

FIJI ISLANDS

TRADE UNIONS (RECOGNITION) ACT 1998

NO. 54 OF 1998

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[L.S.]

K.K.T. MARA
President

[9 November 1998]

AN ACT

**TO PROVIDE FOR THE RECOGNITION BY EMPLOYERS OF REGISTERED
TRADE UNIONS AND FOR RELATED MATTERS**

ENACTED by the Parliament of the Fiji Islands-

Part I - PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Trade Unions (Recognition) Act 1998.
- (2) This Act commences on the date on which the Constitution Amendment Act 1997 (No. 13 of 1997) commence.

Interpretation

2. In this Act, unless the context otherwise requires-

"collective agreement" means an agreement made between a registered trade union recognised under this Act and an employer, or a trade union of employers registered under the Trade Unions Act (Cap. 96), which-

- (a) prescribes (wholly or in part) the terms and conditions of employment of employees of one or more descriptions; or
- (b) regulates the procedure to be followed in negotiating terms and conditions of employment; or
- (c) combines (a) and (b);

"collective bargaining" means treating and negotiating with a view to the conclusion of a collective agreement or the revision or renewal of such an agreement;

"compulsory recognition" means recognition accorded under section 8;

"eligible for membership" means qualified by age and occupation and in all other respects to be a voting member of a registered trade union in accordance with its constitution and rules;

"employee and employer" have the meanings respectively assigned to those terms by the Trade Unions Act;

"group of employees" means a group, class or category of employees employed to undertake a particular kind of work;

"labour inspector" means a labour inspector in the service of the Government;

"labour officer" includes any person authorised in writing by the Permanent Secretary to perform the duties of a labour officer;

"majority trade union", in relation to an employer, means a registered trade union of which 50% or more of the persons eligible for membership in a trade union and employed by that employer are voting members;

"minority trade union", in relation to an employer, means a registered trade union of which less than 50% of the persons eligible for membership in a trade union and employed by that employer are voting members;

"Permanent Secretary" means the Permanent Secretary to the Minister;

"recognised trade union" means a registered trade union that has been accorded voluntary or compulsory recognition under this Act;

"recognition" means recognition for the purpose of collective bargaining;

"registered trade union" means a trade union registered as a trade union under the Trade Unions Act;

"trade union" has the meaning assigned to it by the Trade Unions Act;

"voluntary recognition" means recognition accorded under section 3(1) or section 4(2) or (3).

Part II - RECOGNITION OF TRADE UNIONS

Recognition of registered trade union where no other union claims recognition

3. (1) Where there is-

- (a) a registered trade union of which more than 50% of the persons eligible for membership and employed by an employer are voting members; and
- (b) no other registered trade union claiming to represent those persons,

that trade union is for the purpose of collective bargaining entitled to recognition by the employer in accordance with a voluntary recognition agreement executed between the employer and the trade union.

(2) An application for recognition under subsection (1) must be in writing and sent to the employer by registered or courier mail, or hand delivered to the employer, with a copy to the Permanent Secretary in either case.

(3) An employer who has received an application for recognition from a trade union under subsection (2) must respond to the application within 7 days of receiving it.

(4) A registered trade union which has applied for recognition by an employer under subsection (1) but-

- (a) has been refused recognition by the employer; or
- (b) has not been accorded recognition by the employer within 1 month of the application,

may apply to the Permanent Secretary for the issue of a compulsory recognition order under section 8.

Recognition of trade union where minority unions involved

4. (1) This section applies where there is more than one registered trade union for which the persons employed by an employer are eligible for membership and claiming to represent those persons.

(2) Where there is a major trade union, that trade union is for the purpose of collective bargaining entitled to recognition by the employer in accordance with a voluntary recognition agreement executed between the employer and the trade union.

(3) Where there is no majority trade union, the most representative trade union is entitled to recognition by the employer in accordance with the terms of a voluntary recognition agreement executed by the employer and the trade union.

(4) For the purpose of this section, "the most representative trade union" means-

(a) the registered trade union which-

(i) represents more of the groups of employees employed by the employer than any other registered trade union; and

(ii) includes within its membership more than 30% of all union members employed by the employer; or

(b) if there is an equal number of groups of employees covered by more than 2 registered trade unions, the registered trade union that represents more than 30% of all union members employed by the employer.

(5) A trade union which is entitled to recognition under subsection (2) or (3) may apply to the employer for such recognition in accordance with section 3(2), and section 3(3) and (4) will then apply.

Employer may recognise minority unions

5. Where section 4 applies to an enterprise and a registered minority trade union so wishes, the employer may voluntarily recognise that minority trade union for the purpose of collective bargaining and may allow such trade union to negotiate on behalf of the employees it represents.

Determination of membership

6. (1) For the purposes of determining the membership of a trade union, the Permanent Secretary, a labour officer, or a labour inspector may-

(a) require an employer to produce the records of wage payments required to be kept by or under the Employment Act (Cap. 92); or

(b) require any trade union to produce records required to be kept by or under the Trade Unions Act; and

(c) in either case, by notice in writing served on an employer or a trade union require such production at a place reasonably accessible to the employer or to the trade union and at a time and date to be specified in the notice but not less than 7 days from the date of service of the notice.

(2) In determining the percentage of union membership of persons employed by an employer-

(a) only those persons who were in the employment on the date on which the union applied for recognition are to be taken into account;

(b) an employee who of his own record leaves employment with the employer after the date on which a trade union applied for recognition must be excluded from the determination.

