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Ministry of Civil Service and Administrative Reforms
Circular Letter No. 27 of 2009
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From: Supervising Officer, Ministry of Civil Service and Administrative Reforms

To: Supervising Officers i/c of Ministries/Departments

Application of the Employment Relations Act 2008 in the Civil Service

Government is making every endeavour to ensure efficiency and productivity, both in the private and public sectors, to keep pace with the major changes and permutations operating in the Labour market at national and international levels. The previous industrial relations legislation, namely the Industrial Relations Act 1973 (IRA), is no longer responsive to the emerging features and it has been repealed and replaced by a completely overhauled and consolidated legislation, which is the Employment Relations Act 2008 (ERA), proclaimed on 2 February 2009.

2. 'ERA' aims at:

- (i) recognizing the democratic rights of workers and trade unions and enhancing protection of those rights;
- (ii) building a productive employment relationship through the promotion of good faith behaviour and mutual trust in all aspects of work relations;
- (iii) promoting collective bargaining;
- (iv) encouraging voluntary settlement of disputes and promoting peaceful resolution of disputes; and
- (v) strengthening the dispute and conflict settlement mechanisms.

3. The new legislation provides for the following institutional set up to deal with employee and employer relations issues:

- the Employment Relations Tribunal (ERT) which replaces the defunct Permanent Arbitration Tribunal (PAT) and the Civil Service Arbitration Tribunal(CSAT); and

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- the Commission for Conciliation and Mediation (CCM) which comes in for the Industrial Relations Commission and the Civil Service Industrial Relations Commission (CSIRC).

4. The relevant parts of ERA which should summon our attention are highlighted hereunder:-

(i) **Right of employee for Disciplined Forces to join a Trade Union - Part I section 3(2)**

Formerly, members of the disciplined forces, i.e. Police Force, Fire Services and Mauritius Prisons Service did not have the right to form or join a trade union. ERA now provides for the staff of the Fire Services and Mauritius Prisons Service to have the right to join or form a trade union; however, without the right to go on strike. In so far as the Police Force is concerned, its officers have no such rights.

(ii) **Collective Bargaining - Part V**

One prominent feature of ERA is the effective recognition of the right to collective bargaining which is a voluntary mechanism for regulating terms and conditions of employment. In this context, each Ministry/Department should draw up and sign a '**Procedure Agreement**' with recognized trade unions or group of trade unions catering for grades in their respective Ministries/Departments as specified in section 51 of the Act. As regards existing trade unions, though action ought to have been taken within 90 days of the coming into effect of the Act as specified in section 108(5), circumstances did not so permit. Whereas for newly recognized trade unions, section 51 of ERA should apply. **A specimen 'Procedure Agreement' is herewith enclosed.**

(iii) **Time - Off - Part V**

Ministries/Departments should make appropriate arrangements to grant reasonable time-off to trade union officials without loss of pay for the purpose of performing trade union functions while reckoning with exigencies of the service.

(iv) **Labour Disputes - Part VI**

In the repealed legislation, labour disputes were reported to the Minister responsible for the subject of Civil Service. Under ERA configuration, disputes should be reported to the President of the CCM in accordance with section 64. However, a dispute can only be reported after meaningful negotiations between parties [section 64(2)] and a stage of deadlock has been reached. **The procedures to be followed are as set out in the guidelines.**

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(v) **Strike - Part VII**

Under the former legislation, a strike became unlawful once action had been taken by the Minister of Civil Service and Administrative Reforms. This situation has been reviewed in line with the ILO Convention as strike is considered to be a fundamental right. However, this should be a last resort after **all conciliation and mediation avenues have been exhaustively explored**. Under section 78 of ERA, the right to strike would be subject to a successful ballot, a minimum service being maintained, where appropriate, and notice being given to the Minister responsible for the subject of labour. **Details have been spelt out in the guidelines.**

(vi) **Conciliation Service - Part VI**

By virtue of section 68 (4), this Ministry is required to provide a conciliation service to parties to a dispute before such a dispute is referred to the CCM or to the ERT. This procedure is meant to ease the process for settling disputes.

5. Section 108 of ERA provides for a transitional period for the implementation of the Act. **The detailed provisions governing this transitional period are highlighted in the guidelines.**

6. To ease the implementation process, you may deem it necessary to assess the current situation obtainable in your organisation to know, albeit indicatively, the number of trade unions which you already officially recognize and with whom you will be concluding a Procedure Agreement.

7. With a view to ensuring the proper enforcement of ERA, each Ministry/Department should, at the earliest possible, set up a Negotiating Body which should be created on the strength of the Procedure Agreement as laid down in section 52. For the purpose of discussing and reaching consensus on the proposed Procedure Agreement, Ministries/Departments have to create the necessary forum for extensive consultations with all parties concerned.

8. This Circular and the enclosed guidelines aim at highlighting the main features of the new institutional set up and at assisting Ministries/Departments to ensure compliance with the requirements of the new legal framework. Needless to point out that the guidelines provided have to be viewed in the global perspective as set out in ERA.

9. Supervising Officers are requested to ensure that the contents of this Circular Letter are brought to the attention of all officers working in their Ministry/Department.

(S.K. Pather)
Supervising Officer

Copy to:- *Secretary to Cabinet and Head of the Civil Service*