

**TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS
(AMENDMENT) ACT, 2003**



No. 16

of 2004

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An Act to amend the Trade Union and Employers' Organizations Act

Date of Assent: 8th October, 2003.

Date of Commencement: 23rd April, 2004.

ENACTED by the Parliament of Botswana

Short title

1. This Act may be cited as the Trade Unions and Employers' Organizations (Amendment) Act, 2003.

Amendment of section 2 of Cap. 48:01

2. Section 2 of the Act is amended —

(a) in subsection (1) thereof, by —

(i) substituting, for the proviso to the definition of the word “employee”, the following new proviso —

“Provided that the expression does not include members of the —

(i) Botswana Defence Force,

(ii) Botswana Police Service,

(iii) Local Police, and

(iv) Prison Service;”,

(ii) substituting, for the definition of the word “employer”, the following new definition —

“employer” means any person who has entered into a contract of employment to hire the labour of any person and includes —

(a) the Government in respect of all its officers except members of the —

(i) Botswana Defence Force,

(ii) Botswana Police Service,

(iii) Local Police, and

(iv) Prison Service;

(b) a public authority; and

(c) the person who owns or is carrying on, for the time being or is responsible for the management of the undertaking, business or enterprise of whatever kind in which the employee is engaged;”;

(iii) deleting the words “consisting, wholly or in part, of more than 30 employees”, which appear in relation to the definition of the term “trade union”, and

(iv) inserting immediately after the definition of “officer” the following new definition —

“public authority” includes a local authority and a land board; and

(b) by deleting subsection (2) thereof.

Amendment of section 3 of the Act

3. Section 3 of the Act is amended in subsection (1) thereof, by deleting the words “, other than the Commissioner of Labour or an officer directly subordinate to the Commissioner of Labour,”.

Amendment of section 10 of the Act

4. Section 10 of the Act is amended —

(a) in subsection (2) thereof, by —

(i) deleting, paragraph (b) thereof,

(ii) deleting, the words “or inconsistent with this Act or with any regulations made thereunder”, which appear in paragraph (c) thereof, and

(iii) substituting for paragraph (g) thereof, the following new paragraph —

“(g) its principal objects are not in accordance with those of a trade union or employers' organization, as the case may be, as the same is defined by section 2.”;

- (b) by deleting subsection (3) thereof; and
(c) by deleting subsection (4) thereof.
5. Section 12 of the Act is amended —
- (a) in subsection (2) thereof, by deleting paragraphs (e) and (i) thereof;
- (b) by deleting subsection (3) thereof; and
(c) by deleting subsection (5) thereof.
6. Section 14 of the Act is amended by substituting, for subsection (3) thereof, the following new subsection (3) —
- “(3) If any trade union, federation of trade unions or employers’ organization whose registration is cancelled under this Act, is not dissolved —
- (a) immediately following the day on which the order cancelling its registration was served on it;
- (b) on the day on which the appeal was dismissed or abandoned, in the event of an appeal against the order cancelling its registration; or
- (c) within three months or within such longer period as the Registrar may allow,
- the trade union, federation of trade unions or employers’ organization, every officer thereof and every person acting or purporting to act as an officer thereof, commits an offence and is liable to a fine not exceeding P100.”.
7. Section 21 of the Act is amended by deleting subsection (2) thereof.
8. Section 27 of the Act is amended by deleting subsections (3), (4), (5) and (6) thereof.
9. Section 28 of the Act is amended —
- (a) in subsection (1) thereof, by deleting the words “or of the Minister” which appear therein;
- (b) in subsection (2) thereof, by deleting the words “or by the Minister, as the case may be” which appear therein; and
- (c) in subsection (3) thereof, by deleting the words “or the Minister, as the case may be” which appear therein.
10. Section 32 of the Act is amended by deleting subsection (2) thereof.
11. The Act is amended by substituting for section 39 thereof the following new section —
- “Application of funds 39. No funds of a registered trade union, federation of trade unions or employers’ organization shall be expended otherwise than as provided by their constitutions.”.
12. Section 45 of the Act is amended in subsection (6) thereof, by substituting for the words “the Minister” which appear therein the words “an independent and impartial auditing body”.

Amendment of section 12 of the Act

Amendment of section 14 of the Act

Amendment of section 21 of the Act

Amendment of section 27 of the Act

Amendment of section 28 of the Act

Amendment of section 32 of the Act

Amendment of section 39 of the Act

Amendment of section 45 of the Act

Amendment
of section 45
of the Act

13. Section 45 of the Act is amended —

- (a) in subsection (1) thereof, by deleting the words “, with the prior consent in writing of the Minister and” which appear therein; and
- (b) by substituting for subsection (2) thereof, the following new subsection (2) —
“(2) Trade unions that have formed an amalgamation in terms of subsection (1), shall inform the Registrar, in writing, of such amalgamation within 14 days of it taking place.”.

