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PART B

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THE INDUSTRIAL RELATIONS (AMENDMENT) ACT, 2000 (Act No. 8 of 2000)



I ASSENT

MSWATI III
King of Swaziland

.....2000

AN ACT
entitled

An Act to amend, and incorporate into, the Industrial Relations Act, 2000 certain international labour practices.

ENACTED by the King and the Parliament of Swaziland.

Citation and commencement.

1. This Act may be cited as the Industrial Relations (Amendment) Act, 2000 and shall be read as one with the Industrial Relations Act, 2000 (hereinafter in this Act called the principal Act), and shall come into force on the date of publication.

Amendment of section 29.

2. Section 29 of the principal Act is amended in subsection (1) by -

- (a) deleting at the end of paragraph (v) the full stop (.) and replacing it with a semi colon (;) and
- (b) adding a new paragraph (w) as follows -

“(w) provision establishing or specifying how as an affiliate, a decision shall be reached in response to a decision by a federation to call peaceful protest action”.

Amendment of section 40.

3. Section 40 of the principal Act is deleted and replaced with a new section 40 as follows -

“Protest action to promote or defend socioeconomic interests.

(1) An employee who is not engaged in an essential service has a right to take part in a peaceful protest action to promote socio-economic interests of workers if -

- (a) the protest action has been authorized by a registered organization or federation; and
- (b) the organization or federation has served notice to the Labour Advisory Board of its authorization in terms of paragraph (a) which notice shall contain or state -
 - (i) the reason for the protest;

- (ii) the nature of the intended action;
 - (iii) the steps taken to resolve the issue giving rise to the protest action;
 - (iv) the notice given to the authorities responsible for public order so that the necessary measures can be taken to ensure the safety of protesters and the public; and
- (c) the notice has been given at least 14 days before the commencement of the protest action.

(2) The Labour Advisory Board shall within 7 days from the time it receives notice under subsection (1), put in place mechanisms to resolve the issues giving rise to the protest action, which issues shall not include purely political matters.

(3) Where the matter is not resolved within the 7 day period referred to in subsection (2), the period may be extended at the request of the parties concerned, or the period may be extended by the Labour Advisory Board where the party intending to take protest action fails without reasonable cause to attend meetings called by the Labour Advisory Board to resolve the matter pursuant to subsection (2).

(4) Where the matter is not resolved within 7 day period referred to in subsection (2), or within any further period pursuant to subsection (3), the Labour Advisory Board shall inform the relevant employers' organization or organizations and the Commission.

(5) Prior to taking protest action, the party intending to take such action shall conduct by secret ballot a vote of -

- (a) in the case of a federation authorizing the action, its affiliates or
- (b) in the case of a registered organization authorizing the action, its members,

and the Commission and the Labour Advisory Board shall be informed of the results of the ballot within 24 hours of the holding of the ballot.

(6) The party intending to take protest action may request the Commission to conduct the secret ballot referred to in subsection (5), in which case the ballot must be completed within 5 days of such request being made and the parties and the Labour Advisory Board shall be informed of the results of the ballot within 24 hours of the holding of the ballot.

(7) Where a ballot has been conducted by the Commission under subsection (6), the results shall be deemed to be conclusive.

(8) The protest action shall be deemed to be in conformity with the Act where -

- (a) pursuant to a secret ballot undertaken in accordance with subsection (5)(a), a quorum of at least 40 per cent has been achieved, and over 50 per cent of those casting ballots have voted in favour of the protest action; or
- (b) pursuant to a secret ballot undertaken in accordance with subsection (5)(b), a quorum of at least 35 per cent has been achieved, and over 50 per cent of those casting ballots have voted in favour of the protest action; or
- (c) the Commission having been requested to conduct a ballot has failed to conduct the ballot or to notify the results of the ballot under subsection (6).

(9) Any interested party aggrieved by the decision to take protest action may refer the matter to the Court for an order which may be granted by the Court under subsection (10).

(10) The Court shall have exclusive jurisdiction -

- (a) to restrain an organisation or federation or any person from participating in a protest action or in any conduct in contemplation or in furtherance of protest action that does not comply with subsection (1); and
- (b) in respect of protest action that complies with subsection (1), to grant a declaratory order after having considered -
 - (i) the nature and duration of the protest action;
 - (ii) the steps taken by the registered trade union or federation to minimize the harm caused by the protest action; and
 - (iii) the conduct of the participants in the protest action.

(11) A person who, and an organisation or federation which, takes part in protest action or in any conduct in contemplation or in furtherance of a protest action that complies with subsection (1) enjoys the protection conferred in the case of a lawful strike.

(12) Notwithstanding the provision of sub-section (11), an employee forfeits the protection against dismissal conferred by that sub-section, if the employee -

- (a) takes part in a protest action or any conduct in contemplation or in furtherance of a protest action in breach of an order of the Court;
- (b) otherwise acts in contempt of an order of the Court made in terms of this section.

(13) Notwithstanding the provisions of subsection (11), a federation, organization or any of its officers, representatives or members shall not be exempt from any civil liability for any criminal, malicious or negligent acts."

Amendment of section 52

4. Section 52 of the principal Act is amended -

- (a) by deleting and replacing subsection (1) with a new subsection (1) as follows -
 - "(1) In the absence of a recognised or registered trade union or staff association an employer, in an undertaking employing twenty-five or more employees, shall establish a Works Council."; and
- (b) by deleting subsection (8).