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GOVERNMENT NOTICE No 53

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

ALEX M WILKIE,
Acting Clerk to the Legislative Council

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A BILL TO PROVIDE AN ARBITRATION TRIBUNAL FOR THE SETTLEMENT OF DISPUTES OF ESSENTIAL SERVICES

ENACTED by the Governor of the Colony of Kenya with the advice and consent of the Legislative Council thereof as follows —

PART I—PRELIMINARY

1. This Ordinance may be cited as the Essential Services (Arbitration) Ordinance 1950. It shall come into force on such day as the Governor shall appoint by notification in the Gazette and shall apply to trade disputes in essential services as herein-
5 after defined

Short title,
commencement
and
application

2. In this Ordinance, unless the contrary intention appears, the following expressions have the meanings hereby respectively assigned to them, that is to say—

Interpretation

“essential services” means the services, by whomsoever
10 rendered and whether rendered to the Crown or to any other person, which are mentioned in the Schedule to this Ordinance, and any services so rendered which the Governor shall at any time hereafter by notice in the Gazette add to that Schedule,

"lock-out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a trade dispute, done, not with the intention of finally determining employment, but with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment, 5

"Member" means the Member of the Executive Council for the time being responsible for labour matters, 10

"organization" means a trade union or other association of persons which is, in the opinion of the Labour Commissioner, representative of employers or of workers, as the case may be, and includes representatives appointed pursuant to section 3 of this Ordinance, 15

"strike" means the cessation of work by a body of persons employed, acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer, done as a means of compelling their employer or any person or body of persons employed, or to aid other workmen in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment, 20

"trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, or between workmen and any authority or body, connected with the employment or non-employment, or the terms of employment or with the conditions of labour of any person, 25

"workman" means any person who has entered into or works under a contract with an employer whether the contract be by way of manual labour clerical work or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour, 30 35

"Tribunal" means an Arbitration Tribunal constituted under the provisions of section 4 of this Ordinance

PART II—APPOINTMENT OF REPRESENTATIVES OF EMPLOYERS AND WORKMEN TO SETTLE TRADE DISPUTES 40

Representatives may be appointed to negotiate settlement of disputes

3. (1) For the purpose of adjusting, or negotiating settlements of trade disputes in any essential service where no registered trade union exists, or no registered trade union exists which is, in the opinion of the Labour Commissioner, sufficiently representative of the employers or of the workmen, as the case may be, the employers or the workmen or each of them the employers and the workmen, as the case may require, may on the invitation of the Labour Commissioner appoint such number of representatives, not exceeding five, as they think fit and such representatives may act on behalf of the employers or of the workmen by or on behalf of whom they were appointed, in negotiating an agreed settlement of any trade dispute 45 50

No 1 of 1943

(2) This section shall have effect notwithstanding anything contained in the Trade Union and Trades Disputes Ordinance, 1943 55

PART III—SETTLEMENT OF TRADE DISPUTES BY CONCILIATION, NEGOTIATION OR BY COMPULSORY ARBITRATION

Constitution of an Arbitration Tribunal

4. For the purpose of settling trade disputes in essential services which cannot otherwise be determined there may be constituted, at the discretion of the Member, an Arbitration Tribunal consisting of— 50

(a) a sole arbitrator appointed by the Member, or

- (b) an arbitrator, nominated by the Member, assisted by one or more assessors nominated by the employers concerned, and an equal number of assessors nominated by the workmen concerned, all of whom shall be appointed by the Member, or
- (c) one or more arbitrators, selected from a panel nominated by or on behalf of the employers concerned, and an equal number of arbitrators, selected from a panel nominated by or on behalf of the workmen concerned and an independent chairman all of whom, shall be appointed by the Member

5. (1) If any trade dispute in an essential service exists or is apprehended, that dispute, if not otherwise determined, may be reported in writing to the Labour Commissioner by or on behalf of either party to the dispute, and the decision of the Labour Commissioner as to whether a dispute is or is not a trade dispute in an essential service and whether a dispute has been so reported to him or not and as to the time at which a dispute has been so reported shall be conclusive for all purposes

