to livelihood which was one of the fundamental liberties guaranteed by Part II of the Federal Constitution. Thus, the Minister, when refusing to refer representations in the exercise of his discretion under section 20(3) of the Industrial Relations Act, 1967, was reasonably expected to give reasons for his decision. If he gave no reasons or inadequate reasons, it was open for a court to conclude that he had no good reasons for making the decision he did. The reasons he gave were then subject to scrutiny for the purpose of determining whether he had exercised his discretion in accordance with law.

If the Minister of Human Resources uses his discretion as to thwart or run counter to the policy and object of the act, it should be amenable to corrections by superior courts. In the case of National Union of Hotel, Bar & Restaurant Workers v. The Minister of Labour and Manpower [1986] 2 MLJ 189, the Federal Court held that the Industrial Relations Act, 1967 was an Act to provide for the regulation of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom.

But if the Minister, by reason of his having misconstrued the Act or for some other reason, so exercises his discretion in away as to defeat the policy and object of the Act, then he has clearly exercised it wrongly.

**Constructive Dismissal**

The Industrial Relations Act, 1967 is silent on the issue of constructive dismissal but it was recognized by the Malaysian judiciary in the absence of any statutory provision governing it. The law regarding constructive dismissal in Malaysia has been clearly established by the Supreme Court in Wong Chee Hong v. Cathay Organization (M) Sdn. Bhd. [1988] 1 CLJ 45. This case in the absence of a specific statutory provision governing constructive dismissal within the meaning of section
20(1) of the Industrial Relations Act, 1967 by interpreting the word "dismissal" with reference to common law principles. The Supreme Court held that:

- the word "dismissal" in section 20 of the Industrial Relations Act, 1967 should be interpreted with reference to the Common Law principle. Thus it would be a dismissal if the employer is guilty of a breach which goes to the root of the contract or if he has evinced an intention no longer to be bound by it. In such a situation the employee is entitled to regard the contract as terminated and himself as being dismissed.

Constructive dismissal denotes the termination of the contract of employment summarily not by the employer but by the employee by reason of the employer's conduct.

Conclusion

As mentioned, the industrial relations system in Malaysia is largely shaped by the statutory provisions in three Acts namely the Industrial Relations Act, 1967, the Trade Unions Act, 1959 and the Employment Act, 1955. These three Acts very much determines the conditions and procedures in the relationships between the employers and the employees. But it is also necessary to analyze the development that these Acts go through together with the development of the country's economy which largely shapes the government policies and attitudes.

The Trade Unions Act, 1959 has tremendous power and means of control over organized labour in Malaysia. These controls cover unions of employees as well as unions of employers, however it tends to be an Act more to curb organized labour in Malaysia than otherwise. The process of registration is tedious and very much depends on the discretion of the Director General of Trade Unions (DGTU).

There are several provisions in the Trade Unions Act, 1959 which protects the rights of the trade unions and its members in engaging in lawful trade union activities. However the elaborate definition of "strike" also takes work to rule or go-slow under its wings which makes the right to industrial action (strike or lock-out) very much restricted. The Trade Unions Act, 1959 also tries to control much of the trade unions' internal matters including membership, officers, rules, secret ballot and the formation of or affiliation with consultative or similar bodies.

The power invested in the DGTU and the Minister of Human Resources is enormous such that the only means of appeal against the DGTU's discretionary power is an appeal to the Minister of Human Resources and an appeal against the discretionary power of the Minister of Human Resources is through the court.

The Industrial Relations Act, 1967 is one of the means of regulating the relations between employers and workmen and their trade unions. Even through the Malaysian industrial law recognizes the right and the freedom of workmen to form and join a trade union and participate in its lawful activities by prescribing several provisions in the Industrial Relations Act, 1967 to deter unfair labour practices particularly by the employer it is rather restricted.
Under section 2 of the Industrial Relations Act, 1967, "collective agreement" means an agreement in writing concluded between an employer or a trade union of employers on the one hand and a trade union of workmen on the other relating to the terms and conditions of employment and work of workmen or concerning relations between such parties and "collective bargaining" means negotiating with a view to the conclusion of a collective agreement. Anything that comes under the definition of collective agreement should be able to be negotiated, however this has been very much curtailed.

The employers are given a prerogative when it comes to matters like the promotion, transfer, employment, termination, dismissal and reinstatement and assignment of duties when in actual fact all these are terms and conditions of employment. Dismissal is part of the management's prerogative included under section 13(3) where the trade union cannot include such matter in the collective agreement. However this does not mean that the employer can dismiss any employee as he pleases. There are provisions in the Industrial Relations Act, 1967 under section 20 which provides for a representation on dismissals.

The Industrial Court is a quasi-judicial authority which has to adopt a judicial approach in discharge of its functions. The Industrial Court derives its jurisdiction from the Industrial Relations Act, 1967. When the Court of Appeal in the case of Syarikat Kendaraan Melayu Kelantan Bhd. v. Transport Workers' Union (1995) 2 MLJ 317 ruled an overlap is permissible between section 35(1) and section 36(1) but is one that depends upon the peculiar circumstances of a particular case, this means that tremendous amount of time and money could be saved without having to through the two sections one by one. Check-off of union dues is in actual fact something really trivial but due to the ruling by the Federal Court in the case of Non-metallic Mineral Products Manufacturing Employees Union v. Malaya Glass Factory (1986) 2 MLJ 129, employers now need not agree on it anymore since it does not come within the statutory definition of trade dispute. The issue of ascertaining who is a workman has gone through a number of stages.

First it was the determination of the fact and law. The fact is the ascertaining of the relevant conduct of the parties under their contract and the inference proper to be drawn therefrom as to the terms of the contract and the question of law, once the terms have been ascertained, is the classification of the contract for services or of services (Dr. A Dutt v. Assunta Hospital [1981] 1 MLJ 304).

Then came the innovative test whereby the Supreme Court in the case of Inchcape Malaysia Holdings Bhd. v. R. B. Gray & Anor. [1985] 2 MLJ 297, held under the law a director is the very brain of the companies or their directing mind determining and formulating the companies' policy. Thus a director cannot be held to be a workman. This innovative test was negated when the Federal Court in the case of Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1993] 3 MLJ 369, held that the expression "workman" in the Industrial Relations Act, 1967 should be liberally interpreted and flexible with a view of being worked out on a case by case basis.

The true principle is that it is incorrect to state in absolute terms that a company director can never be a workman. An examination of the functions of the claimant is always necessary to decide this question. This not only widens the
scope of who is a workman to include professionals even through it is on a case by case basis. There is no statutory requirement of due inquiry before dismissal in the Industrial Relations Act, 1967. When the Supreme Court's ruling in the case of Dreamland Corporation (M) Sdn. Bhd. v. Choo Ching Sooi & Anor [1988] 1 MLJ 111 made the dismissal inquiry redundant and was further endorsed in the Federal Court ruling in Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal [1995] 3 CLJ 344, it was amounting to say that employers can terminate now and ask questions later.

It has also deprived the lower paid salary workers to the right of a so called fair pre-dismissal inquiry which might be their last resort. Most of these workers cannot afford the time and money spent on adjudication.

The Industrial Relations Act, 1967 is silent on payment of compensation in lieu of reinstatement but in the case of Dr. A Dutt v. Assunta Hospital [1981] 1 MLJ 394, the Federal Court held that the right to compensation must be an issue in representations for reinstatement and necessarily arises where the Industrial Court would not order reinstatement. The Industrial Court considered being its power under section 30(3) which provides that the Industrial Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

Under section 30(6), in making its award, the Industrial Court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of a trade dispute or in the matter of the reference to it under section 20(3) but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute or the reference to it under section 20(3).

Normally the review jurisdiction of the superior courts ends with the quashing of the decision and remitting back the case to the Industrial Court to act according to law, that is, decide to reinstate the dismissed workman or order compensation in lieu of reinstatement. But in the case of R Rama Chandran v. The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, the superior courts justified its jurisdiction for the three new powers. Not only does this shorten the time spent in court it is also a lesson to the devious employers such that at times superior courts do not follow the common practice in awarding compensation or such.

When it comes to the exercise of discretion, the High Court can only interfere with an act of an executive authority if it could be shown that he had misdirected himself in point of law, he had taken into account some wholly irrelevant or extraneous consideration, he had wholly omitted to take into account a relevant consideration or his decision contravened the object of the statute. There is no requirement under the Industrial Relations Act, 1967, that the Minister of Human Resources should give reasons for the exercise of his discretion.

In the case of Hong Leong Equipment Sdn. Bhd. v. Liew Fook Chuan and another appeal [1996] 1 MLJ 481, the Court of Appeal held that the exercise of discretion in dismissal cases as a general rule, procedural fairness, which includes the giving of reasons for a decision, must be extended to all cases on the right to livelihood.
which was one of the fundamental liberties guaranteed by Part II of the Federal Constitution.

The Industrial Relations Act, 1967 is silent on the issue of constructive dismissal but the law regarding constructive dismissal in Malaysia has been clearly established by the Supreme Court in Wong Chee Hong v. Cathay Organization (M) Sdn. Bhd. [1988] 1 CLJ 45. This case in the absence of a specific statutory provision governing constructive dismissal within the meaning of section 20(1) of the Industrial Relations Act, 1967 by interpreting the word dismissal with reference to common law principles. Constructive dismissal denotes the termination of the contract of employment summarily not by the employer but by the employee by reason of the employer’s conduct.

**DISCUSSION QUESTIONS**

The following questions are related to the topic discussed in the chapter. (Please note that the questions in the final examination are closely related to discussion questions in each chapter).

Based on your reading in this chapter as well as by referring to other sources (i.e. journal articles, books, etc.), prepare the answer for the following questions.

1. Consider the latest development of trade unionism in Malaysia. Critically examine what factors explain the decline or increase (not merely members, but also roles) in unionization in Malaysia? Have unions outlived their usefulness to workers and society? Will they die out? Should they?
   - Discuss and support your arguments with some examples.

2. Briefly discuss the legal framework of industrial relations system in Malaysia (especially Employment Act 1955, Trade Union Act 1959, Industrial Relations Act, 1967, and OSHA 1994) and critically examine in what way these legal framework may contribute to the harmonious relationship as well as success in the economic and development of the country.

3. Briefly discuss in what way the Malaysian industrial relations system may differ from other countries?

**APPLICATIONS**

By now, it is expected that you already understand the topic discussed in this chapter. To strengthen you understanding on the topics discussed, choose one of the following questions and prepare the answer.  

1. Working individually or in groups, contact the HR/IR manager of any organization (i.e. a local bank, MNCs or perhaps your own organization). Ask the HR/IR manager about their views on legal framework of Malaysian industrial relations systems. Document their comments in the form of the pros and cons of the laws.
2. Working individually or in groups, contact the trade union officials of any organization (i.e. a local bank, MNCs or perhaps your own organization). Ask the trade union official about their views on legal framework of Malaysian industrial relations systems. Document their comments in the form of pros and cons of the laws.

3. What factors explain the decline in unionization in many part of the world, including Malaysia? Have unions outlived their usefulness to society? Will they die out? Should they? — Discuss and support your arguments with some examples.

FURTHER READING

There are a number of other texts available that are aimed at human resource management and industrial relations specialists and therefore explore the issues introduced here in more detail. These include Aminuddin (2004), Salamon (2003), and Marchington and Wilkinson (2000), Anantaraman, V. (2002)
Trade Union in Malaysia: 
- Historical Perspective

Introduction
This chapter provides an overview of the historical development of trade unionism in Malaysia. The discussion will be divided into several parts based on the different eras in the development of trade union in the country; early years of trade unionism, the migrant labour before 1945, militant labour era between 1945-1950, emergency period, before independence, post colonial period 1957-1969 and post independent period.

Development of Trade Union in Malaysia
The development of the trade unions in Malaysia can be traced way back to the nineteenth century with the migration of workers from mainly China and Southern India. These workers were mostly brought in by the British Colonial authorities to work in the plantation and mining sectors due to the reluctance of the local workforce who are willing to work in these sectors. The locals were more interested in working in their traditional padi fields than taking up paid jobs in these sectors. The entrance of these immigrant workers was one of the factors responsible for the development of trade unions in Malaysia. The workers from South India were dominant in the plantation sector while the majority of the Chinese workers worked and concentrated in the mining sectors.

At the very beginning, these workers had no need to attach themselves to any formal legitimate union. They had no intention of staying in Malaya permanently. All they wanted then was a decent job to earn enough money to support their families back in India or China. Besides, joining a trade union was strongly opposed by the British employers. Hence, the British colonial government saw no reason for passing any bills or laws in relation to trade unions at that time.

However, this does not mean that these workers were not involved with unions at all. As a matter of fact, most of the Chinese workers were brought into Malaya through the triad societies that operated underground. It was very common of them forming associations for the interests of their guild members. The organization era in the form of unions in Malaysia started in 1920 when the Chinese workers established associations, guild, and other forms of organizations to cater for their interests. It is a known fact that the Communist Party of Malaya (formed in 1928) infiltrated into these bodies of workers to carry out its underground activities. When the British colonial government realized that the Communist Party of Malaya (though leading an illegal existence) was capitalizing on the agitation by workers for improved labour conditions, was forced into passing a Labour Bill in 1940 after the Communists incited strikes of 1937 and 1938. However, the bill could not be passed into law due
the Japanese Occupation of Malaya at that time. With the fall/defeat of the Japanese in 1945, the bill was passed into law in 1946, giving the Malayan Union its first formal Labour Law. (Note: the enactment prior to this period was only for the Federated Malay States).

As a result of the influence of Communists on the Labour Movement, the then British government wanted to control the situation by modifying the trade union's law. The amendment was aimed at terminating the involvement of outsiders from meddling in the trade union activities. The amendment also required trade union confederation to be confined to trade unions whose members were workers in similar trades, occupations or industries. Other than that, all trade union officials, except for the post of Secretary, must possess three years experience in the industry of their unions.

Having fought alongside the British against the Japanese, the British colonial powers accorded formal recognition to the Communist Party of Malaya which was before that time an outlawed organization carrying out guerilla warfare from their jungle hideouts. With this recognition (legalization), the Communist Party emerged from the jungles and consolidated the opportunity by setting up trade unions in almost every trade. It portrayed itself as championing the cause of deprived workers hence gaining a very huge support from them so much so that at the end of 1947, there were 298 registered trade unions (then known as General Labour Union and was later re-named Pan-Malayan Federation of Trade Unions - PMFTU), with a following of nearly 200,000 members. In fact, the only trade union in the Malayan Union at that time that was not fully controlled by the Communist Party were those trade unions in the Civil Service.

**Beginnings**

Great Britain was said to be the origin nation that started the establishment of the trade unions. The first form of permanent organization among wage earners was the local trade club of the eighteenth century. Such clubs were to be found among skilled artisans in many trades and among them to name a few were hatters, cordwainers, curriers, brush makers, calico printers, cotton spinners, cutlery workers, printers. Throughout this era the guilds remained strong but in the eighteenth century, as business life became more complex and specialized, and as journeymen's interests became less and less linked to those of their masters, they began to combine separately.

The trade clubs sought with little success, mainly by appeals to Parliament, to protect the wage standards of their members, based on custom and apprenticeship, against the growing devastating effects of unregulated competition. They were not local and isolated from each other, but virtually illegal. The doctrine of the Middle Ages still prevailed that it was the prerogative of the State to regulate such matters, although the state no longer attempted to do so (Flanders, 1968).
It was to take another century, but in the end the masses of workers in the new factories, mines and transport undertaking (such as railways) followed suit. There were no unions as such in the Middle Ages. As being recorded by Donald Macintyre in his book, *Talking about Trade Union, 1941*, there were no unions as such in the middle Ages. Master craftsman and their skilled employees belonged to the same guilds that originally fixed prices and wages (Donald Macintyre, 1979)

From the very beginning, the progress of the trade union movements in Malaysia had been violently obstructed by the government and capitalists. In fact it started when the first union were formed in the 1920’s and 1930’s, whereby the British colonial government’s answer was a brutal repression. Only after the World War II had begun in Europe and the threat of Japanese fascist expansions was cleared, and then only did the colonial government finally gave the word ‘go’ or allowed the legal establishment of trade unions in 1940. After the Japanese occupation, the General Labor Unions or in short known as GLU and then its successor the Pan-Malayan Federation of Trade Unions (PMFTU), were suppressed together with other militant anti-colonialist movements in 1948.

Between the year 1940, when the government until the year 1971 was approving the first trade union law, there were a lot of amendments that had been made continuously to several acts. The goals of the amendments were said to ensure that the workers or the employers enjoyed their work and work in peace and harmony. Amongst the acts that have been amended were the Trade Unions Act, Industrial Relations Act and Labour Act.

It was to look like that the industrial situation in Malaysia was going to be successfully maintained when the dispute between the Malaysia Airline System and the Airlines Employees Union occurred. This made the government strengthen further its grip on the trade unions so that it could sustain its export-oriented industrializing strategy.

Basically, there are three types of unions in Malaysia. They are the public sector employees’ unions, private sector employees’ unions and employers’ unions. The public sector consists of the civil service or the government servants, the statutory bodies and the local authorities. In 1994 there were 217 unions in this sector. These include some of the largest unions in the country, such as the National Union of the Teaching Profession, the Malayan Nurses Union and the Malayan Technical Services Union.

In the public sector, the problems of the employees including demand for wages and other terms of service were always discussed at the national level between the government and the Congress of Unions of Employees in the Public and Civil Service (CUEPACS). Besides CUEPACS, MTUC (Malaysian Trade Union Congress) also plays an important although sometimes controversial role in the industrial relations system. Both the public and the private sector unions are affiliated to it. In 1991 there were 160 members of which most were unions in the private sector.

In 1998, the total workforce in Malaysia was about 8.88 million. This figure increased in the year of 2000, to 9.194 million. The number of persons employed was
8,597 million in 1998 and once again it increased in to 8,920 million in 2000 (Malaysian Economy in Figures, 2000). Out of 877 000 workers in the public sector, 320 000 were unionized. While in the private sector, out of 7,720 000 workers, 400 000 were unionized. At the moment, about 720 000 workers are organized into unions. In other words, about 8.2% of our workers are members of unions. This figure is considered low compared to many Asian countries such as Sri Lanka (35%), Philippines (25%), Japan (29%), Hong Kong (32%) and Singapore (15%). However, the number of the union members are expected to increase in future due to the government’s policy which also allows the foreign workers to become members of the trade unions. Thus, the development of the trade unions will probably again experience changes.

The Migrant Labour – Before 1945

In the nineteenth century, because of the indigenous inhabitants of Malaysia, predominantly Malays were agriculturalists and were not willing to accept the restraints and discipline of industrial type labour in return for low wages, Chinese and European miners, planters or merchants imported most of their labour from South East China and South India. The main characteristic of this sort of labour force was its poverty, ignorance and its temporary nature. The labourers were recruited from areas where the destruction of local industry or political unrest had led to widespread hardship. Their employers were often cheating them with false promises. They had no intention of colonizing or settling down in Malaya but merely earning enough to send remittances to the families and to return themselves after the few years of hard work. (Palmer, Colonial Labour Policy in The Rubber Plantation in Malaya, c.1910-1941 New York, 1960, pp68)

The birth of the labour-intensive tin mine and rubber industries increased the need for labour, which native Malays were reluctant to fulfill. The Malays showed a strong aversion to wage employment and preferred more congenial way of life as peasant farmers or fishermen (Thompson, 1947). The shortage of labour for this two industries was overcome by recruiting labour from India and China where the depressing conditions due to overpopulation and unemployment encourage the workers to emigrate to Malaya.

Paternalism

Most of the immigrant labourers brought into Malaysia were illiterate, indentured laborers. The passage or fares of these immigrant labourers were paid by the employers for whom they had to work for a specified period of time as payment for the passage. The employers, however, because labour was in short supply, often used various means and tactics to prolong the period of service. Their welfare depended on the paternalistic care exercised by the employers or imposed by the government through legislation.

The Chinese labourers were generally more independent than the Indians, and their welfare were taken care of by employer-employee associations. The employer
administered these associations, and they served as mutual aid societies, centers of bargaining between employer and employees, and at the time as sources of information for employment. These associations were later broken up but their existence were not conducive to labor organizations especially when the workers were willing to allow them to cater for their needs (Yong Chee Seng, 1967).

**Beginning of organized labor.**

The earliest associations of workers ever recorded in Malaysia were the guilds introduced by Chinese migrants. Legislation were enacted providing for the registration of these guilds. By 1920s the workers began to organize themselves in societies of a different type—mutual help associations whose membership was wholly Chinese.

In 1938 after an outbreak of strikes, the Malayan government introduced three bills that became law by 1941. These bills were the industrial courts ordinance, the trade unions enactment and the trade disputes ordinance. A Registrar of Trade Unions was appointed to facilitate the transaction of mutual aid societies into trade unions through registration.

During the same period there was a tendency towards the establishment of societies with trade political connections, which led the Malayan government to be cautious about permitting the registration of associations. With the revision of the policy in 1928, there was an increase in the association with trade union function was discreetly discouraged by regulation and those which were recognized were company or 'yellow' unions (Gamba, 1962).

**Threat to Bona Fide Trade Union**

Strikes in the Coal Mines of Batu Arang and in the transport industries in 1930s made the government introduce a new legislation to deal with disturbances especially in the public utilities. The British realizing the economic threat presented by the growing power of the workers, ordered the police to treat these associations as secret societies if necessary. Some of the associations had connections with the secret societies but it was not clear whether their members were deported because of illegal activities or for being trade unionists. Between 1936 and 1941, the Malayan Communist party was strenuously attacked, and an attempt was made to break its power but in this process non-communist Indians and Malays were sentenced to long period of imprisonments for distributing trade unions pamphlets.

**Implementations of Trade Unions Ordinance 1940**

With the end of the war in 1946, the Trade Unions Ordinance of 1940 was put into operations. From 1946 to 1948, there was a rapid increase in the number of unions but a temporary setback occurred in 1948. On the other hand, with the end of the war the Malayan Communist Party emerged from its guerrilla activities against the Japanese. These provided the external leadership, which was lacking before the war,
and together with the legal framework enabled the trade unions to exist as legal institutions. They were organized along minutely divided lines, and few of them embarrassed even all the workers engaged in the same occupations in the given locality (Thompson, 1947). The Malayan Communist Party efforts in organizing the labour force was very successful and they founded trade unions “from cabaret girls to tin mines” (Awbery and Deely, 1942) But the Malayan Communist Party organized the labour force was not mainly to fight for better conditions but also to be a camouflage for their political activities.


After the Japanese defeat in World War II, the British Military Administration (BMA) had over taken the administration of Malaya. The era of the labour movement during this period of militant labour can be divided into 5 main phases of movement as follows:

- The Emerging Labour Movement (Sept 1945-Mar 1946)
- The Continued Rise Of Labour Militancy (Apr 1946- Mar 1947)
- The Colonial Authorities Check Labour’s Growth (Apr 1947- Mar 1948)
- Prelude Of The Emergency (Apr – June 1948)
- The Elimination of Militant Unionism (June 1948- June 1950).

All these unions had formed general unions in several states. This centralizing tendency culminated on February 15th 1946 with the formation of the Pan Malayan General Labour Union (PMGLU) by the individual state general labour unions. The British Military Administration (BMA) had made registration of trade unions compulsory. Most of the public did not agree by writing several comments in the newspapers stating that it was merely interference against free trade union movements.

In 1946, the government announced that as long as the trade unions were bona fide, i.e. non-communist led, registration was just more of a formality. The government then took two major steps in response to the increase of trade union activities. Firstly, a Trade Union Advisors Department was set up with the appointment of a Registrar of Trade Unions. Secondly, a Trade Union Enactment containing these three important clauses were also passed.

- All trade unions had to be registered
- Unions in the same industry could only form federations of trade unions
- Union officials had to be employed for a minimum of three years in the industry that they represented.

A very important milestone in the Malayan Union trade unionism was the rampant strike actions in the second quarter of 1948. Most of these strikes took place in the plantation sectors and were very bloody. In fact it was a known fact that most of these strikes if not all were masterminded by the Communist Party with the intention of overthrowing the government with the use of force. The Communist led General Labour Unions (GLU) also used strong-arm tactics to prevent rival unions being
formed (Report by S.S. Awberry and F.W. Dalley, 1948). It organized 41 strikes in 1946 and most of them were successful which resulted in higher wages for the members. As a result, the government responded by amending the 1940 Trade Union Enactment. This brought to an end the general character of trade unions that was in existence. Evidently, this amendment in legislation was intended to curb the involvement of Communist Party within the trade unions, to restrict their size and thus their power by disallowing general workers unions.

The main purpose of amending the 1940 Laws was to monitor the illegal and underground unions being used by the Communist Party. And by monitoring it, some 100 unions were de-registered and also disbanded. Many trade union officials who were communists took the union funds and moved into the jungle to begin guerilla warfare. (Maimunah, 1999). Table 1 and 2 below showed the breakdown of numbers of strikes organized and man-days lost.

### Table 1: Strikes in Singapore: May 1946-March 1947

<table>
<thead>
<tr>
<th>Month</th>
<th>Number of workers striking (estimated)</th>
<th>Number of new strikes</th>
<th>Number of existing strikes</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1946</td>
<td>5,500</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>June</td>
<td>2,550</td>
<td>7</td>
<td>-</td>
</tr>
<tr>
<td>July</td>
<td>19500</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>August</td>
<td>28,700</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>September</td>
<td>5,400</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>October</td>
<td>10,000</td>
<td>7</td>
<td>-</td>
</tr>
<tr>
<td>November</td>
<td>8,000</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>December</td>
<td>2,100</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>January 1947</td>
<td>8,500</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>February</td>
<td>12,000</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>March</td>
<td>3,000</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>


### The State of Emergency

Having been outlawed, the CPM reverted to their old way of operations, that is jungle warfare. Since they have lost both their sources of revenue and support from the unions, they did not however give up entirely. Instead they continued with an ‘underground’ participation in Union activities and other forms of hostilities including armed hostilities. The growing militant action and armed hostilities advocated by the Communist Party resulted in the declaration of State of Emergency on 19.6.1948 by the British High Commissioner, Sir Edward Gent. This situation created a vacuum in the trade union fold. Workers felt disillusioned and many remained susceptible to communist and subversive influence. As a result, in 1947, the trade union membership declined to 42,288 with only 169 unions remaining in the fold.
In 1947, there were 267 trades unions with a total membership of about 174,833. The detailed breakdown of the membership is shown in Table 3. The GLU later became a threat to the colonial government. Through the amendments of the Trade Unions Ordinance, the government managed to de-register PMFTU.

Table 2: Strikes and Man-Days Lost: February 1947-March 1948

<table>
<thead>
<tr>
<th>Month</th>
<th>New Strikes</th>
<th>Singapore (Man-days Lost)</th>
<th>Malayan Union (Man-days Lost)</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 1947</td>
<td>9</td>
<td>171,000</td>
<td>96,000</td>
</tr>
<tr>
<td>March</td>
<td>3</td>
<td>53,000</td>
<td>85,000</td>
</tr>
<tr>
<td>April</td>
<td>2</td>
<td>39,000</td>
<td>30,000</td>
</tr>
<tr>
<td>May</td>
<td>4</td>
<td>9,000</td>
<td>38,000</td>
</tr>
<tr>
<td>June</td>
<td>5</td>
<td>3,000</td>
<td>17,000</td>
</tr>
<tr>
<td>July</td>
<td>3</td>
<td>10,000</td>
<td>69,000</td>
</tr>
<tr>
<td>August</td>
<td>6</td>
<td>49,000</td>
<td>97,000</td>
</tr>
<tr>
<td>September</td>
<td>5</td>
<td>32,000</td>
<td>123,000</td>
</tr>
<tr>
<td>October</td>
<td>0</td>
<td>14,000</td>
<td>16,000</td>
</tr>
<tr>
<td>November</td>
<td>1</td>
<td>8,000</td>
<td>30,000</td>
</tr>
<tr>
<td>December</td>
<td>2</td>
<td>9,000</td>
<td>33,000</td>
</tr>
<tr>
<td>January 1948</td>
<td>3</td>
<td>33,000</td>
<td>22,000</td>
</tr>
<tr>
<td>February</td>
<td>1</td>
<td>8,000</td>
<td>27,000</td>
</tr>
<tr>
<td>March</td>
<td>1</td>
<td>150</td>
<td>10,000</td>
</tr>
</tbody>
</table>

Total man-days lost, April 1946 to March 1947:
- Singapore : 1,173,000
- Malayan Union : 713,000

Total man-days lost, April 1947 to March 1948:
- Singapore : 205,000
- Malayan Union : 512,000

(Source: M.R. Stenson, Industrial Conflict in Malaya, East Asian Historical Monographs, 1977 page 198)
### Table 3: Trade Unions – Mainland (October 31st 1947)

<table>
<thead>
<tr>
<th>States</th>
<th>PMFTU control</th>
<th>Independent</th>
<th>Doubtful</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No of unions</td>
<td>Memberships</td>
<td>No of unions</td>
<td>Memberships</td>
</tr>
<tr>
<td>Selangor</td>
<td>20</td>
<td>17,988</td>
<td>18</td>
<td>10,679</td>
</tr>
<tr>
<td>Perak</td>
<td>10</td>
<td>11,691</td>
<td>16</td>
<td>5,738</td>
</tr>
<tr>
<td>Kedah</td>
<td>6</td>
<td>5,617</td>
<td>9</td>
<td>4,783</td>
</tr>
<tr>
<td>Perlis</td>
<td>-</td>
<td>12,825</td>
<td>9</td>
<td>7,238</td>
</tr>
<tr>
<td>N. Sembilan</td>
<td>4</td>
<td>12,483</td>
<td>9</td>
<td>7,238</td>
</tr>
<tr>
<td>Penang</td>
<td>7</td>
<td>7,141</td>
<td>11</td>
<td>7,384</td>
</tr>
<tr>
<td>Pahang</td>
<td>4</td>
<td>7,018</td>
<td>9</td>
<td>5,058</td>
</tr>
<tr>
<td>Johor</td>
<td>22</td>
<td>20,470</td>
<td>10</td>
<td>2,251</td>
</tr>
<tr>
<td>Malacca</td>
<td>9</td>
<td>5,648</td>
<td>3</td>
<td>1,092</td>
</tr>
<tr>
<td>Kelantan</td>
<td>-</td>
<td>1</td>
<td>160</td>
<td>8</td>
</tr>
<tr>
<td>Selangor</td>
<td>20</td>
<td>17,988</td>
<td>18</td>
<td>10,679</td>
</tr>
<tr>
<td>Total Number of Unions:</td>
<td>267</td>
<td>Total membership:</td>
<td>174,833</td>
<td></td>
</tr>
</tbody>
</table>

PMFTU Control: 30.7%  
Doubtful: 45.3%  
Independent: 24.3%  
Total: 100%

Source: Trade Union adviser to Malaya, Mr. Brazier. Also found in "The Origins of Trade Unions in Malaya" by Charles Gamba, pp 154.

In the 1950s, the trade union movement was revived. Many of the major national unions were formed during this decade. Their activities were regulated and controlled by the relevant legislations but at the same time, the government accepted the right of the unions to exist. The trend of registered Mainland Trade Union membership is shown in Table 4.

### Table 4: Mainland Registered Trade Unions Membership (1946-1950)

<table>
<thead>
<tr>
<th>YEAR</th>
<th>EMPLOYERS</th>
<th>EMPLOYEES</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1946</td>
<td>992</td>
<td>67,452</td>
<td>68,449</td>
</tr>
<tr>
<td>1947</td>
<td>997</td>
<td>195,113</td>
<td>195,110</td>
</tr>
<tr>
<td>1948</td>
<td>963</td>
<td>69,134</td>
<td>70,032</td>
</tr>
<tr>
<td>1949</td>
<td>983</td>
<td>41,305</td>
<td>42,288</td>
</tr>
<tr>
<td>1950</td>
<td>942</td>
<td>54,579</td>
<td>55,521</td>
</tr>
</tbody>
</table>

Source: Labour Department, Kuala Lumpur. Adapted as on December 31st each year (Abstract from The origins of Trade Unionism in Malaya, Charles Gamba,1962)
The Emergency and its effect on Trade Unions

By abandoning trade union action and resorting to open violence, the communists clearly revealed what was their main agenda. Since they were operating under the guise of trade unionism, they managed to hijack most of the strategic positions for their ulterior motives although they succeeded in convincing their followers (ordinary union members) that they were fighting for the emancipation of the defenseless and over exploited workers. With the ban of the party and the sudden disappearance of these so-called leaders, thousands of the rank and file were left leaderless, bewildered and disillusioned. Realizing that many of their sacrifices had been in vain and they had been made the plaything of the political parties, a large percentage of the workers began to lose faith in trade unionism and all it stood for.

As the Emergency dragged on, this attitude became more widespread and it was a long time before the effects of the "let down" began to wear off. For some groups, its effects have still not been forgotten. For many other workers the conditions resulting from the Emergency discouraged participation in union affairs. Apart from restrictions on travel and on the holding of meetings, many workers discovered that active unionism was associated with suspicion and often invited police questioning, screening, and in some cases, detention to make sure that they were not communist. Since many –if not most –of the communist insurgents were of Chinese origin, understandably the Chinese came in more often than the others in usual share of police attention, with the result that to the present day it seems to be a factor which influenced their participation in union activities. All this, plus the general state of insecurity and fear that prevailed in certain areas, tended to reduce trade unions activities in the first years of the Emergency to a minimum (Report of A Mission from the International Labor Office, 1962.)

Whereas at the beginning of 1948 there were 289 unions in the federation with a total membership of 198,713 persons, but by the end of the year this has dropped to 161 unions totaling 70,637 members, a reduction by more than a half. The Unions most affected by this were those of workers outside government service. The unions of employees in government service had on the whole been free of communist influence. This could be partly on account of the economic and social position of their members and partly because they were prevented from affiliating with the unions outside the public sector. By the end of 1949 there was a further decline in numbers, there now exist 169 unions with 42,288 members.

Once the initial shock was over, the question of reforming the trade union movement came to the fore again, but under the conditions of the Emergency this proved an uphill task, and those unions, which survived the collapse of the PMFTU, had a difficult time keeping their organizations intact. The Trade Union Adviser department made considerable efforts to help unions to build up their membership, but this was a slow process since the average Indian and Chinese plantation and mine workers were convinced that the government would regard anyone attempting to organize workers or to make active demands on employers as communist agents.
As the battle against the communists was, however, won over the psychological and military fronts, confidence gradually returned and there was a steady increase in membership, particularly among the plantation workers. Many employers, too feeling that unions were a lesser evil than Communism began to give greater recognition to them and to bargain with them. Economic conditions also began to improve partly as a result of increased rubber prices. Amalgamations, organizational changes, better leadership, assistance from international trade unions organizations and greater experience all played their part in strengthening the movement. If the period of the Emergency was difficult one for trade unions as a whole, it was nevertheless a good testing time and helped unions to face a variety of problems and was a foundation for further development in the future.

Trade Union Before Independence (1950 – 1957)

The era of 1950-1957 created a new wave to the trade union movement. During this period, the colonial administration tried to develop a harmonious relationship between the trade union and the administration. As (Jomo and Todd (1994) stressed, the colonial administration had switched their strategy of dealing with trade union by applying a ‘winning hearts and minds’ by initiating various social reform policies designed to draw support away from the anti-colonial insurgents.

By the end of 1947 and the beginning of 1948, the colonial administration used harsh methods in order to stop the trade union movement. With the declaration of the Emergency throughout the country, it affected the trade union movement. At this time, PMFTU as one of the dominant unions during the period had slowed down their activities and many of their leaders have been detained. With the aggressive action taken by both government and employers to stop the trade union movement, it became a threat for employees to be actively involved in the union movement. Far Eastern Economic Review (21 June 1949) has stated that at this stage, the sense of struggle of trade union was missing and the spirit of trade unionism was dead (Jomo and Todd, 1994).

By 1950-1957, a new historical perspective has emerged during this period. The colonial administration has made a new strategy to win the trade union members’ interest to co-operate with the administration. Besides, by using a ‘friendly approach’ to the trade union, it helped the administration to prevent the emergence of militant unionism in the organization.

During the 1950s, the union movement was being controlled by the colonial administration. The government had monitored the role of union to ensure that every single activity proposed by the union members was not influenced by subversive elements. Before 1950s, the role of union had been determined by the workers themselves in order to fulfill their needs in the jobs they performed. But from 1950s, the colonial administration had realized that they should control every movement of the union. According to Maimunah (1999), in 1950s, the trade union movement was
revived. Many of the major national unions were formed during this decade. Their activities were carefully regulated and controlled by the relevant legislation but at the same time the government accepted the right of the unions to exist.

The involvement of foreign organizations in the union movement also occurred during this period. The International Confederation of Free Trade Unions (ICFTU) had offered their assistance to the unions through the Trade Union Adviser (TUA). The assistance offered by the ICFTU were in terms of administration, legal problems, difficult employers and membership recruitment. The ICFTU also had a good relationship with the government in order to deprive the militant unionism influences in the existing unions. The acceptance of a foreign body in the union movement had shown that the colonial administration were willing to co-operate with the unions in order to help them continue with their activities. As long as the unions were free from the militant influences, the unions were allowed to conduct their activities. The ICFTU also offered financial assistance to certain unions. Jomo and Todd (1994) explained that the support given by the ICFTU in the 1950s was intended to boost ‘healthy’ trade unionism to counter radical left-wing influence.

<table>
<thead>
<tr>
<th>Year</th>
<th>Public Sector</th>
<th>Private</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unions</td>
<td>Members</td>
<td>Unions</td>
</tr>
<tr>
<td>1948</td>
<td>52</td>
<td>25,692</td>
<td>104</td>
</tr>
<tr>
<td>1949</td>
<td>70</td>
<td>20,142</td>
<td>93</td>
</tr>
<tr>
<td>1950</td>
<td>84</td>
<td>25,451</td>
<td>84</td>
</tr>
<tr>
<td>1951</td>
<td>100</td>
<td>38,685</td>
<td>91</td>
</tr>
<tr>
<td>1952</td>
<td>123</td>
<td>43,579</td>
<td>91</td>
</tr>
<tr>
<td>1953</td>
<td>138</td>
<td>41,450</td>
<td>93</td>
</tr>
<tr>
<td>1954</td>
<td>136</td>
<td>42,256</td>
<td>96</td>
</tr>
<tr>
<td>1955</td>
<td>137</td>
<td>52,061</td>
<td>98</td>
</tr>
<tr>
<td>1956</td>
<td>135</td>
<td>67,301</td>
<td>100</td>
</tr>
<tr>
<td>1957</td>
<td>151</td>
<td>n.a.</td>
<td>99</td>
</tr>
</tbody>
</table>

Table 5: Number of Unions and Membership in the Public and Private Sectors, 1948 - 1957


In 1954, the National Union of Plantation Workers (NUPW) was registered. This was followed by the registration of National Union of Railway Men and the All-Malayan Estates Staff. The registration of these unions showed that the union establishment during this period was more towards the amalgamation unions. Unions from different sectors such as plantations, mining, railways, transportation and public service were merged. Before this period (before the end of 1948 onwards) the unions were established based on their sectors and they are not willing to combine with other unions from different sectors. For instance, the establishment of Rubber Estate Labour Unions comprised of rubber tapers only. But, at the same time, there were certain unions that didn’t agree with the amalgamation of the unions. In 1956, the
Malayan Estate Workers' Union and the Pan - Malayan Rubber Workers' Union (PMRWU) were established. Both were from the plantation and the establishment of these unions was the result of dissatisfaction of their members towards the NUPW. But unfortunately the establishments of these unions were rejected by the RTU as it was suspected to be used for unlawful purposes (Jomo and Todd, 1994).

The most perceptible events in the union history during the period were the increasing number of union memberships. The increasing number in union membership both in public and private sectors occurred during 1951 and 1955-56. Every sector i.e., manufacturing, plantation, mining and transportation had greater increases in the membership. This was due to the strategy implemented by the colonial administration. With a smooth approach offered by the administration, the workers felt that their involvement in the unions did not affect their work. Instead, they could gain their rights through the union without confronting the regulations of the country. Another factor that attracted the workers to join the union during this period was the minimum age of the membership was reduced to 16 years. By reducing the legal minimum age, it could attract the young workers to join the union because most of the workers especially unskilled workers consist of teenagers aged 15 above. Table 5 below showed the number of unions and membership in the public and private sector in the country.

During this period, strike actions were not as rampant but towards the end of 1955 and early 1956 there was a rise in strike actions visibly in every sector of the economy. The most notable strike at that time was that organized by Selangor Transport Workers Union (STWU) in December 1954 to January 1955. The Union demanded the reinstatement of a dismissed member and improved working conditions. This strike greatly disrupted the public transportation service in Kuala Lumpur and finally the management agreed to the demands made by STWU.

In 1956, the strike organized by the NUPW created an impact on the union's history. During this particular year, the Malayan Mining Employees' Union's Sunday boycotts also occurred. As a result, the employers lost 17,000 workdays (Ayadurai and Chee, 1981:85). The number of workdays lost during this period was seven times greater when compared to the 1955 strike (Jomo and Todd, 1994).

Table 6 below showed the number of strikes, workers involved and workdays lost during this period.

Beside the strike mentioned above, the most serious incident occurred was the strike organized by the North Eastern Transport Services in Kelantan in 1952 which involved over 300 unionized Malay workers. The union had made three demands that were (i), the dismissal of the Managing Director, (ii) reinstatement of six dismissed employees and (iii) an increase in the cost of living allowance. Unfortunately, the management refused to accept the demands from the union. Instead the management dismissed the strikers and hired new employees to replace them. During this case, the MUTC played a role in appealing on behalf of the dismissed strikers but was unsuccessful.
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Strikes</th>
<th>Workers Involved</th>
<th>Workdays Lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>181</td>
<td>25,692</td>
<td>104</td>
</tr>
<tr>
<td>1949</td>
<td>29</td>
<td>20,142</td>
<td>93</td>
</tr>
<tr>
<td>1950</td>
<td>48</td>
<td>25,451</td>
<td>84</td>
</tr>
<tr>
<td>1951</td>
<td>58</td>
<td>38,685</td>
<td>91</td>
</tr>
<tr>
<td>1952</td>
<td>98</td>
<td>43,979</td>
<td>91</td>
</tr>
<tr>
<td>1953</td>
<td>138</td>
<td>41,450</td>
<td>93</td>
</tr>
<tr>
<td>1954</td>
<td>136</td>
<td>42,256</td>
<td>96</td>
</tr>
<tr>
<td>1955</td>
<td>137</td>
<td>52,061</td>
<td>98</td>
</tr>
<tr>
<td>1956</td>
<td>135</td>
<td>67,301</td>
<td>100</td>
</tr>
<tr>
<td>1957</td>
<td>151</td>
<td>b.a.</td>
<td>99</td>
</tr>
</tbody>
</table>

Table 6: Number of Strikes, Workers Involved, and Workdays Lost 1948 - 1957


Some of the strikes organized by the unions received positive response by the employers which meant that the employers accepted their demands. But in most of the cases, the strikes organized by unions failed to force the employers to accede to their requests. For instance, the Mill and Factory Workers’ Union, Selangor in 1954, organised a successful strike. Even though the company dismissed the strikers but in return the company assisted the workers to form an in-house union.

In order to show their support to the union movement, the colonial administration introduced the Whitley system in 1953. The main objective of the Whitley system to improve the relationship between the employers and employees so that the disputes could be resolved. By applying the Whitley system, the Joint Standing Council was set up comprised of an equal number of representatives from both employers and employees. According to Haines, both sides would meet together under their respective chairs and reach decisions on their joint problems by discussion and agreement, there being no recourse to voting. Once agreement has been reached, it was affected immediately (Jomo and Todd, 1994). The Whitley system also introduced the role of the Arbitration Tribunal that consists of a panel of independent persons drawn from nominees of both the Official and Staff Sides of the National Whitley Council (Jomo and Todd, 1994).

The colonial administration also recognized the formation of the NUPW as a representative for the employees. The NUPW consisted of five unions, the Malayan Estate Employees’ Union (Perak), the Johore Plantation Workers Union, the Alor Gajah Rubber Workers’ Union, and the Malacca Estate Workers’ Union. The establishment of NUPW received support from the government, employers and the ICFTU. The NUPW was against the communist influence and wanted to be free from any political influence. The uniqueness of this union is that the membership was dominated by Indians. As known earlier, at the early stage of union formation, most of the members came from the Chinese workers. Chinese workers has dominated
most of the unions because they were actively involved in union movements. The other races (Malays and Indians) were rarely involved in the unions and in certain cases their rights to join the Chinese unions have been denied. But at this point of time, the situation had changed where the Indian workers were actively involved in the union movements.

In 1950, the Malayan (Malaysian) Trade Union Congress (MTUC) was established with the assistance of the Trade Union Adviser Malaya. In 1941, the MTUC was registered as a society and not as a union. The main role of the MUTC was to serve as a center for labour in order to strengthen their solidarity. MTUC also provided structure, direction, co-ordination and support for the individual unions. In order to prevent the MTUC from any political activities such as the GLU or PMFTU, MUTC was forbidden to interfere in any individual union affairs. By doing this, the government ensure that the MTUC would control the radical unions throughout the country.

Because of the fear of the communist influence or radical left-wing, the government had prohibited the unions from joining any political parties. The government preferred the unions to be non-political. During this period, two main political parties were the Labour Party of Malaya and the Independence of Malaya Party. The question raised here was whether the MUTC should join the Labour Party of Malaya or the Independence of Malaya Party. And at last they came to an agreement that MTUC should be free from any political party. At this stage, the argument on the involvement of the unions in politics had reached a climax in 1954. Finally, the MTUC Annual Delegates Conference decided that the union should be free from any political influences.

It can be said that during 1950 to 1957, the union movements received better attention from the colonial government, even though the assistance from the MTUC and ICFTU towards the union movements were not as aggressive as that of the previous years. Although the colonial government supported the union movements in other circumstances, they still monitor the union movements closely to prevent the left wing influences penetrating the unions.

**Trade Union in the Era of Post Colonial Period (1957 - 1969)**

The period of 1957 to 1969 created a more pleasant situation for the union movement. After Independence, the conservative Alliance government (a new government after Independence) gave more flexibility for unions to conduct their activities. Even though the State of Emergency was still being implemented, it did not affect the labour movement’s activities.

In September 1963, Singapore, Sabah and Sarawak joined the Federation of Malaya to form Malaysia (Jomo and Todd, 1994). Although the merger means that they were under one administration, the union movements in Sabah and Sarawak were not allowed to join union movements in the Peninsular Malaysia. As stated in the Trade Union Ordinance, combining workers from various skills and industries to form
unions were also prohibited. The government introduced this ordinance in order to prevent fragmentation among the union movements.

The development of union movements during 1957 to 1969 was influenced by economic and political factors. The union membership dropped in 1956 (232,174) till 1959 (174,894). But the number later increased in 1960 (527,673). As the country achieved Independence, the scenario in the political movements also affected the union movements. Even though the new government became more lenient with the union movements, the relationship between the government and unions were still strained. Fearing the close links between the Unions and the Communists, the government urged the National Union of Factory and General Workers (NUFGW), the Malayan Mining Employees Union and the National Union of Transport Workers to de-register in 1957. The Union members were reluctant to join the unions for fear of being suspected of having links with the communist elements. This was the main reason why the union memberships declined during this particular period. The new economic environment resulted in only one percent of economic growth and on the other hand the unemployment rate was high at 7% especially in the agricultural sector. This scenario affected the member union membership as well as the union movements. The figures of union membership in 1962 and 1969 are as per shown in the Tables 7 & 8.

<table>
<thead>
<tr>
<th>Union Size</th>
<th>Unions</th>
<th>Members</th>
<th>Percentage of Total Union Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 100</td>
<td>181</td>
<td>25,692</td>
<td>104</td>
</tr>
<tr>
<td>101 - 200</td>
<td>29</td>
<td>20,142</td>
<td>93</td>
</tr>
<tr>
<td>201 - 500</td>
<td>48</td>
<td>25,451</td>
<td>84</td>
</tr>
<tr>
<td>501 - 1,000</td>
<td>58</td>
<td>38,685</td>
<td>91</td>
</tr>
<tr>
<td>1,001 - 2,000</td>
<td>98</td>
<td>43,579</td>
<td>91</td>
</tr>
<tr>
<td>2,001 - 5,000</td>
<td>138</td>
<td>41,450</td>
<td>93</td>
</tr>
<tr>
<td>5,001 - 10,000</td>
<td>136</td>
<td>42,256</td>
<td>96</td>
</tr>
<tr>
<td>More than 10,000</td>
<td>137</td>
<td>52,061</td>
<td>98</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>295</strong></td>
<td><strong>257,486</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>

Table 7: Number of Unions and Membership by Union Size In 1962


The perception of the employers towards the unions still did not change. The employers felt that the unions were still a threat to them. During this period, the employers used various tactics to suppress the unions in their organizations. The government also could not force the employers to give rights to the employees to form or join unions.

During this period the most critical event in the union movements was the re-emergence of radical unions. With this re-emergence of the radical unions, the number of strikes organised by the unions increased. These radical unions were
confronting the employers and the government in order to advance the employees' interests. The most radical unions during this period were the Pineapple Industry Workers' Union, the Shoe Industry Workers' Union, the National Union of Employees in the Printing Industry, the UMEWU, the Electrical Industry Workers' Union and the Selangor Building Workers' Union. These unions became more radical in order to meet the demands of their members. The established union movements preferred to use a more negotiating approach to seek their rights. The unions perceived the established ones as serving the governments' interests.

<table>
<thead>
<tr>
<th>Unions</th>
<th>Members</th>
<th>Percentage of Total Union Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>75</td>
<td>3,390</td>
<td>1.17</td>
</tr>
<tr>
<td>35</td>
<td>5,132</td>
<td>1.77</td>
</tr>
<tr>
<td>49</td>
<td>16,056</td>
<td>5.54</td>
</tr>
<tr>
<td>28</td>
<td>20,048</td>
<td>6.62</td>
</tr>
<tr>
<td>26</td>
<td>37,922</td>
<td>13.08</td>
</tr>
<tr>
<td>16</td>
<td>53,689</td>
<td>18.52</td>
</tr>
<tr>
<td>8</td>
<td>49,469</td>
<td>17.06</td>
</tr>
<tr>
<td>2</td>
<td>104,162</td>
<td>35.94</td>
</tr>
<tr>
<td>Total</td>
<td>289,868</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Table 8: Number of Unions and Membership by Union Size In 1969


In order to stop the radical movements, the government with the help of the Registrar of Trade Unions de-registered those unions regarded as extremists. By doing so, it helped the government to control the union movements. For instance in 1967, the UMEWU was de-registered, ostensibly in the interest of the non-monthly-paid estate workers, (Jomo and Todd, 1994). The Selangor Building Workers' Union was also banned after been accused of using the union for unlawful purposes. Another action taken by the government was detaining the leaders of the trade unions mostly under the Internal Security Act (ISA).

Within this period, the number of strikes had slightly increased as a result of the radical union movements. Most of the strikes were organized by the union activists in order to force the employers to fulfill their demands. In December 1962 for instance, RUM began a 23-day strike which disrupted the railway services and the union kept on threatening the government and employer, with various radical actions. Another strike occurred in May 1964 where the Unions of Post Office Workers organized a strike to claim for improved wages for postal clerks. Both RUM and the labor movement considered these strikes as successful. These strikes received a great deal of support from various unions so much so that a mediator in the person of Professor Ungku Aziz from University Malaya was invited to assist in the negotiations. As a result, RUM won the monthly wages for its members and public service status (Jomo and Todd, 1994). By winning this negotiation, it gave a new perception to the union
movement. It proved that their demands could be fulfilled through well organized unions.

As a result of the strikes organized by the unions, the Industrial Relations Act was introduced in 1967. With this Act, the government could use it as a weapon to fight radical unions that organized strikes. The Act also gave the government the authority to ban any form of strikes conducted by the unions. In 1965, the Minister of labour on behalf of the government was given the authority to ban strikes. The Act also encouraged conciliation between the unions and the government as well as the employers. Arbitration procedures was also introduced, but the Act could not guarantee the union’s security. This was because the employers could still use its managerial prerogative power to discriminate against the unions and employees.

CUEPACS was also officially registered as a union on 23rd October, 1957. It represents the public sector unions on the staff side of Whitley Council. It also joins in negotiations between the employer and the employees and hears grievances of the public sector employees.

In conclusion, between 1957 and 1969, there were not much improvement in the union movements when certain unions won some of their claims even though the unions remained disunited. Attempts on the mergers of the unions failed because some of the union members felt that, the unions would lose their voice on their claims from their employers. During this period, there was also a decline in union membership due to economic and political factors which made joining the union unattractive to employees for fear of dismissal and other unfair labour practices adopted by the employers.

Labour Movement 1969 -1980

Between 1969 and 1980, the membership of trade unions fluctuated. For example, there was a decline of about 5 per cent in 1970 although there was an increase later in 1974. These changes were attributed to the political changes at that time as it was immediately after the lifting of the Emergency brought about by the May 13 Riots. The National Operations Council made it clear that it would only tolerate unions that cooperated with the government.

Government ignored the demand of public service Unions (Ibrahim Ali Salaries Commission Report to be implemented)

The trade union movement’s calls for a revision of the labour laws and implementation of the Ibrahim Ali Salaries Commission Report were portrayed by the government as threats to the national interests. The new Prime Minister, Dato' Hussein Onn, advised the unions against using pressure to support their claims, and warned them not to take any action which might deter investors or threaten the country’s security (Malaysia Annual Report of the Trade Unions Registry, 1976, p.23).
1978 - 1979: MAS Employees Affiliated to AEU

This event was one of the major influences to the 1980 amendments to the Labour laws. It was also the starting point of the rapid development of Malaysian Trade Union movement since 1960. At that particular point in time, the government did not entertain any claims of the trade unions but tried to pressurize the union movement itself. The unions on the other hand failed to gain public sympathy in 1970. The MAS conflict started when the lower grade MAS employees demanded a new collective agreement by refusing to work over time. MAS management then brought the issue to the Ministry of Labour and the Ministry referred the matter to the Industrial Department to solve. The dispute reached a deadlock which culminated in the removal of the names of 874 members who were alleged to have taken part in the illegal action. MAS also suspended 213 workers and summarily dismissed 119 workers for alleged boycott of overtime and go slow. The Deputy Prime Minister at that time Datuk Seri Dr. Mahathir Mohamad closed down MAS airlines while the Registrar of Trade Unions on 27 January 1979 issued a show cause letter to AEU as to why its registration should not be cancelled on the grounds of boycott of over time and go slow. This was followed by the freezing of union funds, and on 14 February 1979 the Police arrested 18 officials of AEU and detained them under the Internal Security Act 1960 on suspicion of tampering with the aircraft, and four others. (Report of the general council, 1979 - 1980, pp.3, 91). Meanwhile the MTUC refused to be involved in the crisis on the grounds that the AEU had not paid its membership fees for the previous years. The government strongly refused ITWF interventions and detained its Assistant Secretary general Donald Uren (a Malaysian) under the ISA.

With Donald Uren confessing his role in the MAS-AEU dispute and the release of the MAS aircraft in Sydney, the government released all the 23, including the Asian ITF representatives, without preferring any formal charges against them in court. The registration of the AEU, which hitherto was cancelled, was never restored, and the AEU was replaced by two separate organizations, one for MAS employees and one for employees of foreign airlines.

Public Service Unions under CUEPACS leadership disaffiliated from Malaysian Trade Union Congress

After the May 13 race riots, the NOC came out with a statement that only trade unions that co-operated with the government would be recognized. It affected the agricultural union and resulted in a decline in their membership. The anxiety of the future of the semi-skilled and unskilled employees in the agriculture industry was disseminated among the Indian workers who are non-citizens of Malaysia. With the regulations introduced under Emergency rules in October 1969, through the amendment of labour laws, public unions were allowed to join the MTUC but not permitted to organize their own movement especially in the 'management prerogative areas' while at the same time ensuring that they were not under the influence of any political party. Then the government highlighted the role of the Congress of Unions in the Public and Civil services as the representative to discuss the wages and conditions.
With much recognition accorded to the CUEPACS by the government, the MTUC felt threatened hence the distrust among the union leaders.

Trade Unions 1981 -2000

Introduction

During this era, the Mahathir administration introduced more policies to control the labour force, suppress the development of trade unions and the rise in wage levels, while at the same time raising productivity.

Look East Policy of Dr. Mahathir Mohamad

With the appointment of Dr. Mahathir Mohamad as Prime Minister of Malaysia in 1981, he introduced the Look East Policy, which was to change Malaysian foreign orientation in terms of economic matters. The Look East Policy was focused on the Japanese and South Korean models of management. These two countries were role models to Malaysia in terms of development especially economically. The Prime Minister encouraged the promotion of Malaysia Incorporated concept and privatization. With the underlying philosophy of close collaboration between the private sector and the government, mobilization of resources for growth of all sectors of the economy was aggressively pursued. To achieve this, the government, initiated yearly dialogues with relevant leaders of the private sectors including foreigners, to obtain feedback regarding impediments, bottlenecks or constraints the private sector face in running their businesses. Through these sessions, the government was able to identify and fine-tune its policies, particularly the macro-economic policies, with a view towards making the environment conducive for business development. Tempted with all the social as well as the economic benefits, coming with such partnership, the government made adjustments to the existing labour laws to make it more 'investor friendly'.

The Impact of Japanese style in-house Unions as the alternative to British-style Trade Union

With the Look East Policy, the government encouraged the Malaysian companies to form in-house unions in their organizations in 1983. The main objective was to produce leaders who understand the company goals and try to achieve it by increasing productivity and consider themselves as part of the organization. Although the government was supportive of the formation of in-house unions, the Registrar of Trade Unions has limited it by refusing the application of in-house union existence. As a result of this, the power of the unions were further weakened. By encouraging the formation of in-house unions, the government was trying to make the already weak trade unions more weaker with the establishment of the formation of the in-house union.
Increasing wide spread use of poorly paid immigrants.

Increasingly, the wide spread use of poorly paid immigrants especially in agriculture, land development schemes, construction, domestic service weakened the bargaining power of labour in the 1980s and 1990s. The NUPW’s has started their strike activities since 1960’s and concentrated only on the security of the monthly salaries compared with the daily salaries especially for workers in plantation sector. The NUPW tried to reduce the influence of the MTUC by an attempt to topple P. Narayanan and his cliques. Then, the government and the plantation company came to an agreement on the issue of minimum monthly wages. By considering these demands, it gave better prospects for the cheap, non-unionised, contract immigrant labour force to lead for a more comfortable life.

