



# AITUC DIGITAL ARCHIVE - 2021

Folder Code: 4 File No. AI-34 S. No. \_\_\_\_\_

Digital File Code: \_\_\_\_\_

File Title: Main Features of the Bill, AITUC  
Working Committee - 1978

Year: 1978 / \_\_\_\_\_

Metadata:  Scanned:

Note: 2 Extra Copies

FILE NO.: \_\_\_\_\_

\_\_\_\_\_  
Name :

\_\_\_\_\_  
Address :

\_\_\_\_\_  
Subject :

\_\_\_\_\_  
From :

To : \_\_\_\_\_

**COBRA FILE**

**NO. 1000**

**Diplomat™**

# **INDUSTRIAL RELATIONS BILL, 1978**

BA  
5002

File No AI-34

4

## **MAIN FEATURES OF THE BILL**

(N/R)

**AITUC  
Working Committee  
(26 & 27 September 1978)  
New Delhi**

**Price : Rs. 3.00**

I N D E X

|   | <u>Page</u> |
|---|-------------|
| 1. Courts, Tribunals, etc.  | 1           |
| 2. Union Registration   | 2           |
| a) Cancellation of Registration<br>by Court or Tribunal                         | 3           |
| b) Union Subscription   | 3           |
| c) Disqualification of<br>office-bearers  | 4           |
| d) Outsider   | 4           |
| 3. Tribunal to adjudicate in<br>TU disputes                                     | 4           |
| 4. Negotiating Agent  | 5           |
| a) Period of recognition  | 10          |
| b) Bar on fresh application<br>for certification                                | 10          |
| 5. Rights of Negotiating Agent  | 7           |
| 6. Determination of Negotiating<br>Agent.                                       | 9           |
| 7. Right of Strike  | 11          |
| a) Essential Services<br>where strike is banned                                 | 11          |
| b) Notice of strike   | 12          |
| c) (i) Strike Ballot under<br>supervision of<br>Registrar                       | 13          |
| (ii) Disputes in connection<br>with ballot to go<br>to Tribunal                 | 13          |
| d) Penal measures for illegal<br>strike   | 13          |
| e) Prohibition of strike<br>even when no reference<br>to Tribunal is made.      | 14          |
| 8. Settlement of Disputes   | 16          |
| 9. Time stipulated for bipartite,<br>Tripartite, Court or<br>Tribunal decisions | 16          |
| 10. Lay-Offs  | 17          |
| - Condition of Lay-Off benefits   | 18          |
| 11. Unfair Practice of employees &<br>trade unions.                             | 19          |
| 12. Penalty for committing<br>unfair practice                                   | 20          |
| 13. Exemption from the provisions<br>of the Bill                                | 20          |

|  | <u>Page</u> |
|--|-------------|
| 14. Hospitals and Educational Institutions Bill        | 20          |
| a) Definition of Hospital and Educational Institution. | 20          |
| b) Strike prohibited                                   | 21          |
| c) Compulsory Arbitration                              | 21          |
| d) Banned from forming registered trade union          | 21          |
| e) No outsider in Association of employees.            | 22          |

-----

## INDUSTRIAL RELATIONS BILL, 1978

### Main features of the anti-working class Bill

The Bill has widened and strengthened the powers of bureaucracy and courts to intervene in industrial disputes and to interfere in the work and activities of trade unions.

Besides conciliation officers, labour courts and industrial tribunals, provisions have been made for appointment of Arbitrators in terms of Section 7(i) which states : "The appropriate government shall maintain a roster of arbitrators from which the parties to an industrial dispute, industrial or trade union dispute may choose an arbitrator or a body of arbitrators for settlement of such dispute".

The institution named Court of Inquiry has also been retained in terms of Section 8(1) which says : "The appropriate government may as occasion arises, by notification, constitute a Court of Inquiry for inquiring into any matter connected, or appearing to be connected with, or relevant to, an industrial dispute or a trade union dispute". The scope of Industrial Tribunals has been widened to interfere and intervene in so-called trade union disputes as also determination of bargaining agent.

