

National Workers Union

***For a
Modern
Trade
Union Act***

September 2008



Table of Contents

4 Executive Summary.....	5
1 Introduction.....	7
2 Legal framework for Trade Unions.....	7
3 Needs of Trade Unions.....	8
4 Trade Union Act 1933.....	8
Interpretation (Section 2).....	8
Register of unions (Section 9).....	9
Registration of trade unions (Section 10).....	9
Provisions relating to registration (18).....	9
Rules of registered unions (Section 19).....	9
Withdrawal or cancellation of certificate of registration (Section 21).....	9
Membership of unions (Section 22).....	10
Members nomination of payee (Section 23).....	10
Change of union's name (Section 24).....	10
Amalgamations of unions (Section 25).....	10
Transfer of engagements (new proposal).....	10
Registrar's report (Section 30).....	11
Recovery of summary penalties (Section 32).....	11
Restriction on application of funds for certain political purposes (Section 33).....	11
Contribution by members to political funds (Section 34).....	11
5 First Schedule.....	11
6 Trade union regulations.....	11
Fees (Section 24).....	11
Auditors' Fees (Section 25).....	12
References.....	13
Appendix "A" - Meaning of "Trade Union".....	15
Appendix "B" - Meaning of "Independent Trade Union".....	17
Appendix "C" - Change of name of trade union.....	19
Appendix "D" - Amalgamation or Transfer of Engagements.....	21

EXECUTIVE SUMMARY

- The *Trade Union Act 1933* should be amended in a way that assist the development of trade unions.
- The Register of Trade Unions should only be a register of trade unions.
- The definition of a “trade union” should be amended to reflect:
 - that unions are organisations wholly or mainly of workers;
 - that a union has to be independent from control of the employer.
- Registered trade unions should be able to object to an organisation that is not an independent organisation of workers being registered.
- All legal matters arising out of the *Trade Union Act* should be determined by the Industrial Court.
- There should be consultation with the trade union movement before any amendments to *Regulations* are referred to parliament.
- Charges for union Rule Books should be left to the discretion of the union.
- There should be an appeal mechanism for unions at risk of de-recognition.
- The age constraints on being a member of a management committee should be abolished.
- Consideration should be given to abolishing the Section on nominations, and reference to a limit of \$500 death benefit should be abolished and left to unions to determine.
- The process for changing the name of a union should be left to the union to determine in accordance with its rules for amending any other rule of the union.
- Amalgamation should be confirmed by a simple majority of those voting.
- A new concept of a “**transfer of engagements**” should be introduced to make it easier for one union to transfer to another. The process should be subject only to a simple majority of those voting.
- A copy of the registrar's report should be circulated to all unions on the Register.
- The recovery of summary penalties should be dealt with through the Industrial Court.
- Union members should “opt-out” rather than “opt-in” to any union Political Fund.
- Consideration should be given to abolishing the Fees in the *First Schedule*. If they are to be retained they should remain at a moderate level.
- Consideration should be given to abolishing the Fees referred in the *Regulations*.
- Auditors fees should be paid for by the Registrar of Trade Unions.

1 INTRODUCTION

- 1.1 Trade unions are a product of society and as such reflect that society.
- 1.2 Unions that are formed at a particular time in history may well find over time that their membership base has eroded as the labour market changes or there are structural alternations in the economy.
- 1.3 Clear examples of this can be found in countries where the manufacturing industry has shrunk and been replaced by a growth in the service sector. Once powerful unions are a mere shadow of their former self as their industry or occupation is overtaken by structural change.
- 1.4 In many countries, the trade union movement has responded to these changes by merging or changing or broadening the base of their membership in order to make them more viable.
- 1.5 In Trinidad and Tobago, trade unions are constrained in their activities by two pieces of legislation:
 - Trade Union Act 1933
 - Industrial Relations Act 1972
- 1.6 In their own ways, both these pieces of legislation have helped to freeze trade unions in their current organisational structures as the legal obstacles to change have become a major hurdle.
- 1.7 This paper looks only at the Trade Union Act. It should not be inferred from this limited approach that the **National Workers Union** does not also have criticisms of the Industrial Relations Act.

