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# **AN UNDERSTANDING OF COLLECTIVE AGREEMENTS, TRADE DISPUTES AND INDUSTRIAL ACTIONS**

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## PART A – COLLECTIVE AGREEMENTS

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### 1. RELATED DEFINITIONS

#### (a) What is a collective agreement ?

A “**collective agreement**” is defined under section 2 of the Industrial Relations Act, 1967 as follows:

“an agreement in writing concluded between an employer or a trade union of employers on the one hand and a trade union of workmen on the other relating to the terms and conditions of employment and work of workmen or concerning relations between such parties”

Therefore, by virtue of the above definition, a collective agreement must take either of the following form:

- (i) An agreement between an employer and a trade union of workmen; or
- (ii) An agreement between a trade union of employers and a trade union of workmen.

#### (b) What is collective bargaining?

The term “**collective bargaining**” is defined under s.2 of the IRA to mean negotiating with a view to the conclusion of a collective agreement.

#### (c) Who is a workman?

The term “**workman**” is defined under section 2 of the IRA as:

“any person, including an apprentice, employed by an employer under a contract of employment to work for hire or reward and for the purposes of any proceedings in relation to a trade dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute”.

**(d) Who is an employer ?**

The term “**employer**” is defined under section 2 of the IRA as:

“any person or body of persons, whether corporate or unincorporate, who employs a workman under a contract of employment and includes the Government and any statutory authority, unless otherwise expressly stated in the Act.”

**(e) Trade Union or Union - Defined**

The term “**trade union**” or “**union**” is defined under section 2 of the Trade Union Act, 1959 as:

“any association or combination of workman or employers, being workmen whose place of work is in West Malaysia, Sabah or Sarawak, as the case may be, or employers employing workmen in West Malaysia, Sabah or Sarawak, as the case may be –

- (a) within any particular establishment trade, occupation or industry or within any similar trades, occupations or industries; and
- (b) whether temporary or permanent; and
- (c) having among its objects one or more of the following objects –
  - (i) the regulation of relations between workmen and employers, for the purposes or promoting good industrial relations between workmen and employers, improving the working conditions of workmen or enhancing their economic and social status or increasing productivity;
  - (ia) the regulation of relations between workmen and workmen or between employers and employers;
  - (ii) the representation of either workmen or employers in trade disputes;
  - (iia) the conducting of, or dealing with, trade disputes and matters related thereto; or
  - (iii) the promotion or organisation or financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike and lock-out.”

## 2. ESSENTIAL STATUTORY REQUIREMENTS

Parties concluding a collective agreement must always ensure that the following essential matters, which are required by statute under section 14 of the IRA, are duly adhered to or provided for when executing the said agreement:

- (1) It is essential that all collective agreements must be in writing;
- (2) It should clearly name the parties to the agreement;
- (3) It should be duly signed by the parties named thereto or by their authorized representatives;
- (4) It should specify the period in which the agreement is to be in force (provided such period shall not be less than three years)
- (5) It must prescribe the procedure for the modification and termination of the agreement;
- (6) It must prescribe the procedure for settling any disputes between the parties;
- (7) It should prescribe how to deal with matters pertaining to interpretation and implementation and references of any such question to the Industrial Court;
- (8) It should **NOT** contain any term or condition of employment which is less favourable than or in contravention of the provisions of any written law applicable to workmen covered by the said agreement.

### Note:

In the absence of any of the above-stated essential terms, the Industrial Court may refuse taking cognizance of the said agreement.

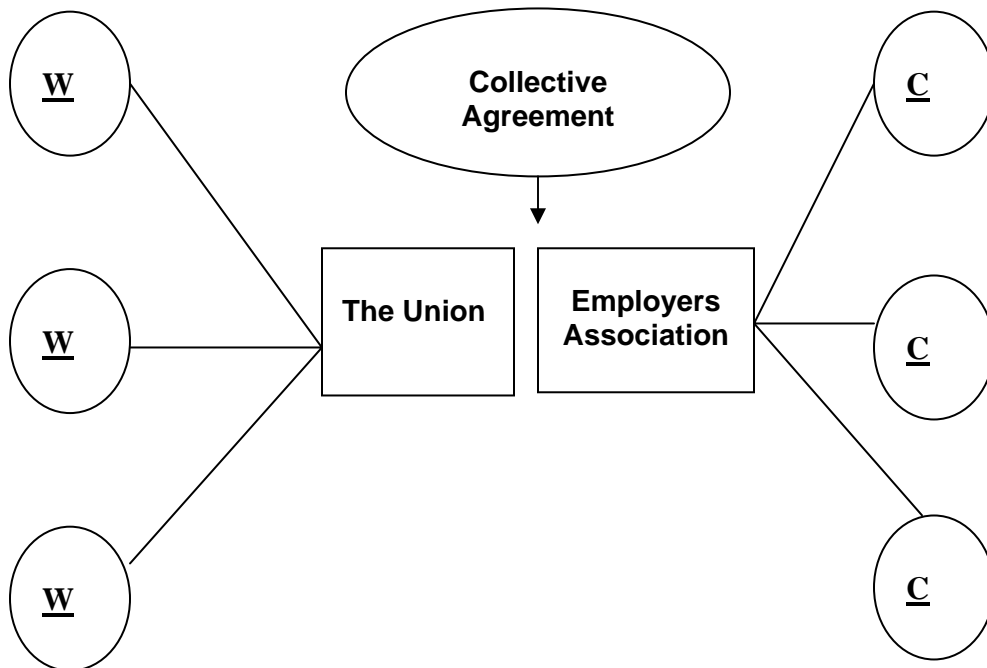
### 3. TYPOLOGY OF COLLECTIVE AGREEMENTS

