

# THE CONTROL AND REGULATION OF STRIKES AND LOCK-OUTS IN MALAYSIA \*

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## Introduction

The control of strikes and lock-outs is very much a product of legislation in Malaysia. One can discern an attempt by the legislature to achieve a balance between the need to regulate strikes and prevent industrial conflagration on one hand, and the due recognition of the concept of freedom of association on the other. The freedom of association provision of the Malaysian Constitution pronounces "all citizens have the right to form associations" subject to the right of Parliament to restrict the right in the interest of security, public order or morality.<sup>1</sup>

2. The need to regulate trade unionism in the interest of security has now largely vanished especially after the ending of the communist emergency which was in force from 1948 to 1960. The danger was perceived to have come from the acknowledged policy of the Communist Party of Malaya to infiltrate the labour movement and create urban labour unrest in the form of strikes and labour demonstrations.<sup>2</sup> Today the labour

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1. Articles 10(1) and (2) of the Malaysian Constitution read as follows:

(1) Subject to Clauses (2), (3) and (4)-

(a) every citizen has the right to freedom of speech and expression;

(b) all citizens have the right to assemble peaceably and without arms;

(c) all citizens have the right to form associations.

(2) Parliament may by law impose-

(a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;

(b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order;

(c) on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.

2. See generally Charles Gamba, *The Origins of Trade Unionism in Malaysia: A study in Colonial Labour Unrest* (Eastern Universities Press Ltd. 1962) and Gene Hanrahan, *The Communist Struggle in Malaya* (University of Malaya Press) 1971 (First Published in 1954).

movement in the country is largely non-ideological. Thus the need to criminalise certain forms of trade union activity as in the past is no longer present. In the result the legislation dealing with strikes and lock-outs is essentially regulatory in nature whilst the principal objective of labour statutes themselves is to strike a balance between the needs of labour and the rights of management.

### **The Industrial Relations system**

3. The principal features of the industrial relations system in Malaysia are collective bargaining, conciliation and compulsory arbitration. The major statutes are the Industrial Relations Act, 1967 and the Trade Unions Act, 1959.<sup>3</sup> The Industrial Relations Act has been described as a piece of social legislation seeking to achieve social justice in the employer/worker relationship.<sup>4</sup> The drafting of the legislation was very much animated by the principles of social justice, in reconciling the competing claims of labour and capital, that imbued the Indian Industrial Disputes Act 1947 and the Australian Conciliation and Arbitration Act, 1947. These statutes in turn carried several features of the war-time labour regulations<sup>5</sup> of Britain that imposed curbs on the freedom of contract in the field of employment law and labour disputes generally. However, unlike the Australian model, Malaysia adopted a system of compulsory arbitration.

4. The Industrial Relations Act (the Act) introduced in Malaysia a new legal regime that discarded many common law concepts regarding employment. In the forefront was the remedying of the imbalance between workmen and the employer in the area of termination of employment. Employers lost the common law right of contractual termination which was replaced by termination for "a just cause or

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3. The other labour statutes operate in the field of employment law simpliciter. The major statute in this regard is the Employment Act, 1955 which stipulates certain minimum standards of employment for workers engaged in manual labour, supervisory work, and generally all workers earning a basic wage of below M\$1, 200 per month. There are also compulsory social security legislation like the Employees Provident Fund Act, 1951 and the Employees Social Security Act, 1969.
  4. See **Non-Metallic Mineral Products Employees Union v South East Asia Fire Bricks Sdn. Bhd.** (1976) 2 MLJ 67 at p.68.
  5. Eg. the Conditions of Employment and National Arbitration Order 1940 that set up the National Arbitration Tribunal providing for compulsory arbitration in respect of "trade disputes": see **National Association v Bolton Corporation** (1942) 2 AER 425, for a comprehensive discussion of this law.

excuse"<sup>6</sup> the distinction between contractual termination and dismissal was obliterated.<sup>7</sup> At the same time the Act armed the Industrial Court with the potent remedy of reinstatement in employment in cases of unfair dismissal. This was a radical departure from the established principle at common law that there could be no specific performance of a contract of employment.<sup>8</sup>

5. In respect of collective disputes, the Act created the machinery of conciliation and arbitration. The pivotal point is the term "trade dispute" which is defined as any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workmen.<sup>9</sup> The term has been given a wide meaning by the courts because of the words