2 LEGAL FRAMEWORK FOR TRADE UNIONS

- 2.1 The rights of individuals in respect of trade unions are set out in the Constitution, with Section 4(j) declaring:

“4.- It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely: -

...

j. freedom of association and assembly ...”
- 2.2 This was further reinforced when, in 1963, Trinidad and Tobago became a member of the *International Labour Organization (ILO)* and has subsequently ratified all eight core Conventions which include, in particular:
 - C87 Freedom of Association and Protection of the Right to Organise Convention, 1948
 - C98 Right to Organise and Collective Bargaining Convention, 1949
- 2.3 Freedom of association is of academic interest only if it does not provide for workers an effective result. To have the freedom to associate but not be able to do anything with that freedom is nothing short of a meaningless sham. It is here that Convention 97, dealing with the right to organise and collectively bargain, steps in and requires member states to actively promote collective bargaining:

“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.” (Article 4)

- 2.4 Although not formally ratified by Trinidad and Tobago, Convention 154 on Collective Bargaining reinforces the active encouragement of collective bargaining when it spells out member states obligations to put in place “*Measures adapted to national conditions shall be taken to promote collective bargaining*” (Article 5(1)).
- 2.5 It could certainly be argued that these obligations have been addressed by the Industrial Relations Act which sets out in its pre-amble that it is:
- “An Act to repeal and replace the Industrial Stabilisation Act 1965, and to make better provision for the stabilisation, improvement and promotion of industrial relations.”*
- 2.6 The legal framework within which industrial relations operates does more than just give 'rights' to workers to form and join trade unions. There is also an obligation on the part of the Government to actively promote collective bargaining – and this cannot be done without effective trade union organisations.
- 2.7 Any legislation which is an obstacle to effective trade union organisation goes against the spirit and intent of international obligations and the stated objective of domestic law.

3 NEEDS OF TRADE UNIONS

- 3.1 Trade unions cannot function as effective representatives of labour if they are not viable.
- 3.2 Modern trade unions need to be able to have access to:
- legal advice
 - research capabilities
 - organising
 - education and training
 - effective communication's
- 3.3 Whether these requirements are met by direct or indirect means, the fact remains that it costs money, and trade unions, even the larger ones, rely almost entirely for their income from members contributions.
- 3.4 This means that the size of the union is important. The ability to change and adapt their organisational structure and membership base is central to the effective functioning of a trade union.

4 TRADE UNION ACT 1933

- 4.1 Modern legislation needs to be written in language which is understood by ordinary people. This legislation is very much a product of its age.
- 4.2 This paper concentrates on highlighting areas we think it is important to change.
- 4.3 This paper makes reference to the UK *Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*. This is done merely to provide an example of where the issues being raised have been addressed in other jurisdictions and we are not necessarily suggesting an exact reproduction of the words used.

Interpretation (Section 2)

- 4.4 The current definition of “*trade union*” allows a range of organisations that are not trade unions, including employers organisations, to register.

- 4.5 Essentially, a trade union is an independent organisation of workers, and therefore only genuine trade unions should be allowed to register (*Appendix "A"*). The definition of "trade union" should be amended to reflect this.
- 4.6 It is also important that trade unions should be "*independent*" - i.e. independent from the employer. This would address the question of '*in-house*', '*sweetheart*' or '*yellow*' unions being registered (*Appendix "B"*). Again, the definition of "*trade union*" should include a reference to this.
- 4.7 It is important that there should be a mechanism for challenging whether a "trade union" that is registered is genuinely "independent". Existing registered trade unions should have the right to challenge a registration if they are of the view that the "union" seeking registration is not genuinely independent.
- 4.8 There would clearly need to be a mechanism for doing this. We would see an initial role for the Registrar of Trade Unions with the Industrial Court being a final arbiter.
- 4.9 We are suggesting the use of the Industrial Court because:
- it has a specialism in industrial relations matters;
 - trade unions are used to working in that environment, and
 - the Industrial Court is open to non-legally qualified practitioners.

Register of unions (Section 9)

- 4.10 The regulations would need to be amended to reflect any changes resulting from the tighter definition of "trade union" being proposed.

Registration of trade unions (Section 10)

- 4.11 Once a trade union fulfils the criteria of being a workers organisation and being independent from the employers, registration to be kept as easy as possible and we see no reason to change the current number of any seven union members being able to form and register a trade union.

