

**AZAD GOVT. OF THE STATE OF JAMMU & KASHMIR, LAW &
PARLIAMENTARY AFFAIRS SECRETARIAT, MUZAFFARABAD.**

Dated the September 8, 1974.

No. 2273/SL/74. The following Ordinance approved by the Legislative Assembly of Azad Jammu and Kashmir at its meeting held on the 21st of August 1974 is hereby published for general information:—

(ORDINANCE III OF 1974)¹

AN ORDINANCE to provide for the law relating to the formation of trade unions, regulation of relations between employers and workmen and the avoidance and settlement of any differences or disputes arising between them.

WHEREAS it is expedient to provide for the law relating to the formation of trade unions, the regulations of relations between employers and workmen and the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto:

AND WHEREAS the Legislative Assembly is not in Session and the President is satisfied that the circumstances exist which render immediate Legislation necessary;

NOW, THEREFORE, in exercise of the powers conferred by Section 24 of the Azad Jammu and Kashmir Government Act, 1970 and all other powers enabling him in that behalf, the President Azad Government of the State of Jammu and Kashmir is pleased to make and promulgate the following Ordinance:-

1. **Short title, extent, application and commencement.-**
(1) This Ordinance may be called the Azad Jammu and

¹ This Ordinance was approved by the Legislative Assembly on 21st of August, 1974 and issued as an Act vide No. 2273/SL/74 dated September, 08, 1974 but retained its name as an Ordinance.

Kashmir Industrial Relations Ordinance, 1974.

(2) It extends to the whole of Azad Jammu and Kashmir Territory.

(3) It shall not apply to any person employed in the Police or any of the Defence Services of Azad Jammu and Kashmir and any services or installations connected with or incidental to the Armed Forces of Azad Jammu and Kashmir or to any person employed in the Administration of the State other than those employed as workmen by the Departments.

(4) It shall come into force at once.

2. **Definitions.**- In this Act, unless there is any thing repugnant in the subject or context.-

(1) 'Arbitrator' means a person appointed as such under this Ordinance ;

(2) 'Award' means the determination by a labour Court, Arbitrator or Appellate Tribunal of any industrial dispute or any matter relating thereto and includes an interim award;

(3) 'Collective Bargaining Agent' in relation to an establishment or industry, means the trade union of workmen which under Section 25 is the agent of the workmen in the establishment or, as the case may be, industry, in the matter of collective bargaining;

(4) 'Conciliation proceedings' means any proceedings before conciliator;

(5) 'Conciliator' means a person appointed as such under Section 32;

(6) 'Employer' in relation to an establishment means any person or body of persons, whether incorporated or not, who or which employs workmen in the establishment under a contract of employment and includes-

- (a) an heir, successor or assignee, as the case may be, of such person or body as aforesaid;
- (b) any person responsible for the management, supervision and control of the establishment;
- (c) in relation to an establishment run by or under the authority of any department of the Government, the authority appointed in this behalf or, where no authority is appointed, the Head of the Department;
- (d) in relation to an establishment run by or on behalf of a local authority, the officer appointed in this behalf or where no officer is so appointed, the Chief Executive Officer of that authority;

Special provision:- For the purposes of destination from the category of "workers or workmen", officers and employees of a department of the Government or a local authority who belong to the superior, managerial, secretarial, directional, supervisory or agency staff and who have been notified for this purpose in the official Gazette shall be deemed to fall within the category of employers,

- (e) in relation to any other establishment, the proprietor of such establishment and every Director, Manager Secretary, agent or officer or person, concerned with the management of the affairs thereof;
- (7) 'Establishment' means any office, firm, industrial unit, undertaking, shop or premises in which workmen are employed for the purpose of carrying on any industry;
- (8) 'Executive' means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted by its constitution;
- (9) 'Government' means the Azad Government of the

State of Jammu and Kashmir;

(10) 'High Court' means the High Court of Judicature, Azad Jammu and Kashmir State;

(11) 'Illegal Lock Out' means -a lock out declared, commenced or continued otherwise than in accordance with the provisions of this Ordinance;

(12) 'Illegal Strike' means a strike declared, commenced or continued otherwise than in accordance with the provisions of this Ordinance;

(13) 'Industrial Dispute' means any dispute or difference between employers and employers or between employers and workmen or 'between workmen and workmen, which is concerned with the employment or non-employment or the terms of employment or the conditions of work of any person;

(14) 'Industry' means any business, trade, manufacture, calling, service, employment or occupation:

(15) 'Labour Court' means Labour Court established under Section 40;

(16) 'Lock out means the closing of a place of employment or part of such place or the suspension, wholly or partly, or work by an employer or refusal absolute or conditional by an employer to continue to employ any number of workmen employed by him where such doing, suspension or refusal occurs in connection with an industrial dispute or is intended for the purpose of compelling workmen employed to accept certain term and conditions of or affecting employment;

(17) 'Organisation' means any organization of workers or of employers for furthering and defending the interest of workers or of employers;

(18) 'Officer in relation to a trade union' means any

member of the executive thereof but does not include in auditor or legal advisor;

(19) 'Prescribed' means prescribed by rules;

(20) 'Public Utility Service' means any of the services specified in the schedule;

(21) 'Registered Trade Union' means a trade union registered under this Ordinance;

(22) 'Registrar' means the Registrar of Trade Union appointed under Section 15;

(23) 'Rule' means rule made under section 78;

(24) 'Settlement' means a settlement arrived at in the course of conciliation proceeding and include an agreement between an employer and his workmen arrived at otherwise than in the course of any conciliation proceeding, where such as agreement is in writing, has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the Government, the conciliator and such other person as may be prescribed

(25) 'Strike' means cessation of work by a body or persons employed in any establishment acting in combination or a concerted refusal, or refusal under a common understanding of any number of persons who have been so employed to continue to work or to accept employment:

(26) 'Trade Union' means any combination of workmen or employers, formed primarily for the purpose of regulating the relations between workmen and employers, or workmen and workmen or employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes a federation of two or more trade unions;

(27) 'Tribunal' means a Labour Appellate Tribunal constituted under section 46 of this Ordinance;

(28) 'Worker' and 'Workmen' means any person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the term as of employment be expressed or implied and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute include a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person-

- (a) who is employed mainly in a managerial or administrative capacity; or
- (b) who, being employed in a supervisory capacity, draws wage exceeding Rupees Six hundred per month or performs, either because of the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

3. **Trade Union and freedom of Associate:-** Subject to the provisions contained in this Ordinance.

- (a) Workers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join associations of their own choosing without previous authorization;
- (b) Employers, without distinction whatsoever, shall have the right to establish and subject only to the rules of the organization concerned, to join associations of their own choosing without

previous authorization;

- (c) trade unions and employers associations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom to organize their administration and activities and to formulate their programme;
- (d) worker and Employers organizations shall have the right to establish and join federations and confederations in Azad Jammu and Kashmir territory.

4. **Adherence to the law of the land:-** Workers and employers and their respective organization, in exercising the rights provided for in Section 3, like other persons or organized collectives, shall respect the law of the land.

5. **Application for registration:-**Any trade union may, under the signature of its president the secretary, apply for., registration of the trade union under this Ordinance.

