

NATIONAL ASSEMBLY OF PARLIAMENT OF GUYANA

REPORT

of the

SPECIAL SELECT COMMITTEE

on the

TRADE UNION RECOGNITION BILL 1994
(Bill No. 19/1994)

Presented to the National Assembly
By the Chairman of the Committee

on

28TH OCTOBER, 1997

**REPORT OF THE SPECIAL SELECT COMMITTEE OF THE NATIONAL
ASSEMBLY ON THE TRADE UNION RECOGNITION BILL 1994**

Publication of Bill

The Trade Union Recognition Bill 1994 was published in the Gazette on Saturday, 26th November, 1994.

2. The Bill provides for the improvement and promotion of industrial relations by the establishment of procedures for the certifying of trade unions as recognised majority unions and for matters connected therewith.

Introduction and First Reading in National Assembly

3. The Bill was introduced in the National Assembly and read the first time on 1st December, 1994.

Debate and Second Reading in National Assembly

4. The Bill was debated in the National Assembly and was read the second time on 19th January, 1995.

Committal to Select Committee

5. Following its second reading, the Bill was committed by the Assembly for consideration by a Special Select Committee.

Members of the Select Committee

6. At a Meeting on 17th February, 1995, the Committee of Selection nominated the following Members of the National Assembly to comprise the Special Select Committee to consider the Trade Union Recognition Bill 1994:-

Members from the People's Progressive Party/Civic (8)

The Hon. Dr. Henry B. Jeffrey, M.P.,
Minister of Labour, Human Services and Social Security
The Hon. Indranie Chandarpal, M.P.,
Minister in the Ministry of Labour, Human Services and Social Security
The Hon. George E. Fung-On, M.P.,
Minister in the Office of the President
Mrs. Pauline Sukhai, M.P.,
Parliamentary Secretary, Ministry of Local Government
Mr. Shaik K.Z. Baksh, M.P.
Mr. Komal Chand, C.C.H., J.P., M.P.
Mr. Alston A. Kissoon, M.P.
Mr. Khemraj Ramjattan, M.P.

Members from the People's National Congress (4)

Mr. Dunstan Barrow, M.P.,
Chief Whip
Miss Jean M.G. Persico, A.A., M.P.
Mr. Arthur A. Alexander, M.P.,
Deputy Speaker of the National Assembly
Mr. M. Idris Deen, M.P.

Member from the Working People's Alliance (1)

Dr. Rupert Roopnaraine, M.P.

Member from The United Force (1)

Mr. Manzoor Nadir, M.P.

First Meeting of the Committee – Election of Chairman

7. At its first Meeting on 23rd March, 1995, the Select Committee elected the Hon. Dr. Henry B. Jeffrey, M.P., Minister of Labour, Human Services and Social Security, to be Chairman of the Committee.

Withdrawal of PNC Members from the Committee

8. At the 9th Meeting of the Committee on Monday, 19th June, 1995, the Committee was informed that the People's National Congress Members on the Committee had decided to withdraw from the Committee.

Meetings of the Committee

9. The Committee met on the following eleven occasions:-

Thursday, 23rd March, 1995

Tuesday, 4th April, 1995

Monday, 10th April, 1995

Tuesday, 18th April, 1995

Friday, 21st April, 1995

Wednesday, 3rd May, 1995

Tuesday, 9th May, 1995

Friday, 9th June, 1995

Monday, 19th June, 1995

Thursday, 4th April, 1996

Wednesday, 22nd October, 1997

Consideration of Bill by the Committee

10. The Committee considered the Clauses of the Trade Union Recognition Bill 1994 and had consultations with the Consultative Association of Guyanese Industry Ltd. (CAGI) and with the Guyana Trades Union Congress (TUC):

Amendments made by the Committee

11. A list of the amendments made to the Bill by the Committee following its deliberations, is attached (**Appendix I**).

12. Of the 37 Clauses of the Bill –

- the following 24 Clauses were agreed to as printed:-
Clauses 1, 4, 7, 8, 10, 11, 12, 13, 14, 15, 17, 19, 20,
22, 23, 24, 27, 30, 31, 33, 34, 35, 36, 37
- the following 13 Clauses were amended:-
Clauses 2, 3, 5, 6, 9, 16, 18, 21, 25, 26, 28, 29, 32.

Bill with Amendments

13. A Bill showing the amendments made by the Committee is attached. (**Appendix II**).

Report of the Select Committee

14. At its meeting on Wednesday, 22nd October, 1997, the Special Select Committee on the Trade Union Recognition Bill 1994 agreed that this Report on the Bill should be presented to the National Assembly.

15. The Report is accordingly hereby submitted to the National Assembly for adoption.

Verbatim Records

16. Verbatim Records of the proceedings of the Meetings of the Committee have been prepared and can be seen at the Parliament Office.

PARLIAMENT OFFICE,
Public Buildings,
Georgetown.

