

JAMAICA

THE LABOUR RELATIONS AND INDUSTRIAL DISPUTES ACT

THE LABOUR RELATIONS CODE

(made under section 3)

L.N. 310/76

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PART I - Preliminary

Establishment

1. The Code is established in accordance with the provisions of section 3 of the Labour Relations and Industrial Disputes Act. Its purpose is to set out guidelines which in the opinion of the Minister will be helpful for the purpose of promoting good labour relations, having regard to the following -

- (i) the principle of collective bargaining freely conducted on behalf of workers and their employers with due regard to the interest of the public;
- (ii) the principle of developing and maintaining orderly procedures in industry for the peaceful and expeditious settlement of disputes by negotiations, conciliation or arbitration;
- (iii) the principle of developing and maintaining good personnel management techniques designed to secure effective co-operation between workers and employers and to protect workers and employers against unfair labour practices.

Purpose

2. The code recognizes the dynamic nature of industrial relations and interprets it in its widest sense. It is not confined to procedural matters but includes in its scope human relations and the greater responsibilities of all the parties to the society in general.

Recognition is given to the fact that management in the exercise of its function needs to use its resources (material and human) efficiently. Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction.

The inevitable conflicts that arise in the realization of these goals must be resolved and it is the responsibility of all concerned, management to individual employees, trade unions and employer's associations to co-operate in its solution. The code is designed to encourage and assist that co-operation.

Application

3. Save where the Constitution provides otherwise, the code applies to all employers and all workers and organizations representing workers in determining their conduct one with the other, and industrial relations should be carried out within the spirit and intent of the code. The code provides guidelines which complements the Labour Relations and Industrial Disputes Act; an infringement of the code does not of itself render anyone liable to legal proceedings, however, its provisions may be relevant in deciding any question before a tribunal or board.

Revision

4. In accordance with section 3(3) of the Act, the code may be revised by the Minister. This will be done in consultation with representative organizations of employers and workers.

This provision is not to be interpreted as inhibiting or restricting the right of the parties to review and improve their own labour management practices as the need arises.

PART II - Responsibilities

Employers

5. In keeping with the need for management to be productive and responsive to workers and the society in general, good management practices and industrial relations policies which have the confidence of all must be one of management's major objectives.

The development of such practices and policies are a joint responsibility of employers and all workers and trade unions representing them, but the primary responsibility for their initiation rests with employers.

Employers should therefore ensure that -

- (i) in the implementation of these policies due regard is to be paid to their responsibilities to the society;
- (ii) in addition to discharging their obligations to workers in respect of terms and conditions of employment, they adopt policies for the social and educational improvement of their workers;
- (iii) they respect their workers' rights to belong to a trade union, and to take part in the union's activities, which include seeking recognition for negotiation purposes. and that they are not averse to negotiating in good faith with such trade union;
- (iv) adequate and effective procedures for negotiation, communication

and consultation, and the settlement of grievances and disputes, are maintained with their workers, and organizations representing such workers;

(v) these procedures are understood and applied by all members of the management team;

(vi) all supervisory staff have clearly defined responsibilities in the organizational structure, are in charge of manageable work groups, understand their responsibilities and have the necessary qualities, and industrial relations training and exposure to do the job;

(vii) supervisors are cognizant of management policies as they affect their individual work groups and that they maintain an effective link between management and members of their work groups.

Individual Worker

6. (i) The worker has a responsibility, to his employer to perform his contract of service to the best of his ability, to his trade union to support it financially and to vest in it the necessary authority for the performance of its functions efficiently; to his fellow workers in ensuring that his actions do not prejudice their general well-being including theft health and safety; to the nation by ensuring his dedication to the principle of productive work for the good of all;

(ii) the legal relationship between employer and worker is determined by the individual contract of employment. Often many of its terms are fixed by collective bargaining and contained in collective agreements. The worker should familiarize himself with the terms of his contract, and in particular any procedure for the dealing with grievances, and abide by them;

(iii) some workers have special obligations arising out of the nature of their employment. Such worker when acting in the course of his employment should be mindful of those obligations and should refrain from action which conflicts with them.

Trade Unions

7. The main objective of a trade union is to promote the interest of its members, due regard being paid to the interest of the total labour force and to the greater national interest. To achieve this aim, trade unions have a duty to maintain the viability of the undertaking by ensuring co-operation with management in measures to promote efficiency and good industrial relations.