6. Section 20(1)

7. In *Goon v. J&P Coats (M) Sdn. Bhd.* (1981) 2 MLJ 129 at p. 136 the position was stated as follows:-

"We do not see any material difference between a termination of the contract of employment by due notice and a unilateral dismissal of a summary nature. The effect is the same and the result must be the same. Where representations are made and are referred to the Industrial Court for enquiry, it is the duty of that court to determine whether the termination or dismissal is with or without just cause or excuse. If the employer chooses to give a reason for the action taken by him, the duty of the Industrial Court will be to enquire whether that excuse or reason has or not been made out if it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. The proper enquiry of the court is the reason advanced by it and that court or the High Court cannot go into another reason not relied on by the employer or find one for it."

8. The leading case which discusses the differences in remedy is the Federal Court decision in *Fung Keong Rubber v Lee* (1981) 1 MLJ 238. The position was stated as follows:

"At common law it is not possible for a wrongfully dismissed workman to obtain an order for reinstatement because the common law knew only one remedy, viz., an award of damages. Further, the courts will not normally "reinstatement" a workman who has been wrongfully dismissed by granting a declaration that his dismissal was invalid: see *Vine v. National Dock Labour Board*; *Francis v. Municipal Councillors of Kuala Lumpur*. At the most it will declare that it was wrongful. However his common law right has been profoundly affected in this country by the system of industrial awards enacted in the Industrial Relations Act, 1976. The wrongfully dismissed workman can now look to the remedies provided by the arbitration system. He can now look to the authorities or his union to prosecute the employer and force the latter to reinstate him. Reinstatement, a statutorily recognised form of specific performance, has become a normal remedy and this coupled with a full refund of his wages could certainly far exceed the meagre damages normally granted at common law." (p.239).

9. See Section 2. The definition follows the description of the term in the UK statutes.

"connected with",<sup>10</sup> although it has also been recognised that the connection must not be too remote.<sup>11</sup> The Act also made provision for the compulsory arbitration of trade disputes upon a reference of the dispute to the Industrial Court by the Minister for Human Resources. It is settled that the reference by the Minister would not be subject to judicial review unless it is established that the Minister had misdirected himself in law or had generally acted counter to the policy and objects of the statute.<sup>12</sup> However, the reference of the dispute by the Minister to the court would not foreclose a valid objection being taken before the Industrial Court that it lacked the jurisdiction to enter upon the enquiry.<sup>13</sup>

6. The Industrial Court established by the Act is a creature of statute. It is obliged to exercise powers only as provided in the statute.<sup>14</sup> However, it is recognised that the court should be relief-oriented and is empowered to make all orders necessary for purposes of settling the trade dispute. It is in this respect not confined to the specific relief claimed by the party.<sup>15</sup> In its decision the Court is obliged to act according to equity and good conscience which enables it to shed the strict legal fetters that bind ordinary courts of law.<sup>16</sup> However, if the court reaches its decision absurdly or makes a perverse finding that no reasonable body of persons properly instructed in the law and facts would make its decision could be set aside by the High Court on review.<sup>17</sup> In addition, the court also possesses certain post-decisional powers like its interpretative function over awards it has delivered, and a non-compliance jurisdiction for complaints that an award of the court has been breached.

### Strikes And Their Resolution

7. Strikes would come under the classification of collective disputes. The forum for their resolution is the Industrial Court. However, unlike in England or the United States, where the immediate remedy to break a crippling strike is the controversial labour injunction, there is no provision under the Act for the Industrial Court to grant injunctive relief. An injunction may however be applied for in the civil court. This would place the burden on the Applicant to first make out a cause of action based on

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10 **Overseas Chinese Banking Corporation Ltd. v. National Union of Bank Employees** (1986) 1 MLJ 338 at p. 340.

11 **National Union of Hotel, Bar & Restaurant Workers v Hotel Malaya** (1987) 2 MLJ 350 at p. 353

12 **See Hotel Union v Minister of Labour** (1980) 2 MLJ 189.

13 **See Inchcape Malaysia Bhd. v R.B. Gray** (1985) 2 MLJ 297.

14 **See Lee Wah Bank v NUBE** (1981) 1 MLJ 169.

15 **See Assunta Hospital v Dr. Dutt** (1981) 1 MLJ 304.

