General Workers Federation
GWF
Joint Negotiating Panel of Sugar Industry Unions
JNP
Tel: 213-1771
gwf@freeitmauritius.org

Attention
Hon. Soodesh Callychurn
Minister of Labour & Industrial Relations
Victoria House
Port Louis.
This 6th August 2019

Re: New Versions Workers Rights Bill & Employment Relations (Amendment) Bill

Urgent new sets of Amendment required

Dear Hon..Minister,

The GWF-JNP believes that new fundamental amendments need to be urgently brought to the new versions of the *Workers Rights Bill & the Employment Relations (Amendment) Bill*, as presently displayed on the website of the National Assembly.

The acceptance of at least three fundamental amendments of the GWF-JNP to the first versions of the Bills, is commendable. It is not every day, that due to workers power, a government took the good decision to withdraw and bring in fundamental amendments to two critical pieces of legislation. The GWF-JNP took good note of the role played by the Hon. Minister and its senior cadres in this context.

1. **PRGF, Private Pensions and its Evil Bug**
   The GWF-JNP takes good note of the amendment on PRGF and its relation to Private Pension Scheme. Now, the 'evil bug; have been removed – no prejudice will be caused to the 50,000 workers under private pension scheme, and no dynamics will be unleashed for a bosses vested interest in Private Pension Fund Scheme, instead of the PRGF, which would have meant to the very death of the PRGF itself.

2. **Redundancy Board and its Evil Bug**
   The GWF-JNP welcomes the amendment made to the Redundancy provision, with elimination of of section 67(8). Now the mechanism fully entrench the principle of '*zisfifie apre lisansie*', thus providing a much more reasonable employment protection mechanism.

3. **Minimal Workers Right and its Evil Bug**
   The GWF-JNP is pleased that the interest of the 450,000 private sector employees have been protected against massive derogation provided for under Section 3 of the Workers' Rights Bill. Derogation to render minimal rights less favorable have now been eliminated and limited to only Collective Bargaining.

The acceptance of the three above amendments of the GWF-JNP justifies the stand taken from the 13th July 2019: that the two laws contained evil bugs and could not '*kwi-vide-vote*'. Now, the whole of the country realist the pertinence of our sincere criticisms, analysis and proposals, without which serious prejudices would have been caused to some 450,000

employees of the country.

Unfortunately the acceptance of the three GWF-JNP amendments have not eliminated other even more destructive evil bugs inserted in the two Bills. It is imperative, and critical to the livelihood of the working people, especially the 450,000 private sector employees, that new amendments be included before the bills are debated and voted by Friday 9th of August 2019.

The first set of Amendment, are four critical amendments to the Right to Labour Dispute, Right Collective Bargaining and Right to Strike and the issue Procedure Agreements under the Employment Relations (Amendment) Bill

The second set is a critical fundamental to the issue of 1% (2%) contribution of private sector employees to the Workfare Programme Fund/National Savings Fund under the new version of Workers Rights Bill.

Urgent Amendments to be brought to the Employment Relations (Amendment) Bill

Urgent Amendments need to be brought to the *Employment Relations (Amendment) Bill*, to prevent the new law to hurl us back in the era of denial of fundamental to strike, thus undermining the keystone of Collective Bargaining principles.

As it stands an employer can use loopholes in the law so as to render the Labour Disputes meaningless and on the other hand himself report a dispute to the CCM, to then imposes Compulsory Arbitration to undermine the right to strike of workers.

1. To Amend Section 18 of the Bill and amend Section 64 of principal Act as amended.
The new Section 64(2) of the Principal Act to read as follows:

(2) (a) No dispute shall be reported to the Commission under subsection (1) unless –

(**~~i) the procedures provided in the procedure agreement if any have been followed;~~**

~~(ii) meaningful negotiations have taken place between the parties; and~~

(iii) a deadlock has been reached.

~~(b) In this section –~~

~~“meaningful negotiation” –~~

~~(a) means meeting, discussing or bargaining in good faith between parties with a view to finding mutually acceptable solutions; and~~

~~(b) includes access to information, within a reasonable time at the request of either party.~~

~~(~~d) by repealing subsections (4) and (5).