There are basically three types of collective agreements in our industrial relations systems. A collective agreement can be (i) between a national union and an employers association or (ii) between a national union and directly with an individual company or (iii) between an in-house union and the company itself.

These types can be more specifically depicted in the following diagrams:

#### **Type (1) Collective Agreement:**

Between a national union and an employers association

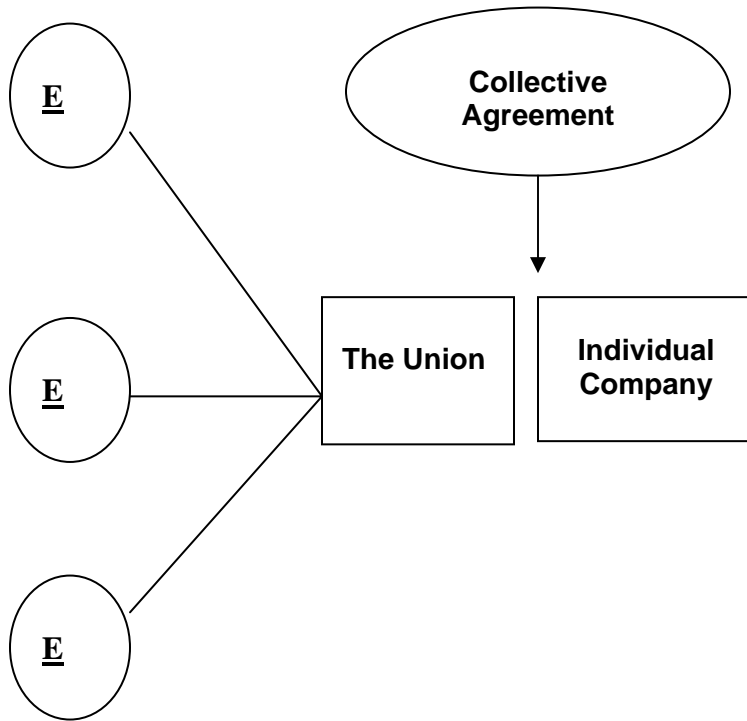


Where,

- W - Represents all employees/workers who are engaged in the specified position/work in the industry concerned.
- C - Represents member companies that are operating in the industry concerned.

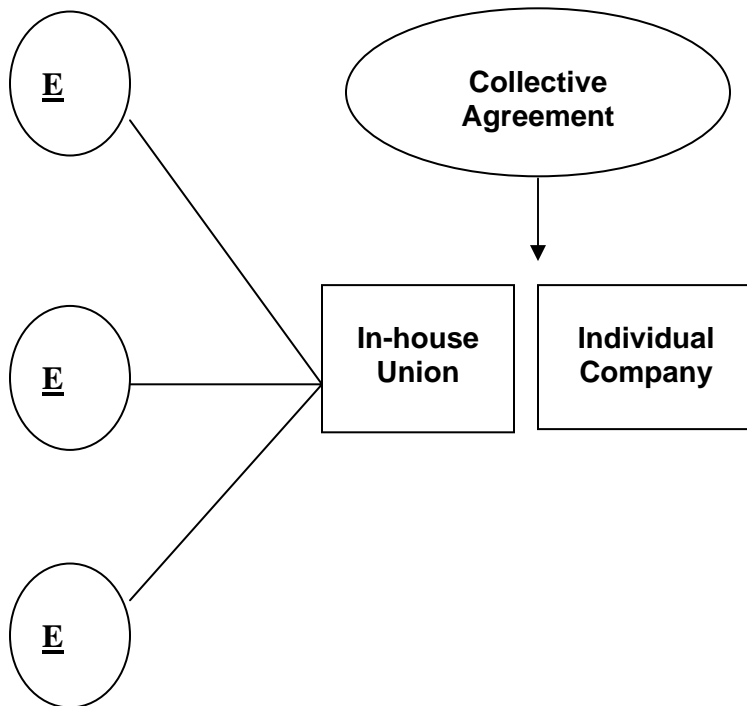
**Type (2) Collective Agreement:**

Between a national union and an individual company



**Type (3) Collective Agreement:**

Between an in-house union and an individual company



Abbreviation:

- W - Represents all employees/workers who are engaged in the specified position/work in the industry concerned.
- C - Represents member companies that are operating in the industry concerned.
- E - Represents employees of the respective individual companies.

