



SWAZILAND  
GOVERNMENT GAZETTE  
EXTRAORDINARY

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VOL. XXXIII]

MBABANE, Friday, March 31st, 1995

[No. 82

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## THE INDUSTRIAL RELATIONS BILL, 1995

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(Bill No. 4 of 1995)

(To be presented by the Minister for Labour and Public Service)

## MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide for the collective negotiation of terms and conditions of employment and for the establishment of an Industrial Court for the settlement of disputes arising out of employment and to provide for matters incidental thereto.

S.H. ZWANE

*Attorney-General*

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## A BILL

entitled

An Act to provide for the collective negotiation of terms and conditions of employment and for the establishment of an Industrial Court.

ENACTED by the King and the Parliament of Swaziland.

## PART I

## PRELIMINARY

*Short title and commencement.*

1. This Act may be cited as the Industrial Relations Act, 1995 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

*Interpretation.*

2. In this Act, unless the context otherwise requires -

"arbitrator" means a person listed as an arbitrator by the Labour Advisory Board and approved by the Minister;

"casual employee" means an employee whose terms of engagement -

- (a) provide for his payment at the end of each day, and
- (b) who is not engaged for a longer period than twenty four hours at a time;

"certificate of registration" means a certificate issued under section 21;

"collective agreement" means an agreement in writing covering terms and conditions of employment and procedures for the settlement of disputes and grievances, concluded by a joint industrial council, or by an employer, a group of employers, or an employers association on the one hand and an industry union or industry staff association on the other hand;

"collective employee representative" means an industry union or industry staff association which has been designated by the Court as the collective representative of all employees or categories of employees in a particular industry included in the designation, or which has been recognised as such under section 39;

"collective employer representative" means an employers association which has been designated by the Court as the collective representative of all employers in the industry named in the designation;

"collective representative" means "collective employee representative" or "collective employer representative" as the context may require;

"Commissioner of Labour" means any person appointed Commissioner of Labour and any other person acting under his authority;

"company" means a body corporate and includes a partnership;

"Court" means the Industrial Court established by section 4;

"dispute" includes a grievance, a trade dispute and means any dispute over the -

- (a) entitlement of any person or group of persons to any benefit under an existing collective agreement or work council agreement;
- (b) existence or non-existence of a collective agreement or works council agreement;
- (c) disciplinary act, dismissal, employment, suspension from employment, re-employment or re-instatement of any person or group of persons;
- (d) recognition or non-recognition of an organization seeking to represent employees in the determination of their terms and condition of employment;
- (e) application or the interpretation of any law relating to employment; or
- (f) terms and conditions of employment of any employee or the physical conditions under which such employee may be required to work;

"employee" means a person, whether or not the person is an employee at common law, who works for pay or other remuneration under a contract of service or under any other arrangement involving control by, or sustained dependence for the provision of work upon another person but does not include a casual employee;

"employer" means a person who employs another person as an employee under this Act and includes the Government, the Swazi National Council or anyone acting on behalf of an employer;

"employers association" means an association of employers which seeks to provide collective representation for employers in the negotiation and regulation of relations between employers and employees or between employers and employees;

"federation" means a body which is wholly comprised of employers and a combination of

employers associations, industry unions or industry staff associations as the case may be;

"immediate family" means, in relation to a person, such person's father, mother, grand-father, grand-mother, step-father, step-mother, son, daughter, grand-son, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister, wife, husband, common law wife or common law husband;

"industry" means a sector of economic activity where the employers provide a similar service, or are engaged in the production, manufacture, processing, purchase or sale of a similar product or similar products;

"industry staff association" means any combination of staff, the principal purpose of which is the regulation of relations between staff and employers within one industry;

"industry union" means a combination of employees, other than staff, the principal purpose of which is the regulation of relations between employees and employers in a particular industry;

"joint industrial council" means a body constituted for an industry under section 41 and having the duty of negotiating terms and conditions of employment for all employees, other than staff, in that industry;

"Labour Advisory Board" means the Board established by section 17 of this Act;

"lockout" means a total or partial refusal by an employer or group of employers to allow his or their employees to work, if such refusal is done with a view to inducing compliance with any demand or with a view to inducing the abandonment or modification of any demand;

"managerial staff" means an employee who -

- (a) has authority on behalf of the employer to employ, transfer, suspend, lay off, recall, promote, dismiss, reward, or discipline other employees or deal with their grievances, or to authorise or recommend such action, when the exercise thereof is not solely of a routine or clerical nature, but required the use of independent judgement; or
- (b) participates in the making of general company policy; or
- (c) works in a capacity which requires him to have full knowledge of the financial position of the employer; or
- (d) has free personal access to other confidential information substantially affecting the conduct of the business of the employer;

"mediation" means the process of settling a dispute through mediators as provided for in section 61;

"Minister" means the Minister for the time being responsible for Labour;

"office" means an official position in an industry union, industry staff association, employers association or federation as the case may be;

"officer" means a person who holds an office in a federation, an industry union, industry staff association, employers association and includes a member of a committee of an industry union, staff association or employers association, or a person employed by such a body as its secretary in a full time or part time capacity;

"organisation" means an industry union, industry staff association or an employers association as the context may require;



"picketing" means the attendance, by one or more persons, directly involved in a dispute, at or near a place where such persons are normally employed or carry on business, for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or refrain from working;

"President" means the President of the Court;

"recognition" means recognition as collective employee representative as provided by section 39;

"strike" means a complete or partial stoppage of work carried out in concert by two or more employees or any other concerted action on their part designed to restrict their output of work against their employer, if such action is done with a view to inducing compliance with any demand or with a view to inducing the abandonment or modification of any demand;

"undertaking" means -

- (a) mines, quarries or other works for the extraction of minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building and civil engineering work, including constructional repair, maintenance, alteration and demolition work;
- (d) undertakings engaged in the transport of passengers or goods by road, rail or air including the handling of goods at warehouses or airports;
- (e) any establishment or office, including establishments engaged wholly or mainly in the sale, purchase, distribution, insurance, negotiation, loan or administration of goods or services of any kind;
- (f) any establishment or administrative service in which the persons employed are mainly engaged in clerical work;
- (g) any newspaper undertaking;
- (h) any establishment for the treatment or care of children or aged, destitute, infirm, mentally unfit or sick persons;
- (i) any broadcasting, postal or telecommunication service, or establishment for the production of cinematographic films;
- (j) any boarding house, cafe, club, hotel, restaurant, or other establishment for public refreshment or public entertainment;
- (k) any undertaking employing more than ten persons engaged in
  - (i) the clearing, felling or stripping of trees, or the construction of roads, bridges or tunnels in a forest area;
  - (ii) the cultivation of land and the use of land for the purpose of husbandry, horticulture, fruit growing, seed growing, dairy farming, livestock or poultry keeping, or breeding, grazing of livestock and the preparation of food for livestock;

but shall not include -

- (i) any undertaking, other than an undertaking in which any harmful or dangerous trade or occupation is carried on, in which only members of the immediate family of the proprietors are employed, or
- (ii) domestic service in a private house;

"works council" means a body established under Part VI;

"works council agreement" means an agreement reached by a works council under the provision of Part VI;

*Power of Minister to exempt.*

3. (1) Subject to sub-section (2), the Minister may by notice published in the Gazette, exempt any person or public authority or class of persons or a class of public authorities from the operation of all or any of the provisions of this Act or any regulation or rule made thereunder.

(2) The Minister shall not make any exemption incompatible with any international labour Convention to which Swaziland is a party.

## PART II.

### ESTABLISHMENT AND ADMINISTRATION OF INDUSTRIAL COURT

*Establishment and composition of Industrial Court.*

4. (1) An Industrial Court is hereby established with all the powers and rights set out in this Act or any other law, for the furtherance, securing and maintenance of good industrial relations and employment conditions in Swaziland.

(2) The Court shall consist of -

- (a) at least two persons qualified to be judges of the High Court one of whom shall be President of the Court, the others being called judges, all of whom shall be appointed in the same manner as a judge of the High Court but in consultation with the Minister and the Minister of Justice;
- (b) two or more other members and alternate members with knowledge and experience in labour related matters to be known as nominated members who shall be appointed by the President.

(3) A judge and two members shall form a quorum of the court.

(4) The nominated members or alternate members referred to in subsection (2) shall, prior to appointment, be chosen by the President after consulting the Commissioner of Labour, from a panel of six names nominated by employers organisations and from a panel of six names nominated by employees organisations.

(5) Nominated members and alternate members shall be -

- (a) appointed by the President on such terms and conditions and approved by the Minister and shall hold office for a term of three years after which they may be a legible for renomination;
- (b) entitled to such fees as may be prescribed by regulation.

(6) The employer of a nominated member shall permit him or her during working hours to perform any of the duties of such a member, and the Court may make such order as it deems necessary to ensure compliance with this subsection.

*Jurisdiction.*

5. (1) Unless there are circumstances beyond its control, the Court shall have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of any application, claim or complaint or infringement of any of the provisions of this Act, an employment Act, a workmen's compensation Act, or any other legislation which extends jurisdiction to the Court in respect of any matter which may arise at common law between an employer and employee in the course of employment or between an employer or employers' association and an industry union, or between an employers' association, an industry union, an industry staff association, a federation and a member thereof.

(2) (a) An application, claim or complaint may be lodged with the Court by or against an employee, an employer, an industry union, an industry staff association, an employers' association, a federation, the Commissioner of Labour or the Minister.

(b) The Court may consolidate claims for the purpose of hearing witnesses, as appropriate.

(3) In the discharge of its functions under this Act, the Court shall have all the powers of the High Court, including the power to grant injunctive relief.

(4) In deciding a matter, the Court may make any order it deems reasonable which will promote the objects of this Act.

(5) The Court may make any decision or order retrospective to such date as the Court may consider just in the circumstances of the particular case.

(6) Any decision or order by the Court shall have the same force and effect as a judgment of the High Court and a certificate signed by the President or judge of the court shall be conclusive evidence of the existence of such decision or order.

(7) Any matter of law arising for decision at a sitting of the Court and any question as to whether a matter for decision is a matter of law or a matter of fact shall be decided by the President, or the judge of the court provided that on all other issues, the decision of the majority of the members shall be the decision of the Court.

(8) (a) The Court shall have the power to refer to the Director of Public Prosecutions any alleged criminal offence under this Act.

(b) Within 90 days of such referral, the Director of Public Prosecutions shall report to the Court on the measures taken and submit a copy of such report to the Commissioner of Labour.

(9) In the exercise of its powers under this Act, the court shall take into consideration any guidelines relating to wage and salary levels and other terms and conditions of employment that may from time to time be issued by the government.

*Court practice and procedure.*

6. The President, after consulting the Attorney-General and the Chief Justice shall, by notice in the Gazette, make rules to govern the Court's practice and procedure.

*Representation of parties.*

7. Subject to any rules made under section 6, any party to any proceedings brought under this Act before the Court may represent himself or herself or be represented by a legal practitioner or any other person authorised by such party.

*Evidence and technical irregularities.*

8. (1) The Court shall not be bound by the rules of evidence or procedure which apply in civil proceedings and may disregard any technical irregularity which does not or is not likely to result in a miscarriage of justice.

(2) Without restricting the generality of subsection (1), the President or judge of the Court may in their discretion admit as prima facie evidence a report filed under this Act, or a written report prepared by the Commissioner of Labour or any officer acting under his authority.

*Power of Court to remit matters to parties, order parties to attend, etc.*

9. (1) If in the Court's opinion the points at issue in any matter before it are not clearly defined to allow the matter to be heard or determined, the Court may remit the matter to the parties, with such directions and advice as it may deem appropriate.

(2) For the purpose of considering any matter before it, the Court may require a person to -

- (a) furnish, in writing or otherwise, such particulars as the Court may require in relation to any matter before it;
- (b) attend before it;
- (c) give evidence on oath or affirmation;
- (d) produce any relevant document.

(3) A person who, without reasonable cause, fails to comply with an order given under subsection (2), shall upon conviction, be liable to a fine not exceeding E2,000 (two thousand Emalangeni) or in default of payment, to a period of imprisonment not exceeding two years.

(4) Any person who -

- (a) furnishes information, provides documents or particulars; or
- (b) gives evidence

which he or she knows or has reasonable cause to believe is false or misleading shall, upon conviction, be liable to a fine not exceeding E2,000 (Two thousand Emalangeni) or to a period of imprisonment not exceeding two years or both.

