

4 September 2009

Ministry of Civil Service and Administrative Reforms
Circular Letter No. 27 of 2009
E/439/27/80/01

From: Supervising Officer, Ministry of Civil Service and Administrative Reforms

To: Supervising Officers i/c of Ministries/Departments

Application of the Employment Relations Act 2008 in the Civil Service

Government is making every endeavour to ensure efficiency and productivity, both in the private and public sectors, to keep pace with the major changes and permutations operating in the Labour market at national and international levels. The previous industrial relations legislation, namely the Industrial Relations Act 1973 (IRA), is no longer responsive to the emerging features and it has been repealed and replaced by a completely overhauled and consolidated legislation, which is the Employment Relations Act 2008 (ERA), proclaimed on 2 February 2009.

2. 'ERA' aims at:
 - (i) recognizing the democratic rights of workers and trade unions and enhancing protection of those rights;
 - (ii) building a productive employment relationship through the promotion of good faith behaviour and mutual trust in all aspects of work relations;
 - (iii) promoting collective bargaining;
 - (iv) encouraging voluntary settlement of disputes and promoting peaceful resolution of disputes; and
 - (v) strengthening the dispute and conflict settlement mechanisms.

3. The new legislation provides for the following institutional set up to deal with employee and employer relations issues:
 - the Employment Relations Tribunal (ERT) which replaces the defunct Permanent Arbitration Tribunal (PAT) and the Civil Service Arbitration Tribunal(CSAT); and

.../2

- the Commission for Conciliation and Mediation (CCM) which comes in for the Industrial Relations Commission and the Civil Service Industrial Relations Commission (CSIRC).

4. The relevant parts of ERA which should summon our attention are highlighted hereunder:-

(i) Right of employee for Disciplined Forces to join a Trade Union - Part I section 3(2)

Formerly, members of the disciplined forces, i.e. Police Force, Fire Services and Mauritius Prisons Service did not have the right to form or join a trade union. ERA now provides for the staff of the Fire Services and Mauritius Prisons Service to have the right to join or form a trade union; however, without the right to go on strike. In so far as the Police Force is concerned, its officers have no such rights.

(ii) Collective Bargaining - Part V

One prominent feature of ERA is the effective recognition of the right to collective bargaining which is a voluntary mechanism for regulating terms and conditions of employment. In this context, each Ministry/Department should draw up and sign a 'Procedure Agreement' with recognized trade unions or group of trade unions catering for grades in their respective Ministries/Departments as specified in section 51 of the Act. As regards existing trade unions, though action ought to have been taken within 90 days of the coming into effect of the Act as specified in section 108(5), circumstances did not so permit. Whereas for newly recognized trade unions, section 51 of ERA should apply. A specimen 'Procedure Agreement' is herewith enclosed.

~~(iii) Time - Off - Part V~~

Ministries/Departments should make appropriate arrangements to grant reasonable time-off to trade union officials without loss of pay for the purpose of performing trade union functions while reckoning with exigencies of the service.

(iv) Labour Disputes - Part VI

In the repealed legislation, labour disputes were reported to the Minister responsible for the subject of Civil Service. Under ERA configuration, disputes should be reported to the President of the CCM in accordance with section 64. However, a dispute can only be reported after meaningful negotiations between parties [section 64(2)] and a stage of deadlock has been reached. The procedures to be followed are as set out in the guidelines.


(v) Strike - Part VII

Under the former legislation, a strike became unlawful once action had been taken by the Minister of Civil Service and Administrative Reforms. This situation has been reviewed in line with the ILO Convention as strike is considered to be a fundamental right. However, this should be a last resort after all conciliation and mediation avenues have been exhaustively explored. Under section 78 of ERA, the right to strike would be subject to a successful ballot, a minimum service being maintained, where appropriate, and notice being given to the Minister responsible for the subject of labour. Details have been spelt out in the guidelines.

