JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 81/87

BEFORE: The Hon. Mr. Justice Rowe - President
The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

BETWEEN	THE ATTORNEY GENERAL	
AND	THE MINISTER OF LABOUR	DEFENDANT/APPELLANTS
AND	CORDEL STEWART	
AND	THE UNIVERSITY AND	
	ALLIED WORKERS UNION	PLAINTIFF/RESPONDENTS

R.G. Langrin, Q.C., Neville Fraser & Oswald Burchenson for Appellants

Richard Small & Maurice Frankson for Respondents

November 16, 17, 18 & December 18, 1987

ROWE: P.

Morgan J., in an oral judgment delivered on October 7, 1987 made two Declarations that:

> "1. That the Collective Labour Agreement commencing the 1st day of January, 1975 as amended on the 3rd day of March, 1986, between the Sugar Producers Federation of Jamaica on the one hand and the Bustamante Industrial Trade Union and the National Workers Union on the other hand:
>
> (a) Is not an open - ended Agreement
>
> (b) Terminates on the 31st day of December, 1987; and

" (c) Cannot be renewed pursuant to any of its terms to extend its duration beyond the 31st day of December, 1987, so as to prevent the Minister, pursuant to the Labour Relations and Industrial Disputes Act and the Regulations made thereunder from causing a ballot to be taken to determine which trade union claiming bargaining rights, in relation to certain factory and field workers of Hampden Estates Limited should be recognized as having such bargaining rights.

2. That the existence of this said Collective Labour Agreement does not prevent the Minister, pursuant to the Labour Relations and Industrial Disputes Act and the Regulations made thereunder, from causing a ballot to be taken as of the 2nd day of October, 1987 at the earliest and at any time subsequent to that date to determine which trade union claiming bargaining rights in relation to certain factory and field workers of Hampden Estates Limited should be recognized as having such bargaining rights."

Against these Declarations the appellants filed and argued two grounds of appeal to the effect that the trial judge misconstrued the terms of the principal Labour Agreement between the Sugar Producers Federation of Jamaica and the Bustamante Industrial Trade Union and the National Workers Union as amended by the Collective Labour Agreement of March 3, 1986 in holding that the Duration Clause in the amending agreement affected the duration of the Principal Agreement and was not limited only to wages, bonus and fringe benefits.

There was really no area of disputed facts. The respondents were not parties to the Principal Agreement or the amendment of March 1986, but they grounded the Originating Summons by affidavits which were not countered in any way. These affidavits disclosed that an agreement was made between the Sugar Producers Federation of Jamaica on the one hand, and the Bustamante Industrial Trade Union and the National Workers Union on the other, on December 13, 1974. It commenced with the sub-title "Effective Date" under which there were three un-numbered paragraphs as under:

> "This agreement applies to all sugar workers engaged in the Factory, Field, Distillery and departments ancillary thereto.
>
> The terms and provisions of this agreement shall form part of the existing Labour Relations Agreement which otherwise remains in force.
>
> This Agreement shall be effective from 1st January, 1975 or the commencement of the crop whichever is the earlier and it shall continue and be in force for a period of one (1) year and shall continue thereafter from year to year unless amended or terminated by agreement or by notice given before the expiration date."

At one time Mr. Langrin thought that there was some relevance to the sub-paragraph which referred to the existing Labour Agreement of which the December 1974 Agreement should form a part. In the light of the fact that the December 1974 Agreement had what appeared to be a comprehensive duration clause showing commencement, continuation, process of amendment and of termination and of the unchallenged correspondence exhibited, the existence of an earlier agreement is irrelevant for any of the matters with which this appeal is concerned.

The 1974 Agreement was amended on April 17, 1985. That amendment (L.B.8) was to take effect from January 1, 1985 or the start of the crop whichever was earlier but there was no mention therein of its duration. A further amendment was made on March 3, 1986 (L.B.12) and under the sub-title "Duration of Agreement" it provided that "this agreement shall be effective from 1st January, 1986 or from the commencement of Crop whichever is earlier, and shall be in force for two (2) years to the 31st December, 1987." In clause 13 it provided that:

> "The above agreement is an amendment to the existing Collective Labour Agreement between the parties."

