



Industrial and socio- political relations

The importance of social dialogue

The Honourable Mr. Justice Jefferson Cumberbatch, Justice of Appeal
Supreme Court, Barbados Judiciary
At the Meet with the Court Symposium of the Industrial Court of Trinidad and Tobago
June 10, 2023

per Mrs. Deborah Thomas-Felix, President, ICTT

- **“...IT IS IMPORTANT THAT UNIONS, EMPLOYERS AND GOVERNMENT SHOULDER AN EQUAL BURDEN TOWARDS NATION-BUILDING. THIS, AFTER ALL, IS THE FOUNDATION OF SOCIAL PARTNERS[HIP] AND SOCIAL DIALOGUE...”**
- **[FEATURE ADDRESS ON 18 AUGUST 2018 AT NUGFW 2ND TRIENNIAL CONGRESS]**



PRESIDENT THOMAS-FELIX (2)

- **“ SOCIAL DIALOGUE IS KEY TO THE ADJUSTMENT WHICH THE WORKPLACE HAS TO MAKE DURING AND AFTER THIS PANDEMIC. I CANNOT OVERSTATE THE IMPORTANCE OF DISCUSSIONS, GENUINE CONSULTATION AND COMPROMISE, BUILT THROUGH SOCIAL DIALOGUE FOR THE EFFECTIVE IMPLEMENTATION OF MEASURES TO ADDRESS THIS PANDEMIC AND ITS IMPACT ON THE LABOUR MARKET....”**

[17 SEPTEMBER 2021 AT A SPECIAL SITTING OF THE INDUSTRIAL COURT]

CONTENTS

- **INTRODUCTION**
- **RELATIONS**
- **ELEMENTS OF GOOD RELATIONS**
- **SOCIAL DIALOGUE**
- **THE BARBADOS EXPERIMENT**
- **COLLECTIVE BARGAINING**

THE
INDUSTRIAL
RELATION

USUALLY EXISTS BETWEEN
EMPLOYER AND WORKERS'
REPRESENTATIVE

AND FORMALLY CREATED
THROUGH THE PROCESS
OF RECOGNITION

THE
SOCIO-
POLITICAL
RELATION

EXISTS BETWEEN THE STATE,
LABOUR AND THE PRIVATE
SECTOR

CREATED BY VOLUNTARY SOCIAL
PARTNERSHIP

NOTE THE BARBADOS
EXPERIMENT [INFRA]

