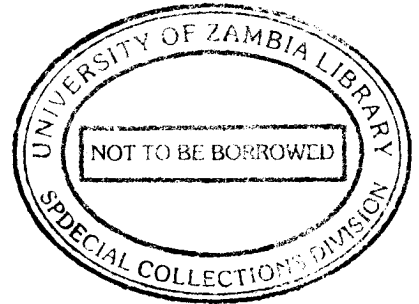


**The Impact of the 1993 Industrial and Labour Relations Act,
On the Labour Movement in Zambia**



By

Ivor Mukwanka

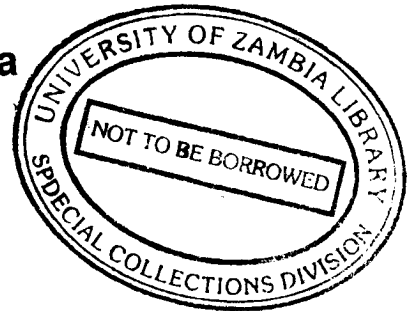
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An obligatory Essay Submitted to the University of Zambia Law Faculty in Partial
Fulfilment of the Requirements of the Bachelor of Laws Degree

The University of Zambia
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December, 2005

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Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to format as laid down in the regulations governing obligatory essays

Date 02-12-2005

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Declaration

I, Ivor Mukwanka (Computer Number 20023618) do hereby solemnly declare that I am the author of this work entitled: *The Impact of the 1993 Industrial and Labour Relations Act, On the Labour Movement in Zambia.*

Save as herein expressly acknowledged every piece of idea is a result of my ingenuity and the views herein expressed do not necessarily represent those of the University of Zambia, the School of Law or my Supervisor Mr. Fredrick Mudenda.

Declared by the said Ivor Mukwanka (20023618) this 28th day of November 2005.



A handwritten signature in black ink, appearing to read 'Ivor Mukwanka', is written over a horizontal line.

Signature

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Dedication

To my wife Nkombo Chibomba-Mukwanka, for the patience and love she showed me throughout my four years of Law School, she is the best wife a man can ever have.

To my mother Veronica Mukwanka and my father Gilbert Mukwanka, I hope I will make you proud.

This paper is also dedicated to the memory of my sister Claudia Mukwanka-Chanda. Lushomo is growing into a strong young man. You can rest in peace knowing that he is in safe hands.

Preface

In 1993 the government undertook changes to the Industrial and Labour Relations Act. These amendments were to revise by way of liberalisation, the provisions on formation or establishment of trade unions and employers organisations. They were also to revise the provisions concerning recognition and collective agreements with a view to enhancing collective bargaining at enterprise level. They also revised the provisions for settlements of disputes. Further amendments were made in 1997 to clarify the jurisdiction of the Industrial Relations Court *inter alia*.

Before the amendments, there was a concept of one industry one union, and further there was only one umbrella mother body, the Zambia Congress of Trade Unions. The initial design of the Industrial and Labour Relations Act was to encourage the development of unitary trade unions and employers associations which were expected to carry out their functions in a manner best calculated to further their interests. This principle was introduced to provide solution to the immediate problem of fragmentation of the trade unions and employers associations. The law was such that it did not allow the establishment of new unions in areas already covered by existing unions.

In effecting the changes the government argued that, they were seeking to provide for the development of an industrial relations system and supportive legislative measures for the attainment of industrial harmony, efficiency and increased productivity. It was further argued that the amendments would assure greater flexibility to workers and employers to associate freely and bring about

positive development of representation that hopefully would ensure quality intervention in the labour market and quick resolution of industrial and labour disputes at places of work which have unsettling effects on production.

In this essay I have embarked on a journey to show just how the 1993 Industrial and Labour Relations Act has impacted on the Labour movement in Zambia. I start my treatise in chapter one with a historical perspective, under this I have discussed the genesis of trade unionism in Zambia, I have also discussed the legislative developments that took place before the 1971 Industrial Relations Act was born, I end this chapter by looking at the factors that lead to the enactment of the 1971 Act.

In chapter two I have looked at how the Labour Movement fared under the 1971 Industrial Relations Act. My discussion begins by reviewing the basis of enacting the Act, I further look at what the objectives of the Act were, I then move on to give the provisions of the Act, and end by showing just how the Labour Movement performed under the Act. I have also given a brief synopsis of the short lived 1990 Industrial Relations Act.

In chapter three I have analysed the provisions of the 1993 Industrial and Labour Relations Act. In addition I have itemised the changes that were brought in by Act number 30 of 1997. Chapter four has discussed the impact that some of the provisions of the 1993 Act has had on the Labour Movement, in discussing this I have looked at what is obtaining in the country right now as regards the movement, I have done this by making a comparison with what was obtaining before the new law was put in place. I have concluded the paper with chapter

five, were I have basically given facts as to why there was need for the Act to be put in place. I have ended this chapter by giving opined recommendations as to what the way forward can be.

Ivor Mukwanka
December 2005
University of Zambia
Lusaka.

Chapter One

Historical Perspective from Colonial Era to 1971

Genesis

Unionism in the world dates way back before the industrial revolution, but its prominence and growth is seen after the Industrial Revolution when the workers of Europe and North America joined hands to safeguard themselves against unscrupulous industrialists.¹ In Zambia the organisation of workers into Trade Unions goes back into the colonial days, the most important aspect of which happened on the Copperbelt and thus is worth recounting. "The origins of labour movements could be traced to the post world war period. Before the advent of organised labour, the colonial labour force was categorised into two groups i.e. the 'white labour force' and the 'black labour force.'² This scenario was underpinned by the colonial government's policy of racial discrimination which permeated every structure of pre-independent Zambia. According to Meynaud and Bey, the companies working the copper mines in Northern Rhodesia were employing approximately 37,000 Africans and 6,000 Europeans in 1957. The aggregate wage of Africans in 1952 was £3,490,000; of the Europeans £8,359,000.³

The stark differences in the wages were so unbearable for the Africans such that it sparked disturbances in 1935. At that time there were no channels through which the African workers could make known their demands or complaints. The

¹ Sven Fockstedt (1966), Trade Unions in Developing Countries, International Institute For Labour Studies, Geneva, p1

² K'C Munangu (1976-1977) "The Rise of Trade Unionism in Zambia"

³ Jean Meynaud and Anisse Salah Bey (1967), Trade Unionism in Africa, A study of its growth and orientation, Methuen & Company Limited, London, p13

white employees had established their own organisation, the Northern Rhodesia Mineworkers' Union (NRMU). This organisation was not open to Africans and had two main objectives: in the first place to promote the European workers' interests and, in the second, to fight against the promotion of African workers, who were all employed in lower grades. In 1940 the European Union backed this by introducing a discriminatory clause into its contracts with the mining companies. At the same time the white workers obtained wage increases as the result of the strikes.⁴ This prompted the African workers to also strike for similar benefits.

The reaction to this was the setting up of a commission of inquiry into the disturbances. Its report enumerated the complaints by the African miners, but more importantly it also outlined the lack of any machinery for the negotiating of the demands of the Africans. However, the commission in its own wisdom or the lack of it concluded that the Africans were not ready or able to form a Trade Union. It recommended the setting up of a system of tribal representatives. "The commission underlined the necessity of ensuring that the tribal representatives were elected by, and responsible to, the African workers. In its opinion, the workers were to look upon them as their representatives and not as tools of the government or the companies."⁵ This system continued to work until 1942-3 when the boss boys' committees were introduced. The boss boy was a term used to designate an African worker who was in charge of ten or so workers who formed a team. He was the intermediary between his team and the Europeans

⁴ Jean Meynaud and Anisse Salah Bey (1967), *Trade Unionism in Africa, A study of its growth and orientation*, Methuen & Company Limited, London, p13

⁵ *Ibid*, p14

who were his immediate superiors. The system meant that all the boss boys of a mine met to put forward the African workers' demands concerning their work.⁶

Two years after the introduction of the boss boys' system, the Rhodesian Labour Department suggested that it become a Trade Union. The mining companies were at first opposed to such a move, but from 1947, pushed by the new policies of the British Labour Government, things moved faster. An official of the colonial office was given authority to help the development of African Trade Unions. This organiser brought together a number of African workers who had participated in the boss boys' committee systems and gave them the task of introducing Trade Unionism to the African workers.⁷ It was not until 1949 when the Northern Rhodesia African Mineworkers' Trade Union (NRAMTU) was formed, it was headed by Lawrence Katilungu. The formation of NRAMTU was the amalgamation of four previously formed local unions. From this time onwards other Trade Unions began to flourish in the country, a situation that continued up until independence in 1964. It would also be pertinent to mention here that the labour movement was very instrumental in the fight against colonialism and other forms of injustices that existed then, a role it has continued to play up to date.

Legislative Developments

After the formation of the Trade Unions the colonial government now faced the problem of regulation, as control now seemed cardinal, without which it was feared anarchy would have taken over. This then would have to be done through legislation; this was the beginning of a series of legislation which was passed to

⁶ Ibid, p14

⁷ Ibid, p14

keep the unions in check and to avert what was referred to as irresponsible leadership both in the African and European Trade Unions. In 1949 two pieces of legislation were passed in which enshrined were principles of voluntary collective bargaining. The two Acts were, the Trade Unions and Trade Disputes Ordinance,⁸ which defined a Trade Union as 'any combination, whether temporary or permanent, under the constitution of which the principal objects are the regulation of the relations between employees and employers, or between employees and employees, or between employers and employers...'⁹ The second one was the Industrial Conciliation Ordinance.¹⁰

The Trade Unions and Trade Disputes Ordinance

Mtopa¹¹ notes that, the important provision of the Trade Union and Trade Disputes ordinance was that it gave legal status to Trade Unions. Thus, accordingly, these combinations of workers had a legal status just short of incorporation. The Trade Union may therefore be sued or it may sue as a union and not by and in the names of its members, but independently of its members. However, according to section 6 of the Act, which was meant for the authorities to control the Unions, the law required that every combination of workers or employers should within six calendar months of its formation be registered with the registrar of Trade Unions. If the registrar refused to register the combination, it should be dissolved on the date of any notification by the registrar that he had refused to register the Union. No unregistered combination of either workers or

⁸ Act No. 24 of 1949, CAP 508

⁹ A.M. Mtopa(1989), Labour Law in Zambia, Kenneth Kaunda Foundation, Lusaka, p206

¹⁰ Act No. 23 of 1949, CAP 25

¹¹ A.M. Mtopa(1989), Labour Law in Zambia, Kenneth Kaunda Foundation, Lusaka, p207

employers was allowed to perform any acts in furtherance of its purpose and any such combination or officer thereof who contravened the provisions of the Act was punishable by law.

