

History labour legislation in trinidad law employment essay

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Trinidad and Tobago's labour movement assumed its importance after World War I, when Captain Andrew Arthur Cipriani began arranging employee masses and gave labourers national pride and he taught them how to oppose colonialism. Cipriani also known as "the champion of the barefoot man" revitalized the Trinidad Labour Party in 1934 and transcended the black-east Indian racial dichotomy. During the 1930's however, the living standard of labourers were deteriorating due to worldwide depression and as such, wages of labourers in the sugar estates and oil fields were quite low but the dividend of the London Shareholders were increased. Labourers thought this was unjust labour practices and eventually lost faith in Cipriani's moderate policies. Strikes and riots were prevalent and this brought the emergence of Tubal Uriah Butler, as the leader of the black oil workers. Trinidad and Tobago enacted its first Trade Union Act in 1933, however it contained "no provisions for the right for peaceful picketing or giving unions immunity against action in tort" (Goolsarran 2006). The Industrial Relations Stabilisation Act was enacted in 1965 as government could no longer delay taking legislative action to regulate the relationship between unions, workers and employers. This introduced the concept of compulsory arbitration to the country by the establishment of the Industrial Court. This Act was later replaced by the Industrial Relations Act, 1972, Chapter 88: 01 of the laws of Trinidad and Tobago. Government has since ratified several ILO Conventions, including the Tripartite Consultation (International Labour Standards) Convention 1976 (NO. 144) however, due to the country's dualist legal system, the ratified conventions are not automatically incorporated into domestic law. This incorporation requires the enactment of legislation

however, Trinidad and Tobago still has obligations in accordance to international law and ILO Jurisdiction, to comply to the ILO Conventions they have ratified (*pacta sunt servanda*). These ratified conventions include the following: a) freedom of association and the effective recognition of the right to collective bargaining; b) the elimination of all forms of forced and compulsory labour; c) the effective abolition of child labour; and d) the elimination of discrimination in respect of employment and occupation. In the Caribbean today, the general industrial relations policy is based on voluntary collective bargaining between employers and workers via their representative associations. The foundation for today's labour legislation laws adopted by CARICOM is based on the core labour standards of the ILO and governments seek to mirror the following:

- Termination of Employment Convention, 1982 (No. 158); (NOT RATIFIED BY TRINIDAD AND TOBAGO)
- Freedom of Association Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Equal Remuneration Convention, 1951 (No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Occupational Safety and Health Conventions.

In Trinidad and Tobago, we have seen an increasingly forceful move by trade unions to manipulate national policies and issues. Some publically vocal union leaders appear at times to be quite confrontational rather than conciliatory and this may be borne out of their frustrated expectations originating from their political associations and current economic circumstances. Regardless of their core reasons for their *modus operandi*, workers and the wider society are being negatively impacted. Oxford Dictionary defines legislation as " the process of making or enacting laws"

and as such, legislation is usually perceived as stringent and without room for much flexibility. This paper aims at understanding the nature of the legislative structure in the Caribbean and focuses on the extent to which employment relations have contributed to the current developments in the employment relations system of Trinidad and Tobago. Employment Relations is defined as the body of work concerned with maintaining employer-employee relationships that contributes to satisfactory productivity, motivation, and morale. Essentially, Employee Relations is concerned with preventing and resolving problems involving individuals which arise out of or affect work situations. (CIPD 2010)The future of employment relations in Trinidad and Tobago depends on the partnership of all social partners, replacing confrontation by collaboration and cooperation. This future can only be accomplished if multipartite means are establish and developed by the government and followed by all stakeholders (government, labour, private sector and civil society). Results from a study of the operations of the labour market in The Caribbean Group for Cooperation in Economic Development (CGCED) suggested that regulatory measures have some effect on the operation of businesses in the region (ABT Associates 1998). These regulations generally refer to the range of social, economical and judicial measures and mechanism which affect the labour market outcomes and behaviour. An example of this was seen during the trade disputes at Petroleum Company of Trinidad and Tobago and Trinidad Cement Limited (TCL) which served as a wakeup call to the national community, on the importance of employee relations. The negotiating role of trade unions to negotiate on behalf of workers for equity as well as increases in wages,

salaries and benefits are clearly identified, however their responsibility to the greater society is often ignored. In the case of PETROTRIN, opinionated considerations appear to have taken precedence over the economic factors and in the case of TCL, the union did not accept the company's high labour costs, when compared to local industry levels and global competitors. TCL's financial status could have become unsustainable had they " given in" to the substantial demands of the union.

