
CHAPTER 27

THE ANTIGUA AND BARBUDA LABOUR CODE

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LABOUR CODE

(19th September, 1975.)

14/1975.
3/1976.
S.R.O. 7:1975.
S.R.O. 46/1981.
S.I. 23/1982.
S.R.O. 45:1984.
7/1989.
18/1989.

DIVISION A

Declaratory

A1. This Act may be cited as the Antigua and Barbuda Labour Code and this Division of this Act may be separately cited as the Antigua and Barbuda Labour Code (Declaratory) Division. Short title.

A2. It is the intent of the Legislature, to bring together, insofar as is practicable, all legislation applicable to employment, employment standards, and industrial relations in Antigua and Barbuda so that — Intent underlying enactment.

- (i) employers and employees can more expeditiously ascertain information as to their rights and responsibilities;
- (ii) persons inside and outside Antigua and Barbuda considering the investment of funds in enterprises to be based in Antigua and Barbuda will have a centralised source of information as to the rights and responsibilities of management and of labour; and
- (iii) legislation can be more amenable to revision, when revision is appropriate.

A3. As further amplified in the various Divisions of this Code, it is hereby declared that the following expressions of national policy underlie and shall be used in the interpretation of the various provisions of this Code: National policy underlying Code.

(1) The interests of workers, employers, and the public should be taken into account and their representative organizations duly consulted in connection with the formulation and periodic revision of the law relating to labour and in connection with the resolution of issues arising in the enforcement of said laws.

(2) Employers should compete on the basis of managerial efficiency and ability rather than on the basis of their employees⁷ working conditions.

(3) The employment conditions of each worker should be those which, at the least, will enable him to provide himself and his family with the amenities of life to which all human beings are entitled.

(4) The employment conditions of workers should be those which serve to preserve their health, safety, and welfare, and to prevent industrial accidents.

(5) Workmen should be free to associate with one another or with a trade union to improve their lot, without interference, restraint, or coercion.

(6) Equality of bargaining power between employees and their employer is to be encouraged as a means of providing a channel of free communication, of equitably resolving problems related to working conditions, and of forestalling avoidable interruptions of production.

(7) Government should provide machinery for the speedy resolution of any question concerning representation of employees by bargaining agents; and, upon resolution of any such question, should require employer recognition of the registered trade union which is the choice of the majority of the involved employees.

(8) Collective bargaining, free of external interference, is to be encouraged; but where free collective bargaining fails, Government should provide machinery for the resolution of questions whose continued existence may harm the economy of Antigua and Barbuda.

(9) The increase in production and in purchasing power which will result from the application of the above principles will benefit workers, employers and consumers and finally will advance the overall socio-economic level of Antigua and Barbuda.

A4. (1) This Code is composed of a number of Divisions the first constituting a declaratory Division and the other nine Divisions each constituting a Division dealing with one or more facets of employment and labour relations. Organization and content of the Code.

(2) The Code is composed of the following Divisions:

- (a) Division A Antigua and Barbuda Labour Code (Declaratory) Division;
- (b) Division B Antigua and Barbuda Labour Code (Administration) Division;
- (c) Division C Basic Employment Division;
- (d) Division D Employment Health, Safety and Welfare Division;
- (e) Division E Women, Young Persons, and Children (Employment) Division;
- (f) Division F Work Permits Division;
- (g) Division G Trade Unions Division;
- (h) Division H Bargaining Agents' Registration Division;
- (i) Division J Employee-Representation Questions (Resolution) Division; and
- (j) Division K Industrial Relations (Regulation) Division.

A5. In this Code unless the context otherwise requires, or the particular Division otherwise specifies— Interpretation.

"Arbitration Tribunal" means the body established by section B8 and each member thereof may be referred to herein as a "Code Arbitrator";

"bargaining agent" or "bargaining representative" means the person, organization, or trade union duly

designated or authorized to represent either employer or employees in negotiating the working conditions of employees; in negotiating the terms of a collective agreement embodying said conditions and, if such agreement is reached, to execute the same; in administering said agreement on behalf of its respective principal; and, generally, in representing its respective principal for the life of its designation or authorization on all matters relating to said conditions of work;

"bargaining unit" means that group of employees in relation to whom collective bargaining is, or could appropriately be, carried on between an employer or his bargaining agent and a bargaining agent of such group of employees;

"Code" means the Antigua and Barbuda Labour Code;

"collective agreement" means any contract between an employer or his bargaining agent and a group of employees or their bargaining agent, governing the working conditions of such employees;

"Comptroller of Customs" means the officer for the time being lawfully discharging the duties of Comptroller of Customs or anyone authorized by him in writing to act on his behalf.

"conditions of work" or "conditions of employment" refers to the elements of hire and termination of employment; to the remuneration, hours, duties and the surrounding terms of employment; and to all other factors directly related to the employment arrangement;

"Division" means a Division of this Code;

"employee" means any person who enters into or works under or stands ready to enter into or work under, a contract with an employer, personally to perform any services or labour, whether the contract be oral or written, expressed or implied; and the term includes a person whose services or labour have been interrupted by a suspension of work during a period of leave, temporary lay off, strike, or lockout, as

well as an apprentice whose services or labour may be designed primarily to train such apprentice; but the term does not include established employees of the Government;

“employer” means any person, including any of his representatives, who contracts for or stands ready to contract for the services or labour of an employee and the term includes any body of persons corporate or incorporate;

“employers' association”, means any organization in which employers participate, and which exists for the purpose, in whole or in part, of dealing with trade unions on behalf of employers over conditions of work; and the term covers any such organization registered under Division H (thereby acquiring various rights and privileges under this Code) as well as those not registered thereunder (thereby only subjecting them to the duties and responsibilities imposed by the Code);

“employment contract” means any contract, whether expressed or implied and whether written or oral, whereunder it is agreed that one person (the employee) will perform certain services for another (the employer); and the term shall include any indenture or contract of apprenticeship;

“essential service” means one of the services specified in the Schedule to Division K;

“established employee” means a Civil Servant or a person employed by the Government whose salary is paid from or out of personal emoluments included in the Official Estimates of Antigua and Barbuda;

“grievance” means any complaint or expression of dissatisfaction whether or not justified, on the part of employees or employers, or their bargaining agents, concerning existing working conditions; and the term includes any failure to honour a term of a contract of employment;

“industrial action” means any strike or lockout;

“Labour Commissioner” means the Chief Public Officer of the Labour Department;

"lockout" means an employer's closing of an enterprise or business place, his suspension of work, or his refusal to continue to employ any number of his employees, with a view toward inducing or compelling employees directly, indirectly, or through their bargaining agent, to accept conditions of employment which he has offered, which offer has been rejected; and the term includes such action designed to induce or compel the acceptance by the employees, or their bargaining agent, of another employer of conditions of employment which he has offered but which have been rejected;

"Minister" means the Minister responsible for administering the respective provisions of this Code;

"National Labour Board" means the body established by section B 7;

Cap. 292.

"newspaper" shall have the meaning assigned thereto by section 2 of the Newspaper Surety Act.

"non-established employee" means a person who is employed by the Government whose wage or salary is paid from or out of funds other than personal emoluments included in the Official Estimates of Antigua and Barbuda;

"registered bargaining agent" means a bargaining agent who has been registered under Division H;

"requirements", "obligations", or "provisions", include the requirements, obligations, or provisions of any regulations or orders made under this Code;

"Schedule" means Schedule to the Division of this Code within which the reference occurs;

"strike" means a partial or total withdrawal of services from an employer by two or more of his employees, in concert or pursuant to a common understanding, or at the request or upon the order of their bargaining agent, either (a) as a protest against a condition of work or employer action related thereto, or (b) as a device to induce or compel their employer, or his bargaining agent, to accept conditions of employment which they have requested,

which request has been refused; and the term includes such action designed to induce or compel the acceptance by another employer, or his bargaining agent, of conditions of employment which his employees have requested, which request has been refused; and the term further includes picketing related to working conditions and/or labour relations, generally, whether by employees or non-employees and whether or not signs are carried or posted and whether or not literature is being distributed;

"trade dispute" (or "industrial dispute") means any disagreement between employer and workers or between worker and worker over conditions of employment, the engagement or non-engagement or termination or suspension of employment of one or more workers, the allocation of work as between workers or groups of workers, the terms or interpretation of a collective agreement, or any other matter relating to the employer-employee relationship, which disagreement has led, or may lead, to an interruption of employment by lockout or by strike;

"trade union" means any organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers on behalf of employees over conditions of work; and the term covers both such organizations as are registered under Division H (thereby acquiring various rights and privileges under this Code) as well as those not registered thereunder (thereby only subjecting them to the duties and responsibilities imposed by the Code);

"wages" means any money or other thing paid or contracted to be paid, delivered, or given at periodic intervals, as recompense, reward, or remuneration for services or labour done or to be done;

"working conditions" is used synonymously with "conditions of work", and

"workman" is used synonymously with "employee".

Employers and employees affected.

A6. (1) To the extent that provisions of this Code apply to employers, they shall apply to all employers operating or doing business in Antigua and Barbuda, including the Government as the employers of its non-established employees; but they shall not bind the Government as the employer of its other employees.

(2) To the extent that provisions of this Code apply to employees, they shall apply to all employees of employers operating or doing business in Antigua and Barbuda, including the non-established employees of the Government; but they shall not apply to—

- (a) established employees of the Government;
 - (b) persons in the naval, military, or air forces of the Government;
 - (c) the Police Force;
 - (d) persons holding the status of diplomatic agents;
- or
- (e) persons employed by the United Nations or its specialised agencies.

Enforcement against Government as an employer.

A7. To the extent that the Government as an employer is in contravention of any provisions of this Act or any regulations or orders thereunder, which contravention is described therein as an offence carrying with it a liability upon summary conviction to a term of imprisonment or a fine, the court shall issue an order declaratory of the rights of the parties.

Establishment of working conditions above minimum standards in Code.

A8. Nothing herein shall be construed as prohibiting an employer, either unilaterally, by individual contract with an employee or with employees, or by collective agreement with employee representatives, from establishing working conditions more advantageous to employees than those minimum standards which are set forth in this Code.

Access to machinery of Code.

A9. Bargaining agents, whether employers' associations or trade unions, shall not have access to the machinery provided under this Code if they do not possess a current certificate of registration under Division H.

A10. To the extent that there may be conflict between any provision of this Code and any provision of existing law not specially repealed in one or another of the Divisions herein, the applicable provision of this Code, as of its effective date, shall prevail over said provision of existing law.

Conflict between provisions and existing law.

A11. The provisions of this Division shall become effective immediately upon enactment.

Effective date.

DIVISION B

Administration

B1. This Division may be cited as the Antigua and Barbuda Labour Code (Administration) Division.

Short title.

B2. It is hereby declared that the following principles shall govern the administration of the Code:

National policy.

(1) Responsibilities shall be fixed, so that administrators, employers and employees and their representatives, and the general public shall know wherein the responsibility for the administration of each provision lies.

(2) Voluntary adjustment or settlement of issues, without formal action by the administrators, is to be encouraged; and any such adjustment or settlement, unless clearly contrary to the purposes of the Code or of any of the Divisions, shall be accepted as dispositive of the issues thus adjusted or settled.

(3) Uniform procedures, to the extent practicable, shall be established and publicized.

(4) Where standards or criteria are set forth in one or another provision of the Code, they shall be adhered to in the administration thereof.

(5) Administration of the Code shall be speedy.

(6) To the extent practicable, all actions taken by administrators of the Code shall be recorded in writing and, except where they are self-evident, reasons for the actions shall be set forth in such writings.

(7) Actions of administrators of the Code shall be publicized to the extent practicable:

Provided, however, that nothing herein should be construed as requiring that the efforts of said administrators to secure voluntary adjustment or settlement of issues, or the actions or statements of parties engaged therein, shall necessarily become matters of public knowledge.

(8) Persons to whom the administration of one or other of the provisions of the Code is entrusted shall act, in connection therewith, impartially and without interference.

Interpretation.

B3. In this Division, unless the context otherwise requires -

"Board of Review" means the three members of the Labour Board who have been selected to sit in review of any matter as specified in section B 13;

"decisional officer" means the Code Arbitrator or Arbitrators or the Hearing Officer to whom a matter has been referred for formal handling under section B 6 (2) (c) and includes the members of the Labour Board if and when they are acting on a Board of Review under section B 13;

"formal handling" means the decisional process to which a matter is subjected pursuant to section B 6 (2) (c); it commences with the order of referral and concludes with the issuance and delivery of a decision or, if there is any request for a review thereof, with the decision on review;

"infringements" refers to acts which may be deemed to be violative of employees' self-organizational rights, as covered by Part I of Division K;

"inspector" means a Labour Inspector within the Labour Inspection Service of the Labour Department;

"major trade dispute" is a trade dispute as described in section K 13;

"recognition-question" refers to any employer's obligation or non-obligation to treat with the collective bargaining agent of his employees;

~~“representation question”~~ refers to any question arising as to the employees' choice of bargaining agent, as covered by Division J;

“severance pay” means the right to remuneration, and/or the amount thereof, which may be possessed by an employee upon the termination of his employment under certain circumstances, as covered by Part 4 of Division C; and

“unfair dismissals” refers to terminations of employment which may be deemed to be unfair dismissals covered by Part 5 of Division C.

B4. Except where otherwise specified in this Code, the Minister shall be responsible for the administration of the provisions of this Code; but in discharging this responsibility he may delegate authority to perform such acts as do not call for the exercise of his personal discretion.

Overall
responsibility.

B5. (1) The Labour Commissioner shall be responsible for the administration of such provisions of the Code as are assigned him therein and in addition, as are assigned him by the Minister.

Responsibilities
of Labour
Commissioner.

(2) In addition to his other duties, he shall receive and cause to be recorded all questions, complaints, petitions, or notifications with respect to employer-employee relations in Antigua and Barbuda, and he shall take the preliminary steps thereon, namely—

(a) Upon receipt of any such question, complaint, petition, or notification, he shall investigate the matter and shall make every effort to dispose of the issues raised therein by voluntary adjustment or settlement, the terms of which adjustment or settlement are not clearly repugnant to the principles and purposes of the Code; and in pursuance thereof—

- (i) he may request the parties to meet with him, jointly or severally;
- (ii) he may request the parties to state the facts as they know them and to set forth their respective positions on the issues;

- (iii) he may request the parties to present witnesses to facts and he may, *sua sponte*, examine any person as to the matter, alone or in the presence of others, at his discretion; and
- (iv) he may utilize the processes of mediation or conciliation, or any other device designed to facilitate voluntary adjustment or settlement.

(b) Failing to achieve voluntary adjustment or settlement, he shall transmit the matter, with a full report thereon, to the Minister.

(3) In addition to his other duties, he shall act as executive secretary for the National Labour Board created hereinbelow, for any decisional officer to whom a matter has been referred for formal handling under section B 6 (2) (c) and for any Board of Review. As such —

- (a) he shall ensure that the records of all proceedings are maintained; and
- (b) he shall ensure that all reports and decisions are appropriately disposed of.

(4) In addition to his other duties, he shall, to the extent practicable, hold himself ready to assist in the resolution of any question arising out of employer-employee relationships in Antigua and Barbuda, whether or not it arises by virtue of the provisions of this Code.

Responsibilities
of Minister on
Section B5
referred by
Labour
Commissioner.

B6. (1) In addition to his other duties, the Minister, upon receipt of a report of the Labour Commissioner transmitted under section B 5 (2) (b), shall himself attempt to achieve voluntary adjustment or settlement of the matter by taking whatever steps he deems appropriate.

(2) Failing to achieve voluntary adjustment or settlement—

- (a) he may refer the matter back to the parties for private negotiations or resort to any machinery for resolving the issues which they have established or may establish, or for the pursuit of any legal action which may be available to them;

(b) he may refer the matter to the proper authorities if he believes prosecution for the commission of an offence is indicated; or

(c) he may refer the matter for formal handling to a decisional officer who, under the Code, is vested with the responsibility of hearing and deciding such matter:

Provided that—

- (i) the referral is in writing;
- (ii) the referral is transmitted to the Labour Commissioner and copies are served on the parties concerned;
- (iii) the referral specifies the provisions under which the matter shall be heard; and
- (iv) if any matter involving an issue which under this code, is to be heard by an Arbitration Tribunal, the referral as a whole shall be to the Arbitration Tribunal.

B7. (1) A National Labour Board is hereby created composed of representatives, in equal numbers, of the Government, employers, and employees, selected as follows—

Labour Board:
its creation,
composition,
responsibilities,
procedures, and
compensation.

(a) four members representing Government, one member each nominated by the Ministers responsible for labour, for planning, for agriculture and for education:

Provided that the Labour Commissioner may not be nominated as a member;

(b) four members representing employers nominated by employers or employers associations designated by the Minister;

(c) four members representing employees nominated by employees associations or trade unions designated by the Minister,

who shall out of their own numbers have such person as chairman as the Minister may designate, who shall preside at all meetings of the National Labour Board and who shall himself designate another member to act as chairman in his absence.

(2) The National Labour Board, shall meet in plenary session at least once per year and at other times—

(a) upon the instruction of the Minister transmitted to the chairman, which instruction shall set forth the purposes thereof, the chairman shall issue a call for a special meeting; setting forth the purposes therefor; or

(b) upon receipt of the written request of at least one third of its members transmitted to its chairman, which request shall set forth the purposes thereof, the chairman shall issue a call for a special meeting, setting forth the purposes thereof.

(3) (a) It shall be the principal responsibility of the National Labour Board periodically to review the Code in the light of the development, economic and social needs of Antigua and Barbuda and to advise the Minister on the need for changes in said Code.

(b) In addition, members of the National Labour Board shall serve as a Board of Review as specified in section B 13 and shall discharge such other responsibilities as are assigned it in this and other Divisions and as are assigned to it by the Minister.

(4) (a) Advance notice of any meeting of the National Labour Board, and a statement of the purposes of such meeting, shall be sent to each member and be posted by the Labour Commissioner upon the bulletin board of the Labour Department, there to be maintained for a period of not less than ten days prior to the opening of the meeting, and he shall also cause it to be published at least one week previously in all newspapers published in Antigua and Barbuda.

(b) Persons wishing to be heard on the subject of a scheduled meeting of the National Labour Board may file a notice of same with the Labour Commissioner at least 24 hours in advance of said meeting.

(c) The National Labour Board, to the extent practicable, shall listen to anyone wishing to be heard on the subject of a particular meeting; but it may limit the time of any such speaker or it may require that the presentation be in writing.

(d) In addition, the National Labour Board may call upon any Government Department for assistance in ascertaining facts with respect to the subject of a

meeting; and it may call upon persons unconnected with Government for assistance therein.

(e) The absence of one or more members of the National Labour Board with respect to any of its deliberations shall not affect the validity thereof:

Provided that not less than two members representing Government, two members representing employers and two members representing employees shall constitute a quorum.

(f) The results of the deliberations of the National Labour Board on any matter shall be incorporated in a written report addressed to the Minister containing recommendations and the reasons for such recommendations; and, with respect to any such report, specially concurring, minority, or dissenting reports may be prepared.

(g) The National Labour Board's report and any specially concurring or minority or dissenting report, shall be transmitted to the Minister by its executive secretary.

(h) The executive secretary of the National Labour Board shall cause said report and any specially concurring or minority or dissenting report to be published in the *Gazette* within ten days of said transmission; and he shall thereupon cause a copy of said issue of the *Gazette* to be posted on the Labour Department bulletin board for a period of ten days.

(5) (a) The National Labour Board shall be an Honorary Body, and each of its members shall be awarded, for each year or fraction thereof of service thereon, an appropriate Certificate of Service signed by the Minister.

(b) No member shall be given nor shall he accept financial remuneration for these services by the Government or by any other party; except that he may be given and he may accept the remuneration for services he would have been rendering during the time spent on National Labour Board business, from the person or persons, including the Government, for whom such services would have normally been rendered; and he shall

be given and he may accept from the Government an allowance for any travel and travel subsistence expenses, to be fixed by the Minister after consultation with the Financial Secretary.

(c) Any person who offers or any member who accepts financial remuneration contrary to paragraph (b) shall be guilty of an offence and liable on summary conviction to a fine of fifteen hundred dollars.

(6) Each member shall hold office at the pleasure of his nominator.

Arbitration Tribunal: its creation, composition, responsibilities, procedures, and compensation.

B8. (1) There is hereby created an Arbitration Tribunal to hear and determine any major trade dispute whose membership shall consist of not less than seven and not more than eleven Code Arbitrators at all times to be selected as follows—

(a) Applications or nominations for membership on the Arbitration Tribunal, submitted by anyone, shall be considered, at special meetings called for the purpose, by the National Labour Board, who shall thereupon report to the Minister the results of its deliberations, including the extent of the affirmative and negative votes on any application or nomination.

(b) After receiving the National Labour Board's report on its deliberations, as described in paragraph (a), the Minister shall select the members of the Arbitration Tribunal.

(2) It shall be the responsibility of the Code Arbitrator or a Panel of Code Arbitrators, as the case may be, selected as prescribed in section K 16, to hear and determine major trade disputes referred under section B6 (2) (c).

(3) In said hearing and determination, the Code Arbitrator or Panel of Code Arbitrators may be assisted by assessors designated by the parties to the dispute:

Provided ~~that~~—

(a) the number of assessors designated by each party shall not exceed the number of Code Arbitrators designated to hear and determine the trade dispute; and

(b) the validity of the hearing and determination of a trade dispute shall be unaffected by the failure of any party to the dispute to designate the assessor to which it is entitled or by the failure of any designated assessor to assist in the hearing or determination.

(4) The hearing shall take place as soon as possible after referral, but, the Code Arbitrator or the Panel of Code Arbitrators, as the case may be, may call the parties into pre-hearing conference for the purpose of narrowing issues.

(5) At the hearing, the parties may present evidence on the issues; may argue orally; and may thereafter, in the discretion of the Code Arbitrator or Panel of Code Arbitrators, as the case may be, submit briefs within a time period set by him or them, as the case may be.

(6) Within the time provided by the applicable provision, the Code Arbitrator or Panel of Code Arbitrators, as the case may be, shall make a determination of the trade dispute.

(7) The determination of the trade dispute shall be made by the Code Arbitrator or, in the case of a Panel of Code Arbitrators, by a majority of the members of such Panel; and such determination shall be incorporated in a decision issued by the Code Arbitrators or Panel of Code Arbitrators, as the case may be, as follows—

(a) The decision shall be in writing.

(b) The decision shall contain findings of facts, with explanations therefor in the event of conflicting evidence.

(c) The decision shall contain a determination of all relevant issues presented, with the underlying reasons therefor.

(8) Whenever more than one Code Arbitrator has been designated to hear and determine a trade dispute and any vacancy occurs in their number, the remaining members may, with the consent of the parties, act notwithstanding such vacancy; and such consent given, no act, proceeding, or determination of the remaining members shall be called into question or invalidated by reason of any such vacancy.

(9) (a) Code Arbitrators may or may not be employees of the Government and need not be citizens or residents of Antigua and Barbuda. With respect to matters referred to them for formal handling under section B6 (2) (c), they shall receive a token remuneration from the Government on an *ad hoc* basis i.e. for time actually spent as a result of such referrals, plus an allowance for any travel or travel subsistence expenses, said remuneration and allowance to be set by the Minister, after consultation with the Minister responsible for Finance.

(b) The Code Arbitrators may, at their discretion, hold themselves out as available for the hearing and determination of trade disputes which are not referred for formal handling under section B6 (2) (c) but with respect to which the parties, by agreement, seek a hearing and determination by a Code Arbitrator or panel of Code Arbitrators. In such cases, as a service to the parties and only to the extent practicable, the Labour Commissioner shall make the necessary arrangements in accordance with the wishes of the parties, but the compensation and travelling allowance, if any, of the Code Arbitrators shall be paid by the parties.

(c) Assessors who participate in the hearing and determination of a trade dispute, as provided in subsection (3) shall be compensated, if at all, by the respective parties by whom they have been designated.

(10) Each Code Arbitrator shall hold office for a term of five years, except that his incumbency shall end earlier if—

(a) he resigns; or

(b) he is removed from office by a Court order for good cause unrelated to the exercise of his decisional processes, and he shall be eligible for re-election, under the procedures specified in subsection (1).