4. **STRUCTURE OF COLLECTIVE AGREEMENTS**

**(a) Duration**

As per s.14(2)(b) of the Industrial Relations Act 1967 (IRA) a collective agreement cannot be for less than three(3) years.

**(b) Scope of Agreement**

In so far as the scope of the agreement is concerned, s.17(1)(b) of the IRA states that an agreement is binding on all workmen employed in the undertaking to which the agreement relates.

The phrase '**to which the agreement relates**' above refers to the job categories covered by the agreement. (Award No: 277/1984)

Non-union members:

Categories of workers who are eligible for membership in the union representing the workers of the company are also covered by the agreement.

**(c) "Forward" Collective Agreement**

In the context of industrial relations, a forward collective agreement is simply a collective agreement that comes into force for a specified duration from the date of concluding the agreement.

**(d) “Retrospective” Collective Agreement**

In the context of industrial relations, a retrospective collective agreement (or retrospective agreement) is an agreement that is intended to take effect for a specified duration commencing from a particular date in the past rather than from the date on which the said agreement was concluded.

**(e) Sections/Divisions of Collective Agreement**

Why is the collective agreement sectioned into three (3) parts?

In the local case of **Malaysian Commercial Banks Association v. National Union of Bank Employees** (Award No: 117/82), the Industrial Court devised the /following new format to be adopted for all future collective agreements:

- Part I - Statutory [ **s. 14(2), Industrial Relations Act, 1967**]
- Part II - Employer-Union Relations
- Part III - Terms and Conditions of Employment

**Note:**

**What is the effect of the provisions contained in a collective agreement insofar as the individual contract of employment with the employee is concerned?**

As from such date and for such period as may be specified in the collective agreement the terms and conditions of the said agreement shall be an implied term of the contract between the workmen and employers bound by the agreement unless varied by a subsequent agreement or a decision of the Court.

(Sec. 17(2), Industrial Relations Act, 1967)

**(f) Retrospective Payment**

It was held in **Rheem Home and Metal Industry Employees Union** (Award No: 290/1983) that only **arrears of wages** would be given retrospective effect.

**(g) Effect of Collective Agreement**

It is provided for in s.17 of the IRA that:

- (i) a collective agreement which has been taken cognizance of by the Court shall be deemed to be an award and shall be binding on the parties to the agreement including in any case
  - where a party is a trade union of employers, all members of the trade union to whom the agreement relates and their successors, assignees or transferees; and
  - all workmen who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates.
- (ii) As from such date and for such period as may be specified in the collective agreement it shall be an implied term of the contract between the workmen and employers bound by the agreement that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance to the agreement.

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## PART B – TRADE DISPUTES

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### 5. TRADE DISPUTE - DEFINED

#### (a) Trade Dispute (or Industrial Dispute)

These terms are basically similar and can be used in the field of industrial relations interchangeably to mean the same concept; that is an industrial or work-related conflict between the employer and/or the employer's association and the employee's union acting on behalf of employees.

#### (b) Definition of Trade Dispute

The term “**trade dispute**” is defined under section 2 of the Industrial Relations Act, 1967 and section 2 of the Trade Unions Act 1959 as follows:

“.....any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workmen.”

#### (c) Definition of Workmen

The term “**workman**” is also defined under the same section of IRA to mean

“.....any person, including an apprentice, employed by an employer under a contract of employment to work for hire or reward and for the purposes of any proceedings in relation to a trade dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequences of that dispute or whose dismissal, discharge or retrenchment has led to that dispute.”

#### Corollary to Definition:

The definition of trade dispute in the IRA consists of two parts, that is firstly concerning the parties to a trade dispute and secondly the subject matter of the trade dispute itself.

**(d) Parties to Trade Dispute**

- i) In respect of the parties, a trade dispute between employer and workers comes within the definition only and only if the dispute is between “**an employer and his workmen**”

It is a significant restriction, which excludes those who are not employed as an employee under a contract of service by the employer.

- ii) The word “workman” is defined widely in the IRA under section 2 to mean “any person, including an apprentice, employed by an employer under a contract of employment for work for hire or reward”.
- iii) But what if a worker has been dismissed, discharged or retrenched and the said action gives rise to a dispute?

The definition provides for this contingency by an additional expression stating that for the purpose of any proceedings in relation to a trade dispute, it includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute.

**(e) Subject Matter of Trade Dispute**

The second aspect of the definition of “trade dispute” concerns the subject matter of such dispute. As per the definition provided in the IRA, a trade dispute must relate to the “employment or non-employment or the terms of employment or the conditions of work of any such workman”.

In the context of the above definition, what is meant by the words “**employment**” and **non-employment**”?

