

SOME ASPECTS OF THE TRADE UNION LAW IN BOTSWANA

N. Moyo

Government plays an important role in industrial relations in Botswana. First and foremost it provides a legal framework for industrial relations and for the settlement of industrial disputes. The main Acts of government in this respect are the Trade Unions Act, 1969 and the Trade Disputes Act, 1969. In addition, Government provides legal protection for people at work. The relevant Acts in this respect are the Employment Act 1963 which lays down conditions for contracts of service, termination of contracts, dismissals, etc., and employee welfare in places of employment, and The Regulation of Wages and Conditions of Employment Act, 1969, which provides for the establishment of Wages Councils for the regulation of remuneration and conditions of employment in some industries.

Government action and the favourable climate which it produces have facilitated the recognition of trade unions by employers. The legal basis of organisation of trade unions is provided by the Trade Unions Act, 1969. Under the Law a trade union means "any combination of more than thirty persons,... associated together prima-

rily for the purpose of regulating relations between employees and employers or between employees and employees in any industry, trade, or occupation..." To begin with, what exactly is the significance of a minimum of thirty persons? Furthermore, what could regulation of relations "between employees and employees" really mean? How significant is it? Shouldn't these two provisions be dropped altogether?

Trade unions are required to register under the Law. The Act confers certain rights, immunities, or privileges to registered organisations. For example, registered trade unions cannot be sued for any alleged wrongful act done by them or on their behalf, nor can their members or officials be sued for any act done collectively in furtherance of a trade dispute. Registered trade unions can also have access to the courts, being able to sue and be sued under their names. There are also liabilities and obligations. A registered trade union is liable on any contract to which it is a party. The obligations include the requirement that they submit to the Registrar a list of their officers, a copy of their constitution and rules, a copy of the balance sheet and auditors' report, etc.

Section 16(1)(e) of the Trade Unions Act is particularly relevant to our present discussion as it concerns the recognition of trade unions for purposes of negotiation. It reads, "a registered trade union of which at least 25 per centum of his employees who fall within the scope of membership of such union are members shall be the negotiating body with which that employer shall be bound to deal in respect of all matters relating to the relations between that employer and those of his employees who are members of that union." This clause raises an important point of principle. The issue is: should recognition come before or after a trade union has achieved a

substantial membership? Why does it matter? The Act has clearly come down on the view that a trade union can only be recognised as a negotiating body after it has achieved a substantial membership among the employees it purports to represent. But what would happen if a previously recognised trade union's membership were to fall below the minimum 25 per cent. Would recognition be withdrawn? What about a trade union which is able to muster only 22 per cent of the employees. Would it be recognised or not? If the objective is to facilitate the development of strong trade unions it could be argued that prior recognition could be more beneficial. One reason for arguing that a trade union should be given recognition even if it has not yet achieved a substantial membership is that very often workers will only join a trade union after it has demonstrated its worth which it can do by winning a wage increase or other real concession from the employer. All this will depend on the employer's willingness to bargain with the union, which presupposes recognition. Granting unconditional recognition could thus break a real vicious circle and open the door to union membership growth. The author is of the opinion that the law should be amended to require that an employer recognise and deal with a registered trade union regardless of the number of union members.

Another provision of the Act which appears to be detrimental to trade unionism is Section 20(3) which says, "no person shall hold the post of treasurer to a registered trade union who in the Registrar's opinion is incapable of carrying out his duties." Why should the Registrar have the power to remove any person democratically elected from holding the post of treasurer? Wouldn't the union members themselves sack an incompetent treasurer? Or is the assumption that the union organisation is incapable of doing so

through its established procedures? It is right that the Law should insist on proper books of account to be kept by the union. It cannot choose the union's officers.

A further retrogressive provision is that empowering the Registrar to refuse to register or cancel the registration of a trade union if "any of the officers of the trade union or any other committee member thereof is a person who is not a citizen of Botswana" (Sections 8(1)(j) and 9(1)(b)(vii)). The implication of this provision is very serious. Take the teaching field for example which is still so dependent on thousands of non Batswana including refugees from Zimbabwe and South Africa. Why shouldn't such persons have full trade union rights? Fortunately, this rule does not appear to have been applied in the case of the Teachers Union. Why should it remain on the statute book? The point is, trade unions, like many other organisations in the country, are short of skilled and experienced leaders. Many organisations try to solve the problem by allowing non Batswana to occupy leadership positions. The central government is a typical example. It is not suggested that trade unions should hire expatriate leaders (They already have expatriate advisors!) What is being suggested is that non-Batswana who ordinarily live and work in Botswana should have full trade union rights - the right to join a trade union and, if elected by the members, hold office in such a union. One of the

sad things about the South African labour scene is the prohibition of black trade unions. People throughout the world have urged that South Africa should legalise black trade unions even among the black migrant workers in the gold mines.

Our final observation is on the penal clauses of the Act. Much of the Act is littered with far too many clauses about the imprisonment and fining of trade unions and trade unionists for various alleged offences. We suggest that fines and imprisonment should be for really major offences (such as those relating to the misappropriation of trade union funds) and not for every little misdeed of trade unionists. Good industrial relations cannot be built by fines and imprisonment of trade unionists.

R E F E R E N C E N O T E S

The Trade Unions Act, 1969

The Trade Disputes Act, 1969

The Employment Act, 1963

The Regulation of Wages and
Conditions of Employment Act, 1969