The Industrial Conciliation Ordinance

The Industrial Conciliation Ordinance provided for the voluntary settlement of disputes by ensuring conciliation proceedings on notification of a dispute to government, to commence and bring the parties together and aid them to find a solution to the industrial problems. This was done by way of a Conciliation Board. The boards were established by written agreements between employers and employees which were registrable by the registrar. Where it appeared to the Governor in Council that in any district, trade, or industry, adequate means did not exist for having trade disputes submitted to a conciliation board for the district, trade or industry he appointed any person or persons to inquire into the conditions of the district, trade or industry, and to confer with the employers as to the expediency of establishing a conciliation board for the district, trade or industry.¹² Section 10 provided that every award of arbitration was to be submitted to all parties to the dispute and the minister would cause the award to be published. There was also an additional provision that provided for a Ministerial Inquiry. This meant that the minister could order any inquiry into the cause and circumstances of any trade dispute. The board of inquiry reported its findings to the Minister.¹³

¹²A. M. Mtopa(1989), *Labour Law in Zambia*, Kenneth Kaunda Foundation, Lusaka, p211

¹³ Frightone Sichone (2000), *The Role of Government in Regulating Industrial Relations in a Liberalised Economy* Obligatory Essay, UNZA Law School. p17

The Birth of Zambian Industrial Law

When Zambia attained independence in 1964, the Zambian government seemed in no hurry to have the Trade Unions and Trade Disputes Act,¹⁴ and the Industrial Conciliation Act,¹⁵ amended or repealed. It was not until seven years later that the government showed commitment to have these laws changed. "Speaking at a seminar of management in Lusaka on 5th March 1970, the then president Kaunda instructed the Minister of Labour to initiate a complete revision of the existing labour legislation, further, he pointed out that the reform of the industrial relations law had to start from scratch because *'there is no point in continually doing patchwork to a document which stems from a period which has nothing in common with our new approach to national affairs.'* Thus the new approach he proposed was to take the form of recognition by law of the existence of various interest-groups in industrial undertakings. The most important of these are the owners of the assets, the providers of the labour and the government, as the custodian of public interest, and management. The president said these were distinct groups and their interests were very often in conflict"¹⁶

The Industrial Relations Act, 1971 was thus born and the era of the colonial Industrial law ended. It was passed on 20th December 1971 with the aim of regulating Industrial Relations in the country. However, it was not until 1974 that this Act became operational.

¹⁴ CAP 507

¹⁵ CAP 508

¹⁶ A. M. Mtopa(1989), Labour Law in Zambia, Kenneth Kaunda Foundation, Lusaka, pp213-214

Chapter two

The Labour Movement under the 1971

Industrial Relations Act

Basis of the Act

Of basic importance in the reasons given for the enactment of the new law was that, the Trade Union Movement needed some reformation to put it in line with the new Zambian government's workings and ideology. This was following the launch of the Mulungushi Reforms of 1968 and the Matero reforms of 1969, the industrial relations had to fall in line with socialism. Kanswata, observed, "accordingly, the Unions had to be organised along the lines of the labour movement in Eastern Europe, whose economies were commandist or government controlled. As per practice in Eastern Europe, they were to be instruments for the participation in the management of workers as social owners and for the differentiation of their working and living conditions."¹⁷

The other aspect it was argued was that the old law was colonial in nature and therefore not in line with what the government wanted. In the words of Mtopa, "the elements in the colonial law which had to be removed included the colonial attitude expressed in the lack of trust in the Trade Union movement and the legal restrictions on the freedom of Trade Union activities. The new law was to remove the stigma of inferiority and immaturity attached to the Trade Union movement."¹⁸

Given this, the law was passed that was to regulate and shape the Trade Union Movement for the next two decades.

¹⁷ Kabwita Kanswata(1998), Government Policy Relating to the Trade Union Organisation and Collective Bargaining in Zambia: An Evolution, Critique and Prognosis, Obligatory Essay, UNZA Law School, p10

¹⁸ A. M. Mtopa(1989), Labour Law in Zambia, Kenneth Kaunda Foundation, Lusaka, p214

Objectives of the Act

The Act had the following major objectives: firstly at the professional level it sought to establish a strong Trade Union movement capable of contributing meaningfully to national development.¹⁹ At the political level, the Act was designed to create a monolithic Trade Union organisation under the wing of the United National Independence Party in line with socialist tenets which underpinned policy formulations at that time. Thus the policy of “one union, one industry”²⁰ was enshrined in the law and all registered Trade Unions were required to affiliate, compulsorily to the Zambia Congress of Trade Unions (ZCTU) which was enshrined in the law as the only confederation of the Trade Unions.²¹ At the industrial level, the Act was designed to establish the machinery to deal with collective bargaining effectively through bargaining units and joint industrial councils and to provide for conflict resolutions. The Act also provided for the setting up of works councils to deal with questions of productivity and the welfare of the workers in the undertaking.²² The Industrial Relations Court and the Works Councils were the machinery through which Industrial disputes could be settled.²³

¹⁹ Sachika’s Article in the post, January 13 1995

²⁰ Sachika’s Article in the post, January 13 1995

²¹ Section 15(1)(b) of The Industrial Relations Act 1971

²² Section 69 of The Industrial Relations Act 1971

²³ Frigton Sichone (2000), The Role of Government in Regulating Industrial Relations in a Liberalised Economy Obligatory Essay, UNZA Law School. pp31-33

Provisions of the Act

Status of the Zambia Congress of Trade Unions

"It should be noted that it was the government's policy to have a unified and strong labour movement which would be more viable and efficient so that it could make considerable input towards national economic development programmes."²⁴ Thus the Zambia Congress of Trade Unions was given a very high status by the new Act; it was so important that it was registered without an application being lodged. Section 26(2)²⁵ provided to the effect that, the commissioner was to register the congress without application being lodged on its behalf. However, any alteration or additions to the constitution of the congress was only registrable by the Commissioner after approval by the Minister of Labour and Social Services.

'One Industry, One Union'

In line with the one party policy was introduced the restriction of registration of Trade Unions in the same industry, thus the policy which came to be popularly known as 'one industry, one union.' This was whereby a union was only permitted to register, if it was for the purpose of representing workers, who were not eligible to form an existing union or who were already represented. Banda²⁶ further elaborates, "By extension no single employer could have more than one union to deal with. This interpretation is derived from section 112 of the 1971 legislation. This section provided that every recognition agreement 'shall provide

²⁴ Frigton Sichone (2000), The Role of Government in Regulating Industrial Relations in a Liberalised Economy Obligatory Essay, UNZA Law School. p37

²⁵ Industrial Relations Act 1971

²⁶ Darlington Amos Banda (1997), The Trade Union Situation In Zambia, An Overview of the Law, Practice and the way Forward, A Monogram, Friedrich Ebert Stiftung, Lusaka, p5

that the employer has duly recognised the Trade Union as the sole representative of and exclusive bargaining agent for the employees employed by such an employer... The net effect ... was to define the structure of the Trade Unions based on the principle of one union in one industry. Indeed in his opening address to the National Assembly of the 7th January 1979 the then President Kenneth Kaunda stated as follows: '*...our policy still remains one of supporting one union for one industry, for we are convinced that a proliferation of trade unions weakens the bargaining strength of the workers.*' The preceding scenario was however in defiance of Convention 87 of 1948 on the Freedom of Association and Protection of the Right to Organise, which understandably was only ratified by Zambia on 2nd September 1996.

Affiliation to Congress by Trade Unions

Affiliation to the mother body was one of the cardinal issues that were addressed by the Act. Under section 43 of the Trade Unions and Trade Disputes Act, affiliation to the Zambia Congress of Trade Unions could only be effected if a majority of the members resolved to affiliate. It was therefore, not mandatory for Unions to affiliate to the Congress. However, the new law brought in a change on this count. Section 15(1) (b)²⁷ provided that, "every union in possession of a valid certification of registration shall be deemed to be a Trade Union duly affiliated to the congress." Further subsection two gave rights and privileges to the Unions that were so affiliated; the Unions were also obligated by law, to the ensuing

²⁷ Industrial Relations Act 1971

obligations. Banda²⁸ elaborated this point when he wrote, "thus the influence and the authority which the congress could exercise in respect of its affiliates wholly depended on what the constitution of the Zambia Congress of Trade Unions stipulated. Indeed section 27(1) required that the constitution of the Zambia Congress of Trade Unions ought to spell out the rights, privileges, duties and obligations conferred or imposed upon Trade Unions by virtue of their affiliation to the congress."²⁹

The powers the Zambia Congress of Trade Unions had over its affiliates were further cemented by Section 28.³⁰ Under this provision; disputes as regards representation in the affiliates had to be referred to the Congress. The provision was that if a dispute arose between two or more Trade Unions as to which of them had or should have the exclusive right to represent employees of a specified class or category then the parties were under an obligation to refer such a dispute to the Zambia Congress of Trade Unions with a right of appeal to the Industrial Relations Court.

Due Shop Order

Funding to the Zambia Congress of Trade Unions and its affiliates was guaranteed as the Act in Sections 20 and 21(1),³¹ introduced what was called the Due Shop Order. Under the Due Shop Order system the Union did not need to lobby for deductions of the dues as the Act compelled the employers to make the deductions and remit the funds simultaneously to the Zambia Congress of Trade

²⁸ Darlington Amos Banda (1997), The Trade Union Situation In Zambia, *An Overview of the Law, Practice and the way Forward*, A Monogram, Friedrich Ebert Stiftung, Lusaka, p2

²⁹ Ibid, p2

³⁰ Industrial Relations Act 1971

³¹ Industrial Relations Act 1971

Unions and the affiliate, when a requisite number of employees were organised and joined the Trade Union.