In **Hagemeyer Industries S/B v. National Union of Commercial Workers** (Award No: 75 of 1983), the Industrial Court declared:

“... the words ‘employment’ and ‘non-employment’ are words of the widest amplitude which have been placed in juxtaposition to make the **definition comprehensive enough to include disputes of every nature connected with the employment or the non-employment of workers by their employer.** This definition, in our view, covers every dispute between the employer and his workmen which is connected with the service of the workman, or with the benefits and privileges incidental to that service.”

In Teluk Anson Agricultural Enterprise Sdn Bhd (Arcadia Estate) v. National Union of Plantation Workers (Award No: 139 of 1984), the Industrial Court remarked:

“The term ‘**non-employment**’ is not defined in the IRA. It is negative of employment, and will come into being in various forms. It will arise when the employer dismisses an employee, or declines to employ him, or contemplates turning him out who is already in employment, or refuses to give work to an employee who is entitled to work, or suspends him. It includes constructive dismissal.”

In Kumpulan Ladang-ladang Trengganu Sdn Bhd v. Kesatuan Pekerja-pekerja Kumpulan Ladang-ladang Trengganu Sdn Bhd (Award No: 135 of 1982) the Industrial Court took the view that once there was a disagreement between an employer and the union over the latter’s proposal on wages and terms of service in respect of his employees, it is a trade dispute within the meaning of the legal definition.

## 6. THE INDIVIDUAL WORKER AND TRADE UNION IN TRADE DISPUTES

It may be noted that in the definition of “trade dispute” there is no reference to either trade union of employers or trade union of employees.

It follows that a trade dispute in the statutory sense can come into existence when an employer and his workers are in dispute despite the absence of a trade union as a party or its intervention.

A trade dispute therefore comes into existence when a worker or a few workers, are in dispute with the employer on the terms and conditions of service. Such a dispute can take the form of a collective action or an individual action, without union representation.

Case:

Such was the view of the Federal Court in the case of **Dr A Dutt v. Assunta Hospital [1981] 1 MLJ 304.**

But, however, a trade dispute can only be referred to the Industrial Relations Department for conciliation if the disputants are party to the dispute within the meaning of the Industrial Relations Act, 1967. And further, it should also be noted that a trade dispute could only be referred to the Industrial Court for arbitration through the conciliation process held at the Industrial Relations Department. So it is important to know what do we mean by the term ‘party’.

The word '**party**' insofar as trade dispute is concerned is restricted under section 18 of the IRA to mean the following:

**Section 18 - Reference of Disputes for Conciliation**

- (1) Where a trade dispute exists or is apprehended, that dispute, if not otherwise resolved may be reported to the Director General by –
- (a) an employer who is a party to the dispute or a trade union of employers representing him in the dispute; or
  - (b) a trade union of workman, which is party to the dispute.

Commentary:

Therefore, although a trade dispute can exist between an employer and an individual employee, but for conciliation and if necessary, a referral to the Industrial Court for adjudication under the *Industrial Relations Act, 1967*, it can only be espoused by a trade union of employees.

**An individual employee, cannot on his/her own file and espouse a dispute under section 18 of the Act.**

**7. CLASSIFICATION OF TRADE DISPUTES**

In the framework of industrial relations, trade disputes arising between employers and workmen may be classified into the following categories:

- (a) Organising Dispute
- (b) Union Recognition Dispute
- (c) Refusal To Commence Collective Bargaining Dispute
- (d) Negotiation Dispute
- (e) Interpretation Dispute
- (f) Non-Compliance Dispute
- (g) Individual Dispute

**(a) Organising Dispute**

The right to form and join a trade union and participate in its lawful activities is generally regarded as the fundamental right of workers.

Obstruction to workers enjoying these rights constitute unfair labour practices. The Industrial Relations Act 1967 provides for such practices under sections 4, 5 and 7.

Therefore organising disputes generally take the form of a complaint by any party of any contravention of the aforementioned sections of the IRA made to the Director General of Industrial Relations under Section 8 of the IRA.

The Director General (i.e the Industrial Relations Department) upon receiving any complaint under the section 8 will normally take such steps to resolve the complaint. If the matter is not resolved the Director-General/IRD will notify the Minister and if the latter thinks fit, the matter will be referred to the Industrial Court for adjudication.

**(b) Union Recognition Dispute**

Union recognition dispute may arise when the employer refuses to accord recognition when a claim for recognition is presented to the employer by the said trade union.

In general, the employer's refusal to recognise the union may be for the following reasons:

- i) the question of all or certain employees' eligibility to union membership;
- ii) doubts about the union's claim of membership support;
- iii) the union's competence to represent the workman under the Trade Unions Act, 1959.

In solving these recognition issues, the law under section 9 of the IRA assigns to the Director General of IR a very active role of conciliation and fact-finding with the assistance of the Director General of Trade Unions where necessary. However, the final arbiter in resolving recognition disputes is the Minister of Human Resources; whose decision is final and shall not be questioned in any court.