Section 10(5) says :

"The Tribunal shall have, subject to the other provisions of this Act, jurisdiction -

- a) to adjudicate industrial disputes relating to any matter specified in or under the Third Schedule or trade union disputes;
- b) to determine the support for any registered trade union of employees under Section 60 and to certify such trade union as sole negotiating agent, chief negotiating agent, associate union or local union; and

c) to determine any matter relating to the election of a negotiating committee and the certification of such committee as sole negotiating agent".

Yet another institution has been provided for in the Bill - National Industrial Relations Commission whose function as stated in clause 11(1) are :

ā) for the adjudication of -

i) any industrial dispute (whether such dispute relates to any matter specified in the Second schedule or the Third schedule) concerning any industrial establishment or undertaking with respect to which the central government is the appropriate government" ; or any dispute where the state government is the appropriate government, "but such dispute in the opinion of the central government,-----.

2(iii)"any trade union dispute which, in the opinion of the central government, involves any question of national importance or one of the parties to the dispute is a registered trade union having offices in more than one state.....".

UNION REGISTRATION FURTHER TIGHTENED:

Section 19(1)(6) of the Bill says :

"Every application for the registration of a trade union shall be made to the Registrar,..... in case of a trade union of employees by 10 per cent of the employees employed in an industrial establishment or undertaking or two or more industrial establishments or unit, branch or office, or units, branches or offices, of an industrial establishment or undertaking, as the case may be.....or by ten employees, whichever is higher".

"Provided that where ten per cent of such employees exceed one hundred employees, it shall be sufficient if the application is made by one hundred of such employees.....".

"Explanation: In case of a trade union which is an association of trade unions, its membership, for the purpose of this sub-section, shall be deemed to be the

aggregate of the membership of each of the trade union constituting such association of trade unions".

Section 20 states : "No craft or categorywise trade union shall be registered under this Act".

60 days to get registration:

According to Section 23(1) : - "The registrar on the receipt of an application for registration of a trade union shall, after making such enquiries and collecting such further information as may be necessary, pass order within sixty days from the date of receipt of the application either granting or refusing to grant registration of the trade union and communicate the order to the applicant.....".

Re-registration of all trade unions:

Section 25(2) states: "Every trade union registered under the Trade Unions Act, 1926, or any other law, before the commencement of this Act, may apply for registration under this Act and where such trade union does not make any such application it shall, on expiry of six months from the commencement of this Act, be deemed to be not a registered trade union for the purpose of this Act".

Cancellation of registration by Labour Court or Tribunal:

Section 26(2) states : "A certificate of registration of a trade union shall be cancelled by the Registrar where a Labour Court or a tribunal recommends cancellation of such registration under sub-section (4) of Section 93 or sub-section (8) of Section 108, as the case may be".

Rate of subscription increased and provides for check-off system :

Section 30(1) states : "The subscription payable by the members of a trade union shall be -

- i) in the case of a trade union of persons employed in agriculture or agricultural operations, not less than twenty five paise per month per member;
- ii) In other cases, not less than one rupee per month per member.

2. Where a trade union, in accordance with its rules, resolves to that effect and the employees who are members of such trade union execute in favour of the employer a written authorisation in that behalf, the membership fee shall be deducted from the wages of the employees by the employer and paid over to the trade union concerned in the prescribed manner."

Disqualification by Labour Court:

Section 33(iii) states : "A person shall be disqualified for being chosen as, and for being an office-bearer of a registered trade union, if.....he is already office bearer of not less than four trade unions; and (iv) a Labour Court has directed, under sub-section (2) of Section 93, that he shall be disqualified for being chosen as, or for being, an office bearer of a trade union, so long as such order is in force".

Outsiders:

Section 34 says: "(1) in the case of a trade union of employees.....employed in one industrial establishment or undertaking only, the number of office-bearers of such trade union who are not persons actually employed in such industrial establishment or undertaking, shall not be more than two.