Trade Unions should therefore -

(i) where appropriate, maintain jointly with management and other trade unions effective arrangements at industry or local levels for

negotiation, consultation and communication and for settling grievances and disputes;

(ii) take all reasonable steps to ensure that their officials and members observe all arrangements;

(iii) provide for the training of delegates in the scope of their powers and duties and the day-to-day operation of the union;

(iv) provide adequate educational opportunities for the advancement of their members;

(v) be properly staffed to serve the needs of its members, and allow for effective lines of communication between such staff and the rank and file membership;

(vi) encourage members to take part in its activities by adopting such means as would best allow them to do so, including the compilation and distribution of information

(vii) make available information pertaining to the rules and policies of the unions;

(viii) provide adequate advisory services for their members and in particular assist them to understand the terms and conditions of their employment;

(ix) identify trends in industrial relations to help their members to anticipate and keep abreast of change

Employers' Associations

8. The principal aim of employers' associations is to promote the interests of their members due regard being paid to the interest of the total labour force and to the greater national interest.

Employers' associations should therefore -

(i) co-operate with trade unions for the establishment at industry level where appropriate, of procedures for the negotiation of terms and conditions of employment and the settlement of disputes and grievances;

(ii) encourage their members to establish effective procedures in consultation with trade unions recognized by them, for the settlement of disputes and grievances at the local level;

(iii) take all reasonable steps to ensure that their members pursue

those procedures which are established;

(iv) collect, analyse and distribute information in the industrial relations field;

(v) identify trends in industrial relations to help their members to anticipate and keep abreast of change;

(vi) provide adequate advisory services for their members;

(vii) encourage their members to provide adequate educational opportunities for the advancement of their workers;

(viii) encourage their members to take an interest in their association and be prepared to contribute to its resources.

PART III - Personnel Management Practices

Employment Policies

9. Clear, comprehensive and non-discriminatory employment policies are an indication of the efficiency of an undertaking. The initiation of such policies is primarily the responsibility of employers, but they should be developed in consultation or negotiation with workers or their representatives.

Employment policies should -

(i) provide for proper recruitment and selection, having regard to the qualification and experience needed to perform the job;

(ii) have regard to the need for workers to advance themselves in the undertaking and so consider filling vacancies by promotion or transfers;

(iii) make clear to the workers the requirements, terms and conditions of employment including *inter alia*—

(a) general conditions of employment;

(b) job requirements and the person to whom the worker is directly responsible;

(c) disciplinary rules and the procedures for the examination of grievances;

(d) opportunities for promotion and training;

- (e) social welfare services, such as medical care, canteens, pensions, etc.;
 - (f) occupational safety health and welfare regulations;
 - (g) methods of consultation;
 - (h) any trade union arrangements;
 - (i) the company's personnel and industrial relations policies.
- (iv) provide induction training both as to the actual job performance and as to the policies and procedures existing in the undertaking, encouraging their adoption particularly as they relate to safety, health and welfare matters;
- (v) ensure that workers are kept abreast of changing job techniques by on the job training or by approved courses;
- (vi) not be influenced by conditions relating to age, sex or other personal factors except where relevant to the job;
- (vii) make provision for workers to further their educational standard if they so desire, by granting time off for such purposes;
- (viii) be carried out by competent staff and be subject to periodic review to ensure efficiency.

Manpower use and Planning

10. Proper manpower utilization policies are essential to efficiency.

Such policies should -

- (i) be given high priority and be integrated with other aspects of planning in the undertaking;
- (ii) assess existing manpower resources based on adequate and up-to-date personnel records;
- (iii) identify future manpower needs and formulate and implement policies for their fulfilment;
- (iv) seek to avoid unnecessary fluctuation in the work force and where such fluctuations are necessary, ensure that there is a minimum of disruption to the workers concerned;
- (v) ensure that the undertaking operates in an efficient manner by

identifying such problems as absenteeism and high incidence of labour turn-over, recording such information and taking steps in consultation with workers or their representatives to correct them.