22nd October, 1997

TRADE UNION RECOGNITION BILL 1994
Bill No. 19/1994

Amendments Made By The Special Select Committee

Clause 2 **Substitution** of the following for subsections (2) and (3):-

“(2) For the purpose of this Act, no person shall be regarded as a worker if he is a member of a disciplined force referred to in paragraph (a), (b) or (c) of the definition of “disciplined force” in article 154 of the Constitution, or an apprentice within the meaning of the Industrial Training Act.”

Clause 3 **Insertion** of the following after the words “public officer”:-

“not below the level of a Senior Labour Officer in the Ministry responsible for labour”.

Substitution of “sections 5 and 37” for “section 37”.

Clause 5 **Deletion** of paragraph (b) of subsection (1).

Substitution of “three” for “two” in paragraph (c) of subsection (1).

Substitution of “three” for “two” in paragraph (d) of subsection (1).

Deletion of “, or a member appointed under subsection (1)(b) or the alternate member therefor” in subsection (7).

Substitution of “member or alternate member” for “member” in subsection (8).

Clause 6 **Substitution** of “resources” for “additional staff” in subsection (2).

Clause 9 **Addition** of the following after subsection (2):-

“(3) Where two consecutive meetings have been summoned within ninety-six hours, each meeting being forty-eight hours apart and each meeting not having the requisite quorum specified in subsection (2), for the next meeting thereafter, any four members shall constitute a quorum.”

Clause 18 Substitution of “two months” for “one month” in subsection (4).

Clause 21 Insertion of the following as subsection (1):-

“(1) Where two or more trade unions have applied under section 18 in relation to the same bargaining unit, the Board shall bring the applications to the attention of the most representative organisation of trade unions providing such details as are necessary to give that organisation an opportunity to resolve the claims among the unions and to report thereon to the Board within a period no longer than twenty-eight days and the organisation shall advise the Board of the outcome of its intervention, which advice the Board shall take due cognisance of, but where the organisation fails to report to the Board within such time or fails to report a resolution, the majority union shall be determined in accordance with subsections (2) and (3).”

Re-numbering of subsections (1) and (2) as subsections (2) and (3).

Insertion of “and there has been no resolution under subsection (1),” after “bargaining unit,” in the re-numbered subsection 2.

Clause 25 Substitution of “two months” for “one month” in subsection (1)(a).

Clause 26 Substitution of “has for reasonable cause” for “has” where it occurs for the first time in subsection (1)(c).

Substitution of “duties under this Act” for “duties” in subsection (1)(c).

Clause 28 Substitution of “expeditiously” for “within ninety days of the date on which the substitution of the recognised majority union occurred”.

Clause 29 Substitution of “Board” for “Minister” wherever it occurs.

Substitution of “the Board may grant” for “he may grant” in subsection (2).

Addition of the following after subsection (5):-

“(6) Where a union is dissatisfied with the decision of the Board made under subsection (2), the union shall have a right of appeal to the Minister.”

Clause 32 Re-numbering of clause 32 as subsection (1).

Substitution of “Notwithstanding section 18, where” for “Where” at the beginning of the clause.

Deletion of “and such challenge is verified by the Minister” in the proviso.

Addition of the following as a further proviso:-

“Provided further that a challenge to a recognised union shall be dealt with by the Board within three months after the coming into operation of this Act.”.

Addition of the following as subsection (2):-

“(2) For the removal of any doubt, it is hereby declared that a poll shall not be called in respect of a matter engaging the attention of the High Court.”.

TRADE UNION RECOGNITION BILL 1994
(Bill No. 19/1994)

Showing

**The Amendments made by the
Parliamentary Select Committee**

22nd October, 1997

TRADE UNION RECOGNITION BILL 1994
(Bill No. 19/1994)

This Bill was -

Published in the Gazette on Saturday, 26th November, 1994,

**Introduced in the National Assembly and Read the First Time
on Thursday, 1st December, 1994,**

**Debated in the National Assembly and Read the Second Time
on Thursday, 19th January, 1995,**

**Committed by the National Assembly to a Select Committee
on Thursday, 19th January, 1995.**

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title and commencement.
Interpretation.
Delegation by Minister.

PART II

RECOGNITION AND CERTIFICATION BOARD

4. Establishment of Trade Union Recognition and Certification Board.
5. Composition of the Board.
6. Secretary and other officers of the Board.
7. Seal of the Board.
8. Remuneration of members of the Board and Secretary.
9. Meetings.
10. Prohibition as to interest.
11. Duties of the Board.
12. Procedure at hearings, etc.
13. Power to summon witnesses, etc.
14. Power to enter premises.
15. Appointment of committees.
16. Power of the Board to delegate.
17. Board may state case to the High Court.

PART III

CERTIFICATION OF RECOGNITION

18. Application for certification of recognition.
19. Appropriateness of bargaining unit.
20. Determination of recognised union where only one union is involved.
21. Determination of recognised majority union where two or more unions are involved.
22. Issue and contents of certificate.
23. Compulsory recognition and duty to treat.
24. Record of certification.
25. Offences by trade unions.
26. Offences by employers.
27. Effect of certification as the recognised majority union.
28. New collective agreement of recognised majority union.
29. Limitations on application for certification.
30. Variation of bargaining unit after certification.
31. Poll for continued certification.
32. Certification of existing recognised majority unions.

