CHAPTER IV.

INDUSTRIAL RELATIONS.

" Industrial Relations " refers to the relations between employers' and employees' organisations and between these organisations and the state. The need for sound industrial relations has been created through a series of events.

With the growth in industrialization and capitalism, labour began to face problems that created discontent. A desire for better wages, for a sense of security and for improved working conditions resulted in the creation of trade unions. Management had now to deal not with each individuals but with an organisation representing their interests. The trade unions through a process of collective bargaining with management attempted to satisfy the needs of their members. This brought them face to face with the management and in this process of collective bargaining, the relationship between the employers' and employees' organisation became complex. Ways and means had to be devised to foster the meeting of these two organisations under cordial relations and to conduct their negotiations in a democratic and peaceful manner. Provisions also need to be made to employ a third party to settle their disputes should they fail to reach an agreement. This entire complex of relations is termed industrial relations.

The present chapter in dealing with industrial relations will first consider the basic freedom of association. Conventions and Malayan labour ordinances on this topic will be analysed. It will also deal with the freedom of labour to resort to industrial action such as strikes and lock-outs. Finally the chapter will cover the area of conciliation and arbitration which are the means of settling trade disputes.

FREEDOM OF ASSOCIATION.

Under this category of labour movement, conventions which have been the basis of our Trade Union Ordinance 1959 and the Employment Ordinance 1955 shall be analysed, and the provisions in these Ordinances which conform to the articles of the convention shall also be discussed.

Freedom of association of trade unions is a fundamental right and privelege which must supercede all other labour demands. Unless this basic freedom is guaranteed, it is meaningless as well as impracticable for trade unions to seek and endeavour to claim the recognition of labour unions as a force in industrial society, or the right to strike or better working conditions or the freedom for collective bargaining. " Freedom of expression and of association are essential to sustained progress. " (1)

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(1) Declaration of Philadelphia 1944

Numerous theories exist as to what iniated the organisation of labour in the form of trade unions. While a study of them is beyond the objective of this exercise, it may not be irrelevant to state that trade union movement arose as an attempt to adjust the needs of workers in capitalist industrial society. These needs have as their foundation the noble concept that labour shall not be bought as any other goods, where it is cheap. As the Declaration of Phildelphia puts it " Labour is not a commodity ". Hence by demanding freedom of association, trade union hopes that through this institutional device to represent workers' interest and to bargain for better wages, working conditions, minimum security and safety and health of labour in a collective manner with the management. Realising the importance of this fundamental right, the International Labour Organisation, only two years after its formation and on the eleventh convention, drafted out the Rights of Association (Agriculture) Convention 1921. This convention is not restrictive to agriculture as it may seem at first sight. It attempts to guarantee the right of labour to organise in a legal manner for the purpose of securing the rights and privileges of its members. To be more specific, the convention demands that the member states that ratify the convention assure freedom of association of agricultural workers just as this freedom is granted to industrial workers. Although no convention exists securing freedom of association of industrial workers, the assumption is that this freedom is given to industrial workers. The convention goes a step further to ensure no restriction to this freedom by requiring the repeal of any other laws that contravened this freedom.

" Each member of the International Labour Organisation which ratified this convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers and to repeal any statutory or other provisions restricting such rights." (2)

As the Malaysian Government's first report to the Organisation in 1961 on this convention stated, adherence to this convention could be witnessed in the Trade Union Ordinance 1959 and the Employment Ordinance 1955.

Section 8 of the Employment Ordinance particularly safeguards the right of labour to organise and secure the freedom of workers from persecution by employers on the ground of union membership.

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(2) Article I - Rights of Association (Agriculture) Convention 1921.

" Nothing in any contrast of service shall in any manner restrict the right of any labourer who is a party to such contract " (3) to join and take part in the activities of a registered trade union or " to associate with any one to organise a trade union in accordance with the provisions of the Trade Union Ordinance " (3)

The Trade Union Ordinance defines a " trade union " as any association on combination of workmen, or employers within any particular trade, occupation or industry. To put it in another way, no trade union which is a combination of workers or employers from more than one trade, occupation or industry shall be formed.