Provisions relating to registration (18)

- 4.12 Section 18(1)(e) requires any appeal against a refusal of the Registrar of Trade Unions to register a union to be referred to the High Court. This should be amended so that the Industrial Court is the route through which this matter is determined.
- 4.13 Section 18(2) allows the Minister to make regulations on a range of matters 'subject to affirmative resolution of Parliament'. There should be a mechanism that requires consultation with the trade unions before this is done.
- 4.14 This could either be by notice to all those unions on the Register of Trade Unions, or to the "*most representative trade union federation*"¹.

Rules of registered unions (Section 19)

- 4.15 Section 19(b) sets a maximum charge to members for the receipt of a Rule Book. This should be left to the discretion of the union, providing that the cost is not set so high that it acts as a deterrent to members being able to purchase a copy of the Rules.

Withdrawal or cancellation of certificate of registration (Section 21)

- 4.16 If the proposal for tightening the definition of a trade union to include its independence is accepted, then this Section would need to be amended to allow for de-registration if a union fell under the control of the employer.

¹ This approach can be found in existing legislation and is used by the International Labour Organization.

- 4.17 There should be an appeal mechanism for trade unions de-registered against their will. The Industrial Court should be used for hearing such matters.

Membership of unions (Section 22)

- 4.18 The reference to twenty-one years is clearly a reflection of the time when the legislation was written.
- 4.19 A fundamental principle of the trade union movement is that all members are equal. It should therefore be left to the union Rules to determine who is eligible for election to any management committee. This section should be deleted in its entirety.

Members nomination of payee (Section 23)

- 4.20 It is questionable as to whether this Section as a whole is necessary, but reference to the sum of five hundred dollars (\$500.00) should be deleted.

Change of union's name (Section 24)

- 4.21 A trade union's name tells the world – and existing and potential members – who the union is. As union's change in terms of who they organise, there is the need, at times, to change the name of the union. Sometimes a modernising or 'relaunch' of a union would also involve changing the union's name.
- 4.22 Employers do this with relative ease. For a trade union, however, there is the requirement to have the consent of “not less than two thirds of the total number of members”² before this can be done.
- 4.23 Such a target is better than any Government has achieved in any election since independence. We would not have a government if this standard was required in general elections.
- 4.24 There is no reason why the union should not be able to change its own name by going through its internal democratic procedures.
- 4.25 The name of the union is in the Rule Book and the Rules will provide a mechanism for changing or amending the Rules. Changing the name of the union should be treated no differently from any other Rule change.
- 4.26 An example of this approach can be found in the UK legislation (*Appendix “C”*).

Amalgamation of unions (Section 25)

- 4.27 The current Trade Union Act makes the same requirement of having two-thirds of actual members agree to an amalgamation before this can be implemented. Such a requirement is likely to make it almost impossible for any large union to be involved in an amalgamation and so dramatically interferes in the rights of trade unions to administer their own affairs.
- 4.28 Amalgamations should be acceptable once a simple majority of those involved in the balloting should be sufficient for any resolution to be passed.
- 4.29 An example of the UK legislation on this is at *Appendix “D”*.

Transfer of engagements (new proposal)

- 4.30 An amalgamation requires two or more unions to merge to form a new union. In these circumstances, a ballot would be required in all the unions involved in the merger.
- 4.31 The concept of a “**transfer of engagements**” is a process whereby one union transfers its engagements to another. In these circumstances it is only necessary to ballot the membership of the union that is transferring its engagements.

² Trade union Act 1933, Section 23(1)

- 4.32 This mechanism has proved especially useful when small unions are transferring their engagements to a larger union.
- 4.33 In some countries, larger unions are often the repository of small unions that are no longer viable. To expect a large union to repeatedly ballot its members is a waste of time, effort, energy and money.
- 4.34 This also has the potential of ensuring that unions do not collapse, but, rather, are absorbed into another trade union. Whilst there is a tendency for small unions in Trinidad and Tobago to cease functioning, leaving workers assets in the hands of the bank or to get lost or misappropriated. In some countries, the trade union movement does not allow unions to die, but rather makes sure that they are voluntarily taken in to another union.
- 4.35 Again, the same criteria of only needing a majority of those voting should be enough to secure agreement on the transfer.
- 4.36 An example of the UK legislation on this is at *Appendix "D"*.

Registrar's report (Section 30)

- 4.37 All trade unions on the Register of Trade Unions should be sent a copy of the Registrar's Report in addition to it being laid before parliament.