(vi) Conciliation Service - Part VI

By virtue of section 68 (4), this Ministry is required to provide a conciliation service to parties to a dispute before such a dispute is referred to the CCM or to the ERT. This procedure is meant to ease the process for settling disputes.

5. Section 108 of ERA provides for a transitional period for the implementation of the Act. The detailed provisions governing this transitional period are highlighted in the guidelines.
6. To ease the implementation process, you may deem it necessary to assess the current situation obtainable in your organisation to know, albeit indicatively, the number of trade unions which you already officially recognize and with whom you will be concluding a Procedure Agreement.
7. With a view to ensuring the proper enforcement of ERA, each Ministry/Department should, at the earliest possible, set up a Negotiating Body which should be created on the strength of the Procedure Agreement as laid down in section 52. For the purpose of discussing and reaching consensus on the proposed Procedure Agreement, Ministries/Departments have to create the necessary forum for extensive consultations with all parties concerned.
8. This Circular and the enclosed guidelines aim at highlighting the main features of the new institutional set up and at assisting Ministries/Departments to ensure compliance with the requirements of the new legal framework. Needless to point out that the guidelines provided have to be viewed in the global perspective as set out in ERA.
9. Supervising Officers are requested to ensure that the contents of this Circular Letter are brought to the attention of all officers working in their Ministry/Department.



(S.K. Pather)
Supervising Officer

Copy to:- Secretary to Cabinet and Head of the Civil Service

PROCEDURE AGREEMENT

PARTIES TO THE AGREEMENT

This Agreement is made on the day of200... between

Organisation:
.....

AND

Union:
.....

1. DEFINITION OF TERMS

In this Agreement:

The Organisation	refers to [<i>name of organisation</i>]
The Union	refers to the [<i>named</i>] Branch of the Trade Union or Trade Union as may be applicable
Bargaining Unit	refers to a group in any particular grade or cadre
Staff	refers to employees in the relevant Bargaining Unit of the Organisation

2. COMMENCEMENT DATE

This Agreement is effective as from [date]
.....

3. PROMOTION OF EMPLOYMENT RELATIONS

The spirit and intention of this Agreement are to further the best possible relations between the organisation and its employees duly represented by the Union and to provide methods and procedures to resolve by collective bargaining or joint consultation on matters affecting employees within the scope of this Agreement.

This Agreement sets out the procedure which will regulate the relationship between the two parties, who acknowledge hereby their common interest in achieving reasonable solutions to any problem which may arise between them and in working

co-operatively towards the agreed aims and objectives of the organisation and in maintaining good employee/employer relations.

The parties to this Agreement meeting together, in free and voluntary association to determine and afterwards to regulate the relations between them in the interest of mutual understanding and co-operation, do hereby declare that they subscribe to the provisions of the Employment Relations Act 2008 (ERA) [or any other enactment which amends the ERA] and to the principles contained in the Code of Practice(4th Schedule).

The rights and obligations under this Agreement shall be subject to any amendment brought about by any enactment and any article of the said Agreement which may be inconsistent with the said enactment shall be reputed to be null and void to the extent of such inconsistencies.

4. RECOGNITION AND SCOPE

All parties recognise that it is vital to good employee/employer relations for the workforce to be properly represented by the recognised union. Furthermore, all sides believe that a truly representative and effective union will enhance employee/employer relations.

