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RETHINKING INDUSTRIAL RELATIONS IN MALAYSIA

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ABSTRACT

Malaysian Industrial Relations is at the crossroads as a result of globalization and the emerging knowledge economy. This article begins with the background of industrial relations theory and Malaysian industrial relations. It also explains changes that are occurring as a result of the changing nature of work and the labour market in response to changes in the global business environment. A number of issues are addressed which call for attention in re-designing a new industrial relations policy for Malaysia in the 21st century.

1.0 WHAT IS INDUSTRIAL RELATIONS?

There has been a long standing debate about what the study of industrial relations should embrace. Some industrial relations writers have taken a narrow perspective of the subject and have defined it as a study of the institutions of job regulation at the workplace (Flanders 1965; Clegg 1979). Others have insisted that industrial relations is only one aspect of the social relations of work, and its study must therefore be located in a comprehensive analysis of contemporary capitalism (Hyman 1989).

The definition and scope of industrial relations has attracted renewed attention in the 1990s. In an assessment of American industrial relations, Kaufman (1993) has argued that the association of industrial relations with the study of trade unions and collective bargaining, coupled with the decline in union membership and power, has prompted a decline in the "organizational and intellectual vitality of the field that began in the early 1970s and accelerated in the 1980s" (ibid. p. 192).

Similarly, the British scholar Kelly (1994) has observed that industrial relations has faced three major challenges in the 1980s and 1990s: the rise of non-unionism; the emergence and growth of human resource management as a related field of study; and the revival of a quantitatively oriented labour economics. Most commentators agree that the field of industrial relations should expand to take account of the wider aspects of the employment relationship, or as Kaufman (1993) states, the nexus of "institutions, practices and outcomes associated with the world of work" (p. 194).

In terms of the definition of the boundaries of the subject, it is possible to say that in its broadest sense industrial relations is about the behaviour and interaction of people at work. It is concerned with how individuals, groups, organizations and institutions make decisions that shape the employment relationship between employers and employees.

Given the broad scope of industrial relations research and analysis, the subject has inevitably acquired an interdisciplinary character. It draws on a number of established academic disciplines such as economics, sociology, psychology, law, political science and history. At times both the subject matter and the analytical tools of each of these disciplines are relevant to the study of industrial relations problems. Some years ago, Dunlop (1958 p. 6) complained that industrial relations had "merely been a cross road where a number of disciplines met".

2.0 THEORETICAL FOUNDATION: UNITARISM VS PLURALISM

The study of industrial relations may be approached from a number of perspectives. Different people perceive industrial relations in different ways, and often from different and competing theoretical stances.

2.1 Unitarism

Unitarists emphasise the common interest of management and workers. According to unitarists, there is no fundamental difference of interest between management and workers as everyone within an organization has a mutual interest in the efficient and harmonious functioning of the organization. Unitarists do not regard conflict as inherent or inevitable within the employment relationship. Instead, they regard conflict as an aberration. Unitarists tend to ignore the concept of power. Instead, they prefer concepts such as 'authority' and 'leadership'. Generally unitarists consider the state to be an unwelcome intruder, which unnecessarily interferes with the otherwise harmonious relations within the enterprise. Unitarists also regard trade unions as unwelcome intruders in the workplace. Unions are regarded as competitors with managers for the workers' loyalty.

Critics argue that unitarism's view of the nature of industrial conflict is too narrow and limited, and that it ignores the fundamental conflicts of interest between managers and workers over, for example, the distribution of income and job security. It can also be said that unitarism is not so much an analytical theory as a prescriptive theory; that unitarism does not seek to describe or analyse the way the world of work is, but to prescribe the way it should be. Critics of the unitarist approach have also dismissed it as a mere 'ideology' designed to legitimise managerial power.

2.2 Pluralism

Industrial relations through the pluralism conceptual lens is seen as a process of competition, bargaining and compromise between many groups, "in which a body of rules restrains the abuse of power and enables all parties to accomplish some gains" (Deery, Plowman & Walsh 1997, p. 1 .9). Pluralism is probably the preferred framework for most academic work in industrial relations.

Pluralism emphasizes the diversity of legitimate individual and group interests within, and external to any organization. According to pluralism, industrial conflict should not be regarded as transitory or as "a pathological deviation from the natural harmony of industry"; rather, it should be seen as inevitable and inherent within the employment relationship (Deery, Plowman & Walsh 1997, p. 1.8). Power is recognised as a suitable concept for analysing industrial relations.