(11) The Arbitration Tribunal is hereby empowered to issue regulations covering its procedures which are not inconsistent with the provisions of this Code.

Hearing officers.

B9. (1) Any question, petition, charge or complaint concerning severance pay as covered by Part 4 of Division

C hereof, concerning alleged unfair dismissals as covered by Part 5 of Division C hereof, representation questions as covered by Division J hereof or infringements as covered by Part 1 of Division K hereof, which shall have been referred for formal handling as provided in section B 6 (2) (i), herein, shall be heard and determined by a Hearing Officer.

(2) The Hearing Officer shall be the Labour Commissioner or, in his discretion, his appointee from the Labour Relations Service of the Labour Department.

(3) The Hearing Officer may, in his discretion, call the parties into pre-hearing conferences, for the purpose of narrowing issues.

(4) At the hearing, the parties may present evidence on the issues; may argue orally; and may thereafter in the discretion of the Hearing Officer, submit briefs within a time period set by him.

(5) Within the time provided by the applicable provision, the Hearing Officer shall issue his decision in the matter—

(a) The decision shall be in writing.

(b) The decision shall contain findings of facts, with explanations therefor in the event of conflicting evidence.

(c) The decision shall contain a determination of all relevant issues presented, with the underlying reasons therefor.

(d) In the absence of a request for review within the time specified therefor, the Hearing Officer's decision shall become final.

(6) The Hearing Officer's decision shall be subject to review by a Board of Review, under the procedures laid down in section B 13.

(7) Hearing Officers under this section, who are fulltime employees of the Government, shall receive no extra remuneration for services rendered as Hearing Officers.

(8) The Minister is hereby empowered to issue regulation covering procedures before Hearing Officers and Boards

of Review under this section which are not inconsistent with the provisions of this Code.

Procedures before
decisional officer,
generally.

B10. The following shall be applicable to matters referred for formal handling under section B 6 (2) (c), whether by a Code Arbitrator or panel of Code Arbitrators or by a Hearing Officer:

(1) Decisional officers shall adhere to the time limits if any, set by the relevant provisions of this Code; failing this, they may be subject to Court Order upon an appropriate application.

(2) Parties may be represented before any decisional officer by themselves, by a legal practitioner, or by a representative of a registered employers association or registered trade union, or by any other person of their choosing.

(3) Admissibility of evidence before a decisional officer under this Code shall not be determined by the formal rules of evidence; all evidence sought to be introduced which is relevant to any issue before said body shall be received;

Provided, however, that—

(a) no evidence shall be received as to statements made or acts performed in connection with attempts to settle the issues by informal agreement; and

(b) the parties, or their representatives, may present, and the decisional officer shall consider, arguments as to the probative value of evidence received, even though such arguments are based, in whole or in part, on principles underlying the formal rules of evidence.

(4) (a) The decisional officer, either *sua sponte* or upon request of any party, shall be empowered to issue summonses requiring the attendance and testimony of witnesses and the production of any documents described therein, in the form prescribed in the Schedule.

(b) Upon a petition to revoke a summons calling for the production of documents filed by the summoned person not more than five days after service of the summons, the decisional officer shall revoke such summons if in his opinion the documents whose production

is required do not relate to any of the issues in the matter, the documents are not described in the summons with sufficient particularity, or there is other good cause for the revocation.

(c) All persons summoned to attend and give evidence or to produce documents before a decisional officer—

- (i) shall be bound to obey any summons served upon them which has not been revoked;
- (ii) shall be entitled to the same rights and privileges as a witness before a court of law; and
- (iii) shall be entitled to be paid their expenses, by the party summoning or requesting the summoning including travelling expenses at the rates prescribed for witnesses attending the Supreme Court:

Provided that, for good cause, the decisional officer may disallow such expenses, in whole or in part.

(d) Any person who—

- (i) without sufficient cause, fails or refuses to attend before a decisional officer in response to a summons issued under this subsection, or fails or refuses to produce any document which he is required by such summons to produce;
- (ii) being a witness, leaves the hearing without the permission of the decisional officer;
- (iii) being a witness, refuses without sufficient cause to answer any question put to him by or with the permission of the decisional officer; or
- (iv) wilfully or unlawfully obstructs or interrupts a proceeding before a decisional officer;

shall be liable on summary conviction to a fine of seven hundred and fifty dollars and to imprisonment for three months.

(5) If any question arises as to the interpretation of any decision of a decisional officer, any party to the matter may apply to said officer for a resolution of the question, and

his decision thereon, rendered with or without a further hearing, within his discretion, shall be deemed to form a part of and shall have the same effect as the original decision.

Independence of
decisional
officers.

B11. (1) Each decisional officer, with respect to the issues referred for formal handling shall hear and decide the issues without supervision or guidance and in such ~~respect—~~

(a) He shall not be given, and he shall not accept, *ex parte* arguments, advice, or other communications regarding such issues.

(b) No one shall supervise him (not even one who may be his supervisor as to his duties other than as a decisional officer) in connection with his conduct of a hearing, his consideration of evidence and arguments presented to him, or the decision he renders on the issues.

(c) No one shall promise or give him any reward and no one shall threaten him with or cause him to suffer any reprisal in connection with his handling of any issue formally referred to him.

(d) No one shall give him and he shall not accept or receive any reward or benefit in connection with his handling of any issue formally referred to him, either before, during, or subsequent to his handling thereof.

(e) No one shall require him to answer any questions as to the mental processes in which he engaged in arriving at his conclusions in any matter referred to him for formal handling, beyond that which is contained in his written decision.

(2) Decisional officers shall withdraw from, and they shall not, directly or indirectly, participate in any matter in which they may have a personal interest, financial or otherwise; nor shall they directly or indirectly participate in any matter in which, although they have not personal interest therein, the surrounding circumstances create an appearance of ~~personal~~ interest.

(3) Any one who contravenes the requirements of this section shall be guilty of an offence and shall be liable on

summary conviction to a fine of three hundred dollars and to imprisonment for one month.

B12. (1) A decisional officer, in his decision, is empowered to impose whatever remedies are considered appropriate in the matter and in particular—

Remedial powers
of decisional
officers.

(a) in a severance pay matter, he may order the payment of a sum of money found due;

(b) in an unfair dismissal matter, he may order the payment of a sum of money equal to loss of wages sustained and, in addition thereto he may also order the reinstatement of the person dismissed or the payment of a sum of money in lieu of such reinstatement;

(c) in an employee-representation matter, he may direct that a secret ballot be conducted to resolve the question;

(d) in an infringement case, he may—

(i) order that conduct found to be unlawful be terminated and/or not repeated in the future;

(ii) order that a collective agreement found to be unlawfully executed be cancelled;

(iii) order reinstatement or hiring to specified employment, with or without the payment of a sum of money equal to wage losses sustained; and/or he may order the payment of a sum of money in lieu of reinstatement or hiring if he deems the option justified;

(iv) order the reimbursement to employees of trade union initial payment, regular membership subscription, or service fee payment;

(v) order that an employer recognize a registered trade union as sole bargaining agent within the definition of section J4; and

(vi) order the execution of a collective agreement with specified terms, or the exclusion or inclusion of specified terms in an existing collective agreement;

(e) in any case—

-
- (i) in connection with his order to pay a sum of money, he shall order that interest be paid thereon if required by the provisions of this Code; and he may order that interest be paid although not required by the Code if justified by the circumstances;
 - (ii) he may issue any order, either retrospective or prospective in nature including directions as to the time within which an order shall take effect as called for by the circumstances; and
 - (iii) he may issue any other remedial order including an order for reinstatement which is relevant to the issues and is just and reasonable on the merits of the case.

(2) An order may run against an employer or a union, or against both jointly and severally, whichever is appropriate.

Board of Review.

B13. (1) As specified in this Code, a Board of Review shall, upon request of a party filed within the period specified therein, conduct a review of administrative decisions.

(2) Each Board of Review shall consist of three members of the Labour Board, selected on an *ad hoc* basis, as follows: Upon receipt of a request for review on a matter which the Code makes reviewable by a Board of Review, the Labour Commissioner shall notify the Chairman of the Labour Board, who shall forthwith select, from among the members thereof, one representative each of Government, employers, and employees to act as the Board of Review on the matter.

(3) The Board of Review—with the Government representative as its Chairman—shall consider the matter; may, in its discretion, set down the matter for oral argument before it by the parties; and shall, as soon as is practicable, issue its decision on review, setting forth therein its conclusions and its reason therefor.

(4) The decision of a Board of Review shall be that of a majority of its members.

(5) If there be no majority decision as to any issue, the determination of that issue in the decision being reviewed shall stand.

B14. (1) As executive secretary for each of the **decisional** officers referred to in this Division, the Labour Commissioner shall cause the decisions of said officers to be properly served upon the parties.

Responsibilities of Labour Commissioner as to decisions of decisional officers.

(2) He shall cause a copy of each such decision to be posted upon the Labour Department's bulletin board for a period of at least ten days; and he shall cause such decision to be published in the *Gazette*.

(3) He shall cause each such decision to be printed in the Annual Report of the Labour Department or in an appropriate annex thereto.

B15. (1) Labour Inspectors, within the Labour Inspection Section and under the supervision of the Labour Commissioner, shall be responsible for the enforcement of such requirements of this Code as are assigned to them herein and as are assigned them by the Minister from time to time.

Responsibilities of Labour Inspector.

(2) In the discharge of such responsibilities, an inspector has power to do any or **all** of the following things, whether or not a complaint of a violation of any provision herein has been **filed**—

(a) to enter without previous notice and inspect and examine, at any time, any premises to ascertain whether the provisions of this Code or any regulations or order issued thereunder, have been or are being complied with;

(b) to question, either alone or in the presence of any other person, as he thinks fit, with respect to matters covered by this Code, any person whom he finds on such premises; or any person whom he has reasonable cause to believe to be or to have been employed therein within the preceding three months, and to require such person to be questioned and to sign a declaration of the truth of matters respecting which he is so questioned:

Provided, however, that no one shall be required under this provision to answer any questions or give any evidence tending to incriminate himself;

(c) to require the production of registers, certificates, notices, documents or other records the keeping of which is required under the provisions of this Code, and to inspect, examine, and copy any of them;

(d) in the case of an inspector who is a duly qualified medical practitioner to direct that any person working or employed therein submit to a medical examination by a medical practitioner of his choice to determine whether the provisions of this Code have been or are being complied with;

(e) to enforce the posting of notices required by the Code; and

(f) to exercise such other powers as may be necessary for implementing this Code:

Provided that, when visiting any premises or questioning any person in connection with the exercise of such powers, an inspector shall, upon request, produce and display his certificate of appointment as Labour Inspector.

(3) On the occasion of an inspection visit, inspectors shall notify the employer or his representative, and the workers or their representative of their presence, unless they consider that such notification may be prejudicial to the performance of their duties.

Duty of secrecy.

B16. (1) No inspector or other person, without the permission of the employer concerned, shall disclose information with respect to any manufacturing process or trade secret which he has obtained in the course of the performance of his duties pursuant to this Code, except to the extent that such disclosure within the Labour Department is necessary to the performance of such duties.

(2) No inspector or other person shall disclose or imply to any employer, or to any other person, except to the extent that disclosure within the Labour Department is necessary for the proper performance of his duties, the source of the complaint, if any, which initiated an investigation of compliance with any provision of this Code.

(3) Any inspector or other person who fails to comply with the provisions of this section shall be guilty of an offence

and liable on summary conviction to a fine of seven hundred and fifty dollars and to imprisonment for three months.

B17. Any regulations or orders which are issued under any Division of this Code—

Requirements for regulations, etc. implementing Code.

- (i) shall be published in the *Gazette*; and
- (ii) shall be posted for a period of at least ten days after issuance upon the Labour Department's bulletin board.

B18. The provisions of this Division shall become effective upon enactment with the special qualifications noted in sections B19 and B20.

Effective date generally.

B19. With respect to the formation of the Labour Board created in section B7, the following preliminary steps shall be taken—

Preliminary steps re Labour Board.

(1) Within ten days after the enactment of this Code the Minister shall, within the limitations contained in section B7, make his determination as to what persons or organizations are entitled to nominate members of the Labour Board along with the number of members each such person or organization may nominate; and the announcement of such determination shall appear in the *Gazette* and on the bulletin board of the Labour Department.

(2) Within the ten days following the publication of said announcement in the *Gazette* and on the bulletin board of the Labour Department any person or organization may file with the Labour Commissioner a protest to any feature of the determination, which protest shall be in writing and shall set forth the reasons therefor.

(3) Within ten days after the close of the period for the filing of protests, the Minister shall call a meeting of the protestors and those who might be affected by a determination of the protests, at which meeting he shall hear any arguments in support of the respective parties' positions.

(4) At that meeting or any adjournment thereof the Minister shall dispose of the protests and, if necessary, shall announce his revision of the determination made under

subsection (1); and the revision made shall be given the same publicity as that specified in subsection (2).

(5) The Minister's determination under subsection (1) as it may be revised under subsection (4) shall be final.

(6) Upon said determination, as revised, those entitled to nominate members of the Labour Board may do so.

(7) Ten days after the announcement of the said determination, as revised—whether or not those entitled to nominate members have done so—the Labour Board shall be considered a functioning body with all of the powers and responsibilities set forth in Section B7.

Preliminary steps
re Arbitration
Tribunal.

B20. With respect to the formation of the Arbitration Tribunal created in section B8, the following preliminary steps shall be taken—

(1) Within ten days after the enactment of this Code, the Minister shall, within the limitations contained in section B8, make a determination as to the minimum qualifications required of persons for membership on the Tribunal and as to the emoluments of the position of Code Arbitrator; and the announcement of such determination shall appear in the *Gazette* and on the bulletin board of the Labour Department.

(2) Immediately thereupon, the Labour Commissioner will solicit the applications or nominations for Code Arbitrators, both within and outside Antigua and Barbuda by publication, in the press; by notification to the appropriate sections of other Governments, to universities, to associations of labour arbitrators or conciliators, and to employers' associations and trade unions; and by any other reasonable means.

(3) As applications and nominations are received, the Labour Commissioner shall ascertain whether each applicant or nominee is willing and available to serve; shall request of each such person a resume of personal information relevant to the position; and shall, to the extent practicable, make inquiries as to the relevant experience, abilities, and reputation of each such person.

(4) Within 40 days after the enactment of this Code a special meeting of the Labour Board called under the pro-

visions of section B7 (2) (~~b~~), shall be held to consider the applications and nominations thus far received, at which meeting the Labour Commissioner shall make available to the Labour Board the information he has procured in accordance with subsection (3). The results of the Labour Board's deliberations shall be reported to the Minister as required by section B8 (1), and he shall make selections as provided in section B8 (1) (~~b~~).

(5) There shall be such additional special meetings of the Labour Board as are necessary, until at least seven Arbitrators shall have been selected as members of the Arbitration Tribunal.

(6) When at least seven Code Arbitrators have been selected as members of the Arbitration Tribunal, then, and then only, shall the Tribunal be considered a functioning body with all of the powers and responsibilities set forth in section B8.

SCHEDULE

S. B10

SUMMONS

Under section B10 of the Labour Code (Administration) Division of the Antigua and Barbuda Labour Code.

To [insert name of person summoned and his occupation and address].

.....
At the request of [insert name of party at whose request the summons is being issued].

.....
You are hereby summoned to appear before [insert name(s) and title-either Code Arbitrator, panel of Code Arbitrators, or Hearing Officer]

.....
in the matter of [insert names of disputing parties].

.....

At [insert place of hearing] on the _____ day of
19____, at _____ [insert a.m. or p.m.].

to give evidence respecting such matter

[If witness is to produce document(s), add] And you are
required to bring with you and produce [here, describe
documents required].

.....

.....

You are liable to a penalty if you disobey this summons.

Given under my hand this _____ day of _____ 19____

Signed

[name and title of decisional officer]

DIVISION C

Basic Employment

Short title.

C1. This Division may be cited as the Basic Employment Division.

National policy.

C2. It is hereby declared that the following expressions of public policy underlie and shall be used in the interpretation of the various provisions of this Division—

(1) Every workman should know what his job consists of, what his working conditions shall be, and, if his employment be terminated, the reason therefor.

(2) Every workman is entitled to reasonable breaks in employment, whether because of physical disability or for rest and rehabilitation.

(3) Every employment ought to provide at least that wage which will ensure a minimum standard of living.

(4) In the interests of spreading employment opportunities and of preventing industrial accidents, there must be a reasonable limitation upon working hours of employees;

(5) To the extent that circumstances dictate that work-hours be reasonably extended, premium remuneration ought to be received therefor.

(6) As an individual works at a job, he gradually earns an equity therein above and beyond his periodic wages, privileges, and allowances; and the maintenance of this equity requires protection.

C3. In this Division, unless the context otherwise ^{interpretation} requires—

"basic wage" means that part of an employee's remuneration for services which is payable in money for his normal hours of work;

"gratuities" means remuneration, in money, received by an employee from customers, whether directly or through an employer and whether individually or shared with fellow-employees;

"gross wage" means the total remuneration for services received in money, in kind, and in privileges or allowances, including gratuities and premium pay;

"hours of work" means the period during which an employee's services are under control of his employer, whether or not work is available for him throughout the period, and it includes all rest, meal, or break periods of fifteen minutes or less but excludes all such periods in excess thereof;

"normal hours of work" means those hours of work for which no premium pay is due under the provisions of section C 27;

"predecessor-employer", in relation to the employment of a person as it affects that person's right to severance pay, as covered in Part 4, is one who, in consequence of a change occurring in the ownership of an undertaking or in the part of an undertaking in which that person is involved, is no longer the employer of that person;

"premium pay" has the meaning assigned thereto by section C 26;

"redundancy" means a situation in which, by virtue of a lack of customers orders, retrenchment, the installation of labour-saving machinery, an employer's going out of business, a *force majeure*, or any other reason, tasks which a person was last employed to perform no longer exist;

"substantially equivalent employment" means employment at work which, although not identical to that which is the basis of comparison, requires similar skills, affords relatively similar prospects of progression, and pays a relatively equal wage; and

"successor-employer", in relation to the employment of a person as it affects the person's right to severance pay as covered by Part 4 hereof, is one who, in consequence of a change occurring in the ownership of an undertaking or in that part of the undertaking in which the person is involved, has become the new employer of that person.

PART I

Commencement, Elementary Requirements, and Termination of Employment

Discrimination
because of race,
etc.

C4. (1) No employer shall discriminate with respect to any person's hire, tenure, wages, hours, or any other condition of work, by reason of race, colour, creed, sex, age or political beliefs:

Provided, however, that this shall not be construed as forbidding the taking of personnel actions genuinely related to that person's ability to discharge the duties of the employment in question.

(2) Anyone who contravenes the requirements of subsection (1) shall be guilty of an offence and on summary conviction shall be liable to a fine of three thousand dollars and to imprisonment for twelve months.

Statement of
working
conditions.

C5. (1) Every person who employs another shall, within 10 days of such employment, furnish said employee with a written statement which shall set forth—

(a) the general responsibilities and related duties for which the employee is being employed;

-
- (b) the regular hours of work, and rest periods;
 - (c) the starting pay, and method of computing same;
 - (d) the term of employment, if other than indefinite;
 - (e) the period of probation, if any;
 - (f) the employee's leave and vacation privileges; and
 - (g) his obligations, if any, imposed under section *J 13*.

(2) With respect to persons currently employed on the effective date of this provision, each employer shall, within ten days after such effective date, furnish each of said persons with a written statement which shall set forth—

- (a) the general responsibilities and related duties for which the employee is currently employed;
- (b) the regular hours of work, and rest periods;
- (c) the current pay, and method of computing same;
- (d) the remaining term of employment, if other than indefinite;
- (e) the remaining period of probation, if any; and
- (f) the employee's leave and vacation privileges.

(3) With respect to either a newly engaged employee or one already employed as of the effective date of this provision, each employer shall either post a copy of any current agreement between the employer and a trade union setting forth the working conditions of such employee or he shall give said employee a copy thereof.

(4) Whenever, subsequent to the giving of a statement under subsection (1) or (2), the employer, whether by necessity or otherwise, desires to change, in any relevant respect, the general responsibilities and related duties of the involved employee as set forth in said statement, he shall, at or about the time he effectuates any such change, furnish the

said employee with a new written statement amending and making appropriate revisions in the original statement, and whenever, subsequent thereto, the employer desires to make additional changes in any relevant respect, he shall, prior thereto, furnish said employee with a written statement further amending the last one furnished; but nothing therein shall be construed as permitting an employer to change working conditions in violation of section C6 or C7.

Conformity with Code generally.

C6. An employer shall not provide employment, and an employee may not accept employment, under terms and conditions which do not conform to the provisions of this Code.

Individual employment contracts.

C7. It shall be lawful for an employer and employee to enter into an individual contract of employment, covering terms of employment, but—

- (i) any provision thereof which establishes conditions which fall below the minimum employment standards established by this Code shall be null and void;
- (ii) any provision thereof which requires that the employee refrain from associating with other employees or with a trade union for collective bargaining purposes shall be null and void; and
- (iii) any provision thereof which, to the employee's disadvantage, conflicts with the terms of a collective bargaining agreement in effect between the employer and a trade union which is the sole bargaining agent of the bargaining unit of which the employee is a part, within the definition of section J4, shall be null and void.

Probation period.

C8. (1) A new employee's probation period may not exceed 3 months in duration, unless there is provision for a greater period in a collective agreement between an employer and a registered trade union acting as sole bargaining agent for all employees in an appropriate bargaining unit.

(2) During his probation period, an employee shall be given reasonable training in the duties of the position for

which he was hired, and shall be kept informed of his progress.

(3) During his probation period, an employee's employment may be terminated without any reason being given except in infringement of his self-organizational rights as set forth in Part I of Division K.

C9. (1) An employer may, without advance notice, terminate the employment of any person who has engaged in misconduct related to his work within the limitations of section C59 (1) or (2). **Employer's notice of termination.**

(2) With respect to a person who has been engaged for a specified term of employment of less than one week's duration, the employer need give no further notice of his intention to terminate said employment at the end of the specified term, unless the terms of his employment specify otherwise.

(3) In all other cases, the employer must give advance notice to the affected employee of an intention to terminate that person's employment, as follows—

(a) with respect to an employee within his probation period, an employer must give at least 24 hours advance notice of his intention to terminate said employee's employment.

(b) with respect to all other employees, the period of said advance notice shall be at least equivalent to the interval of time between the affected employee's paydays;

(c) in no case need the period of said advance notice exceed 30 days unless an employment contract calls for a longer notice period.

(4) Having given due advance notice to terminate employment, an employer may terminate the employment prior to the effective date of termination under the notice, provided that he pay the employee a sum equivalent to that which he would have paid if the employee had worked throughout the period.

(5) If the employer has not exercised the option provided in subsection (4), he may require the employee to

render his normal services until the effective date of termination under the notice, at the regular wage last being received by said employee:

Provided, however, that during said period the involved employee shall be entitled as far as is practicable, to a reasonable amount of time off without loss of pay in order to seek other employment.

(6) An employer having given due advance notice to terminate employment and not having exercised the option provided in subsection (4), shall be discharged of any obligation to pay the involved employee's regular wage if and when said employee voluntarily quits his employment prior to the effective date of termination under the notice.

Statements upon
termination.

C10. (1) Upon the termination by an employer of any person's employment subsequent to the expiration of the latter's probation period, the employer shall, upon a request being made by the employee within seven days of termination or notice thereof furnish forthwith to said employee a written statement of the precise reason for the action.

(2) The employer shall, upon request of the terminated employee furnish a certificate specifying the dates of his engagement and termination and the type of work on which he was employed.

(3) An employer who furnishes a statement or certificate required by subsection (1) or (2) respectively, shall be conclusively bound by the contents therein in any proceeding testing the fairness of the dismissal as covered by Part 5 herein or his liability for severance pay covered by Part 4 herein.

(4) An employer who fails to furnish either the statement or the certificate shall be estopped from introducing testimony as to facts which might have been recited in said statement or certificate, in any proceeding testing the fairness of the dismissal or his liability for severance pay whichever is applicable.

Employee's
notice of
termination.

