FOR OFFICIAL USE ONLY

GOVERNMENT OF ANDHRA PRADESH

LABOUR DEPARTMENT

CONCILIATION OFFICERS' MANUAL

COMMISSIONER OF LABOUR, ANDHRA PRADESH, HYDERABAD.

DATED: 1-5-1984

CONTENTS

CHAPTER - I

CONCILIATION

Conciliation isoften described as an art, which opens out a wide field for the conciliator to display his originality, initiative, tact and approach in reconciling the parties to the dispute and bringing about an amicable settlement.

It is the duty of the Conciliation Officer to suggest ways and means of resolving controversial issues. The purpose of conciliation is not to give a decision. He has to bring into play his persuasive powers, tact and imagination in bringing the disputing parties on a common platform so as to facilitate negotiations and discussions. He does not sit in judgement on the right or wrong of the stand taken by either party to the dispute; on the other hand, he tries to bridge the gap between the parties to pave the way for mutual understanding and eventfual settlement of the dispute. The Conciliation Officer should be a patient and tireless negotiator, possessing a fairly good grasp of the subject and uptodate knowledge of the case laws to enable him to convince the parties of the justifiability or otherwise of the stand taken. Success in conciliation will depend to a large extent on these qualities. A Conciliation Officer may in addition to joint meetings hold separate discussions with the parties to impress a possible solution.

CONCILIATION OFFICER - HIS ROLE,POWERS AND DUTIES

Conciliation Officer.

Under Section 4 of the Industrial Disputes Act, it is discretionary on the part of the appropriate Government to appoint conciliation officers. A conciliation officer may be appointed for a specified area or for specified industries. Accordingly the Government of Andhra Pradesh have appointed the Commissioner of Labour

Joint Commissioner of Labour, Assistant Commissioner of Labour, (Headquarters) as Conciliation Officers for the whole of Andhra Pradesh and Deputy Commissioners of Labour and Assistant Commissioners of Labour as Conciliation Officers within the jurisdiction as specified in the Notifications (Vide G.O.Ms.No.840, Employment and Social Welfare (Labour I), dated 22.10.1974, G.O.Ms.No.687 of Employment and Social Welfare Department dated12.8.1975, G.O.Ms.No.112, Employment and Social Welfare Department dated 15.12.75 and G.O.Ms.No.428, dated 23.6.1981 of Labour, Employment, Nutrition and Technical Education Department. They are charged with the duty of mediating in and promoting settlement of industrial disputes.

Role of Conciliation Officer.

The Conciliation Officer uses his good offices to find a solution that may help the parties to arrive at a settlement. He must create an atmosphere congenial to a free, frank and friendly discussion. The Conciliation Officer's handling of the dispute should be impartial and should not give rise to a feeling that he is taking sides. In making suggestions to the parties, the Conciliation Officer should be guided by case-laws and the fairness and reasonableness of the demand.

Qualities

Patience, tact, perseverance, resourcefulness, sound knowledge of industry and its economics as well as fair appreciation of the working conditions of labour, are qualities which go a long way in the success of a Conciliation Officer. Knowledge of Law and various Court decisions would be an asset to his work.

The task of a Conciliation Officer does not begin only when a dispute is brought to his notice, as prevention of disputes is no less important. The Conciliation Officer should play a positive role by maintaining contacts with employers and

employees by periodical visits to the Industrial Units and keeping in touch with Union and workmen.

Powers.

All Conciliation Officers are deemed to be Public Servants within the meaning of section 21 of the Indian Penal Code.

To carry out the duties imposed under Section 11(2) the Conciliation Officer has been empowered to enter the premises of any establishment to which the dispute relates, after giving reasonable notice to the parties, and inspect the same or any work, machinery, appliance or articles therein or interrogate any person therein in respect of any matter relevant to the dispute. Omission by the Conciliation Officer to give notice required under section 11(2) does not affect the legality of the conciliation proceedings or validity of the Memorandum of Settlement signed by the parties. (State of Bihar V. Kripa Shankar Jaiswal A.I.R. 1961 S.C. P.504). Under Section 11(4) he can call for and inspect any document relevant to the dispute or necessary for purpose of verifying the implementation of any award; and in this connection he enjoys the same powers as vested in a Civil Court under the Code of Civil Procedure (Annexure-I).

It has been the experience that some of the managements fail or refuse to produce the documents required for purpose of investigation of the dispute or in connection with implementation of awards or agreements. In such cases no penal action under Section 31(2) can be taken. Action can however be considered only under Order No.XI of the Civil Procedure Code 1908. The decision of the Supreme Court in the case of Jaswant Sugar Mills Ltd., Vs. Lakshmichand (LLJ. I - 1963 P. 524) is relevant in this regard.

Duties.

The duties of the Conciliation Officer have been specified in Section 12. The Conciliation Officer has to investigate whether an industrial dispute exists or is apprehended, go into the merits of the issues, take all such measures as he considers fit for the purpose, to

enable the parties to come to a fair and amicable settlement of the dispute.

Under Section 12(1) the Conciliation Officer may at his discretion hold conciliation proceedings in non-public utility services. The Conciliation Officer has no such discretion in respect of Public utility Service where a notice of Strike/lockout under Section 22 has been given. It is mandatory for the Conciliation Officer to hold Conciliation Proceedings on receipt of a notice. In such a case conciliation is deemed to have commenced.

CHAPTER II
PUBLIC UTILITY SERVICES/NON-PUBLIC UTILITY SERVICES.

Public Utility Service.

The act treats dispute in Public Utility Services on a different footing from those arising in Non-Public Utility Services. Sections 2(n), 12, 20 and 22 deal with disputes in Public Utility Service.

In addition to the list enumerated in Section 2(n) and the First Schedule, the State Government has, under Section 40, notified additional Industries as Public Utility Services, vide Annexure-II.

Where an industrial dispute relates to a Public Utility Service and a notice under section 22 has been given it is mandatory for the Conciliation Officer as per section 20(1) to hold conciliation proceedings. In view of Rule 9 of A.P.Industrial Disputes Rules,1958 the Conciliation Officer has to meet both the employer and the workmen concerned at such place and at such time as he may deem fit to endeavour to bring about a settlement.

Where a notice under Section 22 is issued, the Conciliation Officer should scrutinise it to satisfy the following:-

a). that the industrial establishment is a Public Utility Service at the relevant time.

b). that the notice is in Form 'L' (Strike) or 'M' (Lockout) as prescribed in Rules 73 and 74 of Andhra Pradesh Industrial Disputes Rules 1958 read with section 22of the

Industrial Disputes Act.

c).that the dispute is an 'industrial dispute' within the meaning of Section 2(k).

If the notice of strike or lockout is patently defective notbeing in proper form, the Conciliation Officer shall intimate the party immediately. However, the Conciliation Officer cannot refuse to proceed with the conciliation on account of defective notice.

The notice for conciliation meeting has to be given in the prescribed form (Annexure-IV) enclosing the notice as in Annexure IV.A to be exhibited by the employer on the Notice Board of the Establishment.

Non-Public Utility Service.

Taking up of disputes in conciliation in non-Public Utility establishments is discretionary and not mandatory.

Rule 11(2) of A.P.Industrial Disputes Rules envisages the procedure of submission of statement of demands by the parties. If the Conciliation Officer is satisfied that an "Industrial Dispute" exists, he should invite the parties for preliminary discussion before admitting the dispute in conciliation. This notice shall be in the Form indicated in Annexure III. If the preliminary discussions are considered not useful, the Conciliation Officer may admit the dispute in conciliation. If his efforts bear fruit the Memorandum of Settlement brought out by him should be sent to Government, alongwith his report under copy to the Commissioner of Labour, the Deputy Commissioner of Labour and Labour Officers concerned. In case the conciliation ends in failure,the report required under section 12(4) of the Industrial Disputes Act,should be sent to Government under copies to the Commissioner of Labour and the concerned Deputy Commissioner of Labour of the area.

The Conciliation Officer before admitting the dispute in conciliation should undertake preliminary enquiry in respect of the following --

Proforma containing the points for scrutiny/Enquiry.

1.Name of the industrial establishment.

2.Name of the Trade Union.

3.Whether the Trade Union is registered.

4.a)Whether membership records have been checked; if so, the number of members.

b)Whether the constitution of the Union allows enrolment of members from the industry/industrial establishment affected by the dispute.

c)Whether it is a recognised union and if so whether it can represent general demands or individual cases of its members only.

d)If the dispute is brought up by the workers whether representatives have been authorised in the prescribed manner.

5.(a)Whether the occupation and categories of workmen affected by the dispute have been specified by the union?

(b)Whether there exists Employer-employee relationship.

6.Whether the industry is covered by the Industrial Establishment Standing Orders Act and if so, whether Standing Orders have been certified. Also indicate whether stand/action taken by the Management is in conformity with Standing Orders.

7.Whether the dispute has been properly espoused?

8.Whether any of the demands are covered by any Labour Legislation and if covered can they be considered under Industrial Disputes Act?

9.Whether there is any subsisting award or settlement in respect of the demands. If so, details thereof may be given.

10.(a) Was any demand of similar nature not taken in conciliation in the past.

(b) Was any demand admitted in conciliation refused reference for adjudication.

11. Whether any other dispute in the establishment is pending before the Industrial Tribunal for adjudication or whether any dispute is under consideration of Government after failure of conciliation proceedings? If so, details thereof may be noted.

12. Whether there was strike on any of the demands during the past one year?

13. Were the demands under dispute served on the opposite party and if so, sufficient time was allowed to the other party to consider the demands.

14. Were mutual negotiations held and if so, with what result?

15. Other remarks if any.

CHAPTER III
INDUSTRY - INDUSTRIAL DISPUTE - TYPES OF DISPUTES.

Industry. The word 'Industry' means any business, trade, undertaking, manufacture, or calling of an employer and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen (Section 2(j) of Industrial Disputes Act,1947).

The definition is exhaustive and comprehensive. The Supreme Court in the Judgement in the case between Bangalore Water Supply-vs-A.Rajappa (vide A.I.R.1978, Supreme Court 548) over ruled several judgements given by the court earlier and prescribed the following guidelines in deciding the term "Industry" as defined under the Industrial Disputes Act,1947:

"Industry, as defined in Section 2(j) and explained in Banerji's case has a wide import.

I. (a)Where (i)systematic activity: (ii)organised by cooperation between employer and employee (the direct and substantial element is commercial): (iii)for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, i.e.,making on a large-scale of prasad or food prima facie, there is an industry in that enterprise.

(b) Absence of profit-motive or gainful objective is irrelevant, be the venture in the public, joint or private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2 (j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified

to over-reach itself.

"Undertaking" must suffer a contextual and associational shrinkage as explained in Banerji's case and in this judgment, so also service, calling and the like. This yields the inference that all organised activity. Possessing the triple elements in I (supra) although not trade or business, may still be 'industry' provided the nature of the activity, viz; the employer-employee basis bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and service adventures, analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity, viz., in organising the cooperation between employer and employee may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for resultant economic operation. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen the statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a)The consequences are (i)professions; (ii)clubs; (iii)educational institutions; (iv)co-operatives; (v) research institutes; (vi)charitable projects and (vii)other kindred adventures, if they fulfil the triple tests listed in I (supra) cannot be exempted from the scope of Section 2 (j).

(b)a restricted category of professions, clubs, cooperatives and even gurukulas and little research labs may qualify for exemption if in simple ventures substantially and going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c)If in a pious or altruist mission many employ themselves, free or for small honorarium, such as lawyers volunteering to run a free legal service clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship then the institution is not an industry, even if stray servants, manual or technical, are hired. Such undertakings alone are exempted not other generosity, compassion, developmental passion or project.

IV. The Dominant Nature Test

(A)Where a complex of activities, some or which qualify for exemption, others not, involves employees of the total undertaking, some of whom are not 'workmen' as in Delhi University case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Nagpur Corporation case will be the true test. The whole undertaking will be 'industry' although those who are not "workmen" by definition may not benefit by the statute.

(b)Notwithstanding the previous clauses, sovereign functions, strictly understood, alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c)Even in departments discharging sovereign functions, ifthere are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d)Constitutional and competently enacted legislative provisions may well remove from the scope of the act.

Industrial Dispute

Industrial Dispute has been defined in Section 2(k). an Industrial dispute would be considered to have arisen,

if a demand raised by the workmen has been refused to be considered by the management and pertains to employment, non-employment, terms of employment and conditions of service of any person. There should be community of interest for the demands raised.

The Supreme Court in the case between the workmen and the Management of Dimakuchi Tea Estate (LLJ I 1958 P.500) held that:

a) The dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other; and

b) The person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest.

Industrial Dispute- Section 2.A of the Industrial Disputes Act

With the amendment made in 1965 inserting a new Section 2.A even an individual could raise a dispute with regard to his dismissal, discharge and termination of his services or his retrenchment or any dispute or difference between him and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination. This section came into effect from 1.12.1965. It however does not have retrospective effect.

A full bench of the A.P.High Court (Visakhapatnam Dist. Marketing Cooperative Society Limited Vs.Government of Andhra Pradesh 1977 Lab.IC 959 - and 1977 - II LLJ page 332), has held that Section 2 A of the Industrial Disputes Act,1947 is protanto repugnant with the provisions of the Andhra Pradesh Shops and Establishments Act of 1966 because the dispute of an individual workman, in regard to termination of services squarely falls within the field covered by Sections 40 and 41 of the Andhra Pradesh Shops and Establishments Act and in view of the facts that the State Act has been assented

to by the President, the provisions of that Act, relating to the termination of services of an employee of a shop/establishment will prevail upon Section 2A and 8 thereof provisions of this Act in so far as they are attracted by reason of Section 2-A. But the Court refrained from expressing any opinion on the legal position that would arise if the individual dispute of a workman is supported either by the union to which he belongs or in the absence of a union by a substantial number of workmen and such a matter is sought tobe referred for adjudication under Section 10 of the Industrial Disputes Act, 1947. This question was considered by another full bench of the same High Court in Sri Brindavan Hotels Vs. Conciliation Officer,Hyderabad - 1977 Lab-IC 1572 (1578) (A.P.). In this case the Court observed that there was no conflict between the relevant provisions of the Industrial Disputes Act,1947 and the relevant provisions of the Andhra Pradesh Shops and Establishments Act. They do not operate in the same area. In other words, there are no two competing statutes in the field. It was therefore held that the workmen's union or a number of workmen can espouse a dispute of an individual workman only under the Industrial Disputes Act,1947 and they cannot espouse it under the Shops and Establishments Act. From these two full bench decisions, on a comparative analysis of the relevant provisions of the two enactments, it emerges that (1) if an individual workman governed by both these Acts wants to raise an individual dispute, he can do so only under the Andhra Pradesh Shops and Establishments Act and (2) if a workman's union wants to espouse the dispute of an individual employee, it can do so only under the Industrial Disputes Act and (3) in the absence of workmen's union if a number of workmen want to espouse a dispute of an individual workman, they can do so under the Industrial Disputes Act,1947.

Workman: The definition of 'workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual work, supervisory, technical or clerical work, for hire or reward. It also

covers any such person who has beendismissed, discharged or retrenched in connection with or as a consequence of the dispute, or whose dismissal, discharge or retrenchment has led to the dispute.

The essential condition to be satisfied is that the person should be employed to do work in that industry and there should exist Master and Servant relationship.

The definition does not cover those:

1) who are subject to the Army Act
2) Who are subject to Air Force Act.
3) Who are subject to Navy (Discipline) Act
4) Who are employed in the Police Service or as Officers or other employees of a prison:
5) Who are employed mainly in a managerial or administrative capacity.
6) Who, being employed in a supervisory capacity, draw wages exceeding Rs.500/- per mensum or exercise either by nature of the duties attached to the office or by reason of the powers vested, functions mainly of a managerial nature.

A person engaged to do supervisory work, unless he falls within the exception of clause (6) shall fall within the definition. The word 'Supervise' and its derivatives are not the words of precise import and must often be construed in the context of the nature of work proposed. In determining the status of employee his designation is not decisive; what determines the status is a consideration of the nature and duties of the function assigned to him. But the fact that the work performed by a workman is of responsible and onerous nature would be immaterial in determining the question as to whether his work is of supervisory character or not. In ascertaining the true status of an employee regard must be had only to any temporary arrangement that might be made as a measure of convenience but to his substantive position.