It is the medium through which conflicts between the bargaining groups are resolved. Power is thought to be spread between the various groups, so that no one group dominates because of the countervailing power of the other groups. The system is one of checks and balances. No one group wins completely, or all the time, but all are able to achieve some of their goals some of the time, through bargaining and compromise. Pluralists look on the state in one of two ways. Some pluralists regard the state "as an impartial guardian of the 'public interest'" (Deery, Plowman & Walsh 1997 p. 19). Others consider the state as a collection of organizations (government departments, industrial tribunals, etc.) each pursuing their own objectives: "the various organs of the state could simply be viewed as just another set of institutions operating within the framework of a pluralistic industrial framework" (Dabscheck 1989, p.9).

Several criticisms have been leveled against pluralism. Radicals and Marxists criticize pluralism's assumption of a balance of power between the parties. Radicals also consider that pluralism's focus on rational conflict management makes it merely a form of managerialism, albeit of a more sophisticated form than unitarism. Radicals also consider that pluralism's emphasis on rules, stability and equilibrium means that it downplays the significance of the more fundamental issues such as the conflicts of interest arising from the class division of society. Managers and unitarists also criticize what they call the old, "them and us", issues such as the conflicts of interest arising from the class division of society mindset as a self-fulfilling prophecy. This perspective can be considered as a bilateral or tripartite industrial system.

3.0 MALAYSIAN INDUSTRIAL RELATIONS

3.1 Introduction

Foreign industrial relations models have played a major role in the development of the industrial relations legal framework in Malaysia. The initial form of labour law in Malaysia relied for much of its inspiration on the British 'voluntarist' model. That is, it entailed voluntary collective bargaining, an absence of legal enforcement of collective bargaining (Deery & Mitchell 1993, pp 3-4). This British model was gradually abandoned throughout the post-War era, in favour of a legal framework that is similar in many way to the Australian 'compulsory arbitration model' (Deery & Mitchell 1993, p. 5).

It appears from Table 7 that only 19% of the respondents developed their CBAS internally, while 74% bought their system from outside vendors. It is also revealed that 58 % of the respondents did not modify the software bought from the vendors. In other word, they prefer to utilize the ready-made package. This may be due to the simplicity of the required application that is sufficient to fulfil the requirement, of small and medium business. The customisation if required can be done with minimum training or with the support of vendors. In addition, the majority of the small and medium companies do not have their own IT personnel to fully develop the system. (Ismail et. al., 2001)

The third foreign model to influence Malaysia was the Japanese system. During the 1980s the Malaysian Prime Minister, Dr Mahathir promoted a 'Look East" economic policy (Deery & Mitchell 1993, p. 9). The cornerstone of the policy was "the inculcation of Japanese-style work ethics, mainly referring to efforts to increase productivity through harder work and greater loyalty to the company" (Jomo 1995, p. 186). Workers were told to abandon traditional, British-style antagonistic trade unionism. The government encouraged the introduction of Japanese management techniques such as quality control circles. Some workers were even sent to Japan for training in Japanese management techniques. Perhaps most importantly, the government encouraged the replacement of existing regional or national unions with single–company, in-house unions.

Like most of the other countries in South East Asia, in Malaysia the government has played a pervasive role in regulating the behaviour and structure of trade unions and collective bargaining. Partly as a result of that heavy government involvement, there are low rates of trade unionism and collective bargaining coverage in Malaysia. Industrial relations and labour market policies have been a major contributing factor to the successful industrialization and development of Malaysia.

3.2 The Historical, Political and Economic Context of Malaysian Industrial Relations

It was during communist insurgency in 1948 that the government took the opportunity to reconstruct the labour movement along more politically neutral lines. The colonial state groomed "responsible" alternative unions (Jomo 1995, p. 204). And a system of compulsory registration of trade unions was used to weed out unacceptably militant or political unions. Small, fragmented unions covering workers in a single occupation and industry were favoured over 'omnibus' unions. These and subsequent developments have led to Malaysian unions being termed 'peanut unions' (Arudsothy & Littler 1995, p. 108). In addition, the Trade Union Ordinance of 1949 imposed severe restrictions on the right to strike.

After independence, the Trade Union Act 1959 was passed, further restricting trade unions. Industrial relations legislation in the 1960s introduced compulsory arbitration and limited the right to strike in 'essential services'. Amendments to the Industrial Relations Act in 1969 entrenched the notion of 'managerial prerogatives' and prohibited bargaining over such issues as dismissals and promotions. Many of these and subsequent changes were designed in part to facilitate the state policy of export-oriented industrialization by ensuring a stable, a low-wage environment conducive to foreign investors.

