

(iii) "collective bargaining agent" in relation to an establishment or group of establishments or industry, means the trade union of the workmen which under Section 24 is the agent of workmen in the establishment or group of establishments or industry, in the matter of collective bargaining;

(iv) "collective bargaining unit" means those workers or class of workers of an employer in one or more establishments falling within the same class of industry whose terms and conditions of employment are, or could appropriately be, the subject of collective bargaining together;

Clause (iii)--Collective Bargaining Agent: This term has been raised for the first time in the Pakistan Labour Legislation. The idea of collective bargaining agent finds its origin in the ILO Convention No. 98 concerning the application of the principles of rights to organise and to bargain collectively.

The idea of collective bargaining agency having been given its place in Labour Legislation, determination of collective bargaining unit becomes a substantial matter. For a collective bargaining unit it is necessary that the above requirements, must exist. In other words the workers desiring to be a Collective Bargaining Unit must belong to the same class. Such class or group must be in the employment of one employer.

Working in one establishment or more of the same employer, in the same class of industry, whose terms and conditions could appropriately be the subject-matter of collective bargaining together.

The above analysis will show that the discretion is vested in the determining authority to hold or not as to whether the workers or class of workers desiring determination as Collective Bargaining Unit could appropriately be grouped as a class whose terms and conditions of service can be determined together.

Trade Union having fulfilled legal requirements entitling for being certified as Collective Bargaining Agent, could perform functions and exercise rights of Collective Bargaining Agent. Mere fact that Registrar wrongly issued a provisional certificate for which there being no provision in law, cannot be considered as an impediment in its way to exercise all rights and perform functions of Collective Bargaining Agent. **1982 PLC 250.**

Certification of Trade Union as Collective Bargaining Agent in consequence of winning election by secret ballot under Section 22(9)(e) (Now Sec. 24(12)(e) is distinguished from that emerging without contest under sub-section (9-a). The embargo on moving application for determination of Collective Bargaining Agent for a period of two years is applicable only in respect of Collective Bargaining Agent certified as a result of contest by secret ballot. **1982 PLC 256.**

Clause (iv)--Collective Bargaining Unit: The collective bargaining unit means those workers or class of workers, of an employer, in

24. Collective bargaining agent: (1) Where there is only one registered trade union in an establishment or a group of establishments, or industry, that trade union shall if it has as its members not less than one-third of the total number of workmen employed in such establishment or group of establishments, or industry upon an application made in this behalf be certified by the Registrar in the prescribed manner to be the collective bargaining agent for such establishment or group of establishments or industry.

(2) Where there are more than one registered trade unions in an establishment or a group of establishments, or industry, the Registrar shall upon an application made in this behalf by any such trade union which has as its members not less than one-fifth of the total number of workmen employed in such establishment or group of establishments or industry or by the employer or the Government, hold within fifteen days from the making of the application, a secret ballot to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment or group of establishments or industry.

(3) The Registrar may, in the case of a large establishment having its branches in more than one towns, hold the secret ballot within thirty days from the making of the application.

(4) The Registrar shall not entertain any application under sub-section (2) in respect of an establishment or group of establishments, consisting of, or including, a seasonal factory within the meaning of Section 4 of the Factories Act, 1934 (XXV of 1934), unless such application is made during the month in which the number of workmen employed in such factory in a year is usually the maximum.

(5) Upon receipt of an application under sub-section (2), the Registrar shall, by notice in writing, call upon every registered trade union in the establishment or group of establishments or industry to which the application relates--

(a) to indicate whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to such establishment or group or industry; and

(b) if it so desires, to submit to him within the time specified in the notice a list of its members showing, in respect of each member, his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his becoming a member and if union is a federation of trade unions, a list of its affiliated trade unions together with a list of members of each such trade union showing in respect of each such member the said particulars.

(6) Every employer shall--

(a) on being so required by the Registrar, submit a list of all workmen employed in the establishment or group of establishments or industry excluding those whose period of employment in the establishment or group of establishments or industry is less than three months and showing, in respect of each workman, his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his employment in the establishment or group of establishments or industry; and

(b) provide such facilities for verification of the lists submitted by him and the trade unions as the Registrar may require.

(7) In computing the period of three months referred to in sub-section (6) in the case of a workman employed in a seasonal factory within the meaning of Section 4 of the Factories Act, 1934 (XXV of 1934), the period during which he

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was employed in that factory during the preceding season shall also be taken into account.