This restriction has not satisfied many trade unionists for they feel that this is a limitation to the amalgamation of workers in various branches of industry. However the government believes that this provision is essential to " prohibit the registration of " omnibus " union, which in the past wrought much harm to industrial peace. " (4)

The provision of Section 8 permitting freedom of association has sometimes been carried too far. Too many splinter unions for the same trade, occupation or industry have sprung up. This breaks up the unity and bargaining power of the trade unions. In the teaching profession over 40 unions exist so much so that there is no coordination in their efforts to press for claims from the government. One, therefore, questions the wisdom of the complete freedom of association. The trade unionists, however, accuse the Ministry of Labour and the Registrar of Trade Unions of promoting what they called " peanut " unions. The Ministry of Labour annual report for 1961 gives the number of employees' unions as 266 with a total membership of 211,801. (5)

In response to the request by the Committee of Experts in 1961 the government replied that persons not employed in a contract of service are free to organise themselves under the Societies Ordinance 1949, and Co-operative Societies Ordinance 1948.

As this convention was one of the earliest to be formulated it was naturally not elaborate, and is rather vague. It was perhaps as an attempt to expand and specify in greater detail this fundamental right to organise that the Right to Organise and Collective Bargaining Convention 1949 was drafted out. In general this convention aimed at protecting workers from discrimination or prosecution by employers on the basis of their union membership, guaranteeing non-interference from employers and anti-union labour laws.

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(3) Section 8, Employment Ordinance 1955

(4) Annual report of Ministry of Labour 1959, p.99

(5) Annual report of Ministry of Labour 1961, p.20

As Article one states " Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment ". This is further elaborated in clause two of the same article which attempts to ensure that a " worker's membership in his union shall not prejudice his terms of employment ".

"Such protection shall apply more particularly in respect of acts calculated to -

a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership.

b) cause the dismissal of or prejudice a worker by reason of union membership " (6)

It was felt that it was not enough to be given the right to organise. Such an association should be guaranteed of freedom from interference This additional provision appears as follows: " Workers and employers' organisations shall enjoy adequate protection against any acts of interference of each other " (7) Article three goes a step even further to suggest that a machinery be established to ensure respect for the right to organise. The next article suggests a positive step that measures should be taken to promote the full development of the machinery for voluntary negotiation with a view to regulate the terms and conditions of employment by means of collective agreement. The implication is that with healthy and independent trade unions, the machinery of voluntary negotiation is not only readily welcomed by the unions but also becomes imperative.

The application of this convention to the armed forces is left to the discretions of the nations, as the armed forces represent a vital nerve in the defence of the country and hence a need for stability in that area. The convention does not apply to public servants.

Another relevant convention on this topic is the Freedom of Association and Protection of the Right to organise Convention 1948. It guarantees trade union organisation the freedom to join federation of unions or affiliate themselves to international organisations. It states " workers and employers' organisations shall have the right to establish and join federations and confederations and shall affiliate with international organisation of workers and employers. (8)

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(6) Article 1 - Right To Organise and Collective Bargaining Convention 1949

(7) Article 2 - Right to Organise and Collective Bargaining Convention 1949

(8) Article 5 - Freedom of Association and Protection of the Right to organise Convention 1948.

The government in its first report to the International Labour Organisation in 1963 on the Right to Organise and Collective Bargaining Convention pointed out that just as in the case of the Right of Association Convention, Section 8 of the Employment Ordinance protects members against anti-union discrimination. If allegations of anti-union discrimination are found to be true, administrative action could be taken by the Ministry of Labour. Such action could also be taken in case of interference or of discrimination by employers. The provision requested in Article 3 (9) of the convention is made unnecessary as the government has encouraged the growth of voluntary system of industrial relations under which the right to organise is respected by workers' and employers' organisations.

The government has faithfully followed Article 4 of the Convention and has assisted trade union and employers' organisations in the establishment of joint voluntary machinery for negotiation. A number of joint councils are now in operation and many collective agreements have been concluded through them. For civil servants and employees in the public services, Whitley Council and work Committees function as machinery for negotiation. Chapter V will go into greater detail into this area.

The government has provided in the Employment Ordinance that members of the armed forces and police are not allowed to form trade unions, but machinery exists for consultation with their representatives.

In reply to a request by the Committee of Experts, the government supplied the information that it is consulting the National Joint Labour Advisory Council to consider what additional measures can be adopted which will strengthen safeguards against anti-trade union discrimination. In practice anti-trade union discrimination is rare.

