

**RIAL Technical Cooperation Fund of the
IACML of the Organization of American States
One-week study-tour to the
Industrial Disputes Tribunal of Jamaica
October 14-19, 2013**

Background

On April 15, 2013 the **Employment Rights Act, 2012** was proclaimed in Barbados. Amongst its provisions was for the establishment of an Employment Rights Tribunal.

Through the RIAL Technical Cooperation fund, assistance was provided for a study tour to Jamaica to observe the practices and procedures of its Industrial Disputes Tribunal.

On October 13, 2013, Mrs. Linda Bowen, **Senior Labour Officer (ag)**, and Miss Angela Knight, **Legal Officer**, departed Barbados for Jamaica for five days' duration ending October 19, 2013. Both members of the delegation attended all sessions together during the period under review.

Brief Description of the Activity or Activities

During the period, the delegation visited both the Ministry of Labour and the Industrial Disputes Tribunal. On Monday, October 14th, 2013, the delegation visited and was based at the Ministry of Labour, whilst during the period October 15th-October 18th, 2013, the delegation was based at the offices of the Industrial Disputes Tribunal.

Day 1

Monday, October 14, 2013

On arrival at the Ministry of Labour, we were introduced to all Staff. The morning was spent in the Labour Inspectorate and Registry Sections of the Ministry where the delegation was briefed on the organizational structure of the Department. The principles and processes of collective bargaining, conciliation and adjudication in Industrial Relations in Jamaica were highlighted and it was pointed out that these units provide advisory services to members of the public, employers, employees and trade unions. Advice is given to persons walking in and telephone requests.

Miss Faylene Foster - Director of Pay and Conditions of Employment Branch III, gave insight into the work of the Ministry, pointing out that its promotion and maintenance of industrial harmony in Jamaica, is achieved through attention to the following:

- Conciliation
- The Industrial Disputes Tribunal
- The Pay and Conditions of Employment Branch/Minimum Wage Section
- Minimum Wage Advisory Committee
- The International Labour Information and
- Occupational Safety & Health

Advice is given by the Ministry in all of the above areas. **Miss Foster** also spoke of the duties of Conciliation Officers and Labour Relations Officers, their roles in the dispute procedure, the conciliation process, referrals to the Conciliation Section and/ or the Minister or the Industrial Disputes Tribunal, collective agreements and the role of the Minister of Labour. The Jamaican position in this regard must be contrasted with the Barbados position where Labour Officers in Barbados performed both roles of Conciliating and the role of labour relations personnel. In Jamaica the functions are separate with Conciliation Officers performing the role of Conciliators and Labour Relation Officers performing the role of labour relations experts.

She informed that the objective of the Conciliation function is to resolve disputes relating to the unionized workforces as they occur. As such the Section seeks to settle disputes in respect of:

1. Negotiations to establish Labour Management Agreements;
2. Issues relating to the administration of Labour Management Agreements;
3. Termination and suspension of employment of workers and;
4. Any matter affecting the privileges, rights and responsibilities of any worker or organization representing workers.

Miss Foster concluded our attachment with that section by giving an overall synopsis of the work of the Ministry. The Ministry of Labour, she explained is increasing its effort to create an awareness of industrial relations and continues to promote and enhance its outreach services as in order to:

- continue the commitment to the tripartite effort in Industrial Relations;
- create and lay the foundation for a less turbulent industrial relations climate;
- promote good industrial relations both in terms of productivity and ensuring the long-term survival of the organization;
- Provide information and understanding about rights and responsibilities in an employment relationship and some issues surrounding the changing forms of production.

With the aim of sensitizing the working and potential working population to their respective rights and responsibilities in an employment relationship, additional services are offered through:

- Presentations, role-play exercises and causes studies
- Workshops and Seminars
- Participation in career fairs
- Discussions on legal rights and obligations under the labour laws
- Discussions on accepted or recommended customs, norms and practices under the Labour Code.

We were informed that the Ministry is divided into General services, Essential services and Occupational Safety and Health.