Security of Workers

11. Recognition is given to the need for workers to be secure in their employment and management should in so far as is consistent with operational efficiency -

(i) provide continuity of employment, implementing where practicable, pension and medical schemes;

iii) in consultation with workers or their representatives take all reasonable steps to avoid redundancies;

(iii) in consultation with workers or their representatives evolve a contingency plan with respect to redundancies so as to ensure in the event of redundancy that workers do not face undue hardship. In this regard management should endeavour to inform the worker, trade unions and the Minister responsible for labour as soon as the need may be evident for such redundancies;

(iv) actively assist workers in securing alternative employment and facilitate them as far as is practicable in this pursuit.

Working Environment

12. Various Acts of Parliament lay down minimum standards in respect of working conditions.

(A) Management in consultation with workers or their representatives should seek to improve these standards,

Management has a duty to -

(i) furnish, equip and otherwise provide factories, workshops, offices and other places where work is to be performed with such facilities as meet the reasonable requirements of safety, health and welfare regulations and to adopt suitable measures for the workers protection, and the prevention of the spread of epidemic or infectious disease;

(ii) organize work in such a manner as to provide in so far as is practicable and best guarantee for the workers' safety and health;

(iii) adopt the statutory and other suitable measures for the

prevention of accidents at the work place and to keep at all times such medication and therapeutic materials as are necessary for the administration of effective first aid;

(iv) ensure that personnel are trained in first aid techniques and in such numbers, as to provide for the presence of at least one such trained worker during working hours;

(v) display in conspicuous positions at the work place rules and regulations, statutory or otherwise concerning safety and health precautions.

(B) The worker has a duty to -

(i) ensure that he understands and observes the safety and health regulations;

(ii) make use of all protective equipment provided;

(iii) co-operate with management and fellow workers in the development and implementation of all safety, health and welfare measures.

Payment of Wages

13. The question of payment for work done is often a contentious area in industrial relations. Wage systems should be agreed and should not be in contravention of any statute.

Wage systems should also -

(i) ensure that the agreed wages and rates are paid;

(ii) be kept in simple terms so that workers can understand them;

(iii) be kept under review to ensure their applicability to changing circumstances.

PART IV - Workers Representation and the Collective Bargaining Process

Trade Union Recognition

14. (i) The Labour Relations and Industrial Disputes Act and the Labour Relations and Industrial Disputes Regulations, 1975, set out the conditions and procedures for the taking of ballots to determine bargaining rights on behalf of workers. This does not, however, preclude employers and trade unions from voluntarily determining claims for bargaining rights where—

- (a) there are no other trade unions representing or claiming to represent the workers in question;
 - (b) the employer is satisfied that the majority of workers in the proposed bargaining unit are members of the applicant union.
- (ii) where recognition is accorded voluntarily the employer should immediately so inform the Ministry of Labour and Employment stating the name of the trade union, the date of recognition and the composition of the bargaining unit;
 - (iii) the employer and the recognized trade union should agree on procedures for resolving disputes and differences and should conduct negotiations in good faith;
 - (iv) trade unions recognized for bargaining purposes should be allowed reasonable facilities to properly represent their members.

Representation at Place of Employment (Delegates)

15. To ensure that proper representation of all workers, delegates are appointed from the work force to represent the interest of the workers. In doing so cognizance must be taken of the size and distribution of the work force as well as the organization of the establishment,

- (i) Trade Unions should -
 - (a) specify the conditions of eligibility for the selection and appointment of delegates, and define the manner in which they can be removed;
 - (b) provide delegates with written authority setting out their responsibilities, particularly with regard to industrial action;
 - (c) notify the management promptly in writing when delegates are appointed, the period for which they hold office, the work groups they represent and any changes among delegates;
 - (d) in consultation with management provide for the proper training of delegates and seek to agree on remuneration whilst attending training courses;
 - (e) consider the selection of a chief delegate to co-ordinate activities and where there is more than one union, seek agreement with management and that other union for the co-ordination of delegate activities.
- (ii) Management should –

- (a) notify delegates of its employment and industrial relations policies;
- (b) consult with delegates on proposed changes in work programmes and methods or any other matter directly affecting the workers;
- (c) co-operate with delegates in the performance of their duties and in particular agree on reasonable time off with pay to carry out these duties. Where such time off has not previously been agreed on, request by delegates should be made of the immediate supervisor and should not be unreasonably withheld;
- (d) make available to delegates a list of new workers and staff changes of particular interest to the bargaining unit, and offer reasonable facilities to acquaint workers with union matters.