MAJOR PIECES OF LABOUR LEGISLATION IN TRINIDAD & TOBAGO

Employment relations in Trinidad and Tobago are supported by a foundation of regulations which guides its process of providing protection for employees on the grounds of exploitations, discriminations and safety. Furthermore, most aspects of the employment relationship are agreed upon during collective bargaining, which is identified in the Kochan, et al strategic choice model as the functional stage. However, the state has overarching, internationally dictated obligations which could not be left to collective bargaining such as employee health and safety, minimum age of employment, working time, workers' compensation, retrenchment and severance benefits and maternity leave. These are enforced by legislation which binds the State and all private employers to avoid discriminatory behaviour and to ensure that equity is applied. These following labour legislations are regulated for employers in Trinidad and Tobago, as sited from the ILO website: Equal Opportunity (Amendment) Act, 2001Industrial Relations Act, 1972 and the Trade Unions Act, 1932The Maternity Protection Act, 1998Minimum Wages (Amendment Act), 2000Occupational Safety and

Health (Amendment) Act, 2006
Retrenchment and Severance Benefits Act,
1985
The National Workplace Policy on HIV/AIDS

Legislation PURPOSE AND INSTITUTIONS ESTABLISHED

In Trinidad and Tobago, the general industrial relations policy is based on controlled collective bargaining between employers and workers, by means of their representative associations, for the agreement of terms and conditions of employment. The Industrial Relations Act (IRA) 1972 was effective from 31st July 1972 and set the stage for the practice of industrial relations in Trinidad and Tobago. It is the legal framework within which parties engage in collective bargaining, settle disputes and go before the Industrial Court for arbitration. The Industrial Court of Trinidad and Tobago was established under Section 4(1) of the Industrial Relations Act (1972) and is referred to as a Superior Court of record. This Court has the jurisdiction of the following: To hear and determine trade disputes; register collective agreements; hearing and determining matters relating to the registration of collective agreements; instructing trade unions, organizations, workers, other persons or employers from taking or continuing industrial action; hearing and determining actions relating to industrial relations offences in accordance to the IRA; and hearing and determining any other matter brought before it, in accordance to the provisions of the Industrial Relations Act. Other institutions developed as a result of industrial relations are the Special Tribunal was also established by the Civil Service Act, Chapter 23: 01 and the Occupational Safety and Health Division which was established within the Industrial Court for the efficient exercise of its jurisdiction under

the Occupational Safety and Health Act 2004 (as amended in 2006).

According to the website of the Industrial Relations Court, it is also required to deal with matters under: The Minimum Wages Act Chapter 88: 04The Retrenchment and Severance Benefits Act 1985The Maternity Protection Act 1998The Occupational Safety and Health Act (2004)Moreover, other institutions developed as a result of the labour legislations in Trinidad and Tobago include the following: INSTITUTION / FRAMEWORKDEVELOPED BY /FROMRESPONSIBILITIESEqual Opportunities CommissionSection 26(1) of the Equal Opportunity (Amendment) Act, 2001fSee Section 27 (1) of the Act (Appendix 1)Alternative Dispute Resolution Unit (ADR Unit)The Industrial Court of Trinidad and Tobago - 2007See Section 12 of the Industrial Relations Act. - developed to carry out the conciliation process on a larger scale(Appendix 2)Ministry of Labour - Conciliation Services, Occupational Health and Safety Issues, Labour Inspectorate Services, Trade Union Services, ... Established by the Commissions of EnquiryTo investigate the causes of labour disturbances in the Caribbean during the 1930'sThe Occupational Health and Safety AuthoritySection 64 (1) of the OSH ActSee section 66 (1) of the Act.(Appendix 3)