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- (8) The Registrar shall, after verification of the lists submitted by the trade unions, prepare a list of voters in which shall be included the name of every workman whose period of employment as computed in accordance with sub-section (6), is not less than three months and who is a member of any of the contesting trade unions and shall, at least four days prior to the date fixed for the poll, send to each of the contesting trade unions a certified copy of the list of voters so prepared.
- (9) Every workman who is a member of any of the contesting trade unions and whose name appears in the list of voters prepared under sub-section (8) shall be entitled to vote at the poll to determine the collective bargaining agent.
- (10) Every employer shall provide all such facilities in his establishment as may be required by the Registrar for the conduct of the poll but shall not interfere with, or in any way influence, the voting.
- (11) No person shall canvass for vote within a radius of fifty meters of the polling station.
- (12) For the purpose of holding secret ballot to determine the collective bargaining agent, the Registrar shall--
- (a) fix the date for the poll and intimate the same to each of the contesting trade unions and also to every employer;
- (b) on the date fixed for the poll, place ballot boxes in the polling station set up for the purpose, seal the ballot boxes in the presence of the representatives of the contesting trade unions;
- (c) conduct the poll at the polling station at which the representatives of the contesting trade unions shall have the right to be present;

- (d) after the conclusion of the poll and in the presence of such of the representatives of the contesting trade unions, as may be present, open the ballot boxes and count the votes; and
- (e) after the conclusion of the count, certify the trade union which has received the highest number of votes to be the collective bargaining agent. ✓
- (13) A trade union shall be certified to be the collective bargaining agent for an establishment or group of establishments or industry unless the number of votes received by it is not less than one-third of the total number of workmen employed in such establishment or group or industry.
- (14) If no trade union secures such number of votes in the first poll, a run-off poll shall be held between the trade unions which secure the two highest numbers of votes in the first poll and the trade union which secures a majority of the votes cast at the run-off poll shall be certified in the prescribed manner to be the collective bargaining agent.
- (15) If the number of votes secured by two or more trade unions securing the highest number of votes is equal, further poll shall be held between them until one of them secures a majority of the votes cast at such further poll.

(16) If no trade union indicates under clause (a) of sub-section (5) that it desires to be a contestant in the secret ballot, the Registrar shall certify the trade union which has made the application under sub-section (2) to be the collective bargaining agent.

(17) A trade union shall be certified to be the collective bargaining agent for an establishment, or group of establishments or industry under sub-section (16) unless it has as its members not less than one-third of the total number of the workmen employed in the establishment or group of establishments or industry.

(18) Where a registered trade union has been certified under clause (e) of sub-section (12) to be the collective bargaining agent for an establishment or group of

establishments, or industry, no application for the determination of the collective bargaining agent for such establishment or group of establishments or industry shall be entertained within a period of two years from the date of such certification except where the registration of such a registered trade union is cancelled before the expiration of the period.

(19) A trade union, without prejudice to its own position, may apply for impleadment as a party to any proceedings under this Act, concerning the federation of trade unions of which it is a member.

(20) The collective bargaining agent in relation to an establishment or group of establishments or industry shall be entitled--

(a) undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the terms of employment or the conditions of work other than matters which relate to the enforcement of any right guaranteed or secured to it or any workman by or under any law, other than the Act, or any award or settlement;

(b) represent all or any of the workmen in any proceeding;

(c) give notice of, and declare, a strike in accordance with the provisions of the Act; and

(d) nominate representatives of workmen on the Board of Trustees of any welfare institutions or Provident Funds and of the Workers Participation Fund established under the Companies Profits (Workers Participation) Act, 1968 (XII of 1968).

(21) The Registrar may authorize in writing an officer to perform all or any of his functions under this section.

COMMENTS

Collective Bargaining Agent, determination of. Procedure as laid down in S. 20 of Industrial Relations Ordinance, 2002 (now Sec. 24 of Punjab Industrial Relations Act, 2010) for determination of Collective

Bargaining Agent, was not followed in preparing the list of members. Even the total number of workers were not brought on record. Management informed the Deputy Registrar that the number of workers would be 70,000, if Engineering Supervisors and Daily Wagers were allowed to cast their votes; but referendum was got conducted with a list of 50,000 of regular employees without participation of Engineering Supervisors and Daily Wagers. Such act on the part of the Member of Commission had deprived Engineering Supervisors and Daily Wagers of their fundamental right to vote. Voters list was not prepared by comparing/verifying the list of members provided by the contesting trade unions and the management. Incomplete list provided by the management was made basis for referendum. Management was only provided three days to submit the list of the workers and in that short span of time the Daily Wagers and Engineering Supervisors were totally excluded. Certificate of Collective Bargaining Agent was issued without noticing that the union did not secure 1/3rd votes of the workmen employed in the establishment as required under the law. Result of referendum was announced in hasty manner. High Courts also took notice of said illegalities committed in holding of secret ballot and suspended Collective Bargaining Agent Certificate at the very preliminary hearing and ordered same to remain suspended till the matter was decided by the Bench. Referendum so held was thus without jurisdiction and was not conducted in accordance with provisions of Industrial Relations Ordinance, 2002 (Now Punjab Industrial Relations Act, 2010). Same was set aside with a direction to Registrar Industry-wise Trade Union to held referendum as per law within two months. **2007 PLC 628.**

