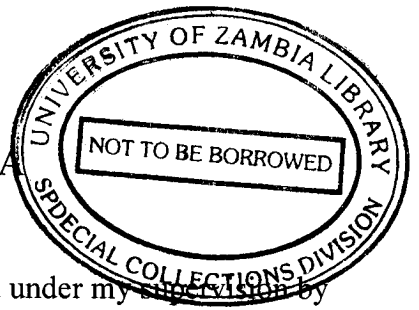


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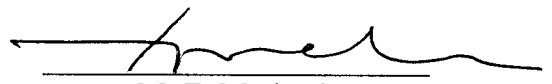
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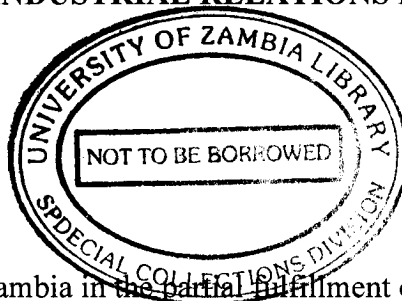
**THE EXTENT TO WHICH THE INDUSTRIAL AND LABOUR RELATIONS
ACT OF 1993 AS AMENDED HAS IMPROVED INDUSTRIAL RELATIONS IN
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Mr F. Mudenda
Supervisor

**THE EXTENT TO WHICH THE INDUSTRIAL AND LABOUR RELATIONS
ACT OF 1993 AS AMENDED HAS IMPROVED INDUSTRIAL RELATIONS IN
ZAMBIA.**



A Directed Research submitted to the University of Zambia in the partial fulfillment of
the award of the Degree of the Bachelors of Laws (LL.B).

By

MASEMEPLA, RICHARD L.

(20061498)

University of Zambia,
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November 2005

DEDICATIONS

To the Lord Jesus Christ through whom I found my strength, good health and wisdom.
And also my father Darius Masempela, my mother Cynthia M. Masempela, my brothers
and sister who have been their for me.

ACKNOWLEDGEMENTS

I thank the Almighty God for giving me the strength and wisdom to finish this work.

My sincere appreciation to my supervisor Mr.F.Mudenda for having guided and encouraged me in the research.

To my father and mother for having supported me financially to reach this far in my education from the time I was born.

To the Government of the Republic of Zambia for having awarded me the scholarship under the Bursary committee, which has been the driving force for my support and upkeep at the university.

To my brothers and sister who have encouraged me to work hard.

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CHAPTER ONE

INTRODUCTION

The Industrial and Labour Relations Act¹ of 1993 as amended by Act no 30 of 1997 governs industrial and labour matters in Zambia. Labour being a part of any occupation has an impact on social economic development of any society. Banda states that

“The main actors in labour relations –the employer and the employee and their organization want to be guided on their rights, duties and responsibilities arising out of that status of being an employer, an employee, a trade union or an employer’s organization. Because of the nature of the relationship which is based on competing demands and interests thereby making such relationship potentially conflictual , the task of establishing guidelines for the Sustenance of such a relationship cannot be left to the parties alone.”²

Most Employers are capitalists who care less about the welfare of their employees. Their concern is maximum profits and less expenditure and this is the reason why workers have very bad working conditions of service. As a result of this development, employers and employees are always in conflict. Hence, labour relations in Zambia are always characterized by strikes, go slows, lock outs, riots, demonstrations etc. “Conventional wisdom has demanded that a neutral third party with an overriding interests in labour relations must lay down the basic rules of behaviour for all the parties.”³ This third party is the state and it normally acts through the legislature which has enacted a number of

¹ Chapter 269 of the laws of Zambia

² Banda Darlington. 1999. “A Guide To Employment Law in Zambia.” Friedrich Ebert stiftung: Lusaka p 1

³ Ibid page 1

legislations to govern labour relations in Zambia such as The Industrial and Labour Relations Act, Employment Act⁴, The Minimum Wages and Conditions of Service Act⁵ and others. However, the research will concentrate on the Industrial and Labour Relations Act, as it will examine the extent to which the same Act improves labour relations.

“There is always danger that one the social partners in labour relations may directly or indirectly abuse the other.”⁶Hence, the state has put in place the Industrial and Labour Relations Act to manage the industrial and labour relations in Zambia. “The Act aims at creating industrial peace and harmony and in case where a labour dispute arises, a diplomatic channel to redress the employers and/or workers grievances.”⁷The Act has many provisions aimed at promoting industrial peace and harmony for instance the Act provides for lawful strikes, collective bargaining, trade unions, Industrial Relations Court (I.R.C) to settles disputes.

However, the obtaining situation in Zambia’s labour relations is quiet unsatisfactory. Labour disputes are so common despite the presence of the Act of 1993 as amended by Act no 30 of 1997. A year cannot pass without strikes or some form of labour related conflict. In addition, the employees in most companies are victims of poor conditions of service. Most workers get low wages, which makes them live below the poverty datum line. Furthermore, most employees are denied essential allowances such as transport

⁴ Chapter 268 of the Laws of Zambia

⁵ Chapter 276 of the Laws of Zambia

⁶ Banda Darlington.1999. “A Guide To Employment Law.” Freidrech Ebert stiftung: Lusaka page 1.

⁷ Nchimunya, Abubakar.2005. “Issue paper on Illegal Strikes.”(Handout from an official from the ministry of labour and social welfare) page 1

allowances etc .In addition to the poor conditions of service, workers salaries are not paid on time, normally they are delayed for many months.

Therefore the research examines the extent to which the Industrial and Labour Relations Act as amended has improved industrial and labour relations matters in Zambia. Chapter one will look at the background of the Industrial and Labour Relations Act and labour relations in Zambia. In addition the importance of improving labour relations. Chapter two will look at the provisions of the Act and see how they help to improve industrial labour matters. Chapter three will look at how the structure, institutions and other things provided for by the Act operate in reality. Chapter four will look at the weakness of the Act. Chapter five will deal with the solutions, recommendations and will conclude.

BACKGROUND OF THE INDUSTRIAL AND LABOUR RELATIONS ACT AND INDUSTRIAL AND LABOUR RELATIONS IN ZAMBIA

The background to the Industrial and Labour Relations Act can be traced in the labour relations history of Zambia. Zambia's labour experience can be traced in three eras that is the pre-colonial era, the colonial era and the post independence era. Through these eras the background of the Industrial and Labour relations Act can be traced.

In the pre-colonial Zambia, there was no industrialization and economic life was not complex and the labour relations were not pronounced. People engaged in farming and there was no formal employment but sometimes people could work for others in return for goods or food. This view is supported by Mtopa who states that

“Before the arrival of Europeans into this part of Africa today known as Zambia the local inhabitants observed customary rules which regulatedthe provision of labour. For instance...a hirer of labour brew beer and the hired did a piece of work and were paid in kind in form of beer, maize, chicken etc for the work done”⁸

When colonial powers began their extensive exploitation of Africa, a sparse subsistence economy held the continent and it still retains its hold today, the technological basis of its technology is farming.⁹ After colonization, the territory was in the hands of the British through the British South Africa Company (BSAC) and in 1924 the territory handed over control to the crown. It was after colonization that Zambia saw economic development as mines were opened in the copperbelt and the railway line was being constructed and other industries were opened. At this point labour relations became complex and formal employment became pronounced because “ the colonial powers imposed upon the Africa of subsistence economy an enclave of relative technology, based in the main upon extractive industry –mining, forestry and plantation crops”¹⁰. African labour was used because the colonialist made it cheap as they greatly racially discriminated Africans. In addition, most work was manual and Europeans found it inferior and that is why they required African labour. Africans were forced to work because the government introduced hut and poll tax, which was to be paid in currency only. Kapongo, Paul. S states that

“...the government introduced the payment of poll and hut tax in the villages; this was to be paid in currency only. Those villagers who could not pay

⁸ Mtopa, A.M.1989. “Labour Laws of Zambia” Kenneth Kaunda foundation: Lusaka page 5-6

⁹ Hutchison .1968. “ Africa and law”university of Wisconsin press: London page 5

¹⁰ Ibid page 6

were intimidated and brutally beaten.”¹¹

Africans had very poor conditions of service as compared to the white workers of the equivalent position. Africans worked for low wages, long hours of service and racial discrimination in the industry and this caused a lot of dissatisfaction and confusions in the industry. As for white employees, they had excellent conditions of service. In the mining industry the African workers were not spared by the poor conditions of service. In 1935, the legislative council increased poll tax on every native. “Consequently, the black miners went on strike rejecting the poll tax system and demanding inter alia for better wages and conditions of work. Indeed it was the first political strike in the country. The strike was brutally crushed by the colonialist resulting into the death of six men shot by police.”¹²

The labour laws that existed then were the Employment of Natives Ordinance. This Ordinance governed the employment of natives. In essence this ordinance undermined Africans chances of having improved labour relations. Section 74 of the Ordinance made it a criminal offence for African servants to breach their contracts of employment with their white employers. The section provided for a penalty of imprisonment or fine of half the monthly wage of the employee who breached the contract of Employment by failing or refusing without lawful cause to commence the service at the stipulated time or absenting himself from work. “For Africans, that law was not to the best of interests because this meant the continuation of the status quo: poor wages and poor conditions of

¹¹ Kapongo, Paul S. “Labour Unrest in Zambia. An Examination of why workers resort to illegal strikes.”(obligatory essay) page 1

¹² Ibid page 3

service.”¹³ However, strikes and bad conditions of service continued and labour relations worsened and Africans workers could organize themselves even if there were no trade unions.