Morgan J., held, in effect, that this duration clause replaced the duration clause in the agreement of December 1974, and by virtue of the amendment the agreement will terminate on December 31, 1987. This decision is important because if Morgan J., is correct, under the

provisions of the Labour Relations and Industrial Disputes Act (L.R.I.D.A.) and the Regulations made thereunder the Minister of Labour at the request of a Union claiming to represent the Workers on a particular estate would be obliged to hold a representational rights poll within the 90 days immediately preceding December 31, 1987.

Two issues arise for determination. Firstly on the true construction of the principal collective agreement as amended what is the duration of the Collective Agreement and secondly whether the duration period so found falls within Regulations 3 (7) (a) or 3 (7) (b) of the Labour Relations and Industrial Disputes Regulations 1975 as amended.

Section 5 of the Labour Relations and Industrial Disputes Act (L.R.I.D.A.) which came into force in 1975 empowered the Minister of Labour to cause a ballot to be taken of workers or categories of workers to determine, in cases of dispute, whether such workers wish to be represented by a trade union at all and if so which union and also to determine by ballot of the workers which of two or more trade unions claiming bargaining rights in respect to them should be recognized by the employer. Regulations made by the Minister to enable him to administer this salutary power are contained in the (L.R.I.D.A.) Regulations of 1975 as amended in 1978. The relevant Regulations are Reg. 3 (4) (a); and 3 (7) (a) and (b) and I set them out hereunder:

> ."3. (4) If any collective agreement containing the terms and condition of employment of the workers in relation to whom the request for the ballot has been made is in force.
>
> (a) the Minister shall not cause the ballot to be taken earlier than ninety days before the date on which any subsisting specified period of that collective agreement is due to expire. ....."

referred to in that amendment and to nothing else. Put another way, Mr. Langrin was saying that the amendment L.B. 12 dealt with some, but by no means all the matters covered by the principal collective agreement and that the fair inference to be drawn is that the duration clause in the amendment referred only to the matters stated in the amendment and did not affect the agreement overall.

Mr. Small for the respondents submitted that the decision of Morgan J., could be supported on three bases:

> "(a) that Regulation 3 (7) (a) applies because the amending agreement (hereinafter referred to as L.B. 12) amends the original agreement, (hereinafter called 'L.B. 21') as regards the duration of the agreement;
>
> (b) that even if the duration clause in 'L.B. 21' continues to exist, 'L.B. 21' contains a specific period as defined in Reg. 3 (7) (a);
>
> (c) that even if the Court were to hold that the relevant Regulation was 3 (7) (b) the appropriate date for computing the 2 years would be the commencement date of the new agreement which was brought into existence by 'L.B. 12' and that that commencement date was 1/1/86."

There was correspondence between the Ministry of Labour and the Attorney-at-law for the respondents. Mr. Small in his letter to the Ministry on June 24, 1987 made specific reference to the amending agreement dated March 3, 1986 which we now know as L.B. 12 but he did not identify the principal agreement to which the amendment related. The reply from the Ministry of Labour did not specifically refer to or identify the document L.B. 21, but it stated that "the existing collective agreement covering the categories of workers in the abovementioned claim is an open-ended one and commenced on the 1st January, 1975." One must ask, what was the source of the information upon which the Ministry's letter was based? It is easy to infer that the information came from the Ministry's files because paragraph 18 (iv) of the Labour Relations Code 1976, provides under the heading Collective Agreements that:

> "Collective Agreements should be in writing and management should send copies of such agreements to the Ministry of Labour and Employment for their records."

On the 28th of September, 1987, Mr. Lambert Brown, a vice-President of the University and Allied Workers Union swore to an affidavit which stated that he received credible information that the document L.B. 21 was the existing relevant collective agreement. He said:

> "That on the 30th day of July, 1987 at the Supreme Court, King Street, Kingston I was presented with a document by the attorney-at-law for the Federation and the Company. The said document was headed 'Agreement between The Sugar Producers Federation of Jamaica and The Bustamante Industrial Trade Union and The National Workers Union' and was dated the 13th day of December, 1974 and exhibited herewith and marked LB21 for identification is a copy of the said document.
>
> That I was informed by the said attorney-at-law for the Federation and the Company and do verily believe that exhibit LB21 is in fact the existing principal collective labour agreement as referred to in paragraph 13 of my Affidavit above-mentioned.