Chief Executive of the Corporation in his petition had prayed that referendum in the establishment which was ordered to be held in May, 2006, be postponed till December, 2006. After arguing matter by both the sides for quite some time, issue had been resolved amicably by the both sides. Counsel appearing for Labour Union had stated that Union would not have any grouse if date of referendum was fixed by Deputy Registrar between 20th of November, 2006 to 27th of November, 2006 by which time summer/hot season would be over; he had also undertaken that members not indulge in any activity which would cause any grievance to the petitioner. Deputy Registrar was directed to hold referendum in establishment accordingly. **2006 PLC 619.**

Collective Bargaining Agent, determination of. President of petitioner union filed application on 4-2-2003 under S. 20(2) of Industrial Relations Ordinance, 2002 (Now Sec. 24(2) of Punjab Industrial Relations Act, 2010) for determination of Collective Bargaining Agent, in the Establishment. Said application was rejected on 26-8-2003 on the ground that Industrial Relations Ordinance, 2002 (Now Punjab Industrial Relations Act, 2010) was not attracted to the said Establishment. Last referendum in the establishment was held; as far back as year 1999. Seven years had passed

1/3rd votes was from the list of voters and not 1/3rd of total workmen as provided by S. 22(9) of the Industrial Relations Ordinance, 1969 and S. 20(9) of the Industrial Relations Ordinance, 2002 (Now Sec. 24(12) of Punjab Industrial Relations Act, 2010). List of voters in the present case, contained 1473 and respondent union had secured 499 votes which was certainly more than 1/3rd of names in list of voters. Constitutional petition was dismissed. **2007 PLC 69.**

Applicant labour union after repeal of Industrial Relations Ordinance 1969, finding itself free from embargo contained in the repealed Ordinance, filed application under S. 20(2) of Industrial Relations Ordinance, 2002 (Now Sec. 24(2) of Punjab Industrial Relations Act, 2010) for certification of Collective Bargaining Agent in respondent establishment. Contention of applicant labour union was that though trade unions in respondent-establishment by operation of amended Ordinance, 1999 were put in abeyance, but after repeal of old Industrial Relations Ordinances by operation of newly promulgated Industrial Relations Ordinance, 2002, Trade Union activities in respondent-establishment stood revived. Under provision of S. 6 of General Clauses Act, 1897, unless a different intention appeared, the repeal of any enactment, would not revive anything not in force or existing at the time repeal took place. In absence of any express and specific mention of respondent-establishment in S. 1 of newly-promulgated Industrial Relations Ordinance, 2002 (Now Section 1 of Punjab Industrial Relations Act, 2010) the exclusion of respondent-establishment and its employees from the purview of Industrial Relations Ordinance, 2002 (Now Punjab Industrial Relations Act, 2010) would remain intact. Applicant trade union would still remain inoperative in the premises of respondent-establishment. **2007 PLC 69.**

25. Determination of collective bargaining unit:

(1) Where the Tribunal, on an application made in this

and all workers who were thousands in number, could not be deprived of their right to vote. Application filed by petitioner was accepted with direction that Deputy Registrar would hold secret ballot for the determination of Collective Bargaining Agent under his supervision in a transparent manner by associating all the parties. **2006 PLC 653.**

Petitioner trade union as well as contesting trade unions were required to submit list of their members giving prescribed details and thereafter duty was cast upon Registrar of Trade Unions under S. 20(5) of Industrial Relations Ordinance, 2002 (Now Sec. 24(8) of Punjab Industrial Relations Act, 2010) to prepare list of voters. Workmen, in order to be included in list of voters was to fulfil twin conditions, firstly that he had been in service of employer for not less than three months and secondly he had been a member of one of contesting trade unions. Registrar of Trade Unions was required to prepare list of voters after due verification. Requirement of 1/3rd votes was from the list of voters and not 1/3rd of total workmen as provided by S. 22(9) of the Industrial Relations Ordinance, 1969 and S. 20(9) of the Industrial Relations Ordinance, 2002 (Now Sec. 24(12) of Punjab Industrial Relations Act, 2010). List of voters in the present case, contained 1473 and respondent union had secured 499 votes which was certainly more than 1/3rd of names in list of voters. Constitutional petition was dismissed. **2007 PLC 69.**

Applicant federation of employees, which had been registered as certified as Collective Bargaining Agent in March, 1984 and was actively functioning as Collective Bargaining Agent since then. Applicant had recently signed an agreement which had also benefited all the workers employed in different units of federation. There could not be two Collective Bargaining Agents in one establishment. Only way out to the opposin respondent was to approach the Commission under S. 54 of Industrial Relations Ordinance, 2002 (Now Sec. 25 of Punjab Industrial Relations Act 2010) for determination of Collective Bargaining Agent or Collective Bargaining Units. Application of applicant was accepted and proceedings undertaken by Registrar Trade Unions for determining Collective Bargaining Agent, were declared to have been initiated without law authority and were of no legal effect. 2008 PLC 15.