“The most significant step to an emerging trade unionism in Zambia could be traced to the 1930s.... Despite the absence of Trade unions movement, the mine workers went on strike represented by heads of the various workers organizations that were formally tribal Clubs.”¹⁴

On the contrary white employees were allowed to form trade unions and that’s how the Northern Rhodesia Mineworkers Union (NRMWU) was formed and in 1940 white employees went on strike. “The success of the European strike prompted the Africans to follow suit...”¹⁵ The African workers did not care what the law stipulated. The strike was followed by the foster commission, which stated that Africans were not ready for a trade union¹⁶. After many struggles, finally with the help of William comrie “the Northern Rhodesia African Mine Workers union was formed in 1949.”¹⁷ This trade union was going to under the Trade Unions and Trade Disputes Ordinance (Act no 23 of 1949). This Act was one of the colonial Labour laws. Part 4 of the ordinance was to be read with the Industrial Conciliation Ordinance. However, the Ordinance made it an offence for essential service workers to go on strike. The procedure of settling disputes under the ordinance was cumbersome. “The governor in council was empowered to appoint a

¹³ Kapongo Paul S .1988. “Labour Unrest in Zambia: An examination of why Workers Resort to Illegal Strikes.” (Obligatory essay) page 4

¹⁴ Simwanza Noel.2003. “Trade unionism in Zambia. An overview.” (Obligatory essay) page 8-9

¹⁵ op-cit page 6

¹⁶ Ibid page6

¹⁷ Ibid page 7

person or a conciliation board to inquire into the working conditions of any industry and he could appoint a board of inquiries to the dispute.”¹⁸In conclusion the colonial labour laws were inadequate, as they could not improve industrial relations, as the laws were oppressive to African workers. In addition, the Trade Unions and Trade Disputes Ordinance could not adequately solve industrial disputes or conflicts. The ordinance failed to bring industrial peace and harmony. It is important to note that common law played a role in the colonial industrial and Labour laws in that they regulated formation of contracts of employment. Mtopa states that “Formation of contracts and settlement of disputes arising from such contracts (of employment) which involved the copper mines or white employer and an African employee was not governed by native or customary law .The inevitable result has been that which could not be settled by either statute law or native and customary law were left to be dealt with under common law”¹⁹.

The achieving of independence gave hope to the Africans that the new African leadership would create better labour and industrial laws that would help the general labour relations improve. The new laws that were introduced did not totally differ from the colonial labour laws as certain provisions were retained. The earliest piece of legislation to govern industrial and labour relations in Zambia was the Trade Unions and Trade Disputes Act of 1964. “The Zambia congress of trade unions (Z.C.T.U) was established by an amendment to the Trade Unions and Trade Disputes Act (TUTDA) of 1964.”²⁰Under section 43 of the Act of 1964 affiliation to Z.C.T.U was not mandatory. The Trade Unions and Trade Disputes Act of 1964 “was repealed in 1971 and replaced with the

¹⁸ Ibid page 8

¹⁹ Mtopa. A.M. 1989. “Labour laws of Zambia”. Kenneth Kaunda foundation: Lusaka: page 19

²⁰ <http://Library.fes.de./fulltext/bueros/sambia/00521b.htm>

Industrial Relations Act which did not become operational until 1974.”²¹ However, the Trade Unions and Trade Disputes Act was not satisfactory as conflict in the industry continued such as strikes and poor conditions of service. Hence, the reason why the Act of 1964 was repealed by the Act of 1971. This Act introduced the Industrial Relations Court (I.R.C). In addition, “in 1971 Industrial Relations Act (IRA: 1971) made some radical changes to this matter providing for the principle of affiliation by registration.”²²

“In a bid to manage post independence industrial conflicts, the government of the then president Dr. Kenneth Kaunda resorted to declaring any service as essential under the preservation of public security regulations.”²³ This was just a way of reducing labour disputes by the government. The 1971 Act’s dispute resolution process was quite unsatisfactory. The methods employed in its provisions were mediation and conciliation and through litigation through the industrial relations court. Mr Chakulya who was a member of parliament in the second reading of the bill (Industrial Relations Act when it was still a bill) stated that

“The bill has acknowledged and accepted the inevitability of strike action and consequently no provision has been made to ban it altogether and in all its forms.”²⁴

However, the Act was written in such a way so as to prevent striking action. Firstly, essential service workers were not allowed to go on strike. Secondly, there were public

²¹ Ibid

²² Ibid

²³ Siapwili, Patrick. 1988. “Labour Dispute Resolution In Zambia: An Evaluation of the Mechanism”. (Obligatory essay) page 2

²⁴ Kapongo, Paul S. 1988. “Labour unrest in Zambia: An Examination of why Workers Resort to Illegal Strikes” (obligatory essay) page 26

security detentions. Finally, the check off system was discontinued if the workers went on wild cat (illegal) strikes²⁵.

In 1990, the Industrial Relations Act of 1971 was repealed by an Act of 1990 and a new Act was introduced. "The repeal of the 1971 Act did not fundamentally change the dispute resolution mechanism."²⁶ Under 1990 Act ZCTU could not interfere with the internal affairs of its affiliates. Under 1971 Act there was the one industry one union. However, "a notable feature of the 1990 Act was the liberation of Trade Union structure which was based on one industry one union. This sounded the weakening gong to the labour movement in that power of ZCTU was now dissipated into splinter unions."²⁷ However, strikes and industrial conflict continued. The Act of 1990 was repealed by Act no 27 of 1993, which was called the Industrial and Labour Relations Act.

"It is important to note that under the same 1993 Act [fn 3:s 34], it is provided that each trade union should maintain its separate status and shall have the right to Organize itself as it considers fit."²⁸

The effect was that it was going to compromise collective bargaining, as the one industry will have many unions. Industrial conflict has not stopped and in fact it is heightening. Finally, the Act of 1993 was amended by Act no 30 of 1997.

The Industrial and Labour Relations Act of 1993 as amended by Act no 30 of 1997 is the current laws relating to the Industrial and labour matters. The industrial and labour

²⁵ Kapongo Paul. S.1988. "Labour unrest in Zambia. An Examination of why workers Resort to Illegal Strikes". (Obligatory essay) page 30 - 33

²⁶ Siapwili P.2003. "Labour disputes in Zambia evaluation of the mechanism". (Obligatory essay) page 4

²⁷ Ibid

²⁸ [HTTP://Library.fes.de/fulltext/bueros/sambia/00521b.HTM](http://Library.fes.de/fulltext/bueros/sambia/00521b.HTM)

relations history of Zambia has been characterized by conflict and unsatisfactory conditions of service. It has been observed that the state has made efforts to regulate industrial and labour conflicts by enacting certain legislations. Firstly, there was the Employment of Natives Ordinance. Then came the Trade Unions and Trade Disputes Ordinance of 1949. Thirdly came the post independence Trade Unions and Trade Disputes Act of 1964. The next Act that followed was the Industrial Relations Act of 1971. This Act continued to govern Industrial and Labour Disputes in Zambia until it was repealed by the Act of 1990. Thereafter, the Act of 1990 was repealed by Act no 27 of 1993 which became called the Industrial and Labour Relations Act which has since been amended by Act no 30 of 1997. However, industrial conflict and poor conditions of service have continued despite the presence of the Act.

IMPORTANCE OF IMPROVING INDUSTRIAL AND LABOUR MATTERS

Economic development of any country is dependant on the efficiency of labour in the industry as it is the source producing goods and services which are exported. "The interactions of a number of factors contributes to economic growth and these include...increasing inputs such as labour and labour productivity growth and technological progress."²⁹ In addition, "Labor is the third factor that influences economic growth."³⁰ Bad labour relations tend to negative economic development through strikes, go slows, low standards of living through low incomes, unemployment etc which tend to reduce the productivity of the industry and this will cause a reduction in the Gross Domestic Product (GDP) of the country. In addition, the turn over of the industry will be

²⁹ www.abs.gov.au/Ausstats/abs@nsf/0/be926eb0e14c80acca257030007a82a8
³⁰ http://www.socialstudieshelp.com/Eco_Growth.htm

reduced thereby increasing the chances of that particular business enterprise to under go liquidation or bankruptcy and this would increase the unemployment levels in the country. This will cause an increase in crime such as theft hence need to improve industrial relations. "Finally unemployment levels imposes significant psychological and emotional costs on workers and their families, as revealed by the positive association between unemployment and higher frequencies of crime, mental illnesses, suicide and divorce."³¹ Furthermore, if the industrial and labour relations are left unimproved, the effects are that public peace and security would be compromised, as there would be a lot of strikes, demonstrations, riots etc. In addition, the standards of living of people would be affected in that it will be low due to low wages. The consequences will be that poverty levels would increase, as people would be getting low wages due to bad labour relations. Ultimately bad labour relations does not bring industrial peace and harmony.