"(2) In the case of a trade union of employees..... employed in two or more industrial establishments or undertakings, not less than three-fourth of the total number of office-bearers of such trade union shall be employees actually employed in any of the industrial establishments or undertakings with which the trade union is connected."

Declaration of assets by office-bearers:

Section 35 : "Every office bearer of a trade union shall file a statement of his assets and liabilities every year, on or before such date as may be prescribed with the Registrar.....".

Interference of Tribunal in Trade Union Disputes:

According to Section 43, "(1) where there is -  
a) a dispute relating to, -  
i) the election of an office-bearer or the disqualifica-

- tion of any person for being chosen as, or for being, an office-bearer of a registered trade union; or
  - ii) whether or not any person is, or be, an office-bearer, or a member of a registered trade union, including any dispute relating to wrongful removal or expulsion of any such office-bearer or member from his office or membership of such trade union, as the case may be; or
  - iii) the property including account books, of any registered trade union; or
  - iv) any other trade union dispute,
- an application may be made in the prescribed manner to the Tribunal specially authorised in this behalf for the adjudication of the dispute, -

(A) where the dispute is in respect of a registered trade union which is an association of trade unions, by any person who is a member of any of the trade unions, which is a member of the association; or

(B) where the dispute is in respect of a registered trade union which is not an association of trade unions, by any person who is a member of the trade union.....".

In terms of sub-section (2) of Section 43, the central government may refer such dispute to a National Commission for adjudication, sub-section

(5) of Section 43 states :

"The award of the Tribunal or the National Commission as the case may be..... shall be final".

Negotiating Agent (Section 52):

Sole Negotiating Agent - Support of not less than 65 per cent of employees of a negotiating unit. Where there is only one registered trade union it will be sole negotiating agent if it has support of not less than 40 per cent of employees.

Chief Negotiating Agent Support of more than 50 per cent but less than 65 per cent of employees.

Associate Union or Unions

- Having support of not less than 20 per cent of employees.

Negotiating Committee

- Where there is no registered trade union, a committee to be called a negotiating committee shall be elected by the employees to discharge the functions of a sole negotiating agent.

According to Section 61, - "(1) where in relation to the employees of a negotiating unit -

- a) In case such negotiating unit consists of two or more industrial establishments or undertakings, or two or more units, branches or offices of the same industrial establishment or undertaking, situated in more than one state, the central government; or
- b) in other cases, the appropriate government, is of the opinion that there is no registered trade union of employees.....or, if there are two or more registered trade unions of employees, none of such trade unions of employees has the support of more than fifty per cent of such employees, the central government or the appropriate government, as the case may be, may direct the Tribunal specially authorised in this behalf by the appropriate government to proceed to hold elections, by secret ballot, among the employees, of such negotiating unit.....to constitute a negotiating committee to represent such employees".

Local Union

Apart from the sole negotiating agent in relating to employees employed in two or more industrial establishments or undertakings, any other trade union may be certified as local union if such trade union of employees has the support of not less than 40 per cent of the employees and is the trade union of employees having the support of the maximum number of employees of such local unit.

Rights of Negotiating Agent:

As regards the rights of Negotiating Agent, Section 67 says : "(1) A registered trade union of employees certified as sole negotiating agent or chief negotiating agent, as the case may be, under sub-section (1) of Section 60 or a negotiating committee certified as a sole negotiating agent under sub-section (7) of Section 61 shall be entitled -

