

**THE OFFICIAL GAZETTE – 8TH MARCH, 1984
LEGAL SUPPLEMENT – C**

PARLIAMENT OFFICE,
Public Buildings
Georgetown,
Guyana.
84-03-08.

The following Bill which will be introduced in the National Assembly is published for general information.

F. A. Narain
Clerk of the National Assembly



GUYANA

BILL No. 5 of 1984

LABOUR (AMENDMENT) BILL 1984

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title.
2. Interpretation.

PART II

ALTERATION OF THE CONSTITUTION

3. Alteration of article 142 of the Constitution.

PART III
AMENDMENT OF THE LABOUR ACT

4. Amendment of section 23 of the Principal Act.
5. Insertion of new Part VIIA in the Principal Act.
6. Insertion of new section 33A in the Principal Act.
7. Amendment of section 34 of the Principal Act.
8. Effect of certain articles of agreement set out in the Schedule.

SCHEDULE

A BILL
Intituled

AN ACT to alter the Constitution in accordance with articles 66 and 164 thereof, to amend the Labour Act, to give legal effect to certain provisions of the agreement set out in the Schedule and to provide for matters connected therewith.

A.D. 1984

Enacted by the Parliament of Guyana:—

PART I
PRELIMINARY

- Short Title
1. This Act may be cited as the Labour (Amendment) Act 1984.
- Interpretation.
Cap. 98:01
2. In Part III “the Principal Act” means the Labour Act.

PART II
ALTERATION OF THE CONSTITUTION

Alteration
of article
142 of the
Constitution.

3. Article 142(3) of the Constitution is hereby altered in the following respects —
 - (a) by the deletion of the word “or” at the end of sub-paragraph (ii); and
 - (b) by the insertion, after sub-paragraph (ii), of the following sub-paragraph as sub-paragraph (iia) —

“(iia) so far as it provides for the regulation of wages, that is, any money or other thing had or contracted to be paid, delivered or given as recompense, reward or remuneration for any work, labour or service done or to

be done, whether such provision is made prospectively or retrospectively, including retrospectively with effect from a day earlier than the day fixed for the coming into operation of this Constitution; or”.

PART III

AMENDMENT OF THE LABOUR ACT

4. Section 23 of the Principal Act is hereby amended by the substitution of a semicolon for the full stop at the end of paragraph (g) and by the insertion, after paragraph (g), of the following paragraph as paragraph (h) —

Amendment of section 23 of the Principal Act.

“(h) any wages paid to the employee in excess of the wages he is entitled to receive:

Provided that from any payment of wages to an employee, after making all other deductions or stoppages allowed under any other provision of this Act, not more than twenty-five per cent of that payment shall be deducted under this paragraph.”.

5. The Principal Act is hereby amended by the insertion, after Part VII, of the following Part as Part VIIA —

Insertion of new Part VIIA in the Principal Act.

‘PART VIIA

COLLECTIVE AGREEMENTS

28A.(1) Every collective agreement which —

Collective agreements enforceable.

- (a) is made in writing on or after the date on which this section comes into operation; and
- (b) does not contain a provision which (however expressed) states that the agreement or part of it is intended not to be legally enforceable, shall be conclusively presumed to be intended by the parties to it to be a legally enforceable contract and with effect from the date specified for that purpose in subsection (3) the collective agreement shall, in so far as its provisions are not inconsistent with the other provisions of this Act or the provisions of any other written law, be binding on, and enforceable by or against, the parties to it and, where any such party is an organisation, all the persons who are members of that organisation on the date on which the collective agreement is made and all those who become members of that organisation after that date.

(2) Where a collective agreement referred to in subsection (1) (a) contains a provision which (however expressed) states that a part of the agreement specified in that provision is intended not to be legally enforceable, the collective agreement with the exception of that part shall be conclusively presumed to have been intended by the parties to it to be a legally enforceable contract and with effect from the date specified for that purpose in subsection (3) the collective agreement, with the exception of that part, shall, in so far as its provisions are not inconsistent with the other provisions of this Act or the provisions of any other written law, be binding on, and enforceable by or against, the parties to it and, where any such party is an organisation, all the persons who are members of that organisation on the date on which the collective agreement is made and all those who become members of that organisation after that date.

(3) The date with effect from which a collective agreement referred to in subsection (1) (a) or part of such collective agreement shall be legally enforceable under subsection (1) or subsection (2), as the case may be, shall be the date specified therefor in the collective agreement or, if no such date is specified, the date on which the collective agreement is signed by all the parties thereto or their representatives or, if the collective agreement is signed by the parties thereto or their representatives on different dates the last of the dates on which any of such parties or their representatives signed the collective agreement.