The Internal Security Act (ISA) Detention without trial discourages labour militancy

During the conflict between MAS management and the AEU, the ISA was the tool the government used in bringing the situation under control in the sense that most of the militant labour leaders within the organization were detained under this law without formally being charged of any offence. In view of the experience and the fear of being locked under this Act, militancy in Labour Union movements became a thing of the past. The power invested on the DGTU to deregister any labour union which in his ‘opinion’ were being used for unlawful purposes is another important factor which helped in controlling labour extremists in the country. So all in all, the law was there at all times to curb any illegal union activities in the form of de-registration, arrest, detention and even suspension from being members of a trade union.

CUEPACS versus the MTUC

The conflict between the MTUC and CUEPACS in 1980 had weakened the unity of the unions itself. Both sides could not put aside their personal interests to unite the labour movement. The differences in interest of the public sector union and private sector union created a gap between them. The private sector union accused the public sector union were conservative in their action and refused to take part in industrial action. While the public sector unionists claimed that the private sector unionists were too radical in their approaches. But, when the private sector unions plan to undertake a day protest due to the new amendments, the public sector unions decided not to, but instead withdraw at the last minute. The civil sector union then claimed that the public sector unionists were not interested to defend their interests. The conflict of both CUEPACS and the MTUC then worsened. CUEPACS claimed that MTUC should be reorganized by dividing the body into three divisions i.e. Civil servant, private sector and the quasi-government authorities (Star, 16 May 1980). The private sector and the quasi-government authorities did not agree with the proposal. They claimed that only public sector unions could get the benefit with this division. CUEPACS then tried to propose itself to be the national representative of public
service trade unions. With this proposal, 12 of CUEPACS members de-affiliated from the MTUC.

CUEPACS still claimed to be a national labour centre and the MTUC was not. One of the example of disharmony between these two bodies was when CUEPACS had supported a Labour Ministry proposal that public sector unions be legally prevented from joining the MTUC (New Straits Times, 5 November 1984), in full knowledge that the implementation will result in a negative impact on labour in general. The conflict had worsened, especially in the election of the worker representatives to attend the International Labour Organization (ILO) conferences. CUEPACS had won but the MTUC demanded that they were more suitable to represent the workers instead. During the Labour Day celebrations in 1984, the government had instructed these two unions to join together to celebrate the 'big day' for workers. However, both bodies refused to cooperate and therefore the Labour Day was celebrated separately.

The other difference was their philosophy, for the MTUC preferred to the conventional way, the status quo ante (before 1980), while the CUEPACS leaders want to propose various alternatives in their approaches to enhance the power of public sector unions generally, and civil servant unions in particular. However, in 1987, many of the public sector unions rejoined MTUC but CUEPACS still was not interested to join MTUC. But, in mid-1980s the CUEPACS President, Ahmad Nor had proposed to form a larger confederation. Even though the situation had improved a bit but with the formation of the Malaysian Labour Organization (MLO) in early 1989, the conflict worsens. And when the MLO President, Mohamad Mat Jid was elected as CUEPACS President in June 1992, the expectation for co-operation was high. The relationship between CUEPACS and MTUC has not improved. Due to this poor relationship, it had affected the union movement itself by weakening the already weaken trade union movements and their abilities to take effective action to defend the rights of the workers.

**Trade Unions and Politics.**

The involvement of the unions in politics started with the conflict of Malaysian Airline System (MAS) with AEU. The problem started when many political parties formed labour bureaus which conduct research, and sometimes advised and acted on labour issues.

Their involvements made the labour issues more complicated rather than complementing the roles of unions in representing labour. Since 1970s, the government had a policy to restrict trade unions from involvement in politics. At the MTUC Annual Delegates Conference in 1972, the MTUC had rejected the resolution to be actively involved in politics. However, in the 1974 general elections, many of the MTUC officers including the President, Vice-President, Youth Leader and Assistant Secretary stood as candidates (Suara Buruh,1974). CUEPACS refused to be involved in politics even though some of its officials had been involved with the Barisan Nasional. Some officials were of the opinion that the use of opposition political parties by the union could put pressure on the government but in the end they
decided not to proceed with the idea because there wouldn’t be a major improvement to the labour unions by using that campaign. To justify the Trade Union Act in terms of involvement of the unions in the political arena, the Ministry of Labour and Manpower warned that ‘political unionism’ could only lead to wide divisions within the trade union movement and prejudiced its effectiveness in pursuing trade union objectives’ (ILO,1980:286). As a result, the unions were prevented from being involved in party politics in Malaysia. The presence of Democratic Action Party prompted the government to interfere and acted the way it did because the DAP had a significant influence on some of the unions executives as well as the MTUC.

In conclusion, it can be said that in Malaysia, trade unions as a whole failed to extend their influence to any significant degree. In the 1980’s, only about 12 –13% of the workforce were members of unions and unions were particularly weak in the private sector (in the public sector about half of the workforce was unionised) (Jackson, 1992).

**Issues Facing MTUC Affiliates and the Labor Movement**

MTUC in its General Council Report 1999-2001 reported that in Malaysia, the workers’ standard of living had not kept pace with the economic growth of the country. Labour legislation on minimum standards had remained stagnant for two decades. Major events that have occurred were as follows:-

**A Decade of Union Efforts Wiped Out**

The events of last decade of the century has been most disturbing; workers saw the gains achieved through years of collective bargaining wiped out by inflation. The East Asian economic crisis left tens of thousands jobless and resulted in wage cuts, slashing of bonus, denial of bonus, severe reduction in take home pay and withdrawal of annual increments.

**Power of MNCs**

For more than two decades, MTUC, trade unions and the international trade union movements have repeatedly highlighted the power and influence exerted by Multinational Corporations (MNCs) and called on the ILO to introduce standards to regulate their behaviour.

**Electronics Workers Victims of MNC’s Powerplay**

A glaring example of MNC’s influence in Malaysia is the Government’s promulgation of a policy which contradict the Trade Union Act and deny the 150,000 electronics workers the right to establish an industrial union. Most American MNC’s have demonstrated a strong anti union stance since the early 70’s and the Government has condoned such unfair labour practices for a variety of reasons.
Globalisation and Competition

In the name of globalisation and competition, powerful corporations, both foreign and national, have restricted growth and influence of trade unions, removed well established minimum standards, blocked minimum wage legislations, weakened collective bargaining and played prominent role in flooding the country with foreign workers.

In the name of globalisation, Malaysian Banks have decided to outsource a number of activities to their subsidiary companies. Despite strong objections against the move, banks are insistent that employees accept or face retrenchment. Banks have ignored unions demand to justify the drastic action.

Prior to this, resulting from Government's directive to merge, banks and financial institutions removed thousands of employees under so-called "Voluntary Separation Scheme (VSS)". Subsequently VSS spread like wild-fire to all sectors and reports from workers and affiliates showed that many were indeed compelled to sign up VSS applications or face retrenchments with inferior compensation.

Recruitment of Foreign Workers

The last decade also saw a tremendous increase in the importation of foreign workers which encouraged employers to practice discrimination and suppress wages to locals. Cruelty and sometimes savage treatment accorded to foreign workers by certain unscrupulous employers severely tarnished the image of Malaysia in the eyes of foreigners. Despite widespread retrenchments, the Government failed to heed MTUC's call to freeze recruitment of foreign workers.

The current influx of an estimated half a million Indonesian Workers into Malaysia, both legal and illegal, could in time change the labour pattern. Much will depend on whether they are allowed to stay on as permanent residents. In more recent times Bangladeshis, Thais and Burmese have joined the labour force (Wu Min Aun, 1995).

Conciliation and Arbitration

The conciliation machinery which forms an essential and integral part of the Malaysian Industrial Relations System is in need of urgent and serious attention. The system has become shockingly ineffective. Steps taken by the Ministry since November 2000 have not significantly improved the serious back-log.

Asean Free Trade Area (AFTA)

There is great deal of discussion about the effect of Globalisation but very little is said about AFTA.

Governments involved in the negotiations have focused their energy to ensure free trade and services and removal of tariffs. So far there is no indication that member
countries have shown any concern or even slight interest to address the wide disparity in wages and working conditions that exist within ASEAN. The implications of AFTA need to be discussed and steps be taken to ensure that the intense competition amongst corporations do not accelerate the race to the bottom.

Campaign for Social Clause

MTUC together with the ICFTU carried out an intensive campaign to demand fair trade that would benefit working families and not just multinational corporations.

Violations of Trade Unions Right

Violations of trade union rights had increased in the past three years. Employers, especially Multinational Corporations (MNCs), blatantly ignored the provisions of Section 5 of the Industrial Relations Act 1967.

Despite the safeguards under the Act, employers continued to victimize, intimidate and even dismiss union activists for taking the lead to set up unions in the workplace.

Reluctance and extremely slow process adopted by the Department of Industrial Relations to enforce the provisions of the IR Act had encouraged employers to act in direct contravention of the legal restrictions.

MTUC Priorities in the New Millennium

Creation of Social Safety Nets

There is an urgent need to establish a fund to assist workers who are retrenched and remain unemployed. In the last 3 years, at least 10,000 workers did not get any compensation as stipulated in the Employment Act because the employers had absconded or have been declared bankrupt.

Legislate a Minimum Wage

The Government should no longer remain indifferent to MTUC’s appeals to legislate a minimum wage of RM 900. Government’s reluctance to intervene has encouraged employers to underpay workers. The full force of the globalisation process will add further pressure to lower wages in the name of competitiveness.

Freedom to Organise

The Government must give effect to the provisions of Article 10 of the Federal Constitution and remove all barriers obstructing workers right to join a trade union of
their choice. It is untenable for the Government to continue denying the workers in the electronics industry to establish an industrial union. Such practice is encouraging more employers to call themselves as electronics manufacturers. MTUC has repeatedly stressed the need to ratify ILO Convention 87 on Freedom to Organise.

The Future of Labour Movement

"Trade union have always had two faces, sword of justice and vested interest". (Flanders, 1970: 15).

The balance between these two features can change over time; however it serves clear that in many countries, unions have lately come to be widely perceived as conservative institutions, primarily concerned to defend the relative advantages of minority of the working population. One of the challenges which confront trade unionism in the twenty-first century is therefore to revive, and to redefine the role of sword of justice.

In wealthy countries, the trade union movements have achieved significant increases in wages and far better working conditions for their members. Even in authoritarian countries, they became mechanisms of controlled ‘welfare’ program. As long as the world economy is in the stage of overall expansion and high profits from productive activities, trade unions seemed to flourish.

Since the early 1970's a lot of people including scholars, journalists, and trade unionists have noted and in some cases bemoaned the decline of trade unions. This was based on the rate at which trade unions especially in the wealthiest countries in the world such as North America, Western Europe, Japan has been declining. Malaysia too is experiencing the declining in numbers of trade unions membership. Over 25 years, the decline of trade-union membership in the country is at an alarming proportion and indeed something has to be done and done urgently to arrest this ugly trends.

To look into the future trend we should start with the actual history of trade unionism in the world as a whole. The existence of workers’ organizations started with the main aim of seeking to obtain better wages and better working conditions for their members. With this in mind trade unions proliferated at almost every workplace where there is the opportunity. The workers’ unions can therefore be said to have begun in its modern form in the early nineteenth century mostly in Western Europe and North America. The earliest such organization were located in new industrial urban centers, where traditional artisans were being displaced by the introduction of machinery that permitted employers to hire less skilled workers and therefore lower paid workers while at the same time making huge profits.

Trade unionism went through a difficult road throughout the nineteenth century. Employers, backed by the state machineries refused to recognize them and used force and intimidation to keep them from being implanted. With the rise of the socialist
and labour parties in the nineteenth century, trade union tended to make common cause with such parties, and slowly to make some headway. The skilled artisan base of trade unionism declined and trade unions embarked on more recruitment of all industrial workers in order to be stronger in their quest to succeed in their struggle with employers and the state. Trade unionism began to spread but weakly outside its location of origin. It was not however until the end of the Second World War that trade union achieved a generalized social legitimacy and legal rights in the industrialized countries. And having trade unions in a country became a sign of modernity. Almost every country, even if the regime was entirely authoritarian, allowed the establishment of trade unions (often puppet or yellow type of trade unions). In the 19th Century, yellow unionism first appeared in the labour movement of Europe. They were called yellow movement because of the colour of the newspaper in England. They were unions indirectly controlled by management and capitalists to obstruct the real unity of workers and to prevent workers from joining genuine unions. Nothing make it easier for capitalists to exploit and suppress workers than keeping them divided and disunited. And these sort of unionism do exist until now.

In the Malaysian context, these yellow unions were encouraged by the British during its colonial government in the early 1950s, by encouraging the formation of the National Union of Plantation Workers (NUPW) and the Malaysian Trade Unions Congress (MTUC) to replace the banned unions. And this trend has been seen influencing the present movement of the trade unions in Malaysia and will prolong for a few more decades.

The strongest opposition to trade unionism has always been among 'independent' workers, that is those who worked for themselves. It was when the artisans lost this independence that they began to see a decline in income and therefore began to unionize in the early nineteenth century. Today history once again is repeating, but now it is the free professionals, who have been relatively wealthy, who are losing their independence, and therefore seeing their income decline, and therefore beginning to think about unionization. For example in the last 2-3 years there has been the beginning of unionization among medical doctors in United States, who find that today they are working for insurance companies rather than for themselves, and therefore earning less as well as losing control over their working conditions. This process will continue. Believe it or not this sort of trend will also spread to Malaysia in just matter of time.

Trade unions could not limit themselves to organizing skilled workers but had to unionize the semiskilled and the unskilled, so now they have learned that they cannot limit themselves to organizing male workers nor those from the majority ethnic group of the country. They are finding that the work force is filled with women and with 'minorities' or migrants and they are beginning or by now should organize them in a serious way. This kind of reformed trade unionism will probably play a much larger role in the next thirty years than it has played in the last decade.

The Malaysian government has exercised its wide legal powers over the trade union organization and activities in a benevolent manner. Whether the present government
will continue this policy is uncertain, but from their track record it is proven that the
government may force the trade unions' legal framework more rigorously.

Globalization and technological advance pose challenges for the labour movement not
only in Malaysia but also throughout the world. Global competition has intensified,
putting new pressures on national industrial relation managers. Industrialized market
economics, which had enjoyed several decades of relative full employment, have since
experienced a return to mass unemployment. Massive jobs losses have been one of
the elements of the 'shock therapy' inflicted on the new market economies. Newly
industrialized economies, in many cases previously cushioned from external shocks,
have become subject to fluctuation of global markets.

In a globalized economy and society, trade unions face three main tasks: organizing in
transnational corporations, organizing the informal sector and connecting with actors
in civil society to advance their broader social and political agenda. In all these areas
they have found partnerships with NGOs and this trend will continue because it
produces positive results. In the process, both unions and NGOs are changing.

As government grapple with the problem of adoption to the new disorder in the world
economy, the political environment in many countries, particularly those where
labour movements are long established has become far more unfavourable. In some
cases this is linked to the erosion of unions "representative status" as "social
partners", in part in consequence of loss of membership.

The other challenge that being faced by the trade unions come from employers. In
some countries there has been a growing unwillingness, to accept trade unions as
collective representatives of employees, in others, while collective bargaining has
survived, its scope has been reduced, and managements have established new forms
direct communications with employees at individuals levels.

The fashion for team working has introduced new mechanism of collective decision-
making which in many countries are detached both from trade union structures and
from statutory institutions of workplace representation. The major trends that
challenge the future role and relevance unions are the demand for greater labour
market flexibility, economic, organizational and employment restructuring for greater
efficiency and flexibility, and changing demographics with greater diversity of needs
and expectation among workers.

Trade Unions may be having some gains in terms of right of casual workers, but
overall in Malaysia the union movement is in trouble. There's been a dramatic decline
in the total number of union membership, it looks particularly less attractive to the
younger workers. The trade unions admit that they have a lot to do in order to make
the labour union attractive to the ever-increasing number of younger professionals.
List of References


Alex Josey, 1958, *Trade Union in Malaya*, Singapore


Charles Gamba, *the Origins of Trade Unionism in Malaya, 1962*, Eastern Universities Press Ltd. Singapore


Ho Keun Song, *Labour Unions in the Republic of Korea: Challenge and Choice*, Department of Sociology, Seoul National University, 1999


Radian Che Rose, *Industrial Relations précis*, 2001

Report of a Mission from the International Labor Office, the Trade Union Situation in the Federation of Malaya, Geneva 1962.

Robert Taylor, Trade Unions and Transnational Industrial Relations, Labour Society Programme, 1999

Sadahiko Inoue, Japanese Trade Unions and their future: Opportunities and challenges in an era of globalization, Rengo Institute for Advancement of Living Standards, Tokyo, 1999


Speech Delivered by Klaus Zwickel, President of the International Metalworkers Federation (IMF) and Chairman of the Industrial Trade Union Metal (IG Metall), Trade Unions, Globalisation and the WTO-Process, Kathmandu, Nepal, July 28, 2000


Stenson, M.R, (1970), Industrial Conflict in Malaya, East Asian Historical Monographs, Oxford University Press


Tai Tuen, 2000, Labour Unrest in Malaya, 1934-1941, the Rise of Worker Movement), Institute of Postgraduate Studies and Research University Malaya, Kuala Lumpur

V.Thompson, Labor Problems in South East Asia, New Haven, Lonn,Yale University Press 1947

Yong Chee Seng, the Early Development of Trade Unions Movement in Malaya, Economy Vol.VII December 1967


Introduction

This chapter provides a brief discussion on trade union in Malaysia. The discussion will be divided into several parts, consisting of an introduction to trade unionism in Malaysia, a membership pattern of trade union, a governance of trade union and finally to discuss the current status of trade union in the country.

Trade Union in Malaysia

In the Trade Union Act (Section 2), a trade union is defined as:

"any association or combination of workmen/employers, being workmen whose place of work is in West Malaysia, Sabah or Sarawak, as the case may be, or employers employing workmen in West Malaysia, Sabah or Sarawak, as the case may be within any particular establishment, trade, occupation or industry or within similar trades, occupations or industries; and whether temporary or permanent; and having among its objects one or more of the following:

• the regulation of relations between workmen and employers for the purposes of promoting good industrial relations between workmen and employers, improving the working conditions or enhancing their economic and social status, or increasing productivity;
• the regulation of relations between workmen and workmen, or between employers and employers;
• the representation of either workmen/employers in trade disputes;
• the conducting of, or dealing with, trade disputes and matters related thereto; or
• the promotion or organisation or financing of strikes or lockouts in any trade/industry or the provision of pay or other benefits for its members during a strike or lockout."

Such a definition of trade union brings along a few implications:

• Many unions call themselves associations. This is especially common when the members concerned are professional or senior officers. To name a few, there are the University of Malaya Academic Staff Association and the Association of Maybank Class One Officers. In fact, all the unions of employers are called associations rather than unions, for example the Malayan Commercial Banks Association.

• The membership of unions is limited geographically. That means, if a person works in the Peninsular Malaysia, he or she can only join a union whose members are also working in the Peninsular Malaysia. It is therefore understood that membership of unions in Malaysia is limited to three i.e. Peninsular Malaysia, Sabah and Sarawak geographical regions. It is hence not surprising but at all possible to have duplication of unions. The examples given
by Maimunah (1999) are The National Union of Commercial Workers, West Malaysia and the Sabah Commercial Workers Union. It should be mentioned here that such a geographical limitation has nothing to do with a person's birth place or place of residence.

- Unions of a general nature are not permitted i.e. the members of a trade union cannot be just any worker. They must work in a particular establishment, which means in the same trade, occupation or industry. In other words, a trade union is meant for workers who share the same common interests in their work. Whether a trade/occupation/industry is similar to another is within the competence of the Registrar of Trade Unions.

- Both employers and employees have the right to set up and join unions provided that they must be separate from each other and must be within any particular trade, occupation/industry.

- A trade union is considered formed when the organisation or group of workers establishes it to achieve one or more of the objectives stated in the Act.

**Membership of a Trade Union**

Every worker in Malaysia has the right to form and join a trade union. The right known as 'freedom of association' is protected in the Industrial Relations Act (Section 5) that states:

- No employer shall prevent a worker from joining a union by putting a condition in his contract of employment,
- No employer shall refuse to employ a worker on the grounds he is a trade union member or officer,
- No employer shall discriminate against a worker (for example in terms of promotion) on the grounds he is a trade union member or officer, and
- No worker shall be threatened with dismissal or dismissed if he proposes to join a trade union or if he participates in union activities.

If there are violations of the provisions above, the workers concerned can lodge reports to the Department of Industrial Relations, or, if necessary, to the Minister of Human Resources and the issue may be referred to the Industrial Court. It is necessary to note here that the right and freedom to form and join trade unions does not imply compulsory membership. Workers are free to choose to join or not to join a trade union. This brings us to another question: Who can join a union?

**Who Can Join a Union?**

Any worker aged 16 and above can apply to join the union relevant to his or her trade, occupation or industry. However, workers that aged below 18 are restricted in many ways as far as union activities are concerned. For example, they are not entitled to vote on matters relating to strikes, imposition of a levy, dissolution of the union or amendment of the rules of the trade union. Besides, a union member who is above 18 but under 21 is not eligible to hold office in the union.

A trade union's membership is only meant for workers related to it. Hence a student is not allowed to join trade union unless he or she is a real worker whose
age is 18 or above. That means a person that is on study leave or a worker who is studying part-time can apply for union membership. As for the public sector workers, they can only join unions set up by workers in the same occupation, department or ministry. In Malaysia, there are about 220 unions representing the entire 800,000 public workforce. However, very few unions are to represent a full ministry. As for the employees of statutory bodies and local authorities, joining a trade union is allowed but the membership is confined to employees in the same body or authority.

Not every worker in Malaysia has the right to join unions, especially those that are in confidential or security work, such as the police force, prison service and the armed forces. Similarly, professionals and those belong to the managerial group in the public sector cannot join a trade union unless they obtain the exemption from the Chief Secretary to the Government.

**Why Workers Join Trade Union**

Statistics have shown that only about 8.2% of the workforce in Malaysia is organized into union, which is comparatively low with the neighboring country. Nevertheless the need for workers to organized into union is valid and necessary. Trade unions are organized with these main objectives:

- to secure the complete organization, to promote the industrial, social and intellectual interests of its members.
- to regulate the relationship between employees and their employers, members and another members.
- to promote the material, social and educational welfare
- to provide legal assistance to members
- To provide victimization pay and dispute pay
- to promote legislation affecting the interests of the members
- to conduct collective bargaining with the employees with a view to concluding a Collective Agreement
- to represent the employees in trade disputes with the employer.
- to represent the employees in Industrial Court, Labour Court.
- to undertake other activities as to promote social, recreational and cultural activities among its members.
- to promote or organize any legitimate industrial action, including strike, subject to the provision of the Trade Union Act 1959.

Workers join union for their own unique reasons. Maimunah mentioned that there are three main reasons, 1) to improve economic situation, 2) to ensure their rights are protected, and 3) for social reasons. A review of the literature produces almost the same reasons for workers to form and join union everywhere around the globe. Let us classify these reasons into three broad categories, namely social, economical and political.

**Social Reasons**

Workers join TU to be protected and to be united with their fellow workers to fight for better working conditions. For instance, employees of the franchise in St. Hubert, a Montreal suburb has file a request to join Quebec Federation of Labour.
on the 18.02.97 to fight for better working conditions. McDonald is infamous for its anti-union stand and bad labour practices. The employees are exploited and a union is needed to protect them from 'infernal pace of work, unpaid overtime, dangerous work and bad pay' (Hout, 1998).

In another situation nurses have been historically reluctant to participate in collecting bargaining, strike better working conditions, or form or belong to labour unions (Meier, 2000). During the 1930’s, economic depression drove many nurses to seek work in hospitals. Lack of protection laws forced many nurses to work under extreme difficult and adverse work conditions. By early 1940’s, ¾ of all the nurses had no sick pay, 50% had no free hospitalization and 2/3 had no pension provisions. Many had to work 50 to 60-hour weeks, and subjected to unposted schedule, arbitrary dismissal and unpaid overtime. It appears that working conditions and patient welfare are the reasons for nurses strike and not particularly wage demands.

According to Mondy (1999), people with close personal relationship in a union or non-unionised environment are likely to support each other. They have strong social needs and enjoy being around other people with same interest and needs. They take advantage of the social and recreational activities offered by the union. Nowadays it is not uncommon for union to offer day care centre, insurance policies at special rates for members and lots of other facilities that are beneficial for the members. This is to increase their sense of solidarity and is likely to stand for each other in difficult times.

In Malaysia, workers join TU because of the efforts made by MTUC to recruit more members among the less organised group. MTUC organised campaigns and distribute leaflets and brochures to attract workers. They highlight the reasons why workers should join TU, the benefits of being members, achievements of the union and also make the workers aware of bad labour practices and what unions can do to remedy. The awareness campaigns is important so that workers know their rights and strive to achieve better working conditions and wages through their union.

**Protection of Rights**

This is the basic of all human interaction. When employer and employee enter into contract, the employee expects employer to play their part by giving them what is written in the letter of appointment. Most of the time, employer would goes back on their own words by discriminating and abusing workers. To protect themselves from this situation, workers join TU. In Malaysia especially, some organization try to discriminate against a group of workers or individual. It was found out through research that this company is paying workers different salaries for the same work done based on gender and racial origin. Such treatment by the company only serve to open the door for TU to come in and bargain for better and equal salary and better working conditions.

Protection of the rights not only protect material standards of living but also their security, status and self-respect, the need to be treated with dignity as human beings. One of the most important of this right is job security. Without his job, worker cannot survive and most of the time, employers abuse this right by using bad labour practices. It is only through union that workers can be assured that this right is protected.
Attitude of the Management

In most cases the management adopt a negative attitude toward TU. How they treat their employees was reflected in the way they communicate with their employees and the tendency to overwork them, expecting too much but giving very little. Employees would tend to feel that they are being treated like machine and not part of the organization. Most of the time the management are insensitive to their employees' needs and this will lead the employee to perceive that they have little or no influence in job-related matters. This is especially true where workers are autonomous and highly skilled like doctors and nurses and the management interference in their job would mean that they have to sacrifice their service for their patients.

Economic Reasons

Typically the bone of contention between employer and employees are the clash of interest. Employer wants more profit and would use the workers to achieve this aim. Employees need the wages, salaries, benefits to afford the necessities and pleasure of life. All these demand from the workers would mean cost to the employers. These demands cannot be achieved if the workers don't unionised. Through the process of collective bargaining, the union are able to ask for more favourable working conditions, better wages and benefits and give them a voice to express their needs and to have a say in decision made by the management that affects their work.

The role of TU is not only to bargain for better pay but also provide benefits to their members. NUBE gives its members good service and insurance coverage (Maimunah, 1999). Besides this, members can use training facilities for a nominal fee. Other unions is generous enough to help members in times of needs and difficulties e.g. compensation for family member who has died, scholarship for their children and so forth.

Political Reasons

Some workers join TU because they see in themselves the capability of being a leader. It is not always easy for blue-collar workers to progress into management. They can satisfy their aspirations of becoming a leader by joining the TU. As with the firm, the union also has hierarchy of leadership and individual members can work their way up through its various levels.

This is especially true in Europe, North and South America, where union leaders become human rights advocate and are very influential in management decision-making. These leaders advocate 'internationally recognised workers rights' including the right to just and healthy conditions of work, equal pay for equal work, just remuneration worthy of human dignity, and the right to form and join trade unions.

In 1998, International Confederation of Free Trade Unions reported that 121 millions in 141 countries are being discriminate and abused (Holst, 1999). They are not protected by the law. Every year thousands of workers lose their lives or become disabled on the job because of conditions that are excessively and needlessly hazardous. According to WHO, occupational accidents account for more than 120
million injuries and 200,000 deaths per year. There are about 160 million cases per year of occupational disease from exposure to physical, chemical and biological hazards – the most common include repetitive motion injuries, mechanical stress from heavy labour, and pesticide poisoning. The risk of disease and injury is increased by chronic parasitic infections, lack of access to sanitation and potable water, malnutrition, illiteracy, and poverty. Most importantly only 5-10% of workers in developing countries have access to adequate occupational health-care services. All the problems cited above are most commonly associated with the third world countries.

Registration of a Trade Union

Any group of workers attempts to form a trade union must apply to the Director-General of Trade Unions for registration within one month of establishing the union. A request for the period of registration to be extended to six months can be made to the Director-General if needed. The application must be signed by a minimum of seven members, the minimum number of members needed to form a union. Upon submission of the application form, the required fees must be paid and a printed copy of the rules or constitution of the union must be attached to the application form. The particulars that must be included in the form are:

- The name of the union.
- The names, addresses and occupations of the members making the application.
- The names, ages, addresses and occupations of the union’s officers.
- (Maimunah, 1999)

When application has been submitted, it does not render an automatic registration by the Director-General. Registration will be denied if the following circumstances are detected:

- If any of the union’s objectives are unlawful;
- If the trade union’s constitution or part of it is found to be in conflict with the Trade Unions Act;
- If the name chosen for the union is suggesting something unpleasant / undesirable, or when it is identical to another already existing union, or if the name bears the intention to deceive; or
- If there is likelihood for unlawful purposes being served by the union.
- (Maimunah, 1999)

Under Section 12 of the Trade Union Act, the Director-General of Trade Union has intimidating power to refuse to register or de-register a trade union. For instance, when a trade union only covers a minority of the workers in a trade, occupation, industry, or an individual workplace, the Director-General has the power to terminate the existence of that particular union. In addition to that, the Director-General will also de-register a union if it is found to have contravened the Trade Union Act and/or involved in unlawful activities. Similar action can also be taken when a union is found to have used its funds for unlawful purposes. (A. Maimunah, 1999).
Union Funds

When a worker registers himself/herself to be the member of a union, he or she has to pay certain amount of fee. Normally there is an entrance fee followed by a monthly subscription. The amount paid varies from one union to the other, but usually ranges between RM3.00 to RM8.00. A union does not enjoy absolute freedom when using the funds. It must abide by the provisions under Section 50 of the Trade Union Act and also the rules of the union itself. (Maimunah, 1999). To be more specific, the funds can be used for the following purposes: (p. 94)

- expenses related to salaries for employees of the union;
- expenses related to the upkeep of an office;
- expenses related to the settlement of a trade dispute;
- compensation to members for losses arising out of trade disputes (i.e. a strike allowance);
- allowances to members and their families on account of death, old age, sickness, accident or unemployment;
- expenses related to the publishing of a newsletter;
- expenses related to the organization of social, sports, educational and charitable activities of the members.

It is important to note here that trade unions in Malaysia are not allowed to use their funds for any political purposes. Though their rights to take part in political activities remain, the union leaders are advised not to be actively involved with politics. To gain a better understanding of the reasons that have brought about the present situation, one needs to look into the histories behind unionism in Malaysia.

The Historical Background of Trade Unions in Malaysia

It was only in the 1920’s that organisations resembling unions started to take form with the development of rubber estates and tin mines. This relatively late development of unions in Malaysia (then called 'Malaya') can be understood as, though more and more immigrant workers from China and India poured into Malaya to work in the tin mines and estates, they perceived themselves as working on a temporary basis. They had no intention to reside in Malaya permanently. All they wanted then was a decent job to earn enough to support the families in China (for the Chinese immigrant workers) and in India (for the Indian immigrant workers). Therefore, there was not a need to attach oneself to any formal, legitimate union. Besides, joining a trade union was strongly opposed by the employers (Maimunah, 1999). Hence, the British colonial government saw no need for passing any bills or laws in relation to unionism.

Nevertheless, it should not be misunderstood that workers were not involved with any unions at all. In actual fact, many Chinese workers were brought into Malaya through the triad societies that operated underground. Besides, trade guilds had long existed in Chinese trade system. Forming associations to protect the interests of the guild members was not something new and had long been practised then. (O'Brien, 1988). Later, with the Societies Ordinance passed in the Straits Settlement in 1889 and in the Federated Malay States in 1895, the triad societies were made illegal. This reduced tremendously the control of the triads over the workers. But the act of forming trade-union like associations did not end there. In fact, the Chinese workers in Malaya were the first to organise themselves into...
unions. When Guomindang (Chinese Nationalist Party) was established, the leftists of the party played a significant role in organising the overseas Chinese especially the workers. This was meant to win their support toward the Chinese Revolution erupted in 1911. The main agenda, needless to explain, was political rather than social and economic. (O'Brien, 1988).

However, situations took a drastic change when the Communist Party of Malaya (CPM) intentionally played an active role in developing the labour movement. They succeeded in attracting many unskilled workers to unionise and take militant actions. In 1930's, the unionised workers were involved in a number of strikes. At that time, there were no labour laws governing and prohibiting strikes and other union activities like the like. The freedom for organising strikes by the workers very much threatened the employers. To safeguard their interests, the employers then exerted pressure on the colonial government to introduce and implement laws aimed at curbing and restricting the unions (Maimunah, 1999).

Finally, after much insistence and pressure from the employers, a trade union bill was passed in 1940. However, due to Japanese occupation, it could only be implemented in the year 1946. The most important feature in this legislation is the compulsory registration of trade unions. This is to oversee the unions' activities so as to counter any subversive attempts organised by CPM. Under this legislation too, the Registrar of Trade Unions is conferred with sweeping powers to refuse to register or to de-register a trade union based on his discretion (Ananta Raman, 1998).

During World War II, CPM helped the British colonial government to fight the Japanese. This dragged the British into a dilemma. The British colonial government was well aware of the threat of the militant CPM. However, they were forced to give recognition to the party as CPM had indeed done much to assist the British government during the time of war. Besides, on the whole, the people living in Malaya were sympathetic to CPM and many especially the Chinese people in Malaya felt thankful to the party because they fought the Japanese. To free themselves from the situational deadlocks, the British resorted to this: On one hand they showed willingness to recognise CPM as a legitimate political party in Malaya, on the other hand, laws were made to serve as watchdogs.

However, the then existing laws were insufficient to curb the militant union activities hosted by CPM. By 1947, the Communist Pan Malayan Federation of Trade Unions had gained sweeping control over almost the entire labour force then, and had hosted a substantial number of strikes. This alarmed the colonial government, as the strikes were more prone to champion the politics agenda of CPM rather than the labourers' interests. Obviously, CPM aimed at using the power of the mass to assist them in their attempts to take over the government by force. As a result, the trade union enactment was amended in 1948, requiring trade union confederation to be confined to trade unions whose members are workers in similar trades, occupations or industries. Other than that, all trade union officials, except for the post of Secretary, must possess three years of experience in the industry of their unions. Once convicted of certain offences, the person is barred from holding office in a trade union. (Ananta Raman, 1998).

With the amendment to trade union enactment, the British government successfully curbed the control on the labour force by CPM. When the communist finally
disappeared into the jungle with the union funds, the Communist Pan Malayan Federation of Trade Unions died a natural death. Eventually, the situation promoted the formation of the non-communist Malayan Trade Union Council (MTUC) that showed sympathy to the national aspiration for independence. This further boosted the post-independence Malayan government's intention to promote a strong, free and democratic union movement, and to seek its co-operation in developing the country (Ananta Raman, 1998).

Despite the government's willingness to recognise MTUC, the restrictions imposed on trade unions in 1948 enactment remained in the 1959 Trade Union Act. Under this Act, whether a trade or an occupation or an industry is similar to the other trade, occupation or industry is up to the discretion of the Registrar of Trade Unions. Thus, the formation of general federations is made impossible (Ananta Raman, 1998).

To sum up here, we can say that the first national emergency has consolidated the Trade Union Act 1959, restricting on the activities of Trade Unions and the Trade Union Movement. However, the restrictive provisions of the related labour laws did not end with the end of the first national emergency. After the second national emergency due to Indonesian Confrontation (1964 – 1967) and the increasing labour unrest from 1962 – 1964, voluntarism in industrial relations in Malaya came to an abrupt end and the government then introduced the compulsory system of industrial relations.

Since the passing of the Trade Union Bill in 1940 until the year 1965, the industrial relations system adopted in the country was voluntary arbitration system. This meant that government intervention would / would not be sought based on the decision of the disputing parties. Under the voluntary system, the parties involved were free in their collective bargaining backed by the right to industrial action. However, from 1962 to 1964, the trend in the Malaysian industrial relations scene was labour unrest and strikes were much more preferred to by the disputing parties rather than the voluntary arbitration. With the increasing number of labour unrest, the government concluded that the voluntary arbitration system had failed to function effectively. As a result, the government introduced the compulsory arbitration system. This compulsory system of industrial relations subsequently found a permanent place in the Industrial Relations Act 1967 (Ananta Raman, 1998).

If we look into the provisions of the Act, it is obvious that trade unions are further restricted in terms of the activities that can be undertaken when a labour dispute occurs. The most important changes are with the implementation of the compulsory arbitration system. Once reference has been made by the Minister, regardless if the reference is 'voluntary' or 'compulsory', as long as the parties involved have been notified of the reference, any industrial action will be considered as illegal and therefore prohibited. Though the right to strike is not utterly denied, it is made almost impossible. Besides the procedural requirements that must be met before a union can take industrial action, the Minister has the power to step in. That results in compulsory intervention and thus prohibiting strike of any kind.

Besides the enactment of the Industrial Relations Act 1967, the second national emergency also resulted in the rise of Trade Union Act 1965 that included a few more provisions to the Trade Union Act 1959. They are provisions:
• "prohibiting a trade union leader from holding office in another union in order to prevent a union leader from wielding power through controlling many unions;
• empowering the Registrar to de-register a breakaway union formed by dissident groups within a trade union in order to discourage multiplicity of unions."

Thus far, we have seen that trade union activities are, in many ways, restricted. However the truth was not so. It was evidenced in 1969 when the racial riots erupted and resulted the third national emergency to be declared and was only terminated in February 1971. According to Ananta Raman (1998), the provisions in the Trade Union Act 1965 and together with the Industrial Relations Act 1967, the Malayan Trade Union Council (MTUC) was made powerless. It also became disabled in preventing the perpetuation of the compulsory industrial relations system. Due to that frustration, the organisation chose to support the opposition parties in the 1969 General Elections, which ended in bloody clashes between the Malay and the Chinese ethnic groups.

To hold MTUC fully responsible for the racial riots occurred on 13 May 1969 would be unjust. A study into the economic and social inequalities among the three ethnic groups especially between the Chinese and the Malay will clearly explain the resentment felt that eventually led to the bloody clash. The results of the General Elections that favoured the opposition parties only served as a catalyst to the riots. After the incident, the government through the National Operations Council set in motion the New Economic Policy aiming at eradicating poverty and moving towards equal distribution of the nation's wealth among the different ethnic groups. In this respect, active government intervention was required. This had a very significant impact on the trade unions and labour relations in this country. More regulations restricting trade unions and labour management relations were incorporated into the basic labour laws of the country i.e. the Trade Union Act 1959 and the Industrial Relations Act 1967.

As expected, the emphasis of the restrictions on the trade unions with Trade Unions (Amendment) Act 1971 was to curb any possible political activities by the union. Before we dwell into the amendment of the Trade Unions Act, let's look at its previous provisions. Modelled after the Colonial British labour laws, trade unions are not allowed to use the trade union funds for any political purposes. However, voluntary contributions from the union members may be sought, as appeared in the Trade Union (Amendment) Ordinance 1955:

Under this provision, a registered trade union may constitute a political fund for such objects as the payment of election expenses of candidates for election to parliament of to any public office, the holding of election meetings, the distribution of political literature, the maintenance of elected persons and the payment of fees to political parties. The decision to establish such a fund must be by secret ballot at a meeting specially convened for the purpose, and contributions to the fund are voluntary without prejudice to the workers as a union member.

(Anantaraman, 1998:5)

In the Trade Unions (Amendment) Act 1971, it removed the provision above. The trade unions are not allowed to raise funds for any persons for political reasons.
The rationale for this removal is that a trade union is to look after the interests of its members, not to champion the cause of any politician. Other than this restriction, the Amendment Act included a provision disqualifying officers/employees of political parties from holding office in trade unions. This is to ensure that trade unions are free from ‘political manipulations’.

Besides the amendment to the Trade Union Act, there are also amendments made to the Industrial Relations Act 1967. Under the Industrial Relations (Amendment) Act 1971, the “management prerogative clause” was introduced. With this clause, the scope of collective bargaining has been limited, very much to the favour of the management. Trade unions are prohibited to raise issues pertaining to promotion, internal transfer, recruitment, retrenchment, dismissal or reinstatement of an employee. The Amendment was added acting as a preventive measure against irresponsible industrial action in the domain of “personal matters”. However, the Act does not prohibit the management from raising such issues in their negotiation with the employees.

To sum up here, the third national emergency resulted in the amendments to the trade union and industrial relations laws that prohibit any political involvement of trade unions, besides limiting their scope of collective bargaining.

After much amendment, the industrial peace seemed to have been successfully maintained. However, in 1979, an industrial dispute happened between the Malaysian Airline System and the Airlines Employees Union (AEU). Outside influence i.e. interference by Donald Uren, the Asian Representative of the International Transport Federation to which AEU was affiliated was brought into the dispute. This disruption to the industrial peace convinced the government if it were to fully exercise the New Economic Policy, it could not afford such a disruption to repeat itself. This brought to the surface the need for the government to strengthen its grip on the trade unions so that it could sustain its export-oriented industrialising strategy.

A glimpse at the amendments made brings us to the following summaries of the 1980 Amendment to Labour Laws:

- Stringent statutory requirements for a legal strike under the Trade Unions Act are introduced. An investigation of the legislative provisions can easily lead us to the conclusion that strikes are made impossible though they still seem workable on paper and can be actually carried out. This is very much due to the provision in the following amendment.
- The 1980 Amendments increased the supervisory powers of the Registrar of Trade Unions. The Registrar has even the police powers to enter a union premise for inspection or examination; and he is also, within his jurisdiction, to look into the question of investment of union funds to ensure everything is done in accordance with the existing laws.
- The Registrar is also empowered to bar any attempts for affiliation to a consultative body by any trade union. With such a provision, the outside influence is successfully curbed.
- Use of unions’ funds for political purposes is strictly prohibited and made impossible. The term “political purposes” is so narrowly defined that any form of political involvement is considered an infringement to the law.
The 1980 Amendments also empower the Minister of Labour and the Minister of Home Affairs to suspend a trade union for a period not more than six months in his absolute discretion.

Based on the aforementioned amendments, it is no doubt that the government has started to play a prominent role in industrial relations. This is to prevent any untoward situations to go beyond control. With the ultimate power to interfere in the hands of the Minister of Labour and the Minister of Home Affairs, any industrial disputes can be settled through compulsory arbitration forced upon the disputing parties.

The final section of the historical background of trade unions will provide a glimpse at the 1989 Amendments of the Labour Laws.

As workers and labourers play an important role in developing a nation’s economy, when there are changes to the nation’s economic policies, there will be a need to revise the existing labour laws to suit the current situations. Hence, when the “Look East Policy” was announced by our Prime Minister Dato’ Seri Dr. Mahathir Mohamad, this called for a redefinition of the goals of the Government labour policy (Ananta Raman, 1998). Under this policy, the Malaysian government intends not only to make Malaysia an economically self-sufficient country but also to gear the country’s economy to high technology industries. To achieve such a goal, solely sustaining industrial peace is not enough. There must also be close co-operation between the management and the employees so that industrial harmony can be fostered. In relation to this, the in-house unionism modelled after the Japanese Enterprise unionism is embraced. This is based on the government’s belief that when there is industrial harmony, there will be higher labour productivity, and this is very much needed for the government’s new industrialising strategy. As aptly put by Anantaraman (1998):

... in-house unionism was conveniently seen to support Government’s new industrialising strategy which was a combination of import substitution and export orientation; therefore the Government, as part of its Look East Policy gave notice to trade union movement that it favoured the reorganisation of industrial relations by promoting in-house unions. (p. 12).

Encouraging and facilitating in-house union formation in enterprises was the focus of the 1989 Amendments. It is hoped that when good employer-employee relations are fostered, productivity will increase. In addition to that, amendments were also made aiming at overcoming employer-initiated obstructions to union formation. Nevertheless, it must be remembered that at this point of time, there are so many restrictions against the trade unions but in the favour of the management. Though the government encourages such a harmonious employers-employees relationship, it seems that there is no real initiation from both the employers and employees. The act of setting up in-house unions is more of a reaction to the government’s appeal. The implication is, there is no sincere co-operation and harmony in the true sense.

As a general conclusion, the labour laws in Malaysia have come a long way since the days of pre-independence. Each time an amendment was made, it could be said that the trade unions are further restricted on their activities and movement,
whereas the government has more power to control the unions. It is not at all surprising that MTUC protested vehemently all the amendments made, though not successfully. Much still needs to be done before the trade unions in Malaysia can actually enjoy free, strong and democratic industrial relations.

Trade Union in Malaysia

In 1998, total work force in Malaysia is about 8.881 million. The forecast figure for year 2000 is 9.194 million. The number of persons employed is 8.597 million in 1998 and the forecast figure is 8.920 million in 2000 (Malaysian Economy in Figures, 2000).

About 720,000 workers are organized into unions. 400,000 are in private sector while 320,000 are in public sector in 1998. In other words, about 8.2 % of our workers are organized into unions. This figure is considered low compared to many Asian countries. For example, the percentage of unionized workers in Sri Lanka was 35 percent; Philippines, 25 percent; Japan, 23 percent; Hong Kong, 22 percent and Singapore, 15 percent. Malaysia has higher percentage of unionized workers as compared to Thailand, 5 percent and Indonesia, 4 percent (Maimunah, 1999).

We have 7,720,000 persons working in private sector while the remaining 877,000 working in public sector. These figures do not include 1.14 million foreign workers in Malaysia in 1998 (National Economic Recovery Plan, 1998) About 5.2 % workers in the private sector and 36.5 % workers in the public sector are organized. In 1998, percentage of employment by sectors is as follows:

<table>
<thead>
<tr>
<th>Sector</th>
<th>% of Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>16.3</td>
</tr>
<tr>
<td>Mining</td>
<td>0.5</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>26.5</td>
</tr>
<tr>
<td>Construction</td>
<td>9.4</td>
</tr>
<tr>
<td>Services</td>
<td></td>
</tr>
<tr>
<td>- private sector</td>
<td>37.1</td>
</tr>
<tr>
<td>- public sector</td>
<td>10.2</td>
</tr>
</tbody>
</table>


There are 533 employees unions in 1998. The Department of Trade Unions classifies these unions into 41 categories. The classification is along industry, trade or services provided by them. For the public sector, the unions are organized by occupation, within a Ministry or Department. For example, in the education service, we have teachers unions, which are organized according to occupation. Even within this group of employees, there are 15 unions catering for different groups of teachers. Some of the teachers unions are formed along racial lines, for example, Malay Teachers Union and Tamil School Teachers Union; other unions cater for a particular type of teachers, for example, religious teachers union, Bahasa Malaysia teachers union and kindergarten teachers union.
The classification of unions into 41 categories is as follows:

<table>
<thead>
<tr>
<th>Bil.</th>
<th>Categories</th>
<th>No. of Unions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>S.M</td>
</tr>
<tr>
<td>1.</td>
<td>Hasil-hasil Pertanian dan Ternakan</td>
<td>15</td>
</tr>
<tr>
<td>2.</td>
<td>Kebutuhan dan Perusahaan Kaya Balak</td>
<td>1</td>
</tr>
<tr>
<td>3.</td>
<td>Perikanan</td>
<td>2</td>
</tr>
<tr>
<td>4.</td>
<td>Hasil-hasil Pertanian yg memerlukan kerja memproses</td>
<td>8</td>
</tr>
<tr>
<td>5.</td>
<td>Perfombongan logam</td>
<td>2</td>
</tr>
<tr>
<td>6.</td>
<td>Perusahaan-perusahaan membuat makanan</td>
<td>8</td>
</tr>
<tr>
<td>7.</td>
<td>Perusahaan-perusahaan membuat minuman</td>
<td>4</td>
</tr>
<tr>
<td>8.</td>
<td>Pembuatan hasil-hasil tembakau</td>
<td>2</td>
</tr>
<tr>
<td>9.</td>
<td>Pembuatan barang-barang tenunan</td>
<td>17</td>
</tr>
<tr>
<td>10.</td>
<td>Pembuatan kasut</td>
<td>1</td>
</tr>
<tr>
<td>11.</td>
<td>Pembuatan Barang Buatan kayu</td>
<td>1</td>
</tr>
<tr>
<td>12.</td>
<td>Pembuatan kertas dan barangan-barang kertas</td>
<td>1</td>
</tr>
<tr>
<td>13.</td>
<td>Perusahaan persetekaan, penerbitan dan yg berkaitan</td>
<td>11</td>
</tr>
<tr>
<td>14.</td>
<td>Pembuatan barang-barang getah</td>
<td>13</td>
</tr>
<tr>
<td>15.</td>
<td>Pembuatan benda-benda kimia dan hasil-hasil kimia</td>
<td>5</td>
</tr>
<tr>
<td>16.</td>
<td>Pembuatan Hasil-hasil minyak petrol</td>
<td>4</td>
</tr>
<tr>
<td>17.</td>
<td>Pembuatan hasil bukan logam kecuali hasil minyak petrol</td>
<td>6</td>
</tr>
<tr>
<td>18.</td>
<td>Perusahaan berasas logam</td>
<td>7</td>
</tr>
<tr>
<td>19.</td>
<td>Pembuatan hasil logam</td>
<td>4</td>
</tr>
<tr>
<td>20.</td>
<td>Pembuatan mesin-mesen jentera</td>
<td>5</td>
</tr>
<tr>
<td>21.</td>
<td>Pembuatan barang-barang letrik/elektronik</td>
<td>7</td>
</tr>
<tr>
<td>22.</td>
<td>Pembuatan mesin-mesen jentera elektronik</td>
<td>21</td>
</tr>
<tr>
<td>23.</td>
<td>Perusahaan pelbagai pembuatan</td>
<td>5</td>
</tr>
<tr>
<td>24.</td>
<td>Pembinaan</td>
<td>5</td>
</tr>
<tr>
<td>25.</td>
<td>Elektrik dan gas</td>
<td>8</td>
</tr>
<tr>
<td>26.</td>
<td>Perdagangan borong dan runcit</td>
<td>15</td>
</tr>
<tr>
<td>27.</td>
<td>Bank-bank dan lain-lain syarikat kewangan</td>
<td>2</td>
</tr>
<tr>
<td>28.</td>
<td>Insuran</td>
<td>3</td>
</tr>
<tr>
<td>29.</td>
<td>Harta tak bergerak</td>
<td>46</td>
</tr>
<tr>
<td>30.</td>
<td>Pengangkutan</td>
<td>9</td>
</tr>
<tr>
<td>31.</td>
<td>Perhubungan</td>
<td>73</td>
</tr>
<tr>
<td>32.</td>
<td>Perkhidmatan kerajaan persekutuan dan negeri</td>
<td>8</td>
</tr>
<tr>
<td>33.</td>
<td>Perkhidmatan majlis perbandaran dan kerajaan tempatan</td>
<td>1</td>
</tr>
<tr>
<td>34.</td>
<td>Perkhidmatan keraja asing</td>
<td>23</td>
</tr>
<tr>
<td>35.</td>
<td>Perkhidmatan pelajaran</td>
<td>4</td>
</tr>
<tr>
<td>36.</td>
<td>Perkhidmatan perubatan dan kesehatan</td>
<td>1</td>
</tr>
<tr>
<td>37.</td>
<td>Yayasan penyelidikan dan sains</td>
<td>11</td>
</tr>
<tr>
<td>38.</td>
<td>Pertubuhan buruh</td>
<td>6</td>
</tr>
<tr>
<td>39.</td>
<td>Perkhidmatan-perkhidmatan perniagaan</td>
<td>15</td>
</tr>
<tr>
<td>40.</td>
<td>Perkhidmatan-perkhidmatan hiburan</td>
<td>-</td>
</tr>
<tr>
<td>41.</td>
<td>Perkhidmatan-perkhidmatan sendirian</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>420</td>
</tr>
</tbody>
</table>

There are some teachers unions which cater for all types of teachers irrespective of race, religion, type of training, for example the National Union of Teacher Profession (NUTP) and Malayan Teachers Union (MTU). Apart from teachers in
the education service, there are other employees, for example, the administrative assistants (clerks), hostel supervisors, laboratory staff etc. These employees also form separate unions catering for their particular interest. Beside those mentioned above, there are in-house unions in the education service, for example each university has its own academic staff association and general staff union.

For the private sector, trade unions are classified according to trade, occupation or industry. For example, banking industry, communication industry, insurance industry, transport industry, construction industry and so on. Manufacturing industry is further divided into metal based industry, metal good industry, machinery manufacturing industry, electrical good manufacturing industry and so on.

The Growth Of Employees' Unions

In 1965, there was 286 employees' union. The number of union decreased to 252 in 1975. Ten years later, the number of unions stood at 369 and in 1990, it increased by 27% to 468. By the end of 1998, total number of unions was 533, in which 420 in Peninsular Malaysia, 67 in Sarawak and 46 in Sabah. A total of 23 new unions were formed in 1998. Table 1 shows the number of unions from 1965 to 1998.

Table 1: Number of Employees' Unions, 1965 - 1998

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Unions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>286</td>
</tr>
<tr>
<td>1970</td>
<td>237</td>
</tr>
<tr>
<td>1975</td>
<td>252</td>
</tr>
<tr>
<td>1980</td>
<td>369</td>
</tr>
<tr>
<td>1985</td>
<td>369</td>
</tr>
<tr>
<td>1990</td>
<td>468</td>
</tr>
<tr>
<td>1992</td>
<td>479</td>
</tr>
<tr>
<td>1994</td>
<td>501</td>
</tr>
<tr>
<td>1996</td>
<td>516</td>
</tr>
<tr>
<td>1998</td>
<td>533</td>
</tr>
</tbody>
</table>

Table 1: Number of Employees' Unions, 1965 - 1998


Trade Union By Sector

The analysis of trade union by sectors shows that 58% of the unions are in private sector while the remaining 42% are in the public sector which are divided into civil service 25% and statutory bodies 17% in 1998. The composition of union by sector is about the same for 1993 and 1998. Table 2 shows trade unions by sector for 1993 and 1998.
### The Density of Trade Union Membership

Table 3 displays the density of union membership by sectors in 1998. The public sector has the highest organized labor. More than a third of the workers in public sector are union members. In private sector, manufacturing sector has the highest density of membership with 6.4% followed by service sector with 6.1%. The least organized sector is the construction sector with only 0.5 percent of the workers are union members. Many big mining companies had closed down due to depletion of tin or gold deposit. Workers in small mining companies are more difficult to organize.

There are several reasons attributing to low density of unionized workers in private sectors:

- A large portion of workers in agriculture and service sectors is self-employed individual. These people are independent workers and they do not form unions.
- In the manufacturing sector, more women workers are employed. These workers are not main breadwinners for the family. Many are satisfied with the wage provided by the employers. Moreover, workers in the manufacturing sector have very high rate of turnovers.
- Service sector has become the largest sector in terms of employment. Employees in this sector especially those in the white-collar jobs are more difficult to unionize because:
  - White-collar employees often identify with the managers;
  - They work in small service establishments, which are difficult to organized.
  - The management may offer some white-collar employees good wages and benefit to lower their desire to unionize.
### Table 3: The Density of Union Membership by Sectors, 1998

<table>
<thead>
<tr>
<th>Sector</th>
<th>No. of Workers</th>
<th>No. of Union Members</th>
<th>% of Union Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>1,401,000</td>
<td>55,000</td>
<td>3.9</td>
</tr>
<tr>
<td>Mining</td>
<td>45,000</td>
<td>1,000</td>
<td>6.4</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>2,279,000</td>
<td>145,000</td>
<td>5.9</td>
</tr>
<tr>
<td>Construction</td>
<td>808,000</td>
<td>4,000</td>
<td>0.5</td>
</tr>
<tr>
<td>Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Sector</td>
<td>3,190,000</td>
<td>195,000</td>
<td>6.1</td>
</tr>
<tr>
<td>Public Sector</td>
<td>877,000</td>
<td>320,000</td>
<td>35.5</td>
</tr>
<tr>
<td>All Sectors</td>
<td>8,597,000</td>
<td>720,000</td>
<td>8.2</td>
</tr>
</tbody>
</table>

Source: Malaysian Economy in Figures, 2000 and Department of Trade Unions

### The Largest Unions by Membership

The strength and power of a union depend on its size of membership and its financial status. In 1985, the largest trade union in term of membership is National Union of Plantation Workers (NUPW) with 100,052 members. In the 1960s, NUPW membership stood at 250,000, but it started to drop in the 1970s due to the fragmentation of rubber plantations by foreign investors and many of the plantations were subdivided and sold to small holders. In the late 1980s to the present moment, the traditional estate workers, some of them seek better employment outside plantation sector and due to shortage of labor, the plantation management employed foreign workers to do the job. This is the reason for drastic drop in membership in NUPW. In 1998, National Union of the Teaching Profession (NUTP) is the largest union with 76,311 members.

Since then the membership has further increased to 97,505 in April 2000. In 1985, NUTP’s total membership was 28,546. The increase of membership for NUTP is due to its campaign for membership and the recruitment courses for potential members in teacher training colleges. Another factor that led to the increase in membership is due to the fear of teachers after the government implementing the New Remuneration System (NRS) in 1991. Under this system, the annual increment of public servants is no more automatic. It has to depend on the Annual Appraisal Report by the Head of Department. Teachers feared that if their appraisal reports were not good, they might not get the annual increment because 5% of the staff would get static, i.e. no annual increment under the NRS. These teachers hope to get help from the union if they face any problems arising from the NRS.

The third largest union is National Union of Bank Employees with 27,622 members while in the fourth place is the Electrical Industry Workers Union with 27,015 members. The Amalgamated National Union of Local Authority Employees (ANULAE) is in fifth place with 19,332 members in 1998. It was third place in 1985 with 18,025 members. Table 4 shows the largest unions in 1985 and 1998.
<table>
<thead>
<tr>
<th>Name of Union</th>
<th>1985</th>
<th>1998</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. National Union of the Teaching Profession</td>
<td>28,545 (2)**</td>
<td>76,311</td>
</tr>
<tr>
<td>2. National Union of Plantation Workers</td>
<td>100,052 (1)</td>
<td>39,400</td>
</tr>
<tr>
<td>3. National Union of Bank Employees</td>
<td>12,922 (7)</td>
<td>27,622</td>
</tr>
<tr>
<td>4. Electrical Industry Workers Union</td>
<td>-</td>
<td>27,015</td>
</tr>
<tr>
<td>5. Amalgamated National Union of Local Authority Employees (ANULAE)</td>
<td>18,025 (3)</td>
<td>19,322</td>
</tr>
<tr>
<td>6. Malay Teachers Unions, Peninsular Malaysia</td>
<td>14,217 (6)</td>
<td>16,935</td>
</tr>
<tr>
<td>7. Telekom Bhd Employees Union*</td>
<td>15,533 (4)</td>
<td>15,847</td>
</tr>
<tr>
<td>8. National Union of College Trained Teachers</td>
<td>8,537 (10)</td>
<td>12,307</td>
</tr>
<tr>
<td>9. Metal Industry Employees Union</td>
<td>-</td>
<td>11,474</td>
</tr>
<tr>
<td>10. Non-metallic Mineral Product Manufacturing</td>
<td>-</td>
<td>10,976</td>
</tr>
<tr>
<td>Employees Union</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Transport Workers Union</td>
<td>10,447 (8)</td>
<td>10,469</td>
</tr>
<tr>
<td>12. National Union of Commercial Workers</td>
<td>14,571 (5)</td>
<td>10,074</td>
</tr>
<tr>
<td>13. National Union of Petroleum and Chemical</td>
<td>-</td>
<td>9,887</td>
</tr>
<tr>
<td>Industry Workers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Tenaga Nasional Bhd Employees Union*</td>
<td>9,884 (9)</td>
<td>9,790</td>
</tr>
</tbody>
</table>

Table 4: The Largest Unions by Membership, 1985 and 1998


* In 1985, they were public sector unions.
** Figures in brackets are the position of the 10 largest unions in 1985.