AMENDMENT(S)

To Page 2

NONE

PART IV

PROSECUTIONS

- 33. Prosecutions.
- 34. Recovery of fines and wages.
- 35. Where State is employer.

PART V

RULES, REGULATIONS

- 36. Rules.
- 37. Regulations.

A BILL

Intituled

AN ACT to provide for the improvement and promotion of industrial relations by the establishment of procedures for the certifying of trade unions as recognised majority unions and for matters connected therewith.

Enacted by the Parliament of Guyana:-

A.D. 1994

PART I

PRELIMINARY

1. This Act may be cited as the Trade Union Recognition Act 1994 and shall come into operation on such date as the Minister may appoint by order. Short title and commencement.

2. (1) In this Act - Interpretation.

(a) "bargaining unit" means that unit of workers determined by the Board as an appropriate bargaining unit;

AMENDMENT(S)

To Page 3

NONE

- (b) "Board" means the Trade Union Recognition and Certification Board established under section 4;
- (c) "collective agreement" means an agreement in writing between an employer and the recognised majority union on behalf of workers employed by the employer in a bargaining unit for which the union is certified, containing provisions respecting terms and conditions of employment of the workers and the rights, privileges or duties of the employer or of the recognised majority union or of the workers and for the regulation of the relationship between an employer and the recognised majority union;
- (d) "collective bargaining" means treating and negotiating with a view to the conclusion of a collective agreement or the revision or renewal thereof or the resolution of disputes;
- (e) "employer" means any person or body of persons, firm, company, public corporation, public authority, or the State who or which has entered into a contract to employ any person and includes, any agent, representative or manager of such person, body of persons, firm, company, public corporation, public authority or the State who is placed in authority over the persons employed;
- (f) "lock-out" means action which, in contemplation or furtherance of a dispute, is taken by one or more employers, whether parties to the dispute or not, and which consists of the closing of a place of employment or the suspension of work by an employer or the refusal by an employer to employ or continue to employ any number of workers;
- (g) "recognised majority union" means a trade union certified under Part III as the bargaining agent for workers comprised in a bargaining unit;

AMENDMENT(S)

To Page 4

NONE

- (h) "the relevant date" means such date as the Board considers appropriate for determining any matter before it under Part III;
- (i) "strike" means a cessation of work, a refusal to work, to continue to work or to take up work by workers acting in concert or in accordance with common understanding and includes any concerted interruption of work or slowing down by workers commonly known as a "sit down strike" or "a go-slow";
- (j) "Trade Union" or "Union" means an association registered as a Trade Union under section 15 of the Trade Unions Act not being an association or organisation of employers registered as a Trade Union under this Act;
- (k) "undertaking" includes any trade or business or any activity involving the employment of workers;
- (l) "worker" subject to subsection (2) means -
- (a) any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work, for hire or reward, whether such contract be expressed or implied, oral or in writing, or partly in writing, and whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour; or
 - (b) any person who by any trade usage or custom or as a result of any established pattern of employment or recruitment of labour in any business or industry is usually employed or usually offers himself for and accepts employment accordingly, and includes any such person-
 - (i) who has been dismissed, discharged, retrenched, suspended, interdicted,

AMENDMENT(S)

To Page 5

NONE

refused employment, or not employed, whether or not in connection with or in consequences of, a dispute;

(ii) whose dismissal, discharge, retrenchment, suspension, interdiction or refusal of employment has led to a dispute; or

(iii) who has ceased to work as a result of a lock-out or a strike.

(2) For the purpose of this Act, no person shall be regarded as a worker if he is -

(a) a member of a disciplined force except the fire service and prison service; or

Cap. 39:04

(b) an apprentice within the meaning of the Industrial Training Act.

(3) In subsection (2) "disciplined force" has the same meaning as in article 154 of the Constitution.

Delegation
by Minister.

3. The Minister may delegate to a public officer any of his functions under this Act, with the exception of the functions conferred by section 37.

PART II

RECOGNITION AND CERTIFICATION BOARD

Establishment
of Trade
Union
Recognition
and
Certification
Board.

4. There is hereby established a Board to be known as the Trade Union Recognition and Certification Board which shall be a body corporate.

Composition
of the Board.

5. (1) The Board shall consist of seven members to be

AMENDMENT(S)

To Page 6

Amendment(s) Made By The Select Committee

Clause 2 **Substitution** of the following for subsections (2) and (3):-

“(2) For the purpose of this Act, no person shall be regarded as a worker if he is a member of a disciplined force referred to in paragraph (a), (b) or (c) of the definition of “disciplined force” in article 154 of the Constitution, or an apprentice within the meaning of the Industrial Training Act.”

Clause 3 **Insertion** of the following after the words “public officer”:-

“not below the level of a Senior Labour Officer in the Ministry responsible for labour”.

Substitution of “sections 5 and 37” for “section 37”.

appointed as follows

- (a) a Chairman appointed by the Minister after consultation with such associations as in his opinion are the most representative associations of trade unions and employers, respectively;
- (b) two members appointed by the Minister;
- (c) two members appointed by the Minister on the nomination of such association as in his opinion is the most representative association of trade unions; and
- (d) two members appointed by the Minister on the nomination of such association as in his opinion is the most representative association of employers,

and the members of the Board shall hold office for two years.

