

Verification of Membership and Recognition of Trade Union Rules, 1994

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Rule

VERIFICATION-OF-MEMBERSHIP-AND-RECOGNITION-OF-TRADE-UN of 1994

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Verification of Membership and Recognition of Trade Union Rules, 1994Published vide Notification
Orissa Extraordinary No. 1317 dated 27.10.1994Chapter-I

1. Short Title.

- The rules may be called the Verification of Membership and Recognition of Trade Union Rules, 1994.

2. Extent, Commencement of Application.

(1)These rules shall extend to the whole of the State of Orissa.(2)They shall come into force on such date as the State Government may by notification in the Official Gazette appoint.(3)Except as otherwise hereinafter provided, these rules shall apply to industries as defined in Clause (j) of Section 2 of the Industrial Disputes Act, 1947 :Provided that the State Government may by notification in the official Gazette, direct that the provision of these rules shall cease to apply to any industry from such date as may be specified in the notification.

3. Definitions.

- In these Rules, unless the context requires otherwise-(a)"Committee" means the State implementation and Evaluation Committee;(b)"Sub-Committee" means the Sub-Committee constituted by and under the Committee;(c)"Employee" means a workman as defined in Clause (s)

of Section 2 of the Industrial Disputes Act, 1947;(d)"Employer" means an employer as defined in Clause (g) of Section 2 of the Industrial Disputes Act, 1947;(e)"Industry" means an Industry as defined in Clause (j) of Section 2 of the Industrial Disputes Act, 1947;(f)"Union" means a trade union of employees, which is registered under the Trade Unions Act 1926 and does not include a federation or association of unions or craft and sectoral unions;(g)"Members" means a person who is an ordinary member of union and has paid the subscription to the union at least for a whole period of three months immediately proceeding the calendar month in which a request has been made by the union to the State Implementation and Evaluation Officer for recognition;(h)"State Implementation and Evaluation Officer" means the Labour Commissioner of Orissa or any other Officer entrusted with the task of verification of membership of unions in the State of Orissa and to recommend recognition of the Union(s);(i)"Recognised Union" means the Union recommended by State Implementation Officer and registered as recognised Union on the basis of verification of membership of Union(s) and given the recognition by the employer as the bargaining agent in the Industry;(j)"Other Union" means the registered unions other than recognised Union" in the Industry.

Chapter-II

4. State Implementation and Evaluation Committee.

- The Committee shall constitute under the Chairmanship of Minister of State, Labour and Employment, Orissa, 4 Government Representatives and 14 Members each from Employers and Employees Representatives.(a)record the report of the State Implementation and Evaluation Officer on verification of membership and recognition;(b)deliberate upon the complaints of withdrawal and/or cancellation of recognition of a union along with the report of the State Implementation and Evaluation Officer on such complaint and decide on the propriety of the action.Note. - Such action shall be binding on parties concerned. For this purpose the Committee may form one more sub-committee to conduct enquiries.(c)deliberate and suggest improvements in the procedure of verification of membership by secret ballot system; and(d)deliberate and give direction an regards the duties and responsibilities of recognised unions and other unions in the Industry.

5. State Implementation and Evaluation Officer.

- It shall be the duty of the State Implementation and Evaluation Officer.(i)to receive applications and examine such applications of unions to recommend for grant of recognition by employer and for that purpose;(ii)to pass order for taking ballot for verification of membership of the unions for recognition by the employer;(iii)to appoint the Returning Officer(s) and Polling Officer(s);(iv)to conduct verification of the union membership by secret ballot for the purpose of recognition of union by the employer;(v)to notify to the parties concerned the result of verification of union membership and advise the employer for grant of recognition to the union;(vi)to report, the result of verification of membership to the State Implementation and Evaluation Committee; and(vii)to recommend cancellation of recognition of union on the basis of complaints of breach of code of discipline or of unfair labour practice and other terms and conditions of recognition after giving the parties an opportunity of hearing.

6. The Returning Officer.

- The duties of Returning Officer shall be :-(a)to conduct secret ballot in an industry in accordance with the order of the State Implementation and Evaluation Officer, and for that purpose to collect the certified list of employee on the rolls of the industry from the employer;Note. - Only workers borne in the establishment register shall be voters.(b)to hear claims/objections, if any, regarding entries in the certified list of voters and disposed them of;(c)to make arrangements for conducting voting in consultation with the employer and the trade unions and the law and order authority, if necessary;(d)to notify the code of conduct for adoption of the participating unions for the purpose of the ballot;(e)to approve appointment of polling agents by the unions; and(f)to forward the result of ballot to the State Implementation and Evaluation Officer.