6. **Requirements of applications:-** Every application for registration of trade union shall be made to the Registrar and shall be accompanied by.

(a) statement showing-

- (i) the name of the trade union and the address of its head office;
- (ii) date of formation of the union;
- (iii) the titles, name, ages, addresses and occupations of the officers of the trade union;
- (iv) statement of total paid membership;
- (v) the name of the establishment or group of establishments or the industry, as the case may be, to which the trade union relate.

- (vi) in case of federation of trade unions, the names, addresses and registration number of member union;
- (b) Three copies of the constitution of the trade union together with a copy of the resolution by the members of the trade union adopting such constitution bearing the signature of the Chairman of the meeting;
- (c) A copy of the resolution by the members of trade union authorising its President and the Secretary, to apply for its registration;and
- (d) in case of a federation of trade unions, a copy of the resolution from each of the constituent unions agreeing to become a member of the federation.

7. **Requirements of registration:-** (1) A trade union shall not be entitled to registration under this Ordinance unless the constitution thereof provides for the following matters namely:

- (a) the name and address of the trade union;
- (b) the objects for which the trade union has been formed;
- (c) the purposes for which the general funds of the union shall be applicable ;
- (d) the number of persons forming the executive shall be from amongst the workmen actually engaged or employed in the establishment or the industry for which the trade union has been formed;
- (e) the conditions under which a member shall be entitled to any benefit assured by the constitution of the trade union and under which any fine or forfeiture may be imposed on him;
- (f) the maintenance of a list of the members of the

trade union and of adequate facilities for the inspection thereof by the officers and members of the trade union ;

- (g) the manner in which the constitution shall be amended, varied or rescinded;
- (h) the safe custody of the funds of trade union, its annual audit, the manner of audit and adequate facilities for inspection of the account books by the Officers and members of trade union;
- (i) the manner in which the trade union may be dissolved;
- (j) the manner of election of officers by the general body of the trade union and the term, not exceeding two years, for which an officer may hold office upon his election or re-election;
- (k) the procedure for expressing want of confidence in an officer of the trade union; and
- (l) the meeting of the executive and of the general body of the trade union, so that the executive shall meet at least once in every three months and the general body at least once every year.

(2) Without prejudice to the provisions of sub-section (1) a trade union, of workmen shall not be entitled to registration under this Ordinance unless all its members are workmen actually engaged or employed in the industry with which the trade union is concerned.

- 8. **Disqualifications for being an officer of a trade union.-** Notwithstanding anything containing in the constitutions or rules of a trade union, a person who has been convicted of an offence under section 71 shall be disqualified from being elected as, or from being an officer of a trade union.
- 9. **Registered trade union to maintain register etc.-** Every

registered trade union shall maintain in such form as may be prescribed-

- (a) a register of members showing receipts particulars of subscriptions paid by each member;
- (b) an accounts book showing particulars of expenditure; and
- (c) a minute book for recording the proceedings of meetings.

10. **Registration:-** (1) The Registrar, on being satisfied that the trade union has complied with all the requirements of this Ordinance, shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of fifteen days from the date of receipt of the application. In case the application is found by the Registrar to be deficient in a material respect or respects he shall communicate in writing his objections to the trade union within a period of fifteen days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objections;

(2) When the objections raised by the Registrar have been satisfactorily met, the Registrar shall register the trade union as provided in sub-section (1) and issue a certificate of registration in the prescribed form within three days of the objections having been so met. In case the objections are not satisfactorily met, the Registrar may reject the application:

(3) In case the application has been rejected or the Registrar has delegated disposal of the application beyond the period of fifteen days provided in subsection (1) or has not issued a certificate of registration within the period of three days as provided in subsection (2), as the case may be, the trade union may appeal to the Labour Court who for reasons to be stated in its judgment may pass an order

directing the Registrar to register the trade union and to issue a certificate of registration or may dismiss the appeal;

(4) Notwithstanding anything contained in any other provision of this Ordinance, every alteration made in the constitution of a registered trade union and even change of its officers shall be notified by registered post by the trade union to the Registrar within fifteen days of such change.

(5) The Registrar may refuse to register such change or alteration if it is in contravention of any of the provision of the Ordinance or if it is in violation of the constitution of the trade union.

(6) Subject to the provisions of sub-section (5), every inclusion or exclusion of any constituent unit of a federation or unions shall be notified by registered post by the federation to the Registrar within fifteen days of such inclusion or exclusion.

(7) In case there is a dispute in relation to the change of officers of a trade union, or any trade union is aggrieved by the refusal of the Registrar under sub-section (5), any officer or member of the trade union may appeal to the Labour Court who shall within seven days of receipt of the application or appeal as the case may be pass an order either directing the Registrar to register the change or alteration in the constitution or in the officer of the trade union or may, for reasons to be recorded in writing, direct the Registrar to hold fresh elections of the union under his supervision.

11. **Transfer, etc. of officer of trade union during tendency of application for registration:-** Save with the prior permission of the Registrar no officer of a trade union of workmen shall be transferred, discharged, dismissed or otherwise punished during the pendency of an application

for registration of the trade union with the Registrar, provided that the union has notified the names of its officers to the employer in writing.

12. **Certificate of registration:-** The Registrar, on registering a trade union under Section 10 shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the trade union has been duly registered under this Ordinance.
13. **Cancellation of registration:-** (1) The registration of a trade union shall be cancelled if the Labour Court so directs upon a complaint in writing made by the Registrar that the trade union has
 - (i) contravened any of the provisions of this Ordinance or the rules ; or
 - (ii) contravened any of the provisions of its constitutions ; or
 - (iii) made in its constitution any provision which is inconsistent with this Ordinance or the rules ; or
 - (iv) dissolved itself or has ceased to exist.(2) Where any person who is disqualified under section 8 from being elected as, or from being, an officer of a trade union is elected as an officer of a registered trade union the registration of that union shall be cancelled if the Labour Court, upon a complaint in writing made in this behalf by the Registrar, so direct.
14. **Appeal against cancellation:-** Any trade union aggrieved by a decision given under section 13 may appeal to the a Labour Appellate Tribunal, which may uphold or reject the decision.
15. **Registrar of trade unions:-** For the purpose of this Ordinance the Government may by notification in the official Gazette appoint as many persons as it considers

necessary to be Registrars of trade unions and where it appoints more than one Registrar, shall specify in the notification the area within which each one of them shall exercise and perform the powers and functions under this Ordinance.

16. **Powers and functions of Registrar:-** The following shall be the powers and functions of the Registrar:-if ,
- (a) the registration of trade unions under this Ordinance and the maintenance of register for this purpose;
 - (b) to lodge or authorise any person to lodge complaints with the Labour Courts for action against trade unions for any alleged offence or any unfair Labour practice or violation of any provisions of this Ordinance;
 - (c) the determination of the question as to which one of the trade unions in an establishment or an industry is entitled to be certified as the collective bargaining agent in relation to that establishment or industry ; and
 - (d) such other powers and functions as may be prescribed.
17. **Incorporation of registered trade union:-** (1) Every registered trade union shall be a body corporated by the name under which it is registered, shall have perpetual succession and a common seal and the power to contract and to acquire, hold and dispose of property, both moveable and immoveable and shall by the said name sue or be sued.
- (2) The Societies Registration Act, 1860 (XXI of 1860), the co-operative societies Act, 1912, (IL of 1912) and Companies Act, 1913 (VII of 1913) shall not apply to any registered trade union and the registration of any trade

union under any of these Acts shall be void.