CHAPTER IV
ESPOUSAL OF DISPUTE

The policy behind the Industrial Disputes Act is to protect the interests of the workmen as a class. An Industrial Dispute should affect the rights of the workmen as a class except in cases covered by section 2(a). It is the community of interest of the workmen class of employees - which furnishes the real nexus between the dispute and the parties to the dispute.

In order that an individual dispute may become an Industrial Dispute it has to be established that it had been taken up by the union of employees or by any appreciable number of workmen. The number of workmen must, however, be such as to lead to an inference that the dispute is one which affects workmen as a class (except those covered by section 2.a of the Industrial Disputes Act).

To convert an individual dispute into an Industrial Dispute it is not necessary that a registered body should sponsor the cause of an individual workman. Once it is shown that a body of workmen either acting through a union or otherwise had sponsored a workman's case, it is sufficient to consider it as an 'Industrial Dispute'.

In the case of espousal of disputes other than individual disputes by a union it is sufficient that a substantial number of workmen from the establishment are members ofthe union. It must further be shown that they participated in or acted together and arrived at an understanding by a resolution or by other means and collectively supported the dispute. The underlying idea is that there should be expression of the 'collective will' of a substantial or an appreciable number of workmen treatingthe dispute as theirs.

What is a substantial or appreciable number of workmen.

What is a substantial or appreciable number of workmen in a given case, depend on the facts of the case . It has, therefore, to be considered as to how many of the fellow workmen actually espoused the cause of the concerned workman by participating in a particular resolution of a union or by expression of collective will.

An individual dispute would not become an industrial dispute unless such dispute is made a common cause by a body or a considerable number of workmen and that the members of the union who are not workmen of the employer against whom the dispute is sought to be raised cannot by their support convert [illegible] an individual dispute into an industrial dispute. The members espousing the cause of the indivinual workmen must be directly and substantially interested in the dispute. (Bombay union of Working Journalists Vs. The Hindu,Bombay (1963-3 SCR 893).

A dispute raised by an individual workman could not become an industrial dispute unless it is supported by his union or in the absence of a union by a number of workmen, that a union may validly raise a dispute, though it may be a minority union of the workmen employed in an establishment, that if there was no union of workmen in an establishment a group of employees could raise the disputewhich becomes an industrial dispute evanthough it is a dispute relating to an individual workman and lastly, where the workmen of an establishment have no union of their own and some or all of them have joined a union of another establishment belonging to the same industry, ifsuch a union takes up the cause of the workmen working in an establishment which has no union of its own the dispute would become an industrial dispute, if such union could claim a representative character in a way that its support would make the dispute an industrial dispute. (vide Workmen of Dharampal Premchand (Saughandhi) V.Dharampal Premchand (Saughandhi)-1965-1-LLJ-528).

Working Journalists in a News Paper Establishment did not form a trade union of their own. Two of such working journalists raised a dispute in regard to their designation. Such dispute espoused by a union of working journalists in which 25% of the working journalists of the establishment in question i.e. 31 out of 131 were members alongwith working journalists of other newspaper establishments. It was held that such union had the necessary representative capacity to espouse the causes of the two concerned employees (Workmen and the management of Indian Express Newspaper Private Limited - II-LLJ 1970 - 132 (SC).

Where out of 60 workmen employed in the company only 18 workmen sponsored the cause of the dismissedand retrenched workmen and these 18 included 13 dismissed workers ofthe company. Held that the espousing of the cause of the workmen was only by five workmen who were, at the relevant time actually in the employment of the company i.e. the proportion was 5 to 60. Such an espousal could not be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute as an industrial dispute. (Vide State of Punjab Vs. The Sanchara Transport Co (Private) Limited and others - AIR 1975 SC-531).

Verification of espousal.

While admitting a dispute in conciliation (in case of non-public utility Service) and at the time of first meeting of the conciliation (in case of Public Utility Service, since conciliation proceedings are deemed to start on receipt of the strike notice) the conciliation Officer has to check and satisfy himself the following:-

1) That the General Body of the Union or workmen has supported to raise the dispute. The minutes book has to be checked.

2) That the resolution has been supported by appreciable or substantial number of workmen of the establishment

3). Membership records have to be verified with the counterfoils of subscription paid, where these are available.

4). Where no union exists, whether the procedure as laid

down in rule 36 has been followed.

Methods of checking membership records

The Union(s) which is/are party/parties to the dispute should be asked to submit registers showing the names of its/their members in the establishment in which the dispute has occurred together with counterfoils of receipts of subscription paid by the member-workmen during the last six months.

On receipt of the above records a method of sample checking should be adopted. In case the number of members of the union is not very large, the sample checking should be done by checking every fifth or seventh entry. In case of large membership the sample checking should be done of about 20% of the membership.

After verification referred to above the position of espousal of the dispute should be indicated in Annexure VI to be appended to the Conciliation report of the Conciliation Officer under Section 12(4) of the Industrial Disputes Act.

Code of Discipline Recognition of Union.

The Code of Discipline lays down the procedure for ascertaining majority union for the purpose of according recognition by the management. This procedure is followed where there is multiplicity of unions in an industry or an establishment. The procedure to determine the majority union as a recognised body through secret ballot is furnished in Annexure IX. Where there is only one union in an establishment, the management may recognise the union as the sole bargaining agent under an agreement. Grant of recognition to the representative union paves the way to maintenance of smooth industrial relations. The recognised union derives certain rights and principles as the sole bargaining agent in respect of all issues of a general nature and affecting the workmen as a whole. However, a minority union which is not recognised has the right to raise issues confined to any of its individual members.

CHAPTER V

PROCEDURE TO BE FOLLOWED WHILE DEALING WITH THE INDUSTRIAL DISPUTES BY THE CONCILIATION OFFICER.

.....

The Conciliation Officer, after satisfying himself with the existenceof an Industrial Dispute and its espousal, may issue conciliation notice to the parties (Vide annexure-IV).

Procedure to be followed while dealing with the disputes

The Management should be advised to put up the Notice as in annexure IV.A on the Notice Board within the factory/establishment for the workmen to know that the industrial dispute has been admitted in conciliation and to enable workmen who are members of other union if any to participate in the conciliation proceedings if they so desire. The discussions should however be strictly confined to the demands on which conciliation proceedings have been initiated.

In the case of Public Utility Services it is quite possible that some of the demands enumerated in a strike notice may not constitute an industrial dispute; but since conciliation proceedings in Public Utility Services are deemed to have started where strike or lockout notice under Section 22 is received by the Conciliation Officer, he has no discretion at that stage to eliminate such demands from the purview of conciliation. However during the discussions he should point out the demands that do not constitute an industrial dispute and shall proceed with the conciliation. In his report to the Government he should explain the position.

The principles in respect of admission of demands in conciliation either in the dispute raised in Non-Public Utility Services or in Public Utility Services where notice of strike or lockout is not received, are the same.

Where there are more than one Union and one of them is a recognised union and the other is a union not recognised and it raises an industrial dispute.

The Industrial Disputes act,1947 does not contemplate recognised or non-recognised union. What is to be satisfied is whether the dispute is supported by appreciable or substantial number of workers. However as a result of tripartite agreement between the employers' Organisations, employees' organisations and Government for maintenance of industrial peace, certain principles have been agreed, conferring certain rights to the majority union in the industry/ industrial establishment for purpose of raising industrial disputes etc. (Code of Discipline). In view of this agreement the Union which is not recognised under Clause 3 of the Code of Discipline has a right to raise only individual grievances like discharge, dismissal and other disciplinary matters affecting their members. A Union which is not recognised under the Code of Discipline cannot raise demands of a general nature. Therefore as a matter of policy, the Conciliation Officer shall not consider in conciliation the general demands raised by a union which has not been recognised.

It may, however, be pointed out that there have been instances in Public Utility Services, where unrecognised unions have raised general demands in a strike notice given under section 22 and thereby bringing the conciliation officer into the picture. Since conciliation proceedings are deemed to have started in such units, the Conciliation Officer in the first conciliation meeting itself should bring to the notice of the union, the nature of demands which that union has a right to raise. It is needless to mention that generally the employer in such circumstances may or may not attend the conciliation proceedings on the ground that the unrecognised union has no right to raise general demands. It is necessary to bear in mind that if the employer refuses to discuss or participate in such conciliation proceedings on the general demands raised by un-recognised union, the

Conciliation Officer shall however, ascertain their views and submit his report to Governmentees required under Section 12(6).

It may also be noted that there may be rare cases where the recognised union loses its strength and unrecognised union which gets the majority of the workers in its fold raises an industrial dispute which include general demands. The Union so raising the demands may also go on strike pressing for conceding the demands of a general nature. In the circumstances the Conciliation Officer shall take great care and act very cautiously.

Where there are more than one Union and they submit different demands on the same subject matter more or less simultaneously.

When there is no recognised union, and more than one union raise demands and give strike notices, the Conciliation Officer has to use his persuasive talents to induce the parties to agree for a common charter of demands. In case the unions fail to present a common charter of demands he may initiate separate conciliation proceedings in respect of the demands raised by the respective unions.

Where there are more than one Union and the dispute raised by one union has already been admitted in conciliation and during pendency of conciliation proceedings the employer and the other union sign an agreement in

During pendency of Conciliation Proceedings between the management and one of the Unions, if an agreement is signed by the management with another union, such an agreement can only be under Section 18(1) of the Industrial Disputes Act, and will be binding only on the parties who signed it. It cannot effect the Conciliation proceedings and the Conciliation Officer has to proceed with the conciliation and submit his report to Government in the usual course. He should, however, incorporate in the Confidential

respect of the same dispute.

report his own views in regard to the mutual agreement.

Procedure in respect of individual disputes raised under Section 2A

As soon as a representation or a communication requesting for intervention in the dispute is received from an individual workman who was dismissed or discharged or terminated or retrenched from service or in respect of any dispute or difference arising out of such discharge, dismissal, retrenchment or termination, the Conciliation Officer after satisfying himself shall hold a meeting with the parties within 10 days of receipt of the said communication or representation. He may, if necessary, convert that meeting as first conciliation meeting, as in these disputes the question of verification of records of the union and its status etc., does not arise. The Conciliation Officers have to scrutinise the charge-sheet, enquiry report, orders of dismissal or retrenchment, in the first meeting itself. The Conciliation Officer should bear in mind that the employer and the workman should be requested to make available all the relevant records for inspection and verification in the matter on the date fixed for the first meeting. The form of notice is marked as Annexure-III. The Conciliation Officer, however, may extend the period for purpose of production of records either by theworker or the management, whenever deemed necessary, but such extensions should be of short period only.

If the Conciliation Officer is hopeful of a settlement, he may consider extension of conciliation proceedings on the request of the parties to a reasonable period, say a week, and a memorandum of settlement recorded under Section 12(3) of Industrial Disputes Act and report sent to Government. In case it is not possible to solve the dispute amicably he shall close the conciliation proceedings and submit his report to

Government as required under Section 12(4) of Industrial Disputes Act. It may be noted that the Conciliation Officer should ensure that normally within 30 days of receipt of representation from the workman a final report is sent to Government. In any case the time taken should not exceed 90 days.

Disputes other than those raised under Section 2A of Industrial Disputes Act.

There usually are two types of individual disputes, the first being individual cases like dismissal, discharge, retrenchment, termination, etc., which could be raised by individual workmen under section 2 A of the Industrial Disputes Act,1947. The other individual disputes like transfer, denial of promotion, denial of proper grade, suspension for an indefinite period etc., which could be taken up by the unions/ substantial numberof workmen. The third type is of general demands like wages, D.A., fringe benefits, working hours etc. In respect of latter two types of disputes, the question of proper espousal of the dispute has to be examined besides the scrutiny of the demands as discussed earlier.

Wage disputes and Concept of minimum, fair and living wage.

While dealing with the disputes relating to wages the concept of wages has to be well understood.

The concept of wages covers minimum wage, fair wage and living wage.

The Supreme Court in the case of Crown Aluminium Works V. their workmen 1958 I-LLJ P(6) held that it is difficult to define or even to describe accurately the contents of 'living wage', 'fair wage' or 'minimum wage' and that in an expanding national economy, the contents of these expressions also expand and vary. Subsequently the said Court, in the case of Hindustan Times Limited Vs.their workmen, 1963 I-LLJ P 108 SC, and Hindustan Antibiotics Limited., Vs.their workmen (1967-I-LLJ P.114 SC) has explained as follows:-

"at the bottom of the ladder, there is the minimum basic wage which the employer or any industry must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need-based minimum, in the sense of wage which is 'adequate to cover the normal needs of the average employee regarded as a human being in a civilised society. Above the fair wage is the 'living wage', a wage which maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen."

The minimum wage is the lowest wage in the scale below which the efficiency of a worker is likely to be impaired. It varies and is bound to vary from time to time with the growth and development of national economy and living standards. The concept of minimum wage must not only ensure for the employee his subsistence and that of his family but must also preserve his efficiency as a worker. In the words of Hidayatullah. J. Minimum wage is independent of the kind of industry and applies to all alike big or small. It constitutes the lowest minimum below which wages cannot be allowed to sink in all humanity (Kamini Metals and Alloys Vs. their workmen-1967-II-LLJ-P.551 SC). The bare minimum or subsistence wage would have to be fixed, irrespective of the capacity of the industry to pay. If an employer cannot maintain an enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms.

In the words of Hidayatullah J., 'fair wage' lies between the minimum wage which must be paid in any event and the living wage which is the goal. (Kamini Metal and Alloys Limited Vs. their workmen (1967-II-

LLJ P.55 SC). It was also observed that as time passes and prices rise even the fair wage fixed for the time being tends to sag downwards and thereby a revision becomes necessary.

Factors for determination of wages.

The determination of wages may be done keeping in view the following factors:-

1) the degree of skill required;
2) the training and experience required;
3) the responsibility to be undertaken;
4) the fatigue involved;
5) the mental and physical requirements for doing the work;
6) the disagreeableness of the task;
7) the attendant hazard; and
8) other factors discussed below.

Fixation of wage structure is always a delicate task, because a balance has to be struck between the demands of social justice which required that the workmen should receive their proper share of the national income which they help to produce, with a view to improving their standard of living, and the depletion which every increase in wages makes in the profits. The Conciliation Officer must also keep in view the recommendations of any Wage Committee approved by Government for the particular industry.

In determining the question as to whether workmen are entitled to increase in the rate of wages, due consideration has to be given to other benefits enjoyed by them. Further, capacity of the management to bear the burden of increased wages has to be considered. In addition, the need for considering the problem on industry-cum-region basis should also be kept in view. The principle of Industry-cum-region basis helps in the maintenance of industrial peace in the entire region and it puts different concerns of the industry on more or less equal footing.

The Supreme Court has held that no distinction can be made in fixing the wage structure, Dearness

allowance or gratuity etc., between the workmen employed by public sector undertakings and private sector undertakings. (Hindustan Antibiotics Limited Vs. their workmen 1967-I-LLJ,P.114).

Dearness allowance:-The Dearness allowance is given to compensate for the rise in the cost of living. Like fixation of wage structure, Dearness allowance has also to be fixed taking into consideration the principle of region-cum-industry. The Supreme Court in the case of Greaves Cotton Company Limited Vs. their workman (1964-I-LLJ.P.342) held that "time has now come when employees getting same wages should get the same Dearness allowance irrespective of whether they are working as Clerks or members of subordinate staff or factory workmen."

(Hindustan Motors Vs. Workmen, 1962-II-LLJ.P. 352 and (ii) Rajendra Mills Limited Vs. its workmen (1960-II-LLJ P.83 SC).

Usually the Dearness Allowance paid in industrial establishments constitute two parts i.e., (1) Fixed Dearness Allowance (2) Variable Dearness Allowance. The fixed Dearness Allowance does not change, but continues to be the same unless the parties agree to merge it with the basic pay of the workmen.