3.3 The Legal and Administrative Framework

The most important laws are the Employment Act 1955 which governs the individual employment contract; the Industrial Relations Act 1967, which governs relations between trade unions and employees, and the settlement of disputes between them, and the Trade Union Act 1959, which specifically regulates union organizations per se (Ayadurai 1993, p.69). The main government agency responsible for the administration of employment relations is the Ministry of Human Resources with the assistance of industrial courts.

3.4 Trade Unions

It was noted that during the 1940s, the Malaya government commenced a regime of control of trade unionism, to ensure trade unions were politically neutral and structurally weak. This system has been refined over the years. At present, trade unionism is governed by the Industrial Relations Act and the Trade Union Act. Unions must be registered under the Trade Unions Act . An unregistered union "shall be deemed to be an unlawful association" and "shall be dissolved" (Trade Unions Act, S19). The Director-General of Trade Unions has very extensive powers regarding trade unions.

In general, the Director-General has applied a very strict interpretation of the requirement that a union may only represent workers in a particular trade, occupation or industry. This has been an important mechanism to prevent unions recruiting members in new industries. For example, the Director-General prevented the Electrical Industry Workers' Union from organizing the foreign-owned electronics sector (which was a major growth industry in the 1980s) on the grounds that "electrical and electronic industries were dissimilar" (Arudsothy 1993, p.81). The electronics sector has subsequently remained largely union-free.

The Director General for Trade Unions may reject an application for registration, or cancel registration, on the grounds that he "is of the opinion that the union had been or is likely to be used for unlawful purposes". The lawful purposes or objectives are strictly limited to economic matters. These legal objectives are: the regulation of the relationship between employers and their employees; the conduct of collective bargaining; the representation of employees in trade disputes with the employer; and the representation of employees in the Industrial Court and Labour Court (D' Cruz 1988, p.165).

Political, as opposed to economic, unionism is prohibited, and unions are expressly prohibited from providing funds, either directly or indirectly, "to a political party or in furtherance of any political objective" (Trade Unions Act, s.52). The internal operations of unions are also heavily regulated by the Trade Union Act and the Director General for Trade Unions. These rules must be submitted to the Director- General for his approval (Ayaduria 1993, p.73). These legislative and other restrictions have played a major role in determining the size, structure and activities of Malaysian unions.

3.4.1 Central Trade Union Bodies

Most public-sector unions belong to the Congress of Unions of Employees in Public and Civil Services (CUEPACS) which, prior to 1980, was affiliated with the Malaysia Trade Union Congress (MTUC), but split due to leadership rivalries. Unions in the public sector are legally empowered to bargain with the Public Sector Department, but no collective bargaining agreements have been concluded to date. This suggests that the CUEPACS tends to be more political than the MTUC on occasion.

Finally, in 1989, the Malaysia Labour Organization (MLO), a rival to the MTUC, was founded, and even though it was supposed to be apolitical, responsible officers of the organization have been connected to various political parties. But it recently joined the MTUC, indicating the prospect for a unified labour movement.

Private sector employers in Malaysia are represented in a central organization known as the Malaysia Employers Federation (MEF). The MEF advises its members on how to deal with trade union claims, helps to prepare counter-proposals, and assists in negotiation of collective labour agreements. It also represents employers on tripartite bodies such as the National Joint Labour Advisory Council and the Wages Council.

3.5 Collective Bargaining

Although it is the stated policy of the government to encourage collective bargaining (Aminuddin 1996, p.105), collective agreements cover only a small percentage of the Malaysian workforce. In 1985, less than 10 per cent of all workers were covered by collective agreements. An important factor in the limited role of collective bargaining in Malaysia is the restrictions on collective bargaining imposed by the Industrial Relations Act (Ayadurai 1993, p.83). The Industrial Relations Act 1967 requires that in order to represent workers, either individually or collectively, a union must be recognized by the relevant employer. If less that half of the relevant workers are union members, the union is entitled to limited recognition. This means the union is only "entitled to make representations in relation to individual grievances on behalf of its members" (Ayadurai 1993, p.74).

If the employer agrees to bargain and an agreement is reached, the parties may conclude a collective agreement. All collective agreements must be submitted to the Industrial Court for approval. If the agreement complies with the law it will be approved by the Court and deemed to be an award of the Court.

3.6 Industrial Disputes

There is no explicit legislative recognition of the 'right to strike' in Malaysia. However, the Industrial Court has determined that, provided the workers do not violate any law; they "act in good faith" in order to "redress a justifiable grievance" and that "the surrounding circumstances left the workman no choice", then the strike is not illegal (Ayadurai 1993, p.78). It is important to note that matters pertaining to labour and industrial relations come within the jurisdiction of the Federal government as stipulated by the Malaysian constitution. Hence the Trade Union Ordinance and the Industrial Relations Act apply throughout the country.