(2) In respect of each member of the Board (other than the Chairman) the Minister shall, in like manner as that whereby that member was appointed, appoint an alternate member for a period ending on the date on which the member in respect of whom he was appointed, ceases to be such a member.

(3) An alternate member may act for the member in respect of whom he was appointed for such time as that member is unable to discharge the functions of his office or for such time as that member is acting as Chairman.

(4) Where the Chairman is for any reason, unable to carry out his functions under this Act, the Minister may, after consultation with such associations as in his opinion are the most representative associations of trade unions and employers, respectively, appoint a Chairman to act for the period of his inability to carry out his functions under this Act, from among the members of the Board.

(5) A member of the Board may at any time resign his office by writing under his hand addressed to the Minister, and upon the date of the receipt by the Minister of such resignation the member shall cease to hold office.

AMENDMENT(S)

To Page 7

Amendment(s) Made By The Select Committee

Clause 5 Deletion of paragraph (b) of subsection (1).

Substitution of “three” for “two” in paragraph (c) of subsection (1).

Substitution of “three” for “two” in paragraph (d) of subsection (1).

(6) The Minister shall revoke the appointment of any member of the Board who was appointed under subsection (1) (c) or (d) or under subsection (2), in respect of the appointment of the alternate member appointed in accordance with subsection (1) (c) or (d), if the organisation or body of persons which made the nomination nominates another person in his stead and such other person, on being appointed shall hold office for the unexpired portion of his predecessor's term of office.

(7) The Minister shall revoke the appointment of the Chairman, or a member appointed under subsection (1) (b) or the alternate member therefor if he indulges in any action that is inimical to the function of the Board, or if he is absent without the permission of the Board from three consecutive meetings of the Board.

(8) The appointment, removal, resignation or death of any member of the Board shall be notified by the Minister in the Gazette.

(9) No member or alternate member shall be dismissed or otherwise victimised by his employer on account only of his being a member of the Board.

**Secretary and
other officers
of the Board.**

6. (1) There shall be a Secretary to the Board who shall be appointed by the Minister from amongst persons who are public officers.

(2) It shall be the duty of the Minister to provide the Board with such additional staff as may from time to time be required by the Board for the discharge of its functions.

**Seal of the
Board.**

7. (1) The seal of the Board shall be kept in the custody of the Chairman or the Secretary, as the Board may determine, and shall be affixed to instruments issued by the Board or to resolutions of the Board.

(2) The seal of the Board shall be officially and judicially noticed.

AMENDMENT(S)

To Page 8

Amendment(s) Made By The Select Committee

Clause 5 Deletion of ", or a member appointed under subsection (1)(b) or the alternate member therefor" in subsection (7).

Substitution of "member or alternate member" for "member" in subsection (8).

Clause 6 Substitution of "resources" for "additional staff" in subsection (2).

(3) All documents, other than those required to be under seal, made by, and all decisions of, the Board may be signified under the hand of the Chairman or the Secretary.

8. The Chairman, other members and the Secretary of the Board shall receive such remuneration as may be determined by the Minister.

Remuneration
of members of
the Board and
Secretary.

9. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of its business and the meetings shall be held at such places and times and on such days as the Board may determine.

Meetings.

(2) The quorum of the Board shall be the Chairman and three other members, of whom one shall be a member appointed under section 5 (1) (c) and one appointed under section 5 (1) (d).

10. (1) A member of the Board shall not, so long as he is in any way directly or indirectly concerned in any matter before the Board by reason of-

Prohibition as
to interest.

- (a) his holding office in, or being a member of, any union concerned in the matter; or
- (b) being the employer or a director, a shareholder, partner or manager of the business of the employer who is concerned in the matter,

take part in any deliberation or decision of the Board on such matter or officiate at any poll taken by the Board for the purpose of determining such matter.

(2) Nothing in subsection (1) (b) shall apply to any shareholder if the total value of his shareholding does not exceed such amount of the total nominal value of the issued share capital of the company as the rules of procedure of the Board provide.

(3) It shall be open to any member of the Board present at any meeting thereof to challenge the entitlement of any other

AMENDMENT(S)

To Page 9

Amendment(s) Made By The Select Committee

Clause 9 Addition of the following after subsection (2):-

“(3) Where two consecutive meetings have been summoned within ninety-six hours, each meeting being forty-eight hours apart and each meeting not having the requisite quorum specified in subsection (2), for the next meeting thereafter, any four members shall constitute a quorum.”

member of the Board, including the Chairman, to take part in any deliberation or decision on any matter before the Board, or to officiate at any poll to be taken by the Board for the purpose of determining such matter on the ground that such other member is directly or indirectly concerned in the matter by reason of any circumstances, referred to in subsection (1).

(4) Upon any such challenge being taken, the Board shall enquire into the merits thereof, and, after giving reasonable opportunity to the member challenged to be heard in answer thereto, shall determine the challenge by a ruling which shall be binding and conclusive for all purposes.