In regard to payment of Variable Dearness Allowance, generally, two methods are in existence. In both these methods payment is linked to cost of living index. The Government servants are paid Dearness Allowance at the following rates whenever there is any increase of 8 points in the Cost of Living Index.

a). Those who are drawing the basic upto Rs.640/-per month	2.5% of the basic.
b). Those drawing more than Rs.640/-	2% of the basic

This formula has been adopted by the Public Sector Undertakings such as Andhra Pradesh State

Electricity Board, Andhra Pradesh State Road Transport Corporation, Municipal Corporation of Hyderabad, Andhra Pradesh Dairy Development Federation etc. The other managements, particularly in the private sector pay Variable Dearness allowance at a fixed rate for each point of rise or fall in the Cost of Living Index. The rates differ from industry to industry, generally from Re.1/- to Rs.2.50 per point increase or decrease in the Cost of Living Index. The Variable Dearness allowance is therefore not static, but change from time to time depending on the increase or decrease in the Cost of Living Index. The parties, usually, agree to merge the Variable Dearness allowance, either fully or in a part with the fixed Dearness allowance at the time of a fresh settlement and also agree for the enhancement in the rate ofpayment.

Change in circumstances justify revision of Dearness allowance.

In the course of time, if the additional Dearness allowance does not sufficiently make up the gap between wages and cost of living, revision of Dearness allowance becomes necessary. This however is to be considered when improvement is noticed in the financial position of the Industry subsequent to a settlement or award and/or rise in the cost of living subsequent to such settlement or award (Mamini Metal and Alloys Limited Vs. workmen-1967 II LLJ.55 SC and Karmachand Thapar).

Conciliation.

The Conciliation Officer shall within 7 days of receipt of the communication requesting for intervention in the dispute should request the Union to produce the membership register and counterfoils of receipts of subscription for purpose of verification of espousal of the dispute.

After the preliminary enquiry, the Conciliation Officer shouldcall upon the employer to submit his counter statement in respect of the said demands. A period of 7 days may be given to the employer for

submission of his counter statement. While calling for the counter statement, the employer should also be required to send a copy thereof to the union or the authorised representatives of the workmen, as the case may be, raising the dispute. If the employer fails to submit his counter statement, within the stipulated period, the conciliation Officer should proceed with the case.

Immediately on receipt ofthe counter statement from the employer within the time stipulated for its receipt, the conciliation officer should formally admit the dispute in conciliation and issue notices to the parties concerned, intimating the date on which the dispute is so admitted and the date on which he proposes to hold the first conciliation meeting. The notice should also indicate the time and place of the meeting. It may be noted that two types of forms inviting the parties to attend joint or conciliation meeting have been prescribed (vide Annexure III and IV). The Conciliation Officer may utilise either of the two forms. The Conciliation Officer should also request the employerto exhibit copies of the notice of him having taken the dispute in conciliation, in the premises of the establishment at prominent places such as the main entrances through which majority of the workmen enter the work place or at such conspicious places where the workmen affected by the disputes are employed for work.

The first hearing of the dispute should be held within 7 days from the date on which the dispute has been admitted in conciliation. Requests for adjournments shall be recorded in the form indicated in Annexure-V . Long adjournments should be avoided.

After the dispute is admitted in conciliation the employer and the workmenunion should be asked to bring with them documents and information required in view of the claim statements and counter statements filed by the parties in the dispute. The [illegible]

Conciliation officer should insist on production of such information relevant to the dispute. The details of powers of conciliation officer have been enumerated in Chapter II

The material produced by respective parties should be exchanged between each other except the confidential documents. If the documents and/or items of information submitted by the parties are marked confidential, the parties concerned may be asked to show the same to a few selected representatives of the other party/parties, with a view to giving an opportunity to the other party/ parties to offer remarks thereon. If either party declines or does not show any inclination to utilise the opportunity it may be impressed upon the party that in that case the documents concerned cannot be formally taken notice of by theconciliation officer. In such case, the conciliation officer has to make a remark in the report that the documents concerned were produced by one party but it declined to allow the opportunity of inspection thereof to the other party although the former party was specially requested to do so.

The Conciliation officer should not however make any mention relating to such confidential documents in the factual report but refer to it in the confidential report along with his views thereon. Where a party gives its consent to permit inspection of confidential documents that should be allowed but in no circumstance copies thereof should be given to the other party.

Separate meetings.

Whenever considered necessary the Conciliation officer may discuss matters relating to the dispute/ separately with the management and the Union. Separate meetings with the parties may be advantageous in knowing their thinking and assessing as to how far they are prepared to concede to achieve a settlement. Moreover the Conciliation Officer could advise and give his

thinking to them which may not be possible during joint discussions. When a dispute is admitted in conciliation, the attention of the employer concerned should specifically be invited to the provisions of Section 33 of Industrial Disputes Act.

It may be pointed out that generally the officers are inclined to endorse in the conciliation file that "parties are present, the arguments heard and statement filed." This is not the correct way of recording. The Conciliation Officer is not a judicial officer to make such endorsements. The Conciliation Officer should mention who was present on behalf of whom, what he said in respect of each demand, what the objection of the opposite party was and what his own suggestions were if any.

The law lays down that the conciliation proceedings should ordinarily be concluded within 14 days of their commencement. It can however, be extended with mutual consent in writing of all the parties to the dispute.

The Conciliation Officer, should take care to see that proceedings are not unnecessarily prolonged owing to the intransigence or non-cooperative attitude of either of the parties to the dispute. Any extension of the proceedings should mainly be for the purpose of exploring possibilities of effecting a settlement of the dispute. If the conciliation officer is convinced that a settlement is not possible he should conclude the conciliation proceedings and submit his report to the Government. It may, however, be noted that if conciliation proceedings are extended beyond the prescribed time limit without the consent of the parties for reasons beyond the control of the Conciliation Officer, the conciliation proceedings do not thereby get vitiated or come to an end.

Government undertakings and cooperatives.

The procedure to be followed in Settlement of disputes arising in Government owned undertakings, certain of the Public Sector Industries and Cooperatives is given in Annexure VII.

C H A P T E R VI

SUCCESSFUL CONCILIATION REPORT AND FAILURE CONCILIATION REPORT.

Successful conciliation report to Government

Where a settlement of the dispute is arrived at in the course of conciliation proceedings, the conciliation officer is required under Section 12(3) of the Act, to submit a report to Government together with a Memorandum of settlement signed by the parties to the dispute. It should be noted that during conciliation proceedings if the parties agree even to some of the demands raised, the conciliation officer should draw up a memorandum of settlement in respect of the issues settled and submit it alongwith his report to the Government and the Commissioner of Labour. In such cases the Conciliation Officer should submit to Government two reports - one under Section 12(3) with Memorandum of Settlement and the other under Section 12(4) with regard to the unsettled issues.

The Memorandum of Settlement should be drawn up in Form 'H' prescribed under Rule 60 of Andhra Pradesh IndustrialDisputes Rules.

Special care should be taken in drafting the settlement and its submission to the Government. The important points to be borne in mind are:-

(1) The wording of the terms of the settlement in respect of each demand should be clear, precise and unambiguous. The words such as 'agreed to consider' 'assured of consideration'which in effect are only an expression of a pious wish, should be avoided, since

such words or phrases lead to difficulties at the time of implementation.

2) The demands that are withdrawn during the conciliation but not by way of bargaining should figure in the short recital, whereas the demands that are agreed to be withdrawn during conciliation proceedings as a matter of give-and-take should figure in the terms of settlement.

3) The Memorandum of Settlement should be signed by---

a) in the case of an employer, by the employer himself, or by his authorised agent; or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation:

b) in the case of workmen:--

i) by the President and the Secretary of a registered trade union of the workmen or if both or either of them is not available, by the representatives duly authorised by the executive of that union:

ii) where there is no registered tradeunion, by 5 representatives of the workmen duly authorised in the General Body meeting by the majority of the workmen, held for this purpose;)

c) in the case of an individual workman, by himself.

4) The date of signing the agreement should invariably be indicated.

5) The report under Section 12(3) together with the memorandum of settlement should be sent to the Government. A copy of the said report together with a copy of the memorandum of settlement should be sent to the Commissioner of Labour in duplicate. Copies of the settlement should also be supplied to the parties concerned.

failure report

If no settlement is arrived at during the course of conciliation proceedings the conciliation officer is required under Section 12(4) of the Act to send a report to the Government duly indicating the steps taken by him for ascertaining the facts and circumstances relating to the

dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at.

The failure report should cover the following matters:

(1) Parties to the dispute
(2) Demands submitted by the union
(3) Date of preliminary enquiry
(4) Steps taken to solve the dispute during mutual discussions.
(5) Demands admitted in conciliation
(6) Commencement of conciliation proceedings and adjournments.
(7) (a) Union's viewpoint on each demand admitted in conciliation
(b) Management's contention in respect of each demand.
(c) Suggestion made by the conciliation officer for settlement on each of the demand.
(8) Conclusion of conciliation proceedings.

While preparing the failure conciliation report, otherwise called factual report, the Conciliation Officer should take utmost care and he must faithfully record the proceedings to avoid any subsequent rebuttal of any fact or statement included in the report by either party. The report should indicate the representative character of the union. Care should be exercised while preparing the factual report to see that no apportionment of blame is made. The Conciliation Officer should not give his individual opinion on the demands in the failure report. His opinion should be given in the non-statutory confidential report. No mention should be made in the factual report about the submission of a confidential report.

After setting forth the demands raised and those admitted in conciliation, the Conciliation Officer should discuss the demands admitted in conciliation seriatum giving the views of the workman and the employer on each de-

mand and indicating the documents and other material produced by them in support of their respective contentions. Thereafter, he should give details of the efforts made by him indicating suggestions offered for an amicable settlement. It is also necessary to mention in this report whether a suggestion for voluntary arbitration under Section 10(a) of the Act or joint application under Section 10(2) has been made, and if so, what was the reaction of each party.

The Conciliation report should also indicate the demands dropped or not pressed before initiation of conciliation proceedings and the demands dropped or withdrawn in the course of conciliation proceedings.

In addition to the statutory report required to be submitted under Section 12(4)to the Government, the conciliation officer shall also separately submit a non-statutory Confidential report to the Government, the Commissioner of Labour and the Deputy Commissioner of Labour concerned. A copy of the statutory report should be sent to the parties and to the Commissioner of Labour and the Deputy Commissioner of Labour concerned.

For general guidance of the Conciliation Officer a model report under Section 12(4) is given in AnnexureVIII.

Confidential report.

The Confidential Report is intended for the exclusive use of Government and is,therefore, not a public document. It is meant to supplement the failure report by such information which by its nature cannot be included in the statutory report. The Confidential report need not cover what has already been stated in the factual report. It is mainly intended for furnishing additional facts which the Conciliation Officer has in his possession alongwith his own comments, assessment, recommendations etc.

The Conciliation Officer is requested to offer his opinion on each demand regarding its justification and whether any of them merit reference to adjudication. The report should also indicate the prevailing position in

concerns of comparable standing, the capacity for the establishment to bear the burden etc.

The Confidential Report should also cover the following:--

(1) Whether the union which espoused the dispute is affiliated to any Central Organisation or whether it is an independent union.

(2) The status or standing of the union, its membership, its bargaining capacity and hold onthe workmen.

(3) The existence of a rival union, if any, its standing in the concern and its attitude in general towards the union sponsoring the demands and in particular towards the demands so sponsored.

(4) Whether the union and employer are parties to the Code and whether the union has been recognised under the Code of Discipline.

(5) Whether there has been undue delay in the espousal of the dispute and reasons or conditions for entertaining the dispute.

(6) Whether any parties to the dispute indulged in unconstitutional acts either before, during or after the conciliation proceedings.

In case of dismissal or termination of services of workman, an extract of charge-sheet framed, relevant standing orders or contract of service and conclusions of domestic enquiry have to be sent alongwith the confidential report. The confidential report should indicate past record of the worker, gravity of the offence, and whether principles of natural justice have been followed. He should also indicate his specific opinion.

In respect of general demands like enhancement of wages, revision of grades etc., the capacity of the establishment to bear the additional burden alongwith position in comparable industrial units in the region shall also be

discussed in this report and specific opinion given.

If the Conciliation Officer recommends any demand for reference to adjudication, issues for such reference should be framed and included in the confidential report. The terms of reference so framed must be clear and unambiguous and should be based on the statement of demands. He should also indicate as to whether reference has to be made to the Industrial Tribunal or Labour Court.

Miscellaneous

It should be noted that where the employer fails to attend the conciliation meeting and files only a counter and the union is present the report should cover merits of the case of both the sides. In cases where the employer neither attends nor files a counter to the demands, but union/workers are present, the confidential report of the conciliation officer should indicate the attitude of the management alongwith his own personal assessment of the demands keeping in view the case law and other relevant factors. Where the union fails to attend the conciliation and the employer is present, the conciliation officer shall indicate the attitude of the union in general in the confidential report.

The report under section 12(4) should be sent to Government ordinarily within 5 days of the conclusion of the conciliation proceedings; and delay should be satisfactorily accounted for. This report should invariably be accompanied by the original statement of demands presented by the union with two additional attested copies thereof.

The Confidential report should be submitted to Government, the Commissioner of Labour and the Deputy Commissioner of Labour, concerned simultaneously with the factual report.

It may be noted that there may be cases where the party sponsoring the dispute withdraws the dispute after its admission in conciliation. In such cases the withdrawal should be obtained from the party concerned in writing. When the dispute is withdrawn in the above manner,

the Conciliation Proceedings may be treated as closed.

The ConciliationOfficer may come across cases where a dispute, after being taken up for conciliation, is not pursued by the party espousing it and the party fails to respond to the communication of the conciliation officer. In such cases too the conciliation proceedings may be treated as closed and the party intimated accordingly.

In these cases the conciliation results in neither settlement nor failure. A pertinent question arises whether conciliation officer is required to submit a report to Government in such cases as the report to be submitted under Sections 12(3) and 12(4) pertains to successful or unsuccessful conciliation. Under Section 20(2)(b) of the Act, conciliation proceedings shall be deemed to have been concluded when the report of the conciliation officer is received by the Government. Unless report is sent by the Conciliation Officer, the proceedings would be deemed to be pending an consequential disability under Section 33 of the Act will operate. It is, therefore, necessary that where conciliation proceedings have been commenced, they must be concluded at some stage, whether by way of settlement, failure or withdrawal of the dispute by the party etc., hence in all cases a report must be sent to Government and others concerned.

CHAPTER VII

STRIKES/LOCKOUTS/LAY OFF/RETRENCHMENT

The Scheme of the Act is that processes for the settlement or adjudication of Industrial disputes must be exhausted before the workmen resort to a strike or the employer to a lockout.

Strike is primarily used as a weapon against the employer with whom an industrial dispute exists. It takes various shapes and forms: 'sit down' strike or

'stay-in' strike 'Tools-down' strike or 'Pen down' strike, 'go-slow' etc.

Go-slow

An employment involves certain obligations on the workmen. They are expected to give certain production and if they deliberately reduce the otput they must be held to be guilty of the misconduct of 'go-slow'. In Bharat Sugar Mills Limited Vs.Jansingh (1961. II.LLJ.644 SC) the Supreme Court observed as follows:

"Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factoryis one of the most pernicious practices that discontented or disgruntled workmen sometimes resort to. It would not be far wrong to call this dishonesty. For, while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, 'go-slow' is likely to be more harmful than total cessation of work by strike. For, while during a strike such of the machinery can be fully turned off, during the go-slow the machinery is kept going on a reduced speed which is often extremely damaging to the machinery parts. For all these reasons 'go-slow' has always been considered a serious type of mis-conduct."

Hunger Strike.

In order to focus the attention of the management on individual grievances or to coerce the employer to concede collective demands a hungerstrike may be resorted to. It is intended for exerting moral pressure. It has been held by the Labour Appellate Tribunal in Sree Commercial Colliery case (1955 LAC 740) that a hunger strike is not strictly a strike as defined under Industrial Disputes Act. Hunger Strike by itself is not an offence, but if the hunger striker openly declares his intention to fast unto death and refuses nourishment till a stage is reached when there is imminent danger to his life he can be held guilty of an offence under Section 309 Indian Penal Code (Ram Sunder V. State 1962 (1) Cr.LL.J.647 ALL).