HOW EFFECTIVE HAVE THEY BEEN OVER TIME

The judiciary operation is subject to legislative and common law. The " Law of Precedence" and ' superior court' states a higher court decision will be binding on any court which is lower in the hierarchy. Therefore, for many employment related cases, reference is made to judgements from prior trade disputes or reference to ILO Conventions which are not subjected to ratification, such as ILO Convention No. 119 and 158 on Termination of

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Employment, which form parts of the Caricom Declaration of Labour and Industrial Relations Principles. This Declaration provides the foundation for general labour policies to which the CARICOM Region aspires. It is consistent with international standards and other international instruments. It provides guidelines on labour matters for the Social Partners and contributes to the development of a healthy industrial relations climate, and enhanced social partnership. It underscores the rights and responsibilities of the Social Partners, and provides the bases for the development of national labour policies, and inform the enactment of labour legislation (as adopted from the CARICOM Declaration). The creation of employment is a major economic and social challenge, however, in the Caribbean most employers seem to refer to the range of regulations as a source of labour market rigidity. Thus, some employers chose to still 'control' the collective bargaining process and ensure that 'contracts of employment' are structured to guarantee that the employer has the "ultimate advantage". In contemporary settings however, the employment relationship is governed by the contract of employment which highlights these regulations and considers collective bargaining with unions.

Relevance to the Contemporary Setting of T & T:

Contemporary employment relations have adopted the "best practice" approach in most Caribbean organisations and have changed the approach/functions of trade unions. Previously, trade unions were focused on representation, but they are now referred to for advice on maintaining this "best practice". However, most unions in Trinidad and Tobago are influenced by society and bargaining is not always in the interest of the

employee and the employer Examples of this was displayed during the trade dispute between Petrotrin and their employees, where the OWTU agreed to a 9% wage increase thereby setting the precedent for a " wage cap" for other public sector organisations. However, this cap was not sufficient for the dispute between TCL and the union, where considerations were not given to the continuity of the business. Likewise, it was seen that sometimes the union does not consider the benefits of the employees, such as the agreement of PSA to accept a 5% wage increase. Employees are more aware of their rights as opposed to five years ago. Also, information is now more accessible due to technological advancement. Today, employers have no choice but to meet the collective bargain of this " pluralist society" as each group is viewed as equal. While this is seen as the future of Trinidad and Tobago Employment Relations, employers are utilising their powers of " union threat effect", by offering short term contract employment, temporary employment and other strategic strategies, to curtail the requirement of union interventions. Examples of this is seen in organisations such as Google and Facebook , who ensures that their employees are kept satisfied to encourage an atmosphere of employee engagement and a non- unionised culture. This is their method of a union threat effect which enables this culture and guarantees the best production of their employees and is also viewed as a unitary approach (Fox 1975). In the Caribbean, Trinidad and Tobago is considered by Caricom as one of the more developed countries and as such, other Caribbean countries could benchmark on our " best practices" and legislation. By completing this context paper and reviewing the historical industrial relations and contemporary employee relations in

Trinidad and Tobago, we are able to understand and appreciate the relevance of Trade Unions, Labour Legislations and the key actors that dominate industrial relations. The future appears to be one where unions are transitioning to a more independent role in society and not simply 'battling' for the employee. In addition, employees are valued as human asset within SHRM approach, as they play a significant role in the organizations competitiveness. Employers must ensure compliance to the requirements as stated in section 6 of the Occupation Safety and Health (Amendment Act) 2006, which identifies their legal responsibilities. The legal frameworks that were created due to the process of collective bargaining have built a balance of rights and respect amongst the various actors in employee relations. The requirements for management to enhance the employment relations relationship will encompass the solution to worker alienation and exploitation by overthrowing of the capitalist system. The Trade Union role, however, is to challenge the control of management. Braverman (1974) disputed that management seeks control and improved performance through deskilling labour.