The Ministry of Human Resources has authority to adjudicate disputes under both Acts, the former applying to both the public and private sectors, the latter, predominantly to the private sector. Even though the unionized sector is relatively small, collective bargaining has been gaining in importance as a method for determining wages, and terms and conditions of employment in Malaysia. Voluntarism is the basis of collective bargaining in Malaysia. When an employer or a trade union serves notice of its intention to commence collective bargaining, the receiving party is required to respond within 14 days. If the response is positive, collective bargaining should commence within 30 days. If negative, or if the bargaining otherwise does not commence within the 30-day period, the party serving notice may notify the Director-General of Industrial Relations who may then take the action necessary to persuade both parties to commence bargaining. If bargaining failed, then a trade dispute will legally exist and will be referred to the Minister of Human Resources who has the power through the Industrial Court to effect reconciliatory measures.

The dispute settlement machinery in Malaysia provides for conciliation and arbitration. The Industrial Relations Act empowers the Director-General of Industrial Relations and the Minister of Human Resources (MHR) to conciliate labour disputes. The Director-General can inquire into the causes and circumstances surrounding the disputes and bring the parties together, or appoint an arbitrator if both parties agree. The Minister can intervene in any dispute for the purpose of conciliation and, if appropriate may refer the case to the Industrial Court for arbitration. The Industrial Court, constituted under Section 30 of the Industrial Relations Act 1967, hears cases brought by the parties or referred by the Minister. Its decision is final and binding.

4.0 THE FUTURE OF INDUSTRIAL RELATIONS

4.1 Globalisation: Convergence or Divergence Model

Globalisation has profoundly impacted and challenged the economies of Asia, and therefore the IR systems. According to Lee (2000), the problems experienced in Asia in the last 20 years are related three economic points: (1) rapid industrialization, (2) the globalisation and liberalization of the Asian economy, and (3) the Asian financial crisis. These economic factors contributed to several trends that are common in Asian countries, such as the shift from low-skilled labour-intensive industries to highly-skilled and knowledge-intensive industries. It is predicted that globalisation would bring about convergence or divergence in the industrial relations of Asian countries.

Warner (2000) proposes the four concepts of 'soft' and 'hard' convergence and 'soft' or 'hard' divergence in place of the simple convergence/divergence model. According him, the Asian industrial relations model will not move towards hard convergence (uniformity). In other words, there is a common trend towards deregulation, privatization, and globalization in both the East and the West, but the details are very different. Lee (2000) concludes that "convergence in IR systems does not necessarily mean that the patterns of IR systems implemented by the less developed countries or latecomers move towards the Western model. Western industrial relations systems can also move towards the Asian models. For example, in the 1980s there was worldwide move towards Japanese style management.

One of the strongest arguments against convergence was raised in a study of a case in Singapore. Lee (2000) observes that Singapore, while globalizing and industrializing its economy by attracting Multinational Enterprises (MNEs) and foreign capital, maintains an authoritarian industrial relations system. The policy implication, drawn by Lee, is that "each country must look for the industrial relations system best suited to its situation. The direct transplant of IR system practices that are successful in other countries or areas will not work for the local economy".

4.2 The Future of Employer Organisations

There is optimism that employer organizations will survive into the future, but with an altered function. As far as the structure of the future employer organization is concerned, it can be suggested that the organization along sectoral or industry lines will continue. Another prediction is that employer organizations will essentially see their function change from collective bargainer to consultant information provider. Consistent with the trend to more individualized workplace bargaining, employer organizations will see their bargaining role circumscribed. Smaller organizations were an expectation since, in their case employer associations might still bargain on their behalf.

To avoid their demise, employer associations will take on an increased role in information provision. Of the various predictions for the type of information employer associations will be offering in the future, the most common were labour market information, advice to employers concerning the contracts of both employees and individual contractors, and advice concerning company law and taxation issues. It was also suggested that we can also expect their involvement in reviewing and adjusting minimum working conditions

4.3 New Unions

The forecast reduction in employment in areas of traditional union strength; the growth of the service sector, of casual and part-time work and self-employment; and of smaller enterprises can be argued to lead to a continued decline in union density as we know it, in the future. Experts refer to an emerging new unionism to meet the needs of atypical workers, including part-time, temporary, women and white-collar workers who were traditionally outside the organsitional target of unions (Kuwanhara, 2000, Pisani and Brighi 2000) . It can be suggested that in the future we can expect to see the rise of new unions (such as staff associations, and of enterprise super unions), as well as non-union workplace groups (such as works councils).