2. To Amend Section 21 of the Bill and amend Section 69 of principal Act as amended.

A new subsection (8A) to be added:

(8) A where no agreement is reached under subsection (8) a trade union may opt to request the Commission to refer the Labour Dispute to the Tribunal.

And the rest of the subsection, as from 9 to reads as follows:

(9) Where no agreement is reached under subsection (8), and the trade union do opt to request the Commission to refer the labour Dispute to the Tribunal, ~~**the Commission shall declare that a deadlock has been reached and**~~ the Commission shall –

(a) within 7 days of the deadlock submit a report to that effect to the parties; and

~~**(b) unless the parties jointly refer the dispute for voluntary arbitration under section 63, refer the labour dispute to the Tribunal at the request of the party reporting the dispute.**~~

~~**(10) The request made by a party to refer a labour dispute to the Tribunal shall be made in such manner as the Commission may approve.**~~

~~**(11) Notwithstanding subsection (9) –**~~

~~**(a) where no agreement is reached in a collective labour dispute reported by a trade union on behalf of its members on an issue which concerns the bargaining unit as a whole; and**~~

~~**(b) the parties to the labour dispute do not opt for voluntary arbitration under section 63 or the party**~~

advise the parties to refer the the Labour Dispute for voluntary arbitration under section 63.

~~**reporting the dispute does not make a request to the Commission to refer the dispute to the Tribunal,**~~
~~**the union may, within 45 days of the submission of the report by the Commission have, subject to sections 76 to 82, recourse to strike.**~~

Subject to subsection (…..and sections 76 to 79...) where the parties decline to refer the labour dispute for voluntary arbitration, the trade union or the employer ~~**the party having reported the labour dispute**~~ may have recourse to strike or lock-out, as the case may be, within 45 days of the submission of the report by the President of the Commission under subsection 5(a).

3. To Amend Section 24 of the Bill and amend Section 76 of principal Act as amended.

24. Section 76 of principal Act amended

Section 76 of the principal Act is amended, in subsection (1) –
(a) by repealing paragraph (a) and replacing it by the following paragraph –

(a) a labour dispute has been reported under section 64 and no agreement has been reached;

(b) by inserting, after paragraph (b), the following new paragraph –

(ba) the trade union ~~**party**~~ reporting the dispute has not made a request to the Commission to refer the labour dispute to the Tribunal under section 69;

4. PROCEDURE AGREEMENT SEVENTH SCHEDULE [Sections 51 and 108]

First, the GWF maintains that we vehemently oppose the inclusion of mandatory Procedure Agreement, more so that the version 1 and even version 2 proposed, has been drafted in the first instance by Business Mauritius. We find it more effective and reasonable that the State propose a Procedure Agreement within the Code of Practice of the Employment Relations Act, for guidance, and a basis for parties to negotiate, or for the Tribunal, to make an Award.

Second, the GWF welcomes the decision of the Minister and the Government to retain two of the GWF fundamental amendments to the proposed Procedure Agreement, to ensure that freedom of the workers and union express themselves in the media and limitation of minimum service, has been retained.

The GWF-JNP still believes that a few additional fundamental amendments needs to be brought to the proposed Procedure Agreement.

PA Amendment 1

Article 9 – Procedure for settling of disputes
Where a dispute is not resolved at the level of the SNC, the employer and the union, acting jointly, may –

(a) in a case of a dispute of right, refer the dispute to the Ministry of Labour, Industrial Relations, Employment and Training;

(b) in a case of a dispute of interest, refer the dispute to the Employment Relations Tribunal or to an arbitrator appointed by them; or

(c) report the dispute to the President of the Commission for Conciliation and Mediation under the Employment Relations Act.

(d) Notwithstanding Article 9, and subsection (c) above, any party, where a dispute is not resolved at the level of the SNC, may report the dispute to the President of the Commission for Conciliation and Mediation under the Employment Relations Act

PA Amendment 2

The Article 2 of the Procedure Agreement gives too wide powers to employers and in law be in law can be interpreted as a union giving away statutory and effective rights, as enacted by National Assembly. This is why we propose a fundamental change to this section. This section too is a copy paste of sugar oligarchs proposed Procedure Agreement. Any respectful state cannot IMPOSE such powers' more reminiscent to slavery times than to modern industrial relations.