(5) The witness fees and any rules laid down by the High Court in connection with such fees payable to any person subpoenaed to give evidence in a criminal case before the High Court shall, mutatis mutandis, apply to any person ordered to attend the Court in terms of subsection (2) (b).

*Costs.*

10. (1) No costs shall be awarded by the Court except against a party held by it to have acted frivolously or vexatiously or with deliberate delay in the bringing or defending of a proceeding.

(2) The tariff of costs laid down under the Rules of the High Court shall mutatis mutandis, apply, to the costs awarded by the Court in accordance with subsection (1).

*Right of appeal or review.*

11. (1) There shall be a right of appeal against the decision of the Court on a question of law only to the High Court.

(2) The High Court, in considering an appeal under this section, shall have regard to the fact that the Court is not bound by the rules of evidence or procedure which apply in civil proceedings.

(3) An appeal against the decision of the Court to the High Court shall be lodged within three months of the date of the decision.

(4) The noting of an appeal under subsection (1), shall not stay the execution of the Court's order unless the Court on application, directs otherwise.

(5) A decision or order of the Court shall, at the request of any interested party, be subject to review by the High Court on grounds permissible at common law.

*Enforcement of Court orders.*

12. (1) An order of the Court -

(a) made under this Act and directing the payment of money or the delivery of any property shall be enforceable by execution in the same manner as an order of the High Court.

(b) directing the performance or non-performance of any act shall be enforceable by contempt proceedings in the Court in the same manner as an order of the High Court.

*Penalty for contravention of order of Court.*

13. A person, organisation or federation held by the Court to have breached an order of the Court, other than an order referred to in section 9, shall upon conviction be liable to a fine not exceeding five thousand Emalangeni, or in default of payment to a period of imprisonment not exceeding five years:

Provided that the court shall consider each day of a continuing contravention of this section or section 9 as a separate contravention or breach.

*Fine may be ordered to be paid to person suffering loss.*

14. If a Court imposes a fine under this Act, and if the Court is satisfied that any person has suffered monetary loss as a result of the breach which led to the fine, the Court may order the whole or any part of the fine to be paid to that person.

*Remedial powers of Court in cases of dismissal, discipline or other unlawful disadvantage.*

15. (1) If the Court, in settling any dispute or grievance, finds that the services of any employee have been terminated or any employee has been disciplined or otherwise disadvantaged or prejudiced contrary to a registered collective agreement or to any law relating to employment, the Court shall make an order granting such remedy as it may deem just.

(2) Without restricting the generality of subsection (1), the Court in settling a dispute or grievance under this section, may award any of the following remedies -

(a) an order for reinstatement whereby the employee is to be treated in all respects as if his or her services had never been terminated including payment of wages, salary and any remuneration payable by virtue of his or her employment;

(b) an order for re-engagement whereby the employee is to be engaged in work comparable to that on which he or she was engaged prior to the termination of his or her services, or other reasonably suitable work, from such date and on such terms of employment as may be specified in the order;

(c) an order that the employer take within a specified period, action appearing to the Court to be practicable for the purpose of obviating or reducing the adverse effect on the employee of any disciplinary act, disadvantage or prejudice;

- (d) an award of compensation in substitution for, or in addition to, any of the remedies specified in clauses (a) to (c) to be determined in accordance with subsection (4) or subsection (8) as the case may be.

(3) Where the services of an employee have been unlawfully or unfairly terminated, the Court shall, in deciding which remedy to award, first consider the possibility of making an award of reinstatement or re-engagement, taking into account the following factors -

- (a) the wishes of the employee;
- (b) the circumstances in which the termination of services took place, including the extent, if any, to which the employee contributed to the termination;
- (c) the practicability of the employer complying with the award.

(4) Where the services of an employee have been unlawfully or unfairly terminated, an award of compensation, of not less than twelve months' remuneration and not more than thirty six months' remuneration, shall be awarded by the Court as it considers just and equitable in all the circumstances having regard to the loss sustained by the employee in consequence of the termination insofar as that loss is attributable to action taken by the employer, and the extent, if any, to which the employee caused or contributed to the termination, and without prejudice to the generality of the foregoing, the court shall have regard to -

- (a) the actual and future financial loss likely to be suffered by the employee as a result of the termination, including the loss of any benefits connected with the employment which are capable of being expressed in terms of money;
- (b) the age of the employee;
- (c) the prospects of the employee obtaining other equivalent employment;
- (d) the circumstances of the termination.

(5) Where the Court has made an award of reinstatement or re-engagement under subsection (1) and the employer can show a good cause in not complying therewith, the employee shall be entitled to a special award to be determined by the court, but this shall not affect entitlement to an award of compensation under subsection (4).

(6) Where the employer can show good cause for not complying with the award of reinstatement or re-engagement, the amount of the special award may be reduced at the discretion of the Court, but this shall not affect entitlement to an award of compensation under subsection (4).

(7) Where the Court has made an order under subsection 2 (c) and this is not complied with by the employer, the Court shall award such compensation, or additional compensation, as it considers just and equitable in all the circumstances having regard to the loss sustained by the employee:

Provided that where the employer can show good cause for not complying with the order, the amount of compensation may be reduced at the discretion of the Court.

(8) Compensation awarded under this section is in addition to, and not in substitution for, any severance allowance or other payment payable to an employee under any other law, including any payment to which an employee is entitled under his or her contract of employment or an applicable collective agreement.

(9) Where the Court has made an order under sub-section (2) (c) due to an act or omission by the employer which constitutes a contravention of this Part, the employee shall be entitled,

regardless of the circumstances, to an award equivalent to one hundred and four weeks' remuneration in addition to an award of compensation under sub-section (7).

*Housing.*

16. (1) Where an employee's normal place of residence is provided by his or her employer, or is otherwise associated with his or her employment, an employee and his or her family shall not be compelled to leave such residence until one calendar month from the day of the termination has elapsed.

(2) Where the Court awards compensation under section 15 to an employee covered by subsection (1) and whose services have been terminated, such award shall include compensation for loss of residence.

### PART III

#### LABOUR ADVISORY BOARD

*Establishment and composition of Labour Advisory Board.*

17. (1) There is hereby established a Labour Advisory Board which shall consist of the following persons -

- (a) a chairperson who shall be the Deputy Commissioner of Labour;
- (b) a deputy chairperson who shall be the Deputy Commissioner of Labour;
- (c) six members who shall represent the interests of employees and be appointed by the Minister from a panel of names submitted by the employees organisations through their federations if affiliated to any.
- (d) six members who shall represent the interests of employers and be appointed by the Minister from a panel of names submitted by the employers organisations through their federation if affiliated to any.

(2) There shall be a Secretary to the Board who shall be appointed from the Department of Labour.

(3) The members of the Board shall be appointed by the Minister by notice in the Gazette for such period, not exceeding three years, and on such terms and conditions as the Minister may determine and shall be eligible for reappointment in accordance with the procedure specified in subsection (1) (c) or (d) as the case may be.

(4) The Minister may terminate the appointment of a member on account of -

- (a) the member's physical or mental incapacity;
- (b) the member's unexcused absence from three consecutive meetings of the Board;
- (c) a recommendation by a majority of the Board's members representing the interests of employees that one of their members should be replaced;
- (d) a recommendation by a majority of the Board's members representing the interests of employers that one of their members should be replaced.

(5) A member of the Board may at any time resign his or her membership by giving one month's notice in writing to the Minister.



(6) Where the Minister terminates the appointment of a member of the Board in terms of subsection (4) or a member resigns, the Minister shall appoint a person to replace that member in accordance with subsections (1) and (3).

(7) The employer of a person who is a member of the Board shall release that person from work to attend meetings of the Board and the court may make such order as it deems necessary to ensure compliance with this instruction as may be established.

(8) Members of the Board including the Secretary shall receive such fees as may be established by the Minister by notice in the Gazette.

*Duties of the Board.*

18. (1) The duties of the Board shall be to consider and advise the Minister on any matter affecting employment initiative or at the request of the Minister and, without prejudice to the generality of the foregoing, such matters shall include -

- (a) proposals for any new legislation relating to employment or industrial relations;
- (b) amendments to this Act or any other law relating to employment or industrial relations, including the penalties for any offences contained therein;
- (c) proposed action in regard to -
  - (i) agenda items or texts to be discussed by the International Labour Conference;
  - (ii) the submission of international labour Conventions or Recommendations to the authorities empowered to enact legislation;
  - (iii) measures to provide for the implementation or ratification of recommendations or international labour conventions as appropriate;
  - (iv) questions arising out of reports submitted under articles 19 and 22 of the Constitution of the International Labour Organisation;
  - (v) the denunciation of ratified international labour conventions.

(2) The Board shall compile and maintain a list of persons, no fewer than three in number at any one time, with sufficient experience in industrial relations or labour law to serve as arbitrators under section 61 of this Act.

*Meetings of the Board.*

19. (1) A quorum for the Board shall be -

- (a) the Chairperson or Deputy Chairperson of the Board;
- (b) two of the members representing employees' interests;
- (c) two of the members representing employers' interests.

(2) The Board shall have the power to co-opt other persons as members for any particular purpose approved by the Minister and such persons shall have all the rights and privileges accorded to appointed members of the Board for the period of their co-option.

(3) The Board shall meet -

- (a) at the initiative of the Chairperson or Deputy Chairperson of the Board on no fewer than four (4) occasions in any calendar year.



- (b) upon the petition of any six members and within ten working days from receipt of the petition by the secretary.
- (4) Subject to this section, the Board shall regulate its own procedure.

#### PART IV

##### EMPLOYEE, STAFF AND EMPLOYER ORGANISATIONS, FEDERATIONS AND INTERNATIONAL ORGANISATIONS

###### *Adoption and registration of constitutions.*

20. (1) Subject to section 27, within three months after its formation, an organisation or federation shall prepare and adopt a written constitution which shall be submitted to the Commissioner of Labour for registration immediately after its adoption.

(2) An organisation of employers shall be deemed to have been formed on the date on which two or more employers agree in writing to form such organisation.

(3) An organisation of employees shall be deemed to have been formed on the date on which six or more employees agree in writing to form such organisation.

###### *Restriction on activities until constitution registered.*

21. An organisation shall not nominate any candidate for election to a joint industrial council, or carry on any activities for or against any candidate in any such election until the constitution of that organisation has been registered with the Commissioner of Labour and a certificate has been issued by the Commissioner to the organisation that such constitution complies with this Act.

###### *Constitution.*

22. The constitution of an organisation shall include the following -

- (a) the name of the organisation and the undertaking or industry in which its activities on behalf of employees will be carried on;
- (b) the offices in the organisation among which shall be the offices of chairperson, secretary and treasurer;
- (c) provision for an election by secret ballot to all offices at least once every two years, and for the naming of a temporary replacement if an office holder becomes disqualified or incapacitated from holding office;
- (d) provision for a general meeting open to all members at least once a year and for the giving of at least twenty one days notice of that meeting to all members;
- (e) a provision that any member may propose a resolution or question an officer at a general meeting;
- (f) a provision that -
  - (i) the general meeting shall be the forum for deciding the policies of the organisation and for reviewing the officers' conduct of the organisation's affairs;
  - (ii) the organisation's officers and representatives are to be bound by decisions of a general meeting;
  - (iii) a general meeting may authorise a Committee of its members to act on its behalf on all or any of the matters referred to in this paragraph for a specific period;

- (g) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses his good financial standing;
- (h) provision that subject to the terms of this Act and to the constitution of the organisation, only a fully paid up member may vote in the election of officers, nominate a candidate for any office, be nominated for, or be elected to any office, or express his views on candidates and issues;
- (i) the grounds on which an officer or member be suspended or expelled from office or from membership, each ground being specific;
- (j) the procedure for suspension or expulsion from office or from membership, including provision that the affected officer or member be fully informed in writing of the allegations against him, that he shall have a reasonable opportunity to meet those allegations and that he shall have a right of appeal to a special or general meeting of the organisation;
- (k) provision for the keeping of full and accurate accounts by the treasurer or other appropriate officer, for the annual audit of those accounts by a suitable and competent person appointed by the organisation who shall not be a member of that organisation, and for the availability to all members of a full, audited annual statement of account;
- (l) provision for the banking and investment of the organisation's funds;
- (m) provision for the paying out of the organisation's funds, including the authority to sign cheques;
- (n) provision for terms and conditions of service including the payment of the expenses and salaries, if any, of officers and employees of the organisation and provision that no other payments may be made to any officer or employee without the prior approval of a general meeting;
- (o) the conditions under which a member may become entitled to any financial benefit provided by the organisation;
- (p) provision for amending the constitution;
- (q) the duration of its financial year;
- (r) provision for the appointment of trustees;
- (s) the inspection of the register of members and other books of the organisation by any member;
- (t) provision for informing members of the progress and result of any negotiations entered into by the organisation aimed at the conclusion, alteration, amendment or abandonment of any collective agreement to which the organisation is, or is to be, a party;
- (u) the manner of dissolving the organisation.