The 20th Session of the Indian Labour Conference held from 7th to 9th August 1962, took the view that hunger strike should be avoided by all means.

"Stay-in" Strike "Tools down" strike etc.

"Stay-in", "Sit-down", "tool-down" or pen-down strikes are some of the names given to strikes in various circumstances. In such strikes workmen peacefully enter the premises of the establishment or the office without indicating their intentions to go on strike. But having thus entered the premises, they generally stay at their places of work or sit there. Those who are clerical workers refuse to do their work which refusal is generally known as "pen-down" strike. Likewise factory workers refuse to work with their tools and such action is known as "tool-down" strike. On account of the workmen staying inside the premises of the establishment the strikes are also known as "sit-down" or "stay in" strikes. "sit down" or "stay-in" strike can be said to be a strike in the traditional sense, to which is added the element of trespass upon the property of the employer.

If the striking workmen remain after working hours in the factory premises with the intention to annoy, insult intimidate and commit offences aiding to achieve their ultimate object of bringing pressure on the employer, such action would come within the mischief of Section 441 Indian Penal Code as every act done by them is intentional. (Chelpark Company Limited Vs. The Commissioner of Police, Madras and others 1967-II-LLJ.836).

Strike/Lock out in Public Utility Service General Prohibition of Strike Illegal Strike

The provisions regarding prohibition of strike and lockout in Public Utility Services, general prohibition of strikes and lockouts and illegal strikes and lockouts have been enumerated in Sections 22, 23 and 24 of the Industrial Disputes Act and the Conciliation Officer has to bear in mind the said provisions in all disputes involving strikes/lockouts.

What is breach of contract

One of the conditions enumerated under Sections 22 and 23, is that no employee shall go on strike in breach of contract. The word 'contract' means contract of service; such contract may be expressed or implied (Punjab National Bank Limited Vs.their workmen - 1952 II. LLJ.648 (L.a.t), and the expression 'breach of contract' in Sections 22 and 23 of the act means breach of contract of service or employment and not a special contract not to go on strike.

In the contract of employment of every workman, there is an implied term that he will work according to the rules of the concern in which he is employed (State of Bihar Vs.Deodar Jha - A.I.R. 1958 P.51)

Reference of disputes-prohibition of continuance of strike/ lockout

Section 10(3) empowers the appropriate Government to prohibit the continuance of any strike or lockout in connection with such dispute referred for adjudication as might be in existence on the date of reference.

Justified and unjustified strike.

The justifiability of a strike has to be viewed from the point of fairness and reasonableness of the demands made by the workmen as well as their exhausting all other legitimate means open to them for getting the demands conceded. It would not be right for workmen to commence a strike without exhausting all other avenues for settlement oftheir demands. (Vide National Transport and General Company Limited and their workmen - 10 FJR 409 (411) L.a.T. and Chandanalai Estate Vs. its workmen - 1960 - II LLJ 243 SC)

Illegal Strike

According to Section 24 a strike commenced or continued in contravention of Section 22 or 23 is illegal.

Illegality and justification cannot co-exist and an illegal strike can never be said to be justified.

A Strike resorted to for the purpose of influencing the employer to open negotiations on the demands is not an 'illegal strike' provided the provisions of Sections 22 and 23 are not contravened.

A Strike commenced before the lapse of seven days after the termination of conciliation proceedings before a Board, or commenced during the pendency of conciliation proceedings would be illegal (Shalimar Works Limited Vs. their workmen, 1955-II LLJ 395 (LaT).

Where the industry concerned is a public utility service and the workmen go on strike without giving notice as required by Section 22 (1)(a), such strike would be illegal (Management of Katkona Colliery, Western Coal fields Limited, Vs. Industrial Tribunal, 1976-LIC 1531 (MP).

In Swadeshi Industries Limited Vs. their workmen (1955 - II LLJ 404 (LaT) the Labour Appellate Tribunal held that in the case of a composite unit of which one section was declared a public utility service, in the absence of evidence that persons going on strike were employed in the Section which had been declared a public utility service, the strike by such workmen could not be held to be illegal. The strike was also held not to be illegal under Section 10(3) as a strike had been commenced much before order under Section 10(3) was issued by the appropriate Government.

In Matchwell Electricals (India) Limited Vs. Chief Commissioner, Delhi (1962-II LLJ 289 Punjab), the workmen resorted to a sort of political strike for one day. The Punjab High Court held that such a strike could not be termed illegal unless it fell within the mischief of Sections 22 to 24 of the Industrial Disputes Act,1947. A strike has to be expressly brought within the mischief of the said Sections before it could be termed illegal.

Effect of Strike/lock-out on contract

Strike does not contemplate severance of relation of the employer and the employee; so also a lockout does not severe the relationship.

Lockout and Closure.

In case of closure, the employer does not merely close down the place of business but closes the business itself and so the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of business itself.

Sections 22 and 23 impose certain restrictions on the commencement of lockouts and sections 10(3) and 10A(4A) prohibit the continuance thereof. Section 24 lays down that a lockout commenced or continued in contravention of the provisions would be ill-gal.

Lockout is neither an alteration of the condition of service to the prejudice of the workmen within the meaning of clause (a) of Section 33 of the Act nor a discharge or punishment whether by dismissal or otherwise, within the meaning of clause (b) of Section 33 of the Act.

An employer who intends to close down an undertaking will have to comply with the provisions of Section 25 FFA of theIndustrial Disputes Act,1947.

Gheraos:

The problem of gheraos affected industrial relations considerably in the year 1967. The High Court of Calcutta has examined this issue in considerable detail in their judgement in Jay Engineering Works Limited and others Vs. the State of West Bengal and others (Matter No.34 of 1967). The Court defined Ghero as a physical blockade of a target either by encirclement or forcible occupation. The target may be a place or a person or persons, usually the managerial or supervisory staff of an industrial establishment. The blockade may be complete or partial. If it is accompanied

by wrongful restraint or wrongful confinement or accompanied by assault, used as a coercive measure on the controllers of industry to force them to submit to the demands of the block-closure such a gherao is unconstitutional, that is to say, violative of the provisions of the Constitution, and unlawful.

Lay-off/ Lockout

The distinguishing features of lay-off, lockout and retrenchment are as follows:

Lay-off and lockout points of similarity.

(1) Both are temporary.
(2) Both arise out of, and exist during emergency.
(3) Both are declared by the employer (though for different reasons)
(4) In both, the relationship of employer and workmen is suspended but is not severed.

Points of difference:

1) Lay off is resorted to for reasons beyond the control of the employer other than a dispute with his workmen; the lockout is normally declared because of dispute.
2) The law makes statutory provisions for compensation for lay-off (Section 25.C of the act). There is no such provision for lockout. However in case of a dispute, pertains to justifiability of the lockout, the Industrial Tribunal may at its discretion award compensation.

Lay-off and Retrenchment.

Points of similarity.

i) Both depend upon the will of the employer.
ii) Both are for economic reasons.
iii) In both statutory provision is made for compensation.

Points of difference:

1) Lay-off is temporary, retrenchment is permanent.
2) Lay-off is due to temporary conditions created by reasons beyond the control of the employer. Retrenchment is due to surplus of workmen, i.e.,

excess of workmen as against available work.

The types of industrial establishments which have been exempted from the provisions of lay-off in sections 25.C to 25.E namely are

i) Those in which less than fifty workmen have been employed on an average per working day in the preceding calender month.

ii) Those which are of seasonal character or in which work is performed intermittently.

Coreponsation for lay-off.

Payment of lay-off compensation is regulated by Section 25.C of the Act.

Establishments not governed by chapter V-A due to less number of workers - Right of management to lay-off workmen. There being no certified standing orders nor any terms of contract conferring a right to lay-off workmen must be held to be laid off without any authority and ordinarily entitled to full wages for the period of lay-off. In a reference under Section 10 it is open to the Tribunal to award a lesser sum in consideration of the justifiability of lay-off (workmen of Firestone Tyre and Rubber Company of India (Private) Limited Vs. the Firestone Tyre and Rubber Company - AIR 1976 SC 1775).

Continuous Service.

The term 'continuous service' occuring in Chapter V.A. and V.B. is defined in Section 25.B of the Industrial Disputes Act. The Supreme Court in the case of Ramakrishna Ramnath Vs. Presiding Officer, Labour Court, Nagapur and another (1970.LLJ. II P. 306) held that this provision does not show that the workmen after satisfying the tests under Section 25.B. has further to show that he worked during all the period he was in service of the employer for 240 days in an year. In other words according to Section 25.B the workmen who, during the period of 12 calendar months, had actually worked in the industry for not less than 240 days, was to be deemed to have completed one year of continuous

service in the industry. For subsequent years, it is not necessary that the workman has to put in 240 days in each year.

Sub-section (2) of Section 25B incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months; he shall be deemed to be in continuous service under an employer for a period, one year or six months, as the case may be, if the workman during a period of 12 calendar months just preceeding the date with reference to which calculation is to be made, has actually worked under that employer for not lessthan 240 days.Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-section (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in column (a) of sub-section (2). The conditions are that commencing the date with reference to which calculation is to be made, in case of retrenchment, if in a period of 12 calendar months just preceeding such date the workman has rendered service for a period of 240 days, he shall be deemed to be in continuous service for a period of oneyear for the purposes of Chapter VA. It is not necessary for the purposes of sub-section (2) (a) that the workman should be in service for a period of one year. If he is in service for a period of one year, and if that service is a continuous service within the meaning of sub-section (1) his case would be governed by sub-section (1) and his case need not be covered by sub-section (2). Sub-section (2) envisages a situation not governed by sub-section (1) (Mohanlal Vs.Management of Bharat Electronics Limited, 1981 LIC 806, 813, 814 (SC)

Once it is found that a workman is in continuous service, then, it is wholly immaterial whether he has worked for a particular number of days in a particular year. The contingency which demands that the worker work for a period of 240 days as provided by sub-section (2) of Section 25 B would come into play provided the workman is not in continuous service, as required under Section 25B (1). In the instant case, even though the workman was found not to have worked for 240 days in some of the years of his long service for having been on unauthorised leave the court held that there was no interruption in his service because neither he had left the service, nor he had been dismissed for being on unauthorised leave.

(R N Upadhyaya V M.A.Mitra, 1982-II LLJ 186,190 (Bombay).

Badli workman.

A badli workman means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment. A badli workman who has completed one year of continuous service in the establishment will be entitled to compensation under Section 25.C of the Act.

Workmen not entitled to compensation

The circumstances under which the workmen laid-off will not be entitled to lay-off compensation are covered by Section 25-E.

Retrenchment.

According to Section 25.F the conditions for effecting a valid retrenchment are (1) one month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice.

2) Payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and

3) Notice to the appropriate Government in the prescribed manner (i.e., Rule 78 of Andhra Pradesh

Industrial Disputes Rules)

The first two are conditions precedent to retrenchment and a retrenchment effected without complying with them would therefore be ineffective. The unconditional offer or tender of payment of compensation preceding retrenchment may be equivalent to compliance of the requirement of section 25.F. An exception to the conditions mentioned above is covered by the proviso to section 25-F where retrenchment is done under an agreement wherein a date for termination of service has been specified. But where the employer, under an agreement, was given an option either to retain some workmen or retrench them with due retrenchment benefits by the end of a particular month, it could not be said that no notice under Section 25.F(a) need be given before retrenching such workmen. An employer cannot take advantage of the Standing Orders providing for shorter period of notice for termination in view of the statutory provisions of Section 25.F of the act which provides for one month's notice for retrenchment of a workman.

Employer's right to retrench

It is for the management to decide the strength of labour force and the employer must always be left with the power to determine, in his discretion, the number of workmen required for carrying out efficiently the work involved in the industrial undertaking. However, when a dispute arises in regard to the validity of any retrenchment, it would be necessary to consider whether the retrenchment was justified and for proper reasons. It would not be open to the employer either capriciously or without any reason to claim that he proposes to reduce his labour force.

Procedure for effecting retrenchment.

Ordinarily, retrenchment shall be effected on the principle of 'last come first go'. The employer must have valid reasons and record the same if he departs from this principle. The onus of showing

that such reasons exist is on the employer, and in the absence of such reasons, retrenchment effected would be bad in law.

Retrenchment in establishment having branches.

In the case of 'retrenchment' in one of the branches of a company having branches in several places, the decisive test for determining as to whether the particular branch can be treated as a separate establishment, is the test of functional integrity. If according to the rules of the company the same grades and scales of pay are in force in all branches and the workmen are transfers le from one branch to another as a condition of their employment, the company should be treated as one establishment for the purpose of Section 25.F.G On the other hand, if the employees are not transferable from one branch to another and if the same grades and scales of pay are not in force in the different branches, each branch is to be treated as a separate establishment.

In an establishment consisting of different departments, junior-most workers belonging only to one department can be retrenched, provided the employer can prove that retrenchment became necessary in that department only. If the employer fails to adduce such proof, the question has to be decided on the basis of seniority in service in the establishment taken as a whole.

Successor's right to compensation

The right of a workman to receive compensation is a statutory right conferred under Section 25.F. This right becomes vested in the workman in accordance with the conditions laid down under Section 25.F.. This right, therefore, devolves on heirs-at-law of the deceased workman and such heirs-at-law are entitled to enforce their claim to the amount of compensation from the employer. Such a claim cannot be dismissed on the mere ground that the workman entitled to the amount is dead. The amount due to him should be paid to his heirs-at-law in the same way as bogus is paid.

Recovery of compensation

Retrenchment compensation can be recovered from an employer either under Section 33.C of the Act or under

the Payment of Wages Act.

Section 25.F will have no direct application where services of all workmen have been terminated by the employer for real or bonafide closure, and in such case Section.25 FFF will come into play.

Retrenchment whether change of service condition

Retrenchment does not constitute a change in condition of service within the meaning of Section 9.A.

Right of the retrenched worker for re-employment

In terms of the provisions of Section 25.H a retrenched worker is to be given preference for re-employment, and a retrenched worker who has offered himself for re-employment, shall have preference over other persons. The employer has to give an opportunity to the retrenched worker, if he proposes to engage a new hand in the same cadre or category as the retrenched workmen.

Special provisions to lay-off, retrenchment and closure of certain establishments.

With a view to check arbitrary lay-offs/retrenchments/closures the Industrial Disputes Act was amended by incorporating Chapter V-B which came into force with effect from 5.3.1976.

The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workmen were employed or an average per working day for the preceding twelve months.

"Industrial establishment" means (i) a factory as defined in clause (m) of Section 2 of the Factories Act,1948 (ii) a plantation as defined in clause (f) of section 2 of the Plantation Labour Act,1951 etc.

In view of the provisions of Section 25 M no workman whose name is born on the muster rolls of an industrial establishment to which Chapter V.B. applies

shall be laid off by his employer except with the previous permission of the Commissioner of Labour. The prior permission is not necessary in respect of lay-offs declared due to shortage of power or due to natural calamity.

Section 25 N deals with condition precedent to retrenchment of workmen. No workman employed in any industrial establishment who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until notice in the prescribed manner is served on the authority i.e., Commissioner of Labour and the permission of the Commissioner of Labour is obtained and other statutory formalities are complied with.

Section 25 O dealing with the condition for closures was struck down by the Supreme Court in Excel Wear V. Union of India (11 LLJ 527) being violative of the guarantee of art.19(1)(g) of the constitution.

In case the employer fails to comply with the said provisions in lay-off, retrenchment, the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off, as if no notice is given in respect of retrenchment respectively. Heavy penalties have been provided in case of contravention of these provisions.

CHAPTER VIII

SETTLEMENTS AND AWARDS

Types of settlements.

There are two types of settlements, namely (1) settlement arrived at between the parties themselves and (2) an agreement reached during the course of conciliation proceedings.

Binding effect of Settlements.