Collective Bargaining

16. (i) Collective bargaining is the process whereby workers or their representatives and management negotiate with a view to reaching agreement on the terms and conditions of employment of the workers concerned. It should be conducted in an atmosphere of reasonableness and good faith, and management and unions should take all steps to ensure that their representatives conduct themselves during negotiations in a manner which will avoid undue acrimony and facilitate the peaceful and orderly conduct of the negotiations. There should be a determination to abide by the terms agreed and due regard should always be paid to the interest of the community.

(ii) Collective bargaining is more meaningful if the parties are informed on the matters being negotiated. The parties should aim to meet all reasonable requests for information which is relevant to the negotiation in hand, and in particular, management should make available information which is supplied to their shareholders or published in annual reports;

(iii) Collective bargaining may take place in relation to the industry as a whole, or a particular undertaking, or in relation to a particular group of employees within an establishment;

(iv) Where negotiations take place at more than one level, their extent and scope should be clearly defined and properly confined to matters which can appropriately be dealt with at those levels,

Bargaining Units

17. (i) Section 2 of the Labour Relations and Industrial Disputes Act, defines a bargaining unit as "those workers or categories of workers of an employer in relation to whom collective bargaining is or could appropriately be carried on". The Regulations made under that Act lay down certain factors to be considered in the event of a dispute in relation to workers who should comprise

the bargaining unit In addition to these factors, consideration may be given to the following –

- (a) the composition of bargaining units should be wide as is practicable so as to avoid a multiplicity of units within the same establishment, as too many small units make it difficult to ensure that related groups of employees are treated consistently;
 - (b) the practice of having separate bargaining units for management and supervisory personnel and excluding them from other bargaining units;
 - (c) that negotiation arrangements may need periodic review but this must be balanced against the need to avoid disruption of existing bargaining units which are working well.
- (ii) Where a dispute exists over any matter concerning the bargaining unit the parties should endeavour to settle the matter by direct negotiation.

Failing agreement, the parties should utilize the conciliation services of the Ministry of Labour.

Collective Agreements

18. The major aim of the collective bargaining process is to arrive at terms and conditions acceptable to both employers and workers. These terms and conditions are usually enshrined in collective agreements, and often contain procedural and substantive provisions.

- (i) Procedural provisions should cover –
 - (a) arrangements for negotiating terms and conditions of employment and provision for their re-negotiation;
 - (b) grievance procedures for settling collective disputes and for dealing with disciplinary matters;
 - (c) facilities for trade union activities in the establishment, and the appointment and functions of delegates;
 - (d) provisions for joint permanent or *ad hoc* consultative committees.
- (ii) Substantive provisions should state—
 - (a) the duration of the agreement;
 - (b) all matters relating to remuneration;

- (c) normal hours of work, provisions for overtime and shift work;
 - (d) provisions for vacation, sick, maternity and casual leave;
 - (e) compensation for job related injuries;
 - (f) provisions for dealing with redundancies, temporary lay off and re-hiring;
 - (g) provisions for determining job performance, job evaluation and job classification;
 - (h) provisions for deduction by management from the pay of members of trade unions, contributions duly authorized by such members.
- (iii) Where practicable, collective agreements should be concluded on an industry wide level, as this ensures uniformity and consistency throughout the particular industry. The matters suitable to such agreement may cover –
- (a) terms and conditions of employment of general application;
 - (b) general guidelines as to how and within what limits any negotiations at the level of an undertaking should be conducted;
 - (c) procedures for settling disputes, either on the industry wide level or in the individual undertaking.
- (iv) Collective Agreements should be in writing, and management should send copies of such agreements to the Ministry of Labour and Employment for their records.

PART V—Communication and Consultation

Communication and Consultation

19. Communication and consultation are necessary ingredients in a good industrial relations policy as these promote a climate of mutual understanding and trust which alternately result in increased efficiency and greater job satisfaction. Management and workers or their representatives should therefore co-operate in promoting communication and consultation within the organization.