C11. (1) An employee who has been engaged for a specified term of employment and who intends to quit his employment at the end of the specified term need give no advance notice of such intention unless the terms of his employment contract specify otherwise.

(2) All other employees must give advance notice to their employers of an intention voluntarily to quit employment, namely—

(a) an employee, during his probation period, shall give at least 24 hours advance notice of such intention;

(b) with respect to any other employee, the period of said advance notice shall be at least equivalent to the interval of time between the affected employee's paydays; except that, in no case need the period of said advance notice exceed 30 days unless an employment contract specifies otherwise.

(3) Failure of an employee to give sufficient advance notice as required herein may subject him, at the employer's option, to dismissal prior to the date that he intended voluntarily to quit by the number of hours or days by which the employee's notice fell short of the required period of advance notice.

(4) Having received due advance notice from his employer of an intention to terminate his employment, an employee may not, unless said employer has exercised his option to terminate said employment earlier than the intended time and to pay wages in lieu thereof under the provisions of section C 9(4), quit his employment prior to the effective date of the notice under pain of losing his pay for the lost time.

C12. The provisions of this Part shall become effective sixty days after enactment thereof. Effective date.

PART 2

Leave Privileges

C13. Every employee who has passed his probation period shall be entitled to certain leave privileges during the course of his employment. Employees' leave rights generally.

C14. (1) Subject to subsection (2) no employee shall be obliged to work on a public holiday except in emergency situations. Public holiday leave.

(2) The Minister may, by Order published in the Gazette, exempt certain industries and enterprises, or certain parts

thereof, from the requirements of subsection (1) on such terms and conditions as he may think fit.

Public holiday
pay.

C15. (1) If an employee does not work on a public holiday he shall suffer no loss of pay, that is, he shall be paid the basic wage he would have received for work performed on that day had it not been a public holiday, provided he has worked his scheduled work day immediately before and his scheduled work day immediately after the said public holiday.

(2) If an employee does work on a public holiday he shall be paid, in addition to any wage which he would have received in respect of the public holiday, an hourly rate of not less than 150 per centum of this basic rate per hour worked.

(3) Should an employer cause an employee to work on a public holiday in conformity with any Order made under section C 14(2) he shall pay said employee such amount as may be prescribed by such Order and in such manner as may be therein prescribed.

Sick leave.

C16. Each employee is entitled to leave on workdays, or parts thereof, during which he is ill or otherwise physically incapacitated for work:

Provided, however, that—

- (i) said leave shall be taken only in connection with actual illness or other physical incapacitation for work, evidence of which, in the form of a doctor's certificate or other satisfactory means, must be furnished by the involved employee upon request of the employer on or after the third consecutive day of any such leave; and
- (ii) in the event that, in the opinion of his employer, the extent of such leave taken renders the employee unfit to continue in his employment and the employer terminates the employment therefor, the employee's right to severance pay and the fairness of the termination or either may be determined under Part 4 or 5 of this Division.

C17. Each employee, for at least the first twelve days of sick leave taken during any twelve consecutive months, calculated from the date of commencement of employment and any anniversary date thereof, shall be entitled to that basic wage, and the employer shall give him that basic wage, which he would have received had he worked on those days. Sick leave pay.

C18. (1) Each employee who has successfully passed his probationary period shall be entitled to, and each employer shall give him, vacation leave without loss of at least the basic wage, including the cash equivalent of payments in kind, he would have received had he not taken the leave, in an amount of at least one day per month of employment. Vacation leave.

(2) Said vacation leave shall be above and beyond and shall not include any public holiday leave as covered by sections C14 and C15, any sick leave as covered by sections C16 and C17, or any daily or weekly non-work periods as covered by section C24.

(3) The dates of the taking of earned vacation leave shall be fixed by agreement between employer and employee.

(4) By mutual agreement the employer may advance leave not yet earned.

(5) By mutual agreement earned vacation leave exceeding six days need not be taken in an unbroken time period.

(6) An employer shall not compel an employee to forego the taking of earned leave even though he pays; in *lieu* thereof, the wage the employee would have received had he taken the leave.

(7) Any person whose employment is terminated for any reason shall thereupon receive in respect of every day of vacation leave due him the remuneration for each such day as provided in subsection (1).

C19. (1) Any employer who contravenes the provisions of section C14, C15, C17 or C18 shall be guilty of an Penalties.

offence and, upon summary conviction, shall be liable to a fine of seventy-five dollars.

(2) If the Court is satisfied that, by reason of the offence, the employer owes any employee a sum of money, it may render a judgment for this sum, with or without interest, which judgment shall be enforceable as any judgment in a civil action.

Effective date. **C20.** The provisions of this Part shall become effective sixty days after enactment.

PART 3

Remuneration and Hours of Work

**National
minimum wage
rate.**

C21. (1) No person shall employ anyone to perform labour or services at a basic wage less than that which shall be established by the Minister after recommendations made to him by a Minimum Wage Advisory Committee specially appointed by him to investigate the conditions of work, extent of unemployment, the cost of living, and the general conditions of the economy in Antigua and Barbuda.

(2) Subject to the provisions hereunder, the Minister may make rules prescribing the powers, duties, and procedure of such Committee.

(3) The Committee shall consist of equal numbers of such employers and employees and representatives of such other interests in the economy as the Minister deems appropriate, one of whom shall be designated by the Minister as Chairman.

(4) The Committee shall have full power to investigate the conditions of employment in respect of the occupation within its terms of reference and to make recommendations as to the minimum rates of wages which should be payable therein.

(5) The Committee may, at any time it deems expedient to do so, call in the aid of one or more assessors, specially qualified in the opinion of the Committee in the matter under investigation.

(6) Any person may, by written notice signed by the Chairman of the Committee, be required—

(a) to attend any meeting of the Committee and give evidence under oath or otherwise;

(b) to produce at any such meeting any document which, in the opinion of the Committee, is relevant to the matter under investigation; and

(c) to furnish such particulars as may be required by the Committee:

Provided that, if any witness declines to answer any question or produce any document on the ground that it will tend to incriminate him or on any other lawful ground, he shall neither be required to answer such question or produce such document nor be liable for any penalties for refusing to do so.

(7) Any person who wilfully fails to comply with a notice addressed to him under subsection (6) or without lawful excuse fails to answer any relevant question or to produce any relevant document, shall be guilty of an offence and liable on summary conviction to a fine of seventy-five dollars.

(8) All questions arising at any meeting of the Committee shall be determined by a majority of votes of all members, including the Chairman, who are present; and no such determination of the Committee shall be considered invalid by reason of any vacancy or absence among the members.

(9) The Committee shall issue interim reports of deliberations with recommendations, if requested by the Minister and, as soon as possible after the conclusion of its deliberations, a final report, with recommendations. These reports shall be addressed and delivered to the Minister, along with specially concurring, minority, and dissenting reports, if any.

(10) Giving full consideration to the recommendations of the Minimum Wage Advisory Committee, the Minister shall thereupon issue an Order prescribing the minimum basic wage payable for employment in Antigua and Barbuda.

(11) The Minister may vary the provisions of any such previous Order, but only with like advice and in the like manner.

(12) Each employer must post said minimum wage rates upon a board on which notices to his employees are customarily posted.

Minimum wage rates for occupation.

C22. (1) Whenever the Minister deems it necessary to take steps to regulate the wages paid in any occupation, he shall appoint a Minimum Wage Advisory Committee to investigate the conditions of work in such occupation and to make recommendations as to the minimum basic wage which should be payable therefor.

(2) With respect to any such Committee appointed, the provisions of section C 21(2) to (9) inclusive shall apply.

(3) Giving full consideration to the recommendations of said Committee, the Minister may thereupon issue an Order prescribing the basic minimum basic wage payable for each such occupation and each level within such occupation.

(4) The Minister may, with like advice and in like manner, revoke or vary the provisions of any previous Order.

(5) In any establishment in which any such minimum occupational wage rates are applicable the employer must post said rates upon a board upon which notices to his employees are customarily posted.

Penalty for not paying minimum wage.

C23. (1) Where a minimum basic wage has been fixed under section C 21 or C 22, an employer who fails to pay said wage rate shall be liable on summary conviction to a fine of three hundred dollars and in the case of a second or subsequent conviction to a fine of seven hundred and fifty dollars.

(2) Where an employer has been convicted for failure to pay the minimum basic wage rate to any person employed by him, then, if notice of intention so to do had been served upon him with the summons, warrant, or complaint, evidence may be given of any failure on the part of the employer to

pay wages at or above the minimum rate to that employee during the two years immediately preceding the date on which the information was laid and, on proof or admission of the failure, the Court may order the employer to pay to the employee such sums as in the opinion of the Court represents the difference between the amount which should have been paid during those years and that which was actually paid, plus ten per cent interest per annum from the date any wage was due until it is paid:

Provided however that the power given in this subsection shall not be in derogation of any right of the person employed to recover wages in any other proceeding, and that the person employed shall not be entitled, by a combination of this and any other proceeding, to recover more than the sum of the above difference.

(3) Where an offence for which an employer is liable to a fine under this section was in fact committed by his agent or another person, said agent or other person shall be liable to be proceeded against as if he were the employer, either together with, or before or after the conviction of the employer, and shall be liable on conviction to the same punishment as that to which the employer is liable:

Provided, however that, no such agent or other person shall be liable for the payment of any deficit of wages under subsection (2):

And further provided that where an employer who is charged with an offence against this section proves to the satisfaction of the Court that he used due diligence to enforce the execution of this Division and that the offence was in fact committed by his agent or some other person without his knowledge, consent, or connivance, he shall, in the event of the conviction of the agent or other person for the offence, be exempt from any fine in respect of the offence, without prejudice however, to the power of the Court to adjudge him to pay the sum due under subsection (2).

C24. Except where otherwise provided by a collective agreement, every employer shall permit each of his employees to enjoy in every period of seven consecutive days a period of rest comprising at least twenty-four consecutive hours.

Rest periods;
standard work
periods;
maximum work
hours and
exceptions.

(2) The standard work-day shall not be more than eight hours and the standard work week not more than forty-eight hours.

(3) Except as provided in subsection (4) herein no employer shall employ any person in excess of twelve hours in any twenty-four hour period or in excess of seventy-two hours in any one hundred and sixty-eight hour period.

(4) Whenever the Minister deems it necessary to increase the allowable hours of work in any establishment or industry, either **permanently**—

(a) in work which is essentially intermittent;

(b) in exceptional cases required by the public interest; or

(c) in operations which for technical reasons must necessarily be carried on outside the limits laid down; or **temporarily**—

(d) in case of accident, actual or threatened;

(e) in case of urgent work to be done to machinery or work place;

(f) in case of force *majeure*;

(g) in case of abnormal pressure of work;

(h) to make up lost time through collective stoppages of work due to accidents to materials, interruptions to the power supply, inclement weather, shortages of materials or transport facilities, or calamities; or

(i) in case of national emergency;
or periodically—

@ for annual stocktaking and the preparation of annual balance sheets; or

(k) for specified seasonal activities;

he may, after consultation with employer and employee representatives, issue an appropriate Order:

Provided, however, that with respect to a permanent increase, the consultation shall be with an Advisory Committee appointed by him, with respect to which Committee the provisions of section C 21 (2) to (9) inclusive shall apply.

C25. Any contravention by an employer of the provisions of section C 24 hereunder shall be an offence, for which said employer upon summary conviction shall be liable to a fine of seventy-five dollars. **Penalties.**

C26. Premium pay shall consist of at least one-and-one half times an employee's basic wage per hour. **Premium pay.**

C27. For any hour of work in excess of eight in any twenty-four hour period or in excess of forty-eight in any one hundred and sixty-eight hour period, an employer shall give premium pay to the involved employee: **Occasions for premium pay.**

Provided that the Minister may revise these standards for any given industry or enterprise by the issuance of an Order to that effect.

C28. (1) Any contravention of the requirements of section C 27 which occurs with respect to a continuous work-period of any employee shall be a single offence; and any contraventions which occur with respect to different work-periods of any employee shall be separate offences. **Penalties and remedies.**

(2) With respect to any such offence, the employer upon summary conviction, shall be subject to a fine of seventy-five dollars; and in addition, the Court may order the payment of any sum found due any involved employee, if warranted by the circumstances.

C29. (1) The money wages of a workman shall be payable in legal tender, provided, however, that the payment of wages by cheque on a bank in Antigua and Barbuda or by postal order shall be deemed to be payment in legal tender in cases in which payment in such manner is customary or necessary or is consented to by the workman: **Form of wages.**

Provided however that nothing herein shall be construed as prohibiting the giving of food, a dwelling-place, or other allowances and privileges in addition to money wages as a remuneration for service; except however, that—

(a) said allowances and privileges shall not include any noxious drugs or intoxicating liquor; and

(b) said allowances and privileges are fairly evaluated at cost to the employer.

(2) Nothing herein shall be construed as prohibiting the distribution to a workman of gratuities received from customers of the employer as part of remuneration for services:

Provided, however, that the amount distributed in gratuities shall not be considered a part of the minimum basic wage which is required by section C 21 or C 22.

Deductions.

C30. An employer may deduct from wages payable to a workman under any contract of employment the following:

(a) any tax rate, or other deduction imposed by any law;

(b) any money advanced by the employer by way of loan (whether paid to the workman himself or to some other person at his request) in anticipation of the regular payment of his wages; provided the amount deducted accords with the agreement made between employer and workman at the time of the loan, and provided that no interest, discount, or similar charge may be imposed on such loan;

(c) the actual or reasonable estimated cost to the employer of any materials, tools and implements which, although not obliged to provide, the employer has supplied to the workman at the latter's request;

(d) any initial payment or regular membership subscription of a registered trade union which an employee has authorized to be deducted:

Provided however, that the employer transmit to the appropriate trade union the funds thus deducted within thirty days of the deduction:

Provided that the total which may be deducted or stopped in any pay period shall not exceed one-third of the gross wage (excluding, however, the value of any

payments in kind) of the workman in the applicable pay period:

Provided further that from and after the coming into force of the Antigua Labour Code (Amendment) Act, 1976 all existing authorisations given by any employee for the deduction of any money from his wages shall cease to have effect and shall accordingly be null and void.

C31. Whenever an employer makes any deduction from an employee's wages, he shall, simultaneously with the payment made, furnish the employee with an accurate statement of wages earned and describe the deduction made.

Statement of deductions.

C32. (1) Wages shall be paid on a regular periodic basis, and no period in respect of which wages earned by a workman are payable shall exceed one month.

Periods, time and place of wage payments.

(2) The payment of wages shall be made on ordinary working days only.

(3) No employer shall pay wages to any workman at or within any retail shop or place engaged in the sale of spirits, wine, beer, or other spirituous or fermented liquor, save and except such wages as are paid by the resident owner or occupier of such shop or place to any workman bona fide employed by him therein.

C33. No employer shall impose in any contract for the employment of any workman any terms as to the place at which, the manner in which, or the person with whom any wages paid to the worker are to be expended, and every contract between an employer and a workman containing such terms shall be null and void.

Agreements re place and manner of expending wages.

C34. (1) Any employer who—

(a) enters into any agreement or contract or gives any remuneration for employment contrary to section C 29, C 30, C 31, C 32, or C 33.

(b) makes any deduction from the wages of any workman or receives any payment from any workman contrary to the provisions of said sections; or

Penalties and workman's right to recover.

(c) otherwise contravenes the provisions of said sections of this Act.

shall be guilty of an offence and shall be liable on summary conviction to a fine of fifteen hundred dollars or for a second or subsequent offence to a fine of three thousand dollars.

(2) In addition to the offence under subsection (1) every workman shall be entitled to recover in a Court so much of his wages exclusive of sums lawfully deducted as shall not have been actually paid to him, plus interest at the rate of ten per cent per annum.

Procedure where
person other than
employer is
responsible.

C35. (1) Where an employer is charged with an offence under the provisions of this Part, he shall be entitled upon information upon oath duly laid by him, to have any other person whom he charges as the actual offender brought before the Court and if, after the commission of the offence is proved, the employer proves to the satisfaction of the Court that he has used due diligence to comply with the provisions of this Part and that the other person has committed the offence in question without his knowledge, consent or connivance, the said other person shall be summarily convicted of such offence and the employer shall be found not guilty of the offence.

(2) If an offence is proved under subsection (1) the Court may order the employer or the other person convicted thereunder to pay to the involved workman any part of wages found to have been unlawfully deducted or, as the case may be, otherwise owed under the provisions of this Part; and said order may be enforced in the same manner as a judgment or order in a civil case.

(3) The power of the Court to issue an order under subsection (2) shall not be in derogation of any right of the involved workman to recover the sum by any other proceeding; provided, however, that no workman shall be entitled in any other proceeding to recover any amount which the Court has ordered to be paid under subsection (2) herein.

work-accounts.

C36. (1) Every employer shall keep an accurate work account as to each employee, of his hours worked, by date, of his leave taken, by type, and of basic and other wages paid

him for each pay period which account he shall preserve, with respect to each entry therein, for at least eighteen months.

(2) Upon demand by an employee, the employer shall make available said work-account for inspection and copying by said employee or his representative.

(3) Any employer who contravenes any provision of subsection (1) or (2) herein shall be guilty of an offence and shall be liable on summary conviction to a fine of seven hundred and fifty dollars.

C37. The Minister may issue regulations for the purpose of carrying out the provisions of this Part. **Regulations.**

C38. No prosecution for any offence under this Part shall be instituted after the expiration of two years from the date of the commission of the offence. **Limitation of prosecution.**

C39. Section C21 shall become effective upon the enactment thereof; sections C22 and C23 shall become effective upon the establishment by the Minister of a basic minimum wage in accordance with section C21, but not less than sixty days after enactment; and all other sections of this Part shall become effective sixty days after enactment. **Effective dates.**

PART 4

Severance Pay

C40. Every employee whose terms of employment with an employer and his predecessors has in aggregate exceeded one year is entitled to severance pay upon termination of said employment by employer for reasons of redundancy. **Right to severance pay, generally.**

C41. Severance pay shall consist of at least one day's pay, at the employee's latest basic wage, for each month or major fraction thereof of his term of employment with his employer and any predecessor-employer. **Computation of severance pay.**

Severance pay, when payable; temporary recalculation; payment of interest.

C42. (1) Subject to the other provisions of this section, simultaneously upon the termination of employment of any employee entitled to severance pay under section C40, the employer shall remit to that employee severance pay computed in accordance with section C41.

(2) If the termination be stated as temporary, no severance pay need be remitted to the terminated employee at the time of termination:

Provided however that—

(a) where the date of recall, if one is given at the time of termination, be six months or more in the future, severance pay shall be payable on the date of the original termination;

(b) if no date of recall is given at the time of termination, severance pay shall be payable when and if, after three months from the termination, the employee shall not have been recalled:

in which case, interest at the rate of ten per cent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

(3) After such payment with interest has been made, if the employee is recalled to his past or substantially equivalent employment, or is again hired by the same employer, he shall be considered to be newly hired and his term of employment, for subsequent severance pay purposes, shall be considered to have commenced on the date of recall or rehire.

Lowering of pay because of redundancy.

C43. If an employee's employment in his last occupation is terminated because of redundancy, but he is offered other employment by his employer at a reduced wage, then the employee may accept the offered employment without forfeiture of his severance pay; but if, having received his severance pay, he accepts the offered employment, he shall be considered newly hired for the purposes of subsequent severance pay:

Provided that, should on eventual termination by reason of redundancy, the employee's final pay be lower than that which he received at the time he would have been originally

entitled to severance pay, then, on the final termination of employment, he shall be entitled to receive severance pay in respect of the period prior to the date on which he would have originally been entitled to severance pay at a rate not less than his original entitlement.

C44. Severance pay is not payable if the employee's employment is terminated by an employer who has gone out of business but, without any break in service, he is offered the same employment by a successor-employer:

Limitations on severance pay; offer of equivalent employment.

Provided, however, that his tenure of employment, for subsequent severance purposes, dates from his original hiring by the first of a series of predecessor-employers; in which case the successor employer, in the event of a subsequent termination for redundancy, shall be responsible for the payment of the employee's severance pay computed on the basis of his full tenure of employment by himself and all predecessor-employers.

C45. If an employee's employment is terminated due to redundancy with a date of recall given him less than six months in the future or with no date of recall given him, and if the employer, prior to ~~three~~ three months after the termination, sells his business to a successor-employer, then—using the standards set forth in section C42 (2) (a) or (6)—if severance pay becomes due, the predecessor-employer and the successor-employer shall be jointly and severally liable for the payment of the severance pay plus interest.

Liability of predecessor—and successor-employers.

C46. (1) Every employer shall maintain an accurate record of the latest hiring date of each of his employees and for the purpose of this section the said hiring date shall be that on which the employee was last hired, either by him or by a predecessor-employer.

Record of hiring.

(2) Upon the request of any employee, the employer shall make that employee's record of latest hiring date available to said employee for inspection.

(3) Any person who fails to comply with the provisions of subsection (1) or (2) shall be guilty of an offence for which on summary conviction he shall be liable to a fine of seventy-five dollars:

Provided that, if there be no present record of an employee's latest hiring date by virtue of the fact that the requirement of subsection (1) was not in effect upon such date, the question of the employee's hiring date shall be one to be disposed of by the procedures set forth in sections C47 to C51 inclusive.

Initiation of proceeding.

C47. (1) Should any question arise as to the date of hiring or as to whether or in what amount, severance pay is due an employee, the employee, the employer or their respective registered bargaining agents may seek a resolution of the question by filing a Charge or Query as to Severance Pay with the Labour Commissioner.

(2) Should the Charge or Query involve a group of employees under similar circumstances, or if there be filed at or about the same time a number of Charges and/or Queries, the cases may be consolidated into a single proceeding.

Preliminary action by Labour Commissioner.

C48. (1) Immediately upon receipt of said Charge or Query, the Labour Commissioner, using the means described in section B5(2) (a), shall call all interested parties together or otherwise seek to settle the matter by voluntary adjustment or settlement.

(2) Within ten days after the filing of the Charge or Query, if he has failed to achieve a voluntary adjustment or settlement, the Labour Commissioner shall transmit the matter, with a full report thereon, to the Minister.

Action by Minister on referral.

C49. On transmittal of the matter to him, the Minister shall seek to settle the matter as called for by section B6 (1) and, should he fail to effect a voluntary adjustment or settlement of all issues within twenty days after the filing of the Charge or Query, he shall take one of the steps open to him under section B6(2), including, if he deems it appropriate, the referral of the matter to a Hearing Officer for formal handling.

Formal proceedings.

C50. (1) The Hearing Officer to whom the formal handling of a Charge or Query as to Severance Pay or as to date of hiring is referred under section B6(2) (c) may, in his discretion, call the parties together into a pre-hearing

conference in an effort to narrow the issues; but having caused a Notice of Hearing to be served on all parties, he shall commence the hearing within at least ten days after receiving the matter for formal handling.

(2) At the hearing, conducted in accordance with the provisions of sections ~~B9~~ and ~~B10~~ the Hearing Officer shall hear and determine the issues.

(3) The Hearing Officer, within five days after the close of the hearing, shall issue a decision in compliance with section ~~B9(5)~~ directing—

- (a) that severance pay is due in a specified amount, plus interest, specifying from and to whom; or
- ~~(b)~~ that no severance pay is due; or
- (c) that a specific date be recorded as the date of hiring.

(4) Notwithstanding the above subsections, the Hearing Officer shall approve any settlement of the matter reached by all parties thereto at any time between the referral for formal handling and the issuance of a decision, if the terms of the settlement achieve justice under the circumstances and are not clearly repugnant to the principles and purposes of this Code; upon which approval, the matter shall be considered closed.

C51. Any party to the proceedings may, within five days after issuance of the Hearing Officer's decision, request a review thereof by a Board of Review, under procedures according with section B13.

**Review of
Hearing Officer's
decision.**

C52. (1) Non-compliance with the decision of the Hearing Officer—or, if a review thereof has been requested, with the decision on review—as to the severance pay due an employee is an offence; and non-compliance with the decision—or the decision on review—as to the severance pay due any other employee is a separate offence.

**Penalties for
non-compliance.**

(2) Any person guilty of such offence is liable upon summary conviction to a fine of seventy-five dollars.