Recovery of summary penalties (Section 32)

- 4.38 All matters arising from the Trade Union Act should be dealt with at the Industrial Court.

Restriction on application of funds for certain political purposes (Section 33)

- 4.39 The requirement for members to "opt-in" to paying contributions to the Political Fund (Section 33(1)(b) reflects changes introduced by the British Government into UK legislation following the defeat of the British General Strike in 1926. Current legislation in the UK has long since changed so that members have to "opt-out" rather than "opt-in" to the Political Fund.
- 4.40 Historically, anti-union Governments have, from time to time, legislated around trade unions political activities in order to make it more difficult for unions to exercise their political agenda. The law in Trinidad and Tobago should not reflect the historical antiquities of British colonialism.
- 4.41 Any issues arising out of the Section should be referred to the Industrial Court and not be left to the sole and unchallengeable discretion of the Registrar of Trade Unions as is currently the position under Section 33(2).

Contribution by members to political funds (Section 34)

- 4.42 This should be amended to provide for members to "opt-out" of paying any political levy rather than "opting-in".

5 FIRST SCHEDULE

- 5.1 Consideration should be given to abolishing all Fees referred to in the First Schedule as the cost of collecting the monies probably costs more than the income derived.
- 5.2 If they are to be retained they should always remain at a moderate level so as not to be an obstacle or deterrent to workers registering a trade union.

6 TRADE UNION REGULATIONS

Fees (Section 24)

- 6.1 Consideration should be given to abolishing all fees referred to in Section 24.

- 6.2 If they are to be retained they should always remain at a moderate level so as not to be an obstacle or deterrent to workers registering a trade union.

Auditors' Fees (Section 25)

- 6.3 The requirement to have the books of the union audited is a requirement of the legislation and the costs associated with this should be paid by the Registrar of Trade Unions.
- 6.4 The auditors concerned will expect to be properly reimbursed and to impose the costs of professional auditors fees on unions – particularly small ones – could well be prohibitive.
- 6.5 There is provision under Section 16(5) of the Act for the Registrar to pay auditors fees and this should be extended to Section 25 of the Regulations.

20th September 2008

REFERENCES

C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 International Labour Organisation <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>> [Accessed 24th August 2007]

C98 Right to Organise and Collective Bargaining Convention, 1949 International Labour Organisation <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>> [Accessed 24th August 2007]

C154 Collective Bargaining Convention, 1981 International Labour Organisation <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C154>> [Accessed 24th August 2007]

Trinidad and Tobago *Industrial Relations Act 1972* Port of Spain: Government Printery

Trinidad and Tobago *Trade Union Act 1933* Port of Spain: Government Printery

United Kingdom *Trade Union and Labour Relations (Consolidation) Act 1992*

<http://www.opsi.gov.uk/ACTS/acts1992/ukpga_19920052_en_1> [Accessed 20th September 2008]

APPENDIX “A” - MEANING OF “TRADE UNION”

An extract from the UK *Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

1 Meaning of “trade union”

In this Act a “trade union” means an organisation (whether temporary or permanent)—

(a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or

(b) which consists wholly or mainly of—

(i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or

(ii) representatives of such constituent or affiliated organisations,

and whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or the regulation of relations between its constituent or affiliated organisations.

APPENDIX “B” - MEANING OF “INDEPENDENT TRADE UNION”

An extract from the UK Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

5 Meaning of “independent trade union”

In this Act an “independent trade union” means a trade union which—

(a) is not under the domination or control of an employer or group of employers or of one or more employers' associations, and

(b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

and references to “independence”, in relation to a trade union, shall be construed accordingly.

APPENDIX “C” - CHANGE OF NAME OF TRADE UNION

An extract from the UK Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

107 Change of name of trade union

(1) A trade union may change its name by any method expressly provided for by its rules or, if its rules do not expressly provide for a method of doing so, by adopting in accordance with its rules an alteration of the provision in them which gives the union its name.

(2) If the name of the trade union is entered in the list of trade unions a change of name shall not take effect until approved by the Certification Officer.

(3) The Certification Officer shall not approve a change of name if it appears to him that the proposed new name

—
(a) is the same as one entered in the list as the name of another trade union, or

(b) is the same as one entered in the list of employers' associations kept under Part II of this Act,

or is a name so nearly resembling such a name as to be likely to deceive the public.