A German study reported that works councils are becoming increasingly important because they deal with 'qualitative' issues such as training, new technology, work organization, and adjustments to restructuring. Moreover, they do so by representing all of the workers in an establishment, not just union members or blue-collar workers. Employees would thus be represented by a 'mixed bag' of large and small unions, and non-union groups. The latter would be competing with the former for membership.

Unions would be involved in enforcing members' individual rights such as unfair contracts, wrongful dismissal, and discrimination allegations. It was also expected that unions would provide site delegates with labour market information for bargaining. If the social unionism model develops as predicted, their role will be to organize both around workplace and non-workplace issues, as both will impact on the quality of life.

4.4 The Future of Wage Determination

The role of Industrial Commissions would largely be confined to that of setting minimum wages and maximum hours. The practice of setting and enforcing minimum standards also protects the notion of a level playing field for employers of labour. Thus it is predicted that wage determination systems, like the Industrial Relations system generally, would center around processes, rather than substantive outcomes. As far as the foreshowed individual contracts are concerned, wage outcomes in the future would be dependant on developments in the product market concerned, one's individual labour market position, and one's bargaining skills.

Malaysian Trade Union Congress President Senator Zainal Rampak said the majority of non-unionized workers earn just between RM300 and RM500 a month. Malaysia needs a minimum wage salary of RM900 a month including the essential benefits. He said the existing Wage Council Act 1974 was outdated. The minimum wage under the act is RM350 per month. This is not applicable now with Malaysia rapidly developing and the cost of living rising. It is proposed that a pay guideline be implemented instead of allowing market forces to decide the salary of workers.

Apart from that, Dr. Fong's proposal to set up a wage council to determine wage levels and benefits for workers should be given serious thought instead of using the dormant tripartite wage council. The National Labour Advisory Council could also form a technical committee to review the existing act and make proposals and recommendations to resolve the issue of low salary and benefits for workers. Malaysian unions adhere to a harmonious industrial system which emphasises trusting each other and working together for the mutual benefits of both parties.

4.5.1 Part-time Labour and Foreign Workers

Continuing disparity between the terms and conditions enjoyed by part-time and full-time workers is also a concern for industrial relations in Malaysia. Research carried out in the United Kingdom in 1991 found that part-time workers were disproportionately excluded from fringe benefits such as pension and sick pay, amongst others. But with the European Union Directive on part-time work, things should look up. It aims to provide for the removal of discrimination against part-time workers: to facilitate the development of part-time work on a voluntary basis, and to contribute to the flexible organization of working time in a manner which takes into account the needs of the employers and workers. (Industrial Law Journal, Vol. 27, No.3, September 1998).

Certain clauses in the Directive are closely based upon the clauses of the ILO Convention No.175 (1994) which established minimum standards of part-time work to be respected by all signatory countries.

Part-time workers in Malaysia would also get the same benefits as full-time worker once the proposed amendments to the Employment Act 1959 are tabled in the Dewan Raykat this year. Among others, the new guidelines will regulate salary structures and benefits, including social security and EPF contributions, medical expenses, sick leave and maternity leave. It will also ensure wages and benefits are proportionate to the nature of work and number of working hours. It is hoped that the such amendments will create more jobs, and add value to work in the form of higher wages and benefits, bring forth positive developments in the well-being of worker, and safeguard their fundamental rights and eligibilities.

Foreign workers have been seen as threat to local workers in terms of job opportunities and levelling down working conditions. But recent studies show that foreign workers and local ones do not compete, but actually supplement one another (Battistella, 2000 & Lee, 2000). Thus internationalization of the labour market will promote the mobility of workers beyond borders, improve employability, reduce unemployment and raise the income level of all workers in an international scope. So the industrial relations policy towards foreign workers needs to be reexamined in order to foster a healthy flow of foreign workers into Malaysia especially in the construction and plantation industries.

4.6 Teleworking

Teleworking is becoming increasingly popular and as a result provisions need to be made for it in the country's industrial relations policy. Many companies are enticed by reports that teleworking can lead to productivity increases of up to 30 percent, a halving of sickness levels and widening of the pool of skilled people who might otherwise be unavailable to work for the organization. Teleworking initiatives can reduce the amount of time employees waste on the daily commute, and give staff the flexibility to achieve a better balance between their work and home lives. Environmentally, thee are significant benefits from reducing the number of people who struggle through the congestion which affects major towns and cities during the 'rush' hour.