(5) Where it is shown to the satisfaction of the Board that a member thereof has failed to comply with the provisions of this section, the Board may declare void all proceedings, determinations and other decisions taken or made on any occasion of such failure, but no proceedings, determinations or other decisions of the Board taken or made on any such occasion shall be, or be deemed to be, invalidated by reason only of such failure, unless the Board so declares.

Duties of the Board.

11. The Board shall be charged with responsibility as more specifically set out under Part III for the determination of all applications and matters concerning the certification of trade unions as recognised majority unions.

Procedure at hearing etc.

12. (1) Every party to a matter before the Board shall be entitled to appear at any hearing thereof and may be represented thereat by an attorney-at-law or a duly authorised representative.

(2) The Board may determine the periods that are necessary for the fair and adequate presentation of a matter by the parties thereto, and may require matters to be presented within any period so determined.

(3) The Board may require or permit evidence or arguments to be presented either orally or in writing or partly orally and partly in writing.

(4) Subject to the provisions of this section the Board may regulate its procedure.

AMENDMENT(S)

To Page /0

NONE

13. (1) For the purpose of dealing with any matter brought before it the Board shall have all such powers, privileges and immunities as are vested in a commissioner appointed under the Commissions of Inquiry Act.

Power to
summon
witnesses, etc.
Cap. 19:03

(2) Any summons may be issued by the Secretary of the Board and shall have the same force and effect as a summons issued under the Commissions of Inquiry Act.

14. (1) The Board or any authorised officer of the Board may, on giving twenty-four hours notice in writing, enter any premises for any purpose in relation to the taking of a poll under this Act.

Power to enter
premises.

(2) An officer shall, on demand, produce a duly authenticated document evidencing his authority to act in pursuance of subsection (1).

(3) Every person who hinders or molests, or otherwise interferes with any member of the Board or any authorised officer in the exercise of any function pursuant to this Act shall be guilty of an offence and liable on summary conviction to a fine of twenty-eight thousand dollars and to imprisonment for six months.

15. (1) The Board may appoint committees from amongst its members to examine and report to it on any matter arising out of or connected with any of its powers and duties under this Act.

Appointment
of committees

(2) The Board may reject the report of any such committee or adopt it either wholly or with such modifications, adaptations, qualifications and exceptions as the Board may think fit.

16. Subject to the provisions of this Act, the Board may delegate to a committee consisting of the Chairman and at least two other members, one being a member appointed under section 5 (1) (c) and the other being a member appointed under section 5 (1) (d), authority to carry out such duties and functions and to exercise such power on its behalf, as it may determine.

Power of the
Board to
delegate

AMENDMENT(S)

To Page //

NONE

Board may
state case to
the High
Court.

17. (1) The Board may, on the application of any party to a matter before the Board, or on its own motion, state a case on any point as to the interpretation or application of this Act or any other written law, for the opinion of the High Court.

(2) The High Court shall hear and determine all questions arising on any case stated, and the determination of the Court on any such questions shall be conclusive for all purposes.

(3) The statement of facts in any case so stated shall, for the purpose of the determination thereof, be conclusive.

Cap. 3:02

(4) The Rules Committee established under section 67 of the High Court Act may make rules regulating the manner in which the Board may state a case and all other matters relating to the procedure for hearing and determining the case.

PART III

CERTIFICATION OF RECOGNITION

Application
for
certification of
recognition.

18. (1) A trade union that desires to be treated as a recognised majority union shall apply to the Board in writing to be so certified in accordance with the provisions of this Part.

(2) The application shall describe the proposed bargaining unit in respect of which certification is sought and shall be in the prescribed form.

(3) The union making the application hereinafter referred to as the "claimant union" shall serve a copy of the application on the employer and on the Minister.

(4) The application shall be determined, within one month of the date of its receipt by the Board, in accordance with the following provisions of this Part.

Appropriate-
ness of
bargaining
unit.

19. (1) When an application is made under section 18, the Board shall determine the bargaining unit it considers appropriate (hereinafter referred to as the "appropriate bargaining unit") and in so doing the Board shall have regard to -

AMENDMENT(S)

To Page 12

Amendment(s) Made By The Select Committee

Clause 18 Substitution of “two months” for “one month” in subsection (4).

- (a) the community of interest between the workers in the proposed bargaining unit including work location, working hours, work arrangements and payment systems;
- (b) the nature and scope of the duties of the workers in the proposed bargaining unit;
- (c) the organisational structure of the employer's undertaking and the views of the employer and the trade union thereon;
- (d) the historical development, if any, of collective bargaining in the employer's undertaking; and
- (e) any other matter which the Board considers to be relevant to good industrial relations.

(2) In considering the appropriateness of a bargaining unit the Board shall not be restricted by the terms of the application.

20. (1) Where only one union has applied under section 18, the Board shall carry out a membership survey to determine the extent of support which the union enjoys on the date of the application among the workers comprised in the appropriate bargaining unit.

Determination of recognised union where only one union is involved.