While the above-mentioned conventions seek to guarantee the freedom of labour to organise itself into an association, two other conventions attempt to remove the obstacle of compulsory or forced labour so that the stated freedom of association can be guaranteed. The conventions are Forced Labour Convention 1929 and the Abolition of Forced Labour 1957.

The Forced Labour Convention requests the assurance of member states to undertake to remove compulsory or forced labour within the shortest possible period.

Forced labour is defined as " all work or service which is exacted from any person under the menace of any penalty and for which the said person did not offer himself voluntarily. " (10)

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(9) " A machinery shall be established for the purpose of ensuring respect for the right to organise. "

(10) Article 2, Forced Labour Convention, 1929

As there is no form of forced labour in Malaya, the Forced Labour Convention is thus negatively ratified. The Employment Ordinance provide that no worker other than a shift worker shall be compelled to work for more than 48 hours in any one week, except under emergency situations.

The Abolition of Forced Labour Convention is in a way a duplication of the Forced Labour Convention. It states that member states shall not make use of any form of labour as a means for economic development, as a punishment for taking part in strikes, or as a form of racial or political discrimination.

This convention is again respected as shown by the absence of any form of forced labour in Malaya. In the government's reply to the inquiry by the Committee of Experts in 1962, reference is made to several occasions when an individual shall be forced to perform compulsory labour not as actions against political beliefs but as punishment for failure to obey the rulings of the Minister for Internal Security. Under Section 8 (1) (6) of the Internal Security Act, the Minister may impose compulsory labour on anyone who contravenes the various orders the Minister may make under the same section. An individual may similarly be forced into compulsory labour should he fail to comply with orders that prohibit the publication of certain publication.

The National Service Ordinance 1952 makes provision for the registration of persons for national service and for call up of persons so registered to serve in the local forces.

In addition to the above-mentioned conventions that have been the basis of our Trade Union Ordinance and Employment Ordinance, several other conventions have influenced the Employment Ordinance separately. They are Penal Sanction (Indigenous Workers) Convention 1939, Contracts of Employment (Indigenous Workers) Convention 1939, Underground Work Convention 1935 and Protection of Wages Convention 1949.

The Penal Sanction Convention guarantees the freedom of indigenous workers to terminate their contract when they so wish and no penal sanction shall be imposed on them. As Article I puts it, " This Convention applies to all contracts by which an indigenous worker enters the service of a public authority, individual or company, and " any penal sanction for any breach of contract shall be abolished as soon as possible. " " Breach of contract " has been defined in the convention as a refusal or failure to commence or perform the service stipulated in contract, any neglect of duty on the part of the worker or any absence from or desertion of work by the worker.

The provision for the abolition of any penal sanction for any breach of contract in the Penal Sanction Convention is contained in the Employment Ordinance. The latter does not contain any penal sanction, as an employee may terminate his contract with or without notice. But if he terminates his contract without notice he is required to pay an indemnity to the amount he would have earned during the period of the notice. (11)

The contracts of Employment (Indigenous Workers) spells out a specific issue of contract. When a contract is made for a period of or exceeding six months and it stipulates conditions of employment which differs from those customary, the contract shall be made in writing. The requirement to put it into writing the terms of contract is to avoid any future conflict due to variation of interpretation of the contract.

Provision to ensure this is made in the Employment Ordinance under Section 10 which stipulates that contract of service exceeding one month shall be in writing. No distinction is made in our labour laws between indigenous and non-indigenous workers.

The Underground Work (Women) Convention forbids the employment of female workers whatever their age in underground work in any time . This is safeguarded in the Employment Ordinance under Section 35 which prohibits the employment of female workers in the underground work. A similar provision is also found in Rule 20 of the Mining Rules, 1934.