Later in the same day, the participants met with the Chief Technical Director of Industrial Relations and Allied Services - **Mr Karl Wedderburn** who spoke of efforts to resolve disputes at the conciliation level, the processes involved in the referral of matters to the Industrial Disputes Tribunal, in cases where there is no resolution. He stated that the Terms of Reference of each case must be clearly determined. There was discussion on the Jamaican legislation and the powers of the Minister under the Act to refer or not to refer matters to the Tribunal. Where, the Minister under the Act, is not satisfied that a matter should be sent to the Tribunal, the Minister has the power not to send such a matter to the Tribunal. The Minister may alternatively request that the parties go back to conciliation and seek to resolve the matter.

He also stated that The Minister of Labour may refer disputes to the Tribunal under the following circumstances:

- If the Minister is satisfied that attempts were made, without success, to settle the disputes by other means available.
- If all circumstances surrounding the dispute constitute such an urgent situation that it would be expedient so to do.
- If it is an essential service and unlawful industrial action is occurring.
- Where parties request that the matter be referred to the Tribunal after exhaustion of other procedures.

The Barbados delegation further toured the Legal Unit, where it met with **Mrs Diane Thompson-Clarke**, one of three Legal Officers attached the Department. She pointed out that:

- All awards and judgements made at the Industrial Court are copied to the Ministry of Labour
- That these awards and judgements are filed according to the year in which these judgements were made
- That formerly, only a unionized worker could take a matter to the Tribunal, now a Non-Unionized worker can take such a matter.
- That cases of Unfair Dismissal, the procedures of Natural Justice has to be evident as set out in the Labour Relations Code
- That the Ministry of Labour is in no way connected to the work of the Industrial Disputes Tribunal.

The final activity of that day was when we were given the opportunity to sit in a Conciliation Meeting, chaired by Labour Conciliator - **Mr Ulric Brown**. In attendance were: **Miss Tenia Christie** the complainant (an employee of the Company)

on the one hand and **Mr Xavier Mayne**-the Company's Attorney and **Miss Ramona Guy** - the Assistant Human Resource Manager of the Company on the other hand.

In this matter, **Miss Christie** had asked the Ministry's intervention, alleging that she had been unfairly treated, been wrongfully accused of theft, had been made to undergo a polygraph test and had been placed on 'indefinite suspension' from her workplace. Her request was for payment of wages owed. The Attorney although maintaining that **Miss Christie** had been justifiably suspended, believed that **Miss Christie** was free to seek employment elsewhere.

In the end there was agreement that the Attorney would send a letter to **Miss Christie** (and copied to the Department), outlining that she was suspended pending the outcome of a Police investigation. He stated further that if the matter was resolved satisfactorily, **Miss Christie** would be given what was legally due her in terms of remuneration.

The delegation was particularly pleased that it was not only allowed the opportunity to be in attendance but further to make an input in the discussions, by expressing its views and asking questions.

Day 2

Tuesday, October 15, 2013

This was the first day at the Industrial Disputes Tribunal and the delegation was assigned to **Mrs Maureen Kennedy** - Secretary of the Tribunal, who spoke of her specific duties and responsibilities to the Tribunal in terms of receiving and recording of matters referred, liaising with individual parties, obtaining proper documentation and setting down each matter for hearing. Thereafter she introduced us to the Office personnel there.

We next met with **Mr Norman Wright, Queens Counsel** - Chairman of the Tribunal who informed on the regulations governing the Tribunal and its operational procedures; some of which include:-

- If industrial action is threatened or has begun and the dispute is referred to the Tribunal it can order that such industrial action not take place or cease from such time. If the order is disobeyed, offenders may be prosecuted.
- The Tribunal has the power to summon any person before it to give evidence or produce papers and records in his control.
- It may administer an oath/take affirmation of any witness appearing before it.
- It may conduct its hearings in private for the purposes of hearing evidence.
- No action may be taken against members of the Tribunal in respect of action done during the course of operations. Its members therefore enjoyed immunity.
- It can conduct its hearings with the presence of one party if the occasion arises (ex parte hearings).
- The Tribunal is not required by law to give reasons for its awards, but it may do so where it is deemed necessary.
- That the Tribunal cannot make an award that is inconsistent with any law involving wages, conditions of employment and hours of work.
- That the Tribunal cannot make an award that is inconsistent with the national interest.