16 Section 30(5).

17 **See Malayan Banking Bhd. v Association of Banks Officers** (1988) 3 MLJ 204.

the strike. This is invariably the complaint that the workers and their union are engaging in an illegal strike, which in exceptional cases can be made out even before trial of the action. However, the enforcement of an injunction order where it is likely that not all the participating strikers are named as defendants is fraught with difficulty. In practice, an injunction is found necessary only in cases of a domestic strike which does not carry any consequences beyond itself. A national strike which threatens an industry or cripples an essential service in the country would never be allowed to run its course. Section 44(b) declares that workmen shall not go on strike after a trade dispute involving them has been referred to the Court. This has proved to be more effective and decisive than any labour injunction. The provision is especially useful in cases of crippling nationwide strikes like rail strikes or dock strikes that bring essential services to a halt causing inconvenience to the public at large. Its salutary effect lies in that the demand of the striking workers is adjudicated in the dispassionate atmosphere of the court-room and not by pressure from the picket line.

#### **Going On Strike And its Legality**

8. Stephenson LJ made the prescient observation in the **Tramp Shipping Case**<sup>18</sup> that "forms of industrial action have developed beyond the contemplation of workmen in the last century, and the end is not yet. What was not then regarded as a strike may be commonly so regarded now." This was an acknowledgment that stoppage of work in the form of a strike simpliciter is not the only form of industrial protest. Industrial action like "work to rule" and "go-slow", while not causing a complete cessation of work nevertheless lead to a reduction or limitation in output with an equally pernicious effect as a strike. Statutory recognition of these forms of industrial protest requiring remedial action was first given in England through the Industrial Relation Act 1971. It was classified as "irregular industrial action short of a strike".<sup>19</sup> Thus union bans on overtime work or rest day work were covered by this description. At the other end of the spectrum, the classification covered dilatory work as a form of industrial protest. The aim of the new categorisation was to disentitle unions from launching industrial action by by-passing the requirement of a strike notice. The position was given in an English case<sup>20</sup> as follows :-

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18 **Tramp Shipping Corporation v Greenwich Marine** (1975) 1 WLR 1042 at p. 1047.

19 A Comprehensive discussion of this class of industrial action is given in the English case of **Employment Secretary v. ASLEF (No.2)** (1972) 2 QB 455.

20 **Seaboard Airlines Inc. v. TGWU** (1973) ICR 458 at p. 460.

"Any concerted form of working without enthusiasm, of prolonged tea breaks, or departures for the relief of natural pressures - the forms of industrial action are limited only by the ingenuity of mankind-all of them constitute "irregular industrial action short of a strike," and are prohibited with or without notice. We are far from saying that it is undesirable that notice of such action should be given, because it gives an opportunity for conciliation. But notice of intention to take irregular industrial action short of a strike does not make that action lawful."

9. However, the U.K. dichotomy between "strike" and "irregular industrial action short of a strike" does not apply in Malaysia. The definition of strike given in the Act is a wide one which goes beyond the popular or colloquial meaning of the term. The term is defined as:-

"The cessation of work by a body of workmen acting in combination, or a concerted refusal or a refusal under a common understanding of a number of workmen to continue to work or to accept employment, and 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 or execution of the whole or any part of the duties connected with their employment."<sup>21</sup>

10. The definition, in its sweep, encompasses any refusal to work in concert resulting in work stoppage or 'limitation, reduction, restriction or dilatoriness' in work. Unlike the U.K. 1971 statute or its 1978 successor, the demand or objective behind the strike is not an ingredient of the definition. The definition looks at effect and not intent. The words 'or does result' in the definition dispenses with intent. Thus like the position obtaining in U.K. an employee would be said to be participating in a strike if he withholds his labour even if he does not have common cause with others on the picket line. The position was given in **Coates** case<sup>22</sup> by Stephenson LJ as follows :-

"I have come to the conclusion that participation in a strike must be judged by what the employee does and not by

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21 Section 2.

22 **Coates v. Modern Methods & Materials** (1982) 3 WLR 764 at p. 775F.

what he thinks or why he does it. If he stops work when his workmates come out on strikes and does not say or do anything to make plain his disagreement, or which could amount to a refusal to join them, he takes part in their strike. The line between unwilling participation and not taking part may be difficult to draw, but those who stay away from work with the strikers without protest for whatever reason are to be regarded as having crossed that line to take part in the strike. In the field of industrial action those who are not openly against it are presumably for it."