In Malaysia, teleworking is an alternative mode of working and has been put into practice, especially among multinational corporations. Under the Demonstrator Application Grant Scheme (DAGS) managed by the National Information Technology Council (NITC), teleworking is given special emphasis within the council's social digital inclusion project. Already several community projects have been undertaken with the focus on exploring different models and initiatives of teleworking. The growing use of the internet as an essential work tool and the uptake of broadband services are seen as factors to encourage more companies to take the initiative and introduce teleworking practices.

In the digital era, there will be outsourcing of work and employees need not be at the employers workplace and such employees need not be hired under a contract of service but under a contract for service. In such situations should the law protect such employees? On the other hand, employers would like flexible contracts on a project basis to be in existence so that they need not incur costs, as is the case with employment contracts. The rights and privileges of teleworkers also need to be protected by trade unions, just like the full-time employees.

4.7 Work-life Balance

Industrial relations policies also have to look into family-friendly employment. The myth that family and work occupy separate spheres is fast fading in the face of tremendous demographic and economic changes (Voydanoff, 1984). Smaller families, increasing number of working women, non-traditional family patterns, and changing values are spurring awareness of the interdependence of work and family. Although the composition of the labour force and family structures have changed rapidly, attitudes and institutions have been slower to evolve. Many workplace rules and practices remain based on a male, single-earner work force, and many families still act under role-sharing assumptions based on the presence of full-time homemakers.

The Work-Life Manual, written by Daniels and McCarraher (2002), suggest that a significant reason for the slow take-up of family-friendly policies is that they chiefly focus on women, especially those with young children. Important as the needs of some groups are, balancing work and home is in danger of becoming ghettoized as something for a 'needy few' rather than a concern for everyone. A second factor is the failure in many organizations to involve people at all levels in creating ways of working that accommodate both business and employees needs as we enter a period of unprecedented change in the way we work, driven by new technology and new methods of communication.

Employers faced the challenge of preparing people with the attitudes and skills needed for successful integration of work and family life. In this context, employers and unions can work together for the successful implementation of family friendly practices in the workplace. The unions should also ensure that employees receive work-life benefits such as:

- Group purchasing
- Onsite personal services
- Alternative work arrangements
- Personal and professional growth opportunities
- Child care
- Elder care
- Adoption benefits
- Financial planning services and advice.

4.8 Life-long Learning

To attract foreign investment and to maintain competitiveness, a country must upgrade its industrial structure and the quality of its labour force. Thus, the linkage between education, and skill formation, and investment and sustainable growth is regarded as a 'virtuous cycle' (Verma and Betcherman, 2000). Governments are encouraged to create infrastructures and environments where employers can provide on the job training and other programs to their employees, and where employees can upgrade their skills, either through self-learning or virtual learning.

The government of Malaysia recently emphasized the importance of developing a life long learning culture among its citizens in order to prepare them for the knowledge based economy. The government, through its K-economy Masterplan plans to create Knowledge-workers and also the new Malaysian Remuneration System (SSM) which emphasis promotion through attendance of courses and exams. A number of issues need to be addressed to meet the demands of lifelong learning:

- Finding the right balance between the responsibilities of government, employers and individuals for vocational training beyond compulsory schooling;
- Making the apprenticeship systems more appropriate to both current and future labour markets needs;
- Increasing awareness of education and training as an investment in the future;
- Increasing access to vocational training for older workers;
- Improving the evaluation of training programmes

Changes in society are demanding changes in skills and levels of training to ensure economic efficiency and personal career fulfillment. Both employers and individuals need to be aware of the demands being made on them and to be able to participate in training relevant to those demands. In short the labour management policies of the country should make sure employees are equipped with the necessary skills and the best way is through continuous learning.

4.9 A Review of Industrial Law

Judge Gopal Sri Ram is of the opinion that principles of common law should not be used in deciding industrial disputes. "Such a concept has no place in modern industrial law which is about employers and employees, terms and conditions of service, and just and fair treatment for the workman", he said at a Bar Council workshop on 'Industrial Adjudication Reforms'. He said ideas such as industrial harmony, economic well-being and social justice were alien to common law. Gopal also said the Industrial Relations Act 1967 should also be amended to include a provision stating that common law should not be used in trade disputes but should be based on current laws. He also called for lawyers to be appointed as Industrial Court chairman and for an appeal court specifically to handle industrial disputes. The Industrial Court plays an important role as court of 'social justice' through which industrial harmony is maintained in Malaysia.