- a) to raise disputes with the employer or employers in relation to the industrial establishment or undertaking or industrial establishments or undertakings, or unit, branch or office, or units, branches or offices of the same industrial establishment or undertaking, as the case may be, constituting the negotiating unit, in regard to general questions concerning employment or non-employment or terms of employment and conditions of labour of the employees of the negotiating unit and enter into agreements with such employer or employers, as the case may be, in pursuance of negotiations under Section 97 or conciliation under Section 98 or to agree to refer such disputes for arbitration under Section 100 or adjudication under Section 101;
- b) subject to the other provisions of this Act, to call for a strike;
- c) to obtain from the employer such accommodation for its office as the employer is capable of providing;
- d) to put up or cause to be put up a notice board on the premises of the industrial establishment or undertaking or each of the industrial establishments or undertakings, or unit, branch or office or, each of the units, branches or offices of the same industrial establishment or undertaking, as the case may be, constituting the negotiating unit, and affix or cause to be affixed thereon, notices relating to meetings, statement of accounts of its income and expenditure and other statements or announcements other than statement or announcements which are subversive of discipline;

e) to hold discussions after prior intimation to the employer concerned with the employees of the negotiating unit within the premises of the industrial establishment or undertaking or any of the industrial establishments or undertakings or unit, branch of office or any of the units, branches or offices of the same industrial establishment or undertaking, constituting the negotiating unit, at such place as shall be allowed by the employer concerned;

- Provided that such discussions shall not interfere with the due working of the industrial establishment or undertaking;

f) to hold discussions with the employer or employers concerned or any person nominated by such employer or employers or with the representatives of a trade union of employers, for the purpose of redressing any grievance of all or any of the employees of the negotiating unit;

g) to hold discussions with the employer in relation to the industrial establishment or undertaking or any of the industrial establishments or undertakings or unit, branch or office or any of the units, branches, or offices of the same industrial establishment or undertaking, constituting the negotiating unit, regarding the state of finance and economy of such industrial establishment or undertaking;

h) to seek and receive as and when required information in regard to the finance and economy of such industrial establishment or undertaking so as to enable such negotiating agent to make suggestions and proposals in order to safeguard the interests of the employees of such industrial establishment or undertaking or of the industrial establishments or undertakings or the public;

i) for the purposes of effectively discharging its functions under this Act, to inspect, by prior arrangement with the employer concerned, books of account maintained in the industrial establishment or undertaking or any of the industrial establishments or undertakings or the unit, branch or office or any

of the units, branches or offices of the same industrial establishment or undertaking constituting the negotiating unit;

- j) to nominate representatives of employees on grievance settlement authority constituted under rules made under this Act;
- k) to nominate representatives on behalf of employees on any body, whether or not established by or under this Act, in relation to the negotiating unit and consisting of representatives of employees;
- l) to represent all or any of the employees of the negotiating unit before any authority under this Act;
- m) in the case of a registered trade union of employees certified as negotiating agent, to collect sums payable by the members thereof to such registered trade union of employees either directly or by the check-off system; and
- n) to exercise such other powers conferred on it by or under this Act.

Provided that a negotiating agent shall not disclose any information obtained by it under clause (h) or in pursuance of inspection of books of account under clause (i) to any person for any purpose other than for the purpose of properly discharging its functions under this Act.

Manner of determining negotiating agent at the discretion of government.

The government, central or state, will decide at its discretion how the negotiating agent will be determined, whether by ballot or verification of membership.

Section 58(1) says : ".....where.....the central government or appropriate government, as the case may be, refers an application for the certification of a registered trade union of employees as negotiating agent or local union of employees to the Tribunal, it shall direct that the support for the registered trade union or trade unions of employees shall, for the purpose of certifying such trade union as negotiating agent, associate union or local union, be determined by the verification of the membership of such trade union or

trade unions or by secret ballot and the Tribunal shall determine the support of such trade union or trade unions in accordance with such direction." Election by secret ballot is provided for (in terms of Section 61(1) only when none of the trade unions has the support of more than 50 per cent of the employees to form a negotiating committee to represent such employees.

Negotiating Agent for two years:

Section 64(1) says "Every certification of a registered trade union of employees as negotiating agent associate union or local union or of a negotiating committee as sole negotiating agent - for a period of two years from the date of such certification". And the certification will continue till a new certification is issued.

In terms of Section 66, employer will be bound to recognise the registered trade union certified as negotiating agent or associate union or negotiating committee.