(4) A change of name by a trade union does not affect any right or obligation of the union or any of its members; and any pending legal proceedings may be continued by or against the union, the trustees of the union or any other officer of the union who can sue or be sued on its behalf notwithstanding its change of name.

APPENDIX “D” - AMALGAMATION OR TRANSFER OF ENGAGEMENTS

An extract from the UK Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

97 Amalgamation or transfer of engagements

(1) Two or more trade unions may amalgamate and become one trade union, with or without a division or dissolution of the funds of any one or more of the amalgamating unions, but shall not do so unless—

(a) the instrument of amalgamation is approved in accordance with section 98, and

(b) the requirements of sections 99 and 100 (notice to members and passing of resolution) are complied with in respect of each of the amalgamating unions.

(2) A trade union may transfer its engagements to another trade union which undertakes to fulfil those engagements, but shall not do so unless—

(a) the instrument of transfer is approved in accordance with section 98, and

(b) the requirements of sections 99 and 100 (notice to members and passing of resolution) are complied with in respect of the transferor union.

(3) An amalgamation or transfer of engagements does not prejudice any right of any creditor of any trade union party to the amalgamation or transfer.

(4) The above provisions apply to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned.

98 Approval of instrument of amalgamation or transfer

(1) The instrument of amalgamation or transfer must be approved by the Certification Officer and shall be submitted to him for approval before the resolution to approve it is voted on by members of any amalgamating union or, as the case may be, of the transferor union.

(2) The instrument must comply with the requirements of any regulations in force under this Chapter and the Certification Officer shall approve it if he is satisfied that it does so.

99 Notice to be given to members

(1) The trade union shall take all reasonable steps to secure that, not less than seven days before voting begins on the resolution to approve the instrument of amalgamation or transfer, every member of the union is supplied with a notice in writing approved for the purpose by the Certification Officer.

(2) The notice shall be in writing and shall either—

(a) set out in full the instrument of amalgamation or transfer to which the resolution relates, or

(b) give an account of it sufficient to enable those receiving the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer.

(3) If the notice does not set out the instrument in full it shall state where copies of the instrument may be inspected by those receiving the notice.

(4) The notice shall also comply with the requirements of any regulations in force under this Chapter.

(5) The notice proposed to be supplied to members of the union under this section shall be submitted to the Certification Officer for approval; and he shall approve it if he is satisfied that it meets the requirements of this section.

100 Resolution approving instrument of amalgamation or transfer

(1) A resolution approving the instrument of amalgamation or transfer must be passed on a vote taken in a manner which satisfies the following conditions—

- (a) every member of the union must be entitled to vote on the resolution;
- (b) every member of the union must be allowed to vote without interference or constraint and must, so far as is reasonably possible, be given a fair opportunity of voting;
- (c) the method of voting must involve the marking of a voting paper by the person voting.

(2) The committee of management or other governing body of the union may arrange for the vote to be taken in any manner which that body thinks fit.

This subsection does not apply if the rules of the trade union expressly provide that it is not to apply in relation to that union.

(3) A simple majority of the votes recorded is sufficient to pass the resolution, whether the vote is taken under arrangements made under subsection (2) or under the rules of the union.

This subsection does not apply if the rules of the trade union expressly provide that it is not to apply in relation to that union.

(4) The provisions of subsections (2) and (3) have effect, where they apply, notwithstanding anything in the rules of the trade union and, in particular, notwithstanding anything in those rules which would require the resolution—

- (a) to be passed by a majority greater than a simple majority, or
- (b) to be voted on by not less than a specified proportion of the members of the union.

101 Registration of instrument of amalgamation or transfer

(1) An instrument of amalgamation or transfer shall not take effect before it has been registered by the Certification Officer under this Chapter.

(2) It shall not be so registered before the end of the period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer.

102 Power to alter rules of transferee union for purposes of transfer

(1) Where a trade union proposes to transfer its engagements to another trade union and an alteration of the rules of the transferee union is necessary to give effect to provisions in the instrument of transfer, the committee of management or other governing body of that union may by memorandum in writing alter the rules of that union so far as is necessary to give effect to those provisions.

This subsection does not apply if the rules of the trade union expressly provide that this section is not to apply to that union.

(2) An alteration of the rules of a trade union under subsection (1) shall not take effect unless or until the instrument of transfer takes effect.

(3) The provisions of subsection (1) have effect, where they apply, notwithstanding anything in the rules of the union.