11. The broadness of the definition makes the position clear that lesser industrial action like 'go-slow' and 'work to rule' would be considered as a strike in Malaysia.<sup>23</sup> It will also be a strike if the work stoppage is intermittent or partial not resulting in a complete cessation of work. Thus, as a rule of thumb any industrial action short of a strike that causes any reduction, restriction, limitation or dilatoriness in work would be caught by the definition as a strike.

12. The absence of motive as an ingredient of the definition of a 'strike' has also dispensed with the dichotomy between 'a legal strike' and 'a justified strike'. In the context of the Act we do not have the anomaly of a strike being justified but illegal, or its converse of a legal strike being otherwise unjustified. The only consideration is whether the strike is legal or illegal.<sup>24</sup> Workers may not be dismissed from employment if they participate in a legal strike.<sup>25</sup> However if the strike is illegal any lock-out by the employer in consequence thereof would be a legal lock-out.<sup>26</sup>

13. Thus, the essential question in any strike dispute is whether the strike is legal or illegal. All rights and liabilities depend on the determination of that question. The principal provision in this regard is Section 45 of the Act :-

"(1) A strike or a lock-out shall be deemed to be illegal if-

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23 See **Non-Metallic Mineral Products Employees Union v. Goh Ban Huat Pottery Works**, Award 3/76.  
24 See **National Union of Hotel, Bar & Restaurant Workers v. Hotel Malaya** (1989) 2 MLJ 350.  
25 **Non-Metallic Mineral Products Employees Union v. South East Asia Fire Bricks** (1976) 2 MLJ 67.  
26 Section 45(2); See **Woodard Textiles Mills v. Textile Union** (1985) ILR 133.

- (a) it is declared or commenced or continued in contravention of Section 43 or Section 44 or of any provision of any other written law; or
  - (b) it has any other object than the furtherance of a trade dispute-
    - (i) between the workmen on strike and their employer; or
    - (ii) between the employer who declared the lock-out and his workmen.
- (2) A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal."

14. In short by Section 45, a strike could be illegal for substantive and procedural reasons. The substantive reason is the motive or objective behind the strike, namely, if it has any object other than the furtherance of a trade dispute between the workmen on strike and their employer. Although the term 'trade dispute' is wide in its scope, Section 45(1) (b) (i) limits it by prohibiting what is often called 'secondary strikes' or 'sympathy strikes'. Such strikes, not uncommon in some countries, are strikes held by workers in one undertaking to express solidarity for the strikers in another establishment where the actual trade dispute exists. It is especially effective if there is business inter-dependence between the two establishments. The 'sympathy strike' brings indirect pressure to bear upon the employer engaged in the trade dispute to resolve the dispute.<sup>27</sup> Another reason for the requirement of action 'in furtherance of a trade dispute' is to prevent 'political strikes' or politically motivated or ideological strikes. Thus a strike like the one that took place in **BBC v. Hearn**,<sup>28</sup> where the reason for the strike was the union's disagreement with the political decision of the Government to relay the cup final to S. Africa, would likewise be an illegal strike in Malaysia.

15. A strike could also be illegal on other substantive grounds, notwithstanding it being in furtherance of a trade dispute, if :-

- (1) it is in respect of any matter covered by a collective agreement.<sup>29</sup> Matters covered by a collective agreement, being essentially terms and conditions of employment, are ordinarily par excellence the stuff of which trade disputes

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27 See for example **Torquay Hotel Co. v. Cousins** (1969) 1 AER 522.

28 (1977) 1 WLR 1004.

29 Section 45(1) (a) read with Section 44 (d).

are made. However, their exclusion from the subject matters on which workmen could legitimately strike is for the reason that under the Act, upon cognizance being taken of a collective agreement by the Industrial Court,<sup>30</sup> there is to be a guarantee of industrial peace on matters relating to terms and conditions of employment for a minimum period of three years;

- (2) the strike is in respect of any of the matters covered by Section 13(3) of the Act. Section 13(3) deals with matters which are traditionally classified as management prerogatives. These are matters like promotion, transfer, allocation of work, retrenchment and termination of employment. It is axiomatic that the most emotionally charged strikes are those in respect of these matters. The inability of a trade union or a collection of workman to go on strike over these matters does not mean there is no avenue of redress for them if the complaint is one of union victimisation or unfair labour practice or simple breach of contract. The dispute is referred to the Industrial Court for adjudication. It is not unusual for the Industrial Court to rescind a transfer order or strike down a retrenchment exercise if it infringes a collective agreement.<sup>31</sup>
- (3) the strike is in furtherance of a recognition dispute<sup>32</sup> and the dispute is being conciliated by the Ministry of Labour.<sup>33</sup> There is also a prohibition against going on strike if the Minister of Human Resources decides against making an order for the employer to grant compulsory recognition to the union. Likewise, an employer is prohibited from ordering a lock-out during the pendency of a recognition dispute. The thrust of the Section is to

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30 Section 16. This is an administrative procedure by which a signed copy of the Collective Agreement is required to be deposited with the Industrial Court within a month of its execution. If the Agreement conforms with the labour statutes it is given cognizance and thereafter is deemed to be an Award of the court.

