

# National Workers Union

Workers of the world unite!



*The Industrial Relations Act Chapter 88:01 ...*

**THE IMPACT OF**

***“ESSENTIAL INDUSTRY***

***CATEGORIES”***

**ON WORKERS RIGHTS**



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## **INTRODUCTION**

The allocation of significant parts of the economy to various “essential industries categories”<sup>1</sup> in the First Schedule of the *Industrial Relations Act Chapter 88:01 (IRA)* has had, and continues to have, a major impact on the ability of workers and their trade unions to effectively organise.

This paper examines some of the issues surrounding the use of “essential industries” in labour legislation in Trinidad and Tobago.

## **HISTORY**

The voluntarist approach to industrial relations was inherited from the British colonial authorities and meant that the relationship between trade unions and employers was left for them to determine with no interference from the state. This was the position at political independence in 1962.

By 1965, this approach had changed dramatically, with the Government introducing the Industrial Stabilisation Act (ISA). Although the ISA did not introduce the concept of “essential industries”, it did refer to “essential services”<sup>2</sup> in which strikes and lockouts were prohibited. These were listed in a Schedule to the ISA<sup>3</sup>.

It was not until the replacement of the ISA by the IRA in 1972 that “essential industries” were introduced into law. The IRA retained “essential services” as a feature of its legislative restrictions on workers rights.

The rationale for introducing the concept of essential industries was entirely political. At the time, there was a movement amongst workers towards the more militant unions of OWTU and TIWU and the Government wanted to avoid these unions having control over too much of the economy. There was also pressure from Labour Congress affiliated trade unions who were losing members to the more progressive unions.

Effectively, what the legislation did was to strengthen the concept of industrial unionism – except that it was imposed by law rather than by a conscious decision of the trade union movement. From the nineteen thirties, workers organised around industrial and economic sectors - dockworkers, oil workers, sugar workers, transport etc. However, over the years unions have morphed into more omnibus general unions.

## **ESSENTIAL INDUSTRIES AND ESSENTIAL SERVICES**

Under the IRA, it is **Section 67(2)** which prohibits workers and employers in “essential services” from taking industrial action. It says:

*“An employer or a worker carrying on or engaged in an essential service shall not take industrial action in connection with any such essential service.”*

The list of “essential services”<sup>4</sup> under the IRA is much expanded over that in the ISA. It is similar, to the essential industries categories but there are some differences.

The **First Schedule** of the Industrial Relations Act Chapter 88:01 sets out a list of “essential industries”<sup>5</sup>. The relevance of this is determined by **Section 38 (4)** of the Act which says:

*“... no application for certification of recognition under this Part shall be considered where the application relates to workers comprised in a bargaining unit in one category of essential industries and the claimant union is already certified as the recognised majority union for workers comprised in a bargaining unit in another category of essential industries.”*

What we have, therefore, is this:

- workers in essential services are not allowed to take industrial action
- workers in essential industries cannot join a trade union that already organises workers in other

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1 See Appendix “A” - IRA: Essential Industries (Categories).

2 Section 36 of the ISA.

3 See Appendix “B” - ISA: Essential Services.

4 See Appendix “C” - IRA: Essential Services.

5 See Appendix “A” - IRA: Essential Industries (Categories).

essential industries

- there is an overlap of essential services and essential industries, although there are some differences.

The reason why some unions have bargaining units in more than one essential industry (i.e. OWTU in oil and electricity; NUGFW in water, health and scavenging) is that when these restrictions were introduced in the IRA in 1972, the Government left the current recognition arrangements in place.

The consequences of the limitation on workers rights arising from the “essential industries” section of the Act is significant. This is not to ignore the issues arising out of the “essential services” prohibitions of industrial action, but that is not the theme of this paper.

### **ESSENTIAL INDUSTRIES CATEGORIES**

The list of essential industry categories is open to ridicule in places.