18. **Unfair labour practices on the part of employers:-** (1)
No employer or trade union of employers and no person acting on behalf of either shall-

- (a) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union, or
- (b) refuse to employ or refuse to continue to employ any person on the ground that such person is or is not a member or officer of a trade union, or
- (c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is or is not, a member or officer of a trade union, or
- (d) dismiss, discharge, remove from employment or transfer or threaten to dismiss, discharge or remove from employment or transfer a workmen or injure or threaten to injure him in respect of his employment by reason that the workmen-
 - (i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union, or
 - (ii) participates in the promotion, formation or activities of a trade union;
 - (iii) induce any person to refrain from becoming, or to cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person ;

- (f) compel any officer of the collective bargaining agent to sign a memorandum by using intimidation, coercion pressure, threat, confinement to a place, physical injury, this connection of water, power and telephone facilities and such other methods ;
- (g) interferes with or in any way influence "the balloting provided for in section 25;
- (h) recruit any new workmen during the period of notice of strike under section 33 or during the currency of a strike which is not illegal except where the conciliator has, being satisfied that complete cessation of work is likely to cause serious damage to the machinery or installation, permitted temporary employment of a limited number of workmen in the section, where, the damage is likely to occur.

(2) Nothing in sub-section (1) shall be deemed to preclude an employer from requiring that a person upon his appointment or promotion to managerial position shall cease to be and shall be disqualified from being a member or officer of a trade union of workmen.

19. **Unfair labour practices on the part of workmen:-** (1) No workmen or trade union of workmen and no person acting on behalf of such trade union shall-

- (a) persuade a workman to join or refrain from joining a trade union during working hours, or
- (b) intimidate any person to become, or refrain from becoming or to continue to be or to cease to be a member or officer of a trade union, or
- (c) induce any person to refrain from becoming, or cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on or

by procuring or offering to procure any advantage for, such person or any other person, or

- (d) compel or attempt to compel the employer to sign a memorandum of settlement by using, intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of telephone, water and power facilities and such other methods.

(2) It shall be an unfair practice for a trade union to interfere with a ballot held under section 25 by the exercise undue influence, intimidation, impersonation or bribery through its executive or through any person acting on its behalf.

RIGHTS & PRIVILEGES OF REGISTERED TRADE UNIONS AND COLLECTIVE BARGAINING AGENTS

- 20. **Law and conspiracy limited in application:-** No officer or member of a registered trade union or collective bargaining agent as determined by the Registrar shall be liable to punishment under sub-section (2) of section 120-B of the Azad Jammu and Kashmir Penal Code, 1860 in respect of any agreement made between the members thereof for the purpose of furthering any such object of the trade union as is specified in its constitution referred to in section 7, unless the agreement is an agreement to commit an offence or otherwise violate any law other than this Ordinance.
- 21. **Immunity from civil suit in certain cases :-** (1) No suit or other legal proceedings shall be maintainable in any civil court against any registered trade union or collective bargaining agent or any officer or member thereof in respect of any action done in contemplation or furtherance of an industrial dispute to which the trade union is a party on the ground only that such act induces some other person to break a contract of employment or that is an interference with the trade, business or employment of

some other person or with the right of some other person to disparte of his capital or of his labour as he wills.

(2) A trade union shall not be liable in any suit or other legal proceedings in any civil court in respect of any tortuous act done in contemplation or furtherance of an industrial dispute by an agent of the trade union if it is proved that such person acted without to knowledge of, or contrary to express instruction given by the executive of the trade union.

22. **Enforceability of agreement:-** Notwithstanding anything contained in any other law for the time being in force an agreement between the members of a trade union shall not be void or avoidable by reason only that any of the objects of the agreement are in restraint of trade;

Provided that nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the express purpose of enforcing, of recovering damage for the breach of any agreement concerning the conditions on which any member of a trade union shall or shall not sell their goods, transact business, or work, employ or be employed.

23. **Registration of Federation of Trade Union:-** (1) Any two or more registered trade unions may, if their respective general bodies so resolve; constitute a federation by executing an instrument of federation and apply for the registration of the federation:

Provided that a trade union of- workmen shall not join a federation which comprises a trade union of employer nor shall a trade union of employers join a federation which comprises a trade union of workmen:

Provided further that a trade union of workmen or employers shall not join a federation outside the territory of Azad Kashmir, not a trade union of workmen or employers, outside Azad Kashmir shall join a federation in

Azad Kashmir.

(2) An instrument of federation referred to in sub-section (1) shall, among other things, provide for the procedure to be followed by federated trade unions and the right and responsibilities of the federation and federated unions.

(3) An application for the registration of a federation of trade union shall be signed by the president of all the trade unions constituting the federation or by the officer of these trade unions respectively authorised by the trade unions in this behalf and shall be accompanied by three copies of the instrument of federation referred to in sub-section (1).

(4) Subject to sub-section (1), (2) and (3) provision of this Ordinance shall so, far as may be and with the necessary modifications apply to a Federation of trade union.

24. **Returns:-** (1) There shall be sent annually to the Registrar on or before such date as may be prescribed, a general statement audited in the prescribed manner of all receipts and expenditure of every registered trade union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the trade union existing on such 31st day of December as may be prescribed.

(2) Together with a statement of the total paid membership and the general statement there shall be sent to the Registrar a statement showing all changes of officers made by the trade union during the year to which the general statement refers together with a copy of the constitution of the trade union corrected up to the date of the dispatch thereof to the Registrar.

(3) A copy of every alteration made in the constitution of a Registered trade union and of a resolution of the

general body having the effect of a provision of the constitution shall be sent to the Registrar within 15 days of the making of the alteration or adoption of resolution.

(4) In case the registered trade union is member of a federation, the name of that federation shall be given in the annual statement.

25. **Collective Bargaining agent:-** (1) Where there is only one registered trade union in an establishment or a group of establishments, that trade union shall if it has as its member not less than one-third of the total number of workmen employed in such establishment or group of establishments, to be deemed to be collective bargaining agent for such establishment or group.

(2) Where there are more registered trade union than one in an establishment or a group of establishments, the Registrar shall, upon an application made in this behalf by any such trade union which has as its members not less one-third of the total number of workmen employed in such establishment or group of establishments or by the employer or the Government, held within fifteen days from the making of the application, a secret ballot to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment or group;

Provided that the Registrar may, in the case of a large establishment having its branches in more than one town, hold the secret ballot within thirty days from the making of the application;

(3) Upon receipt of an application under sub-section (2) the Registrar shall, by notice in writing, call upon every registered trade union in the establishment or group of establishments to which the application relates-

(a) to indicate whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to such

establishment or group ; and

- (b) If it so desires, to submit to him within the time specified in the notice a list of its members showing in respect of each member, his parentage age, the section or department and the place in which he is employed, his ticket number and the date of his becoming a member and, if the trade union is a federation of trade unions, a list of its affiliated trade unions together with a list of members of such trade union showing in respect of each such member the said particulars.
- (4) Every employer shall-
 - (a) on being so required by the Registrar, submit a list of all workmen employed in the establishment excluding those whose period of employment in the establishment is less than three months and showing in respect of each workmen, his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his employment in the establishment; and
 - (b) Provide such facilities for verification of the lists submitted by him and the trade unions as the Registrar may require;

Provided that, in computing the period of three months referred to in clause (a) in the case of a workman employed in a seasonal factory within the meaning of section 4 of the Factories Act, 1934 (XXV of 1934), the period during which he was employed in that factory during the preceding season shall also be taken into account.