Elements of good relations

FAIRNESS, COMPROMISE AND GOOD
FAITH

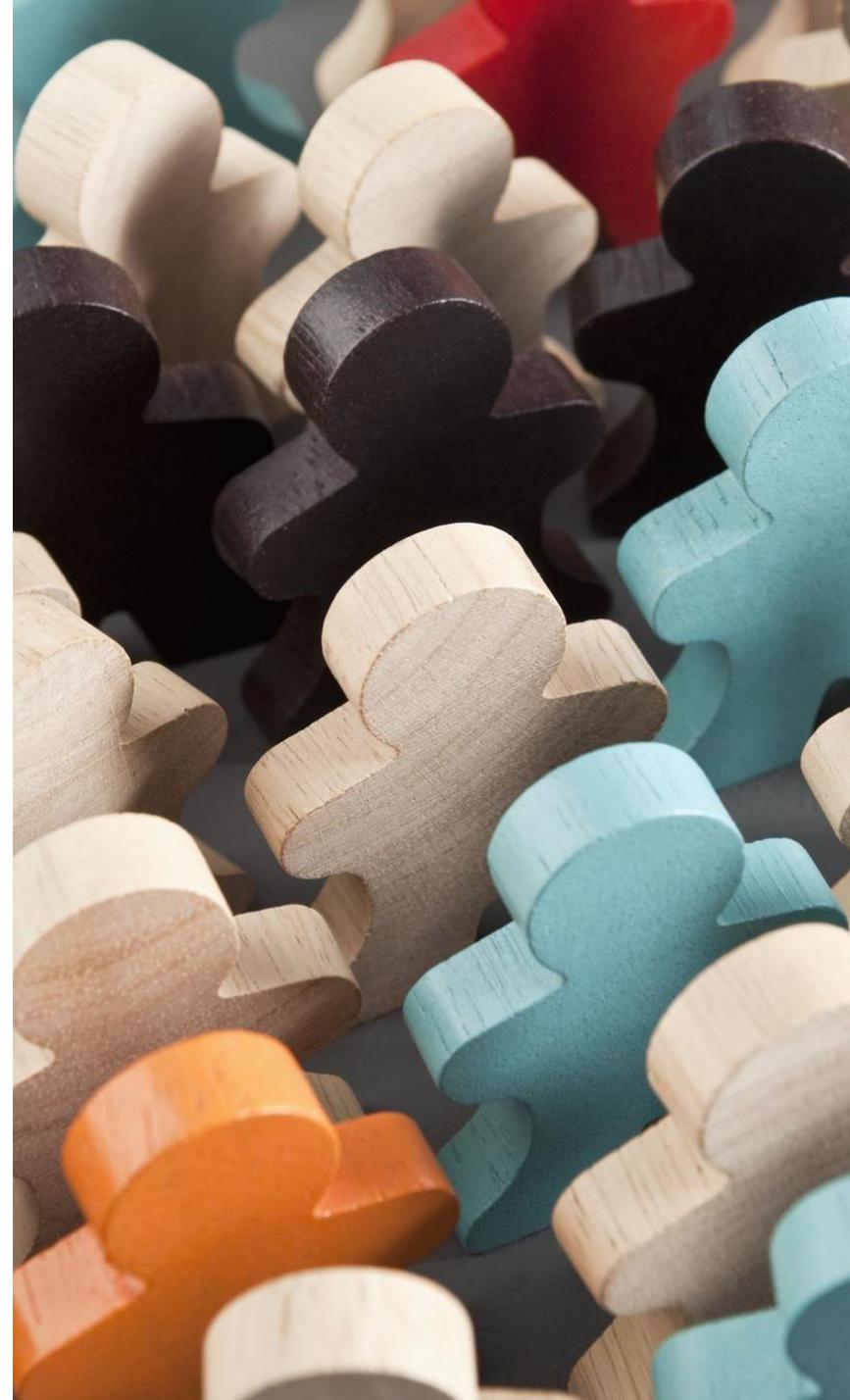
COMMUNICATION

PRODUCTION

PUBLIC INTEREST CONSIDERATIONS

FAIRNESS

- IN CONDITIONS OF WORK
-REMUNERATION, HEALTH
SAFETY & WELFARE,
COLLECTIVE BARGAINING.
- IN EQUALITY
OF TREATMENT OF THE
OTHER PARTY(IES)TO THE
RELATION [irrespective of
bargaining power]
- IN TERMINATION OF
RELATION– NATURAL
JUSTICE- **Industrial
Relations Act, Ch. 88.01,
ss 10 (4), (5), Employment
Rights Act 2012, Part V**



GOOD FAITH

- HONESTY AND CANDOUR
- CONSCIONABILITY*
- FREEDOM OF INFORMATION
- TRANSPARENCY





COMMUNICATION

- IMPERATIVE TO THE VIABILITY OF **ANY** RELATION-MARITAL, FAMILIAL, ROMANTIC, COMMERCIAL, NEIGHBOURLY....
- SOCIAL DIALOGUE—DEFINED BY THE INTERNATIONAL LABOUR OFFICE AS INCLUDING “**ALL TYPES OF NEGOTIATION, CONSULTATION OR, SIMPLY, EXCHANGE OF INFORMATION BETWEEN OR AMONG REPRESENTATIVES OF GOVERNMENTS, EMPLOYERS AND WORKERS ON ISSUES OF COMMON INTEREST RELATING TO ECONOMIC AND SOCIAL POLICY.**”



Communication

DESCRIBED AS “THE ILO’S BEST MECHANISM IN PROMOTING BETTER LIVING AND WORKING CONDITIONS AS WELL AS SOCIAL JUSTICE.”

RELEVANT ALSO TO “ANY EFFORT TO MAKE THE ECONOMY MORE PERFORMING AND MORE COMPETITIVE AND TO MAKE THE SOCIETY IN GENERAL MORE STABLE AND MORE EQUITABLE...”

MAY BE TRIPARTITE OR BIPARTITE.

SOCIAL DIALOGUE

GREATLY FACILITATED IN THE INDUSTRIAL RELATION BY EXISTENCE OF THE CONCEPTS OF FREEDOM OF ASSOCIATION FOR TRADE UNION PURPOSES AND OF COLLECTIVE BARGAINING.

THE SOCIAL PARTNERSHIP IS SUBSTANTIALLY AIDED BY THE BREADTH AND NUMBER OF ISSUES FOR DIALOGUE AMONG THE PARTIES TO THE RELATION.