(3) In addition, the Court is empowered, if warranted by the circumstances, to enter a judgment as to severance pay due, which judgment shall be enforceable just as any judgment in a civil case.

Regulations. **C53.** The Minister may issue regulations for the purpose of carrying out the provisions of this Part.

Effective date. **C54.** The provisions of this Part shall become effective upon the date on which the Labour Board becomes a functioning body under section B19.

Recovery of severance pay. **C55.** (1) An employee may recover by civil proceedings in a court of competent jurisdiction the severance pay to which he is entitled under this Act.

(2) In the event of bankruptcy or liquidation of the business of the employer, or on any other closure of business the amount owing to an employee as severance pay shall be paid in priority to other debts.

PART 5

Unfair Dismissals

Right not to be unfairly dismissed. **C56.** Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any such employee without just cause.

Termination after fixed term of employment. **C57.** For the purposes of this Part, an employee will not be deemed to have been dismissed unfairly if his employment is terminated at the expiration of the term specified at the time of his hire.

Good cause for dismissal; test for measuring same. **C58.** (1) A dismissal shall not be unfair if the reason assigned by the employer therefor—

(a) relates to misconduct of the employee on the job, within the limitations of section C59(1) and (2);

(b) relates to the capability or qualifications of the employee to perform work of the kind he was employed to do, within the limitations of section C59(3);

(c) is that the employee was redundant;

(d) is that the employee could not continue to work in the position he held without contravention (on his or on the employer's part) of a requirement of law; or

(e) is some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held:

Provided, however, that there is a factual basis for the assigned reason.

(2) The test, generally, for deciding whether or not a dismissal was unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably but, even though he acted reasonably, if he is mistaken as to the factual basis for the dismissal, the reasonableness of the dismissal shall be no defence, and the test shall be whether the actual circumstances which existed, if known to the employer, would have reasonably led to the employee's dismissal.

C59. (1) An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to, situations in which the employee has—

Termination for misconduct or failure to perform duties in satisfactory manner.

(a) conducted himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue;

(b) committed a criminal offence in the course of employment without the consent, express or implied, of the employer; or

(c) behaved immorally in the course of his duties.

(2) Where an employee is guilty of misconduct in or in relation to his employment that is not sufficiently serious to permit his employer to terminate his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state

the action the employer intends to take in the event of repetition; which action may include suspension without pay for such period as may be specified in the written warning; and, thereafter, if the employee is, within six months following the receipt of the written warning, guilty of misconduct in or in relation to his work which is the same or substantially the same as the misconduct in respect of which the written warning was given, the employer may terminate the employment of said employee or take such other action as may have been specified in the written warning.

(3) Where an employee is no longer performing his duties in a satisfactory manner, the employer may give the employee a written warning which shall describe the unsatisfactory employment in respect of which the written warning is given and state the action the employer intends to take in the event of repetition; and, thereafter, if the employee does not, during the period of three months following the receipt of the written warning, demonstrate that he is able to perform and has performed his duties in a satisfactory manner, the employer may terminate the employment of said employee.

Initiation of proceedings.

C60. (1) Should any question arise as to whether an employee has been unfairly dismissed, the employee, or his registered agent, may seek a resolution of the question by filing a Complaint of Unfair Dismissal with the Labour Commissioner.

(2) Should the Complaint involve a group of employees under similar circumstances, or should there be filed at or about the same time a number of Complaints involving similar circumstances, the cases may by consent be consolidated into a single proceeding.

Preliminary action by Labour Commissioner.

C61. (1) Immediately upon receipt of the said Complaint, the Labour Commissioner, using the means described in section **B5(2)(a)** shall call all interested parties together or otherwise seek to settle the matter by voluntary adjustment or settlement.

(2) Within ten days after the filing of the Complaint, if he has failed to achieve a voluntary adjustment or settle-

ment, the Labour Commissioner shall transmit the matter, with a full report thereon, to the Minister.

C62. On transmittal of the matter to him, the Minister shall seek to settle the matter as called for by section **B5(1)** and, should he fail to effect a voluntary adjustment or settlement of all issues within twenty days after the filing of the Complaint, he shall take one of the steps open to him under section **B5(2)** including, if he deems it appropriate, the referral of the matter to a Hearing Officer.

Action by
Minister on
referral.

C63. (1) A Hearing Officer to whom the formal handling of a Complaint of Unfair Dismissal is referred under section **B6(2)** (c) may, in his discretion, call the parties together into a pre-hearing conference in an effort to narrow the issues; but, having caused a Notice of Hearing to be served on all parties, he shall commence the hearing within at least ten days after receiving the matter for formal handling.

Formal
proceedings.

(2) At the hearing, conducted in accordance with the provisions of sections **B9** and **B10** the Hearing Officer shall hear and determine the issues.

(3) The Hearing Officer, within five days after the close of the hearing, shall issue a decision in compliance with section **B9(5)** and, in accordance with section **B11** he may issue any remedial order which is relevant to the issues and is just and reasonable on the merits of the case.

(4) Notwithstanding the above subsections, the Hearing Officer shall approve any settlement of the matter reached by all parties thereto at any time between the referral for formal handling and the issuance of a decision if the terms of the settlement achieve justice under the circumstances and are not clearly repugnant to the principles and purposes of this Code; upon which approval, the matter shall be considered closed.

C64. Any party to the proceeding may, within five days after the issuance of the Hearing Officer's decision request a review thereof by a Board of Review, under procedures according with section **B13**.

Review of
Hearing Officer's
decision.

Penalties for
non-compliance.

C65. Non-compliance with the decision of the Hearing Officer—or, if a review thereof has been requested, with the decision on review—is an offence; and non-compliance with the decision—or the decision on review—as to each employee involved is a separate offence.

(2) Any person guilty of such offence is liable upon summary conviction to a fine of seven hundred and fifty dollars.

Regulations.

C66. The Minister may issue regulations for the purpose of carrying out the provisions of this Part.

Effective date.

C67. The provisions of this Part shall become effective upon the date on which the Labour Board becomes a functioning body under section B19.

PART 6

Administration and Miscellaneous

Responsibility for
inspectors to
ensure
compliance.

C68. (1) Whether or not a complaint has been filed, inspectors, under the supervision of the Labour Commissioner, shall be charged with securing the proper observance of the provisions of this Division.

(2) An inspector so charged under subsection (1) shall have power—

- (i) to enter without previous notice at any hour of the day or night any workplace liable to inspection;
- (ii) to carry out any examination, test, or inquiry which he may consider necessary to satisfy himself that the legal provisions are being observed;
- (iii) to interrogate, alone or in the presence of witnesses, the employer or any of the staff of the undertaking on any matters concerning the application of this Division;
- (iv) to require the production of any records or documents called for by the provisions of this

Act and to copy or make abstracts of any such records or documents; and,

- (v) to enforce the posting of notices required by this Division.

(3) If any person interferes with any inspector in the exercise of the powers given by this section or fails or refuses to produce any of the above records or documents that person shall be liable on summary conviction in respect of each offence to a fine of seventy-five dollars; and if any person makes or causes to be made, or knowingly allows to be made, any such record or document which is false in any material particular, or if he produces, cause to be produced, or knowingly allows to be produced, any such record or document to any inspector acting in the exercise of the powers given by this section, knowing the same to be false, he shall be liable on summary conviction to a fine of four hundred dollars and to imprisonment for three months.

C69. Nothing herein shall be construed as prohibiting an employer, either unilaterally, by individual contract with an employee, or by a collective bargaining agreement with employee representatives, from establishing working conditions more advantageous to employees than those minimum standards set forth in this Division. Establishment of higher standards.

C70. The provisions of this Part shall become effective upon enactment. Effective date.

DIVISION D

Employment Health, Safety and Welfare

D1. This Division may be cited as the Employment Health, Safety and Welfare Division. Short title.

D2. In this Division, unless the context otherwise requires:— Interpretation.

"bodily injury" includes injury to health;

- "building operation" means the construction, alteration, repair or maintenance, or the demolition, of a structure or harbour facility, bridge or viaduct, waterworks or reservoir, pipeline or aqueduct, sewer or sewage system, including any engineering aspects thereof;
- "employee", as used herein, means anyone performing duties in a workplace with the expressed or implied permission of the operator of the workplace, on a part or full-time basis, whether or not such person is receiving remuneration for his services; and the expression "to employ" shall be construed accordingly;
- "factory" means the premises in which manufacturing takes place; and the term includes any warehouse or storage place, building operation, harbour operation, mine or quarry, or railway;
- "fumes" include gases or vapours;
- "harbour facility" means any work performed at a so-called harbour, whether natural or artificial, piers, jetties, or other installations in or at which ships can dock, obtain shelter, or ship or unship goods or passengers;
- "machinery" means all instruments of manufacturing, including machines (whether operated manually or mechanically), prime movers of machines, units designed to transmit power or motion thereto or therefrom, units designed to transport items or persons in connection with a manufacturing process, appliances used in said process, and all the parts thereof;
- "maintained" means being kept in an efficient state, efficient order, and in good repair;
- "manufacturing" means the conversion of materials from one form to another for the purpose of adding value thereto, by fabrication, alteration, repair, ornamentation, dismantling, finishing, washing or cleaning, storing or preserving, heating or cooling, and, generally, adapting for sale;

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- "operator of a workplace", means, primarily, the body responsible for processing carried on therein, in whole or in part, whether an individual proprietorship, partnership, or corporation or other form of undertaking; and the term includes any person with actual, apparent, or ratified authority to act on behalf of the operator. It includes the owner of a building containing a workplace to the extent that responsibilities are imposed on said owner under section D5; and it includes the owner or hirer of a machine or implement used in a workplace other than the principal operator thereof to the extent that any obligation under this Division relates to persons who are employed in or about or in connection with such machine and who are in the employment or pay of such owner or hirer;
- "owner", in relation to property, real or personal, includes any person who is, for the time being, entitled to the possession of, or to a rental or payment for another's possession of, said property;
- "parent", means a parent or guardian of, or person having the custody of, or the control over, a young person, and the term includes any person having a direct benefit from the wages of a young person;
- "prime mover", means every engine, motor, or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel, or other source of energy;
- "railway" means any rail line used for the transport of passengers or goods and includes any work in connection with the operation thereof;
- "sanitary conveniences" includes urinals, water closets, earth closets, privies, ash-pits, and any similar conveniences;
- "young person", means a person who has attained the age of fourteen years and has not attained the age of eighteen years; and
- "workplace" means the place at which work is performed in connection with the cultivation of any crop or activities related thereto; any manufacturing,

storage, construction, and land, sea, or air transport enterprises; any retail establishment; other commercial or industrial enterprises of any kind; and any office or operation related to any of these.

PART 1

Application

General application.

D3. Except as is otherwise indicated herein, the provisions of this Division shall apply to all workplaces.

Application to Government work places.

D4. This Division shall apply to workplaces belonging to or in the occupation of the Government.

Responsibility where part of the building is separate workplace.

D5. Where a part of a building is let as a separate workplace, the Minister may declare which sections of this Division are to be the responsibility of the owner of the building and which the responsibility of the occupier of the part of the building in question, by issuance of an Order to this effect, which Order shall set forth the reasons therefor.

Extension of provisions.

D6. The Minister may, for good cause, extend the application of the provisions of this Division to such installations or operations as may not appear to be specifically included in the definition of "workplace", but which would constitute a reasonable extension thereof, by issuance of an Order to this effect:

Provided that—

(a) such Order shall set forth the reasons for the extension; and

(b) the Order shall be effective at the hour and date specified therein but shall not be effective beyond the end of the first session of the Legislature which opens subsequent to the issuance of the Order.

Exemptions.

D7. (1) The Minister may, for good cause, exempt from one or more of the provisions of this Division any

workplace or part thereof, by the issuance of an Order to this effect:

Provided that the Order sets forth the term of the exemption, with the basis therefor.

(2) The exemption shall be effective for no more than six months in the absence of an Order of extension by the Minister which shall set forth the basis for any such extension.

(3) Any such extension shall be effective for no more than six months in the absence of an Order of further extension by the Minister, which Order shall set forth the basis for further extension.

(4) Any such Order of exemption or extension thereof may contain conditions which must be met in order to qualify for the exemption or extension.

D8. Except where otherwise expressly provided, the provisions of this Division shall be in addition to, and not in substitution for or diminution of, the provisions of any other Division. Non-exclusivity of these provisions.

PART 2

Minimum Requirements

D9. (1) Every person who operates a workplace on the effective date of this Division shall, within one month thereafter, file with the Labour Commissioner a written notice stating the particulars prescribed in the Schedule and every person who commences to operate a workplace subsequent to the effective date of this Division shall, within one month of such commencement, file a similar notice. Registration of workplaces.

(2) Thereafter, whenever there is a material change in any of the particulars appearing in the notice called for in subsection (1), the person operating the workplace shall file with the Labour Commissioner a written notice setting forth any such change, within one month of the effectuation of same; and, thereafter, with respect to any further material change, he shall likewise file a similar notice within one month of the effectuation of any such further change.

Health.

D10. For the purpose of safeguarding the health of persons employed in or performing any duty in workplaces, the operator of every workplace shall—

- (a) keep the workplace in a clean state;
- (b) keep it from becoming overcrowded;
- (c) maintain a reasonable temperature therein;
- (d) provide adequate ventilation therein;
- (e) provide lighting therein sufficient to avoid employees' eyestrain;
- (f) provide effective means for draining floors; and
- (g) provide suitable and sufficient sanitary conveniences.

Safety

D11. For the purpose of ensuring the safety of persons employed in or performing any duty in workplaces, the following provisions shall apply to every workplace—

(1) Adequate measures shall be taken for the prevention of fire therein and for adequate means of escape for persons employed therein.

(2) All machinery used therein shall be operated and maintained in such a manner as to be safe for all employees.

(3) All walls, partitions, floors, stairs, passages and gangways shall be of sound construction and properly maintained.

(4) (a) No new steam boiler shall be put into use in any workplace unless there has been obtained from the manufacturer of the boiler or from a competent person a certificate specifying the maximum permissible working pressure thereof and said certificate shall be filed with the Labour Commissioner within 28 days of the installation of the boiler.

(b) No steam boiler which has been previously used shall be put into use in any workplace for the first time until it, and all its fittings and attachments, have been

examined by a competent person when it is cold, and as soon as possible thereafter, when steam is raised. And the examiner shall ensure that there are safety valves sufficient and adequate to assure the safe operation of the boiler, and ensure that said safety valves are so adjusted as to prevent the boiler being operated at an unsafe pressure, as to which examination and adjustment the workplace operator shall procure from the examiner a certificate of the results thereof.

(c) Thereafter, it shall be the responsibility of the operator of any workplace to see that every steam boiler therein and all its fittings and attachments shall be examined thoroughly and adjusted by a competent person at least once every 14 months, and also after any extensive repairs, in the manner described in subparagraph (b), and to procure from the examiner a certificate of the results thereof.

(d) The certificates required under subparagraphs (b) and (c) shall be filed by the work-place operator with the Labour Commissioner within 28 days of the completion of the examination.

(e) The Labour Commissioner, by the issuance of an Order, may except from any of the provisions of this subparagraph any class or type of steam boiler as to which he is satisfied that such provisions cannot be applied. Any such exception either may be unqualified or may be subject to such conditions as may be contained in the Order.

D12. For the purpose of contributing to the welfare Welfare. of persons employed in or performing any duty in workplaces, the following provisions shall apply to every workplace—

- (1) There shall be an adequate supply of wholesome drinking water;
- (2) Washing facilities shall be provided and maintained;
- (3) There shall be accommodation for clothing not worn during working hours, and for the drying of work clothing;

(4) Suitable facilities for employed persons to sit during the course of their employment shall be provided and maintained;

(5) Readily accessible first aid equipment shall be provided and maintained; and

(6) Other facilities such as canteen, mess rooms, rest rooms, as are reasonable under the circumstances, shall be provided and maintained.

Special protective measures.

D13. (1) It shall be the responsibility of the operator of any workplace to ensure that —

(a) No persons shall be permitted to partake of food or drink in any room where any lead, arsenic or other poisonous substance is used;

(b) Suitable goggles or protective screens shall be provided to protect the eyes of any persons employed in a process involving a special risk of injury to the eyes;

(c) Where a work process involves a reasonable possibility of injury to other parts of an employee's body, suitable protective equipment shall be furnished;

(d) No persons employed therein shall be required manually to lift, carry, or move anything in excess of the maximum weight specified by any regulations made under this Division;

(e) Where persons are employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances shall be provided and maintained;

(f) Where a process involves heat or steam, facilities adequate to protect workers therefrom shall be provided and maintained;

(g) No person shall be required to use white phosphorous (sometimes called yellow phosphorous) in any process; and

(h) With respect to any process involving the use of or exposure to products containing benzene (which term, as used herein, means the aromatic hydrocarbon C₆ H₆ itself or any product the benzene content of which

exceeds 1 per cent by volume), harmless or less harmful substitutes shall be used if they are available, but, if no such substitute is available then—

- (i) the process shall be, as far as is practicable, carried out in an enclosed system; or where an enclosed system is not practicable, the place of work in which the process is carried out shall be equipped with effective means to ensure the removal of benzene fumes to the extent necessary for the protection of the health of the workers;
- (ii) the word "benzene" and appropriate danger signals shall be clearly visible on any container holding benzene; and
- (iii) each worker who may be exposed to benzene shall receive appropriate instructions about safeguarding health and preventing accidents, as well as about action to be taken if there is any evidence of poisoning.

(2) The operator of any work place shall notify the Labour Commissioner in such manner and in such particularity as the Minister may by regulations prescribe, of any industrial accident which occurs within the work place or to any person in the employment of the operator and also of the occurrence of any occupational disease among any person or persons in his employment.

D14. (1) Any person employed in a workplace to which this Division applies shall make use of all means, appliances, conveniences or other things provided in pursuance of this Act for the health, safety and welfare of employees, to the extent that his employment involves its use. **Duties of persons employed.**

(2) No person employed therein shall wilfully interfere with, misuse, or damage any such means, appliance, convenience or other thing.

(3) No person employed therein or in any other place shall wilfully and without reasonable cause do anything likely to endanger himself or others.

Prohibition of deduction of wages.

D15. Subject to the provisions of this Act, the operator of a workplace shall not, in respect of the cost of anything done or to be done by him in pursuance of this Division or any regulations or order issued thereunder, make any deduction from the sum contracted to be paid by him to any person employed, nor shall he receive or allow any other person to exact or to receive any payment in ~~lieu~~ of such deduction.

Issuance of regulations and orders.

D16. (1) The Minister may issue regulations prescribing the standards to be achieved in respect of any of the obligations set forth in this Part and the methods required to attain them; and he may establish advisory committees on which employers and employees are represented to assist him in this function.

(2) The Minister may, for good cause, require the operator of a workplace to take special measures bearing on the health, safety, or welfare of the employees therein, by the issuance of an Order to this effect, and, without derogating from the generality of such power he may require such alteration of the workplace or to any plant therein to be carried out in such manner and within such time as may be specified in the said order as may be necessary to comply with the requirements of this Act or of any subsidiary legislation made hereunder relating to health and safety of workers; and in addition thereto he may also order, in the event of imminent danger to the health or safety of workers, the introduction of such temporary measures as may be necessary to remove such danger.

(3) The Minister may, for good cause, require the operator of a workplace to take specified measures bearing on the health, safety or welfare of employees whose duties, related to the business of the workplace, are performed in whole or in part, outside the workplace, by the issuance of an Order to this effect.

(4) The Minister may, for good cause, require arrangements to be made for medical supervision in any workplace by the issuance of an Order to this effect.

(5) The Minister may, for good cause, require medical examinations of employees in any workplace at the expense

of the operator of the workplace to ascertain whether their health has been or is being adversely affected by their employment therein, by the issuance of an Order to this effect.

D17. (1) The Minister, acting through the Labour Commissioner, may undertake research into the cause of and the means of preventing employment injury, in the course of which he may co-operate with any other unit of Government or any other organization undertaking similar research.

Accident and
safety
programme.

(2) The Minister, acting through the Labour Commissioner, may undertake programmes to reduce or prevent employment injury, in the course of which he may co-operate with any other unit of Government or any other organization undertaking similar programmes.

PART 3

Administration

D18. (1) The Minister shall have overall responsibility for the administration of this Division.

Responsibility for
administration.

(2) The Labour Commissioner shall be responsible for the day-to-day administration of this Division except insofar as this Division provides otherwise and except that the Minister, on a temporary basis, may impose certain duties on other Government officers.

(3) Labour inspectors, within the Labour Inspection Service of the Labour Department, shall investigate complaints of violations of this Division and, on a regular basis, make routine checks of employers' compliance therewith.

D19. (1) The operator of any workplace and his agents and employees shall permit the entry of and shall furnish the necessary means and facilities to an inspector for the purpose of his performance of duties enumerated herein.

Duty to permit
entry and furnish
means to
inspector.

(2) An inspector may, if he has reasonable cause to apprehend any serious obstruction in the course of his duties, take with him a police officer.

Special powers of
inspector.

D20. (1) An inspector may take for analysis samples of material used or intended to be used in a workplace which he thinks may prove on analysis to be likely to cause bodily injury to persons employed.

(2) An inspector, having reasonable cause to believe that any condition exists at a workplace or any extension thereof which may cause bodily harm to any persons employed or performing duties therein, shall serve written notice upon the operator thereof of his intention to recommend that the Minister issue an appropriate remedial order under section D16.

(3) Whenever an inspector is of the opinion that the employment of any young person in the workplace or any process or part thereof is or may be prejudicial to his or any other person's health, he may serve written notice thereof on the operator of the workplace requiring the cessation of or the imposition of specified limitations upon that young person's employment, and, thereafter, the requirements of the notice shall become an obligation under this Division.

PART 4

Offences, Penalties and Legal Proceedings

Offences.

D21. (1) In the event of the contravention of any obligation created under any provision of this Division or of any regulation or order issued thereunder, by any person upon whom the obligation is imposed, whether the operator of a workplace or a person employed therein, said operator or person shall be guilty of an offence.

(2) If such contravention be by an employed person, the operator of the workplace shall also be guilty of an offence if it is proved that he failed to take all reasonable steps to prevent the contravention.

(3) If the operator of a workplace avails himself of any exemption allowed under this Division or any order or regulations issued thereunder, he shall be deemed to have contravened the provisions of this Division if he fails to comply with any of said conditions contained therein.

(4) Where an offence committed by the operator of a workplace under this Division or any order or regulations issued thereunder is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, other officer, manager or person other than the operator, he, as well as the operator, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) If a young person is employed in any workplace in contravention of the provisions of this Division or any order or regulations issued thereunder, the parent of the young person shall be guilty of an offence, unless the contravention occurred without the consent, connivance, or wilful default of the parent.

D22. (1) If any persons are employed in a workplace other than in accordance with this Division, or any regulation or order thereunder, there shall be deemed to be a separate contravention in respect of each person so employed.

Multiple or continuing offences.

(2) It is hereby declared that where the contravention of any provision of this Division or any regulation or order thereunder is a continuing offence:

(a) the recommencement of such offence after any interval constitutes a fresh offence; and

(b) a prosecution may be instituted, and the person accused may be convicted and sentenced, from time to time, in relation to any portion of the period during which the offence continues to be committed:

Provided, however that such portion shall not be a portion of the period for which the accused has been previously convicted and sentenced for the same offence.

D23. (1) A failure to comply with section 79 is an offence for which the non-complying person shall be liable on summary conviction to a fine of seventy-five dollars, or thirty dollars for each day since the expiration of the month stipulated therein, whichever is the greater, or to imprisonment for two months.

Penalties for specific offences.

(2) If a parent of a young person shall be guilty of an offence under section D21(5), he shall be liable on summary conviction to a fine of seventy-five dollars.