The convention concerning the Protection of Wages applies to all to whom wages are paid or payable. The convention attempts to enumerate the method of payment of wages and protects the right of workers to receive the wages in full and have the right to dispose their wages as they wished to. Article 3 stipulates that wages are to be paid in legal tender only and that it should be paid to workers only. Article 6 forbids any employer to limit the freedom of spending of wages of employees. The article that follows this does not allow employers to conduct stores for the purpose of profit and price at such stores are to be reasonable and the workers shall not be forced to purchase goods from these stores. Notice of any deductions to be made in the wages of an employee shall be made known to the employee and such deduction shall be to the extent prescribed by national laws. (12)

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(11) Section II, Employment Ordinance, 1955

(12) Article 8, Protection of Wages Convention, 1949

Article 10 stipulates that wages may be attached or assigned only in a manner and within limits prescribed by national laws. Wages shall be protected against such attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family. In the event of bankruptcy of the employer, Article II suggests priority and the portion of priveleged creditors as regards wages of employees. Article 13 forbids payment of wages in taverns and other similar establishments. Article 14 mentions that workers shall be informed before they enter employment of the conditions of wages and the particulars of their wages.

According to the Employment Ordinance anyone who falls under the definition of " labourer " is subject to the application of all the provisions of the Ordinance.

The ordinance has excluded non-manual workers, domestic servants and other workers as outside the scope of the ordinance, although in practice its provisions are observed.

Sections 25 and 26 of the Ordinance ensures that wages should be paid only in legal tender and that restrictions regarding the place of payment or the manner of spending are considered illegal.

Section 30 prohibits shops on a place of employment without a licence from the Commissioner who shall supervise for fair prices.

Part IV of the Ordinance stipulates that deductions shall only be made of specified kinds only, which are made at the request of the labourer to a registered trade union, a thrift society or such an association for recovery of advances made to employer and other deductions authorized by written law.

Under the Subordinate Court Rules 1950, wages may not be seized in execution of a court order. Wages may be assigned only in accordance with the provisions in the Bankruptcy Ordinance.

Under Sections 31 and 32, wages for two consecutive months have priority over other debts in the event of bankruptcy. The Ordinance also provides that wages are to be paid within seven days of wage period which is one month. In the event of the termination of employment, settlement of wages are to be done before the expiry of four days after termination. On employment, a worker is informed of the conditions of employment by his employer by trade union officials or by reference to the current wage agreement. Sections 61 and 62 of the Ordinance also requires that employers should maintain wage records and to make available particulars to the workers.

To summarise, the Trade Union Ordinance and the Employment Ordinance guarantee the freedom of association. But the Trade Union Ordinance prohibits the association of workers who belong to different trades, occupations or industry. Apart from this restrictive nature the Ordinance's provision of complete freedom to form trade union so long as seven workers could agree to form a union results in the creation of numerous trade unions, each too small to exert any influence. The Employment Ordinance, further prohibits any form of forced labour and seeks to guarantee freedom of the worker to terminate his contract of service anytime he so desires without facing any penal sanctions. But to prevent any abuse of this privelege, the worker is required to give a month's notice or pay up wages equivalent to a month's salary.

The Employment Ordinance also seeks to ensure that workers are free to spend their wages as they wished without any form of compulsion from the employers. Employers may only make such authorized deductions from the employees' wages as provided in the laws. Wages of labourers receive top priority in cases of insolvency. Thus we see that workers are freed from interference by their employees in matters of association, choice and termination of employment and the manner of spending their wages.

Next we shall look into the freedom of industrial action.

FREEDOM FOR INDUSTRIAL ACTION

Workers have not only achieved freedom of association, they have also succeeded in gaining freedom to take part in industrial action. This freedom is granted to the workers in Malaya by the Trade Disputes Ordinance of 1949.

It provides that it is not unlawful for one or more persons to attend at a home or place of work to persuade others to work or not to work in contemplation of a trade dispute, " provided they do not calculate to intimidate anyone or obstruct the approach thereto " (13). It further states that any agreement by two or more persons in furtherance of a trade dispute shall not be punishable as a conspiracy (14) This fulfils the provision of the Freedom of Association and Protection of Right to Organise Convention 1948, that, " workers and employers have the right to establish and to join organisation of their own choosing subject only to the rules of the organisation concerned." (15)

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(13) Section 4 - Trade Disputes Ordinance 1949.
(14) Section 6 - Trade Disputes Ordinance 1949
(15) Article 2 - Freedom of Association and Protection of the Right to organise Convention 1948

However the Ordinance stipulates that strikes or lock-outs in public utilities or essential services cannot be undertaken without fourteen days, or after the expiry of six weeks from giving such notice. This restriction has been felt necessary as a cessation of work in public utilities and essential services would create embarrassment to the public and to the government besides inconvenience to all. In fact, in May 1965, the government issued the Essential Regulations under which any person employed in an essential service was prohibited from taking part in any form of industrial action as long as the proclamation of emergency issued in 1964 continued. Trade unions all over the country raised a unanimous voice of protest against this restriction on industrial action. They claimed that the government could declare a certain industry as falling within the group of essential services thus prohibiting industrial action in these industries.