The Organisation recognises the (Union/joint Negotiating Panel) as bargaining agent for employees in the grades of for the purpose of collective bargaining with regard to the following:

- › Machinery for negotiation for the settlement of terms and conditions of employment
- › Negotiating rights
- › Facilities for officers in relation to trade union activities
- › Establishment of a minimum service
- › Procedures relating to disciplinary matters
- › Procedures relating to grievances of individual workers
- › Access to workplace
- › Access to information
- › Check-off agreements
- › Safety and Health
- › Equal Opportunities
- › Staffing levels
- › Job Descriptions and Job Content
- › Work Practices
- › Use of New Technology
- › Facilities for Union Representatives
- › Any changes to this Agreement

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- › Staffing levels
- › Job Descriptions and Job Content
- › Work Practices
- › Use of New Technology
- › Facilities for Union Representatives
- › Any changes to this Agreement

- > Restructure and Job Security
- > Welfare of staff
- > Such other staff matters as may be agreed upon by parties concerned

5. MANAGERIAL FUNCTIONS

Without the items listed below being interpreted exhaustively, the parties agree that the Organisation shall have the sole and absolute right:

- > to conduct its business and manage its operations;
- > to hire, control and direct the working forces;
- > to determine the time, methods and manner of working, and type of work to be done;
- > to modify, extend, curtail or cease operations and to determine the number of employees required;
- > to promote employees and effect transfers according to the needs of the Organisation;
- > to discipline and dismiss employees according to Rules and Regulations; and
- > to decide in its sole discretion all other matters connected with the management of its business.

The Organisation rights specified above shall be subject only to the following conditions:

- (i) that the Organisation agrees not to breach any of its obligations under the terms of this Agreement and of any other agreement with the Union;
- (ii) that consultation with the Union will take place whenever appropriate; and
- (iii) that the Organisation will provide the Union with a copy of any circular letter addressed to its employees represented by the Union.

6. UNION SECURITY AND FUNCTIONS

- (i) The Organisation shall not discriminate against an employee because of membership in or involvement in trade union activities.
- (ii) The Organisation agrees to afford reasonable assistance to the Union to carry out its legitimate functions provided that such assistance does not unduly disrupt the smooth functioning of the Organisation's activities.
- (iii) The provisions of this Agreement shall apply to accredited representatives of the Union who have been duly elected or appointed in accordance with the rules of the Union.

- › These records shall be circulated among members of the Negotiating Body and shall be approved at the subsequent meeting.
- › Any agreement reached at the level of the Negotiating Body shall bind the Organisation and the Union and shall, in the absence of any specified date of implementation, be executed as early as possible and in any case not later than 30 days, except if circumstances do not so permit.
- › The Negotiating Body shall conduct its business as usual even in cases where two or more Unions decide, as provided for under section 37 (3), to constitute a joint Negotiating Panel and be recognised as such.

8. TIME - OFF

- (i) The Organisation agrees that employees, who, as accredited representatives of the Union, attend meetings convened by the Organisation, shall suffer no loss of pay for attending any such meeting during working hours.
- (ii) Subject to the exigencies of the service, upon being given prior reasonable notice, the Organisation agrees to give reasonable time off to accredited representatives of the Union to attend conferences, conventions, seminars or for the purpose of any other function related to or appertaining to their position in the Union. As regards training courses, conferences and seminars abroad, time-off should be granted in accordance with the relevant parts of the Personnel Management Manual.
- (iii) The Organisation hereby agrees to grant time off facilities to the members of the Union as follows -

.....(to be guided by section 42 of ERA)

9. CHECK - OFF

The Organisation agrees to a check-off system provided that in the case of deduction from salaries/wages for this purpose, the employer shall receive written authority from the individual employees as per Form A.

Other conditions regarding check-off shall be in conformity with Sub-Part C of Part V of the ERA.

- (iv) The Union agrees to notify the Organisation (and keep this information up to date) in writing of the names of all accredited representatives at the earliest possible opportunity and to notify the Organisation of any subsequent change. Persons whose names have been notified to the Organisation shall be the sole representatives of the Union.
- (v) The Organisation and the Union agree that neither of them nor any of their officers or members will intimidate, coerce nor threaten in any manner any person employed by the Organisation.
- (vi) The Union further agrees that employees shall not engage in any Union activity whilst on employer's time or on employer's premises except with the express permission of the Organisation.
- (vii) The organisations shall not interfere in the establishment, functioning or administration of the union.