**(c) Refusal To Commence Collective Bargaining Dispute**

Refusal to commence collective bargaining may arise when one party refusing to accept the invitation by the other party to negotiate on the proposals included in the invitation within the fourteen days after the receipt of the invitation or refusing to commence collective bargaining within 30 days after accepting that invitation. Refusal to bargain in these circumstances is expressly recognised as trade dispute.

Following the failure of conciliation efforts of the Director General of IR to resolve such disputes, this dispute may be referred to the Industrial Court by the Minister under section 26(2) of the IRA for a binding award.

**(d) Negotiation Dispute**

Negotiation disputes arise when the parties fail to reach an agreement on some/all of the terms and conditions of the collective agreement after the commencement of collective bargaining. If the Director General fails to resolve the matter amicably through conciliation efforts, the dispute may be referred to the Industrial Court by the Minister under section 26(2) of the IRA for a binding award.

**(e) Interpretation Dispute**

At the time of concluding the collective agreement the union and the employer or the employers' association may have been confident that they both agreed on the meaning of a particular clause. However, when it is time to implement this part of the agreement, it may become evident that the two parties may not agree on what should be the correct interpretation

Matters pertaining to the interpretation of a clause of the collective agreement is provided under **section 33** of the IRA. Under the said section, if any question arises as to the interpretation of any award or collective agreement taken cognizance of by the Industrial Court, the Minister may refer the question or any party bound by the award or agreement may apply to the Court for a decision on the question.

**(f) Non-Compliance Dispute**

Non-compliance disputes arise when one party to the collective agreement complains that the other party has failed to comply with a provision of the collective agreement.

**(cont'd)**

Such a complaint may, if not otherwise resolved, be lodged with the Industrial Court under **section 56** of the IRA by any trade union or person bound by such an award or agreement; there is no need for the Minister to refer a complaint of non-compliance to the Court.

The complaint lodged under section 56 must relate to a specific term of the award or agreement that has not been complied with.

**(g) Individual Disputes**

Individual disputes arise mainly on (i) unfair labour practices and victimisation or (ii) unfair or unjust termination of the services of an employee by his employer.

Disputes over unfair labour practices may arise over unfair transfer, unfair or disproportionate disciplinary punishment or victimisation of the workman. Disputes under unfair labour practices/victimisation, if not otherwise resolved through the conciliation process are referred to the Industrial Court under **section 26(2)** of the IRA.

Disputes over termination of service may arise over unjust or unfair dismissal, unfair retrenchment or unfair termination of service for whatever reasons. Dismissal disputes, if not resolved through the conciliation process are referred to the Industrial Court under **section 20** of the IRA.

**8. SETTLEMENT OF TRADE DISPUTES**

A trade dispute between the trade union/workmen and the employer can be resolved through the following avenues

**(a) Contractual Grievance Machinery**

When a trade dispute first surfaces in the workplace, the aggrieved party may use the grievance procedure provided for in the collective agreements to attempt to resolve/settle the dispute.

**(b) Conciliation**

When the grievance machinery fails, the aggrieved party may involve the Industrial Relations Department to resolve/settle the dispute by way of conciliation proceedings under the provisions of the Industrial Relations Act, 1967.

**(c) Mediation**

When the trade dispute is not resolved or settled at the Industrial Relations Department, there is a high possibility of the matter being referred to the Industrial Court for adjudication.

In recent years, the Industrial Court has been recommending the disputants to go for mediation before the trial proper. At this stage, the mediation is held at the Court's premises and it's usually presided over by the Court's Assistant Registrar or a Chairman of the Court.