The Trade Disputes Ordinance also prohibits industrial action during the pendency of any conciliation proceedings under the Industrial Courts Ordinance, 1948 (16). This is necessary for once the parties concerned have submitted their case to a third party for conciliation or arbitration, the continuance of industrial action would prejudice the conciliation or arbitration efforts of the third party. As a mark of respect to the third party, the workers should also refrain from industrial action.

The employers too, have their share of responsibility. They are required to give six weeks notice to the workers in the public services before lock-out. Thus we see that the provision of time requirement binds both parties.

The Ordinance further prohibits any student who is not a lawful member of a trade union to do any act in furtherance of a trade dispute. Failure to conform to this may result in the expulsion of the student by the Chief Minister of the state. (17) This provision is made to prevent the abusive use of students to encourage agitation and unrest by the trade unionists. Students may carry these habits into the schools.

The Ordinance also prohibits any workmen to commence or continue acts in furtherance of an illegal strike (18) and refusal to support any illegal strike shall not be the reason for expulsion of any worker from trade unions.

Let us now look at statistics on strikes.

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(16) Section 4 - Sub-Section (2)
(17) Section 7A - Trade Disputes Ordinance 1949
(18) Section 9 - Trade Disputes Ordinance, 1949

TABLE III.

Number of Strikes during 1961.

Causes.	No. of Strikes
Strikes related to Collective Bargaining:	
Concerning conditions of employment	12
Concerning Wages	1
Engagement or dismissal of workers	11
Other conditions of employment	29
Sympathy Strikes	1
Other causes	4
Total	58

Source: Appendix 34, p.82, Annual Report, Ministry of Labour 1961.

As the table above shows, fifty-eight strikes occured in 1961. While the number of strikes in a year is not a pleasing thing to note, it goes to illustrate our point that there is freedom of industrial action as provided in the Trade Disputes Ordinance. Lest it be thought that these strikes could have been abortive ones the table below would prove otherwise. It indicates that 35 of 58 strikes achieved at least some measure of success, with the results of three strikes still pending at the end of the year. Nineteen of the strikes achieved complete success.

TABLE IV.

Number of Strikes - By result during 1961

Result	No. of Strikes
Workmen's demands entirely accepted	19
Workmen's demands partially accepted	16
Workmen's demands rejectes	13
Employers' demands entirely accepted	4
Employers' demands partially accepted	1
Unknown results	2
Strike still pending	3
Total	58

Source: Appendix 36, p.84, Annual Report Ministry of Labour, 1961

We could therefore conclude that there is sufficient freedom of industrial action in practice in addition to the theoretical provision in the Trade Disputes Ordinance.

While the freedom of industrial action may be granted, often, it is used as a last resort. Trade Unions and management often approach either the government or private citizens to conciliate or arbitrate in the trade disputes. What provisions in our Ordinances exist to create these machineries? What measures are taken by the government to encourage joint voluntary system of negotiation to avoid or settle trade disputes? The answers to these questions will form the topic of the next section.

CONCILIATION AND ARBITRATION.

The need for elaborate and effective system of settling trade disputes becomes indispensable in any industrializing countries like Malaya. Unless such measures exist to avoid or to settle trade disputes promptly, industrial peace would not be achieved. Without industrial peace, the cooperation of employers and employees in participating in industrial development is difficult to achieve. We shall now see what measures exist in law and in practice to settle trade disputes amicably.

