GUIDELINES FOR INTERVENTION BY COMMISSIONER OF LABOUR IN TERMS OF SECTION 82 OF THE INDUSTRIAL RELATIONS ACT.

1. INTRODUCTION

1.1. These guidelines are published by the Minister under Section 109 of the Industrial Relations Act.

1.2. These guidelines lay down general principles to guide the Commissioner of Labour in preventing or limiting disputes in terms of Section 82 of the Industrial Relations Act. These guidelines are also to assist employers, employees and their organisations in understanding how the Commissioner will perform the dispute functions in terms of Section 82 of the Act.

1.3. It is accepted that conflict is an inevitable part of the employee/ employer relationship, and that it would be impossible to eliminate all disputes. It is however possible to eliminate unnecessary disputes and to assist parties in managing conflict effectively. These guidelines aim to provide assistance in this regard, in respect of disputes which have serious implications for employers/ employees or the economy if not resolved quickly.

2. STATUTORY EMPOWERMENT OF THE COMMISSIONER OF LABOUR TO INTERVENE IN DISPUTES

2.1 Section 82 of the Industrial Relations Act empowers the Commissioner of Labour to intervene at any time before a dispute is reported to the Commission, if the Commissioner is satisfied that the dispute may have serious implications for employers, employees or the economy if not resolved quickly.

2.2 A "dispute" includes a dispute as defined in Section 2 of the Act, which exists or may arise between:-

22.1. employees and their employers
22.2. trade unions and employers or their organisations;
22.3. trade unions themselves;
22.4. employer organisation themselves.

2.3. The following circumstances may be regarded as having sufficiently serious implications for employers, employees or the economy to justify the Commissioner of Labour's intervention in terms of Section 82 of the Industrial Relations Act;

2.3.1. the dispute could result in significant industrial action if not resolved; or

2.3.2. the dispute could cause economic harm to the economy, the employers, the employees or sectors of the community; or

2.3.3. the dispute could cause negative publicity for Swaziland or labour relations within Swaziland; or

2.3.4. the dispute could result in violence, damage to property or injury; or

2.3.5. it is within the public interest generally for the Commissioner to intervene.

2.4. If the circumstances justify the Commissioner of Labour's intervention, the Commissioner should intervene irrespective of whether the parties to the dispute wish the Commissioner to do so. It is however recognized that the Commissioner's intervention is more likely to result in a positive impact if that intervention is welcomed by the parties to the dispute. For these reasons the Commissioner should engage any party expressing concern over the Commissioner's intervention and, if possible, attempt to persuade the parties to agree to the Commissioner's intervention. The Commissioner must in all cases advise the parties to the dispute in writing of the intention to intervene.

2.5. The Commissioner of Labour may intervene by-

2.5.1. intervening personally and attempting to resolve or prevent the dispute through conciliation; or

2.5.2. appointing, after consultation with the Commission, a conciliator to attempt to resolve or prevent the dispute; or

2.5.3. appointing, after consultation with the parties, a commissioner or after consultation with the President of the Industrial Court, a judge to conduct a fact – finding exercise and to make recommendations for the resolution or prevention of the dispute.

2.6. The Commissioner of Labour and any person appointed by the Commissioner to intervene shall have the powers referred to in Section 64 (5) of the Industrial Relations Act. These powers include the right to subpoena any person for questioning, to give evidence or to produce a relevant document or object.

3. PRINCIPLES OF EFFECTIVE DISPUTE PREVENTION OR RESOLUTION

3.1 It is recognised that certain basic principles should be applied in order to prevent disputes, whether at workplace, industry or national level. The Commissioner of Labour should apply the following principles in intervening in disputes:-

3.1.1. Recognise that conflict is an inevitable factor in the employee/ employer relationship. Disputes will inevitably arise and it may be legitimate to certain situations for employers and employees to participate in industrial action. The Commissioner should accordingly not necessarily intervene everytime a dispute occurs which may lead to industrial action.

3.1.2. Generally deal with problems quickly and as close to their source as possible, thereby not allowing conflict the space and time to grow. The Commissioner should time any intervention as appropriately as possible, to maximise the potential for settlement or prevention of a dispute.

3.1.3. Address the root causes of conflict, and not just the outward symptoms of the problem. The Commissioner should, in any intervention, attempt to analyse and resolve the fundamental reasons for the conflict.

3.1.4. Recognise the extent to which the nature of the dispute influences the suitability of different dispute resolving mechanisms. For example, a dispute over the interpretation or application of a party's rights may be best suited to being resolved through some form of adjudication.

3.1.5. recognise the need for an effective dispute management system to deal with all disputes that may arise. The Commissioner should attempt to analyse whether the required systems and procedures are in place to deal with ongoing conflict that may occur.

3.2. The Commissioner of Labour's office needs to ensure that it is in close contact with the Labour relations field within Swaziland (e.g. by scanning the media, constant meetings with key role players etc.) in order to assess whether it should intervene in any dispute.

4. EFFECT OF THE COMMISSIONER OF LABOUR'S INTERVENTION ON THE REPORTING OF A DISPUTE TO THE COMMISSION

4.1 If a party reports a dispute to the Commissioner under Section 76 of the Industrial Relations Act after the Commissioner of Labour has intervened but before that intervention has been completed, the Commission may, after consultation with the Commissioner, direct the Commissioner or persons appointed by the Commissioner to conciliate the dispute as if they were commissioner's appointed under Section 80 (1) of the Act.

4.2 If a party reports a dispute to the Commission after the Commissioner of Labour has completed an intervention in accordance with Section 82 of the Act, the Commission may deem the dispute to have been conciliated and issue the required certificate stating whether or not the dispute has been resolved.

5. THE EDUCATION FUNCTION OF THE COMMISSIONER'S OFFICE

5.1. An appropriate budget needs to be allocated to ensure that the Commissioner of Labour's office is able to fulfill its obligations as set out in these Guidelines.

5.2. A range of appropriate codes, guidelines, model agreements and relevant precedents should be developed and published, and made available to the labor relations community throughout Swaziland, thereby contributing to a more effective and less conflictual labour relations environment.

5.3. Workshops and seminars should be arranged involving key role players within the labour relations community, to discuss, develop and highlight the role to be played by the Commissioner's Office in preventing disputes.

5.4. The Commissioner of Labour's office in consultation with the Commission, may offer training to key role players for the purposes of developing skills that prevent or minimise disputes at the workplace. These skills may include, but not be limited to, the following:-

5.4.1 negotiations skills

5.4.2 managing conflict at the workplace;

5.4.3 conducting disciplinary enquiries;

5.4.4 arbitration skills; and

5.4.5 labour relations training generally.