The Chairman also spoke of the physical layout of the Tribunal hearing rooms and the delegation was introduced to respective members of the Tribunal. We were able to tour the Tribunal's general offices, Tribunal Hearing rooms, and observe a Tribunal

Hearing where we were introduced to the complainants' and defendants' legal representatives in the case.

The delegation was also introduced to the Tribunal's Attorney-at-Law - **Miss Tanya Ralph** who spoke of her role, emphasized that the Tribunal was a completely separate entity form the Ministry of Labour; provided guidance on the tenets of Jamaican legislation, the role of the Minister of Labour and the Administrative Authority of the Tribunal. She also undertook to provide the delegation with copies of Tribunal judgments.

It must be pointed out that the delegation was assigned to the premises of the Tribunal for the remainder of the week.

Day 3

Wednesday, October 16, 2013

The Delegation attended a Tribunal Hearing involving **Naranda Company Ltd and University and Allied Workers Union (UAWU)**. The said Union was represented by **Senator Lambert Brown**, which dealt with the question of incentive pay for five groups of workers and the wording of a confidentiality clause.

At the adjournment of the hearing, the delegates were again assigned to Attorney -at- Law Tanya Ralph, who further expanded on the role and function of the Tribunal.

Day 4

Thursday, October 17, 2013

The delegation again met with Attorney-at Law, **Miss Tanya Ralph**. She gave further insight on the procedures for dealing with an industrial dispute referred for arbitration to the Industrial Disputes Tribunal. The steps appeared to be as follows:

- The Secretary of the I.D.T advises the parties that a matter with a stated terms of reference has been referred to it by the Minister of Labour.
- Parties are summoned to a preliminary hearing where industrial action is taking place or threatened (usually a mutually agreed date).
- A division of the Tribunal constituting the Chairman and two other members conducts the hearing. A secretary and one or two recording steno typists are also required to be present.
- Undertakings from both parties are given to supply written briefs within a specified time. If parties are unable to supply briefs, by the deadline, parties must request an extension of time in writing.
- The company and/or union may wish to be represented at the hearing by an Attorney-at-Law or Consultant.
- Once briefs are submitted the Tribunal will schedule a meeting. Opening submissions are usually taken from the aggrieved side, usually the union, who will begin the hearing. Where the dispute relates to the collective agreement, the union usually speaks first and the employer speaks first on disciplinary matters.
- Witnesses are summoned, documents presented and all relevant evidence submitted in support of the case.
- Upon completion of the hearing, an award is handed down. At least two members of the division (a simple majority) must sign the award to make it binding. Where all three members disagree,

the Chairman hands down the Award. An Award may be retroactive but it must not predate when the dispute first arose.

- The award is to be made within 21 days after reference or if it is impracticable to make the award within that time, it is to be made as soon as may be practicable with the agreement of the parties.
- The Minister or the parties may seek interpretation of the award.
- Where a dispute has been referred to the Tribunal and the parties reach full agreement before the Tribunal begins to deal with the dispute, the parties must furnish the Tribunal with a copy of the signed agreement and also a letter of request to the Minister to withdraw the dispute.
- The Tribunal must ensure that awards are capable of being implemented. The Tribunal makes awards that are binding and final. These awards can only be overturned on a point of law.

Subsequent to this discussion and obtaining the above relevant information, the delegation then sat in on the continuation of the hearing between **Naranda Company Ltd and University and Allied Workers Union.**

Day 5

Friday, October 18, 2013

The delegates attended a tribunal hearing involving **Nestle Jamaica Ltd.** This involved the dismissal of one of its Security Guards for willfully defrauding the Company. After representations by the parties, this matter was adjourned to November 10, 2013.