Bar on application for certification as Negotiating Agent:

Section 56 says : "(1) No application of a registered trade union of employees -

- a) as negotiating agent in relation to the employees of a negotiating unit; or
- b) as a local union in relation to the employees of a local unit,

shall be entertained by the central government or the appropriate government, as the case may be, if -

- i) in the case referred to in clause (a), any other registered trade union of employees or a negotiating committee has been certified as negotiating agent in relation to the employees referred to therein; or
- ii) in the case referred to in clause (b), any other registered trade union of employees has been certified as local union in relation to therein:

Provided that such application may be entertained if a period of two years has expired after the date of verification of the other registered trade union of employees or negotiating committee as negotiating agent or other registered trade union of employees as local union, as the case may be, or such certification or negotiating agent or local union has been cancelled under sub-section (2) of Section 64 or is deemed to be cancelled under sub-section (3) of that section.

(2) A registered trade union of employees shall not be eligible to apply for certification as negotiating agent, associate union or local union -

- a) if it has not been functioning as a registered trade union -----, for a period of at least one year immediately preceding the date of making such application; or
- b) if there is a finding of a Tribunal that such trade union of employees has indulged in an unfair practice and a period of not less than six months has not elapsed after the date of such finding".

Right of Strike:

In so-called essential services strike has banned. Section 90(1) says : "No employee employed in any essential service shall go on strike in breach of contract".

The First Schedule gives the list of the following industries and services as Essential Services :

1. Any establishment of, or connected with, armed forces of the Union or other establishments or installations connected with the defence of the country against war or external aggression.
2. Any railway service, any other transport service for the carriage of passengers or goods by air, water or land.

3. Any service in the international Air port -  
Aurhotity of India constituted under Section  
3 of the International Airports Authority Act,  
1971.
4. Any service in, or in connection with the working  
of, any major port or dock.
5. Any section of an industrial establishment or  
undertaking on the working of which the safety  
of such establishment or undertaking or the  
employees employed therein depends.
6. Any postal, telegraph or telephone service.
7. Any service in, or in connection with, the  
working of any public sector undertaking engaged  
in the purchase, procurement, storage, supply or  
distribution of foodgrains.
8. Any industry which generates, supplies or distri-  
butes power, light or water to the public, whether  
directly or indirectly.
9. Any system of public conservancy or sanitation.
10. Banking.
11. All atomic energy installations including nuclear  
power stations.
12. Production, supply and distribution of coal.

In all other industries or undertakings the restriction before going on strike is requisite notice, and strike ballot to be conducted by the Registrar of Trade Unions and having support of not less than 60% of the employees. Every decision to go on strike whether one-day or indefinite will have to pass through ballot and requisite support.

Section 90 (2) says : "No person employed in any industrial establishment or undertaking (other than an essential service) shall go on strike in breach of contract.....(a) without giving to the employer a notice in writing of strike.....within six weeks before striking;

(b) Within fourteen days of the giving of such notice;

(c) Before the expiry of the date of strike specified in any such notice as aforesaid.

(d) during -

(A) (i) the pendency of any conciliation proceedings in respect of any industrial dispute before the

conciliation officer and fourteen days after the conclusion of such proceedings; or  
ii) the pendency of any proceedings before an arbitrator or a Labour Court, Tribunal or National Commission, as the case may be, and sixty days after the conclusion of such proceedings,  
in respect of any matter in relation to which such proceedings are pending; or

(B) during the period in which a settlement arrived at in the course of negotiations.....or conciliation.....or an award is in operation, in respect of any of the matters covered by the settlement or award.....".

Strike Ballot in which any employee even employer can raise dispute:

Section 90 (3) says : "Every decision to go on strike shall be supported by not less than sixty per cent of the employees in a strike ballot conducted in such manner as may be prescribed prior to the giving of the notice-----and the notice shall be given by the negotiating agent in such form as may be prescribed".