All the parties who were in a position to contradict Mr. Brown's assertions were before the Court when this affidavit was filed and relied upon and none of them attempted to say that he was misinformed or that the document he produced was inaccurate or inappropriate. This leads me to the inescapable conclusion that although it was not so specifically stated in the letter from the Ministry, the inference to be drawn is that the Ministry was relying on the document of which LB 21 is a copy as containing the terms of the principal collective agreement between the parties. Mr. Brown's uncontradicted affidavit of September 28, 1987 is sufficient evidence that the parties were not relying upon any earlier agreement to fix the duration of the agreement, than the agreement contained in L.B. 21.

The agreement L.B.12 provided in Clause 13 thereof that:

> "The above agreement is an amendment to the existing Collective Labour Agreement between the parties."

From what I have said above this clause means that the agreement, L.B. 12, was intended to amend the agreement, L.B. 21.

Mr. Small submitted that in the same way as the duration clause in L.B. 21 became the duration clause of the whole agreement, the natural construction to be applied to the duration clause in L.B. 12 was that the duration clause in L.B. 12 became the duration period of the whole agreement.

I am persuaded that there is merit in that argument and for the reasons upon which Mr. Small relied. L.B. 12 was intended to amend L.B. 21 and the intention of the parties is to be gathered not from any secret hope or oral expression, general understanding or the like, but from the language used by the parties in the context of the agreement. The duration clause in L.B. 21 entitled the parties to permit the agreement to run from year to year indefinitely. But what it did not do was to enable the parties to treat that Agreement as anything but an agreement from year to year. A mechanism for revision of the principal agreement, L.B. 21, was built into that agreement in that it provided that the agreement could be amended or terminated by mutual agreement. No clause of L.B. 21 was exempted from the amendment process and nothing in L.B. 21 provided that the duration clause therein should be subject to any special procedure for amendment.

There is, as Mr. Small submitted, the closest relationships between paragraphs 2 and 3 of L.B. 21 and Clauses 1 and 13 of L.B. 12. In both cases there is a clause expressly stating that each particular agreement is an amending agreement, that the earlier agreement thereby amended remain in force and each provided for a period of duration. Consequently the method adopted to construe paragraphs 2 and 3 of L.B. 21 should be equally applicable to the construction of clauses 1 and 13 of L.B. 12.

If L.B. 21 as the principal agreement contained a master clause as to duration with over-riding effect, then the provision in L.B. 12 for a two-year agreement would be inconsistent and void. If somehow, the two duration periods could be construed to run side by side, a possible conflict would arise. If workers at the end of the first year of the life of L.B. 12 demanded an increase in wages and fringe benefits and relied on the so-called over-riding clause in L.B. 21 that the agreement can only be from year to year if not amended or terminated, could the employer say, "I will not negotiate with you because we have already solemnly agreed on the rates of pay and fringe benefits for the present year, and we are just beginning the 2nd year of the agreement L.B. 12." Of course it would make nonsense to construe the two documents to provide two duration periods and cause confusion on all fronts. I conclude therefore that the agreement L.B. 12 amended the duration clause of agreement L.B. 21 and in the process substituted a new duration clause for the whole agreement. That agreement is due to expire on December 31, 1987.

The matter in contention in the instant case is whether the Minister of Labour may cause a representational ballot to be held in the 90 day period prior to 31st December, 1987 or he is precluded by the L.R.I.D.A. and the Regulations made thereunder from holding such a ballot before the 90 day period prior to 31st December, 1988. On the facts there is a collective agreement in force in relation to the management and workers of the Hampden Estates Limited. That agreement specifies a period not exceeding two years during which it shall remain in force and in my opinion falls squarely within the provisions of Regulation 3 (4) and 3 (7) (a) of the L.R.I.D.A. Regulations 1975 as amended. That agreement comes to an end by effluxion of time on December 31, 1987, and is given no life thereafter by the parties who entered into that contract. The parties have by the clearest language converted an open-ended agreement into one for a fixed period not exceeding two years. I therefore find no merit in the grounds of appeal argued by the appellant.

I would upheld the decision of the learned trial judge as I entirely agree with her finding when she said:

> "What I find is that on the second agreement there is the first paragraph, Duration of Agreement, which says:
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> 'This agreement shall be effective from 1 January 1986 or from the commencement of crop whichever is earlier and shall be in force for the two (2) years to 31 December 1987.'
>
> That I find takes the place of the preamble headed 'Effective Date' on the old agreement, so the agreement as it is now has a fixed date of termination being 31 December 1987. Because it has a fixed date, it is no longer an Open-Ended Agreement."

Mr. Small addressed some interesting arguments in his alternative submissions. Suffice it to say that I do not accept that Regulation 3 (7) (a) applies to open-ended collective agreements, but I do not wish to enter fully into an area which on the facts does not arise for consideration.