7. NEGOTIATING BODY

- ▷ The Union and the Organisation agree to constitute themselves into a Negotiating Body for the purpose of bargaining.
- ▷ The Negotiating Body shall be composed of four to six representatives from either side, subject to representation being at par.
- ▷ On the basis of mutual agreement, the Union or the Organisation may co-opt other representatives.
- ▷ The Negotiating Body shall be chaired by the Supervising Officer in charge of the Organisation or any other officer designated by him but who should not be below the rank of Principal Assistant Secretary.
- ▷ The Negotiating Body shall meet once every two months or at any such time as may be required.
- ▷ Either party may request the holding of a meeting of the Negotiating Body by giving written notice to the other party giving the reasons thereof and specifying the issues to be discussed at that meeting.
- ▷ The parties shall, at the earliest possible, mutually agree on the date and time of the meeting.
- ▷ Meetings of the Negotiating Body shall be held on the Organisation's premises.
- ▷ The proceedings of the meetings shall be kept on record in writing and in such manner that they faithfully reflect the deliberations of the Negotiating Body.

10. DISCLOSURE OF INFORMATION

The parties shall not disclose information that:

- (i) is prohibited to be released by law or by order of any court;
- (ii) may cause prejudice to the interests of the organisation or to an employee;
- (iii) is personal information relating to the privacy of an employee, unless the employee consents to the disclosure of that information.

11. PROCEDURE FOR THE RESOLUTION OF INDIVIDUAL GRIEVANCES/ APPREHENDED DISPUTES

STAGE I

(i) Individual Grievances

In the event of any employee having a grievance:

- ▶ the issue may be raised first by the employee directly concerned, with his line manager, who shall attempt to settle it within (indicatively seven) working days, or a mutually agreed period of time;
- ▶ the employee, if he so wishes, may be accompanied by his Union representative;
- ▶ if unresolved, the issue may be raised by the employee directly concerned, with the Supervising Officer/ Responsible Officer, who shall attempt to settle it within (indicatively ten) working days or a mutually agreed period of time; and
- ▶ the employee, if he so wishes, may be accompanied by his Union representative.

(ii) Collective Grievances/Apprehended Dispute

In the event of there being a grievance or apprehended dispute affecting some or all employees, the issue should in the first instance, be reported to the Supervising Officer/ Responsible Officer of the Organisation concerned.

STAGE II- [applicable to part (i) and (ii) of stage I]

- The parties shall have meaningful negotiations during a period not exceeding 90 days or such longer period as may be agreed in writing.

- At any time during that period but not later than 20 days before the expiry of the 90 days, or such longer period as may be agreed in writing, any party may seek the assistance of the conciliation service provided by the Ministry of Civil Service and Administrative Reforms as specified under section 68 of ERA.
- Any agreement reached during the conciliation period will have the effect of a Collective Agreement as specified at sections 55 and 56 of ERA. The Collective Agreement should be signed and registered within 30 days of the signing of that agreement with the Employment Relations Tribunal (ERT) and the Ministry of Labour, Industrial Relations and Employment.

STAGE III

If there is no agreement at stage II:

- (i) provided both parties agree, they may refer the dispute for voluntary arbitration to the ERT or to an arbitrator appointed by them as per section 63 of the ERA;
- (ii) at any point in time during the 90 days' of negotiation period when a stage of deadlock has been reached, any party may report the dispute to the Commission of Conciliation and Mediation (CCM).

12. VARIATION OF A COLLECTIVE AGREEMENT

- (a) A Collective Agreement may be varied -
 - (i) in such manner and as a result of the occurrence of such circumstances as are provided in the agreement;
 - (ii) where there is a substantial change of circumstances which warrants such variation.
- (b) Either party (the Union or the Organisation) may make proposals to the other party for amendments to an existing agreement or for a new agreement on any issue falling under the purview of this Procedure Agreement.