Section 90(4) says: "The Registrar shall have general power of supervision and superintendence over the conduct of strike ballot and he shall also decide, in such manner as may be prescribed any dispute pertaining to strike ballot and he may exercise powers either on his own motion or on a request made in that behalf by any employee or the employer".

Without banning strike, resorting to legal strike would thus be made impossible.

Penal measures for socalled illegal strike:

Section 93(2) says: "Where the Labour Court on an application....or a reference made to it .....finds that any strike or lockout is illegal and any person has taken part in or has instigated or otherwise shotted such strike or lockout, as the case may be, or where any person has been convicted under

Section 136 and 137 or Section 138, the Labour Court may, by order, direct that such person shall be disqualified for being, or being chosen as, an office bearer of a registered trade union of employees or chairman or member of a negotiating committee, or as the case may be, registered trade union of employers, for such period not exceeding two years as may be specified in the order".

For illegal lockout the employer goes scot free, and punishment is provided for non-existent trade union of employers.

Section 93(3): says that in case of illegal strike "the certificate of registration of the trade union of employees shall be cancelled and for illegal lockout in sub-section (4), certificate of registration of (non-existent) trade union of employers shall be cancelled.

Section 95 says : "No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lockout".

Overriding powers of government to prohibit strike, even when no reference is made:

says:

Section 79/(1) Where it appears to the appropriate government that an industrial dispute exists between an employer in relation to an industrial establishment or undertaking and the employees employed therein and in respect of such industrial dispute that government has received a report regarding the failure of conciliation proceedings under sub-section (5) of Section 98, the appropriate Government, if it appears to that Government that in the public interest it is necessary to make provision in regard to all or any of the following matters, it may, by general or special order notified in the Official Gazette, make provision -

- (a) prohibiting, subject to the provisions of the order, strike or lockout in connection with such industrial dispute in any industrial establishment or undertaking, other than an industrial establishment or undertaking wherein any industry which is

- an essential service is carried on or any undertaking of such industrial establishment;
- b) requiring employers, employees or both to observe such terms and conditions of employment (including terms and conditions relating to work load and manning, wages and payment of interim or ad hoc bonus) as may be specified by, or determined in accordance with, the order;
  - c) requiring any industrial establishment or undertaking or any part thereof not to close or remain closed or stop production;
  - d) requiring the employees not to slow down work or continue to slow down work;
  - e) requiring any industrial establishment or undertaking not to suspend, or terminate the services of, any employee or any class of employees; and
  - f) any incidental or supplementary matter which appear to the appropriate Government to be necessary or expedient for the purpose of the order:

Provided that no order made under clause (b) shall require an employer to observe terms and conditions of employment, less favourable to the employees than those which were applicable to them at any time within ninety days preceding the date of the order.

Sub-Section (4) says :

"Where such industrial dispute is not referred to for arbitration under Section 100 or for adjudication to the Labour Court, Tribunal or the National Commission under Section 101 or Section 104, as the case may be, before the expiry of a period of six months from the date on which the order made under Sub-section (1) is notified, the order shall cease to be in force on the expiry of such period."

Punishment for financially supporting or helping illegal strike:

Section 139 says : "Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lockout shall be punishable with

imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both".

Further Section 138 says :

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lockout which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both".

### Settlement of Disputes

#### The Bipartite Process

Section 97(2): "The employer or employers, as the case may be, shall commence negotiations with the sole negotiating agent or chief negotiating agent, as the case may be, within fifteen days of the intimation" of the particulars of the dispute.

Where no settlement is arrived at in the course of negotiations or such negotiations have continued for more than sixty days, the parties, jointly or separately, shall forward a report to the Conciliation Officer.

Failure report, in case of failure to arrive at settlement, will be sent by the Conciliation Officer to the appropriate government "before the expiry of sixty days from the commencement of the conciliation proceedings" provided that with the approval of the appropriate government" the Conciliation Officer may continue conciliation proceedings beyond such period of sixty days".