In 1998, out of top 10 unions, four unions are from the public sector and the remainder from the private sector. All the top 12 unions’ membership is over 10,000. One of the unions with over 10,000 member is an in-house union, i.e. Telekom Bhd Employees Union.

The Smallest Employees Unions By Membership

Out of 533 unions in 1998, 123 unions with membership less than 100 and out of these unions, 16 of them, 8 from Peninsular Malaysia, 6 from Sarawak and 2 from Sabah, with membership less than 20. The smallest union is Normah Medical Specialist Center Employees Union Sarawak formed in 1993 with only four members. Trade Union Act, 1959 Section 10 (1) states that:

"Every application for registration of any association, combination or society as a trade union shall be made to DGTU in the prescribed form, and shall be signed by at least seven members of the union, any of whom, may be officers thereof."

For this particular case, when this union was first formed, the membership must be at least 7, however its membership has dropped to 4 in 1998. The DGTU has powers to de-register such union because it has contravened the rules and
regulation of the Trade Union Act (TUA). Table 5 shows the 10 smallest union in 1998. Seven of these small unions are in-house unions. Their memberships are confined to employees in one establishment, for example Balingan Wharf Laborers' Union. This union is small because its potential membership pool is small. However, there is one national union with only 12 members. There are many independent schools in the country, but the union is small.

<table>
<thead>
<tr>
<th>Name of Union</th>
<th>Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Normah Medical Specialist Center Employees Union Sarawak</td>
<td>4</td>
</tr>
<tr>
<td>2 Kesatuan Pembantu Kesihatan Awam Sabah</td>
<td>8</td>
</tr>
<tr>
<td>3 Kesatuan Sekerja Anggota KWSP Sabah</td>
<td>9</td>
</tr>
<tr>
<td>4 Baram Wharf Laborers' Union</td>
<td>12</td>
</tr>
<tr>
<td>5 National Union of Teachers in Independent School S/M</td>
<td>12</td>
</tr>
<tr>
<td>6 Persatuan Eksekutif Kelang Container Terminal Bhd</td>
<td>12</td>
</tr>
<tr>
<td>7 Kesatuan Pekerja Alam Flora Sdn Bhd</td>
<td>12</td>
</tr>
<tr>
<td>8 Kesatuan Penolong Pegawai Veterinar S/M</td>
<td>12</td>
</tr>
<tr>
<td>9 Kesatuan Pekerja HWC Industries Sdn Bhd</td>
<td>15</td>
</tr>
<tr>
<td>10 Balingan Wharf Laborers' Union</td>
<td>15</td>
</tr>
</tbody>
</table>

Table 5: The Smallest Unions by Membership, 1998

Source: Department of Trade Unions

The Strength of Employees Union in Term Of Assets Owned

According to Maimunah (1999) the strength and power of the trade union movement can not be judged by the number of unions registered. The size and density of membership and the financial status of the unions are significant factors.

Basically, the union's financial strength depends on the members' subscription. Monthly union subscriptions range from RM3.00 to RM8.00. The higher the monthly subscription and the larger the membership, the fund collected would be more and the union's financial position would be strong. The unions' leaders should be wise in utilizing the union fund for the purpose of administration of the unions and the welfare and union education of their members. The TUA allows union fund to be invested with the permission of DG TU. Some union leaders through their prudent effort in managing the union funds have successfully accumulated assets for their unions. Table 6 shows the 10 richest unions in term of assets in 1998. The richest union is National Union of Bank Employees with RM30.5 million worth of asset. Asset per member is RM1106. The second richest union is Transport Workers Union with 10.5 million worth of asset. Asset per member is RM2239. Though rank second in term of total asset, Transport Workers Union has the highest asset per member. All the top 10 richest unions have accumulated assets more than RM1.5 million.
<table>
<thead>
<tr>
<th>Name of Union</th>
<th>Asset (RM)</th>
<th>Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 National Union of Bank Employees</td>
<td>30,535,000 (1105)*</td>
<td>27,622</td>
</tr>
<tr>
<td>2 Transport Workers Union S/M</td>
<td>10,463,000 (2239)</td>
<td>4,673</td>
</tr>
<tr>
<td>3 National Union of Teaching Profession S/M</td>
<td>4,984,000 (66)</td>
<td>76,311</td>
</tr>
<tr>
<td>4 Electrical Industries Workers S/M</td>
<td>4,392,000 (162)</td>
<td>27,015</td>
</tr>
<tr>
<td>5 All Malayan Estate Staff</td>
<td>3,888,000 (1717)</td>
<td>2,265</td>
</tr>
<tr>
<td>6 National Union of Commercial Workers S/M</td>
<td>3,209,000 (318)</td>
<td>10,074</td>
</tr>
<tr>
<td>7 National Union of Plantation Workers</td>
<td>3,127,000 (79)</td>
<td>39,402</td>
</tr>
<tr>
<td>8 Malaysian Airline System Employees Union</td>
<td>1,867,000 (2239)</td>
<td>7,780</td>
</tr>
<tr>
<td>9 Metal Industry Employees Union</td>
<td>1,807,000 (57)</td>
<td>11,474</td>
</tr>
<tr>
<td>10 Amalgamated National Union of Local Authority Employees (ANULAE)</td>
<td>1,768,000 (91)</td>
<td>19,332</td>
</tr>
</tbody>
</table>

**Table 6: Unions' Financial Strength, 1998**

Source: Department of Trade Unions

* Figure in bracket shows asset per member.

**SIZE OF UNION**

In 1998, only 12 unions or 2 percent of the unions have membership more than 10,000. Union with more than 2000 members accounted for only 11 percent or 60 out of 529 unions. 60 percent or 314 unions have fewer than 500 members. 123 unions or nearly a quarter of total unions in Malaysia have membership fewer than 100. It is expected that the ability of these small unions to serve their members would be strictly limited. Many of the small unions have leadership problems (Maimunah, 1999).

**Table 7: Size of Employees' Unions, 1998**

<table>
<thead>
<tr>
<th>Membership</th>
<th>No. of Unions</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 or fewer</td>
<td>126</td>
<td>24</td>
</tr>
<tr>
<td>101 - 200</td>
<td>82</td>
<td>15</td>
</tr>
<tr>
<td>201 - 500</td>
<td>110</td>
<td>21</td>
</tr>
<tr>
<td>501 - 1,000</td>
<td>91</td>
<td>17</td>
</tr>
<tr>
<td>1,001 - 2,000</td>
<td>64</td>
<td>12</td>
</tr>
<tr>
<td>2,001 - 5,000</td>
<td>33</td>
<td>6</td>
</tr>
<tr>
<td>5,001 - 10,000</td>
<td>15</td>
<td>3</td>
</tr>
<tr>
<td>10,001 and above</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>533</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Department of Trade Unions
The union officials are not able to submit annual report to DGtu. Out of 50 unions that did not submit the annual report to DGtu on or before due date of 31 March, 1998, 37 (74%) of them have members fewer than 100. It is quite alarming to note that nearly 10 percent of the unions do not follow the provision of the TUA and these unions may be de-registered by DGtu if he exercises his discretionary powers given to him. DGtu is sympathetic to these small unions and many of them are in-house unions that are formed with the encouragement of the government. Table 7 shows the size of employees’ unions in 1998.

**Types of Unions**

There are basically three types of unions in Malaysia, namely:

1. Employees unions which is divided into:
   - public sector unions and
   - private sector unions
2. Employers unions and
3. Federation of employees unions

**Employees Union in Public Sector**

The public sector unions consist of the civil service, the statutory bodies and the local authorities. In 1998, there were 219 unions in public sector. These include some of the largest unions in the country, such as NUTP, Malay Teacher Union, ANULAB and National Union of College Trained Teachers with membership more than 10,000 each. There are also a few very small public sector unions, for example, Kesatuan Pegawai-pegawai Semenanjung Perkhematan Pendidikan Sarawak (Peninsular Education Service Officers Union Sarawak) with 54 members, Kesatuan Sekerja Anggota Kumpulan Simpanan Pekerja Sabah with 9 members, and Kesatuan Pegawai-pegawai Rancangan Tanah Negeri Sembilan with 26 members. Most of the small unions confine their membership to similar occupation in government departments, some even at state level.

The TUA provides that workers in the public sector can only form and join union whose members are in the same ministry, department or occupation. There is no collective bargaining machinery for the public sector employees. The government sets up three National Joint Councils to hear the views and to discuss service problems faced by public sector employees. There is an umbrella body for public sector unions - the Congress of Unions of Employees in the Public Sector and Civil Service (CUEPACS). CUEPACS has 103 affiliates. About 46 percent of the unions in public sector are affiliated to CUEPACS. The number of union members in the public sector is decreasing as a percentage of the total number of employees who are union members. This is not because of a loss of interest by public sector employees in unionism but because of the government policy of privatization whereby many of the largest bodies which are heavily unionized have become private sector unions, for example, Telecommunication Department became Telekom Bhd and its union with 15,847 members is the largest in-house union. National Electricity Board had been privatized and became Tenaga Nasional Bhd and its employees union has a membership of 9790. The process is on-going and therefore, the number of organizations being converted from public to private is likely to increase further.
Employees' Union in Private Sector

Employees' unions in private sector are either national or in-house. There are 314 private sector unions in 1998. National unions attempt to cover all workers in the same industry, trade or occupation. The larger unions have a sophisticated structure with regional branches and local/plant level committees. A union purporting to be national in coverage is not necessarily a large union in term of membership. The size of the membership depends on the number of potential members and the degree of success of the union leaders in persuading these potential members to join the trade union. It has to make clear that the national unions do not cover workers through out Malaysia, but only Peninsular Malaysia or Sabah or Sarawak as the case may be, as required by the law.

The concepts of in-house union were opposed by MTUC, but the government went ahead with the amendment of the TUA to enable the formation of in-house union. The amendment was passed in 1989. Among the provisions, the amendments would allow the DGTU to register in-house unions in an industry where there was already a national union.

Table 8: The Largest In-house Union by Membership, 1998

<table>
<thead>
<tr>
<th>Name of Union</th>
<th>Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Telekom Bhd Employees Union</td>
<td>15,847</td>
</tr>
<tr>
<td>2. Tenaga Nasional Bhd Employees Union</td>
<td>9,790</td>
</tr>
<tr>
<td>3. Malaysian Airline System Employees Union</td>
<td>7,780</td>
</tr>
<tr>
<td>4. Kesatuan Pekerja-Pekerja Pos Pakalan Seragam Malaysia Bhd</td>
<td>5,173</td>
</tr>
<tr>
<td>5. Kesatuan Pekerja-pekerja Perusahaan Otomobil Nasional Bhd</td>
<td>4,561</td>
</tr>
<tr>
<td>6. Kesatuan Pegawai-pegawai Rendah Tenaga Nasional Bhd</td>
<td>4,614</td>
</tr>
<tr>
<td>7. Kesatuan Pekerja-pekerja Nippon Elektrik Glass (M) Sdn Bhd</td>
<td>4,444</td>
</tr>
<tr>
<td>8. Kesatuan Pekerja Felda Farm Industries Sdn Bhd.</td>
<td>3,708</td>
</tr>
<tr>
<td>10. Kesatuan Pekerja-pekerja Perkaranan Pos Malaysia Bhd.</td>
<td>3,237</td>
</tr>
</tbody>
</table>

Source: Department of Trade Unions

An in-house union is one where members are all employed by the same employers. This immediately suggests that members of such unions can and will be involved in different occupation. The government's policy is to encourage the formation and growth of such unions.

There were 233 in-house unions in the private sectors in 1998. The growth of in-house union is rapid. In 1985, there were only 52 in-house unions (Maimunah, 1999) with a combined membership of 25,000. In 1997, there were 218 in-house unions with 144,875 members and in 1998 there were 233, an increase of 15 unions or 7 percent over a year period. Table 8 shows the 10 largest in-house union in 1998. Out of the 10 largest in-house unions, 8 are the public sector before they were privatized.

The development of in-house unions has been affected by the attitudes of employers and the government, both of which are more amenable to and more co-operative with such unions. The government believes that in-house unions are more likely to
be appreciative of the situation in their place of employment and problems of their employer and less influenced by outsiders such as politicians. Thus, there will be a closer relationship between employer and union, which will lead to more peaceful industrial relations.

Employers also prefer their employees to be represented by in-house unions. It is quite common that when workers in a particular company start to take an interest in becoming members of a national union, the company will take steps to encourage the establishment of an in-house union.

The effectiveness of in-house unions is a very controversial issue. In the USA, such unions are called “yellow unions” and are considered to be dependent on the employer. The employer, who provides them with financial help, physical facilities may indirectly control the in-house unions, and representatives of management will be involved in running the union. Latiff Sher Mohamad, in his book on in-house unions, lists out the disadvantages of in-house unions as follows:

- In-house unions are generally weak because membership is limited and confined to workers in on particular company.
- The leadership of such unions must be chosen from the small number of members, which may give rise to the possibility of the employer trying to exploit such leaders.
- The union’s financial strength will not enable it to carry its normal trade union activities.
- Fear of victimization among union leaders particularly in relation to promotion, termination of employment, transfers and assignment of duties which are management prerogatives and
- In-house unions with small memberships will be unable to provide scholarships and other social benefits for their members.

The national trade union movement has strongly opposed the establishment of in-house unions where a national union already exists.

**Employers Associations**

Employers like workers have equal rights to form unions, which are mostly known as associations. Employers’ associations are a response to the large and powerful national trade unions. Their main objectives are to promote and protect the interests of their members, to negotiate and deal with trade unions of employees, and to represent their members in any trade dispute between an individual member and the employees’ union.

The rules for forming and joining a trade union are the same for both unions of employees and of employers. Thus, any group of employers wishing to form a union must apply to the DGTU, and the members must be from the same trade, industry or occupation (Maimunah, 1999).

There were nine employers associations, of which seven are in Peninsular Malaysia. The active employers’ association is Malayan Agricultural Producers’ Association (MAPA) in plantation industry with 180 members; Commercial Employers’
Association of Peninsular Malaysia (CEA) in commercial industry with 9 members and Malayan Commercial Banks' Association in banking industry with 39 members.

Federation of Employees' Unions

The federation of trade unions is the umbrella bodies for trade unions in similar trade, occupation or industries. There are five such federations, in which four are in Peninsular Malaysia and one in Sarawak. The federation with most members is the Congress of Unions of Employees in Public and Civil Service (CUEPACS). It has 103 affiliates in 1998. Another public sector federation is the Congress of Teachers Unions in Education Service. It has only 7 affiliates. The remaining three federations are in private sector. They are Federation of Unions of Bank and Financial Institution Employees Malaysia with 9 member unions; Federation of Unions of Employees in Textiles and Garments Industry with 5 unions as its affiliates and the remaining one is Sarawak Wharf Laborers' Federation with 11 unions as its affiliates.

The trade unions join the federation to get support and advice. The function of the federation is to promote mutual interest and to enhance the strength and power of individual union.

STRUCTURE OF UNIONS

Most of the national trade unions have a similar structure in that a works committee is set up in each company where they have members. This committee, elected by members, is responsible for liaising with the management on behalf of the members and gathering information on members' problems and grievances to be passed up the union hierarchy. If the union is large enough, groups of members in a particular geographical region will form a branch and will elect a branch committee to run the branch. At the national level, the officials of the union, known as the executive council, elected by the members at a national delegates conference, will decide on policy matters and ensure the efficient running of the union's business. The size of the executive council will depend on the structure and the constitution of the union. If it has branches then representative of these branches will sit on the executive council. For example, the National Union of Bank Employees executive council is made up of 8 principal officers and representatives from each of the union's 11 branches. The chairman and secretary of each branch are automatically chosen to sit on the executive council.

TRADE UNION AFFILIATION

Trade union in Malaysia is permitted to affiliate to other bodies, both within and outside the country. However, the trade union has to get DGTU's permission to affiliate to foreign bodies. Malaysian Trade Union Congress (MTUC) is an umbrella body for trade unions. It was formed in 1949 under the Society Act. Trade unions join MTUC to get advice and assistance and also for workers solidarity. The unions affiliated to MTUC come from both the private and public sectors. It is a labor center for Malaysia. Many public sector unions are affiliated to CUEPACS. Some public sector unions are affiliated to both MTUC and CUEPACS, for example, the NUTP.
Individual trade unions may apply permission from DGTU to be affiliated to foreign bodies. For example, CUEPACS is affiliated to Public Service International (PSI) and International Federation Building and Woodworkers (IFBWW) and also to International Trade Secretariat. Other unions, which are affiliated to IFBWW, are NUPWDE, MTSU and KPMSM; NUTF is affiliated to Education International while Transport Workers Union is affiliated to International Transport Workers Federation.

These international organizations provide assistance, training and funding for certain projects. Certain parties are very suspicious of the friendship and help extended by foreign unions towards local counterparts. There are those who question the motives of the foreigners especially those in the developed countries. Arockia Dass (1991) stated that many of the so-called international trade unions centers in effect service the interest of transnational corporations (TNCs). Agents of these international trade union centers approach trade union centers in developing countries with offer of help in trade union awareness courses and skills training for local leaders and members. They come in the guise of allies of the workers and then systematically destroy the effectiveness of the national union centers by luring away good leaders with job opportunities elsewhere, and bribing other leaders with foreign training programs and study tours.

Ayubur Rahaman, secretary of the Bangladesh National Workers' Federation drew attention of the American Asian Free Labor Institute (AAFLI) in the tea plantation of his country. He accused AAFLI of 'planting' its stooges in the Bangladesh Tea Workers Union and manipulated the workers against the incumbent militant leaders. This enabled AAFLI to run the union for the benefit of the tea plantation owners, who were mostly British transnational corporations (Arockia Dass, 1991). Rahaman's observations were an echo of the experience of our plantation workers in Malaysia, where the demise of militant unionism was engineered for purposes of international cold war politics by the International Confederation of Free Trade Union (ICFTU). Arockia Dass (1991) who was a leader of Transport Equipment and Allied Industries Employees' Union (TEAIEU) has had considerable experience of the subtle seduction tactics used by the international trade union federations to wean the militant union leaders away for the benefits of foreign transnational corporations (TNCs). He said that trade unions not only have to pay affiliation fees but also to adhere to the guideline of the international affiliates as the condition to get support from them. There is a string attached for assistance rendered by international trade organizations.
CONGRESS OF UNIONS OF EMPLOYEES IN THE PUBLIC AND CIVIL SERVICE (CUEPACS)

The Trade Unions Act, Section 72 permits unions in a similar trade, occupation or industry to form a federation. Such federation must register with the Department of Trade Unions.

Congress of Unions of Employees in Public and Civil Service (CUEPACS) is one of the federations of trade unions that were registered under the Trade Unions Act. The federation serves as the spokesman for the public service workers, and was first registered in 1959.

The Objectives of CUEPACS

The objectives of CUEPACS include:

- to promote the interests and improve the working of its affiliate trade unions;
- to protect the interests of the affiliate trade unions and their members;
- to endeavour to improve the conditions of employment of the members of the affiliate trade unions; and
- to promote legislation affecting the interest of member unions in particular or trade unionists in general.

Membership

The membership of CUEPACS is open to all registered trade unions in the public and civil service in West Malaysia. Out of 219 trade unions in public and civil service, 103 are affiliated to CUEPACS.

Conference

The Congress conference is held once in three years time. The Congress Council will determine the time, date and place for the meeting.

Structure

Working Committee in CUEPACS contains:

- President
- 2 Deputy President
- 14 Vice President
- 1 Secretary General
- 3 Deputy Secretary General
- 14 Assistant Secretary
- 1 Financial Secretary
- 1 Deputy Financial Secretary

Beside these 37 members of working committee, there are 22 other committees, which is called Grade Committee. The CUEPACS structure, organisation and function chart is in the Appendix 4.
Activities

Activities and programs in CUEPACS organised by the grade committees and bureau like Education Committee, Organisation & Consolidation Committee, economic Bureau. Several examples of the activities held by these committees are:

- Seminar Kepimpinan Kesatuan Sekerja;
- Kursus Pendidikan CUEPACS;
- Majlis Penerangan Pelarasan Gaji;
- Labour Day Celebration and etc.

MALAYSIA TRADE UNION CONGRESS (MTUC)

Malaysian Trade Union Congress or MTUC is a society that is registered with the Registrar of Societies under Association Act 1955. MTUC is the oldest labour centre representing the workers throughout Malaysia.

MTUC is playing a role as the spokesman for trade unions at both national and international levels. It represented the workers’ viewpoint on tripartite bodies such National Labour Advisory Council (NLAC) and the employees Provident Fund Board. On behalf of workers, the MTUC also advises unions on any matters on which they seek assistance. It runs training to help union leaders understand their roles and responsibility.

The Objectives of MTUC

The objectives of MTUC include:

- providing an advisory service to its members;
- presenting the labour viewpoint to government;
- presenting workers’ views on national issues, e.g., development plans and education;
- helping to organise workers who do not belong to the union;
- representing the Malaysian labour movement at forums abroad;
- providing trade union education; and
- carrying out research on matters of trade union interest.

Membership

Members of MTUC are individual trade unions, which choose to affiliate to it. Based on the report of unions statistics for membership as of March 1998, MTUC had 176 members, most of which were unions in the private sector. The number of members in affiliated unions is 455,841. 41 unions with 144,630 members are the affiliates of the public sector and 135 unions with 311,211 member are from the private sector unions. 59% of the composition are male and 41% are female with 64% Malay, 16% Chinese, 17% Indian and 3% others. The largest affiliated union is the National Union of Teaching Profession with 76,311 members.
Other affiliates by sector are:

- Agriculture - 8 unions with 50,914 members
- Mining - 10 unions with 16,470 members
- Manufacturing - 52 unions with 104,718 members
- Construction - 1 unions with 1,367 members
- Electricity, Gas, Water - 10 unions with 21,169 members
- Commerce, Banking & Finance - 13 unions with 53,610 members
- Transport & Communication - 32 unions with 60,039 members
- Government Services - 28 unions with 119,841 members
- Services - 50 unions with 147,554 members

Committee

MTUC has a number of committees responsible for different areas as follows:

- Economic and Development
- Safety and Health
- Consumer matters
- Education
- Research
- Welfare and sports
- International Affairs
- Industrial Relation
- Women’s Affairs
- Labour Law
- Youth Affairs

Issues and Claims

There are many issues that concern the welfare and interest of workers were brought up from time to time. Some of these issues have been resolved, but many are still waiting to be approved or agreed by the government and implemented for the benefit of workers in general. Among some of the most important issues are:

The minimum salary for workers in Malaysia

The government is still reluctant to implement it for fear of reducing Malaysia competitiveness in attracting investors (The Star, 31st July 2000 pg. 1). The employers associations also were not in favor of this scheme. They argue that the workers salary should be limited to productivity. MTUC will have to struggle hard to demand for its implementation which will bring definite benefits to workers. The MTUC was asking for a minimum wage of RM600.00 (Premesh Chandran, Labour News MTUC, June 1999, pg.4) Recently it has been revised to RM900.00.
The Retrenchment Fund for Workers

MTUC was asking for the implementation of Retrenchment Fund since 1998 after the economic slowdown. The Government has agreed in principle to the setting up the fund, which will be managed by SOCSO (The Star, 31st July 2000, pg. 1). The fund would only made payment to those workers who have not received the compensation from the employers. About 10% of the workers retrenched did not get the retrenchment benefits from employers (The Star, 31st July 2000, pg. 1).

However Malaysian Employer Federation (MEF) disagreed with the setting up of the fund. They argued that the employers have so far made contribution to EPF, SOCSO and Human Resource Development Fund. The implementation of the Retrenchment Fund will definitely increase operational cost, which they were reluctant to bear. The Prime Minister of Malaysia urged the employers not to object outright. “If the cannot contribute a ringgit (per worker) 50 sen will do” (The Star, 31st July 2000, pg. 1). The MTUC proposed that each worker pays RM 1.00 toward the fund and the employer will make the same amount of contribution. The issue is not resolved.

14 weeks maternity leaves for women workers

Under the Employment Act, married women are entitled 60 days of maternity leaves. MTUC proposed that the entitlement to be increased to 14 weeks (84 days).

Monthly Salary for Plantation Workers

This issue was brought out in 1999 by NUPW. So far, Malaysian Agricultural Producers’ Association (MAPA) has agreed in principle to the implementation of the scheme.

CONCLUSION

The reasons for workers to join TU are varied and valid. First and foremost TU main objectives is to maintain and improve wages, hours and conditions of labour. With so much exploitation and greed on the part of the employers, the workers position is vulnerable. The workers need the protection of union to ensure that they are not being taken advantage by unscrupulous employers. Second TU is concerned with the opportunities which exist for workers to obtain work i.e. the pursuing of full employment. Thirdly, TU movement exists to extend the influence of work people over the policies of industry and to arrange for their participation in its management.

Essentially the underlying reasons for the formation of TU is to regulate the relationship between both parties and to create a harmonious working environment. This is necessary to ensure that the organization benefits most in terms of high productivity and to develop high quality workers who enjoy making contribution to the organization.

TU in Malaysia in general is weak with three-quarters of the Unions’ membership, which is less than 500. These Unions financial strength is weak and they are not able to provide welfare, social and educational training for their members. Recently
the government encourages the formation of in-house Unions, which further weaken the size, and financial strength of the Unions. It is the government's policy to have small Unions so that it is easier to control.
Reading 6

Employers' Association (MEF)

Introduction

Employers' Associations (EAs) are also commonly referred to as EAs or Employers' Federations. As employees in many organization join together to form trade unions, employers in many cases join together to form Employers' Associations. Hence, Dunlop (1958) referred to the Employers' Associations as the "bosses' unions".

EAs can be defined as formal groups of employers set up to defend, represent or advise affiliated employers and to strengthen their position in society at large with respect to labour matters. Unlike trade unions, which are composed of individual persons, EAs are composed of enterprises or individual organizations.

EAs, if given a wide meaning, it covers any association or organization of employers which deals with social, labour or industrial relations matters, in whatever form, including advisory, consultative, representative, educational and other activities. The term therefore refers to both those organizations which deal exclusively or primarily with social and labour matters as well as those which have, in addition to their social and industrial relations role, functions relating to the commercial, trade, technical, financial and other business interests of their members.

From the industrial relations perspective, EAs refers not to Chambers of Commerce or Trade Chambers or whatsoever name called, but to organizations of employers established to resolve labour relations and other social policy issues relevant to the conduct of business. Basically, these employers associations represent the interests of business to government and engage in collective bargaining with trade unions.

In simple terms, Solomon (1992) defines EAs as any organization whose membership is composed of employers and whose purposes include the regulation of relations between employers and their employees or trade unions.

Why Are EAs Important?

EAs was seen as important originally as to reacting to government or union action. Organizations which have developed a more sophisticated approach, have transformed into a preventive one, such as creating a climate and structure to promote better relations through settlement, negotiations and less disputes.
Below are a few aspects as to why an EAs is important:

- Policy formulation and lobbying role - involves influencing the government on labour legislation and policy, participating in tripartite wage fixing bodies and formulating codes and charters prescribing basic principles and procedures of labour relations.

- Labour advisory services - services covering the whole field of labour relations, from collective bargaining subjects to interpretation of laws and disciplinary matters.

- Representation of members before labour courts

- Assisting in and participating in dispute settlement including strikes

- Collective bargaining and negotiation constitute as promoting a climate of harmonious labour relations - the collective bargaining role of EAs differ from one country to another. In some cases the organization may act in an advisory capacity, whereas in other cases the organization conducts the negotiations on behalf of the members and exceptionally, becomes a party to collective agreements on behalf of their members.

- Training enterprise personnel especially personnel managers in labour relations skills

- Promoting and developing good labour relations - this may be achieved in a variety of ways. For example, an EAs could promote settlement of differences through negotiation and in fact promote the idea of dispute prevention rather than dispute settlement. Training in human resource management and labour relations skills is another way of promoting harmonious relations.

Origins Of EAs

The development of employers’ associations is closely associated with the emergence of a modern industrial economy. The specific stimulus for association formation varies from case to case. The need to establish a countervailing force to newly formed trade unions was an important motive in many countries in the latter part of the nineteenth century and the early years of the twentieth century.

The growth of such organizations has been closely linked to the extension of unionism to unskilled workers. For example, it has been claimed that in Britain, the modern employers’ federations were inspired by growth of “new unionism”.

Clegg (1970) argues that the Shipping Federation was established in 1890 with the purpose of defeating the closed-shop policy of the Sailors’ and Firemen’s Union, formed in response to the growth of the National Union of Boot and Shoe Operatives. In France, the real development of employers’ associations occurred at the beginning
of the twentieth century a direct response to the growth of trade unionism. The mushrooming of trade unions resulted in a need for mutual protection against the changing nature of strikes, which were becoming organized and coordinated rather than being spontaneous reactions. In Sweden for example, employers' associations were set up as a counter-mobilization to the growing organizational strength of the trade union movement. Hence, it is often said that EAs have usually been established in reaction to union power and are therefore a more recent phenomenon than workers' organizations.

The most widespread pattern of the origin of EAs has been the grouping together of enterprises for the defense of their economic interests. In a large number of countries, such groupings started as trade organizations, often in the form of associations of businessmen who decided to join forces in order to advance and protect their business interests. The impetus for employers to associate was particularly marked for those undertakings, which operated in highly competitive product and factor markets. Association bargaining could prove a means of enhancing market control in labour-intensive industries since wages would be "taken out of competition" as between employers themselves.

In the Japanese textile industry, long-standing EAs were equally active in regulating employer competition for labour and in fixing labour standards—once again at a time when the supply side of the market was little affected by trade unions. More generally under association bargaining, it has been shown that:

"...the employer is not only provided with maximum assurance that competitors will make the same settlement that he does; he is also assured that his competitors will be shut down...when he is shut down, so that he need nor reckon on a permanent reduction in market share when calculating the costs of a strike."

After the Meiji Restoration in 1868, the modernization of the Japanese economy, led to the formation of business associations. Japan Paper Manufacturing Federation established in 1880 being one of the first ones, primarily as trade associations, concerning themselves with functions such sharing of technical information to enable their members to compete with western imports. In later years, as labour costs began to rise, they became increasingly concerned with industrial relations issues.

In addition to these factors, the main stimulus to employer organization in a number of countries appears to have been less that of a counter to growing union power, or an attempt to achieve market (or labour force) regulation, and more of a response to what was perceived as a threat to common employer interests arising from increasing state intervention. The creation of a central employers' association fulfilled the need for an authoritative spokesman to represent employer interests before the legislature.

At industry level, there was also a demand by individual firms for association services and technical assistance in applying and interpreting the legislation, since most employers had neither the economic strength nor the managerial skills to cope themselves and simultaneously with the unions and government apparatus.
In Australia for example, the original intention was to oppose the compulsory arbitration system which employers had regarded as a fundamental challenge to management rights, and subsequently to disseminate information and advice to association members in interpreting the "maze of words, classifications and legislation that the system was producing."

It cannot be denied that in many countries where the EAs originated, often in periods of cyclical upswing in economic activity, with the intention of providing protection against onslaughts upon the position of employers and the undermining of the prerogatives, especially from trade unions. Although mainly reactive bodies at the outset, they were no slow to initiate new patterns of industrial relations in countries like Britain and Sweden. As Crouch (1993) observed that although historically employer organization has often followed that of labour, nevertheless "once goaded into action by labour, employers often set the pace for subsequent organizational development."

However, although it is possible to identify a number of common facilitating factors in the development of employers' associations in various countries, there are also some important differences both between and within the countries, particularly in the extent to which these bodies engage indirect negotiating activities on behalf of their members. To some extent, this has been influenced by the economic structure and market factors in the particular country or industry concerned. But it also appears to depend upon the extent employer control over the workplace is enhanced by multi-employer bargaining rather than by independent, single-firm action.

EAs have evolved into highly significant actors in their own right—they have initiatory power and their activities are a critically important variable affecting the direction and development of industrial relations.

**International EAs: Historical Development**

The first international meeting of representatives of central employers' federations was held in 1912 in Turin on the occasion of a World Labour Exhibition. It recommended the creation and promotion of employers' associations in their own countries and the study of the possibility of establishing an international group. However, it was the first ILO Conference in 1919, which provided a new opportunity for a gathering of employers' representatives at international level. In 1920, the International Organization of Industrial Employers' (IOE) was created with its headquarters in Brussels. After the Second World War, the organization changed its name to International Organization of Employers' (IOE).

Between the two World Wars, the IOE remained active almost solely within the framework of the ILO. The development of international federations of Trade Unions in the twenties had no real counterpart on the employers' side. After 1945, the development of international institutions in the United Nations System led to a reinforcement of the IOE, whose headquarters were moved in 1964 from Brussels to Geneva.
The International Organization of Employers (IOE)

Since its establishment in 1920 the International Organization of Employers’ (IOE) has been recognised as the only organization at the international level that represents the interests of business in the labour and social policy fields. The IOE is a permanent liaison body for the exchange of information, views and experience among employers throughout the world. It acts as the recognised channel for communication and promotion of the employer point of view to all United Nations agencies and other international organizations.

Today, it consists of 135 national employer organizations from 131 countries from all over the world. These organizations are the “central employers’ federations.” This means that undertaking cannot be in direct membership even if they are multinational enterprises. Its members are conditions before they can become members. They have to be composed exclusively of EAs, to stand for and defend the principle of free enterprise and subject to control or interference of any kind from any governmental authority or any outside body. The internal structure of IOE is based on a General Council, where all members are represented, an Executive Committee and a permanent Secretary General.

The IOE works closely with the ILO. In fact, there is a symbiotic relationship between the two organizations. The IOE is one of the organizations enjoying full consultative status with the ILO (as well as with the UN). The ILO also provides assistance to employers in developing countries, for instance by organizing seminars or by sending experts to help them with organizational problems.

Overview Of EAs In Some Selected Countries
(a) Australia

Structure of the organization

The Confederation of Australian Industry (CAI) is the peak council of Australian employer organizations. CAI is the largest single organization representing industry and commerce in Australia. It was established in 1977 following a merger of the Associated Chambers of Manufacturers of Australia and the Australian Council of Employers’ Federation.

CAI consists of two Councils; the National Employers’ Industrial Council, based in Melbourne, which is responsible for industrial relations, labour matters and related social issues and the National Manufacturing and Commerce Council, based in Canberra, which is responsible for developing and implementing policies concerning manufacturing, trade, industry and commerce policy issues.

Looking at the CAI National Employers’ Industrial Council, it represents members to Government, the Arbitration Commission, the trade union movement and the community in respect of industrial relations, labour matters and related social issues.
The Industrial Council:

- Provides a closed forum for employer organizations to discuss matters of mutual concern which enables them to take effective co-ordinate action on behalf of employers
- Reviews proposed amendments to legislation affecting employer-employee relationships so as to ensure that the interests of employers are protected
- Presents submissions on behalf of private employers in National Wage Cases and other cases of general employer concern before the Conciliation and Arbitration Commission
- Presents submissions to government inquiries in respect of issues which involve the relationship between industry and employees
- Maintains an occupational health and safety facility

Basically, CAI represents the interests of employers of all sizes, from small to large, and in all sectors of the economy. Recently, in the year 2001, CAI has changed its name to Australian Chamber of Commerce and Industry (ACCI).

Objectives

The major aims and objectives of ACCI are:

- To promote industry, trade and commerce
- To promote unity of purpose and action by employers in all matters affecting their welfare and interests
- To improve relations between employers and employees
- To present the views of Australian employers to relevant courts, tribunals, commissions or committees
- To represent the interests of employers, industry, trade and commerce to government.

Membership

Membership of ACCI is open to any association or body that is of a national character and has similar aims and objectives to ACCI. Members may elect in which of the three ACCI Councils they wish to participate, the Industrial Council, Manufacturing Council or Commerce and Industry Council, and may decide to participate in all three.

At present, ACCI members' network has over 350,000 businesses represented through Chambers of Commerce in each State and Territory, and a nationwide network of industry associations. This makes ACCI the largest and most representative business association in Australia.
(b) Singapore

Structure of the organization

A trade union of employers known as "The Federation of Industrialists and Traders in Singapore" was formed in Singapore with 23 employers in July 1948. The primary objective was to promote and protect the general interest of employers. The name of the Federation was changed to the "Singapore Employers Federation (SEF)" in August 1953, due to the growth in its membership and the rapid expansion of industries.

The National Employers Council (NEC) was also formed by a group of employers. It was founded in 1965. The objective of the NEC was also to serve employers. The Singapore National Employers Federation (SNEF) was established through the incorporation of the SEF and the NEC on July 1980.

SNEF is registered as a trade union under the Trade Unions Act. SNEF represents the interests of all sectors of the economy and it is the national trade union of employers. SNEF is also a counterpart of the National Trades Union Congress (NTUC), where it is an independent, autonomous non-for-profit organization funded by membership fees and revenue from consultancy, training, research and other activities.

Industrial Relations

SNEF provides services to employers in these key areas:

- Industrial relations consultancy on employer-employee relations, union management negotiations and employment issues such as labour legislation, wage systems, medical and social benefits.
- HRM consultancy on compensation scheme designing, cost-effective benefits programmes development, performance appraisal system and talent management.
- Benchmarking of occupational wages, service increments, bonuses, employee benefits, and other employment terms and conditions.
- Providing executive development programmes, in-center and in-company training programmes on human resource development, industrial relations, safety & health, quality management, and CREST.
- Funding of SMEs for HRM Consultancy under the PSB/SNEF Approved-In-Principal (AIP) Local Enterprise Technical Assistance Scheme (LETAS).

The core services help both unionized and non-unionized companies to enhance harmony in union-management relations, employer-employee relations, productivity and competitiveness at the enterprise level.

Mission

To help employers achieve excellence in employment practices and strengthen the employers' role in the tripartite partnership.
Vision

To be the employers vanguard in preserving industrial harmony in Singapore so as to enable employers to enhance their workforce competitiveness, improve the quality of work life of their employees, and fulfill their obligations to their shareholders, employees, consumers and Singapore.

Membership

Before the incorporation, SEF had 591 members and NEC had 226 members. To this date, membership figure totaled more than one thousand eight hundred in SNEF.

(c) Japan

Structure of the organization

Major EAs are:

- KEIDANREN (Japan Federation of Economic Organization), whose work is to bring together the opinions of business circles on trade and financial policy
- NISSHO (Japanese Chamber of Commerce and Industry), which represents the position of local businesses and small and medium enterprises
- DOYUKAI (Japan Association of Corporate Executives), an employers' research forum which studies economic policy and social problems
- NIKKEIREN (Japan Federation of Employers' Association), a body specializing in labour questions.

The above are the so-called 4 major economic organizations. Of them, NIKKEIREN is the central organization of employers' associations. Nikkeiren is the abbreviation for Nihon Keieiisha Dantai Renmei (Japan Federation of Employers' Associations). An organization of employers which deals with labour and social issues in Japan.

NIKKEIREN was founded on 12 April 1948, under the slogan “Employers, be righteous and strong.” Labor disputes erupted frequently due to the post-war confusion at the time which gave rise to persistent inflation and food shortages. Employers were striving to establish management rights while groping to reconstruct the economy. On the whole, Nikkeiren was launched to promote solidarity among employers and build sound relationships between labor and management.

Objectives

From its inauguration, Nikkeiren has endeavored to fulfill three principal missions, through mutual education efforts of employers:

- To elevate of management ethics based on the solidarity of its membership
- To establish orderly and harmonious human relationships within corporations
• To contribute to social and economic progress through corporate activities.

At the root of these, NIKKEIREN's belief is that, in any age, the most valuable resource for any company is its people. Thus, from the start, Nikkeiren has consistently addressed the human aspects of corporate management.

Membership

Currently, Nikkeiren is comprised of 47 regional (prefectural) employers' associations and 60 industrial organizations.

(d) Indonesia

Structure of the organization

The Employers' Association of Indonesia (APINDO) established on 31 January 1952 under the name of PUSPI. Activities of the EAs were undertaken under the umbrella of a foundation. At a later stage, in 1978, the body was transformed into an association using the same abbreviation PUSPI. At its national convention in 1982 in Yogyakarta, the structure of the organization throughout the country was further stipulated more in detail. Finally, in 1982 at the national convention in Surabaya the organization decided to alter the name into Asosiasi Pengusaha Indonesia, The Employers' Association of Indonesia, abbreviated as APINDO. Presently, APINDO is the unifying organization for employers.

Objectives

The aims and objectives of the association as stipulated in its statutes are:-

• To unite and to give guidance to employers and serving their interest in the field of industrial relations and manpower affairs, and in human resources development in general
• To create and maintain equilibrium, industrial peace and work spirit as within the field of industrial relations and manpower
• To assist for the improvement of productivity as part of active participation in pursuing national development, with a view to attaining social welfare, spiritually as well as materially
• To establish a consensus of opinion in the implementation of manpower policies of employers, conducive with the policy of the government

Membership

Membership to the association is voluntarily, but the government is assisting in the promotion for membership. In the statutes is stipulated that membership comprises: companies/ employers with domicile in Indonesia, business/ industrial sectoral associations.
At the moment about 9100 companies are registered as regular members to organization spread throughout the country; which includes private as well as state-owned enterprises, and further also cooperatives.

Trends Of EAs Throughout The World

The main feature that distinguishes EAs from other associations such as management associations or organizations of personnel managers is that the latter is a professional body, consisting mainly of individual managers and concerned with improving and developing management skills and with the furtherance of management profession, while the former, that is the genuine "EAs" consists of member firms which advise, assist and represent members' interest in labour relation matters. However, in actual practice, it is not always easy to draw a dividing line between the two organizations concerned.

The most widespread pattern of the origin of EAs have been the grouping together of enterprises for the defense of their economic interests. Such groupings started as trade organisations, often in the form of associations of businessmen who decided to join forces in order to advance and protect their business interests. The situation was rather different for Singapore where the initiative to set up EAs was first taken by expatriate employers who created associations with which only foreign employers were entitled to affiliate so that local employers established their own bodies. Eventually, all these bodies merged into one national EAs.

An important area of service provided by EAs which is surely one of the most appreciated activities carried out by the EAs for the benefit of its members, is the information and research which consists of collection and distribution of information, relevant to labour relations and personnel policy issues. Many EAs publish, at more or less regular intervals, bulletins, annual reports, journals or other periodicals. Whereas in the context of research, the extent and scope of research performed by an EA must be determined by the nature of its role, activities and services.

Certain trends of EAs throughout the world could be identified. A brief review of them would be helpful in providing certain perspective and framework in making analyse of the characteristics of EAs in Malaysia and the challenges they are facing which will be elaborated in the subsequent sessions.

A survey undertaken by Wild (1999) under the auspices of the Bureau for Employers' Activities of the ILO attempted to look at the trends of EAs throughout the world. Survey questionnaires were sent to 195 EAs and 71 EAs responded. From the response analysed, some of the trends identified were:

Objectives

There is similarity among EAs in regard to their priority functions to members in the past, presently and the future. Their priorities were in: employee relations, lobbying, information provision, training and consultancy. Of these functions, information,
• To contribute to social and economic progress through corporate activities.

At the root of these, NIKKEIREN's belief is that, in any age, the most valuable resource for any company is its people. Thus, from the start, Nikkeiren has consistently addressed the human aspects of corporate management.

Membership

Currently, Nikkeiren is comprised of 47 regional (prefectural) employers' associations and 60 industrial organizations.

(d) Indonesia

Structure of the organization

The Employers' Association of Indonesia (APINDO) established on 31 January 1952 under the name of PUSPI. Activities of the EAs were undertaken under the umbrella of a foundation. At a later stage, in 1978, the body was transformed into an association using the same abbreviation PUSPI. At its national convention in 1982 in Yogyakarta, the structure of the organization throughout the country was further stipulated more in detail. Finally, in 1982 at the national convention in Surabaya the organization decided to alter the name into Asosiasi Pengusaha Indonesia, The Employers' Association of Indonesia, abbreviated as APINDO. Presently, APINDO is the unifying organization for employers.

Objectives

The aims and objectives of the association as stipulated in its statutes are:-

• To unite and to give guidance to employers and serving their interest in the field of industrial relations and manpower affairs, and in human resources development in general
• To create and maintain equilibrium, industrial peace and work spirit as within the field of industrial relations and manpower
• To assist for the improvement of productivity as part of active participation in pursuing national development, with a view to attaining social welfare, spiritually as well as materially
• To establish a consensus of opinion in the implementation of manpower policies of employers, conducive with the policy of the government

Membership

Membership to the association is voluntarily, but the government is assisting in the promotion for membership. In the statutes is stipulated that membership comprises: companies/ employers with domicile in Indonesia, business/ industrial sectoral associations.
At the moment about 9100 companies are registered as regular members to organization spread throughout the country; which includes private as well as stateowned enterprises, and further also cooperatives.

**Trends Of EAs Throughout The World**

The main feature that distinguishes EAs from other associations such as management associations or organizations of personnel managers is that the latter is a professional body, consisting mainly of individual managers and concerned with improving and developing management skills and with the furtherance of management profession, while the former, that is the genuine "EAs" consists of member firms which advise, assist and represent members' interest in labour relation matters. However, in actual practice, it is not always easy to draw a dividing line between the two organizations concerned.

The most widespread pattern of the origin of EAs have been the grouping together of enterprises for the defense of their economic interests. Such groupings started as trade organisations, often in the form of associations of businessmen who decided to join forces in order to advance and protect their business interests. The situation was rather different for Singapore where the initiative to set up EAs was first taken by expatriate employers who created associations with which only foreign employers were entitled to affiliate so that local employers established their own bodies. Eventually, all these bodies merged into one national EAs.

An important area of service provided by EAs which is surely one of the most appreciated activities carried out by the EAs for the benefit of its members, is the information and research which consists of collection and distribution of information, relevant to labour relations and personnel policy issues. Many EAs publish, at more or less regular intervals, bulletins, annual reports, journals or other periodicals. Whereas in the context of research, the extent and scope of research performed by an EA must be determined by the nature of its role, activities and services.

Certain trends of EAs throughout the world could be identified. A brief review of them would be helpful in providing certain perspective and framework in making analyse of the characteristics of EAs in Malaysia and the challenges they are facing which will be elaborated in the subsequent sessions.

A survey undertaken by Wild (1999) under the auspices of the Bureau for Employers' Activities of the ILO attempted to look at the trends of EAs throughout the world. Survey questionnaires were sent to 105 EAs and 71 EAs responded. From the response analysed, some of the trends identified were:

**Objectives**

There is similarity among EAs in regard to their priority functions to members in the past, presently and the future. Their priorities were in: employee relations, lobbying, information provision, training and consultancy. Of these functions, information,
training and consultancy were identified as the ones which had commenced most recently, relative to others. There will be an anticipated increase in tripartite dialogue.

Membership

Two basic models of membership of national EAs were discerned: one where membership is confined to subsidiary EAs on a sectoral or regional basis (20 EAs); the other (the majority) where membership is open to individual companies. In the latter case, the membership model can be further subdivided into EAs where membership comprises companies only (21 EAs) and those with mixed membership (29 EAs).

There is evidence of net EAs membership growth. Some 81% of the EAs report membership growth with the largest growth constituencies being medium and large-sized private sector companies. Membership growth in developed countries is somewhat lower than in both less developed countries and Eastern European countries.

Staffing

The level of staffing of EAs relates directly to the budgetary differences of the EAs. A staffing level differential of 16 times between EAs in developed and less developed countries compares with an overall revenue difference of 50 times. The substantial staffing disparity between EAs in developed, less developed and Eastern European countries makes any averaging of manpower information meaningless.

Financing

Almost all the EAs relied on subscriptions as a source of income, about two-thirds sold services to members, 40% sold services to non-members as well, about one-quarter received grants from international or regional sources, and 14% received grants from a national source. A large number of developing country EAs (75%) charged for services to members compared with 50% in the case of developed country EAs. Looking at from the perspective of the main source of income, 90% of developed country EAs received two-thirds of their income from subscriptions, with the percentage and amounts being less in case of developing countries.

EAs IN MALAYSIA

Introduction

The umbrella body for employers and EAs in Peninsular Malaysia is the Malaysian Employers’ Federation (MEF) and in Sabah it is the Sabah Employers’ Consultative Association (SECA). MEF is the employers’ equivalent of MTUC. MEF and SECA are registered under the Societies Act 1966 and not under the Trade Unions Act. They were not registered under the Trade Union Act as they do not comply with Section 2 of the Act.
There are EAs that take membership from only within a particular establishment, trades, occupations or industries. There are 14 such EAs registered under the Trade Unions Act, 1959 and five of them are associate members of MEF. There is a net increase of only two EAs that were registered under the Trade Unions Act over the last five years. EAs registered under the Societies Act are generally regarded as trade association but a few of such associations also provide support to their members on IR services either by themselves or through MEF whereby they joined as associate members. In the subsequent section, attempt is made to look at the trends of EAs in Malaysia.

MALAYSIAN EMPLOYERS FEDERATION (MEF)

Historical Background

Although the history of MEF can be traced back to 1959, it was not known by the name of MEF at that time. Inaugurated on 17 April 1959 as the Federation of Malaya Industrial and Commercial Employers’ Consultative Association, it was then consisting of 73 founder-members and one affiliate member, the Pan Malayan Road Transport Operators’ Association. According to the Federation of Malaya’s Protem Chairman, L.P Bruce of Shell, the objective of the establishment of the association of employers was,

"The path towards progress and development along which the Federation of Malaya has chosen to travel is that of a private enterprise economy operating within the policy laid down by a democratically elected Government... It is only right that the Government should expect the interest of employers to be represented by a recognized and far-reaching association, and that it should be able to turn to the body for advice and consultation on all matters pertaining to the free enterprise system. There are certain conditions indispensable to the proper functioning of the free enterprise, and it is the responsibility of employers to ensure that the Government maintains them."

The first Chairman was R.J.E Price of Malayan Tobacco Company while Y.B Tan Sri Dato’ S.O.K Ubaidulla was elected the Vice-Chairman in 1963. Subsequently when the Association changed its name to the Malayan Employers Consultative Association (MECA), Tan Sri Dato’ S.O.K Ubaidulla was elected as the President, a post he held until December 1982. In recognition of his long association with the Federation, he was made the Honorary Life President.

In May 1962, the Malayan Council of Employers’ Organization (MCEO) was formed. MCEO comprised of three constituent partners namely the Malayan Employers’ Consultative Association (MECA), the Malayan Agricultural Producers Association (MAPA) and the Malayan Mining Employers’ Association (MMEA). Originally recognized as the country’s apex employer’s organization, MCEO’s functions included co-coordinating thinking among the private sector employers on matters of common interest and providing consultation on industrial relation matters. As the country’s
economy grew, so did the types of industries in the country. It soon became apparent that the membership base of a central organization had to be expanded to reflect the structural changes that were taking place in the national economy. Members of MECA were employers from all sorts of industries and sectors. MECA was also no longer just a body that employers turned to for advice and consultation, it also represented employers in trade disputes and conciliatory proceedings, conducted training as well as research. It soon became apparent that a strategic realignment was necessary to reflect not only the structural changes that were taking place in the national economy and to allow for a greater diversity of employer representative and functional effectiveness, but also to enhance the effectiveness of the Association as a employer’s organization. Hence, on 31 December 1977, it was unanimously agreed by the constituent bodies to dissolve MCEO and MECA was renamed the Malaysian Employers Federation (MEF).

The membership of MEF then included all MECA’s direct members (now termed as Ordinary Members), and six employers’ trade unions, which became the Association members.

Objectives

The objectives of MEF are:

- To co-ordinate the views of employers on labour matters and promote, protect and defend the interests of employers in general
- To promote good relations between employers and employees through the adoption of sound principles and practices of personnel and industrial relations
- To facilitate, promote and provide a forum for regular consultation between members on matters of common interest
- To keep members informed on the operation of existing labour laws and regulation, the activities of Government on all legislative proposals which may affect or tend to affect the interests of employers in industrial relations matters and to take such actions as may be appropriate
- To advise members on matters relating to employment as well as collective bargaining and to assist them in the settlement of industrial disputes and to represent them at Labour and Industrial Court proceedings
- To compile and circulate such statistical and other data for the study of wage structure, conditions of employment and other matters affecting the relations between employers and employees
- To provide training facilities in order to develop the skills of employers at all levels in the effective management of human resources
- To print and publish newspapers, periodicals and pamphlets for the dissemination of information relating to the activities of the Federation.

MEF endeavors to work towards achieving a harmonious industrial environment where employers, workers and government can work together in order to bring about continued national development.
Membership

When MEF was first established in 1959, the Federation had only 73 founder-members and one affiliate member, the Pan Malayan Road Transport Operators' Association. This membership grew to 877 ordinary members at the beginning of 1978 and by its 35th year, the Federation's ordinary membership strength had grown to 2,239.

Membership of the Federation is open to all private sector employers and employer organizations. Private sector companies are Ordinary Members while employer organizations are categorized as Association Members. As at 31 December 2000, the Ordinary members of MEF totaled 3,370 companies, a net increase of 90 companies. These companies have a total employment size of 977,138 workers. From the charts below (Figure 1 - 4), it can be seen that non-manufacturing companies constituted 58% of the total MEF ordinary membership. The majority of the companies are in the central region (2,478 companies), followed by the northern region (325 companies) and the southern region (278 companies). 38% of the membership profile are small-sized companies with 50 employees and below. The medium-sized companies, which employ 51-200 employees, constituted 34.8% of the MEF membership. Most of the MEF members are non-unionized companies (2,735 companies).

![MEF Membership by Sector Industry](image)

Figure 1: MEF Membership by Sector Industry
Figure 2: MEF Membership based on Unionised/Non-Unionised

Figure 3: MEF Membership by Employment Size
Figure 4: MEF Membership by Location

Note: Central Region consists of Kuala Lumpur & Selangor
Northern Region consists of Perlis, Kedah & Penang
Southern Region consists of JB & Malacca
East Malaysia consists of Sabah, Sarawak & WP Labuan
East Coast consists of Pahang, Terengganu & Kelantan

Employer organizations that join MEF are known as Association members. They could be divided into the following categories:-

Category A: Membership in this category is open to all Employers’ Organisations who require the full range of services provided by MEF. The members of the Association Members in this category are eligible for all the services provided by MEF by virtue of their membership with the Association Member concerned.

Category B: With effect from 5th September 1991, this category of membership is deleted.

Category C: Membership in this category is open to all registered employer trade unions in Malaysia, and to the central Employers’ Organisations in Sabah and Sarawak.

Category D: Membership in this category is open to any Employers’ Organisation.

However, the members of the Association Members in this category is not eligible for the Industrial Relations Services provided by MEF by virtue of their membership with the Association Member concerned.
These associated members continue to lend their support to MEF. There are currently ten association members and they provide useful inputs and feedbacks to the government issues relating to human resource development. These association members include:

- Association of Insurance Employers (AIE), Commercial Employers Association of Peninsular Malaysia (CEAPM), Malaysian chamber of Mines (MCM) – Category A members.

- Sabah Employers’ Consultative Association (SECA), Malayan Commercial Banks’ Association (MCBA), Association of Hotel Employers, Peninsular Malaysia (AHE) – Category C members.

- Malaysian Textile Manufacturers Association (MTMA), Pan Malayan Road Transport Operators Association (PMRTOA), Stevedores Employers Association (SEA), Malaysian Palm Oil Association (MPOA) – Category D members

Management

The Management of MEF is vested in the Council comprising Representatives as follows: Ordinary Members - 12 Representatives; Association Members of Category A – one Representative each; Association Members of Category C – one Representative each; Association Members of Category D – no Representatives. The Council elects from its members: a President, four Vice Presidents and a Treasurer.

The President is responsible for the supervision of the day-to-day administration of the office and staff of MEF subject to the directions and decisions on policy made by the Council. The Vice Presidents act in rotation for the President during his absence.

The Council appoints the Chief Executive and staff as paid employees to administer MEF Secretariat. The Chief Executive is designated the Executive Director who heads the MEF Secretariat. There are eight Industrial Relation consultants who provide advisory and consultative services to member organizations on matters pertaining to human resources and industrial relations.

Apart from providing advisory services, the Industrial Relations consultants also provide industrial relations training to members and non-members. Since one of MEF’s main roles includes providing training services to its members, there is a training team which consists of a senior consultant and associate consultant.

Another main role of MEF is to conduct research and surveys on labour-related matters such as salaries and fringe benefits. MEF also produces a number of publications to keep its members informed of the developments in government policies, legislation and important issues in labour-related matters. The Senior Research & Information Manager, assisted by a Senior Research Analyst as well as two Research Analysts head this role. In MEF expansion plan, it would be recruiting more consultants to provide advisory and representation services to members.
The MEF headquarters is at 3A06-3A07, Block A, Pusat Dagangan Phileo Damansara II, Petaling Jaya. MEF also has regional offices in Penang (for Northern Region), Johore (for Southern Region) and Pahang (for East Coast Region). This is to enable the companies in the respective regions to have easier access to industrial relations advice and assistance. Each of these regional offices is managed by an Industrial Relations consultant who is assisted by a secretary each. There are also future plans to set up a regional office in East Malaysia under its expansion program to have a better coverage of MEF services for members in that region.

Funding

To fulfill all the functions of providing advisory and consultative services, training and research and information/publication, MEF needs resources, particular human resources. They need expertise which can be given by a permanent staff of lawyers, economists, sociologist, public relations specialists, statisticians and also experts in the running of employers' organizations, which has become a profession. MEF is currently on an expansion plan to recruit more personnel to meet the growing demand for continued assistance in the field of research, industrial relations and human resource matters.

On the other hand, MEF also needs contributions by actual employers. Usually, presidents and chairmen of committees are honorary functionaries. It is not too easy to find businessmen willing to spare their time - free of charge - for rather exhausting jobs involving stances of long negotiations and proceedings. As MEF is also represented in a growing number of various tripartite and consultative bodies, the running of an employers' organization is based on close cooperation between the elected chairman and professional staff members.