- (c) Negotiations will start within thirty days after the full and complete proposal of points for discussions would have been submitted by both parties and the latter will endeavour to reach agreement within a period of three months from the exchange of proposals, subject to extension by mutual consent.

13. STRIKE AND LOCK OUT

- A. For the purposes of this Procedure Agreement, both parties undertake to be governed by the provisions of part VII of ERA in relation to ~~matters concerning strike, including concerted cessation of work, or~~ slow down of work, or work to rule.

B. CONTINUITY OF SERVICES

The Union agrees that, in the event of a strike, services which are considered to be essential shall be maintained and shall not be disrupted or interrupted. A minimum service consisting of *[the organisation and the union to decide and agree as to the specificity of each Organisation]* should be maintained.

14. GENERAL PRINCIPLES - DISCIPLINARY PROCEDURE AND OTHER MATTERS

Both the Organisation and the Union acknowledge that:

- (a) all employees have obligations towards the Organisation, as well as rights, and that existence of trust is essential to a continued relationship between employer and employee;
- (b) it is the duty of Management to prevent any undisciplined behaviour from disturbing the smooth running of the service;
- (c) management shall undertake to remind employees from time to time about specific standards of work and conduct, particular obligations and responsibilities as well as rights, as the need arises, provided that the Union understands and agrees that employees shall be deemed at all times to know their rights and obligations; and
- (d) where an employee's work, conduct and attendance are reported to be unsatisfactory, the provisions of the PSC Regulations shall apply.

15. DURATION OF AGREEMENTS

This Procedure Agreement, which binds the Organisation and the Union, shall be effective as from the date of signature.

This Agreement may be varied by both parties and where there is no agreement on the variation, any party may refer the matter to the ERT which shall make such order as it thinks fit within 30 days of the date of the referral.

No claim for a variation of this Procedure Agreement shall be entertained by the ERT before the expiry of a period of 12 months commencing on the date of the coming into force of the agreement, unless there is change in the circumstances that warrants such variation.

The implementation of this Agreement shall be subject to any ensuing amendment to the Employment Relations Act.

Signed this day of

Made in two (2) originals

For and on behalf of the Organisation

.....
.....
.....

For and on behalf of the Union

.....
.....
.....

Appendix I

FORM A

(Check-off Admission as per Part V Sub Part C of ERA)

APPLICATION FORM FOR DEDUCTION OF UNION SUBSCRIPTION:

The Officer in Charge
Finance Section
Ministry/Department

I,

hereby authorise you to deduct from my wages/salary each month and pay to the

.....

(Union) Rupeesbeing the amount
of the monthly subscription to the Union, the first deduction to be made from my
wages/salary as from (date).....

I understand that this authority can be revoked by the submission to you of a
withdrawal form signed by me, in accordance with section 45 (c) of the Employment
Relations Act.

Signed:

Occupation:

Date:

Explained and Witnessed by

..... Union Representative

Appendix I

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(Check-off Admission as per Part V Sub Part C of ERA)

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I understand that this authority can be revoked by the submission to you of a
withdrawal form signed by me, in accordance with section 45 (c) of the Employment
Relations Act.

Signed:.....

Occupation:.....

Date:

Explained and Witnessed by

..... Union Representative

Appendix 2

FORM B

(Check-off Withdrawal as per section 45(c) of ERA)

APPLICATION FORM TO CEASE DEDUCTION OF UNION SUBSCRIPTION

The Officer in Charge
Finance Section
Ministry/Department

I.....

hereby request you to cease deduction from my wages/salary of the sum of
Rs.....representing my
monthly subscription fee to (Union)
with effect from (date).

Signed:

Occupation:.....