After receipt of failure report from the Conciliation Officer, "the appropriate government shall before the expiry of sixty days from the date of the receipt of the report -

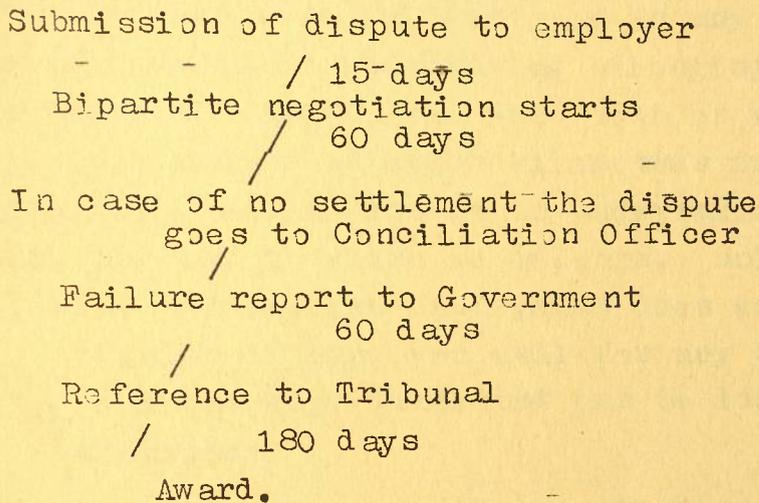
"Consider whether there is a case for reference to the Labour Court or Tribunal" and if there is a case for reference, it will be made under section 104.

#### Time to be taken by Courts or Tribunals.

- a) A court of inquiry shall submit its report..... ordinarily within a period of 180 days which may be extended.

- b) The Labour Court shall pronounce its award ordinarily within a period of 90 days.
- c) The Tribunal or National Commission shall pronounce its award ordinarily within a period of 180 days.

A DIAGRAMATIC VIEW OF THE WHOLE PROCESS:



Total days come to 375, provided the time table is maintained at every stage.

Lay Offs.

Section 81 says :

" (1) Whenever an employee whose name is borne on the muster rolls of an industrial establishment or undertaking (whether or not such establishment or undertaking is of a seasonal character or in which work is performed only intermittently) employing twenty or more persons and who has completed not less than one year of continuous service under an employer is laid off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the wages, that would have been payable to him had he not been so laid-off, for the first thirty days of lay off and thereafter compensation which shall be equal to seventy five per cent of the total of the wages so payable:

Provided that employees engaged in any industrial establishment or undertaking which is of a seasonal character shall be entitled to compensation under this sub-section only in relation to any lay off during

the season in which such industrial establishment or undertaking ordinarily carries on its activity.

(2) No compensation shall be payable by the employer under sub-section (1) to an employee who has been laid-off -

a) if he refuses to accept any alternative employment in the same establishment or undertaking from which he has been laid-off, or in any other establishment or undertaking belonging to the same employer situated in the same town or village or within a radius of eight kilometres from the industrial establishment or undertaking, as the case may be, to which he belongs, and - -

i) such alternative employment does not, in the opinion of employer call for any special skill or previous experience and can be done by the employee;

ii) the wages which would normally have been paid to the employee had he not been laid off are offered for the alternative employment also; and

iii) the acceptance of the alternative employment does not involve undue hardship to the employee having regard to the facts and circumstances of his case; or

b) if he does not present himself for work at the industrial establishment or undertaking at the appointed time during normal working hours at least once a day;

c) if such laying-off is due to a strike or slowing down of production on the part of employees in another part of the industrial establishment or undertaking.

(3) Notwithstanding that employees in any industrial establishment or undertaking have been laid off, it shall be the duty of every employer to maintain for the purpose of this Chapter a muster roll and to provide for the making of entries therein by employees who may present themselves for work at the establishment or undertaking at the appointed time during normal working hours under clause (b) of sub-section (2).