(4) A copy of every collective agreement referred to in subsection (1) (a) signed by the parties thereto or their representatives shall be presented to the Chief Labour Officer by all or any of such parties or representatives as soon as may be possible, and in any case not later than three months, after it is made and the Chief Labour Officer shall keep it in his office:

Provided that the validity or enforceability of the collective agreement shall not be affected by the non-presentation of the collective agreement to the Chief Labour Officer under this subsection.

(5) Where a copy of a collective agreement is presented to the Chief Labour Officer under subsection (4) by only one or some of the parties thereto or their representatives the Chief Labour Officer shall issue notice, in the prescribed form, of the presentation of the collective agreement to the parties who, or whose representatives, did not join in presenting the collective agreement to him.

(6) Where one of the parties to a collective agreement referred to in subsection (1) (a) is a trade union recognised by any employer, who or any organisation of which he is a member is a party thereto, as sole bargaining agent in respect of all his employees or any class of his employees, the collective agreement shall be binding also on, and

enforceable also by or against, every one of his employees, or every one of that class of his employees, as the case may be, who are not members of the trade union, to the same extent to which it would have been binding on, or enforceable by or against, those employees if they were members of the trade union.

(7) A member of any organisation which is a party to any collective agreement, a copy of which has been presented to the Chief Labour Officer under subsection (4), shall be entitled to examine it or make extracts from it during the normal working hours of the office of the Chief Labour Officer on any working day and every person on whom the collective agreement is binding shall be entitled to obtain a copy of it on payment of such fees as may be prescribed by the Minister by regulations.

(8) In this section reference to member of an organisation includes, in the case of an organisation of which any other organisation is a member, reference to every member of that other organisation.

(9) Where a copy of any collective agreement, a copy of which is required by subsection (4) to be presented to the Chief Labour Officer, is not presented to the Chief Labour Officer before the expiry of the period specified therefor by that subsection, each of the persons who signed the collective agreement shall be liable on summary conviction to a fine of five hundred dollars and also to a fine of fifty dollars for every day during which the failure to so present the collective agreement to the Chief Labour Officer continues.

28B. (1) In this Act “collective agreement” means any agreement or arrangement which for the time being is subsisting and —

Meaning of
“collective
agreement”

- (a) is an agreement or arrangement made (in whatever way and in whatever form) by or on behalf of one or more organisations of employees and either one or more employers, one or more organisations of employers, or a combination of one or more employers and one or more organisations of employers; and
 - (b) is either an agreement or arrangement prescribing (wholly or in part) the terms and conditions of employment of employees of one or more descriptions, or an agreement or arrangement relating to one or more of the procedural matters specified in subsection (2), or both.
- (2) The procedural matters referred to in subsection (1)(b)

- (a) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, terms and conditions of employment;
- (b) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, other questions arising between an employer or group of employers and one or more employees or organisations of employees;
- (c) negotiating rights;
- (d) facilities for officials of trade union or other organisations of employees;
- (e) procedures relating to dismissal;
- (f) procedures relating to matters of discipline other than dismissal;
- (g) procedures relating to grievances of individual employees.

Regulation
of terms
and condi-
tions of
employment
of em-
ployees
in the
public
sector.

28C. (1) The Trades Union Congress and the Government may, in relation to employees in the public sector generally or in relation to any class of employees in the public sector, make an agreement or arrangement in writing with respect to any of the matters in respect of which a collective agreement may be made.

(2) Any agreement or arrangement made by the Trades Union Congress and the Government under subsection (1) shall, in so far as its provisions are not inconsistent with the other provisions of this Act but notwithstanding anything contained in any other written law or contract or award of any arbitrator or arbitration tribunal, be binding on every employee, in relation to whom the agreement or arrangement is made, and his employer and be enforceable by or against each such employee or his employer, with effect from the date specified for that purpose in the agreement or arrangement or, if no such date is specified, with effect from the date on which the agreement or arrangement is signed by all the parties thereto or their representatives or, if the agreement or arrangement is signed by the parties thereto or their representatives on different dates, the last of the dates on which any of such parties or representatives signed the agreement or arrangement.

(3) An agreement or arrangement made by the Trades Union Congress and the Government under subsection (1) may contain a provision stating that the agreement or arrangement or part thereof is intended not to be legally enforceable and —

- (a) where the provision states that the whole of the agreement or arrangement is intended not to be legally enforceable, subsection (2) shall not apply to the whole of the agreement; and
- (b) where the provision states that part of the agreement or arrangement is intended not to be legally enforceable, subsection (2) shall not apply to that part but shall apply to the remaining part of the agreement.