Date:

Explained and Witnessed by

..... Union Representative

**Guidelines for the enforcement of the
Employment Relations Act 2008 and the Employment Rights Act 2008
in the Civil Service**

A Employment Relations Act

1. Application of the Act

- The Employment Relations Act applies to all employees of the Public Service, including employees of the Mauritius Prisons Service and the Fire Services, but excluding employees of the Mauritius Police Force.

2. Recognition of Trade Union (TU) and Negotiation Rights (section 36)

- A TU or group of TUs may apply in writing to a Ministry/ Department for recognition as a bargaining agent. The application must be accompanied by:-
 - (i) a copy of the certificate of registration of each TU;
 - (ii) a copy of agreement between or among a group of TU's acting jointly;
 - (iii) the number and category of members that each TU has in the Bargaining Unit.
- The Ministry/Department will have 30 days from the date of receipt of the application to inform the TU in writing whether the application has been approved or otherwise. In case the application is not allowed, the Ministry/Department should give reasons thereof.

3. Criteria to consider for the recognition of a TU (section 37).

- A TU should have the support of at least 30 % of workers in the Bargaining Unit in the organisation.
- If a TU has more than 50% of members in the bargaining Unit, the TU is entitled to recognition as sole bargaining agent.
- If 2 or more TUs have each the support of 30 % or more but less than 50 % of employees, the TUs shall be recognised as a joint negotiating panel.

- Where there is no recognised TU and where a TU or group of TUs is not entitled to recognition, an employer may voluntarily grant recognition to the TU or group of TUs having obtained the highest percentage support from the workers in the bargaining unit of the Ministry/Department.

4. **Negotiators**

A TU may appoint a person who is not a member of the Union to stand in as negotiator.

5. **Time Off facilities (section 42)**

- a. Officials of TU will be granted reasonable time off facilities without loss of pay for the purposes of performing their trade union functions, subject to the exigencies of the service.
- b. Time off facilities should be agreed upon and specified in the Procedure Agreement which should stipulate, as far as possible, while taking into consideration, the size of the TU, the type and volume of trade union activities and the responsibilities of the official at the level of a federation or confederation, the extent and duration of time-off facilities to be granted.
- c. Agreement for time off facilities shall be for a period of not less than 24 months.
- d. Applications for time off shall be made to the employer within a reasonable timeframe and approval shall not be unreasonably withheld by the employer.

Note: General policies for time off facilities will continue to be issued by the Ministry of Civil Service & Administrative Reforms to ensure consistency across the service.

6. **Protection against Discrimination and victimisation**

According to ERA, "involvement in trade union activities" means that the worker:-

- (a) is a member or an officer of a TU;
- (b) has acted as negotiator or representative of workers in collective bargaining;
- (c) has participated in a lawful strike;
- (d) was involved in the formation or proposed formation of a trade union;
- (e) has made or caused to be made a claim for some benefit for a worker or has supported any such claim, whether by giving evidence or otherwise;
- (f) has expressed grievance on behalf of another worker to an employer;
- (g) has been allocated or has applied to take any employment related to education leave;
- (h) has been a representative of other workers in dealing with an employer on matters relating to the employment of those workers; or
- (i) has represented workers under the Occupational Safety and Health Act, whether as a health and safety representative or otherwise.

7. Procedure Agreement

a) The ERA provides in section 51 that Ministries/ Departments will have to draw up and sign a Procedure Agreement (PA) with each recognised trade union:-

- (i) where a trade union has obtained recognition before the commencement of ERA, a Procedure Agreement should have been signed within 90 days from the date of the coming into operation of the Act (section 108 (6)). [It is to be pointed out that this time limit has not been met because of circumstances beyond control].
- (ii) where a trade union has been recognised under ERA, a Procedure Agreement should be signed between the parties within 30 days from the date of recognition or such extended period agreed between parties (section 51 (1)).