*Organisations to be confined to one Industry.*

23. (1) An industry union may have as members, and may purport to represent, only persons who are currently or usually employed in the industry in which that industry union is active or who have distinct occupational qualifications for employment in that industry.

(2) An industry staff association may have as members, and may purport to represent only staff who are currently or usually employed in the industry in which that staff association is active

or who have distinct occupational qualifications for employment in that industry.

(3) An employer's association may have as members, and may purport to represent only those persons or business associations who are engaged in a pursuit within the industry in which that employers' association is active and which usually has one or more employees working in that industry.

*Right to be or not to be a member and prohibited provisions and practices.*

24. (1) A person eligible for membership in an organisation under section 23 has a right to membership in that organisation if that person pays any fees that are properly payable to it, and has a right to remain a member as long as the person complies with the rules of the organisation.

(2) A person eligible under section 23 has the right not to join such organisation.

(3) An employer shall not require membership of any organisation as a condition of employment or offer any form of inducement or deterrent to any employee or prospective employee designed to influence his decision to join or not to join an organisation.

(4) The constitution of an organisation shall not impose any condition, obligation or restriction which is oppressive, unreasonable or unjust.

(5) Without restricting the generality of subsection (4), no organisation shall discriminate, in its constitution, against any person on the ground of race, colour, creed, marital status, sex, tribal, ethnic or clan extraction, political opinion or affiliation, or social status.

*Annual return from organisations and federations.*

25. (1) Within five calendar months after the end of each financial year, an organisation or federation shall submit a return to the Commissioner of Labour which shall include -

- (a) the organisation's or federation's current postal address;
- (b) the names and postal addresses of its current officers;
- (c) the details of any amendments made to its constitution since the preceding return;
- (d) its audited accounts for the preceding financial year prepared by registered auditors;
- (e) where it is an organisation, the federation to which it is affiliated and the total number of its members;
- (f) where it is a federation the names of its affiliates and the number of members of each affiliate and the name of an international body or bodies to which it is affiliated.

(2) An organisation or federation which is in breach of subsection (1) shall not nominate any candidate for election to a joint industrial council, or carry on any activities for or against any candidate in any such election, nor shall such organisation participate in the activities of the joint industrial council until the breach is remedied.

*Powers of Commissioner of Labour concerning constitutions and returns of organisations and federations.*

26. (1) If the Commissioner of Labour is of the bona fide opinion that an organisation's or federation's constitution, or any amendment thereto, or any return required under this Act does not comply, in whole or in part, with this Act, the Commissioner shall forthwith and in writing advise the organisation or federation concerned of his opinion and direct it to have the matter rectified in a specified manner.

(2) In the event of the organisation or federation concerned failing to comply with section 25 and with the Commissioner of Labour's directive in terms of subsection (1) within 30 days, the Commissioner of Labour may order suspension of the organisation or federation.

(3) Before acting under sub-section (2), the Commissioner of Labour shall give consideration to any representation, including counter proposals to a directive under subsection (1), made by the organisation or federation.

(4) The Commissioner of Labour shall after the expiry of 30 days suspension period, deregister the organisation or federation concerned by notice published in the gazette and newspapers circulating in Swaziland.

(5) The Commissioner of Labour may refuse to register the constitution of an organisation if satisfied that any other organisation, whose constitution is already registered, is sufficiently representative of the whole, or a substantial proportion of the interest in respect of which the applicants seek registration.

(6) The Commissioner of Labour shall inform the applicants, in writing, of the grounds for refusal to register the constitution of an organisation under subsection (4).

(7) An organisation or federation whose annual returns are long over due and has not submitted such returns by the date of coming into force of this Act, shall have three months within which to submit the returns.

(8) The Commissioner of Labour shall deregister the organisation or federation which fails to submit its returns within the three months period stipulated under sub-section (6).

*Powers of Court in regard to constitution and returns etc.*

27. (1) Upon application by an affected party or by the Commissioner of Labour, the Court may

- (a) strike out any provision in the constitution of an organisation or federation which violates any requirement of this Act, or amend the provision to bring it into compliance with this Act; or
- (b) alter or amend the constitution to provide any of the particulars required by section 22 which may be lacking.

(2) Notwithstanding subsection (1), an organisation or federation registered under the Industrial Relations Act, 1980 on the date of coming into force of this Act shall have three months within which to bring its constitution into conformity with this Act, after the expiry of which period subsection (1) shall apply.

(3) Any alteration or amendment of an organisation's or federation's constitution ordered by the Court under subsection (1), shall take effect on a date specified by the Court.

*Compliance with constitution.*

28. (1) Subject to sections 26 and 27 and to any other provisions of this Act, an officer, member or employee of an organisation or federation shall comply with the constitution of the organisation or federation, and a former officer, member and employee of an organisation or federation who is required to do or refrain from doing anything by such constitution shall comply with such requirement.

(2) Upon Application by an affected party or by the Labour Commissioner, the Court may

make any order which it deems necessary to prevent or stop a violation of any provision of the constitution of an organisation or federation.

*Improper practices in election of officers.*

29. (1) A person shall not attempt to affect the outcome of an election for any office in an organisation or federation by fraud, threats, bribery or other improper means.

(2) Upon application by any member of the organisation or federation affected by any unlawful conduct referred to in subsection (1), or by the Commissioner of Labour, the Court may declare such election null and void, determine a date for the holding of a fresh election and make provision for the filling of the office concerned, pending the outcome of such fresh election, or make such other order relating to such election or fresh election as it may deem fit.

*Criminal conviction a disqualification for office.*

30. (1) A person shall not hold office in an organisation or federation if he has been convicted, within ten years prior to the date of his election, of a crime involving dishonesty for which he or she was sentenced to imprisonment without the option of a fine, including a suspended sentence or imprisonment.

(2) Any person who is convicted of a crime involving dishonesty while holding office in an organisation or federation shall be deemed to have lost the office at the time of conviction.

*Disqualification from holding office etc.*

31. (1) (a) A person shall not at any one time hold office in more than one organisation or at anyone time hold office in an organisation and in a political party or be a Minister, Assistant Minister or Deputy Minister in the Government.

(b) A person shall not at any onetime hold office in a federation and in a political party or be a Minister, Assistant Minister or Deputy Minister in the Government.

(2) A person whose acquisition of an office places him or her in breach of this section or section 30 shall be disqualified from holding that office or from being represented by anyone, in it.

(3) Nothing in this section shall prevent an organisation or federation from utilising secretarial services, advisory services, or similar assistance from a central or communal source.

*Deposit and safeguarding of funds.*

32. (1) All funds received by or on behalf of an organisation or federation shall forthwith be deposited to the organisation's or federation's bank account, with a bank in Swaziland duly licensed as a financial institution under the Financial Institutions (Consolidation) Order, 1975.

(2) Expenditure of funds by or on behalf of an organisation or federation shall be evidenced by a written receipt of voucher, which shall be kept with the organisation's or federation's account.

(3) The treasurer or other officer responsible for the custody of the organisation's or federation's funds and property shall hand over such funds and property to the organisation or federation when he leaves office, or earlier if so directed by the Chairperson and Secretary of the organisation or federation or a general meeting.

(4) The Court may make such order as it deems necessary to secure compliance with this section.

*Legal status of organisation, federation and officers.*

33. (1) Whether or not its constitution has been registered under this Act, an organisation or federation shall be deemed to be a body corporate with the capacity to contract and to hold property, and with the capacity to sue and be sued in its own name.

(2) Notwithstanding subsection (1), no civil proceedings except those expressly allowed by this Act may be brought against an organisation or federation or against any officer, representative or member thereof, in respect of any act bona fide done by or on behalf of such an organisation or federation in the furtherance or purported furtherance of the interests of its members or of anyone whose interest are substantially similar to those of its members.

(3) Subsection (2) shall not be construed to exempt an organisation or federation or any of its officers, representatives or members from contractual liability for goods or services, from obligations incurred in respect of property, from any civil liability or from liability for any criminal, malicious or negligent act.

*Defunct organisations or federation.*

34. (1) Upon application by an affected person or by the Commissioner of Labour, the Court may, after making such enquiries as it may consider necessary, declare an organisation or federation to be defunct if the organisation or federation has not filed a return under section 25 or if the Court is satisfied that the organisation or federation is no longer carrying on any of the activities of an organisation or federation.

(2) A declaration made under this section shall include such directions for the disposal of the organisation's or federation's assets, if any, as the Court may deem just, having regard to the constitution of the organisation or federation.

*No compulsion to join or support organisation.*

35. (1) A person shall not seek, by the use of any threat or intimidation, to compel or coerce any other person to join or not to join or support any organisation.

(2) A person who contravenes this section shall, upon conviction, be liable to a fine not exceeding E5,000 (Five thousand Emalangen) or a period of imprisonment not exceeding 3 years or to both.

*Provision for federations.*

36. (1) Organisations may form, participate in, be affiliated to or join a federation which has as its principal objects the functions of advice, consultation and the provision of services to its members.

(2) A federation or an officer thereof shall not act, either by instruction to its members, or by taking instructions from its members in any way that might be held as being in restraint of trade, or in support of a political party, or in any other manner that might be construed as giving the federation the status or function of an industry union, industry staff association or employers association and without prejudice to the generality of the foregoing, a federation or an officer thereof shall not call any members of an industry union, industry staff association or any other person who is not a member of the federation, to any of its meetings or give such members or person any instructions which may cause a violation of this Act.

(3) A federation or officer thereof which causes or incites the cessation of work or economic activity by an organisation or contravenes subsection (2), shall upon conviction, be liable to a fine not exceeding ten thousand Emalangen (E10,000) or to imprisonment for a period not exceeding

ten years or to both and shall further, if an organization or federation, be deregistered or if an officer, not be eligible to hold office in any federation or organisation for a period of five years.

*International workers' and employers' organisations.*

37. (1) An organisation or a federation comprised solely of employee or employers' organisations, may affiliate with and participate in the affairs of international workers' or employers' organisations, make financial and other contributions to such organisations, and receive financial and other assistance from them:

Provided that before making an application for membership of any such international bodies the organisation or federation shall first consult with the Minister.

(2) A person shall not interfere with or impede the exercise of any right recognised by subsection (1).

(3) The Court may make such order as it deems necessary to prevent a breach of subsection (2).

*Limitation on non-occupational activities of organisations and federations.*

38. (1) Unless its constitution provides otherwise, and subject to the specific approval of a general meeting, the officers of an organisation or federation may express views on behalf of the organisation or federation on any matter of public policy or public administration.

(2) If upon application by a member of any organisation, federation or by the Labour Commissioner, the Court determines that an organisation or federation has, during the twelve months immediately preceding the application, devoted more funds and more of the time of its officers to campaigning on issues of public policy than to protecting the rights and advancing the interests of its members, as provided for in this Act, the Court may, as it sees fit -

- (a) suspend any rights acquired by the organisation to exclusive bargaining;
- (b) issue an order limiting the non-occupational activities of the organisation or federation;
- or
- (c) order the winding up of the organisation or federation.

*Recognition as collective employee representative.*

39. (1) An industry union or industry staff association which has been issued with a certificate under section 21, may apply in writing to an employer for recognition as the exclusive collective employee representative for such categories of employee as are named in the application concerning all terms and conditions of employment including wages and hours of work.

(2) An Industry Union or industry staff association shall serve a copy of the application referred to in subsection (1) on the Commissioner of Labour.

(3) If fifty percent or less of the employees in respect of which the industry union or industry staff association seeks recognition are fully paid up members of the organisation concerned, recognition shall be at the discretion of the employer and the employer shall, within thirty days of the receipt of the application, reply in writing to the organisation.