To cover the costs of their operations - mainly staff costs - the employers' organization needs resources. Usually they consist of contributions paid by enterprises either directly or through the branch or regional organizations. The entrance fees for MEF membership are: Entrance Fee: RM300 (applicable to new applicants only); and Subscription Fees: 1st 100 employees @ RM10 per employee/year; 2nd 100 employees @ RM18 per employee/year; 3rd 100 employees @ RM26 per employee/year; and thereafter, at RM41 per employee/year. Annual subscription is subject to a minimum of RM1,000 per year and a maximum of RM6,000 per year.

Apart from the subscription fees, MEF also obtains its revenues from making representations on behalf of its members, proceeds from training courses and seminars, sale of publications, conducting its Diploma courses in Industrial Relations, repayment of staff loans and from organizing Conferences.

MEF's Role

The role of MEF can be viewed from two perspectives:

- Its role in the economic development of the country and
- Its role in serving its members' needs
Role in Social-Economic Development

During the last two and a half decades, Malaysia has achieved significant progress in economic growth. Malaysia was able to sustain a high growth rate of 8.9% per annum with low unemployment rate for the last eight years since 1988. Although Malaysia was not spared from the economic and financial crisis that hit most of the ASEAN and Asian countries, the country finally emerged out of the crisis in 1999. The country’s recovery from the economic crisis is expected to absorb a larger number of job seekers. Total employment in 1999 increased by 1.7% to 8.741 million compared with a decline of 2.5% in 1998. In 2000 the real GDP of the country continue to grow at 8.5%. The annual inflationary rate remained low at 1.6% as compared to 2.8 in 1999.

The private sector continues to play a very important role in the development and growth of this country. The private sector currently employs 6890.1 million people in sectors such as manufacturing, construction, retail trades, restaurants, transport and finance, insurance real estate and business services. As the Government continues with its ongoing policy of consolidation of the public sector as well as the privatization programs, the private sector is gaining importance as the vehicle of economic growth. Recognizing that a private-sector-led growth would lead to a higher level of economic success, the Government has entrusted a bigger role to the private sector initiatives. As the private sector plays an increasingly important role in the country’s economy, the role of MEF is also increasingly becoming more important and challenging. MEF’s role in the country’s economic development includes:

Developing a Productive and Efficient Labour Force

The Third Outline Perspective Plan (OPP3) emphasized on building a resilient and competitive nation. As the world is becoming more globalised, it is imperative for industries in Malaysia to adjust her structures to remain competitive. It is imperative that that to ensure the transition from labour intensive economy requiring high manual manipulative skills to a high value added knowledge-based economy in the face of increasing global competition, there needs to be changes in Paradigm within the National framework in the management of our human resources which includes promotion of employability, high dependence on employee to ensure employee relevance i.e. empowerment of the employee, embracing changes for improvement, and implementation of individualized pay systems based on productivity or performance.

As rapid technological development continues to take place in our country, it is important for us to have a dedicated, productive and technologically competent workforce to propel the nation to a higher level of competitiveness in the international market. Hence, MEF stresses continuous training and skills upgrading of employees. In line with this, MEF provides trainings which can be claimed under the Human Resources Development Fund (HRDF). Thus, registered members with the Human Resources Development Council are able to claim up to 75% of the total training programme fees. This is to encourage organizations to send their employees for training. These training programmes equip individuals with the necessary skills and knowledge to discharge their duties more efficiently. MEF believes that by equipping
the workforce with the necessary skills and knowledge, the competitiveness of the economy can be enhanced.

Representative Function in the Policy Making

MEF holds regular dialogues with the various ministries such as the Ministry of Human Resources, Health and International Trade and Industry. Tripartism which seeks for cooperation among the social partners: government, employers and workers is achieved through these social dialogues. Social dialogues are fundamental to sustaining a harmonious industrial relations climate in the country. These dialogue sessions also enables the MEF to represent and protect the employers’ views to the relevant ministries. For example, MEF participates in the Annual Budget Dialogues sessions with the Finance Minister.

MEF actively participates in the Ministry of Human Resources Tripartite Meeting (replaced the National Labour Advisory Council (NLAC)), the highest tripartite body on labour matters. The Tripartite Meeting comprises of representatives from the Government, trade union of workers and the MEF. Here MEF serves as a representative function in the political structure. Before the Government implements any human resource policy, it may take the initiative in seeking the advice of an interest group. The meaning of such a step is the recognition of the technical expertise of the group and its representative character. The Government also feels that it is necessary to gauge the preliminary reaction of the group if the decisions to be taken are to be implemented correctly. For example, before implementing the policy of converting the Employees Provident Fund to an Employees Pension Scheme (EPS), the MEF Industrial Relations Panel was asked to study the proposal submitted by the International Labour Organization for a national pension scheme within the framework of the Employees Provident Fund.

MEF has also established an Industrial Relations Panel which consists of members from employer organizations as well as private companies. This committee helps in coordinating the employers’ views on national issues and shaping the policy pertaining to industrial relations and human resources policy. The Industrial Relations Panel also deliberates on priority matters which have direct impact on the industrial relations.

Contributes to the National Manpower Planning

MEF plays an important function in enhancing the Government’s efforts in manpower planning. For example, MEF conducts survey on the employment market to determine whether there is a mismatch between the skills supplied and demanded. Such information is vital not only to prevent skill shortages but also to reduce unemployment rate. In a survey conducted by MEF in July 2000, it was indicated that there was a shortage of skilled labour and a mismatch between the skills supplied and demanded. The major shortage areas were in technical and writing/communication skills. The need for skilled IT personnel was also stressed in banking-related and IT/communications industries. This information can be used by local colleges and universities to produce graduates with skills that are needed by the country. Without
such information, universities and colleges may be producing graduates which are not needed and as a result, unemployment will occur.

**Represents the Interest of Employers Internationally**

MEF ensures that the interests of Malaysian employers are fulfilled by means of maintaining close ties with the authorities and the other social partners at the regional and international level. At the regional level, MEF is the founder member of the ASEAN Confederation of Employers (ACE) while at the international level, MEF is a member of the International Organization of Employers (IOE) and the International Labour Organization. MEF’s participation in these organizations is to ensure that the Malaysian employers’ views are fully and effectively represented when international labour standards are being set.

**Role in Serving Its Members’ Needs**

As an employer’s organization, MEF fulfills its members’ needs by providing consultancy and advisory services, training, information and research services. MEF’s services to its members are as follow:-

**Representative Function in the Industrial Relations System**

The core activity of MEF is the Industrial Relations consultancy and advisory services provided to all its members. Besides providing such services, MEF also represent its members (i.e employers) at conciliations, negotiations, Industrial Court and Labour Court for disputes with their unions or employees. Figure 5 below shows the number of cases dealt with by MEF from 1993-2000 in respect to court representation, conciliation and collective bargaining.

![Industrial Relations Activities (1993-2000)](image)

Figure 5: Industrial Relations Activities
MEF's industrial relations consultancy and advisory services are provided by its team of Industrial Relations consultants. Members can either phone in or visit the consultants at the MEF headquarters. Everyday there will be two consultants on duty to answer employment related questions from members. MEF also reviews collective agreements submitted to its member organizations by trade unions to ensure that the terms and conditions stipulated in the agreement are fair to the employers. There may be times when the consultants of MEF negotiate on behalf of their members. Special areas of expertise of MEF Industrial Relations consultants include terms and conditions of employment, labour legislation, trade union recognition, collective bargaining, and handling discipline. The Industrial Relations consultants represent members at the Industrial Court, Labour Court and at conciliation proceedings for various types of industrial disputes with their unions and their employees.

**Important Pressure Group**

According to Jackson and Sissons (1976), employers' organizations are usually important pressure groups. Employers' associations have regularly provided representatives for a range of official committees, commissions and bodies like industrial tribunals and wage councils. As an employer's representative, MEF represents employers in various councils and boards such as the Ministry of Human Resources Tripartite Meeting (replaces the National Labour Advisory Council), Ministry of Human Resources – Committee on the National Retrenchment Scheme, Employees Provident Fund, Social Security Organization Board, National Productivity Corporation, Human Resources Development Council, National Vocational Training Council, National Institute of Occupational Safety and Health, National Council for Occupational Safety and Health and the Wages Council for the Hotel and Catering Industry, for Shop Assistants and for Cinema Workers. By engaging itself in these boards and organisations, MEF could ensure that employers' views are considered before human resources recommendations by the Ministries become polices.

MEF initiatives in this respect through the year 2000 are as follows:-

- Submitted a memorandum to the Government on the need to review the labour legislations. For example, the Employment Act 1955 needs to be change sufficiently to meet the substantially changed economic scenario.
- Proposed that Section 292(1) of the Companies Act 1965 be amended to make it mandatory for the receivers / managers to pay termination benefits to the employees before paying the rest of the creditors.
- Responded to the introduction of "The Code of Practice on the Prevention and Eradication of Sexual harassment at workplace. MEF is not agreeable to the proposals that the Code be made into law and to also be incorporated into collecting agreements.
- Initiated moves to create the platform to discuss issues of mutual concern with the MTUC.
Source of Information

MEF also holds regular monthly meetings that serve as a forum for members to exchange views, opinions as well as experience. Members are also updated with the latest development in the Government policies as well as the proposals made by MEF to amend the various labour legislations and matters taken up by the Industrial Relations Panel. The relevant court awards are highlighted at these meetings to enlighten members with the implication and principles involved in the judgment. From time to time, Government officials as well as guest speakers from the private sector are invited to address the meetings on the topics that affect employers in order to give member organizations a better understanding on the issues.

The ties between MEF and its members has strengthen through the members’ continuous support, cooperation and commitment shown in ensuring the success of its activities.

Training Provider

MEF is now an important training institution. It helps in developing among their members an interest in training and in elaborating common policies on the subject. Their activities are especially oriented towards management training or the training of leaders of personnel departments. Human resources development continues to be at the forefront of MEF’s commitment in providing continued assistance to employers. Training activities are conducted by all the consultants at the MEF Secretariat. However, their areas of training differs according to the areas of the specialization of the consultants. The Industrial Relations team will train on matters pertaining Industrial Relations while the training team will concentrate on human resource development and Occupational Safety and Health.

Training courses are conducted on a regular basis and is open to members and non-members. These courses cover topics relating to industrial relations, labour laws and human resource management. MEF can also conduct in-plant courses designed to suit individual members’ requirements in one or a combination of the above areas. Every year, members of MEF will be given a training directory. The training directory contains a listing of all the courses offered for the year as well as the training calendar specifying which are the dates these training are conducted. To encourage organizations to constantly upgrade the skills and knowledge of their employees, all MEF courses have been granted the status of Approved Training Programme (ATP) under the Human Resources Development Act 1992.

MEF continues to upgrade the training section by recruiting more staff and introducing more training programmes in English and Bahasa Malaysia. In 2000, MEF strived to meet the needs of its members by providing new training programmes through its in-plant and public courses. These include:-

- Dealing with Sexual Harassment in the Workplace
- Collective Bargaining
- Managing Absenteeism
• Handling People Problems
• Compensation Packages and Payroll Administration
• Self Empowerment

Some of the courses relate to many skills that human resource practitioners need in discharging their day-to-day job functions. For example, the course on Dealing with Tripartite Meeting addresses the problems of sexual harassment and its effects on the morale productivity and company reputation.

Apart from such courses, MEF also conducts the Diploma in Industrial Relations for human resources practitioners who wish to equip themselves with the needed knowledge and skills that their profession entails. MEF courses are constantly in demand. In 2000, a total of 175 training courses were conducted comprising of 105 in-house plants and 70 public courses. The Figure 6 on the next page shows that number of participants in the MEF industrial relations and human resources courses.

![Bar Chart](image)

**Figure 6: Participants of MEF According to Courses**

Conducts Research and Surveys for Information and Publication

MEF strengthened its research activities to meet the pressing need for timely and accurate information. Information is disseminated to members via its monthly newsletter (*The Malaysian Employer*), circulars, survey reports and its website.

The MEF Library is also a useful source for members to make references on court rulings, collective agreements, books as well as periodicals. The library system has been updated and development of online access to bibliographic database, court rulings and collective agreements has been initiated to meet the growing needs of members.

Members can also benefit through the *MEF Salary and Fringe Benefits Survey for Executives and Non Executives* which is conducted annually on member
organizations. This survey provides useful insights into the compensation packages offered by member companies to their employees. For example from the 2000 Survey, members will see that there was an upward trend in salary increase in 2000 compared to 1999 where executives received an average increase of 6.80 % and 7.27 % for non-executives. It was also discovered that 90 % of the respondent companies granted bonus to their employees and the average contractual bonus granted was 1.72 months for the executives and 1.74 months for the non-executives. Members can use such information for their budgetary purposes and in determining their organization’s salary increases, bonus payouts, etc.

Through the research and information dissemination activities carried out by MEF, members are able to obtain timely information about the latest developments in Human Resource Management as well as relevant Government policies pertinent to human resources and industrial relations. The other surveys conducted by MEF throughout the year 2000 are as follows:-

- Survey on Recruitment of Foreign Workers.
- Survey on Shortage of Bollermen / Boiler Engineers.

Provides A Forum for Exchange of Ideas

MEF organizes national conferences as a forum for the exchange of ideas and fellowship among Human Resource practitioners. Besides this, MEF also nominates participants from members as well as the Secretariat to represent MEF at local or international seminars and workshops. Participation at these forums provides the MEF nominees a good opportunity to present the views of employers. At these forums, participants are exposed to new ideas and technology that they can apply to their workplace.

In 2000, MEF together with the ASEAN Confederation of Employers (ACE) carries out joint studies on labour issues that affect the region. Among the national and international seminars participated by MEF nominees last year were the:-

- NICC Invitation Programme on Prospective Leaders of Employers’ Organizations in ASEAN Countries held in Japan;
- ILO Tripartite Meeting on Moving Sustainable Agriculture Development through the Modernisation of Agriculture and Employment in Globalised Economy in Geneva;
- NICC Study Programme for Prospective Leaders of Employers’ Organizations in ASEAN Countries Management Training programme in Japan and
- Turin Center Course: A92159 Occupational Safety & Health Management in Enterprises in Italy.
Trends of EAs in Malaysia

A study was done on MEF and SECA (the umbrella EAs); all 14 EAs registered under the Trade Unions Act; and two EAs registered under the Societies Act and are associate members of MEF. The study is based on the review of documentary evidences, such as the Constitutions, Statement of Account, Reports and papers of the respective EAs filed with the Registrar of Trade Unions, Ministry of Human Resources. The list of EAs being studied is attached on page 28 (Table 1) and 31 (Table 2). From the analysis of the EAs in Malaysia, the following observations were made:-

Types & Objectives

EAs in Malaysia could broadly be divided into two types:

- Organisations registered under the Societies Act, 1966 - The EAs from this category generally have as their main objective is in serving the members interest in aspects pertaining to the growth and profitability of the members' respective sectors, industries or business activities. IR activities are merely their subsidiary activities or in most instances not been covered at all.

However, there is an exception to two such organizations, namely, the Malaysian Employers Federation and the Sabah Employers' Consultative Association which serve as umbrella organisation of private sector employers and EAs in Malaysia and Sabah respectively. Their core objective is in IR and they could not be registered under the Trade Unions Ordinance, 1959 because their memberships are not confined to employers within a particular establishment, trade, occupation or industry or within similar trades, occupations or industries as stipulated in Section 2 of the Trade Unions Act, 1959.

- Organisations registered under the Trade Unions Act, 1959 - The EAs from this category generally have as their main objectives are in supporting their members in matters of IR, to promote and safeguard the rights and interests of employers. As they are registered under the Trade Unions Act, they can represent their members in handling trade disputes and collective bargaining.

It could be drawn from the above two categories of EAs based on their mode of registration that the EAs could also be characterised, based on their prime objective – whether it is IR-oriented or trade-oriented.

Membership

These aspects are generally straightforward. All the organizations (except the Malaysian Employers’ Federation and the Sabah Employers’ Consultative Association) are open to all employers in a particular industry (only limited by geographical region of West Malaysia, Sarawak and Sabah). However, it is observed from the list of members list of EAs, that there is a proclivity of 'reputable business' to join as members.
Finance

Most EAs are funded largely direct from subscription income. However, in the case of the two umbrella EAs and several of the older, bigger or better established, they also obtain income from sources like: conducting training courses and seminars; sales of publications, organising conferences and dinners; rental of office or facilities; interest from term deposits; donations; grants; and entrance fees. On the contrary, there are small EAs having deficit financial account.

Organisation Structures and Staffing

Most EAs have very small and simple organisational structures. They were established as single national bodies and recruit members directly. The exception is with MEF, which has a centre body, and regional offices to better serve their members. The management of most of the EAs is vested in the Council of the organisation. The personnel of the Council are generally elected from among members and constitute a Chairman or President as the head; sometimes one or several Vice-President; a Secretary, a Treasurer and representative members. Some of the bigger and established EAs have paid full-time management staff.
TABLE 1: MAIN OBJECTIVES OF EAS

<table>
<thead>
<tr>
<th>Association</th>
<th>Promote and protect Members</th>
<th>Advisory and assistance</th>
<th>Financial support</th>
<th>Research and development</th>
<th>Representatio n</th>
<th>Harmonious relationship</th>
<th>Information gathering</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MAPA</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>2. EMIEA</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>3. MCBA</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>4. SPIEA</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>5. AIE</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>6. SEA</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>7. LOA</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>8. SWCBA</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>9. SCBA</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>10. KPBESM</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>STIEA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>CEAS</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>CEAPM</td>
<td>/</td>
<td></td>
<td></td>
<td>/</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>AHE</td>
<td></td>
<td>/</td>
<td>/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>MPA*</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>MCM*</td>
<td>/</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Registered under the Societies Act 1966

**Interpretation:**

2. **EMIEA** - The Engineering and Machinery Industry Employers' Association, Peninsular Malaysia.
5. **AIE** - Association of Insurance Employers.
10. **KPBESM** - Kesatuan Penguasa Bas Ekspres Semenanjung Malaysia.
11. STIEA - Sabah Timber Industry Employers’ Association.
12. CEAS - Commercial Employers’ Association of Sarawak.
13. CEAPM - Commercial Employers Association of Peninsular Malaysia.
14. AHE - Association of Hotel Employers, Peninsular Malaysia.
15. MPA - Malaysian Palm Oil Association.
16. MCM - Malaysian Chambers of Mines

Source: Ministry of Human Resource.

Definition of terms:

1. Promote and protect association:
   To promote, foster and safeguard the interests of associations or members.

2. Advisory and assist:
   To advice and assist in the regulation of relations between members and
   employees and between members and members.
   Provide good offices for settlement of disputes.

3. Financial assistance:
   To finance members who involved to any litigation, trade disputes or
   others legal proceeding arising out of any trade dispute with a trade union.

4. Research and development:
   Develop relevant information and statistic on matter of interest to
   members.

5. Representation:
   Representation of members of labour or trade dispute, to prosecute or
   defend any suits application or proceeding before court or tribunal
   proceeding;
   Broaden relationship with government;
   Representation of employers interest at national and international forum.

6. Harmonious relationship:
   To promote and maintain good relations or feeling between employers and
   employees.

7. Information gathering:
   Distribution of information on subject ranging from case law, disputes and
   relevant information to members.
<table>
<thead>
<tr>
<th>Items</th>
<th>Associations or companies</th>
<th>Numbers of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>MAPA</td>
<td>163</td>
</tr>
<tr>
<td>2.</td>
<td>EMIEA</td>
<td>155</td>
</tr>
<tr>
<td>3.</td>
<td>MCBA</td>
<td>38</td>
</tr>
<tr>
<td>4.</td>
<td>SPIEA</td>
<td>36</td>
</tr>
<tr>
<td>5.</td>
<td>AIE</td>
<td>30</td>
</tr>
<tr>
<td>6.</td>
<td>SEA</td>
<td>20</td>
</tr>
<tr>
<td>7.</td>
<td>LOA</td>
<td>12</td>
</tr>
<tr>
<td>8.</td>
<td>SWCBA</td>
<td>17</td>
</tr>
<tr>
<td>9.</td>
<td>SCBA</td>
<td>15</td>
</tr>
<tr>
<td>10.</td>
<td>KPBESM</td>
<td>15</td>
</tr>
<tr>
<td>11.</td>
<td>STIEA</td>
<td>10</td>
</tr>
<tr>
<td>12.</td>
<td>CEAS</td>
<td>10</td>
</tr>
<tr>
<td>13.</td>
<td>CEAPM</td>
<td>10</td>
</tr>
<tr>
<td>14.</td>
<td>AHE</td>
<td>40</td>
</tr>
<tr>
<td>15.</td>
<td>MPA*</td>
<td>98</td>
</tr>
<tr>
<td>16.</td>
<td>MCM*</td>
<td>138</td>
</tr>
</tbody>
</table>

TOTAL  
821

* Registered under the Societies Act 1966
MALAYSIAN EMPLOYERS' FEDERATION (MEF) VIEWS ON ISSUES RELATING TO INDUSTRIAL RELATIONS

MEF could be regarded as the spokesman for employers and they represent EAs in presenting views on certain critical issues on Human Resources and Industrial Relation activities. Their views on issues listed were obtained from newspaper cuttings, reports, books and interview with MEF personnel. Previewing MEF’s view on some current HR and IR issues ranging from human resources, industrial relations, dispute, policy making, training and other related issues would give us an insight into the trend of thinking and approach to matters generally taken by our employers.

New Policy on Hiring of Foreign Workers¹

Background:

Amendments of Immigration Act will be made in March 2002 whereby stiffer penalties for offences pertaining to illegal immigrants including whipping if they are caught entering illegally and employers engaging and harboring them.

On recruitment, foreign workers will be restricted and limited to Indonesian workers to the plantation sector housemaids with immediate effects as compared previously they can work in all sectors: manufacturing, construction, services, and agriculture sectors. Foreign workers will be recruited from other countries like Thailand, Cambodia, Vietnam, Laos, Philippines, Myanmar Sri Lanka and Nepal for plantation, construction and agriculture. Also from Turkmenistan, Uzbekistan, Kazakhstan, for manufacturing, services and construction sector and India for plantation sector.

Recruitment will be done on government to government basis. This is to avoid problems such as foreign workers being cheated or not being able to find employment they had been promised in the country, as previously done by the agents.²

MEF views:

According to MEF’s Executive Director, Encik Shamsuddin Bardan MEF agreed to the government suggestions that more workers should be taken from other countries as mentioned. The country should not be too dependent on foreign workers any more, any move to reduce them should be implemented gradually especially in the construction sector which hires many Indonesian workers. Employers should be given a proper dead line to meet any government decision so that they could make adjustments in their operations. MEF is also on the views that time should be given to the employers to see their staff requirements. MEF also urge the government to reconsider its stand on the Indonesian workers as the last choice because the existing pool of Indonesian workers, many of whom could be said to be law abiding, should be

¹ Business Times (6.02.2002)
² The Sun (7.02.2002)
³ The Star (16.02.2002)
allowed to stay here so that staff requirement and production will not be severely hit. MEF also said that Indonesians spoke the same language and could easily adapt themselves to the local environment i.e between local employers and foreign employees as compared to Nepalese even though they are hardworking.

MEF also on the view that Government should reconsider the new policy because it will disrupt the manpower planning and business operations of the private sector employers. No guarantees that the countries will not create any social problems.

Employers given flexibility in recruiting cost effective workers. Based on experience Indonesians are more suitable because of culture, language and similar working environment as well as skill and communication and cheap labour as compared to other countries.

National Retrenchment Fund
Background
The fund was proposed by the MTUC whereby employers and employees must contribute 50 cents for each worker monthly. Until now agreement yet to be reached with employers as there are differences opinions between Ministry and employers. Memorandums incorporating these views have been made to the Deputy Prime Minister's office and Minister of Human Resources This matter is being actively pursued by the Federation through further discussion.

MEF views:
According to MEF's Executive Director, Encik Shamsuddin Bardan MEF views that the fund should not be set up because current labour legislations already contain provisions which protect the interest of the retrenched employees. The proposed fund would also penalize the majority of employers who are efficient in order to take care of the inefficient companies. Instead of retrenchment fund, MEF proposed that section 292(1) of the Companies Act 1965 be amended to make it mandatory for the receivers/managers to pay termination benefits to the employees before paying the rest of creditors.

Unionization of foreign workers
Deputy Minister in the Ministry of Human Resources had agreed that foreign workers can join unions as ordinary workers but they cannot hold positions in the organizations. MEF and MAPA said Trade Unions Act was silent on whether foreign workers could join union and the laws are open to interpretation.

Enhancing Productivity and Competitiveness

---

4 The New Straits Times (25.01.2002)
5 The New Straits Times (26.1.2002)
6 Business Times (8.11.2001)
According to MEF’s Executive Director, Enck Shamsuddin Bardan MEF on the views that several issues and challenges facing the employers ahead including the growing demand for customers satisfaction in the workplace, the deepening economic interdependence in a globalised world, the free flow of information and rapid development of information and communication technology, and the shift towards a knowledge based economy. To face those issues and challenges above employers should:

Enhance Competitiveness

MEF in the past stressed that long-term competitiveness in the international market can only be assured through ensuring world class performance standards; operational excellence; cost efficiency and enhancing labour productivity and innovation. It is also crucial for Malaysia to maintain and enhance its cost-competitiveness in terms of employment of skilled manpower, productivity, availability of efficient infrastructure and strong supporting industries, and a conducive environment for investment.

Therefore there is a need to constantly review and fine tune policies in line with changing needs of investors and streamline administrative procedures to ensure that the country remains as an attractive place to invest both for the local and foreign investors. The fact remains that the high investment rate in the early 1990’s is no longer forthcoming.

In order to remain competitive in the domestic market, companies will have to strategise in terms of efficiency/productivity, rationalisation, and forge strategic partnership to strengthen their market share. To achieve higher levels of national competitiveness in the face of increased competition amongst nations, from macro economic perspectives, the contribution of Total Factor Productivity (TFP) has to be increased at a faster rate and the efficiency of capital needs be enhanced.

Employers are now seeking to sustain their competitiveness thru pay systems which are related to performance and productivity as a way of absorbing increased labour costs, while at the same time rewarding and motivating employees to perform better. In implementing a performance based wage system, companies need to increasingly employ the use of performance-related variable bonuses instead of the traditional fixed-base pay system. The government through the Budget 2002 had announced that the restrictions on bonus be abolished and stressed that this measure will provide an opportunity to employers to offer remuneration which commensurate with their workers’ productivity.

MEF views that more needs to be done to promote productivity-linked wage system (PLWS). MEF recommended that the Government review the existing legislation which impedes the introduction of PLWS. The promotion and firm commitment by the government on the need to implement PLWS is necessary especially in the provision and dissemination of timely and reliable data and successful related case studies.
Human Resource Development

In the Budget 2002 speech, the Prime Minister stressed that to enhance productivity and competitiveness, employers must undertake to train and upgrade the skills of their workers and practical training schemes need to be encouraged as one of the avenues to increase the supply of skilled and trained manpower.

MEF emphasized that the building of human capital for the challenges of the new economy requires a holistic approach. There is a need to review and align national policies and legislation on education and labour to meet the new challenges. It is necessary to ensure an adequate supply of skilled manpower and to produce graduates relevant and appropriate qualifications so as to eliminate the existing mismatch between supply and demand of such graduates. Adequate access to data and appropriate policies and approaches towards learning will enable our workforce to continually learn and adapt, thus ensuring their continued relevance and employability.

We need new forms of performance management and reward system to enhance personal accountability and delivery of results, concerted and sustained efforts at benchmarking to understand and internalize the critical issues which affect competitiveness.

MEF is of the view that a review of the education curriculum at all levels needs to be undertaken taking account of the input and feedback from the private sector to produce individuals equipped with analytical and creative skills, technical skills and leadership competence.

All these call for the development of a National Human Resources Master Plan that must be able to align the efforts to all critical sectors of the economy to guide the country in the development and sustainability of the nation’s human capital.

MEF call for a coordinated effort between government and private sector to establish the National Human Resources Master Plan on an urgent basis.

Life Long Learning

Information and communication technology (ICT) is reshaping employment and occupational structure across the world. As a Malaysian economy moves to k-economy, managers and workers need to pay constant attention to enhancing skills and knowledge. Workers would have to continuously pick up new skills during working life to remain productive members of the workforce. The mindset of employers and workers must shift to one of life-long employability through continuous training and skills upgrading.

Private companies do not respond fast enough to meet the requirements of competition, skill development at the enterprise level aimed at building capacity to
absorb new technologies, developing the ability to function and participate in groups (interpersonal skills), achieving functional flexibility (e.g. through multi-skilling and job rotation), and improving quality and productivity. Workers have to come up with improvements which are not just practical, but innovative and creative.

Women Participation

Women participation in the labour force, which was 44.4 per cent in 2000, is still relatively low. Increased women’s participation will ensure that Malaysia would less dependent on foreign workers and expatriates. When we consider 25.4 per cent of the undergraduate population is women, we can see the loss to the nation created by the non-utilization of this major component of this pool of talent.

In the Budget speech, in recognition of the women’s role in the economic development, the Government has set up Ministry of Women and Family Development to address the issues of women and children and families will be given more attention. The government has also amended Article 8(2) of the Federal Constitution to include the word ‘gender’ to ensure that laws and policies do not discriminate against women. Also the Ministry has launched the Women against Violence Campaign on July 23 2001.

MEF has proposed the Government should provide special attention for the setting up of community based childcare canters to increase women’s participation in the economy especially. Today working women in Malaysian households have to rely mostly on foreign maids. The current practice of yearly renewal of permit of foreign maids causes inconvenience for women who have to take time off to renew the permit that is always a lengthy and cumbersome process. It is proposed that the renewal of the permit be extended from one year to three years.

Code of Practice of the Prevention and Eradication of Sexual Harassment in The Workplace

Background
On August 6th 1999 the Ministry of Human Resources issued the Code of Practice On The Prevention and Eradication Of Sexual Harassment In The Workplace. The code requires the employer to establish, at the enterprise level, an in house mechanism to prevent, handle and eradicate sexual harassment in workplace. This mechanism should among others include a policy statement. The policy statement should address the following:-

- A declaration prohibiting sexual harassment in the organization;
- A caution stating that sexual harassment constitutes a breach of the company’s policy and will incur disciplinary actions up to and including dismissal;

---

7 Business Times (01.02.2002)
A directive stating that supervisors and managers have a positive duty to implement the policy and to demonstrate leadership by example;

Every company should formulate a policy that is suitable to the environment in which it operates. Basically the policy should inform the employees of the acts that constitute sexual harassment, their rights and avenue to complain and be assured of speedy action after investigation.

A written policy though an important initial step, is not enough to ensure that the company’s policy to combat sexual harassment is effective. Employees will only feel that the top management is serious in combating sexual harassment if sufficient time and resources are devoted to establish rules and procedures, monitoring their effectiveness and educating all employees as to their rights and responsibilities.

The company’s policy on sexual harassment should be brought to the attention of all employees and management. In addition to the policy, employers are encouraged to provide training and to educate employees in the area of sexual harassment. This is delicate but important matter. In the final analysis the interests of the company is paramount. A harassed worker is not a good worker. Various parties have called on the Ministry of Human Resource to come up with new legislation on the ‘Prevention and Eradication of Sexual Harassment in the Workplace’.

MEF views:

According to MEF’s Executive Director, Encik Shamsuddin Bardan MEF is on the view that there is no need for special legislation to be introduced and to also be incorporated into collective agreements. MEF is on the view that sexual harassment is a form of misconduct and should be dealt as such as sexual harassment in the workplace is a form of misconduct and should be dealt with accordingly based on handling misconduct. The existing labour legislations contain adequate provisions to deal with misconduct. At a Workshop held on 20-21 November 2000, the Labour Department and the NGO’s present agreed that it would remain a Code and monitoring of its effectiveness should be continued.

**Human Factor Key To K - Economy Success**

**Background**

K-economy defines by the Organization for Economic Cooperation and Development as an economy directly based on the production, distribution and use of knowledge and information. In short, ideas and knowledge will need to be treated as capital or intellectual capital as opposed to real capital assets (plant and machinery) and financial capital (such as equity and bonds) with its own rates or return. According to MEF’s Executive Director, Encik Shamsuddin Bardan in Malaysian context, the emphasis will be on the use of knowledge and information to enable individuals, corporations and the country to compete more effectively.

*Business Times (5.7.2002)*
Problems faced by employers:

- The need for competitive reward system. A new reward strategy has to be developed to align remuneration and recognition to reinforce the attitudes, behavior and skills required to achieve business strategy. Some of the problems and issues arising out of the implementation of a productivity and performance linked pay system include:
  - Inadequate criteria to measure performance or criteria are not easily understood, communicated and accepted
  - Absence of regular feedback performance
  - Firms adopting a 'wait and see' attitude
  - Need to establish mechanism for sharing of information in relation to profitability
- Addressing the mismatch between supply and demand for skills. Employers in responding a MEF survey had indicated that companies faced shortages in the technical and production areas. Manufacturing companies placed greater emphasis on production and technical skills while non-manufacturing companies (banking related and communication industries) demanded more technical and information technology skills.

MEF views:

MEF had proposed in many for a that a broader – based education and training system is required to produce more well-rounded workers. In addition MEF had proposed for greater private sector input in manpower planning. Greater private sector involvement in setting up of institutions to provide training in IT and communications would contribute significantly in resolving problems.

Challenges Faced By The Employers In K – Economy

MEF views:

Developing Human capital

Employers should change their mindset and emphasized on knowledge and skills. In developing a k-workforce, employers need to equip their human resources with IT skills and knowledge. Malaysia’s capability and capacity in acquiring and utilizing new knowledge and technologies will be determined by the quality of human resources. A competent, disciplined and highly skilled labour force with strong ethical and moral values and commitment to excellence must be developed.

Knowledge management

The employers has the responsibility to instill IT awareness in the organizations by applying IT throughout the organizations to facilitate better deployment, utilization and management of human resources.
Building learning organizations

The employers should realize the importance of building learning organizations and emphasizing a culture of continuous learning. Learning organizations will contribute to the growth and the way forward into a knowledge economy. Without such culture, all the management systems will be fruitless.

Job Opportunities For The Disabled On Private Sector 9

Background:

In the symposium on the Career of the Disabled which was held on 12th March 2001 organized by Labour Department Peninsular Malaysia, MEF suggested the following suggestions to facilitate the disabled to find suitable employment:-

- Creating greater awareness on the capability of the disabled.
- Special incentives for the employers who employ disabled.
- The creation of data bank on the disabled job seekers.

The disabled are urged to equip themselves with the ICT skills to make themselves more employable. There are vast opportunities for the disabled to upgrade their ICT skills and they should grab them. The technological upgrading of individuals and organizations provide a much greater employment opportunities to the disabled, not only as employees but also as employers that will generate greater employment opportunities for the disabled.

MEF views:

According to MEF’s Executive Director, Encik Shamsuddin Bardan MEF strongly supports efforts made by individuals, organizations or associations to highlight success stories of the disabled in their respective careers to the public at large.

Consequences Of Failure To Conduct Domestic Inquiry 10

Background:

The concept and content of natural justice imposes a duty on the employer to act fairly when an employee is being subjected to disciplinary action resulting from misconduct. There are two recognizable aspects of natural justice namely impartiality and fairness:-

---

9 Business Times (28.03.2001)
10 Business Times (7.12.2000)
no man shall be a judge in his own cause – which means that the inquiry must be carried out by persons who are impartial and unbiased and not directly concerned with the allegations against the employee.

No man is to be condemned unheard –which means that the employee concerned will be given an opportunity to know the case against him, be present at the domestic inquiry and present his case defense.

It would be expected of an employer in conducting a domestic inquiry to:-

• give prior and sufficient notice to the party affected to prepare his case adequately;
• give the employee an adequate opportunity to present his case;
• make available to the party affected any information, evidence or material the company would rely upon for its decision.

Law relating to domestic inquiry, The Employment Act 1955 provides a statutory right to be heard by the employee within the scope of the Employment Act 1955. Section 14(1) of the Act stipulates that an employer may, on the ground of misconduct inconsistent with the fulfillment of the expressed or implied conditions of his service after due inquiry:

• dismiss without notice the employee;
• downgrade the employee;
• impose any other lesser punishment as he deems just and fit.

There were cases where the employers held domestic inquiries before dismissal but the Industrial Court had held that because the inquiries were not held ‘properly’, the claimants were entitled to backwages on compensation. An illustration of such a case was in Industrial Court award no. 142 of 1986 between Malayan Banking Berhad v Association of Bank Officers. In this case, the claimant was dismissed after due inquiry, for misappropriating the company’s money. The court came to the conclusion that it had no doubt that the claimant had committed the act misappropriation and upheld the dismissal. However, on the domestic inquiry, the court concluded that the claimant was denied a fair hearing because two members of the board were biased and partial as they had prior knowledge of the investigation report. On the said ground, the court ordered the company to pay claimant RM29,022 as backwages from date of dismissal to the last date of hearing at the Industrial Court. Also the case of Industrial Court award no. 141/86 between Dreamland Corp. v Choong Chin Sooi, the Industrial Court, although upholding dismissal, ordered backwages amounting RM62,720 on the grounds that the company failed to hold an inquiry before the dismissal.

MEF views:

domestic inquiry before dismissal or the conducting of a defective inquiry would no longer be fatal to the employer since the Industrial Court hearing would enable the defect to be cured.

In the event the employees always avoids attending the inquiry due to many reasons such as sick leave, it is recommended that employers should give clear indications to the employee that the inquiry would nevertheless be conducted in the employee’s absence and the disciplinary punishment may be taken against the employee which may include dismissal.

On the date of the inquiry, the employer should proceed with the domestic inquiry even if the employee did not turn up. Even though the failure of conducting domestic inquiry or conducting a defective domestic is not fatal to the employer’s case as such irregularities can be cured at the Industrial Court hearing.

Issues of Probation

Background:
The term probation is not defined in any of the labour legislation. Commonly, it denotes a period in which the employer gauges the performance of an employee and decides whether he or she should be confirmed in the position the person is engaged. At the end of the period, the employer may decide to confirm the probationer if his performance is up to the standard expected by the company or extend the probation period if the performance is not up to the standard but can be improved or not to confirm the probationer if his work is not up to the standard. The period of probation varies from three to six months in the private sector and one to three years in the public sector.
The issue of probationers’ rights and the employers’ rights and obligations during and at the end of the probation period has brought a great deal of debate and resulted in a number of cases being referred to the Industrial Courts and higher courts.

One of the significant issue was drawn from judgements by the Federal Court for the cases K.C Mathews v Kumpulan Guthrie Sdn. Bhd. And V. Subramaniam v Craigielea Estates are concluded below:-

- An employee on probation remains as a probationer unless the employer confirms him at the end of his probation period;
- At the end of probation period an employer can either confirm or not to confirm the services of the probationer if his services are found unsatisfactory; and
- The services of the probationer cannot be terminated before the end of the probation period except on grounds of proven misconduct or other sufficient reasons.

*Business Times (9.11.2000)*
MEF views:

According to MEF’s Executive Director, Encik Shamsuddin Bardan it would be a good management practice that employers should decide at the end of the probationary period, based on performance appraisals during the probationary period, whether the employee concerned should be confirmed, not confirmed or the probation be extended for a further period. It is advisable that the decision made by the employer as to the status of the employee should be communicated to the employee concerned in writing, at the end of probationary period, initial or extended, as the case might be. It is advised that it may not be proper to keep a probationer languishing indefinitely on probation.

The next issue arises relates to the rights of a probationer to seek for reinstatement if the employer decides not to confirm the probationer at the end of the probation period or terminate / dismiss the probationer during the probation period. In the Court of appeal case of Khatijah bt Abbas v Pesaka Capital Corp Sdn. Bhd. (1997) MLJ376, it was held that probation comes in the purview of Section 20(1) of the Industrial Relations Act. The Court of Appeal that an employee on probation enjoys the same rights as a permanent or confirmed employee and his or her services cannot be terminated without just cause or excuse.

Productivity Linked Wage System ¹²

Background:

MEF has been striving to reform the existing wage system to allow for wage increases through productivity improvement in order to remain competitive. There are now in place a number of companies, which have successfully implemented productivity-linked wage systems both in the manufacturing, banking, service and agricultural sectors.

On June 6, 2000, it was reported that the Secretary General of Malaysian Trades Union Congress (MTUC) M. Rajasekaran had proposed that the national minimum wage be set at RM900 per month instead of the earlier figure of RM1200 per month.

MEF views:

According to MEF’s Executive Director, Encik Shamsuddin Bardan MEF remains steadfast to the view that wages should be determined through collective bargaining or contractual agreement at the enterprise level between management, workers and their unions. Wages should not be determined through legislation in the form of national minimum wage. MEF also on the view that the right policy relating wages should be to instill confidence among local and foreign workers; help companies regain their cost competitiveness, enhance productivity and preserve jobs for workers and minimize unemployment.

¹² Business Times (6.07.2000)
MEF feels that we should encourage greater flexibility in the wage system in the private sector, to enhance companies' ability to deal with individual circumstances to contribute towards commensurate with performance and results. Minimum wage legislation impedes the freedom of contract between employers and employees. Wage determination ought to be dependent inter alia upon:-

- the productivity of labour employed by the industry;
- comparable wages in comparable concerns in the same market; and
- the present capacity of the industry to pay and prospects in the future.

Within the scenario of rapid technological innovations and new ways of doing business, the emphasis should be on flexibility and the ability of the wage system to adapt to change and not to introduce new rigidities into the wage systems.

The Prime Minister stressed that the best way to get higher wages was to increase productivity and if the increase was not reasonable, negotiations should be held with the employers. MEF is of the view that the existing labour laws provide sufficient scope for workers to organize themselves and settle questions relating to wages through collective bargaining.

MEF also of the view that proposed minimum wage is not based on economic arguments i.e wages paid to workers is to ensure that the wages were enough to guarantee a minimum standard of living, and furthermore the effect is that or implied any employer regardless of his capacity to pay cannot employ any person below the statutory minimum wage. In other words employer fail to pay the minimum wage would be contravening the law. It is not unrealistic to expect that such a high national minimum wage is adopted, there would be a price impact on consumer price stabilizations measures introduced by the government e.g. price of chicken, roti canai, nasi lemak, teh tarki etc. It also affects pensioners, self employed, the unemployed and various sectors of the population. Also the setting up minimum wage system would lead salaries to up very high levels for all categories of workers including executives. Furthermore our neighboring country like Singapore does not have minimum wage. Even though Indonesia, Philippines, and Thailand, which have introduced minimum wage, there is no conclusive evidence to say that the workers there are much better off than the workers in Malaysia because of the minimum wage.

On the contrary, real earnings of workers in Malaysia in all sectors of the economy have consistently increased, thus improving the quality of life of Rakyat. Therefore the call for a national minimum wage is neither practical nor applicable in Malaysia. We should be focusing our efforts towards new compensation strategies that are in line with business strategies that are in line with the business strategies of the organization to remain competitive. With the achievement of greater heights of economic growth and productivity increases, the fruits of our efforts can then be shared by all levels of Malaysian society.
Assessment of MEF Views on Current Issues On IR

In Malaysia, there are some employers who would use their powers to prevent their workers joining unions. They consider unions to be a “third party” intervention in the worker-employer relationship.

The employer recognizes that employees have the right to form and join union. However, discreet attempts are made to discourage workers from joining and being active a union. Such action, if proven, would amount to interfering and is an offence under the Industrial Relation Act.

Furthermore, one of the main objectives of MEF is to promote, protect and defend the interest of its members and employers in general. MEF try to defend or promote their members interest by using three approaches. The first approach is simply rejecting any proposal /recommendation by government or trade union that they view as encroaching employers prerogatives. Example of this situation is:-

- Monthly wages for rubber tapper,
- National Retrenchment Fund, and
- Foreign Workers.

The second strategy used by MEF is to fully support government recommendation. Most of the issues seen as not so important for employers and will not affect the employers immediately. Issue that MEF showing supports are

- Enhancing productivity and competitiveness, and
- Human Factor in Key-Economy.

The last and final approach is to stay neutral on certain issues and used “wait and see” attitude. Due to this stand, government sometime face difficulty in making the right decision on certain issues especially when drafting or amending an Act in IR. Examples of MEF using this approach are:-

- Code of practice of the Prevention and eradication of sexual harassment in the workplace, and
- Unionization of foreign workers.
THE CHALLENGES OF FUTURE TRENDS ON EAS

Introduction

EAs need to be one step ahead of their members. They would have to take cognizant to the challenges of future trends and able to advise their members on what is likely to be important in the future, if they were to stay relevant. Gone are the days when EAs could depend on employers for reasons such as fear of unions. They have to take on new challenges to justify their existence. Hence, this section attempts to: (i) look at the future trends which would impact on EAs; and (ii) how the trends can be utilized by EAs in maximizing good IR practices and industrial harmony potentials towards the excellence of enterprises and achieving national aspirations. The issues will be viewed from the employers perspective in the light of constant demand on them to be sensitive to the needs, interests and wants of stakeholders as they strive to ensure good IR practices to maximize the potential of their employees, as employers themselves and their enterprises.

The phenomena changes and dramatic challenges posed in this millennium has made employers refocused their attention on employees in general and good IR practices in particular. The government took cognisant to this reality that the industrial harmony of companies in Malaysia must be strengthened if companies are to be prepared adequately in the future. This is clearly reflected in the emphasis our government has given to employees’ development in all major development plans. The Five-Year Development Plans, the Outline Perspective Plan, the Industrial Master Plan all outlined the policies, the strategic directions and programs on enhancing the capacity of employees.

In looking at the current trends on IR practices, the focus here would be at both the macro and micro levels. References will be made from the review of literatures, interviews and general discussion with employers and reflections from the writer's experiences. The deliberations on the current trends that have profoundly impacted upon IR practices; its ramifications on employers and towards realizing our national aspirations are as follow.

Current trends impacting on IR practices at macro level

Constant environmental changes

Constant environmental changes mean that employers face constant challenges. In this millennium, the changes in the environment is characterised more pronouncedly by these three phenomenon: globalisation, economic liberalisation, and the dramatic advent of the information and communication technology (ICT).

The dramatic and fast-pace changes in the environment had brought about much uncertainty and unpredictability. Globalisation and economic liberalisation have made nations and people of the world become inevitably interdependent and in need of each other. The people of the world are becoming increasingly interconnected in
all phases in their lives and this development inadvertently brought new perspective in employment. There is a pressing need for our employers to network and develop linkages among their counterparts in other countries. The IR practices they are to develop will have to consider the complexities and intricacies of cross-cultural factors.

In anticipation of the changes and challenges, the government has set the platform for the country to make the crucial paradigm shift from production-driven economy to knowledge-driven economy. We can witness the government’s commitment to this course through such strategic strategies as the setting-up of the National IT Agenda (NITA) and the aggressive promotion of the MSC, developing of an electronic government and a host of other innovative projects.

In the context of employment, it could be noted that more ICT-based institutions have been established to train and equip our workforce with the all-dominant and powerful enabling tools of ICT. The agenda for ICT literacy is essential for our workforce to have assessed and utilise the knowledge and information available from around the world. Employers have crucial roles to play. Workers need not only to be trained in ICT but also trained to acquire the knowledge, skill and experience in niche areas of other new technologies that include robotic and electronic (Sabariah, 2000). To maintain the pace of change, employers need to develop their corporate culture of continuous learning.

EAs need to help corporations cope with the challenges above. As a practical example, some companies are provides training and training consultation to companies that realise the significant of this challenge and has set up knowledge bank with the following rationale: to build a strong foundation for the post-industrial age; to leverage knowledge for organizational competitiveness; and to build a learning corporation.

The future trend is that knowledge management rather than information provision is likely to be an essential service.

Financial commitment and support on good IR practices

Evidence in Europe from the Price Waterhouse Cranfield survey shows the almost all European countries have increased their expenditure on the career development for all categories of employees. Similar evidence occurs in Australasia, South Africa and USA (cited Horwitz, 1999). This trend also prevail in Malaysia.

As an illustration on increasing financial commitment and support on employees’ development in Malaysia, especially on skill training and development, the private sectors received a tremendous boost when the government launched the Human Resources Development Fund (HRDF) which make it mandatory for employers involved in manufacturing and some industry in the service sector to contribute HRDF at the rate of 1% of their wage view. Since 1993, RM596.28 million has been collected and a total of 2.24 million training places had been approved for employees to be trained and upgrade their skills.
The government has set up another source of labour fund called Skill Development Fund (SDF) which is also administered by the Ministry of Labour to help employers defray part of the allowable costs of skilled training and concurrently improving assess to skilled training.

International organisations like the United Nations which through UNDP has been a source of fund to developing countries like Malaysia in supporting urban and rural HRD in skill. The International Labour Organisation support employees development in skill through countries and regional projects and through the provision of research, advisory services and training facilities. The Asian and Pacific Skill Development (APSDEP) has been designed to give a regional dimension of ILO activities in Malaysia.

Developed countries also provide funding for employees' development to developing countries. Japan, for instance, provide funding for skill development through the Japan's Official Development Assistance (ODA) and through agencies like the Japan International Cooperation Agency (JICA), Japan Overseas Cooperation Volunteers (JOCV), Japan International Training Cooperation Organisation (JITCO) and Overseas Vocational Training Association (OVTA).

The implication to this trend challenge EAs to know how and where to get the resources but more importantly to utilize the resources effectively. Driven by their own resourcefulness and diligence, EAs should be able to secure the fund needed for their employees development endeavors.

Workforce characteristics and changing demographics.

The manifestation of this trend is the changing values and expectations of a young and well-educated workforce; and the increasing participation of women in the workforce. One of the main forces behind Malaysia's economic momentum is the availability of young and educated human capital. Malaysia has a sizable population comprising people under the age of 30. Compared with twenty years ago, today the young and educated workforce has aspirations and preferences that are more aligned with those prevalent in industrialized societies. This suggests that future labour practices in Malaysian companies should take this into consideration by providing more developmental opportunities and empowerment.

In Malaysia, women also play an increasingly active role in the economy. Despite the increasing participation of women in the workforce and positive attitudes towards it, societal values and expectations may create a barrier for career advancement. In Malaysian culture, maintaining family integrity and harmony and taking care of children are the primary responsibilities of women. The possible "harm" to the family by women's work is of constant concern. This concern is one of the underlying rationales behind the lack of practices for developing and using women's potential to the fullest extent. It is evident that the new workforce will place a high value on integrating work and family. Accordingly, more companies are moving to develop
work-and-family instructional programs, as well as on- and off-site child and elder care programs (Aycan, 2001).

**Responsiveness to current and future job and skill market demand**

Today, jobs and skills change at dizzying rate. The time line for many employees between skill acquisition and skill obsolescence continues to shorten over the years. In fact, many jobs and skills have become obsolete or not relevant. Employers are increasingly recognising the pragmatic needs for training in the context of the continual development of their employees' knowledge and skills as essential to corporate success and the enhancement of employees levels of corporate commitment and their work morale.

Job and skill competencies constantly interface with technologically advances, environmental and economic changes, and a host of other demands. All these challenges accentuated the importance of IR and transformed good IR practices to be an important function of strategic management.

In tandem with the changes in the environment, employers in their capacity as the employees developer must necessarily develop training programs that meet the needs of market demand. Major changes in the labour force are critical and will be exacerbated in this new millennium. The changes in the labour force are fueled principally by the introduction of new technology with lightning-like speed. EAs will be center to address the resulting skilled-level gaps between workforce entrance and job available. Technology has lead to higher skill jobs (rather than deskillinng jobs). EAs can play instrumental roles in ensuring the development of the new skills among employees of corporations. In instances where work is deskill, viable alternatives will require training.

New ways of organising work has also impacted upon employers. Some of the development or extension of innovations in the organisation of work are like job redesign, TQM, JIT and ISO 9000. Each of this initiative involved developing the labour in the content and interpersonal skill associated with the innovation.

A survey into the training programs available in the market over the years since its inception would indicate clearly to the demand of changing requirements for the workforce which is shaped by the change in technology and new innovative ways of doing work.

**Current trends in IR practices at micro level**

Current trends in IR practices could also be distinguished at the micro or corporate level which similarly impact upon and challenges employers. Some of the more distinct manifestations of the trends are as follow:
New corporate structures and new process to cope with change

Companies of the future will become increasingly complex in terms of size, financial resources, manpower utilization and product diversification. Traditional structures will not be adequate. To permit a company to be proactive rather than reactive, matrix corporation concepts is emerging. This will provide the flexibility to utilize resources wherever they can be found to effectively meet the needs of the company. A greater emphasis is placed on processes and systems within the companies that will permit self-renewing activities and innovation (Morley et al., 1995).

The implications of this trend on employers are:
• They will have to understand and learn to apply the principal of matrix corporation. Many early corporate theories and assumptions are now obsolete. Employees need to be multi-skilled. The focus will be on getting the job done. Systematic efforts will be made to prevent working through corporate channels, which tend to choke and prevent corporate growth and effectiveness.
• They must make corporate analysis and to interpret the results for management.
• They must place greater emphasis on being communications linkers within the corporate.
• They must focus attention on helping corporations become comfortable in the presence of change and to work effectively within corporation characterized by continuous change.

Recognition of corporate culture

The current trend also require employers to be take cognisant of corporate culture and take into account the need for a match between culture and strategy in the company (Brown & Dodd, 1998). Culture, deemed as the personality of a company (Savolainen, 2000), is seen as an important variable in deciding how IR practices should be delivered and evaluated. An under-developed issue would appear to be the role of employers in influencing and changing, rather than simply maintaining, corporate culture. Employers has a crucial, challenging role to play in successfully "orchestrating" strategic corporate culture change.

In the Malaysian multi-diversity workplace, corporate culture is even more complex a concept and difficult to pin down. The influence that employers might have in changing corporate culture could therefore be even more difficult to isolate and clarify. However, a recognition of the potential for IR to develop and enhance (as opposed to merely recognise) corporate culture is essential. In another perspective, interestingly, the current global trend towards a participative and democratic culture within companies as identified by Chiavenato (2001), would be well accepted here as it is consistent with our core values.

Creative and learning corporations

There is a growing trend for companies to develop as creative and learning corporations arising from the recognition that initiatives such as Total Quality
Management (TQM), Business Process Reengineering (BPR) and other 'programmed' responses by themselves are inadequate for enterprises seeking continuous improvements and strategic breakthroughs. It has been described creativity and learning are the only sustainable competitive advantage. Hence, the creation of creative and learning corporations is seen as a response to an increasingly unpredictable and dynamic environment (Griego et al., 2001).

Canning (1996) observed that there were three corporate paradigm shift with different focus. The beginning was Weber's (1947) bureaucratic enterprises focusing on efficiency, i.e. doing things right. From the mid 60s we have Drucker's (1964) performance based organization focusing on effectiveness, i.e. doing the right things. In the 90s we have learning corporation, i.e. focusing on learning i.e. continually expanding the corporate 's capacity to do the right things and to do things right (Senge's (1990) promulgated the concept of learning organisation). Since then, interest in the learning corporation has not diminished. We could see attempt to seek synergy from another phenomena namely the creative corporations. The creative corporation would provide the ideal corporate climate for corporate learning to take place. In this era, it is not only learning, it is the ability to learn faster and faster that matter most. The creative corporation could provide the basis and platform for all the changes to take place.

EAs should initiate corporations to build their organisations creatively to bring about change in human behaviour and corporate processes to be a more adaptive and flexible corporation by linking creativity to everyday processes and the climate of corporates. EAs are to impress upon the corporations that creativity is not the prerogative of the select few or merely confine to activities that call for a creative content to their output. Given the right environment and with appropriate stimulation and innovation, most employees could become more creative. Creativity can be learnt and improved as it is a skill (Majaro, 1992).

A focus on employees

The challenge that companies will have to face in the 1990s is no longer one of who has got the biggest and most effective technological power, but rather who has got the right level of skill and expertise. It is more and more recognised that in the future, real power will reside in the hands of ordinary employees rather than with managers such as has been the case thus far. The jargon used in management nowadays is slowly shifting from the expected language of strategy, operational targets etc. to a "softer" type of language such as: loyalty, self-respect, partnership, consensus, fairness, common values and co-operation (Kitaura, 1996).

Focus on employees is competitively a sound strategy. There are various studies that have managed to establish a link between commitment to people and impact on performance. For example, the Swedish consultant Lars Hessner, jointly with the Institute of Statistics at Stockholm University, has managed to establish a link between attitudes and business profitability levels in a large number of corporations. They have for instance demonstrated that:-
• Businesses that have good standing in the market place and known to be good performers, are those that do have the best working climates;
• Employees prefer to have respect and be involved in the everyday running of their businesses rather than just do their job and be treated indifferently (Fagerfjall, 1995).

EAs should render helping hands to corporations to get them vitally involved with educating employees and increasing their awareness of what it means to generate value within their corporations.

Demand for quality

The demand for quality has emerged as the single most critical factor for companies to survive in the ever expanding and competitive global market place. It is imperative to focus on the workforce dimension of quality management as employees development is at the heart of all total quality management programs. Continuous quality improvement depends upon the best use of the talents and abilities of a company’s workforce. To achieve world class quality, it is crucial that the companies empowers its workers. Employers must develop and realize the full potential of their workforce and maintain an environment conducive to full participation, personal and organizational growth. This can be achieved through creating the appropriate good IR practices through training, employee participation and involvement, building quality awareness among employees, and motivating employees. The main issues considered in employees development are: good management of the workforce, employee involvement, quality education and training, employee recognition and performance, and employee well-being and morale.

Recruitment and selection

The recruitment and selection function will continue to pose pressing challenge on employers in the years to come. Current skill shortage is one major factor that points to rapidly deteriorating recruitment prospects. It would be harder for those employers who fail to change their ways or are slow to use a more innovative form of employment (Chiavenato, 2001).

It is imperative upon employers to attract high performers and exercise a high degree of professionalism in this endeavor. They must try to sell their companies to the prospective employees whom they want on the basis of their companies’ track record and the challenging environment they operates. By attracting employees who want to give high performance, they add value to the company and create a stimulus for other employees inside the company to stretch themselves to perform better. The whole process of recruitment needs to reflect the professionalism of the company. EAs should encourage employers to examine their various recruitment and selection methods and adapt them creatively to identity and recruit the three major employees groups, namely the managers, supervisors, and the rank and file.
Labour outsourcing

An increasing trend in many companies is to outsource labour work, in particular, administrative and high transaction cost activities as corporations desire to minimize the workload of regular employees, reduce cost, reap economies of scale, improve quality and efficiency, and gain expertise from outside vendors. Labour outsourcing is also look upon as a strategic tool for achieving competitive advantage as outsourcing the transaction-based employees activities (e.g., benefit administration) frees employers to deal with strategic issues. Generally, some aspects of the labour functions are judged as cost centers (e.g., benefit administration) but other elements of a labour system create value as part of a corporation’s strategic infrastructure (Belout, 2001).