Dispute
procedure

(2) The Labour Commissioner shall consider any trade dispute so reported to him as aforesaid and shall endeavour to conciliate the parties and to effect a negotiated agreement or other settlement, or if, in his opinion, suitable means for settling the trade dispute already exist by virtue of the provisions of any agreement made between organizations of employers and workmen respectively, he may refer the matter for settlement in accordance with those provisions, or he may refer the matter for settlement by representatives appointed under the provisions of section 3 of this Ordinance, so, however, that where an attempt to conciliate the parties has failed or where a matter has been referred for settlement in accordance with any of the provisions of this sub-section and there is a failure to reach a settlement or, in the opinion of the Labour Commissioner, a settlement is unduly delayed, the Labour Commissioner, shall cancel the reference and report to the Member who may constitute a Tribunal under section 4 of this Ordinance and refer the trade dispute to the Tribunal

(3) Such reference shall be made by the Member within twenty-one days from the date on which the trade dispute was reported to the Labour Commissioner under sub-section (1) of this section unless, in the opinion of the Member, the special circumstances of the case make it necessary or desirable to postpone such a reference for such further period as the Member may in writing allow

(4) The Tribunal shall consider any trade dispute referred to it under this section and shall make an award

6. Save as expressly provided in this Ordinance or in Rules made under this Ordinance, a Tribunal may regulate its procedure and proceedings as it thinks fit

Regulation
of Tribunal
proceedings

7. (1) The Labour Commissioner for the purpose of effecting a negotiated agreement or other settlement, or a Tribunal for the purpose of dealing with any matter referred to it under section 5 of this Ordinance, may by order require any person—

(a) to give such information and furnish such particulars as the Labour Commissioner or the Tribunal may specify in relation to the trade dispute,

(b) to attend before the Labour Commissioner or the Tribunal,

(c) to give evidence on oath or otherwise, and

(d) to produce any relevant documents

Powers of
Labour
Commissioner
and Tribunal

(2) Any person who fails to obey an order given under the provisions of sub-section (1) of this section shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding four hundred shillings

Appearance by
advocate

8. It shall be in the discretion of the Labour Commissioner or of a Tribunal, as the case may be, to permit or not to permit any interested person to appear by advocate in any proceeding under the provisions of this Ordinance 5

Proceedings
to be public
or private in
discretion of
authority
holding them

9. (1) The Labour Commissioner or a Tribunal may, in his or its discretion, admit or exclude the public and representatives of the press from any proceeding under the provisions of this Ordinance 10

(2) Whenever any representative of the press is permitted to be present at any such proceeding and not otherwise, a fair and accurate report or summary of such proceeding may be published, but until the award has been made and published, no comment shall be published in respect of the proceeding or the evidence 15

(3) Any person who contravenes any provision of sub-section (2) of this section shall be guilty of an offence and shall be liable to a fine not exceeding five thousand shillings 20

PART IV—AWARDS

Award to be
made without
delay and
may be
retrospective

10. (1) A Tribunal shall make its award, or, as the case may be, furnish its advice on any matter referred to it under section 12 of this Ordinance, without delay and where practicable, within twenty-one days from the date of reference 25

(2) An award on any matter referred to a Tribunal for settlement may be made retrospective

Awards and
agreements to
be binding

11. (1) Any negotiated agreement or award made under the provisions of section 5 of this Ordinance shall be binding on the employers and workmen to whom the agreement or award relates and, as from the date of such agreement or award or as from such date as may be specified therein pursuant to sub-section (2) of section 10 of this Ordinance, it shall be an implied term of the contract between the employers and workmen to whom the agreement or award relates that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with such agreement or award until varied by a subsequent agreement or award 30 40

(2) No application to vary any award shall, except with the permission in writing of the Member, be made within six months of the promulgation of such award

Refence to
Tribunal for
advice

12. The Labour Commissioner may refer to a Tribunal for advice any matter relating to or arising out of a trade dispute in an essential service which, in his opinion, ought to be so referred 45

Interpretation
of award

13. If any question arises as to the interpretation of any award of a Tribunal, the Labour Commissioner or any party to the award may apply for a decision on such question and the Tribunal shall decide the matter after hearing the parties, or without such hearing, if it thinks fit, the decision of the Tribunal shall be notified to the parties and shall be binding in the same manner as the decision in an original award 50

Award of
Tribunal not
to conflict with
any law

14. Where any trade dispute referred to a Tribunal involves questions as to wages or as to hours of work, or otherwise as to the terms or conditions of or affecting employment which are regulated by any Ordinance other than this Ordinance, the Tribunal shall not make any award which is inconsistent with the provisions of that Ordinance 55