(a) *Communication*

Communication is a two way flow of information between management and workers or their representatives. There should likewise be scope for a cross flow of information between various departments of management—

(i) management should following consultation with workers or their representatives take appropriate measures to apply an effective policy of communication;

(ii) such measures as are adopted should in no way prejudice the position of recognized workers representatives or management and supervisory representatives;

(iii) a communication policy should be adapted to the nature of the undertaking, its size and composition and the interest of the workers;

(iv) the most important medium of communication is by word of mouth through personal contact between management and workers or workers' representatives. However, personal contact should be supplemented where necessary by such means as—

(a) written information by way of house-journals, bulletins, notice-boards;

(b) meetings for the purpose of exchanging views and information;

(c) media aimed at permitting workers to submit suggestions and ideas on the operation of the undertaking;

(d) proper orientation courses;

(v) the matters of interest to be communicated include the operation and future prospects of the undertaking especially as they affect the worker. Information regarding training, prospects of promotion, general working conditions, staff welfare services, safety regulations. social security schemes, transfers, termination of employment, job description and procedures for the examination of grievances is a matter which management is expected to have readily available in easily understandable form. Management should undertake to explain decisions which are likely to affect directly or indirectly the situation of the workers in the establishment provided the disclosure of such information is not damaging to either of the parties.

(b) *Consultation*

Consultation is the joint examination and discussion of problems and matters affecting management and workers. It involves seeking mutually acceptable solutions through a genuine exchange of views and information. Management should take the initiative in establishing and regularising consultative arrangements appropriate to the circumstances of the undertaking in co-operation with the workers or their representatives.

- (i) Management should ensure that in establishing consultative arrangements-
 - (a) all the information necessary for effective consultation is supplied;
 - (b) there is adequate opportunity for workers and their representatives to expose their views without prejudicing their positions in any way;
 - (c) senior members of management take an active part in consultation
 - (d) there is adequate opportunity for reporting back.
- (ii) Where formal arrangements exist the rules and procedures as well as the subjects to be discussed should be agreed between representatives of management and workers.

PART VI - Grievance, Dispute and Disciplinary Procedures

Disputes Procedures

20. Disputes are broadly of two kinds -

- (a) disputes of right which involve the application and interpretation of existing agreement or rights; and
- (b) disputes of interests which relate to claims by workers or proposal by management as to the terms and conditions of employment.

Management and workers representatives should adopt a procedure for the settlement of such disputes which -

- (i) should be in writing;
- (ii) states the level at which an issue should first be raised;
- (iii) sets time limits for each stage of the procedure and provides for extension by agreement;
- (iv) precludes industrial action until all stages of the procedure have been exhausted without success;
- (v) have recourse to the Ministry of Labour and Employment

conciliation services.

Individual Grievance Procedure

21. All workers have a right to seek redress for grievances relating to their employment and management in consultation with workers or their representatives should establish and publicize arrangements for the settling of such grievances. The number of stages and the time allotted between stages will depend on the individual establishment. They should neither be too numerous nor too long if they are to avoid frustration. The procedure should be in writing and should indicate -

- (i) that the grievance be normally discussed first by the worker and his immediate supervisor—commonly referred to as the “first stage”;
- (ii) that if unresolved at the first stage, the grievance be referred to the department head, and that the worker delegate may accompany the worker at this stage—the second stage, if the worker so wishes;
- (iii) that if the grievance remains unresolved at the second stage, it be referred to higher management at which stage it is advantageous that the worker is represented by a union officer; this is the third stage;
- (iv) that on failure to reach agreement at the third stage, the parties agree to the reference of the dispute to conciliation by the Ministry of Labour and Employment;
- (v) a time limit between the reference at all stages;
- (vi) an agreement to avoid industrial action before the procedure is exhausted.

Disciplinary Procedure

22. (i) Disciplinary procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should -

- (a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;
- (b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;

- (c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;
 - (d) provide for a right of appeal. wherever practicable to a level of management not previously involved;
 - (e) be simple and rapid in operation.
- (ii) The disciplinary measures taken will depend on 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 circumstances;
 - (b) no worker should be dismissed for a first breach of discipline except in the case of gross misconduct;
 - (c) action on any further misconduct, for example, final warning suspension without pay or dismissal should be recorded in writing;
 - (d) details of any disciplinary action should be given in writing to the worker and to his representative;
 - (e) no disciplinary action should normally be taken against a delegate until the circumstances of the case have been discussed with a full-time official of the union concerned.