- (5) The Registrar shall, after verification of the lists submitted by trade unions, prepare a lists of voters in which shall be included the name of every workman

whose period of employment as computed in accordance with sub-section (4) is not less than three months and who is a member of any of the contesting trade unions and shall, at least four days prior to the date fixed for the poll, sent to each of the contesting trade unions a certified copy of the lists of voters so prepared.

(6) Every workman who is a member of any of the contesting trade unions and whose name appears in the lists of voters prepared under sub-section (5) shall be entitled to vote at the Poll to determine the collective bargaining agent.

(7) Every employer shall provide all such facilities in his establishment as may be required by the Registrar for the conduct of the poll but shall not interfere with, or in any way, influence, the voting.

(8) No person shall canvass for vote within a radius of fifty yards of the polling station.

(9) For the purpose of holding secret ballot to determine the collective bargaining agent, the Registrar shall-

- (a) fix the date for the poll and intimate the same to each of the contesting trade unions and also to every employer;
- (b) on the date fixed for the poll so place in the polling station set up for the purpose the ballot boxes which shall be sealed in the presence of the representative of the contesting trade unions as to receive the ballot papers;
- (c) conduct the poll at the polling station at which the representatives of the contesting trade unions shall have the right to be present;
- (d) after the conclusion of the poll and in the presence of such of the representatives of the contesting

trade unions as may be present, open the ballot boxes, and count the votes; and

- (e) after the conclusion of the count, declare the trade union which has received the highest number of votes to be the collective bargaining agent;

Provided that no trade union shall be declared to be the collective bargaining agent for an establishment or group of establishments unless the number of votes received by it is not less than one third of the total number of workmen employed in such establishment or group.

- (10) Where a registered trade union has been declared under clause (e) of sub-section (9) to be the collective bargaining agent for an establishment or group of establishments, no application for the determination of the collective bargaining agent for such establishment or group shall be entertained within a period of two years from the date of such declaration, except where the registration of such a registered trade union is cancelled before the expiration of the period.

- (11) A collective bargaining agent may without prejudice to its own position, implead as a party to any proceedings under this Ordinance to which it is itself a party any federation of trade unions of which it is a member.

- (12) The collective bargaining agent in relation to an establishment or group of establishments shall be entitled to-

- (a) undertake collective bargaining with the employer or employers on matters connected with employment non-employment, the terms of employment or the conditions of work;
- (b) represent all or any of the workmen in any

proceedings;

- (c) give notice of, and declare, a strike in accordance with the provisions of this Ordinance.

(13) The Registrar may authorise in writing an officer to perform all or any of his functions.

26. **Check Off:-** (1) If a collective bargaining agent so requests the employer of the workmen who are members of a trade union shall deduct from the wage of the workmen such amounts towards their subscription to the funds of the trade union as may be specified with the approval of each individual workman named in the demand statement furnished by the trade union.

(2) An employer making any deductions from the wages under sub-section (1) shall, within 15 days of the end of the period for which the deductions have been made, deposit the entire amount so deducted by him in the account of the trade union on whose behalf he has made the deductions.

(3) A collective bargaining agent shall maintain with a branch of any scheduled Bank of Pakistan or with a Post Office Savings Bank an account to which shall be credited the entire amount deducted by the employer under sub-section (1) from the wages of the member of Trade Union.

(4) The employer shall provide facilities to the collective bargaining agent for ascertaining whether deduction from the wages of its members are being made under subsection (1).

JOINT CONSULTATION CONCILIATION & MEDIATION

27. **Shop Stewards to act as link between labour and management:-**(1) In every establishment in which fifty or more workmen are employed shop stewards, from amongst the workmen in a shop, section or department of

the establishment, shall-

- (a) Where there is a collective bargaining agent in the establishment, be nominated by it;
- (b) where there is no collective bargaining agent in the establishment, be elected at a secret ballot held in the prescribed manner;

Provided that any shop Steward elected before the commencement of the Ordinance shall continue to hold till the expiry of his term.

(2) The employer shall provide all such facilities in this establishment as may be required for the holding of a ballot under sub-section (1) but shall not interfere with or in any way influence, the voting.

(3) A Shop Steward shall hold office for a period of one year from the date of his election or nomination, as the case may be.

(4) Any dispute arising out of or in connection with the election of a shop steward shall be referred to the Registrar whose decision shall be final and binding on, all parties to this dispute.

(5) The Shop Steward shall act as a link between the workers and the employer, assist in the improvement of arrangements for the physical working conditions and production work in the shop, section or department for which he is elected and help workers in the settlement of their problems either connected with work or with any such individual grievance of a workman as is referred to in sub-section (1) of section 30.

28. **Works Council:-** (1) In every establishment in which 50, or more workmen are employed or were employed on any day in the preceding 12 months, the employer shall constitute, in the prescribed manner a works council consisting of representatives of the employers and the

workmen so however that the number of the representatives of the workmen is not less than the number of the representatives of the employer in the work council.

(2) In the case of an establishment where there are one or more trade unions, the collective bargaining agent shall nominate the representatives of the workmen on such works council:

Provided that where there is no collective bargaining agent representatives of workmen on a works council shall be chosen in the prescribed manner from amongst the workmen engaged in the establishment for which the works council is constituted.

29. **Functions of works council.** The functions of a works council shall be to promote measures for securing and preserving good relations between an employer and his workmen are in particular-

- (a) to endeavor to maintain continuous sympathy and understanding between the employer and workmen;
- (b) to promote settlement of differences through bilateral negotiations;
- (c) to promote security of employment for the workmen and conditions of safety, health and job satisfaction in their work;
- (d) to encourage vocational training within the establishment;
- (e) to take measures for facilitating good and harmonious working conditions in the establishment, to provide educational facilities for children of workmen in secretarial and accounting procedures and to promote their absorption in these departments of the establishment; and

- (f) to discuss any other matter of mutual interest with a view to promoting better labour management relations.

30. **Redress of individual grievances:-** (1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law for any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop Steward or Trade Union, within three months of the day on which the cause of such grievance arises.

(2) Where a worker himself brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker.

(3) Where a worker brings his grievance to the notice of his employer through his shop Steward or Trade Union, the employer shall within seven days of the grievance being brought to his notice, communicate his decision in writing to the shop steward, as the case may be, the Trade Union.