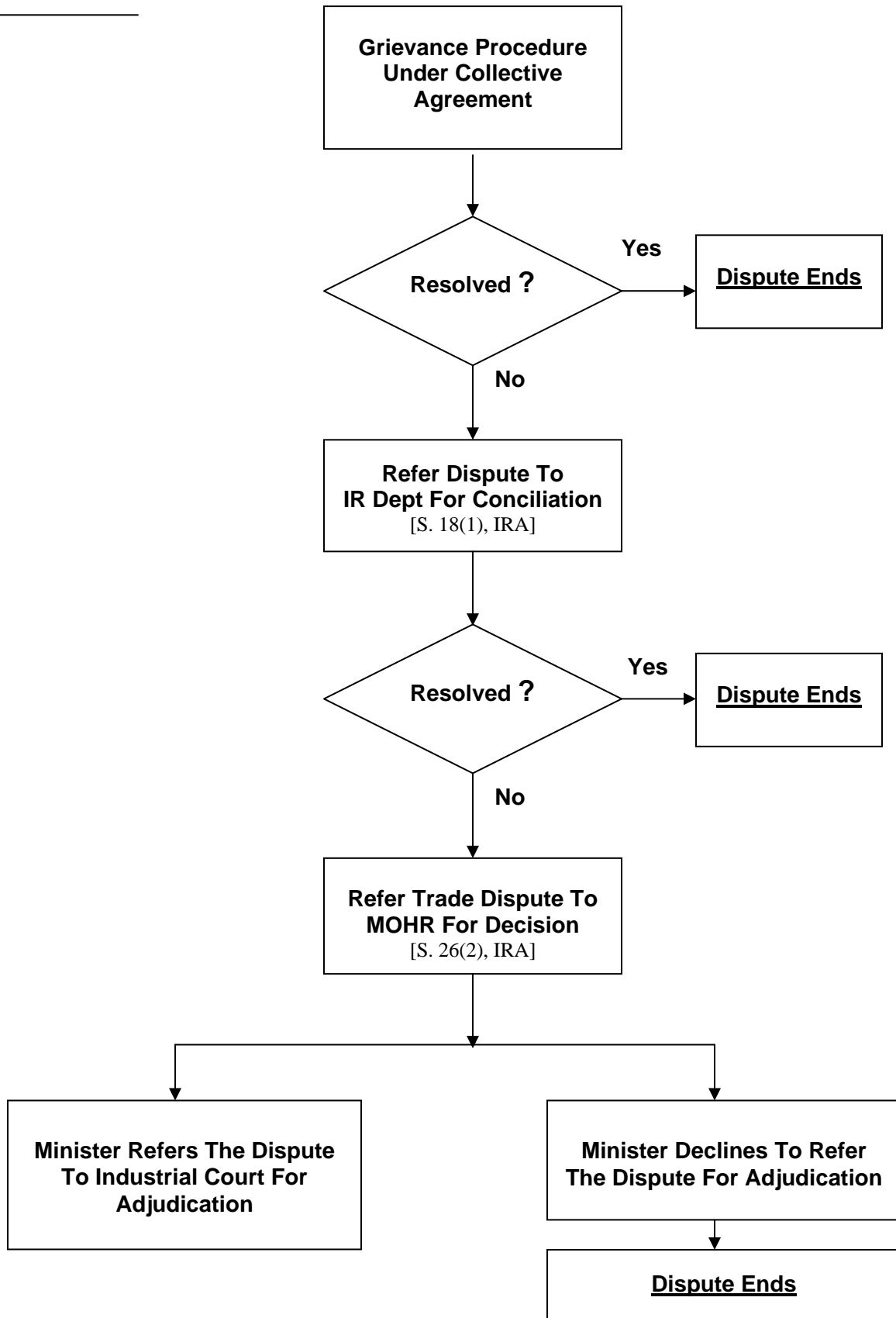
**(d) Adjudication**

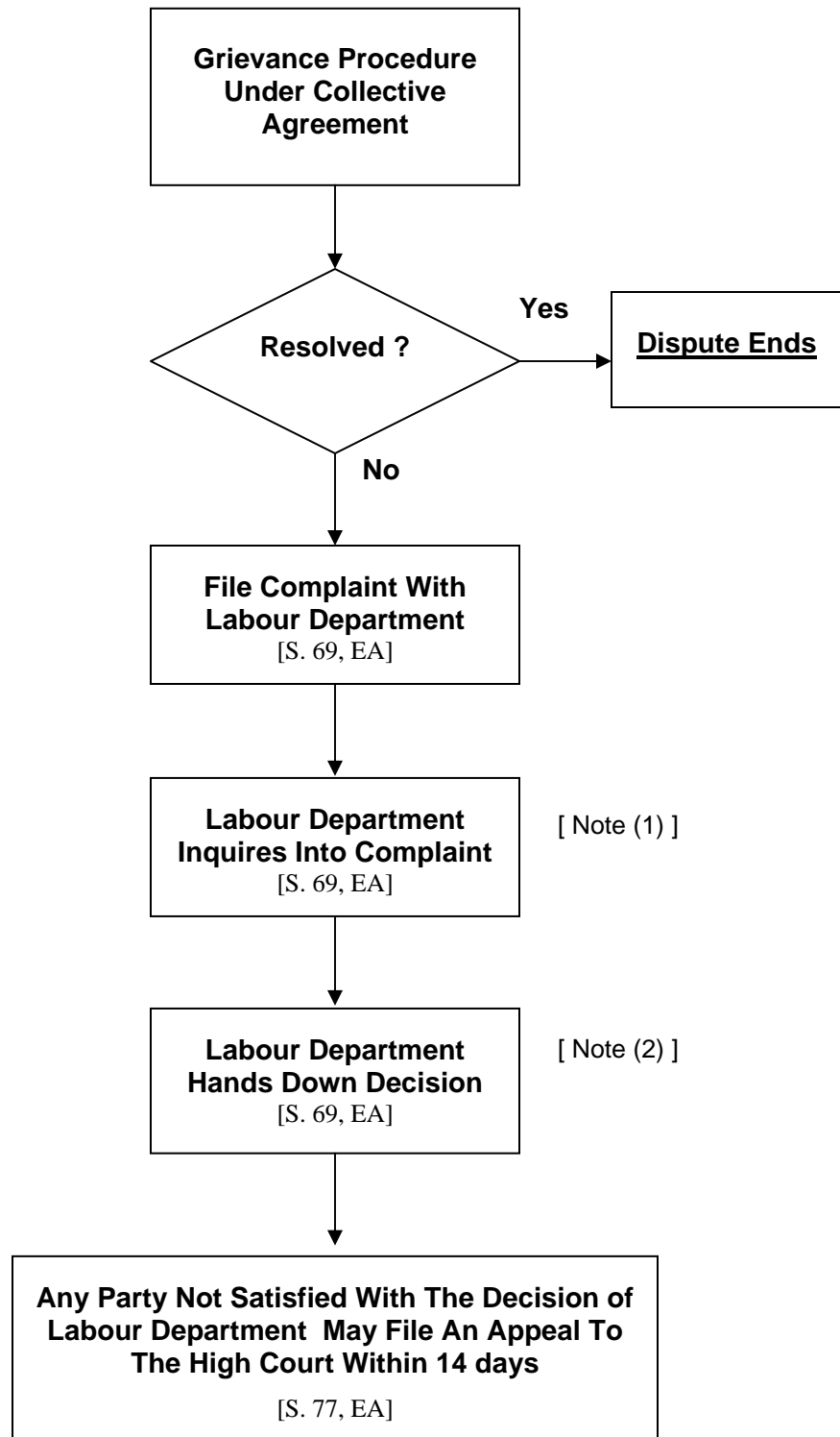
If the above avenues have been duly exhausted and found wanting, then the disputing parties have no other alternative but to have their dispute adjudicated before the Industrial Court.