(2) Where it appears to the Board from the results of the survey that the union is supported on the date of application by at least forty per cent of the workers comprised in the appropriate bargaining unit, the Board shall certify the union as the recognised majority union for that unit.

(3) In carrying out any membership survey under this Act the Board shall satisfy itself, by whatever means it deems appropriate, as to the authenticity of any documents submitted.

21. (1) Where two or more trade unions have applied under section 18 in relation to the same bargaining unit, the Board shall carry out a secret poll among workers in the unit and shall certify as the recognised majority union for the unit the claimant union which is shown by the poll to have the greatest support among the workers, provided that no union shall be certified where less than forty per cent of the workers take part in the ballot.

Determination of recognised majority union where two or more unions are involved.

AMENDMENT(S)

To Page 13

Amendment(s) Made By The Select Committee

Clause 21 **Insertion** of the following as subsection (1):-

“(1) Where two or more trade unions have applied under section 18 in relation to the same bargaining unit, the Board shall bring the applications to the attention of the most representative organisation of trade unions providing such details as are necessary to give that organisation an opportunity to resolve the claims among the unions and to report thereon to the Board within a period no longer than twenty-eight days and the organisation shall advise the Board of the outcome of its intervention, which advice the Board shall take due cognisance of, but where the organisation fails to report to the Board within such time or fails to report a resolution, the majority union shall be determined in accordance with subsections (2) and (3).”

Re-numbering of subsections (1) and (2) as subsections (2) and (3).

Insertion of “and there has been no resolution under subsection (1),” after “bargaining unit,” in the re-numbered subsection(2)

(2) Where the results of the poll show a tie or are inconclusive, a second poll shall be carried out within seven days, and in the event of a second tie or the results being inconclusive, a further poll shall be conducted within fourteen days:

Provided that where a certified union is being challenged and the challenging union satisfies the Board, by means of a survey, that the support of the challenging union among the workers in the unit is not less than forty per cent, the Board shall cause a poll to be taken, but the certificate of recognition of the challenged union shall not be cancelled where the challenging union fails to obtain a majority of not less than forty per cent amongst the workers in the unit.

Issue and contents of certificates.

22. (1) The Board shall issue a certificate under its seal to the union and to the employer in every case in which it certifies a trade union as the recognised majority union.

(2) The certificate shall contain a statement of the following particulars -

- (a) the name of the employer and the trade union thereby certified;
- (b) the category or categories of workers comprised in the bargaining unit;
- (c) the number of workers comprised in the bargaining unit at the relevant date; and
- (d) such other matters as may be prescribed.

Compulsory recognition and duty to treat

23. (1) Where a trade union obtains a certificate of recognition for workers comprised in a bargaining unit in accordance with this Part, the employer shall recognise the union, and the union and the employer shall bargain in good faith and enter into negotiations with each other for the purpose of collective bargaining.

(2) A recognised union which fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of twenty-eight thousand dollars.

(3) An employer who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on summary

AMENDMENT(S)

To Page **14**

NONE

conviction to a fine of twenty-eight thousand dollars and in addition, to a fine of five hundred dollars for every day the breach continues until the employer has complied with such provisions.

(4) Where a trade union has been certified under section 22, or has made application for certification under section 18, an employer who decides to close an undertaking must give the Board and the concerned trade union -

- (a) reasonable notice of his intention;
- (b) reasons for his decision; and
- (c) the numbers and categories of workers to be affected.

(5) The union concerned must be consulted before the final decision to close is taken.

(6) An employer who closes an undertaking without complying with subsections (4) and (5) shall be guilty of an offence and shall be liable on summary conviction to a fine of fifty-six thousand dollars and to imprisonment for six months.

(7) In any prosecution under subsection (6) the onus shall be on the employer to prove that he gave the Board and the union concerned reasonable notice and reasons in accordance with subsection (4).

24. (1) Every trade union shall keep a record of its certification made by the Board under section 22, in the prescribed form for the purposes of this Act.

Record of
certification.

(2) The production of the record or of a copy of the relevant portion thereof, certified by the Secretary of the Board shall be admissible in all courts and shall be conclusive proof of the matters therein stated.

25. (1) (a) Except where the Board has failed to determine the application within the period of one month as mentioned in section 18 (4) any trade union which in furtherance of a claim to be certified as the recognised union for the whole or any part of that unit,

Offences by
trade unions

AMENDMENT(S)

To Page 15

Amendment(s) Made By The Select Committee

Clause 25 **Substitution** of “two months” for “one month” in subsection (1)(a).

induces workers to strike shall be guilty of an offence and liable on summary conviction to a fine of twenty-eight thousand dollars.

(b) Subject to subsection (1) (a), any worker who in furtherance of a claim by a union to be certified under section 22, takes part in a strike shall be guilty of an offence and liable on summary conviction to a fine of seven thousand dollars.

(2) Subject to subsection (1) (a), where an offence has been committed under this section by a trade union with the consent or connivance of any officer of the union or any person purporting to act in such capacity, such officer or person shall be guilty of an offence and liable on summary conviction to a fine of twenty-eight thousand dollars.

Offences by
employers.