- b) If any party refuses to draw up and sign a Procedure Agreement, the other party may apply to the ERT for the making of the Agreement by way of an award.
- c) A Procedure Agreement can be varied by both parties; however, if a party refuses to vary the Procedure Agreement, the other party may refer the matter to the ERT for an order.
- d) A variation of the Procedure Agreement can only be entertained at ~~the expiry of a period of 12 months unless there is change in~~ circumstances that require an immediate change in the procedure agreement.

➤ **Inescapable elements to be captured under a Procedure Agreement**

- Establishment of a negotiating body.
- Matters to be bargained.
- Clear definition of the terms and conditions of negotiations.
- The way labour disputes will be dealt with and/or settled.
- Extent of time off facilities
- Establishment and scope of a minimum service as specified under section 81.

8. Bargaining Procedures (section 53)

- Any recognised trade union or group of trade unions or any Ministry/Department can initiate negotiations with a view to reaching a collective agreement. This requires that the other party is given a notice, in writing, signed and specifying the party to be involved in the negotiation.
- Additionally, the notice should set out a summary of issues to be discussed and spell out the bargaining unit.

- Any party served with such a notice has an obligation to start negotiations within 30 days of the date of receipt of the notice or any such longer period as may be agreed upon by parties. If any party refuses to start negotiation, the other party may apply to the ERT for an order.
- Any collective agreement reached between parties must be in writing and signed by parties concerned.
- ~~A collective agreement can be renegotiated after a period of 24 months~~ has lapsed from the date of its coming into force; or on such date as it is specified in the agreement.
- Any collective agreement concluded between parties shall be registered with the ERT and with the Ministry of Labour, Industrial Relations and Employment by all parties within a period of 30 days from the date of the signing of the agreement.

9. **"Labour Dispute"**

- a. means a dispute between a worker, or a recognised trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker;
- b. does not, notwithstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau in relation to remuneration or allowances of any kind;

The procedures to be followed in dealing with labour disputes/ apprehended disputes are set out hereunder:-

- Any **apprehended dispute** should, in the first instance, be the subject of discussion/ negotiation between an employee/recognised trade union and the Ministry/Department concerned. The parties shall have meaningful negotiations within a period not exceeding 90 days or any such longer period as may be agreed between the parties.
- At any time during that period but not later than 20 days before the expiry of the 90 days or of any period as may have been agreed upon by the parties, any party may seek the assistance of ~~the conciliation service provided by the Ministry of Civil Service~~ and Administrative Reforms as specified under section 68 (4) of the Act.
- Any agreement reached during the conciliation will have the effect of a Collective Agreement as specified in sections 55 and 56 of the Act.
- The Collective Agreement should be signed and registered within 30 days of the signing of the agreement with the Employment Relations Tribunal (ERT) and the Ministry of Labour, Industrial Relations and Employment as per section 61.
- If there is no agreement:
 - (i) at any point in time during the 90 days' of negotiation, any party may report a dispute to the President of the CCM where a stage of deadlock is reached; or
 - (ii) both parties may jointly refer the dispute for voluntary arbitration to the ERT or to an arbitrator to be appointed by them (section 63).
- The CCM will provide conciliation and mediation service and will have to complete its proceedings within a delay of 30 days of the date of receipt of the Labour Dispute or any such longer period as may be agreed between the parties.
- Where no agreement is reached, the CCM shall submit a report to the parties within 7 days and advise the parties to refer the

dispute jointly for voluntary arbitration to the ERT or to an arbitrator to be appointed by them.

- Where no agreement is reached in the case of a dispute reported by an individual worker, the CCM may, within 7 days, with the consent of the worker, refer the dispute to the ERT for arbitration (section 69(7)).
- Where a dispute has been referred to the ERT for voluntary arbitration, the ERT shall make its award within 90 days.

To note that:

Disputes in respect of the Fire Services and the Mauritius Prisons Service, reported to the CCM will immediately be referred to the ERT which will have to make its award within 30 days of the referral (section 70(3)).