Amendment
of section 48
of the Act

14. The Act is amended by substituting, for subsection 48 thereof, the following new section —

“Recognition at
the work place

Act No.
of 2002

48. (1) If a trade union represents at least one third of the employees of an employer, that trade union may apply for recognition under section 32 of the Trade Disputes Act.

(2) Notwithstanding any other provision of this Act, no member of management in any undertaking or enterprise shall be represented by a negotiating body, whether the same is or is not a registered trade union or branch thereof, in respect of matters bearing upon relations between his employer or the industry in which the member of management is employed and those employees thereof or therein who are members of management unless the negotiating body represents only members of management in the same undertaking, enterprise or industry and no other employees.

(3) In this section, “member of management” means an employee who has authority, on behalf of his employer, to employ, transfer, suspend, lay off, recall, promote terminate the employment of, reward, discipline or deal with the grievances relating to the employment any fellow employees or effectively to recommend any such action or the manner in which such grievances ought to be dealt with, if the exercise by him of that authority is not merely of a routine or clerical nature but require the use of his discretion.

(4) An employer who has granted recognition to a trade union, in terms of section 32 of the Trade Disputes Act, shall bargain in good faith with the union on the following matters —

- (a) remuneration and other terms and conditions of employment, including the physical conditions under which employees are required to work;
- (b) employment benefits;
- (c) employment policies concerning, inter alia, the recruitment, appointment, training, transfer, promotion, suspension, discipline and dismissal of employees;

- (d) the collective bargaining relationship including —
 - (i) organizational rights,
 - (ii) negotiation and dispute procedures, and
 - (iii) grievance, disciplinary and termination of employment procedures; and

(e) any other agreed matter.

(5) A trade union that has been granted recognition shall bargain in good faith with the employer who recognises it in respect of any of the matters referred to in subsection (2).

(6) Any dispute concerning the duty to bargain in good faith shall be referred to the Commissioner for mediation in accordance with section 7 of the Trade Disputes Act.

(7) If the dispute is not settled, the dispute may be referred to the Industrial Court for determination.

(8) An employer may apply to the Industrial Court for an order withdrawing recognition on the following grounds, that:

- (a) the trade union no longer represents one third of the employers' employees;
- (b) the trade union refuses to negotiate in good faith with the employer;
- (c) the trade union refuses or fails to comply with an arbitration award or an order of the Industrial Court; or
- (d) the trade union has materially breached a collective agreement concluded with the employer.”.

15. The Act is amended by inserting, therein, immediately after section 48 thereof, the following new sections —

“Recognition
at level of
industry

48A (1) For the purposes of this section, a trade union includes two or more trade unions acting jointly.

(2) If a trade union has, as its members, at least one third of the employees in an industry, the trade union may apply to the Commissioner for the establishment of a joint industrial council under section 36 of the Trade Disputes Act.

(3) If a trade union has been granted recognition in an industry in terms of section 34 of the Trade Disputes Act —

- (a) any employers' organization representing employers in the industry shall bargain in good faith with the union on the matters listed in subsection (4); and
- (b) any employer in the industry, not belonging to an employers' organization, shall bargain in good faith with the union on the matters listed in subsection(4).

Insertion of
sections 48A,
48B and 48C in
the Act

- (4) The matters referred to in subsection (3) include —
- (a) remuneration and other terms and conditions of employment, including the physical conditions under which employees are required to work;
 - (b) employment benefits;
 - (c) employment policies concerning the recruitment, appointment, training, transfer, promotion, suspension, discipline and dismissal of employees;
 - (d) the collective bargaining relationship including —
 - (i) organizational rights,
 - (ii) negotiation and dispute procedures, and
 - (iii) grievance, disciplinary and termination of employment procedures; and
 - (e) any other agreed matter.

(5) A trade union that has been granted recognition shall bargain in good faith with an employer or employers' organisation that recognises it in respect of any of the matters referred to in subsection (4).

(6) Any dispute concerning a duty to bargain in good faith shall be referred to the Commissioner for mediation in accordance with section 7 of the Trade Disputes Act.

(7) If any dispute referred to in subsection (6) is not settled, the dispute may be referred to the Industrial Court for determination.

Organisational
rights of
recognised
trade unions

48B (1) Subject to the provisions of this section, a trade union granted recognition in terms of section 32 or 34 of the Trade Disputes Act, shall be entitled to —

- (a) have authorised representatives of the union granted access to an employer's premises for purposes of recruiting members, holding meetings or representing members;
 - (b) have trade union dues and levies deducted from employees' wages on the written authorisation of the employees; and
 - (c) have trade union representatives appointed by the union from among its employees, recognised by employers for purposes of representing members of the union in respect of —
 - (i) grievances,
 - (ii) discipline,
 - and
 - (iii) termination of employment.
- (2) An employer may impose —
- (a) reasonable limits as to frequency, time and place, on the access of authorised representatives to the employer's premises;

(b) no more than a five percent (5%) levy on a trade union for deducting trade union dues and levies from employees on behalf of the trade union; or

(c) reasonable limits on the number of trade union representatives to be appointed to represent its members.