15. The Arbitration Ordinance shall not apply to the proceedings of a Tribunal or to any award made by a Tribunal

Arbitration
Ordinance not
to apply
Cap 18

16. (1) Whenever a Tribunal consists of more than one arbitrator and any vacancy occurs in their number the Tribunal may, with the consent of the parties, act notwithstanding such vacancy

Vacancies in
Tribunals

(2) Whenever a Tribunal consists of an arbitrator, assisted by assessors, and any vacancy occurs in the number of assessors, the Tribunal may, in the discretion of the arbitrator, either act notwithstanding such vacancy, or consent to another assessor being nominated and appointed to fill such vacancy

(3) No act, proceeding or determination of a Tribunal shall be called in question or invalidated by reason of any such vacancy, provided that, in the circumstances referred to in sub-section (1) of this section the required consent has been first obtained

17. Every award shall be submitted to the Member who shall, as soon as possible thereafter, cause such award to be published in such manner as he may think fit

Award to be
submitted
to Member

20 PART V—PROHIBITION OF LOCK-OUTS AND STRIKES IN ESSENTIAL SERVICES—OFFENCES

18. (1) An employer in any essential service shall not take part in a lock-out, and a workman in any essential service shall not take part in a strike unless a trade dispute exists and has been reported to the Labour Commissioner in accordance with the provisions of section 5 of this Ordinance and twenty-one days, or, if a further period has been allowed by the Member under sub-section (3) of that section, twenty one days and such further period, shall have elapsed since the date of the report and the trade dispute has not during that time been settled or been referred to a Tribunal for settlement in accordance with the provisions of that section

Prohibition of
lock-outs and
strikes in
essential
services

(2) Any person who contravenes the provisions of sub-section (1) of this section shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding four hundred shillings or to imprisonment for a term not exceeding one month or to both such fine and imprisonment

Penalty

19. (1) No person, whether an officer of a trade union or other association or not shall declare instigate, counsel, procure or abet a lock-out or strike in any essential service, unless a trade dispute exists and it has been reported to the Labour Commissioner in accordance with the provisions of section 5 of this Ordinance and twenty-one days, or, if a further period has been allowed by the Member under sub-section (3) of that section, twenty-one days and such further period shall have elapsed since the date of such report and the dispute has not during that time been settled or been referred to a Tribunal by the Member under the provisions of that section

Counselling
or procuring
lock-out or
strike

(2) Any person who contravenes any of the provisions of sub-section (1) of this section shall be guilty of an offence against this Ordinance and shall be liable to a fine of five thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment

(3) This section shall have effect for a period of two years from the commencement of this Ordinance unless previously revoked

PART VI—MISCELLANEOUS

20. No prosecution for a contravention of section 18 or 19 of this Ordinance shall be instituted save by or with the consent of, the Attorney General

Sanction of
Attorney
General

Member may
make rules

21. The Member may make Rules for better carrying this Ordinance into effect and in particular for regulating the procedure to be followed in any proceeding before a Tribunal

THE SCHEDULE

(Section 1)

5

Water Services

Electricity Services

Health Services

Hospital Services

Sanitary Services

10

Transport Services necessary to the operation of the above-mentioned services or any of them

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are first, to provide methods of settling trade disputes in essential services, either by conciliation, direct negotiation between employers and workmen or their representatives or, failing a successful outcome of such methods, by compulsory arbitration before an Arbitration Tribunal constituted under the Ordinance secondly to prohibit persons, under penalties, from taking part in, or declaring, instigating or procuring lock-outs or strikes in essential services unless a trade dispute exists and has been reported and efforts at conciliation or agreement have not succeeded within twenty-one days of the trade dispute being reported or the dispute has not within that time, been referred to arbitration under the provisions of the Ordinance and thirdly to prohibit political strikes in essential services

In more detail the principal provisions of the Bill are as follows —

Clause 2 defines what is meant by an "essential service" Essential services will include any of the services, by whomsoever rendered and whether rendered to the Crown or to any other person, which are set out in the Schedule to the Ordinance and any other services so rendered which the Governor, by notice in the Gazette, at any time adds to that Schedule

The scheduled services are—

Water Services,

Electricity Services,

Health Services,

Hospital Services,

Sanitary Services,

Transport Services necessary to the operation of the above-mentioned services or any of them