(4) An agreement or arrangement made under subsection (1) shall be published by the Government in the *Gazette* as soon as may be possible after it is signed by all the parties thereto or their representatives:

Provided that the validity or enforceability of the agreement or arrangement shall not be affected by its non-publication in the *Gazette*.

(5) Where in relation to the same employee a collective agreement to which section 28A applies and an agreement or arrangement made under subsection (1) are in force, and the provisions of the collective agreement in regard to any matter, being provisions which are intended to be legally enforceable, are in conflict with the provisions of the agreement or arrangement made under subsection (1) in regard to that matter, also being provisions which are intended to be legally enforceable, the provisions of the agreement or arrangement made under subsection (1) in regard to that matter shall prevail.

(6) The Trades Union Congress and a public sector employer may, in relation to the employees employed by or in the service of the public sector employer or any class of such employees, make an agreement or arrangement in writing with respect to any of the matters in respect of which a collective agreement may be made and the other provisions of this section, excluding subsection (1), shall *mutatis mutandis* apply to, and in relation to, the agreement or arrangement so arrived at subject to the modification that for every reference therein to an agreement or arrangement made by the Trades Union Congress and the Government under subsection (1) there shall be substituted a reference to the agreement or arrangement made under this subsection.

(7) In this section —

- (a) “award” includes an interim award;
- (b) “employee in the public sector” means an employee employed by or in the service of a public sector employer;

(c) “public sector employer” means —

- (i) the Government;
- (ii) any public corporation, or any other corporate body in which the controlling interest vests in the State or in any agency on behalf of the State’.

Insertion
of new sec-
tion 33A
in the
Principal
Act.

‘Injunc-
tion not to
be grant-
ed against
function-
ing of
arbitration
tribunal.

6. The Principal Act is hereby amended by the insertion, after section 33, of the following section as section 33A —

33A. (1) Notwithstanding anything contained in any other written law, where any matter has been referred, for settlement, to the arbitration of an arbitration tribunal under section 4, no court shall make an interlocutory order (whether *ex parte* or with notice) in any cause or matter pending before it staying, or having the effect of staying, the operation of the reference or granting an injunction prohibiting, or having the effect of prohibiting, the arbitration tribunal from exercising or performing its functions in respect of the matter so referred.

(2) Where before the coming into operation of this section a court has made an interlocutory order granting an injunction prohibiting, or having the effect of prohibiting, any arbitration tribunal, to whom any matter has been referred for settlement under section 4, from exercising or performing its functions and that cause or matter has not been finally determined by the court before the coming into operation of this section, any of the parties to the cause or matter in which the interlocutory order has been made may, within three months of the coming into operation of this section, apply to the court in which the cause or matter is pending requesting the cancellation of the interlocutory order and thereupon the court shall, after giving all the parties concerned a reasonable opportunity of being heard, pass appropriate orders in accordance with the provisions of this section so as to enable the arbitration tribunal to exercise and perform its functions.

(3) The preceding provisions of this section shall not apply to any application properly made under article 153 of the Constitution.

(4) A cause or matter in which the legality or propriety of the reference of any matter, for settlement, to the arbitration of an arbitration tribunal under section 4 is questioned shall be heard and finally determined, by the court in which it is pending, with all convenient speed and all the parties to the cause or matter shall give full co-operation to the court for this purpose.

(5) The provisions of this section shall apply also in relation to any arbitration tribunal to which any matter has been referred under section 4 before the date on which this section comes into operation, if that arbitration tribunal has not, before that date, effected a settlement of the matter referred to it or made its final award in relation to that matter.

(6) In this section “interlocutory order” includes an order granting an interim injunction.’

7. Section 34 of the Principal Act is hereby amended in the following respects —

- (1) by the substitution in paragraph (c), for the word “; and”, of the words “, including the form for a notice under section 28A(5);”;
- (2) by the insertion, after paragraph (c), of the following paragraph as paragraph (cc) —

“(cc) prescribing the fees payable under section 28A(7) for obtaining a copy of a collective agreement; and”.