(3) If any person—

(a) forges or counterfeits any certificate required by, under, or for the purposes of this Division or any regulation or order thereunder;

(b) gives or signs any such certificate knowing it to be false in any material particular;

(c) knowingly utters or makes use of such certificate so forged; counterfeited, or false as aforesaid;

(~~d~~) knowingly utters or makes use of such certificate as applying to any person to which it does not so apply;

(e) personates any person named in such certificate;

(~~f~~) falsely pretends to be an inspector;

(~~g~~) wilfully connives in any such forging, counterfeiting, giving, signing, uttering, making use, personating, or pretending as aforesaid;

(~~h~~) wilfully makes a false entry in any register, notice, certificate, or document required by, under, or for the purposes of this Division or any regulation or order thereunder to be kept or served or sent;

(~~i~~) wilfully makes or signs a false declaration required by, under, or for the purposes of this Division or any regulation or order thereunder; or

(~~j~~) knowingly makes use of any such false entry or declaration as aforesaid,

he shall, without prejudice to any other penalty, be guilty of an offence and liable on summary conviction to a fine of fifteen hundred dollars, or to imprisonment for one year.

(4) The operator of any workplace or any person therein who—

(i) obstructs or delays an inspector in the due exercise of any power conferred on him by or under this Division;

- (ii) refuses to answer or falsely answers, any inquiry authorized by or under this Division;
- (iii) fails to produce any register, book, document or other record he is required by or under this Division to produce; or
- (iv) conceals or prevents, or attempts to conceal or prevent, any person from appearing before or being examined by an inspector,

shall be guilty of an offence and liable on summary conviction to a fine of seventy-five dollars or to imprisonment for three months; and, in the case of a second or subsequent conviction under this section within two years from the last conviction for a previous offence under this section to a fine of one hundred and fifty dollars or to imprisonment for six months.

(5) If any person suffers bodily injury or is killed, or dies, in consequence of the operator of the workplace having contravened any provision of this Division or any regulation or order thereunder, the operator shall on summary conviction, without prejudice to any other penalty, be liable to a fine of fifteen hundred dollars, and the whole or part of the fine may be applied for the benefit of the injured person or of the family of the deceased person, or otherwise, as the Court determines:

Provided that—

(a) in the case of injury to health, the operator shall not be liable to a fine under this subsection unless the injury was caused directly by the contravention; and

(b) the operator shall not be liable to a fine under this subsection if proceedings against him under this Division in respect of the act or default by which the injury was caused, have taken place and been dismissed before death as a result of the injury occurred.

D24. Subject as hereinafter in this Division provided, any person guilty of an offence for which no express penalty is provided shall be liable on summary conviction to a fine of three hundred dollars; and if the contravention in respect of which he was so convicted is continued after the conviction he shall (subject to the provisions of section D25)

Penalties for offences for which no express penalty provided.

be guilty of a further offence and liable on summary conviction in respect thereof to a fine of thirty dollars for each day on which the contravention is so continued.

Power to issue regulations includes power to prescribe penalties for contraventions thereunder.

D25. The power to make regulations under this Division includes the power to prescribe for offences against such regulations such penalty not exceeding one hundred and fifty dollars for each offence and, in the case of a continuance of any such offence, a further penalty not exceeding fifteen dollars for each day that such offence shall continue after service of written notice thereof; and in default of payment of such penalties, imprisonment for three months.

Power of court to order cause of contravention to be remedied.

D26. Where the operator of a workplace is convicted of an offence under this Division the Court may, in addition or instead of inflicting a fine, order him, within the time specified in the order, to take such steps as may be so specified for remedying the matters in respect of which the contravention occurred, and may, on application, enlarge the time so specified; and where such an order is made, the operator shall not be liable under this Division in respect of a continuation of the contravention during the time allowed by the court; but if, after the expiration of the time as originally specified or enlarged by subsequent orders, the order is not complied with, the operator shall be liable (in addition to the penalty above prescribed for the offence) on summary conviction to a fine of thirty dollars for each day on which non-compliance continues.

Penalties for persons actually committing offence for which operator is liable.

D27. Where an act or default for which the operator of a workplace is liable is in fact the act or default of some agent, servant, worker, or other person, that agent, servant, worker or other person shall be guilty of an offence and liable to a fine as if he were the operator.

Proceedings where inspector or operator believes the offender to be other than operator.

D28. (1) When it is made to appear to an inspector at the time of discovering an offence—

- (a) that an operator of the workplace has used all due diligence to enforce the execution of this Division;
- (b) that the offence has been committed by a person other than the operator; and

(c) that it has been committed without the consent, connivance, or wilful fault of the operator,

the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the operator.

(2) In proceedings brought against the operator, the operator shall be entitled upon information duly laid by him and on giving the prosecution no less than three day's notice in writing of his intention, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge. Thereupon, if the commission of the offence be established, the operator may seek to prove—

(a) that he used all due diligence to enforce the execution of this Division and of any relevant regulation and order issued thereunder; and

(b) that the said other person had committed that offence in question without his consent, connivance, or wilful default,

in which case the person thus charged may cross-examine the operator if he testifies and any other witness called by him, and he may introduce rebutting evidence; and the prosecution may cross-examine witnesses brought on behalf of either the operator or the other person and may itself introduce evidence.

(3) If, thereupon, the allegations noted in subsection 2 (a) and (b) hereinabove be proved to the satisfaction of the Court, the other person shall be summarily convicted of the offence; and the person so convicted shall, in the discretion of the Court, be also liable to pay any costs incidental to the proceedings.

(4) Where, under this Division any person is substituted for the operator with respect to any provision of this Division, any order, summons, notice, or proceedings, which for the purpose of any of these provisions is by or under this Division required or authorized to be served on or taken in relation to the operator, is hereby required or authorized to be served on or taken in relation to that person.

purposes of this Division, any person shall, on application and payment of the prescribed fee, be entitled to obtain a certified extract under the hand of the Registrar-General of the entry in the register under the Births and Deaths (Registration) Act of the birth of the person. Cap. 53.

D31. (1) Any document (including any summons or order) required or authorized to be served under this Division may be served— Service and sending of documents.

(a) on any person by delivering it to him, or by leaving it at his residence;

(b) on any firm by delivering it to any partner thereof, or by leaving it at the principal place of business of such firm, and in the case of a limited company by delivering it to an officer of the company at the registered office;

(c) on the operator of a workplace (even though it be a limited company) in any such manner as aforesaid, or by delivering it, or a true copy thereof, to any person apparently not under the age of sixteen years at the workplace.

(2) Any such document intended to be served upon the operator of the workplace may be addressed to "the operator" at the proper address of the workplace without further name or description.

(3) The foregoing provisions of this section shall apply (with the necessary modifications) to the sending of any documents required or authorized to be sent under this Division.

D32. In any premises the whole or any part of which has been let or is being used as a workplace— Power of Court to modify agreements and apportion expenses.

(a) where an agreement between the owner and the operator of the workplace prevents one or other from making alterations in the premises which are necessary to conform to any requirement or standard imposed by or under this Division or any regulations or order thereunder, the Court, upon the application of either

Prosecution of offences and recovery and application of fines.

D29. In any proceedings under this Division it shall be sufficient in the information, which shall be laid by or on behalf of the Labour Commissioner, to allege that the workplace is a workplace within the meaning of this Division and to state the name of the ostensible operator thereof.

(2) Where, with respect to and in consequence of any accident in a workplace, a report is made by an authority appointed to hold a formal investigation under any law, or a coroner's inquest is held, and it appears from said report or from the proceedings at said inquest that any of the provisions of this Division or any regulations or orders thereunder were not complied with at or before the time of the accident, summary proceedings against any person liable to be proceeded against in respect of such noncompliance may be commenced at any time within three months after the making of the report or the conclusion of the inquest as the case may be.

(3) Where any offence is committed under this Division by reason of a failure to make an examination, enter a report or do any other thing, at or within a time specified by this Division or by any regulation or order thereunder, the offence shall be deemed to continue until the examination is made, or a report entered, or the other thing done, as the case may be.

Special provisions as to evidence.

D30. (1) Where any entry in a register or record is required to be made by this Division or any regulation or order ~~thereunder~~

(a) any entry made therein by or on behalf of the operator of a workplace shall be admissible against him as evidence of the facts therein stated; and

(b) the absence of the entry shall be admissible as evidence that the requirement has not been observed.

(2) Where, in any proceedings under this Division with respect to a young person, it appears to the court that the young person is apparently of or below the age alleged by the informant, it shall lie on the defendant to prove that the young person is not of or below that age; but where the age of any person is required to be ascertained or proved for

party in an action joining the other, may after a hearing, issue an order setting aside or **modifying** the agreement to permit the making of the necessary alterations; and

(b) where alterations in the premises are necessary to conform to any requirement or standard imposed by this Act or any regulations or order thereunder, the Court, upon the application of the owner or the operator of the workplace in an action joining the other, may, after a hearing, issue an order apportioning the expenses of said alterations.

PART 5

Effectiveness, Repeal, etc.

Saving.

D33. The fact that an employer or employee has complied with or failed to comply with any of the provisions of this Division shall not affect any right of an employee to compensation, or the liability or obligation of any employer or employee, under any statute relating to compensation for employment injury; with respect to any such rights, liabilities, or obligations, the **provisions** of that statute shall govern.

Effective date.

D34. The **provisions** of this Division shall become effective upon enactment.

SCHEDULE

(Section D9)

Particulars to be Submitted by Operator of a workplace.

1. Name of the operator of the workplace.
2. Address and location of the workplace.

-
3. Nature of the work carried on in the workplace.
 4. Whether mechanical power is used and, if so, its nature.
 5. Whether steam boilers are used and, if so, the following particulars in respect of each such boiler—
 - (a) Type, description and distinctive number;
 - (b) Country and year of manufacture;
 - (c) Date of the last thorough examination and name of the person by whom the examination was made;
 - (d) Maximum permissible working pressures in pounds per square inch.
 6. (a) Total number of persons employed in the workplace;
 - (b) Where persons are employed, in shifts, the maximum number employed at any one time.

DIVISION E

Women, Young Persons and Children (Employment)

E1. This Division may be cited as the Women, Young Persons, and Children (Employment) Division. Short title.

E2. In this Division, unless the context otherwise requires— Interpretation.

"agricultural undertaking" means the cultivation of any crop, or any related activities;

"child" means a person under the age of fourteen years;

"compulsory school age" is that period during which a child or young person is required to attend school under the Education Act; Cap. 145.

"industrial undertaking" means any manufacturing, mining, storage, construction, or land, sea, or air transport enterprise; and the term includes a commercial enterprise of any kind and any office or other related operation;

"night work" means work performed between the hours of ten p.m. and five a.m.;

"parent or guardian" means a parent or guardian of a child or young person; and the term includes any person who is liable for the maintenance of, who has the custody of or has control over said child or young person, or who has or would have a direct benefit from the earnings of said child or young person;

"ship" means any seagoing ship or boat of any description registered or licensed in Antigua and Barbuda;

"woman" includes any person of the female sex without distinction of age; and

"young person" means a person who has ceased to be a child and who is under the age of eighteen years.

Prohibition of
employment of
children.

E3. (1) No child shall be employed or shall work in a public or private agricultural or industrial undertaking or in any branch thereof, or on any ship:

Provided that the above contained prohibition shall not apply—

- (i) to any undertaking or ship on which only members of the same family are employed;
- (ii) to members of a recognized youth organization who are engaged collectively in such employment for the purposes of fund raising for such organization; and
- (iii) to a child who is working together with adult members of his family on the same work and at the same time and place; and

Provided further that any child so working shall not work within school hours or for a period of more than eight hours

in any twenty-four hour period or more than thirty hours in any one hundred and sixty-eight hour period or at night.

(2) The provisions of this section shall not apply to the exercise of manual labour by any child under order of detention in a reformatory or industrial school or by any child receiving instructions of manual labour in any school provided that such work is supervised by any government department or public authority.

E4. Any parent or guardian of a child who, by wilful default or by habitually neglecting to exercise due care, has contributed to the commission of the offence of taking a child into employment in contravention of this Division, shall be guilty of an offence. Liability of parent or guardian.

E5. (1) No young person shall be employed unless he has been found fit for the work he is expected to perform after a thorough medical examination; and, thereafter, his employment shall be subject to medical supervision until he is no longer a young person. Restrictions in employment of young persons.

(2) A person shall not employ a young person who is within the compulsory school age during school hours.

(3) Except as hereinafter provided, no young person shall be employed on night work, namely—

(a) no young person shall be employed or shall work during eleven consecutive hours any of which are between ten p.m. and five a.m. in any public or private agricultural or industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed and any person who employs any young person or permits him to work in contravention of the provisions of this section shall be guilty of an offence;

(b) young persons of the age of sixteen years or over may be employed or work between ten p.m. and five a.m. on work which, by reason of the nature of the process, is required to be carried on continuously day and night, but only in undertakings which may be declared to come under an exception created by Order of the Minister.

(4) The provisions of subsection (1) shall not apply to such employment or work of young persons of the age of sixteen years or over in cases of emergencies which could not have been controlled or foreseen and which are not of a recurring character.

(5) When, in case of serious emergency, the public interest demands it, the Minister may, by order, suspend the prohibition of night work in relation to young persons of the age of sixteen years or over as respects all undertakings for such period as he may deem necessary.

(6) Any person who contravenes the requirements of subsections (1) to (3), shall be guilty of an offence, and any such offender, including in the case of a corporation, any director or officer thereof who authorizes, permits, or acquiesces therein shall be guilty of an offence and liable on summary conviction to a fine of three hundred dollars.

(7) The Minister may by regulation vary above requirements with respect to *bona fide* training programmes, under conditions he may deem appropriate.

Registers to be kept.

E6. (1) Every employer in an agricultural or industrial undertaking shall keep a register of all persons under the age of eighteen years employed by him, and every shipmaster shall keep a register, or a list in the articles of agreement of all such persons employed on board his ship.

(2) Such register or list, as the case may be, shall contain particulars of the names, addresses, and dates of birth of all such persons, and of the dates on which they enter and leave such employment, and shall on request at any reasonable time be produced for inspection by any public officer duly authorized to that effect.

(3) Any employer or shipmaster failing to comply with or acting in contravention of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of three hundred dollars.

False certificate or representation as to age.

E7. Where a child or young person is taken into employment in contravention of this Division on the production, by or with the privity of the parent or guardian,

of a false or forged certificate, or on the false representation of his parent or guardian that such child or young person is of an age at which such employment is not in contravention of this Division, that parent or guardian shall be guilty of an offence.

E8. (1) No woman shall, merely by reason of her sex, be employed under terms or conditions of employment less favourable than that enjoyed by male workers employed in the same occupation and by the same employer.

Equal pay for women.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars and in addition thereto the Court may order that the employer convicted of an offence under this section shall pay to the employee concerned such sums of money as the Court is satisfied she has been underpaid and such order shall rank as a judgment debt and may be enforced accordingly.

E9. (1) Where the offence of taking a woman or young person or child, as the case may be, into employment in contravention of this Division is committed by an agent of the employer, such agent shall be liable to a penalty as if he were the employer.

Liability of agent of employer.

(2) Where the employer is charged with an offence under this Division, he shall be entitled upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the Court is satisfied that the employer used due diligence to comply with the provisions of this Division and that the other person committed the offence in question without the employer's knowledge, consent or connivance, the other person shall be summarily convicted of the offence, and the employer shall be found not guilty.

E10. (1) Any labour inspector shall have power to enter any premises or place wherein any industrial undertaking is carried on, or to board any ship, for the purpose of ascertaining whether any woman, young person, or child is employed in contravention of this Division, and to inspect

Inspection of premises.

such premises, place, or ship, and examine any person therein touching the employment of any woman, young person or child.

(2) Any person refusing admission to or obstructing a duly authorized labour inspector in the execution of any duty under this Division shall be guilty of an offence and liable on summary conviction to a penalty of three hundred dollars.

Regulations.

E11. The Minister may make regulations with respect to—

(a) the cleanliness, freedom from effluvia, overcrowding, ventilation and general sanitary conditions of any premises or place wherein women, young persons or children are employed;

(b) the maximum hours of employment of women, young persons or children and the times allowed for meals; and

(c) requirements generally designed for better carrying out of the provisions of this Division.

Penalty for contraventions not expressly provided.

E12. Any person guilty of an offence against this Division or any regulations made thereunder for which no penalty is expressly provided shall be liable on summary conviction to a fine of seventy-five dollars, and in the case of a second or subsequent offence to a fine of one hundred and fifty dollars.

Effective date.

E13. The provisions of this Division shall become effective upon enactment.

DIVISION F

Work Permits

Short title.

F1. This Division may be cited as the Work Permits Division.

F2. In this Division, unless the context otherwise requires— **Interpretation.**

“engage in employment” means—

- (a) take or continue in any employment;
- (b) practise any profession;
- (c) engage in any trade or business; or
- (d) ~~engage~~ or be employed in any form of occupation,

whether or not such employment, profession, trade, business or occupation is taken or continued, or is engaged in, practised or carried on, for reward, profit, or gain;

“self-employment” means employment on one's own behalf, and not under a contract of employment, express or implied; and

“work permit” means a work permit issued under the provisions of this Division.

F3. The provisions of this Division shall not apply to any employed person— **Application.**

(a) who is a citizen of Antigua and Barbuda or is employed by the Government;

(b) who is a member of Her Majesty's regular naval, military or air forces;

(c) who is duly accredited to the State by or under Her Majesty or the Government of any Commonwealth or foreign state, or the wife, family, staff or servant of any such person;

(d) holding the Status of diplomatic agents;

(e) employed by the United Nations or its specialised agencies;

(f) employed in an executive capacity by the Caribbean Community, the Eastern Caribbean Currency Authority, the Caribbean Development Bank, the

Organisation of Eastern Caribbean States or the Economic Affairs Division of the Organisation of Eastern Caribbean States; or

(g) who is a person or one of a class of persons to whom, by Order of the Minister, this Division shall be declared not to apply.

**Prohibition
against
employment.**

F4. A person who is not a citizen of Antigua and Barbuda shall not engage in employment or self-employment in Antigua and Barbuda unless he has obtained a work permit issued by or on behalf of the Minister.

**Applications for
work permit.**

F5. (1) Application for a work permit, or its renewal or extension, shall be made by or on behalf of the person for whom the work permit is sought by the filing, with the Employment Service of the Labour Department, of an application in the form prescribed in the First Schedule completed in triplicate; and, unless the applicant is a self-employed person, said application must be accompanied by a statement in triplicate completed by the intended employer, in the form prescribed in the Second Schedule.

(2) On every application for a work permit, or renewal thereof a fee of ten dollars shall be paid by or on behalf of the applicant.

**Action upon
application for
work permit.**

F6. (1) The Chief of the Employment Service shall conduct an investigation of the conditions surrounding any application for a work permit, and he shall make a report and recommendation to the Minister, and in making such report and recommendation—

(a) he shall take into consideration, among other things, the effect of the grant upon employment opportunities open to citizens of Antigua and Barbuda; and

(b) he may recommend that any work permit granted contain such condition or conditions as appear to be warranted under the circumstances, including the conditions that—

- (i) there be assigned, from among citizens of Antigua and Barbuda, a counterpart-trainee to the position for which the work permit is being granted; and

- (ii) a condition of renewal by the filing of periodic reports on the progress of the ~~counterpart~~ trainee.

(2) Thereupon, the Minister shall decide whether or not, and under what conditions, the permit shall be granted.

(3) Where a work permit is granted or renewed, it shall take the form prescribed in the Third Schedule and, shall not be valid unless and until the fees prescribed under section ~~F11~~ shall have been paid.

(4) A work permit granted shall be effective for such period, not exceeding ~~one~~ year, as the Minister shall allow; but, upon application duly filed under section F5 and considered as prescribed under subsection (1) hereunder, said permit may be renewed by the Minister from time to time.

F7. (1) If any person acts in contravention of or fails to comply with the provisions of section ~~F4~~, or fails to comply with any condition specified in a work permit granted to him, he shall be liable on summary conviction to a fine of fifteen hundred dollars or to imprisonment for six months, and any work permit granted to him shall thereupon be cancelled.

Penalty applicable to employees or self-employed persons.

(2) In any such proceeding, a work permit signed by the Minister stating the conditions upon which the permit is granted shall be conclusive evidence of such conditions unless the defendant proves otherwise.

F8. (1) If any employer employs a person who requires a work permit without that person having first obtained such work permit or in non-compliance with the conditions attaching to a work permit, such employer shall be guilty of an offence and shall be liable on summary conviction to a fine of fifteen hundred dollars or to imprisonment for six months.

Penalty applicable to employers.

(2) Where any offence against this section is committed by a body corporate, the chairman and every director and every officer of the body corporate who knowingly authorises or permits the offence shall be liable to the same penalty.

False statements
in application,
etc.

F9. If any person knowingly or wilfully makes any false statement in any form specified in section F5 which is filed with the Employment Service of the Labour Department or in response to any queries put to him in the course of an investigation made under section F6 (1), he shall be liable on summary conviction to a fine of seven hundred and fifty dollars or to imprisonment for three months.

Fees.

F10. (1) There shall be paid by any person granted a work permit such fee as shall be prescribed by the Minister by Order. All such Orders may be varied or amended at any time and shall as soon as possible be laid before Parliament.

(2) The Minister may prescribe different fees for different persons or categories of persons and for persons receiving different wages or salaries at such rates as may be prescribed.

(3) All fees for work permits shall be paid into the Consolidated Fund.

Regulations.

11. The Minister may issue regulations, not inconsistent with the provisions of this Division, for the administration thereof.

Repeal.
6 of 1971.
S.R. & O. 14/1971.
S.R. & O. 15/1971.

F12. The Work Permit Act 1971 is repealed; except that the Work Permit (Exemption) Order, 1971 issued under section 3 (e) thereof and Work Permit (Fees) Order, 1971 issued under section 10 thereof shall be deemed to have been issued under sections F3 (1) (g) and F10, and shall remain in effect until and unless revised by further Order issued under said respective sections; and except that all work permits issued under that Act, which have not expired, shall be considered to have been issued under section F6.

Effective date.

F13. The provisions of this Division shall become effective upon enactment.

Transitional.

F14. Notwithstanding anything in this Division, a person who, on 31st October, 1981, was regarded as belonging to Antigua for the purposes of this Division and who on 1st November, 1981, is not a citizen of Antigua and

Barbuda according to law shall, for the purposes of this Division, and only for those purposes, be deemed to be a citizen of Antigua and Barbuda—

(a) for a period of eighteen months beginning with 1st November, 1981; or

(b) if before the expiration of that period he applies to be registered as a citizen of Antigua and Barbuda, until he is so registered, or his application is finally refused.

FIRST SCHEDULE

Application under section F5 of WORK PERMITS DIVISION of the Antigua and Barbuda Labour Code.

I, of

hereby make application for work permit under the provisions of the Work Permit Division of the Antigua and Barbuda Labour Code.

The particulars stated below are true and correct—

- (a) Country of origin.....
- (b) Date of Birth.....
- (c) Training and experience
- (d) Number, date and place of issue of Passport
.....
- (e) Date of arrival in Antigua and Barbuda.....
- (f) Period of stay granted by Immigration Authorities.....
.....
- (g) Place of residence before arriving in Antigua and Barbuda
.....
- (h) Employer/intended employer
- (i) Salary or wage.....
- (j) (If self-employed) Business, trade, occupation or profession
.....

(k) Comments
.....
.....

Dated this day of , 19.....

.....
Signature of Applicant.

SECOND SCHEDULE

Attachment to Application under section F5 of
WORK PERMITS DIVISION
of the Antigua and Barbuda Labour Code.

I/WE of..... hereby
request that a work permit be issued to
..... of

The particulars stated below are true and correct to the best
of our knowledge, information and belief—

- (a) Nature of employment offered
- (b) Nature of ~~my/our~~ business, trade, profession or occupation.
- (c) Rate of pay and conditions of employment offered
- (d) Was vacancy advertised locally? (Give details)

.....
Signature.

(if a company, stamp and signature
of Director.)

THIRD SCHEDULE

WORK PERMIT under section F6 of WORK PERMITS DIVISION

of the Antigua and Barbuda Labour Code.

THIS WORK PERMIT is issued to (hereinafter called the holder) under the provisions of the Work Permit Division of the Antigua and Barbuda Labour Code.

The holder may, during his stay in Antigua and Barbuda be employed/engaged as a—

.....

by under the following conditions:

.....

This work permit shall be valid for a period of from the date of issue.

Dated this day of 19

..... Minister responsible for Labour.

DIVISION G

Trade Unions

G1. This Division may be cited as the Trade Unions Short title. Division.

G2. In this Division, unless the context otherwise requires — Interpretation.