(4) If the employer fails to communicate a decision within the period specified in sub-section (2) or, as the case may be, sub-section (3), or if the worker is dissatisfied with such decision, the worker or the Shop Steward may take the matter to his Trade Union or the Labour Court or as the case may be the Trade Union may take the matter to the Labour Court, and, where the matter is taken to the Labour Court it shall give a decision within fifteen days from the date of the matter being brought before it as if such matter were an industrial dispute:

Provided that a worker who desires so to take the matter to the Labour Court shall do so within a period of two months from the date of the communication of the

employer or, as the case may be, from the expiry of the period mentioned in sub-section (2) or sub-section (3), as the case may be.

(5) In adjudicating and determining a grievance under subsection (4) the labour Court shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.

(6) Notwithstanding anything contained in sub-section (1) to (4) any workman aggrieved by the termination of his employment as result of retrenchment, dismissal, discharge, lay off, lock-out or otherwise not earlier than two months preceding the commencement of this Ordinance, may within a period of two months from the commencement of this Ordinance, or the termination of the employment, whichever is later, either him self or through his Trade Union takes the matter directly to a labour Court having jurisdiction in the area in which the establishment is situated.

31. **Negotiations relating to differences and disputes:-** (1) If at any time an employer or a collective bargaining agent finds that an industrial dispute has arisen or is likely to arise, the employer or, as the case may be, the collective bargaining agent, may communicate his or its views in writing either to the work Council or the other party so, however, that where the views are so communicated to the Works Council, a copy of the communication shall also be sent to the other party.

(2) On receipt of the communication under sub-section (1), the Work Council or the party receiving it shall try to settle the dispute within ten days of the receipt of the communication by bilateral negotiations, and if the parties reach a settlement, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded to the Conciliator and the authorities mentioned in clause (24) of section 2.

(3) Where a settlement is not reached between the employer the collective bargaining agent or, if the views of the employer or collective bargaining agent; have been communicated under sub-section (1) to the works Council, there is a failure of bilateral negotiations in the Works Council, the employer or the collective bargaining agent may, within seven days from the end of the period referred to in sub-section (2), serve on the other party to the dispute a notice of lock-out or strike, as the case may be, in accordance with the provisions of this Ordinance.

32. **Conciliator:-** (1) The Government shall, by notification in the Official Gazette, appoint as many persons as it considers necessary to be conciliators for the purposes of this Ordinance and shall specify in the notification the area within which, or the class of establishments or industries in relation to which, each one of them shall perform his functions.
33. **Notice of strike or lock-out.-** The period of notice of lock-out or strike given under sub-section (3) of section (31) shall be 21 days.
34. **Conciliation after notice of strike or lock-out.-**Where a party to an industrial dispute serves a notice of strike or lock-out under section 31 it shall simultaneously with the service of such notice deliver a copy thereof to the conciliator who shall proceed to .conciliate in the dispute, and to the labour court.
35. **Proceedings before Conciliator.-** (1) The conciliator shall, as soon as possible, call a meeting of the parties to the dispute for the purpose of bringing about a settlement.
- (2) The parties to the dispute shall be represented before the conciliator by persons nominated by them and authorised to negotiate and enter into an agreement binding on the parties:

Provided that if, in the opinion of the Conciliator,

the presence of the employer or any officer of the trade union connected with the dispute is necessary in a meeting called by him, he shall give notice in writing requiring the employer or such officer to appear in person before him at the place, date and time, specified in the notice, and it shall be the duty of the employer or the officer of the trade union to comply with the notice.

(3) The conciliator shall perform such functions in relation to a dispute before him as may be prescribed and may, in particular suggest to either party to the dispute such conciseness or modification in its demand as are in the opinion of the conciliator likely to promote an amicable settlement of the disputes.

(4) If a settlement of the dispute or of any matter in dispute is arrived at in the course of the proceedings before him the conciliator shall send a report thereof to the Government together with the memorandum of settlement signed by the parties to the dispute.

(5) If no settlement is arrived at within the period of the notice of strike or lock-out, the conciliation proceedings may be continued for such further period as may be agreed upon by the parties.

36. **Arbitration:-** (1) If the conciliation fails, the conciliator shall try to persuade the parties to agree to referee the dispute to an arbitrator. In case the parties agree, they shall make joint request in writing for reference of the dispute to an arbitrator agreed upon by them.

(2) The arbitrator to whom a dispute is referred under sub-section (1) may be a person borne on a pannel to be maintained by the Government or any other person agreed upon by the parties.

(3) The arbitrator shall give his award within a period of thirty days from the date on which the dispute is referred to him under subjection (1) or such further period

as may be agreed by the parties to the dispute.

(4) After he has made an award, the arbitrator shall forward a copy thereof to the parties and to the Government who shall cause it to be published in the official Gazette.

(5) The award of the arbitrator shall be final and no appeal shall lie against it. It shall be valid for a period not exceeding two years or as may be fixed by the arbitrator.

37. **Strike and Lock-out:-** (1) If no settlement is arrived at during the course of conciliation proceedings and the parties to the dispute do not agree to refer it to an arbitrator under section (36), the workmen may go on strike or, as the case may be, the employer may declare a lock-out on the expiry of the period of the notice under section (33) or upon a declaration by the conciliator that the conciliation proceeding have failed, whichever is the later.

(2) The party raising a dispute may at any time, either before or after the commencement of a strike or lock-out, make an application to Labour Court for adjudication of the dispute.

(3) Where a strike or lock-out lasts for more than 30 days the Government may, by order in writing, prohibit the strike or lock-out:

Provided that the Government may by-order, in writing prohibit a strike or lock-out at any time before the expiry of 30 days if it is satisfied that the continuance of such strike or lock-out is causing serious hardship to the community or is prejudicial to the national interest.

(4) In any case in which the Government prohibits a strike or lock-out, it shall forthwith refer the dispute to the Labour Court.

(5) The Labour Court shall, after giving both the

parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible but not exceeding thirty days from the date on which the dispute was referred to it:

Provided that the Labour Court may also make an interim award on any matter of dispute. Provided also that any delay by the Labour Court in making an award shall not affect the validity of any award made by it.

(6) An award of the Labour Court shall be for such period, as may be specified in the award, which shall not be more than two years.

38. **Strike or Lock-out in Public Utility Services:-** (1) In the case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock out at any time before or after the commencement of the strike or lock-out.

(2) The provisions of sub-section (3), (4) and (5) of section 37 shall also apply to an order made under sub-section (2) of that section.

39. **Application to Labour Court:-** Any collective bargaining agent or any employer may apply to the labour court for the enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement.

40. **Labour Court:-** (1) The Government may, by notification in the official Gazette, establish as many Labour Courts as it considers necessary and where it establishes more than one Labour Court, shall specify in the notification the territorial limits within which or the industry or classes of cases in respect of which each one of them shall exercise jurisdiction under this Ordinance.

(2) A labour court shall consist of one presiding officer appointed by the Government.

(3) A person shall not be qualified for appointment, as

Presiding Officer unless he has been or is, or is qualified to be a District Judge or an Additional District Judge.