Regarding the three crucial labour laws - the Employment Act 1955, Industrial Relations Act 1967 and the Trade Unions Act 1959 - that determine the industrial relations climate of the country, a number of questions need to be asked:

- Are the current laws in keeping with the rapid changes that are taking place in the business environment as a consequence of free trade and globalization?
- Are the laws deemed to be too protective of employers?
- Are the current laws, promulgated decades ago, relevant for the times?
- Should the scope of the laws be expanded to cover more or fewer employees?
- Are the current laws too rigid that the cost of doing business is increasing and the country is no longer competitive?
- In the knowledge-based economy (K-economy), do we need many restrictive laws that inhibit employers, trade unions and employees from concluding individual employment contracts without interference from third parties?
- With a more informed workforce in the future, would trade union membership be marginalized and consequently, is there a need for laws to protect them ?
- Should there be standardization of labour laws throughout the country especially between Peninsula Malaysia, Sarawak and Sabah?

4.10 The National Retrenchment Scheme and Industrial Accidents

The new era of globalisation poses a lot of uncertainties for businesses and to stay afloat, employers have to downsize, right size and restructure their organizations and this will result in retrenchments and termination of surplus employees. Should there be a law on retrenchment and payment governing retrenchment? The MTUC has proposed a National Retrenchment Scheme to provide financial help for retrenched workers. There are many companies which have closed down without giving any notification to unions or employees. The workers have been left in the lurch. According to the New Straits Times, 21 July 2002, the scheme is long overdue for implementation and should be in place by year end. MTUC had proposed that contributions towards the scheme be on the basis of RM1 per worker and RM1 per employer, a formula opposed by employers. The scheme, to be managed by the Social Security Organization, would go a long way in helping retrenched workers financially while trying to find other jobs.

Despite the existence of Occupational Safety and Heath Act 1994 (OSHA), industrial relations policies in Malaysia should also emphasize the health and safety conditions of workers. The MTUC's President has categorized employers in Malaysia as not sensitive towards the health and safety of workers and they are only interested in making profits especially small companies. The Ministry of Human Resources will ensure that the organizations which employ more than 40 workers adhere to the directive regarding worker's safety and heath. Dr. Fong also commented that the Ministry is now pushing for what we call Malaysian Occupational Safety and Health Standards based on International Labour Organisation (ILO) standards.

The National Institute of Occupational Safety and Health (NIOSH) is taking steps to improve the standard of workplace safety and health. According to Fadzlul Haq Abd Razi, the manager of Niosh's Special Projects Unit (personal communication),"basically there are two aspects of workplace safety: unsafe acts, and unsafe conditions. Unsafe acts related to worker behaviour, attitude and habits that 'invite' accidents. Unsafe conditions are mainly perpetrated by the employer", he explains. "It's the employer that provides the training, sets the working environment, and the tools and the equipment. Ultimately work safety accountability rests mainly with the employer. Management sets the company safety policy and should be responsible enough to ensure it is implemented".

The Human Resources Ministry has directed the Occupational Safety and Health Department to carry out checks at all workplaces listed under vulnerable industries to ensure they adhere to regulations under the Occupational Safety and Health Act 1994. Minister Datuk Dr. Fong Chan said a special committee had been set up to find out if factories and high-risk workplaces adhered to the stipulated regulations. Among the industries to be audited are those handling gases and dangerous liquids, refineries and construction sites.

The aim of this audit is to reduce industrial accidents. Although over the years since 1990, the number of accidents have declined from 17 per 1,000 employees, the Ministry wants the numbers reduced until we meet the developed countries' standards of four per 1,000 employees. To ensure that health and safety regulations are strictly followed, the penalty for non-compliance with regulations will be increased from RM50,000 to RM100,000 for every non-compliance. In addition, employers should report all industrial accidents so that the affected workers could receive social security compensations and benefits.

4.11 Data Protection at Work

The industrial relations policy of the future should also establish a framework of principles and rules governing treatment of personal data at work in order to provide clear and comprehensive guidance to employers and workers about their rights and obligations in this field. A clear and simple framework of principles and rules on protection of worker's personal data will enhance employer/worker relationships and perhaps look into the provisions of Privacy and Data Protection Bill to protect the privacy of employees. The main drivers of this protection of worker's personal data are:

- Technological advances (e.g. e-mail, electronic files, the emergence of the 'home office' or teleworking which is increasingly blurring the boundary between work and private life. and cheaper genetic testing technology)
- Globalization (outsourcing of the human resource function of large businesses is new and offers efficiency gains but may be difficult if data protection laws are not devised.