"committee of management" of a trade union means all officers and trustees thereof;

"registered trade union" means a trade union registered under Division H; and

"statutory objects" means the regulation of the relations between workmen and employers, or between

workmen and workmen; the negotiation and determination of employees' working conditions in the conduct of business; and/or the providing of benefits to employees.

PART I

General Principles

Legality of action in pursuance of statutory objects.

63. Within the limitations set forth hereinbelow, the performance of acts in pursuance of the statutory objects shall not be unlawful; and the fact that two or more persons perform such acts shall not, merely by virtue of this joint action, be construed to make the acts unlawful.

Combinations with objects other than statutory objects.

G4. (1) Subject to the provisions of section ~~G18~~ any combination composed of employees or of persons acting on behalf of employees which has, in whole or in part, the statutory objects shall be deemed to be a trade union for the purposes of this Division.

(2) The fact that any such combination's pursuance of objects other than statutory objects does not prevent it from being a trade union is not, however, to be construed as entitling it to perform acts in pursuance of any unlawful objects.

Suits by and against trade unions.

G5. (1) Within the limitations set forth in this Division any trade union may sue or be sued—

(a) if there are trustees, in the name of its trustees;

(b) if there are no trustees, in the name of any of its officers;

(c) if there are no officers, in the name of any of its members; or

(d) if there are no present members, in the name of any of its last-known trustees, officers, or members.

(2) In any action by or against a trade union, the persons authorized by the rules of the union so to act, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity or in any authorized tribunal, touching

upon or concerning the property, right, or claim of property of the union; and shall or may in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded in any such court, in their proper names and titles, without other description.

(3) No such action, suit, prosecution, or complaint shall be discontinued or shall abate by reason of the death or removal from office of any such person, but the same shall proceed and may be proceeded in by his successor as if such death, resignation or removal had not taken place; and such successor shall pay or receive the like costs as if the action, suit, prosecution, or complaint, had been commenced in his name as one of the parties for the benefit of, or to be reimbursed from, the funds of the union.

(4) A summons to be issued to any such person may be served by leaving the same at the registered office of the union.

G6. A court shall not entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of— **When trade union contracts not enforceable.**

- (i) any agreement between a trade union and an employer, except as provided by section K27;
- (ii) any agreement between members of a trade union concerning the conditions on which any members of the union shall or shall not sell their goods, transact business, employ or be employed;
- (iii) any agreement for the payment by any person for any subscription or penalty to a trade union;
- (iv) any agreement for the application of funds of a trade union—
 - (a) to provide benefits to members;
 - (b) to furnish contributions to any employer or workman not a member of that union in consideration of the employer or workman acting in conformity with the rules and resolutions of the union; or

(c) to discharge any fine imposed upon any person by sentence of a court of justice;

(v) any agreement between one trade union and another; or

(vi) any bond to secure the performance of any of the above agreements:

Provided however that nothing in this section shall be deemed to render any of the above mentioned agreements unlawful.

Prohibition of actions of tort against trade unions.

G7. (1) An action against a trade union or against any members or official thereof on behalf of themselves or of other members thereof, in respect of any tortious act alleged to have been committed in respect of industrial action by or on behalf of the union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued for any tortious act committed by any of them personally, except in respect of any tortious act committed by or on behalf of the union in contemplation of or in furtherance of a trade dispute.

Removal of liability for restraint of trade.

G8. (1) The purposes of any trade union registered under this Division shall not, by reason merely that they may be in restraint of trade, be deemed so unlawful as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

(2) The purposes of any such trade union shall not by reason merely that they are in restraint of trade be unlawful so as to render void or voidable any agreement or trust involving the union.

Removal of liability for breaching employment contract, etc.

G9. An act done in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

G10. Every undertaking or promise, whether written or oral, express or implied, constituting or contained in any agreement to hire or in any employment contract between any prospective employee or employee and any employer wherein the employee promises not to join, become, or remain a member of a trade union is hereby declared to be contrary to public policy, shall not be enforceable in any court, and shall not afford the basis for the granting of legal or equitable relief by any court.

Promises not to join unions.

G11. (1) An agreement or combination of two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if the act, if committed by one person, would not be a crime.

Conspiracy in relation to trade disputes.

(2) An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act done without any such agreement or combination would be actionable.

(3) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm, in contemplation or furtherance of a trade dispute, to attend at or near a place where a person works, carries on a business, or happens to be, or any a person approaches to such place, within the limitations of section K.20(2)(h) if they do so merely for the purpose of peacefully obtaining or communicating information (whether or not such information is in fact true) or of peacefully persuading any person to work or to abstain from working.

(4) Notwithstanding subsections (1) to (3) inclusive nothing in this section shall affect the law relating to riot, unlawful assembly, breach of peace, or sedition or any offence against Antigua and Barbuda.

G12. Except in strict conformity with the provisions of this Code, no court shall have jurisdiction to issue any restraining order or interlocutory or perpetual injunctive relief in any case involving or growing out of any trade dispute, to prohibit any participating or interested persons from doing, whether singly or in concert, any of the following acts—

Limitations on injunctive relief in trade disputes.

(a) ceasing or refusing to perform any work or to remain in any relation of employment;

(b) becoming or remaining a member of any labour organization, regardless of any such undertaking or promise as is described in section 10;

(c) paying or giving to, or withholding from, any person participating or interested in such trade dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) by all lawful means aiding any person participating or interested in any trade dispute who is being proceeded against in, or is prosecuting, any action or suit in any court;

(e) giving publicity to the existence of, or the facts involved in, any trade dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) assembling peaceably to act or to organize to act in promotion of their interests in a trade dispute;

(g) advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) agreeing with other persons to do or not to do any of the acts heretofore specified; or

(i) advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 11.

Limitations upon
responsibility for
unlawful acts of
others.

613. No officer or member of any trade union and no trade union participating or interested in a trade dispute, shall be held responsible or liable in any court for the unlawful acts of individual officers, members, or agents, except upon proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Application of
union funds.

614. (1) Any trade union shall have power to apply its funds for any lawful object or purpose as and when authorized by its constitution.

(2) The funds of a trade union shall not be applied, either directly or indirectly or in conjunction with another trade union, association or body, or otherwise indirectly in the furtherance of the political objects set forth in subsection (3) (without prejudice to the furtherance of any other political objects), except under the following conditions—

(a) The furtherance of each of these objects by funds of the union must have been approved by separate resolutions passed on a ballot of members or delegates of the union taken at a regular or special meeting thereof in accordance with the provisions of this section by a majority of those voting;

(b) Any payments in furtherance of these objects must be made out of a separate fund (in this Division referred to as a political fund of the union,) which fund shall not come from the general treasury of the union but shall come from special levies upon the members in accordance with a resolution referred to in paragraph (a); and

(c) Any member of a trade union may, within twenty-one days after receiving notice of a special levy sent him in accordance with a resolution referred to in paragraph (a) give written notice that he objects to contributing to the union's political fund under this levy, in which case he shall, as long as his notice is not withdrawn, become exempt from contributing to said fund under this levy.

(3) The political objects to which a political fund applies are the expenditure of money—

(a) on the payment of any expenses incurred directly or indirectly by a candidate or prospective candidate for election to the House of Representatives or any public office (that is, the office of member of any municipal body or of any local road board or of any public body which has power to raise money, directly or indirectly, by means of a rate) before, during, or after the election in connection with his candidature;

(b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate;

(c) in connection with the registration of electors or selection of a candidate for the House of Representatives or public office;

(d) on the holding of political meetings of any kind, or on the distribution of political literature or political documents, unless the main purpose of the meetings or of distribution of the literature is the furtherance of statutory objects within the meaning of this Division; or

(e) on the maintenance of any person who is a member of the House of Representatives or who holds a public office.

(4) Any member who is exempt from an obligation to contribute to the union's political fund in accordance with subsection (2) (c) shall not therefor be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of that part of the political fund as to which he is exempt from any obligation to contribute).

(5) Contribution to a political fund shall not be made a condition for admission to a union.

Amalgamation of unions.

G15. Any two or more trade unions may, by the consent of not less than two-thirds of the members or delegates of each thereof, become amalgamated together as one trade union, with or without any dissolution, division, or pooling of the funds of the union parties or either or any of them; but no amalgamation shall serve to extinguish any of the pre-existing rights or obligations of any of the union parties.

Membership of minors.

G16. Any person under the age of legal majority but not under the age of sixteen years may be a member of a trade union, unless provision to the contrary is made in the rules thereof; and he may, except as hereinbelow provided, enjoy all the rights of a member, execute all instruments, and give all acquittances necessary to be executed or given under the rules, but—

- (i) he shall not be a member of a committee of management, a trustee, or the treasurer of a union;

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- (i) he may, by writing under his hand, delivered at or sent to the registered office of the union, nominate any person other than an officer or servant of the union (unless such officer or servant is the husband, wife, father, mother, brother, sister, nephew, or niece of the nominator) to whom any moneys payable on the death of the member shall be paid at his decease; and he may from time to time thereafter revoke or revise such nomination by writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of the nominator, the union shall pay to the current nominee the amount due to the deceased member.

G17. (1) If any person, by false representation or impersonation, obtains possession of any moneys, securities, books, papers, or other effects of a trade union, or, having the same in his custody or possession, wilfully withholds or fraudulently misapplies the same, or wilfully applies any part of same to purposes other than those expressed or directed in the rules of said trade union, said person shall be guilty of an offence; and on summary conviction therefor, the court, if it sees fit, may summarily order such person to deliver up all such moneys, securities, books, papers, or other effects to the trade union or to repay the amount of money obtained or applied improperly and to pay a further sum not exceeding three hundred dollars, together with costs.

**Falsely obtaining
or misapplying
union effects.**

(2) Upon non-compliance with an order under subsection (1) in whole or in part, the Court may order the person so convicted to be imprisoned, for any period not exceeding six months.

(3) Nothing herein shall prevent the said trade union from taking whatever other legal steps against the person aforesaid for the recovery of said moneys, etc., or from proceeding by indictment against him; but no person shall be proceeded against by indictment if a conviction has been previously obtained for the same offence under the provisions of this Division.

Formation of union.

G18. Any combination of two or more persons devoted to, among other things, the pursuance of statutory objects, shall qualify as a trade union within the meaning as assigned thereto by section A5; provided that, within ten days of the formation thereof—

- (i) it adopt a name—
 - (a) which name shall not be identical with that of any registered trade union; and
 - (b) which name shall not so nearly resemble that of any registered trade union as to be likely to deceive;
- (ii) it establish the location of a registered office to which all communications and notices may be addressed;
- (iii) it adopt a constitution and a set of rules none of which shall be inconsistent with the statutory objects of a trade union; and
- (iv) it designate persons to act as officers, including at least two trustees.

Subsequent actions.

G19. (1) A trade union may, after formation, make such changes in its name (within the requirements of section ~~C18(i)~~ (a) and (b)), its registered office, its constitution and rules, and the identities of its officers, as it sees fit:

Provided, however, that any such changes shall be made only by motions or resolutions passed on a ballot of members or delegates taken at a regular or special meeting thereof by a majority of those voting.

(2) No such changes shall affect any right or obligation of the union or any of its members, and any pending litigation may be continued by or against the trustees or any other officer of the union, who may sue or be sued on behalf of said trade union.

(3) ~~(a)~~ At least once per period of twelve months after the formation of the union, there shall be prepared, no later than ninety days after the expiration of the period covered, an accurate report of the union's financial transactions and an accounting of its assets and liabilities,

audited by a chartered accountant or other qualified professional accountant unconnected with the union except with respect to this auditing function.

(b) A copy of the report shall be made available for inspection and copying by any member, on request of that member.

(c) Responsibility for compliance with paragraphs (a) and (b) shall be that of the committee of management of the union, jointly and severally; and any contravention thereof shall be an offence, making an offender liable on summary conviction to a fine of one hundred and fifty dollars.

G20. (1) Each trade union, registered or unregistered within ten days of the final execution or amendment thereof, shall file with the Labour Department a copy of each collective agreement between it and any employer covering employees of that employer. **Filing of collective agreements.**

(2) Responsibility for compliance with the requirement of subsection (1) shall be that of the committee of management of the union, jointly or severally; and any contravention thereof shall be an offence, making an offender liable on summary conviction to a fine of one hundred and fifty dollars.

G21. Any person, who with intent to mislead or defraud, gives to any member or to any person intending or applying to become a member of a trade union **copies of rules etc.**

- (i) a copy of any rules thereof, on the pretence that they are the existing rules of the union and that there are no others, when in fact they are not the existing rules; or
- (ii) a copy of any rules, on the pretence that such rules are the rules of a registered trade union, when in fact the union is not a registered trade union,

shall be guilty of an offence and liable on summary conviction to a fine of one hundred and fifty dollars.

Acts not
applicable to
unions.

G22. The following Acts shall not apply to trade unions:

Cap. 184.

(i) the Friendly Societies Act; and

Cap. 94.

(ii) the Companies Act.

PART 2.

General Principles Applicable to Registered Trade Unions

Ownership of
property.

G23. (1) Any registered union may own property, both real and personal.

(2) All real or personal property belonging to any registered trade union shall be vested in the union's trustees for the time being, for the use and benefits of the trade union and its members.

(3) Upon the death or removal of any such trustees the property shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever.

(4) In all actions, suits, indictments, or summary proceedings before any court touching upon or concerning any such property, the same shall be stated to be the property for the time being of those holding the said office of trustees, in their proper names, as trustees of said union, without any further description.

(5) Any registered trade union may purchase or take upon lease or rental, in the name of trustees of the union for the time being, any real or personal property;

(6) Any registered trade union may sell, exchange, mortgage, bail, or let its property, in any of which cases, no purchaser, assignee, mortgagee, bailee, or tenant (whichever is appropriate) shall be bound to inquire whether the trustees have authority for said sale, exchange, mortgage, bailment or letting; and the receipt of trustees shall be a discharge for any money obligation arising therefrom.

G24. When a person, being or having been a trustee of a registered trade union, in whose name any stock belonging to such union which is transferable at any bank in Antigua and Barbuda, either solely or jointly with another or others, —

Absence or disability of trustees.

(a) is absent from Antigua and Barbuda;

(b) becomes bankrupt or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement or for composition with his creditors;

(c) becomes a lunatic;

(d) is dead or, if it be unknown whether he is living or dead; or

(e) has been removed from his office of trustee,

the Labour Commissioner, on application from the secretary and three members of the union and on proof satisfactory to him, may direct the transfer of the stock into the name of any other person or trustee for the union; and

- (i) such transfer shall be made by the surviving or continuing trustees; or
- (ii) if there be no such trustees or if such trustees refuse or are unable to make such transfer and the Labour Commissioner so directs, the transfer shall be made by the manager of the bank,

in either of which cases the bank is hereby indemnified against any claim or demand of any person injuriously affected thereby.

G25. A trustee of any trade union registered under this Division shall not be liable to make good any deficiency which may arise or happen in the funds of the union, but shall be liable only for the moneys which are actually received by him on account of said union.

Responsibility of trustee.

PART 3

Miscellaneous

Effective date. **G26.** The provisions of this Division shall become effective upon enactment.

DIVISION II

Bargaining Agents Registration

Short title. **H1.** This Division may be cited as the Bargaining Agents' Registration Division.

Interpretation. **H2.** In this Division, unless the context otherwise requires—

'control or domination of an employer, group of employers, or employers' association'', means such control or domination as has been found under Part I of Division K;

"federation of employers' associations" means an organization composed of a combination or amalgamation of employers' associations;

"federation of trade unions" means an organization composed of a combination or amalgamation of trade unions; and

"parent organization" in relation to a trade union or employers' association, means an organization of which the union or association is a branch or section.

Eligibility of bargaining agents for registration.

H3. (1) Every trade union or federation of trade unions which is composed of seven or more members, and—

(a) is not under the control or domination of an employer or group of employers; and

(b) has power, without the concurrence of any parent organization, to alter any of its own rules and to control the application of any of its own property and funds,

shall be eligible for registration under this Division except that no federation of trade unions shall be eligible for registration unless **all** the constituent or affiliated trade unions of which it consists are registered.

(2) Every employers' association or federation of employers' associations which has power, without the concurrence of any parent organization, to alter its own rules and to control the application of its own property and funds shall be eligible for registration under this Division except that no federation of employers' associations shall be eligible for registration unless all the constituent or affiliated employers' associations are registered.

H4. (1) Application for registration shall be made with the Labour Commissioner by or on behalf of the bargaining agent seeking registration in such form and manner as the Labour Commissioner shall require.

Application for registration.

(2) Together with any such application, the following shall be furnished—

(a) a copy of the rules of the organization and a list of its officers;

(b) the names and addresses of branches, if any;

(c) the number of members at the time of application; and

(d) if the organization has been in operation for a period prior to the filing of the application, a statement setting forth such information for that period (but no more than for the year preceding the filing) as would be contained in an annual financial report of the organization required of all registered organizations under section H8 (2);

(3) Upon the filing of any application for registration, a fee of ten dollars shall be paid.

H5. (1) Upon the filing of any application for registration under this Division, the Labour Commissioner shall, himself or through an appointee within the appropriate Service of the Labour Department, investigate whether the

Application for registration.

bargaining agent seeking registration is in fact eligible for registration.

(2) In said investigation, the Labour Commissioner, or his appointee, may examine books and records and may make such inquiries of such persons as he deems necessary to determine the eligibility for registration of the bargaining agent seeking same.

(3) In said investigation, any person who fails or refuses to produce the books and records required for examination or who produces such books and records which contain material false representations of which he is aware, or any person who fails or refuses to respond promptly to inquiries directed to him hereunder or who, in his response, wilfully makes false representations, shall be guilty of an offence for which he shall be liable on summary conviction to a fine of three hundred dollars.

(4) If he is satisfied from the investigation that the bargaining agent seeking registration is not eligible for same, the Labour Commissioner shall issue an order denying registration, giving the reasons therefor.

(5) An applicant denied registration under subsection (4) may within five days, request a review of the denial by a Board of Review, under procedures according with Section B13;

(6) A final order denying registration is without prejudice to a new filing for registration under section H4 by or on behalf of the bargaining agent denied registration, at any subsequent date.

(7) If he is satisfied from his investigation that the bargaining agent seeking registration is eligible for same, the Labour Commissioner shall issue a certificate of registration to the bargaining agent

(a) stating whether it is a trade union, an employers' association, or otherwise; and

(b) specifying the name in which the bargaining agent is registered; but the name so specified—

- (i) shall not be identical with that of any other bargaining agent presently registered; and
- (ii) shall not so nearly resemble that of any other bargaining agent presently registered as, in the opinion of the Labour Commissioner, to be likely to deceive.

(8) During the interval between the filing of its application and the issuance of an order denying registration or a certificate of registration (whichever is applicable), a bargaining agent shall be presumed eligible for registration and shall enjoy the privileges of a registered bargaining agent as specified in this Code and shall be subject to the responsibilities of a registered bargaining agent as specified in section H6 or H7, whichever is applicable, and of section H8; except that the presumption shall not apply if—

(a) an order denying registration has been issued under subsection (4) until and unless the order has been reversed by a decision on review;

(b) the application is a renewed application filed within one year after the issuance of a final order denying registration to the same bargaining agent; or

(c) the application is a renewed application filed within one year of the issuance to that bargaining agent of a certificate of de-registration under section H10.

(9) A certificate of registration issued shall be valid for one year from the date of issuance; provided, however that, within ten days after said issuance, there be paid by or on behalf of the bargaining agent covered by the certificate a fee based upon a scale fixed by an order of the Minister, which scale shall be based, at least in part, upon the number of members in the bargaining agent seeking registration.

H6. (1) A registered trade union shall adhere to the course of conduct specified in the following subsections.

Principles of conduct for registered trade unions.

(2) Any person who applies for membership, and who—

(a) is a worker of the description; or of one of the descriptions, of which its members wholly or mainly consist, and

(b) is appropriately qualified for employment as a worker of that description,

shall not, by way of arbitrary or unreasonable discrimination, be excluded from joining said trade union; except that, if, within the twelve months immediately preceding his application, he has been expelled from membership therein in accordance with subsection (9) his application for membership may be rejected therefor.

(3) There shall be periodic elections of officers, occurring at intervals of no more than two years;

(4) Except on a temporary basis in emergency situations, no person shall hold office except by election;

(5) No person shall hold office for more than two years except upon re-election;

(6) No member of the trade union in good standing shall be unreasonably excluded from—

(a) attending or taking part in any meeting of the trade union;

(b) being a candidate for or holding any office therein;

(c) nominating candidates for such office;

(d) voting in any election for such office; or

(e) voting in any ballot of the members thereof.

(7) Any ballot among the members of the trade union, upon request of any member, shall be secret; and, in any ballot and on any motion, every member shall have a fair and reasonable opportunity to vote without interference or restraint.

(8) With respect to the annual financial report a copy of which is required to be prepared under section 110 (5) herein, the trade union shall—

(a) supply a copy thereof free of charge to each of its members; or

(b) cause the report to be published in a journal relating to its affairs which is available to its members; or

(c) post a copy for easy inspection by members.

(9) No member of the trade union shall be subjected by or on behalf of the trade union to any unfair or unreasonable disciplinary action; specifically, except in respect of non-payment of any contribution which, under the rules of the trade union, he is required to pay, no member shall be subjected to disciplinary action, including expulsion from membership, unless—

(i) he has had a written notice of the charges brought against him under an existing rule of the trade union;

(ii) he has been given a reasonable time to prepare his defence;

(iii) he is afforded a full and fair hearing; and

(iv) a written statement of the findings resulting from the hearing is given him.

(10) In the event of a person's expulsion from the trade union in accordance with subsection (9) he shall not be caused to lose his employment thereby,

(11) No restriction shall be placed on any member in respect of his instituting procedures, or prosecuting, defending, or testifying in any court or tribunal or before the Minister or the Labour Department.

(12) A member may withdraw from membership at any time, upon reasonable notice; and he shall not be caused to lose his employment thereby.

(13) The trade union's current rules shall be available for inspection by members at all reasonable times.

(14) The trade union's rules—

(a) shall not be inconsistent with any of the requirements of subsections (2) to (13); and

(b) shall be uniformly applied.

Principles of
conduct for
registered
employers'
organizations.

H7. (1) A registered employers' association shall adhere to the course of conduct specified in the following subsections.

(2) Any person who applies for membership, and who is an employer or individual proprietor of the description or of one of the descriptions, of which its members wholly or mainly consist, shall not, by way of arbitrary or unreasonable discrimination, be excluded from membership in the association.

(3) No member of the association shall be subjected by or on behalf of the association to any unfair or unreasonable disciplinary action.

(4) A member may withdraw from membership at any time, upon reasonable notice:

Provided, however, that—

(a) he may not effectuate any withdrawal during the period from the commencement of a series of collective negotiation meetings on his behalf to the date of the reaching of a collective agreement resulting from said negotiations, the imposition of the terms of a collective agreement by a decisional officer created by this Code, or the abandonment of bargaining by both his bargaining agent and the trade union with which it has been bargaining (whichever is applicable); and,

(b) any withdrawal effective upon the reaching of or imposition of a collective agreement as specified in subparagraph (a) shall not serve to release him of any obligation under said agreement for the full term thereof.

(5) The current rules of the organization shall be available for inspection by any member at all reasonable times.

(6) The rules of the organization—

(a) shall not be inconsistent with any of the requirements of subsections (2) to (5); and

(b) shall be uniformly applied.

H8. (1) Every registered bargaining agent shall have a registered office to which all communications and notices may be addressed for any purpose.

Requirements of registered bargaining agents, in general.

(2) Every registered bargaining agent shall cause to be kept proper accounting records with respect to all of its assets and liabilities, and all of its financial transactions; and in connection therewith, it shall establish and maintain a satisfactory system of control of said accounting records its cash holdings, and all its receipts and remittances.

(3) Said accounting records shall not be regarded as proper if they do not give a fair view of the financial state of affairs of the bargaining agent.

(4) Every registered bargaining agent shall appoint an auditor to audit its accounting records at least once per year, which auditor shall be a chartered accountant or other recognized accountant unconnected with the union except with respect to this auditing function.

(5) Every registered bargaining agent shall cause to be prepared, and to be audited, an annual financial report.