Industrial Relations Court

Also ushered in, was the Industrial Relations Court, which was established in 1974. Section 98(a), (b) and (c) ³² gave the court a wide range of powers, inter alia, to examine and approve collective agreements, arbitrate over collective disputes and generally implement the provisions of the Act. The Industrial Relations Court was to operate as a tribunal where no strict rules of evidence and procedure were necessary, and basically, it was felt that justice would be dispensed expediently this way.

Works Councils

Section 69 of the Act established Works Councils. This was for the purpose of effective participation of workers in their affairs. They were also established to secure the mutual cooperation of workers, management of the undertaking and the Trade Union in the interests of industrial peace, improved working conditions, greater efficiency in every undertaking employing not less than one hundred employees. This was according to section 55(1). It was also provided that information was to be given to the councils by the undertakings regarding their decisions on certain matters in writing of all the decisions taken by the board of directors, the proprietors of the undertaking, as the case may be in relation to the investment policy, financial control, distribution of profits, economic planning, job evaluation, wages policy and the appointment of senior management executives

³² Industrial Relations Act 1971

in the undertaking.³³ No decision emanating from management was to have effect until it was approved by the council. Section 72(2) however, stopped the council from unreasonably withholding such approval.

Performance of the Labour Movement under the Act

The stage for the performance of the Labour movement was thus set with the above legislation in place. It is arguable that the Trade Union Movement in Zambia performed at its best under the Industrial Relations Act of 1971. The drafters created an Act that was Union friendly and which resulted in the consolidation and strengthening of the Movement. "One of the factors that had made the Zambia Labour Movement to be one of the strongest in Africa was the retention of the principle of one union in one industry up to 1990. Indeed the period 1971 to 1990 was the era of capacity building with legal support of the trade unions. By 1990 the Zambia Congress of Trade Unions had organisational structures similar to those of the United National Independence Party (UNIP) across the country."³⁴

The government under the leadership of Kaunda, tried to turn the labour movement into the ambit of UNIP, but the Zambia Congress of Trade Unions resisted all efforts to try and turn it into a party wing so that it could cede control to UNIP. There was an argument by UNIP then that since Zambia pursued the policy of party supremacy, all organs or structures in the country needed to be incorporated into it, a move that saw the Zambia Congress of Trade Unions being incorporated into the National Council of UNIP. This move according to

³³ Kabwita Kanswata(1998), Government Policy Relating to the Trade Union Organisation and Collective Bargaining in Zambia: An Evolution, Critique and Prognosis, Obligatory Essay, UNZA Law School, p11

³⁴ Ibid, p9

Banda³⁵ was a demonstration of government's perception of the labour movement as a pillar of formidable influence, which needed to be controlled and weakened.

There were provisions in the 1971 Act that gave the labour movement an environment in which it could flourish. For instance funds were readily available because the Due Shop Order guaranteed a steady inflow of money. One of the most difficult aspects of unionism is getting members to subscribe, but the Act guaranteed this. While this was in blatant contravention of the International Convention on the right to organise, UNIP cared less as its initial aim was to create a mass movement for its own benefit. A thing which backfired as the Labour Movement refused to be a UNIP wing. The end result was that the unions grew in strength as they had all the finances they needed at their disposal. They had money to organise the Movement into a formidable force by creating structures that were very strong and influential. On the other hand the thriving of the parastatals (state owned enterprises) and their policy of mass recruitment gave the Unions a steady and sustained inflow of membership. The above coupled with the principle of 'one industry, one union' created very well cemented Trade Unions on which the Zambia Congress of Trade Unions' superstructure was firmly anchored.

As has been seen above, the Congress was given immense powers to superintend over the affiliates by the Act. However, this situation was not without any misinterpretation, as the Zambia Congress of Trade Unions erroneously

³⁵ Darlington Amos Banda (1997), *The Trade Union Situation In Zambia, An Overview of the Law, Practice and the way Forward*, A Monogram, Friedrich Ebert Stiftung, Lusaka, p9

thought that they had sweeping powers to discipline or interfere in their affiliates internal affairs. A position which was rectified by the supreme court in the case of, Luciano Mutale and Jackson Chomba v Newstead Zimba.³⁶ In this case the General Council of the National Union of Building, Engineering and General Workers (NUBEGW) suspended its chairman as a disciplinary measure. In response to the suspension the Zambia Congress of Trade Unions, to which the union was affiliated, inter alia, suspended the whole of the Executive Committee of the union pending an investigation by Congress into the activities of some members of the union. The appellant objected to the Congress' intervention and sought declaratory relief from the High Court, inter alia, that the Congress acted ultra vires its constitution in suspending or dismissing the executive committee of the union.

The High Court found for the respondent and the appellant appealed. The respondent argued on behalf of the Congress that because the union was affiliated to Congress (which affiliation was mandatory under the Industrial Relations Act, Cap. 517) the rights, privileges, duties and obligations of trade unions in terms of the Act were those specified in the Constitution of Congress. It was held: The power to expel must be found in the rules and does not exist apart from them. It is not enough for a rule to confer power to deal with disputes between members. Unless power to take the measures complained of is explicitly stipulated or it exists by necessary implication then the measures taken in the absence of such power would be regarded as ultra vires, null and void if not altogether illegal.

³⁶ (1988 - 1989) Z.R. 64 (S.C.)

The Works Councils were not received with favour; as the labour movement generally viewed them as a tool of the UNIP government to control the worker-management relations. This was more so after party committees were introduced at places of work in 1974. And as Kanswata³⁷ intimated, they were in effect agencies reporting management and other workers who were engaging in activities that were termed counter revolutionary. They were in reality an extension of UNIP in all their dealings, because of the fact that UNIP exercised direct control. In 1975 the department of Industrial Democracy was established. Its aim was seen as being to ensure mutual cooperation between workers and management with the inclusion of party committees. The glaring feature of the works councils, party committees and the Trade Unions was their tendency to have conflicting situations. This Kanswata says was attributable to the duplicated or similar roles they used to play at any place of work. The Works Councils therefore were always in conflict as the union would be on one hand and the party on the other, with management being used as sacrificial lambs, as almost always the two would call for their dismissal.³⁸

On the political front the labour movement acted as the only meaningful opposition to UNIP, there was always acrimony between the two and confrontations and showdowns were not uncommon. The aim of UNIP was always to try and control the labour movement, they had been allies in the struggle for independence, and they were bedfellows immediately into the post

³⁷Kabwita Kanswata(1998), Government Policy Relating to the Trade Union Organisation and Collective Bargaining in Zambia; An Evolution, Critique and Prognosis, Obligatory Essay, UNZA Law School, p11

³⁸ Ibid, p12

independence era. But things did not remain the same for a long period as UNIP had an insatiable appetite to control all institutions in the land, and they thought that the labour movement as a citadel of workers power could not be spared. The genesis of the political confrontations between the UNIP government and the Labour Movement was in 1972.³⁹ "The legalisation of one party rule in 1972 sparked a confrontation between the Zambia Congress of Trade Unions and the Kaunda government. In 1974 the congress elected a leadership, under Frederick Chiluba, that promised to defend its autonomy. The new leaders immediately took steps to strengthen democracy and accountability within the Zambia Congress of Trade Unions and its affiliated unions."⁴⁰

Having had established democracy within the labour movement, the Zambia Congress of Trade Unions leaders turned their focus onto the national political front; they did this by demanding democracy in local and national representative bodies. Mihyo⁴¹ observes that, when in 1980 the government abolished free and multiparty procedures in local government elections, the move was opposed by the Zambia Congress of Trade Unions. Further the government decided to integrate the mine township councils with the newly formed District Councils which would be controlled by UNIP. In response the Mineworkers' Union of Zambia declared a dispute and organised a strike and demonstrations for one week. UNIP reacted by expelling all senior union leaders from its membership, thus making it impossible for them to continue as union leaders. This was

³⁹ Henk Thomas(Ed) 1995, '*Against Overwhelming Odds: The Zambian Trade Union Movement*,' By Paschal Mihyo, article in, Globalisation and the Third World Trade Unions, The Challenge of Rapid Economic Change, Zed Books, London, p207

⁴⁰ Ibid, p205

⁴¹ Henk Thomas, op.cit, p207

because party membership was a prerequisite to hold any office in the country under the one party system. However, the workers went on a strike until the party agreed that the expelled leaders could continue to head their unions.⁴²

After the defeat, the government attempted to take control of the unions by sponsoring pro-government candidates in union elections, a move which saw almost all of these candidates being rejected. UNIP had to appease them by offering them senior cabinet and party posts. Intimidation, surveillance and detention were also used by the government to frighten and silence the Zambia Congress of Trade Unions leaders. On several occasions in 1980 and 1986, Zambia Congress of Trade Unions leaders were arrested detained and released without being charged. The Congress reacted by moving into the political forefront by targeting the economy and the wages and incomes policy. Backed by its formidable network of Trade Unions the labour Movement was steadfast and was not cowed by these events, it continued fighting labour injustices and attacking government on issues that affected the workers.

After the government failed to beat the Labour Movement on this front, it changed strategy. There was now a realisation in UNIP that the Labour Movements strength was augmented by the Industrial Relations Act. It therefore, decided to weaken the Movement by the introduction of a new Industrial Relations Act in 1990. Kaunda used the advocacy by the movement for plural politics against it, he claimed that the labour movement needed to be liberalised as well. This was in sharp contrast to his earlier statements in 1970 when he

⁴²Henk Thomas(Ed) 1995, Globalisation and the Third World Trade Unions, The Challenge of Rapid Economic Change, 'Against Overwhelming Odds: The Zambian Trade Union Movement,' By Paschal, pp207-208, quoting N R Simutanyi

admitted that the bargaining strength of Trade Unions was undermined by the proliferation of Trade Unions. Kaunda was now stating that trade unions had a duty to compete for membership and that therefore, the law should allow the proliferation of trade unions within industries.⁴³

The Industrial Relations Act 1990

With the foregoing, the new Act was not well received, the argument that the unions needed to be liberalised as was being demanded on the political front by the Zambia Congress of Trade Unions, was seen as just an excuse to try and decimate the Labour Movement. Quoting Sachika, Sichone states that it was argued that the new Act was intended to 'loosen control on labour relations, liberalise industrial relations and harmonise the industrial relations in the country generally. 'Kaunda stressed that the new Act was aimed at making the labour movement more democratic, in line with the spirit of the pluralism the Zambia Congress of Trade Unions was demanding.'⁴⁴

The Industrial Relations Act 1990 was very short lived; it enacted in 1991 and was repealed and replaced by another Act two years later.

