

Industrial Relations (Amendment) Bill

Bill No. 25/2002.

Read the first time on 8th July 2002.

A BILL

intituled

An Act to amend the Industrial Relations Act (Chapter 136 of the 1999 Revised Edition) and to make related amendments to the Trade Unions Act (Chapter 333 of the 1985 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Industrial Relations (Amendment) Act 2002 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of section 24**

2. Section 24(2) of the Industrial Relations Act (referred to in this Act as the principal Act) is amended by deleting the words “or section 25” in the penultimate line of paragraph (a).

Repeal of section 25

10 3. Section 25 of the principal Act is repealed.

Amendment of section 29

4. Section 29 of the principal Act is amended —

(a) by inserting, immediately after the words “this Part”, the words “or Part IIIA”; and

15 (b) by inserting, immediately after the words “this Part” in the section heading, the words “or Part IIIA”.

New Part IIIA

5. The principal Act is amended by inserting, immediately after section 30, the following Part:

20 “PART IIIA

LIMITED REPRESENTATION OF EMPLOYEES IN MANAGERIAL AND EXECUTIVE POSITIONS

Interpretation of this Part

30A.—(1) In this Part, unless the context otherwise requires —

25 “executive employee”, in relation to an employer, means an employee who is employed in a managerial or an executive position by the employer;

“recognised trade union” means a trade union the majority of whose membership consists of employees in non-managerial or non-executive positions and which has been accorded recognition by an employer only in respect of such employees under section 16.

(2) For the purposes of this Part, the Minister for Finance shall be deemed to be the employer of employees of the Government.

Limited representation of executive employees

30B.—(1) Notwithstanding section 16, a recognised trade union may represent any executive employee individually, and not as a class, for all or any of the following purposes only:

- (a) to make representations to the Minister under section 35(2);
- (b) upon the retrenchment of the executive employee, to negotiate with the employer with a view to resolving any dispute relating to the retrenchment benefit payable to the executive employee;
- (c) to negotiate with the employer with a view to resolving any dispute relating to a breach of contract of employment by the executive employee or the employer;
- (d) to represent the executive employee in proceedings before a Court in respect of the dismissal or reinstatement of the employee in circumstances arising out of a contravention of section 82 or any matter referred to in paragraph (b) or (c).

(2) Where a recognised trade union seeks to represent an executive employee under subsection (1), the employer may object to such representation only on the ground that the employee —

- (a) is employed in a senior management position or performs or exercises any function, duty or power of a person employed in a senior management position, including the control and supervision of major business operations, accountability for operational performance, formulation of business policies, plans and strategies and provision of leadership to other employees;

- 5 (b) performs or exercises any function, duty or power which includes decision making, or the power to substantially influence decision making, on any industrial matters including the employment, termination of employment, promotion, transfer, reward or discipline of other employees;
- (c) performs any function or duty which includes representing the employer in any negotiation relating to any industrial matters;
- 10 (d) has access to confidential information relating to the budget and finances of the employer, any industrial relations matter or the salaries and personal records of other employees; or
- (e) performs or exercises any other function, duty or power which may give rise to a real or potential conflict of interest if he is represented by the trade union.
- 15 (3) Where an employer raises any objection under subsection (2), the employer and the trade union shall make a joint application to a Court for the determination of the question.
- (4) Until the Court gives its decision, the recognised trade union may continue to represent other executive employees whose representation by the trade union under subsection (1) is not objected to by the employer under subsection (2).
- 20 (5) The powers of a Court under subsection (3) shall be exercisable by the Court constituted by the President alone.

Invitation to negotiate

- 25 **30C.** A recognised trade union representing an executive employee under section 30B may serve on an employer or an employer may serve on a recognised trade union, as the case may be, a notice in the prescribed form (referred to in this Part as an invitation to negotiate) —
- 30 (a) setting out proposals for resolving any dispute relating to the issue of retrenchment benefit payable to the executive employee upon the retrenchment of the executive employee or a breach of contract of employment by the executive employee or his employer; and

- (b) inviting the employer or trade union, as the case may be, to negotiate with it in relation to those matters with a view to arriving at a settlement.

Acceptance of invitation to negotiate

5 **30D.** An employer or a recognised trade union upon whom an invitation to negotiate has been served under section 30C may, within 7 days after service of that invitation, serve on the recognised trade union or employer which served the notice an acceptance of the invitation to negotiate (referred to in this Part as an acceptance to
10 negotiate).

Non-acceptance of invitation to negotiate

15 **30E.**—(1) Where a recognised trade union or an employer upon whom an invitation to negotiate was served under section 30C has not served an acceptance to negotiate within the time specified in section 30D, the employer or trade union which served the invitation to negotiate, as the case may be, may notify the Commissioner.

20 (2) Upon receipt of a notification under subsection (1), the Commissioner shall consult, or direct a conciliation officer to consult, with the employer or trade union which has not served an acceptance to negotiate with a view to persuading that employer or trade union to accept the invitation.