Refusal by employer to grant recognition

7. If a registered trade union claims to be entitled to recognition by an employer under section 3(1) or 4(2) or (3), but the employer refuses to recognise the trade union only on the ground that less than 50% or 30%, as the case may be, of the persons in the employment who are eligible for the membership of the trade union are voting members of it, the trade union may refer that matter for decision to the Permanent Secretary, whose decision on it is final.

Compulsory recognition order

8. (1) The Permanent Secretary, on receipt of an application under section 3(4), must consider the application, taking into account all the facts and circumstances appearing to be relevant any may, subject to section 11, make a compulsory recognition order-

(a) declaring that a registered trade union is entitled to recognition; and

(b) specifying the manner in which the employer is to accord recognition to the trade union.

(2) A compulsory recognition order made under subsection (1) is effective from the date it is made or as otherwise specified in the order.

Refusal of Permanent Secretary to grant recognition order

9. If on an application under section 3(4) the Permanent Secretary refuses to make a compulsory recognition order under section 8, the registered trade union is not entitled to recognition by the relevant employer for 6 months from the date of the refusal.

Duration of recognition

10. (1) A registered trade union which is entitled to recognition under section 3(1) or 4(2) continues to be so entitled until such time as the Permanent Secretary, on an application by

the employer or a majority trade union, determines that over a period of 6 months ending not more than 2 months before the date of application, the average number of persons in the employment of the employer who were voting members of the recognised trade union was less than 50% of the average number of persons who were eligible for membership in the union, in which case from the date of such determination the registered trade union ceases to be entitled to recognition.

(2) A registered trade union which is entitled to recognition under section 4(3) continues to be so entitled until such time as the Permanent Secretary, on an application by the employer, determines that over a period of 6 months ending not more than 2 months before the date of application the average number of persons in the employment of the employer who were voting members of the recognised trade union was less than 30% of the average number of persons who were eligible for membership in the union, in which case, from the date of such determination the registered trade union in question ceases to be entitled to recognition.

(3) An employer or majority trade union whose application under this section been refused is not entitled to make a similar application within 6 months from the date of such refusal.

(4) This section is without prejudice to any civil or criminal proceedings arising out of any contravention of a voluntary recognition agreement which occurred before the date of a determination by the Permanent Secretary under subsection (1) or (2).

Exclusion from recognition

11. Upon application by an employer or a registered trade union, the Permanent Secretary may by order exclude from recognition of a trade union any person who is employed in a confidential capacity or who represents the employer in matters affecting industrial and staff relations.

Offences and penalties under Part II

12. (1) An employer or trade union who or which fails to comply with the provisions of a voluntary recognition agreement executed, or a compulsory recognition order made, under this Part commits an offence.

(2) An employer or trade union who or which fails to comply with a requirement imposed under section 6(1) commits an offence.

(3) An employer or trade union who or which commits an offence under this section is liable on conviction to a fine of \$1,000 and in the case of a continuing offence to a further fine of \$100 for every day during which the offence continues.

Part III – ADHERENCE TO PROVISIONS OF THE ACT

Additional interpretation for Part II

13. For the purpose of this Part, "boycott", "industry", "lock-out" and "strike" have the meanings respectively assigned to them by the Trade Disputes Act.

Strike or lock-out unlawful

14. Where-

- (a) it appears to the Minister that there is an actual or declared strike, lock-out or boycott arising out of recognition or in relation to recognition in any industry or section of an industry; and
- (b) the Minister is satisfied that all practicable means of obtaining recognition through the procedures laid down in this Act have not been followed,

the Minister may by order declare the strike, lock-out or boycott to be unlawful.

Offences where strike or lock-out is unlawful

15. (1) A person who in connection with any strike, lock-out or boycott declared unlawful under this Act causes, procures, counsels or in anyway encourages, persuades or influences another person to take part in the strike, lock-out or boycott commits an offence.

(2) If a person convicted of an offence under this section was at the time of the offence an officer or official of an organisation of employers or employees or was purporting to act as such an officer or official, it is a defence to a charge against the organisation that the convicted person committed the offence without its authority.

(3) Where an officer or official or person purporting to act as an officer or official of an organisation of employers or employees commits an offence with the authority of that organisation, it is a defence to a charge against any other person who at the time of the offence was an officer or official of that organisation that the offence was committed without his consent or connivance or that he exercised all due diligence to prevent the commission of the offence.

(4) A person who ceases work or refuses to continue to work being work which in terms of his employment he is bound to do, in circumstances which gives rise to reasonable suspicion that he is taking part in or acting in furtherance of an unlawful strike, commits an offence.

(5) It is a defence to a charge under subsection (4) to show that the person ceased work or refused to continue work, as the case may be, for causes wholly unconnected with the unlawful strike.

(6) A trade union or organisation of employees which engages in an unlawful strike, lock-out or boycott or is in breach of an order made under this Act, commits an offence.

Penalties for offences under Part III

16. A person or organisation who or which commits an offence under section 15 is liable on conviction to a fine of \$2,000 and to imprisonment for 12 months.

(2) A person convicted of an offence under section 15 is disqualified from holding any post as an officer of a trade union for 2 years from the date the offence was committed.

Part IV - MISCELLANEOUS

Regulations

17. The Minister may make regulations to give effect to the provisions of this Act, and may prescribe penalties for breaches of such regulations not exceeding a fine of \$5,000 or imprisonment for 12 months.

Repeal

18. (1) The Trade Unions (Recognition) Act (Cap. 96A) is repealed.

(2) Every registered trade union which was accorded recognition under the repealed Act continues to be accorded recognition after the commencement of this Act and the provisions of this Act apply to such a trade union accordingly.

Passed by the House of Representatives this 8th day of October 1998.

Passed by the Senate this 29th day of October 1998.