Affiliation to Congress

One of the notable changes in the Act that that was different from the 1971 Act was that affiliation to the Zambia Congress of Trade Unions was now voluntary. In addition by a resolution a Trade Union was now free to disaffiliate itself from congress. Section 14(b) thus stated, from the commencement of this Act, every

⁴³ Darlington Amos Banda (1997), The Trade Union Situation In Zambia, An Overview of the Law, Practice and the way Forward, A Monogram, Friedrich Ebert Stiftung, Lusaka, p7

⁴⁴ Frightone Sichone (2000), The Role of Government in Regulating Industrial Relations in a Liberalised Economy Obligatory Essay, UNZA Law School. p56

Trade Union which is the holder of a valid certificate of registration issued under the Industrial Relations Act, 1971, and affiliated to the Congress under that Act, shall, subject to paragraph (c), not be affiliated to the congress under this Act. Section 14(2) stated that, a Trade Union which affiliates to the congress under paragraph (c) of subsection (1) may, by a two thirds majority passed by the members of the Trade Union disaffiliate itself from the congress.⁴⁵

'One Industry, one union'

The new Act did away with this by the non inclusion of section 7(8) (b) of the 1971 Act.⁴⁶ This therefore meant that persons were now free to form parallel Trade Unions in the same Industry.

'One Industry, one union'

The individual unions were now responsible for remitting the thirty percent subscription to the Congress, the old system of the employers doing it was done away with.⁴⁷

Performance of the 1990 Act

This Act however, failed to achieve what UNIP wanted as the Labour Movement had now joined hands with politicians and formed the Movement for Multiparty Democracy, which went on to form government in 1991. The Zambia Congress of Trade Unions provided the Republican president through Frederick Chiluba, and when he named his cabinet it was not surprising that six ministers were former Trade Union leaders.

⁴⁵ The Industrial Relations Act 1990

⁴⁶ George Mwale (2004), *Zambia's Industrial Relations in the Multi-party democratic dispensation (1991-2003)*, "A conceptual and Comparative Analysis," Directed Research, UNZA Law School, p35

⁴⁷ Section 23 of The Industrial Relations Act 1990

Chapter Three

The 1993 Industrial and Labour Relations Act

When the Movement for Multiparty Democracy (MMD) took over the reins of power from UNIP in 1991 they promised an overhaul of the legal structure of the Labour Movement in order to strengthen it. Essentially this was interpreted to mean the redrafting of the 1990 Industrial Relations Act particularly as it affected the organisational structure based on the multiplicity of unions. It will be recalled in fact that before its ascendancy to the helm of political power the Movement for Multiparty Democracy, itself dominated by former labour leaders such as Frederick Chiluba, strongly condemned the 1990 Act as being anti-union and divisive. Yet, at the same time, the MMD leadership promised to usher in liberal policies.⁴⁸ With the foregoing the 1993 Act was born.

Salient Features

Definition of a Trade Union

The interpretation clause, section 3, defines 'Trade Union' as any group or organisation of employees registered under the Act whose principal objectives are the representation and promotion of the interests of employees and regulation of relations between employees and employers and includes a federation of trade unions. This was a departure from the previous definition which defined a union as 'an organisation of employees registered as a Trade Union under the Act and whose principal objects were the regulation of collective relations between employees and employers or between employees and

⁴⁸ Darlington Amos Banda (1997), *The Trade Union Situation In Zambia, An Overview of the Law, Practice and the way Forward*, A Monogram, Friedrich Ebert Stiftung, Lusaka, p10

organisations of employers, or between employees and employees.⁴⁹ It is therefore obvious that the definition has been broadened.

Registration of a Trade Union

There was a restriction introduced under the Act as regards registration. If a union already existed in that particular industry then a new one formed on the same lines could not be registered.

Recognition Agreements

This was provided for under section 65, it had the same provisions as that of the 1990 Act which was under section 81(1). The provisions have an import of mandating the employer to recognise any Trade Union that had been duly formed.

Due Shop Order

The minister could order by statutory instrument an employer to deduct subscriptions from the wages of an eligible employee, as required by the Union constitution, if he was satisfied that the union had organised 60 percent of the eligible employees in the undertaking.

Works Councils

The provision in the 1990 Act as regards works councils was done away with in the 1993 Act, the view that they were an encroachment on Trade Unions worn the day.

⁴⁹ Section 4, The Industrial Relations Act 1990

Status of Zambia Congress of Trade Unions

To the disappointment of the labour movement the much criticised voluntary affiliation to Congress which had been introduced in 1990, remained intact in the new Act.

Collective Bargaining and Collective Disputes

The provision relating to collective bargaining remained the same save for changes of provisions as regards Collective Agreements. This can be seen in Section 72 that provided to the effect that, any variations of the Collective Agreement could be lodged with the Labour Commissioner for approval by the minister. It was further provided that parties to the agreement could extend the period of the agreement if the bargaining unit did not conclude a new agreement before expiry of the old one, in addition such an extension could be done for any other reason on application to the minister.

The Industrial Relations Court

The jurisdiction of the court remained the same in the new Act; however it was now possible for individual employees to bring actions against their employers in the Court. "Under section 98 of the Industrial Relations Act of 1990, individual employees were not covered and this was a subject of litigation in the case of A.T Ndulo v Indeco.⁵⁰ It was held that the then section 98 which defined the jurisdiction of the court and the orders it could make only applied to a collection of employees and not an individual. This meant, therefore, that aggrieved

⁵⁰ (1979-1981) ZIRC 27

individuals had no recourse to the Industrial Relations Court but only to the High Court.”⁵¹

The other change or new provision as regards the court was brought in under section 97 where persons aggrieved by an award, declaration, decision or judgment of the court could now appeal to the supreme court on any point of law, or any point of mixed fact and law, but not on a point of fact alone.

Act Number 30 of 1997

International Labour Organisation (ILO) Convention 87 and 98

Some of the provisions of the 1993 Act were seemingly in conflict with the International Labour Organisation Convention 87 on the Freedom of Association and the protection of the Right to Organise, and convention 98 on the Right to Organise and Collective Bargaining, which Zambia had ratified. Consequently there was a need to fine tune labour laws in the country so that they could be in line with ILO standards and the above conventions. There was hence need to make amendments to the act, these came by way of Act number 30 of 1997. The basic principle enshrined in the conventions was that, workers and employers, without distinction whatsoever, have the right to establish and join organisations of their own choice with a view to furthering and defending their interests.⁵² The following were the notable changes;

⁵¹ George Mwale (2004), *Zambia's Industrial Relations in the Multi-party democratic dispensation (1991-2003)*, "A conceptual and Comparative Analysis," Directed Research, UNZA Law School, p35

⁵²Ibid, p35

Rights of Employees In Respect Of Trade Union Membership

The amendment in Section 5⁵³ gives rights to employees in respect of Trade Union membership, and such rights as are provided for in the constitution, it provides, notwithstanding anything to the contrary contained in any other written law and subject only to the provisions of the Constitution and this Act every employee shall have the following rights:

(a) the right to take part in the formation of a trade union; (b) the right to be a member of a trade union of that employee's choice; (c) the right, at any appropriate time, to take part in the activities of a trade union including any activities as, or with a view to becoming, an officer of the trade union, seeking election or accepting appointment, and if so elected or appointed, to hold office as such officer subject only to the constitution of the trade union concerned; (d) the right to obtain leave of absence from work in the exercise of the rights provided for in paragraph (c) and the leave applied for shall not be unreasonably withheld by the employer; (e) the right not to be prevented, dismissed, penalised, victimised or discriminated against or deterred from exercising the rights conferred on the employee under this Act; (f) the right of any employee not to be a member of a trade union or to be required to relinquish membership; (g) the right not to be dismissed, victimised or prejudiced for exercising or for the anticipated exercise of any right recognised by this Act or any other law relating to employment; or for participating in any proceedings relating thereto; (h) the right not to do work normally done by an employee who is lawfully on strike or

⁵³ Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia

who is locked out, unless such work constitutes an essential service, or if on request the employee voluntarily waives the right specified under this Act.

Registration of Trade Unions

Section 9⁵⁴ has reduced the minimum number of supporters required to register a Trade Union from one hundred to fifty, further the minister may actually reduce the number. The requirement to publish every notice for application in the government gazette was also dropped. This was replaced with the requirement that the application was to be signed by the supporters and a submission of the same was to be made to the Labour Commissioner.

The requirement that such a union should not be formed where another union exists, which represents a similar category of members has been done away with.

Due shop Order

The amendment totally did away with this by removing the 60 percent requirement under which a minister could make an order to force employers to make deductions of subscriptions for a union. It now provided, "an employer may, by agreement with an eligible employee, deduct the amount of subscription prescribed by the constitution of the trade union from the wages of such eligible employee if the employee is a member of such trade union. An eligible employee may, at any time, withdraw the agreement referred to in subsection (1), by giving three months notice, in writing, to the trade union concerned."⁵⁵

⁵⁴ Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia

⁵⁵ Section 22 of the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia

Affiliation to Congress or Federation of Free Trade Unions

It is now optional for trade unions to affiliate to the congress or other federation of trade unions. Actually the word 'congress' was removed and replaced with the words 'Federation of Trade Unions.' Currently, there are two labour centres in existence in the country that is the Zambia Congress of Trade Unions and the Federation of Free Trade Unions of Zambia. Under the amended Act,⁵⁶ a Trade Union validly registered was given an option to either continue being affiliated to the Zambia Congress of Trade Unions or to disaffiliate itself subject to its constitutional provisions and in the same way affiliate to a federation of its choice.

