

SECRET

Memorandum for the Cabinet on the proposed changes to the Industrial Relations Bill by the Hon. Minister of Labour, Employment and Welfare.

Honourable Ministers will recall the Industrial Relations Bill which was presented to the House of Representatives on 12th March, 1969. They will also recall that after the publication of the Bill I had promised to consult all interested trade unions, associations and other bodies. These consultations have now been completed and I therefore propose re-introducing the Bill with the changes which are listed on statement attached to this Memorandum. For the sake of clarity this Memorandum includes the salient points already raised in the memorandum submitted to the Honourable Ministers before the Bill was read for the first time to the House of Representatives.

Recognition of and Negotiations with Trade Unions

The Bill will make it compulsory for employers to recognise and negotiate with trade unions. All registered trade unions would enjoy the right of making representations whether orally or in writing to the employers of workers they represent, and where the trade union represents at least 51% of the workers employed with a particular employer negotiations will have to be conducted by the employer with that trade union. The figure applies to the categories of workers for whom negotiations or disputes are considered.

To ascertain the actual strength of the employees who are members of any trade union the Minister of Labour will have the power, through the Registrar of trade unions to cause a count of the workmen employed by the employer concerned. A review of such count (appeal) may be undertaken by the Industrial Court (to be set up in terms of this Bill). Once a count is carried out, a fresh count may not be called for before a period of at least six months has elapsed. Failure to recognise or negotiate with a trade union (as above) will still constitute an offence liable on summary conviction to a fine (multa) of from £100 to £1000 or to imprisonment for a period not exceeding six months or to both such fines and imprisonment.

(b)/.....

L-ARKIVJI NAZZJONALI TA' MALTA

(b) The Bill will not preclude the establishment of Works Councils in industrial undertakings. Where such Councils are set up it shall rest with the majority of workers in the undertaking to decide whether they wish to negotiate with their employers through these Councils or through a Trade Union.

Industrial agreements

(c) Another major improvement contemplated by the Bill is that relating to the validity of industrial agreements between employers and representatives of workers. Such agreements will have to be drawn up in writing, will apply to all workers who work in the particular sector of employment contemplated by the agreement and will automatically exclude offensive action (strikes, lockouts, etc.) during their currency. Failure to carry out the obligations imposed by an industrial agreement will make the contravenor liable for the damages which may result from his actions.

A copy of any industrial agreement shall have to be delivered to the Minister by any party thereto within seven days from the day on which the agreement is concluded. Unless this is done the agreement shall no longer be legally binding.

Strike Notice

(d) A notice of three days shall be required before the day on which it is intended that a lockout or strike shall commence. If, during these three days conciliation or arbitration proceedings under the provisions of the Bill are initiated, the period of the three days shall become automatically extended to a total period of seven days.

Offensive action during negotiations

(e) The new proposals in the Bill shall make a lockout or strike illegal only in the following cases:-

- (i) before the expiration of the period of notice of three days mentioned previously; (this period of three days would be automatically extended to seven days if conciliation or arbitration proceedings shall have commenced);
- (ii) within one year of an arbitration award;

(iii)/.....

- (iii) during arbitration proceedings if such a strike or lockout were to cause a threat to the national security of the State or if the strike were to stop essential services or supplies: this is however qualified by the requirement that a declaration to this effect by the Prime Minister has to be made in the House of Representatives.

The penal clauses for taking part in an illegal strike or lockout have been dropped; but any employer or worker as the case may be may claim damages against any worker or employer who shall engage in an illegal strike or lockout or for failure to abide by the conditions of an award under the provisions of the Bill.

Civil Servants and Industrial Relations

(f) The Bill provides for the setting up of a National Negotiating (Civil Service) Council in a different form than that originally proposed. The Council shall be composed of representatives of trade unions and associations representing the following classes of Civil Service employees:-

- (i) the General Service class;
- (ii) the Professional, Scientific and Technical class;
- (iii) the Teaching class;
- (iv) the Departmental class;
- (v) the industrial class and Miscellaneous;

(g) The council shall be composed of not more than ten members to represent the official side and appointed by the Prime Minister and by ten members to represent equally each of the five classes of employees. The latter ten members shall be appointed by the trade unions representing the largest number of employees in that particular sector, provided that more trade unions representing the same class of public officers may combine their strength for the purposes of representation. All trade unions representing employees in each of the groups mentioned above may form committees for the study of matters of interest to the group and the views expressed in such committees may be submitted to the National Negotiating (Civil Service) Council by their representatives in such Council.