CARBERRY J.A.

This was an appeal from the judgment of Morgan J., delivered on the 7th October, 1987. At issue are the provisions made under The Labour Relations and Industrial Disputes Act for dealing with competition between rival trade unions and the role of the Minister of Labour and his Ministry in settling such disputes.

Before looking at the provisions of the Act and the regulations made under it, it is useful to look at the background to the dispute in this case. On the one hand stand the employers, who have grouped themselves into an organization known as the Sugar Producers' Federation of Jamaica. This organization bargains on behalf of various sugar producers with representatives of the trade unions to which their sugar workers belong. As I understand it, in their bargaining they purport to reach agreements that will cover the entire industry and all the workers involved in it. There has been in the past and there promises to be in the future keen competition between rival trade unions for the privilege of representing the workers in the sugar industry. We were referred to the case of R. v. Minister of Labour, ex-parte National Workers Union (1978) 27 W.I.R. 239. It concerned the sugar estate next door to that with which this case is involved, and to some extent very similar problems. It illustrates the main problem in this case, inter union rivalry. In that case the incumbent trade union then enjoying bargaining rights on behalf of the sugar workers at the estate was the National Workers Union (hereinafter called the NWU), and they were being challenged by The Bustamante Industrial Trade Union (hereinafter called the BITU) who claimed that the workers on the estate had transferred their affections to the BITU which now enjoyed their confidence and support, and that they wished to be represented by the BITU. The Act provided a mechanism for the verification of such claims by a ballot of the workers involved. It also provided limitations on the holding of such ballots. The Minister of Labour of that day proposed to hold such a ballot. The NWU took him to the courts in an effort to prevent this and to rely on the limitations. The Court was there faced with the same problem involved

in the present case, i.e. on the act and the regulations as they then stood should a ballot be held or not? In that case the Full Court decided that under the then existing Act and Regulations a ballot should be held, and that the Minister of Labour was right to propose and hold such a ballot.

What the result of the ballot was I do not know, but at sometime soon after, both trade unions solved the problem by uniting to make joint representations and together became the unions negotiating with the Sugar Producers Federation on behalf of the workers in the sugar industry.

What has happened in the present case is that in November, 1984, a new union, the University and Allied Workers Union (hereinafter called the UAWU) wrote to Hampden Estate claiming bargaining rights for the workers on that estate. In doing this they were in effect challenging the NWU and the BITU who then jointly represented the workers, and the UAWU sought the intervention of the Minister of Labour; they asked that the Minister direct a poll to be taken amongst the workers in question with a view to establishing whether or not they wished to change their union representation to the UAWU. On this occasion however, the Minister, or perhaps his Ministry, were unwilling to hold such a poll; for reasons which are examined below the Minister and his staff claimed that on a proper construction of the Act, the Regulations made under it, and the existing collective labour agreement, a poll could not be held. By letter dated 24th January, 1985, the Ministry through Mr. Irons, wrote to the UAWU and advised that a poll could not be held before the 90 day period culminating on the 31st December, 1986. This was said to be the result of an existing "open-ended" Collective Agreement covering the workers involved. No details were given as to this agreement.

Surprisingly, no effort seems to have been made by the UAWU in 1986 to secure the holding of the poll in the period indicated in the letter of 24th January, 1985. It perhaps should be noted that the employers' response to the 1985 challenge by UAWU was in effect to rely on the response made by the Ministry of Labour; see the letter from the Sugar Producers Federation to the UAWU of the 19th February, 1985. This was understandable. They had reached an accommodation with the NWU and BITU and in the interest of industrial peace they had no wish to upset existing arrangements by

having to deal with a newcomer.

The UAWU renewed its efforts to secure bargaining rights for the workers at Hampden Estates and some neighbouring farms by a fresh claim made under cover of their letter of 10th April, 1987, to Hampden Estates. By letter of the 4th May, 1987, the UAWU wrote to the Ministry of Labour and asked that the Ministry (or Minister) arrange a representational rights poll. In their letter the UAWU alleged that a new collective agreement had been made between the Sugar Producers Federation and the NWU and BITU and that this agreement established a definite termination date of 31st December, 1987 for its duration, unlike the previous "open-ended collective agreement" referred to in the previous letter from Mr. Irons of 24th January, 1985, on the basis of which he had stated that no poll could be held before 31st December, 1986.