(6) Within ninety days after the close of the fiscal year covered thereby, every registered bargaining agent shall file a copy of said report, and a certificate of audit thereof with the Labour Commissioner.

(7) Every registered bargaining agent shall keep a register of its members in such form as the Labour Commissioner shall require.

(8) Every registered bargaining agent, within ninety days after the close of the fiscal year covered by the annual financial report prescribed in subsection (5) shall submit a summary report of its membership to the Labour Commissioner in such form as he shall require; provided, however, that the report need not contain the names of individual members.

(9) Every registered bargaining agent shall file with the Labour Department a copy of every collective agreement

to which it is a party within ten days of the execution or amendment thereof.

(10) Whenever there is a change in the name, the address of the registered office, the rules, the officers, or the names or addresses of branches, if any, of a registered bargaining agent, that organization shall notify the Labour Commissioner thereof within ten days after any such change is made.

Renewed registration.

H9. (1) On the anniversary date of each bargaining agents' registration, the Labour Commissioner shall issue a new certificate of registration to that organization free of charge.

(2) The new certificate of registration issued shall be valid for one year from the date of issuance.

Withdrawal or cancellation of registration.

H10. (1) The registration of a bargaining agent shall be cancelled—

(a) upon the request of the organization; or

(b) if the organization is no longer eligible for registration under this Division.

(2) A registered trade union is no longer eligible for registration under this Division if—

(a) It no longer meets the requirements of section **H3 (1)**;

(b) It fails to adhere to any of the principles of conduct set forth in section **H6**; or

(c) It fails to comply with any of the requirements of section **H8**.

(3) A registered employers' association is no longer eligible for registration under the Act if—

(a) it no longer meets the requirements of section **H3 (2)**;

(b) it fails to adhere to any of the principles of conduct set forth in section **H7**; or

(*t*) it fails to comply with any of the requirements of section H8.

(4) (a) The Labour Commissioner shall, if he has received a specific complaint in writing from any person who is a member of the registered bargaining agent the subject of the complaint alleging that such registered bargaining agent is no longer eligible for registration and if it appears to the Labour Commissioner that the particulars of which complaint if true would be a ground for refusing registration, thereupon investigate the eligibility for registration of such registered bargaining agent.

(*b*) Such investigation shall be conducted by the Labour Commissioner or his appointee from among the officers in the appropriate Service of the Labour Department.

(*c*) In the conduct of the investigation, the Labour Commissioner, or his appointee, shall have the same powers as are described in section H5 (2) and any person who fails to produce books or records required for examination hereunder or who produces such books or records which contain material false representations of which he is aware or who fails to respond promptly to inquiries directed to him hereunder or who, in his responses, wilfully makes false representations, shall be guilty of an offence for ~~which~~—

- (i) he shall be liable on summary conviction to a fine of three hundred dollars; and
- (ii) if the person convicted is an officer of the bargaining agent under investigation, the Labour Commissioner may cancel the registration of such bargaining agent.

(5) If, upon investigation, the Labour Commissioner believes that the registered bargaining agent is no longer eligible for registration, he shall issue a rule setting forth his belief, with the grounds therefor in writing and calling upon the bargaining agent to show cause, within a specified period, why the registration should not be cancelled.

(6) If no response to the rule to show cause is filed, the Labour Commissioner shall forthwith issue a certificate of deregistration.

(7) If a response to the rule is filed, the Labour Commissioner shall consider same and shall take appropriate steps, including but not limited to the following—

(a) he may decide the matter upon the rule and the response;

(b) he may make, or cause to be made by an officer in the appropriate Service of the Labour Department, such further investigation as appears to be necessary; and

(c) he may provide for a hearing on the matter, at which he shall preside.

(8) If, upon the basis of steps taken under subsection (7) he is satisfied that the involved organization is not eligible for continued registration he shall issue an order to this effect.

(9) If, upon the basis of steps taken under subsection (7) he is satisfied that the involved organization is not eligible for continued registration, he shall—

(a) issue an order requiring the organization, within a time specified within the order, to make such changes as he deems necessary for it to be eligible for continued registration and he shall consider the acts thereupon taken in determining what next to do; or

(b) issue a certificate of deregistration.

(10) All actions of the Labour Commissioner taken under this section shall, upon a written request, filed within 5 days, be reviewed by a Board of Review under procedures according with section B13.

(11) A bargaining agent whose registration has been cancelled at its request or to whom a certificate of deregistration has been issued shall no longer be considered a registered bargaining agent under this Division; but this is not to be construed as prohibiting future registration upon appropriate application and demonstration of the attainment of eligibility.

H11. (1) If, in the course of any investigation authorized in this Division the Labour Commissioner, his appointee, or any other person ascertains the name of any member of a trade union, he shall not disclose such name to any other person except in so far as disclosure within the Labour Department is necessary for the proper performance of his duties. Duty of secrecy.

(2) Any person who contravenes the above subsection shall be guilty of an offence and liable on summary conviction to a fine of seven hundred and fifty dollars or to imprisonment for three months.

H12. The Minister may issue regulations, not inconsistent with the provisions of this Division, for the administration thereof. Regulations.

H13. (1) In addition to the duties and responsibilities which are assigned to him under the provisions of this Division and which may be assigned him by any regulations issued thereunder, the Labour Commissioner shall maintain a current list of bargaining agents registered under this Division, with the addresses of their respective registered offices. Additional duties of Labour Commissioner.

(2) He shall make available to any person for inspection **and** copying **at** all reasonable times, the lists of registered bargaining agents and their registered addresses, and the notifications, reports or revisions thereof, filed with him by any registered agent within the past two years.

(3) He shall include an account of his activities under this Division in the Annual Report of the Labour Department, or in an annex thereto.

H14. All application and registration fees received shall be paid into the Consolidated Fund. Disposition of fees.

H15. The provisions of this Division shall become effective ninety days after enactment. Effective date.

DIVISION J

Employee—Representation Questions
(Resolution)

Short title.

J1. This Division may be cited as the **Employee-Representation Questions (Resolution) Division**.

National policy.

J2. The following is the national policy underlying this Division:

(a) Whereas the failure to resolve questions as to the existence, and the extent, of the desire of employees for bargaining representation is a cause of concern, unrest, and industrial strife;

(b) Whereas, in the interests of equalizing the bargaining power of employer and employees, a fundamental principle of industrial life is that the choice of a majority of a group of employees should be the sole bargaining representative of the entire group; and

(c) Whereas it is equally important that, if there is no majority choice, no trade union should be the sole bargaining representative of the entire group:

(1) It now becomes necessary to create a machinery whereunder questions concerning representation can be resolved, machinery under which—

- (i) a unit of employees appropriate for collective bargaining purposes can be fixed;
- (ii) there shall be a secret ballot in which the uncoerced desires of the employees in an appropriate bargaining unit can be ascertained; and,
- (iii) in the interests of industrial stability, the choice of said employees thus demonstrated shall be effective for a reasonable period thereafter; but,
- (iv) after a reasonable period has passed, there shall be the opportunity for said employees to express themselves anew in a secret ballot.

(2) The choice of the majority of an appropriate unit of employees, having the obligation to represent all employees

in said unit for bargaining purposes, may receive remuneration for its services.

J3. In this Division, unless the context otherwise requires— Interpretation

"certification", means the Labour Commissioner's official announcement that one or other registered trade union has received the requisite number of votes in a secret ballot among employees in an appropriate bargaining unit to entitle it to act as sole bargaining agent for the employees in said unit (and such trade union may be referred to herein as the "certified bargaining agent"); or the Labour Commissioner's official announcement that, in such a secret ballot, a majority of votes has been against any trade union being entitled to act as sole bargaining agent (and such announcement may be referred to herein as the "Certificate of Results");

"decertification", means the Labour Commissioner's official announcement that, in a secret ballot conducted under this Division, a trade union which has been acting as sole bargaining agent for a unit of employees has received less than the requisite number of votes entitling it to continue to act as sole bargaining agent for such employees (and such trade union may be referred to herein as the "decertified union");

"employee" shall not include the spouse, son or daughter, or parent of an employer where the employer is an individual proprietorship; the spouse, son or daughter, or parent of a partner where the employer is a partnership; or any person who owns or who has a beneficial interest in at least ten percent of the ownership of a corporation which is the employer, or the spouse, son or daughter, or parent of any such person;

"registered" trade union or employers' association means one registered under Division H;

"sole bargaining agent" means the representative of a bargaining unit of employees, as described in section J4;

“supervisor” or “supervisory employee” means an individual having authority in the interests of an employer, to hire, assign, transfer, reward, promote, demote, discipline, suspend, lay-off, or discharge other employees or responsibly to direct them or adjust their grievances, or effectively to recommend any such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires, rather, the use of independent judgement; and

“union security arrangement” means any requirement whereunder membership of a trade union or payment of a negotiating fee to a sole bargaining agent is a condition of entitlement to a benefit under a collective agreement.

Right of
exclusive
representation.

J4. Despite the general rule laid down in section K3 that an employee may be represented for bargaining purposes by an agent of his own choice or by no such agent, a registered trade union designated or selected for such purposes by a majority of the employees in a unit appropriate for collective bargaining purposes shall be the sole representative of all the employees in employment in said unit for the purposes of collective bargaining purposes in respect of the working conditions therein:

Provided, however, that any individual employee, or group of employees, or any trade union so requested by an employee in the unit, shall have the right at any time to present grievances to an employer and to have such grievances adjusted, without the intervention of the sole bargaining agent, so long as the adjustment is not inconsistent with the terms of a currently effective collective agreement between the employer and the sole bargaining agent; on condition, however that the sole bargaining agent is given the opportunity to be present at such adjustment to ensure consistency with the terms of the agreement.

Method of
resolving
representation
questions,
generally.

J5. Whenever there is a timely-raised question as to whether or not a majority of the employees in any appropriate bargaining unit wish to be thus represented the question shall be decided through a secret ballot conducted by the Labour Commissioner, under the conditions set forth in this Division;

and, thereupon, the Labour Commissioner's certification of results shall constitute a resolution of the question.

J6. Any employee or his registered bargaining agent, or any employer or his registered bargaining agent, may initiate the procedures leading to such secret ballot, by the filing with the Labour Commissioner of a Petition to Resolve Employee-Representation Question, which Petition shall describe the bargaining unit in which the question has arisen, and shall assert, under oath, either that—

Initiation of proceeding.

- (i) at least thirty percent of employees herein have designated or selected a named or petitioning trade union, not presently recognized by their employer, as their sole bargaining agent, to represent them in collective bargaining;
- (ii) at least thirty percent of the employees therein, currently represented by a trade union as their sole bargaining agent, no longer wish to be so represented;
- (iii) a registered trade union, having been recognized by an employer as sole bargaining agent in said unit, which recognition, however, was not the result of the procedures provided herein, now seeks certification through such procedures; or
- (iv) an employer has been met with a request or demand by a registered trade union for recognition as sole bargaining agent in said unit and hereby seeks resolution of the validity of the union's request or demand.

J7. (1) Immediately upon receipt of a Petition, under section J6, the Labour Commissioner shall cause a copy thereof to be posted on the bulletin board of the Labour Department, along with a notice calling upon any registered trade union (other than that for which the Petition seeks certification or decertification as sole bargaining agent) which has been designated or selected by at least thirty percent of the involved employees to assert a claim of intervention within five days.

Preliminary action by Labour Commissioner.

(2) Within five days thereafter, the Labour Commissioner, using the means described in section B5 (2) (a) shall call all interested parties together or otherwise seek to settle the matter by voluntary adjustment or settlement, the **only** acceptable settlements in such a matter being—

(a) an agreement by all parties that a secret ballot, as described in section J11, be conducted by the Labour Commissioner; or

(b) an agreement by the Petitioner that the Petition be withdrawn.

(3) Within ten days after the filing of the Petition, if he has failed to achieve a voluntary adjustment or settlement, the Labour Commissioner shall transmit the matter to the Minister, with a full report thereon.

Action by
Minister on
referral.

J8. On transmittal of the matter to him, the Minister shall seek to settle the matter as called for by section B6 (1); and, should he fail to effect a voluntary adjustment or settlement of all issues within twenty days of the filing of the Petition, he shall refer the matter to a Hearing Officer for formal handling in accordance with section B6 (2).

Formal
proceedings.

J9. (1) The Hearing Officer to whom the formal handling of a Petition to Resolve Employee-Representation Question is assigned—either the Labour Commissioner or his appointee from the Labour Relations Service of the Labour Department—may, in his discretion, call the parties together into a pre-hearing conference in an effort to narrow the issues; but having caused a Notice of Hearing to be served on all parties, he shall commence the hearing within at least ten days after receiving the matter for formal handling.

(2) At the hearing, conducted in accordance with the provisions of sections B9 and B10, the Hearing Officer shall hear and determine such of the following issues as arise for determination at the hearing—

(a) the truth or falsity of the assertion of substantial employee support (or non-support, as the case may be) contained in the Petition or in a claim of intervention;

(b) the appropriateness of the bargaining unit;

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- (c) the timeliness of the Petition; or
 - (~~d~~) any other relevant issue by any of the parties.

(3) (a) The issue having been raised by one or other of the parties, the truth or falsity of assertion of employee support (or non-support) contained in the Petition or in a claim intervention shall be investigated by the Hearing Officer during a short recess called by him.

(~~b~~) The fact that either the petitioning union or a union claiming intervention is the union-signatory to a collective agreement which is currently effective or has recently expired and which covers, in whole or in part, the involved unit of employees, shall be presumptive proof of employee support of that union.

(c) Other evidence bearing on said support (or non-support) may take the form of employee signatures on bargaining-authorization cards or petitions (or decertification petitions), of the involved unions records of paid-up membership, or any other appropriate form.

(d) In this investigation, the Hearing Officer shall compare the employees' names appearing in such evidence with those on a current list of employees in the unit.

(~~e~~) Should the involved employer fail or refuse to furnish a current list of employees in the unit, it may be assumed that all names appearing on the evidence bearing on employee support (or non-support) are employees within the unit.

(~~f~~) In no case shall the Hearing Officer or any other person reveal to anyone the names of the employees who supported (or failed to support) a trade union, as revealed by the above evidence; and any person who fails to comply with this provision shall be guilty of an offence and liable on summary conviction to a fine of seven hundred and fifty dollars or imprisonment for three months.

(4) (a) The issue having been raised by one or other of the parties, the Hearing Officer shall receive stipulations, concessions, testimony, and arguments as to the

appropriateness of the bargaining unit described in the Petition.

(b) Relevant factors bearing on the appropriateness of the unit shall include, but shall not be limited to—

- (i) the history of collective bargaining as it relates to the involved employer, other employers in the industry, and employers, generally, in Antigua and Barbuda;
- (ii) the community of interest among those employees within and outside the described unit;
- (iii) the interchangeability of, and line of progression among, employees within and outside the described unit; and
- (iv) the integration of work-processes as between employees within and those outside the described unit.

(c) Neither officials of management, supervisors, confidential clerical employees whose duties involve access to an employer's personnel records, nor security guard employees shall be included in a bargaining unit with other employees; but this is not to be interpreted as prohibiting the representation by trade unions, in separate bargaining units, of confidential clerical employees whose duties involve access to an employer's personnel records or of security guard employees.

(5) (a) The issue having been raised by one or other of the parties, the Hearing Officer shall receive stipulations, concessions, testimony, and arguments as to the timeliness of the Petition.

(b) No election under this Division shall be held within one year of a valid election previously held; therefore, any Petition to Resolve Employee-Representation Question filed within one year of a valid election previously held shall be untimely.

(c) Where the employees involved in the Petition are currently covered by a collective agreement between

their employer and the sole bargaining agent within the meaning of section 4 the existence of said contract shall act as a bar to any proceedings hereunder, and any Petition shall thereupon be considered untimely:

Provided that—

- (i) if it be filed between thirty and ninety days before the termination of such agreement whose term be for one year or less, the Petition shall be considered timely filed;
- (ii) if it be filed between sixty days and one hundred and twenty days before the termination of the agreement whose term be more than one but no more than two years, the Petition shall be considered timely filed;
- (iii) if it be filed between ninety days and one hundred and fifty days before the termination of the agreement whose term be more than two years but not more than three years the Petition shall be considered timely filed; and
- (iv) with respect to any agreement whose term exceeds three years, if it be filed during the last ninety days of the three-year period following the effective commencement date of said agreement, the petition shall be considered timely filed:

And provided further that if both the employer-signatory and the trade union-signatory to any such agreement waive the existence of the agreement as a bar to any proceeding herein, the Petition shall be considered timely filed.

(d) Neither a collective agreement of indefinite duration, a collective agreement which fails to provide for sole recognition of the trade union-signatory, nor a collective agreement between an employer and an unregistered trade union shall be a bar to any proceedings hereunder (and, hence, shall not render a Petition untimely); but nothing herein should be construed as rendering such agreement unlawful—

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- (i) unless found to be unlawful under Part 1 of Division K; or
 - (ii) except to the extent such agreements may contain provisions which contravene the requirements of any provision of this Code.

(6) Any other relevant issue having been raised by one or another of the parties, the Hearing Officer shall receive stipulations, concessions, testimony, and arguments thereon.

(7) The Hearing Officer, within ten days after the close of the hearing, shall issue a decision in compliance with section B9 (5), in which—

(a) he shall direct that a secret ballot be conducted under the supervision of the Labour Commissioner, specifying the bargaining unit in which the ballot be taken, the choice to appear on the ballot, and any other appropriate details;

(b) he shall dismiss the Petition, specifying the reasons therefor; or

(c) in accordance with section B11 he shall issue any other remedial order which is relevant to the issues and is just and reasonable on the merits of the case.

Review by Board of Review.

J10. Any party to the proceeding may, within five days after the issuance of the Hearing Officer's decision, request a review thereof by a Board of Review, under procedures according with section B13.

The secret ballot.

J11. (1) The provisions of this section shall apply to secret ballots and conducted in accordance with an agreement of all parties as reached under section J7(2) (a) and those conducted under a direction of election appearing in a decision of a Hearing Officer issued in accordance with section J9(7) (a).

(2) Any secret ballot conducted hereunder shall be conducted by, or under the supervision of, the Labour Commissioner or his appointee.

(3) Those eligible to vote shall be the employees within the appropriate bargaining unit.

(4) A copy or copies of a Notice of Election, to be furnished by the Labour Commissioner, shall be posted at a conspicuous place or at conspicuous places at or near the workplace of the employees in the involved bargaining unit for at least one week preceding the election, which notice shall—

(a) give the date, hours, and place of balloting;

(b) describe the requirements for eligibility to vote;

(c) contain a notification, in bold print, that any trade union which obtains a majority of the valid votes cast shall be certified as the sole bargaining agent of all employees in the bargaining unit; and

(d) contain a notification, in bold print, that if any trade union is thus certified a condition of the continuation of employment for such employees, beginning ten days after the certification, shall be either the maintenance of membership in said union or the periodic payment to said union of an appropriate fee for the bargaining services rendered.

(5) At the election, each of the parties, including the involved employer, may be represented by an observer or, in the Labour Commissioner's discretion, by more than one observer, in equal numbers.

(6) (a) On the ballot shall appear the names of the registered trade union with respect to which the Petition seeks certification as sole bargaining agent (or the trade union with respect to which the Petition seeks decertification), the name of each registered trade union which has qualified for intervention, and a place for voters to reject representation by any trade union.

(b) All trade union parties to the matter shall have a place on the ballot, but the only unregistered trade union which may appear thereon is one with respect to which decertification as sole bargaining agent is sought.

(c) One of the choices on the ballot shall be "No" (on a one-union ballot), "Neither" (on a ballot con-

taining the names of two unions), or "None" (on a ballot containing the names of more than two unions).

(7) Provision shall be made, at the election, for the challenge of the voting eligibility of a would-be-voter by any of the observers on grounds to be stated by the challenger; and, in the event of any such challenge, there shall be provisions for segregating and preserving in a sealed envelope the ballot of the challenged voter.

(8) At the close of the election, the Labour Commissioner, or his appointee on his behalf, shall count the unchallenged ballots and issue a tally of Votes.

(9) (a) Within five days of the issuance of the Tally of Votes (either of the original or of a run-off election) any party to the matter may file objections to the conduct of the secret ballot or to its results specifying the grounds therefor.

(b) If, in the opinion of the Labour Commissioner, the stated grounds for the objections, and the responses filed by any party, raise relevant issues as to the propriety of the election, he shall refer the matter to the Hearing Officer who conducted the original hearing. The conduct of the hearing on objections shall follow the procedures set forth in section J⁹ herein, with necessary alterations.

(c) The Hearing Officer's decision—reviewable by a Board of Review—upon the validity of the election, shall recommend either that the Labour Commissioner issue certification in accordance with the Tally of Votes or that the election to which the objections are addressed be set aside and that the Labour Commissioner conduct a re-run election.

(d) If a re-run election is conducted, the ballot thereon shall be the same as that in the election which was set aside, and the procedures therein shall accord with those set forth in subsections (2) to (9) inclusive.

(10) (a) If, in any election, the number of challenged ballots, if counted, are sufficient to change the results therein, the Labour Commissioner shall refer the matter to the Hearing Officer who conducted the original hearing. The conduct of the hearing on challenges — and it may be consolidated with a hearing on objections treated in subsection (9)—shall *mutatis mutandis*, follow the procedures set forth in section J9.

(b) The Hearing Officer's decision—reviewable by a Board of Review—upon the validity of the challenged ballots, shall recommend to the Labour Commissioner which of the challenged votes, if any, should be counted and added to the Tally of Votes and which, if any, should remain uncounted.

(c) The Labour Commissioner shall thereupon open the sealed envelopes containing the challenged ballots which the Hearing Officer—with the approval of a Board of Review, if a review of the Hearing Officer's decision was requested—recommended be counted; he shall, maintaining the secrecy of the identity of the voter as to each such ballot, count said ballots; and he shall thereupon issue a Revised Tally of Votes.

(11) If no choice on the ballot has received an overall majority of the valid votes cast, a run-off election shall be held between the two top choices within ten days. The procedures to be followed in a run-off election shall accord with those set forth in subsections (2) to (8) inclusive.

J12. After all objections or challenges are disposed of, the Labour Commissioner shall issue a certification in accordance with the latest revised Tally of Votes; depending upon the votes of a majority of the employees who have cast valid ballots, which for purposes of this Act shall constitute a "majority" as used in section J4, he shall, as the case may be, either—

Certification by
Labour
Commissioner.

- (i) certify a registered trade union as the sole bargaining agent of the employees in the involved bargaining unit;

- (ii) decertify a trade union currently recognized as sole bargaining agent; or
- (iii) certify that no trade union has received a majority of the valid votes cast by the employees in the involved bargaining unit and that therefore no union is entitled to be their sole bargaining agent.

Effect of certification as sole bargaining agent.

J13. (1) As provided by section **J4** the certified trade union shall be the sole bargaining agent for all the employees in the involved bargaining unit; and, as indicated in section **K4(2)** (c), it shall have the duty to represent all such employees in negotiating collective agreements.

(2) (a) Every employee in the involved bargaining unit shall have the right to benefit from any collective agreement negotiated in terms of subsection (1), less a negotiating fee:

Provided that where an employee becomes or having become remains a member in good standing of the certified trade union no such fee shall be paid to the certified trade union.

(b) (i) The negotiating fee referred to in paragraph (a) shall be \$50.00. The Minister may by order vary the amount of such fee.

(ii) Any order made under sub-paragraph (i) shall be laid before the next ensuing session of Parliament and shall remain in force unless cancelled or amended by resolution of both Houses of Parliament, when it shall cease to have effect, or shall have effect in its amended form but without prejudice to the validity of anything done by virtue of such order prior to such cancellation or amendment.

(c) (i) The negotiating fee shall be payable by the employer in respect of each benefiting employee who does not satisfy the conditions in the proviso to paragraph (a) and, if not paid within thirty days shall be recoverable as a civil debt from the employer.

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- (ii) The negotiating fee referred to in this section shall be paid to the certified sole bargaining agent in respect of each collective agreement negotiated by it.

(d) "Benefiting employee" for the purposes of this subsection means any person who was a member of the sole bargaining unit on the date when the collective agreement was made.