(h) The functions of the Council, which will supersede the Malta Government Joint Council will be to secure the greatest measure of co-operation between the State in its capacity as employer and the general body of civil servants in matters affecting employment under the Crown in Malta, with a view to increase of efficiency in the Public Service combined with the well being of those employed, to provide machinery for dealing with grievances and generally to bring together the experience and different points of view of all members of the Civil Service. The Bill further provides for matters of procedure of the Council. It enables the Council to appoint various Committees and to delegate powers to them. Decisions within the Council will be arrived at by agreement between the two sides, which will be signed by the Chairman (appointed by the Prime Minister) and the Vice Chairman (appointed by the Staff Side) and will be reported to the Cabinet and thereupon will become operative subject to the overriding authority of the House of Representatives.

In the case of disagreement in the National Negotiating Council the matter will be referred to a Special Commission nominated by the Minister for a further attempt at conciliation. If this attempt also fails then recourse should be had to arbitration.

- (i) In the case of final disagreement about any dispute the Chairman and Vice Chairman con-jointly will ask the Minister to refer the matter to arbitration.

Whitley Councils

(j) The Bill shall also allow the formation of Whitley Councils for particular grades which shall be special negotiating bodies not on national level. The points raised at these Councils which are considered to affect other classes of employees or which impinge on the rights and conditions of the General Civil Service, shall be passed to the National Negotiating (Civil Service) Council, where one member of the union concerned may be co-opted as observer. Matters which are of interest to the General Service, shall be referred to the National Negotiating (Civil Service) Council on which a representative of the Whitley Council shall have the right to appear as observer.

(k) In cases of disagreement at Whitley Council level, the issues may be referred to the Minister for such action under the Act as

he may deem proper in all circumstances of the case, whereupon all the provisions of the Act, which may be applicable in the case, shall apply.

The Industrial Court

(1) As already stated in the Memorandum introducing the original Bill an Industrial Court is to replace the present arbitration tribunal and to decide issues of an industrial nature which could arise under the law. The Court will be composed of one of Her Majesty's Judges who will be specifically appointed to deal with these cases and will also be able to help in other work of the 'Superior Courts only' in emergencies. When considering industrial disputes the Court will be assisted by two Assessors drawn up one each from two panels: one representative of employers and the other of employees. In the case of industrial disputes relating to civil servants there will be a special panel of assessors to represent the Government.

Labour Court

(2) A new concept introduced in the proposed amendment of the Bill will be the creation of a "Labour Court" as distinct from the Industrial Court. The Labour Court shall be composed of the President of the Industrial Court who shall hear all Court cases concerning all Labour Legislation at present administered by the Department of Labour. Proceedings before the Labour Court shall include all such cases involving conditions of work, including for example, loss of wages, hours of work, leave, sick leave, overtime, fines discharges without a just cause, claims for notice money, etc. Cases under the Factories Ordinance, the Industrial Training Act, and the Disabled Persons (Regulation of Employment) Act, etc., will also be referred to the Labour Court. Thus it will be possible to deal with such Court cases more expeditiously than hitherto, and will thus be avoided the delays caused by referring such cases to the ordinary Court of Law.

Consolidation

(3) The opportunity is being taken to consolidate the provisions of the Trade Unions and Trade Disputes Ordinance, 1945 with those of the Conciliation and Arbitration Act, 1948 under the new name

of the new "Industrial Relations Act, 197...".

Consequential

(c) Consequential provisions shall include:-

- (i) the provision that when an offence is committed by an association of persons any director or officer of the Association will become personally liable, unless he shows that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence. Such provision is necessitated by the fact that our Criminal Laws do not provide for offences committed by associations of persons.
- (ii) The provision that any valid agreement between trade unions and employers existing on the day of commencement of the Act which would have been deemed to be an industrial agreement if it were made at a time when this Act were in operation, will be considered as an industrial agreement for the purpose of this Act, if a copy thereof is sent to the Minister of Labour within a period of thirty days from such date by either of the parties thereto.
- (iii) The provision amending the Conditions of Employment (Regulation) Act, 1952, to provide that "Recognised conditions of employment" under that Act would include such conditions as will result from an industrial agreement.

Hon. Ministers are requested to approve the policy of the Industrial Relations Bill outlined above.

30/7/70