(4) Where an employer decides to recognise an industry union or industry staff association in terms of subsection (3), the conditions under which the employer agrees to recognise the organisation shall form part of the reply to be given to the organisation.

(5) If more than fifty per cent or more of the employees in respect of which the industry union



or industry staff association seeks recognition are fully paid up members of the organisation concerned, the employer shall, within 30 days for the receipt of the application and in writing, -

- (a) grant recognition to the organisation; or
  - (b) if the employer is in doubt, the parties shall go for a verification count.
  - (c) if the employer decides not to grant such recognition, lodge with the Court his reasons for the refusal to grant recognition and serve a copy thereof on the industry union or industry staff association, as the case may be;
  - (d) where thirty days has elapsed and the employer does not recognise the industry union or industry staff association, the industry union or industry staff association shall lodge an application with the court to force the employer to recognise it.
- (6) The Court shall, on receipt of the reasons referred to in subsection (5) and any submissions made to it by the parties concerned, make such order as it deems fit.

(7) If for a continuous period of more than three months in any calendar year the percentage of fully paid up members of an organisation which has been granted recognition under sub-section (5) falls below fifty per cent of the employees concerned, the employer or the organisation may apply to the Court for the withdrawal of such recognition, and the Court may -

- (a) make such order as it deems fit, including an order containing terms of such withdrawal; and
- (b) adjudicate on the validity and duration of any collective agreement existing between the employer and the organisation affected by such withdrawals.

(8) Where an organisation has been granted recognition as the exclusive collective employee representative, it shall be the duty of that organisation to provide full and proper representation of the interest of all employees covered by the recognition agreement whether or not they are fully paid up members of the organisation.

#### *Dues deduction.*

40. (1) An employee may deliver to an organisation of which he or she is a member or of which he or she is eligible for membership, and which has been recognised under section 39, a written authorisation for the periodic deduction from his or her wages of fees duly payable by him or her to that organisation.

(2) An organisation which has received an authorisation under subsection (1) may request the employer, in writing, to make the authorised deduction and remit it to the organisation.

(3) An employer may demand proof of the authorisation referred to in subsection (1) in its original form or a certified copy thereof.

(4) An employer who receives a request in accordance with subsection (2) shall make authorised deductions and shall promptly remit to the organisation the funds so collected.

(5) Any dispute over the authenticity of a written authorisation under this section shall be determined by the Commissioner of Labour, whose decision shall be final.

(6) An employer shall not be required at any one time to make deductions from the wages of any employee with respect to the fees of more than one organisation.

(7) An employee may revoke his authorisation under this section by giving written notice to the employer and to the organisation concerned and, on the receipt of such notice, the employer



shall make the deduction at the end of the month in which such notice is received but shall thereafter cease to make any deduction.

(8) The employer may retain a collection fee not exceeding five per cent of the amount collected.

(9) With each remittance, the employer shall give the organisation a full written account of the amounts collected and remitted.

(10) Upon application by an affected party, the Court shall make such order as it deems necessary to ensure compliance with this section.

## PART V

### NEGOTIATING MACHINERY

#### *Joint Industrial Councils.*

41. (1) When an industry union or an employers association considers itself to be sufficiently representative of employees or employers interest in an industry, as the case may be, either party may apply in writing to the Commissioner of Labour for the establishment of a joint industrial council for that industry and shall submit a copy of the proposed constitution of the joint council with the application.

(2) After consulting an interested party, the Commissioner of Labour shall upon receipt of the Application, request the Minister to establish a joint industrial council for the industry, if the Commissioner of Labour is satisfied that the establishment of such a council is desirable and practicable and its constitution suitable.

(3) On being satisfied that all the required conditions under this Act have been met, the Minister shall, by notice in the Gazette, establish a joint industrial council for the industry concerned.

(4) If the Commissioner of Labour does not consider the establishment of a joint industrial council to be desirable or practicable, he shall within thirty days of receiving the application, so inform the applicant in writing, setting out the reasons for his decision.

(5) If the Commissioner of Labour has taken action as in subsection (4), or where the Commissioner of Labour has requested the Minister to establish a joint industrial council and the Minister has not done so within sixty days of the date the application was submitted under subsection (1), the party which submitted the application may refer the matter to the Court.

(6) Upon receiving a reference made to it under subsection (5), the Court, after hearing any interested party, and if it is satisfied that the establishment of a joint industrial council in the industry named in the preference is practicable and desirable, and that the proposed constitution of the joint industrial council is suitable (subject to any amendment the Court may make), the Court may direct the Minister to establish a joint industrial council for the industry and the Minister shall thereupon establish the council by notice in the Gazette.

#### *Constitution of joint industrial council.*

42. The constitution of a joint industrial council shall provide for -

- (a) the industry and class or classes of employee to be covered by the council;
- (b) the appointment, number and method of selection of employer and employee

representatives;

- (c) the appointment and method of selection of a chairman and deputy chairman of the council;
- (d) the appointment and method of selection of a secretary or joint secretaries of the council;
- (e) the procedure for the appointment of alternate members of the council;
- (f) the number of members required to form a quorum;
- (g) the procedure for the replacement of members;
- (h) the term of office of members appointed to the council;
- (i) the procedure to be followed in the event of a dispute or deadlock in the council;
- (j) the method by which persons affected by any collective agreement made or amended by the council shall be informed thereof;
- (k) provision for the amendment of the constitution;
- (l) such other matters as may be included in the constitution by applicant to establish the council and which may be approved by the Commissioner of Labour or the court as the case may be.

## PART VI

### WORKS COUNCILS

#### *Establishment of Works Councils.*

43. (1) An employee in an undertaking, employing twenty five or more employees (excluding casual employees) shall establish a works council.

(2) A works council shall be established and conducted in accordance with a written constitution submitted to the Commissioner of Labour and which shall provide for -

- (a) the name of the undertaking in which the works council is established;
- (b) equality of representation in the council for employees and for the employer;
- (c) the appointment of a chairperson;
- (d) the functions and scope of the council;
- (e) the class or classes of employees to be covered by the council;
- (f) the procedures for dealing with disputes in the council and with individual and collective grievances in the undertaking;
- (g) the status and functions of employee representatives on the council;
- (h) the appointment, number and method of selection of the employee representatives;
- (i) such other matters as may be agreed between employer and employee representatives.

(2) Where a works council is established in an undertaking operating within an industry wherein a joint industrial council has been established under Part IV or in an undertaking where an industry union has been granted recognition under section 39 -

- (a) the functions and scope of the works council shall not include any of the matters dealing with rates of wages, hours of work or terms and conditions of employment which are included in the scope and functions of the joint industrial council as the case may be;
  - (b) the election or appointment of employee representatives on the works council shall be conducted under arrangements to be agreed in writing between the industry union and the employer concerned.
- (3) If a works council has been established in an undertaking in respect of which an industry union subsequently obtains recognition in terms of section 39 or which forms part of an industry in respect of which a joint industrial council is subsequently established, the works council shall, from the date on which recognition is granted, or the date on which the joint industrial council is established, as the case may be, cease to exercise any function in respect of any of the matters dealing with rates of wages, hours of work, or terms and conditions of employment which are included in the recognition agreement between the industry union and the employer, or which are included in the recognition agreement between the industry union and the employer, or which are included in the scope and functions of the joint industrial council.

(4) Notwithstanding any of the provision of this section, a collective agreement made between an industry union or by a joint industrial council shall not provide for the diminution of any of the terms and conditions of employment agreed upon in a works council before the granting of recognition to an industry union or before the establishment of a joint industrial council:

Provided that if such collective agreement does contain any such provision it shall be construed as if the relative provisions of the agreement made in the works council were substituted for it.

*Right to submit works council constitution to Court.*

44. (1) If any party affected by the establishment of a works council considers that the constitution thereof does not comply with this Act, or does not sufficiently reflect his legitimate interest, the party may submit a copy of the constitution to the Court together with written reasons as to why it considers the constitution should be changed.

(2) The Court shall, on receipt of the submission to it referred to in subsection (1), call upon the parties concerned to make such representations as may be deemed necessary by any of them and shall thereupon adjudicate on the matter, including making an order affecting such amendments to the constitution as it thinks fit.

(3) When the constitution of a works council has been submitted to the Court under subsection (1), the constitution, duly amended by the Court, or unamended as the case may be, shall be the substantive constitution of the works council.

*Enforcement of agreements reached by a works council.*

45. (1) An agreement made by a works council shall take effect from the date, and shall subsist for the period, stipulated in the agreement except as may otherwise be required by this Act or as may be agreed by the works council and registered by the Commissioner of Labour.

(2) Where any party fails to comply with the provisions of an agreement made by a works council, the council or any employee or employer affected by the agreement may apply to the Court for redress and the Court, after considering all the circumstances of the matter, may, as it deems fit so to do, make an order that appears just and reasonable.

PART VII  
COLLECTIVE AGREEMENTS

*Collective agreements.*

46. (1) A collective agreement shall-

- (a) be in writing and signed by the parties to the agreement;
- (b) contain effective procedures for the avoidance and settlement of disputes within the industry and in individual undertakings covered by the agreement;
- (c) be for a specific period of not less than twelve months and not more than twenty four months;
- (d) contain provision for the settlement of all differences arising out of the interpretation, application and administration of the agreement.

(2) After a collective agreement has been signed by the parties, it shall be submitted to the Court with a copy to the Commissioner of Labour together with a request by the parties for the registration of the agreement by the Court.

(3) A collective agreement shall not provide that it is to take effect on a date less than ten days after it is received by the Court under subsection (2).

(4) Nothing in this section shall affect or be deemed to affect the validity of a collective agreement which is valid and subsisting immediately before the coming into force of this Act and such agreement shall remain in force until it lapses by effluxion of time, or until it is replaced by a collective agreement registered under the provisions of section 48, whichever is the earlier.

*Procedure by Court on receipt of agreement.*

47. (1) On receipt of a collective agreement, the Court shall consider it and thereafter may -

- (a) register the agreement without amendment;
- (b) with the consent of both parties thereto, register the agreement with such amendments or modifications as it may consider necessary;
- (c) subject to such terms and conditions as it may impose, refer the agreement back to the parties for further negotiation on matters which the Court considered sufficient grounds for refusal to register the agreement.

(2) Where the Court has referred a collective agreement back under subsection (1) (c), and the parties fail to reach agreement, the Court shall then register the agreement with such modifications as it thinks just.

(3) The Court may refuse to register a collective agreement where -

- (a) it conflicts with any of the provisions of this Act or any other law;
- (b) there is in force an unexpired collective agreement relating to employees covered by the collective agreement submitted for registration;
- (c) it provides for terms and conditions of employment less favourable to employees than those provided by any law;
- (d) it requires membership in any organisation as a condition for obtaining or retaining employment;

- (e) it discriminates against any person on the grounds of race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation, or social status.

*Status of registered collective agreements.*

48. (1) The terms and conditions of a collective agreement registered under section 47 (referred to in this Part as a "registered agreement") shall be binding on the parties.

(2) The terms and conditions of a registered agreement shall, where applicable, be deemed to be terms and conditions of the individual contract of employment in the case of an agreement reached -

- (a) in a joint industrial council, for all employees covered by the agreement in the industry in which the joint industrial council was established; and
- (b) between an organisation and one or more individual employers, for all employees covered by the agreement who are employed by such employer or employers.

(3) Registration of a collective agreement shall be deemed to constitute actual notice to affected parties of all the provisions of the collective agreement.

*Amendments to registered agreements.*

49. (1) Either of the parties may make an application to court to amend a registered agreement for the purpose of -

- (a) correcting any obvious error or ambiguity occurring in the agreement;
- (b) including any matter agreed upon at the time of the negotiation of the agreement but which has been inadvertently omitted;
- (c) the deletion of any matter contained in a registered agreement, not agreed to at the time of the negotiation of the agreement, but inadvertently included therein.

*Coverage of registered agreements.*

50. Upon application by an affected party, the Court shall determine whether any employer or employee, or any class of employers or employees is engaged or employed in a particular industry or is covered or not covered by a registered agreement.

*Terms more favourable to employees permitted.*

51. (1) An employer may agree to, or may grant, any term or condition of employment more favourable to an employee than the corresponding provision of a registered agreement applicable to the employee.

(2) Any dispute over whether a term or condition referred to in subsection (1) is more favourable to the employee involved shall be determined by the Court.