The outsourcing of labour activities or programs depends on (a) company strategy, (b) corporate culture, (c) competencies/skills of labour, and labour strategy. In view of the changing role of labour function, strategic labour activities would be performed more and more inside the corporation and routine labour activities would be more and more outsourced (Khatri, 1999). Hence, employees themselves should not neglect their personal developmental growth and competencies if they are to remain relevant in the company. This trend drives upon EAs to help enterprises to constantly strive for excellence and add-value to their companies to ensure their stake in the companies.

Competency based compensation and variable pay plan

Another current trend is the shift towards the decentralization of bargaining on pay and conditions by companies. They are moving away from standard pay scales toward pay systems that are flexible and strategically aligned with complex and changing global environments. Examples include the increasing use of competency based pay, in which pay is geared more to individual skills and abilities that contribute to corporate success than the job individuals perform, and broadbanding (Dawson, 1995).

The trend towards increased use of performance related pay presents a particular challenge to the employers, since the system, while motivating those receiving the payments, can have a considerably negative effect on the commitment and motivation of those who do not receive them. No matter how fair the system appears to be, it is unlikely that a company has sufficient resources to reward all those meeting their targets and, in the longer term, such schemes may be problematical, as there will be strong upward pressures in salary costs.

Another growing trend to counter the shortfalls in the competency-based compensation system is to use the “variable pay” plans. Variable pay or incentive pay plans refer to payments that are based on an objective or quantitative assessment of individual, group, or company’s performance, that do not add to base salary. Examples include bonuses, gainsharing plans, profit sharing, and stock option plans. Variable pay does not add to base salary, and thus can be much larger on average in any one time period, and more noticeable and motivating. Variable payments are also increasingly being tied to team, unit, or company performance, as opposed to
individual performance, allowing corporations to reward individuals for team or group related effort (French, 1998).

In the Malaysian context, the variable pay trend has made inroad. This could be seen by the use of stock option plans for lower level employees and the management in government own companies (e.g. TMB and TNB) and other public-listed companies. Many reasons have been advanced for the growth of these "broad based option plans". Stock options are a way to link employees' pay to the company's performance. This can increase employees' morale and performance and help the company reduce risk, by linking compensation expense to firm performance.

A shift towards the performance management system

The performance management system (PMS) has rapidly become established as a central element of labour management. There is a growing trend among companies to displace or restructure their traditional performance appraisal system to the PMS approach. Effective PMS ensures that employees are set challenging and achievable objectives within a corporation framework, and that they receive formal and informal feedback on progress periodically. It also leads to the accurate identification of training needs, and provides a basis for reward decisions. In addition, performance management is a powerful source in shaping the corporate culture.

PMS is the growing trend as it attempted to provide a strong linkage to the strategic goals of the corporation. Traditional approaches to managing performance associate variations in performance with personal factors, when, in fact, they could actually be caused in part or entirely by situational or systems factors. Essentially, the assessment of individual performance must necessarily consider not only what individuals have done (the results), but also the circumstances in which they have had to perform. PMS also emphasize on the 4C (caring, consulting, coaching and counseling) (Veale & Wachtel, 1996).

The PMS approach has been adopted by some big corporations in Malaysia (e.g. PETRONAS, TNB and TMB). Employers must ensure that the PMS is job related, reliable, valid, standardized, consistent, practical, workable, and acceptable to all concerned. They need to get the cooperation and input of the managers, supervisors and the general employees. They are also responsible in initiating the PMS in necessary circumstances.

Changing work arrangements

It is an evident trend that companies need to offer alternative workweek and work schedule if they hope to attract and retain talented employees, as well as to maintain effective, competitive levels of productivity. These options include telecommuting, part-time employment, job sharing, flextime, a compressed workweek, temporary assignments, developing a supplemental workforce, hiring independent contractors, and employee leasing (Church et al., 1996).
This phenomena presents a considerable challenge for employers. The issues are like how can employees be given the necessary support to work effectively at different time and from different locations? This entails not only the technological issues, but also the social stimulus and management feedback required to operate from home or at different time. Work rules, disciplinary procedures, and work schedules must be set. For changing work arrangements to be an effective corporate strategy, it is critical that the HR role actively negotiates between the different needs of employers and employees. This will entail making both parties' needs explicit, acknowledging the differences between their needs and directing efforts towards constructing outcomes that are mutually satisfying.

**Expansion in records maintenance and information management**

The area of employees records maintenance will continue to expand as labour-related legislation has increased and the labour function has grown in complexity, records maintenance has expanded accordingly. Employers are required to have extensive knowledge of various legal requirements for retention of records and posting notices. An offshoot of this development had been the computerized employees information system. Such system will not only greatly ease the tasks of record keeping but can assist with virtually all aspects of labour management.

**Plans of action for EAs**

The following are plans of action adapted from Wild (1999)'s proposal which could be adopted by EAs in our country as their preparation for the challenges ahead.

- **Increasing membership**
  EAs could focus on new investors and increasing numbers of women in business and young entrepreneurs. They would need to clearly define the membership package. Its mission should be relevant, positives and inspiring the public. They also should utilized affective communication in its mission, services and shared information.

- **Improving the income based**
  EAs could generate more income through marketing the professional, academic and training abilities of its staff in the form of sales of publication, research finding and industrial relation. Coordination fees from donor project could bring additional revenue.

- **Improving performance assessment**
  Assessment of EAs could be qualitative, for examples, percentage growth in membership, income and retention, numbers of programmed and their effectivenes as measured by participants, the numbers of dispute resolved or avoided, financial ratio such as income and expenditure. While qualitative measured of an employers organization would involved the organization image and reputation with the public and the membership.
• Developing and improving services
In regard to developing and improving services, EAs would need to identify services necessary through mechanism such as committees, conversations with members, surveys, link with employer’s organization. Services could be developed and improved through the establishment of strategic alliances as well as link with universities and other educational institutions.

• Service delivery
In assessing delivering services the regional structures and local representatives of employers’ organization should be used. Direct communication should be used regarding deliver subject with members. Where the organization does not have the requisite capacity or expertise, the service could be outsource.

• Staff development and training.
Leadership and a good corporate culture is important to retain institutional memory. Each staff should be encouraged to develop a skill or skill in addition. EAs should establish link with universities and vocational training institution to ensure members acquire new knowledge and skill.

• Information / Research
It is imperative to develop an information / research base. However, the research and information base should be uncomplicated, easy to digest and relevant. Information collected should be functional.

Assessment of Challenges Face by EA in The Future

With globalization and economic liberalization and the heavily used of ICT in daily operation, EAs have to show its relevancy to exist in the era of economy without clear boundaries. By the year 2005 Malaysia have to implement AFTA, which definitely will have an impact to employers and employees. Globalization will force certain employers to merge with other to form bigger and better entities to face the multinational onslaught. Besides that there will also be new trade economic bloc that defies the idea of free trade, which can create more hurdle for employers in Malaysia.

Looking at the trend mentions above, EAs in Malaysia need to create linkages with others from others countries especially with multinational companies. They also should know and follow the guideline prescribe by World Trade Organization EAs also have to be more willing to work in hand with their trade union in order to survive in the era of globalization. Infighting between these two groups will definitely make their organization less competitive and productive. United in facing the future will give them the chance to survive.

Conclusion

The trends taking place within the companies and the wider context of the economy and society that impacted on EAs in Malaysia were discussed taking a broad-brush
approach, focusing on the role of employers and towards the realization of national objectives as set-forth in OPP 3. It could be drawn upon that how Malaysian employers deal with them depend on how much employers are committed to IR and how well its corporate system is equipped to facilitate IR activities for its employees.

The challenges with which EAs have to cope vary greatly from country to country. What may be considered as a new challenge in one country, may not be a problem in another. Priorities are and must be different. But in spite of all these differences, there are certain basic challenges with which EAs are confronted everywhere. The major challenge for an EAs is to carry out two basic functions; providing services to member firms and acting as employers' representatives in national economic and social development and policy. The roles performed by EAs will continue to develop and change.

In smaller corporation, IR activities is generally informal and tends to rely more on external IR expertise to provide for its needs. In larger corporations, IR activities are usually institutionalized and managed by specialist in the HRM Division within the organisation.

It is now recognised that good IR practices are fundamental necessities for both the companies as well as the employees. The need to provide good IR practices, a soft corporate infrastructure, is no longer just a prerequisite to initiate employment. The pace of structural and technological innovation has highlighted the need for retraining and skill upgrading and developmental throughout an employee's lifetime in employment.

Some crucial IR activities, such as collective bargaining and industrial harmony should not be viewed as an operating expance but rather a long-term investment in the use of employees. It is not an end in itself but neither in it a subsidiary. It is one of the crucial tool in developing their enterprises. Undoubtedly, the challenge ahead for employers is to play a credible value-adding role in improving corporate effectiveness and assuming a pivotal role in strategy formation.

With concerted effort, optimizing the potentials of our enterprises, addressing strategically to emerging national and global trends, EAs should spearhead our enterprises to change which would put them in good stead to face the challenges ahead - forging to achieve our national goals.
References


- Garavan, Thomas N; Heraty, Noreen; Barnicle, Bridie. (1999). Human resource development literature: current issues, priorities and dilemmas. Journal of European Industrial Training; Volume 23 No. 4


- Industrial Relation Act, 1967. International Law Book Services, Wisma ILBS.

- International Journal of Manpower; Volume 17 No. 4.


• Trade Unions Act 1959. International Law Book Services, Wisma ILBS.


- Part Two -

Prepared by:

Assoc Prof. Dr. Raduan Che Rose
Graduate School of Management
Universiti Putra Malaysia
43400 UPM Serdang
Selangor

crr@putra.upm.edu.my
03-8946 7438 / 019 3869446

© Universiti Putra Malaysia, July 2006

All rights reserved.
No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of Centre for External Education, UPM.
# Table of Content

**Part Two**: Employee, Organization and Community Relations: Activities, Framework and Issues

<table>
<thead>
<tr>
<th>Topics</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading 7: Collective Bargaining in Malaysia (The Process and Regulations)</td>
<td>190</td>
</tr>
<tr>
<td>Reading 8: Employee Discipline and Procedures</td>
<td>211</td>
</tr>
<tr>
<td>Reading 9: Industrial Conflict in Malaysian Industrial Relations Environment</td>
<td>230</td>
</tr>
<tr>
<td>Reading 10: Industrial Democracy: Employee Involvement and Participation</td>
<td>251</td>
</tr>
<tr>
<td>Reading 11: Corporate Governance in Malaysia</td>
<td>279</td>
</tr>
</tbody>
</table>
Reading 7

Collective Bargaining in Malaysia:
The Process and Regulations

This chapter gives an overview of the collective bargaining in Malaysia. A major issue is the changing role of HR in organizations. Where HR was once a clerical function that was relegated to the lower echelons of the organization, today more and more companies have elevated the HR function to an integral part of the senior planning team.

Introduction

Malaysia aspires to be an industrialized nation by the year 2020. As a developing nation striving to achieve this goal, it cannot afford to have internal strife caused by industrial unrest, strikes, picketing, etc. Thus it has made clear its obvious preference for the three-cornered approach comprising collective bargaining, conciliation and arbitration to industrial relations.

Using this approach, when negotiations through Collective Bargaining fail to resolve disputes or differences, industrial action (like strikes or lockouts) may not necessarily follow. A subsequent way to deal with this problem is by conciliation through the Department of Industrial Relations in the Ministry of Human Resources. The third is arbitration through a statutory constituted tripartite tribunal specially set up for this purpose - the Industrial Court. The Industrial Court is empowered by the Industrial Relations Act 1967 to arbitrate any trade dispute.

When the trade dispute is referred by the Minister of Human Resources to the Industrial Court, the industrial action is deemed as illegal and the court's award in settling the dispute becomes binding, final and conclusive and shall not be challenged, appealed against, reviewed, or called in question by any court.

This, however, does not mean the workers' rights to strike or lockouts by employers are not recognized in Malaysian industrial law. It only means that the right is severely restricted, with powers vested in the Minister of Human Resources to prohibit strikes/lockouts if he thinks it is expedient to do so in the interests of industrial peace and economic development. The Industrial Relations Act prohibits a strike or a lockout in certain circumstances, for instance, after a trade dispute has been referred to the Industrial Court for arbitration; and it restricts their use in the "Essential Services" by requiring appropriate notice of their intended use. The Act also makes it a criminal offence for anyone to participate in or to instigate or to support any illegal strike or lockout.

The Malaysian government has reiterated the rationale for this approach:

"As long as our cost of production is low, we can compete, continue to develop and progress. But if we also use the 'the test of strength' approach in settling industrial
disputes, we too will face production cost increases and lose our competitive edge. The effect on us would be worse (than in some other NICs) because we do not have our own technology, we are short of capital and our domestic market is small."

(Mahathir Mohamed, 1998)

Basically the Industrial Relations policy of the Malaysian Government is to promote mutual understanding and co-operation between employers and workers in industry in order to increase not only the economic stability and prosperity of the country but also the wellbeing of its people as a whole. This end is achieved by:

- encouraging the growth and development of democratic and responsible trade unions of workers and employers;
- encouraging and assisting in the conduct of voluntary negotiations between employers and workers (through their own trade unions) on wages, terms and conditions of employment and other matters of mutual interest in the world of work;
- encouraging the establishment of jointly agreed machinery in places of employment for resolving employer/employee differences;
- providing conciliation and arbitration services as necessary for the peaceful and orderly settlement of disputes; and
- fostering good labor-management relations in concert with other agencies.

Under the Malaysian industrial relations system, there are two separate subsystems that relate to the setting of wages and other terms and conditions of service, i.e. the public sector and the private sector. In the public sector, the government acts unilaterally to decide on the salaries and other benefits for public servants. The government’s stand in this stems from its belief that it is not in the best interests of the country for collective bargaining to take place in the public sector.

In the private sector, a bilateral system exists - employers and trade unions are encouraged to bargain in good faith within the parameters set in the Industrial Relations Act 1967.

What is Collective Bargaining (CB)?

The Donovan Commission described CB "a right which is and should be the prerogative of every worker in a democratic society."

CB is a process that involves the negotiation, drafting, administration and interpretation of a written agreement between an employer and a union for a specific period of time (Byars & Rue, 1991:420). It is one of the major mechanisms by which the wages, terms and conditions of employment like overtime rates, retirement benefits, leave benefits, allowances, medical benefits, etc are established. The CB process also provides a formal channel through which the differing interests of management and employees may be resolved on a collective basis.
Generally, the basic tenets of the CB process are:

- Negotiation of relevant issues in good faith by both management and the union.
- Incorporation of the parties' understandings into a written contract.
- Administration of the daily working relationships according to the terms and conditions of employment specified in the contract.
- Resolution of disputes in the interpretation of the terms of the contract through established procedures.

The CB relationship is founded on mutual dependence between management and employees although there is an inherent conflict of interest between the two parties. It is this conflict which provides the input into the CB process. However, the perception of the degree of mutual dependence may vary. Management may perceive its dependence on its work force decreases during times of high unemployment (Salamon, 1987:273).

**Nature of Collective Bargaining**

The essential characteristic of CB, according to the Donovan Commission, is that "employees do not negotiate individually, and on their own behalf, but do so collectively through representatives". Thus, CB can only exist and function if:

- the employees themselves are prepared to identify a commonality of purpose, organize and act in concert;
- management is prepared to recognize their organization and accept a change in the employment relationship which removes, or at least constrains, its ability to deal with employees on an individual basis. (Salamon, 1987:266-267)

**Types of Collective Bargaining**

The different types of CB are **distributive bargaining, integrative bargaining and concession/cooperative bargaining** and **conjunctive bargaining**. Distributive and integrative bargaining are two models put forward by Walton and McKensie. Distributive bargaining occurs when labor and management are in conflict on an issue and when the outcome is a win-lose situation. For example, if the union wins an increase of 40 cents per hour, management has lost some of its profits. Integrative bargaining is a newer form of negotiations and it opts for a 'win-win' or 'mutual gains' bargaining (Fisher and Ury, 1981). The aim is to make bargaining less adversarial and to develop more harmonious relations. Both parties try to understand the other side's needs and to focus on interests (underlying problems) rather than positions (demands).

Both will evaluate a range of alternative solutions rather than advocating a single one and most importantly, concentrate on generating solutions (acceptable propositions) that simultaneously meet both parties' needs.

---

1. Ivancevich, 1998, p. 590
This type of CB involves a problem-solving approach. For example, both sides may face a common problem such as high absenteeism among the employees. Both parties attack the problem and seek a solution that provides for a win-win outcome. In this way, they accommodate each other’s needs through a simultaneous gain without incurring further costs.

Concession bargaining or cooperative bargaining exists when something of importance is given back to management. Concessions can consist of wage cuts, wage freezes of previously negotiated increases, benefits, reductions, changes in work rules that result in increased flexibility for management, etc.

According to Chamberlain and Kuhn, cooperative bargaining can only take place when both parties accept that neither will gain additional advantages unless the other gains too. However, this does not imply that the two parties are pursuing a common interest but that their different interests are more capable of achievement if each is prepared to allow the other to move towards its objective. To that extent, they work on a cooperative basis.

Chamberlain and Kuhn added another term conjunctive bargaining to refer to situations where both parties agree to terms as a result of mutual coercion and arrive at a truce only because they are indispensable to each other (Salamon, 1987:273).

Dimensions of Collective Bargaining

The structure of CB is both a product and a major determinant of patterns of industrial relations. Variations occur across countries in terms of union density, union structure, union government, workplace organization and strikes and the CB bargaining structure.

The manufacturing sector is characterized by a decentralized structure of CB, highly developed workplace organization and strikes. The public sector, in contrast, is characterized by a centralized structure of CB with less developed workplace organization and strikes are few and protracted. (Clegg [1979] in Molander & Winterlon, 1994:156)

The other dimensions of the bargaining structure are: the level of CB (the point at which it is conducted - national, organizational or plant/site levels); the scope of bargaining (the range of issues negotiated at a particular level); the depth of bargaining (the extent to which the parties are involved in the interpretation and application of rules. For a given level, the bargaining unit is defined in terms of the categories of workers covered; the coverage is a measure of the proportion of the employees in the bargaining unit whose terms and conditions are determined by the CA; the form of an agreement refers to the degree of formalization (from an informal understanding to a formal written agreement); and the control of an agreement refers to the degree to which it is enforced. (Molander & Winterlon, 1994:156)
Factors affecting Collective Bargaining

The process of CB is affected by a number of factors or forces which both management and labor unions must deal with. Demand for (skilled and unskilled) labor force depends on the economic situation in the country and the needs of the industries. During times of high level of unemployment, management will have a better leverage in CB for the degree of their dependency on the workers has decreased.

There is also a growing trend among organizations to consider alternatives to recruitment such as outsourcing, use of contingency workers and employee leasing. The reason is many have found it hard to remove workers who only exhibit marginal performance and they have become wary of the potential problems of unionization. This practice of outsourcing as well as the other alternatives to recruitment has weakened unions’ strength (low membership) to a certain extent and subsequently their bargaining strength for the size of the permanent employees has reduced considerably.

Technological changes also affect CB. Companies characterized as high tech or capital intensive have less concern for the impact of unions than firms that are heavily dependent on unskilled or semiskilled labor. As a result, unions have frequently attempted to control technological change in order to protect job opportunities.

International forces may have a profound impact on labor-management relations, especially for firms that take advantage of less expensive foreign labor. However, this is dictated by the host country’s laws regarding immigration and employment of foreign workers. In Malaysia, history is repeating itself. If before, we depended on Chinese and Indian foreign labor to work in the tin mines and estates during the colonial days, now the scenario is pretty much the same. We still are dependent on cheap, unskilled foreign labor in the construction and agriculture sectors. These foreign workers are not interested to join unions or are prohibited from joining. This has important implications on union membership and bargaining strength.

Economic conditions such as inflation rates, unemployment levels as well as geographic differences in economic conditions affect the CB process. During periods of high inflation, unions will exercise more pressure on management to keep wage levels in line with changes in the CPI. Periods of high unemployment may dilute the bargaining power of unions because the effectiveness of the strike as an economic weapon is lessened.

During adverse economic times, bargaining conditions bargaining concerns may shift from high wages and better benefits to job security issues such as demanding protection from layoffs. In extreme cases, employee concessions or “give-backs” may be necessary to bail the employer out of dire financial straits. Companies that have earned high profits, good rates of return, and a bright economic outlook are challenged to “share the wealth” by unions through generous wage increases and liberalized benefits.

The industrial relations and consequently the CB institution in any country are heavily governed by its political forces and legal regulations. The government may
influence CB and employment conditions in ways which differ greatly among countries. In the US the government is primarily (and perhaps ineffectively) a referee in CB. In Latin American countries, where CB is poorly developed, the parties pressure the state to obtain conditions which in other countries might be obtained through CB (Poole & Warner, 1998:666).

In Malaysia the CB process is guided by the federal and state laws of the country for they govern every facet of union-management relations for both the private public sectors. These laws, like Industrial Relations Act 1967, are primarily procedural, i.e. they dictate how the parties must deal with each other, the management prerogatives [e.g. Section 15 (3)] which are not negotiable, how CB should be conducted, etc. Government may determine employment conditions by law like setting the minimum wages, legislating the length of holidays or preventing ethnic discrimination, determines benefits like pensions for the public sector. As in the case of Malaysia mentioned earlier, through legislation it also provides for settlement of disputes through conciliation and arbitration.

Thus almost regardless of the form government intervention takes, the greater the extent of government participation the less scope there is for voluntary CB.

**Functions of Collective Bargaining**

Chamberlain and Kuhn identified several functions of CB, each emphasizing a different concept of the process and a different stage in its development (in Salamon, 1987:271 -272).

**A market/Economic function**

It determines the terms labor will continue to be supplied to a company by its present employees or will be supplied in the future by newly hired workers. In this context, the Collective Agreement is a formal contract and the grievance procedure ensures that the employer complies by the terms agreed upon. Generally, the primary process is concerned with substantive terms by which people are to be employed.

**A governmental function:**

By using a political analogy, the bargaining relationship is seen as a mutual dependency of the parties concerned and the power of each to veto the acts of the other. The CA then is viewed as a body of law determined by the management/union negotiators as the legislature, and the executive authority is within the management. The grievance procedure becomes the judicial process to deal with any differences in interpretation and application of the law (i.e. the executive authority) and on a legislative role - to agree on issues not covered by the CA. Should CB take place, its contents will include procedural issues, distribution of power and authority, substantive issues and distribution of money.
A decision-making function:

CB allows the workers through their union representatives, to participate in the determination of the policies which guide and rule their working lives. When decisions have been reached between the trade union and employer, the CA becomes a formal memorandum and acts to limit employer's freedom and discretion to act unilaterally. The grievance procedure then forms an integral part of the joint decision-making process. The concept of mutuality which underlies CB recognizes that "authority over men requires consent" and "involves defining areas of joint concern within which decisions must be sought by agreement". (Salamon, 1987:272)

Collective Bargaining Process

Pre-negotiation

In any CB, both parties attempt to receive concessions that will help them achieve their objectives. This entails a lot of preparation work during the pre-negotiation period and the follow-up in terms of the implementation of the agreement. Thus the whole CB is a continuous process and not just something that occurs once in three years.

An appropriate analogy of this is the iceberg concept where the visible part of the bargaining is the meeting which only makes up 10% of the whole bargaining process. The other 90% is hidden in the form of the preparation and follow-up. (Maimunah, 1999:137)

Data (external and internal) (see Figure below) of all types are maintained by both unions and management. In addition to this, it is also important to check the background of the union negotiators. This will allow management to interpret the
style and personalities of these negotiators. Management will also look into the union’s financial strength, its total membership, the power structure and internal problems which might weaken its position.

**Bargaining Data for Negotiators:**

<table>
<thead>
<tr>
<th>Internal To The Firm</th>
<th>External To The Firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Number of workers in each job classification</td>
<td>☐ Comparative industry wage rates</td>
</tr>
<tr>
<td>☐ Minimum and maximum pay in each job classification</td>
<td>☐ Comparative occupational wage rates</td>
</tr>
<tr>
<td>☐ Compensation per worker</td>
<td>☐ Comparative fringe benefits</td>
</tr>
<tr>
<td>☐ Overtime pay per hour and number of annual overtime hours worked by job classification</td>
<td>☐ Consumer Price Index (CPI)</td>
</tr>
<tr>
<td>☐ Number of employees, by categories, who work on each shift</td>
<td>☐ Patterns of relevant bargaining settlements</td>
</tr>
<tr>
<td>☐ Cost of shift differential premiums</td>
<td></td>
</tr>
<tr>
<td>☐ History of recent negotiations</td>
<td></td>
</tr>
<tr>
<td>☐ Cost of fringe benefits</td>
<td></td>
</tr>
<tr>
<td>☐ Cost-of-living increases</td>
<td></td>
</tr>
<tr>
<td>☐ Vacation costs by years of service of employees</td>
<td></td>
</tr>
<tr>
<td>☐ Demographic data on the bargaining unit - members by sex, age and seniority</td>
<td></td>
</tr>
<tr>
<td>☐ Cost and duration of lunch breaks and rest periods</td>
<td></td>
</tr>
<tr>
<td>☐ Outline of incentive, progression, evaluation, training, safety and promotion plans</td>
<td></td>
</tr>
<tr>
<td>☐ Grievance and arbitration awards</td>
<td></td>
</tr>
</tbody>
</table>

Some companies resort to having regular formal and informal contacts with union leaders at both the headquarters and plant levels to gain useful information should a CB crop up. It could also improve relationship between the bargaining parties and make the CB a more pleasant and smooth process. Conducting frequent attitude surveys helps to ascertain the demands the union is likely to make on behalf of its members like the complaints and grievances of the workers and this helps management to be better prepared for CB.

Economic information (external data) is probably the most important data required in preparation for a CB. Both parties will study the recently signed agreements in comparable companies and industries. In almost all CB, wages and benefits are most difficult items to agree on and workers expect to get a wage increase every time a new agreement is signed. The economic state of the country is an important consideration for both parties when they negotiate on wages. The usual bargaining edge trade unions use is that wage increases should commensurate with the cost of living and tenure of service.

Information of the current Consumer Price Index (CPI) and the changes that have taken place since the last agreement is also important. The CPI is a statistical
representation of the change in the cost of living over a particular period. By checking the prices of a "basket" of goods inclusive food, clothing, rent, etc and services (medical, transport, etc) used by an average Malaysian family on a monthly basis, the CPI is useful tool to indicate rates of inflation.

Selecting the negotiators

It is important that both parties, the employer and union, to select carefully their negotiators because this can determine the outcome of the CB. It is not only the skills and experience that are important but also the negotiators must be patient, have strong communication skills, physically fit to withstand long sessions and very knowledgeable of the employment laws and the Malaysian I.R. system. (Maimunah, 1999:139) They will be responsible for both the pre-negotiation preparation and the negotiation itself.

The management side usually consists of the I.R. Manager or the Human Resource Manager, the Finance Manager (to handle the costing in the union’s proposals) and one or two line managers. Usually, the CEO is not advised to be present as this will give the management a leverage to insist on a break or postponement so that he can confer with his superior officer.

If the bargaining / negotiation is at the national level, the union representatives will be full-time officers or employees of the union including the executive secretary and the I.R. officers who have plenty of bargaining experience and the company level union leaders. In-house unions will choose their own union executive council members.

Developing a bargaining strategy and tactics

Strategy is the plan and policies that will be pursued at the bargaining table. Tactics are the specific actions taken in the bargaining sessions. It is important to spell out the strategy and tactics because bargaining is a give-and-take process with characteristics of a poker game, a political campaign or a heated debate. J.T. Dunlop and J.T. Healey gave it a perfect analogy:

"a poker game combining deception, bluff, luck and ability; a debating society with long-winded speeches to impress one's colleagues and possibly have some effect on the opposition; power politics or pure brute strength in forcing terms of settlement on the weaker party and finally a rational process in which appeal to facts and to logic reconciles interests in the light of common interests."

(Maimunah, 1999:145)

An important issue in mapping out a strategy is the maximum concessions that will be granted. A shift of strategy might lead the other party to expect too much. By granting too much will be perceived as weak. Hence it is a very delicate balancing act of the extent management or union will go before it risks a work stoppage or lockout is considered. All these have to be determined before the bargaining starts.

Another strategic plan is to develop the total cost profile of the maximum concession package - how much will the package cost the company now and in the future? Will
this affect the human resource policies or production procedures if these concessions are granted? These considerations help management determine how willing it is to take a strike. Planning for a strike is very difficult but it should be part of the strategic planning.

Two elements commonly found in CB strategy and tactics are resistance points and the use of trade-offs to reach an agreement (Poole & Warner, 1998:673). Each side has a resistance point. For example, in the bargaining of wages increment the union may be willing to settle for a RM2 an hour increase, but not for less. Thus its resistance point is RM2. Management on their side may be willing to settle for a RM3 to avoid a strike, so its resistance point is RM3.

Each side’s resistance point is largely determined by its BATNA (Best Alternative to a Negotiated Agreement). The union negotiators may conclude, based on their evaluation (which may be incorrect) of the company’s competitive position and the strength of their union, that they could win RM5 through a long strike. But such a strike is expensive and there is also a good chance it may lose. Thus it settles for the RM2 figure by discounting the RM5 after considering the highly subjective factors like high costs and uncertainty of a strike. Likewise too, management sets its resistance point at RM3 after going through a similar process.

In this case, there is a positive contract zone (the difference between the two resistance points) of RM1, and the main task of bargaining (also a very difficult haggling task and a lengthy one) is to divide the RM1 between the two parties. However, if the bottom line of the union is RM4 and management too refuses to reconcile on that, the contract zone is negative and a strike is likely unless the parties change their reservation price.

The complexity of bargaining is further complicated when neither side reveals its reservation price. By not revealing its resistant point, the union may win up to RM1 more. So the union bluffs and claims it needs RM4.

The second element is the possibility of making trade-offs to reach an agreement. Trade-offs require at least the existence of two issues, with the parties differing as to the priority they give to these issues. Unions may think wages most important whereas management may prioritize working rules. Thus union makes a concession on wages in return for management’s concession on working rules. In such a trade-offs, neither side gets everything it wants but both sides are better off than they were previously. Thus trade-offs create value. However, such value-creating trade-offs do not come easily because each side has an incentive not to reveal its priorities. If unions were to announce publicly its top priority, management might hold this item ‘hostage’ and may concede it only for major union concessions.

Using the best tactics

Tactics are calculated actions used by both parties. Occasionally, tactics are used to mislead the other party and to secure an agreement that is favorable to either management or the union.
Some popular tactics used by both unions and management to secure a favorable agreement are:

- **Conflict-based.** Each party is uncompromising, takes a hard line and resists any overtures for compromise or agreement. Typically, what happens is that one party mirrors the other party's actions.
- **Armed truce.** Each party views the other as an adversary. Although they are adversaries, it is recognized that an agreement must be worked out under the guidelines specified by the law. In fact, the law is followed to the letter to reach an agreement.
- **Power bargaining.** Each party accepts the other party with the knowledge that a balance of power exists. It would be unproductive to pursue a strategy of trying to eliminate the other party in the relationship.
- **Accommodation.** Both parties adjust to each other. Positive compromises, flexibility and tolerance are used, rather than emotion and raw power. It is claimed that most managers and union leaders use this tactic for the bulk of union-management bargaining issues.
- **Cooperation.** Each side accepts the other as a full partner. This means that management and the union work together not only on everyday matters but also in such difficult areas as technological change, improvements in quality of work life and business decision making. (Ivanchevich, 1998:393)

Bargaining in 'good faith' is important. Threats, abusive language and tirades are considered weak tactics by both parties. Logical presentations, good manners and a calm manner seem to be more effective than threats. If either party does not bargain in good faith, unfair labor practices can be charged. The costs, publicity and hostility associated with not bargaining in good faith are usually too significant to ignore. This does not mean the union and management must agree with each other about issues. In fact, the very essence of CB is disagreement and negotiation.

Lack of good faith would include:
- Unwillingness to make counter proposals.
- Constantly changing positions
- Use of delaying tactics
- Withdrawing concessions after they have been made.
- Refusal to provide necessary data for negotiations.

**Reaching a formal contractual agreement (Collective Agreement)**

Once an agreement is reached, it is put in writing in a language as precise, simple and unambiguous as possible and signed. A formal signing ceremony is held with an invited guest from the Ministry of Human Resources as witness. A media coverage would reflect well on the parties involved and illustrate the harmonious relationship between the company and union.

Each side will proceed with a postmortem to evaluate the extent of their success in securing their objectives and make a note of those strategies and tactics which had proved effective. This is useful for the subsequent round of bargaining.
However, it is equally possible that a deadlock may happen when negotiations break down and a trade dispute results.

**Contract Ratification**

After resolving their differences and agreeing on contract language with management, the union negotiators must submit the tentative agreement to the members for ratification. Ratification usually requires a simple majority vote.

**Collective Agreement (CA)**

Once the negotiations through CB are successful, the trade union and employer may conclude a Collective Agreement. A Collective Agreement is an agreement in writing between an employer or employer union on the other hand, and an employee union on the other, relating to the terms and conditions of employment and work of workmen or concerning relations between such parties. (Industrial Relations’ Act, 1967).

The Industrial Relations Act 1967 provides that:

The CA shall be in writing, and signed by the parties to the agreement or by persons authorized in that behalf. It shall set out the terms of the agreement and shall, where appropriate:

- name the parties to the agreement
- specify the duration of the agreement - which shall not be less than 3 years from the date of commencement of the agreement
- prescribe the procedure for modification and termination of the agreement
- specify the procedure for the resolution of any question that may arise as to the implementation or interpretation of the agreement, by reference of any such question to the Industrial Court for a decision.

The Act requires the submission of every CA to the Industrial Court for approval. The Court may amend the agreement if it does not comply with the law before approving it. For a CA to be recognizant by the Industrial Court as binding, it must fulfill the certain conditions:

- Must include the names of the parties to the agreement: the employer union, all the members of the trade union to which the agreement relates, and their successors, assignees or transferees; and all workmen who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates.
- As from such date and for such period as may be specified in the CA, it shall be an implied term of the employment contracts between the workmen and employers bound by the agreement that the rates of wages to be paid and the conditions of employment to be observed under the employment contracts shall be in
accordance with the agreement, unless they are varied by a subsequent agreement or by a decision of the Industrial Court.

The CA regulates the relationship between the employer and his employees for the set period of time. If the employer fails to comply with the terms contained in the CA, the union or individual employee can lodge a complaint to the Industrial Court.

It is important to note that the principle of CB and its corollary, the CA, do not apply in the public sector.

**Collective Bargaining in Malaysia**

In Malaysia, Collective Bargaining (CB) and Collective Agreement (CA) are regulated by the Industrial Relations Act 1967 (Part IV). Malaysian industrial law prescribes the following prerequisites for CB to exist and be effective:

- Ensures the freedom of workmen to form and join a trade union and participate in its lawful activities by proscribing unfair labor practices by any person, particularly the employer.
- Requires the employer to recognize the trade union as the sole bargaining agent if it has sufficient membership.
- Defines the scope of CB in order to enable the parties to know what bargaining demands they can negotiate on.
- Imposes on both parties an obligation to bargain in good faith or negotiate with each other with a sincere desire to reach an agreement.
- Ensures the smooth administration of the contract by providing for both the interpretation and implementation of the provisions of the CB.

Once a trade union is given recognition, it may invite an employer or groups of employers to commence CB and vice versa. However, an employer will rarely initiate a CB. The invitation is made in writing and sets out the proposals for a collective agreement.

Section 13(3) of the Industrial Act 1976 stipulates six matters which trade unions may not include in their proposals for negotiation in a CB. These matters are described as managerial prerogatives. The six matters are:

1. the promotion of a workman from one grade or category to a higher one
2. the transfer of workmen within the employer's organization or establishment
3. the employment of any person in the event of a vacancy arising in an establishment

---

2 The 'managerial prerogatives' concept is a controversial one. Employers maintain it is valid but workers' unions argued it is obsolete and any power employers have over workers should be negotiable. MTUC had criticized heavily this very aspect in the I.R. Act in its 189-point Memorandum to the Government and demanded the whole of Section 13 (3) be deleted. However, the MEF had responded most strenuously against any change, much less abolition of Section 13 (3). It had cautioned the Government that any encroachment into this area of recognized functions of management would, without any doubt, have the effect of dissipating business confidence.
4. the termination of the services of a workman by reason of redundancy
5. the dismissal and reinstatement of a workman
6. the assignment or allocation of duties to a worker

Upon receiving the invitation, the employer or trade union of employers must reply in writing within 14 days from receipt of the invitation, notifying acceptance or otherwise of the invitation. CB must commence within 30 days from date of notification of acceptance.

If the invitation has been refused within 14 days or if no CB has commenced within 30 days from date of receipt of notification of acceptance, the party making the invitation may notify the Director General of Industrial Relations (DGIR) whereupon he may take the necessary steps to expedite the commencement of CB without undue delay.

If, after such steps have been taken and there is still refusal to commence CB, a trade dispute is deemed to exist upon the matters set out in the invitation.

**Industrial Relations in the Public Sector**

The public sector consists of the Federal, State and Local Government (civil service), statutory bodies and the local authorities (see figure on page 29). The industrial relations in the public sector differ significantly from that in the private sector. The public sector employer is the government which is armed with vast legislative and executive powers that can and is often used in its relation with the employees. The public employer has used the Internal Security Act (1967) to detain trade unionists whose activities were perceived to threaten the security of the nation or economy. The government-employer being a sovereign entity cannot be held ransom for whatever cause. The government has always held a very stringent stand especially if unions begin to impose terms and act in a confrontational manner. (Hazman Shah)

The work force in the public sector is large and highly diversified. It employs some 800,000 employees of all classes and trades representing about 15% of the nation labor force. Public policies concerning terms and public employment lie solely within the jurisdiction of the federal government making it the focal point in the conduct of public sector industrial relations.

In the public sector, employees are not accorded the same privileges and rights as their counterparts in the private sector. They are permitted to join or to be accepted as members by trade unions but under the provisions defined by the Trade Unions Act 1959. The Act provides that workers in the public sector can only form and join unions whose members are in the same ministry, department or occupation. This is to ensure that discussions are possible with the employer on a logical basis since problems in the public sector tend to be peculiar to a certain department or ministry.

Some examples of the largest unions in the public sector are the National Union of the Teaching Profession (NUTP), the Malayan Nurses Union and the Malayan Technical Services Union.
Collective Bargaining in the Public Sector

One significant difference between public sector unions and the trade unions in the private sector is they are not and cannot be involved in CB. The process of negotiation between unions and employers to improve the terms and conditions of service of employees does not apply in the public sector may resort to industrial action so long as they and their unions abide by the provisions in the Industrial Act 1967.

The Industrial Court may arbitrate any trade dispute in the public sector, once the Minister of Human Resources has referred the dispute to the Court. However, the Minister may refer the dispute to the Court only with the consent of the King or the
State Authority involved to the referral. The reason why the public sector is treated differently from the private sector is because the government is Malaysia's largest employer. Thus any terms and conditions of service granted to its employees will influence the terms paid out in the private sector. Any increase in wages in the public sector will have immediate and significant financial repercussions on the country. One is the increase in wages in the public sector will lead to a perceived need to increase the wages in the private sector. Another reason is public sector wages would mean an increase in public expenditure and an increase in taxation. Until 1973, CB existed in the public sector through the machinery of Whitley Councils, which were established in 1953 based on the British model. They were replaced in 1973 by three National Joint Councils (NJCJs) which were later increased to five.

Since there is no CB in the public sector, the terms and conditions of service are decided unilaterally by the government. CUEPACS has frequently called upon the government to allow for CB in the public sector but this is unlikely to happen in the near future. The government has appointed special commissions and committees from time to time. Now, issues pertaining to wages and terms of service at the national level are discussed between the government and Congress of Union of Employees in the Public and Civil Service (CUEPACS).

Congress of Unions of Employees in the Public and Civil Service (CUEPACS)

CUEPACS is a federation of trade unions of government workers registered in 1959. It is registered with the Department of Trade Unions and acts as the spokesman for the public service workers. Its membership is open to all registered trade unions in the public and civil service in West Malaysia. The administration of CUEPACS is carried out by a council elected at a convention held once in three years.

The objectives of CUEPACS are:

- to promote the interests and improve the working of its affiliate trade unions
- to protect the interests of the affiliate trade union and their members
- to endeavor to improve the conditions of employment of the members of the affiliate trade unions
- to promote legislation affecting the interest of the member unions in particular or trade unionists in general. (Maimunah, 1999:113)

Salaries Commissions/Salaries Committees:

Since the 1960s, several ad-hoc commissions have been set up to review salaries and other terms of service in the public sector as and when it considers it necessary, and report their findings and make recommendations to the government. The reports may or may not be accepted by the government. If their reports are accepted, then their recommendations are implemented by the Public Services Department (PSD).
The more important commissions are as follows:

**Salaries Commissions and Committees:**

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>Suffian Report</td>
<td>Public Service</td>
</tr>
<tr>
<td>1971</td>
<td>Tun Aziz Report</td>
<td>Judiciary Service</td>
</tr>
<tr>
<td>1971</td>
<td>Abdul Aziz Report</td>
<td>Teaching Service</td>
</tr>
<tr>
<td>1973</td>
<td>Harun Report</td>
<td>Statutory bodies &amp; Locals Authorities</td>
</tr>
<tr>
<td>1975</td>
<td>Ibrahim Ali Report</td>
<td>Public Sector</td>
</tr>
<tr>
<td>1977</td>
<td>CCR to examine the Ibrahim Ali Report</td>
<td></td>
</tr>
</tbody>
</table>

In 1992, the New Remuneration System (NRS) was introduced. Among others, it regrades groups of employees and provides new benefits like paternity leave. Under the NRS, increments depend on the performance as measured through an annual appraisal system to replace the fixed annual increments.

**Public Services Department (PSD)**

The PSD acts as the personnel department of the Federal government. Its 8 divisions handle all personnel-related functions in the public service like recruitment; service; training and career development; wages and allowances; pensions; negotiations and administration of civil service employees. Its other functions include negotiating any anomaly arising from the implementation of the recommendations of the Salaries Commission and supervising the National Joint Councils (NJC’s).

**National Joint Councils (NJC’s)**

In 1973, three NJCs were set up to replace the 2 Whitley Councils and six years later (1978) the government revamped the NJCs into five divisions. They are:

- employees in the Public Services other than employees in the Subordinate and Manual Group;
- employees in the Subordinate and Manual Group in the Public Services;
- employees in the Education Service;
- employees in the Statutory Authorities; and
- employees in the Local Authorities.

The NJCs are purely administrative creation through the 1/79 service circular. The initial function of NJCs was to negotiate wages and benefits of employees in the public sector. This right, however, was withdrawn in 1979.

Now its role is to provide a channel of communication for the government to receive feedback from the unions on the views of the public sector workers. It is to enable the employer (official) and employees (staff) discuss new proposals or principals of
compensation or matters of general interest to public employees. There is no provision for any negotiation between NJCs with the government. As such, they cannot be equated with the CB sessions in the private sector.

In addition to NJCs, Departmental Joint Councils have been constituted on a ministry/department/statutory authority/local authority basis. They are for consultation and negotiation on the efficiency of the 'department' concerned and the morale of the employees in that 'department', everything else is strictly prohibited.

Public Services Tribunal (PST)

A PST was set up in 1977 to arbitrate any dispute over anomalies in the implementation of recommendations of various Salaries Commissions and committees after negotiation has failed to resolve such dispute. One example is the Cabinet Committee Report (CCR) on salaries and terms and conditions of service. Such anomalies are first referred to the PSD and when the PSD rejected a worker's claim that the CCR was being incorrectly implemented, an appeal could then be made to the Tribunal.

The Tribunal is not authorized to resolve any disputes such as trade disputes. Decisions made by the Tribunal are final and conclusive and binding on all parties involved and affected by the dispute and must be implemented no later than six months from the date they were delivered.

The Impact of CB on Employees, Organizations and Society

Impact of CB on employees

CB provides a uniform set of substantive which applies to all bargaining-unit employees such as wages increases, terms and conditions of work. Uniform provisions such as these ensure a more egalitarian atmosphere in the workplace and tend to reduce the uncertainty associated with personnel practices and procedures.

Through the institution of a CB, employees obtain access to a formal grievance procedure through which they can contest management's personnel practices and procedures. Employee power is increased through the threat or use of unfair labor practice charges if the employer violates certain federal labor law provisions as well as through work stoppages via the economic strike.

Very often, however, employees lose their individual power to bargain with the employer. Instead of annually negotiating a salary or wage increase on an individual basis, employees are forced to accept a standardized wage scale or promotion system in which the roles of superior job performance, meritorious accomplishments and exceptional initiative and reliability are largely ignored. Although an arrangement of this nature may be perfectly acceptable to many employees, the more ambitious and upwardly mobile worker may feel that such a system is both confining and frustrating.
Lastly, CB provides employees with an opportunity to release tension and gives them a voice. It eliminates abuse and often engenders a sense of participation and commitment.

Impact of CB on employers

Unionization has a potentially profound impact on the management and operational performance of a company. In any CB, management typically loses much of its unilateral discretion on personnel matters. But even without formal CB, management never has complete discretion. It is subject to government regulations and market pressures. Furthermore, it is often forced to engage in informal, implicit bargaining with its employees. For example, unless it provides acceptable working conditions and wages, employees may leave, sabotage or shirk.

Undeniably, CB strengthens employees’ hands through their trade unions in negotiations. Trade unions have forced some organizations into modifying or refurbishing personnel practices and policies that had become obsolete and a source of employee morale problems. In this sense also, it brings into the open employees’ dissatisfaction about the workplace.

Management is forced to enforce greater uniformity in personnel practices and policies. In a way it helps to lighten their burden when they are forced to make tough decisions on matters such as individual pay raises, promotions and disciplinary matters.

According to empirical research (mostly American), workers who have the benefits of CB generally enjoy higher wages, better benefits, fewer injuries, narrower wage dispersions and greater equality between genders and ethnic groups. Through rising labor costs, CB reduces turnover and better qualified employees are hired. On balance it may increase efficiency (Freeman & Medoff 1984), although this is debatable. (Poole & Warner, 1998:667)

For labor-intensive firms whose product, price and competitive edge are heavily affected by the cost of labor, unionization can be anathema. As an example, an organization which spends 50%-70% of its budget for personnel expenditures will be in serious financial problem if unionization puts further pressure on it to increase the pay level especially when it also faces stiff competition and rising non-labor costs. Time (number of man-hours) is lost also through strikes and negotiation.

It also reduces management’s flexibility and makes it more difficult for management to adapt to technological and market changes. Unions are thought to hinder production and efficiency through the enforcement of certain work rules and procedures. Unions may protect less desirable employees whose performance is substandard. In America, the practice of featherbedding* had received wide publicity when the railroads shifted from steam to diesel-powered locomotives. The change eliminated the need for firemen whose primary job was to feed coal into the steam.

*Featherbedding is a situation in which the employer is forced to pay a worker even when little or no work is performed.
locomotive boilers. Because of union pressure, however, the railway fireman’s job has survived. (Leap, 1995:19)

Impact of CB on society

The effect of unionization and CB on the economy and society may be pervasive but it is difficult to ascertain for sure the magnitude of these effects. Some questions worth considering are: Do unions cause inflation? Has CB hindered productivity in our economy? What effect has CB played in either stimulating or stifling aggregate demand for goods and services? To what extent has the threat of unionization caused non-unionized firms to fashion their compensation and personnel policies after unionized firms? Labor unions jealously guard the employment rights of their constituents whenever possible. However, some believe that by imposing high pay structures (like unions do) it has forced employers to close plants and abandon labor-intensive production methods in favor of more capital-intensive methods. Thus, perhaps it is not too extreme to say unions do affect unemployment level to some extent.

Concluding Remarks

Collective Bargaining is the heart of industrial relations and an important mechanism in regulating the employer-employee relationship. Trade unions and workers see it as their prerogative. It becomes a legal means and communication channel for workers to voice their grievances and to negotiate for wage increases, better terms and working conditions through their union representatives. It also acts as a buffer against management malpractices and abuse of labor and ensures management adheres to what was agreed in the CA.

Whatever self-interests both sides (employers and trade unions) may choose to protect, they cannot ignore the repercussions of unionization and CB on employees, organizations and society as a whole.

To make CB work to the benefit of both employers and unions - a win-win strategy, there are a few things we need to bear in mind. First, labor is not a factor of production in the same sense as capital and land; human beings are more than mere extensions of machines. Workers cannot be used, used, depreciated and discarded after they have lost their maximum productive potential.

Second, there is and always will be a potential conflict of interests between workers and management. However, not all workers perceive such conflict. Some who do, still elect not to do anything about it. If such is the case, perhaps it is good to rethink and rationalize the whole idea of confrontational industrial conflict.

Lastly, there are a number of ways to deal with this conflict. Although CB is probably regarded the most acceptable method by most labor relations experts, alternative methods of resolving worker-employer conflict may be considered such as through
individual bargaining by employees, protective legislative and mutual non-union worker-company agreements.

Epilogue - The future of bargaining

Unions are in retreat throughout much of the world. They have lost both political and economic strength. Among the reasons are high overall levels of unemployment, the shift from well-unionized mass production to service work and globalizations. Industry-wide bargaining only functions best when national markets can be effectively insulated from external pressures like globalization.

Besides these economic threats to unions, management of workforce has also changed. Organizations are moving towards leaner structures and participative management in which unions play little direct role. (Unions have accused management of using empowerment as a smokescreen to abuse workers to do supervisors' job). Furthermore, managers everywhere are pushing for greater flexibility in the management of their workforce - outsourcing, contingency workers, etc. In Malaysia itself, the government is encouraging in-house unions to trade unions.

Of course no one will know whether or when these trends will be reversed. Professor George Strauss of University of California has this to say, "Until some form of successful multinational unionism develops, it seems questionable whether CB will regain its significance".
EMPLOYEE
DISCIPLINE AND PROCEDURES

Introduction

Pulner (1999) describes discipline as "one tool for regulating behaviors and actions that do not coincide with what is expected from the organization members."

The above definition implies that there are other ways to ensure desired behavior and actions of organization members but components of discipline such as person (who), the knowledge and skills for handling disciplinary matters (what and how) are proved to be effective and timely for the purpose, if it is done professionally by the management.

Mondey, Noe and Premeaux (1996) define discipline as "the state of employee self-control and orderly conduct and indicates the extent of genuine teamwork within an organization."

It is important that members acknowledged the procedures so that whatever behaviors and actions do not conflict with organizational goals.

Therefore, discipline in an organization not only acts solely as to ensure conformity of all members on company's rules and regulations but also important element to create the culture of the organization as a whole. Culture can only be created if the organizational beliefs, values and norms are compatible among all its members. Once a good and healthy culture has been created, it is easier for the management to ensure stability in terms of performance, productivity and financial of the organization.

Types of Disciplinary Problems

In some cases, employees still need some degree of extrinsic disciplinary actions to constantly remind them of misconduct not accepted by the organization. It is therefore important to develop rules to change employees' behavior to meet these established standards.

Generally, there are four types of disciplinary problems among employees - attendance, on-the-job behavior, dishonesty and outside activities.

Attendance problem or absenteeism arises when organization fails to align employees' goals with those of the organization, or when employees cannot relate to their work or the organization they serve. Compared with 'the good old days', values and attitudes towards employment have changed, so have the perception towards attendance at work. Today, employees no longer think that work is their central life interest and they tend to excuse themselves from work more frequently and more easily.
On-the-job behaviors that are disallowed in an organization include carelessness in doing work, neglect of duty, dress code violation, sleeping on the job and not following established procedure. Other more severe problems are such as insubordination or refusal to obey a direct order of a superior, failure to use safety device, sexual harassment, fighting, gambling, alcoholism and drug abuse. All these represent a clear rule violation of acceptable standard of behaviors, therefore corrective action should be taken immediately.

Dishonesty such as lying, stealing, corruption, giving and receiving bribe, sabotage of organization's operations will result in the most severe disciplinary action in most organizations. This is because a dishonest act may reflect directly on the employee's character, and many superiors believe that dishonest employees cannot be trusted and must be separated from the organization.

Outside activities are involvement of employees outside of work which are likely to reflect the organization's image. Badmouthing the organization and questioning organization's key value in public are among outside activities that can lead to disciplinary actions against employees. This is especially true among employee at the top and middle management level because the line between managers speaking or acting for them and for the organization remains unclear.

It is no easy task for managers or superiors to take disciplinary action against their subordinates. This is because many factors must be taken into account before any action is taken. They should first weigh the seriousness of the misconduct from the organization’s point of view. For instance, dishonesty is regarded as a major problem and will be dealt with more urgently compared with non-punctuality. Generally, the longer the duration, the more serious the problem. The third or fourth occurrence is considered more severe than the first one. Mistakes that are made repeatedly will be treated with less magnanimity.

Upon making judgment, it is only fair to give the employee a chance to explain why he made such a mistake. Exculpatory factors and acceptable reasons for the wrongdoing are to be taken into consideration when taking disciplinary action. For a new recruit whose degree of socialization is still low in the organization, the superior should educate the person to conform to the acceptable standard of behavior.

The types of punishment very much depend on the history of the organization’s discipline practices. Similar infractions must be dealt within a fair and consistent manner at all times. Managers who intend to take disciplinary actions should be prepared to provide backing and evidence to support the charge of employees’ wrongdoing and justify punishment.

Aspects and Kinds of Misconduct

Misconduct refers to employee’s action that is contrary to either the company’s rules and regulations, the terms and conditions stated in his contract of service, or any misbehavior that warrant disciplinary actions.

The Industrial Court defined misconduct as “bad management, mismanagement and misfeasance or culpable neglect of an official duty in regard to his office. Both in law and in ordinary speech the term misconduct usually implies an act done
willfully with wrong intention and as applied to professional acts, even though such acts are not inherently wrongful, it means also a dereliction of or deviation from duty."

Ramasamy (2001) stated that Halsbury’s 3rd edition, Vol. 25 p.485 para 934 defines misconduct as “misconduct as inconsistent with the due and faithful discharge by the servant of the duties for which he was engaged, is good cause for his dismissal; but there is no fixed rule defining the degree of misconduct, which will justify dismissal.”

Thus, the concept of misconduct in employer–employee relationship is based upon the nature of the relationship itself; where an employee has certain express or implied obligations towards his employer. Any conduct on the part of the employee inconsistent with the faithful discharge of his duties towards his employer can fall within the ambit of misconduct.

According to Aysudurai (1994), "any infringement of the rules and regulations aforementioned would constitute misconduct, so long as it can be shown that the rules and regulations is reasonably necessary and even desirable for the effective management of the employees or the efficient operation of the organization or in the legitimate interests of the employer".

The Industrial Court has deliberated on various forms of misconduct: (1) abusive/derogatory/insolent/vulgar and impertinent; (2) assault of a superior or fellow worker; (3) borrowing money and pecuniary embarrassment; (4) computer crimes, based on Computer Crime Act 1997; (5) conflict of interest; (6) damaging interest of employer; (7) defamation; (8) dishonesty; (9) disobedience; (10) drinking or being drunk; (11) fighting at work; (12) forgery; (13) fraud and theft; (14) gambling; (15) insubordination; (16) negligence; and (17) sexual harassment.

Section 14 of the Employment Act states that an employer may, on the ground of misconduct inconsistent with the fulfillment the express or implied conditions of his service, after due inquiry:
- Dismiss without notice the employee,
- Downgrade the employee, or
- Impose any other lesser punishment as he deems just and fit.

However, the Employment Act does not specify what constitutes misconduct, mainly because it is impossible to make a list of misdeeds that may take any forms and may take place under different circumstances. Without a clear definition of misconduct, it is therefore within the employer’s own discretion to decide whether an employee has committed misconduct.

In order to be fair to the employee who commits a misconduct, the Employment Act conditions that the employer must carry out investigation called domestic inquiry or due inquiry. This is the preliminary investigation that must take place before any disciplinary action is taken on the employee. The purpose of the inquiry is to find out – who, what, when, where, why and how it happened.
When Employee be Bound to Company's Discipline

The Employment Act 1955 is that one set of labor laws which governs many aspects of the contract of service between an employer and an employee. This piece of legislation, among other things:-

- Defines a contract of service, and manner of termination.
- Sets the minimum terms and conditions of employment.
- Prescribes when an employer may take action against an employee or when the employee may take action against the employer.
- Regulates payment of wages and deductions.
- Sets out the mechanisms for enforcement of the provision.

Categories of Misconduct

Misconduct can either be minor or major. This classification is important as the punishment meted out is largely dependent on the nature and gravity of the misconduct.

When an employee breaks a rule, the employer must decide whether he has committed a major or minor misconduct. The criteria often depends on the nature of his work, the number of times of occurrence, his track record (i.e., his length of service and whether he has a clean record), the circumstances under which the misconduct took place (e.g., whether there was provocation) and also the reason for the employee's misconduct (e.g., did he steal to pay for a spouse's medical expenses?). For instance, a security guard of a bank who falls asleep at work is considered a major misconduct, but a typist who also falls asleep is considered a minor misconduct. An employee who breaks a rule for the first time is considered as committing a minor misconduct. But if he does it repeatedly, then it may become a major misconduct.

Reasons for Employee's Misconduct

When many seem to care about ways to penalize employees who step out of line, we think we should find out why these employees fail to abide by the rules and regulations in a company. If we do not analyze the problems behind the scenes, the disciplinary action taken on any employee will lead to personal grudge which can tear down both the employer and the employee. Below is some of observations pertaining to reasons for disciplinary problems in the workplace.

- The employee must be given clear guidelines of his duties and job functions. In many organizations, it is common that the duties of an employee is assumed rather than listed out clearly by the employer. Some employees do not function according to their designation, except for those who are at the managerial level. If a junior professional is given the tasks of a much more senior position, it is natural that the person will malfunction when he is exhausted with tasks that are not clearly assigned for him.

- The employee must be treated as a family. In this global village where there are multiracial personalities within a company, discrimination toward the minority is often noticeable. Even a minor discrimination is likely to cause
employee to leave the company quickly. If he chooses to stay, then it is likely that he cannot perform well and that he does not live up to the expectation of others.

- Insincerity of employer leads to poor performance. When an employee feels cheated by his employer and notices he is not given what he deserves or what has been promised, then it is natural that he will not perform well at work. Employer must lead by example. Employer who does not behave as expected will not be respected and their instructions may not be followed accordingly.

- Lack of training and poor working environment fail to motivate the employees. In organizations like software development, an employee needs to be given proper training. An employee cannot be assigned a project for a software developer and making him develop the project without guiding him.

- Balancing the workload among employees. Small organizations where there is a lot of work to be done, some employees may have heavy workload. The employer needs to balance the work so that none of the employees is over loaded with multi-tasking.