Further, two or more registered trade unions disaffiliated from the Congress or which were not affiliated to any Federation could in accordance with their constitutions establish or form a federation of trade unions of their choice.⁵⁷ George Mwale sums up the argument on these amendments by commenting that, "the amended section 17 significantly disposes the monolithic status of the Zambia Congress of Trade Unions and the Zambia Federation of Employers. The Zambia Congress of Trade Unions, no longer holds its prized position in Zambia's industrial setup, and is now considered potentially to be one of the 'Federations of Trade Unions' that can be recognised and deregistered under the Act. This development highlights the greater freedom of association and the right to organise as enshrined in ILO Convention 87."⁵⁸

⁵⁶ Section 17, 1993 Industrial and Labour Relations Act

⁵⁷ Sections, 11 of Act No. 30 of 1997, 17(1) (a) (b) (c) and (d) as amended by Act No. 30 of 1997

⁵⁸ George Mwale (2004), *Zambia's Industrial Relations in the Multi-party democratic dispensation (1991-2003)*, "A conceptual and Comparative Analysis," Directed Research, UNZA Law School, p35

Court Process against Officer of a Trade Union

Section 20⁵⁹ has brought in a provision that has made it possible for the removal of an officer of a Trade Union, or a federation of Trade Unions, who is not qualified to hold office or who is involved in embezzling trade union funds. The amendment has made it easier for union members to remove erring officers even before their terms of office end.

Application for Registration- Employers Organisation

Five or more members of an employers' organisation can now form an employer's organisation, or such lesser number as the commissioner may accept. This is as provided under section forty.⁶⁰

Court Process against Officers - Employers' Organisation

The process to remove an officer of an employers' organisation has been made easier through a petition to the court. Not later than 30 days from the date of election and appointment or becoming aware of such fraudulent misuse.

Collective Agreements

Within three months from the date of registration of the Recognition Agreement the Employer or Employers Organisation as the case may be and the trade union shall enter into Collective Bargaining for the purpose of concluding and signing of a Collective Agreement.⁶¹

⁵⁹ Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia

⁶⁰ Ibid Section 40

⁶¹ Ibid Section 66

According to the amendments in the Act⁶² Collective Agreements can take place at enterprise or industry levels. However, Collective agreements concluded at industry level shall bind only members of the employer's organization and the trade union concerned. This is in line with the freedom of association.

Conciliation

It has been provided that where a dispute arises and neither party to a dispute is engaged in an essential service either party to a dispute may refer the matter for conciliation. The amendment has introduced an improvement unlike in the past when both parties were required to agree to refer the dispute to conciliation.⁶³

However when conciliation fails to settle the collective dispute either party to the dispute may refer it to the court or conduct a strike or lockout ballot.⁶⁴ Where action in pursuance of a strike or lockout takes place in accordance with the provisions of the Act the provision of the recognition and collective agreements between the parties shall not be deemed to have been breached by reason only of such action.

The Industrial Relations Court- Jurisdiction of the Court

The Industrial Relations Court has been given the original and exclusive jurisdiction to hear and determine any Industrial Relations matter and any proceedings under the Act. The decision in Cheelo and nine others v ZCCM⁶⁵ has however put to rest the confusion that was initially brought about by Acts number 15 and 30 of 1997. In this case there was an appeal against a high court

⁶² Section 66 of the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia

⁶³ Ibid Section 76(1)

⁶⁴ Ibid Section 78

⁶⁵ SCZ Appeal No. 25 of 1999

decision that it had no jurisdiction to try the appellant's case. The appellants were employed by the respondent. A redundancy agreement was signed between the appellants' union, Mine Workers Union of Zambia, and the Association of Copper Mining Employers to which the respondent belonged. The appellants were later on declared redundant and were not paid their redundancy package. They commenced an action in the Kitwe High Court for recovery of their benefits. An application was filed by the respondents to dismiss the action on the ground that the Court had no jurisdiction to try the case. The Deputy Registrar who heard the application, instead of dismissing the action, transferred it to the Industrial Relations Court. The appellants appealed to a judge in chambers who observed that there was no authority for the transfer of causes from the High Court to the Industrial Relations Court and advised the appellants to discontinue the action and seek leave of the Industrial Relations Court to file out of time.

In the Supreme Court one ground of appeal related to the amendment to section 85 of the Industrial Relations Act. It was argued by the respondents that the trial judge was right in deciding that Act No. 30 of 1997 ousted the jurisdiction of the High Court in disputes arising from master/servant relationships and was fortified by Act No. 15 of 1997 which, amended section 3 of the Industrial Relations Act by omission of the High Court from the definition of court and defining the word court to mean Supreme Court and Industrial Relations Court.⁶⁶

In determining the question whether the jurisdiction of the High Court had been taken away by the amendments of 1997, regard was had to the provisions of

⁶⁶ Fredrick Mudenda, *The Award of Damages in Employment Cases in Zambia: A General Overview*, in Law Association of Zambia Journal, Volume 2, 1999/2000

section 85(1) of the Industrial and Labour Relations Act and especially on the new sub section 9 brought about by amendment brought about by Amendment Act No. 30 of 1997. The new sub-section 9 of section 85 defines what an industrial relations matter is. It is from this definition, that the contours of the jurisdiction of the court are delineated. The Supreme Court stated: it is quite clear from the subsection the term 'Industrial Relations Matter' means collective disputes, collective agreements or recognition agreements or matters affecting the rights, obligations and privileges of employees, employers and their respective bodies under the signed agreement.⁶⁷

The Supreme Court further stated: to give the expression 'Industrial Relations Matters' a wide interpretation so as to encompass cases of breach of contract, wrongful dismissal or claims of the nature before us which could be tried by local court or subordinate court could lead to absurdity. We cannot conceive a situation where a domestic servant in Kaputa who has not been paid his salary or leave pay should come and file a complaint in the Industrial Relations Court in Lusaka or Ndola...against his employer. We find therefore, and hold that notwithstanding the removal of High Court from the Employment Act and on a proper interpretation of subsection 9 of section 85 of cap 269, the High Court has jurisdiction to try cases arising out of pure master and servant relationships and the instant case is one such case.

According to Mudenda,⁶⁸ it is clear that the Supreme Court's decision hinged on the interpretation of the term 'Industrial Relations matter' under the new

⁶⁷ Fredrick Mudenda, *The Award of Damages in Employment Cases in Zambia: A General Overview*, in Law Association of Zambia Journal, Volume 2, 1999/2000, p55

⁶⁸ Ibid, p56

subsection 9. According to the Supreme Court the 'jurisdiction term' did not fully cover all situations that may arise from employment situations or disputes. "One criticism that may be levelled against the Supreme Court's analysis of the term 'Industrial Relations Matters' is that the Supreme Court construed the term to be exhaustive when infact the wording and text of the subsection shows that the definition was inclusive or illustrative." Mudenda concludes by saying that, 'The Cheelo case appears to have been decided on the basis of the practical reality obtaining on the ground and indeed the example given by the Supreme Court of a Kaputa worker travelling to Ndola or Lusaka to file a complaint in the Industrial Relations Court could have persuaded the court to arrive at the decision it did and not on a 'a proper interpretation of subsection 9 of section 85 of Cap 269.'⁶⁹ The Court cannot as provided by section 85(3) consider a complaint or application unless it is presented to it within thirty days of the occurrence of the event which gave rise to the complaint or application: Provided that, upon application by the complainant or applicant, the Court may extend the thirty day period to three months after the date on which the complainant or applicant has exhausted the administrative channels available to that person.⁷⁰

Remedies by the Court

The court has been given wide powers to grant remedies as it deemed. The Act provides thus; "where the Court finds that the complaint or application presented to it is justified and reasonable, the Court shall grant such remedy as it considers

⁶⁹ Fredrick Mudenda, *The Award of Damages in Employment Cases in Zambia: A General Overview*, in Law Association of Zambia Journal, Volume 2, 1999/2000, p57

⁷⁰ Section 85(3) of the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia

just and equitable and may- (a) Award the complainant or applicant damages or compensation for loss of employment; (b) make an order for reinstatement, re-employment or re-engagement; (c) deem the complainant or applicant as retired, retrenched or redundant; or (d) make any other order or award as the court may consider fit in the circumstances of the case.”⁷¹

Conclusion

In conclusion it can be noted that the amendment Act brought in a lot of changes to the principle Act. It would seem ironical that the government that was so opposed to some of the provisions of the 1990 Act would turnaround and not only embrace such provisions in the new Act, but move further and implement changes which they were totally against. But it seems like the new government was in such a dilemma that trying to enact legislation or keep legislation that was couched in the 1970s was going to be like swimming against the tide. They had after all campaigned on the platform of providing freedoms to all Zambians; the guiding principle for them was therefore, providing democracy and individual liberty.

In addition the law had to be in line with, International Labour Organisation (ILO) conventions 87 and 98. It can however, be discerned from Anyangwe,⁷² that even the ILO itself did face such a dilemma, when he commented, “the supervisory organs of ILO do recognise that in unity there is strength. They acknowledge the philosophy of ‘one industry, one union.’ They appreciate the arguments in favour of the desirability of avoiding proliferation of overlapping

⁷¹ Section 85A of the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia

⁷² Carlson Anyangwe (1997), Application of International Labour Standards in Zambia, unpublished, p11

Trade Union groupings. However, they insist that efforts to impose Trade Union unity through official action by the state would run counter to the principles of Convention 87, in particular those covering the right of workers to establish and join organisations of their choosing.”

Questions have been asked in the labour movement as regards the MMD government's position on trade unions in the country, especially with regard to the 1993 Act and the subsequent amendments thereof. Two views have emerged which try to explain this. On one hand is the argument that the government was trying to burn the ladder it had used to ascend to power. Frederick Chiluba has been particularly singled out that since he knew the strength the united labour movement had, he did not wish to face it as president, hence the legislation. On the other hand is the view that the government had no choice but conform to international labour standards, by giving workers individual liberties and freedoms in the place of work. As to which one is the correct position is still a matter of debate. The case of giving workers liberties and freedoms is sounder though as it is backed by the International Labour Organisation Conventions.

Chapter Four

The Impact of the 1993 Act on the Labour Movement

The impact of the law on the labour movement has been negative. As observed, "In-fighting, division, internal conflicts and a weak alliance characterises the labour movement in Zambia today."⁷³ At no time in the history of the movement has it been at its lowest in terms of organisation, than at present. The vibrant labour movement which was once the pride of Africa has been relegated to the back seat and the role it played as the voice of the voiceless has almost been silenced. At the height of the Structural Adjustment Programme (SAP) and its attendant programme of privatisation, the labour movement sat on the sidelines and watched while its membership base was almost wiped out by restructuring and liquidation of parastatal companies. As stated in a report over 7000 employees lost their jobs between January and October of 1995 from 310 companies as a result of the structural adjustment programme.⁷⁴ More have since joined this large army of the unemployed.