*Application to abolish wages council.*

52. Where a joint industrial council has been established in an industry and the council reaches a collective agreement covering the terms and conditions of employment in the industry, either party in the joint industrial council, may apply to the Minister for the abolition of any wages council established under the Wages Act, 1964 applicable to the industry covered by the collective

agreement.

## PART VIII DISPUTES PROCEDURE

### *Reporting of disputes.*

53. (1) A dispute may only be reported to the Commissioner of Labour by -

- (a) an employer;
- (b) an organisation which has been recognised in accordance with section 39;
- (c) a member of a works council;
- (d) a member of a joint industrial council;
- (e) any other organisation active in the undertaking concerned in the dispute where no organisation has been recognised in terms of section 39;
- (f) any employee in the undertaking where no organisation is active in the undertaking concerned in the dispute.

(2) The Commissioner of Labour shall acknowledge receipt of any report made to him under subsection (1).

(3) A dispute may not be reported to the Commissioner of Labour if more than six months have elapsed since the issue giving rise to the dispute first arose, but the Commissioner of Labour may, in any case where justice requires, and with the written approval of the Minister, extend the time during which a dispute may be so reported to him.

(4) For the purpose of the exercise of approval to extend the time during which a dispute may be reported under subsection (3), the Minister may refer to the Court any question arising on the exercise of such approval for its recommendation and advice.

### *Contents of report and notice of dispute.*

54. (1) A report of a dispute shall be made in writing, signed by the person making the report and shall specify -

- (a) the parties to the dispute;
- (b) the address of each of the parties;
- (c) particulars of all the issues in dispute stating as precisely as possible their nature and scope; and
- (d) what steps, if any, have been taken for the settlement of the dispute either in accordance with the provisions of a joint industrial council constitution, a collective agreement registered under Part VII, a works council constitution or otherwise.

(2) A party reporting a dispute shall immediately deliver by hand or send by registered post a copy of the report to the other party or parties to the dispute.

### *Powers of Commissioner of Labour on a report.*

55. (1) If a dispute is reported to the Commissioner of Labour under section 53, the Commissioner of Labour may in writing -

- (a) request further particulars of any of the matters specified under section 54 (1);

(b) insofar as suitable procedures for settling disputes exist between the parties and have not been followed, refer the dispute back to the parties for the procedures to be followed.

(2) Particulars supplied in pursuance of a request by the Commissioner of Labour under subsection (1) (a) shall be subject to section 54 (2) and shall be read as one with the matters reported under section 54 (1).

(3) If the Commissioner of Labour makes a request for further particulars under subsection (1) (a), the dispute shall be treated as reported only on the date on which such particulars were supplied to the Commissioner of Labour.

(4) A dispute referred to the parties pursuant to subsection (1) (b) shall be deemed not to have been reported to the Commissioner of Labour and shall be treated as reported to the Commissioner of Labour only on the date when the parties or either of them report that the dispute still exists and the Commissioner of Labour is satisfied that, subject to subsection (5), such suitable procedures as may exist for settling disputes have been followed.

(5) If the Commissioner of Labour is satisfied that either of the parties to a dispute reported under section 53 refuses to follow such suitable procedures for settling the dispute as may exist, after the dispute was referred to them under subsection (1) (b), he shall so state in writing to the parties, and thereupon section 58 (2) shall apply as if the Commissioner of Labour had intervened in the dispute under that section.

*Referral of question as to nature of dispute to the Court.*

56. (1) If there is any question as to whether a dispute that has been reported is one that concerns the -

(a) application to any employee of existing terms and conditions of employment or the denial of any right applicable to any such employee in respect of his employment or

(b) dismissal, employment, re-employment or re-instatement of any employee

either party or the Commissioner of Labour may make application to the Court for the determination thereof and the Court may determine the matter in a summary manner, whether or not by way of hearing witnesses in the matter.

(2) The decision of the Court on any question before it under subsection (1) shall be final and binding on the parties to such question.

(3) Where a matter is determined by the Court under subsection (1), the dispute shall be deemed to have been first reported to the Commissioner of Labour on the date when the decision of the Court on the question is given.

*Action on report by Commissioner of Labour.*

57. (1) The Commissioner of Labour shall, as soon as possible after a dispute has been reported or deemed to have been reported to him, take such steps as he may consider advisable to secure, within fourteen days next after the date on which the report is received by him, a settlement of the dispute by means of conciliation.

(2) The parties to a dispute that has been reported to the Commissioner of Labour may agree in writing to extend the time, specified in subsection (1), including any further extension of time under this subsection, within which the Commissioner of Labour may take steps to secure a settlement of the dispute by means of conciliation.

(3) Where in pursuance of subsection (2), the parties to a dispute agree to extend the time



within which the Commissioner of Labour may take steps to secure by means of conciliation a settlement of the dispute, the Labour Commissioner may continue to take steps so as to secure a settlement of the dispute.

(4) Notwithstanding any other provisions of this Part, where the Commissioner of Labour is satisfied that no useful purpose would be served by continuing to conciliate under this section, he may certify that the dispute is an unresolved dispute pursuant to section 61 (1).

*Intervention by Commissioner of Labour.*

58. (1) Notwithstanding the provisions of section 53 to 57, the Commissioner of Labour may intervene in any dispute at any time before a report is made or deemed to have been made for the purpose of advising the parties thereto and of conciliation with a view to the settlement of the dispute.

(2) If the Commissioner of Labour intervenes in a dispute pursuant to subsection (1), he shall so advise the parties to the dispute expressly in writing and such a dispute shall be deemed to have been reported pursuant to section 53 (1), notwithstanding section 53 (2).

*Date of report in certain cases.*

59. If under this Part more than one date is to be deemed to be the date when a dispute is first reported to the Commissioner of Labour, the date on which the report shall be considered to have been so made to the Commissioner of Labour shall be the date which is last in point of time.

*Resolved Dispute.*

60. (1) Where a dispute has been determined or resolved (either before or after conciliation), the parties shall prepare a memorandum of agreement setting out the terms upon which the agreement was reached and either party may present the memorandum to the Commissioner of Labour with a request that it be forwarded to the Court under this section.

(2) Upon receipt of the memorandum referred to in subsection (1), the Commissioner of Labour shall forward it to the Court which shall enter the memorandum of agreement as if it was an order or award of the Court.

*Unresolved disputes.*

61. (1) A dispute, reported pursuant to section 53 (1) or deemed to have been so reported under this Part, which remains unresolved after the time stipulated under section 57 (1) within which the Commissioner of Labour may take steps by means of conciliation to secure a settlement thereof, including any extension of such time under section 57 (2) which has expired, shall be certified as an "unresolved dispute" in writing by the Commissioner of Labour and notice thereof served on the parties to the dispute and the Commissioner of Labour shall also state any reasons which in his opinion have prevented a settlement.

(2) If the unresolved dispute concerns the application to any employee of existing terms and conditions of employment or the denial of any right applicable to any employee in respect of his employment or the dismissal, employment, re-employment or re-instatement of any employee, either party to such a dispute may make application to the court, or the Commissioner of Labour may refer the matter to the Court for the determination of the dispute.

(3) If the unresolved dispute concerns matters, other than those referred to in subsection (2) -

(a) at both parties request, the Commissioner of Labour shall refer the dispute to the court for its determination thereof and the court's determination on the matter shall be final;



Arbitration Board established in the following manner -

- (i) each party shall, within two days of such referral, appoint an arbitrator to the Arbitration Board;
  - (ii) the parties shall within four days of such establishment appoint a third arbitrator to the Arbitration Board who shall be the chairman, but should they fails to do so, the two arbitrators shall within two days thereof appoint the third arbitrator;
  - (iii) each party shall bear all the costs relating to the appointment of its arbitrator except that the parties shall equally share the costs relating to the appointment of the third arbitrator;
  - (iv) the arbitrators shall determine the rules of procedure of the Arbitration Board;
  - (v) the determination of the Arbitration Board on the dispute shall be final and binding on the parties and shall be made within fourteen days of the establishment of the Board;
  - (vi) once the parties have agreed to solve a dispute through arbitration neither the parties nor the Labour Commissioner may refer the dispute to the Court.
- (c) either party may, subject to this Act, give notice that they intend to take action by way of strike or lockout in accordance with this Part.

(4) Before the notice referred to in sub-section 3 (c) is given, the parties shall have the opportunity to resolve the dispute through mediation in which case the following procedure shall apply -

- (a) each party shall within two days appoint a mediator;
- (b) the parties shall within four days appoint a third mediator who shall be the chairman, but should they fail to do so, the two mediators shall within two days thereof appoint the third mediator;
- (c) each party shall bear all the costs relating to the appointment of the mediators except that the parties shall equally share the costs relating to the appointment of the third mediator.
- (d) the mediators shall determine the rules of procedure of the mediation;
- (e) the mediators shall complete their assignment within a period of six days; and
- (f) the decision or determination of the mediators shall not bind the parties to the dispute and after such determination or decision, the parties may take action by way of a strike or lockout, or refer the dispute to the court for determination in accordance with section 61 (3) (a), or request that the matter be referred to arbitration in accordance with section 61 (3) (b).

(5) Where the parties belong to essential services, subject to section 68 (2), their dispute shall immediately be referred to mediation, in which case the provisions of sub-section (4) shall *mutatis mutandis* apply except that the parties shall not be compelled to pay the costs of such mediation, the costs thereof being borne by Government.

*Strike or lockout procedures.*

62. (1) Subject to this section and section 61, if there is an unresolved dispute, either party may take action by way of lockout or strike.

- (2) (a) A party to an unresolved dispute who intends taking strike or lockout action shall give written notice to the Commissioner of Labour and serve a copy of the notice on the employer or employers' association directly affected in the case of an employees organisation.
- (b) The Commissioner of Labour shall, in the presence of the parties to the dispute, within seven days of receipt of the notice, arrange and supervise a secret ballot to determine whether the majority of employees whom it is proposed should take part in the strike action are in favour of taking such action.
- (3) The Commissioner of Labour shall take all reasonable steps to ensure that all employees proposing to take part in strike action have an opportunity to vote in the ballot.
- (4) There shall be a duty upon any employer of employees within the terms of subsection (2) to supply the Commissioner of Labour on request with the names of relevant employees, and any other information which the Commissioner of Labour may require, in order to conduct a ballot for the purposes of subsection (2).
- (5) The Commissioner of Labour shall notify the result of a strike ballot to the parties and to the Court within 48 hours of the holding of the ballot, but failure by the Commissioner of Labour to organise a ballot in conformity with this section shall not deprive an otherwise lawful strike of protection under this Act.
- (6) Where a majority of employees covered by the recognition agreement voting in the ballot have voted in favour of strike action, or where the Commissioner of Labour has failed to conduct or notify the result of a strike ballot under subsections (2) and (5) respectively, the strike shall be deemed to be in conformity with this Act:
- Provided that new written notice is given to the other party or parties to the dispute and to the Commissioner of Labour at least 48 hours before the commencement of such action.
- (7) Subject to sub-section (6), a party to an unresolved dispute who intends taking a lockout action shall give written notice to the other party or parties and to the Commissioner of Labour at least 48 hours before the commencement of such action:
- Provided that no action in pursuance of a lockout notice shall be taken earlier than seven days or later than 14 days after the date on which the dispute has been certified as unresolved within the meaning of section 61.
- (8) Nothing in this section shall prevent the parties at any time agreeing to refer the dispute to an arbitrator or to the court as stipulated in section 61.
- (9) Where, at any time, a dispute which has been certified as unresolved within the meaning of section 61 is resolved by agreement between the parties, the procedure specified in section 60 shall be followed.
- (10) For the avoidance of doubt any other notice of an intention to take action by way of lockout or strike given before the dispute was first reported to the Commissioner of Labour, or deemed under this Act to have been so reported, including any notice given during the conciliation period, shall be null and void.

*Referral of unresolved dispute to Court.*

63. The Commissioner of Labour shall refer an unresolved dispute to the Court if -

- (a) no lockout notice or strike notice is given pursuant to section 58;

- (b) no action in pursuance of a lockout notice or strike notice was commenced after the expiration of fourteen days and before the expiration of twenty one days from the date on which the Commissioner of Labour was required to certify under section 57 that the dispute is an unresolved dispute;
- (c) after action in pursuance of a lockout notice or strike notice was taken, there is a joint request to the Commissioner of Labour by the parties to the dispute for referral of the unresolved dispute to the Court.