## 9. TRADE DISPUTE RESOLUTION PROCESS

Route No: (1)

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**Note:**

- (1) An inquiry conducted by the Labour Department under s.69 of the EA is commonly referred to as the 'Labour Court' proceeding,
- (2) The Labour Department's decision in an inquiry under s.69 is referred to as an Order and is usually handed down in the prescribed Form C.

**Note:**

**Can the Labour Department inquire into and decide any dispute relating to wages or even other terms of employment that are governed by the collective agreement?**

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In the case of **Uvarajah & Anor v. Penolong Pengarah Buruh, Butterworth & Ors [1992] 2 MLJ 152** the Supreme Court observed that:

..... the jurisdiction of the Director General of Labour under section 69 has not been excluded merely because the wages of a complaining employee are provided for in the collective agreement. The Director General under section 69 must necessarily interpret and enforce the terms of the collective agreement when deciding on a complaint and making an order thereunder.

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## PART C – INDUSTRIAL ACTIONS

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### 10. INDUSTRIAL ACTION DEFINED

What is an industrial action?

The **Oxford Dictionary of Business and Management** (4th edn) defines industrial action as follows:

**Any form of coordinated action in an industrial dispute by employees, with or without the support of a trade union, that seeks to force employers to agree to their demands relating to wages, terms of employment, working conditions etc.**

#### Malaysian Context

In Malaysia, the **Industrial Relations Act 1967** acknowledges only the **strike**, the **lockout** and **picketing** as legitimate techniques to settle trade disputes through industrial action.

But, however, the IRA strictly regulates the use of these techniques to settle such disputes, thereby indicating that it hardly approves of them, or at least of their use for this purpose. The strike and the lockout are also regulated by the Trade Unions Act, 1959.

### 11. STRIKE AND LOCKOUT

#### **Definition of Strike:**

(section 2, Industrial Relations Act, 1967)

The cessation of work by a body of workmen acting in combination or a concerted refusal or a refusal under a common understanding of a number of workmen to continue to work or to accept employment, and includes any act or omission by a body of workmen acting in combination or under a common understanding which is intended to or does result in any limitation or restriction or reduction or cessation of or dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment

**Definition of Lockout:**

(section 2, Industrial Relations Act, 1967)

- (a) the closing of a place of employment;
- (b) the suspension of work; or
- (c) the refusal by an employer to continue to employ any number of workmen employed by him;

in furtherance of a trade dispute, done with a view to compelling those workmen to accept terms and conditions of or affecting employment.

**When Is a Strike or Lockout Is Deemed Illegal ?**

Under section 45 of the Industrial Relations Act, 1967 (IRA) a strike or lockout is deemed illegal under the following circumstances:

- (a) when it is declared or commenced or continued in contravention of section 43 or section 44 of the IRA or of any provision of any other written law; or
- (b) when it has any other object than the furtherance of a trade dispute:
  - i) between the workmen on strike and their employer; or
  - ii) between the employer who declared the lockout and his workmen.

However, a strike declared in consequence of an illegal lockout, or a lockout declared in consequence of an illegal strike, is not deemed illegal by the IRA.