This concluded our official sessions, training and sensitization. The delegation was invited to lunch with the members of the three Tribunals of the Industrial Disputes Tribunal.

MAIN RESULTS AND FINDINGS

- The Industrial Disputes Tribunal (IDT) is an autonomous organ of the Ministry that hears and determines claims to do with employment matters. These include a range of claims relating to unfair dismissal, breach of contract, wages/other payments.
- The major plank in maintaining the essences of industrial relations policy and practice within a legalized atmosphere has been the move to a tribunal, specifically for labour matters.
- The degree of authority of the Minister of Labour in Jamaica far outweighs that accorded Barbados' Minister. In Barbados the Chief Labour Officer administers the Act and even in this regard, his powers are not as extensive as those as the Minister in Jamaica. In Jamaica there is no such post as that of a Chief Labour Officer.
- Evidence of a separate entity - The Tribunal is no way connected to the Ministry of Labour, even in physical location.
- That the Attorney-at-Law at the Tribunal was not extensively involved in the decision making of the Tribunal and that there is no interaction between the Attorneys-at -Law of the Ministry of Labour and the Tribunal.
- The decisions emanating from the judgements given by a Tribunal set specifically for Labour matters could and should more easily reflect Industrial Relations practice. Industrial relations practices may not as easily be taken into consideration in a Magistrates' Courts.

LESSONS WHICH CAN BE REPLICATED

- A greater focus should be placed on the impact that the industrial relations system has on the social and economic development of the country and consequently to the prominence given to the agencies that administer its policies.
- A similar study tour should be considered whereby other officers can be exposed to the work and expertise of the Industrial Tribunal.
- Clear procedures and guidelines along similar lines of those practised when preparing matters for Court can be observed and put in place for Tribunal Hearings, although one must caution here that the procedure of the Tribunal and that of the Court should not be identical.
- Identification of and selection of separate premises, appropriate institutional staffing and implementation of efficient library and registry systems for the Tribunal need to be considered.

NEXT STEPS

The Labour Department has served an auxiliary role in facilitating and assisting parties in narrowing the differences between them to a point where they meet agreement. This is and has always been a free and voluntary process. Now with the introduction of the **Employment Rights Act, 2012** as another mechanism in seeking dispute resolution, it would be prudent to ensure that:

- The requisite staffing and financial needs to make the Tribunal fully functional and operational be considered.
- Separate premises are to be identified for the Tribunal once a budget for this has been approved, but in the meantime the Tribunal's hearing will occur at the Warrens Office Complex in a room dedicated as a Hearing Room.

- Documentation obtained on Jamaica's Tribunal Hearings is shared with the Barbados Tribunal, where possible and once it is not a breach of confidentiality.
- Budgetary proposals submitted by the Tribunal will have to be considered by the Ministry of Labour and Ministry of Finance.
- The Barbados Tribunal is now in the process of preparing its Rules for approval.
- Hearing will commence as soon as is reasonably practicable in 2014.
- The process of outfitting the Hearing Room has started and staff members will familiarize themselves with the Liberty Court Reporting Operation System so that recording of hearings can occur effectively. There is no provision in Barbados for the typists at the hearings and instead there is provision for the recording of hearings.
- Tribunal members and staff of the Labour Department, who will work with the Tribunal, will familiarize themselves with the operation and functions of other tribunals in Barbados such as the Consumer Claims Tribunal and the Severance Payment Tribunal.

EVALUATION OF THE ACTIVITY AND RECOMMENDATIONS

The agenda as outlined for the Study Tour were given as:

- An opportunity to gain practical and theoretical insights into the operations of Jamaica's Industrial Relations Procedures, the Industrial Disputes Tribunal and undertake a comparison of these procedures.

Insomuch therefore as the above represented the department's focus for the study tour, those objectives were realized.

At this point, in time the Delegation wishes to formally thank your organization for assisting us in this Study Tour. We thank you on behalf of the Labour Department.