- (4) Labour Court shall;
 - (a) adjudicate and determine an industrial dispute which has been referred to or brought before it under this Ordinance.
 - (b) enquire into and adjudicate any matter relating to the implementation or violation of a settlement which is referred to it by the Government.
 - (c) try offences under this ordinance, and such other offences under any other law as the Government may by notification in the official gazette specify in this behalf.
 - (d) exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under this Ordinance or any other law.
- (5) Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (VII of 1923), or the payment of wages Act, 1936 (VI of 1936) as inforce in Azad Jammu and Kashmir, the Government may, by notification in the official gazette, appoint a Labour Court to be or confer upon it any power or function of, any authority under any of the said Acts, and upon such notification, the Labour Court shall be deemed to be such authority and shall exercise the powers - and perform the function of such authority under the relevant Act.

41. **Procedure and powers of Labour Court:-** (1) Subject to the provisions of this Ordinance, while trying an offence a Labour Court shall follow as nearly as possible summary procedure as prescribed under the Code of Criminal

procedure, 1898.

(2) A Labour Court shall, for the purpose of adjudicating and determining any industrial dispute be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil procedure, 1908 (Act V of 1908) including the powers of :

- (a) enforcing the attendance of any person and examining him on oath,
- (b) compelling the production of documents and material objects, and
- (e) issuing commissions for the examination of witnesses or documents.

(3) A Labour Court shall, for the purpose of trying an offence under the Ordinance, have the same powers as are vested in the Court of a Magistrate of the first class, specially empowered U/S 30 of the Code of Criminal procedure, 1898 (Act V of 1898) and shall for the purpose of appeal from a sentence passed by it, be deemed to be a Court of Sessions under that Code.

(4) No Court fee shall be payable for filing, exhibiting or recording any document in, or obtaining any document from a Labour Court.

- 42. **Appeal against the decision of Labour Court:-** Any party aggrieved by a decision of a Labour Court under Section 41 may prefer an appeal to a Labour Appellate Tribunal within thirty days of the delivery thereof and a decision of the Labour Appellate tribunal in such appeal shall be final.
- 43. **Penalty:-** If an order or direction under section 41 or a decision under section 42 is not given effect to or complied with within a week or within a period specified in such order direction or decision, the defaulter shall be punishable with imprisonment for a term which may

extend to one year or with fine which may extend to one thousand rupees, or with both.

44. **Cognizance of cases:-** No person shall be prosecuted under Section 43 except on a complaint in writing--
- (a) by the workman if the order in his favour is not implemented within the period specified in section 43, or
 - (b) by the Labour Court, if a decision or direction is given under section 41 and 42 is not complied with.
45. **Awards and decisions of labour court:-** (1) An award or decision of a labour court shall be given in writing and delivered in open Court and two copies thereof shall be forwarded forthwith to the Government.
- (2) The Government shall, within a period of one month from the receipt of the copies of the award or decision, publish it in the official Gazette.
 - (3) Any party aggrieved by an award given under sub-section (1) may prefer an appeal to Labour Appellate Tribunal within 30 days of the delivery thereof and the decision of the Tribunal in such appeal shall be final.
 - (4) All decisions of Labour Court, other than awards and decision referred to in subjection (3) of this section, and sentences referred to in sub-section (3) of section 41 shall be final and shall not be called in question in any manner by or before any court or other authority.
46. **Labour appellate Tribunal:-** (1) The Tribunal shall consist of one member to be appointed by the Government by notification in the official Gazette.
- (2) The members of the Tribunal shall be a person who is or has been a judge (or an Additional Judge) of High Court and shall be appointed on such terms and

conditions as Government may determine.

(3) The Tribunal may, on appeal, confirm, set aside, vary or modify the award or decision and shall exercise all the powers conferred by this Ordinance on the Labour Court, save as otherwise provided. The decision of the Tribunal shall be delivered as expeditiously as possible, within a period of 60 days following the filing of the appeal: Provided that such decision shall not be rendered invalid by reason of any delay in its delivery.

(4) The Tribunal shall follow such procedure as may be prescribed.

(5) The Tribunal shall have authority to punish for contempt of its authority, or that of any Labour Court Subject to its appellate jurisdiction, as if it were the High Court.

(6) Any person convicted and sentenced by the Tribunal under Sub-section (5) to imprisonment for any period, or to pay a fine exceeding Rs. 50/- may prefer an appeal to the High Court.

47. **Settlement and awards on whom binding:-** (1) A settlement arrived at in the course of a conciliation proceedings, or an award of an arbitrator published under section 36 or an award or decision of a Labour Court delivered under section 45 or the decision of a Tribunal under section 46 shall.

- (a) be binding on all parties to the industrial dispute;
- (b) be binding on all other parties summoned to appear in any proceedings before a Labour Court as parties to the industrial dispute unless the court specifically otherwise directs in respect of any such party;
- (c) be binding on the heirs, successors or assignees of the employer in respect of the establishment to

which the industrial dispute relates where an employer is one of the parties to that dispute; and

- (d) where a collective bargaining agent is one of the parties to the dispute, be binding on all workmen who were employed in the establishment or industry to which the industrial dispute relates on the date on which the dispute first arose or who are employed therein after the date.

- (2) A settlement arrived at by agreement between the employer and a trade union otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement.

48. **Effective date of settlement, award, etc.-** (1) A settlement shall become effective.

- (a) if a date is agreed upon by the parties to the dispute to which it relates, on such date; and
- (b) if a date is not so agreed upon, or the date on which the memorandum of the settlement is signed by the parties.

- (2) A settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of one year from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the aforesaid period until the expiry of two months from the date on which either party informs the other party in writing of its intention no longer to be bound by the settlement,

- (3) An award given under sub-section (1) of section 45 shall, unless an appeal against it is preferred to the Tribunal, become effective on such date and remain effective for such period, not exceeding two years, as may be specified therein. The Tribunal shall specify date from

which the award on various demands shall be effective and the limits by which it shall be implemented in each case:

Provided that if, at anytime before the expiry of the said period any party bound by an award applied to the Labour Court which made the award for reduction of the period on the ground that the circumstances in which the award was made have materially changed, the Labour Court may, by order made after giving to the other party an opportunity of being heard, terminate the said period on a date specified in the order.

(4) A decision of the Tribunal in appeal under sub-section (3) of section 46 shall be effective from the date of award.

(5) Notwithstanding the expiry of the period for which an award is to be effective under sub-section (3) the award shall continue to be binding on the parties until the expiry of two months from the date on which either party informs the other party in writing of its intention no longer to be bound by the award.

49. **Commencement and conclusion of proceedings:-** (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out is received by the conciliator under section 33.