CONCLUSION

It is clear that the background of chapter 269 of the laws of Zambia is linked to the history of the industrial and labour relations in Zambia. Zambia's labour experience has caused the enactment of the Act of 1993. In the colonial era; six men were killed during the strike of the 1930s on the copperbelt for fighting for better wages. In addition, bad conditions of work prompted labour conflict between the employers and employees. The colonial Administration failed to control labour relations in Zambia and hence trade unions had to be allowed. Further the introduction of the Trade Unions and Trade Disputes Ordinance did not improve labour relations. The post independence era did not

³¹ Kaufman Bruce .1985. "Economics of Labour Markets and Labor Relations". Dryden press: Georgia page 534

do much to help the situation. The Trade Unions and Trade Disputes Act of 1964 was repealed and replaced by the 1971 Act which was later on repealed by the Industrial Relations Act of 1990. This Act was equally repealed by the Industrial and Labour Relations Act of 1993. It is clear from the above that the legislature has not passed an adequate Act that will successfully address industrial and labour relations in Zambia in that even if there has been many repeals of the industrial relation legislation in the past, they all possess similar provisions such as essential service workers not going on strike, long procedures for strike action to be legal, similar dispute resolution processes for example the use of the conciliation and the Industrial Relations Court. Furthermore, trade unions and employers organisations and their federations are retained in the similar circumstances with minimal modification such as doing away with the one industry one union to having many federations of trade unions.

CHAPTER TWO

THE NATURE OF THE 1993 INDUSTRIAL AND LABOUR RELATIONS ACT AND HOW IT IMPROVES INDUSTRIAL RELATIONS IN ZAMBIA

“The Industrial and Labour Relations Act of 1993, Chapter 269 of the laws of Zambia governs labour and industrial matters in companies and other organizations. The Act acts as a legal document to manage labour related disputes that arise between employer or management and the workers.”³² The purpose of the Act of 1993 is to maintain a peaceful relationship between the employers and the employees that is to minimize industrial conflict and to bring industrial harmony. The Act comprises a lot of provisions aimed at dealing with different industrial situations so as to improve industrial relations in Zambia.

The preamble to the Act of 1993 provides that it is an Act to revise the law relating to the formation of trade unions and employers representative organizations, including the formation of trade unions and federation of employers organizations, recognition and collective agreement, settlement of disputes, Strikes, lockouts, essential services and to replace the Industrial Relations Act; 1990 and to provide for matters connected with or incidental to the foregoing.³³ The preamble to the Act gives us an idea of what the Act provides for in order to improve industrial relations. However, the 1993 Act is not applicable to certain organizations or bodies. Section 2 states that the Act shall not apply to Zambia Defense Force, Zambia Police Force, Zambia Prisons Service, Zambia Security Intelligence Service and the Judges, Registrars of the court, Magistrates and local court justices. In addition to the above-mentioned exceptions includes any person, trade or undertaking that the minister may exempt after consulting the tripartite consultative labour council.

³² Nchimunya, Abubakar.2005. “Issue Paper on Illegal Strikes”. (Handout from an official from the ministry of labour and social security) page 1

³³ Preamble to chapter 269 of the Laws of Zambia.

Furthermore, section 2(3) of the 1993 Act states that companies Act, societies Act and cooperatives societies Act shall apply to any trade unions or associations.

The Industrial and Labour Relations Act establishes Trade unions under part (II) of the Act. "The interpretation clause section 3 of the Industrial and Labour Relations Act defines trade unions as any group or organization of employees registered under the Act whose principle objective is the representation and promotion of the interests of employees and regulations of relations between employees and employers and includes a federations of trade unions."³⁴ The rights to form trade unions are guaranteed by the constitution that is freedom of assembly and association, (Article 21 of the Constitution³⁵). The Act provides for trade unions that are essential for improving the welfare of employees .The Trade unions protect the interests of the employees. In addition, they bargain on behalf of the employees for better conditions of service. An employee cannot be fired or disadvantaged because of his activities in the trade unions (section 5(2) a of the Act of 1993). In the case of Zambia National Provident Fund V Rowland Musukwa³⁶, the respondent involved himself in Trade union activities and the employer wrote letters to him that his activities were detrimental to his duties. He was discharged and he sued the employer pursuant to section 5(2) a of the Industrial Relations Act. The Supreme Court t held inter alia that "section 5(1) provided that every employee shall the right at any appropriate time to take part in activities of trade unions and to absent himself without leave for the sole purpose of taking part in such activities". Hence employees have a chance to assemble and decide the way forward for their problems and in this way the Act of 1993 improves industrial relations in Zambia by providing for trade unions.

³⁴ Mwenda. W.S.2004. "Employment Law in Zambia." UNZA press: Lusaka page 82

³⁵ Chapter one of the laws of Zambia

³⁶ 1995/SCZ/15(unreported)

It is important to note that it is easy for any group of employees to form trade unions so long they fulfill the requirement of the Act. The idea of the one industry one union has been done away with. The advantage of this is that the neglected category of employees in an industry may form their own union to represent their neglected needs. In the case of The Attorney General and the Labour commissioner V Zulu, Kamukwamba, Muyangwa and others³⁷, the secondary school teachers applied to the labour commissioner to register the Secondary School Teachers Union of Zambia (SESTUZ). The commissioner rejected the application on the basis that teachers are represented by the Zambia National Union Of Teachers (ZNUT). The Supreme Court on the appeal by the Attorney General interpreted section 9(8)c of the Act of 1993 as permitting a specific trade or category or profession to be able to form trade unions and it was on this basis that the secondary school teachers were allowed to form trade unions. At least the 1993 Act protects even minority workers of an industry by enabling them to form their own union thus the Act has in this way being effective in improving industrial relations.

Furthermore part III of the Act provides for federations of trade Unions. The trade unions may choose a federation of trade unions to associate with. The importance of federations of trade unions is that they promote and regulate the relations between the trade unions affiliated to them or between employees, their trade unions, employers and employers' organizations. They improve industrial relations in that they help in the bargaining process between employers and trade unions and also resolve differences among trade unions thus removing confusion from the industry. This can be seen in section 34(5) b which states that the federation shall have jurisdiction over trade unions affiliated to it, on the provisions of professional and technical advisers to trade unions involved in the negotiation with employer's organizations or litigation. In addition Section 35(1)

³⁷ (1995) Z.R 33 (S.C)

states that where a dispute arises between two or more unions, the parties will refer the matter to the federation affiliated to it for resolution by reconciliation.

Part IV of the Act establishes Employers Organizations. “An employer’s organization refers to any group of employers registered under the Industrial and Labour Relations Act whose principle objectives are representation and promotion of employer’s interests and the regulations of relations between employers and employees or between employers and trade unions and includes a federation of employer’s organization.”³⁸ The employer’s organizations are very similar to federation of trade unions, the difference being that they represent employers. The rights of employers in regard to employer’s organizations are provided for by section 37(1) of the Act. These are; the employer shall have the right to participate in the formation of, or join, an employers organization and to participate in its lawful activities, no one shall coerce, impede or interfere with the exercise of employers rights under the Act, no person shall subject the employer to any form of discrimination on the ground that he is or he is not a member of any organization or if the employer holds office in an organization and no person shall impede or interfere with the lawful establishment administration or functioning of an organization Of course it would be unfair to let employees to have organizations representing them and to have no organization representing the employers. During collective bargaining, there is a balance in the bargaining powers of the parties as no party will be disadvantaged as a result of inadequate representation.

Part V of the Act establishes the Federation of Employer’s Organizations. The Zambia federation of employers continues to exist as a Federation of Employer’s Organizations. The federations have constitutions that regulate their affairs. “A federation of employer’s organization whose

³⁸ Section 3 of Industrial and Labour Relations Act of 1993

membership consists wholly or mainly of registered employers organizations or individual employers who are not members of any employers organization and whose principal objectives include regulation of relations between employers organizations or between employers organizations and trade unions and federations of employers organizations.”³⁹ These federations of employer’s organizations improve industrial relations by assisting in the collective bargaining and in resolving industrial conflict.

Part six of the Act of 1993 deals with funds of representative bodies. Section 61 of the Act regulates the usage of funds by the representative bodies by stating that notwithstanding anything contained in the constitution of a representative body, the funds of the representative body shall be expended for the lawful objects authorized by the constitution. This improves industrial relations in that the funds of a body shall not be used for other purposes other than for the welfare of the persons it represents. The Act further states that the representative bodies shall according to generally accepted principles of accounting and procedures keep books and records of incomes and expenditure, assets and liabilities and will prepare financial statements. This helps the representative bodies to operate smoothly without thefts or plunder of the body’s funds, which can cause the body to be bankrupt. In addition to this point, the union leaders may concentrate on stealing instead of concentrating on industrial problems, which might cause internal fights within the body there by derailing the purpose of that body and this would negatively impact on industrial relations.