Mr. Irons, for the Ministry, replied to the UAWU by letter dated 8th May, 1987. He advised that there was (still) an open-ended Collective Agreement between the Sugar Producers Federation and the unions and that no ballot could be taken earlier than during the 90 day period expiring on 31st December, 1988.

On the 24th June, 1987, Mr. Richard Small wrote to Mr. Irons in response to the letter of 8th May, 1987. He challenged the information about the existence of an open-ended collective agreement and alleged that on 3rd March, 1986 an amending agreement had been made between the parties the duration of which was to expire on 31st December, 1987. He enclosed a copy of it, and requested that the department commence processing of the UAWU's claim to a representational rights ballot or poll.

Mr. Irons replied on the 6th July, 1987. He condescended to details: He stated that the open-ended collective agreement commenced on the 1st January, 1975. The Amendments that had been made did not alter its character or duration, and he reiterated that it could not be challenged earlier than in the 90 day period prior to the 31st December, 1988.

The UAWU's response was to take out on the 14th July, 1987, the originating summons which features in this case. The UAWU sought a declaration that the Collective Labour Agreement commencing the 1st January, 1975,

as amended by the agreement of 3rd March, 1986 was not (or no longer) open-ended, and terminated on 31st December, 1987; and that it did not prevent the Minister of Labour from causing a ballot to be taken as demanded by the union. They also sought an injunction to prevent Hampden Estates and the Sugar Producers Federation from amending the existing collective agreement so as to extend its duration beyond 31st December, 1987, and from entering into any new Collective Labour Agreement which would come into force subsequent to the 31st December, 1987, until such time as the ballot which they sought had been taken. The summons was taken out in the name of a member of the staff at Hampden Estate, and of the UAWU, and was directed against the Minister of Labour, the Attorney General, Hampden Estates Limited and the Sugar Producers Federation of Jamaica. The Originating Summons was heard by Morgan J on the 5th and 7th of October, 1987, and in effect that learned judge gave judgment for the UAWU in the terms sought in their summons, and which have been summarized above. Before considering the facts which emerged in the litigation as to the collective agreements made between the Sugar Producers Federation and the NWU and BITU it is proposed to take a broad look at the provisions of the Labour Relations and Industrial Disputes Act, conveniently referred to as the LRID Act.

Section 23(1) of the Constitution of Jamaica in effect conferred on workers the right to form or belong to trade unions of their choice. This was re-inforced by section 4 of the LRID Act which provided in subsection 1:

> "Every worker shall, as between himself and his employer, have the right -
>
> (a) to be a member of such trade union as he may choose;
>
> (b) to take part, at any appropriate time, in the activities of any trade union of which he is a member."

The other subsections of section 4 contain supplementary provisions protecting these rights. Section 5 of the Act, "Ballots to determine bargaining rights" carries the scheme of section 4 still further. It may be said to have two purposes: first to provide a mechanism for establishing as between the worker and his employer which union shall enjoy bargaining rights on the workers behalf, and securing the employer's recognition of that union; and secondly,

in the event of competing claims by rival unions it uses the same mechanism, the ballot, to determine which, if any, union should be entitled to "bargaining rights". Section 5(1) of the LRID Act reads thus:

> "If there is any doubt or dispute -
>
> (a) as to whether the workers, or a particular category of the workers, in the employment of an employer wish any, and if so which, trade union to have bargaining rights in relation to them; or
>
> (b) as to which of two or more trade unions claiming bargaining rights in relation to such workers or category of workers should be recognized as having such bargaining rights,
>
> the Minister may cause a ballot of such workers or category of workers to be taken for the purpose of determining the matter."

The subsections which follow contain provisions amplifying the Minister's powers, and carrying into effect the purpose of the ballot; for example the Minister is to certify the result and communicate the result to the employer who is then required to recognize that union as having bargaining rights. It is also provided that if two or more trade unions each receive not less than thirty per cent of the number of workers eligible to vote, they may claim joint bargaining rights. Subsection 9 provides for ballots to be taken in accordance with such procedure and conditions as shall be prescribed. Section 27 of the LRID Act gives the Minister power to make regulations prescribing any matter or anything which may be or is required by the Act to be prescribed.

In pursuance of the powers given by section 27 and section 5(9) the Minister made regulations, The Labour Relations and Industrial Disputes Regulations, 1975; they were amended in 1978, as a result of R v Minister of Labour, ex parte NWU (supra). These regulations deal almost exclusively with the arrangements to be made for the taking of a ballot and with the conditions under which a ballot may be called for.