A settlement arrived at in the course of conciliation proceedings binds all parties to the Industrial Dispute as envisaged under Section 18(3) of the Industrial Disputes Act, whereas a mutually arrived at agreement binds only those parties who are signatories

to it.

Operation of settlement

According to Section 19(1) of the Industrial Disputes Act, the settlement shall come into operation:-

i)on the date which has been agreed upon by the parties to the dispute; or

ii)in case no date has been agreed upon, on the date on which the memorandum of settlement is signed by thepartiea to the dispute.

The settlement does not cease to be binding ipso facto on the expiry of the period of its operation as laid down in clause (i) of Section 19. It is not open to a party to terminate and unilaterally repudiate the settlement without complying with the requirements of sub-section (2) of Section 19 of the Act.

Termination of Settlement

In case of any of the parties to the settlement wants the settlement to be terminated on the expiry of the aforesaid period, that party has to give notice of two months of its intention to terminate the settlement in writing to the other party or parties. Otherwise the settlement shall continue to be binding on the parties until the expiry of two months from the date of the notice of termination.

In case Deccan Tile Works V. a workman (1960 2 LLJ. page 296) the Andhra Pradesh High Court observed that except in cases where the period of operation of settlement has been agreed upon by the parties, the settlement cannot be terminated by the parties during the period of six months from the date on which it came into force. This position was also considered by the Supreme Court in the cases namely, Cochin State Power Light Corporation V.Workmen (1964 2.LLJ100) and Bangalore Woolen, Cotton and Silk Mills, V.their workmen (1968 2.L.J. page 555). In the latter case, the Supreme Court observed as follows:

"Intimation regarding the termination of an award must be fixed with reference to a particular date so as to enable account to come to the conclusion that the party giving that intimation has expressed its intention to terminate the award. Such a certainty regarding date is absolutely essential, because the period of two months, after the expiry of which the award will cease to be binding on the parties will have to be reckoned from the date of such clear intimation. Such notice of intention to terminate the award was given only on 14.8.1961. and under Section 19(6) the award will cease to be operative after the expiry of two months, i.e. 14.10.1961. The letter written on 26.6.19[illegible] cannot be considered to be a notice given by the Union apart from the fact it does not in fact convey any such intention, it is also invalid as it has been given even before the settlement was terminated."

The Supreme Court in the case between Sukla Manufacturing Industries Private Limited and Workmen (III-LLJ-1977-Page 339) held that there is no legal impediment to give advance intimation of intention to terminate the settlement provided the contractual or statutory period of settlement is not thereby affected or curtailed. The court further held that only where the notice expires within the period of operation of a settlement, such a notice will be invalid.

Award:

According to section 2(b) of the Industrial Disputes Act, award means an interim or a final determination of any Industrial Dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal and includes an arbitration award made under Section 10-A of the Act.

Enforceability and operation:

There is a distinction between the date on which an award becomes enforceable and the date when it comes into operation. The date from when the award of a Labour Court or Tribunal shall be operative is

the date specifically mentioned as such in the award itself. The date of enforceability of the award of a Labour Court or Tribunal is the date following the expiry of thirty days from the date of its publication under Section 17 of the Industrial Disputes Act. It may be noted that where no date is specified in the award it comes into operation when it becomes enforceable.

The Industrial Tribunal has the power to order that its award shall be applicable retrospectively LLJ.II. 1965 P.403).

Binding Effect.

An award of Labour Court or Tribunal or a National Tribunal or of an Arbitrator shall be binding on the parties concerned as per the provisions of Section 18(3) of the Act.

Period of Operation of award.

According to Sub-section (3) of Section 19, the statutory period of operation is one year from the date on which the award becomes enforceable under Section 17(A) of the Act.

Section 18(3)(a) makes a settlement arrived at in the course of conciliation proceedings and an award binding on all parties to the dispute. Law gives greater sanctity to a settlement than to an award, and therefore, industrial law does not contemplate any interference with the finality of a settlement and compels a settlement to run on for the period mentioned in thesettlement itself, and neither party is permitted to challenge that settlement during the period of its operation. The question relating to period of operation of an award passed on the basis of a memorandum of settlement filed before the Tribunal/Labour Court as a compromise came up in the case of Indian Detonators Limited V. their workmen and Industrial Tribunal in Writ Petition No.496/69, and the Andhra Pradesh High Court held that:-

"It must be given the meaning which is quite natural and if so understood sub-section (3) would be subject to the entire section 19 and not to only a part of section 19.

"There is no justification to assume that the period of an award referred to in sub-section(3) can in no case be made subject to the period of settlement agreed upon by the parties to it which falls under sub-section(2).

"The legislature wanted the period of the award made subject to the period of settlement genuinely arrived at between the parties referred to in sub-section(2). The reasons are too patent. Apart from the object of the Act to ensure an enduring Industrial peace, the intention is to attach more importance to settlement than to the determination of the dispute by an Industrial Tribunal.

"We are, therefore, clearly of the view that where the settlement is arrived at between the parties, when a dispute is pending before the Tribunal and such an agreement is submitted to the Tribunal and if an award is passed in terms of the settlement, in such a case, it is the period mentioned in sub-section(4) of Section 19 relating to settlement that would be applicable. It would be operative for the period mentioned in the settlement. It would be binding not only on the parties to the settlement but also on others as is the case in regard to an award.

"Applying this reasoning as far as it is applicable to the facts of the present case, the necessary conclusion which it would lead to is that the settlement arrived atbetween the parties during the pendency of the dispute before the Industrial Tribunal would immediately become operative. If they are filed before the Tribunal an award is made, the settlement would continue to be effective with the added benefit of the award for the period mentioned in the settlement."

Termination of Award:

According to Sub-section(6) of Section 19 of the Industrial Disputes Act, an award shall continue to be binding on the parties, notwithstanding the expiry of the period of operation under sub-section (3), until a period of two months has elapsed from the date on which notice is given by any party bound by the award to theother party or parties intimating its intention to terminate the

award.

The Notice must be a notice of two months duration under Section 19(6) after the period of operation of the award has expired. It is clear from the language of the sub-section that during the period of notice the award continues to be binding.

The difference between the words 'operation' and 'binding' used in sub-sections 19(3) and 19(6) has to be clearly understood. Section 19(6) makes it clear that after the period of operation of an award has expired, the award does not cease to be effective or binding. It continues to be binding on the parties until notice has been given by one of the parties of its intention to terminate it and two months have elapsed from the date of such notice.

Effect of Termination of award under Section 19(6) on rights and obligations of parties.

Termination of an award by either party under Section 19(6) does not have the effect of extinguishing the rights flowing therefrom. The effect of termination of an award is only to prevent thereafter the enforcement of the obligations under it in the manner prescribed, but the rights and obligations which flow from it are not wiped out. Evidently by the termination of an award, the contract of employment is not eliminated. The obligations created by an award of contract could be altered by a fresh adjudication or fresh contract (workmen of New Elphinstone Theatre V. New Elhpinstone Theatre (1961 LLJ 105, Madras High Court).

Res Judicata: The technicalities of the principle of Res Judicata cannot be strictly invoked in Industrial adjudication. But irrespective of the Principles of Res.Judicata Section 19(2) or Section 19(6) itself is a bar or the reference or adjudication of Industrial disputes covered by "settlements" or "awards as long as they remain binding on the parties. Hence, when there is a subsisting settlement or award, binding on the parties, the Tribunal will have no jurisdiction to consider the

same points in a subsequent reference, as such subsequent reference will itself be invalid and illegal (Aluminium Factory Workers' Union V. Indian Aluminium Company Limited 1962 I.LLJ.210(SC) and Bangalore Woolen, Cotton and Silk Mills Company Limited V. their workmen (1968) I LLJ.555(559) (SC).

Awards which do not bar further reference or adjudication.

The bar of section 19(6) of the bar of 'res judicata' will operate only where there is an adjudication by a Tribunal on the merits of the dispute in an award. Similarly, the bar will operate in regard to such items of dispute, which were not pressed and were withdrawn when there could be no agreement of settlement between the parties.

Any finding in an application for permission under Section 33(1) of the Act cannot operate as 'res judicata' in subsequent adjudication proceedings involving the same subject matter.

CHAPTER IX

MISCELLANEOUS MATTERS

Arbitration

Voluntary arbitration has been recognised as a desirable method of settling differences or disputes, and has to be encouraged.

Section 10.A of Industrial Disputes act provides for arbitration by voluntary agreement of the parties. The employers and the workmen may agree in writing in the prescribed From C (vide rule 7 of Andhra Pradesh Industrial Disputes Rules) to refer an existing or apprehended dispute for arbitration to such persons or persons chosen by them including the Presiding Officer of a Labour Court or Tribunal or National Tribunal. The agreement then is forwarded to the Government for publication in the official Gazette within one month from the date of its receipt. In other words, the Government notifies the appointment of the arbitrator chosen by the parties.

Industrial Truce Resolution.

In 1958 the Central Organisations of employers and workers' unions agreed to bind themselves to settle all differences; disputes and grievances by mutual negotiation, conciliation and voluntary arbitration. The Industrial Truce Resolution adopted in 1962 provides that there should be a maximum recourse to voluntary arbitration in all matters pertaining to dismissal, discharge, victimisation andretrenchment of individual workmen, not settled mutually. The Indian Labour Conference recommended that whenever conciliation fails, arbitration would be the next normal step, except in cases where the employer feels that for some reasons he would prefer adjudication, such reasons being creation of new rights and other matters having wide repercussions involving financial stake-

The Industrial Truce Resolution also provided that the Conciliation Officers may, if the parties agree serve as arbitrators. Accordingly, the Conciliation Officers in the State were permitted to act as arbitrators if the parties to the dispute desired it. It may be noted that the procedure to record arbitration agreement and other matters relating to it have been enumerated in para ii (iv) of the Code of Discipline.

The Government in G.O.Ms.No.2091, Home (Labour I) Department dated 14.9.1973 approved a panel of arbitrators.

Dismissal and discharge distinction.

Dismissal as a measure of disciplinary action is the severest punishment that can be inflicted by an employer upon a delinquent workman for some act of misconduct. No order of dismissal can be takenunless the employee concerned is informed in writing of the alleged misconduct, is given fair opportunity to explain, and a proper enquiry following the principles of natural justice has been held. However, termination ofservice or discharge simpliciter, which is not by way of punishment, would not tantamount to dismissal (Moti Ram Deka Vs.Manager, North East Frontier Railway-1964-II-LLJ.467 S.C.) when

the standing orders of an establishment inter alia provides for termination of the services of a workman by giving 14 days notice or wages in lieu of notice, the termination of services of the workman may be said to be a discharge simpliciter. If the termination is done keeping in view the spirit of the standing orders by paying the employee even more than 14 days wages or giving him more than 14 days notice, it may also be said as discharge simpliciter. (Nanu Vs. Kapinwa and Company, I.LLJ.212, High Court, Kerala).

The expression 'discharge' as used in Section 33(2)(b) and the proviso to it covers both categories of discharge i.e., discharge simpliciter and discharge by way of punishment (National Machinery Manufacturing Company Limited Vs. H.J.Vyas, 1964 I-LLJ.624 Bombay).

The Supreme Court, in regard to cases which may fall under discharge simpliciter, has in a judgement observed as follows: (Reported in LLJI 1975 p 262)

The Industrial Tribunal has the power, and indeed the duty, to X-ray the order of termination in a given case and discover its true nature if the object and effect if the attendant circumstances and/ulterior purposes, is to dismiss the employee because he was an evil to be eliminated. But, if the management, to coverup its inability to establish by an enquiry, illegitimately but ingeniously passes an "innocent" looking order of termination 'simpliciter' such an action is bad and is liable to be set aside.

The Court further observed that loss of confidence is no new armour for the management otherwise, security of tenure assured by the new industrial jurisprudence and authenticated by a catena of cases of this court (Supreme Court) can be subverted by this neo-formula. Loss of confidence in the law will be the consequence of the loss of confidence doctrine.

In this context the Court observed that loss of confidence is often a subjective feeling or individual re-

action to an objective set of facts and motivations. The court is concerned with the latter and not with the former, although circumstances might exist which justify a genuine exercise of the power of simple termination.

In a reasonable case of a confidential or responsible post being mis-used or a sensitive or strategic position being abused, it might be a high risk to keep the employee once suspicion started, and a disiplinary enquiry cannot be forced on the master. There, the Court noted, a termination simpliciter may be bonafide, not colourable, and loss of confidence be evidently of the good faith of the employer.

There are myriad situations where an employer might, in good faith, have to reduce his staff, eventhough he might have only a good word for his employees. Simple termination is a weapon usable on such occasion and not when the master is willing to strike but afraid to wound the Court added.

The Supreme Court further went on to observe that first one the Directive Principles of the Constitution on obligating the State to make provision for securing just and humane conditions of work. Security of employment is the first requisite of a worker's life. The second equally axiomatic consideration is that a worker who wilfully or anti-socially holds up the wheels of production, or undermines the success of business, is a high risk and deserves, in industrial interest, to be removed without tears.

Suspension.

Suspension pending enquiry is not an industrial dispute. But suspension for an indefinite period imposed as a punishment for misconduct will beam industrial dispute (Burn and Company Vs.workmen S.c.529 AIR).

The Supreme Court in the case of Hotel Imperial, New Delhi V. Hotel Workers Union (AIR 1959 S.C.P.1342) held that in the absence of an express term in the contract of employment or in a statutory rule, the employer has no right of suspending the workman and witholding his

wages or salary pending the conclusion of an enquiry into his misconduct.

In the case of Caja V. T.Jormanik Sien (A.I.R.1961) the Supreme Court held that the employer has the right to order the suspension of a workman as an interim measure pending the enquiry into his misconduct in the sense of forbidding him to work, but he has no right to withhold payment of the workman's wages or salary either wholly or partially during the period of such suspension, except when he is empowered to do so either under the terms of the contract of employment or any statutory rule.

In the case of Sasa Musa Sugar Works Limited V. Shabrati Khan vide 1959-II-LLJ-388 the Supreme Court held that there would be no contravention of Section33 in ordering the suspension of the workman found guilty of misconduct pending the orders of the Tribunal. But, if the workman has been suspended without holding a regular enquiry, the Tribunal may, even when it grants permission, direct payment of wages for the period of suspension.

Conditions of service etc. to remain unchanged under certain circumstances during the pendency of proceedings.

The basic object of section 33 broadly speaking is to protect the workman concerned in the dispute against victimisation by the employer and to ensure that during pendency proceedings are brought to expeditious termination in a peaceful atmosphere, undisturbed by any subsequent cause tending to further exacerbate the already strained relations between the employer and the workman (Air India Corporation V V.A.K. Bully, 1972 I.LLJ. page 501 (SC)

Thus the purpose of the prohibition contained in Section 33 is two-fold. On the one hand it is designed to protect the workmen concerned during the course of conciliation, arbitration and adjudication, against harassment and victimisation "on account of their having raised the industrial dispute; on the other hand it is to maintain status-quo by preventing any action

on the part of the management which may otherwise give rise to fresh dispute resulting in furtherstrained relations between the employer and the workmen. To achieve this object ban has been imposed upon the employer exercising his statutory, contractual or common law right to terminate the services of his employee accordingto the contract or the provisions of law governing such service. In regard to actions covered by section 33(1), previous permission has to be obtained, by the employer, while in regard to actionsfalling under Section 33(2), he has to obtain subsequent approval to certain conditions.

The scope of the enquiry before the authority to whom an application under Section 33(1) or Section 33(2)(b) for permission or approval is made, is to remove or maintain the ban by granting or refusing the permission or approval asked by the employer but the fact that the Tribunal has accorded permission orapproval does not validate the action of discharge or the punishment by way of dismissal or otherwise, while the refusal to accord permission would stop the employer from discharging or punishing the workman by way of dismissal or otherwise and the refusal to accord approval will invalidate any contemplated action of the discharge or dismissal.
The validity of the disciplinary action can be gone into by the Tribunal on a reference being made by theGovernment under Section 10 of the Industrial Disputes Act (Orissa Cement Company Limited Vs.their workmen, 1960.II. LLJ. page 91(SC).