The Barbados Experiment

- TRIPARTITE SOCIAL DIALOGUE-
GOVERNMENT, LABOUR
AND PRIVATE SECTOR.
- 1 MAY 2023 (LABOUR
DAY IN BARBADOS)
- DECLARATION OF
MISSION BARBADOS



THE DECLARATION

BECOME

BECOME A CLEAN AND BEAUTIFUL LARGE-OCEAN STATE IN WHICH ALL DOMESTIC ACTIVITIES ARE 100 PER CENT SUSTAINABLE BY 2035

ENSURE

ENSURE THAT BARBADIANS ARE ACTIVELY INVOLVED IN EVERY ASPECT OF THE SOCIAL, ECONOMIC AND CULTURAL DEVELOPMENT OF THEIR COUNTRY.

ENSURE

ENSURE THAT EVERY BARBADIAN HAS EQUITABLE AND RELIABLE ACCESS TO **CLEAN WATER AND AFFORDABLE NUTRITIOUS FOOD.**

THE DECLARATION

IMPROVE

IMPROVE PUBLIC HEALTH AND SAFETY BY ACHIEVING A 90 PER CENT REDUCTION BOTH IN NEW CASES OF NON-PCOMMUNICABLE DISEASES AND IN CRIME

PROVIDE

PROVIDE OPPORTUNITIES FOR BROAD-BASED WEALTH CREATION AND **REDUCE THE RATE OF POVERTY BY 50 PER CENT.**

TRANSFORM

TRANSFORM BARBADOS INTO AN INCLUSIVE DIGITALIZED SOCIETY WITH SEAMLESS ACCESS TO SERVICES.



COLLECTIVE BARGAINING

- **BIPARTITE SOCIAL DIALOGUE**
- **THE ILO PRINCIPLES-CONVENTION # 98**
- **THE RIGHT TO COLLECTIVE BARGAINING IS A FUNDAMENTAL RIGHT ENDORSED BY MEMBERS OF THE ILO ON JOINING THE ORGANIZATION WHICH THEY HAVE AN OBLIGATION TO RESPECT, TO PROMOTE AND TO REALIZE IN GOOD FAITH**



COLLECTIVE BARGAINING

- COLLECTIVE BARGAINING IS A RIGHT OF EMPLOYERS AND THEIR ORGANIZATIONS, ON THE ONE HAND, AND ORGANIZATIONS OF WORKERS, ON THE OTHER HAND, INCLUDING FIRST-LEVEL TRADE UNIONS, FEDERATIONS, AND CONFEDERATIONS. ONLY IN THE ABSENCE OF THESE ORGANIZATIONS MAY INDIVIDUAL REPRESENTATIVES OF THE WORKERS CONCERNED CONCLUDE COLLECTIVE AGREEMENTS. **KOSTAL UK LTD. v DUNKLEY ET AL [2022] 2 ALL E R 607 (UKSC)**
- THE RIGHT TO COLLECTIVE BARGAINING SHOULD BE RECOGNIZED THROUGHOUT THE PUBLIC AND PRIVATE SECTORS

COLLECTIVE BARGAINING

THE PURPOSE OF ALL COLLECTIVE BARGAINING IS THE REGULATION OF TERMS AND CONDITIONS OF EMPLOYMENT IN A BROAD SENSE AND [OF] THE RELATIONS BETWEEN THE PARTIES.

COLLECTIVE AGREEMENTS SHOULD BE BINDING. IT MUST BE POSSIBLE TO DETERMINE TERMS AND CONDITIONS OF EMPLOYMENT WHICH ARE MORE FAVOURABLE THAN THOSE ESTABLISHED BY LAW AND PRECEDENCE MUST NOT BE GIVEN TO INDIVIDUAL CONTRACTS OVER COLLECTIVE AGREEMENTS, EXCEPT WHERE MORE FAVOURABLE PROVISIONS ARE CONTAINED IN INDIVIDUAL CONTRACTS.

COLLECTIVE AGREEMENTS

TO BE EFFECTIVE, THE EXERCISE OF THE RIGHT TO COLLECTIVE BARGAINING REQUIRES THAT WORKERS' ORGANIZATIONS ARE INDEPENDENT AND NOT "UNDER THE CONTROL OF EMPLOYERS OR EMPLOYERS' ORGANIZATIONS" AND THAT THE PROCESS OF COLLECTIVE BARGAINING CAN PROCEED WITHOUT INTERFERENCE BY THE AUTHORITIES.