Disciplinary Action

Disciplinary procedures are utilized for the purpose of correcting unsatisfactory work performance or behavior. However, prior to taking disciplinary action every reasonable effort should be made to secure acceptable work performance by employees. Disciplinary actions may differ depending on the nature and severity of the employee’s offence, and very much depend on the history of the organization’s discipline practices. Managers who intend to take disciplinary actions should be prepared to provide backing and evidence to support the charge of employees’ wrongdoing and justifi punishment.

Before taking any disciplinary action on any an employee, the employer must ensure that there is a third party to listen to both parties. Recently, there are lot of reported cases that employers are misusing their power at the managerial level to lay off employees whom they dislike. Employees are threatened to follow stringent rules and regulations set forth by the management. In short, we think given the current employment scenario, employees are not given a fair treatment by many companies.

When it has been determined that disciplinary action is required, it should be taken in a timely fashion. It is essential that such action be taken immediately after the occurrence of a violation of a behavioral standard, while the event is still fresh in the mind of the employee concerned. In any event, the employee should be made aware that he or she has violated acceptable standards of behavior, that the employee’s supervisor is aware of the offense, and what action, if any, is to be taken. Multiple incidents of unacceptable behavior indicating a pattern of unsatisfactory performance may be addressed jointly. If unrelated incidents of unacceptable behavior subsequently occur, depending upon the circumstances, either the next step in progressive discipline may be taken or a new disciplinary sequence may begin for the unrelated behavior.
Each supervisor should be aware of behavior problems occurring in the department or area being supervised, and he or she will be expected to act promptly should disciplinary action become necessary. The supervisor should:

- Inform each new employee of the rules pertaining to the individual’s employment and explain the employee’s job duties.
- Record, in detail, any incident which may result in disciplinary action.
- Carefully review the facts in each situation and exercise a neutral and impartial attitude before taking any action. In determining the appropriate disciplinary action, careful consideration should be given to such factors as the severity of the employee’s offense or omission, the length of the employee’s prior service, the quality of that service, the time elapsed since any previous documented incident of unsatisfactory work performance, and the number and nature of any previous incidents of unsatisfactory work performance.
- Apply appropriate corrective disciplinary action. Prior to suspension or termination of employment, the Office of Human Resources Management (OHRM) must be notified and be in agreement with the proposed action. Documentation of any disciplinary action taken should be sent to OHRM for inclusion in the employee’s official personnel file.
- Follow up any corrective or disciplinary action to ensure it has accomplished set objectives.

Procedure for Disciplinary Action

An employer should ensure that a fair, effective and expeditious procedure exists for dealing with disciplinary matters. Such procedure may be established in consultation with the employees’ representatives or trade union as appropriate. The employer should define and make known to each employee the rules of work and the disciplinary action, which may follow if they are broken. Penalties should be graduated according to the seriousness of the offence. An employee should not, except in cases of gross misconduct, be dismissed for a first offence.

The disciplinary procedure should be in writing and be made known to each employee. The proceedings should be conducted in accordance with the rules of natural justice and should:

- Provide for the employee to be informed, in writing, of the misconduct.
- Specify who has the authority to take what forms of disciplinary action.
- Provide for full and speedy consideration by employer of all the relevant facts.
- Give the worker the opportunity to state his case and the right to be represented by his workers’ representative or trade union official.
- In the case of less serious offences, provide, in the first instance, for a warning by the employee’s immediate superior.
- In the case of more serious offences, provide for a formal warning in writing, setting out the circumstances and the disciplinary action to which an employee will be liable if he commits a further offence and require a copy of this record to be given to the employee and if he so wishes to his employees’ representative or trade union official.
- Provide for a right of appeal against disciplinary action to a higher level of management not previously involved.

216
The Disciplinary Action Process

The disciplinary action process deals largely with infraction of rules. Rules are specific guides related to behavior on the job. When rules are established, it must be known and understood by the employees. Employees cannot obey a rule if they do not know it exists. As long as employee’s behavior does not vary from acceptable practices, there is no need for disciplinary action. Otherwise, corrective action may be necessary. The purpose of this action is to alter the types of behavior that can have negative impact on the achievement of organizational objectives not merely chastise the violator.

Changes in external and internal environment of a firm may alter the disciplinary action process. Change in the external environment such as technological innovation may render a rule inappropriate and may even necessitate new rules. These new rules can have impact on the disciplinary action process. The disciplinary action process can also be altered due to changes in the internal environment such as change in the organization’s culture and policies.

```
EXTERNAL ENVIRONMENT
   Organizational goals
      ↓
   Establish rules
      ↓
   Communicating Rules to Employee
      ↓
   Observe performance
      ↓
   Compare performance with rules
      ↓
   Take Appropriate Disciplinary Action
```

**Diagram 1.0: The Disciplinary Action Process.**

Disciplinary Guidelines

There are a few disciplinary guidelines that must be followed in order to make a disciplinary action meaningful and conductive to both employer and employee.
Rules and regulations must be specific

Organization has its rules and regulations. These rules and regulations must be spelled out clearly and specifically. It is preferable for human resource personnel to list down misconduct or undesired behavior so that employees know what not to do during and after office hours. Any ambiguity can result in rule violations and, worse perhaps, lawsuit from employees who charge discrimination. Any time there is doubt regarding what a rule mean, the court are likely to side with the employee.

Rules and regulations must be communicated

Employees have to be made aware of the rules and regulations. Organization typically used employee handbook, memos or verbal communicate for supervisors. Many organizations used a combination of written and verbal communication. The written document is particularly important since it provides physical evidence should legal action be brought by an employee who claims lack of knowledge about a particular rule or practice. Written communication is also important because it serves a basis for explaining and clearing up any misunderstandings about the rules and regulations.

Disciplinary action must be corrective and not punitive

Disciplinary action must be corrective and not punitive in nature. It is the organization’s objective to correct undesirable behavior, not to penalize the person. The emphasis is on providing constructive and positive leadership. Even if we have to punish, the punishment should reflect condemnation for the offence committed and not to be directed against the employee as a person.

Enforcement must be fair and consistent

Consistency means that the same act of misconduct committed by two different workers should lead to the same penalty. Punishment should be impersonal and consistent regardless of who the doer to reflect impartiality and fairness in disciplinary action. There should be no victimization and discrimination. Thus, there should be no question of supervisors’ favorites being permitted to break the rules, but others being punished. Organization can use a system of progressive discipline under which continual violations of the rule results in sterner punishment and eventually lead to dismissal. The penalties must be tied directly to the offence (first time, second time) and not to the individual who committed it. To ensure consistent disciplinary action within the organization, supervisors should periodically undergo training together to give them a common frame of reference and also attend meetings at which discipline cases are discussed and management action reviewed. This approach will familiarize supervisors with the ways in which to deal with specific cases effectively and consistently since they are aware of what has been done in the past.

Individual circumstances must be considered

Extravagant and mitigating circumstances must be fully weighed. For example, danger to one’s health and safety can constitute an extenuating circumstance and limit the right of the organization to discipline employees who fail to comply with orders. Similarly, an employee who is on vacation and returns to work unaware
that a new rule has been implemented regarding leaving the work area without authorization, cannot be expected to follow the rule. Another mitigating circumstance is job seniority. An organization may rigidly enforce safety rules and fire those who break them. However, if a worker with 30 years seniority forgets to wear safety glasses, the individual is likely to find management overlooking the infraction because the penalty is too severe and if the matter ever reached arbitration, the organization is likely to lose.

**Progressive Discipline should be employed**

It is also important to have an incremental approach as the foundation of effective discipline in an organization. Progressive discipline means that an organization takes a series of steps to deal with infraction. Progressive disciplinary action usually begins with verbal warning and proceeds through a written warning, suspension, demotion, pay cut and dismissal. Other more positive disciplinary procedures are such as counseling, motivation, socialization and training to enable employee adapt to the working environment better.

The primary exception is that immediate termination may result for major infractions, such as theft, deliberate destruction of property, or use narcotics on the job. Such discipline disallowed in an organization includes carelessness in doing job, neglect of duty, dress code violation, sleeping on the job and not following established procedures. Other more severe problems are such as insubordination or refusal to obey a direct order of a superior, failure to use safety device, sexual harassment, fighting, gambling, alcoholism and drug abused.

Dishonesty such as lying, stealing, corruption, giving and receiving bribe, sabotage of organization’s operation will result in the most severe disciplinary action in most organization. This is because a dishonest act may reflect directly on employee’s character, and many superiors believe that dishonest employees cannot be trusted and should be out of the company.

Outside activities are involvement of employees outside of work, which are likely to reflect organization’s image. Badmouthing the organization and questioning organization’s key values in public are among outside activities that can lead to disciplinary action.

Before any disciplinary action can be taken against employees, there are many factors that have to be considered. For instance, they should look at the seriousness of the misconduct from the organization’s point of view, mistakes that are made repeatedly will be considered more severe than the first one. Upon making judgment, employers must provide and practice all the procedures of fair hearing to employees’ explanation regarding the misconduct.

**Disciplinary action should be immediate**

Immediate, instantaneous action must be taken as soon as the wrongdoing is noticed or reported. All disciplinary cases should be dealt with within a reasonable period as soon as the persons given the responsibility to act on, be they manager or supervisor have become aware of the wrongdoing. Otherwise, Doctrine of Condonation may set in. This simply means that if you know what a particular employee or a group of employees is doing wrong and yet you take no action on it, the Industrial law may interpret your lack of action as an indication that you
condone and permit the wrong doing. The legal effect of condonation is that you cannot rely upon the same act as ground or grounds for subsequent disciplinary action.

Types of Discipline

Basically, organization uses 2 types of discipline:-
- Negative discipline.
- Positive discipline.

Negative Discipline

Negative or corrective discipline is an action to discourage infractions and to ensure that future acts are in compliance with standards. The disciplinary action taken, is used to penalize and reform the offending employees and to deter others from breaking the rules. This kind of discipline may only be effective for a short period because the employee modifies his/her behavior out of fear and engenders anger which result in negativism and other undesirable attitudes. It is essential that disciplinary action can be carried out in a proper manner, otherwise it can lead to industrial disputes. The disciplinary actions that can be taken include warnings, suspensions, demotion, discharge, dismissal and stoppage of increment.

Positive Discipline

Positive or preventive discipline is an action taken to encourage employees to follow standards and rules so that infractions are prevented. This type of discipline focuses on correcting the behavior and communicating the expected change to the employee rather than threatening the employee that he is subject to increasingly serious disciplinary action if he does not improve. The employer is trying to create an organizational climate where employees willingly conform to the established rules and regulations. It can be achieved through proper motivation and supervision.

The theory behind Progressive Discipline is that if the problem employee is treated with self respected and given the opportunity to solve the problem rather than being punished, employee is more likely to respond positively to resolve the problem.
The disciplinary Approach

A person’s needs, wants, and desires are unique because they are determined by his environment, his learning experiences as well as his physical and mental constitution. Supervisors need to understand this, as this will assist them to motivate the employees. Three approaches are used to administer Disciplinary Action.

The Hot Stove Rule
According to the Hot Stove Rule, disciplinary action should have the following consequences, which are analogous to touching a hot stove:

- **It burns immediately.**
  Disciplinary action must be taken immediately so that the individual understands the reasons for it. With the passage of time, people have the tendency to convince themselves that they are not at fault, which tends in part to nullify later disciplinary effects.

- **It provides warning.**
  It is also extremely important to provide advance warning that punishment will follow unacceptable behavior. As individual is more close to the hot stove, the are warn by its heat that they will be burned if they touched it. This will give them the opportunity to avoid the burn.

- **It gives consistent punishment.**
  Disciplinary action should be consistent in that everyone who performs the same act will be punished accordingly. As with the hot stove, each person who touches it with the same degree of pressure and for the same period of time is burned to the same extent.

- **It burns impersonally.**
  Disciplinary action should be impersonal. The hot stove burns anyone who touches it without favoritism.

This approach can be used perfectly if the circumstances surrounding all disciplinary situations were the same. Otherwise, the progressive disciplinary action may be more realistic and more beneficial to both employer and employee. Usually in each individual disciplinary case, situations are often quite different, and many variables may be present. Thus, a supervisor often finds that he or she cannot be completely consistent and impersonal in taking disciplinary action.

Progressive Disciplinary Action

Progressive discipline seeks to correct employee’s behavior rather than punish them. So, punishment should be equivalent with the misconduct. In other words, the first time a particular act of misconduct is committed, unless it is a very serious, the worker will be given a relatively light penalty. But, should be repeat the same misconduct, the penalty will be heavier. Typically in a progressive disciplinary system, the penalties begin with an oral warning and counseling session. In the case of more serious offences or if the oral warning fails, the
employee will be given a written warning setting out the circumstances and the
disciplinary action to which the employee will be liable if he commits a further
offence and require a copy of this record to be given to the employee. If these
methods fail, then more serious action like dismissal will be taken after a due
inquiry has been held.

This approach also intended to ensure that the minimum penalty appropriate to
the offence is imposed. To ensure this, an employee who develops a discipline
problem has to answer a series of questions.

In order to assist managers in recognizing the proper level of disciplinary action,
some firms have formalized the procedures. One approach is to establish
progressive disciplinary action guideline. In this example, a worker who is absent
without authorization will receive an oral warning for the first time it happens and
a written warning the second time; the third time, the employee will be
terminated. However, specific guidelines for various offenses should be developed
to meet the needs of the organizations. For example, smoking in an unauthorized
area may be grounds for immediate dismissal in an explosive factory. On the other
hand, the same violation may be less serious in a plant producing concrete
products. Basically, the penalty should be appropriate to address the severity of
the violation, and no greater.

The approach that was under progressive disciplinary action are:

a) Verbal Warning

This is the mildest form of discipline. The written verbal warning is a
temporary record of a reprimand that is then placed in the manager’s file of
the employee. The warning should state the purpose, date and outcome of the
interview with the employee. The written verbal reprimand is best achieved if
completed in a private and informal environment. The manager should clearly
inform the employee of the rule that has been violated and the problems that
this infraction has caused. Employee should be allowed to respond. After the
employee has been given the opportunity to make her case, the manager must
determine if the employee has proposed an adequate solution to the problem.
If this has not been done, the manager should direct the discussion towards
helping the employee figure out ways to prevent the trouble recurring. The
employee should be informed that if the problem recurs, follow up actions will
be taken. The difference between written verbal warning and written warning
is that the written verbal warning remains in the hands of the manager. It is
not forwarded to the Human Resource Management for inclusion in the
employee’s personnel file.

b) Written Warning

This is the first formal stage of the disciplinary action process because it
becomes part the employee’s official personnel file. Warning is given out to the
employee and a copy is sent to the Human Resource Management to be
inserted in the employee permanent record. The procedure of writing the
warning is the same as the written verbal warning.

222
It should include:

- A statement of the problem.
- Identification of the misconduct committed.
- Consequences resulting from the misconduct.
- Corrective action required of the employee.
- Proposed action by the employer, failing corrective action.
- Reference to previous warnings, including dates given.

At the end of the discussion, the employee will be told that a written warning will be issued. This is the only difference between the written warning and written verbal warning.

c) Suspension

The next disciplinary step is suspension or layoff. Suspension may be for one or two days or several weeks. It is usually taken if the prior steps have been implemented without the desired outcomes. Some organizations skip this step completely because it can have negative consequences for both the employer and the employee. During the suspension period, to the management, it is a loss of employee. If the employee has unique skill or is a vital part of the complex process, her/his loss can severely impact the organization’s performance unless a suitable replacement can be located. From the employee standpoint, a suspension can result in the employee returning to the workplace in a more unpleasant and negative frame of mind than before the layoff.

Although suspension or layoff has negative impact on both employer and employee, it is still considered as one of the disciplinary measures because, to the management, a short layoff, without pay, is to convince the employee that the management is serious.

d) Dismissal

Dismissal is the final step in the disciplinary action process. Dismissal is normally an action of the employer in terminating an employee’s service. It should be used for the most serious offenses. Decision to dismiss an employee should be given a long and hard consideration. This disciplinary action will be an emotional trauma for the employee especially for those who have been with the organization for many years.
Suggested Guidelines for Progressive Disciplinary Actions

- Offences Requiring First, Oral Warning; Second, A Written Warning; And Third, Termination
  - Negligence in performance of duties.
  - Unauthorized absence from job.
  - Inefficiency in the performance of job.

- Offences Requiring A Written Warning And The Termination
  - Sleeping on the job.
  - Failure to report to work one or two days in a row without notification.
  - Negligent use of property.

- Offences Requiring Immediate Discharge
  - Theft.
  - Fighting on the job.
  - Falsifying time card.
  - Failure to report to work three days in a row without notification.

Disciplinary Action without Punishment

Disciplinary action without punishment gives a worker time off with pay to think about whether he or she to follow the rules and continue working for the company. It is important that all rules be stated in writing if this approach is used by the organization. New employees should be informed during the orientation that repeated violations of different rules will be viewed in the same way as several violations of the same rule. This approach keeps employees from taking undue advantages of the process. Under this approach, when an employee violates a rule, an oral reminder is issued. Repetition brings a written reminder. During these two steps, the manager tries to encourage the employee to solve the problem. If the employee violates a rule for the third time, he or she will have to take one, two or three days off (with pay) to think about the situation. After the time off, the employee and the manager will meet to agree that the employee will not violate the rule again or that the employee will leave the firm.
DOMESTIC INQUIRY

What Is Domestic Inquiry?

A domestic Inquiry is an internal hearing held by an employer to determine whether an employee is guilty of an act of misconduct (Maimunah, 1999). According to M.N.D’Cruz (2000), domestic inquiry is to find out if the alleged incident is misconduct. It is conducted to search for the truth, establish the truth, to decide if that truth substantiates that the alleged incident was indeed misconduct, to establish who committed that misconduct, to consider mitigating circumstances, if any, and to recommend the appropriate punishment. But, above all of these, domestic inquiry is done on the base of equity and good conscience.

When to Conduct Domestic Inquiry?

According to Kanagalingam (1983) and Anantaraman (1997), there is no specific procedure stipulated in the Malaysian Labor Legislation on how to conduct a domestic inquiry. Reference is only made to 'due inquiry' stated in Section 14(1) of the Employment Act 1955 (Amendment 1998):

"An Employer may, on the grounds of misconduct inconsistent with the fulfillment of the express or implied conditions of his service, after due inquiry:-

- dismiss without notice the employee,
- downgrade the employee, or
- impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks."

The word after due inquiry has special significance. The intention of the legislature is manifestly clear. An employer must first satisfy himself on prima facie evidence through a proper inquiry that the employee is guilty of the allegations leveled against him before an employee can be dismissed, downgraded or suspended. Therefore any dismissal, downgrading or suspension of any employee without the conduct of an inquiry is invalid.

Malaysian Industrial Courts have laid down procedures for conducting domestic inquiries in compliance with the rules of natural justice. The procedure briefly requires that no man shall sit in judgment in his own cause or in which he is interested and the parties must be given ample opportunities to be heard. The conduct of domestic inquiry contrary to the principles of natural justice will render the whole inquiry null and void. In award no. 66/76 the following guidelines were evolved in the conduct of domestic inquiries and in determining whether the principles of natural justice have been violated.

Generally they are as follows:-

- the inquiry is to be instituted as early as possible
- the worker is to be given particulars of the misconduct, in writing, a reasonable time before the inquiry to enable him to prepare his case.
- where applicable, the worker is to be accompanied by his union or committee representative at the hearing.
- the inquiry is to be conducted by officers not directly connected with the investigation of the misconduct so as to give the hearing impartiality.
• the worker is to be allowed to ask questions by the officers. Questioning of witnesses by the worker to be at discretion of the officer-in-charge of the inquiry. Consideration to be given to the language spoken by the worker.
• arbitrary decisions to be avoided.

Inquiry Proper

D. Cruz (2000) stated that the inquiry officer /panel should have only a copy of the charge sheet. He/they should not read the statements or look into any records pertaining to the case of the accused before the inquiry.

In an inquiry, it is for the management to prove the charges against the employee and it is not for the accused to prove his innocence. The accused is deemed to be innocent until he is proven guilty.

In selecting the inquiry officer/panel due care been given to the following:
• He/they should not in any way be involved in the case/incident.
• He/they should have no prior knowledge of the case/incident.

Domestic Inquiry: Procedural impropriety – chairman of inquiry – knowledge of facts of allegations before inquiry – whether he should disqualified himself – whether findings of inquiry tainted with irregularities


Why Domestic Inquiry Is Necessary?

According to Ramasamy (2001), domestic inquiry into the misconduct of employees arises out of two situations:
• Requirements of the Employment Act 1955
  The Employment Act 1955, which provides protection for employees under the Act provides the machinery for the investigation and punishment of offenders at the place of employment. Section 14 (1) of the Act requires the employer to carry a "due inquiry" in respect of the misconduct committed by an employee before the employer can impose a punishment. This is a statutory obligation imposed on the employer. The purpose of a domestic inquiry is unlike that of a court hearing. Its purpose rather is also to investigate, ascertain and probe all facts placed before it.

• Natural Justice
  There is obligation of the employer to comply with the rules of natural justice. One of the principles of natural justice is that before the services of an employee may be terminated on the grounds of misconduct which deserves the punishment of dismissal, he should be adequately informed of the accusations made against him and he should be given a fair opportunity to correct or contradict them. Domestic inquiry is conducted with reference made to the word after due inquiry under the Employment Act Section 14 (1). Other than what has been stipulated in the act, domestic inquiry is also necessary because:
The holding of an inquiry shows employees that an employer is trying to be fair and just in relation to taking disciplinary action. Of course, if the inquiry is a sham and farce then this advantage will be lost.

All employees have their right to claim for unfair dismissal under section 20 of the Industrial Relation Act. By conducting a proper domestic inquiry will give the employer confidence that an accused employee is guilty of misconduct before disciplinary action is taken against him; and to give the employee the opportunity to defend himself, thus justice is to be done.

The right to a hearing.
No one should be punished unheard. That is the basic principles of natural justice. Before a decision is made as to guilt of an employee, he should be given a chance to state his case.

Is The Domestic Inquiry Compulsory?

According to Section 14 (1) Employment Act, 1955 (Amendment 1998), it is a mandatory for any employer to conduct domestic inquiry prior to dismissal, downgrading and suspension of any employee on the ground of misconduct. But, in certain circumstances, it may not always be possible or even necessary to hold a detail domestic inquiry. For example, where there are only a handful of employees under one employer, the employer may have to be the investigator, prosecutor, inquiry officer and punishing authority. If the employee has been informed of the charges against him and has been given adequate time to prepare his defense, and also sufficient opportunity to present his defense, including any documentary proof and witnesses he may have to support his defense, it can safely be assumed that the requirement of a 'due inquiry' have been satisfied.

Industrial Court Award no. 47/93 the court said that where a workman in answer to a charge leveled against him admits his guilt there will be nothing more for the company to inquire into and, in such a case, the holding of an inquiry would be an empty formality.

Actions Prior To Domestic Inquiry

Allegation of misconduct normally comes from superiors against subordinates and can also be from employees against superiors. Other sources can be from outsiders such as customers and suppliers. In ordinary circumstances, the accused employees should be accorded to a fair hearing at a domestic inquiry. However, it has been held that a 'due inquiry' for the purposes of section 14 of the Employment Act, 1955 may served by a show-cause letter.

Domestic inquiry is done after an investigation into allegations has been conducted in order to obtain factual information and to decide whether there is a case to be answered by the alleged employee. There are few necessary steps the management should do during investigation and also before they can really conduct the inquiry. The management should gain information by interviewing witnesses and also suspect employees. All the statements from witnesses have to be recorded. Prior to holding an inquiry the employer must give proper notice written, informing the employee that he is to attend a domestic inquiry. The notice letter must also include the charge(s) stated what is the misconduct alleged on him.
Principles of Natural Justice

According to Ramasamy (2001), the principles of natural justice in the context of industrial disciplinary inquiry may be stated as follows:-

- That the workman whose conduct is being inquired into, must have reasonable notice of the case he has to meet.
- That he must have reasonable opportunity of being heard in his own defense according to the maxim ‘audi alteram partem’ (principle of natural justice where the judge should hear both sides) and this includes, inter alia, the opportunity to face and challenge his accusers, witnesses and whatever evidence there is against him.
- That the hearing must be by an impartial tribunal, i.e. a person who is neither directly or indirectly the party to the case. “Nemo debet esse judex in propria causa sua” that is to say no man shall sit in judgment in his own cause or in which he is interested.

The expression ‘natural justice’ is sadly lacking in precision, but from judicial dicta two essential elements of natural justice are discernible:

- The disciplinary decision must have been reached without bias on the part of the panel hearing the charges.
- There must be a fair hearing. This means the accused is entitled to appropriate notice of the charges, the right to be heard in answer to these charges, the right to attend and to put his or her case to the tribunal.

Some Recognized Principles of Natural Justice to be Followed in Domestic Inquiry

Anantaraman (1997) stated some steps to ensure natural justice principles to be followed in domestic inquiry:-

- Employee to be informed of the charges.
  The workman must know the nature of the misconduct alleged against him. The charges sheet should with a manner, such as affidavit the same on company Notice Boards would not serve as full a purpose a refusal to accept the same by the employee.
- Taking evidence meeting charges.
  A domestic inquiry with violation of the rules of natural justices where a person is not given a chance to meet the charges against him. There being no fixed rule the justice depends on the peculiarity of the case.
- Reasonable opportunity to be heard.
  The expression ‘reasonable’ is not susceptible of a clear definition. What is reasonable in one case may not be reasonable in another case. What is reasonable is not necessarily what is best but what is fair appropriate to the purpose under all circumstances.
- No bias.
  At the end of an inquiry, the Inquiry Officer makes a report of his findings. It is not enough to make notes of the inquiry. Also, it is not necessary to write superfluous, but it is duty of Inquiry Officer to record clearly and precisely his conclusion and to indicate briefly his reasons for reaching the said conclusions.
Conclusion

Enforcement of discipline in any organization is very important to achieve their vision, mission and objectives. By having employees with good discipline and attitude will have an organization to create a harmony working environment in an effective manner and indirectly will increase their productivity. This is because an employer is not going to face any major problem in handling this kind of employees. In order to achieve this, employers should try their best to create a good relationship among their employees by treating them as a family, convey a clear working guidelines and give good training to them from time to time rather than blaming them when any mistake occurred without giving them chance to defend themselves.

As an employee, he/she should show good attitude and try to be a good worker in the organization. An employee must learn and understand all rule and regulation of the organization when first join the organization. A proactive attitude must be planted in order to success. If an employees does not clear or understand about any thing regarding the organization, he/she should ask for further explanation from the employer.

A good policy and its enforcement will make an organization become better and more competitive. The policies enforce must always fair and beneficial to both employees and employers in order to achieve the objective of the organization.

BIBLIOGRAPHY


Reading 9

INDUSTRIAL CONFLICT: in Malaysian Industrial Relations Environment

Introduction

The Industrial Relations (IR) Act in Malaysia was promulgated in 1967 and forms the basis of the present structure of the Malaysian Industrial Relations system which covers three main functions, collective bargaining, conciliation and arbitration. The Act replaces the Employment Ordinance (1955) and the Trade Unions Ordinance (1959). With the replacement, the Act changed Malaysia from a voluntary arbitration system to that of compulsory arbitration.

Under the Industrial Relations Act, 1967, employees and workmen have the right to form, join and participate in the lawful activities of trade unions. The main feature of the IR Act is collective bargaining or negotiation. Collective bargaining is needed to regulate terms and condition of employment in the private sector. In addition, the Government amended the IR Act to introduce the Code of Conduct of Industrial Harmony (1975) to make grievance procedure a legal requirement in all collective agreements deposited with the Industrial Court for cognizance. Under the Code, both employers and workers are committed to observe and comply with certain provision including 'to refrain from resorting to coercion, intimidation, victimization and avoid go-slow, sit-down and stay-in strikes'.

Since compulsory arbitration was introduced in 1967, there has been a steep decline in the number of strikes and lockouts. The number of man days lost due to strike actions and lockout in the last five years illustrate the downward trend. There were 64 strikes in 1975 while strikes and lockouts between 1970 and 1983 were 130, with 73, 773 man days lost.

RIGHT TO STRIKE

There is no provision in any International Labour Organization (ILO) convention that specifically recognizes the right to strike. In the context of present Malaysian industrial law, there leaves no room for a justifiable strike. The number of cases submitted by nature of disputes from 1979 to 1983 were 728. A trade dispute or labour dispute is defined in the IR Act 1967 as any dispute between an employer and his workmen which is connected with employment or non-employment or the terms of employment or the condition of work of any such workmen.

Strike patterns in Malaysia is not alarming by international standards, but it is not an indicator that the state of industrial relation is satisfactory. The 1940s saw a high
incidence of strike activities. From 1948 to 1955 strikes were very much less frequent basically because of the presence of the Emergency Regulation (TU Act, 1948).

The right to strike is recognized under the Malaysian industrial law but is circumscribed to achieve a balance between unrestricted freedom to industrial action and the need for industrial peace in the larger interest of Malaysia's economic development.

** Strikes **

The socialization process of organization influences strike patterns and behaviours. In organization where decisions are made fast and leaders have 'grass root' support, strike action is popular. The socialization process also conditions negotiations during strikes. Workers going on a strike face a hostile environment. Union officials are even more prone to anti-strike environmental pressures because they are frequently made out to be responsible for the behaviour of their members.

A strike is considered as a social phenomena (Gouldneo, 1965). Danaraj in his paper, defined strike to mean 'a refusal by the employees of an establishment to work' or as 'a concerted withdrawal from work by a part or all the employers'. Strikes have seldom been received in favorable terms, even though a strike may be perfectly legal and its cause very legitimate; however the larger society often sees it as a disruptive and in cooperative attempt by anti social workers. Nevertheless strikes can be generally defined as a cessation of work that involves a breakdown in the flow of materials within the factory and flow of commodities to the community. Strike is a form of open expression of agression.

One of the earliest strike organized by the union members of workers in Malaysia was in January 1959 and this was reported in the union newspaper named 'Suara Kesatuan' which was established in 1957 using the Bahasa Melayu language. The news went partly to state that:

"Lima puluh empat orang ahli kesatuan pekerja-pekerja pos dan telekom yang beruniform Malaya telah berhenti beramai-ramai dari kesatuannya dan menubuhkan sebuah cawangan kesatuan kebangsaan pekerja-pekerja pos beruniform cawangan Perak hari Sabtu yang lalu. Mereka berhenti beramai-ramai kerana tidak percaya lagi kepada pegawai kesatuan tersebut yang berpusat di Pulau Pinang".

In conclusion, the Malaysian Industrial Relations System not only recognized strikes in the Malaysian industrial law but it is also endorsed by its judiciary (Ananta Raman, 1998).
An Analysis on Strikes

The discussion on industrial dispute or industrial conflict should be done by analyzing the incidences of strikes to get a clearer picture of it. Strikes are one of the indexes of a clear existence of industrial conflict. The tables to be presented will show the number of strikes by year, the number of workers involved, and the number of working-days or man-days lost.

According to the Annual Report of the Department of Industrial Relations of the Ministry of Labour (Human Resources), a strike is defined as a concerted work stoppage by a group of workers lasting at least one full day. The number of workers involved includes those actually on strike and those prevented from working at least for one work-day during the work stoppage.

Table 1: Number of Strikes, Workers involved and Working-Days Lost
Peninsula Malaysia 1947 – 1970

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases</th>
<th>No. of workers</th>
<th>No. of days lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>295</td>
<td>69,217</td>
<td>696,036</td>
</tr>
<tr>
<td>1948</td>
<td>190</td>
<td>34,037</td>
<td>370,464</td>
</tr>
<tr>
<td>1949</td>
<td>29</td>
<td>2,292</td>
<td>5,390.5</td>
</tr>
<tr>
<td>1950</td>
<td>48</td>
<td>4,925</td>
<td>37,967</td>
</tr>
<tr>
<td>1951</td>
<td>58</td>
<td>7,454</td>
<td>41,365</td>
</tr>
<tr>
<td>1952</td>
<td>98</td>
<td>12,801</td>
<td>44,489</td>
</tr>
<tr>
<td>1953</td>
<td>48</td>
<td>7,934</td>
<td>38,957</td>
</tr>
<tr>
<td>1954</td>
<td>72</td>
<td>10,011</td>
<td>50,831</td>
</tr>
<tr>
<td>1955</td>
<td>213</td>
<td>48,677</td>
<td>562,125</td>
</tr>
<tr>
<td>1956</td>
<td>103</td>
<td>17,067</td>
<td>218,962</td>
</tr>
<tr>
<td>1957</td>
<td>72</td>
<td>10,945</td>
<td>59,730</td>
</tr>
<tr>
<td>1958</td>
<td>69</td>
<td>9,467</td>
<td>59,211</td>
</tr>
<tr>
<td>1959</td>
<td>95</td>
<td>6,946</td>
<td>38,523</td>
</tr>
<tr>
<td>1960</td>
<td>58</td>
<td>4,596</td>
<td>41,947</td>
</tr>
<tr>
<td>1961</td>
<td>95</td>
<td>9,045</td>
<td>59,730</td>
</tr>
<tr>
<td>1962</td>
<td>72</td>
<td>17,232</td>
<td>365,168</td>
</tr>
<tr>
<td>1963</td>
<td>85</td>
<td>226,427</td>
<td>508,439</td>
</tr>
<tr>
<td>1964</td>
<td>46</td>
<td>14,684</td>
<td>152,666</td>
</tr>
<tr>
<td>1965</td>
<td>60</td>
<td>14,673</td>
<td>109,915</td>
</tr>
<tr>
<td>1966</td>
<td>45</td>
<td>14,452</td>
<td>157,980</td>
</tr>
<tr>
<td>1967</td>
<td>103</td>
<td>31,062</td>
<td>280,417</td>
</tr>
<tr>
<td>1968</td>
<td>49</td>
<td>8,750</td>
<td>76,779</td>
</tr>
<tr>
<td>1970</td>
<td>17</td>
<td>1,216</td>
<td>1,867</td>
</tr>
</tbody>
</table>

Source: Department of Industrial Relations, Ministry of Labour, Malaysia.
The number of working-days lost or man-days lost is based on the number of vacancies caused by the dispute during each day of the dispute, or, where this is not practicable, by multiplying the number of days for which the dispute lasted by the average number of vacancies reached at weekly in intervals. Sundays, public holidays or any other days on which work is not normally performed are discounted for this purpose. For the discussion on industrial conflict at this point, it would be easier done by looking at the data on the occurrence of strikes year by year.

The figures in Table 1 showed that the number of strikes and the number of workers involved changes greatly during that time (1947 – 1970). The largest number of strikes recorded was 295 (1947). This was followed by 181 (1948), 231 (1956), 113 (1957) and 103 (1968). The lowest number of strikes recorded within that time was 17 (1970). The most number of workers involved was 226,427 in 1962 while the least number of workers involved in a strike was recorded in 1970 (1216) other than 2292 in 1948.

The figures on the number of working-days lost also showed vast differences. 696,036 working-days lost was the highest number recorded for 1947, followed by 562125 (1956), 508439 (1964) and 449856 (1962). The year 1970 recorded the least number of working-days lost which was 1867 followed by 5390 for 1949.

The figures in Table 1 also showed that there was no parallelism between the number of strikes, number of workers involved and number of working-days lost. As an example, even though 1947 recorded the most number of strikes, it did not record the highest number of workers involved. The same goes for 1962 which recorded the most number of workers involved but the number of strikes occurred was only 95. However, only in 1970 that all the three categories recorded the lowest numbers.

Table 2 : Number of Strikes, Workers involved and Working-Days Lost
Peninsular Malaysia 1971 – 1980

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases</th>
<th>No. of workers</th>
<th>No. of days lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971</td>
<td>45</td>
<td>5,311</td>
<td>20,265</td>
</tr>
<tr>
<td>1972</td>
<td>66</td>
<td>9,701</td>
<td>33,455</td>
</tr>
<tr>
<td>1973</td>
<td>66</td>
<td>14,003</td>
<td>40,866</td>
</tr>
<tr>
<td>1974</td>
<td>85</td>
<td>21,820</td>
<td>103,884</td>
</tr>
<tr>
<td>1975</td>
<td>64</td>
<td>12,124</td>
<td>45,749</td>
</tr>
<tr>
<td>1976</td>
<td>70</td>
<td>20,040</td>
<td>108,562</td>
</tr>
<tr>
<td>1977</td>
<td>40</td>
<td>7,783</td>
<td>73,729</td>
</tr>
<tr>
<td>1978</td>
<td>36</td>
<td>6,792</td>
<td>35,032</td>
</tr>
<tr>
<td>1979</td>
<td>28</td>
<td>5,629</td>
<td>24,868</td>
</tr>
<tr>
<td>1980</td>
<td>28</td>
<td>3,492</td>
<td>19,554</td>
</tr>
</tbody>
</table>

Source: Department of Industrial Relations, Ministry of Labour, Malaysia.
The period between 1970 – 1980 saw a tremendous decrease in the number of strikes in Peninsular Malaysia when compared to the period for 1947 – 1970. From Table 2, the most number of strikes during this period was 85 in 1974 followed by 70 in 1976. The number of workers involved were 21830 and 20040 respectively while the number of working-days lost was more in 1976 (108562) than in 1974(103884).

The least number of strikes recorded during this period was 28 in 1979 and in 1980. The number of workers involved for the two years were 5629 and 3402 respectively. The least number of working –days lost was 19554 in 1980.

Table 3: Number of Strikes, Workers involved and Working-Days Lost – Peninsular Malaysia 1981 - 1990

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of strikes</th>
<th>No. of workers involved</th>
<th>No. of working-days lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>24</td>
<td>4,832</td>
<td>11,850</td>
</tr>
<tr>
<td>1982</td>
<td>26</td>
<td>3,330</td>
<td>9,621</td>
</tr>
<tr>
<td>1983</td>
<td>24</td>
<td>2,458</td>
<td>7,880</td>
</tr>
<tr>
<td>1984</td>
<td>17</td>
<td>2,437</td>
<td>9,269</td>
</tr>
<tr>
<td>1985</td>
<td>22</td>
<td>8,710</td>
<td>34,773</td>
</tr>
<tr>
<td>1986</td>
<td>23</td>
<td>3,957</td>
<td>14,333</td>
</tr>
<tr>
<td>1987</td>
<td>13</td>
<td>3,178</td>
<td>11,035</td>
</tr>
<tr>
<td>1988</td>
<td>9</td>
<td>2,192</td>
<td>5,784</td>
</tr>
<tr>
<td>1989</td>
<td>17</td>
<td>4,761</td>
<td>23,877</td>
</tr>
<tr>
<td>1990</td>
<td>17</td>
<td>98,510</td>
<td>301,978</td>
</tr>
</tbody>
</table>

Source: Department of Industrial Relations, Ministry of Labour, Malaysia.

The period between 1981 – 1990 showed an even lower number of strikes compared to the previous ten year period (1971-1980). The highest number of strikes recorded during this period was 28 in 1982. This number is lesser than the lowest number of strikes recorded for the period between 1971-1980 which was 28. The number of workers involved in strikes during this period was the highest in 1990 with 98510.

The lowest number of strikes recorded for this period was in 1988 with 9 cases. The number of workers involved was 2192 while the number of working-days lost was 5784.

Table 4 showed that the highest number of strikes occurred in 1991 with 23 cases and 4207 number of workers were involved. The number of working days lost for 1991 was 6110. There is a notable difference in the lowest and highest number of strikes for this period. 1997 recorded 5 cases of strikes with 812 workers involved and 2396 number of working-days lost.

The latest figures obtained on strikes was from January to July 2000. According to the data from Department of Industrial Relations, Ministry of Human Resources,
Malaysia, there are 8 cases so far. The number of workers involved was 2580 while the working-days lost was 5073.

Table 4: Number of Strikes, Workers involved and Working-Days Lost – Peninsular Malaysia 1991 – 1999

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of strikes</th>
<th>No. of workers involved</th>
<th>No. of working-days lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>23</td>
<td>4,207</td>
<td>6,110</td>
</tr>
<tr>
<td>1992</td>
<td>17</td>
<td>6,110</td>
<td>16,164</td>
</tr>
<tr>
<td>1993</td>
<td>18</td>
<td>2,399</td>
<td>7,152</td>
</tr>
<tr>
<td>1994</td>
<td>15</td>
<td>2,289</td>
<td>5,675</td>
</tr>
<tr>
<td>1995</td>
<td>13</td>
<td>1,748</td>
<td>4,884</td>
</tr>
<tr>
<td>1996</td>
<td>9</td>
<td>995</td>
<td>2,553</td>
</tr>
<tr>
<td>1997</td>
<td>5</td>
<td>812</td>
<td>2,396</td>
</tr>
<tr>
<td>1998</td>
<td>12</td>
<td>1,778</td>
<td>2,685</td>
</tr>
<tr>
<td>1999</td>
<td>11</td>
<td>3,452</td>
<td>10,554.5</td>
</tr>
</tbody>
</table>

Source: Department of Industrial Relations, Ministry of Human Resources, Malaysia.

In summary, the number of strikes have been steadily falling since 1947. The largest number of strikes was 295 in 1947. In 1956, there were 213 strikes. After 1968, the number of strikes never exceeded 100. In the 1960s the average number of strikes per year was 57, in 1970s the average number was 51 and in 1980s, the average number was 20. The average number of strikes for the 1990s was 12.

Strikes by Sector

According to Kamaruddin (1992), most strikes that occurred from the year 1953 – 1970 involved workers in the rubber estates only. As such, most of the other strikes were staged by workers in the coconut, oil palm, tea and pineapple plantations. He added that this was due to the sector having the largest number of workers. Besides, the workers’ union, the National Union for Plantation Workers (NUPW) was a very influential union.

The number of strikes were relatively high in the manufacturing sector especially after 1966. However, since the number of workers in this sector is small when compared to the number of workers in the plantation sector, the strikes that occurred never exceed the number of strikes that occurred in the plantation sector.

For the 1975 figure as shown in Table 5 below, the agricultural product industry had accounted for the highest number of strikes with 35 cases out of a total of 64 for that year. This industry includes the rubber, oil palm, tea, coconut and coffee estates and also all the activities concerning with the processing, packing, and grading of agricultural products.
Table 5: Strikes By Industry - 1975

<table>
<thead>
<tr>
<th>Industries</th>
<th>Number of Strikes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Agricultural Products Industry</td>
<td>35</td>
</tr>
<tr>
<td>2 Quarrying</td>
<td>2</td>
</tr>
<tr>
<td>3 Manufacturing</td>
<td>16</td>
</tr>
<tr>
<td>4 Construction</td>
<td>2</td>
</tr>
<tr>
<td>5 Commerce</td>
<td>2</td>
</tr>
<tr>
<td>6 Transport</td>
<td>4</td>
</tr>
<tr>
<td>7 Service</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>64</strong></td>
</tr>
</tbody>
</table>

Source: Department of Industrial Relations, Ministry of Labour, Malaysia.

Ten years later, in 1985, the situation had not changed. The strikes by sector that occurred in 1985 is shown in Table 6 below.

Table 6: Strikes By Sector – 1985

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of cases</th>
<th>No. of workers involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estate</td>
<td>14</td>
<td>5195</td>
</tr>
<tr>
<td>Mining and Quarrying</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>4</td>
<td>2779</td>
</tr>
<tr>
<td>Construction</td>
<td>2</td>
<td>430</td>
</tr>
<tr>
<td>Commerce</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Transport</td>
<td>1</td>
<td>31</td>
</tr>
<tr>
<td>Service</td>
<td>1</td>
<td>275</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>22</strong></td>
<td><strong>8710</strong></td>
</tr>
</tbody>
</table>

Source: Department of Industrial Relations, Ministry of Labour, Malaysia.

The sector involved in the largest number of strikes for 1985 as in 1975 was still the agricultural or estate sector with a total number of 5195 workers involved.

The 1986 statistic also did not show any difference in the number of strikes involving the estate sector. This sector still led the rest with the largest number of strikes which
is 14. The number of workers involved was 1607. The strikes by sector for 1986 is shown in Table 7.

Table 7: Strikes By Sector - 1986

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of Strikes</th>
<th>No. of workers involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estate</td>
<td>14</td>
<td>1607</td>
</tr>
<tr>
<td>Mining and Quarrying</td>
<td>2</td>
<td>1509</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>5</td>
<td>682</td>
</tr>
<tr>
<td>Construction</td>
<td>1</td>
<td>134</td>
</tr>
<tr>
<td>Commerce</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Transport</td>
<td>1</td>
<td>25</td>
</tr>
<tr>
<td>Service</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>23</strong></td>
<td><strong>3957</strong></td>
</tr>
</tbody>
</table>

Source: Department of Industrial Relations, Ministry of Labour, Malaysia.

From the data shown in Table 8, the sector with the most number of strikes is the manufacturing sector with 24 cases and 5079 workers involved. There is a shift from the estate sector having the largest number of strikes in the 1970s and 1980s to the manufacturing sector in the 1990s.

From the earlier strike statistics of Malaysia we can say that the estate and the manufacturing sector have had the most strikes. There could be two possible reasons for this phenomena. Firstly, the location of workers in society and secondly, the characteristics of the job and worker.

The social and geographical isolation of these workers sharing common grievances, living conditions, codes and social standards could possibly increase the propensity to strike. The workers are largely homogeneous, undifferentiated masses without much occupational stratification. This provides the necessary ingredients for group cohesion. Rubber tappers, for instance, not only have same grievances but they have them at the same time, same place and same employer. This contributes to a 'mass grievance'.

Steady contact between the members of the group creates the basis for a permanent organization. Furthermore, plantation workers are the best organized and largest labor force in Malaysia. The union for these workers becomes a kind of working-class party. The strike is the only available weapon to remedy their weak position. It also acts as a substitute for occupational and social mobility.
Table 8: Strikes by Sector – 1995 – 1999

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of cases</th>
<th>No. of workers involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry, Livestock and Fishery</td>
<td>16</td>
<td>2369</td>
</tr>
<tr>
<td>Mining and quarrying</td>
<td>1</td>
<td>37</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>2</td>
<td>5079</td>
</tr>
<tr>
<td>Electricity, Gas and Water</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Construction</td>
<td>3</td>
<td>997</td>
</tr>
<tr>
<td>Wholesale &amp; Retail Trade, Restaurant and Hotels</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Finance, Insurance, Real Estate &amp; Business</td>
<td>1</td>
<td>29</td>
</tr>
<tr>
<td>Community, Social &amp; Personal Services</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Transport, Storage and Communication</td>
<td>5</td>
<td>274</td>
</tr>
<tr>
<td>Others</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>8785</strong></td>
</tr>
</tbody>
</table>

Source: Department of Industrial Relations, Ministry of Labour, Malaysia.

In contrast, workers in the commerce, transport and services industries are found to have a lower propensity to strike (a total 9 out of 64 strikes in 1975, 2 out of 22 in 1985, 6 out of 50 in 1995-1999). The workers in these industries are better integrated into the general community. These workers live in multi-industry communities, associate with people with quite different working experiences than their own and belong to associations with heterogeneous memberships. As such, their individual differences are less likely to integrate into a mass grievance.

Job and social mobility is high with a more stratified occupational hierarchy. Such workers are neutrals in disputes for they have access to higher skilled jobs, managerial or even employer status. The community pressure would bring pressure to encourage peaceful conduct. Furthermore, the workers are more dispersed making group cohesion difficult to be attained.

Secondly, the inherent nature of the job determines which workers are more inclined to go on strike. Workers in the Agriculture Products and Manufacturing Industry could be more strike-prone because of the nature of their jobs. Their jobs are physically more difficult, wages subject to seasonal and market fluctuations and conditions of living less satisfactory than workers in other industries.

In contrast, the service industry where the worker uses less physical exertion, wages stable and conditions of work satisfactory is less prone to strike. The manufacturing
industry is generally medium strike-prone relative to the Agricultural Products Industry. This may be because the job condition varies from factory to factory. Therefore, strikes do occur in industries which segregate large number of persons and where workers are relatively unpleasant with their jobs.

Though these reasons do to some extent explain inter-industry propensity to strike, such a complex phenomena such as strikes need multi-causation, that is the political environment, human relations, dominant personalities, historical background, ideological views and the general economic environment. At the level of the firm many more factors must be examined.

Types and causes of strikes

There are mainly two types of strikes. They are: 1. strikes related to collective bargaining; and 2. strikes not related to collective bargaining. Under each type, there are several causes. Table 9 illustrates the different types and causes for each type.

Table 9: Types and causes of strikes

<table>
<thead>
<tr>
<th>Strikes related to collective bargaining</th>
<th>Strikes not related to collective bargaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>refusal to enter collective bargaining</td>
<td>terms and conditions of contractual terms</td>
</tr>
<tr>
<td>deadlock in collective bargaining</td>
<td>in collective agreement and other service</td>
</tr>
<tr>
<td></td>
<td>contracts</td>
</tr>
<tr>
<td></td>
<td>retrenchment and lay-off</td>
</tr>
<tr>
<td></td>
<td>promotion, allocation of duties, transfer,</td>
</tr>
<tr>
<td></td>
<td>and other management prerogatives</td>
</tr>
<tr>
<td></td>
<td>demotion, suspension, warning letter, and</td>
</tr>
<tr>
<td></td>
<td>other disciplinary actions</td>
</tr>
<tr>
<td></td>
<td>non-implementation of labor standards and</td>
</tr>
<tr>
<td></td>
<td>statutory provisions related to other</td>
</tr>
<tr>
<td></td>
<td>non-monetary benefits</td>
</tr>
<tr>
<td></td>
<td>infringements of workers' right/unfair</td>
</tr>
<tr>
<td></td>
<td>labor practices</td>
</tr>
<tr>
<td></td>
<td>others</td>
</tr>
</tbody>
</table>

We shall examine the types and causes of strikes from 1992 – 1999. The data collected from the Department of Industrial Relations, Ministry of Human Resources, Malaysia is shown in Table 10.

The type of strikes for the span of eight years (1992-1999) showed that most strikes are not related to collective bargaining. They are mainly strikes related to disputes over terms and conditions of contractual terms in collective agreement and other service contracts. There were 46 cases with 8084 workers involved in the strikes. The
least number of strikes with only 1 strike throughout the eight years was cause by refusal to enter into collective bargaining. There were only 140 workers involved in that strike. Other causes of strikes other than those mention in Table 10 amounted to 41 cases being the second in line.

Table 10: Types and causes of strikes in Malaysia from 1992-1999.

<table>
<thead>
<tr>
<th>Types and causes of strikes</th>
<th>No. of strikes</th>
<th>No of workers involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strikes related to collective bargaining</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Refusal to enter into collective bargaining</td>
<td>1</td>
<td>140</td>
</tr>
<tr>
<td>b) Deadlock in collective bargaining</td>
<td>4</td>
<td>6399</td>
</tr>
<tr>
<td>Strikes not related to collective bargaining</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Terms and conditions of contractual terms in collective agreement and other service contracts</td>
<td>46</td>
<td>8084</td>
</tr>
<tr>
<td>b) Retrenchment and lay-off</td>
<td>2</td>
<td>1144</td>
</tr>
<tr>
<td>c) Promotion, allocation of duties, transfer, and other management prerogatives</td>
<td>9</td>
<td>656</td>
</tr>
<tr>
<td>d) Demotion, suspension, warning letter, and other disciplinary actions</td>
<td>8</td>
<td>354</td>
</tr>
<tr>
<td>e) Non-implementation of labor standards and statutory provisions related to other non-monetary benefits</td>
<td>3</td>
<td>348</td>
</tr>
<tr>
<td>f) Infringements of workers’ right/unfair labor practices</td>
<td>4</td>
<td>2456</td>
</tr>
<tr>
<td>g) Others</td>
<td>41</td>
<td>8514</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10</strong></td>
<td><strong>28005</strong></td>
</tr>
</tbody>
</table>

Nature of Strikes in Malaysia from 1995-1999
The nature of strikes are divided into sub-categories. They are shown in Table 11.

### Table 11: Nature of strikes

- **Total cessation of work**
- **Partial cessation of work**
- **Other form of concerted actions which adversely affect normal production operations.**

Out of the three sub-categories, the first category is the most common. Over the period of five years (1995-1999), there had been 33 cases involving 5930 workers. The number of working-days lost was reported to be 16792.5 days. This is shown in Table 12.

### Table 12: Nature of Strikes in Malaysia – 1995-1999

<table>
<thead>
<tr>
<th>Nature of Strikes</th>
<th>Number of cases</th>
<th>Workers involved</th>
<th>Working days lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total cessation of work</td>
<td>33</td>
<td>5930</td>
<td>16792.5</td>
</tr>
<tr>
<td>Partial cessation of work</td>
<td>17</td>
<td>2855</td>
<td>6280</td>
</tr>
<tr>
<td>Other form of concerted actions which adversely affect normal production operations</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>8785</strong></td>
<td><strong>23072.5</strong></td>
</tr>
</tbody>
</table>

From the result obtained, there is a substantial number of days lost which could affect serious economic consequences and would lead to a loss of output or contracts from customers. According to Aminuddin (1990), the strike tendency of workers is a vital factor influencing the investment decision by multi-national companies. She added that the number of strikes alone does not tell whether the strike activity is serious or not but rather the duration of strikes and the number of workers involved are two factors that could have adverse effect on the economy.

### Duration of Strikes in Malaysia

Majority of strikes in Malaysia are relatively short, lasting from 1 – 3 days only. This is possibly because of the conciliation efforts by the Industrial Relations Department and also the intervention by the Ministry. The result of these actions is that the disputes are referred to Industrial Court for arbitration. Another reason for the short
strikes is because the workers cannot afford to go without pay for any length of time and union strike funds tend to be limited. To assess the seriousness of strike activities, we should look at the number of workers involved in a particular strike.

A one day strike involving thousands of workers is most likely to have more serious repercussions than a strike which only involve a handful of workers. Let us look at the duration of strikes in the 1980s and compare them to those in 1990s.

**Table 13: Duration of Strikes - 1980 – 1986**

<table>
<thead>
<tr>
<th>Duration of strikes</th>
<th>Number of Strikes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 3 days</td>
<td>95</td>
</tr>
<tr>
<td>4 – 7 days</td>
<td>45</td>
</tr>
<tr>
<td>8 – 14 days</td>
<td>18</td>
</tr>
<tr>
<td>15 and over days</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>164</strong></td>
</tr>
</tbody>
</table>

From Table 13, the duration of strikes is mostly 1 – 3 days for the period of 7 years. There were 95 cases of strikes which lasted 1-3 days while 6 cases lasted 15 and over days. This suggest that the strike period from 1980 – 1986 were of short duration.

From 1995-1999, there were slight changes. This is shown in Table 14.

**Table 14: Duration of Strikes – 1995-1999**

<table>
<thead>
<tr>
<th>Duration of strikes</th>
<th>Number of Strikes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 3 days</td>
<td>37</td>
</tr>
<tr>
<td>3-5 days</td>
<td>13</td>
</tr>
<tr>
<td>More than 5 days</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>52</strong></td>
</tr>
</tbody>
</table>

For the period of five years (1995-1999), the duration for most strikes was 3 days or less. This is similar to the 1980s but the number of strikes had reduced considerably. Only 37 cases were reported and the strikes lasted for only 3 days. The duration of strikes for this period had also reduced. There were only 2 cases reported for the longest duration of strikes that lasted for 5 days or more.

Therefore from the economic perspective, this is a good sign that less and less number of strikes are happening and with reduced number of strike days. This means that the
strike activities in Malaysia are getting less serious and the fact that the duration of strike is short proved that more favorable and less radical ways of solving disputes are taken.

**Pickets**

When peaceful methods fail to settle a dispute, the trade union may attempt to force a settlement by using or threatening to use more aggressive methods like strikes and pickets. The two types of industrial actions are generally discouraged and considered irresponsible. Aminuddin (1990) gave a good example of a dispute between the National Union of Bank Employees (NUBE) and the Malayan Commercial Banks Association (MCBA) over the increase in wages. The union members decided to come to work wearing ‘sarongs’, t-shirts and slippers to show that they could not afford to buy suitable clothing for work unless they receive a pay increase.

According to Aminuddin (1990), a picket is a gathering of workers outside the workplace or place of dispute with placards and banners expressing workers’ grievances and demands for people to see, thus generating public sympathy and support.

The most common form of industrial action taken by workers is picketing, what more the Industrial Relations Act allow these workers to attend at or near their workplace whenever they have a trade dispute for the purpose of giving information to public and other workers to try and persuade them not to work if a strike has been declared.

However, picketing should not obstruct the entrance or exit to the organization and most importantly, it must be peaceful. Workers who are involved in the dispute can participate in the picket. It is used to communicate issues to the public and indirectly embarrass the employer. It is often held at lunchtime and before and after working hours, but if a strike has been declared, the picketing will be continued throughout the day.

Since there are a number of conditions that obstruct the workers from making strikes, picketing becomes more popular as a pressure tactic to get the employer to give in to the workers’ demands. In ‘The Star’ 28 April 1988, 2000 workers of Syarikat Telekom Malaysia (STM) picketed in front of their headquarters during lunch breaks and after office hours to demand for payment of bonus. In another instance occurred in the same month, 8,400 workers in statutory bodies picketed at their respective workplace to ask for the revision of their salary.

Yearly Report of the Department of Industrial Relations of the Ministry of Human Resources, Malaysia, indicated that the manufacturing sector held the most pickets compared to other sectors. There were 57 cases reported throughout the five years from 1996 – 1999. There were 1997 manufacturing workers involved. 1997 showed the most number of pickets with 34 cases throughout the year.
Table 15 illustrates pickets by the various sectors and the number of incidences and the workers involved.

Table 15: Picket by Sector – 1996-1999

<table>
<thead>
<tr>
<th>Sector</th>
<th>No. of cases</th>
<th>No. of workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry, Livestock and Fishery</td>
<td>5</td>
<td>1099</td>
</tr>
<tr>
<td>Mining and Quarrying</td>
<td>1</td>
<td>50</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>57</td>
<td>9179</td>
</tr>
<tr>
<td>Electricity, Gas and Water</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Construction</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Wholesale and Retail Trade, Restaurants and Hotels</td>
<td>12</td>
<td>1027</td>
</tr>
<tr>
<td>Transport, Storage and Communication</td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td>Finance, Insurance, Real Estate and Business Services</td>
<td>12</td>
<td>3432</td>
</tr>
<tr>
<td>Community, Social and Personal Services</td>
<td>4</td>
<td>525</td>
</tr>
<tr>
<td>Others</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>92</strong></td>
<td><strong>15331</strong></td>
</tr>
</tbody>
</table>

Causes of Pickets from 1996 - 1999

There are many causes of picket and among them deadlock in collective bargaining is the cause for many pickets. This is shown in Table 16 below. From the statistics, it showed that the main causes of why workers picket was mainly because of deadlock in collective bargaining. Throughout the 5 year period, there were 31 cases which involved 5050 workers. Disputes over terms and conditions of contractual terms in collective agreement and other service contracts is the second cause of picketing with 23 cases and 3406 workers involved.