The decline in the formal employment has naturally led to a decline in Trade Union membership. The loss of membership at such a high rate not only threatens the very existence of the trade unions but also raises the question of relevance of unions. The manufacturing and construction sectors are some of the worst hit sectors. Trade Union membership in the construction sector fell from 25,000 in 1990 to about 11,000 in 1998. In the manufacturing sector Trade Union membership fell from 27,000 in 1990 to about 12,000 in 1998. This pattern is the

⁷³ Darlington Amos Banda (1997), *The Trade Union Situation In Zambia, An Overview of the Law, Practice and the way Forward*, A Monogram, Friedrich Ebert Stiftung, Lusaka, p20

⁷⁴ Bank of Zambia, 1995 Annual Report

same in most other sectors indicating an overall decline in Trade Union membership over the said period.⁷⁵ The public sector has not been spared by this down turn in the number of unionised employees. In a research report by Grayson Koyi,⁷⁶ he states that unionisation declined by over 45 percent between 1995 and 2003 for the Civil Servants Union of Zambia (CSUZ); by about 65 percent over the same period for the National Union of Public Service Workers (NUPSW), and; by about 32 percent for the Zambia United Local Authority Workers Union (ZULAWU).

It is important to look at just how some of the clauses in the 1993 Act have impacted on the movement.

Registration of a Trade Union

The reducing of the minimum number of supporters to form a Trade Union to fifty has entailed that more and more unions are being formed. For instance the Zambia Revenue Authority, which has 1,400 eligible members, can have as many as 28 unions. This may sound simplistic but it can happen, what more with the dropping of the requirement that another union should not be formed where one exists with members in a similar category. The chaotic situation created by the new section 9 does not only work against the unions but also creates a nightmare for management, for instance the University of Zambia has a multiplicity of unions which management has to negotiate with. Year in and year out you hear of one group going on strike immediately after the other, or one group claiming that management is treating them differently. This situation is not

⁷⁵ Zambia Congress of Trade Unions, A survey Report On, Trade Union Membership and Profile in Zambia

⁷⁶ Grayson Koyi (2004), HRM and Trade Unions: A Contradictory Agenda? A Case of Evidence from the Public Sector in Zambia (1993-2003), Master of Arts Thesis, The Hague

only time consuming to management but also creates an inconvenience to the customers, students and other members of the public who consume the services of the university, if quantified this results in a huge loss of money.

The situation is even worse for the government as a union has mushroomed at every conceivable level; it's also not uncommon for losing candidates to form unions immediately after the elections. The proliferation of unions has found a lot of expression on this front in the teaching profession, for instance in 2001, the country's oldest and largest union, the Zambia National Union of Teachers, with an estimated membership of over 42,000, had exclusive bargaining rights to represent teachers. But with the new section 9 in place, three new unions have since sprung up; these are the Secondary School Teachers Union (SESTUZ), the Primary School Teachers (PETUZ) and more recently the Basic Education Teachers Union. This trend has not helped in improving the members' conditions because government has insisted on one bargaining unit in which the four unions are represented. A situation which makes one wonder is why the unions were formed in the first place, when they are all represented by one bargaining unit.⁷⁷

The point of government insisting on one bargaining unit demonstrates the fact that it is not interested in wasting time by negotiating with so many unions, on mutually beneficial issues. The question is why the unions can't take heed.

The issue of registration of the Secondary School Teachers Union of Zambia met resistance initially; it however was given a green light by the Supreme Court in

⁷⁷ Grayson Koyi, Trade Unions and the Struggle for Quality Public Services in Zambia, A Research Report for PSI

the case of, Attorney General and the Labour Commissioner v Fabian Zulu Amedeus C Kamukwamba Sitenge Mundia Mutangwa & Others.⁷⁸ The facts of the case are that, the respondents applied to the Labour Commissioner on behalf of the secondary school teachers, to have their union called the Secondary School Teachers Union to be registered as a union. The Labour Commissioner rejected their application on the basis that secondary school teachers were represented by the Zambia National Union of Teachers. The respondents petitioned the High Court for a declaration that their constitutional rights had been infringed by the denial to have their union registered. The learned High Court Commissioner considered the petition and declared that the Labour Commissioner's refusal constituted a denial of the respondents' enjoyment of their constitutional rights. The High Court Commissioner further ruled that the provisions of section 9 (8) (c) of the Industrial Relations Act No. 27 of 1993, were inconsistent with the provisions of the Constitution of Zambia and they were invalid.

The Attorney-General being dissatisfied with the High Court Commissioner's decision appealed to the Supreme Court. On delivering judgment Gardner, AG, JS, made the following comments, I have had the advantage of reading the judgement of my learned brother Chaila and I respectively concur with that part of his judgement, which finds that section 9 (8) (c) of the Industrial and Labour Relations Act is not ultra vires Article 21 of the Constitution. I regret, however, that I dissent from the learned Judge's findings that the said section does not allow the registration of a separate union for secondary school teachers. The

⁷⁸ (1995) ZR 33 (SC)

section 9 (8) (c) that, even though employees may represent a class or classes of employees already eligible for membership of an existing trade union, (as in this case), these employees may be registered as a union if such a union represents a specific category of eligible employees who are qualified to form a trade union.

The first part of the section, which prevents members of the same class of employees from registering as a separate trade union, is qualified by the second part of the section which provides that, if they form a specific category of employees in the same profession, they may be allowed to register. The intention of the section is clear. It is to prevent a proliferation of trade unions within a single trade, profession, or industry; that is the effect of the first part of the section. The second part of the section, however, if it is construed as is worded, would allow the registration as a trade union of any group of employees who could show that they represented a specific trade or profession or category of eligible employees. Under the section no group could register unless it came within that provisions, and this to a certain extent, would restrict the number of trade unions which could be registered. There would, however, still be a number of groups in numerous categories and sub-categories who would be qualified to be registered, and if they were so registered, there would be a plethora of trade unions, thus defeating the object of the section. In order to avoid this situation, the section must be construed, if it can be, to give effect to the intention of the legislature, as manifest in both the first and second parts of the section.

In considering the application of section 9 (8) (c) of the Industrial and Labour Relations Act and its construction under the principles which I have mentioned, one of the matters to take into account is whether the respondents are already represented by an existing union. If they are adequately represented, there would be no need for the formation of a new union, and the provisions of the second part of section 9 (8) (c) of the Act could not be called in aid, because the formation of such a new union would be contrary to the general restriction intended by the section. On the evidence adduced, however, I would find that, as a minority group, the respondents are not adequately represented, and in order to uphold their constitutional rights, they be allowed to form a union independently of other teachers.

I would hold that the proposed Secondary School Teachers Union of Zambia comprise a specific category, different from other teachers, who are qualified to form a trade union within the terms of section 9 (8) (c) of the Industrial and Labour Relations Act, and that its members are not represented by any other union. I would find that the provisions of section 9 (8) (c) of the Industrial and Labour Relations Act are *intra vires* the constitution and allow for the registration of a separate union for secondary school teachers. I would dismiss this appeal and uphold the order made in the High court, with costs to the respondents.

Muzyamba, JS: I have read the judgement of my learned brother Gardner, and for the reasons that he has given; I would also dismiss the appeal with costs to the respondent to be taxed in default of agreement. By a majority the appeal is dismissed with costs to the respondents.

It is interesting to note here that the legislators to get rid of the seemingly confusing construction of section 9 decided to just repeal and replace the entire section. This time around there is only a very minor restriction which is in reference to the name of the union intended to be registered and it provides: a group of employees shall not be registered as a trade union under this section under a name identical to, or by which, any other trade union has been registered or so nearly resembles such name as to be likely to deceive its own members or members of the public.⁷⁹

Due Shop Order

Like all institutions in Zambia the labour movement has been hit with serious financial difficulties, the boom years of the 1970's when they had a steady flow of income are gone. This has obviously resulted in the suspension of very important programmes like workers education, in some instances financial difficulties have resulted in constitutional programmes like elections being postponed or not being regularly held as stipulated. The removal of the due shop order has made things even worse, whereas previously unions could collect dues for as long as they had organised sixty percent of the eligible members, it is now up to the employees to decide to subscribe to the union or not. In this regard section 22⁸⁰ stipulates that; an employer may, by agreement with an eligible employee, deduct the amount of subscription prescribed by the constitution of the trade union from the wages of such eligible employee if the employee is a member of such trade union. An eligible employee may, at any time, withdraw the

⁷⁹ Section 9 (5) (a), The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

⁸⁰ Section 22 (1) and (2), The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

agreement referred to in subsection (1), by giving three months notice, in writing, to the trade union concerned.

Section 22 does not even attempt to explain what happens to an employee who prefers to have his subscription withdrawn. This creates confusion because it seems perfectly okay for someone to withdraw their subscriptions but still remain a member of the union. Hence an eligible employee can benefit from the efforts of the union which he or she does not support financially, a very unfair situation. The withdrawal of the due shop order and the creation of the new section 22 is a recipe for the financial undermining of the labour movement. The impact of this is evident in the labour movement. Hatoongo,⁸¹ has observed that the withdrawal of the due shop order has created a very unfair situation, because unions will labour to negotiate for conditions of service which non contributing members will benefit from. He further stated that a compromise situation could have been created were those who benefit from the union and do not want to be members can make a smaller contribution. He lamented on the impact that this has had on the financial resources of the union, stating that it is now difficult for union operations to be conducted as the union financial base dwindles. Hatoongo said that though not all financial difficulties could be attributed to this clause it is very important that all the people who benefit from the work of the union should as a matter of fairness fund it.

Koyi⁸² observes that as the unions' financial base is undermined by sections like section 22, unions have not sat idle; they have become creative and employed

⁸¹ Ronald S Hatoongo, General Secretary, Zambia Revenue Authority Workers Union, Personal Interview

⁸² Grayson Koyi, Director Research, Civil Servants and Allied workers Union of Zambia, Personal Interview

strategies, such as broadening of the catchment area. This he says has been achieved by changing the constitutions and names of the unions so that they will encompass other eligible employees in a similar area of operation. For instance the union formerly known as Civil Servants Union of Zambia(CSUZ), is now known as Civil Servants and Allied Workers Union of Zambia(CSAWUZ), this entails that now it will not only concentrate on main stream civil servants, it may now organise other eligible employees, who are termed allied.