(3) An employee who authorises a deduction of trade union dues and levies may withdraw that authorisation in writing.

(4) If the constitution of a trade union requires the election of trade union representation at the workplace, the employer shall, subject to reasonable limitations as to place and time, permit the elections during working hours.

(5) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section shall be referred to the Commissioner under section 7 of the Trade Disputes Act for mediation.

(6) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

Disclosure of
information to
a recognised
trade union

48C (1) Subject to the provisions of subsections (2) to (8), an employer shall, on request, disclose all relevant information to a recognised trade union that is reasonably required to allow the trade union to consult or bargain collectively.

(2) An employer shall notify the recognised trade union, in writing, if any of the information requested by the union is information which may not be disclosed in terms of subsection (3).

(3) An employer shall not disclose information —

- (a) that is legally privileged;
- (b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of court; or
- (c) subject to subsection (7), that is confidential and which, if disclosed, may cause material harm to an employee or the employer;
- (d) subject to subsection (7), that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

(4) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section shall be referred to the Commissioner for mediation in accordance with section 7 of the Trade Disputes Act.

(5) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

(6) In any dispute about the disclosure of information, the Industrial Court shall first decide whether or not the information is relevant.

(7) If the Industrial Court decides that the information is relevant and if it is information referred to in subsection (3)(c) or (d), the court shall balance the harm that the disclosure is likely to cause, against the harm that the failure to disclose is likely to cause to the ability of the recognised trade union to engage effectively in consultation or collective bargaining.

(8) If the Industrial Court decides that the balance of harm favours disclosure, the Court may order disclosure on terms designed to limit the harm likely to be caused to the employee or employer.

(9) When making an order, the Court shall take into account any breach of confidentiality in respect of information disclosed to the trade union in terms of this section and may refuse to order the disclosure of the information for a period specified in the award.

(10) In any dispute about an alleged breach of confidentiality, the Industrial Court may order that the right of disclosure of information in that workplace be withdrawn for such period as may be specified in the award.”

Amendment of
section 49 of
the Act

16. Section 49 of the Act is amended in subsection (2) thereof —

- (a) by deleting paragraphs (a) and (b) thereto; and
- (b) by inserting the word “financial” immediately before the words “interests of the members”, which appear in the second line of paragraph (c).

Amendment
of section 50
of the Act

17. Section 50 of the Act is amended by inserting the word “financial” —

- (a) in subsection (1) thereof, immediately before the words “affairs of any trade union” which appear therein;
- (b) in subsection (2) thereof, immediately before the words “affairs of such other trade union” which appear therein;
- (c) in subsection (3) thereof, immediately before the words “affairs are investigated under the provisions of the previous subsections” which appear therein;
- (d) in subsection (4) thereof, immediately before the words “affairs or activities” which appear therein; and
- (e) in subsection (5) thereof, immediately before the words “affairs or other activities of the trade union or other person” which appear therein.

- 18.** Section 52 of the Act is amended by inserting the word “financial” immediately before the word “investigation” which appears therein. Amendment of section 52 of the Act
- 19.** Section 53 of the Act is amended by deleting subsection (1) (b) (i) thereof. Amendment of section 53 of the Act
- 20.** Section 54 of the Act is amended by substituting for paragraph (a) thereof, the following new paragraph — Amendment of section 54 of the Act
- “(a) uses violence or intimidates that other person or that person’s spouse or children, or injures his property;”
- 21.** Sections 22, 51, 60 and 62 of the Act are hereby repealed. Repeal of sections 22, 51, 60 and 62 of the Act
- 22.** The Act is amended by substituting for section 63 thereof, the following new section — Amendment of section 63 of the Act
- “Receipt of funds 63. (1) A registered trade union, federation of the trade unions or employers’ organisation may, subject to the provisions of any other law in force, accept funds originating from outside Botswana.
- (2) In this section, “funds” includes all donations, loans or other assistance having pecuniary value, other than air, road or sea passages, or scholarships.”
- 23.** Section 68 of the Act is amended by deleting subparagraphs (c) and (d) thereof. Amendment of section 68 of the Act
- 24.** The Schedule to the Act is hereby repealed. Amendment of the Schedule to the Act

PASSED by the National Assembly this 9th day of July, 2003.

A. MATLHAKU,
Clerk of the National Assembly.