8. (1) Notwithstanding anything contained in any provision of the Principal Act or in any other written law or contract or award of any arbitrator or arbitration tribunal to the contrary, articles 1 to 5 (inclusive) and 7 of the agreement set out in the Schedule and entered into between the Government and the Executive Members of the Trades Union Congress on 23rd August 1977 shall, subject to the other provisions of this section, be deemed to be, and always to have been, a legally enforceable contract binding on, and enforceable by or against, every public sector employee referred to in article 1 thereof (hereafter in this section referred to as “public sector employee”) and his employer, and each of the aforesaid articles shall, subject to the other provisions of this section, continue, and be deemed to have continued, to be so binding and enforceable, after the expiry of the year 1979 also until it is modified or replaced by any other agreement (not being an agreement entered into between an individual employee and his employer), award or order made in accordance with the provisions of the Principal Act and binding on, and enforceable by or against, such public sector employee and his employer.

(2) Unless otherwise directed by the President, no public sector employee shall, on and from 1st January 1979 and as long as article 1 of the aforesaid agreement continues to be in force, be entitled, or be deemed ever to have been entitled, to claim, receive or recover as wages in relation to any period any amount in excess of the amount he would be entitled to receive as wages for that period if the rate of wages payable to him continued to be the same as the rate at which wages were last paid to him in 1978.

Amendment of section 34 of the Principal Act.

Effect of certain articles of agreement set out in the Schedule.

(3) Any amount received or recovered by any public sector employee, on and after 1st January 1979, as wages in excess of the amount he is entitled to receive as wages in accordance with subsection (2) shall, if so required by the employer from whom he received it, be repaid by him to that employer within such period as may be specified by the employer.

(4) If any public sector employee, being required by his employer to do so under subsection (3), fails or refuses to repay to the employer the whole or part of any amount he is liable to repay to that employer under that subsection, within the period specified therefor by the employer, then, the employer may, without prejudice to any other mode of recovery the employer may have, and notwithstanding anything contained in the Principal Act or any other written law or contract to the contrary, deduct the whole or part of such amount from the wages payable by him to the employee:

Provided that from any payment of wages to an employee, after making all other deductions or stoppages allowed under the Principal Act, not more than twenty-five per cent of that payment shall be deducted under this subsection.

(5) Notwithstanding anything contained in any judgment, decree or order of any court or authority, no public sector employee shall be entitled on and from 1st January 1979 to claim, receive or recover from his employer as wages any amount which he would not have been entitled to receive or recover if this section had been in operation on and from the 23rd August 1977 and any such amount received or recovered by the public sector employee from the employer on or after 1st January 1979 shall, if so required by the employer from whom he received it, be repaid by him to that employer and the provisions of subsections (3) and (4) shall *mutatis mutandis* apply in relation to the time within which and the manner in which the repayment shall be made or may be had.

(6) Nothing contained in this section shall be deemed to confer on any public sector employee a right to claim, receive or recover, in relation to any period in any year including, and prior to, 1978, wages at rates higher than the rates at which wages were actually paid to him for that period.

(7) In this section "wages" has the same meaning as in the Principal Act.

SCHEDULE

Section 8

AGREEMENT ENTERED INTO BY THE GOVERNMENT OF GUYANA AND THE TRADES UNION CONGRESS ON 23RD AUGUST, 1977.

The Government of Guyana (hereinafter referred to as the "Government") of the one part, and the Executive Members of the Trades Union Congress of the other part (hereinafter collectively referred to as "the Trades Union Congress") hereby enter into this Agreement this 23rd day of August, 1977.

ARTICLE 1
MINIMUM WAGE

It is hereby agreed that the new minimum wage shall apply retroactively from 1st January, 1977, to all public sector employees. "Public Sector" means all Central Government Ministries, Departments, Institutions and Agencies (including all Corporations and Companies owned and controlled by the State or in which the State has a majority equity).

2. The new Public Sector minimum wage shall be no less than —
 - (a) for 1977 — \$1.05 per hour/\$6.40 per day/\$200.00 per month
 - (b) for 1978 — \$1.35 per hour/\$11.00 per day/\$258.00 per month
 - (c) for 1979 — \$1.75 per hour/\$14.00 per day/\$333.00 per month.

3. Within the context of the existing normal practice at enterprises/organisations, the work-week and work-day for which this rate applies shall not exceed 44 hours and 8 hours, respectively.

ARTICLE 2
WAGE/SALARY NEGOTIATIONS

1. The Wage/Salary negotiations in the Public Service (or any other public sector agreement already expired or expiring during 1977) shall commence immediately within the parameters agreed herein.