A TRADE UNION WHICH REPRESENTS THE MAJORITY OR A HIGH PERCENTAGE OF THE WORKERS IN A BARGAINING UNIT MAY ENJOY PREFERENTIAL EXCLUSIVE BARGAINING RIGHTS.

COLLECTIVE BARGAINING

- HOWEVER, IN CASES WHERE NO TRADE UNION FULFILLS THESE CONDITIONS OR SUCH EXCLUSIVE RIGHTS ARE NOT RECOGNIZED, WORKERS' ORGANIZATIONS SHOULD NEVERTHELESS BE ABLE TO CONCLUDE A COLLECTIVE AGREEMENT ON BEHALF OF ITS OWN MEMBERS.
- **THE PRINCIPLE OF GOOD FAITH IN COLLECTIVE BARGAINING** IMPLIES RECOGNIZING REPRESENTATIVE ORGANIZATIONS, ENDEAVOURING TO REACH AN AGREEMENT, ENGAGING IN GENUINE AND CONSTRUCTIVE NEGOTIATION, AVOIDING UNJUSTIFIED DELAYS IN NEGOTIATION AND **MUTUALLY** RESPECTING THE COMMITMENTS ENTERED INTO, TAKING INTO ACCOUNT THE RESULT OF NEGOTIATIONS IN GOOD FAITH.

COLLECTIVE BARGAINING

- IN VIEW OF THE FACT THAT THE VOLUNTARY NATURE OF COLLECTIVE BARGAINING IS A FUNDAMENTAL ASPECT OF THE PRINCIPLES OF FREEDOM OF ASSOCIATION (C 87), COLLECTIVE BARGAINING MAY NOT BE IMPOSED UPON THE PARTIES AND PROCEDURES TO SUPPORT COLLECTIVE BARGAINING MUST, IN PRINCIPLE, TAKE INTO ACCOUNT ITS VOLUNTARY NATURE; MOREOVER, THE LEVEL OF BARGAINING MUST NOT BE IMPOSED UNILATERALLY BY LAW OR BY THE AUTHORITIES, AND IT MUST BE POSSIBLE FOR BARGAINING TO TAKE PLACE AT ANY LEVEL.



COLLECTIVE BARGAINING

- IT IS ACCEPTABLE FOR CONCILIATION AND MEDIATION TO BE IMPOSED BY LAW IN THE FRAMEWORK OF THE PROCESS OF COLLECTIVE BARGAINING, PROVIDED THAT REASONABLE TIME LIMITS ARE ESTABLISHED. HOWEVER, **THE IMPOSITION OF COMPULSORY ARBITRATION IN CASES WHERE THE PARTIES DO NOT REACH AGREEMENT IS GENERALLY CONTRARY TO THE PRINCIPLE OF VOLUNTARY COLLECTIVE BARGAINING AND IS ONLY ADMISSIBLE (SIC) (1) IN ESSENTIAL SERVICES IN THE STRICT SENSE OF THE TERM (THOSE OF AWHOSE INTERRUPTION WOULD ENDANGER THE LIFE PERSONAL SAFETY OR HEALTH OF THE WHOLE OR PART OF THE POPULATION; (2) WITH REGARD TO PUBLIC SERVANTS ENGAGED IN THE ADMINISTRATION OF THE STATE; (3) WHERE, AFTER PROLONGED AND FRUITLESS NEGOTIATIONS, IT IS CLEAR THAT THE DEADLOCK WILL NOT BE RESOLVED WITHOUT AN INITIATIVE BY THE AUTHORITIES; AND (4) IN THE EVENT OF ACUTE NATIONAL CRISIS.**
- **ARBITRATION WHICH IS ACCEPTED BY BOTH PARTIES IS ALWAYS LEGITIMATE**