(2) A conciliation proceeding shall be deemed to have concluded:-

(a) where a settlement is arrived at, on the date on which a memorandum of settlement is signed by the parties to the dispute; and

(b) where no settlement is arrived at:-

(i) If the dispute is referred to an, Arbitrator under section 36 on the date on which the Arbitrator has given his award; or otherwise

- (ii) On the date on which the period of the notice of strike or lock-out expires.
- (3) Proceedings before the Labour Court shall be deemed to have commenced:-
 - (a) in relation to an industrial dispute, on the date on which an application has been made under section 37 or section 39 or on the date on which it is referred to the Labour Court by the Government under section 37 or 38 and-
 - (b) in relation to any other matter, on the date on which it is referred to the Labour Court.
 - (4) Proceedings before a Labour Court shall be deemed to have concluded on the date on which the award or decision is delivered under sub-section (1) of section 45.
- 50. **Certain matters to be kept confidential:-** There shall not be included in any report, award or decision under this Ordinance any information obtained by a Registrar, Conciliator Labour Court, Arbitrator or Tribunal in the course of any investigation or inquiry as to a trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such authority, if the trade union, person, firm or company in question has made a request in writing to the authority that such information shall be treated as confidential, nor shall such conciliator or any person present or concerned in proceedings disclose any such information without the consent in writing of the secretary of the trade union or person, firm or company in question as the case may be:

Provided that nothing contained in this section shall apply to disclosure of any such information for the purpose of prosecution under section 193 of the Azad Kashmir penal Code.

51. **Raising of industrial disputes:-** No industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent or an employer.
52. **Prohibition on serving notice of striking or lock-out while proceedings pending:-** No notice of strike or lock-out shall be served by any party to an industrial dispute while any conciliation proceedings or proceedings before an arbitrator or a Labour Court or an appeal to the Tribunal under sub-section (3) of section 46 are or is pending in respect of any matter constituting such industrial dispute.
53. **Powers of Labour Court and Tribunal to prohibit strike etc.** (1) When a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time when, in respect of such industrial dispute, there is made to, or is pending before, a Labour Court, an application under section 39 the Labour Court may, by an order in writing, prohibit continuance of the strike or lock-out.

(2) When an appeal in respect of any matter arising out of an industrial dispute is preferred to a Tribunal under section 46. The Tribunal may, by an order in writing, prohibit continuance of any strike or lock-out in pursuance of such industrial dispute which had already commenced and was in existence on the date on which the appeal was preferred.
54. **Illegal strike and lock-out:-** (1) A strike or lock-out shall be illegal if:-
 - (a) it is declared, commenced or continued without giving to the other party to the dispute, in the prescribed manner, a notice of strike or lock-out or before the date of strike or lock-out specified in such notice, or in contravention of section 52 or

- (b) it is declared, commenced or continued in consequence of an industrial dispute raised in the manner other than that provided in section 51, or
 - (c) it is continued in contravention of an order made under section 37 or section 53.
 - (d) it is declared, commenced or continued during the period in which a settlement or award is in operation in respect of any of the matters covered by a settlement or award.
- (2) A lock-out declared in consequence of an illegal strike and a strick declared in consequence of an illegal lock-out shall not be deemed to be illegal.

55. **Procedure In case of illegal strick or lock-outs:-** (1) Notwithstanding anything contained in any other provision of this Ordinance or in any other law for the time being in force, an "officer of the Labour Department not below the rank of Assistant Director, Labour Welfare, hereinafter in this section referred to as the officer may make enquiries in such manner as he may deem fit into an illegal strick or illegal lock-out in a factory and make a report to the Labour Court.
- (2) After completing the enquiry the officer shall serve a notice on the employer and the collective bargaining agent or the registered trade union concerned with the dispute to appear before the labour Court on a date to be fixed by that Court.
- (3) The Labour Court, may within ten days following the day on which it receives a report under sub-section (1) after considering the report and hearing such of the parties as appear before it order the strike to be called off or the lock-out to be lifted.
- (4) If the employer contrivance the order of the Labour Court under sub-section (3) and the court is satisfied that

the continuance of the lock-out is causing serious hardship to the community or is prejudicial to the national interest, it may issue an order for the attachment of the factory and for the appointment of an official receiver for such period as it deems fit, and such period may be varied from time to time.

(5) The official receiver shall exercise the powers of management and may transact business, enter into contract give valid discharge of all moneys received and do or omit to do all such acts as or necessary for conduction the business of the factory.

(6) The Labour Court may, in appointing and regulating the work of an official receiver exercise the powers of a Civil Court under the Code of Civil procedure (Act V of 1908).

(7) If the workers contrivance the order of the Labour Court under sub-section (3) the court may pass orders of dismissal against all or any of the striking workers:

Provided that the court may review its orders if good and sufficient cause is shown by an affected worker within seven days of such orders of dismissal.

(8) Subject to any rules made by the Government in this behalf the officer may for the purpose of enquiry under sub-section (1) within the local limits for which he is appointed, enter with such assistants if any being persons in the service of Azad Jammu and Kashmir, as he thinks fit in a factory, where he has reason to believe an illegal strike or lock-out to be in progress, and make such examination of the premises and plant and of any registers maintained therein and take on the spot or otherwise such evidence of persons and exercise such other powers as he may deem necessary for carrying out the purpose of this section.

(9) The officer shall have authority to call any party to

such dispute to his office or secure his presence in the factory and shall also have the power to bind any party to the dispute to appear before the Labour Court.

(10) Where a part to an illegal strike or lock-out on being required or bound under this section to appear before the officer or the Labour Court, does not so appear, the officer or Labour Court, as the case may be may, besides taking such other action as may be admissible under this Ordinance proceed Exparte.

56. **Conditions of service to remain unchanged while proceedings pending:-** (1) No employer shall, while any conciliation proceeding or proceedings before an Arbitrator a Labour Court or Tribunal in respect of an industrial dispute are pending, alter to the disadvantage of any workman concerned in such dispute, the conditions of service applicable to him before the commencement of the conciliation proceedings or of the proceedings before the Arbitrator, the Labour Court or Tribunal, as the case may be, not shall be-
- (a) save with the permission of the conciliator, while any conciliation proceedings are pending, or
 - (b) save with the permission of the Arbitrator, the Labour Court or Tribunal, while any proceedings before the Arbitrator, Labour Court or Tribunal are pending, discharge, dismiss or otherwise punish any workman except for misconduct not connected with such dispute.
- (2) Notwithstanding anything contained in sub-section (1) an officer of a registered trade union shall not, during the tendency of any proceedings referred to in sub-section (1) be discharged, dismissed or otherwise punished for misconduct, except with the previous permission of the Labour Court.
57. **Removal of fixed assets:-** No employer shall remove any

fixed assets of the establishment during the currency of illegal lock-out or a strike which is not illegal.

58. **Protection of certain persons:-** (1) No person refusing to take part or to continue to take part in any illegal strike illegal lock-out, shall, by reason of such refusal, be subject expulsion from any trade union or to any fine or penalty to the deprivation of any right or benefit which he or his legal representatives would otherwise have been entitled; or liable to be placed in any respect, either directly or indirectly, under any disability or disadvantage as compared w other members of the trade union.

(2) Any contravention of the provisions of sub-section (1) may be made the subject-matter of an industrial dispute, and nothing in the constitution of trade union providing the manner in which any dispute between its executive members shall be settled, shall apply to proceedings for enforcing any right or exemption granted by sub-section (1). In any such proceeding, the Labour Court may, in lieu of ordering a person who has been expelled from membership of a trade union to be restored to membership, order that he be paid out of the funds of the trade union such sum by way of compensation or damages as the court thinks just.

59. **Representation of parties:-** (1) A workman who is a party to an industrial dispute shall be entitled to be presented in any proceedings under this ordinance by an officer of a collective bargaining agent and subject to the provision of sub-section (2) and sub-section (3) any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceeding by a person duly authorised by him.