*Strike and lockout action in conformity with this Part.*

64. (1) If action in pursuance of lockout notice or strike notice takes place in conformity with this Part -

- (a) the provision of a registered agreement (within the meaning of Part VII) if any, between the parties, shall not be taken to have been infringed, abrogated or otherwise set aside by reason only of such action; and
- (b) the contract of employment with respect to every employee involved in the lockout or strike shall not, by reason only of the taking of such action, be deemed to have been determined.

(2) Nothing in subsection (1) shall be construed as imposing on an employer any obligation to pay for any services of an employee which are withheld as a result of strike action taken in conformity with this Part.

*Consequences for Strike or lockout action not in conformity with this Part.*

65. (1) If any strike or lockout takes place otherwise than in conformity with this Part -

- (a) an employer instituting lockout action shall be guilty of an offence and, in addition to any other penalty under subsection (2), have his business licence or certificate of registration or practice withdrawn and shall be liable for the unpaid wages, salary and other remuneration that an employee may reasonably be expected to obtain in respect of any period during which the lockout action took place; and an employee may recover such wages, salary or other remuneration as if it were a civil debt, without prejudice to any other manner in which proceedings may be taken for the recovery thereof;
- (b) an industry union or industry staff association taking strike action shall be guilty of an offence and, in addition to any other penalty under section (2), the Court may order the cancellation or suspension of its registration;
- (c) where an employee takes part in such strike action the employer may treat such action as a breach of contract and may terminate his services summarily.

(2) An employer or an industry union or industry staff association guilty of an offence under this section, shall upon conviction, be liable to a fine not exceeding E5,000 (Five thousand Emalangeni) or in default of payment, to a period of imprisonment not exceeding five years or deregistration of the organisation.

*Minister may apply for order in national interest.*

66. (1) If any strike or lockout is threatened or taken, whether in conformity with this Act or otherwise, and the Minister considers that the national interest is threatened or affected thereby, he may make application to the Court ex parte for an injunction restraining the parties from

commencing or from continuing such action, and the Court may make such order thereon as it considers fit having regard to the national interest.

(2) Where the Court upon such an application under subsection (1) makes an order, the parties bound by that order shall immediately refrain from or discontinue such action, and the matter which gave rise to the action shall be deemed to have been referred to the Court by the parties concerned for determination.

(3) An order made by the Court under subsection (1) shall be published in the Gazette and in a newspaper circulating in Swaziland and such publication shall be deemed to be service of notice thereof on all parties to the dispute, including all employees engaged in the action, whether threatened or taking place.

(4) Subject to this section, no order of the Court made under subsection (1) shall be deemed to have validated any action taken if such action was not otherwise in conformity with the provisions of this Part.

*Attorney-General may apply for a declaratory order.*

67. (1) Notwithstanding the provisions of section 66, where the Attorney-General has reason to believe that a strike or lockout taken or threatened is not in conformity with this Act or any other law, he or she may apply to court ex-parte for a declaratory order to that effect.

(2) Upon such an order being granted, the parties involved in the strike or lockout shall immediately refrain from or discontinue such action failing which, the Government may take appropriate measures to stop the action.

*Strike action etc. prohibited during hearing.*

68. (1) A party to a dispute shall not continue, or take strike action or institute a lockout while proceedings in relation to a dispute to which that action relates are pending before the Court.

(2) A person shall not take strike action or institute a lockout as a result of disagreement or dissatisfaction with an order or award of the Court.

(3) A person who contravenes subsection (1) or (2) shall -

(a) be guilty of an offence and on conviction liable to a fine not exceeding E5,000 (Five thousand Emalangeni) or to a period of imprisonment not exceeding five years or to both such fine and imprisonment.

(b) if the person continues with the contravention in spite of the conviction, he shall be ordered to pay a fine not exceeding E5,000 (Five thousand Emalangeni) for each day the contravention continues.

*Strike action or lockouts prohibited in essential services.*

69. (1) Without prejudice to section 65, the provisions of this section shall apply only to employees engaged in essential services as defined in subsection (6) of this section.

(2) An employer or employee carrying on or engaged in an essential service shall not take strike action or institute a lockout in connection with any such essential service.

(3) An employer who contravenes subsection (2) shall be liable, on conviction, to a fine not exceeding E10,000 (Ten thousand Emalangeni) or to a period of imprisonment not exceeding ten years or to both such fine and imprisonment.

(4) An employee who contravenes subsection (2) shall be liable, on conviction, to a fine not

exceeding E2,000 (Two thousand Emalangeni) or to a period of imprisonment not exceeding one year or to both such fine and imprisonment.

(5) An organisation or federation, the holder of an office in an organisation or federation or any other person who calls for, or causes strike action to be taken in an essential service, or induces or persuades any worker in such service to take such action shall be guilty of an offence and on conviction liable -

- (a) in the case of an organisation to a fine not exceeding E10,000 (Ten thousand Emalangeni), and the Court may cancel its Certificate of Registration issued under Part IV;
  - (b) in the case of the holder of an office in an organisation to a fine not exceeding E5,000 (Five thousand Emalangeni) or to a period of imprisonment not exceeding five years or both, and such person shall be disqualified from holding office in any organisation for a period of five years after conviction therefore; or
  - (c) in the case of an individual who is not the holder of an office in an organisation to a fine not exceeding E2,000 (Two thousand Emalangeni) or to a period of imprisonment not exceeding one year or to both such fine and imprisonment.
- (6) (a) For the purposes of this section, essential services, by whosoever such services are rendered, and whether rendered to the Government or to any other person are -
- (i) water services;
  - (ii) electricity services;
  - (iii) fire services;
  - (iv) health services;
  - (v) sanitary services;
  - (vi) telephone, telegraph and broadcasting services;
  - (vii) any service in the civil capacity in respect of the Government of Swaziland.
- (b) The Minister may, by notice in the Gazette, amend the list of essential services provided for in paragraph (a).

(7) An employer in an essential service shall cause to be posted up, on premises used for the purpose of that service, a printed notice containing the provisions of this section.

(8) An employer in an essential service other than the Government, who fails to comply with subsection (7) shall be guilty of an offence and on conviction be liable to a fine not exceeding E1,000 (One thousand Emalangeni) or to a period of imprisonment not exceeding six months.

*Offence for persons or organisation who contribute financial assistance promote or support strike action or lockout in an essential service.*

70. (1) If, for the purpose of promoting or maintaining the conduct of a strike or lockout in an essential service contrary to this Act, a person directly or indirectly contributes financial assistance to an employer or an organisation which calls or causes such action to be taken or to any employee involved in such action, the person shall be guilty of an offence and on conviction, be liable to a fine not exceeding E5,000 (Five thousand Emalangeni) or to a period of imprisonment not exceeding five years or to both.

(2) An employer or an organisation which receives any financial assistance for the purpose of supporting a strike or lockout instituted or continued in an essential service contrary to this Act shall be guilty of an offence and on conviction, be liable to a fine not exceeding E1,000 (One thousand Emalangeni) or to a period of imprisonment not exceeding one year or to both.

(3) An employee or other person who receives financial assistance for the purpose of supporting a strike or lockout in an essential service contrary to this Act shall be guilty of an offence and on conviction, be liable to a fine not exceeding E2,000 (Two thousand Emalangeni) or to a period of imprisonment not exceeding one year or to both.

*Criminal liability of officers of body corporate.*

71. (1) Where there is reasonable cause to believe that an offence under this Act has been committed by a body corporate, criminal proceedings may be instituted against any person who at the time of the commission of the offence was a director, manager, secretary or other office bearer of such body who was purporting to act in any such capacity.

(2) Without prejudice to any other defence, where criminal proceedings are instituted against a person referred to in subsection (1), it shall be a defence if any such person proves that the offence was committed without his or her consent or connivance and that he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to his or her functions in that capacity and to all the circumstances relating to the commission of the offence.

## PART IX

### FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANISE

*Basic employee rights.*

72. An employee may -

- (a) take part in the formation of any organisation or federation;
- (b) be a member of any organisation and take part in its lawful activities;
- (c) hold office in any organisation or federation; or
- (d) exercise any and all rights conferred or recognised by this Act, and assist any employee, industry union or industry staff association to exercise such rights.

*Basic employer rights.*

73. Every employer may -

- (a) take part in the formation of any employers' association or federation;
- (b) be a member of any such association or federation and take part in its lawful activities;
- (c) hold office in any such association or federation;
- (d) exercise any and all right conferred or recognised by this Act, and assist any employer or employers' association to exercise such rights.

*Prohibited employer practices.*

74. (1) An employer or employers' association, and a person acting on behalf of an employer or employers' association, shall not, with respect to any employee or any person seeking employment

- (a) discriminate against such employee or person because of his exercise or anticipated exercise of such right conferred or recognised by this Act or because of his participation in any capacity in a proceeding under this Act;
  - (b) threaten such employee or person that he will suffer any disadvantage from exercising any right conferred or recognised by this Act or from participating in any capacity in a proceeding under this Act;
  - (c) promise such person any benefit or advantage for not exercising any right conferred or recognised by this Act or for not participating in any capacity in a proceeding under this Act;
  - (d) restrain or seek to restrain such an employee or person, by a contract of employment or otherwise, from exercising any right conferred or recognised by this Act or from participating in any capacity in a proceeding under this Act; and any contractual term which purports to exert any such restraint shall be null and void, whether agreed to before or after the coming into force of this Act;
  - (e) impose any discipline or disadvantage upon an employee for refusing to do work normally done by an employee who is lawfully on strike or who is locked out, unless such work must be done to prevent an actual danger to life, health, property.
- (2) Nothing in this section shall be interpreted as preventing an employer from fairly terminating the services of an employee in accordance with an Employment Act:

Provided that where an employee claims that he or she was selected for redundancy for a reason specified in subsection (1), it shall be for the employer to prove otherwise.

(3) Nothing in this section shall be interpreted as preventing an employer from disciplining an employee for just cause provided that where an employee claims that he or she was disciplined for a reason falling within subsection (1) it shall be for the employer to prove that the discipline was imposed for just cause.

(4) An employer who contravenes sub-section (1) shall be guilty of an offence and on conviction liable to a fine not exceeding E10,000 (Ten thousand Emalangeni) or a period of imprisonment not exceeding five years or to both:

Provided that section 71 shall apply *mutatis mutandis* where the contravention is committed by a body corporate.

*Lawful striker's rights to return to employment.*

75. If an employee who has been lawfully on strike, or who has been locked out by his employer, presents himself for work not more than one working day after the end of the strike or lockout, the employer shall reinstate such employee in the employment which he held immediately before the beginning of the strike or lockout, unless material changes to the employer's operations have resulted in the abolition of such employment.

*Refusal to do strikers' work.*

76. An employee, or number of employees acting in concert, may refuse to do any work normally done by an employee or employees who are lawfully on strike:

Provided that such refusal will not endanger the safety of persons or property.



*No interference by public officers.*

77. A person holding government office, or acting or purporting to act on behalf of anyone holding such office, shall not exercise any power conferred by or under any law in such a way as to impede the exercise of rights conferred or recognised by this Act.

*Access to employer's premises.*

78. (1) An employer shall not deny to an officer or authorised representative of an industry union or industry staff association or joint industrial council such access to the employer's work premises as is reasonably and necessary for the lawful activities of the industry union, industry staff association or joint industrial council as the case may be.

(2) In granting the access required by subsection (1), an employer may impose any restrictions as to time and place which are reasonable and necessary to avoid undue disruption of operations, or in the interests of safety and it shall not be deemed unreasonable for an employer to refuse permission for an organisation to hold meetings of its members on the premises of the employer during working hours.

(3) Upon application, if the Court is satisfied that an employer has unreasonably refused or limited any access required by this section, it may make an order directing the granting of such access, subject to such restrictions as it may deem appropriate.

*Representative's credentials and requirements as to representation etc.*

79. (1) A representative appointed or elected to membership of a Works Council or Joint Industrial Council shall present his credentials for approval and acceptance to the Chairman of such council.

(2) A representative appointed or elected to office in an industry union or industry staff association shall provide proof of his or her identity and credentials when required by an employer whose premises he or she wishes to visit.

(3) A representative appointed at his or her place of employment shall observe the terms of his or her contract of employment, work competently and with due diligence, have proper regard for the safety and well-being of his or her fellow employees, and observe the established rules, conditions and standards of employment.

