CHAPTER 13:
TYPES OF INDUSTRIAL ACTIONS

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OVERVIEW

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- INDUSTRIAL ACTIONS BY EMPLOYERS
1. INTRODUCTION
1.1 DEFINITION

- Trade dispute: Any dispute between employer and employees which is connected with the employment/non-employment or terms and conditions of work
1.2 CAUSES OF TRADE DISPUTE

- Individual’s complaint/grievances and is represented by union and who has exhausted the grievance procedures without getting satisfactory results

- Difference of opinion between union of employees and employer as to the appropriate terms and conditions of employment

- Difference of opinion as to the interpretation of Collective Agreement and Industrial Court Award
- Non-implementation of Collective Agreement and Industrial Court Award
- Deadlock in collective bargaining
- Problems of getting trade union recognition from the employer
- The employer practices unfair labour practice to certain groups of the trade union members
- To raise certain issues that been accepted in the collective agreements
The employer unwillingness to implement what has been written inside the collective agreements

The employer unwillingness to settle individual or group of employees’ trade dispute effectively
2. INDUSTRIAL ACTIONS BY EMPLOYEES
2.1 PICKETING: SECTION 40 OF IRA

- It is lawful for employees to attend at or near their workplace when they have trade dispute for the purpose of:
  - Peacefully giving information to public and other employees
  - Persuade other employees not to work if strike has been declared
However such picketing must NOT:

- Intimidate anyone
- Obstruct the entrance/exit to the organization
- Must be peaceful

Only those employees directly involved in the dispute can participate in the picket, although an officer or employee of the union can be present to ensure that the picketing is carried out according to the law.
Picketing can be done through:

- Often held at lunchtime and before/after working hours
- Prominent display of banner and placards with derogatory comments about employer, by requesting passers-by to show their support by pressing their vehicle horns and by willingness to give information to mass media, which will in turn publicise the dispute
Visualization: Picketing
2.2 STRIKE: SECTION 2 OF IRA

- Strike: Cessation of work by a body of workmen acting in combination

  OR

- a concerted refusal under a common understanding of a number of workmen to continue to work or to accept employment
Includes any act or omission by a body of workmen acting in combination

OR

Under a common understanding which is intended to or does result in any limitation, restriction, reduction or cessation of or dilatoriness in the performance of execution of the whole or any part of the duties connected with their employment
In simple words, strike:

- Stopping of work by a group of employees including any attempt to limit or slow down production
- Employees refuse to continue to work with the intention to result in limitation, reduction, cessation and dilatoriness in the performance of their work
Visualization: strike
Steps to be taken before a strike is carried out:

SECRET BALLOT PAPER

All members are required to attend and carry out a secret poll whether to accept or reject a strike. Members aged between 16-18 are nor required to poll.

Resolution

Secret ballot paper counted must contain the resolution of poll. Issues contain: reject management action or types of action to be taken by the members during strike.

2/3 Majority

To be effective in strike
**Cooling Period**

If the secret polling is successfully done and all steps are taken, then a cooling period of 7 days is allowable before the main strike is valid for strike.

**14 Days**

The decisions of the secret ballot are to be acknowledged or sent to the Registrar of Trade Union by the secretary of the Trade Union within 14 days after secret polling is carried out.

**90 Days**

The secret ballot paper is valid within 90 days from the date of secret polling and if strike does not proceed within those days after 90 days, then the process of secret polling is to be started again.
Section 43 of IRA: Restriction of a strike in the essentials services

- Banking
- Electricity
- Fire services
- Port, harbour and airport services
- Postal and telecommunication services
- Water services
- Transport services by land, water, or air
- Broadcasting services
- Petroleum and gas industries
Any Government services provider
- Custom and exercise
- Immigration
- Marine
- Meteorology
- Printing
- Chemistry
- Civil Aviation

Service which are connected with, or related to, or which assisted towards the maintenance and functioning of the Armed Forces and the Royal Malaysian Police Forces

Business and industries which are connected with the defence and security of Malaysia
Any section of any services, on the working of which the safety of the employees therein or of the establishment relating thereto depends

Industries declared by the Ministry of Human Resource in the Gazette as industries essential to the economy of Malaysia

In these services, besides all the other procedures, intending strikers must give 21 days notice to employer

When an employer receive such notice, he is required to inform the Director General

The cooling-off period is longer than those in the private sector and it gives time for government to take appropriate action to prevent the strike and is considered vital to the economy
2.3 BOYCOTT

- Members refuse to use or buy a company’s product
- Union will try to encourage other workers and supporters to follow suit - exerting economic pressure on the employer to give in to their demands
2.4 SABOTAGE

- Deliberate action aimed at weakening another entity through subversion, obstruction, disruption, or destruction
3. INDUSTRIAL ACTIONS BY EMPLOYERS
3.1 LOCK-OUT

Definition:

- Closing of a place of employment, the suspension of work

  OR

- Refusal by an employer to continue to employ any number of employees employed by him in furtherance of a trade dispute, done with a view to compel those employees to accept terms and conditions of employment
Procedures for lock out:

- **Section 45, IRA**
  - Must be in furtherance of a trade dispute

- **Section 40, TUA**
  - Before lock out takes place, a secret ballot must be held by those eligible strike, clearly stating issues leading to the proposed lock out
  - Results of this ballot must be sent to Director General within 14 days after taking the ballot
  - Secret ballot is only valid for 90 days and if lock out has not taken place within this period, a new ballot is required if employer intends to continue such action
Section 25A, TUA

- Lock out can only take place if 2/3 of those entitled to vote agree to the action.
- Lock out can only take place after a mandatory waiting period of 7 days after submitting the results to Director General.
Section 44, TUA

A lock out is not permitted if:

- Over a collective agreement, in which has been deposited with and accepted by Industrial Court
- Over managerial prerogatives items ie. Those matters prohibited from being included in the collective bargaining proposals
- During the proceedings of a Board of Inquiry appointed by Minister and 7 days after the conclusion of such proceedings
- After a trade dispute has been referred to Industrial Court for arbitration
- Over a recognition dispute, in which being resolved by Minister
- When YDPA has refused permission for a trade dispute in the public sector to be referred to Industrial Court for arbitration.
- Section 43, IRA

  - Restrictions of lock out in the essentials services:
    (Same with STRIKE)