31 See **Dunlop Industry Employees Union v. Dunlop Malaysia Industries Bhd** (1987) 2 MLJ 8.

32 A recognition dispute is considered a trade dispute: see **Re Lower Perak Motor Service Co** (1968) 1 MLJ 5. However, pursuant to a 1971 amendment, recognition disputes were withdrawn from the jurisdiction of the Industrial Court and are now settled by a final decision of the Minister of Labour as to whether recognition should or should not be granted. The decision of the Minister is subject to judicial review but because his decision is protected by a privative clause, the scope for challenge is limited: see **Minister of Labour v. Paterson Candy** (1980) 2 MLJ 122.

33 Section 10(1).

prohibit the actual strike action by the union and not steps preparatory to it like the issue of a strike notice.<sup>34</sup>

16. The procedural grounds upon which a strike, otherwise lawful, could be illegal, are basically two-fold:

- (1) **The Strike Notice:** The requirement to give a strike notice is contained in Section 43(1). It is only in respect of undertakings considered to be an essential service. The businesses that are considered an essential service are listed exhaustively in the Schedule to the Act. They include services like banking, electricity, fire, port and labour, prison, fuel, health, telegraph, transport etc. and would cover the provision of these services in both the public and private sectors. Because of the prohibitive terms in which Section 43(1) is couched, a strike carried out without notice would be considered unlawful.<sup>35</sup> The notice period before strike is 42 days; a strike carried out with short notice would likewise be illegal.<sup>36</sup>
  
- (2) **The Strike Ballot:** Section 45(1) which deals with illegal strikes also specifies that a strike would be illegal if it contravenes 'any other written law'. This imports the requirements under the Trade Unions Act 1959. Section 25A(1) (a) of this Act declares that no trade union of workmen shall go on strike without first obtaining the consent by secret ballot of at least 2/3 of its members in respect of whom the strike is to be called.<sup>37</sup> By Section 40(5) of the same Act, the results of the strike ballot must be filed with the Director General of Trade Unions within 14 days of it being taken. Powers are given to the Director General to verify the results of the strike ballot. Thus a trade union may not go on strike before the expiry of 7 days after filing the returns with the Director General,<sup>38</sup>

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34 **Enesty Sdn. Bhd. v Transport Workers Union** (1986) 1 MLJ 18.

35 The format of a strike notice is given in the Industrial Relations Regulations 1986. It requires the signature of the President and Secretary of the Union and a statement of the reason for the strike.

36 Section 43(1) (a); A case from another jurisdiction on short notice is the New Zealand case of **Harder v. NZ Tramways** (1977) 2 NZLR 162.

37 The form and procedure is given in the Trade Union Regulation 1959 (Regulation 26; Form U.)

although it might not also go on strike after the expiry of 90 days after the taking of the ballot in respect of which the strike was called.<sup>39</sup> A strike called in breach of the secret ballot requirements either because no ballot was taken or the wrong members were polled or prescriptive requirements were not met would be unlawful.<sup>40</sup>

17. It is evident from the above discussion that the freedom to strike is quite circumscribed under Malaysian law.<sup>41</sup> The principal objective of Malaysian industrial dispute law appears to be to remove collective dispute from the industrial battlefield and put it for compulsory arbitration.<sup>42</sup>

### The Illegal Strike: Legal Consequences

18. The legal consequences of an illegal strike can be considered from the standpoint of civil and criminal liabilities. On the civil side, all actions taken and directions given pursuant to or in furtherance of an illegal strike would be of no legal consequence and cannot confer any protection to union leaders and participating workers alike. The employment of union funds in furtherance of an illegal strike could become a charge personally against the union leaders who sanctioned the payment.<sup>43</sup> At the individual level, workers who have participated in an illegal strike are deemed to have broken their contracts of service and are liable for dismissal.<sup>44</sup> They would also not be entitled to their wages.<sup>45</sup> There is yet another liability affecting them personally. Under Section 25A(3) of the Trades Union Act 1959 the Director General of Trades Union

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38 Section 25a (1)(b).