Another salient feature that the Act establishes are the Recognition Agreement under part VII of the Act. Section 63(1) of the Act places an obligation on every employer employing twenty-five or

³⁹ Ibid page 96

more employees or such lesser number as may be prescribed by the minister to register himself with the commissioner. Subsection 3 of section 63 stipulates a penalty for non-registration by an employer. Section 64 states that in not less than three months from date of registration, the trade union and the employer shall enter into a recognition agreement. In addition, the employer's organization and the trade union to which the workers belong shall enter into a recognition agreement. According to section 65, a recognition agreement provides for the following. Firstly, that the employer or the employers organization has recognized the trade union as representative or and bargaining agent for the eligible employees represented by the trade union so recognized for the purpose of regulating relations between employers and employers organization and trade unions. Secondly, the rules relating to bargaining procedures. Finally, the methods and procedures under which the agreement may be reviewed, amended, replaced or terminated. Three copies of the recognition agreement are required to be delivered to the commissioner by the parties to the agreement. If the commissioner is satisfied that all the conditions of the recognition agreement have been met, register it and return copies to the parties.⁴⁰

This part of the Act improves industrial relations in that it places obligation on the parties to labour relations to recognize the other party's representative organization. As a result, this lays a good ground for negotiating labour matters, as the parties will take each other seriously. Therefore, recognition agreements improve collective bargaining in the following ways. Firstly, the law places obligation of recognizing the trade union on the employer. Secondly, the parties decide how they would settle their disputes. Recognition agreements bring about certainty on negotiating process between the employers and employees and also helps industrial conflict to be resolved in an orderly fashion in that parties would have already agreed what procedures, methods, rules etc to

⁴⁰ Section 65(2) of the Act of 1993

solve the conflict and not in a chaotic way like what happened in the 1930s strike on the copperbelt province where six African miners were killed in a violent strike.

Part VIII of the Act of 1993 establishes collective agreements. Section 66(1) of the Act says Within three months from the date of registration of the recognition agreements under subsection 3 of section five, the employers or employers' organization as the case may be, and the trade unions shall enter into collective bargaining for the purpose of concluding and signing collective agreements. "Collective Bargaining may be defined as a process of joint or co-determination through negotiation by the bargaining units of conditions or terms of employment."⁴¹ Collective Bargaining as a process results into a collective agreement. Section 66(2) of the Act states that collective bargaining may be undertaken at the level of an undertaking, through negotiations between the management of the undertaking and the trade union representing the eligible employers and employees. Secondly at the level of an industry through negotiations between the employers organization and trade unions representing the eligible employees. Section 68 provides what should be contained in a collective agreement. Firstly, it should contain the date on which the agreement should come into effect and the period for which it remains in force and also the methods procedures and the rules for reviewing, amending, replacing or terminating the other collective agreement. Other provisions relate to the lodging and variation of collective agreement and so on.

The legal effect of a collective agreement is that "if the agreement is procedurally correct and approved by the minister, it constitutes a legally binding contract between the parties"⁴². In

⁴¹ Mwenda.W.S.2004. "Employment Law In Zambia". Unzapress: Lusaka 97

⁴² Mwenda W.S.2004. "Employment Law in Zambia." Unza press: Lusaka page 99

addition 71(3) c of the Act states that a collective agreement which has been approved by the minister shall be binding on the parties to it. In the case of Mumbuwa Kamayoyo v Contractors Haulage⁴³, the supreme court held that a collective agreement is a legally binding contract between the parties and the anything done outside these contractual agreement are of no legal effect.”⁴⁴ Collective agreements are important in improving industrial relations in Zambia. This agreement represents what the parties have agreed through negotiations and hence, in the case of any problems, it gives guidance on what should be done rather the parties trying to wrestle advantage from one another based on unfound reasoning. The agreement equally helps the courts to make a decision based on the collective agreement in case of a conflict. In the case of Pamodzi Hotel V Godwin Mbewe⁴⁵ a waiter was found drunk on duty and his employers summarily dismissed him. He then issued a writ for wrongful dismissal and High Court held in his favour. On appeal, the supreme court stated, inter alia, that where there is a collective agreement which has been properly published in the Gazette and which contains a disciplinary code providing for a certain procedure to be followed before dismissal there is statutory support for such procedure and a breach thereof might as well result in a declaration that a dismissal was null and void.⁴⁶ Collective agreement bring certainty in resolving industrial conflict whereby one party will not cry foul as the matter in issue may be provided for by the collective Agreement.

The other issue contained in the Act is the settlement of disputes under part IX. Section 75 of the Act 1993 states that a collective dispute will be deemed to exist when there is a dispute between the employer and or an organization representing the employer on the one hand and the employees

⁴³ (1982) Z.R13 (SC)

⁴⁴ Op-cit page 99

⁴⁵ (1987) ZR56 (HC)

⁴⁶ Mwenda, W.S.2004. “Employment Law in Zambia.”Unzapress: Lusaka page 99

or an organization on the representing the employees on the one hand relating to the terms and conditions of, or affecting the employment of, the employees as one party to the dispute has presented in writing to the other party all its claims and demands and the other party within 14 days fails to answer the claims or demands or secondly the other party rejects the demands and finally both parties fail to reach a settlement after negotiating at least in one meeting. The Act in section 76(1) states that if neither party to the dispute is not involved in essential services fail to settle the dispute; they shall refer the matter to a reconciliator or a board of conciliators for the reconciliation process. If the parties fail to agree within seven days, they shall inform the minister. The minister shall then be required by the labour commissioner to appoint names from the list of names kept. The conciliator so chosen shall summon the parties for conciliation .If any party to the dispute fails to come, then they shall be guilty of an offence if no reasonable cause shall be furnished.

Where the dispute involved essential service workers, they shall send the matter to court. Section 77(1) of the Act states if the matter is settled by conciliation, the parties to the dispute shall sign a memorandum of the terms of settlement, which will be witnessed by the conciliator or the chairman. The conciliator shall send copies to the Registrar who will refer it to the court that will approve it if it is not contrary to the law .If not approved by the court the registrar shall send the decision of the court to the parties. The importance of settling matters by conciliation in industrial relations is that conciliation tends to preserve future relationships of the parties to labour relations after settling the dispute. Hence, this improves industrial progress and the parties will not hold hate against each other, thereby making it easy for the parties to hold future negotiations over labour relation.

Section 78(1) of the Act permits strike action. It states that if the conciliator fails to settle the dispute, the parties to the dispute may either refer the matter to court or conduct a ballot to settle the dispute by strikes or lockout. But where the dispute is sent to court the decision of the court becomes final and binding on the parties. "A strike is defined as the ceassation of work or withdrawal of labour contrary to the terms and conditions of a contract by a body of persons employed in any undertaking acting in combination or a concerted refusal under a common understanding off a number of persons who are employed to continue to work or provide their labour."⁴⁷ Section 78 continues to state that where parties decide to proceed on a strike or lockout, the parties shall not proceed on the same unless a simple majority decision of the employees present and voting is made by employees in favour of the strike or lockout. The minister may intervene before the commencement of the strike, to try and settle the dispute .The minister may apply to court to declare the strike as against public interest and if the court favours the minister's application, then the strike ceases to be legal. However, section 76(10) of the Act states that that the provisions of the collective and recognition agreements will not be deemed breached by reason of strike action. Without laid down ways of resolving disputes breeds anarchy and chaos in industries hence the importance of part IX in improving industrial relations.

Another important feature of the Industrial and Labour Relations Act is contained in part X of the Act entitled the Tripartite Consultative Labour Council. Section 79((1) of the Act states that the Tripartite Consultative Labour Council shall consist of the minister and such equal number of members representing the trade unions, the employers and the government and the number shall not be less than twenty one. The minister or the deputy chairs the council. The decision of the

⁴⁷ Section 3 of the Industrial and Labour Relations Act of 1993

council shall be by the majority. The function of the council shall be to advise government on issues relating to manpower development and any other matters referred to it by the government. This improves labour relations in that it constitutes all the parties to the labour relations who on majority make decisions on issues fairly without oppressing the other party to labour relations. In addition the government will have an opportunity to have balanced views on labour matters and in these way labour relations is improved in Zambia.

Part XI of the Act provides for the Industrial Relations Court. The Court has jurisdiction to hear and determine any industrial relations matters and any proceedings under the Act (Section 85(1) of the Act). The court may also punish one for contempt. However the complaint must be brought within thirty days of the occurrence of the event that gave rise to the complaint.⁴⁸ The jurisdiction of the court is so wide that most of employer and employee matters are covered for. In addition, Article 94 of the constitution recognizes the jurisdiction of the Industrial Relations Court. According to section 85(9) of the Act, industrial relations matters mean inquiries, awards and decisions in collective disputes, interpretation of the terms of the award, collective and recognition and agreements and matters affecting rights, obligations and privileges of the employees. The court is empowered to give various remedies such as awarding damages, making an order of reinstatement, deem the complainant as retired or retrenched or redundant and any order the court may see as fit in the circumstance of the case (section 85A of the Act). The court consists of the chairman, his vice and assessors. Section 86(2) of the Act states that the chairman and his deputy should possess the same qualification of a High Court Judge. In addition section 85 (5) of the Act states that the Court is not bound by the rules of evidence. The decision of the court is only appealable to the Supreme Court.(Section 97 of the Act) The Industrial Relations Court improves

⁴⁸ Section 85(3) of the Act of 1993

industrial relations in Zambia in that it settles industrial disputes. It is well adapted for settling industrial disputes in that it is less formal than the other courts, hence making it efficient and expedient in settling disputes. As a result, it also brings about industrial peace and harmony. The court will protect a party to the labour relations who has been abused by the other.