Conciliation

25 **30F.**—(1) If, after the expiration of 14 days from the date of service of an invitation to negotiate, an agreement has not been reached between the recognised trade union and employer by whom and upon whom the invitation was served as to all the matters set out in the invitation, either party to the negotiations may notify the Commissioner.

30 (2) Upon receipt of a notification under subsection (1), the Commissioner may consult, or direct a conciliation officer to consult, with the employer and trade union concerned in an endeavour to assist them to reach a settlement by conciliation.”.

Amendment of section 31

6. Section 31 of the principal Act is amended by inserting, immediately after paragraph (c), the following paragraph:

“(ca) the trade dispute relates to —

5 (i) the retrenchment benefit payable to an executive employee who is represented by a recognised trade union under section 30B; or

10 (ii) a breach of contract of employment by an executive employee who is represented by a recognised trade union under section 30B or his employer,

15 and the employer or the recognised trade union representing the executive employee makes a request in writing to the Registrar that the trade dispute be submitted to arbitration;”.

Amendment of section 42

7. Section 42 of the principal Act is amended —

(a) by inserting, at the end of paragraph (a), the word “and”; and

(b) by deleting paragraph (b).

Amendment of section 59

8. Section 59(1) of the principal Act is amended by deleting “25,”.

Amendment of section 79

9. Section 79 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

25 “(2) It shall not be an offence for an employer to require as a condition of the appointment or promotion of a person to a managerial or an executive position that the person shall not be or continue to be an officer or a member of a particular trade union unless —

30 (a) that trade union is a trade union whose constitution and rules restrict its membership to persons in managerial or executive positions; or

- (b) that trade union is a trade union which may represent persons in managerial or executive positions only under section 30B.”.

Related amendments to Trade Unions Act

5 **10.** The Trade Unions Act (Cap. 333) is amended —

- (a) by inserting, immediately after subsection (1) of section 27, the following subsection:

10 “(1A) A registered trade union the majority of whose membership consists of employees in non-managerial or non-executive positions shall not commence, promote, organise or finance any strike or any form of industrial action in connection with any trade dispute between members employed in managerial or executive positions and represented by it under section 30B of the Industrial Relations Act (Cap. 136) and their employer.”;

- (b) by inserting, immediately after the words “subsection (1)” in section 27(2), the words “or (1A)”;

- (c) by inserting, immediately after subsection (3) of section 27, the following subsections:

20 “(3A) No member of a registered trade union who is employed in a managerial or an executive position and who is represented by the trade union under section 30B of the Industrial Relations Act (Cap. 136) shall commence, promote, organise, participate or otherwise act in furtherance of any strike or any form of industrial action taken by the trade union.

30 (3B) No member of a registered trade union the majority of whose membership consists of employees in non-managerial or non-executive positions shall commence, promote, organise, participate or otherwise act in furtherance of any strike or any form of industrial action in connection with any trade dispute between members employed in managerial or executive positions and represented by the trade union under section 30B of the Industrial Relations Act and their employer.

35 (3C) Nothing in subsection (1A) or (3B) shall preclude a registered trade union referred to in those subsections or any of

its members employed in non-managerial or non-executive positions from commencing, promoting, organising, financing, participating or otherwise acting in furtherance of any strike or any form of industrial action affecting those members in accordance with subsection (1).

(3D) Any member of a registered trade union who contravenes subsection (3A) or (3B) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.”;

(d) by deleting the word “or” at the end of section 27(4)(a);

(e) by deleting the comma at the end of paragraph (b) of section 27(4) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(c) taken in contravention of subsection (3A) or (3B),”;

(f) by deleting subsection (8) of section 27 and substituting the following subsection:

“(8) For the purposes of this section —

(a) “industrial action” means the adoption of any practice, procedure or method in the performance of work which would result in a limitation on output or production in any occupation, service, trade, industry or business; and

(b) where the majority of the membership of a registered trade union consists of employees in non-managerial or non-executive positions, the consent of its members employed in managerial or executive positions and represented by it under section 30B of the Industrial Relations Act (Cap. 136) shall not be taken into account in ascertaining whether the consent of the majority of the members have been obtained under subsection (1).”; and

(g) by inserting, immediately after subsection (1) of section 39, the following subsection:

“(1A) Notwithstanding subsection (1), where the majority of the membership of a registered trade union consists of

employees in non-managerial or non-executive positions, no rule of the trade union shall confer on any member who is employed in a managerial or an executive position the right to vote in any secret ballot taken for the purpose of obtaining the consent of its members to commence, organise, participate or otherwise act in furtherance of any strike or any form of industrial action under section 27(1).”.

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EXPLANATORY STATEMENT

This Bill seeks to amend the Industrial Relations Act (Cap. 136) to allow limited representation of employees in managerial and executive positions by trade unions the majority of whose membership consists of employees in non-managerial and non-executive positions and to make related amendments to the Trade Unions Act (Cap. 333).

Clause 1 relates to the short title and commencement.