- Water and Sewerage is an essential industry, and yet WASA is not able to provide continuous water to more than 21% of the population<sup>6</sup>;
- the sugar industry is so essential that the Government closed it;
- Communications includes radio - there are now 37 radio stations<sup>7</sup> all of which would seem to be an essential industry according to the IRA;
- civil aviation includes airline catering services – so the company that makes sandwiches for *Caribbean Airlines Limited* is an essential industry;
- the iron and steel includes “the handling of scrap iron” - so the activities on the Highway by Beetham are an essential industry.

**Section 38(5)** of the IRA allows for an easy variation of the First Schedule:

*“The President of Trinidad and Tobago may, subject to affirmative resolution of the House and the Senate, add to, vary or otherwise amend the First Schedule.”*

It is interesting to note that the iron and steel industry was added as recently as 1980, specifically in response to the development of an iron and steel industry in the country. It forced those workers to form a new union – the Steel Workers Union of T&T.

### **OPTIONS OPEN TO WORKERS**

When un-organised workers in an essential industry want to join a trade union, they have these limited choices:

- join a trade union that is already recognised in that essential industry category;
- join a trade union that does not have any bargaining units in an essential industry category
- form a new trade union

#### **Join a trade union that is already recognised in that essential industry category**

This, of course, is an obvious option, but one that workers may not necessarily wish to adopt for whatever reason. It would limit the choice of union to that already recognised in the essential industry category.

#### **Join a trade union that does not have any bargaining units in an essential industry category**

The number of unions falling into this category would seem to be limited to:

- Banking Insurance and General Workers Union
- All Trinidad General Workers Trade Union (now that there is no sugar industry)

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<sup>6</sup> WASA'S TARIFF REVIEW - *Issues, Impact & Analysis Study Prepared by CAP-M Research for the T&T Chamber of Industry and Commerce and the TTMA (May 2008)*

<sup>7</sup> *Telecommunications Authority of Trinidad and Tobago*  
<http://www.tatt.org.tt/Broadcasting/ListofRadioBroadcasters.aspx> [accessed 4/11/12]

- National Workers Union
- National Union of Domestic Employees
- Union of Commercial and Industrial Workers

The irony, of course, is that once one of these unions acquires a bargaining unit in an essential industry category they are then boxed into that category.

#### Form a new trade union

Whilst forming and registering a trade union under the *Trade Union Act Chapter 88:02* is not a difficult process, building a trade union is not easy.

A new union would have little in the way of resources – especially until it established recognition. Such a union would likely have no office, no full-time staff, no ability to employ lawyers or other advisers or undertake research. Effectively, such a union is likely to be an in-house organisation with all the weaknesses that that entails.

Although the freedom to form and join a new trade union is not restricted by the IRA, looked at in terms of giving workers the organisational strength necessary to impact on the balance of power between workers and their employer, it is a poor option.

#### **FREEDOM OF ASSOCIATION**

The restrictions on workers rights to join a trade union of their choice are contrary to the provisions of the International Labour Organization's Convention on the right to organise<sup>8</sup>. The requirements of this Convention are clear:

##### PART I. Article 2

*Workers and employers, **without distinction whatsoever**, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. [NWU emphasis]*

The Government of the Republic of Trinidad and Tobago ratified Convention 87 on 24<sup>th</sup> May 1963. By ratifying a Convention, a Government is confirming that their domestic legislation is consistent with the principles of the Convention. It is clear that, in this respect, the position in Trinidad and Tobago is far from satisfactory.

#### **INDUSTRIAL UNIONISM**

There are a number of models of trade union organisation. Each one has its advocates and detractors. Industrial unionism, that is organising along industrial lines, has found favour in many quarters as has the concept of general unionism and One Big Union.

However, the central question in any organisational model is: “*what is the most effective way for workers to maximise their strength*”.

From a practical point of view, industrial unionism in a small country like Trinidad and Tobago has its limitations. A quick examination of most of the larger unions shows that they have broadened their organisational base beyond their initial core group of workers:

- the OWTU has long since organised outside the oilfields;
- the NUGFW has bargaining units throughout the private sector;
- *All Trinidad* was able to survive the closure of the sugar industry because it had bargaining units outside that industry;
- BIGWU, whilst having the core of its membership in the finance sector, still manages to organise a supermarket.
- The seamen's union (SWWTU) also organises National Flour Mills and WITCO – both completely

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8 *C87 Freedom of Association and Protection of the Right to Organise Convention, 1948*

unrelated to the waterfront;

- even the PSA has amended its constitution to allow it to take workers in the private sector into membership.