Clause 2 also defines "lock-out" and "strike" A "lock-out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a trade dispute, done, not with the intention of finally determining the contract of employment, but with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment A "strike" means the cessation of work of a body of persons employed, acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer, done as a means of compelling their employer or any person or body of persons employed, or to aid other workmen in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment

Part II of the Bill deals with the appointment of representatives of employers and workmen for the purpose of settling a trade dispute in any essential service where no registered trade union exists, or no trade union exists which is, in the opinion of the Labour Commissioner, sufficiently representative of the employers or the workmen, and provides that each of them may appoint up to five representatives for the purpose of negotiating an agreed settlement of the dispute

Clause 4 provides for the constitution of Arbitration Tribunals which may consist, at the discretion of the Member of Executive Council for the time being responsible for labour matters, of—

- (a) a sole arbitrator appointed by the Member, or
- (b) an arbitrator nominated by the Member assisted by an equal number of assessors nominated by employers and workmen, or
- (c) one or more arbitrators selected from a panel nominated by the employers and an equal number of arbitrators selected from a panel nominated by the workmen, with an independent chairman nominated by the Member

Clause 5 is important, and lays down the procedure which is to be followed when a trade dispute in an essential service exists or is apprehended. The Clause provides that a trade dispute, if not otherwise determined, may be reported in writing to the Labour Commissioner by or on behalf of either party to the dispute. The Labour Commissioner is to consider the trade dispute so reported and is to endeavour to conciliate the parties and to effect a negotiated agreement or other settlement, or, if a conciliation board or other means of settling disputes already exist in the industry, he may refer the dispute for settlement by those means, or he may refer it for settlement by representatives appointed by employers and workmen as mentioned above in the commentary on Part II. If efforts at conciliation fail, or where the matter has been referred for settlement as mentioned above and there is a failure to reach a settlement, or the settlement is unduly delayed, the Labour Commissioner is to cancel the reference and report to the Member who may constitute a Tribunal under *Clause 4* and refer the trade dispute to the Tribunal. The Member is to make this reference within twenty-one days from the date on which the dispute was reported to the Labour Commissioner unless, for special reasons that period is permitted to be extended. The Tribunal is to consider any trade dispute referred to it and to make an award.

Clauses 6 and 7 deal with the procedure and powers of the Tribunal and of the Labour Commissioner.

Clauses 8 and 9 contain provisions relating to the appearance of advocates before the Labour Commissioner or the Tribunal and the holding of proceedings in public or private sessions at the discretion of the authority holding them.

Part IV deals with awards and provides that the Tribunal is to make its award without delay and, where practicable, within twenty-one days from the date of reference to it. Awards may be made retrospective.

Clause 11 provides that negotiated agreements or awards are to be binding on employers and workmen and that contracts of service are to be regulated in accordance with such agreements or awards until varied by subsequent agreements or awards. No application to vary an award may be made except with special permission of the Member, within six months of the promulgation of the award. *Clauses 12 and 13* deal respectively with references to the Tribunal for advice and with the interpretation of awards.

Clause 14 provides that awards may not be made which are inconsistent with the provisions of any Ordinance affecting terms or conditions of employment and *Clause 15* provides that the Arbitration Ordinance (Chapter 18) is not to apply to the proceedings of the Tribunal or to awards made by it.

Clauses 16 and 17 deal with vacancies in Tribunals and with the submission of awards to the Member who is to cause them to be published.

Clause 18 provides that an employer in an essential service is not to take part in a lock-out, and a workman in any essential service is not to take part in a strike, unless a trade dispute exists and has been reported to the Labour Commissioner in accordance with the Ordinance and twenty-one days (or if a further period has been allowed by the Member under sub-section (3) of section 5, twenty-one days and such further period) shall have elapsed since the date of the report of the dispute and the dispute has not during that time been settled or been referred to the Tribunal for settlement in accordance with the provisions of the Ordinance. Penalties are provided for contravention of this section.

Clause 19 provides penalties for any person whether a member of a trade union or other association or not, who declares, instigates,

counsels, procures or abets a lock-out or strike in any essential service, unless a trade dispute exists and the provisions of the Ordinance have been complied with

By *Clause 20* the sanction of the Attorney General is necessary before any prosecution is instituted under section 18 or 19 of the Ordinance

Clause 21 empowers the Member to make Rules

It is not possible to say whether any additional expenditure of public moneys will be incurred if the provisions of this Bill become law

Nairobi,
7th January, 1950

K K O'CONNOR,
Attorney General