The last part of the Act of 1993 is the General part. This part provides for general issues such as an act done in contemplation or furtherance of a collective dispute shall not be actionable on the ground that it induces the breaking of a contract of employment. Other provisions relate conspiracy in collective disputes etc .A provision worth mentioning is section 107, which provides for essential service. This section does not allow these classes of employees to go strike or be involved in lockouts. This provision is important in that people's lives may be endangered if the workers responsible for electricity, sewerage, and medical services were allowed to go on strike. Another interesting provision is section 108 provides for restriction on discrimination in employment. It states that no employer shall terminate the services of an employee or impose a disadvantage on the grounds on race, sex, marital status, religion, political affiliation or opinion, tribal extraction or status of the employee. In the case of Zambia National Broadcasting Corporation V Tembo, mulenga and Phiri⁴⁹, the complainant's contracts of employment were terminated by payment of three months salary in lieu of notice. They filed complaints that they were discriminated against on the basis of political opinion. They had been biased in reporting before the Movement for multiparty Democracy came into power and when it came into power the complainants were dismissed. The courts held in their favour when it found that the parties were dismissed because of their political affiliation and were awarded damages. The importance of this provision is that it protects employees of different social background in the industry. In this way the general part tries

⁴⁹ (1995-1997) ZR 68 (SC)

to cover for miscellaneous issues that may not fit in any of its heading and it has proved to be a success to a certain extent hence improving industrial relations in Zambia

THE STRUCTURES THAT THE ACT CREATES

The Act creates structures and safeguards that exist such the industrial Relations Act aimed at improving industrial relations. The preamble to the Act mentions the major issues that the Act will address and in addition the Act is divided into parts. The major structures created are the Trade unions, federations of trade unions, employer's organizations, and federations of employer's organizations, recognition and collective agreements, strikes and lockouts, Tripartite Consultative Labour council and the Industrial Relations Court. These are designed to bring peace and harmony to the industry.

CONCLUSION

The Industrial and Labour Relations Act is important in that it curbs industrial conflict. Its provisions are designed to improve industrial relations by providing for various issues such as trade unions and their federations, employers organizations and their federations, settlement of disputes, Industrial relations Court etc. The strength of the Act is that its provisions help to bring about industrial harmony and peace, creating a happy atmosphere in the industry. However, this is not to say that the Act is perfect in its entirety, it has its shortcomings which will be examined later.

CHAPTER THREE

In its ideal form, the Industrial and Labour Relations Act of 1993 seems effective in improving industrial relations in Zambia. Its provisions favour the above stated notion. However, this chapter shall examine and explore how the Act exists and operates in Reality. In order to achieve this, the essay will look at the safeguards or structures that the Act provides for such as Trade Unions, Federation of Trade Unions, Employers organizations, Federation of Employers Organizations, strikes and settlement of Disputes, Collective and Recognition agreements and Industrial Relations court .

Trade Unions and the Federations of Trade Unions

“Following the Industrial and Labour Relations Act of 1993 more union have emerged, some have split away from the mainstream union...”⁵⁰ The 1993 Act has made it easy for an category of employees to register a trade union long as they fulfill the requirement of the Act. Basically, trade unions represent the interests of the employees. However, the state of affairs in Zambia today is that one industry can have more than one union. Section 9 of the Act does not give conditions on which class of employees should register a trade union. Since the repeal of section 9 by Act N0 30 of 1997, there are no rules that can guide the registration of Trade Unions

The effect of having more than one union for one industry has brought division and internal conflict in the labour movement of Zambia. Currently, the Secondary School

⁵⁰ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

Teachers Union of Zambia (SESTUZ) and Technical and Trades Lecturers Union (TTLU) have broken off from the Zambia National Union of Teachers (ZNUT). In a similar fashion, the Bankers Union of Zambia (BUZ) and the Zambia Revenue Workers Union (ZRWU) are splinter unions from ZUFIWA (Zambia Union of Financial and Allied worker)”⁵¹

The issue at hand is whether it is a good sign that there are splinter unions from mainstream trade unions. Of course, common sense tells us that if things were well in the mainstream trade union, then the splinter unions would not have broken off. The division has caused disunity in the Labour Movement in Zambia. What this shows is that the mainstream union did not adequately represent the splinter unions. The Trade Union Movement has been underscored by the proliferation of trade unions due to the fact that the section 9 of the 1993 Act has made it easy for trade unions to be registered. However, trade unions in Zambia have their positive aspects. They do fight for better conditions of service and even encourage strike action in order to cause their demands to be met.

Furthermore, the Federations of Trade Unions is another factor that has caused weakening of the trade union movement of Zambia. The Act of 1993 provides for federations of Trade Union that is any group of unions can form their own federations. As a result affiliation to Zambia Congress of Trade Unions is not mandatory. “There are Two Trade Unions Federations in Zambia. The largest federation is the Zambia Congress of Trade Unions (ZCTU) founded in the early 1960s... The second and much smaller

⁵¹ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

federation is the break away federation Free Trade Unions of Zambia (FFTUZ) founded in 1996 with four affiliates.”⁵² The Act permits for many Federations of Trade Unions to exist. The question is whether this development of having many federations strengthens or improves industrial relations in Zambia. “To underscore the degree of division and disuniting within the labour Movement one just has to look at the tug of war between the ZCTU and the FFTUZ and how this has affected the internal cohesion of some trade unions.”⁵³ Instead of the Industrial and Labour Relations Act leading to the formation of New Federations of Trade Unions, it has caused breakaways from the main Zambia Congress of trade Unions. Thereby reducing chances of improving industrial relations in Zambia. Therefore, the FFTUZ’s members are unions that disaffiliated themselves from ZCTU.

The effect of having many federations of Trade unions is that they seem to be working against each other. ZCTU supported the breakaway of Secondary School Teachers Union of Zambia (SESTUZ) and Technical and Trade Lectures Union (TTLU) from the Zambia National Unions of Teachers (member of FFTUZ) which cried foul.”⁵⁴ In a similar fashion, the Bankers Union of Zambia (BUZ) and the Zambia Revenue Workers Union (ZRWU) are splinter unions of Zambia union of financial and Allied workers both of which have been accepted affiliate to ZCTU.⁵⁵ From the above information, it is clear that there is a problem in Zambia trade union Movement. An International Organisation called Fredrich Ebert shiftung reveals that there are ostensibly four factors that lead to the

⁵² [Http://www.fes.org.za/English/debate/occpaper04.pdf](http://www.fes.org.za/English/debate/occpaper04.pdf) page 13 and 14

⁵³ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

⁵⁴ Ibid

⁵⁵ Ibid

split of the Labour Movement in Zambia.⁵⁶ The first factor identified is the 9th quadrennial congress held in 1994 Livingstone. Prior to the congress the president of ZCTU called a meeting of the executive board so as to ascertain on who wanted or did not want to stand for their positions or other positions to state so. Members declared their positions. However, things changed during the congress as members of the board stood against each other. "This created confusion and painted a picture of disintegration within the ranks of the executive board."⁵⁷ After the elections the President and the Secretary General retained their seats defeating the contenders. At this point the president of Mine Workers Union announced that his union would disaffiliate from ZCTU. Four other unions followed this except for the National Union of Commercial and Industrial Workers, which has rejoined. There others still disaffiliated. "According to Splinter groups consisting the Federations of Free Trade Union in Zambia (FFTUZ), rampant Malpractice and lack of seriousness characterized the manner in which business was conducted in the congress."⁵⁸

An organization called Friedrich Ebert stiftung (FES) through its website⁵⁹ explained the following factors as equally contributing to split of the Zambian labour movement. Therefore, the second factor identified is the relationship between the ZCTU and other unions.⁶⁰ The breakaway unions tell that ZCTU has embarked on a campaign to destabilize those unions disaffiliated from it by accepting splinter unions of the disaffiliated unions to be affiliated to ZCTU. The third factor is the ZCTU, Freidrich

⁵⁶ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

⁶⁰ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

Ebert Shiftung and FFTUZ relationship.⁶¹ The disaffiliated unions felt that FES support ZCTU as a result it was able to carry out its destabilization campaigns and activities. Finally, the leadership crisis in ZCTU is another contribution of the split of the labour movement of Zambia.⁶² The disaffiliated unions felt that the leadership of ZCTU is more involved in politics and much less effort is directed towards addressing the interests of workers.

In summary, Trade unions movement in Zambia is not strong due to the division of the unions .It is like each one for themselves and because of having many federations, each federations cherishes the Misfortune of the other. This has had negative effects on improving industrial relations in Zambia.

Employers Organizations and Their Federations

Employers are represented by a number of organisations. The Zambia Federation of Employers (ZFE) is a national employer association with many member associates. It is important to note that the ZFE is the only federation of Employers in existence in Zambia. “The Zambia Federation of Employers is not representative of the growing number of small and Micro enterprises”⁶³

The Zambia Federations of Employers has an executive board and a secretariat. “ZFE also provides to its members a wide range of services and training activities in areas such as; industrial relations, personnel management, productivity, improvement management

⁶¹ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

⁶² Ibid

⁶³ [Http://www.fes.org.za/English/debate/occpaper04.pdf](http://www.fes.org.za/English/debate/occpaper04.pdf) page 15

of privatization, occupational Health and safety and managing skills for SMEs.”⁶⁴In addition, it has a well-stocked library for information at the disposal of its members.⁶⁵ From this, it is clear that the organisation is well adapted for improving industrial relations as it provides services during activities. Membership to the organisation is in three categories namely, member association, individual members and associated members.⁶⁶ “Membership of the federation is 215 organizations employing over 250,00 employees.”⁶⁷ However, the statistics are subject to the social dynamics of the Zambian society as the number is likely to change or to have changed. Zambia Federation of Employers is a member of International Organisation of Employers (IOE) and represents Zambian Employers in ILO activities.⁶⁸ ZFE endeavours to be representative of all its members and it does actually represent its members. All seems to be well with ZFE and Employers organisations seem to be effective in organizing themselves. There seems to be unity among Employers organisations.