Picketing incidences in Malaysia from 1996 to 1999 showed that most of the pickets occurred in Wilayah Persekutuan/Selangor with 29 cases and 4340 workers involved. The various picket by office is shown in Table 17.
Table 16: Causes of Picket - 1996-1999

<table>
<thead>
<tr>
<th>Causes of Picket</th>
<th>Number of cases</th>
<th>Workers involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refusal to enter collective bargaining</td>
<td>1</td>
<td>150</td>
</tr>
<tr>
<td>Deadlock in collective bargaining</td>
<td>31</td>
<td>5050</td>
</tr>
<tr>
<td>Disputes over terms and conditions of contractual terms in collective agreement and other service contracts</td>
<td>23</td>
<td>3466</td>
</tr>
<tr>
<td>Retrenchment and lay-off</td>
<td>8</td>
<td>1127</td>
</tr>
<tr>
<td>Promotion, allocation of duties, transfer, and other management prerogatives</td>
<td>2</td>
<td>130</td>
</tr>
<tr>
<td>Demotion, suspension, warning letter, and other disciplinary actions</td>
<td>4</td>
<td>439</td>
</tr>
<tr>
<td>Non-implementation of labor standards and statutory provisions related to other non-monetary benefits</td>
<td>4</td>
<td>1145</td>
</tr>
<tr>
<td>Infringement of workers' right/ unfair labour practices</td>
<td>3</td>
<td>709</td>
</tr>
<tr>
<td>Others</td>
<td>16</td>
<td>3175</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>92</strong></td>
<td><strong>15331</strong></td>
</tr>
</tbody>
</table>

Table 17: Picket by Office from 1996 to 1999.

<table>
<thead>
<tr>
<th>State</th>
<th>No. of cases</th>
<th>No. of. workers involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Headquarters</td>
<td>2</td>
<td>200</td>
</tr>
<tr>
<td>Wilayah Persekutuan/ Selangor</td>
<td>29</td>
<td>4340</td>
</tr>
<tr>
<td>Johor</td>
<td>3</td>
<td>200</td>
</tr>
<tr>
<td>Perak</td>
<td>18</td>
<td>1996</td>
</tr>
<tr>
<td>Pulau Pinang</td>
<td>24</td>
<td>2471</td>
</tr>
<tr>
<td>Negeri Sembilan</td>
<td>5</td>
<td>3695</td>
</tr>
<tr>
<td>Kedah/Perlis</td>
<td>2</td>
<td>446</td>
</tr>
<tr>
<td>Kelantan</td>
<td>3</td>
<td>1047</td>
</tr>
<tr>
<td>Terengganu</td>
<td>2</td>
<td>240</td>
</tr>
<tr>
<td>Pahang</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Melaka</td>
<td>2</td>
<td>346</td>
</tr>
<tr>
<td>Kluang</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Muar</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sabah</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sarawak</td>
<td>1</td>
<td>350</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>90</strong></td>
<td><strong>15331</strong></td>
</tr>
</tbody>
</table>
The latest data received from the Department of Industrial Relations indicated that from January – July 2000, only 11 cases of pickets were reported so far.

International Experiences

Here are a few examples of strikes and opinion on strikes at the international level. One example is in the UK and the other in the US. In the UK Archbald Cox (2000) stated that the steel strike has precipitated a demand for new legislation providing better solutions to labour disputes which endanger the nation. Since World War II, there have been five major steel strikes.

Archbald further argued that many students of IR are now convinced that the best hope for avoiding national emergency strikes, while preserving a huge measure of freedom and private responsibility for the terms of the settlement lies in legislation which opens the door to a wide range of procedures. The Harlow Bill Amendment of 1947 provides no safeguard against a national emergency dispute, arising at a single plant. In 1952-1953, a strike at one plant of American locomotive company cut off the entire supply of nickel alloy pipe used in the gaseous diffusion plants of the Atomic Energy Commission.

In the US Sharon Waxman (2000) reported in Los Angeles that as actors strike over payment for commercials is nearing their fourth months out of work-with no end in sight, panic is beginning to get in around Holywood with the realization that a similar job action could shut down film and television production next year.

In the Republic of Ireland, Gregor Kerr from the Teachers Union of Ireland, commented on the development of IR since 1906. With minor amendments according to Kerr’s article, the IRS became the IR Act (1990) a result from a decade of ‘consultations’ and discussions between government, employers and unions. The Act repealed the 1906 Trades Disputes Act in its entirety and redeemed most of its provisions but modified them in such a way as to tilt the legal balance away from workers.

The Australian Council of Trade Unions (ACTU) is very active and is always up to date in releasing current news relating to labor matters at the website http://www.actu.asn.au. ACTU represents over 2 million Australian workers and their families. In November 1999, ACTU has teamed with Virtual Communities in bringing affordable personal computers and internet access to union members and their families.
NUTP: DISPUTES AND STRIKES – A CASE STUDY

Nut was formed in 1954. The main objectives of NUTP at the time were as follows:

- Secure the complete organization of all persons in the teaching profession
- To improve the conditions of remunerations and employment of the members and protect and advance their interests
- To provide means for co-operation of teachers and the expression of their collective opinion upon matters affecting the interests of the teaching profession
- To assist financially or otherwise the work or purpose of any lawful association
- To promote the professional, social and educational welfare of the members in any lawful manner.

The strength of NUTP came from its eleven state branches. Since its foundation the union had grown from strength to strength and by 1962 the membership is approximately 4000. (NUTP now claims it has about 85,000 members).

The early years of NUTP’s formation (1950s and 1960s), NUT concentrated on four major issues as follows:

- Equal pay for women
- DTC Parity
- Housing facilities for all the teachers
- Medical facilities for all laborers

From 1954, NUT had relentlessly fought for equal pay equal work. Since 1957, the NUT had taken up the question with the Prime Minister and the Minister of Education on several occasions.

The NUTP was the first organization to successfully organize a countrywide campaign for public support and sympathy on the issue of Equal Pay collecting 10,000 signatures from people of all walks of life. By June-July 1965, the ineffectiveness of the NJCT (National Joint Council for Teaching) as negotiating body for teachers claims, determined the NUT decided to implement the following actions.

- Withdrawal of services from sports and other forms of extra curricula activities for a month
- Wearing of uniform badge with suitable words inscribed there in.
- Strike for a particular period

The NUT hoped the government would wake up to the fact that teachings were being exploited and that their claims merited immediate and priority attention.
NUTP Mass Rally

The NUTP held a mass-rally for DTC parity and medical and housing facilities on 16th July 1966 at DBP. More than 1000 teachers and supporters from all part of the country attended the rally.

Although the four major claims of the NUT was equal pay for woman, DTC parity and housing facilities and medical facilities for all teachers, the union also fights for other various issues plagued the teachers as follows:

- Service in east-coast
- Widows and orphans fund
- Study leave
- Flight of temporary teachers
- NUT memos to Suffian commission
- Full pay leave to sit exam

Boycott of Extra Mural Activities

Frustration and impatience with the government's attitude, NUTP launched series of countrywide industrials actions. Beginning from 26th July 1966 teachers belonging to 8000 strong NUTP boycotted extra mural activities in schools throughout the country to protest against the government's delay in settling long-standing claims.

For the first time in the history of the teaching profession in the country, teachers had gone into such a boycott and on such a scale. Never in the history of teachers trade unionism in Malaysia did teachers picket for five continuous days and nights. The NUTP's nation wide picketing caught the attention of the public. The NUTP announced that picketing had been withdrawn, the boycott of extra mural activities in school would continue until a satisfactory in out come was reached on DTC parity, equal pay, housing and medical facilities.

The Historic Strike

The government's delaying tactics to deprive teachers of their legitimate rights sparked NUTP calling out its members to a strike. Beginning from March 27 1967, thousands of NUTP members in all the states of west Malaysia participated in the strike in grand solidarity which the country had never seen before.

The strike gained the immediate and spontaneous supports of NUTP members and many non-members form very day it was launched. From reports received the affected more than 800 schools involving about 11,000 teachers in country. Government teachers, women teachers, Chinese school teachers, Tamil school teachers, graduate teachers and other categories of teachers stood up together for "Justice for teachers". More than 400 headmasters and senior assistants also participated in the strike. It cannot be denied that the strike helped to raise the social
consciousness of teachers, parents, pupils and the public at large. The NUT strike action also received support from opposition politicians.

NUTP's Solidarity

By 1972 the total membership of NUTP went up to 13,580 indicating that teachers were acquiring a stronger and more confident in NUT's struggles for its members interests. The increase is also due to factor of financial and other benefits and the improved conditions of service derived from the implementation of the Aziz Scheme. The NUTP's service to its members particularly during the difficult period had proved to the teachers what and experienced and well-organized union could do.

NUTP's Formation

The official formation of the NUTP on May 1973 ushered in new era of teacher trade unionism in Malaysia. On 22nd November 1974 the union had called on all its members to boycott all courses by the Ministry of Education. The ministry's response was quick. Union leaders were immediately invited for talks to settle the issues. However in years thereafter the union became more conscious of its duties towards professional development and began to play more important role in the area. It was about the time to that there was less confrontational pressure and demand for improving service conditions, since most of the demands were already met or received favorably. Thus sometimes around the 80's positive steps were taken to organize courses, whole workshops, have seminars and initiate many other such activities thorough the country. One of the union's most important achievements was the review of the Education Law in the country. It's struggle continued to gain among other things rights for teachers working in rural areas, better maternity benefits for women teachers, healthier school and class room environment for teachers and etc.

Today the union stands on a pedestal of respect. There are visible congenial ties with the Ministry of Education and the Government. The union's activities and contributions earns considerable respect and significant support from teachers at all level and from the public at large. Thus there is no more picketing or strikes recently carried out by the union.

CONCLUSION

It cannot be denied that economic factors play a significant role in determining the behavior of unions. However there are secondary determinants and unions have been shaped by the forces of the environment and influences of society to solve their problems. Socialization process of the workers will conditioned their behavior.

Danaraj (1978) commented that unions have been socialized by the larger society to adopt methods that are moderate and acceptable. He added that the socialization process of any organization influences the strike patterns and behavior. He stressed
that every strike action could be less popular in unions with a hierarchy of procedures. Each organization differs in its constitutional procedures for strike action. In organizations where decisions are made fast and leaders have grass-root support, strike action is popular. He explained that the socialization process also conditions negotiations during strikes and the demands which union made are based on the concept of fairness which is conditioned by employers.

Strikes have seldom been received in favorable terms. The Malaysian government have stated their distress for strikes and lockouts to resolve industrial disputes. The Prime Minister in his speech in the New Straits Times January 1996 said that as long as strikes and lockouts remains, negotiations between employers and employees will continue to be tense and wise decisions are difficult to arrived at. He urged that problems between employer-worker should be resolved through arbitration and without strike. This would result in a better industrial harmony and helps to attract foreign investors and increase job opportunities. As a result of constant pressure from the government not to strike, there is a strike reduction happening in the late 90s with only 5 cases in 1997.

Therefore, though a strike may be perfectly legal and its cause very legitimate, the larger society often sees it as disruptive and uncooperative attempt by anti social workers. Even though strikes may be a common occurrence in many countries, it is conventionally described as industrially subversive, irresponsible, inconsistent with democracy, contrary to the worker’s own interest and in any event unnecessary. Hence workers going on a strike face a hostile environment. Union officials are even more prone to anti-strike environmental pressures because they are frequently made out to be responsible for the behavior of their members. Lastly, if a strike is started while a resentment is high, then only can the effects of socialization be minimized.
Introduction

Industrial Democracy is an economic arrangement which involves workers making decisions, sharing responsibility and authority in the workplace. Although industrial democracy generally refers to the organization model in which workplaces are run directly by the people who work in them, there are also representative forms of industrial democracy.

The machinery of industrial democracy may involve such devices as joint labor-management committees, works councils or worker representatives in the boardroom. The development of collective bargaining is viewed by many as providing the platform through which industrial democracy may be developed.

Against this background, the three main rationales for introducing industrial democracy and employee participation are based upon different dimensions that could be categorized as economic, social and political assumptions:

- **Economic** – changes in employees’ attitudes and behavior are achieved through financial participation, by offering employees a stake in the firm. Employees’ association with management values and goals is thereby increased, and they are more motivated and committed to achieving those goals.
- **Social/ moral** – by catering for employees’ social needs, through improved job security and satisfaction and quality of working life, higher performance is achieved. Alternatively, satisfying social needs can be treated as an end in itself.
- **Governmental/ political** – current government policy is to improve national economic efficiency while also improving the experience of work for employees. Government policy promotes employee participation as a means of improving company performance, particularly by changing employees’ attitudes and improving the work environment. Through political channel, workers are allowed to have a greater say in decision making at work.

Definition of Terms

**a. Industrial Democracy**

Industrial democracy is a process whereby employees are allowed to have a greater say through mechanisms such as regular staff meetings, performance feedback, training, staff suggestion schemes, circulars, and consultative committees for specific issues such as occupational health and safety, equal employment opportunity, enterprise bargaining, etcetera. It means genuine
participation and not simply being informed after a decision-making has been made.

b. Employee Participation

Employee Participation is a process of achieving industrial democracy when it enables employees to have a real influence on decision making at workplace.

c. Employee Involvement

The above term typically refers to the involvement of employees in decision making relating to matters which are usually reserved for the attention of managers. The reality is the degree of involvement has been left to the discretion of individual employers, so participation in decision making can operate at different levels and stages along the continuum, even within the one organization. The intent was not necessarily for employees to make decisions, but to be partners in the decision-making process regarding matters that affected them.

Definitional Consensus

Industrial democracy as a term does seem to suffer from some perceived disadvantages. It is sometimes associated with political democracy and carries the connotation of elections to formal representative bodies to the possible exclusion of more direct forms of participation.

The term 'industrial democracy' is claimed to be resist by the employers because of its 'inherently political and ideological overtones and fear that those who advocate it are essentially seeking radical social change involving an abrogation of property and ownership rights' (Bryan Noakes, 1984). This attitude would seem to be a barrier to employer co-operation in this area. The term 'employee participation' on the other hand appears to be favored by most employers and their associations; and it is often used in a way which results in less emphasize on the rights of workers and means involvement rather than the power to influence decision making. Some employers see participation involving employees to the exclusion of unions. Most unions, however, regard themselves as the single channel of representation for their members and the introduction of participatory schemes without involvement have in the past, frequently encountered difficulties.

The Australian’s Department of Employment and Industrial Relations came out with both terms, clarified as:

**Industrial Democracy** best describes the goal to strive for in the same way what we are striving to achieve a more democratic society and encompasses participation in decision making at the national, industry and enterprise level. It means genuine participation and not simply being informed after a decision has been taken.
Employee participation describes the processes and practices for achieving a greater degree of employee influence in individual enterprises and workplaces. It is an essential part of the process of achieving industrial democracy when it enables employees to have a real influence on decision-making which relates to matters affecting their working lives.

The main difference between the terms as described above lies in the level at which implementation takes place. Most governments prefer the term ‘employee participation’ because it focuses on the organization and workplace and encompasses a wide range of practices and approaches. It seems then that the government position is that emphasize should be placed on participation at the enterprise and workplace, at least at this stage of its efforts to encourage an expansion of democratic work practices. In this context, unions are seen as one of the key elements in the processes which allow employees to have a real influence on decision-making and that such processes are not imposed by any one party but are the outcomes of joint action.

Central to the notion of democratic work practices is the redistribution of power and responsibility in enterprises leading to an increase in the decision making power of non-managerial employees. It is similar to the Australian Government’s Policy Discussion Paper report that highlights a distinction between the control or government of the enterprise and its internal management. The two areas do interact and there is no clear boundary of definition between them. The government is concerned with goal setting and strategic planning and these functions are usually the responsibility of the chief executive and board of directors. The internal management of the enterprise is concerned with the operational aspects, i.e. the means by which the goals and priorities that have been set by the board will be attained.

The above research project report goes on to make the useful and realistic distinction between worker participation in internal management matters and participation in the democratic control of the enterprise as a whole including the setting of organizational objectives. The authors of the report believed that only the latter should be called industrial democracy and distinguished it from employee participation in the operational aspects of management. Something less than industrial democracy exists if employees do not have any control over the direction and goals of the organization. The involvement of employees in internal management decisions does constitute participation to varying degrees but such participation of itself, does not amount to industrial democracy. Some types of participation are conceived as leading to industrial democracy and there are others which do not.

An example of an appreciation between the terms ‘employee participation’ and ‘industrial democracy’ is to be found in the initiatives taken in South Australia in the early to mid 1970s. When the thrust of the Government’s policy was joint consultation and job enrichment schemes the term ‘worker participation’ was used. Subsequently, the government adopted the policy of a representative model of participation and in particular, placed an emphasize on representation extending to the policy or board level of companies. Along with this shift in policy, the term ‘industrial democracy’ replaced ‘worker participation’ as the appropriate term to describe the government’s aims.
Further support for the distinction between 'participation' and 'democracy' in the industrial context is provided by Carole Pateman (1970) who asserts that the terms cannot be used interchangeably and are not synonyms. The concept of industrial democracy must include the opportunity for full participation at board level. On the other hand, partial participation (explain later in this writing) does not require the democratization of enterprise authority structures, for it is possible for workers or their representatives to influence higher level decisions while the overriding power remains in the hands of management.

There are however other views which do not make a distinction between participation and industrial democracy. One explanation of the concept of industrial democracy includes the complete range of workers' power; from an elementary form (receiving information from management) to the opposite end of the spectrum, complete worker determination. As we move along the continuum, the participation and power of workers increase at the expense of the prerogatives of management until complete co-determination is reached.

Employee participation is analyzed and classified according to: WHO is to participate; WHICH decision making areas employees should participate in; HOW they should participate in these decision making areas; and the MECHANISM or system of participation through which employees should operate.

From the discussion, it is evident that there are differences of perspective which the various researchers and groups have of employee participation but there still exists the common thread of employees having a greater part to play in decisions on matters which affect them at work.

The Participation in Decision Making (PDM)

The Participation in Decision Making (PDM), is a situation where employees sharing decision-making with employers by being given an opportunity to have a greater say in decisions that affect them. This definition is rooted from understanding of PDM as the act of joint decision-making with others to achieve organizational objectives. (Knoop, 1991). Another definition suited to the enterprise bargaining context is that PDM is the level of influence employees have in the process of decision-making, whether or not their participation is formal or informal (Scully, et al., 1995; Coton et al., 1988; Locke & Schweiger, 1979). In fact, these two definitions show that PDM can be operationalized or defined in a number of different ways. The purpose of PDM also influences how it is defined.

Forms of Participation

The Participation in Decision Making (PDM) in industrial organizations reflects in several ways. In Tito's Yugoslavia employees elected their management and determined both their own and the managers' remuneration by free vote. In Western Germany larger companies are obliged to have a two-tier board system consisting of a supervisory board and management board.
One of the primary reasons for increasing employee participation in the workplace is to enable organizations to benefit from the perceived motivational effects of increased employee involvement and commitment to the organization (Latham et al., 1994) as is the rationale for implementing participation in the enterprise bargaining context. Greater involvement through participation mirrors employees have better access to information, which in turn reduces political behavior and increases job satisfaction (Witt, Andrews & Kacmar, 2000). In short, organizations can use PDM to increase the rate of information through the organization, enrich connections among agents and increase the diversity of information models applied to decision-making (Anderson & McDaniel, 1999:8).

Increasing employee participation is also viewed as a means of gaining the most from a more educated, technologically-oriented workforce in an environment of cost cutting, extensive downsizing and de-layering of organizational structures (Connell, 1998). While increased employee participation is purported to deliver gains all round, a number of studies show only moderate support for positive relationships between the degree and type of participation and work. (Sagie, 1995; Wagner, 1994; Cotton et al., 1988; Wagner & Gooding, 1987; Miller & Monge, 1986).

Latham and colleagues (1994) considered the cognitive and motivational effects of participation and found that participation in formulating task strategies significantly affected performance effectiveness. Pearson (1991) reported that productivity and satisfaction are both positively influenced when PDM includes feedback. Yammarino and Naughton (1992) considered the role of group member participation as opposed to individual involvement, and found that shared perceptions about participation influenced job satisfaction outcomes. Connor (1992) found more highly ranked positions, higher level of skills, smaller size, and lower emphasis on profit making were contributed to higher levels of dispersion and encouraged PDM.

Cotton and his colleagues provided a clear dimensional framework, however; their analytical findings were inconclusive and the results mixed. For example, informal participation and employee ownership are effective in terms of both productivity and satisfaction, whereas short-term participation is ineffective on both criteria. Participation in work decisions appears to increase productivity, but increases satisfaction less consistency” (Cotton et al., 1988:16). A major contribution from this research was the recognition that PDM was multifaceted, and that aggregated data showed some forms of participation were more effective than some others. Understanding was credited when Black and Gregersen’s (1997) research identified that generating alternative ideas and solutions, planning, and evaluating results had the most significant influence on job satisfaction and work performance outcomes. Due to the diversity of operational constructs contained within the PDM literature, Black and Gregersen’s (1997) six dimensional framework was used to structure analysis of previous literature. This framework provides a continuum that synthesizes a comprehensive and flexible view of PDM, and is presented below.
Dimension 1: Rationale for Participation in Decision-making

The rationale for involving employees is the first of Black and Gregersen's (1997) dimensions and comprises two philosophical approaches. The first is a democratic or humanistic perspective that believes employees should have the right to participate in decisions that affect them. The second approach is a more pragmatic perspective based on the belief that increased employee involvement and participation leads to increased productivity and profitability (Black & Gregersen, 1997; Margelis & Black, 1987; Locke & Schweiger, 1979). Clulow (1999) extends the humanistic view represented by the two approaches further, suggesting employee participation should be based on shared values, with the employer and employee striving toward a shared goal, rather than merely focusing on the task. The rationale for PDM within the enterprise bargaining context tries to capture the advantages of both views. For example, enterprise bargaining can be viewed as an extension of the industrial democracy movement of the late 1980s, with the perceived practical benefit of increased profitability for the employer (Morris, 1996).

The employer's rationale for implementing PDM is important. Latham and colleagues (1994) recommend participation be viewed as a cognitive process where employees input ideas and suggestions that managers can harness to solve problems or improve work activities and in turn make even more effective decisions. In an experimental study, employee involvement had a positive effect on employees' self-efficacy, with a reciprocally positive influence on other work outcomes, such as motivation, goal commitment and satisfaction (Latham et al., 1994). These views suggest greater participation in the decision-making processes that allow employees a greater understanding and familiarity with tasks and expected outcomes, with subsequent improvements in performance effectiveness. Even if the cognitive relationship was not strongly positively correlated, it seems reasonable to agree with Denton and Zeytinoglu (1993) that lack of PDM reduces involvement and influence over the employees' working life and discourages their best efforts.

Dimension 2: Formal and Informal Participation

Black and Gregersen's (1987) second dimension refers to the structure of decision-making in terms of whether or not involvement is formal or informal. Formal participation occurs when the organization clearly identifies how employees will participate through policies or regulations. Informal participation is where there are no clear rules or guidelines, yet employees are given the opportunity to participate in decision-making. An example of the latter includes an individual supervisor or manager encouraging and supporting employee participation in making decisions through discourse or negotiation. In fact, some researchers suggest the employees' relationship with their supervisor is critical to effective PDM (van Yperen, van den Berg & Willering, 1999). Significantly, Cotton and colleagues (1988) findings regarding this dimension are quite similar to those of Black and Gregersen (1997). While Cotton and his colleagues (1988) recorded six PDM dimensions, they tended to focus more on the type or form of participation employees engage in. They found informal participation, along with work
decisions and employee ownership had the most positive influence on work performance and job satisfaction. However, this finding needs to be qualified, as respondents rated informal participation in an environment of representative participation. Representative participation effectively excludes many employees from direct participation, so findings of increased satisfaction and productivity were attributed more to the informal relationship promoting an opportunity for direct involvement, rather than the degree of formality or informality of the PDM process (Cotton et al., 1988).

The introduction of enterprise bargaining has provided a formal structure for employees to participate in the workplace in regard to work practices, working conditions and rewards. Although Australian workers were becoming involved in participatory practices at the workplace during the 1980s through formal industrial democracy programs, or were informally involved particularly in the non-union sector, participation was still largely dependent on the goodwill of management in individual workplaces (ACER, 1999).

**Dimension 3: Direct and Indirect Participation**

The third dimension refers to the form PDM takes. Employees may be given the opportunity to be directly involved in the PDM process or may have a restricted role via formal representation. For example, rather than being directly involved, employees are frequently represented in the enterprise bargaining process by elected representatives. Although representatives have a responsibility to support the views of their constituents and keep them informed of discussions, the exclusion from the process of the majority of employees means they may not share the same level of understanding as their representative counterparts. Whether involved in the discussions or otherwise, all employees do have a role, albeit sometimes a restricted one, as they are able to vote on outcomes or decisions made by their representatives.

Representative participation is not as well supported as direct participation. Previous research by Black and Gregersen (1997) found direct involvement was more likely to promote greater employee commitment, satisfaction and performance than indirect participation. Cotton et al., (1988: 17) support this finding and suggest ". . . that performance / productivity effectiveness is associated with forms that are direct, long-term, and / or are of high access". While the down-side of the higher level of direct employee involvement is that the process becomes more time-consuming, greater employee access to PDM gives employers a higher likelihood of attaining performance outcomes and is found to be valued by employees. The notion that employees should have a chance to "have a say" and have direct involvement in the workplace has received considerable attention in the literature. Notions of procedural justice suggest that when employees are given "voice" to voice out their aspirations, perceptions of fairness increase (Roberson, Moe & Locke, 1999; Hunton, Hall & Price, 1998). "Voice-based participation" is the term used for the relationship between the amount of "voice" received and the value attached to that amount. The perception that employees are given what they consider is a "fair" amount of voice strongly influences their decision acceptance and commitment (Greenberg, 1990). If employees are given either more or less "voice" than they desire, negative effects may result. So the key for achieving the
most positive outcomes is to match employees' expectations of fair involvement across all stages of decision-making (Hunton, Hall & Price, 1998) and the goal setting process (Beeler & Hunton, 1997).

**Dimension 4: Decision issues for participation.**

The fourth dimension of PDM refers to the level and type of decision-making issues employees participate in (Black & Gregersen, 1997; Cotton et al., 1988). These types of decisions could include task design, working conditions, strategic issues and capital investment. The level of participation refers to the amount of influence employees exert, for example, ranging from merely expressing an opinion, to influencing outcomes. Examples of types and levels of issues that influence satisfaction and performance outcomes identified by Locke and Schweiger (1979) include involvement in human resource functions, the design of the work itself, conditions of employment and company policies.

However, an employee's ability to participate effectively within and across these areas depends on their having sufficient task relevant knowledge (Latham et al., 1994), especially when participation aims to improve performance. To investigate performance outcomes, Scully, Kirkpatrick and Locke (1995) tested a conceptual model of participation that assessed the degree of participation, information flow and stages when participation was used in the work cycle. These researchers found that participative set tasks led to workers having significantly higher levels of satisfaction, task agreement, enjoyment and liking for co-workers, when compared to workers whose tasks were developed without the employees' participation (Scully et al., 1995).

In summary, employee participation can range in level from day-to-day tasks that incorporate work practices and conditions, through to the higher levels of participation where, for example, employees have input into organizational strategy. Regardless of level, it seems that a critical factor for successful participation is employees having the relevant knowledge and skill to participate effectively. While the enterprise bargaining process is aimed at increasing employee participation in work practices, conditions and benefits, the reality that was found in the Australian Workplace Industrial Relations Survey (AWIRS) (1995; cited in Moorehead, et al., 1997) was that levels can and do vary significantly within and between organizations.

**Dimension 5: Degree of involvement**

The fifth dimension identified by Black and Gregersen (1987) was the degree of involvement in decision-making. The options for influencing decisions range along a continuum of responses, from having "no say" at one end of the scale, to having "control" and/or "veto power" at the other end of the scale. Not surprisingly, the highest level of satisfaction and performance can be expected to be present in the upper range of the continuum, where employees have greater control over the outcome (Black & Gregersen, 1987). Further, employee involvement is likely to be greater when the task or outcome is personally meaningful, but may be counter-productive if workers are involved in issues they see as irrelevant (Hunton et al.,
1998). Different levels of PDM can lead to different outcomes (Black & Gregersen, 1997; Cotton et al., 1988). Participation in work decisions has been found to increase productivity; however, the impact on satisfaction was more likely to depend on level of representation. For example, in instances where employees were represented in the participatory process rather than involved, representatives reported increased satisfaction, but there was no significant effect on worker productivity (Cotton et al., 1988).

The literature appears to offer a fairly widespread consensus of general meaning of the term degree and level of participation and definitions typically refers to the involvement of employees in decision making relating to matters, which are usually reserved for the attention of managers (M.P. Robson, 1982). Another explanation refers to participation as a range of processes and activities through which employees share in making decisions which extend beyond those which are implicit in the context of their job. A somewhat more precise approach refers to participation in decision making as influence exerted through a process of interaction between employees and managers and based upon the sharing of relevant information between the two groups. This definition emphasizes two essential aspects of participation: influence, and participation:

Influence – is regard as being of primary importance to the concept of participation and the degree of participation which occurs may be determined by the degree to which influence is exerted by either party. The highest level of participation then occurs where employees and management are able to exert equal influence and the lowest level occur where either the parties possess all or most the influence. Influence is a necessary but not sufficient condition to achieve the full meaning of the concept.

Participation – has been explained as a continuum of situations; or rather a continuum which ranges from a situation of 'a little' participation to 'a lot' (D.McGregor, 1960). Such a wide range situations, however, obscures the issues involved and a much more rigorous analysis is required. Pateman identifies three main participatory situations which encompass and explain the concept. These are:

a. Pseudo-participation – describes a situation where a decision has already been made by management and employees are allowed to discuss the matter in such a way that they feel that they have participated in the making of that decision. In fact no real participation has taken place and essentially employees have been manipulated by the management.

b. Partial participation – occurs when two parties are in a position to influence one another but the final power to make decision rests with one party only. Employees are usually in the equal position of subordinates with management the superior party and having the right to make the final decision resting with them.

c. Full participation – entails a situation where each individual member of a decision making body has equal power to determine the outcome of decisions.
It has been pointed out that participation at different levels of decision making within an organization is not mutually exclusive. Indeed, decision taken at one level frequently will have implications which will affect decisions taken at another level, especially in a downwards direction.

**Dimension 6: Process of decision-making**

Lastly, the sixth dimension proposed by Black and Gregersen (1997) is the process of decision-making where employees have the option to participate at five different levels. These five levels being:

- The basic level where employees are encouraged to identify problems only.
- The second level, where employees may offer solutions to problems.
- The third level where employees have the power to select a specific solution.
- The fourth level where employees have the power to plan and implement a solution.
- The fifth and highest level, gives employees control over evaluating results.

While Locke et al., (1984) originally reported assigned goals were favored over self-set goals to achieve higher performance levels, this view has since been revised. A later study by Latham, Erez and Locke (1988) found a “tell and sell” approach was preferred to a ‘tell’ approach, which in fact demotivated and reduced employee performance. Though these premises seem straightforward, managers can manipulate employees’ behaviors to influence outcomes they desire. For example, managers can outwardly seek open participation, but circumvent this by selecting the employees who participate in the process (Yeung, 1997).

Providing employees have the knowledge and experience to participate, and clear boundaries to participate within (Ashmos, Duchon & McDaniel, 1998) and goal knowledge (Cloutz, 1999) participation in formulating task strategies has been found to be significantly affect performance (Latham et al., 1994). Further, Hollenbeck and Klein (1987) recommend participation take into account task and goal achievement difficulty. PDM involvement in generating alternatives, planning and evaluating results significantly impacts on outcomes, with higher levels of participation in the decision-making process correlated to higher levels job satisfaction and work performance (Black & Gregersen, 1997).

Of the PDM dimensions, the fifth and sixth dimensions, being the level or degree of involvement, and the process of decision-making respectively, are most pertinent to the enterprise bargaining context. The level and degree of involvement are not clearly defined in the state or federal legislation, such as Australia; other than to stress the need for consultation and joint responsibility at the enterprise level (Niland, 1993). Different organizations appear to have interpreted these two dimensions in different ways. The reality is the degree of involvement has been left to the discretion of individual employers, so PDM can operate at different levels and stages along the continuum, even within the one organization. One only needs to consider the opportunity for different levels of participation offered by different managers, even if only within an informal context. The intent was not necessarily for employees to make decisions, but to be partners in the decision-making process regarding matters that affected them.
As stated previously, participation within the enterprise bargaining context was aimed at work practices, working conditions and remuneration. The rhetoric offered workers improved job satisfaction in an environment fostering participation and commitment to achieve improved performance outcomes (Callus, 1997; Quinlan, 1996; Niland, 1993). Increased participation would boost trust, lead to greater task involvement and worker satisfaction and these were prerequisites for enterprise bargaining to succeed (Niland, 1993). Despite this objective, a number of researchers (Connell, 1998; Callus, 1997; Green, 1996; Quinlan, 1996) have expressed concern at the strategies used by many managers. Low trust, un-met expectations and varying degrees of participation have been underlying contributors to the poor results emerging poor results. In many cases, employee participation has been limited or almost non-existent (Callus, 1997; Quinlan, 1996). It may well be that are a clearer role for employee participation and its practice are vital missing ingredients for influencing more positive outcomes from collective bargaining.

Common Form of Industrial Democracy

a. Codetermination

Codetermination (Mitbestimmung); or joint management under which workers or their representatives sit on the governing boards or the factory councils which are responsible for the policies of the enterprise.

The co-determination model is designed to give workers and actual voice in the decision-making processes of their enterprises and not merely a consultative role. The concept aims at creating a condition of shared power in industry, focusing not just on the employer and employees but attempting also to balance the interests of the workers in the plant with those of the unions and labor in general.

Codetermination takes place through two structures:

- the supervisory board in a large enterprise
- and/or the factory council in most companies.

The best-known example of co-determination is that which operates in West Germany where worker representatives have comprised half the membership of supervisory boards in the country’s coal mining and, iron and steel industries since 1951 under the Co-determination Act. Over two-thirds of all German firms have a factory council. Only about one-fourth have the supervisory board. Many large firms have both. If a firm is large enough to have both, the workers are twice represented. Depending on the size of the firm, the supervisory board must have between one-third and one-half worker membership. The factory council is composed entirely of employee representatives.
Codetermination is a kind of bargain typical of the way the German economy is managed. Management can largely direct the functioning of the company. It makes investment, financial, operational, and market decisions, but those decisions are made through a mechanism in which labor can have a voice. Labor can make certain that the conditions under which the workers operate are socially acceptable. It can also make certain that the workers benefit from the company's well-being. But labor in turn has a stake in ensuring that the demands and actions of the workers do not jeopardize the firm itself.

b. Shop Floor Participation

The main principle behind management-led initiatives in improving shop-floor employee participation is to get lower-level staff more involved in the decision and work process and to grant these employees greater autonomy and control over job tasks and methods of work (Cappelli and Rogovsky, 1994). This increases the necessity of horizontal communication between front-line employees (Ichniowski, Shaw and Prennushi, 1997). Both intensified communication and autonomy of non-managerial staff are supposed to be improved if the work organization is characterized by (autonomous) teams and flat hierarchies (Appelbaum et al., 2000).

It may increased employee involvement raise firm productivity by:

i. The strategy takes advantage of the specific knowledge no managerial employees have about their own work processes and combines the skills and expertise of a group of workers (Levine and Tyson, 1990; Cooke, 1994; Hübler and Jirjahn, 2002);

ii. Individuals are expected to have a higher identification with their enterprise and the decisions taken so that they feel more committed and consequently do a better job (Huselid, 1995; Fernie and Metcalfe, 1995; Ichniowski, Shaw and Prennushi, 1997; Godard and Delaney, 2000);

iii. Employees participating at decisions can balance production more effectively and as a result eliminate bottlenecks or interruptions of the production process (Appelbaum et al., 2000);

iv. Reducing hierarchies may make some employees of the middle management redundant, and a higher cost autonomy of groups may diminish waste, inventories and inefficiencies (Appelbaum et al., 2000).

c. Work Councils

The role of work councils in increasing the joint establishment surplus is comparable to that of shop-floor participation. They exert a collective voice (Freeman and Medoff, 1979; FitzRoy and Kraft, 1987; Frick and Sadowski, 1995) and communicate worker preferences and implicit knowledge, which helps to optimize the work routine and to moderate worker demands during rough times (Freeman and Lazear, 1995; Addison, Schnabel and Wagner, 2001; Hübler and Jirjahn, 2002). The interaction between shop floor employee participation and
works councils regarding establishment productivity is less clear, however. On the one hand, work councils may use their bargaining power to negotiate less productive work practices that require less additional effort or endanger less jobs if the management decides to introduce productivity-enhancing work practices (Frick, 2002). It is therefore possible that works councils weaken the full productivity effects of more participative work forms in order to reduce the negative impact on the employees (Hübler and Jirjahn, 2003). In addition, works councils may be inclined to make increased participation voluntary, defending the choice of employees not to participate. This would give works councils the opportunity to hold participation activities “hostage” until certain.

The amendment of the Work Council Act (WCA) in August 2001 also includes codetermination rights of work councils on the organization of team-work (Hübler and Jirjahn, 2002). This is after the work councils demands are met (Cooke, 1994). On the other hand, work councils and shop-floor employee participation may be complements because the latter mainly concerns the better usage of information on individual workplaces and teams, whereas questions that concern the entire establishment can be better arranged by works councils (Hübler and Jirjahn, 2003). Works councils also demand a credible commitment of the management to take account of the interests of the employees. Therefore work councils may induce a serious hearing to employees’ ideas and concerns about the design of participation (Cooke, 1994; Freeman and Lazear, 1995). This increases the workers’ cooperation in the introduction and implementation of more participative work forms (Milgrom and Roberts, 1992; Wolf and Zwick, 2003; Zwick, 2002b).

In addition, flatter hierarchies and teamwork increase the cohesion among the employees. However, high cohesion is a prerequisite for an effective collective voice (Levine, 1996; Kato and Morishima, 2002). Thus, either the positive “collective voice effect” or the negative “restriction of management effect” may also determine the impact work councils have on the productivity effect of shop-floor employee participation (Cooke, 1994). Addison, Schnabel and Wagner (1997) find that work councils are less likely to be observed in firms in which other forms of direct participation are practiced. They argue that the two forms of participation could be an alternative to each other. Müller-Jentsch (1995) stresses that work councils usually reject new shop-floor employee involvement. Frick (2002) also argues that more shop-floor employee participation measures are found in establishments with work councils, but that the work councils in these establishments tend to be less cooperative or even hostile. Hübler and Jirjahn (2002) derive a negative interaction effect between work councils and the labor productivity effect from a reduction of hierarchies, while they find a positive interaction effect of teamwork and groups with own financial responsibilities. Finally, Kato and Morishima (2002) provide evidence for complementarities between top-level participation such as joint labor-management committees and shop-floor participation in Japan. The empirical evidence on the interaction between works councils and shop-floor participation is therefore mixed and partly contradictory.
d. Workers’ Management

At the end of World War II the liberation forces of Marshall Tito controlled a large proportion of Yugoslavian industries and this along with a virtual absence of political opposition, helped to shape the country’s struggle for political and economic independence. Government policy moved from administrative centralism to decentralization which resulted in the commune not to the state, being the basic socio-political community and the introduction into industry of a system of Workers’ Management.

The Yugoslav model of worker control, founded in 1950 is the most comprehensive example of the participation of workers in the world. The principle advantage claimed for such a system is that the worker has the ultimate say in the management of the enterprise. As the result of the recognition of the right of each worker to participate in the production process, personal and social needs are fulfilled and security of employment is enhanced due to the workers’ right of veto.

In the Yugoslav model of worker management, the operation of which depends on legislative support, the workers’ Council is the source of directive authority in the enterprise and the Director of the Company is the source of executive authority. Economic units established in 1965 and consisting of 20 –100 working in the plant also exercise a certain amount of delegated managerial authority. The responsibilities of the council which is the policy making body are defined by legislation and include decisions regarding investments and expansion, adoption of the annual budget and company work regulations.

Although the decision making power theoretically rests with the workers, it has in practice been exercised by higher management. Workers seem to find it difficult to compete with management in the areas of broad policy, business and finance because of a low level of education and expertise. Where matters relating to wages and working conditions become an issue then the influence of the workers is much greater.

e. Financial Participation

Financial participation, in the forms of profit-sharing and share ownership, has been a feature of employee participation in the EU for many years. While financial participation has been supported in some Member States through tax incentives and other forms of legislation, there is a wide divergence in approaches to be found in different countries. There is also concern at European level that costs and administrative complexities have hampered the large scale introduction of financial participation schemes.

Financial participation links an element of the pay bill to profitability, and so can be used as a means to control costs. By taking advantage of tax breaks, it offers a tax-efficient route for remuneration, and can help to attract or retain staff. By encouraging a sense of mutuality between employer and employee, it can improve both industrial relations and productivity, and with it, employee commitment to the success of the organization is higher.
Some companies use these schemes merely as a form of good financial management, some only as a resourcing tool. Only a proportion seeks to recast the employment relationship with their staff. But there are other benefits that organizations can enjoy from involving their workforce more in its financial success.

Some studies have found a positive association between financial participation and business performance (example share price or productivity). Which causes which is less clear. However, it does seem that financial participation schemes generate positive attitudes at work, lead to better organizational health (lower absenteeism and staff turnover) and improved employee relations.

It may be that already successful companies with the money to invest in these schemes are merely supporting success rather than stimulating further success. Or it could be that such approaches are simply a part of wider employee-centered practices that together create the benefits.

f. Collective Bargaining

The Donovan Commission described collective bargaining as a right, which is and should be the prerogative of every worker in a democratic society. According to Maimunah (2003) collective bargaining is the process by which representatives of the employees (the trade union) meet together with the employer to negotiate and decide upon workers’ wages and other terms and conditions of service. It involves joint decision-making by the employer and the employees and is a form of bilateral rule making in an industrial democracy. Therefore collective bargaining is considered as a peaceful mechanism by which the wages, terms and conditions of employment like overtime rates, retirement benefits, leave benefits, allowances, medical benefits etcetera are established. The collective bargaining process also provides a formal channel through which the differing interests of the management and employees maybe resolved on a collective basis.

The industrial relation and the collective bargaining institution in any country are heavily governed by its political forces and legal regulations. The government may influence collective bargaining and employment conditions in ways which differ greatly among countries. In the US the government is primarily a referee in collective bargaining. In Latin American countries, where collective bargaining is poorly developed, the parties pressure the state to obtain conditions which in other countries might be obtained through collective bargaining (Poole & Warner, 1998).

In Malaysia the collective bargaining process is guided by the federal and state laws of the country for they govern every facet of union management relations for both private-public sectors. These laws, like Industrial Relations Act 1967 are primarily procedural i.e. the dictate how the parties must deal with each other, the management prerogatives [e.g. Section 13(3)] which are not negotiable, how collective bargaining should be conducted. Government may determine employment conditions by law like setting the minimum wages, legislating the
length of holidays or preventing ethnic discrimination, determines benefits like pensions for the public sector. As in the case of Malaysia, through legislation it also provides for settlement of disputes through conciliation and arbitration.

Collective bargaining is the heart of industrial relations and an important mechanism in regulating the employer-employee relationship. Trade unions and workers see it as their prerogative. It becomes a legal means of communication channel for workers to voice their grievances and to negotiate for wages increases, better terms and working conditions through their union representatives. It also acts as a buffer against management malpractices and abuse of labor and ensures management adheres to what was agreed in the Collective Agreement.

Unions are in retreat throughout much of the world. They have lost both political and economic strength. Among the reasons are high overall levels of unemployment, the shift from well-unionized mass production to service work and globalizations. Industry wide bargaining only functions best when national markets can be effectively insulated from external pressures like globalization.

Beside these economic treats to unions, management of workforce has also changed. Organizations are moving towards leaner structures and participative management in which unions play little direct role. Union has accused management using empowerment to abuse workers to do supervisors’ job. Furthermore, managers everywhere are pushing for greater flexibility in the management of their workforce – outsourcing, contingency workers, etc. In Malaysia, the government is encouraging in-house unions to trade unions.
Industrial Democracy in Selected Countries

a. United States

The idea of industrial democracy in the U.S. had been present at least since the late 19th century. Albert Gallatin, Secretary of the Treasury under Presidents Jefferson and Madison, installed a profit sharing plan in his factory with the thought that: "the democratic principle on which this nation was founded should not be restricted to the political process but should be applied to the industrial operation as well" (Derber, 1970).

According to Derber, the study of American labor management history reveals the idea of industrial democracy as major motivating force of many workers, union leaders, and reformers. Only the economic theme (the desire for more money, job security, improve living standards) seems match it in importance. The genesis of industrial democracy clearly is attributable to the transfer of ideas about democracy in the city-state and the nation-state to democracy in industry. (Derber, 1970).

In 1837 the U.S. experienced one of the first economic depressions and temporarily derailing the progress of labor management cooperation. The union movement had grown despite developing employer resistance, but depression virtually destroyed it. The cooperative movement, working class shareholders in jointly owned enterprises, received fixed dividends on invested capital. Excess profits were reinvested in new ventures such as insurance companies, foundaries, factories, and so forth. The objectives of this experiments were to manufacture articles the society deemed necessary to provide employment members; to provide quality products for distribution in growing markets and; to promote a philosophy that working people were not inferior.

Following the Civil War an everwidening rift between capital and labor alarmed moderates from labor, business and the public. Violent railroad labor disputes in 1877 destroyed portions of Chicago, Pittsburg and several other cities. The Central Labor Union had informed a joint session of Congress as early as 1883. In 1889 economist Richard Ely called for the creation of worker council, but earlier, in 1886 J.C. Bayles had developed a model for electing shop workers' representatives to an industry or plan-wide problem solving body of managers and employees. Calling the representatives "shop councils," Bayles clearly specified that these entities were not to be new forms of arbitration or collective bargaining but a means of real labor-management cooperation.

b. Great Britain

While the United States struggled with post war labor relations, Great Britain scored better, especially in regard to industrial democracy. Prior to and during the war, strikes continuously plagued the country, in the crucial munitions, shipyard and railway industries. This forced Parliament to look for remedies. A subcommittee of the British Cabinet Reconstruction Committee, under the deputy
speaker of the House of Commons, John H. Whitley, submitted five separate reports on industrial problems, basically advocating worker representation in the decision making process of industry. The committee recommended the establishment of joint industrial councils (Whitley Councils) at three levels: factory, district and total industry. The final report emphasized that workers should have equal standing with employers at all levels.

Whitley Councils continued through the 1940s but suffered resentment, according to one sided advantage; that of labor. Some of the militants eventually dropped opposition to the councils and established joint committees with employer federations.

Industrial democracy in Great Britain takes the form of collective bargaining and worker representation through the use of teams. British work groups elect a chief spokesperson or steward to interface with management. Union councils represent unionized employee to ensure workers are treated fairly by the management.

c. Australia

Experience of World War I where no allied country had provided more volunteers for the imperial war machine than Australia did. So, having demonstrated a readiness for sacrifice Australian wanted greater control over their lives. Moreover living in the most unionized country in the world, and in the only country where the Labor Party had formed majority governments, many Australian saw the labor movements as the vehicle of democracy.

As the largest set of voluntary organizations in the country the trade union provided indispensable training in the skills of active citizenship: running meetings, framing demands, mobilizing supporters, advocating, negotiating and lobbying. In an extension of this democratic impulse, trade unionists and their allies had organized the Labor Party so that its parliamentarians would held accountable by the splendid democratic machinery of the party (annual conferences, the pledge and caucus) rather than by the need to face their constituents from time to time.

Specific Applications of Participation in Australia

i. Joint Consultation

Over a past decade or so, joint consultation-based schemes, have occupied a relatively prominent place in Australia. In 1976, for instance, a survey of Australian companies showed that some 25% of employers interviewed were using some form of consultation and another 25% were proposing to do so. Generally, the form being used involved no alteration to the traditional decision making processes and industrial relations matters such as wages and hours of work were considered to be outside the scope of the consultative machinery.
Joint consultation occurs where employee representatives are consulted about decisions but little real influence on the decision making process. Indirect participation involving a small number of representatives dealing with matters of relatively minor significance appears to be characteristics of this form of participation. Typically, this concept places little or no responsibility or accountability on employees for the consequences of the decision taken. In Australia this concept was clearly shown in Goldworthy Mining Limited where a Site Working Committee was set-up to make suggestions to management on matters relating to industrial relations, working conditions, safety, communications, production and maintenance.

ii. Co-determination

The initiative came in 1945 from the founder of the Fletcher Jones and Staff Pty. Ltd. who believed that workers should share the profits of their efforts, be involved with the operation of the enterprise and regard their work as more than just a means of earning a living. The employees hold two-thirds of the shares and have the right to vote for representatives on the Board of Directors. Employees consistently have voted for management's nominees for these positions.

iii. Worker management

The establishment of self-managed enterprises has generated little apparent interest in this country probably because Australian political structure and philosophies are so different to those in the countries where it has been introduced. Some of most publicized examples of self-management are at NVC Sydney, Modern Maid and Staff Ltd., Melbourne; and Dynavac Pty. Ltd., Melbourne.

An Overview of Malaysian’s Experience

Malaysia’s industrial relation has been characterized by extensive state control guaranteeing a high level of managerial prerogative within the workplace, minimal reported conflict and very little bargaining power for labor (Suhannah 2002; Jomo and Todd 1994). Employers in Malaysia assume a very high level of control in the workplace and this is rarely challenged by employees. This reflects past practice and the imbalance of power between labor and capital in the country. Given the historical background, it is not surprising that the prescription for increasing competitiveness is to increase their right to manage labor, and thereby reduce labor costs, even further.

The Malaysian Government’s goal of achieving developed nation status by 2020 – Vision 2020 – is well known. The government indicated in its Third Outline Perspective Plan: 2001 – 2010, that it envisages a change of emphasis in the drive for economic growth. Malaysia now needs to develop new strategies to ensure its competitiveness within the region. The knowledge-based economy (k-economy) is seen as a critical change to the basis of Malaysia’s competitiveness and the means to provide well-renumerated quality jobs for Malaysia workforce. The proposed development of k-economy is being accompanied by rhetoric extolling
the need for a multi-skilled workforce, willing to engage in lifelong learning, capable of exercising their initiative and creativity in the workplace.

The industrial relations literature (e.g. Kochan, Katz and McKersie 1986; Appelbaum and Batt 1994) would suggest that the type of industrial relation would accompany such a development would include the following:

1. Mutual commitment between management and workers reflected in employment security, employee involvement in decision making, cooperative labor relations, equal opportunity, high safety standards.
2. The provision of ongoing training
3. Flexible work organization whereby multi-skilled employees are grouped into semi-autonomous work teams moving between tasks.

In Malaysia the concept of employee participation is not without precedent. In 1975 within the Code of Conduct for Industrial Harmony and Areas for Cooperation and Agreed Industrial Relations Practices, negotiated between the Malaysian Council of Employers' Organizations (the predecessor to the Malaysian Employers Federation) and the MTUC, included a commitment by employers and detailed arrangements to establish regular consultative arrangements with employees and unions at the enterprise level. Since there was no legislative foundation for joint consultation and works committees, little activity of this nature has occurred.

In furthering employee participation Malaysia can draw upon a model developed within its own past. It can also look to the works councils concept long established in Germany and more recently within the European Union. Within the Asian region various forms of labor management councils, joint consultation committees and works councils have been established, including the Labor-Management Council (LMC) system in South Korea.

The current position of organized labor is very weak. In 2002 there were 581 unions with a total membership of 807802 amounting to approximately 9% of employees (Malaysia, Ministry of Human Resources, 2003). Legislation however limits the activities of unions via regulations on union recognition, bargaining rights, the taking of industrial action and political activities (Kirkville, 1993). Despite a legal framework that purports to enable collective bargaining, the basic thrust has favored managerial unilateralism and the proportion of the workforce covered by collective bargaining is about 12%. The Industrial Relations Acts greatly restricts the role of unions in collective bargaining by excluding items from bargaining which are deemed to be managerial prerogative (such as hiring, firing, redundancy, promotion, transfer and the allocation of duties).

However, cooperation rather than conflict is the norm in Malaysian workplaces. Legislation stifles unions from organizing legal strikes, with the potential consequences including deregistration and detention of activists.

The changing nature of the Malaysian economy has impacted substantially on the composition of the wage-paid workforce, in particular, in relation to women, Malays and the utilization of foreign labor. The government recognized the need to address some of these inequities and reflected in employment restructuring.
strategies to better represent the ethnic composition of the population. The introduction of the Code of Practice on Preventing and Eradicating Sexual Harassment in the Workplace and together with both the 8th Malaysia Plan and the Third OPP 2001 – 2010 reiterate the need for employment without gender bias and to better reflect the ethnic composition of the population.

Another dimension of industrial democracy in Malaysia is flexible work organization. The introduction of this concept means that multi-skilled employees are grouped into semi autonomous work teams moving between tasks and taking collective responsibility for their work is a critical component of a high performance workplace. It should achieve efficiencies in production, potentially improve the quality of the goods or services produced as well as offering potential benefits to employees. New methods of work organization, inventory management and quality control have been introduced; the team concept of production is being used in some plants; multi-skilling is more prevalent; the working week made more flexible in some workplaces to match the needs of production (Abdullah, 1994).

Considerations

While there is some evidence from the literature that participation can have a positive effect on companies’ financial performance and the working environment, a significant body of work also questions these links. In their analysis, Juliette Summers (University of Stirling) and Jeff Hyman (University of Aberdeen) found that:

a. The effects of participation schemes vary with the environment into which they introduced. An insecure workplace environment may induce employees’ compliance with participation measures, but may not achieve the commitment needed for attitude changes.

b. Links between participation and attitude change appear to depend on the degree of influence granted to employees under participation measures. Low degrees of perceived influence are unlikely to produce positive results. However, middle management appears to resist participation initiatives which are perceived as reducing their influence or authority, thus posing an obstacle to the success of participation programs.

c. A combination of financial and work-related participatory measures can have a positive impact on company performance as employees do not all react to participation initiatives in the same manner. Some respond well to financial initiatives and others to more work-related elements.

d. Assumptions that participation measures affect all employees identically, regardless of gender, race, age and contractual status, can amplify social disadvantage. Disadvantaged groups, such as older workers, disabled people and those with caring commitments, may have only a restricted voice at work.
e. In terms of the work-life balance and family-friendly working, employees’ voices remain muted. They tend to have a weak collective voice in larger organizations, whereas in some smaller firms individuals can sometimes negotiate flexible working arrangements.

An Evaluation of the Effectiveness of Industrial Democracy

Not all the literature agrees on the universal, positive effects of participation. Some suggest that participation may have no effect or even negative effects on performance. However, it is difficult to discern a definitive pattern. Lack of consistency in the outcomes of participatory measures suggests that schemes are not isolated from the effects of the external economic, political and social environment.

a. Attitude change

Participatory measures such as team working and high-involvement work practices demonstrate improvements in performance, but can also have less positive outcomes for employee and social well-being. Performance changes may occur because participation leads to changed attitudes which lead to higher performance. Alternatively, changes in behavior and performance may be achieved not through attitude changes but through fear and an insecure or intensified work environment.

One explanation for these contradictory results is that participation schemes are sometimes introduced as part of restructuring packages. When employees are faced with an insecure environment, participation may induce compliance and not the attitude changes necessary in employees’ commitment to the enterprise. If this is so, behavioral changes may not be of the order anticipated.

The degree of influence accorded to employees is also important. Low levels of participation with little employee autonomy have been identified as a reason for disappointing results. Where employees’ expectations have been raised by introducing participation, but there is little real improvement in employee influence, workers may express resentment and dissatisfaction. Where participation is only from the top down, workers may feel that they are being lectured and not listened. Even where participation is from the bottom up, workers may feel that management is using their ideas, with no return seen and felt by employees.

High levels of participation also have their own problems. Some authors claim that employees do not make hard decisions, opting for outcomes that maximize income, not profit. Others claim that employees are not able to discipline co-workers, and that decision-making takes too long. From the management perspective, high degrees of employee influence may mean that managers’ input in decision-making is reduced. Whether from concern that their authority is being compromised or through dilution of the decision-making process, this may result in reduced competitiveness.
Participation can also be categorized as individual versus collective. Individualized forms of participation may clash with existing collective arrangements and fail to induce a harmonious climate. Concerns have also been expressed over individualized financial participation, and a fall in share prices could make it harder to attract high-quality staff. Collective participation, on the other hand, can work with existing labor-relations channels and attitudes in a productive way. The role of trade unions therefore continues to be significant.

However, collective participation is no guarantee of positive attitude change. Management also has to accept the ethos of participation, and middle and supervisory management is a particularly difficult group to influence.

b. Combining participation measures

The potential for positive impact on performance seems to arise when participation measures are used in combination, either as financial and work-related participation, or as representative and direct participation. Either combination may act upon employee perceptions, encouraging high-trust relations within the workplace and allowing employees with different motivations to enjoy the benefits of participation. Employees are not a homogeneous group responding identically to participation initiatives. Different employees have different motivations: some respond to financial incentives and others to more social or work-related ones. This is why a combination of financial and work-related participation appears to have a positive effect on performance.

c. Transferability

A further issue is the transferability of participation schemes, particularly between large and small firms. It is uncertain whether participation schemes suitable for large firms will have positive effects in smaller companies, or whether participation measures can be transferred between industrial sectors and even between different national conditions. For example, the success of Japanese profit-sharing and other involvement techniques has been accounted for by Japan’s unique culture, which emphasizes mutual obligations by employee and employer.

d. Workplace equality

Questions arise concerning the benefits of participation measures to workplace equality. Work-related participation can place a premium on social factors such as ability to communicate and the time available to commit to participation. Participation can therefore amplify social advantage and, by the same token, social disadvantage; for example, caring responsibilities may mean that some employees have relatively less time to attend meetings.

In addition, some schemes may be based upon questionable assumptions about employees – for example, that women are sometimes less committed to work and perhaps less willing to participate. However, a number of studies have refuted this assumption. Other potentially excluded groups also suffer from amplified disadvantage, including ethnic minorities, single parents, agency workers and
temporary workers, with possibly limiting effects on their capacity and opportunity for participation.

e. Discrimination

Less advantaged groups and individuals, such as older workers, ethnic minorities and disabled people, may have a restricted 'voice' within the workplace. Coupled with greater employment insecurity, this can permeate workers' performance through frustration and impotence, with a negative impact on both organizational performance and quality of working life.