Article 2 – Powers of the employer (Extent and Limitations)

(1) The union recognises the prerogatives of the employer to conduct its business and manage its operations, ~~including –~~ in accordance with the law

~~(a) planning, directing and controlling of the operations of the business including methods, standards and manner of working;~~

~~(b) hiring, controlling and directing the working force and determining the number of workers required;~~

~~(c) controlling and regulating the use of all equipment and other properties of the employer and determining technological improvements required;~~

~~(d) determining the time, methods, manner of working and type of work to be done;~~

~~(e) modifying, extending, curtailing or ceasing operations and determining the number of workers required;~~

~~(f) selecting, appointing, transferring, promoting and laying off workers;~~

~~(g) disciplining and terminating the employment of workers for good cause;~~

~~(h) making such rules and regulations as the employer may consider necessary and advisable for the orderly, efficient and safe conduct of the business;~~

~~(i) deciding all other matters connected with its business.~~

~~(2) The union may, where the employer makes an abuse of his prerogatives, contest any of the decisions made in connection therewith.~~

(3) (a) The employer and the union shall endeavour to ensure that the rights of the other party as specified in the labour legislation, this Agreement or any Collective Agreement are respected.

(b) The parties agree that the rights of the employer, union and the workers include democratic and other rights as protected by the Constitution and laws of Mauritius, and the ILO conventions, where applicable.

(4) (a) The employer will ensure that all relevant laws will be respected and that there are relevant consultations and negotiations with the recognised union, ~~whenever appropriate and~~ in any matter concerning reduction in workforce, substantive changes to contractual terms and conditions of employment, transfer of ownership or where cessation of business is contemplated.

(b) The employer undertakes to comply with the laws of Mauritius in operating its business. ~~and retains the right to operate his business without any interference.~~

(5) The employer shall, in his administrative and human resource policies –

(a) cater for the general welfare of workers, in particular in so far as mess room, working tools and equipment, transport facilities, health and safety at work and communication are concerned;

(b) maintain regular, formal and informal consultations with the recognised unions concerning terms and conditions of employment, with a view to promoting good industrial relations.

(6)

~~(a) The employer agree that before bringing any substantial change to the terms and conditions of employment, he will consult the workers to explain the nature and reasons of such changes.~~

(a) The employer agree that before bringing any substantial change to the terms and conditions of employment, he will inform the Unions and comply with all relevant provision of the law and joint Agreement between the Union and the Employer.

(b) The workers are free to make representations, as appropriate, through their union's or workplace representatives.

New Critical Amendment to the Workers Rights Bill

1. Urgent Amendment needed to stop the potential robbery of 1% wages of some 450,000 private sector workers

If URGENT amendments not included in the new version of the ***Workers Rights Bill***, it will mean that the whole legal framework governing the present deduction of 1% of wages of all private sector will fundamentally be altered and cause serious prejudices to private sector employees.

As the Minister and Senior Technicians are aware we already raised this critical issue in the official meeting held with the GWF-JNP last week.

After the meeting, some amendments were made to the new version of the Bill, and in the SIXTH SCHEDULE [Section 78] FINANCING OF TRANSITION UNEMPLOYMENT BENEFIT.

The result is the generations of further serious problems and dangerous inconsistencies which WILL cause serious prejudices to the ALL private sector employees.