ZFE is also represented on the following government institutions. These are the National Economic Advisory Council, Postal Service Corporations, Zambia Privatization Agency and so on.⁶⁹ It seems that the Zambia Federation of Employers has a broad spectrum of activities and it is well represented and well adapted in handling the interests of employers. Its officials have better access to information. In addition, ZFE helps Employers Organizations by negotiating collective agreements on their behalf.

⁶⁴ http://www.ioe-emp.org/ioe_emp/worldwide/page_pays_HTML/afrique/zambia.htm

⁶⁵ Ibid

⁶⁶ http://www.ioe-emp.org/ioe_emp/worldwide/page_pays_HTML/afrique/zambia.htm

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Ibid

Recognition and Collective Agreements

Collective agreements are a result of collective bargaining. However, the law imposes an obligation on the employer to enter into Recognition Agreement with employees. These Agreements have been respected and accorded higher status in industrial dispute resolution. The Act of 1993 provided for sectoral bargaining through joint councils but they have been phased out. The reason for this was that smaller companies are made to pay the same wages as the larger companies. The collective bargaining that exists today is mainly at enterprise level. The result of this is that there is a low wage economy in Zambia.⁷⁰ Hence the collective Agreements that exist today are not as effective as those from the period before the removal of joint councils. "At the level of an enterprises, the bargaining unit consists of the representatives of a union on the unions side and the individual employer on the other side."⁷¹ However, collective bargaining can still be done at industry level. The collective Agreement reached is binding on the parties and is incorporated into the individual contracts of Employment. Collective Agreements are effective and courts have used them to resolve industrial disputes.

What makes collective Bargaining possible and effective are recognition agreements. . The bargaining process is basically through negotiations between the parties. The stronger negotiator has better chances of having his views put into the collective agreement. "While the law recognizes the duty to bargain collectively, it does not

⁷⁰ [Http://www.fes.org.za/English/debate/occ paper. Pdf](http://www.fes.org.za/English/debate/occ%20paper.Pdf) page 17

⁷¹ Mwenda.W.S.2004. "**Employment Law In Zambia**". Unzapress: Lusaka page 98

prescribe any minimum standards.”⁷² The consequence is that the collective Agreement is not always fair. It at times contains mocking provisions to the workers.

Strikes and Settlement of disputes

“Collective Labour Relations portend industrial action and industrial action has as a consequence negative effects on the nation.”⁷³ Industrial action includes strikes, lockout and go-slows. However, industrial action is only resorted to when settlement of industrial dispute fails. However, the process of the settlement of disputes as contained in the Act of 1993 is quite long. Nevertheless, due to the fact that there is no standard set for bargaining, there has been a lot of collective disputes between employer and trade unions in Zambia.⁷⁴

This part of the chapter is concerned with how industrial actions such as strikes as provided by the Act exist in reality. According to Internet research on Zambian labour relations, it was stated that the law permits strikes only after all other legal recourse has been exhausted. Those procedures are very cumbersome.⁷⁵ Section 107 (2) of the Act prohibits essential service workers from striking. All workers have the legal right to strike except for those engaged in essential services; however, there has not been a legal strike since 1993.⁷⁶ Strikes are usually of the following reasons. – Actual or perceived competition over substantive procedural or psychological interests; breakdown in interpersonal acceptance linking, conception and understanding; ideologies, religious

⁷² Mwenda.W.S.2004. “**Employment Law In Zambia**”. Unzapress: Lusaka: page 100

⁷³ Ibid

⁷⁴ <http://www.state.gov/g/drl/r/s/hrrpt/2004/41633.html>

⁷⁵ Ibid

⁷⁶ Ibid

belief misunderstanding or difference over interpretation of relevant data.”⁷⁷ A strike can be declared illegal if strike action conducted has no legal backing or where the strike is taken without exhausting the required legal requirements or provisions of addressing grievances.

The question then is why is it that it is difficult for a legal strike to exist in Zambia. As already pointed out, the procedure for strike action to be effected is quite long. The workers are pressed with emergencies on their hands and they cannot wait that long. For example, in situations where the salary has delayed for five months they cannot wait for the procedure to be followed. The workers will just cease service because of the hardships they are facing. Secondly, essential service workers are not allowed to go on strike so when hardship comes, they are forced to go on strike. The government has responded to striking civil servants with threats of massive firing and arrests and revocation of rally permits and when it occurs many persons are fired.⁷⁸

TRIPARTITE CONSULTATIVE LABOUR COUNCIL

The council exists but has no permanent offices. There are three parties to the council these include government, employers and employees. The functions of the council are set out in the Act⁷⁹ that is to formulate policies and advise government on all issues relating to labour matters. “The Tripartite Consultative labour council is housed in the department of labour but does not meet regularly and has no permanent secretariat. It

⁷⁷Nchimunya, Abubakar.2005. “**Issue Paper on Illegal Strikes**” (Handout from the ministry of labour and social security) page

⁷⁸ <http://www.gov/g/drl/rls/hrrpt/2004/416333.htm>

⁷⁹ Section 83 of the Act of 1993

appears to be a rubber stamp.”⁸⁰ The decision of the council is by majority of the number voting. However, the impartiality of the decision leaves a lot to be desired because the government and Employers shares the same interest as employers where as the employees are on their own. This can be inferred from Section 79(1) of the Act which states that the council will be composed of equal number of members representing trade unions ,employers and the government, and considering that decisions are by majority therefore employees views are not likely to pull through.

THE INDUSTRIAL RELATIONS COURT

“The Industrial Relations Court is only in Lusaka and Ndola. All industrial and labour cases are presented before any of these courts.”⁸¹ However in the Case of Cheelo and Nine others v ZCCM ⁸², it was stated that “we find therefore, and hold that ... on the proper interpretation of subsection (9) of section 85 of CAP 269, the High Court has jurisdiction to try cases arising out of pure master servant relationships ...”. The Industrial Relation Court is on par with the High court. The purpose of the court is adjudicate/hear all industrial and labour relations matters. The Industrial Relations Court has a wide jurisdiction of hearing employment cases. However, the Industrial Relations Court gives effect to the Industrial and Labour Relations Act by interpreting its provisions. “The practice and procedure in the court is governed by the Industrial Relations Court Rules.”⁸³

⁸⁰ [Http://www.fes.org.za/English/debate/occpaper04.pdf](http://www.fes.org.za/English/debate/occpaper04.pdf)

⁸¹ January - March, 2005. “The Civil Servant “Fighting for workers’ Right”” page 6

⁸² SCZ Appeal No. 25 of 1999

⁸³ Mwenda.W.S.2004. “Employment Law In Zambia”. Unzapress: Lusaka: page 116

The Industrial Relations Court does not follow strict rules of evidence. The procedure of the IRC is quite flexible. The IRC has a wide jurisdiction over employment cases in Zambia. However, the Industrial Relations Court does not apply to the police force, Judges and registrars of the courts, Air force and the Zambia Army because section 2(1) of the 1993 Act states that the Act shall not apply to these same bodies. Other than litigation, the Industrial Relations Court Offers Mediation services for employment disputes.⁸⁴ However, the parties are charged are one hundred and fifty thousand as mediation fees per session.

“The Industrial Relations Court is composed of the chairman and Deputy Chairman sitting with two Members appointed by the Minister of labour.”⁸⁵ The chairman and his deputy are the only ones with qualification of a High court judge and they guide the court on points of law. The sit in court with laymen who bring to the court their vast experience in labour and industrial Relations so as to help the court arrive at a fair decision.⁸⁶ The Roles of the chairman and the Deputy Chairman and the laymen that are the members is to complement each other and this reduces the rigidity that is there in conventional courts. The Industrial relations court has helped to reduce the load of cases in conventional courts. The IRC is a specialized court and it disposes matters within short periods of time thereby making it is more efficient than a conventional courts. Appeals from the IRC lie directly to the Supreme Court.

⁸⁴ Statutory Instrument no 26 of 2002 rule 12(1)

⁸⁵ January-March.2005. **“The Civil Servant “Fighting for workers’ Right”** page 6

⁸⁶ Ibid

CONCLUSION

The Industrial and Labour Relations Act of 1993 is effective in improving industrial relations in Zambia. It is quite important in that it puts in place many safe guards to ensure that industrial relations are improved. The safeguards that the Act has placed exist fairly and these include the Industrial Relations Court, Tripartite Consultative Labour Council etc. The effectiveness of a collective agreement will depend on the negotiating powers of the parties. Trade unionism in Zambia needs improvement as the labour movement is divided. The way in which the Act of 1993 has affected the industrial relations in Zambia leaves a lot to be desired.