The evidence indicates that participation schemes in tandem with welfare measures – such as equal opportunities and family-friendly policies – improve organizational performance and the quality of working life. By contrast, perceptions of unfairness have a negative impact.

f. Employee participation and family-friendly working

Some studies which have examined the business consequences of implementing family-friendly employment policies have found benefits in doing so. Others have tried to determine whether employees have a voice over work-life issues, and how instrumental it might be in establishing family-friendly employment policies.

Employees appear to have a voice of some kind in larger organizations. It tends to be collective, and expressed through trade unions or staff associations. Smaller enterprises typically lack collective means of expression, though there can be direct communication between individual employees and their employers over flexible working. Some studies have reported individuals negotiating informal arrangements with their managers in small and medium-sized enterprises to suit their individual circumstances, but not all employees have a powerful enough voice to achieve this.

Family-friendly policies appear to be more widespread and deeply embedded in enterprises which recognize unions, though this association does not imply that unions have a more effective voice. Consultation – even with and among line managers – also appears to be rather restricted, with the possible exception of health services, where there is an organizational cultural tradition of consultation.

However, the major factor influencing employers to implement or extend family-friendly policies appears not to be collective or individual employee pressures, but labor-market conditions backed by minimal statutory requirements.

The management of time is an essential workplace process over which employees – especially those with domestic responsibilities – need a measure of control in order to combat tensions between the demands of work and home. Despite some softening of the political climate towards trade unions and scarcity of labor in some sectors, there is little evidence that employees, collectively or individually, have been able to make any significant impact on the work-life agendas of companies, even with evidence that there can be a business case for such policies.
It also seems that some managers continue to adopt a gendered and possibly marginalized perspective of work-life issues.

Research has also shown that long working hours – another major dimension of work-life conflict – have scarcely been touched by the Working Time Regulations or high-profile concerns expressed in the media and elsewhere. In terms of the work-life balance and family-friendly working, the evidence suggests that the voices of employees remain muted.

**g. Policy implications**

The extent of current political support for employee participation is mixed. At times it appears uncoordinated or even contradictory, as evidenced by the Government’s ambiguous stance towards greater European influence over participation practice and work reforms such as the Working Time Directive. In addition, work-related participation policies focus on efforts to promote collective (though not necessarily trade union-based) participation through measures such as social partnership, while financial participation legislation leans towards individualized programmes. Current policy appears to be trying to appease both employers’ and to a lesser extent trade union aspirations, though initiatives to date seem to point to the former direction.

This apparent lack of co-ordination of policy will have a disproportionate impact on small firms. Small firms are less likely to introduce work-related participation measures than larger companies, therefore providing few opportunities to access the positive effects of combining participation schemes.

In the United Kingdom for instance, the Employment Relations Act 1999 works against the development of collective participation in small firms through the country. Since the quality and quantity of welfare policies are associated with trade union presence, small firms and their employees could be missing out on the positive effects of combining participation and welfare schemes. Furthermore, the introduction of European Works Councils (EWC) applies only to large, complex enterprises with specific cross-European operations. Here, policy needs to focus on the training of EWC delegates in order to realize the positive effects of participation.

There are also some areas where the reach of policy is limited. Participation measures are not isolated from the effects of the external environment. Economic fluctuations have an impact on share prices, for instance, and the voluntary nature of many participation schemes means that they are vulnerable to cost-saving exercises. In addition, there are discrepancies between how a policy is conceived at national or organizational level and how it is interpreted at company or workplace level.

**Conclusion**
The terms of industrial democracy and employee participation may be differently understood by different people. But many writers regard them as interchangeable and synonymous. It is useful to make a distinction, however, between participation in the internal management of the enterprise and participation in the democratic control of the enterprise as a whole including the setting of organizational objectives. In the view of a number of researchers only the latter should be called industrial democracy and must include 'full participation' at company board level with accompanying modifications to the authority structure of the organization. Not all forms of participation can be conceived as leading to industrial democracy. But the common thread is the definitional debate is that of employees having greater say in the things which affect them at work. To this extent there appears to be consensus.

By referring to the politico-historical background, different country experienced different forms of industrial democracy although there are looked pretty much similar and interrelated. But the interrelation and interconnection between nations worldwide are still not clear. Providing these examples: when Britain's Whitley Committee was set-up, officials from the Bureau of Labor Statistics of the US visited England to study that country's labor problem and to exchange ideas with labor ministry officials. Other nations, excited by the promises of democratic self determination in Woodrow Wilson's peace plan, adopted 'works council' programs. The Austrian government passed 'works councils' legislation in 1919 and the new German government followed a year later. The grand duke of Luxembourg decreed the establishment of 'works councils' in October 1920. In the same year, Sweden enacted a law stating, "...works councils shall be instituted in industries with a view of giving workers a greater insight into production..." Even Japan, emerging as a world power after World War I, copied the works councils concept from the West; its plans, however, were more paternalistic than democratic.

In general the case for industrial democracy and workers' participation rests on a number of arguments and dimensions. The combinations of participation and welfare measures (such as equal opportunities and family-friendly policies) on the other hand, appear to enhance both organizational performance and the quality of working life. Policy support should focus on union recognition and activity within a human rights framework, since this can positively influence employees' behavior towards organizational goals and employer behavior toward their employees.

One visible approach that combines participation with welfare is trade union presence and recognition. There is strong evidence that union recognition improves the scope and scale of welfare policies — such as family-friendly employment — within organizations, though not necessarily their operation at workplace level.

Given the findings from the literature review, policy-makers should be especially concerned about the policy implications for participation in terms of potentially excluded groups. This is especially the case since small firms (which are particularly affected by the current lack of policy co-ordination) employ a disproportionately high population of both women and ethnic minorities.
Ignorance of these differences within the workforce could lead to participation schemes that undermine equality of opportunity within the workplace.

References


Department of Employment and Industrial Relations. Employee Participation News, No. 3. 1984.


Introduction

This article discusses the corporate governance issues, including the factors for good corporate governance, the legal framework and mechanisms in Malaysia. The discussion relates the economic crisis in 1997 that necessitate for the corporate governance efforts on the private sector in the country. It is explained based on the reforms agenda contained in the Malaysian Code on corporate governance, identifies some of the important mechanisms applied in the reforms of the Malaysian corporate governance. It is found that the mechanisms that have been put in place are comprehensive and covers a wide spectrum of corporate governance internally and externally.

Overview

A decade ago, the term corporate governance was largely academic jargon. Today, the term is familiar to almost everyone. Unfortunately, it’s familiarity in our society comes about because revelations and news of corporate misdeeds have become a part of our daily lives. People in general do not understand what a company director does but they are quick to conclude that if anything goes wrong with a company, it must be the directors’ fault. If the company is doing well, the directors will surely abuse their position and take advantage of the financial surplus themselves, not for the benefits of the company.

Enron and WorldCom, to give two world well-known examples, engaged in misdeeds that led to their eventual downfall. Along the way, many shareholders lost their wealth and thus their faith and trust in corporate America. In Malaysia, the financial crisis has been deemed to have been one of the main catalysts for corporate governance and corporate law reform that have been implemented by corporate regulators in between 1997 to 2001. Specifically these reforms have been driven primarily by the forces of modernization, globalization and communication revolutions. Believe it or not, we already have an extensive system of corporate governance. The system has never been perfect, but we have only begun to notice it. Now, the media regularly discusses corporate governance, and it is also discussed in every business school around the world.

“No one pretends that democracy is perfect or all-wise, indeed it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.”

Winston Churchill to the House of Commons.
The reform and modernization of the legal and regulatory framework related to companies involve a number of economic, social, cultural and political considerations. It is dynamic and substantial process. The process is significant as it ensures the competitiveness of companies in a rapidly evolving corporate milieu. Companies are under significant pressure to accommodate and adapt to the changes effected by the law interdependent international commercial system. Amendments and modification in selected aspects of the law need to be carried out in order to strengthen current company legislation so that it can meet the current demands of society.

In the past, developments and reform in company law “have been primarily driven by the need to balance the needs to balance of commerce and industry with the need to protect investors and creditors. The current impact of globalization, modernization, and new computer technology on company law necessitates a re-examination of the status of company law legislation. Legislative amendments and reforms have to consider the growing sophistication and complexity of business operations that operate in the technological environment. Legislators are aware that the existing law may be onerous and less appropriate in meeting the technological innovations of the new era. There is a different legal requirement to consider given the transformation of the ordinary business operation into a new paradigm.

What is Governance?

Governance refers to the act or process of governing. Obviously, governance has existed since the dawn of civilization. History tells us of the never-ending evolution of models of governance, with periods of advancement and enlightenment interspersed with those of retrenchment and at times, temporary darkness. Most recently, we have witnessed the widespread embracing of representative government, most commonly democracy by and for the people.

Corporate governance is a system by which companies are directed and controlled principally by a board of directors (Cadbury report). It relates to the internal means by which corporations are operated and controlled (OECD principles). In expanded version, it is the process and structure used to direct and manage the affair of the company towards enhancing business prosperity and corporate accountability with ultimate objective of realizing long-term shareholder value whilst taking into account the interest of other stakeholders (Finance Committee on Corporate Governance Malaysia)

As a system, it consists of:

- A set of rules that define the relationships between shareholders, managers, creditors, the government and other stakeholders, and
- A set of mechanisms to enforce these rules directly or indirectly (Asian Development Bank)

The High Level Finance Committee on Corporate Governance officially define CG as "the process and structure used to direct and manage the business and affairs of the
company towards enhancing business prosperity and corporate accountability with the ultimate objective of realising long term shareholder value, whilst taking into account the interests of the shareholders”.

Professor Bob Tricker (1984) suggested that “if management is about running business, governance is about seeing that it runs properly”. While Organization for Economic Co-operation & Development - OECD Principle states that CG as “It relates to the internal means by which corporation are operated and controlled”.

In general, corporate governance is a process which is concerned about HOW corporation are managed, HOW managers are governed, WHAT questions face boards of directors and the accountability a corporation has to shareholders.

**What is good governance?**

Recently the terms governance and good governance are being increasingly used in development literature. Bad governance is being increasingly regarded as one of the root causes of all evil within our societies. Major donor and international financial institutions are increasingly basing their aid and loans on the condition that reforms that ensure “good governance” are undertaken.

The concept of governance is not new, it is a process of decision making and the process by which decision are implemented (or not implemented). Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance.

Since governance is the process of decision-making and the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the decisions made and the formal and informal structures that have been set in place to arrive at and implement the decision.

Based on literature, scholars has discusses about principles, components, pillars, fundamental and essentials to describes a good corporate governance. Generally, they were discusses about Transparency, accountability, rule of law and integrity. To cover all, good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized; the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.

**Participation**

Participation by both men and women is a key cornerstone of good governance. Participation could be either direct or through legitimate intermediate institutions or representatives. It is important to point out that representative democracy does not necessarily mean that the concerns of the most vulnerable in society would be taken into consideration in decision making. Participation needs to be informed and
organized. This means freedom of association and expression on the hand and an organized civil society on the other hand.

Characteristic of good governance
(Source: Human settlements, United Nations Economic and Social Commission for Asia and the Pacific)

Rule of law
Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.

Transparency
Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided in easily understandable forms and media.

Responsiveness
Good governance requires that institutions and process try to serve all stakeholders within a reasonable timeframe.
Consensus

There are several actors and as many views points in a given society. Good governance requires mediation of the different interest in society to reach a broad consensus in society on what is in the best interest of the whole community and how this can be achieved. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development. This can only result from an understanding of the historical, cultural and social contexts of a given society of community.

Equity and inclusiveness

A society’s well being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, but particularly the most vulnerable, have opportunities to improve or maintain their well being.

Effectiveness and efficiency

Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.

Accountability

Accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders. Who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organization or institution. In general an organization or an institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law.

In conclusion, it should be clear that good governance is an ideal which is difficult to achieve in its totality. Very few countries and societies have come close to achieving good governance in its totality. However, to ensure sustainable human development, actions must be taken to work towards this ideal with the aims of making it a reality.

Corporate Governance in Malaysia

Company law in Malaysia started in the late nineteenth century with the companies enactment 1897 at the same time when the concept of carrying on business as a joint stock company was first introduced to the Malay states as a result of the influx of businessmen from both the east and west who came into the country to carry on in the tin mining and the rubber plantation industries. As a citizen of Malaysia, most of
us would be able to recall the country’s transformation from an agricultural economy juxtaposed with tin mining to one that is now vibrant, diversified and industrialized.

Malaysia has taken the path of industrialization from import substitution and labour intensive industries through to ever greater value, export oriented and capital and technology intensive industries. Except for the present economic turmoil which runs through out the globe, Malaysia had been exceedingly successful at attracting massive investment flows into the country and has few years begun to be a capital exporting nation. The latter is particularly noteworthy because it no longer represents capital flights from the country but rather a conscious and coherent national drive to move itself into niches and positions that will ensure continued viability and vigour of our Malaysian enterprises.

In the decade preceding the Asia Financial crisis, the economy of Malaysia grew at a robust average rate of more than 8 % per year. By 1997, the World Trade Organization ranked Malaysia the 18th largest exporting country. It’s then total external trade of more than US$158 billion also placed Malaysia as the 17th largest importing nation, with external debt of some 40 % of gross domestic product (GDP). At approximately 38% of GDP, the savings rate in Malaysia was one of the highest savings rate in the world and provided financing for some 95% of total investment outlays.

**Reason for the crisis in Malaysia**

A number of opinions have been expressed concerning the reasons for the crisis. According to Caplen, (February 1999, Euromoney) the numerous arguments could be categorized into two main schools of thought. The first school of thought stresses that the Asian countries were accountable for their economic maelstrom due to poor corporate governance, corruption and bad microeconomic policies. Gengatharen (1999, Lawasia journal) stated that this argument failed due to three reasons. Firstly, the tendency to treat all Asian countries as the same is flawed as some countries such as Singapore which has a well managed economy was not spared of the adverse effect of the crisis. Secondly, corruption has been a traditional problem for a number of years in many South-East Asia countries and now a new phenomenon. Thirdly, is about poor corporate governance tends to put the blame on the borrowers rather than the lenders and it appears and it appears that international banks have been blamed for taking excessive risks.

The second Scholl of thought stipulated that hedge funds were the reasons that account for the crisis. However, Miller (1998, Journal of applied corporate finance) argued that it was the banks that played a central role in the reversal of capital flows rather than hedge funds.

Generally, Malaysia has adopted a sound macroeconomic policy and had liberalized its financial system to participate in the global financial market. Initially, poor corporate governance, inappropriate banking regulation and supervision have been reported to be the reasons for the financial crisis.
The Malaysian Code on Corporate Governance

<table>
<thead>
<tr>
<th>Title:</th>
<th>Malaysian Code on Corporate Governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Author:</td>
<td>Malaysian Institute of Corporate Governance</td>
</tr>
<tr>
<td>Year :</td>
<td>2002</td>
</tr>
</tbody>
</table>

Abstract: The Malaysian Code on Corporate Governance is aimed at providing guidelines for companies to observe good corporate governance in their business practices. The Code is especially relevant for public listed companies that have a responsibility towards their shareholders to observe the highest standard of transparency, accountability and integrity. Malaysian companies must have the drive and ambition to turn themselves into quality companies. The advent of globalisation of finance, capital and investment markets will intensify global economic competition. Malaysian companies must be prepared to face the challenges ahead and if they are to thrive on global dynamics.

The approach adopted for the Malaysian code on corporate governance (the code) represents a hybrid between the prescriptive and non-prescriptive models. The former sets standards of desirable practices for disclosure of compliance, whilst the latter requires actual disclosure of corporate governance practices. The approach in Malaysia, which has since been adopted by Singapore, is designed to allow for a more "constructive and flexible response to raise standards in corporate governance as opposed to the more black and white response engendered by statute or regulation". The code essentially aims to set out principles on structures and processes that companies may use in their operations towards achieving the optimal governance framework. These structures and processes exist at a micro level which includes issues such as the composition of the board, procedures for recruiting new directors, remuneration of directors, the use of board committees, their mandates and their activities.

Objective of the code

The code aspires towards two primary, inter-related objectives. First, it aims to encourage disclosure by providing investors with timely and relevant information upon which investment decisions may be made and the performance of companies evaluated. Secondly, it serves as a guide to boards of directors by clarifying their responsibilities and providing prescriptions to strengthen the control which they exercise. The code is designed to maximize flexibility to meet the varying circumstances of individual companies, given the diversity of entities listed on the Kuala Lumpur Stock Exchange (KLSE) and Malaysian Exchange of Securities Dealing (MESEDI) and Automated Quotation (the Exchange). These ranges from widely-held, large, privatized companies such as, Tenaga Nasional Berhad and Telekom Malaysia...
Berhad to a smaller, owner dominated enterprises that are not uncommon in emerging markets.

The essence of the code is for all listed companies to provide a complete description of their corporate governance practices, and to benchmark these against the specific principle as enunciated. When companies deviate from these best practices, they should disclose such non-compliance with appropriate explanations. This is necessary in order to facilitate the easy review and evolution of corporate governance practices as capital markets in Malaysia deepen and mature, and as market mechanism for promoting good corporate governance.

**Structure of the code**

The code is divided into three parts. The first part is "principles of corporate governance", has as its objective the setting out of the various principles which are to be applied flexibly and with common sense to meet the varying circumstances of individual companies. Companies are required by chapter 14 of the listing requirement of the Kuala Lumpur Stock Exchange (KLSE) to include in their annual report narrative statement of how these principles are applied to their particular circumstances. This ensures that sufficient disclosures are provided for investors and other stakeholders to assess the financial performance and governance practices of companies, and to respond in a fully informed manner.

The four key areas addressed under the principles pertain separately to directors, director's remuneration, shareholders, as well as accountability and audit. It is evident that there is no substitute for having good board practices and for ensuring the integrity of members appointed to the board of directors. The latter is of particular importance as integrity ensures compliance with both the form and the substance of the code. The concept of integrity of board members is implicitly recognized by the company's act which contains provisions to penalize directors for insolvent trading as well as to prohibit undischarged bankrupt and or person who have been convicted of an offence relating to fraud, from being directors of companies.

**The Effect of Globalization and Technology on CG**

Globalization has often closely associated with rapid economic transformation, time-space compression, emergence of global polity, and a revolution in communication technology. Malaysia's experienced modernity, modernization and postmodernism. Details explanation as below:

**Modernity**

The first phase of the pre-contact period was characterized by the traditional and customary indigenous practices. The traditionalistic agrarian society is simplistic in nature. The second phase was marked by a reaction against external influence that arose from colonization.
The third phase occurred when the country obtained independence in 1957. The post-colonial government embarked on an export-oriented industrialization policy. The features of modernization involve:

- A drive towards export-oriented industrial products;
- Growth in multinational investment; and
- A social re-engineering process.

**Postmodernism in Malaysia**

Postmodernism is marked by a period of uncertainty and fluctuations. It was worsened by the currency crisis in Malaysia. The reasons that account for this were mainly political in nature. In 1971, Malaysia's Cross Domestic Product per capita ranked third, behind Japan and Singapore, among East Asian Nations. In 1990, it fell to fifth position behind South Korea, Taiwan and Hong Kong. The problems that gave rise to the economic crisis in Malaysia consists of over-capacity in finance and manufacturing, over reliance on foreign borrowing, a weak and over-capacity of banks, and allegations of crony capitalism. A weak regulatory framework fosters irresponsible lending practices and corporate abuse. There was lack of stringent and prudent regulations.

**Globalisation, computer and communication technology**

In economic point of view, globalisation is always associated with the process of change, free trade, regional and national economic interdependency, and deregulation of financial market. Advancement in information and communication technologies continues to foster the evolution of the global financial market into a new phase of growth and development. Globalization provide vast opportunities for the growth, investment and transfer of new technologies on market integration, efficiency and organizations has radically transformed the form and nature of global. The emergence of a global communication network has also facilitated the growth and expansion of global financial markets.

The impact of computer and communication technology on corporate finance and management may be discussed in terms of the following:

- Influence on corporate management and the virtual fiduciary
- Shareholders' participation and on-line trading of securities
- The law and role of regulatory bodies
- The emergence of the on-line corporation-electronic delivery of documents, electronic voting and company meetings, and electronic lodgment of documents.

In Malaysia, the relevant regulatory bodies have duly acknowledged the benefits of the modern technologies. Some of the developments that have been introduced by organizations such as the KLSE includes the implementation of the Code of Electronic Client-Ordering System (ECOS) for its members in 1995, Electronic Reporting System (ERS) in 1997, etc, etc and now latest e-payment, e-banking has been introduced.
The rules of good corporate governance: methods of efficient implementation

The former Prime Minister Tun Dr. Mahathir Mohammad’s vision of a developed and industrialized Malaysia by the year 2020 had begun crystallizing. Malaysia has developed great changed, a national scenario with intensified infrastructural spending, of massive handing of over of the public enterprises and industries to the public through further privatization projects. The development more extensive and deepened industrial based. The question now is the readiness at every level and to understand the implications of national transformation as expected by vision 2020 and be ready to tap into opportunities available for the benefit of all concern.

The issue of corporate governance in Malaysia has in recent years received more attention than it would ordinarily have in the light of a series of corporate failures that gave rise to implications that affect not only those directly connected with the corporations concerned i.e. the directors, shareholders and auditors of the corporations, but also those affected by its existence such as employees, customers, suppliers and the environment.

This interest is further aggravated by occurrences of major corporate failures such as the collapse of the Barings Empire, the Daiwa Bank debacle, the Maxwell affair and nearer to home the Perwaja episode which all have pointed to the lack of a proper corporate governance system as a major cause. Latest issues were crisis in Malaysian Airline System (MAS) and PROTON. Studies have shown that a majority of those corporate failures were predominantly dominated by one individual, occupying a position of trust, which apart from losing large amounts of money also committed illegal acts.

The last economic turmoil faced by so many countries, including Malaysia, which started July 1997, to a certain extent was contributed by lack of a proper corporate governance among the corporate sector. Followed by tremendous hike of oil prices, it was up to USD80 to USD 90 per barrel.

To a large extent, Malaysia’s economy depends on the drive and efficiency of its companies. Therefore the effectiveness with which their board of directors discharges their duties and responsibilities determines Malaysia’s competitive position. Company directors must be free to drive their companies forward, but they have to exercise that freedom within a framework of effective accountability.

This is the essence of any system of good corporate governance. Corporate governance is the system by which companies are directed and controlled. Company directors are primarily responsible for the governance of their companies. The shareholders’ role in governance is to appoint the directors and external auditors and to satisfy themselves that an appropriate governance structure is in place. The external auditors are responsible to provide shareholders with an external and objective check on the directors’ financial statements.
A proper and efficient system of corporate governance should be able to regulate directors’ duties and restrain them from abusing their powers. It should also be able to ensure that company directors act in the best interests of their companies as well as ensuring the observance and compliance with all laws, regulations and codes of conduct and best practices.

In Malaysia, company directors are guided in the performance of their duties and responsibilities by a number of laws and regulations and non-legal requirements and codes of conducts. Principle among them is the Companies Act 1965, a law regulating companies which was based originally on the U.K. The said Act had been amended twenty-seven times since it was first implemented on 15 April 1966 to take into account the various comments and suggestions from the private and corporate sectors.

The amendments have also taken into account abuses of company structures by company directors at the expense of the interests of minority shareholders. We have heard of properties injected into their companies by directors for exchange of share by valuation that is several times higher than the cost of the properties to them. We have also heard of directors who have acquired valuable properties from their companies at dirt-cheap prices.

Several new provisions had been introduced to deal with more transparency on actions by company directors especially those dealing with accounts and audits, disclosure of interests in contracts with the company by directors, disclosure of interests in shares by directors and substantial shareholders, substantial property transactions by companies with their directors and insider trading. These new provisions are contained in sections 132A, 132B, 132C, 132D, 132E and division 3A of Part IV of the Companies Act 1965.

There are also new provisions introduced to prohibit transactions by directors and substantial shareholders which may jeopardize the interest of the company such as those contained in sections 132G, 133 and 133A. The controversial section 132G was introduced at time when many company directors and major shareholders of public listed companies were making quick bucks for themselves by injecting assets or shares which they recently acquired into their companies for exchange of shares at valuation several times higher than the cost those assets or shares to them.

This kind of assets or paper shuffling which are almost always executed at the expense of the minority shareholders and which diminish the earnings per share of the company is prohibited by section 132G except those transactions which are exempted by subsection (6) of the section. The giving of loans by a company, whose ordinary business is not that of giving of loans, represents a diversion of resources away from the company to money lending activities and may be used as a means to siphon money out of a company for personal benefit. Section 133 and 133A prohibit the giving loans to directors and persons (including corporations) who are connected to the directors.
These prohibitions do not apply to exempt private company (i.e. a company with less than twenty members and no corporations has any beneficial interests in the shares of the company) and to the giving of loans in the circumstances exempted under those sections.

In addition to the Companies Act 1965, directors of public listed companies must also observe and comply with the Securities Commission Act 1993, the Securities Industry Act 1983, the Policies and Guidelines On Issue/Offer of Securities issued by the Securities Commission (SC) and the Listing Requirements of the Kuala Lumpur Stock Exchange (KLSE).

The guidelines of the SC sets out the requirements which have to be met before embarking a corporate proposal as well as the continuing obligations which all parties concerned must comply with once their proposals have been approved by the SC. The KLSE listing requirements, in addition to other matters, contained a requirement for every listed company to set up an audit committee as a sub-committee of the board of directors. The prime role of an audit committee is to provide an independent evaluation of a company's financial reporting function. It involves both financial reporting to the shareholders and others as well as a company's business ethics. The audit committee must comprise of not less than three members with a majority of them non-executive independent directors who are not related to the executive directors of the company or its related corporations and chaired by a non-executive director.

In Malaysia there are no qualification requirements imposed by law on who may be a company director. To any individual, it is easy to become a director, but to be a responsible one calls for a man of indisputable character, integrity and righteousness. Essentially person are appointed to boards of companies because of their ability, experience, influence, personal wealth or political, social or family position or reputation.

With such a diversity of backgrounds and qualification, it is therefore inevitable that in and about the affairs of their companies, some will act recklessly, some incompetently and some may be guilty of fraud or other acts of dishonesty. Of course a large majority of our companies are well served by their boards, and in those cases, the directors generally have a good understanding of the nature of the company-director relationship and of corporate image.

This corporate image will appear differently depending upon the class of persons viewing it. Thus, to the investing public, a particular company may present images of financial stability, reliable reporting and an enviable dividend record. Another company may present to employees the image of a good employer. To the consumers, a particular company may present an image of sound merchandising and matchless customer service.

Directors are expected to hold and attend meetings with reasonable regularity and to exercise some degree of care in the selection and supervision of the chief executive officer and other officers of their companies. They should also familiarize themselves
with the provisions and requirements of the memorandum and articles of association of their companies, the Companies Act 1965 and other laws and requirements relevant to the operations of their companies and observe them strictly. The business community and the investing public expect that directors of companies have working knowledge of their power, duties and responsibilities.

Prominent should not safely lend their names and advertising values to any company upon the understanding that they need not take any active part in the management and supervision as non-executive directors. They must bear in mind that their role of non-executives is rather important as their presence at board meetings would serve as a check on the actions of the executive directors and they are also supposed to provide balanced and independent views on all proposals and policies deliberated at the meetings and to offer sound advice if things do not go the way it should. Their role can be said to be of the highest moral obligations to minimize sharp practices and excesses which may arise from the demeanor of certain unscrupulous directors. They should seek for the removal of these unscrupulous directors if the need arises.

Company directors owe to their company duties of good faith, loyalty, skill and diligence. They are supposed to take an interest to inform themselves of the business, its policies and the manner in which it is conducted, its products and advertising and the difficulties, which might be encountered. There should not be any room for mere sleeping or inactive directors. As a director, he is a member of the team whose collective responsibility is to direct the business of the company in the interest of all affected by its well being. As a member of that team, he would be falling far short of his duty if he considers that regular attendance at board meeting wall that was expected of him.

The Companies Act 1965 applies to all directors equally and generally a director is liable for the action of his fellow’s directors. The fact that he has no executive responsibility within the company has no bearing on the question. Directors are answerable to all offences committed by the company and the fact that he/she is merely a sleeping director will not save him from his/her legal obligation. Pleading ignorance of the offending transaction or circumstances would not be an adequate defense. He/she must ensure that he/she is regularly provided with sufficient financial and non-financial information about his company to satisfy himself that he/she is fulfilling his obligations. It is not enough for him/her to be honest and well meaning. There is more to it than that. He/she must be well informed and cultivate a constant awareness of the obligations expected of him/her by the Companies Act and other relevant laws and requirements. That is to say, he must observe and practice proper corporate governance.

The company directors code of ethics

A number of steps have been taken in many jurisdictions to improve the system by which companies are controlled and governed. In the UK, the London Stock Exchange had set up the Cadbury Committee to study the concern at the lack of
confidence in financial reporting and the value of audits following some well-publicized failures of prominent companies. Among other matters, the Cadbury Committee recommended the adoption of a Code of Best Practice for all listed companies citing that had a code such as the one it recommended been in existence in the past, a number of recent examples of unexpected company failures and cases of fraud would have received attention earlier.

Taking cue from the findings of the Cadbury Committee and with the aim of ensuring that the Malaysian corporate sector develops in a clean, ethical and healthy environment and after having consultation with the private and corporate sector, the Government through the Registrar of Companies, introduced **The Company Director’s Code of Ethics** on 8 April 1996. While the code has no force of law, I wish to remind all concerned that the Code was drafted on the basis that every director is required by section 132 of the Companies Act 1965 to at all times act honestly and use reasonable diligence in the discharge of his duties and moreover, a number of matters in the code are actually provisions in the Companies Act redrafted into the Code in non-legal and simple language which would be easily understood by all.

The Code of Ethics was formulated by the Registrar of Companies together with the following professional bodies:

- Malaysian Institute of Directors (MID);
- Malaysian Institute of Accountant (MIA);
- Malaysian Association of Certified Public Accountants (MACPA);
- Kuala Lumpur Stock Exchange (KLSE);
- Bar Council, Malaysia;
- Federation of Public Listed Companies (FPLC);
- Association of Banks, Malaysia (ABM);
- Association of Merchant Banks in Malaysia (AMBM);
- Malaysian Association of the Institute of Chartered Secretaries and Administrators (MAICSA);
- Malaysian Association of Company Secretaries (MACS); and
- Malaysian Airways System (MAS)

This Code of Ethics, among other matters, introduces ethical standards on practices company directors based on the beliefs and value of a person and instil a spirit of social responsibility in tandem with the existing laws and regulations relating to the management of a company. This Code of Ethics generally imposes more requirements for efficiency by company directors in view of the latest developments in the business and legal environments, which are now more complex and sophisticated. This Code of Ethics is divided into three main parts, i.e.

- Corporate Administration;
- Relations with shareholders, employees, creditors and customers;
- Environment and social responsibilities.
Part one of this code imposes a requirement for company directors to devote time and effort in the interest of their companies and not to use their position as a director for their own private interest. This part also requires every director to stay abreast with the development in the affairs of the community as well as the development in the relevant laws. In other words, it is expected for a director, at all times, to be aware of all the changes to the relevant laws made in tandem with the development in the corporate sector.

One very important point in this part is the call for every director to self-impose a limit on the number of directorship he holds in companies to a number in which he can best devote his time and effectiveness. There is no point for a person to hold directorship in many companies if he cannot devote his time effectively in the management of every company in which he is a director. It will be sadden to note if there are persons who hold the post of director in a company merely for the high remuneration without any serious and effective involvement in the management of that company.

Part 2 of this Code, touches on the relationship between the directors and shareholders, employees, creditors and customers. This part essentially touches on the responsibilities of the directors towards their shareholders in spite of the fact that many of those responsibilities are clearly elucidated in the Company Act 1965. This part of the Code, also call upon directors to take an interest in the welfare of their employees as well as encourages directors to promote professionalism and raise the level of competency of the management and employees of their companies. The responsibility of the directors to ensure adequate safety for employees in their work places is also emphasized in this part of the Code. To add, SWOT (Strength, weaknesses, opportunity and threat) analysis principle would be able to analyze all the relationships.

The environment and social responsibilities of company directors are covered by Part 3 of this Code. This part reminds company directors, especially those in companies, which are not active and not carrying on business for a long period of time, not to neglect their companies. Directors of such companies are reminded that they should take specific actions such as to wind-up their companies or apply to have the names of their companies struck off the register.

Those actions are thought to be appropriate to show a true picture of the condition of our national economy as well as to provide an accurate indication when preparing statistics relating to the total number of companies existing in the country. An accurate statistics is very essential to investors, researchers and decision-makers for them to analyze or make decisions regarding the viability of certain investments or make forecast relating to the future development of our national economy.

The scope of this part goes beyond the provisions of the Companies Act and tries to instill the spirit of social responsibility as it, among other matters, encourages companies which are successful to assist in community programs in line with the aspiration of the concept of "Caring Society" in vision 2020. The call on company
directors to be supportive of the efforts by the government to overcome inflation is also contained in this part.

In the management of their businesses, directors should not only think of achieving maximum profits for their companies but should instead also think of the effect on the public at large. Usually more profits is derived from increases in the prices of goods or services produced or provided by a company but at the same time such increases in prices give rise to inflationary effects on the public.

What is attractive about Company Director’s Code of Ethics is that it reflects the earnest efforts by the Registrar of Companies (ROC) to ensure good corporate behaviour based on high ethical standards and to ensure that our corporate sector develops in a clean and healthy environment. If one goes through the provisions of the Code, one can see that a number of the provisions of the Companies Act 1965 which imposes duties and responsibilities on directors had been incorporated in the Code in layman’s language. In doing so, this has in a way reflected the efforts be the ROC to indirectly increase the level of understanding by our company directors of their duties and responsibilities under the said Act.

With the launching of this Code of Ethics, it will appear as though the ROC would adopt a two prong approach in its enforcement of corporate laws, i.e.

- Enforcement through various operations, which has been carried out or are being carried out.
- By ensuring better understanding of their duties and responsibilities by all involved in the corporate sector company directors and secretaries.

The aim is not only to enforce the laws by punishing the offenders but also by ensuring better understanding of their duties and responsibilities, so that directors would avoid committing offences.

The role of the company secretaries in governance

Despite the complexities of the company law, directors are expected to be aware of the legal consequences of their actions and their duties to their companies and other affected parties such as the shareholders, prospective investors, customers, suppliers and creditors. Professional advice should always be sought when there is any doubt concerning a proposed course of action. In our Malaysian environment, many company directors are those who do not know exactly what their responsibilities are under the law. They basically are technocrats or simply people with good business acumen. Many of them still run their companies as though they are their own private businesses, not taking into cognisance that there are other people having interests in their companies. It is therefore in their best interest for them to seek advice and guidance from professionals.
The Companies Act 1965 recognizes the need for this and has introduces a requirement for every company to appoint a qualified company secretary. He or she must either be a member of a professional body which has been prescribed by the Minister or is one who holds a license issued by the Registrar of Companies. The company secretary has a key role to play in ensuring that all-relevant laws, regulations and requirements are strictly followed and there is compliance with the correct procedures.

It is in the best interest of the directors themselves to ensure that a suitably qualified person is appointed as company secretary to guide and advice them. The company secretary should be the first person the directors go to for advice and services in any compliance. Sometimes, it is not the lack of good advice but rather the directors have their own views and choose to listen to only advice that enable a planned strategy to proceed.

The company secretary should not see himself or herself merely as being person responsible for ensuring compliance with the statutory requirements such as keeping proper statutory books and following the correct procedures for convening general and board meetings but rather he or she should play the very important role as the "keeper of the company's conscience". In playing this role, there is the need for the company secretary to have a wider perception of the company's obligations to all stakeholders and be steadfast in proffering advice and guidance to the board of directors.

The position of company secretary and the profession of company secretarialship should be made as an indispensable repository for effective corporate governance. Whilst responsibility for setting in place strategies for good corporate governance does not rest with the company secretary alone, the company secretary nevertheless must provide critical assistance to the board by heightening their awareness of the principles of good corporate governance.

In order to assist company secretaries in playing their role in enhancing the standard of corporate governance in the country, the Registry of Companies has formulated "The Company Secretary Code of Ethics." It was officially launched by the Honorable Minister of Domestic Trade and Consumer Affairs on the 4th of July 1996 in Kuala Lumpur.

The Code of Ethics, may be broadly understood as the application of ethics to corporate affairs, is formulated to enhance the standard of corporate governance and to instill professionalism and effectiveness among company secretaries. The Code of Ethics is to serve as a code of human conduct and to deal with the question of what is morally right or wrong and what is morally good or evil. The principles on which the Code relies are those that concern transparency, integrity, accountability and corporate social responsibilities.

The Code of Ethics is formulated to raise the standard of corporate governance and to inculcate good corporate behaviour to achieve the following objectives:
a. To instill professionalism among company secretaries within the tenets of
morality, efficiency and administrative effectiveness; and

b. To uphold the spirit of social responsibilities and accountability in line with the
legislation, regulations and guidelines covering a company.

The Code of Ethics was formulated by the Registrar of Companies together with the
following professional bodies:

- Malaysian Association of the Institute of Chartered Secretaries and
  Administrators (MAICSA);
- Association of Banks in Malaysia (ABM);
- Kuala Lumpur Stock Exchange (KLSE);
- Malaysian Association of Company Secretaries (MACS)
- Malaysian Association of Certified Public Accountants (MACPA);
- Malaysian Institute of Accountants (MIA);
- Malaysian Institute of Directors (MID);
- Malaysian International Chamber of Commerce and Industry (MICCI); and
- Association of Merchants Banks in Malaysia (AMBMB).

The role of the auditors in governance

Under the Malaysian Company Law, a company shall at each annual general meeting
appoint a person or persons to be the auditor/s of the company. The auditor must be
properly qualified i.e. he must be an ‘approved auditor’ licensed by the Minister of
Finance. Basically, auditors are appointed by the shareholders during annual general
meeting and thus answerable to the shareholder, not to the directors.

Under section 174 of the Companies Act 1965, the auditor is under a duty to examine
the books and accounts of the company and report to the shareholders/members on
those accounts and on every balance sheet and profit and loss account he has
inspected. His report must also give particulars of the assets and liabilities, profits
and dividends included in the prospectus issued by the company.

It is the duty of the auditor to form an opinion regarding a number of matters and
state in his report particulars of deficiencies, failures or shortcomings in these
matters. Thus, company auditors play a role in maintaining good corporate
governance. Through his report the shareholders/members of the company will be
able to know the detail management of the company. So, an auditor must be
professional in doing his work. Auditor’s attention must also be drawn to the
provisions of section 174(8) of the Companies Act 1965 which state that:

"if an auditor, in the course of the performance of his duties as auditor of a company
is satisfied that –
• there has been a breach or non-observance of any of the provisions of the Act; and
• the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or consolidated accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of its holding company, he shall forthwith report the matter in writing to the Registrar of Companies.

Failure to do so is an offence, punishable with 2 years imprisonment or fine of RM30,000.

Auditors must also be reminded that he may be removed from office by ordinary resolution of the company at a general meeting (may be AGM or EGM) of which special notice has been given (section 172(4) of the Companies Act 1965).

The role of the shareholders in governance

Shareholders are the 'towkeys' of the company. They invest their money in the company for gain/profit and thus they are the 'owners' of the company. However, as shareholders, they are not involved in the day-to-day management of the company's business. The management is done by the board of directors and employee or executives of the company. They exercise their rights in the company through their vote in the general meeting of the company. As such, shareholders are the most interested party in the affairs of company and should ensure at all times that the affairs of the company are properly governed.

To be able to exercise their rights effectively during each general meeting, shareholders must insist that they be provided with full and relevant information pertaining to affairs of the company. To vote for something which he is not well-informed, is a dangerous trend and thus will encourage the management to take advantage for their own interest.

Besides that, shareholders must also closely and continuously follow the development in the company at all times. If they detect any malpractice or non-compliance of the law by the management which requires immediate action to be taken, they have the right to call for a general meeting (EGM) of the company, without having to wait for the next annual general meeting.

Section 144 of the Companies Act 1965, provides for such right, notwithstanding anything in its articles of association, if the requisition is made by shareholders/members having not less than one-tenth of the total paid-up capital of the company. In the recent years we have a few public listed companies, where their shareholders had exercised their right under that section in order to remove several directors of the companies and to appoint new directors.

Even minority shareholders have their right to be protected, under the Malaysian Law, and thus contribute to better management and good corporate governance in the
company. Section 181 of the Companies Act 1965, provides that any shareholder/member may apply to the Court for an order under the section on the ground.

- that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members ...... or in disregard of his or their interests as members, shareholders or holder of debentures of the company, or

- that some act of the company has been done or is threatened or that some resolution of the members ...... has been passed or is proposed which unfairly discriminates against otherwise prejudicial to one or more of the members or debenture holders.

If on such application the Court is of the opinion that either of those grounds is established, the Court may, with the view to bringing to an end or remedying the matters complained of, make such as it think fit.

Experience has shown that the board of directors and the executives of a company usually will exercise more care and prudence in managing the company if shareholder including minority shareholders, show their close attention and supervision on the affairs of the company and to exercise their rights as provided by the law if need be.

Directors must be made to aware that they are appointed by the shareholders at general meeting and they also can be removed from office by ordinary resolution of the shareholders before the expiration of their period of office as provided by the Articles of Association of the company.

In the find analysis, the shareholders role in governance is to appoint reliable and capable directors and auditors of the company and to satisfy themselves that an appropriate governance system is in place.

The role of managers and employees of the company in governance

Like directors of company, managers and employees also have their role to play in order to maintain good corporate governance. If the board of directors is considered as 'back-bone' of a company, managers and employees are the 'limbs' that enable the company towards certain direction. It is the managers and employees who actual steer the company from one direction to another based on whatever decision made by the board of directors. They are the actual 'implementor' of all plans and projects undertaken by the company.

As an 'officer' of the company (as defined under section 4 of the Companies Act 1965) managers and employees must at all times act honestly and use reasonable diligence in the discharge of their duties in the company, for the interest of the company. They
should not at any time place their personal interest to override the interest of the company.

As 'officer' of the company, managers and employees must realise that there are numerous provisions in the Companies Act 1965 that provide for statutory offences against them and also penalty for the offences. These offences include giving of false and misleading information or statement (section 364); giving of false reports with interest to deceive (section 364A); obtaining payment of money to company by false promise (section 366(3); and fraud by officers (section 368). All these offences carrying penalty of imprisonment between 5 - 10 years or fine of RM30,000 - RM50,000 or both.

**The rule of regulatory authorities in governance**

As stated earlier, 'corporate governance' is the system by which companies are directed and controlled. Thus good corporate governance will steer the company towards prosperous and profitable enterprise. Besides internal factors (as discussed above) good corporate governance are also being determine by rules and regulations established by the government through various regulatory authorities such the Registrar of Companies (ROC); Securities Commission (SC); Kuala Lumpur Stock Exchange (KLSE); Bank Negara; Foreign Investment Committee (FIC) and Ministry of Finance (MOF). As such, in reality, these regulatory authorities do have their role to play for assisting companies to achieve good corporate governance. Legal infrastructure such as rules and regulations must be in place to facilitate corporate development from times to times. If need be, new rules must be enacted and obsolete one to be amended accordingly.

In order to keep in tandem with latest development in the corporate sector, rules and regulations must take into consideration the numerous comments and suggestions from the various associations representing the private and corporate sector. For that matter, the Companies Act 1965 had been reviewed from times to times and amended 27 times since its inception. These amendments are necessary in order to facilitate corporate growth and thus establishing framework for good corporate governance.

Having a good piece of law alone does not guarantee effective implementation, unless the regulatory authorities concerned take necessary steps to enforce them effectively. Proper enforcement mechanism must be in place so that the law must be adequate to protect the interest of the investing public and at the same time must not cause undue hardship or inconvenience to the company and its directors and promoters.

Regulatory authorities must also be professional, competent and fast in dealing with the corporate sector. Some corporate dealings and restructuring need prior approval of the relevant regulatory authorities. Wrong decision or delayed action by those authorities will obviously cause serious damages to the companies concerned and may lead to poor corporate governance. Approval for listing of companies in the stock exchange should not take years as it may cause uncertainty of direction for the companies concerned. The process and procedure for approval of all relevant applications must be made transparent to all parties concerned.

299
Companies need effective and friendly guidance from the relevant regulatory authorities for their growth and good corporate governance especially in 'bad times' as what we facing now since July 1997. Internal struggle within the company alone will bring them to no where under the present situation. If companies cannot survive the turmoil, then we have to forget about 'good corporate governance'. And without good corporate governance no right-thinking person may want to invest their money here. So, all relevant regulatory authorities must 'co-operate' and give their fullest and sincere assistance and full support to the corporate sector for immediate economic recovery.

**Corporate Ethics**

Much of the scandals and embezzlements which occurred in the corporate world is due mainly to the "get rich quick" mentality which some businessman and company directors have developed. I am saying this because every time we look closely, we see all kinds of activities unworthy of people entrusted with responsibilities. Integrity is an integral part of business; in fact without it, modern business, which is based almost entirely on credit, could not be transacted. Ethical consideration should be given in all business policies and actions whether they relate to consumers, employees, creditors, the environment and the Government.

Everyone here may agree that businessmen are not indifferent to ethics in their private lives. My point is that in their office lives, they cease to be private citizens; they become game players who must be guided by somewhat different set of ethical standards or rules. So long as businessman complies with the laws of the land and avoids telling malicious lies, he is ethical. If the law as was written gives a man a wide open chance to make a killing, he would be a fool not to take advantage of it. If he does not, somebody else will.

There is no obligation on him to stop and consider who is going to get hurt. If the law says he can do it, that is all the justification he needs. When public opinion feels that certain business practices are highly unethical, legislation would be enacted. However, legislation alone is not the only solution to problem of low ethical standards. As a matter of fact, as new legislation is enacted, some people who are adversely affected by them will start looking out for loopholes. What the industry needs to offset the growing atmosphere of public suspicion is a new emphasis on conscience, new discussions of ethical problems at all levels and greater awareness of the importance of moral consideration in the formation of management policies.

Irrespective of laws and guidelines, the question of ethics in business depends a lot on individual conscience, pride and responsibility. It deals with what is morally right and wrong and what is morally good and evil. It concerns our judgements, beliefs and values pertaining to all aspects of life, be it social, economic, political or even cultural. Corporate ethics may be broadly understood as the application of ethics to corporate affairs. By this we mean that the corporate mission, objectives, strategies, programs and all its operations are formulated and undertaken within the realms of ethics. In
other words, every decision, judgement or action is only taken or performed when it is ethical to do so. Whether or not it is ethical will depend on the beliefs and values one have and uphold. In the case of a corporation, it is the beliefs and values of the directors and management of the corporation.

Efforts towards good corporate governance

The government and the corporate sector in Malaysia are serious in moving towards establishing good corporate governance. Various laws, rules and regulations had been enacted over the past years to control, regulate and facilitate corporate affairs, thus to create suitable environment for good corporate governance. Among the relevant laws are as follows –

- the Companies Act 1965
- the Securities Industry Act 1983
- the Securities Commission Act 1993
- the Banking and Financial Institution Act 1989
- the Kuala Lumpur Stock Exchange Rules
- FIC Guidelines

These laws, rules and regulations are being reviewed from times to times in order to suit current development in the corporate sector. The government had also set up a single body known the Securities Commission in March 1993 to regulate and supervise the capital market in Malaysia. We are all aware that there is a direct relationship between good corporate governance and investors’ confidence in capital market. A shareholder who is not satisfied with the standard of corporate governance in his company would ordinarily withdraw his investment by selling his shares in the stock market. Thus by establishing a single regulatory body such as the Securities Commission to supervise the capital market is an important milestone in moving towards reliable corporate governance in the country - at least among the public listed companies.

In 1997 at the APEC meeting in Canada, our government had made a pledge that Malaysia would take a leading role in corporate governance in the Asian Pacific Region. That shows that the Malaysian Government is committed towards that direction knowing fairly well that any effort to establish good corporate governance must be jointly carried out by the private sector as well as the government. As a result of that undertaking, the government had established a High Level Committee on Corporate Governance comprising of senior officials of the relevant government agencies and representatives of the private sector. A special report on the Malaysian Corporate Governance had been prepared by the Committee and later handed over to the Ministry of Finance for further consideration by the government.
In March 1998, another milestone in creating good corporate governance was created when the Registrar of Companies together with few professional bodies such as FPLC, MID, MAICSA, MIA and MACPA had formed an entity known as the Malaysian Institute of Corporate Governance (MICG). The Institute was incorporated on 10th March 1998 as a public company limited by guarantee. The principal activity of the Institute is to promote and encourage corporate governance development, education and training for the benefit of its members and other interested institutions or bodies in Malaysia. It is interesting to note that just a month after its incorporation the Institute was given the task to prepare report on corporate governance which was later handed to the High Level Committee or Corporate Governance to be considered by the government.

In 1998, in conjunction with its 100 years celebration, the Registrar of Companies had also introduced a Corporate Governance Award and Best Secretaries Award. These awards are meant to be given out annually with the help of the MICG and other professional bodies. It is my sincere hope that these awards will be continued in the future.

In conclusion, it is now shown that the burden to create good corporate governance in this country lies with all parties interested, either directly or indirectly in the performance of a company. They include directors, secretaries, auditors, shareholders, managers and employees as well as the government authorities. Although the government provides the basic infrastructure and serves as a regulatory "watch dog", it must be emphasized that stringent legislation and regulations are no substitute for proper corporate governance, sound management and high ethical standards by directors and managers of our corporations for a healthy investment in our country.

Experience has shown that no system of supervision however vigorous, can guarantee that there will never be undesirable practices and non-professional conduct. Directors and managers of our corporation must therefore live up to the expectations and display the highest professionalism in the conduct of their businesses in order for Malaysia to be able to attract continuous flows of investment, both local and foreign.

As democracy flourished in the United States, it created a context for the free-market economic system referred to as capitalism. In the early days of the Industrial Revolution, an unrestrained form of capitalism resulted in a very small number of people becoming very wealthy while most stayed poor. The greedy and unscrupulous Robber Barons of the time could not be trusted as they created great personal wealth at the expense of their customers, workers, and public shareholders. The political system responded to the situation with laws and regulations intended to limit the excesses and abuses of the free and unrestrained markets of the time. In the end, capitalism prevailed under the watchful eye of the federal and state governments. As we have noted, this vigilance continues today.

The success of capitalism created opportunities for businesses to grow larger. One driver of this growth was the opportunity for investors to unite their capital (money) to fund extensive projects and massive enterprises. These investors became owners of
portions or shares of the businesses in which they invested, and have come to be known as shareholders.

The larger businesses that were created could not be governed effectively by proprietors and partnerships for many reasons. Consequently, in the twentieth century, the publicly owned corporation emerged as the dominant legal form for business enterprises.

The corporation has three distinctive features that make it an attractive form for defining the legal entity of a business. Its unlimited life, the limited liability of the owners, and the divisibility of ownership that permits transfer of ownership interests without disrupting the structure of the organization. Interestingly, these attributes are rooted in a Supreme Court opinion written by Chief Justice John Marshall in 1819 in the United States of America.

Today, the public corporation itself operates as a form of representative government. The owners (shareholders) elect directors as their representatives to manage the affairs of the business. The directors, who as a group are referred to as the board of directors, then delegate responsibility for actual operations to the Chief Executive Officer (CEO), whom they hire. The CEO is accountable to the board of directors, which, collectively and individually, is accountable to the shareholders. In addition to its role in selecting the CEO, the board also advises on and consents to the selection of businesses and strategies of the firm as well as oversees results. In sum, this system of authoritative direction, or government, is known as corporate governance.

**Corporate governance and the strategic management process**

George Bain, (Real-world Corporate Governance by Nigel Kendall & Arthur Kendall, 1998) discussed that the bog advantage of the shareholder model over the stakeholder model in management term is a simple goal it presents: Maximize shareholder value. The general rule is the governance, the goals and the strategy of a business must be compatible, and there must be congruence between the expectations of the various interested parties.

It means:
- There is a common view as to the ethic by which the business is conducted
- The views of all interested parties are taken into account when deciding the goal
- An appropriate weighting is given to those views to arrive at a conclusion as to how to achieve the greatest good
- A strategy is formulated to attain the chosen goal which takes account of the likely behavior of the various interest group
- An implementation program includes reporting systems which ensure transparency and regular feedback on matters which affect them to the various stakeholders.
The good governance is all about good management, it representing the totality of a strategic management model. The elements which are more specific is placed in context. The key approach and methodology developed to achieve good governance lies at the beginning, in building the concept at every part of the businesses.

Conclusion

To conclude, it is extremely important, there are clear limits to the relevance and scope of public enforcement and boundaries beyond which private enforcement and intervention must take over. The assessment must often do at authorized levels. The key words are transparency, accountability, rule of law and integrity.

The ultimate relevance and efficacy of many of the regulatory reforms implemented in Malaysia and elsewhere rests with the shareholders themselves and the attention they pay to the affairs of the companies in which they invest. Certainly, the investors have inherent incentives to monitor and engage companies on corporate governance matters far beyond that which is true of regulators, who must adopt a public policy stance in monitoring and enforcement.

In Asia, although various investor groups have emerged, they are relatively young, and institutional investor activism can be said to be still in its infancy. To take the agenda for developing the private enforcement framework forward however, it is crucial that institutional investors play a more important role in the self-regulatory framework by attending meetings, participating and voting, not only with their feet.
 Needless to say, rules which impose shareholder-level controls on the tunneling of assets out of the company through related party transactions and self-dealing are pointless, without reciprocal participation from shareholders. The Malaysian Code on Corporate Governance exhorts institutional investors to make considered use of their voting rights in line with their fiduciary duties to their investing clientele. However, several economic and practical disincentives to activism, such as free riding \(^1\) and the costs associated with monitoring \(^2\) are contributory factors to institutional investor apathy. Unlike listed companies, institutional investors are not obliged to disclose in their annual reports their compliance with the Code.

In this context, institutional funds have a key role to play in promoting corporate governance. Indeed, greater transparency on the nature and extent of activism by such funds will further enhance public confidence in the framework.

On that note, it is suggested that government, statutory regulators and industry all have key roles to play in improving the corporate governance framework.

“No one pretends that democracy is perfect or all-wise, indeed it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time”

Winston Churchill to the House of Commons.
References

- Nigel Kendall & Arthur Kendall, Pittman 1988, Real-World Corporate Governance
- Tie Fatt Hee, Thompson 2003, Corporate Governance and Corporate Law Reform in Malaysia
- Low Chee Keong, Corporate Governance An Asia-Pacific Critique
- Dato Megat Najmuddin Khas, Low Chee Keong & Kala Anandarajah, Corporate Governance in Malaysia
- Asian Institute of Management Managing Corporate Governance
- Datuk Ramly Bin Haji Ali, Malayan Law Journal September 1999
- Corporate Governance Regional Roundtable, 2002
- Security Commission (regulatory perspective)
- Bank Negara Malaysia, Annual report and collection of speeches, 1997-2004
Example of Corporate Governance Guidelines for the company

COLGATE COMPANY

Governance Principles

Governance is an ongoing commitment shared by our Board of Directors, our management and all Colgate people. At Colgate, we believe strongly that good corporate governance accompanies and greatly aids our long-term business success. This success has been the direct result of Colgate’s key business strategies, including its focus on core product categories and global brands, people development programs emphasizing “pay for performance” and the highest business standards. Colgate’s Board has been at the center of these key strategies, helping to design and implement them, and seeing that they guide the Company’s operations.

Our Board of Directors is independent, experienced and diverse.

The Board believes that an independent director should be free of any relationship with Colgate or its senior management that may in fact or appearance impair the director’s ability to make independent judgments, and in 2004 adopted strict new independence standards based on this principle. Since 1989, Colgate’s Board of Directors has consisted entirely of outside independent directors, with the exception of the CEO. As its present directors exemplify, Colgate also values experience in business, education and public service fields, international experience, educational achievement, strong moral and ethical character and diversity.

Related Information: Director Independence Standards, Board Members, Board Committees, Independent Board Candidate Qualifications

Our Board focuses on key business priorities and leadership development.

The Board plays a major role in developing Colgate’s business strategy. It reviews the Company’s strategic plan and receives detailed briefings throughout the year on critical aspects of its implementation. The Board also has extensive involvement in succession planning and people development with special focus on CEO succession. It discusses potential successors to key executives and examines backgrounds, capabilities and appropriate developmental assignments.

Related Information: Board Committees, Board Guidelines on Significant Corporate Governance Issues

Open communication between and among directors and management fosters effective oversight.

Both inside and outside the boardroom, Colgate’s directors have frequent and direct contact with Colgate’s management. Key senior managers regularly join the directors during Board meetings and more informal settings, and together they actively
participate in candid discussions of various business issues. Between scheduled Board meetings, directors are invited to, and often do, contact senior managers with questions and suggestions. Communication among the directors is enhanced by the relatively small size of Colgate’s Board, which fosters openness and active discussion, and by regular meetings of the independent directors without the CEO present.

Related Information: Board Guidelines on Significant Corporate Governance Issues, Board Members, Executive Management Team

Established policies guide governance and business integrity.

First formalized in 1996, Colgate’s "Guidelines on Significant Corporate Governance Issues" are reviewed annually to ensure that they are state-of-the-art. Formal charters define the duties of each Board committee and guide their execution. Colgate’s Corporate Governance Guidelines and all Committee Charters are available in the Board Committees area of this website. Additionally, the Board sponsors the Company’s Code of Conduct and Business Practices Guidelines, which promote the highest ethical standards in all of the Company’s business dealings.


Our Board plays an active role overseeing the integrity of the financial statements of the Company.

The Board is committed to the quality, integrity and transparency of Colgate’s financial reports. This commitment is reflected in Colgate’s long-standing policies and procedures, including an internal audit group monitoring financial controls worldwide, independent auditors who have a broad mandate and an independent Audit Committee overseeing these areas.

Related Information: Audit Committee, Code of Conduct, Global Hotline

Good governance is the responsibility of all Colgate people.

Colgate people worldwide are committed to living our global values of Caring, Global Teamwork and Continuous Improvement in all aspects of our business. By managing with respect, Colgate people create an environment of open communication, teamwork and personal responsibility. A constant dedication to good governance shapes our Colgate culture and ultimately leads to good business results.

Related Information: Code of Conduct, Global Hotline, Living our Values for Sustainability
Good governance thrives from continuous improvement.

The Board has established a formal procedure to evaluate its overall performance against criteria that the Board has determined are important to its success. These criteria include financial oversight, succession planning, compensation, strategic planning and Board structure and role. The Board then reviews the results of the evaluation and identifies steps to enhance its performance. The Board's committees also conduct self-evaluations, examining their overall performance against their Committee Charters. During the past year, the Board developed an individual director evaluation process, which enables the directors to provide valuable feedback to one another for enhanced effectiveness.

Related Information: Board Guidelines on Significant Corporate Governance Issues, Board Committees