As the new versions of the Workers Rights Bill and its subsequent amendments stand, and in conjunction, with the application of the National Savings Act, it will have the following consequences:

1. All employees of the private sector will see their salaries be **deducted twice by 1% every months.**

The first deduction of 1% under Section 79 (2). Contribution to Workfare Programme Fund which says the following:

> *(2) Every employer shall, at the time of payment of the basic wage or salary to a worker for any period, deduct a sum representing one per cent of the basic wage or salary and pay over that sum to the supervising officer of the Ministry responsible for the subject of social security for credit into the Workfare Programme Fund.*

The second deduction of 1% will be under Section 5 (2) of the National Saving Act, which have not been repealed and which reads as follows:

> *(2) The employer of any employee referred to in item 2 of the First Schedule shall, at the time of paying to the employee his basic wage or salary for any period, deduct therefrom one per cent of the basic wage or salary and pay over that sum to the National Pensions Fund for credit to the Fund. [Fund" means the Fund established under section 3 NSF Act]*

The is why, **first** it is imperative to bring in, an URGENT new Amendment to ensure that the 1% contribution goes **UNIQUELY** to the **National Savings Fund Account of the employee**, as provided for the *Section 5b of the National Saving Act*. The 1% contribution CANNOT and SHOULD NOT be Credited to the Workfare Programme Fund as proposed in the Workers Rights Bill.

The first amendment, while eliminating the absurdity of two deductions of 1%, under two laws, will also ensure, as provided for in the *Section 5B (2) (a) of the National Saving Act*, that '**any balance**' from the 1% monthly contribution of an employee in the National Savings Fund Account of the employee will be paid as as "lump sum" at retirement.

Any balance remaining after the payment of 50% of the Transition Unemployment Benefits or after the payment from "Wage Guarantee Fund", shall as a matter of right goes to **EVERY EMPLOYEE** individually. And '**any balance**' also means the TOTAL remaining balance plus the accrued benefits included in the balance, whether the worker has been subjected to redundancy or none payment of wages during his lifetime.

The Workers Rights Bill as it stands, first turns the 1% contribution into a 1% Tax to be paid into the Workfare Programme Fund and secondly (may be inadvertently) deduct another 1%! According to our calculations a 1% a worker earning Rs 15,000 today would see Rs300,000 robbed, when he retires after 40 years. The whole of the private sector workforce, based on 450,000 employees will robbed some 131 Billion rupees!This is totally unacceptable, and the GWF-JNP and the workers of Mauritius, will NEVER accept such a robbery of workers salaries, in any circumstances.

Second, the Workfare Programme Fund, should NOT be funded by employees, but be funded by the employers and other sources. Proper amendments need to be included before Friday on this issue.

Third, we also propose that employers' contribution should be increased to 1% to be equal to those of the employees. Instead o 0.5% as proposed in the Bill.

It is only when the above amendments are being taken on board, that the new system will a bit fairer to the worker - as the worker will finance 50% share of Transition Unemployment Benefits, in addition to 'Guarantee' his 'Wage" as proposed by the Bill.

The GWF-JNP believes that several related subsequent amendments should brought to the Workers Rights Bill to ensure that the above principles be respected in the new law.

Conclusion

We urge the Minister to pay the same attention, as he did, when we submitted our proposals. What we are proposing is ONLY for the sole benefits of the 450,000 or so employees who create the wealth of this country and who in the coming months will express their right to vote. A right which denied for more than 300 years by the rich and propertied class, the very same class who are now trying to stifle working people advancement.

The reactionary position of the wealthy and propertied class, now under the umbrella of Business Mauritius, have always in the whole history of working people emancipation sabotaged advancement. They opposed the abolition of slavery, denied minimal right after indentured labour, opposed universal suffrage & independence, blocked workers' rights such as COLA in the 70's, fought against the introduction of the NPS in 1978, opposed the introduction of the TCSB in 1982 and vehemently oppose the fundamental right to strike of workers.

The GWF-JNP will scrupulously scrutinise all the moves by the government and the 'Fifth Column' and the stooges of the wealthy and propertied class within the State.

Should the government bow down, even with a single measure and concessions to the bosses, the GWF-JNP will not hesitate to assume its responsibility, as we have done throughout our history. A history, which by the way is also part of the history of the present government. And of course the working people of this country will ferociously react with their votes in such circumstances.

We hope the Minister will take his responsibility as he ded in the first sets of amendment and leave an advancement for the working people, whatever the result of the next elections would be.

Yours sincerely

Clency Bibi (Prezidan GWF) , Devanand Ramjuttun (JNP)
Jean Yves Chavrimootoo (Animater GWF) & Ashok Subron (GWF-JNP)