7. The Polling Officer.

- The polling officer(s) shall assist the Returning Officer in conducting the secret ballot.

8. Observers.

- The State Implementation and Evaluation Officer at his discretion, if felt necessary, may appoint an observer or a team of observers to witness and oversee the secret ballot.

9. Voting.

(1)The voting shall be held by secret ballot under the supervision of the Returning Officer.(2)The employer shall be responsible for making necessary arrangements in connection with election as the Returning Officer may direct and he shall comply with such directions.Chapter-III Method of conducting secret ballot

10. In case of Single union.

- There shall be no verification of union membership for recognition of the union where only one registered union is functioning in an industry for at least a period of one year after its registration.

11. In case of Multiple unions.

(1)In case of multiplicity of unions in an industry, where applications in Form 'A' in case of unions and Form 'B' in case of employers prescribed under these rules in triplicate along with prescribed fees have been received by the State Implementation and Evaluation Officer from any of the unions or the employer and after preliminary enquiry if the union is found to be fulfilling the criteria for recognition, he shall-(a)order for verification of union membership through secret ballot;(b)appoint the Returning Officer; and(c)forward a copy of the orders to the employer, the unions(s) concerned and the Returning Officer.(2)The Returning Officer on receipt of the order and within a period of 30 days shall notify the date, place and time of voting by secret ballot with copy to all concerned, and

shall appoint the observers.(3)(a)The Returning Officer shall collect the names and particulars of employees working in the industry/Estts. and shall display the same in the notice boards of the employer, unions and also forward copies to all unions inviting objections/suggestions within a period of not less than ten days.(b)The final list of eligible workmen to participate in secret ballot voting shall be placed in the notice boards with copy to the employer and the unions at least 15 days before the date of ballot;

12. System of Polling and counting of Ballots.

(a)Where employees of the industry are posted at offices situated in different places, the Returning Officer wherever possible may conduct ballot on the same day and for that purpose he may appoint more than one polling officer;Provided that if it is not possible polling on the same day at various offices of the industry situated away from the main polling centre, separate arrangements for ballot may be made.(b)The ballot shall be conducted preferably on a working day inside the premises of the industry.(c)After the ballot the ballot boxes shall be sealed with the seals of the Returning Officer, the unions and the employer.(d)The ballot shall be held and votes shall be counted at the dates places and time to be notified by the Returning Officer.(e)The employer and the unions may appoint one agent each to witness the ballot and the counting.Chapter-IV Recognition of Unions

13. Verification of membership.

- Verification of union membership may arise out of the following :-(1)(a)Any union having functioned as such in an industry at least for a period of one year from the date of registration may apply to the State Implementation and Evaluation Officer for verification of membership for recognition of union.(b)Any recognised union or any other union functioning in an industry fulfilling the criteria of Clause (a) of Sub-rule (1) may apply to the State Implementation and Evaluation Officer for verification of membership for recognition of the union before 90 days of the date of expiry of the period of recognition.(2)The employer may also apply for verification of membership of the unions functioning in the industry provided that members of unions have paid membership fees for the whole period of three calendar months immediately preceeding the calendar months in which the application, so made for recognition.Note. - Such members do not belong to the category of trainees covered under the Apprentices Act, 1961 or any training scheme recognised or sponsored by the Government.

14. Fees.

- Every application for verification shall be accompanied by a fee of rupees two hundred for recognition in shape of demand draft drawn in favour of the State Implementation and Evaluation Officer and this fee shall be remitted to the State Labour Institute.

15. Acceptance of the application by State implementation and Evaluation Officer.

- The State Implementation and Evaluation Officer may entertain the application and may conduct such enquiry and investigation as he deems fit to verify the genuineness of the materials/information contained in the application.

16. Obligation of the Employer.

- It shall be the obligation of the employer to furnish when called for by the State Implementation and Evaluation Officer or any Officer authorised by him such information as may be required for the purpose of carrying out the process of verification within such time limit as set by the State implementation and Evaluation Officer.

17. Recommendation of Recognition.

(1)The State implementation and Evaluation Officer shall pass orders for verification of union membership through secret ballot and upon completion of the ballot advise the employer for recognition of the union.(2)Where only one union is functioning at least for a period of one year after registration the State Implementation and Evaluation Officer may advise the employer for granting recognition to such union.(3)(a)Receipt of the advice the employer shall recognise the union as the sole bargaining agent within a week and forward a copy of the letter of recompletion to the State Implementation and Evaluation Officer, the Labour Commissioner, and District Industrial Relations Machinery.(b)Such recognition normally shall be for a period of two year.(c)The State Implementation and Evaluation Officer shall register the name of the union in the Register of Recognised Trade Unions.