2. Those Wage/Salary negotiations shall use the agreed guidelines at Clauses 2 and 3 of Article 1 above, as well as the following:—

- (a) The cut-off points for increases shall be —

| | |
|--------|-----------|
| 1977 — | \$600: |
| 1978 — | \$925: |
| 1979 — | \$1,200.; |
- (b) For 1977, an agreed 10% of the wage bill up to the cut-off point shall be distributed to all employees within the organisation/enterprise favouring the lower paid employees against those higher up the pegged Scale;
- (c) In 1977, the distribution of the 10% increase is to be achieved by applying the formula illustrated in the attachment hereto marked "A";
- (d) For 1978 and 1979, the percentages of the wage bill to be used in the formula shall be discussed and agreed with the Trades Union Congress.

3. The Agreement shall be for three years — 1977-1979 and negotiations for the new Agreement with effect from 1980 shall take into account the minimum at 1979, i.e., \$14.00 per day.

ARTICLE 3
INCREASE ADJUSTMENTS

1. The increases for adjustment include the earned increment for 1977 but in those particular cases where the size of the adjustment is less than an increment, the increment shall apply.

2. The incremental date for all employees covered by Clause 1 of Article 1 of this Agreement shall be 1st January.

3. The adjustments for 1978 and 1979 shall be discussed prior to the January of the preceding year

ARTICLE 4
ANOMALIES

All anomalies identified shall be forwarded to a Central Committee through the Permanent Secretary, Public Service Ministry for examination and corrective action.

ARTICLE 5
INCENTIVES

1. Within the next two weeks, a Central Committee shall be set up to work out general principles for incentive schemes.

2. Each enterprise shall thereafter appoint a Committee to, (within those guidelines), propose specific incentive schemes.

3. Those specifics referred to in Clause 2 immediately above shall be submitted to the Central Committee for their final approval.

4. The Trades Union Congress shall be represented on the Central Committee, and individual trade unions on the individual enterprise Committees.

5. All such incentive schemes shall apply to all workers — management and non-management — and shall be tax free.

ARTICLE 6
INTERPRETATION

This Agreement shall be interpreted as an act of faith, and the Trades Union Congress and its affiliates will do everything within their power to ensure that in all sections and areas of activity, there is full production and increased productivity.

ARTICLE 7

This Agreement shall continue in force until 31st December, 1979, but pending the negotiation and conclusion of a new Agreement which shall take effect from 1st January, 1980, the provisions of this Agreement shall continue in full force and effect.

Done at the Office of the Prime Minister, the Residence, this 23rd day of August, 1977.

(Sgd.) L. F. S. Burnham
Minister of Finance
for the Government of Guyana.

For the Trades Union Congress

| | |
|--------------------------|---------------------|
| (Sgd.) J. Langrey | Vice-President |
| (Sgd.) Stanton Critchlow | -do- |
| (Sgd.) J. H. Pollydore | General Secretary |
| (Sgd.) B. Bangaree | Treasurer |
| (Sgd.) N. Semple | Executive Member |
| (Sgd.) S. D. Felix | -do- |
| (Sgd.) S. Baichan | -do- |
| (Sgd.) L. A. Comacho | Assistant Secretary |

EXPLANATORY MEMORANDUM

Clause 3 of this Bill seeks to alter paragraph (3) of article 142 of the Constitution so that legislation to regulate wages cannot be challenged on the ground that it affects property rights guaranteed by that article.

2. Clause 5 of the Bill seeks to insert a new Part, namely, Part VIIA, in the Labour Act, Cap. 98:01. The new Part contains three sections, namely, sections 28A, 28B and 28C. The new section 28A seeks to make collective agreements legally binding and enforceable and the new section 28B seeks to define the expression "collective agreement". The new section 28C seeks to enable the Trades Union Congress and the Government to enter into an agreement in relation to public sector employees in respect of matters regarding which collective agreements can make provision. Provision is sought to be made in that section also to enable a public sector employer and the Trades Union Congress to enter into an agreement in relation to the employees of that employer or any class of his employees. Any agreement entered into under the new section 28C shall, as proposed, be binding and enforceable by or against, employers and employees in the public sector in relation to whom the agreement is entered into.

3. Clause 6 of the Bill seeks to insert a new section 33A in the Labour Act to prevent the functioning of arbitration tribunals, to which matters are referred under section 4 of the Labour Act, being delayed by interlocutory orders granted by courts.

4. Clause 8 of the Bill seeks to give legal effect to certain provisions of the agreement entered into between the Executive Members of the Trades Union Congress and the Government on 23rd August 1977 subject to the decision subsequently taken by the Government in regard to the wage freeze. Power is, however, sought to be given to the President by clause 8(2) of the Bill to direct the increase of the wages of public sector employees.

Kenneth W. E. Denny,
Minister of Manpower and Co-operatives.