39 Section 40(3). The objective behind this is to prevent strikes on stale claims.

40 A recent English decision in point arises out of the 1984 coal-mine strikes in U.K. : see **Taylor v. NUM (Derbyshire Area)** (1984) IRLR 440.

41 The observation in the **South East Asia Firebricks case** (1976) 2 MLJ 67 at p. 69: 'There can be no equilibrium in industrial relation today without the freedom to strike. If workers could not in the last resort collectively withhold their labour, they could not bargain collectively,' is too widely stated. It must be read in the context of the facts of that case which concerned an illegal lock-out and a legal strike.

42 This was evident also in the precursor legislation to the present, namely the Essential (Trade Disputes In the Essential Services) Regulations, 1965 and the Trade Disputes Ordinance, 1949.

43 See for example, **Taylor v. NUM** (1985) IRLR 99. In an unprecedented case, Vinelott J. ruled that union officials who sanctioned the payments of over 1.7m to unofficial strikers were liable to reimburse the union for mismanagement of funds, although it is possible for the general meeting to resolve, in good faith, not to take action for recovery.

may direct that workers who have participated in an illegal strike should cease to be members of the union concerned and would not be eligible for membership again unless with the approval of the Director General. The Director General is however required to hold an inquiry and observe the rules of natural justice before he invokes his powers under the provision.<sup>46</sup>

19. On the criminal liability front, the Act has created a number of sanctions for trade union activity in promotion of an illegal strike. Section 46 imposes penalties in the form of imprisonment for a term not exceeding one year or a fine not exceeding M\$1,000 or both for commencing, continuing or acting in furtherance of an illegal strike. A like sanction and punishment is listed for those who instigate or incite participation in an illegal strike. There is also penalty imposed on person, not necessarily a person connected with the industrial dispute, who finances or gives financial aid in furtherance of an illegal strike.<sup>47</sup> All these criminal sanctions apply mutatis mutandis to an illegal lock-out.

### Conclusion

20. In this overview of strike law in Malaysia, we see a strong legislative vote in favour of the control and regulation of strikes. One also sees a straight uncluttered approach to the problem unfettered by the chains of trade union history that bedevilled English legislation on the subject. For example, Professor Wedderburn began his classic treatise on labour law in England by this observation: 'Most workers want nothing more of the law than that it should leave them alone'.<sup>48</sup> Thus the 'absence of the law'<sup>49</sup> in matters relating to labour relations has been very much the guiding philosophy behind labour legislation there, at least until the seventies.<sup>50</sup> The recognition in England of the freedom to strike

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44 See the **Hotel Malaya** case, *supra*. Thus, the workers in the **South East Asia Firebricks** case, *supra*, who were deemed to be on a legal strike were, accordingly reinstated.

45 See the **Woodard Textiles** case, *supra*.

46 **Metal Industry Employees Union v. Registrar of Trade Unions** (1982) 1 MLJ.

47 Section 48.

48 K.W. Wedderburn, **The Worker And The Law** (1965 Penguin ED.) at p.9.

49 A term used by another leading labourite, Professor Otto Kahn-Freund, *op.cit.* p.13.

50 Except for the hiatus created by war-time labour regulations that controlled freedom of contract in employer/worker relationship, the first stringent laws of free-will trade union activity would appear to be Industrial Relations Act 1971 introduced by the Conservative Government.

to maintain the equilibrium in industrial relations was also reflected in judicial decisions.<sup>51</sup>

21. The balance under Malaysian strike law is tilted towards the imposition of curbs on this common law freedom rather than its enhancement. Under present legislation there exists only a narrow area in which the freedom to strike remains extant—namely, to pressure an employer to collectively bargain or to protest over matters not covered by a collective agreement. However, the procedural requirements that must be met before a trade union can strike and the power of the Minister to refer the dispute to the Industrial Court and thereby make any continuance of a strike unlawful, reflects a legislative policy that is set against the concept of freedom to strike in favour of the concept of compulsory labour arbitration.

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51 See Lord Wright in *Crofter Hand Woven Harris Tweed Co. Ltd. v. Veitch* (1942) AC 435 at 463.