(4) An employer shall allow -

- (a) reasonable time for internal consultation with members of the organisation, provided that permission to be excused from normal duties for this purpose has been obtained;
- (b) accredited representatives of employee organisations reasonable time off, with or without pay, in his or her discretion to deal with business affairs of employee organisations;
- (c) time off, with or without pay, in their discretion, for official attendance at formal meetings of appropriate employee organisations or associations, and for training courses relevant thereto;

*Remedies for breach.*

80. (1) If it finds, upon application by any interested person or by the Commissioner of Labour, that a person has suffered loss from a breach of sections 72, 73 or 74, the Court, in addition to or in lieu of imposing any of the sanctions specified in section 13 may make any order which it deems just and appropriate to provide redress for such breach and to discourage similar breaches in the future.



(2) Without restricting the generality of subsection (1), an order made under this section may contain any direction permitted by section 15.

(3) Where the services of an employee are terminated for a reason which constitutes a contravention of this Part, in addition to an award of compensation under section 15 (4) the Court shall order the reinstatement of the employee in accordance with its powers under section 15 (2) (a) or order the payment of a special award of not less than 104 weeks remuneration regardless of the circumstances.

(4) If it finds, upon application by an interested person or by the Commissioner of Labour, that there is reason to believe that a breach of sections 72, 73 or 74 will take place, the Court may make such order as it deems necessary to prevent such breach.

*No encouragement of violence.*

81. (1) An organisation or federation, or anyone acting on its behalf, shall not engage in any activity or publicly advocate any course of action that may bring about the overthrow of the Government or violent resistance to it, or bring about acts of violence, intimidation or cause damage to property.

(2) If, upon application by a member of the organisation or federation or by the Commissioner of Labour, or by the Attorney-General, the Court is satisfied that an organisation or federation or anyone acting on its behalf has breached subsection (1), the Court shall order that it be dissolved forthwith and that the persons responsible for the breach be ineligible for office in any organisation or federation for a term not exceeding ten years.

(3) A person who has been a victim of any violence, intimidation or whose property has been damaged or and has suffered any loss as a result thereof, may sue the organisation, federation or person acting on its behalf, in a civil court.

## PART X

### MISCELLANEOUS

*Picketing.*

82. (1) All peaceful picketing by persons involved directly in the dispute giving rise to the picketing shall be lawful except if -

- (a) it is intended, or may reasonably be expected, to lead to or support an unlawful strike;
- (b) it involves violence or threat of violence, physical obstruction or restraint or persons or property, breach of the peace, or the persistent following about or persistent harassing of a person;
- (c) it involves the publication of derogatory statements about an employer or employers which purport to be statements of fact but which are erroneous or misleading, and that the person publishing them knew or ought to have known were false;
- (d) it is directed at a dwelling house, unless that dwelling house is also a place of business; or

(e) it is directed at an establishment or an undertaking not directly involved in the dispute.

(2) Without prejudice to subsection (1), picketing shall be unlawful if it seeks to affect the resolution of any question of representation which under this Act is to be determined by the election of the members of a joint industrial council, or if it seeks to affect the resolution of any dispute or grievance which under this Act is to be finally settled by the Court, or if it seeks to influence an individual or group of individuals either to join or not to join or to cease membership of any organisation.

(3) Any person or organisation who contravenes this section shall be guilty of an offence and on conviction liable to a fine of E5,000 (Five thousand Emalangeni) or five years or to both.

#### *Expenses.*

83. The minister shall determine the remuneration, including any allowance payable to members of the Court and to any other persons appointed for the purposes of this Act, and the expenses so incurred shall be charged on the Consolidated Fund.

#### *Code of Practice.*

84. (1) The Code of Practice set out in the Schedule (hereinafter called "the Code") shall come into operation on the date this Act comes into operation.

(2) Nothing in the Code shall be legally binding on any person and it shall not be an offence not to comply with its provisions.

(3) Notwithstanding subsection (2) the Court may take the Code into account in arriving at its decision in proceedings under this Act.

(4) The Minister may after such consultations as he may consider necessary, amend the Code.

#### *Regulation etc.*

85. The Minister may prescribe anything under this Act which requires to be prescribed and may make regulations for giving effect generally to the purposes and provisions of this Act.

#### *Application to Government.*

86. This Act shall apply to employment by or under the Government in the same way and to the same extent as if the Government were a private person but shall not apply to -

- (a) any person serving in the Umbutfo Swaziland Defence Force established by the Umbutfo Defence Force Order, 1977;
- (b) the Royal Swaziland Police Force;
- (c) The Swaziland Prison Service.

#### *Transitional provisions.*

87. (1) All legal proceedings pending before the Court established under the repealed Act shall, on the appointed day, be continued by the Court established under this Act as if they had been initiated under it.

(2) Any process, matter or thing initiated under the provisions of the repealed Act, shall, on the appointed day, be continued as if it has been initiated under this Act.

(3) A person appointed a member of the Court referred to in sub-section (1) shall, on the appointed day, continue to be such member under this Act.

*Repeal.*

88. (1) The Industrial Relations Act, 1980 is repealed.

(2) Notwithstanding such repeal, any rules or regulations made or issued under the repealed Act, shall, to the extent that they are not inconsistent with this Act, continue to be valid unless otherwise revoked under this Act.

## SCHEDULE

### CODE OF PRACTICE

(Section 84)

*Introduction.*

1. The purpose of this Code is to provide practical guidance for the day to day conduct of good industrial relations. It has been prepared in consultation with the Labour Advisory Board and complements the legislative provisions of the Industrial Relations Act. The Code is not legally binding and it is designed to interpret industrial relations in the widest sense. Although some of the detailed provisions of the Code may need to be adapted to suit particular circumstances, especially in small establishments, or in certain types of employment, such adaptations should be consistent with the Code's general intentions. Failure to observe the Code will not, in itself, render anyone liable to prosecution; at the same time, the Industrial Court may take the Code into account in any proceedings before it. Any changes necessary to the Code of Practice will be made by the Minister for Labour after consultation with the Labour Advisory Board.

*Management Responsibilities.*

2. The principal aim of management is to conduct the business of the undertaking successfully. To achieve this aim it is necessary to have a good working relationship between management and employees. The achievement of these relationships is the joint responsibility of management and employees and the organisations which represent them. At the same time, the prime responsibility for the promotion of good working relationships rests with management, who should take the initiative in their development and pay as much attention to them as they pay to such management responsibilities as finance, marketing or production.
3. When an organisation has been recognised for negotiating purposes, management should, in conjunction with the organisation, maintain effective arrangements for negotiation, consultation and communication and for the settlement of disputes and grievances, and take steps to ensure that agreements are complied with, and that agreed procedures are observed and used.
4. Where no organisation has been recognised for negotiating purposes, management should maintain effective arrangement for consultation and communication and for the settlement of grievances and ensure that these arrangements are used.
5. Management should ensure that every manager and supervisor is properly selected and trained, and that -

- (a) his responsibilities and authority are clearly defined;

- (b) he knows and understands the procedure for the treatment and settlement of disputes and grievances;
- (c) he is responsible for a working unit or group that he can manage or supervise effectively;
- (d) he is fully conversant with management policies insofar as they affect his working unit or group;
- (e) he has a good general knowledge of the labour legislation affecting the employees for whom he is responsible.

*Employee organisations.*

6. The principal aim of employee organisations is to promote the interests of their members. To do this effectively they must try and ensure that the undertakings in which their members are employed prosper. The contribution is to assist in the promotion of efficiency in those undertakings. They share with management the responsibility for good industrial relations. Employee organisation should -

- (a) maintain, together with employers association or individual employers, as appropriate, effective arrangements for negotiation, consultation and the settlement of disputes and grievances;
- (b) take steps to ensure that officials, representatives and members observe agreements and follow agreed procedures and understand the policies and rules of the organisation;
- (c) ensure that officials understand their powers and duties and are properly trained to carry them out efficiently and responsibly;
- (d) maintain effective communication within the organisation and encourage members to attend meetings and participate in the work of the organisation.

*Employers association.*

7. The principal aim of employers associations is to promote the interests of their members. To do so they should -

- (a) where appropriate, maintain jointly with employee organisations, effective arrangements at industry or other levels for the settlement of disputes and grievances and the negotiation of terms and conditions of employment;
- (b) take steps to ensure that members develop effective arrangements for the settlement of disputes and grievances at the level of the individual undertaking, and that they are conversant with and observe agreements and agreed procedures;
- (c) provide advice to members on employer/employee relations, including the collection and distribution of information on legislative and other changes which affect these relations.

*The individual employee.*

8. The individual employee has obligations to his employer, to his industry union or staff association if he belongs to one, and to his fellow employees. His legal relationship with his employer derives from his individual contract of employment. Some of its terms may be fixed by collective agreement, other by law. He should ensure that he understands the terms of his contract and complies with them. He should be familiar with the arrangements for dealing with grievances

arising out of his contract and make use of them. Employees working in an essential service for example health, sanitary, or electricity services, should ensure that they know the special obligations placed upon them because of their work in these services.

*Labour Department.*

9. The formal responsibilities of the Commissioner of Labour and his staff are contained in the various laws dealing with labour matters. In effect, they go further than this. The Labour Department is a public service for the benefit of individual employees and employers and the organisations or associations to which they may belong. The Department can advise all parties on labour matters, provide a conciliation service and obtain information on legislative and other trends both within Swaziland and outside its borders. All parties should avail themselves of the services offered by the Department.

*Employment policies.*

10. The prime responsibility for employment policies rests with management; at the same time, they should be developed, as appropriate, by consultation or negotiation with employee representatives. Employment policies should have regard to the legislative requirements relating to non-discrimination in employment.

*Manpower planning.*

11. Manpower planning should take account of existing manpower resources, present and future manpower needs and the necessity of matching manpower resources to these needs. It is essential that manpower planning should be an integrated part of the planning process, backed by management and based on adequate and up to date personnel records. In the evolution of a manpower policy care should be taken to -

- (a) avoid unnecessary fluctuations in the labour force, and where changes are necessary, make them with as little disruption as possible;
- (b) maintain arrangements for the transfer of employees between jobs;
- (c) maintain consultation and negotiating procedure aimed at identifying the causes of absenteeism and labour turnover with a view to controlling these aspects.

*Engagement and selection of employees.*

12. In engaging and selecting employees, management should have a clear knowledge of the terms and conditions of employment relative to the vacancy and explain them to applicants. The person responsible for engagements should be aware of the qualifications and experience called for, and where possible should consider applicants from within the undertaking where promotion is involved. Management should carry out periodic checks on engagement and selection methods and ensure that persons charged with the responsibility for engagement and selection of employees are competent to carry out the task.

*Training.*

13. Management should ensure that new employees are given induction training and are properly informed about their conditions of employment. Where necessary, on the job training should be given to supplement previous experience and training. When young people are entering employment for the first time, they should be given a general introduction to the working environment, basic training in regard to working requirements and specific training in their particular job; they should also be taught the importance of health and safety precautions. All employees should be encouraged to improve their education and skills by taking advantage of training facilities and educational

opportunities, both inside and outside their place of employment.

*Payment systems.*

14. Payment systems should be kept as simple as possible consistent with their purpose; where payment is linked to performance they should be based on some form of work measurement. Where an employee organisation has been recognised, the payment system should be reflected in an agreement between the parties. Differentials should be rational and related to the job content, preferably they should be mutually agreed. Employees should normally be paid during working hours.

*Status and security of employees.*

15. Compatible with the successful operation of the undertaking, management should provide stable employment, including reasonable job security for employees absent through sickness or other causes beyond their control. Unnecessary fluctuations in the level of earnings of an individual employee should be avoided by arranging his work so that he receives broadly equitable payments for each pay period. Status of employees and the facilities available to them should be based on the requirements of the job; where this is not so, the aim should be to progressively reduce and ultimately eliminate differences not so based.

16. Responsibility for deciding the size of the work force rests with management. A policy for dealing with reductions in the work force, should they become necessary, should be worked out in advance, and where applicable, in conjunction with employee organisations; they should form part of the undertaking's employment policies. Insofar as is possible, management should seek to avoid redundancies by such means as restricting engagements; reducing overtime; retiring employees who are beyond the normal retiring age; retraining employees for transfer to other work, and, as a last resort, short time working.