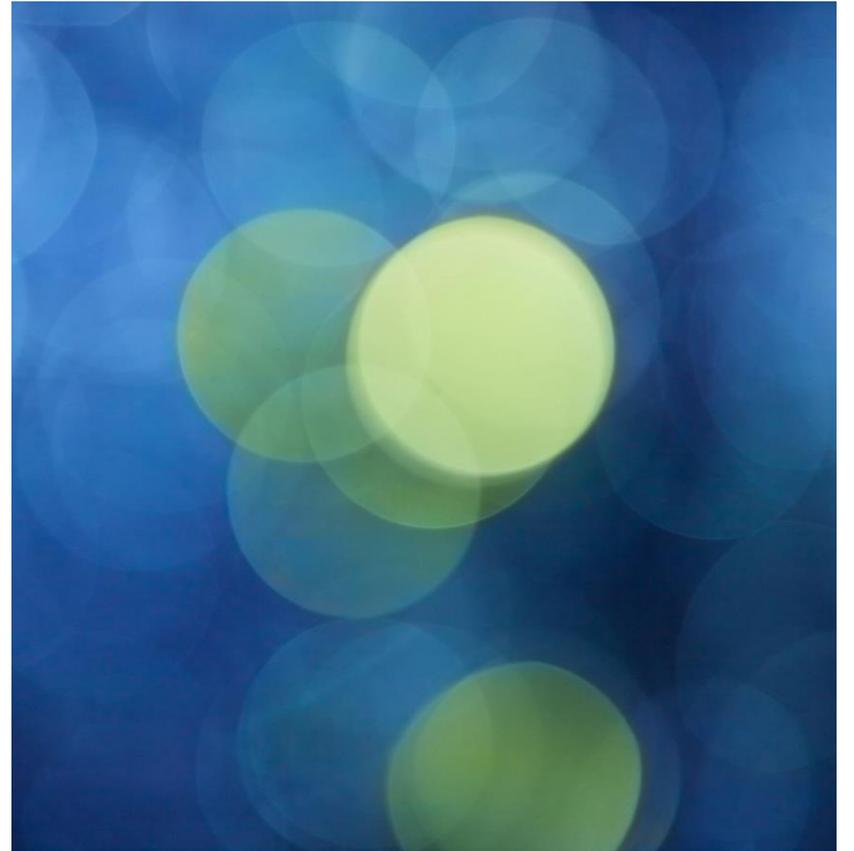
COLLECTIVE BARGAINING

INTERVENTIONS BY THE LEGISLATIVE OR ADMINISTRATIVE AUTHORITIES WHICH HAVE THE EFFECT OF ANNULLING OR MODIFYING THE CONTENT OF FREELY CONCLUDED COLLECTIVE BARGAINS, INCLUDING WAGE CLAUSES, ARE CONTRARY TO THE PRINCIPLE OF VOLUNTARY COLLECTIVE BARGAINING.

THESE INCLUDE:

THE SUSPENSION OR DEROGATION OF COLLECTIVE AGREEMENTS BY DECREE WITHOUT THE AGREEMENT OF THE PARTIES;

THE INTERRUPTION OF AGREEMENTS WHICH HAVE ALREADY BEEN NEGOTIATED;



COLLECTIVE AGREEMENTS

THE REQUIREMENT THAT FREELY CONCLUDED COLLECTIVE AGREEMENTS BE RENEGOTIATED;

THE ANNULMENT OF COLLECTIVE AGREEMENTS AND THE FORCED RE-NEGOTIATION OF AGREEMENTS THAT ARE CURRENTLY IN FORCE;

THE COMPULSORY EXTENSION OF COLLECTIVE AGREEMENTS ALREADY IN FORCE EXCEPT IN CASES OF EMERGENCY AND FOR SHORT PERIODS.



COLLECTIVE BARGAINING

- RESTRICTIONS ON THE CONTENT OF FUTURE COLLECTIVE AGREEMENTS, PARTICULARLY IN RELATION TO WAGES, IMPOSED BY THE AUTHORITIES AS PART OF ECONOMIC STABILIZATION OR STRUCTURAL ADJUSTMENT POLICIES FOR IMPERATIVE REASONS OF ECONOMIC INTEREST, ARE ADMISSIBLE ONLY INsofar AS SUCH RESTRICTIONS ARE PRECEDED BY CONSULTATIONS WITH THE ORGANIZATIONS OF WORKERS AND EMPLOYERS AND FULFIL THE FOLLOWING CONDITIONS:



COLLECTIVE BARGAINING

- (I) THEY ARE APPLIED AS AN EXCEPTIONAL MEASURE AND ONLY TO THE EXTENT NECESSARY;
- (II) THEY DO NOT EXCEED A REASONABLE PERIOD; AND
- (III) THEY ARE ACCOMPANIED BY ADEQUATE GUARANTEES DESIGNED TO PROTECT EFFECTIVELY THE STANDARDS OF LIVING OF THE WORKERS CONCERNED AND PARTICULARLY THOSE WHO ARE LIKELY TO BE THE MOST AFFECTED.

FROM GERNIGON, ODERO & GUIDO -"COLLECTIVE BARGAINING: ILO STANDARDS AND THE PRINCIPLES OF THE SUPERVISORY BODIES" [ILO]



THE END



THANKS FOR YOUR ATTENTION!