CHAPTER FOUR

The Industrial and Labour Relations Act just like any other piece of legislation has got its weaknesses. The weaknesses inherent within the Act are numerous and hence the need to improve it. Therefore, the purpose of this chapter is to examine the weakness of the Act of 1993.

The first weakness of the Act is that it exempts certain bodies from its scope of application, therefore, it worsens the division of the labour movement in Zambia as "...fighting, division, internal conflict and a weak alliance characterizes the labour movement in Zambia"⁸⁷. These bodies include the Zambia Defense Force, Zambia Police Force, Zambia Prisons Service, Zambia Security Intelligence Service and Judges, Magistrates, Local Court Justices and Registrars.⁸⁸ In addition, the Minister after consulting the Tripartite Consultation Labour Council may exempt any person or class of persons from being affected by the Act.⁸⁹ This makes the labour movement in Zambia divided. The effect is that a judge and a teacher who both have degrees from the university of Zambia get different salaries in that judge gets a lot in comparison to a teacher. The division of the labour movement causes large disparities between workers of similar qualifications. There is need to unify all workers in Zambia under the Industrial and Labour Relations Act so that those with a weak bargaining power can adequately be helped by the same system under the Act.

⁸⁷ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

⁸⁸ Section 2(1) of the Act of 1993

⁸⁹ Section 2(2) of the Act of 1993

The second weakness of the Industrial and Labour Relations Act is that the Act does not regulate the registration of trade union as internet research has shown that there is “need to review registration of trade unions as they are proliferating”.⁹⁰ This has caused fragmentation of employee representation, thus disunity.⁹¹ Section 9 of the Act provides for application for registration of trade unions. The section only shows the procedure of applying and other conditions for registration. However, it does not set a yardstick or any qualification for a group to be registered as a trade union apart from that the application to register a group should be signed by not less than fifty supporters or such lesser number as the minister may prescribe. This has caused workers from an industry with a union to register its own union. For example in the teaching industry there is Zambia National Union of Teachers, Secondary School Teachers Union of Zambia and Primary School teachers union of Zambia. However, the ILO Convention number 87 on the Freedom to associate and protection of the right to organize (FAPRO) which Zambia has ratified states that “ Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.”⁹² Its quiet a disadvantage for the teaching industry as most of them are all employed by the government. This kind of set up cause’s confusions among them and will end up fighting. In addition, section 9 of the Act has allowed splinter unions from mainstream unions. This section should be amended so that its sets a yardstick on which class of employees can qualify to register a union.

⁹⁰ <http://www.fes.org.za/english/debate/debate/occpaper04.pdf> page 16

⁹¹ Abubakar Nchimunya.2005. “Issue Paper on Illegal Strikes.”(Hand out from the ministry of labour and social security) page 6

⁹² Article 2 of the ILO Convention number 87

The third weakness of the Act is that trade unions are allowed to affiliate to Federation of Trade Unions of their choice and can also cease to be affiliated to them. As this above named weakness is a principle of ILO convention on the right to associate, internet research reviews that it is the view of many African labour experts that far from fostering organizational independence and democracy FAPRO (conventional no.87 of ILO) indeed undermines the very basic principle of trade unionism whose success in the area of social justice must depend on unity.⁹³ In addition, the breakaway unions from a federation of trade union may form their own federation.⁹⁴ This causes disunity within an industry. How can one industry have many unions affiliated to different federations. "...the ZCTU supported the breakaway of the secondary school teachers union (SESTUZ) and the ...(TTLU) from ZNUT...SESTUZ had applied for affiliation to the ZCTU which has accepted."⁹⁵ These provisions of section 17 have caused the rise of Federation of Free Trade Unions of Zambia. Workers who cannot agree with each other breakaway and form their unions. This impairs the employee representation of an industry and also creates confusions and fights.

The fourth weakness of the 1993 Industrial and Labour Relations Act is that property of the trade unions vests in the trustees and that the trustees shall hold it on behalf of a trade union. This can be inferred from the fact that the trustees are not personally liable to make good loss in the funds of the trade unions unless the loss can be attributed to the

⁹³ [http:// library.fes.de/fulltex/bueros/zambia/0052603.htm](http://library.fes.de/fulltex/bueros/zambia/0052603.htm)

⁹⁴ Section 17(1) of the 1993 Act

⁹⁵ <http:// library.fes.de/fulltex/bueros/zambia/0052603.htm>

trustees willful neglect or willful default.⁹⁶ Section 24 provides that the trade union may purchase or take on a lease in the name of trustees of trade unions and that no purchaser shall inquire whether the trustee has authority for sale and the receipt of the trustees shall be a valid discharge for the moneys arising there from. This provision favours third parties dealing with the union and not the union. In cases of fraud by trustee, the union can have a lot of debts thus impairing its operations. Section 25 says all real personal property shall vest in trustees of a trade union for use and benefit of trade unions and the members. There is need to put safeguards in order to ensure that there would be no thefts or mismanagement of property. Therefore trade unions should be turned into some form of legal person so that it can own its property

The fifth weakness is that the federation of trade unions has no jurisdiction over the affairs of the trade union affiliated to it.⁹⁷ These affairs include domestic management or domestic matters. The danger of this is that the union will not be checked on its internal affairs by another independent body. This will facilitate for frauds or unfair practice in the union because there will be no independent body to monitor them. Furthermore, section 28 states that there is the federation of trade unions in Zambia. This means that there can be as many federations of trade unions as possible. Our experience in Zambia shows a divided labour movement because of the double federations that exist today. The Act basically facilitated for the splitting of FFTUZ from ZCTU. And since then, the two organizations are competing for membership of unions. They seem to be working against each other.

⁹⁶ Section 27 of the 1993 ACT

⁹⁷ Section 34(2) of this Act

Hence, this section has weakened the labour movement in Zambia. . The internal cohesion of many trade unions has been affected by the tug of war between FFTUZ and ZCTU.⁹⁸

Sixthly, the 1993 Act does not actually stipulate a minimum standard for a collective agreement. In support of above Mwenda W.S states that, “While the law recognizes the duty to bargain collectively, it does not prescribe any minimum standards of bargaining. This has regrettably led to a lot of collective disputes between employers and trade union in Zambia.”⁹⁹ There is need for the Act to set minimum stands for Bargaining. A collective agreement can be reached but it is no guarantee that its contents are fair more especially in cases where the employees are weak for example, if they are generally illiterate.

The seventh weakness of the 1993 Act is that the settlement of collective disputes under part ix of the Act is not effective as “there are a lot of bottle necks and pitfalls in the labour dispute resolution mechanism in Zambia.”¹⁰⁰ The procedure for dispute settlement is far too long under the Act. When a collective dispute exists in circumstances descried by section 75, the parties refer the dispute to a conciliator appointed by the parties or a board of conciliators provided that neither of the parties is involved in essential services.¹⁰¹ If the dispute is settled by conciliation well and good but if it isn’t then the parties to the collective dispute may refer the dispute to the court of

⁹⁸ [http:// library.fes.de/fulltext/bueros/sambia/00521b03.htm](http://library.fes.de/fulltext/bueros/sambia/00521b03.htm)

⁹⁹ Mwenda W.S 2004. *Employment Law in Zambia*. UNZA press: Lusaka: page 100

¹⁰⁰ Siapwili Patrick.1998. “*Labour Dispute Resolution In Zambia. An Evaluation o f the Mechanism*”(obligatory essay). Page 16

¹⁰¹ Section 76 of Act of 1993

conduct a ballot to settle the dispute by strike or lockout.¹⁰² In cases of issues that are pressing this procedure might be inappropriate as the employees who decide to go on strike they should not do so until ten days after their decisions.¹⁰³

In addition to the above, the minister may apply to the court for a declaration that the strike is not to public interests and the court may give an order to that effect.¹⁰⁴ This means that even if workers were prudent enough to follow the dispute settlement procedure and have a strike then it is easy for minister to put it to an end. Hence, it would make it difficult for civil servants to go on a legal strike as the government would easily crush it. What then is the aim of going through a tiresome process only to achieve nothing at the end?. This had made it difficult for legal strikes to exist in Zambia.

The eighth weakness of the Act is that the Tripartite Consultative Labour Council as provided by section 79(1) of this Act has an unfair representation.¹⁰⁵ There are three parties to the council namely, Employers, employees and government. The government falls under the category of employer as it is not employed by anybody but instead it employs persons. Therefore, in light of Section 81 (5) which states that "Decision of the Council on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have casting votes in addition as deliberative vote." It means that decisions of the government and employers will be the same because of their nature as employers. The

¹⁰² Section 78(1) of the Act of 1993

¹⁰³ Section 78(4) of the Act of 1993

¹⁰⁴ Section 78(6) and (7)

¹⁰⁵ Comments made by an official from the Industrial Relations Court but he said that his statements were unofficial information

effect will be that as decisions of the council are carried by majority decision then it would mean the employers would loose most of the time. Another weakness concerning the tripartite consultative labour council is that it only meets three times in a year at places where the chairman should decide a consultation with the trade unions and the employer's organization.¹⁰⁶ This implies that the Council had no permanent offices or secretariat. The operations of the council are impaired by this fact.