The impact of the removal of the due shop order seems to have been felt more by the Zambia Congress of Trade Unions. As unions seem to be having difficulties to collect dues from the general membership, it seems they have resorted to remitting less money than they previously used to. In an address to the general council of 27th April 2005 the Zambia Congress of Trade Unions President⁸³ implored the affiliates to remit the correct amount to the mother body. He warned that affiliates that seem to be holding on to the thirty percent that needs to be remitted risk sanctions. He further lamented that the old system where the employer was compelled to remit the thirty percent was more beneficial to the congress. A quick perusal of the financial report to the same council reveals that most unions now withhold the thirty percent and they were in arrears to the congress to the tune of One Billion Kwacha, a situation if left unchecked can grossly undermine the labour movement. It seems apparent that the less the affiliates collect the less there is for the labour centres for programmes.

⁸³ Secretary Generals Address to the ZCTU, General Council Meeting, 27th April 2005

Affiliation to Congress or Federation of Free Trade Unions

The impact of the freedom to affiliate to the Zambia Congress of Trade Unions has had the most profound impact on the labour movement in Zambia today. It seems like the Zambia Congress of Trade Unions was not ready for any challenges as evidenced by the stance that has been taken. Until recently the Zambia Congress of Trade Unions and the Federation of Free Trade Unions in Zambia have been at daggers drawn. The enmity has its deep roots in the war for membership; the Zambia Congress of Trade Unions has always felt that the other labour centre is merely a breakaway. The fact that the Federation of Free Trade Unions in Zambia was born out of a dispute after a quadrennial conference does not help matters.⁸⁴

The genesis of the dispute can be traced from 1994 when there were five unions that disaffiliated themselves from the Zambia Congress of Trade Unions, and formed the Federation of Free Trade Unions in Zambia. These unions were, Mine Workers Union of Zambia (MUZ), the National union of Building, Engineering and General Workers (NUBEGW) the Zambia Union of Financial Institutions and Allied Workers (ZUFIAW) the Zambia National Union of Teachers (ZNUT) and the National Union of Commercial and Industrial Workers (NUCIW). Through dialogue though, ZNUT, NUBEGW, NUCIW and the Mine Workers Union of Zambia, managed to return to Zambia Congress of Trade Unions but ZUFIAW remained and is still a member of the Federation of Free Trade Unions of Zambia up to today.

⁸⁴ Adrian Shikwe (2003), Trade Union Country Report-Zambia, <http://www.fes.org.zm/publications/tradeunionrep.pdf>.

While opposed to the formation of another labour centre in favour of a united federation, the Zambia Congress of Trade Unions supported the breakaway of the Secondary School Teachers Union of Zambia, and the Technical and Trades Lecturers Union from the Zambia National Union of Teachers, a move which annoyed the leadership of the Federation of Free Trade Unions of Zambia.⁸⁵ In a similar fashion, the bankers union of Zambia, which is a splinter union of ZUFIAW, joined the Zambia Congress of Trade Unions. ZUFIAW also felt, that the formation of the Zambia Revenue Authority Workers Union (ZRAWU) was unnecessary and its members should have just fallen under ZUFIAW, as its business could be deemed to be allied to financial institutions. This led to a struggle between the founders of (ZRAWU), and the leaders in ZUFIAW, when the former carried the day, they understandably affiliated to the Zambia Congress of Trade Unions.⁸⁶ The Congress argued that as long as the Federation of Free Trade Unions of Zambia did not feel that it was necessary to form a strong alliance with the Zambia Congress of Trade Unions then they would not be responsible for the splinter unions from it. A position that did not help matters at all. Banda noted that, "whatever the arguments maybe from either camp this state of affairs has irreparably damaged the much needed unity of the labour movement and it is imperative that the parties seriously re-examine their role in the Trade Union movement."⁸⁷

⁸⁵ Darlington Amos Banda (1997), *The Trade Union Situation In Zambia, An Overview of the Law, Practice and the way Forward*, A Monogram, Friedrich Ebert Stiftung, Lusaka, p29

⁸⁶ Ibid, p29

⁸⁷ Ibid,p29

The re-examining of the role of the Federation of Free Trade Unions of Zambia and the Zambia Congress of Trade Unions came by way of sponsored dialogue by the Frederick Ebert Stiftung, a Germany organisation which specialises in labour issues.⁸⁸ It is gratifying to note that, though much has not been done in terms of bringing the two labour centres to merge, great headway has been made for the two to work together since 1996 when this initiative began. This has culminated in the Zambia Congress of Trade Unions and the Federation of Free Trade Unions of Zambia, sharing platforms to articulate issues beneficial to the workers of Zambia, a case in point being the joint demonstration against the wage freeze and increase in Pay as You Earn (PAYE) on 18th February, 2004.⁸⁹ The invitation of Ms Joyce Nonde, the president of the Federation of Free Trade Unions of Zambia and her Executive Secretary, Sam Lungu, to the Zambia Congress of Trade Unions National Council of 11th March 2004 can be seen as a very good step towards achieving unity. A point which Ms Nonde, did not miss to emphasis when she addressed the Council, she pointed out that unity of the two mother bodies was going to shame those who wished them bad luck by sending false messages that the labour movement in Zambia was divided.⁹⁰

All in all the labour movement still remains divided, there is still a lot of mistrust between the Federation of Free Trade Unions of Zambia and the Zambia Congress of Trade Unions. The acrimony and disunity which has served only to weaken the labour movement could have not been there if the 1993 Act⁹¹ did not

⁸⁸ Ibid, p30

⁸⁹ ZCTU, minutes of the National Council, 11th March, 2004

⁹⁰ Ibid, p13

⁹¹ The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

liberalise affiliation to the federation of a union's choice.⁹² It is a big wonder or maybe just a stroke of luck that no other labour centre has come up, it can only be hoped that no such thing will happen, but the potential remains there that someone can come up with another Federation, a move that will further undermine and weaken the labour movement.

Collective Bargaining

Collective Bargaining is an exclusive function of a Trade Union and the employer or employers' organisation. Together they form a bargaining unit. Before the Industrial and Labour Relations Act was amended in 1997, section 66 established what were known as joint councils. A joint council was a bargaining unit at industry level. At enterprise level, a bargaining unit was known simply as a bargaining unit. Where collective bargaining took place by joint council, whatever was agreed upon would bind everyone in that industry notwithstanding that they were not party to the negotiation. All collective agreements had to be gazetted before they could assume their legal status.⁹³

By dropping the requirement for gazetting, they have brought in the aspect that you can have an illegal collective agreement hence the need for the minister to approve it. But the old system seems to have been better where whatever was agreed was just turned into law, and not testing what was agreed to find out whether it conformed to the requirements of the law. The bringing in of the minister to approve the variation and extension of the Collective Agreement is worth

⁹²Ibid, Section 17

⁹³ W.S. Mwenda (2004), Employment law in Zambia: Cases and Materials, UNZA Press, Lusaka, p98

examining. Section 71⁹⁴ has by giving powers to approve collective agreements effectively reduced the power of the bargainers, how can the minister have power not to approve what has been mutually agreed upon. It is not in order for the minister to take a paternalistic stance when the bargaining units have power to act on behalf of their principals. The spirit of collective bargaining is therefore under mined by this section, because as alluded to what is perceived to be free bargaining is not so anymore as once the collective agreement is submitted it can be rejected and the bargaining process has to start once more.

Section 73⁹⁵ has had a very negative impact on collective bargaining. The allowing of bargaining units to apply for extensions to the collective agreements has created a very undesirable situation, where it has become common in the country to see collective agreements extended for almost indefinitely. The consequences for such extensions have brought untold misery to workers in the republic; this is more so especially during the period that Zambia experienced hyper-inflation. Amongst the unions that have suffered under this section are the Zambia United Local Authority Workers Union, which has had collective agreements with councils extended at almost every negotiation. The provisions in section 69⁹⁶ puts a cap on how long negotiations can take place which in itself is a good safeguard, but section 73 (1) allows for an extension to be made to the existing collective agreement this has given an escape route for employers who are not labour friendly. This is more so that the extension can be made for any reason, as long as an application is made to the minister.

⁹⁴ Ibid, Section 71

⁹⁵Section 73, The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

⁹⁶ Section 69, The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

Collective Disputes

A collective dispute exists when there is a dispute between employers or organisations representing employers and employees or organisations representing employees, relating to the terms and conditions of or affecting employees, and one party to the dispute has presented in writing to the other party all its claims and demands. The other party should have failed to answer the claims or demands within fourteen days of receipt of the claims or demands and made no counter offer; or both parties to the dispute should have held at least one meeting with a view to negotiating a settlement of the dispute and failed to reach settlement on all or some of the matters in issue between them.⁹⁷ As already indicated above collective disputes involving non-essential service organisations, are settled by means of conciliation. These provisions are found in part IX of the Act.⁹⁸

Despite the provisions that are in place, the 1993 Act⁹⁹ has had a big impact on strike action in Zambia; it has put in very rigorous and time consuming measures to discourage workers from taking strike action. These provisions have indirectly taken away one of the fundamental rights which workers have all over the world, that is the right to participate in a strike. The Act has just fallen short of outrightly outlawing strikes; it is therefore no big wonder that since the act was put in place almost every strike that has taken place has been illegal. An assertion which Mwenda agrees with; "it has been argued that it is very difficult to go on a legal strike in Zambia due to the cumbersome procedures that must be followed before

⁹⁷ Section 72 The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

⁹⁸ Ibid, part IX

⁹⁹ The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

employees can go on a legal strike. With the increasing number of illegal strikes presently taking place in Zambia, one would be hard-pressed not to agree with the critics of the onerous procedural requirements in collective disputes.”¹⁰⁰ With the foregoing it is pertinent to examine in detail just how the Act¹⁰¹ has provided for the resolution of collective disputes and how these provisions have impacted on the labour movement.