Section 33.A gives right of complaint to a workman only during the pendency of the proceedings before a Labour Court,Tribunal or National Tribunal. The complaint in writing in the prescribed manner has however to be filed by the aggrieved employee before the concerned authority. The authority will adjudicate on the complaint as if it is a dispute referred to it and give its decision before submission of its award to

Government on the main dispute.

Notice of change.

The object ofsection 9.a is to prevent a unilateral action on the part of the employer, changing the conditions of service to the prejudice of the workmen (Tamil Nadu Electricity Workers Federation Vs. Madras State Electricity Board 1962. II.LLJ.136 Madras). The Legislation contemplates three stages in providing for the notice of change under Section 9.A. The first stage is the proposal by the employer to effect a change; the second stage is the time when he gives a notice and the third stage is when he effects the change on theexpiry of 21 days from the date of notice. The conditions of servicedo not stand changed, either when the proposal is made or the notice is given but the change is effected only when it is actually made, i.e., when thenew conditions of service are actually introduced (North Brooks Jute Company Limited Vs. their workmen 1960. I.LLJ.680 (SC)

Section 9.A prohibits an employer from giving effect to any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule without giving to the workman likely to be affected by such change, a notice in the prescribed manner of the nature ofthe change proposed to be effected. Further the employer is enjoined not to effect the proposed change within 21 days of giving the notice.

Protected workman

Who is a protected workman and recognition ofsuch workman are dealt with in sub-section (4) of Section 33 of the Industrial Disputes Act read with rule 63 of Andhra Pradesh Industrial Disputes Rules,1958.

Every registered trade union connected with an industrial establishment to which the act applies shall communicate to the employer before 30th April every year, the names and addresses ofsuch of the officers of the union who are employed in that establishment and who in the opinion of the union should be recognised as 'protected workmen'. Any change in the incumbency of any such officer

shall be communicated to the employer by the union within 15 days of such change.

The employer shall, subject to sub-section (4) of Section 33, recognise such workmen to be protected workmen for the purpose of sub-section (3) of the said section and communicate to the union in writing, within 15 days of the receipt of the names mentioning them as protected workmen for a period of 12 months from the date of such communication.

— 2 —

ANNEXURE - I

PRODUCTION OF DOCUMENTS - POWERS OF CONCILIATION OFFICERS:

O.11, r.12 in the First Schedule to the Code of Civil Procedure,1908

It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party, thereto, upon oath, of such of the documents in his possession in power, relating to any matter in question in such suit, as the Court shall think right, and the Court may deal with such documents, when produced, in such manner as shall appear just.

—2—

ANNEXURE-II

LIST OF INDUSTRIES RESERVED BY THE ANDHRA PRADESH GOVERNMENT TO THE FIRST SCHEDULE.

1. Oxygen and acetylene Industry
2. Fertiliser Industry.
3. Detonators Manufacturing Industry.
4. Lamination Industry.
5. Polyster Resin Industry
6. Phenolic Resin Industry
7. Moulding powder Manufacturing Industry.
8. Printing Industry.
9. Special purposes Machines Manufacturing Industry.
10. Drugs and Pharmaceutical Industry.
11. Manufacturing Marketing and Distribution of Petroleum Industry.
12. Aeronautic Industry
13. Dairy Farming
14. Manufacturing Heavy Power Equipment like Steam Turbines, Turboalternators, condensors etc. Industry.
15. Manufacturing Pressure Vessels, Heat Exchangers Industry.
16. Chlorine Production Industry.
17. Nitro Cellulose Paints Industry.
18. Industry connected with Manufacture of Guided Missiles and other like items.
19. The Andhra Scientific Company Limited.
20. Ferro Alloys Industry.
21. Zinc Smelting Industry.
22. Hindusthan Machine Tools Industry.
23. Andhra Pradesh Electrical Equipment Corporation Limited.
24. Praga Tools Limited Industry.
25. Nizam Sugar Limited Industry.
26. Visakhapatnam Steel Project Industry.

ANNEXURE III

GOVERNMENT OF ANDHRA PRADESH

OFFICE OF THE_____

No. Dated:

From

To:

1)
2)

Sir,

Sub:-Industrial Disputes Act,1947-Dispute between the management of_____ and their workmen represented by

Ref:-

****

This is to inform you that I propose to discuss the above mentioned dispute and if need be also to initiate conciliation proceedings in connection therewith. I would therefore be grateful, if you could make it convenient to call on me on_____at_____ with all the material which you consider relevant to the dispute. In case you are unable to come personally and propose to send a representative, your representative should also bring with him the necessary authority in form 'F' to sign a settlement in case the dispute is amicably settled.

Yours faithfully,

CONCILIATION OFFICER.

ANNEXURE - IV

GOVERNMENT OF ANDHRA PRADESH
LABOUR DEPARTMENT

No. Dated:

From
Shri
Conciliation Officer &
Commissioner of Labour,
Andhra Pradesh, Hyderabad.

To

Sir,

Sub:-Conciliation proceedings in the dispute between the employers of
and their workmen represented by the

I have to inform you that I have on the admitted in Conciliation under the Industrial Disputes Act, 1947 the following matter/s

ISSUES

Please take notice that the Conciliation proceedings in this connection will be held on at in my office. You are requested to attend the same with all the relevant information documentary or other - pertaining to the dispute without fail or depute a duly authorised representative who will be in a position to speak on behalf of the management.

Form 'F' prescribed under Rule 38 of the Andhra Pradesh Industrial Disputes Rules 1958, is enclosed, which may be filled in and returned to this office by the appointed date.

You are further requested to exhibit the attached notice (sent herewith in triplicate) in your premises at prominent place.

Yours faithfully,

Conciliation Officer &
Commissioner of Labour, Andhra Pradesh, Hyderabad.

Copy forwarded to the General Secretary.

The Union is requested to attend the Conciliation proceedings on the date, and place mentioned above with all the relevant information, documentary or other bearing on the subject.

Conciliation Officer &
Commissioner of Labour, Andhra Pradesh, Hyderabad.

ANNEXURE IV A

NOTICE

Office of the Commissioner of Labour, Andhra Pradesh, Hyderabad.

No. Dated:

Shri
Conciliation Officer &
Commissioner of Labour,
Andhra Pradesh, Hyderabad.

BETWEEN:

and

the workmen employed by it,

In the matter of dispute raised by the

regarding.

It is hereby notified for the information of the workmen concerned that the following matter/s in respect of the dispute has/have been admitted in conciliation by me on and Conciliation Proceedings in respect thereof will be held on at in my office at the above address.

Conciliation Officer &
Commissioner of Labour.

Matters admitted in conciliation.

ANNEXURE V

ADJOURNMENT OF CONCILIATION PROCEEDINGS BY MUTUAL CONSENT BEFORE THE CONCILIATION OFFICER

SRI_____

Subject:

Case No:

We hereby mutually agree that the Conciliation proceedings in respect of the matter mentioned above should be adjourned to.....

Representing Employer. Representing workmen.

Date: Conciliation Officer.

ANNEXURE VI

PROFORMA TO BE FILLED IN BY THE CONCILIATION OFFICER WHILE FORWARDING HIS REPORT UNDER SECTION 12(4) OF THE INDUSTRIAL DISPUTES ACT,1947.

1.Parties to the dispute:
   (a) Name of the Employer
   (b) Name of the Union concerned (if any)
   (c) Status.

2.(a) Number of workmen in the Company
   and
   (b) Number and occupation of workmen
   affected by the dispute;

3.(a) Period for which membership of the Union among workmen was verified and the number of workmen:
   (b) Date of registration of the Union:

4. If the workmen are not represented by a registered Trade Union whether the representatives have been authorised in the manner prescribed under rule 38 of the Andhra Pradesh Industrial Disputes Rules.

5. Whether any of the demands is covered by the provisions of any other Labour Act.

6. Whether any of the demands is covered by a subsisting award or settlement or is pending before an adjudicator.

7. Whether the Industry is covered by the Industrial Employment Standing Orders Act and if so whether Standing Orders have been certified. Also indicate whether the stand/action taken by the Management is in confirmation with Standing Orders.

8.(a) If a previous award or settlement covering the demands has expired or terminated.
   (b) Whether reasonable time or changes of circumstances is established to warrant revision of the demands.

9.(a) Whether the workmen had resorted to strike on any of the demands whatsoever while the dispute was pending in conciliation.

(b) Whether workmen had resorted to strike on any of the demands in dispute in the past.

10. Whether benefits demanded are comparable to benefits given or awarded in comparable concerns; if so, whether this point has been discussed in the mainreport.

11.In the case of demand for Bonus whether the audited Balance Sheet of the Company has been examined in the light of the formula laid down by the labour appellate tribunal and if so whether the Conciliation Officer has given his opinion in this behalf in the main report.

12.In the case of the demands for reinstatement and compensation whether the following items have been included in the main report:

(1) the names of the discharged, dismissed or retrenched workmen.
(2) the period of service put in by each of them.
(3) the notice or notice pay and other benefits, such as retrenchment compensation, gratuity etc., given by the Company.
(4) Whether the principle of 'first come last go' has been taken into account by the management.
(5) Reasons that led to the discharge of each of these workmen; and
(6) the conciliation Officer's remarks.

13. In the case of demands on behalf of the supervisory staff whether exact nature of duties performed by such staff is indicated in the report.

14. Whether the Union and/or the management want the dispute to be referred for adjudication and whether they are agreeable to sign an application under Section10(2)

CONCILIATION OFFICER

ANNEXURE VII

PUBLIC SECTOR OR GOVERNMENT OWNED OR CO-OPERATIVE INDUSTRIAL ESTABLISHMENTS - PROCEDURE TO BE FOLLOWED.

....

The following procedure has to be followed in regard to disputes in Government owned or controlled industries and Local bodies.

(1) The Union operating in a Government undertaking may be advised first of all, to present the demands to the Departmental Officer concerned.

(2) On receipt of set of demands the Officer and the concerned should separate such of those items on which orders are required from higher authorities and forward them with his comments to the competent authority and meanwhile try to redress the other grievances within his competence.

(3) On receipt of the orders from higher authorities the Departmental Officer should communicate the views of the Department to the Union.

(4) The Union may take up the matter with the Labour Department, if the reasons put forth by the Department are not convincing or satisfactory-

As the views of the Department on such issues are already available, much inconvenience may not be felt in conciliation meetings even if the officer participating pleads his inability to convey any decision owing to lack of adequate powers

According to these instructions, so long as the employing department or local body concerned is still at the stage of consideration of the demands of the workmen, the Labour Department will not intervene or take action. It will do so only when a strike is threatened or when one of the parties to the industrial dispute(in practice the workers) specifically asks for its mediation on the ground that the management has rejected its demands or taken an unduly long time for a decision. Where the disputes are of State-wide nature, Conciliation proceedings

will be initiated by the Commissioner of Labour, the Additional Commissioner of Labour or the Joint Commissioner of Labour. In case of disputes which are not of State-wide nature, the concerned Deputy Commissioners of Labour or Assistant Commissioners of Labour will intiate conciliation proceedings. On completion of the Conciliation proceedings, if settlement is not reached, the conciliation officer will send the usual conciliation and confidential reports under the Act to the Government. Where the conciliation proceedings are intiated by the Commissioner of Labour/Additional Commissioner of Labour/ Joint Commissioner of Labour, a copy of the factual conciliation report may also be sent to the Secretary to Government in the Department having administrative control over the undertaking to which the dispute relates. In other cases, the concerned Conciliation Officers may send a copy of the factual report to the Head of the employing Department to which the dispute relates.

COOPERATIVE INSTITUTIONS - FACTFINDING

The Government In G.O.Ms.No.1957-Agriculture, dated 10th October,1962 have issued the following instructions to deal with the disputes arising in industrial establishments run in the Co-operative sector:-

Whenever an industrial dispute arises in Cooperative Institutions which are not public utility services, the officers of the Cooperative Department should intimate immediately to the Assistant Commissioner of Labour concerned about the existence of the dispute and proceed to use their good offices to settle the dispute amicably. A report of the settlement of the dispute by the officers of the Cooperative Department shall be sent to the Officer concerned of Labour Department within two months from the dateon which the dispute has arisen. If no intimation of the settlement of the dispute is received by the Officer concerned in the Labour Department within the said period if the union/workmen represents for intervention, the officer concerned may

proceed to take action under the Industrial Disputes Act for an early settlement of the dispute. In the case of Public Utility Services, the concerned conciliation officer shall take action as per the provisions of Industrial Disputes Act.

ANNEXURE-VIII

MODEL FORM OF CONCILIATION (FACTUAL) NO. 3&T.

From
Sri
Conciliation Officer &
Commissioner of Labour.

To
The Secretary to Government,
Labour, Employment, Nutrition &
Technical Education (Labour I) Department,
Andhra Pradesh,
HYDERABAD.

Sir,

Sub:-Industrial Disputes Act,1947 - Dispute between the workmen and the management of "M" - Conciliation under Section 12(4) - Report - Submitted.

...

PARTIES TO THE DISPUTE

Representing the Employer : Sri "Y"
Secretary of "M"

Representing the workmen : Sri "X"
President 'M' Union

Sri "Z" General Secretary
of "M" Union.

.... - -

The General Secretary of "M" Union, in his letter dated 11th November,1970 submitted a memorandum of demands to the management, with a copy endorsed to this office for information. Subsequently, the union in its letter dated 20-11-1970 informed this office that the mutual negotiations on the demands ended in failure. The Union, while enclosing a copy of Statement of demands, requested the intervention of the Conciliation Officer. On receipt of the letter, preliminary enquiries were initiated on 25-11-70 regarding the membership of the Union and its competence to raise the dispute. On verification of the records of the union it is found that a majority of the workers of the above company are members of the union and the memorandum of demands was presented by the Union in pursuance of a resolution passed by the union (either union executive or in a general body meeting of

the union). A copy of the statement of demands of the union was sent to the management on 25.11.1970 requesting them to offer their views on each demand raised by the union. The views of the management were received on 5-12-1970. I had preliminary discussions with the parties on 10-12-1970 and tried to bring about a settlement invoking the provision of section 12 but the meeting did not produce any useful result. The dispute was taken up in conciliation and notice dated 12-12-70 was issued to the parties intimating that conciliation proceedings would be commenced from 15-12-1970.

The demands raised by the union are:

1. Revision of grades of all categories.
2. Enhancement of wages to all categories of employees.
3. Linking of dearness allowance to the cost of living and payment at the rate of one rupee per point.
4. Workloads of all categories of employees.
5. Grant of 30 days earned leave.
6. Grant of 15 days casual leave and 30 days sick leave with full pay.
7. Grant of 15 festival holidays with pay.
8. Supply of two pairs of dresses to the workers.
9. Dismissal of Sri Venkataiah.
10. Retrenchment of Sarvasri Babu Rao and Sri Rama Rao.
11. Recognition of unions.
12. Grant of marriage advance.
13. Provision for canteen.
14. Non-payment of night shift allowance as awarded by the Industrial Tribunal in Industrial Dispute No.10/69.
15. Payment of bonus at the rate of 30% for the years 1968-69 and 1969-70.

The first 10 demands were admitted in conciliation and the demands 11 to 15 were not admitted in conciliation for the following reasons.

Recognition of union and grant of marriage advance does not constitute an industrial dispute as defined under Section 2(K) of the Act. The demand relating to

provision for canteen is covered by the Factories Act, 1948 and, therefore, it also does not constitute an industrial dispute. Non-payment of night shift allowance as awarded by the Industrial Tribunal is a matter of implementation of an award and it also does not constitute an industrial dispute. The demand relating to bonus for the years 1968-69 and 1969-70 has been examined with reference to the subsisting agreement dated 15-10-1968 arrived at between the parties under Section 12(3) of the Industrial Disputes Act. This agreement is in operation and will continue to be binding till end of December,1970. It may be mentioned that in 1968 the union demanded 30% Bonus for 1968-69. During the discussion this demand along with the issue relating to bonus for 1969-70 was also resolved under Section 12(3) of Industrial Disputes Act to the effect that 20% Bonus would be paid for each year. The management agreed to pay bonus to the workmen according to the payment of Bonus Act at the rate of 20% for each year i.e. 1968-69 and 1969-70. The Union also agreed not to press for higher bonus for these two years than the maximum. That being the fact I pointed out to the union that this matter is covered by the subsisting memorandum of settlement and therefore it does not constitute an industrial dispute to be considered under conciliation now. The Union appreciated this point and dropped this demand.