(2) No party to an industrial dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Ordinance.

(3) A party to an industrial dispute may be represented by a legal practitioner in any proceedings before the Labour Court, or before an Arbitrator, with the permission of the Court or the Arbitrator as the case may be.

60. **Interpretation of Settlement and awards:-** (1) If any difficulty or doubt arises to the interpretation of any provisions of an award or settlement, it shall be referred to the Tribunal constituted under this Ordinance.

(2) The Tribunal to which a matter is referred under subsection (1) shall after giving the parties an opportunity of being heard, decide the matter and its decision shall be final and binding on the parties.

61. **Recovery of money due from an employer under a settlement or award.** (1) Any money due from an employer under a settlement or under an award or decision of the arbitrator, Labour Court or Tribunal may be recovered as arrears of land revenue or as a public demand. If upon the application of the person entitled to the money the Labour Court so directs.

(2) Where any workman is entitled to receive from the employer any benefit, under a settlement or under an award or decision of the Arbitrator, Labour Court or Tribunal, which is capable of being computed in terms of money, the amount at which such benefit shall be computed may, subject to the rules made under this Ordinance, be determined and recovered as provided for in sub-section (1) and paid to the workman concerned with in a specified date.

62. Any act or function which is by this Ordinance required to be performed by or has been conferred upon a collective bargaining agent may, until a collective bargaining agent has been ascertained under the provisions of this Ordinance be performed by a registered trade union which

has been recognized by the employer or employers.

PENALTIES AND PROCEDURE.

63. **Penalty for unfair labour practices:-** (1) Whoever contravenes the provisions of Section 11 shall be punishable with imprisonment which may extend to three years or with fine which may extend to two thousand rupees or with both.
- (2) Whoever contravenes the provisions of section 18 shall be punishable with imprisonment which may extend to four years, or with the fine, which may extend to five thousand rupees or with both.
- (3) Any workman who contravenes the provisions of Section 19 shall be punishable with imprisonment which may extend to three years, or with fine which may extend to two hundred rupees or with both.
- (4) An Officer of a Trade Union, a workman or person other than a workman who contravenes or abets the contravention of the provisions clause (d) of sub-section (1) of section 19 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to two thousand rupees or with both.
- (5) Where the person accused of an offence under sub-section (4) is an officer of Trade Union, he shall cease to hold the office of such officer and be disqualified from holding any office in any Trade Union during the term immediately following the term in which he so ceases to hold office.
- (6) Whoever contravenes the provisions of Section 57 shall be punishable with imprisonment which may extend to three years or with fine which may extend to two thousand rupees or with both.
64. **Penalty for Committing breach of settlement:-** Whoever committing any breach of any term or any settlement,

award or decision which is binding on him under this Ordinance shall punishable:-

- (a) for the first offence, with imprisonment for a term which may extend to one year or with fine which, may extend to five hundred rupees, or with both; and
- (b) for each subsequent offence with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

65. **Penalty for failing to implement settlement etc:-** Whoever wilfully fails to implement any term of any settlement, award or decision which it is his duty under this Ordinance to implement, shall be punishable with, imprisonment for a term which may extend to one year, or with a fine which may extend to rupees five hundred or with both, and in the case of continuing failure, with a further fine which may extend to two hundred rupees for every day after the first during which the failure continues,
66. **Penalty for false statement, etc:-** Whoever wilfully makes or causes to be made in any application or other document submitted under this Ordinance or the rules thereunder any statement which he knows or has reason to believe to be false, or wilfully neglecting or fails to maintain or furnish any list, document or information one he is required to maintain or furnish under this Ordinance or the rules thereunder, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to five hundred rupees, or with both.
67. **Penalty for illegal strike or lock-out:-** (1) Any workman who commences, continues otherwise acts in furtherance of, an illegal strike shall be punishable with imprisonment

for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both.

(2) Any employer who commences, continues or otherwise acts in furtherance of an illegal lock-out shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and in the case of a continuing offences with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

68. **Penalty for instigating illegal strike or lock-out:-** Whoever instigates or incites others to take part in or expends or supplies money or otherwise acts in furtherance or support of an illegal strike or an illegal lock-out shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both.

69. **Penalty for taking part in or instigating go-slow:-** Whoever takes part in, or instigates or incites others to take part in or otherwise acts in furtherance of a go-slow shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Explanation:- In this section go slow means an organized, deliberate and purposeful slowing down of normal out-put of work by body of workmen acting in a concerted manner, but does not include the slowing down of normal output, of work which is due to mechanical defect, break-down of machinery, failure or defect in power supply or in the supply of normal materials and spare parts of machinery.

70. **Penalty for discharging officer or trade union in certain circumstance etc:-** Any employer who contravenes the provisions of section 56 shall be punishable with imprisonment for a term which may

extend to six months, or with fine which may extend to five thousand rupees, or with both.

71. **Penalty for embezzlement or mis-appropriation of funds:-** Any officer or any other employee of a registered trade union guilty of embezzlement or mis-appropriation of trade union funds shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to a fine, which shall not exceed the amount found by the court to have been embezzled or mis-appropriated upon realisation, the amount of fine may be reimbursed by the court to the trade union concerned.
72. **Penalty for other offences:-** Whoever contravenes, or fails to comply with any of the provisions of this Ordinance, shall, if no other penalty is provided by this Ordinance for such contravention or failure be punishable with fine which may extend to two hundred and fifty rupees.
73. **Offences by corporations:-** Where the person guilty of any offence under this Ordinance is a company or other body corporate, every Director, Manager, Secretary or other officer or agent thereof shall, unless he proves that the offence was committed without his knowledge or consent or that he exercised all due diligence to prevent the commission of the offence, be deemed to be guilty of such offence.
74. **Trial of offences:-** No court other than a Labour Court or that of a Magistrate of the First Class shall try any offence punishable under this Ordinance.

MISCELLANEOUS

75. **Indemnity:-** No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this ordinance or any rule.

76. **Registrar, etc., to be public servants:-** A registrar, a Conciliator the Presiding Officer of a Labour Court and the Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Azad Jammu and Kashmir penal Code (Act XIV of 1860),
77. **Limitation:-** The provisions of Section 5 of the Limitation Act, 1908 (IX of 1908), shall apply in computing the period within which an application is to be made, or any other thing is to be done, under this Ordinance.
78. **Powers to make rules:-** (1) The Government may make rules for carrying out the purposes of this Ordinance.
(2) Rules made under this Section may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.
79. **Offences to be non-Cognizable:-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) no police Officer shall be competent to arrest without warrant an employer or a worker for an offence under this Ordinance.

SCHEDULE.

Public utility Service:- see Section 2 (20)

1. The generation, production, manufacture or supply of electricity, gas, oil or water to the public.
2. Any system of public consernancy or sanitation.
3. Hospital and ambulance service.
4. Fire fighting Service.
5. Any postal, Telegraph and telephone Service.
6. Watch and Ward staff and security services maintained in any establishment.

Sd/-
Asstt. Legal Remembrance,
Azad Kashmir Govt.