Major factors in this development are:

- workers find it easier to join an existing established union, and
- unions need to expand their membership base to increase their resources and viability.

Against this background, the legal imposition of the industrial model of trade unionism is a major attack on the rights of the trade union movement to organise itself as it sees fit. More importantly, it effectively ensures the development of a weak trade union movement which is limited in its ability to maximise its strength.

Whilst the ability of trade unions to merge to increase their strength and resources is hampered by the requirements of the *Trade Union Act*, it is prohibited between most trade unions because of the restrictions of the essential industries section of the IRA.

### **AMEND THE IRA – REPEAL THE FIRST SCHEDULE**

The position of the **National Workers Union** (NWU) is clear: **Repeal the First Schedule of the IRA** thus eliminating any restrictions on the rights of workers to join a trade union of their choice.

The NWU has developed policies on a whole range of criticisms of the IRA. This paper only deals with the important but narrow issue of the essential industries categories. Other areas that are of particular importance are:

- developing quick and easy mechanisms for recognition
- ending all restrictions of the right to take industrial action

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**APPENDIX “A” - IRA: ESSENTIAL INDUSTRIES (CATEGORIES)**

The following are described as “essential industries” according to the First Schedule of the Industrial Relations Act:

1. Electricity Service (Generation, Transmission and Distribution)
2. Water and Sewerage Services
3. Fire Service
4. Health Services
5. Hospital Services
6. Sanitation Services (including scavenging)
7. Oil, Gas, Petrochemicals (Exploration, Exploitation, Refining, manufacture, Distribution, Marketing)
8. Port Operations (Dock and Harbour, Cargo Handling, Ship Building and Repairing)
9. Sugar (Cultivation, Manufacture, Refining)
10. Communications, internal and external (Radio, Telephones, Telegraph, Television, Wireless)
11. Public Bus Transport Services (including Public School Bus Service)
12. Civil aviation services (including all services provided by a commercial airline the majority of the aircraft of which are registered in Trinidad and Tobago or are owned by citizens of Trinidad and Tobago or by a company incorporated in Trinidad and Tobago, aircraft maintenance, refuelling and ramp services, air traffic control and meteorological services and airline catering services)
13. The iron and steel industry, that is to say:
  - (a) the processing and smelting of iron ore;
  - (b) the manufacturing of pig iron or direct reduced iron from iron ore and scrap;
  - (c) the converting of pig iron and scrap into steel;
  - (d) the rolling of steel into sheets and other forms by the operators of the smelting facility or by the converters into steel;
  - (e) the operation of blast furnaces or open hearth furnaces;
  - (f) the handling of scrap iron, scrap steel and slag in the manufacturing of pig iron or direct reduced iron or in the production of steel;
  - (g) the management and administrative functions necessary for or incidental to the carrying out of the activities described in paragraph (a) to (f).



***APPENDIX “B” - ISA: ESSENTIAL SERVICES***

The “essential services” listed in a Schedule of the ISA:

1. Electricity Services
2. Fire Services
3. Health Services
4. Hospital Services
5. Sanitary Services (including scavenging)
6. Water Services



***APPENDIX “C” - IRA: ESSENTIAL SERVICES***

The “essential services” listed in the Second Schedule of the IRA:

1. Electricity Service (Generation, Transmission and Distribution).
2. Water and Sewerage Services.
3. Internal Telephone Service.
4. External Communications (Telephone, Telegraph, Wireless).
5. Fire Service.
6. Health Services.
7. Hospital Services.
8. Sanitation Services (including scavenging).
9. Public School Bus Service.
10. Civil Aviation Services (including all services provided by a commercial airline the majority of the aircraft of which are registered in Trinidad and Tobago or are owned by citizens of Trinidad and Tobago or by a company incorporated in Trinidad and Tobago, aircraft maintenance, refuelling and ramp services, air traffic control and meteorological services and airline catering services).