18. Special Conditions for Recognition.

(a)The union which secures the maximum number of votes, but not less than 30% of the total number of votes polled, shall be entitled to be recognised. In the event of two or more unions getting an equal number of votes the union having the higher period of existence after registration shall be declared duly voted by the employers.(b)In the event of none of the unions securing 30% votes the Labour Commissioner shall constitute a "Negotiating Committee" for the industry on pro rata basis based on the number of votes polled by each union in the verification process subject to the condition that each unions shall have at least one number on the Negotiating, Committee.(c)In order to quality to be represented in the Negotiating Committee, a union must have secured a minimum of 10 per cent of the total number of votes polled.Note. - In no case if the numbers of member on Negotiating Committee shall be more than nine.

19. Recognition of the Union.

- The recommendation of the Labour Commissioner for recognition of union/Negotiating Committee shall be mandatory on the part of the employer.

20. Cancellation of Recognition.

(1)The Labour Commissioner may advise the employer to revoke/cancel recognition of a union;On application submitted by the Employer or from unions, after giving reasonable opportunities for showing cause for not more than 30 days to the recognised unions as to why recognition shall not be cancelled and after holding such enquiry as may be necessary.Recognition of a union may be revoked cancelled or withdrawn(a)If an union has instigated, aided or assisted the commencement or continuance of a strike which is deemed to be illegal under the Industrial Disputes Act, 1947; or(b)If its registration under the Trade Union Act, 1926 is cancelled; or(c)If the union has violated the conditions laid down in the Code of Discipline in Industry and the code of conduct;(2)Once the recognition of a union is cancelled, the union shall be debarred for a period of at least on year from the date of revocation/cancellation from participating in the verification.(3)In the event of so, other unions may be considered for recognition.Chapter-V Rights of recognised union and other unions

21. Rights of Recognised union.

(1)To collect the membership fees of the members through check off system.(2)To put up or cause to put up a notice board on the premises of the industry in which its members are employed and affix or cause to be affixed notice thereon.(3)For the purpose of prevention or settlement of an Industrial Dispute;(a)To hold discussion with the employees concerned in its office beyond normal working hours so as not to interfere with working of the industry.(b)To meet and discuss with the employer or any person appointed by the employer in that behalf with prior information, the grievances of employees employed in industry.(c)To appear on behalf of any employee in any domestic and departmental enquiry held by the employer.(d)To represent in the joint forums so constituted by the employer for welfare and safety of the employees,(e)To assist and co-operate with the employer for production and productivity issues of the Industry.(f)To appear or act in the proceedings relating to unfair labour practices.(g)To appear or act on matters in conciliation, arbitration and adjudication on behalf of the employees.

22. Responsibilities of Recognised Union.

(a)To observe the Code of Discipline in Industry and the code of conduct.(b)To co-operate with the employer in matters of general welfare, safety and productivity of the employees.(c)To avoid confrontation and resolve all issues with the employer on mutual discussions and co-operation.(d)To develop a sense of discipline, punctuality, safety and mutual respect in the industry among the employees.(e)To act as a channel of communication between employees and employer for better understanding in the industry.(f)To encourage and advocate settling of individual grievances through the grievance redressal industrial procedure.(g)To hold Executive Body meeting and Annual General Body Meeting of the union as per the By-laws of the union.

23. Facilities for Recognised Unions.

(1)It shall be obligatory on the part of every employer to provide the following facilities to the

recognised union.(a)An office outside the premises of the industry with minimum fittings and fixtures, electricity and water supply, free of cost.(b)Adequate number of office furniture one for all for office purpose.(c)Wherever possible, one internal telephone connection to the union office and at least two connections to the office bearers who are employees of industry/establishments and reside in the company's Township.(d)To provide transport for the office bearers of the union when called for discussion by the employer at places other than in the industry and allow TA/DA to such personnel as per their entitlement treating the day(s) of discussion as on duty.(e)To allow maximum of two representatives to attend conciliation, arbitration, adjudication cases on their cost. The employer, however, may treat this absence as special leave provided the union makes a formal request on that behalf to the employer along with supporting documents.(2)The above facilities shall be withdrawn if the recognition is cancelled. However, in case of a recognised union, completed two years tenure recognition facilities shall not be withdrawn until fresh verification is held and recognition status decided by the State Implementation and Evaluation Officer.

24. Rights of Unrecognised Union.

(a)To meet and discuss with the employer or any person appointed by him in that behalf the grievances of any individual member relating to his service conditions.(b)To appear on behalf of its members employed in the establishment in any domestic or departmental enquiry held by the employer and before the Conciliation Officer/Labour Court/Industrial Tribunal or Arbitrator.Chapter-VI Miscellaneous

25. Modification or Amendment of the Rules.

- The State Implementation and Evaluation Officer in consultation with the State Implementation and Evaluation Committee at any time make any amendment addition or deletion of this procedure, without, however altering the basic structure of the Scheme.