26. (1) No worker shall be dismissed, or have his employment adversely affected, or his position altered by his employer, by reason of the circumstances that the worker -

- (a) is an officer, delegate or member of a trade union;
- (b) has appeared as a witness or has given any evidence in proceedings under this Act; or
- (c) has absented himself from work without leave after he has made an application for leave for the purpose of carrying out his duties as an officer or delegate of a trade union and such leave has been unreasonably refused or withheld.

(2) An employer shall not -

- (a) make the employment of a worker subject to the condition that he shall or shall not become a member of a trade union or shall relinquish his membership of a trade union;
- (b) dismiss a worker, or adversely affect his employment, or alter his position to his prejudice by reason of his participation

AMENDMENT(S)

To Page 16

Amendment(s) Made By The Select Committee

Clause 26 **Substitution** of “has for reasonable cause” for “has” where it occurs for the first time in subsection (1)(c).

Substitution of “duties under this Act” for “duties” in subsection (1)(c).

in the activities of a trade union outside his working hours;

- (c) with intent to dissuade or prevent a worker from becoming such officer, delegate or member, or from so appearing or giving evidence, threaten to dismiss him, or to affect his employment adversely or to alter his position to his prejudice by reason of the circumstances that the worker is or proposes to become, an officer, delegate or member of a trade union, or that worker proposes to appear as a witness or to give evidence in any proceeding under this Act.

(3) An employer who contravenes any of the provisions of subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine of twenty-eight thousand dollars; and the magistrate making the order for conviction shall also order that the worker be reimbursed any wage lost by him and direct that, notwithstanding any rule of law to the contrary, the worker be reinstated in his former position or in a similar position with terms and conditions of employment no less favourable.

27. Where a trade union is certified as the recognised majority union -

- (a) such union shall immediately replace any other trade union that immediately before such certification was the recognised union for the workers comprised in the bargaining unit and, subject to paragraph (c), shall have exclusive authority to enter into collective bargaining on behalf of workers in that unit;
- (b) if another trade union had previously been certified in respect of workers

Effect of certification as the recognised majority union.

AMENDMENT(S)

To Page *17*

NONE

comprised in the bargaining unit, the certificate of the last mentioned trade union shall be revoked in respect of such workers; and

- (c) if, at the time of certification, a collective agreement is in force, such trade union shall be substituted as a party to the agreement in place of the union that was a party to the agreement.

New collective agreement of recognised majority union.

28. Where a recognised majority union is substituted as a party to a collective agreement in accordance with section 27 (c), the union so substituted as a party to the collective agreement may submit to the employer proposals for the revision of the collective agreement or for a new collective agreement and the parties shall bring into effect, the revised or new collective agreement within ninety days of the date on which the substitution of the recognised majority union occurred. the collective agreement in force so remaining until a new collective agreement is signed.

Limitations on application for certification.

29. (1) No application for certification of recognition shall be entertained or proceeded with where -

- (a) there is a recognised majority union for the same bargaining unit described in the application; and
- (b) the application is made earlier than two years after the recognised majority union obtained certification as such, but an application may be made with leave of the Minister although two years have not expired since the certification was obtained.

(2) Where a union desires to obtain leave of the Minister pursuant to subsection (1) (b) it shall make an application to the Minister for the purpose, and if the Minister is satisfied that good reasons exist for making the application for certification of recognition before the expiration of the period of two years, he may grant leave accordingly

(3) In determining whether good reasons exist under subsection (2), the question, whether the union making the

AMENDMENT(S)

To Page 18

Amendment(s) Made By The Select Committee

Clause 28 **Substitution** of “expeditiously” for “within ninety days of the date on which the substitution of the recognised majority union occurred”.

Clause 29 **Substitution** of “Board” for “Minister” wherever it occurs.

Substitution of “the Board may grant” for “he may grant” in subsection (2).

application to the Minister, has the support of more than fifty per cent of the workers comprised in the bargaining unit for which the recognised majority union is certified, may be taken into account, but may not be the sole reason on which leave is to be granted.

(4) No application for certification of recognition may be made by a trade union earlier than twelve months from the date

when the application made by that union for certification with respect to the same bargaining unit was last determined or from the date when its certificate of recognition was cancelled.

(5) An application for certification of recognition once made may not be withdrawn, except with leave of the Board.

30. (1) The bargaining unit and record of certification or recognition may be varied in accordance with the provisions of this section.

Variation
of
bargain-
ing
unit after
certifica-
tion.

(2) Application may be made to the Board, for variation of the bargaining unit not earlier than one year after the date of the certificate of recognition.

(3) An application for variation of the bargaining unit may be made by -

- (a) the recognised majority union;
- (b) the employer;
- (c) workers employed in the bargaining unit for which the union is certified, for the exclusion from that bargaining unit of those workers or any of them on the ground that it is no longer an appropriate bargaining unit in so far as it includes those workers or any of them; or
- (d) workers not so employed but employed by the same employer, for their inclusion in the bargaining unit for which the union is an appropriate bargaining unit for the inclusion of those workers.