The first conciliation meeting was held on 16-12-1970; both the management and the union attended the meeting. The representative of the union contended that for the past 3 years the management had huge profit due to good marketing of the products of the establishment and that there has been no increase in the wages of the workers for the last 5 years despite steep rise in the cost of living and fall in the value ofthe rupee. The management on the other hand has contended that in 1968 they considered the economic difficulty of the workers while agreeing to pay maximum percentage of bonus for the accounting year 1968-69 and 1969-70 and that due to increase of taxes and

other business commitments they are not in a position to concede any demand which involves financial burden of the management. The management also stated that they did not make huge profits as pointed out by the union and that it is not reasonable to demand increase in wages and linking of dearness allowance, increase in festival holidays, sick leave and casual leave at this stage. The Union's representative has stated that the action of the management in dismissing Sri Venkataiah amounts to victimisation as he is an organising secretary. The union further pointed out that Retrenchment of two employees viz. Babu Rao and Srirama Rao, is unjust and against the provision of Section 25F of Industrial Disputes Act. The management, in respect of the dismissal and retrenchment, contended that they followed the established procedure while dismissing and retrenching the employees in question and therefore, there is no substance in the statement of the union. In respect of the issue of workloads the union pointed out that there is no fixed workload to the employees and the management with this advantageous position is entrusting work much in excess of the normal work that can be expected from the workers during their hours of work. The management while denying the allegation of the union agreed to consider this demand and requested time till end of December, 1970 to consult their principals. I suggested to the management to consider not only this demand relating to workloads but also other demands since the last wage increase was made in 1964. The management agreed to discuss all the demands with their top management. The Union, while stressing for quick solution of the dispute, agreed to wait till end of December, 1970. On the joint request of the parties the conciliation proceedings were adjourned to 3rd January 1971. I advised the parties to bring all the relevant records in the next meeting. Both the parties were present on 3.1.71 and final talks were held. The conciliation proceedings were concluded on the same day.

I give below the union's arguments, the managements

contention and my own suggestions in the same order in respect of each of the demands omitted in conciliation.

1. Revision of grades with effect from 1.11.1970
2. Enhancement of wages at the rate of Rs.30/- per month with effect from 1.11.1970.

The demand relating to enhancement of wages is interlinked with the demand pertaining to revision of grades. These two have been clubbed together and dealt with.

The existing grades and the grades demanded by the union in respect of various categories of employees are indicated below:-

Category	Existing Grade	Grade demanded.
Unskilled.	50-2-70-3-100	70-3-85-5-150
Semi-skilled	80-2-90-3-135	100-3-115-3-50
Skilled	100-3-115-3.50-150-5-200	150-5-250
Highly skilled	125-5-250	200-5-250-8-330.

The union stated that the last revision was done 5 years back and that their demand for wage revision or revision of grades is justified. The Union explained that the drop in the purchasing power of the rupee has a direct baring on the wage position of the employees. In support of their contention, the union pointed out that establishments of this size have within the last 3 years enhanced wages twice. It was further stated that this establishment earned huge profits in all the past 3 years continuously and, therefore, they are justifie in their demand.

The Management contended that the existin; wage scales were both fair and reasonable and that the profits earned in the last 3 years are not such as to enable them to meet the demands of the workers immediately especially when they had incurred losses for the years 1965-66 and 1966-67. They further argued that, though production at the moment is at the maximum level, as they have to contend with various factors such as keen competition in the market, government restrictions and high overhead expenses,

they could not afford to increase the wage bill of the workers.

The Workers' representative produced material relating to production figures orders placed by other states and the wage position obtaining in similar industrial concerns for the last two years in support of their contention. They also requested me to examine the balance sheets of the management for the last 4 to 5 years. The management also produced production figures and other material in support of their contention. I also requested the management to produce the balance sheets of the establishment for the last 3 years. The material produced by the parties was scrutinised by me. I also examined the demand of the union keeping in view the wage position in similar establishments of this industry. After considerable discussions by way of compromise, I suggested to the management that if they are not in a position to immediately concede the demand relating to revision of grades they may consider an adhoc increase of Rs.10/- per worker in the basic wage and that this increase could be adjusted to the general revision of grades in the financial year 1971-72. The representative of the management informed me that as a matter of fact they are not in a position to meet the increase demanded but yet in the interest of industrial peace they are agreeable to consider enhancement of Rs.5/- over the existing wages on adhoc basis. He also clarified that this increase shall not count for the purpose of Provident Fund, ESI contribution and for payment of retrenchment compensation and gratuity. The representative of the union informed me that if the management gives them Rs.10/- as an adhoc increase without any conditions as aforesaid and if the general revision of grades is taken up in May,1972, they have no objection to agree on these terms. The representative of the management informed me that it is difficult to concede the demand of the Union. I had further discussions with the represen-

tatives of the union separately and also with the management. The representatives of the union informed us that the union has no objection to drop demand No.2 i.e., enhancement of wages at the rate of Rs.30/-. But they are not agreeable to reconsider the demand No.1 (revision of grades). Since the management expressed their inability to concede the demand No.1, the efforts to resolve this issue did not bear fruit.

3.Enhancement of Dearness allowance:-The Union's contention is that the rates of Dearness allowance obtaining in the company are neither based on any scientific principles nor in keeping with the present high cost of living. The Dearness allowancebeing paid is Rs.20/- to unskilled and semi-skilled workers and Rs.30/- to skilled and highly skilled workers, the union demanded the linking of Dearness allowance to Hyderabd cost of living index and its payment at the rate of one rupee per point fixing the minimum at Rs.40/-.

The management have rejected the demand. The stand taken by them is the same as in regard to the demand for increase in wage scales,namely that they cannot meet extra expenditure on establishment now, and that they would consider this question also while considering the revision of wages.

4.Workloads of all categories of employees: The Union explained that there are no fixed workloads of the employees and that actually for the work that is being turned out there is need to increase the number of workers in each department. The Union requested that workloads may be fixed as any delay in this regard has a direct impact on the health of the workers.

The Managementon the other hand contended that no extrawork is being taken from the workmen and the existing complement of workmen is adequate. As this is a question involving technicalities I made asuggestion to the parties to get this issue resolved by a reference to the local Productivity Council. Though in principle this

suggestionswas agreeable to the parties on the question of meeting or sharing expenses for the work-load study, there was no compromise. The discussion on this issue, was ioftructuous.

5.Grant of 30 days earned leave: The union explained that in addition to the leave provided for under the Factories act, they need 30 more days leave with wages.

The management rejected this demand and explained that the workmen are eligible for the leave provided for under the Factories act.

6(a) Grant of 15 days Casual Leave with pay:-The Union's representative stated that now no casual leave is being granted. He also argued that to meet urgent or unforeseen personal and domestic engagements casual leave is required.

The management stated that as a result of grant of casual leave absenteeism will be increased and that it will have an adverse effect on the economic position of the management. On enquiries it is found that local industries are allowing about 6 to 8 days of Casual Leave with pay. I made a suggestion to the management to consider this demand initially for 8 days. The management, however, informed that it is difficult for them to concede this demand.

6.(b) Grant of 30 days days sick leave with pay:-The Union explained that their demand is for grant of 30 days sick leave in addition to what they are getting under Employees State Insurance Scheme.

The managementstated that the workers are now eligible to the sick leave ensured under Employees' State Insurance act and therefore there is no point in demanding 30 more days sick leave, they rejected the demand.

7.Grant of 15 days festival holidays with pay:The representatives of the union explained that the festival holidays allowed presently are only10 and that this number is not adequate to cover all the 3 National Holidays and important festivals. He further stated that they are justified in demanding 15 days festival holidays to cover all the important festivals,holidays like Maharnavami,Kanuma, Narkachaturdasi, Ramzan,Id etc.

The representative of the management statedthat the existing number of holidays was reasonable keeping in view the national interests of increased production. He further contended that the holidays allowed to the Company Compare favourable with those allowed by a majority of other factories in the area. He, therefore, took the stand that there was no justification whatsoever for the union's demand. It is found that similar industrial concerns in the area are allowing eight to twelve paid holidays including two national holidays namely Independance Day,and Republic Day. I made a suggestion to the management to grant two more paid holidays as a compromise, but my suggestion did not find favour with the management.

8.Supply of dresses:-The Union explained that their demand is for two pairs of dresses to each worker. The management stated that there is no justified reason to consider this demand. I made a suggestion to the management to consider this demand. I made a suggestion to the management to consider supply of dresses to theworkers whose dresses get spoiled while on duty. I also impressed on the union that demand for dresses to all workers is not reasonable, since x no other concern in the area is supplying dresses to all workers. The management are agreeable to give a pair of dresses to such of the workers whose clothes get spoiled while on duty. Their offer is not agreeable to the union.

9).Dismissal of Sri Venkaiah:-The representative of the Union stated that Sri Venkaiah is the organising Secretary of the Union and he is building up the Union's

position effectively. He further stated that Sri Venkaiah is an active office-bearer representing the grievances to the management and the management therefore bore grudge against him. He also stated that the charges framed against him are (1) In-subordination and (2) absence from duty for 5 days without prior sanction of leave from 1-7-70 to 5.7.70. He pointed out that the first charge was not proved at all and that the management refused to allow a representative of the workman during the domestic enquiry, which is against the established procedure of domestic enquiry. The representative stated that the section supervisor questioned him on 12.6-70 at about 12.30 p.m. as to where he had gone during working hours and the worker replied that he was in the painting section at that moment since Sri Ka loo another worker was telling him about an accident that occured in their locality after they left for work from their house. It was further stated that the worker had interval at 12.15 P.M. and his absence from workspot is only for a few minutes. This reply made the supervisor furious and he attributed this as an act of insubordination. He further explained that on 5.7.70 the worker submitted leave application for the period from 4.7.70 to 8.7.70 since he had to perform his brother's marriage which was fixed x suddenly. He also pointed out that if the management had an idea to punish him they would have charge-sheeted then only and inclusion of this charge now is an after thought. He also stated that for this period of absence wages for 5 days were cut from the salary.

The management's representative contended that they followed the established procedure in dismissing him from service and that refusal to allow a representative of the worker in the domestic enquiry does not vitiate the enquiry and therefore they are not inclined to reconsider this matter.

10.Retrenchment of Sri Rama Rao and Sri Babu Rao:-The Union's view-point was that these two workers are the executive members of the union and that the management

with a view to victimising them effected retrenchment. The management's representative stated that they followed the principle of last-come first go while effecting retrenchment of these 2 employees working as unskilled workers. They also produced the record showing the seniority list of the unskilled category and notice issued under Section25F(C) of the act. The management further explained that this retrenchment was done on the ground of slackness in business. The Union questioned that, when all the 500 workmen are required to run the business, it is not correct to say that only two employees were considered surplus on the ground of slackness in business. I suggested to the management to reconsider re-employment of these employees. The management expressed their inability to reconsider the matter, though the union is agreeable for reemployment.

As I could not find a meeting point in the respective stands taken by the parties to the dispute on each of the demands, I suggested to them reference of the issues for voluntary arbitration under Section 10(a) or reference under Section 10(2). While the union was agreeable to the suggestion, the management were not. I had therefore, to conclude the conciliation as having failed. The original statement of demands submitted by the union is enclosed.

Sd/-x x x x x
Commissioner of Labour.

Copy to the Management.
Copy to the Union
Copy to the Commissioner of Labour
Copy to the Deputy Commissioner of Labour concerned.

ANNEXURE IX

NOTE ON SECRET BALLOT

According to the Trade Unions Act,1926 any seven persons employed in an establishment or unit can form a union and get it registered with the Registrar of Trade Unions under the said enactment. Hence more than one registered union can operate in an unit or establishment. Each union makes an attempt to get ascendency over the other by raising demands. Such attempts on the part of the unions result in inter-union rivalry, which leads to industrial unrest in the shape of go-slow strikes etc. Industrial unrest hampers production. In order to check mushroom growth of unions and to ensure industrial peace the code of discipline presents the conception of one union in one industry and recognition of the majority union. Annexure IV to the Code of Discipline contains the procedure for verification of membership for purpose of recognitionof the majority union. As per the procedure prescribed in the Code either one of the unions or the Management can make a representation to the Labour Department to determine the relative strength of the Unions. On receipt of such a requisition the Commissioner of Labour obtains from the concerned Deputy Commissioner of Labour (Dy.Registrar of Trade Unions) information regarding the names of the Unions,registration Nos,their affiliations to Central Organisations of Labour, and extract of rules of the byelaws, etc. operating in the unit or establishment. On receipt of this information, the concerned Deputy Commissioner of Labour (Deputy Registrar of Trade Unions) or the concerned Assistant Commissioner of Labour is appointed as verification officer depending upon the size and status of the unit or establishment. The verification officer thereafter verifies as to whether the registered unions operating in that particular unit or establishment are affiliated to any of the Central Organisations of Labour which are a party to the Code or they have accepted the Code independently. If a Union is neither affiliated to the Central Organisation of Labour nor has it accepted the Code independentlY, the Verification officer advises it to accept the Code so as

to enable it for participationin the Verification proceedings. It may be cautioned here that according to theCode of Discipline, a period of one year must lapse between the date of acceptance of the Code and the date of verification, in case more than one unions are in existence. But in the State of Andhra Pradesh the existence of one-year period after the acceptance of the Code has been dispensed with as per the decision taken by the State Evaluation and Implementation Committee. The Unions will, however, have to complete one year of existence after registration. After making these preliminary enquiries the Verification Officer issues notices to the eligible unions for production of records for purposes of verification as per the procedure detailed in the enclosure appended hereto.

It may be mentionedhere that according to the procedure laid down in the Code the Verification Officer is required to make personal interrogation of workers whose membership of a particular union has been objected to by the rival union on the basis of systematic sampling methods. Experience showed that personal interrogation was not fool proof and therefore it was replaced by Secret Ballot as per the decision takenin the meeting convened by Sri T.Anjaiah, the then Labour Minister on 22.2.1975. This decision was subsequently ratified by the State Evaluation and Implementation Committee in its 18th meeting held on 16.1.1976. The method of Secret Ballot has been held to be the most democratic method to resolve interand intra-union rivalries. The procedure to be followedfor conduct of Secret Ballot instead of personal interrogation is detailed in theenclosure referred to above.

There is a possibility that one of the unions, which has participated in the verification proceedings conducted by the Labour Department to resolve inter union rivalry and to determine the majority union may not be satisfied with the results of the elections and the aggrieved party may approach civil court for the ventilar

tion of its grievance. In order to avoid this unnecessary litigation the State Evaluation and Implementation Committee in its meeting held on 3.1.1981 has resolved that the participating unions should give a written undertaking to the Commissioner of Labour that they would not approach the Court of Law challenging the verification conducted by the Labour Department. It was also decided that if any union is aggrieved it should first make a complaint stating the irregularities or objections, if any, in the verification before the Commissioner of Labour who shall investigate into the complaint and give his decision and the same would be binding on the participating unions. If they are still aggrieved by his decision they may represent the matter to the State Evaluation and Implementation Committee.

The Postal ballot has to be conducted in respect of verification in the Andhra Pradesh State Road Transport Corporation Limited only.

It may be pointed out here that intra-union rivalry also crops up in an union. A situation arises wherein there is only one union with two sets of office-bearers each claiming to be validly elected office-bearers. This intra union rivalry also createsindustrial unrest in the unit or establishment and presents a problem to the management as well as to the Labour Department as to with whom negotiations should be conducted. In case intra-union rivalry develops in a particular union the only remedy available is that one of the contesting groups could approach the civil court. The procedure followed in the Civil Court is lengthy and cumbersome and consumes lot of time. As has been statedabove intra union rivalryoften culminates into industrial unrest resulting in drop in production. Hence the State Evaluation and Implementation Committee in its 19th meeting held on 25.2.1976 under the Chairmanship of Sri T.Anjaiah, the then Labour Minister has resolved as follows:-

Where different groups of union conduct their own elections separately and elect different sets of office

bearers with the union the Registrar of TradeUnionsis required to intervene and conduct elections for the office bearers of the union. In case membership lists are not supplied by the office bearers of either of the rival groups the challenging group may be asked to collect from members three month 'union's subscription in advance within a month and furnish the list of such members alongwith other members of the union, which shall form voters list.