The Industrial Relations Section of the Department of Labour and Industrial Relations administers the Industrial Courts Ordinance 1948, Wages Councils Ordinance 1947 and the Trade Disputes Ordinance 1949. The Industrial Relations Section recognising the desire of both sides in industry to settle questions relating to wages and conditions of employment voluntarily by themselves and through their own voluntary action, abstains from interference till it is approached. This system of industrial relations is called the voluntary system of industrial relations. The aim is to"build up self-government in industry " (19) Hence the function of the government in this field is mainly to reinforce and supplement whatever voluntary arrangements which the two sides of industry have made for themselves. (20)

But it has been found that the two sides only meet when differences between them have arisen under an atmosphere of tension. Hence to make free collective bargaining function effectively, the government has been encouraging the formation of permanent joint voluntary machineries established with recognised procedures of conducting these machineries (21)

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(19) Industrial Relations Law and Practice in Malaya, article by Inche Mohd. Sidek Bin Ta'ab, Report of Annual First Trade Union Seminar, 1965 p.62
(20) Ibid p. 62
(21) p.10, Annual Report, Ministry of Labour, 1961

The success of such a system of voluntary industrial relations could be gauged from a remark made by a writer thus: " Perhaps the brightest star in Malaya's favour when it comes to industrial development is the happy industrial relationship that exists here " (22) Besides this word of praise for this system, statistical data could also be mentioned. In the planting industries, joint consultative Council at national level and joint consultative committee at state level exist. Besides these in 1961, about 233 Malayan Planting Industries Employer's Association Member Estates had joint consultation at estate level. In the mining industry, there was joint consultation on twenty Malayan Mining Employers' Association Member Mines. With recognition granted to the Malayan Mining Workers' Union, more joint consultation could be hoped to hold. In other places of employment, joint machinery also existed. In seventy-six places, some form of consultation and negotiation machinery, was in practice. If these figures show anything, it is that employers and employees are fast learning the usefulness of having joint voluntary machineries. The 1959 Annual Report of the Ministry of Labour gives a breakdown of the number of joint machineries state-wise.

TABLE V.

Name of State	No. of estates with joint machinery.
Penang	11
Kedah	25
Perak	40
Pahang	12
Malacca	20
Negri Sembilan	11
Selangor	23
Johore	14
Total	156

Source: p.13 Annual Report Ministry of Labour, 1959

An important pre-requisite for this system of industrial relations is the recognition of the freedom of association of trade unions. As this basic freedom is granted in the Trade Union Ordinance and Employment Ordinance, the functioning of this system of industrial relations is ensured.

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(22) Quoted on p.8, Annual Report Ministry of Labour, 1961

The freedom applies to employers too. In Malaya, we have the Malayan Planting Industries Employers' Association, the Malayan Mining Employers' Association, the status of Malaya Business Houses Employers' Association and the Malayan Commercial Banks' Association.

But the provision for easy registration of trade unions has created " pannut " unions. The difficulty in forming a coalition of these unions for purposes of establishing joint machineries could be imagined by one and all.

In certain trades where conditions of employment cannot be regulated effectively by voluntary agreements owing to inadequate organisation of workers or employers, the government has passed the Wages Councils Ordinance, 1947. At least two Wages Councils exist today; one for shop Assistants and another for Stevedoring workers in Penang. We shall discuss in greater detail this Ordinance when we deal with Remuneration.

When it is realised that both parties are unable to conduct their negotiations or secure settlement of their differences by themselves, the government provides additional assistance to the parties. But since collective bargaining is considered to be the normal method of settling labour problems, there is no provision in the Industrial Courts Ordinance for compulsory arbitration. The Industrial Relations Section first offers its conciliation services as provided for in the Industrial Courts Ordinance. (23) When this also fails, the parties may resort to voluntary conciliation. The reference at any dispute to the arbitration should be with the consent of both parties. Arbitration awards under this ordinance are not legally binding, but since the parties voluntarily agree to refer their dispute to arbitration, they usually accept the advice of the Department of Labour and Industrial Relations to assure them in advance to accept awards made by the Arbitrator.

But this system of joint voluntary negotiation has been restricted by the promulgation of two regulations in 1965. The Essential (Prohibition of Strikes and Proscribed Industrial Actions) Regulations which prohibits strikes in certain essential services in the public sector. The Essential (Arbitration in the Essential Services) Regulations restricts strikes in the case of certain essential services in the private sector. We shall not analyse these regulations as the period covered in this study ends before the passing of these Regulations.

Returning to the voluntary system of conciliation and arbitration, the Industrial Courts Ordinance is the relevant Ordinance to be studied. But before going into that, let us look at the international standards in this field.

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(23) Section 4, Industrial Courts Ordinance 1948

The International Labour Organisation has thus far not drafted out any Convention on this subject. However, it has " formulated " a Recommendation entitled Voluntary Conciliation and Arbitration Recommendation 1951. It may be interesting to note that Malaya had already enacted the Industrial Courts Ordinance three years before the Recommendation was adopted.