Unfair Practices

The unfair practices on the part of employees and trade unions have been listed in the Fourth Schedule as follows :

- (1) To coerce employees in the exercise of their right to self-organisation or to join a trade union of employees of their choice or from refraining from joining any trade union of employees.
- (2) For the striking members of a trade union of employees to picket non-striking employees in such a manner that such non-striking employees are physically debarred from entering the work place.
- (3) To indulge in acts of force or violence or to hold out threats of intimidation, in connection with a strike against non-striking employees or against the managerial staff or with the intention of compelling the employer to do or omit to do any particular thing.
- (4) To refuse to negotiate collectively in good faith with the employer and dishonour an agreement entered into in the course of negotiations under Section 97 or conciliation under Section 98.
- (5) To indulge in coercive activities with the intention of preventing the certification of a registered trade union of employees as sole negotiating agent or chief negotiating agent or the constitution of a negotiating committee.
- (6) To encourage or instigate or engage in slowing down production (whether it is called "work to rule" or by any other name) to compel the employer to accept the demands of the employees or any section thereof.
- (7) To stage demonstration at the residence of the employers or the managerial staff.
- (8) To refuse to work overtime when exigencies of service require performance of overtime work.

Punishment for committing unfair practices:

Section 141 says : "Any person who commits any unfair practice shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both".

According to Section 108 (1), "where any trade union has committed, or is committing, any unfair practice, any employee or employer or registered trade union or the appropriate government or an officer of that government specially authorised in this behalf may.....make a complaint to the Tribunal specially authorised in this behalf by the appropriate government".

According to Section 108 (7): "The finding and the order of the Tribunal.....shall be final and as per sub-section (8)" the tribunal may having regard to all the circumstances of the case..... by order, direct that the registration of the trade union shall be cancelled".

Exemptions

Hospital, educational institutions, etc. have been kept out of the purview of the Bill.

Section 146 says : "Nothing in this Act shall apply to:

- a) any hospital, including a dispensary
- b) any educational, scientific, research or training institution
- c) any organisation exclusively engaged in any charitable or philanthropic service; or
- d) Khadi or village industries,  
or to any employee employed therein..."

According to sub-section (4) of Section 148, small scale industry also may be exempted by the appropriate government from all the provisions of this Act or such of the provisions of this Act as the government chooses to do.

The Hospitals and Educational Institutions

(Conditions of service of employees and settlement employment disputes) Bill, 1978:

Hospital has been defined in the Bill in sub-section (7) of Section 2 as : " 'hospital' includes a nursing home, a dispensary or other institution for the treatment or for the reception and treatment of persons requiring

medical attention or rehabilitation".

In Sub-section (2) of Section 2,

"Educational institution" includes -

- a) any university
- b) any college, whether or not affiliated to a university
- c) any school, whether or not recognised or aided by government.
- d) any scientific institution
- e) any institution in which research in respect of any matter is carried on
- f) any other institution in which the activity of imparting knowledge or training is systematically carried on".

Strike Prohibited:

Section 18(1) says : "No employee employed in any establishment shall go on strike in breach of contract".

According to Section 19(2), "Any employee who goes on strike in contravention of sub-section (1) of Section 18, shall be punishable with Imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both".

Compulsory Arbitration:

Both in respect of individual employment dispute and employment dispute, failing settlement, reference to arbitration is compulsory, either to a mutually agreed arbitrator or to an arbitrator or board of arbitrators to be nominated by the appropriate government.

Award of Arbitrator Final:

In terms of sub-section (5) of Section 11 and sub-section (10) of Section 12, the award of an arbitrator or a body of arbitrators or a board of arbitrators shall be final.

Banned from forming trade union:

The Bill only mentions about "association of employees" in Section 6(1) which says :

"Where there is any association of employees, being an association which satisfies the condition laid down in

sub-section (3).....and the employer.....  
after ascertaining the support of the employees of  
such establishment for the association aforesaid in  
the prescribed manner, is satisfied that the  
association has the support of the majority of such  
employees, then, such employer shall recognise such  
association.....".

Sub-Section (3) says :

"No office-bearer of any association referred to  
in sub-section (1) shall be a person who is not employed  
in any establishment."

-----

