

Trade Union Recognition

Within workplaces, trade unions undertake to be recognized by the employer as the representative of employees. This is where the trade union attempts to advance a legitimate claim to negotiate with the employer on behalf of the employees, on matters related to conditions of work and the negotiation of pay. In order for the trade union to be recognized by the employer, it must be established that it represents a majority of the members of staff, who are members of the union.

Where a majority of unionized workers is confirmed to exist in an enterprise or workplace, a 'bargaining unit' is accepted to have been established. The bargaining unit is created on a voluntary basis and its formal recognition is based on the principle that the trade union has secured a minimum representation of fifty percent (50%) + 1 plus one. The problem with this arrangement is that there is no force of law to mandate the recognition of the trade union by the employer. This means that the employer voluntarily accepts to recognize and engage with the trade union; with fear of the latter having a legal recourse. Suffice to say, where there is a dispute in establishing that a 50+1 majority worker representation exists so as to confirm the legitimacy of the creation of a bargaining unit, the regulatory agency in the jurisdiction, can be called upon to conduct a survey or audit to justify or deny the claim. In the case of Barbados, the responsibility of conducting a survey or audit falls to the Labour Department.

There is a high level of significance attached to trade union recognition, as it gives the trade union certain rights in the workplace. The list of these rights includes; undertaking collective bargaining, engaging with management on workplace issues, and grievances, to participate as a member of the Occupational Safety and Health Committee, the ability to visit the workplace and to have discussions with the unionized members, and to name a shop steward on staff for the purpose of organizing, monitoring, addressing concerns of staff members, working as the link between the management and the union leadership.

As required by the Trade Union **Act in democratic** societies, trade unions are registered as legal entities under the law. However, it must be pointed that registration does not mean recognition. This raises some questions about the ability of trade union to be assured the rights to protect the interest of unions in the workplace where the employer is under no legal obligation to recognize a trade union, if even the evidence satisfied that a bargaining unit exists. This happens to

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be a shortcoming of voluntary nature of the engagement of the employer with the trade union.

This brings us to consider what the implications are for the rights of workers, citizens and residents, for freedom of choice and freedom of association, as expressed under the constitution. It would seem that there is an inherent conflict which needs to be resolved, as it would only be fair that the employer has the right to refuse or deny engagement with the trade union, as there is force of law that mandates otherwise.

The search for an alternative, leads to the exploring of statutory or compulsory recognition. On face value, this might appear a viable option as it provides the opportunity for the trade union to apply to the Court of Law, Industrial Court or a tribunal which has been established for the purpose of hearing such matters. This is a step which requires a continuous approach, given that there are other considerations such as the drawbacks which come with moving from a voluntary to statutory arrangement, it would be interesting to know if an employer could engage with more than one trade union at a time, where the claim is made that each represents workers at the enterprise or workplace.

In reflecting on the current practice of trade union recognition, there are situations where two and, in some instances, more than two trade unions representing the interest of members at the workplace. Where each has a right to represent their members, only one may be able to lay claim to having 50+1 required to establish a bargaining unit. As it stands, these competing trade unions are not ostracized by the employer but are accommodated. Should a decision be taken to press for compulsory recognition, it would certainly raise eyebrows as to what would be the fate of those trade unions that have minority membership at the workplace.