Outlining the role of the state, in the promotion of industrial peace, the convention states that " Voluntary Conciliation machinery should be made available to assist in the prevention and settlement of industrial disputes between employers and workers appropriate to national conditions " (24)

The Industrial Courts Ordinance 1948, defines a trade dispute as " any dispute or difference between employees and workmen or between workmen and workmen connected with the employment or with the conditions of labour of any person. " (25) The Industrial Courts Ordinance is an ordinance to provide for the establishment of an Industrial Court and Courts of Inquiry in connection with trade disputes and to make other provisions for the settlement of such disputes. Part II of the Ordinance deals with Industrial Court. In conformity with Article 4 (26) of the Recommendations, the Ordinance provides that a standing Industrial Court is to be appointed by the Minister to settle trade disputes. The requirement in the Recommendation that the Voluntary Conciliation Machinery if on a joint basis, should comprise of equal number of representatives of workmen and employees is met in Section 3 of the Ordinance which stipulates that equal number of independent workers and employees are to be represented in the Court.

The Recommendation suggests that the procedure could be set in motion by either labour or management. The Ordinance provides that " any trade dispute existing or apprehended may be reported to the Commissioner of Labour by or on behalf of either parties. " (27)

When such a report is received, the Commissioner has several alternatives to follow. He could either:-

a) Refer the matter for settlement to the Industrial Court.

b) Refer the matter to the arbitration of one or more persons appointed by him.

c) Refer the matter to a board of arbitration consisting of equal number of representatives of workers and employees and an independent chairman appointed by the Minister of Labour.

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(24) Article I Voluntary Conciliation and Arbitration Convention 1951
(25) Section 2 Industrial Courts Ordinance 1948

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(24) Article I Voluntary Conciliation and Arbitration Convention 1951
(25) Section 2 Industrial Courts Ordinance 1948
(26) Voluntary Conciliation and Arbitration Recommendation 1951
(27) Section 4, Industrial Courts Ordinance 1948

Should any arrangements exist in any industry or trade, between employers and workers for the settlement of disputes, the Minister is then not empowered to refer such matters to the Industrial Court unless both parties request him to do so or unless there is a failure to reach agreement through the existing machinery.

The Industrial Court should not make any award which is inconsistent with any of the written agreements of laws relating to hours of work, conditions of work and the like.

The Recommendation requires that while a dispute is being looked into to arrive at a conciliation, labour should be discouraged from participating in strike or lock-outs. However the Recommendation also stresses that no provision ought to be interpreted as limiting the right to strike.

Similarly in the process of arbitration labour is to abstain from strike on lock-outs and is to be encouraged to accept the arbitration award.

Normally, it is the practise in Malaya for labour to cease strike and lock-outs while conciliation or arbitration is in progress. But labour or management is under no obligation to accept the arbitration award since arbitration is on a voluntary basis. However, generally it is expected that these awards will be accepted as arbitration was resorted to voluntarily. As long as this acceptance of the awards is ensured, the Industrial Courts would continue to serve a useful purpose in settling trade disputes.

The trust placed by employers and employees in the system of Industrial Courts can be from the number of Industrial Court awards made. In 1964 and beginning of 1965, the Court made six awards in the following cases.

a) Dispute between the Northern Eastern Transport Services Ltd., Kota Bharu and the Transport Workers Union, Federation of Malaya.

b) Dispute between states of Malaya Business Houses Employers' Association and the National Union of Commercial Workers.

c) Dispute between Borneo Motors (M) Ltd., Ipoh and National Union of Commercial Workers.

d) Dispute between Dunlop Malayan Industrial Ltd., and National Union of Employees in Companies Manufacturing Rubber Products

e) Dispute between the City Council of George Town Penang and the Penang Municipal Services Union.

f) Dispute between the Transport Workers Union and the Perlis Transport Co., Ltd.

Reference to statistical data would give us an indication as to how much use is made of the conciliatory assistance provided by the government and the number of occasions when the trade disputes are settled by the parties themselves. The table below shows that one-third of the disputes in 1961 were settled by the parties concerned through their joint voluntary machineries. This is an encouraging figure. Another one-third of the disputes were settled with reference to a third party.