AMENDMENT(S)

To Page 19

Amendment(s) Made By The Select Committee

Clause 29 **Addition** of the following after subsection (5):-

“(6) Where a union is dissatisfied with the decision of the Board made under subsection (2), the union shall have a right of appeal to the Minister.”.

(4) The Board shall not entertain an application under subsection 3 (c) unless it is satisfied that not less than fifty per cent of the workers comprised in the bargaining unit have signified in writing their concurrence in the application.

(5) Where, on an application under subsection (3) the Board is satisfied, after having considered the circumstances set out in section 19, that workers should be excluded from, or included in, a bargaining unit, it may vary the bargaining unit accordingly and make an order for the variation of the certification and record thereof, made under section 22.

(6) The certification of a trade union as a recognised majority union shall not be affected by reason only of inclusions in, or exclusions from the bargaining unit pursuant to the provisions of this section.

Poll for continued certification.

31. On an application made by a minimum of forty per cent of workers in a bargaining unit for which a union is certified the Board shall cause a poll to be taken to determine whether the union shall continue to be so certified.

Certification of existing recognised majority unions.

32. Where a union immediately before the commencement of this Act was recognised as the bargaining union in respect of any bargaining unit, the Board shall issue a certificate to the union under section 22, certifying it to be the recognised union in respect of that unit:

Provided that where, on the establishment of the Board, there exists in any bargaining unit a challenge to the recognised union and such challenge is verified by the Minister, the Board shall, as soon as practicable, cause a poll to be taken in accordance with section 21.

PART IV

PROSECUTIONS

Prosecutions. 33. Subject to article 187 of the Constitution, no prosecution shall be commenced for any offence under this Act by or against the Board.

AMENDMENT(S)

To Page 20

Amendment(s) Made By The Select Committee

Clause 32 **Re-numbering** of clause 32 as subsection (1).

Substitution of “Notwithstanding section 18, where” for “Where” at the beginning of the clause.

Deletion of “and such challenge is verified by the Minister” in the proviso.

Addition of the following as a further proviso:-

“Provided further that a challenge to a recognised union shall be dealt with by the Board within three months after the coming into operation of this Act.”.

Addition of the following as subsection (2):-

“(2) For the removal of any doubt, it is hereby declared that a poll shall not be called in respect of a matter engaging the attention of the High Court.”.

34. Where any person is convicted for an offence under this Act, the order imposing any fine, or requiring the reimbursement of any wages lost, may also direct that the fine or wages, if not paid in accordance with the order, may be recovered by levying execution in accordance with the provisions of Part IV of the Summary Jurisdiction (Petty Debt) Act, as if the order were a judgement for the payment of money within the meaning of that Part, and thereupon, execution may be levied accordingly.

Recovery of fines and wages.

Cap. 203

35. Notwithstanding the provisions of this Act, where the State is the employer the State or any agent or representative of the State shall not be liable to prosecution under this Act but an aggrieved party may apply to the High Court for a declaration and the High Court may make an order declaratory of the rights of such party.

Where State is employer.

PART V

RULES, REGULATIONS

36. Subject to this Act and to any regulations made thereunder, the Board may make rules providing for the form and manner in which matters may be brought before it and determined:

Rules.

Provided that before such rules are made they shall be sent to the most representative associations of trade unions and employers respectively, for their comments.

37. (1) The Minister may make regulations generally for carrying out the provisions of this Act, and, without prejudice to the generality of the foregoing, regulations may -

Regulations.

(a) provide for the conduct of surveys and polls; and

(b) prescribe anything which is to be prescribed under this Act.

(2) A person who contravenes any of the regulations made under this Act, shall on summary conviction be liable to a fine of

AMENDMENT(S)

To Page 21

NONE

twenty-eight thousand dollars, and in the case of a continuing offence, to a further fine of two thousand dollars for each day during which the offence continues.

EXPLANATORY MEMORANDUM

Part II seeks to establish a Trade Union Recognition and Certification Board which shall have responsibility for examining and adjudicating on all claims for recognition. The membership of the Board shall comprise persons, representative of the Government, employers and employees, in keeping with the principle of tripartism in industrial relations. This Part also confers appropriate powers on the Board and sets out procedures designed to ensure a fair hearing in the determination of all recognition issues.

This Bill seeks to provide a much needed measure of reform in regulating industrial relations in Guyana. It introduces procedures for determining and certifying which trade union should be regarded as the recognised majority union in relation to any particular undertaking.

Part III seeks to set out the machinery for determining the recognised majority union and to protect the rights and freedoms of trade unions and of workers. A union determined as the recognised majority union, shall be issued a certificate of recognition under the seal of the Board and shall be entitled to compulsory recognition by the employer. This part also establishes procedures to be followed by trade unions upon being certified as recognised majority unions and also establishes procedures for the variation of the bargaining unit after certification. Part III penalises acts done by employers with the intention of denying employees their right to freedom of association, as well as acts done by trade unions in violation of the procedure for the settlement of issues.

Part IV seeks to provide for prosecutions and the recovery of fines and wages and exempts the State from prosecution under the Act.

Part V seeks to provide for rules to be made by the Board, and regulations by the Minister.