26. Repeal.

(1)These Rules shall replace the corresponding provision regarding verification of membership of unions provide in the Code of Discipline in Industry.(2)Notwithstanding such repeal anything done or any action taken under the code of discipline in industry shall be deemed to have done or taken under the corresponding provisions of these rules.

27. Removal of doubts and difficulties.

- For removal of doubts and difficulties in implementation, the decision of the State Implementation and Evaluation Committee shall be final.Form A[See Rule 11](Applications by a union for registration as a recognised union)Verification Case No.Before the State Implementation and Evaluation Officer Orissa(Name and address of the applicant union).....AppellantVrs

1. (Name and address of the employer undertaking).....Non-applicant

2. (Name and address of other trade union)..... Non-applicant

Application for registration is a recognised unionThe applicant union begs to submit as follows :

1. The applicant union is registered under the Trade Union Act on.....under certificate No..... issued by the Registrar of Trade Unions.....

2. The applicant union has the following office bearers elected on.....

President.....Vice President (if any).....General Secretary (if any).....Treasurer (if any).....Members of the Executive Committee.....

3. The applicant union has the following membership in the undertaking namely.....for the whole of the period of six calendar months immediately preceding the month in which this application is made;

Month Number of members Percentage of the employees in the undertaking
1.2.3.4.5.6.

4. At a general meeting of the members of the applicant union/meeting of the Executive Committee of the applicant union which was held at.....on.....day of.....20...., it was decided that the union should apply for registration as a recognised union for.....(Here insert the name of the undertaking).

5. The undertaking for which this trade union seeks recognition as a Recognised Union is engaged in..... industry/trade. The undertaking is known as.....and located at the following address.

Address.....

6. The undertaking is a proprietary concern/partnership concern/ company and owned by the following persons :

.....

7. The applicant union hereby tenders the prescribed fee of Rs. 200/- for this application/the applicant union has paid the prescribed fee of Rs. 200/- for this application by Money Order to the State Labour Institute, Bhubaneswar, receipt for which is enclosed.

8. The applicant union has not instigated, aided or assisted the commencement or continuation of a strike among the employees in the undertaking for which the applicant union seeks recognition which is deemed to be illegal under the Industrial Disputes Act within six months immediately preceding the date of this application.

9. The applicant union is a recognised union for the following undertakings/ is not a recognised union for any other undertaking;

Name of the undertakings ;

10. The applicant union has/has not on its roll of members employee employed in undertaking other than the undertaking for which the application is filed.

11. The applicant union herewith files the following documents with a list

(i)Registered address of the applicant union.(ii)A true copy of the certificate of registration as a trade union.(iii)Authority of the persons for filing this application.(iv)A true copy of the Constitution of the application union.Verification I.....who is holding office as..... in the applicant union hereby verify that the contents in the above application in Paras..... are written from my knowledge and are true and those in Paras..... are written from knowledge and are true and those in paras..... are written from information obtained from..... and believed to be true. I have signed this at.....on.....Date of application.

PlaceDatePresented

by.....on.....

Signature of the person authorised to makeapplication

Signature of the officer authorised to receive application.(To be filled when the application is presented in person)Application of an employer to pass order of verification of membership of unions for recognitionForm-B[See rule (1)]Before the State Implementation and Evaluation Officer,.....Verification No..... of 20.....BetweenName and address of the applicant employer-.....Name and address of the Unions :.....The applicant employer begs to submit that the following unions registered under Trade Unions Act 1926 are operating in our Industrial undertaking.

Name, and address of the Union

Registration and date

No. Names of the President/ General Secretary

1.2.3.4.5.

2. The Total employees employed by us are placed hereunder.

Name of the Union	Name of shift	Total number of employees category wise
(1)	(2)	(3)

3. Our establishment is a proprietary/partnership company concerned owned by the following persons.

Name	Designation
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4. Our establishment is engaged in production/manufacturing of.....since.....

5. The following union/unions have violated the code of Discipline in Industry during last one year.

Name of the union	Nature of violation adopted/ committed	No. and date in which complaint lodged before the S.I. and E. Officer	Result thereof
(1)	(2)	(3)	(4)

1.2.3.

6. Additional information, if any.....

Verification I, Shri..... holding the post of..... of the establishment..... hereby verify that the contents in the above application in Paras..... are written from my knowledge and are true and those in Paras..... are written from information obtained/received from..... and believed to be true. I have signed this at..... on..... Place..... Date..... Signature of applicant Designation