The 1993 Industrial and Labour Relations Act does not distinguish between bargaining in the essential services and bargaining in the non-essential services, but it makes a distinction between essential services and non-essential services when it comes to the procedure for resolution of collective disputes.¹⁰² Section 76(1)¹⁰³ provides for the procedure to be followed when a collective dispute has arisen and neither party to the dispute is engaged in an essential service. The dispute is resolved through conciliation. In the case of a dispute arising between parties, either of whom is engaged in an essential service, the parties cannot resort to conciliation but have to refer the dispute to the industrial relations court for resolution. The rationale behind section 76(6),¹⁰⁴ is very difficult to grasp, it seems the drafters did not realise that conciliation is quicker and the most preferred way of resolving disputes in modern society. It would therefore be very beneficial to the employers and employees in essential service to have the

¹⁰⁰W .S. Mwenda (2004), Employment law in Zambia: Cases and Materials, UNZA Press, Lusaka, p102

¹⁰¹ The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

¹⁰²W .S. Mwenda (2004), Employment law in Zambia: Cases and Materials, UNZA Press, Lusaka, pp100-101

¹⁰³ Section 76(1), The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

¹⁰⁴Ibid, Section 76(6)

dispute resolved through the method of conciliation or even mediation. It would not only be quicker and cheaper but it would also be less acrimonious.

Section 77¹⁰⁵ provides thus, as soon as a collective dispute is settled by means of conciliation, the conciliator or the Chairman of the Board of conciliation shall cause a memorandum of the terms of the settlement to be prepared which shall be signed by the parties to it and shall be witnessed by the conciliator or the Chairman and each member of the board of conciliation, as the case may be. The conciliator or the Chairman of the board of conciliation, shall, within seven days of the settlement of a dispute by conciliation, submit authenticated copies of the memorandum referred to in subsection (1) to the Registrar. The Registrar shall, as soon as possible after receipt of a copy of the memorandum refer it to the Court which shall, subject to the settlement embodied in the memorandum, if not contrary to any written law, approve the settlement. If the Court decides that the settlement as a whole or any term of the settlement embodied in the memorandum is contrary to any written law, the Registrar shall communicate the decision of the Court to the parties to the dispute accordingly.

Where a conciliator or board of conciliation fails to settle a collective dispute, the parties may refer the dispute to the court or conduct a ballot to settle the dispute by a strike or lockout.¹⁰⁶ Where the dispute is referred to court, the decision of the court is binding upon the parties subject to appeal to the Supreme Court. Where the parties decide to proceed on strike or lockout, they should not do so unless a simple majority decision of the employees present and voting is made in

¹⁰⁵Section 77, The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

¹⁰⁶Ibid, Section 78

favour of the strike or lockout. A strike should begin ten days following the decision to go on strike and may continue for an indefinite period during which the dispute remains unresolved. A point to be noted is that at the stage of voting the Labour Commissioner can frustrate the union's efforts to do so as it is his office that is mandated to supervise and conduct the ballots. The Civil Servants and Allied Workers Union of Zambia, was made to wait indefinitely by the Labour Commissioner when it had a dispute with government in 2004 over the failure by government to pay housing allowance, which had been negotiated for and agreed upon in 2003. According to Chaala,¹⁰⁷ the labour commissioner's office frustrated his union by claiming that he was organising manpower to conduct the ballot, this gave government a leeway to procrastinate the issue, until they were ready to renegotiate.

During the ten day period in which the strike has to wait before commencement, the minister has been given power to intervene and settle the dispute. After consultation with the tripartite consultative labour council, the minister may apply to the court for a declaration that the continuance of the strike or lockout is not in the public interest.¹⁰⁸ Where such an application is made the court must make a decision within seven days of the application for the declaration.¹⁰⁹ Where the court issues a declaration in favour of the application, the strike or lockout must cease and the dispute is deemed to have been referred to the Court as if the

¹⁰⁷ Darrison Chaala, General Secretary, Civil Servants and Allied Workers Union of Zambia, personal Interview

¹⁰⁸ It seems that this is giving the minister too much power as only he will interpret what is in the interest of the public. In any case it is difficult to grasp just what kind of strike can be in public interest assuming that the workers are not part of the public.

¹⁰⁹ W.S. Mwenda (2004), Employment law in Zambia: Cases and Materials, UNZA Press, Lusaka, p101

conciliator or board of conciliation had failed to settle the collective dispute. The court has the power to decide whether the workers on a legal strike should be eligible for payment of wages during the period of the strike. Where action in pursuance of a strike or a lockout takes place in accordance with the provisions of this Act, the provisions of the recognition and collective agreements, if any, between the parties shall not be deemed to have been breached by reason only of such action; or the contract of employment with respect to each employee involved in the strike or lock-out shall not be deemed to have been breached by reason only of such action.

When you glean from the elaborate procedure above, it is evident why there is a perception that it is impossible to have a legal strike in this country.

Chapter Five

Conclusion and Recommendations

It is evident that the 1993 Industrial and Labour Relations Act has impacted negatively on the labour movement in Zambia. Zambia's legal framework has historically recognized the right of workers to form unions and, irrespective of the sector, to use the collective bargaining machinery for the determination of wages and conditions of employment. Until the liberalization policies of the 1990s, the legislative framework produced a highly regulated labour market. Since then, however, the labour market has been de-regulated and a new pattern of industrial relations has emerged.¹¹⁰ Questions are often asked whether it is sheer betrayal or just a coincidence that the Act was put in place at the time that Frederick Chiluba was president. He was after all a former Trade Unionist who led the movement for close to three decades. What then was his interest in seeing to it that when he left state house the labour movement was in disarray and at the brink of extinction, when just a decade earlier when he entered it the labour movement was buoyant and strong? These and more questions are often asked about just what went wrong.

It is important not to lose track of the fact that Chiluba ruled the country at the height of the Structural Adjustment Programme. The buzz word at that time was deregulation and liberalisation, the IMF and World Bank promised this country that if it adhered to its programmes, the economic decay of the late 1980s was going to be reversed. Privatisation was going to bring in the much needed

¹¹⁰ Grayson Koyi, Trade Unions and the Struggle for Quality Public Services in Zambia, A Research Report for PSI

capital, and more employment would be created, however, the new company owners did not need to be tied down by archaic labour laws that were counter productive. For instance it was going to be unfair to insist on having collective agreements that were negotiated at the industry level, because such agreement did not take into consideration the fact that different companies had different resources. This kind of arrangement only worked well in a commandist economy which the country pursued in the 70s and 80s.

The International Labour Organisation was also pushing for Zambia to free labour by ratifying Convention 87 on the Freedom of Association and the protection of the Right to Organise, and convention 98 on the Right to Organise and Collective Bargaining. Article 22 of the Constitution had to be respected and thus employees had to be given the right to belong to Trade Unions of their choice. This meant abandoning the policy of 'one industry, one union,' with the obvious consequence that now any one can form a Trade Union and workers are free to belong to such a union as long as the requirements are adhered to. The Zambia Congress of Trade Unions no longer has the monopoly it had of being the sole mother body; the Federation of Free Trade Unions of Zambia has joined them. Yet still others are free to form federations to which unions can affiliate.

Except for the noted pitfalls in the 1993 Act, it is very evident that the law has been pro-workers rights. It is therefore very difficult for anyone to argue wholesomely against the provisions of the Act; it is however saddening to see that it has elicited a very bad state of affairs in terms of workers unity. It is important to note also that the Zambia Congress of Trade Unions and the

Federation of Free Trade Unions of Zambia have never been wholly opposed to the provisions, of the Act because they were party to its enactment. For instance before the enactment of Act Number 30 of 1997, two tripartite labour council meetings were held to discuss the same; these were on 28th February and 5th March 1997.¹¹¹ When the final Act came out it seems there were only a few points of disagreement that had been put in the new Act, for instance the council had proposed that section 17 provide that a third of all registered trade unions in the country should agree if there is to be formation of a federation, the Act however, provides two or more unions can form a federation. The Zambia Congress of Trade Unions in a document entitled 'observations of the 1997 Act' argued that all category of employees should have been allowed the freedom and right to join the appropriate Trade Union organisation as was the case in Germany, Norway, Sweden and other Scandinavian countries,¹¹² this was in apparent reference to the defence forces and police.

What then has brought all the problems that are associated with the Industrial and Labour Relations Act of 1993? It seems that the lack of adaptation is the biggest problem. Unions have decided to remain in an era were things were gotten on a silver platter; they have failed to realise that the world has changed and freedoms of assembly and association that were trampled upon in the pre-90s era are gone. The world now focuses on individual human rights and therefore you cannot force individuals to belong to organisations or subscribe to

¹¹¹ ZCTU, Observations and Recommendations, Industrial Relations Bill, 1996

¹¹² ZCTU, memo to General Secretaries dated 24th March, 1998

organisations that they do not want. Selfishness and lack of tolerance amongst union leaders is the main problem and not the Act.

The way forward then entails that union leaders become selfless and put their members above their interests. If this is done then the problems that have dogged the unions will be a thing of the past. It is also important to seat down and dialogue with members who feel aggrieved instead of reacting to them with scorn, as has been seen of late where when one challenges the leadership he or she is branded a sell out and someone who is being sponsored by management, the end result is expelling such a person.

The move by government to have bargaining units that represent a number of unions is the only way that can reduce time wastage in collective bargaining. The position that is now prevailing in the teachers unions, where only one bargaining unit is recognised, is a fair system. All in all this paper recommends that dialogue and unity is the only way forward for the unions, crying for government to restrict union activities like it did in the 70s will not only be unworkable but it is also unattainable.

Government also needs to pass amendments to Part IX of the Industrial and Labour Relations Act, especially as regards the lengthy procedure on conciliation. Regard should also be taken as to the power that the Labour Commissioner has in relation to his supervising a ballot for a strike or lockout. There should be a provision which compels the labour commissioner to carry out the ballot whether he likes it or not. The intervention by the minister in the conciliation process should also be dropped as his role seems to be nothing but

fetters to the freedoms and rights of workers to use their power to bargain for what they feel rightfully belongs to them, through the power to strike.

Further it is recommended that amendments should be made to section 71 so that we revert to the old system where collective agreements were gazetted, in this way what is agreed between the parties will just be turned into law and not the current system where what is agreed can be deemed to be illegal. Lastly, Section 22 needs to be amended so that, if in a work place there are any eligible members and they benefit from union activities despite the fact that they do not pay subscriptions, they should be compelled to contribute some amount towards the running of the union.

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2. Industrial Relations Act 1990, (Repealed)
3. The Industrial and Labour Relations Act Chapter 269 of the Laws of
Zambia.
4. Industrial and Labour Relations (Amendment) Act No. 30 of 1997.
5. The Constitution of Zambia, Cap 1 of the laws of Zambia.