TABLE VI.

Number of Strikes by Method of Settlement in 1961.

	Method of Settlement.	No. of Strikes
1)	Settlement by direct negotiations between the parties	19
2)	Settlement by the medium of a third party through voluntary conciliation accepted by the parties to the strike	19
3)	Strikes terminated without successful negotiations	17
4)	Strikes still pending	3
	Total	58

Source: Appendix 35, p.83, Annual Report Ministry of Labour.

In the Ordinance provision is also made for the setting up of a Court of Inquiry. This is to enquire into certain trade disputes which cannot normally be dealt with by the normal process of voluntary conciliation and arbitration or a dispute from which the public are likely to be gravely affected. Usually the Courts of Inquiry is set up as a last resort when no settlement seems possible or when an independent examination of the dispute is felt essential in the public interest.

" The Minister may set up a Court of Inquiry for such disputes, which shall inquire in private or in public and report thereon to the Minister. " (28) The Court normally makes a report for the information of the government and public about the causes of the dispute and its recommendations of settling the dispute. Once again, the parties are under no legal obligation to accept the recommendations.

The government feels that it may be risky to allow trade disputes in certain cases to be settled in the normal voluntary basis. Hence it may force the reference of such disputes to a Court of Inquiry. But such a system may lend itself to abuse unless exercised with care.

No Courts of Inquiry were held in the years 1959, 1960 and 1961.

The International Labour Organisation has drafted another Recommendation in the field of industrial relations entitled Collective Agreement Recommendation, 1951. It recommends that " machinery appropriate to the conditions of each country should be established by means of agreement or laws or regulations to negotiate, conclude, revise or renew collective agreement or to be available to assist," (29) in this procedure.

It further recommends that collective agreements should be in writing and should bind the signatories thereto.

The machinery referred to in the Recommendation will be discussed when the National Joint Labour Advisory Council and the Department of Labour and Industrial Relations are dealt with below. All collective agreements arrived at by labour and management are put in writing and are binding on both parties. (30) Contracts of employment should not have stipulations which run contrary to such collective agreements which are to be notified to the employers. (31)

A survey of the functions of the National Joint Labour Advisory Council is important in the context of the Malayan Industrial Relations. Established in 1957 it is a voluntary and advisory council consisting of representatives of labour, management and the government. Its function is to advise the Minister of Labour on all questions affecting labour and promotion of industrial peace and ways and means to stimulate regular considerations of both management and labour on all matters affecting the progress and well-being of industry.

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(28) Section 6, Industrial Courts Ordinance 1948
(29) Article 1, Collective Agreement Recommendation, 1951
(30) "Collective Agreements should bind the signatories thereto," Article 4
(31) "National laws may require employers to take steps to bring to the notice of the workers the text of the collective agreement," Article 5, Collective Agreement Recommendation 1951

The Industrial Relations Section of the Department of Labour is another instrument that could be employed to formulate, revise or renew collective agreements. The exact nature in which this is done was discussed earlier.

We have above discussed at length the international and national labour standards in the field of industrial relations. The Malaysian Labour laws were found to comply with the International Labour Organisation's provision for freedom of association of trade unions.

We noted a side effect of this freedom in that it has encouraged too many tiny trade unions. Our labour laws also prohibit any form of compulsory labour and grant to the labourers the right to their entire wages (except for some authorised deductions) and the right to spend them in the manner they desired. The Trade Disputes Ordinance was found to grant workers the right to engage themselves and persuade others to participate in industrial action without fear of punishment or discrimination. We also noted under conciliation and arbitration, the government's effective voluntary system of industrial relations. This system has proved to be the main factor in industrial peace, in this country. The Industrial Courts Ordinance provides for the establishment of an Industrial Court and a Court of Inquiry as additional measures of settling trade disputes. However we also noted that Essential Regulations of 1965 tempered with the freedom of industrial action and the freedom of labour and management to settle their differences in the manner they wished.

With this survey of the industrial relations we must now move to another area which we shall call the General Conditions of Labour. Wages of labour is a delicate and important respect of labour interest. We shall note in the next chapter what machinery exist to ensure minimum wages for labour. Workers are interested in fixing a standard number of hours of work and demand a certain number of holidays per year. We shall also study the international and national provisions for hours of work and holidays for workers in the next chapter.

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