The procedure enumerated in the Enclosure is followed for conduct of Secret ballot elections to the Office bearers of the Union in order to resolve intra-union rivalry.

It may also be mentioned here that situation may arise where the president/general secretary of a union does notyhold a General Body Meeting or conduct elections even on receipt of requisition notice from the members of the Union as per the bye-laws. In such situation requisitionists may approach the Registrar of Trade Unions (Commissioner of Labour) for the conductof election of office bearers of the union after the expiry of the period stipulated in the bye-laws and the Registrar of Trade Unions is required to conduct elections for the office bearers of the Union as per the decision taken by the State Evaluation and Implementation Committee.

After the conduct of elections the Registrar of Trade Unions shall register the list of office bearers duly elected by Secret Ballot, in his records and shall also intimate to the Management the namesof the elected office bearers for being recognised for collective bargaining, if it is a recognised union.

The Conduct of Secret ballot elections was challenged in the High Court by Andhra Pradesh Labour Association and the High Court of Andhra Pradesh in Writ Petition No.380 of 1976 dated 4.8.1976 dismissed the appeal observing that the democratic process requires that

whenever there is a rivalry amongst two groups of a trade union it should be resolved by a secret ballot and in order to see that the secret ballot is properly carried out, it is also desirable that an independent body or authority should hold the secret ballot at which the members of the union can vote and elect the proper office bearers.

— 4 —

UNDERTAKING

We hereby give an undertaking that our Union will not approach the Court of Law challenging the Verification under the Code of Discipline in.....
(Name of Establishment)
.....

We give this undertaking in pursuance to the decision of the Evaluation and Implementation Committee in its 27th meeting held on 3.1.1981.

SIGNATURE.

—

ENCLOSURE

GUIDELINES FOR VERIFICATION-CUM-SECRET BALLOT OF MEMBERSHIP OF UNIONS FOR THE PURPOSES OF RECOGNITION UNDER THE CODE OF DISCIPLINE.

1. On receipt of instructions from the Head Office the Verification Officer will ask the General Secretaries of the eligible Unions through a notice to be issued by Registered Post Acknowledgement Due to produce before him within ten days at the stipulated place and time, a list (in triplicate) of their members who have paid subscription for atleast three months during the period of six months immediately preceeding the date of reckoning alongwith (i) membership-cum-subscription register (ii) receipt counterfoils, (iii) cash and account books, (iv) bank books and (v) a copy of the constitution of the Union.

2. If any of the Unions fails to produce the list of its members and records, a second and final notice will be given by Registered Post Acknowledgement Due asking it to produce them within ten days at the stipulated place and time. If the Unions fail to produce the list and records on the second occasion also no further attempt will be made to verify its membership.

3. However in genuine cases a third notice may be issued (with the permission of the Head Office) for production of records and that not more than fifteen days extension of time be allowed. The Union asking for extension of time after second notice should file its application with the Evaluation and Implementation Machinery sufficiently ahead of the date fixed for production of records.

4. In the following circumstances extension of time for only one month be given for production of records by the Union:-

where (i) union intimates loss of records and has reported to the police about their loss;

(ii) the records are reported to have been

lost in floods or fire.

(iii) the records are in the custody of a Court or

(iv) they have been locked by a Magistrate.

5. The eligible unions concerned should be addressed to prepare department-wise or Category-wise list of members who have paid three months' subscription in the period of six months prior to the date of reckoning. The date of reckoning should be the first of the month in which verification commences (i.e.) when the Officer asks the Unions to submit their membership lists and records for scrutiny. The list of members to be prepared (in triplicate) should be in the following proforma:-

Sl.No.	Name of the worker Father's/husband's Name	Department Ticket No.	Subscription period Month	Month-Month	Month-Month
1.	2.	3.	Month 4.	Month	

6. In this list the Union may be asked to enter the Receipt No. and beneath it the date of payment. If any receipt No. is 20 and the payment was made on 10.8.1974 the entry will be made as 20/10.8.1974.

7. Notices calling for membership lists and other records should be sent by registered post Acknowledgement Due or by messenger and in either case acknowledgements should be obtained and preserved. If the notice for production of records is sent by Registered Post Acknowledgement Due to the registered address given by the Unions, it should be sufficient and no contention that it was not received by the Secretary or the President should be accepted.

8. Notices should be addressed to the General Secretary of the Union by designation (never by name) and issued at the Registered address of the Union.

9. In the notices to be issued to the Unions for production of records and membership lists the Verification Officer need not indicate the clause or clauses of the

Code of Discipline underwhich the verification is being taken up unless there is a clear indication in the communication sent by the Head Office.

10. While issuing the notices referred to above, it should be seen that the unions get clear ten days' time for production of membership lists and other records. The transit period should be approximately calculated and after giving clear ten days time,a date should be fixed for production ofthe list and the records. If the unions fail to produce the list and other records within the specified period, they have to be given yet another opportunity giving clear ten days' time.

11. If union fails to produce the records even after the Second and final notice (third notice in special circumstances), the defaulting union forfeits its right to participate in the verification proceedings.

12. On the date fixed for production of membership lists and accounts, the name of each person in the list should be checked with the membership register and the counterfoils of receiptsand the amounts collected on any particular date or period should be verified with the Bank account and/or Post Office Savings Bank and the Cash Book to see if anythey have been actually received and credited, as otherwise it is possible that a particular sum may be shown to have been received as subscription and the same may be shown as having been spent with the result that all the entries may be bogus and records might have been prepared just for the purpose of varification.

13. The membership lists should be compared with the muster rolls of the Employer at the work places where the original musters are maintained. The verification with the musters has to be done by the Verification Officers personally and for this purpose they have to visit the establishments etc. Copies of the musters need benot be called for verification.

14. After cent percent check the actual strength should be

determined and entered at the end of the list. Lists may be obtained in triplicate. The verified strength should be entered in the list and the Officer himself should sign and get it signed by the Union office bearers who attend the verification. One list may be returned to them and two copies may be retained with the Verification Officer.

15. The total complement as on the date of reckoning should be personally verified by the Verification officers from the Musterrolls of the establishments covered and the figures of total complement shown to the office bearers of the contesting unions before the secret ballot and their signatures obtained. This is essential to avoid complications in future. Muster rolls or the other records of the Management should not be shown to the office bearers of the Unions without the knowledge and permission of the Management.

16. Workers who have died, retired, retrenched or dismissed from service or transferred to another Division after the date of reckoning should not be excluded from the total complement but the retired, retrenched and dismissed workers should not be allowed to vote. The names of the workers transferred to other Divisions should not be deleted from the voters list.

17. The next stage is the preparation of draft voters list. The draft voters list has to be prepared on the basis of the verified membership lists. Care should be taken that the name of a voter does not appear more than once in the voters list although his name may be found in the membership lists of more than oneunion.

18. A copy of the draft voters list has to be shown or given to the representatives of the Unions sufficiently in advance or giving three four days time to enable them to file objections point out omissions etc. Thereafter the voters list has to be finalised. It is enough if one copy of the finalised voters list is given to each of the contesting unions. The final voters list as far as possible be given to the contesting unions fifteen days before the date of secret ballot.

19. The date of secret ballot and the postal ballot and other formalities be decided in consultation with the contesting unions and the management.

20. Secret ballots under Clause (5) in various units/ branches of the same industry should be conducted simultaneously on one and the same day.

21. Postal ballot will be provided only to those members workmen who will be away/on duty on the date of secret ballot As soon as the date of polling is fixed, the Verification Officer should address the management to furnish a list of all those workmen borne on the voters list who will be away onduty on the date of polling. This list should be obtained from the management on the date of polling. A copy of the list should be furnished to the contesting unions three or four days after the regular secret ballot. Corrections and omissions etc. may be pointed out by the unions on the next day of the polling for rectification/inclusion in the voters list for postal ballot. The verification Officers have to suitably amend the said list after consulting the officers of the deploying department on the telephone. The list so finalised will be the voters list for postal ballot.

22. Postal ballot should be held on the 8th day of the day of secret ballot which gives seven days clear interval.

23. The postal ballot has to be conducted in respect of verification in the Andhra Pradesh State Road Transport Corporation only. Postal ballot should not be conducted in other undertakings even though a few workers may be away on duty on the date of the secret ballot.

24. If the number of voters exceeds 1,000 at any depot/ ugit an additional booth may be set up.

25. The Verification officer should obtain the list of workers transferred from one depot to another within

the same Division after the date of reckoning. The Unions also should furnish a list of such transferred workers to the Returning Officer, who will make necessary additions and deletions in the voters lists of the concerned depots/unibes informing the contesting unions. All those amendments should be carried out before the voters list is finalised and given to the contesting unions.

26. All those workers who are under suspension and whose names are included in the voters list will have the right of voting.

27. Workers who are transferred to another Division after the date of reckoning but before the finalisation of the voters list have to be followed to vote in the Division from where they were transferred provided they are available on the date of polling; otherwise they will not be allowed to vote. The contesting unions should furnish the names of such transferred workers to the Verification Officers before the finalisation of the voters list.

28. All paid apprentices and all casuals have to be included in the total complement and the voters list if they are on the muster rolls of the Division/Establishment on the date of reckoning and allowed to vote.

29. A voter will be allowed to cast his vote only at the place where his name appears in the voters list.

30. Canvassing within the polling station and within a radious of 200 meters and within 2hours of the commencement of the polling is prohibited.

31. Each contesting Union can appoint one polling agent an two relief agents at each polling station. The agent must be an employee of the establishment, member of the union and himself a voter.

32. The unions should furnish in writing the names of the agents to the concerned Returning Officer atleast three days in advance of the date of secret ballot.

33. At each booth one polling agent and two relief agents for each candiate will be permitted on production of identity card.

34. The Polling Agents of the unions should reach the polling station atleast fifteen minutes before the commencement of the poll and sign on the slip to be inserted in the ballot box before it is sealed by the Presiding Officer. The sealing of the ballot box and the poll will not be stopped for the attendance of the polling agents. The poll will start at the time fixed without waiting for the polling agents.

35. Every polling agent must produce before the Presiding Officer his appointment letter signed by the Depot/Unit secretary who will be authorised by the President/ General Secretary of the Union to appoint polling agents.

36. Only one polling agent will be allowed inside the polling station at any given time.

37. Polling agents of the unions can raise an objection with reference to the voting of any voter in case of doubt. The identity of the voter will be verified with the management or with reference to his identity card.

38. The voters waiting at the time of closing of the poll within the area of the polling booth will be permitted to vote.

39. The voters who attend after the time fixed will not be allowed to vote.

40. Postal ballot papers will be available with the officers who are appointed for this purpose and available atcach depot/unit on the date and hours fixed.

41. Postal ballots will be collected in sealed covers by the officers appointed for this purpose and available at each depot on the date and hour fixed. The Verification Officers should obtain the signatures of the agents of the contesting unions on the sealed envelops contain-

ing the ballot papers,if the agents are present.

42. Each contesting union will have the freedom to choose its own symbol for election.

43. The contesting unions should supply the blocks (size 1" x 1") of their respective symbols to the concerned Verification officers by the dates fixed by them. If they are supplied after that date the ballot papers will be printed with only the name of the union but not with the symbol of the union which fails to supply the blocks by the appointed day.

44. The Verification Officer will supply not more than 25 ballot papers to each of the contesting unions (after duly cancelling the ballotpapers) for educating the workers.

45. If thevverification/secret ballot is not complete within a period of 12 months from the date of reckoning the Verification Officer shall change the date of reckoning and issue fresh notices and undertake fresh verification.

46. Immediately after completion of poll on the day of polling the Presiding Officer of the concerned polling booth has to seal the ballot boxes properly and to bring them under police escort to secure place where the ballot papers will be counted. The Place of counting must be within the depot/unit premises and preferably in closed doors.

47. The presiding Officer should break the seal of the ballot boxes and open them in the presence of the polling agents of the contesting unions and then start counting of ballot papers with the assistance of the Polling Officer and other polling personnel drafted for polling duty. He can allow only one authorised person for each contesting union to witness the counting of ballot papers. While counting ballot papers if any invalid ballot paper is found it should be separated and shown immediately to

the representatives of the Unions and get their signatures on the back side of such invalid ballot papers.

48. After completion of counting the Presiding Officers can announce the result then and there and obtain on two copies of the results the signatures of the representatives of the unions who have witnessed the counting in token of their having been satisfied with the conduct of election and counting of votes and handover the copies of the results to the Returning Officer concerned alongwith the used and unused ballotpapers on the next day.

49. On receipt of sealed covers containing postal ballot papers, the sealed covers should be opened and ballot papers counted in the presence of the representatives of the unions and the result compiled/ before the Returning Officer and specified time and date and sent to the Chief Returning Officer/ Commissioner of Labour in the prescribed proforma.

50. Finally, the Verification Officer should send his detailed verification report enclosing it in a cover marked 'confidential' direct to the Chief Returning Officer/ Commissioner of Labour. The Verification report is a confidential document and its contents should not be disclosed to any one. The parties should not know that the verificationreport has been forwarded to the Head office.

51. The verification officers are further requested to send alongwith the results, the representations if any, in original filed by the contesting unions together with their detailed comments. If there are no representations, mention should be made accordingly.

52. Counting of votes has to be done by the Presiding officers at each depot/unit on the same day i.e. the date of poll in the presence of the polling agents and their signatures be obtained and the figures communicated to the Returning officer who will furnish the results in the prescribed proforma to the Headoffice immediately

and subsequently compile the results of postal ballot after receipt of the sealed envelope containing the ballot papers of those who were away on duty and then forward the final compiled results to the Head office in the following proforma:-

1. Date of reckoning.
2. Total complement of the Establishment/Division on the date of reckoning.
3. Total number of voters as per voters list.
4. Total number of votes polled on the Polling Day / On the Postal Ballot Day
5. Total number of invalid Votes " "
6. Total number of votes polled by 'X' Union " "
7. Total number of votes polled by 'Y' Union " "
8. Total number of votes polled by 'Z' Union " "

53. The final result of electionwill be announced by the Chief Returning Officer/Commissioner of Labour.

54. The Verification Officers should not give any impression by their talk or behaviour that they are in favour of one union or the other. They should be absolutely impartial and be courteous and polite but firm.

55. If the Verification officers have to go outside their jurisdiction in connection with verification, they have to obtain prior permission from the Commissioner of Labour.

56. Before the secret ballot the Verification Officers should address the local police officers for providing adequate police bandobust for preservation of law and order at the polling booths and their offices.

57. For conducting secret ballot an expenditure not exceeding Rs.250/- is admissible if the total complement of the factory establishment/division on the date of reckon-

ing is less than 1,500. If the total complement of the factory/establishment/division on the date of reckoning is 1,500/- or more an expenditure not exceeding Rs.500/- is admissible. The Verification officers should see that requisitions for funds are sent to the Head office atleast 15 days in advance of the date fixed for secret ballot to enable the Head office to draw the amount on abstract contingent bill and to arrange remittance through Demand Draft.

58. Immediately after conducting the secret ballot the Verification officer should send the vouchers in original for recoupment of the advance amount received by him alongwith the Stock Entry Certificate for the articles purchased by him in connection with the secret ballot. Regarding the un-spent amount, if any, the Verification officer has to obtain a Demand Draft in favour of the Commissioner of Labour and send the same to the Head office alongwith the vouchers.

59. If the Verification officer has not obtained the amount in advance and has incurred the expenditure, he should send the vouchers alongwith the Stock Entry Certificate to enable the Head office to prepare final bill to claim and remit the amount to the Verification officer.

60. Each voucher should be endorsed "Paid by me" and attested by the Verification officer.

61. In case of any doubt the Verification officers should consult the Head office.

*****