J14. Nothing herein is to be construed as making illegal the request or demand by a registered trade union, or the granting of said request or demand by an employer, that said employer recognize and treat the said trade union as the sole bargaining agent for a unit of his employees:

**Informal
recognition as
sole bargaining
agent.**

Provided that—

- (i) the trade union does in fact represent an uncoerced majority of the employees in said unit;
- (ii) the unit is not clearly inappropriate for bargaining purposes; and
- (iii) no other trade union is presently acting as the sole bargaining agent for the employees in said unit;

and provided further that, with respect to such recognition achieved by a trade union without resort to machinery here established, there shall be no union security arrangement whatsoever.

J15. The Minister may issue regulations for the effectuation of this Division which are not inconsistent with its provisions.

Regulations.

J16. The provisions of this Division shall become effective upon the date on which the Labour Board becomes a functioning body under section B19.

Effective date.

DIVISION K

Industrial Relations (Regulation)

Short title. **K1.** This Division may be cited as the Industrial Relations (Regulation) Division.

Interpretation. **K2.** In this Division, unless the context otherwise requires—

"employees' self-organizational" rights are those described in section K3;

"essential services" are those listed in the Schedule;

"fringe benefits" refers to work-benefits of employees above and beyond their basic wage;

"impasse" means that state of negotiations over a working condition or working conditions at which it can be reasonably assumed that any remaining disagreement is not susceptible to solution by further negotiations;

"infringement" is the extinction or diminution of employees' self-organizational rights, as found unlawful in section K4;

"major trade dispute" is a dispute as defined in section K13; and

"unilateral action", in a bargaining relationship, means action taken by one of the parties thereto covering any condition of work or term of a collective agreement without negotiating about such action, at least to a point of impasse, with the other party.

PART 1

Protection of Self-Organizational Rights

Employees self-organizational rights.

K3. Employees shall have the right to associate with each other or with a trade union; to form, join, or assist trade unions; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for mutual aid or protection; and they shall also have the right to refrain from any and all such activities except as such right is limited by a union security arrangement as may be imposed by section 13.

K4. (1) It shall be an infringement upon employees' self-organizational rights for an employer—

Infringements on employees' self-organizational rights.

(a) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section K3;

(b) to dominate or to interfere with the formation or administration of any trade union;

(c) to contribute financial or other support to any trade union other than any sum which an employer has agreed to pay under a collective agreement:

Provided, however, that an employer shall not be prohibited from permitting trade union representatives to confer with him during working hours without loss of pay;

and provided further that nothing in this Division shall preclude an employer, within the limitations set by section C30, from transmitting to a union the initial payment and regular membership subscription or any other payment to a bargaining union authorized under section C30, whichever is applicable, of any employee who, in writing, authorizes the deduction of same from his wages and its transmission to the union;

(d) by discrimination in regard to the hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in a trade union;

(e) to discharge or otherwise discriminate against an employee because he has filed a complaint of a contravention of any requirement of this section or has given testimony with respect to any such alleged contravention; or

(f) to refuse to bargain collectively with the sole bargaining representative of a unit of his employees.

(2) It shall be an infringement upon employees' self-organizational rights for a trade union, registered or unregistered—

(a) to restrain or coerce employees in the exercise of the rights guaranteed in section K3;

(b) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1) (d);

Provided, however, that nothing in this Division shall preclude a registered trade union from seeking to enforce a requirement imposed by section J13;

(c) if it is the sole bargaining representative of a unit of employees to refuse to bargain collectively with the employer;

(d) if it is a beneficiary of a union security arrangement as authorised by section J13 to discriminate against any employee to whom that union security arrangement applies;

(e) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, for services which are not performed or not to be performed:

Provided, however, that nothing in this Division shall preclude a trade union from seeking an employer's agreement to deduct from an employee's wages the monies which an employer is authorised to deduct under and by virtue of section C30 and its transmission to the union.

(3) (a) For the purposes of this section, "to bargain collectively" shall be construed as the performance of the mutual obligation of the employer or his representative and the sole representative of the employees in a bargaining unit to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment; to execute a written contract incorporating any agreement reached, if requested by either party; and, a written contract having been executed, to discuss any question or interpretation thereof.

(b) For the purposes of this section, refusal to bargain collectively includes, but is not limited to, the following—

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- (i) on the part of either an employer or of a trade union which is the sole bargaining representative, a failure to adhere to any of the requirements of paragraph (a);
 - (ii) on the part of either an employer or of a trade union which is the sole bargaining representative, the unilateral termination of a collective agreement or the unilateral modification of working conditions fixed by a collective agreement, prior to the expiration of said agreement;
 - (iii) on the part of either an employer or a trade union which is the sole bargaining representative, the unilateral modification of an existing working condition after the expiration of a collective agreement, unless the party desiring such modification serves notice of its intended action at least sixty days prior to the time it is proposed to make such modification; offers to meet and confer on the proposed modification; upon request, does meet and confer on the proposed modification, at least to a point of impasse; notifies the Labour Department within thirty days after giving such notice of the existence of a trade dispute (provided agreement on the proposed change has not already been reached); and continues in full force and effect, without resort to industrial action, all terms and conditions of the expiring or expired contract to the end of the sixty-day notice period or the expiration of the contract, whichever comes later;
 - (iv) on the part of an employer, a refusal to accord recognition as sole bargaining representative to a trade union entitled to such recognition;
 - (v) on the part of an employer, unilaterally to change working conditions;
 - (vi) on the part of an employer, during the negotiation of a collective agreement, to refuse, upon request, to give information to a sole bargaining representative, knowledge of which on the

part of the representative is a pre-requisite of informed and meaningful bargaining; or

- (vii) on the part of an employer, to refuse to discuss a grievance under an existing collective agreement; or in the discussion of a grievance, to refuse, on request, to furnish information to a sole bargaining representative, knowledge of which on the part of the representative is a pre-requisite of informed and meaningful discussion of the grievance.

(c) The duties imposed in this section upon an employer or a sole bargaining representative with respect to each other shall terminate upon an intervening certification by the Labour Commissioner under which the sole bargaining representative loses its status as such.

Initiation of proceeding.

K5. (1) Should any question arise as to whether any employee's rights have been infringed upon, the employee, or his registered agent, may seek a resolution of the question by the filing of a Complaint of Infringement with the Labour Commissioner.

(2) Should the Complaint under subsection (1) involve a group of employees under similar circumstances, or should there be filed at or about the same time a number of Complaints involving similar circumstances, the cases may be consolidated in a single proceeding.

Preliminary action by Labour Commissioner.

K6. (1) Immediately upon receipt of a Complaint under section K5, the Labour Commissioner, using the means described in section B5(2)(a), shall seek to settle the matter by voluntary adjustment or settlement.

(2) Within ten days after the filing of the Complaint, if he has failed to achieve a voluntary adjustment or settlement, the Labour Commissioner shall transmit the matter, with a full report thereon, to the Minister.

Action by Minister on referral.

K7. On transmittal of the matter to him, under section K6(2) the Minister shall seek to settle the matter as called for by section B6(1) and, should he fail to effect a voluntary adjustment or settlement of all issues within twenty days after the filing of the Complaint, he shall take one of the steps

open to him under section B6(2), including if he deems it appropriate, the referral of the matter to a Hearing Officer for formal handling.

K8. (1) The Hearing Officer to whom the formal handling of a Complaint of Infringement is referred under section B6(2) (c) may, in his discretion, call the parties together into a pre-hearing conference in an effort to narrow the issues; but having caused a Notice of Hearing to be served on all parties, he shall commence the hearing within at least ten days after receiving the matter for formal handling. Formal proceedings.

(2) At the hearing, conducted in accordance with the provisions of sections B9 and B10, the Hearing Officer shall hear and determine the issues.

(3) He shall, within five days after the close of the hearing (or after the receipt of briefs, if the submission of briefs has been permitted), issue a decision in compliance with section B9(5); and, in accordance with section B11, the decision may issue any remedial order which is relevant to the issues and is just and reasonable on the merits of the case.

(4) Notwithstanding the above subsections, the Hearing Officer shall approve any settlement of the matter reached by all parties thereto at any time between the referral for formal handling and the issuance of a decision, if the terms of the settlement achieve justice under the circumstances and are not clearly repugnant to the principles and purposes of this Code; upon which approval, the matter shall be considered closed.

K9. Any party to the proceeding may, within five days after the issuance of the Hearing Officer's decision, request a review thereof by a Board of Review, under procedures according with section B13. Review of Hearing Officer's decision.

K10. (1) Non-compliance with the decision of a Hearing Officer or if a review thereof has been requested, with the decision on review—is an offence; and non-compliance with the decision—or the decision on review—as to each employee involved is a separate offence. Penalties for non-compliance.

(2) Any person guilty of an offence under subsection (1) is liable upon summary conviction to a fine of three hundred dollars and imprisonment for two months.

Effective date.

K11. The provisions of this Part shall become effective upon the date on which the Labour Board becomes a functioning body under section B19.

PART 2

Trade Disputes

General application.

K12. Government shall provide the machinery for the handling of all trade disputes in Antigua and Barbuda to the end that—

- (i) all parties to any such dispute shall have the benefits of Government services designed to lead to a voluntary adjustment or settlement; and
- (ii) a major trade dispute, if not voluntarily adjusted or settled, shall be resolved by Government services.

Meaning of major trade dispute.

K13. (1) A major trade dispute is a trade dispute which—

- (a) has led to an interruption of work which is continuing; or
- (b) if there is no present interruption of work, may lead to an interruption of work,

which interruption has seriously jeopardized or is likely to jeopardize seriously the economy of Antigua and Barbuda.

(2) The essential services in Antigua and Barbuda are those listed in the Schedule which list may be amended at any time by the Minister by order:

Provided, however, that no services shall be added to the Schedule unless the interruption of that service would be likely to jeopardise seriously the health, safety or economy of Antigua and Barbuda.

(3) The fact that the interruption or possible interruption is within an industry listed in the Schedule shall create

a presumption that the trade dispute is a major dispute, but the presumption may be rebutted by the circumstances.

(4) The fact that the interruption or possible interruption is within an industry not listed in the Schedule shall create a presumption that the trade dispute is not a major dispute, but the presumption may be rebutted by the circumstances.

K14. (1) Should the existence of any trade dispute come to the attention of the Minister or the Labour Commissioner, whether by notification from any party thereto— and a notice received under section ~~K4(3) (b)~~ (iii) shall be considered such notification, by the filing by any person of any question, query, complaint, or petition with respect to employer-employee relations in Antigua and Barbuda, or by any other means, the Labour Commissioner shall immediately, using the means described in section ~~B5(2) (a)~~ seek to settle the matter by voluntary adjustment or settlement.

Initiation of proceeding.

(2) Within ten days after the existence of the trade dispute has come to his attention, if he has failed to achieve a voluntary adjustment or settlement, the Labour Commissioner shall submit the matter, with a full report thereon, to the Minister.

K15. (1) On transmittal of the matter to him, the Minister shall seek to settle the matter as called for by section ~~B5(1)~~; and should he fail to effect a voluntary adjustment or settlement of all issues within twenty days after the existence of the trade dispute is called to the attention of the Minister or Labour Commissioner, he shall take one of the steps open to him under section ~~B6(2)~~.

Action of Minister on referral.

(2) In determining which of the steps to be taken under subsection (1), he shall first determine whether the matter constitutes a major trade dispute within the meaning of section K13.

(3) In arriving at a determination under subsection (2), he may appoint and seek the advice of an Advisory Committee composed of an equal number of representatives of Government, employers and employees whose sole duty shall

be to investigate whether the matter constitutes a major trade dispute.

(4) If he determines that the matter as of the time being, is not a major dispute, he shall issue an order to this effect and thereupon shall remand the matter back to the parties unless it is one which appropriately can be referred to a Hearing Officer under the provisions of this Code.

(5) If he determines that the matter constitutes a major trade dispute, he shall issue an order to this effect, and he shall refer it to a Code Arbitrator or a Panel of Code Arbitrators of the Arbitration Tribunal, whether or not it also constitutes a matter which would be heard by a Hearing Officer under the provisions of this Code.

(6) The Minister's determination that a trade dispute does or does not constitute a major dispute is subject to review, upon the request of any party to the dispute filed within two days, by a Board of Review, under procedures according with section B13.

**Formal
proceedings.**

K16. (1) Upon the referral of a matter to the Arbitration Tribunal for formal handling, the Labour Commissioner shall forthwith call the parties together to select the Code Arbitrator or Panel thereof who shall hear and determine the dispute and shall present the parties with a list of the available Code Arbitrators, from among whom they shall make the selection. The manner of selection shall be as follows:

- (i) one of the parties, designated by lot, shall strike the name of one of the Code Arbitrators off the list;
- (ii) the other party shall strike off a further name, and thereafter, in turn, each party shall strike off names until the remaining names on the list equal the number of Code Arbitrators to whom the Minister has referred the matter for formal handling.
- (iii) the Code Arbitrators whose names thus remain on the list shall hear and determine the matter;

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- (iv) with respect to a panel, the members shall select a chairman from among their own number;
 - (v) if a vacancy occurs among the Code Arbitrators selected to hear and determine a matter, the vacancy shall be filled by the Code Arbitrator whose name was last stricken from the list presented to the parties for selection.

(2) The Code Arbitrator (or panel thereof) thus selected to hear and determine the matter shall cause a Notice of Hearing to issue, setting the place and time of hearing.

(3) At any time prior to, during, or after the hearing, the Code Arbitrator (or panel thereof) may call the parties together in an effort to narrow the issues.

(4) In the conduct of the hearing, the Code Arbitrator (or panel thereof) shall adhere to the provisions of sections B8 and B10.

(5) The Code Arbitrator (or panel thereof), within twenty days after the close of the hearing (or after the receipt of briefs, if the submission of briefs has been permitted), shall issue a decision in accordance with section B8(6) and section B8(7) (a), (b) and (c) and, in accordance with section B11, the decision may contain any remedial order which is relevant to the issues and is just and reasonable on the merits of the case.

(6) Notwithstanding the requirements of subsections (2) to (5) above, the Code Arbitrator (or panel thereof) shall approve any settlement of the matter reached by all parties thereto at any time between the referral for formal handling and the issuance of a decision, if the terms of the settlement achieve justice and are not repugnant to the principles and purposes of the Code; upon which approval, the matter shall be considered closed.

K17. (1) Non-compliance with the decision of a Code Arbitrator (or panel thereof) is an offence; and non-compliance with the decision as to each employee involved is a separate offence. Penalties for non-compliance.

(2) Any person guilty of such offence is liable upon summary conviction to a fine of seven hundred and fifty dollars and to imprisonment for six months.

Effective date.

K18. The provisions of this Part shall become effective upon the date on which the Arbitration Tribunal becomes a functioning body under section *B20*.

PART 3

Industrial Action

Right to industrial action.

K19. It is hereby declared that the strike and the lockout are legitimate aspects of the process of free collective bargaining, and, except in strict conformity with the provisions hereinbelow, no court shall have jurisdiction with respect to the existence or threat of any such industrial action or any activities related thereto, either in a criminal proceeding or in any civil proceeding in law or in equity; and specifically, except in strict conformity with the provisions hereinbelow, no court shall have jurisdiction with respect to the granting of any restraining order or any injunction, temporary or permanent, in connection therewith.

Limitation.

K20. (1) Nothing in section *K19* herein shall affect the law relating to riot, unlawful assembly, breach of peace, sedition, or any offence against Antigua and Barbuda.

(2) Notwithstanding the provisions of section *K19* hereof no industrial action shall be commenced or, if commenced, shall ~~continue~~—

(a) in any trade dispute in an industry listed among the essential services in the Schedule, until and unless the Minister has issued an order declaring that the dispute is not a major trade dispute;

(b) in any trade dispute in any other industry if and when the Minister has issued an order declaring that the dispute is a major trade dispute;

(c) in any trade dispute in pursuance of an objective which has been referred for formal handling under section *B5(2) (c)*;

(d) in any trade dispute in protest of a decision of any decisional officer, including a court, rendered under this Code;

(e) in any trade dispute the objective of which is the achievement of recognition from an employer as bargaining agent of a unit of his employees, where another trade union is presently recognized as sole bargaining agent for the same, or any of the same, employees;

(f) in any trade dispute in violation of an existing no-strike or no-lockout commitment;

(g) in any trade dispute designed to further an action which has been found to be an infringement upon employees' self-organizational rights as prescribed in section K4; or

(h) in any trade dispute in which any person, with a view to compel any other person or to do or to abstain from doing any act which such other person has a legal right to abstain from doing or to do, respectively, wrongfully, and without legal authority—

- (i) uses violence toward or intimidates such other person or his wife or children, or injures his property;
- (ii) hides any tools, clothes, or other property owned or used by such other person, or deprives him of the full use thereof;
- (iii) persistently follows such other person about from place to place;
- (iv) watches or besets the house or other place where such other person resides, or any approach to such house or place; or
- (v) with two or more persons follows such other person in a disorderly manner in or through any street or road:

Provided, however, that it is the performance of these acts which is prohibited and not the industrial action unaccompanied by such acts.

Application of
penalties.

K21. The provisions of section K20 shall apply to—

- (i) any person who directs, urges, or encourages any person to engage in the prohibited industrial action or related activities;
- (ii) any employee who, alone or in concert, participates in the prohibited industrial action or related activities; and
- (iii) any employer, or his agent, who participates in the prohibited industrial action or related activities,

but they shall not apply to any person or organization other than one who actually commits an act here made unlawful or who authorizes or ratifies the same after actual knowledge thereof.

Penalties and
sanctions.

K22. (1) With respect to the requirements of section K20—

(a) Any contravention of the requirements of section K20 (2) (a) or (b) shall be an offence for which the offender shall be liable upon summary conviction to a fine of three thousand dollars and to imprisonment for twelve months;

(b) Any contravention of the requirements of section K20 (2) (c), (d) or (e) shall be an offence for which the offender shall be liable upon summary conviction to a fine of fifteen hundred dollars and to imprisonment for six months.

(c) Any contravention of the requirements of section K20 (2) (f) shall be an offence for which the offender shall be liable upon summary conviction to a fine of seven hundred and fifty dollars and to imprisonment for three months.

(d) Any contravention of the requirements of section K20 (2) (g) shall be an offence for which the offender shall be liable on summary conviction to a fine of three hundred dollars and to imprisonment for two months.

(e) Any contravention of the requirements of section K20 (2) (h) shall be an offence for which the offender

shall be liable on summary conviction to a fine of fifteen hundred dollars and to imprisonment for twelve months.

(2) In addition to the powers conferred under subsection (1), a court may make such order as it may think fit in any such proceeding brought before it:

Provided, however, that no court shall have jurisdiction to issue an interlocutory or perpetual injunction in any such case except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) and testimony in opposition thereto, if offered, and except after findings of fact by the court to the effect—

(a) that unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained;

(b) that substantial and irreparable injury to complainant's property will follow if no injunctive relief is granted;

(c) that as to each item of relief granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) that complainant has no adequate remedy at law; and

(e) that the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

(3) No interlocutory injunction shall be issued without notice ~~unless~~—

(a) the complainant alleges that, without such order, substantial and irreparable injury to complainant's property will be unavoidable;

(b) there be testimony under oath sufficient, if sustained, to justify the court in issuing an interlocutory injunction after notice; and

(c) the restraining order be effective for no more than five days.

(b) to endanger human life or public health or to cause serious bodily injury to any person, or to expose valuable property to the risk of destruction, loss or serious injury,

as the case may be, shall be guilty of an offence and shall be liable on summary conviction to a fine of fifteen hundred dollars and to imprisonment for a term of three months.

(3) In any proceeding in respect of an offence under this section, the court shall presume the existence of the contract, and in the particular service alleged in the charge related to the proceeding unless the contrary is proved.

K24. The provisions of this Part shall become effective upon enactment. Effective date.

PART 4

Collective Agreements

K25. (1) With respect to all collective agreements filed by trade unions under section G20 it shall be the duty of the Labour Commissioner, acting through the Labour Relations and the Statistical Services of the Labour Department, to analyze said agreements for whatever information may be derived with respect to the employment conditions of workmen covered by collective agreements. Duties of Labour Commissioner re collective agreements filed.

- (2) (i) With respect to all collective agreements filed by registered bargaining agents under section H8 (9) it shall be the duty of the Labour Commissioner, acting through the Labour Relations Service, to analyze said agreements to ensure that the provisions thereof are not inconsistent with the provisions of this Code.
- (ii) Should he find one or more provisions of any such agreement to be inconsistent with any

(4) No restraining order or interlocutory injunction shall be issued except on condition that the complainant shall first file an undertaking with adequate security in an amount to be fixed by the court to recompense those enjoined from any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable counsel's fee) and expense of defence.

Special provisions re certain services.

K23. (1) Whether or not a strike therein be unlawful, any workman who—

(a) being a workman in an essential service, wilfully breaks or terminates his contract of service without fourteen days written notice, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to deprive the public or any section thereof of the enjoyment of that essential service; or

(b) whether or not a workman in an essential service, wilfully breaks or terminates his contract of service, without fourteen days' written notice, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to endanger human life or public health, or to cause serious bodily injury to any person, or to expose valuable property to the risk of destruction, loss or serious injury,

shall be guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars and to imprisonment for one month.

(2) Any person who causes or procures or counsels any workman specified in subsection (1) so to break or terminate his contract without fourteen days' written notice, knowing or having reasonable cause to believe that the probable consequence of that workman's breach or termination, either alone or in concert, will be—

(a) to deprive the public or any section thereof of an essential service or substantially to diminish the enjoyment of an essential service by the public or a section thereof; or

provision of the Code, he shall so inform the filing bargaining agents.

- (iii) Thereupon, if any such provision of the agreement is revised and, as revised, is resubmitted to him, he shall analyze the revised provision to ensure that there be no inconsistency with the provisions of the Code.
- (iv) Finding any remaining inconsistency, he shall so inform the filing bargaining agents as in paragraph (ii); and he shall analyze any further revised section resubmitted for inconsistency with the provisions of the Code, as in paragraph (iii) as often as revisions of the agreement are resubmitted.
- (v) Should he find no inconsistency with the Code in the collective agreement as originally submitted, or as resubmitted from time to time under paragraphs (iii) and (iv), he shall certify that the collective bargaining agreement is a lawful contract in all respects.

Parties' intent as to enforceability.

K26. (1) Every collective agreement between an employee or employer or the registered agent of either on the one hand and a registered trade union on the other **which—**

(a) is executed after the effective date of this Part; and

(b) does not contain a provision which (however expressed) states that the agreement or part of it is intended to be legally enforceable,

shall be conclusively presumed to be intended by the parties not to be a legally enforceable contract.

(2) Where a collective agreement executed between such parties after the effective date of this Part contains a provision which (however expressed) states that a specified part of the agreement is intended to be legally enforceable, the agreement, with the exception of that part, shall be conclusively presumed to have been intended by the parties not to be a legally enforceable contract.

(3) Where a collective agreement executed between such parties after the effective date of this Part contains a provision which (however expressed) states that all of the agreement is intended to be legally enforceable, the agreement shall be conclusively presumed to have been intended by the parties thereto to be a legally enforceable contract.

K27. (1) Every collective agreement between registered bargaining agents which has been certified as a lawful contract under the provisions of section K25 (2) shall thereupon be a legally enforceable contract to the extent the parties thereto intended it to be enforceable, as noted in section K26. **Enforceability of collective agreements.**

(2) Such contracts to the extent intended to be enforceable, shall be enforced in the Courts in the same manner as any other enforceable contracts.

K28. The provisions of this Part shall become effective upon enactment. **Effective date.**

PART 5

Administration and Miscellaneous

K29. The Minister may issue regulations for the purpose of carrying out this Division which are not inconsistent with its provisions. **Regulations.**

K30. The provisions of the Part shall become effective upon enactment. **Effective date.**

SCHEDULE

(Ss. K2 and K13)

Essential Services

1. Water Services.
 2. Electricity Services.
 3. Hospital Services.
 4. Fire Services.
 5. Prison Services.
 6. Air Traffic Control Services.
 7. Meteorological Services.
 8. Services rendered by International Aeradio Limited
 9. Services rendered by persons employed in the Government Printing Office.
 10. Services rendered by Cable and Wireless (West Indies) Ltd.
 11. Services rendered by the Port Authority.
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