10. Strike

“strike” means any action taken by a group of workers whether or not in furtherance of a labour dispute, and whether or not they are parties to the dispute, which consists in –

- (a) a concerted stoppage of work; or
- (b) a concerted course of conduct, including going slow or working to rule, which is carried on –
 - (i) with the intention of preventing, reducing or otherwise interfering with the production or distribution of goods, or the provision of services; and
 - (ii) in the case of some or all of the workers involved, in breach of their obligations to their employer or in disregard of the normal arrangements between them and their employer.

11. Right to strike

Subject to section 77, a worker has the right to strike and every employer may have recourse to a lock-out, where-

1. a labour dispute has been reported to the President of the CCM and no agreement has been reached (section 64);
2. the parties to the labour dispute have not elected to refer the dispute for voluntary arbitration under section 63;
3. a strike ballot has been successfully taken in accordance with section 78;
4. a written notice of not less than 10 days before the commencement of the strike has been given to the Minister of Labour, Industrial Relations and Employment and to the other party (section 79);
5. a minimum service as specified in the Procedure Agreement has been organised and put in place during the strike- (section 81).

To note that:

- Where the parties decline to refer the dispute for voluntary arbitration, the party reporting the dispute may have recourse to strike within 45 days of the report of the CCM - (section 69(5) (a)) subject to the criteria laid down in section 76.
- Workers shall also have the right to strike for reasons laid down in section 76(2).
- Where a labour dispute is reported by an individual worker [section 77(d)], workers cannot go on strike.
- Officers of the Mauritius Prisons Service and the Fire Services do not have the right to strike [section 77 (1)(c)].
- Strike or lock-out becomes unlawful where the Supreme Court makes an order, upon application by the Prime Minister, prohibiting the continuation of the strike or lock-out [section 82(3)].
- Issues covered in a collective agreement or an award in force are not subject to strike [section 77 (1)(b)].
- Where a minimum service as specified under section 81 has not been established, workers cannot go on strike.

12. Transition Period (section 108)

- Every TU registered under the repealed Industrial Relations Act immediately before the commencement of ERA shall be deemed to have been registered under ERA.
- The registration of every TU under the repealed Industrial Relations Act and having less than 30 members in the case of a TU of workers immediately before the commencement of ERA shall lapse, if within 2 years from the commencement of ERA it does not attain a minimum membership of 30 employees.
- Any TU of workers which had recognition immediately before the commencement of ERA shall be deemed to have obtained recognition under ERA.
- Any of the following agreements entered into or orders made immediately before the commencement of ERA shall be deemed to have been made for the purposes of ERA –
 - a. a check – off agreement or order;
 - b. an agency shop agreement or order;
 - c. a procedure agreement; or
 - d. a collective agreement
- Every Federation comprising trade unions and federations of trade unions existing before the commencement of ERA shall, on application made by it, be entitled to be registered as a confederation.
- Any application, complaint or appeal made under the repealed Act before the commencement of ERA shall be dealt with in accordance with the provisions of ERA.

3 Employment Rights Act

Attention is invited to the provisions of the Employment Rights Act 2008, which are also applicable to the Civil Service, namely-

- Section 61(a) – The Permanent Secretary of the Ministry of Labour, Industrial Relations and Employment may enter without previous

notice, at any hour of the day or night, any place of work, other than premises used solely for residential purposes except with the permission of the occupier thereof.

- Section 61(d) - The Permanent Secretary of the Ministry of Labour, Industrial Relations and Employment may interview alone or in the presence of any other person, as he thinks fit, and at such place he deems appropriate, the employer or his representative and any person employed in the organisation, regarding the application of this Act or any other enactment relating to labour or employment, and any such person shall answer the questions truly to the best of his ability provided that no such person shall be required to give any information tending to incriminate himself.

- Section 4 - Discrimination in employment and occupation.
- Section 20 - Equal remuneration for work of equal value.
- Section 54 - Violence at work.