Another weakness of the Act is seen in section 85(3) which states that the court shall not consider 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 from the date on which the complainant or applicant has exhausted the administrative channels available to that person. Where there are good reasons, applications to file complaints out of time are allowed. The disadvantage of this section is that most employees in Zambia are not well informed about the Industrial Relations Court and hence it might be difficult for them to apply for redress from the court considering the fact of the thirty days deadline. In addition, some locations in Zambia are far form the courts and the complaint would have to prepare accommodation in Lusaka or Ndola so to initiate the processes of suing. In addition, the three months extension the court may give is far too less because of the aforementioned reasons.

Another weakness that has been identified is contained in section 96 of the Act. This section states that "the chairman shall, by statutory instrument, make rules regulating the procedure of the court." The chairman may make rules that are inappropriate for

¹⁰⁶ Section 81(2) of the Act of 1993

example, the current rules of the court provide for mediation, which is a good cause for resolving industrial disputes. But however, the rule further provides that the mediation fees will be paid per seating that is the sum of one hundred and fifty thousand kwacha. This is not fair as many employees would not manage.

The tenth weakness of the industrial and labour relations Act is found in section 100 of the Act. It states that any person or in combination with others willfully break a contract of service or of hire knowing or having reasonable cause to believe that the reliable consequence of their doing so will endanger human life or cause serious bodily harm or expose any property, whether personal or real to destruction shall be guilty of an offence which is plus able by a fine or imprisonment. In many instances employees break a contract of service willfully in order to protest against bad working conditions. Therefore, there is need to narrow this provision so as to protect those workers who may withdrawn their labour because they want better conditions. It's difficult to have a legal strike in Zambia and hence this provision narrows the workers chances of seeking the desired conditions of service.

The eleventh weakness identified is under section 107, which provides for essential services as "all workers have legal right to strike except those engaged in essential services...."¹⁰⁷ This Act provides that any worker who provides an essential service shall be issued with an essential service certificate. The Act provides that an essential service worker who does any act or omit to do any act which is likely to interfere or hinder with

¹⁰⁷ <http://www.state.gov/g/drl/rls/hrrpt/2004/41633.htm>

the carrying on of an essential service shall be guilty of an offence.¹⁰⁸ In addition essential service workers are not allowed to go on strike. Furthermore, the essential service workers will be denied salary if they go on strike.¹⁰⁹ These classes of employees may be arrested without warrant by a police officer for breaching this provision. The essential services provisions are aimed at protecting the political order from disturbances and preventing strikes. In relation to essential service workers , Kapongo says that “However, far from deterring strikes, these declarations have not served any significant purpose...”¹¹⁰ Essential service workers are disadvantaged in that they can not effectively advocate or protest for better working conditions.

CONCLUSION

The 1993 Industrial Labour Relations Act as amended possesses certain weaknesses which need address. An employer is a stronger party to collective disputes because they have money and control over the worker. The proliferation of trade unions in Zambia due to easy registration has caused many problems. The advent of political pluralism in 1990 in Zambia was used as a major thrust to justify the liberalization of the labour movement by the former government of Kenneth Kaunda. While it was publicly admitted in 1990 by the former head of state that the bargaining strength of trade union is undermined by the proliferation of trade unions. It was stated that trade unions had a duty to compete for membership and that therefore, the law should allow proliferation of trade

¹⁰⁸ Section 107(2) of the Act

¹⁰⁹ Section 107(4) of the Act

¹¹⁰ Kapongo P.S.1988. “Labour unrest in Zambia: An Examination of Why Workers Resort to illegal strikes”(obligatory essay) page 32

unions.¹¹¹ However, the observation of freidrich Ebert Stiftung went on to say that “it is interesting to note that while the MMD was strongly opposed to the 1990 industrial relations Act introduced by the former government as it was perceived to be divisive of the labour movement the MMD now in power have done nothing significant to address the divisive character of the law”.¹¹² It is clear from these statements that the government as an employer has its own interests to save hence it is conservative when it comes to changing certain aspects of the Act which are detrimental to the employees. The weaknesses inherent within the Act are the major con tributaries of bad labour relations in Zambia.

¹¹¹ <http://library.fes.de/fulltext/bueros/sambia/00521b.htm>

¹¹² Ibid

Chapter Five

The essay has shown the historical background of the 1993 Act and the industrial relations in Zambia. Furthermore, the nature of the Industrial and Labour Relations Act was examined including its strengths and weaknesses. This Chapter will give the solutions and recommendations, which may improve the Industrial and Labour Relations Act of 1993. The final part of the essay will be the conclusion.

Recommendations

There are a lot of shortcomings in the current 1993 Industrial and Labour Relations Act. The interviews with officials from Ministry of Labour and Social Welfare reviewed that the 1993 Act is currently undergoing review and it is going to be amended.¹¹³ However, they expressed dissatisfaction over the same Act. One official released a paper prepared by him, in which he identified the need to regulate the registration of trade unions, as they are too many¹¹⁴. The key to industrial success is a strong trade union movement and this cannot be achieved with divided unions in one industry. It is therefore recommended that the 1993 Act should promote unity and peace among unions in the same industry by providing for mandatory periodical meetings among them so that they may discuss their problems. Secondly, there are two federations of Trade Unions in Zambia. In order to make the trade union movement more effective, it therefore recommended that the Act should only provide for one Federation of Trade Union so as to prevent the “tug of war between ZCTU and

¹¹³ The officials refused to show the proposed Amendments

¹¹⁴ Abubakar Nchimuunya. 2005. “Issue paper of illegal shrikes”(hand out from the Ministry of Labour and social welfare) page 6

FFTUZ”¹¹⁵ which “...has affected internal cohesion of some trade unions.”¹¹⁶ The effect will be that the trade union movement will be strengthened. In addition, there is need for monitoring the internal affairs of trade unions and therefore, the Act must provide such a mechanism. The result will be that trade unions will not be used for other purposes other than representing workers interests. Fourthly, the 1993 Industrial and Labour Relations Act should stipulate the minimum standards for a collective agreement so that the workers cannot be sidelined in event of bad negotiations during collective bargaining as Mwenda states that, “while the law recognizes the duty to bargain collectively, it does not prescribe minimum standards for bargaining.”¹¹⁷

The fifth recommendation that can improve industrial relations in Zambia is to improve the settlement of collective disputes under part ix of the 1993 Act. The Act should provide for an effective and expedient procedure. Section 78(6) of the 1993 Act that allows minister to apply to the court to have the strike declared against public interest should be repealed because it undermines the fairness of the dispute resolution process. In addition to the conciliation process that the Act provides for, there is need to introduce other alternative Dispute resolution processes such as Arbitration. “The relationship between employer and employees are likely to be better preserved in ADR because the need for allegation and cross allegation is avoided.”¹¹⁸ This may even reduce strikes.

¹¹⁵ <http://library.fes.de/fulltext/bueros/sambia/00521b03.htm>

¹¹⁶ Ibid

¹¹⁷ Mwenda W.S.2005. “Employment Law in Zambia.” Unzapress: Lusaka page 100

¹¹⁸ Siapwili Patrick.1998. “Labour Dispute Resolution in Zambia; An evaluation of the Act mechanism.”(Obligatory essay) page

The composition of the Tripartite Consultation labour council must be reviewed so that the number of employees should be equal to that of employers and the government. From an interview with an official from the Industrial Relations Court who chose to be anonymous and declared his statements unofficial stated that the employers and government basically share the same interests as employers. Therefore during decision-making process the employers are out numbered. It is therefore recommended that the composition of the council should be reviewed in order to rectify this shortcoming. Furthermore, the Act should make provisions to ensure that the council has a permanent secretariat and permanent offices.

Nevertheless, other provisions of the Act need to be reviewed and changed. It is unfair to imprison a worker who willfully breaks a contract of service or hire who that knows the consequences of such breach will endanger human life or the property of the employer as provided for by section 107 of the Act. The reasoning and justification behind this recommendation is that the employees breach of a contract may be caused the employer breach of the same contract by either delays in paying the worker wages or subjecting the worker to hazardous conditions of service such as working in a quarry without a helmet or dealing with corrosive acids without proper protection. This provision must be revealed.

The provisions relating to essential service workers should be reviewed so that the workers can be allowed to go on strike. The current Act does not permit this. The workers are greatly oppressed. According to a report by Times of Zambia¹¹⁹, Zambia Electricity Supply Corporation workers went on strike protesting for the observance of the tradition payday.

¹¹⁹ 3rd March, 2005, Times of Zambia Newspaper

NESAWU president, Peter Chupa claimed that only ten (10) percent of workers were paid.¹²⁰ This is very sad for essential service workers as 1993 Act also permits the arrest of essential service workers who go on strike. It is therefore recommended that the Act be amended so as to enable these classes of workers to have a better way for advocating for their rights as workers rather than to let them have no drastic way of bringing out there grievances.

CONCLUSION

The 1993 Industrial and Labour Relations Act is important and as such it must keep abreast with the changing circumstances in the labour and industrial sector. Its provisions may have suited the time it was enacted but it does not follow that it may suit today's industrial relations. The Act has its strength, which to an extent have improved industrial relations in Zambia. However, there are weaknesses inherent within it, which has caused the employers to take undue advantage of the workers. It is important for the industrial relations to as improved they contribute to the welfare of an individual and economic development.

¹²⁰ Abubakar Nchimunya 2005. "Issue Paper on Illegal Strikes". (London from an official the Ministry of Labour and Social Security).

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