- Security (in some countries businesses may be expected to monitor workers or prospective workers as part of boarder government efforts to step up security monitoring).

The main substance of data protection at work includes:

- Consent

  A worker or prospective worker is often in the position where it is difficult to refuse, withdraw or modify consent owing to the relationship of subordination between employer and employee.

- Medical data

  Access to and processing of medical data require particular attention in the employment context. It may be necessary for an employer to check whether a worker may be exposed to a health risk at work but the information should be kept to the absolute minimum required for an employer to meet his obligations. Some countries only allow employers to be informed of the outcome of the medical examinations i.e. whether the worker is fit to work or not. As a result the medical diagnosis and the rest of the medical record remain confidential and only the occupational health physician can have access to it.

- Drug testing and genetic testing

  Testing of workers for drug and substance abuse is becoming commonplace in Malaysia. Much of the present legislation allows testing of workers or a prospective worker's health to ensure that they are 'fit to work', which may include testing a worker for drug and substance abuse and employers' collection and processing of this kind of data should be limited.

  Employers who do genetic testing should limit the use of data which result from such testing. It is recognized that some employers are using genetic data to determine whether a worker should be employed or promoted. Genetic data relates not only to DNA analysis of the worker in question but may also extend to access to details of family members' medical histories.

- Monitoring and surveillance

  A number of companies have provisions restricting monitoring of worker's behaviour and correspondence (for example e-mails, internet use). It is time that employers and trade unions develop their own codes of practice on employee monitoring since recently the government have issued a warning against viewing pornography on the internet during office hours.

4.12 Information and Communications Technology (ICT) and the Knowledge-based Economy.

As evidenced by no less than the creation of Multimedia Super Corridor (MSC) and the K-economy master plan, IT is the vehicle of Malaysia's entry into the Knowledge-based economy. The main features of the K-economy are a highly educated labour-force, workers who are skilled in the application of knowledge, and the use of information and communications technology (ICT). It promises more value added production and greater international competitiveness. Initially, the use of ICT, the presence of knowledge workers, and the application of knowledge may be dense in some areas. But it is expected to spread to all sectors, even those that are traditionally labour-intensive and with low knowledge and technology content. The challenge that labour poses is perhaps the greatest of all in the transformation to the K-economy. Truly, the K-Economy is about workers driving the physical infrastructure, leveraging on the information and knowledge base to create value that translates into wealth.

The Congress of Unions of Employees in Public and Civil Services (CUEPACS) is calling the government to further address the training needs of civil servants in the areas of information and communications technology (ICT). While the organization recognizes that the government has provided ample planning for ICT training under the electronic government (e-government) initiative, it has the view that such facilities should be made available to government employees across the board. According to CUEPACS President Datuk Siva Subramaniam, this is crucial to ensure the training needs of government employees are identified and catered for over the years to come.

In Malaysia, for example the Multimedia Super Corridor (MSC) status companies alone are estimated to need more than 42,493 knowledge workers this year. Currently, the country is depending mainly on foreign expertise and producing only 10 per cent of its IT workforce. The lack of IT skilled professionals can hinder the nation's progress in a knowledge-based economy.

The demands of the new workforce of the K-economy will be different from the P-economy workforce, and as a result employment relations will need to cater for new conditions of employment such as flexibility of work, competency based pay, team based pay, family friendly environments, career development and progression. Employers and unions need to come to an understanding on issues like training and re-skilling for the current workforce and educating the future workforce.

5.0 CONCLUSION

The Malaysian industrial relations policy is the product of the government's desire to maintain a harmonious management-labour relationship in order to attract foreign direct investment which is needed to develop the

the employment relationships are highly regulated by government legislation, recently the government has introduced changes such the minimum wage, National Occupational Health and Safety Act, benefits for part-time workers, the National Retrenchment Scheme and ICT training for workers which will benefit them at the expense of the employers. In today's era of globalisation and ICT, Malaysia needs to reexamine its industrial relations in the context of the knowledge based economy and emerging trends in the workplace.

To assess the future of industrial relations one should fully take into account the overall impact of technological change, change in the industrial structure, the changing nature of the labour force, the labour market and globalization. The new industrial relations policy needs to address new issues such as teleworking, life long learning, knowledge workers, work-life balance, ICT and protection of data at work. New strategies need to be put in place so that challenges to the industrial relations climate in the country can be dealt with effectively. Collaboration between employers, workers and government will ensure the success of the Malaysian industrial relations model and hopefully will become a role model for other countries still struggling to create harmonious relationships that work.

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