17. Where redundancy is inevitable, management in consultation with employees and their representatives, should give as much warning as possible to everyone's concerned. At the same time consideration should be given to the introduction of a scheme for voluntary retirement, redundancy or transfer. A decision should be taken as to which employees are to be made redundant, ensuring that no public announcement is made before the employees involved and their representatives have been informed.

*Working conditions.*

18. Minimum standards relative to working conditions are contained in the labour laws. Management should, in co-operation with their employees, aim at improving these standards by better housekeeping, cleanliness in the work place, improved lighting and ventilation etc. Noise levels should be reduced as far as possible and the standards of safety and hygiene kept at a high level. Where protective equipment is provided, e.g. safety helmets, goggles and machinery guards etc., management and employee representatives should take steps to ensure that they are properly used. For their part, employees should ensure that they understand the health and safety precautions in use, that they observe them and also that they make use of protective equipment.

*Communication and consultation.*

19. Management, employee representatives and organisations share a responsibility for ensuring that there is effective communication and consultation in all establishments. Communication and consultation are essential at any time, but they are particularly important in times of change. For example, major changes in working conditions should not take place without prior discussion between management and employees or their representatives.



20. Effective arrangements should be introduced to ensure a flow of information between management and employees. Personal contact between each manager or supervisor and the working group they control should be supplemented, where practicable, by written information, e.g. on notice boards or by training courses and meetings. Employees should be regularly informed about the performance of the undertaking and organisational or management changes which affect them.

21. Management should ensure that managers and supervisors know that it is an important part of their duties to explain management policies and convey work instructions clearly and that they have the requisite information to do so. Opportunities should be provided for employees to discuss matters affecting their employment and management should ensure that they are kept informed of these discussions.

22. Every employee should be given information about the requirements of his job and to whom he is directly responsible; disciplinary procedures and the circumstances which can lead to suspension and dismissal; any arrangements which exist relative to an employee organisation; opportunities for promotion and necessary training to achieve promotion; social and welfare facilities and fire prevention, safety and health rules.

23. Employee representatives and employee organisations should ensure that they have the means of communicating effectively with those they represent, whilst, at the same time recognising that management has a responsibility for communicating directly with the employees. All parties should co-operate in keeping employees informed of the results of any negotiations or consultations affecting them.

#### *Consultation.*

24. Management should take the initiative in setting up and maintaining consultative arrangements best suited to the circumstances of the establishment, bearing in mind the requirements of the Industrial Relations Act relative to the recognition of employee organisations, collective bargaining and the introduction of works councils. In setting up these consultative arrangements, management should ensure that -

- (a) the arrangements provide opportunities for the free expression of views on matters affecting employment, without incurring the risk of discrimination against persons expressing such views;
- (b) senior staff take part in the consultation;
- (c) all parties have all the information they require in order that they may participate effectively in the consultation; and
- (d) the arrangements include effective means of reporting back to employees.

#### *Recognition of employee organisations.*

25. Section 40 of the Industrial Relations Act establishes the procedure for the recognition of an employee organisation as a collective bargaining representative. Preferably, this process should be voluntary, but in the event of a dispute the matter can be referred to the Industrial Court. In replying to an application for recognition, management is entitled to know how many employees in the undertaking are members of the undertaking, but not their identities. When the extent of support cannot be agreed, the Court can make a decision as to how the support can be determined. A recognition agreement should establish the categories of employees covered by the agreement, and once an organisation is recognised, management should be prepared, within agreed procedures, to receive representations from the organisation on behalf of its members about grievances which cannot be dealt with on an individual basis. A clear procedure is necessary for the resolution of



conflicts of interest.

26. An essential ingredient for sound industrial relations is mutual trust and respect between an employer and any organisation representing his employees. To establish this trust and respect there should be regular contacts between the parties. Such contacts should not be left until there is a problem. Equally, employee organisations should be provided with facilities to meet members in order that they may represent them effectively.

*Collective bargaining.*

27. The procedure for the conduct of collective bargaining is set out in Part V of the Industrial Relations Act. Ideally, collective bargaining should cover as wide a group as possible within the same industry. Too many small units make it difficult to ensure consistent treatment for related groups of employees, although there may be a need to take into account the interests of minority groups within the industry. Whilst negotiating arrangements need periodic review, arrangements which are working well should be disturbed without good reason.

*Collective agreements.*

28. Collective agreements deal with matters of procedure and matters of substance which are of joint concern to management and employees. A collective agreement may contain provisions of both kinds or they may be dealt with in separate agreements. In either case the agreement should be in writing and should contain arrangements for the periodic review of procedures etc. *In addition* to the matters covered in Part VII of the Industrial Relations Act, the agreement may contain provision for -

- (a) facilities for organisation activities in the undertaking and the appointment, status and functions of shop stewards;
- (b) the constitution and scope of any consultation committees;
- (c) techniques for determining levels of performance including job grading, work measurement and job evaluation;
- (d) guaranteed pay, sick pay, maternity leave and other special kinds of leave;
- (e) procedures for handling redundancies;
- (f) general guide lines for negotiating at a lower level matter which cannot be decided satisfactorily at industry level;
- (g) the relevance of an agreement made at establishment or undertaking level to an industry wide agreement.

*Disclosure of information.*

29. For collective bargaining to be conducted realistically and responsibly, it is necessary for both parties to have adequate information on the matters being discussed. Management should be prepared to meet all reasonable requests from employee organisations for information relative to planned negotiations. In particular, it should make available, in convenient form, information supplied to shareholders or published in annual reports.

*Employee representation at the place of work.*

30. It is an advantage for all parties for management to deal with representatives of employees who can put forward their collective views. This function is normally carried out by employees who are accredited to act on behalf of members of an employees' organisation in the establishment

where they themselves are employed. They are usually called "shop stewards".

31. A shop steward has responsibilities both to fellow members in the establishment and to the organisation outside it, in addition to his responsibilities as an employee. Most shop stewards spend only a part of their time on shop steward's duties, but their role in the effective conduct of industrial relations at the place of work is always important. Where there are shop stewards, industry unions should provide for their election and appointment, defined the manner in which they can be removed from office and specify their powers and duties within the organisation.

#### *Functions of a shop steward.*

32. A shop steward's functions at the place of work cover such matters as the recruitment of members of the organisation; maintenance of membership; the collection of dues and contributions and the handling of members' grievances, etc. His role varies according to the industrial relations system in which he operates. Agreements at the level of the industry may lay down, or provide guide lines on some of his functions. Others are best determined in the individual establishment. But all the functions of a shop steward should be clearly defined and those relating to industrial relations should be agreed between the parties. A shop steward must observe all agreements to which his organisation is a party and should take all reasonable steps to ensure that those whom he represents also observe the.

#### *Appointment and qualifications of shop stewards.*

33. When recognition has been accorded to an organisation, management and the organisation should agree on the number of shop stewards needed in the establishment and the work groups for which each shop steward is responsible. In conjunction with management, organisations should decide on the conditions and eligibility for election and appointment. For example, minimum age, grade and length of service in the establishment. Members of organisations should be informed promptly when shop stewards are appointed and when changes are made.

#### *Status of shop stewards.*

34. Shop stewards should be provided with written credentials setting out their powers, duties and authorities, which shall not include the right to call for industrial action. All credentials should state the period of his office and the work group he represents. In an establishment where there are a number of shop stewards, they should consider selecting a senior steward to co-ordinate their activities.

#### *Facilities for shop stewards.*

35. The facilities needed by the shop stewards will depend on their functions and the nature and extent of these facilities should be agreed between organisations and management. They may include time off from the job, to the extent reasonably required, for their industrial relations functions; permission for which should be sought from the appropriate manager and should not be unreasonably withheld; maintenance of earnings while carrying out these functions; lists of new employees; accommodation for meetings with the employees whom they represent, with other shop stewards and with full-time organisation officials; access to a telephone and the provision of notice boards, provided that the employer should always have the right to see any notice before it is put up.

#### *Training of shop stewards.*

36. Employee organisations and management should review the type of training most appropriate for the shop stewards needs and take all reasonable steps to ensure that shop stewards receive the

training they require; seek to agree on the arrangements for leave from the job to attend training courses and seminars, including compensation for loss of earnings; and accept joint responsibility for training in the use of arrangements for communication and consultation and for handling grievances.

*Grievance and dispute procedure.*

37. All employees have a right to seek redress for grievances and management should establish, with employee representative of organisation concerned, or where no organisation has been recognised, through other means, arrangements under which individual employees can raise grievances and have them settled fairly and promptly.

There should be a formal procedure, except in very small establishments where there is close personal contact between the employer and his employees. Where organisations are recognised, management establish a procedure with them for settling collective disputes. Individual grievances and collective disputes are often dealt with through the same procedure. Where there are separate procedures they should be linked so that an issue can, if necessary, pass from one to the other, since a grievance may develop into a dispute.

*Individual grievance procedure.*

38. The aim of the procedure should be to settle the grievance fairly and as near as possible to the point of origin. It should be simple and rapid in operation. The procedure should be in writing and provide that -

- (a) the grievance should normally be discussed first between the employee and his immediate superior;
- (b) the employee should be accompanied at the next stage of the discussion with management by his employee representative if he so wishes and, if there is a collective representative, and the employee concerned belongs to that organisation, a representative of the organisation should be allowed to be present at this stage if he so wishes; and
- (c) there should be a right of appeal.

*Collective disputes procedure.*

39. Disputes are broadly of two kinds -

- (a) disputes of right, which relate to the application or interpretation of existing agreements or contracts of employment; and
- (b) disputes of interest, which relate to claims by employees or proposals by management about terms and conditions of employment.

40. A procedure for settling collective disputes should be in writing and should -

- (a) state the level at which an issue should first be raised;
- (b) lay down time limits for each stage of the procedure with provision for extension by agreement; and
- (c) reflect the requirements of the Industrial Relations Act in regard to strikes and lockouts.

41. The procedure should have the following stages -

- (a) employee representatives should raise the issue in dispute with management at the level directly concerned;
- (b) failing settlement, it should be referred to a higher level within the establishment; and
- (c) if still unsettled, it should be referred to further agreed stage, for example, to a stage of an industry-wide procedure, or to a higher level within the undertaking;
- (d) it should be treated in terms of the Industrial Relations Act.

*Disciplinary Procedures.*

42. It is a basic principle that an employee should not be dismissed from his job without reason. At the same time, it is difficult to protect an employee after he has been dismissed, and the usual question relative to an employee proved to be unfairly dismissed is the amount of compensation due to him. It is rare for an employee to be willing to reinstate a dismissed employee, and clearly, therefore, dismissal should be a last resort.

Every employer should ensure that fair and effective arrangements exist for dealing with disciplinary matters, if an organisation has been recognised, the organisation should be associated with the disciplinary procedure.

43. Whatever procedure is decided upon, it should provide for full consideration of all the relevant circumstances by someone with authority to take the necessary decisions. The procedure should be formal except in very small establishments where there is close personal contact between the employer and his employee. Management should make known to each employee -

- (a) the disciplinary rules and the agreed procedure; and
- (b) the type of circumstances which can lead to suspension or dismissal.

The procedure should whenever possible be put into effect only after consultation with a collective representative. It should be in writing and should be given to each individual employee or displayed somewhere it can be conveniently read. It should -

- (a) state the fact if it has been agreed with an employee organisation;
- (b) specify, by name or by job, who has authority to take various forms of disciplinary action and ensure that only senior management has the power to dismiss;
- (c) give the employee the right to state his case and to be accompanied by his employee representative;
- (d) ensure that, so far as practicable, the final decision on disciplinary action is taken by a level of management not previously involved; and
- (e) provide for independent conciliation if the parties to the procedure wish it.

44. Where there has been misconduct, the disciplinary action to be taken will depend on the circumstances, including the nature of the misconduct. But normally the procedure should operate as follows -

- (a) the first step should be an oral warning or, in the case of more serious misconduct, a written warning setting out the circumstance;
- (b) no employee should be dismissed for a first breach of discipline except in the case of serious misconduct;

- (c) a written record should be kept by the employer of all disciplinary action other than oral warnings and any entry in that record regarding an employee should be shown to him and, if he wishes, his employee representative; and
- (d) great care should be taken when a shop steward is disciplined as he, clearly, is in a very vulnerable situation with regard to discrimination. A shop steward should never be dismissed until the circumstances of the case have been discussed with a full time official of his organisation, though he may be suspended pending such discussions.