Clause 2 makes a consequential amendment to section 24(2)(a) arising from the repeal of section 25 by clause 3.

Clause 3 repeals section 25 which is no longer required in the present circumstances.

Clause 4 amends section 29 to prohibit negotiations between a trade union and an employer which are carried out otherwise than in accordance with the new Part IIIA (to be inserted by clause 5).

Clause 5 inserts a new Part IIIA (containing sections 30A to 30F) which allows trade unions the majority of whose membership consists of employees in non-managerial or non-executive positions to represent an executive employee individually for limited purposes.

The new section 30A contains definitions of the words “executive employee” and “recognised trade union” which appear in the new Part IIIA and the new section 31(ca) (to be inserted by clause 6).

The new section 30B allows a recognised trade union to represent an executive employee individually, and not as a class for all or any of the following purposes only:

- (a) to make representations to the Minister under section 35(2);
- (b) upon the retrenchment of the executive employee, to negotiate with the employer with a view to resolving any dispute relating to the retrenchment benefit payable to the employee;

- (c) to negotiate with the employer with a view to resolving any dispute relating to a breach of contract of employment by the executive employee or the employer; and
- (d) to represent the executive employee in proceedings before the Industrial Arbitration Court (the Court) in respect of the dismissal or reinstatement of the employee in circumstances arising out of a contravention of section 82 or any matter referred to in paragraph (b) or (c).

An employer may however object to the representation of an executive employee by a recognised trade union on the ground that the employee performs or exercises any function, duty or power specified in section 30B(2). The functions, duties and powers specified in section 30B(2) are essentially those which may give rise to a real or potential conflict of interest if the executive employee is represented by the trade union.

The new section 30C provides that a recognised trade union representing an executive employee under section 30B or the employer may serve on each other, as the case may be, an invitation to negotiate setting out proposals for resolving any dispute relating to the issue of retrenchment benefit payable to the executive employee upon his retrenchment or a breach of contract of employment by the executive employee or the employer.

The new section 30D provides that an employer or a recognised trade union upon whom an invitation to negotiate has been served may, within 7 days of service of the invitation, serve an acceptance to negotiate on the other party.

The new section 30E provides that a recognised trade union or an employer who served an invitation to negotiate may notify the Commissioner for Labour (the Commissioner) if the party on whom the invitation was served has not served an acceptance to negotiate within 7 days. Upon receipt of such notification, the Commissioner is required to consult, or direct a conciliation officer to consult, with the employer or trade union which has not served an acceptance to negotiate with a view to persuading that employer or trade union to accept the invitation.

The new section 30F provides that if an agreement has not been reached between a recognised trade union and the employer upon whom an invitation to negotiate was served within 14 days of service as to all the matters set out in the invitation, any party to the negotiations may notify the Commissioner. Upon receipt of such notification, the Commissioner may consult, or direct a conciliation officer to consult, with the employer and trade union in an endeavour to reach a settlement by conciliation.

Clause 6 amends section 31 by inserting a new paragraph (ca) to empower the Court to take cognizance of a trade dispute which relates to the retrenchment benefit payable to an executive employee who is represented by a recognised trade union under the new section 30B or a breach of contract of employment by the employee or his employer where the employer or the trade union representing the employee makes a request in writing to the Registrar that the trade dispute be submitted to arbitration.

Clause 7 deletes paragraph (b) of section 42 which is no longer required in consequence of the repeal of section 25 by clause 3.

Clause 8 makes a consequential amendment to section 59(1) arising from the repeal of section 25 by clause 3.

Clause 9 amends section 79(2) to include a trade union which may represent executive employees under the new section 30B as one of the trade unions which an employer may allow a person who is to be appointed or promoted to a managerial or executive position to be or continue to be an officer or a member.

Clause 10 makes related amendments to sections 27 and 39 of the Trade Unions Act (Cap. 333).

Section 27 is amended mainly to provide that where the majority of the membership of a registered trade union consists of members who are employed in non-managerial or non-executive positions —

- (a) the trade union and its members are prohibited from commencing, promoting, organising, financing, participating or acting in furtherance of any strike or industrial action in connection with a trade dispute between members employed in managerial or executive positions and their employer;
- (b) its members employed in managerial or executive positions are prohibited from commencing, promoting, organising, participating or acting in furtherance of any strike or industrial action taken by the trade union, whether or not such strike or industrial action is in connection with a trade dispute between those members and their employer; and
- (c) the consent of its members employed in managerial or executive positions shall be disregarded in ascertaining whether the consent of the majority of the members of the trade union has been obtained under subsection (1) for the purposes of commencing, promoting, organising or financing any strike or industrial action affecting the whole or any section of its members.

Section 39 is amended by inserting a new subsection (1A). The new subsection (1A) prohibits the rules of a registered trade union the majority of whose membership consists of employees in non-managerial or non-executive positions from conferring on members who are employed in managerial or executive positions the right to vote in a secret ballot taken for the purpose of obtaining the consent of its members under section 27(1) of the Trade Unions Act.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