Section 44 prohibits a strike or a lockout in any of the following circumstances:

- (a) during the pendency of the proceedings of a Board of Inquiry appointed by the Minister;
- (b) after a trade dispute has been referred to the Industrial Court and the parties have been notified of such reference;
- (c) in respect of any matters covered by a collective agreement taken cognizance of by the Industrial Court in accordance with section 16 or by an award of the court;
- (d) in respect of any matters covered under section 13(3).

**Section 43** restricts a strike or a lockout in the 'essential services'. It does not prohibit a strike or a lockout in these services but only requires appropriate notice of them under the provisions of IRA.

The following areas covered by **section 13(3)** are those mentioned under **section 44** in respect of which a strike or lockout cannot be initiated:

- (a) the promotion by an employer of any workman from lower grade or category to a higher grade or category;
- (b) the transfer by an employer of a workman within the organization of an employer's profession, business, trade or work, provided that such transfer does not entail a change to the detriment of a workman in regard to his terms of employment;
- (c) the employment by an employer of any person that he may appoint in the event of vacancy arising in his establishment;
- (d) the termination by an employer of the services of a workman by reason of redundancy or by reason of the reorganization of an employer's profession, business, trade or work or the criteria for such termination;
- (e) the dismissal and reinstatement of a workman by an employer;
- (f) the assignment or allocation by an employer of duties or specific tasks to a workman that are consistent or compatible with the terms of his employment.

The **Trade Unions Act 1959** also regulates the strike and the lockout. Under **section 25A** of the TUA an employee is prohibited from calling a strike or an employer union from declaring a lockout in any of the following circumstances:

- (a) in the case of an employee union, without first obtaining the consent by secret ballot of at least two-thirds of the total number of members who are entitled to vote and in respect of whom the strike is to be called ;
- (b) before the expiry of seven days after submitting to the Director General of Trade Unions the result of such secret ballot, in accordance with the provisions of section 40(5);
- (c) if the secret ballot for the proposed strike or lockout has become invalid or of no effect by virtue of the provisions of section 40(2), (3), (6) or (9); or
- (d) in contravention of or without complying with the rules of the trade union; or

- (e) in respect of any matter covered by a direction or a decision of the Minister given or made in any appeal to him under any provision of the TUA; or
- (f) in contravention of or without complying with any other provision of the TUA or any provisions of any other written law.

## 12. **PICKETING**

Picketing is seen largely as a flag waving or demonstrative exercise to shore up support for striking workers. It is a fairly precarious activity where criminal law can play a major part, simply because of the potential threat to public order and its impact upon public rights of passage.

### **Definition:**

The Shorter Oxford Dictionary defines the verb 'to picket' as, *inter alia*, the posting of men to intercept non-strikers on their way to work and prevail upon them to desist. The **activity of picketing** may embrace a wide range of activities. The pickets may limit themselves to merely observing scabs; they may go beyond this and tempt to persuade them not to aid the employer by working for him (or in the case of customers, doing business with him) – using placards, speaking, shouting and persisting despite refusals to attend. They may go beyond persuasion to where their behaviour amounts to a threat – through their mere presence, by physical violence, social ostracism or economic boycott; or they may engage in actual assaults, destruction of property or by physical blocking of entrances and interference with traffic.

### **Law Relating To Picketing, Sec. 40 - Industrial Relations Act, 1967**

It shall be unlawful for one or more persons acting on his or their behalf or on behalf of a trade union or of an employer in furtherance of trade dispute to attend at or near any place:

Provided that it shall not be unlawful for one or more workmen to attend at or near the place where the workman works and where a trade dispute involving such workman exists only for the purpose of peacefully –

- (i) obtaining or communicating information;
- (ii) persuading or inducing any workman to work or abstain from working

and subject to such attendance being not in such numbers or otherwise in such manner as to be calculated

- (a) to intimidate any person;
- (b) to obstruct the approach thereto or egress therefrom; or
- (c) to lead to a breach of the peace.

13. **GO-SLOW**

The Industrial Court has also commented on the 'go-slow'. In the case of **Penfibre Sdn Bhd v. Penang & Prai Textile & Garment Industry Employees Union** (Award No: 324 of 1987) the Court declared the following:

A slowdown or 'go slow' accompanied by loss or damage to the industrial undertaking against which such action was taken has always been condemned by this court, which has time and again cited as guidance the remarks of the learned judges in the following cases:

**It was contended on behalf of labour that go slow tactics were as a strike for the purpose of compelling the employer to yield to their demands. This is a view, which we cannot accept. Slowdown is an insidious method of undermining the stability of a concern and tribunals certainly will not countenance it. In our opinion, it is not a legitimate weapon in the armoury of labour. Furthermore, while the right to strike under certain conditions has been recognised by necessary implication under the Industrial Disputes Act and is controlled by its provisions, go slow has been regarded by labour legislation as a misconduct**

**(Firestone Tyre & Rubber Co v Bhoja Shetty 1953 Lab App Cas 413)**