One of the main problems in industrial relations has been inter union rivalry and the shifting of worker's allegiance from one union to its competitor. Consequently these regulations have sought to prescribe the conditions under which a ballot may be called for, and more particularly a

ballot to determine whether the workers in a particular bargaining unit have changed their allegiance and desire a new or different union to represent them in place of the union which they had previously chosen. Regulation 3 deals with these problems. It is a long regulation covering a number of conditions governing the Minister being persuaded to call a ballot, or to put it another way it prescribes a number of factors of whose existence the Minister must be satisfied if he is to call for a ballot to be taken. The regulation commences thus:

> "3(1) The Minister may cause a ballot to be taken under section 5 of the Act if - "

There then follow a number of obvious pre-conditions to the call for a ballot: there must be a request in writing, supported by prima facie evidence of worker support in the particular bargaining unit, and the employer must be shown to have resisted or at any rate has not acceded to the claim. Of particular importance in cases of inter union rivalry where there is already a union previously chosen and currently representing the workers in the bargaining unit is subsection 4 of regulation 3. It reads:

> "3(4) If any collective agreement containing the terms and conditions of employment of the workers in relation to whom the request for the ballot has been made is in force —
>
> (a) the Minister shall not cause the ballot to be taken earlier than ninety days before the date on which <u>any subsisting specified period of</u>* that collective agreement is due to expire;
>
> (b) the Minister's decision that a ballot should be taken shall be subject to the conditions that --
>
> (i) that collective agreement shall not be affected by the result of the ballot; and
>
> (ii) no negotiations for the making of a new collective agreement in respect of those workers shall be concluded before the ballot is taken."
>
> (*The words underlined above were inserted by the amendment made in 1978).

The aim of the regulation is to preserve within limits industrial peace or order at the workplace. If the workers in the particular bargaining unit have previously chosen a union, and the union has negotiated a collective

agreement, then until a time that is reasonably close (ninety days) to the date on which the current collective agreement is due to expire no ballot will be held to verify whether the workers wish a new and different union to represent and bargain for them. This limitation does not so far as I can see breach the right given by section 4 of the Act to workers to be a member of a trade union of their choice. They can still be a member, but it does provide that their new union will not be able to demand recognition through establishing itself by a ballot until within a certain prescribed time before the expiry of any existing collective agreement. Nor does this prevent the employer from recognizing the new union if he wishes to. Nor does it stop the Minister from calling a ballot under Regulation 3(1)(c) on the ground that he is satisfied that new or unforeseen circumstances have arisen which in his opinion justify that taking of a ballot. The position of the new union and its power to enter into new negotiations in accordance with its newly won mandate is preserved in the provisions of Regulation 3(4)(5) (ii) set out above. The UAWU request for an injunction to prevent Hampden Estates and the Sugar Producers Federation on its behalf from extending the current collective agreement or making a new one is based on that provision.

A question that immediately arises is how does one determine the date on which a current collective agreement is due to expire? What if the agreement is one that on its face is scheduled to have several years duration? Or perhaps has been so structured that the main agreement is to last for several years, but a section of it, e.g. dealing with wages is to be negotiable every year or two? Can the existing union in combination with the employer make an agreement which is endless? or has extended its expiry date for several years? The answer probably is that union and employer can make any agreement that they please. But what is at issue is having made such an agreement will it preclude a new union from coming into the picture and asking the Minster to call a ballot? This was the point at issue in R v Minister of Labour, ex parte NWU (supra) and, though the circumstances have changed and the regulations also, it is the point at issue here.

The regulations have sought to address this problem by subsection 7 to regulation 3. It reads:

"3(7) In paragraph (4) "specified period" means

(a) in relation to a collective agreement which specifies (in whatever manner) any period, not exceeding two years, during which that collective agreement shall remain in force, the entire period so specified;

(b) in relation to any other collective agreement --

(i) the period of two years from the date of commencement (or where no date of commencement is mentioned in that collective agreement, the period of two years from the date of execution) of that collective agreement;

(ii) every additional period of two years after the period specified in sub-paragraph (i);

(iii) any fractional part of two years remaining after any period specified in sub-paragraph (i) or sub-paragraph (ii), as the case may require."

This regulation, as I understand it, provides that if there exists a current collective agreement of two years, or under, then a ballot cannot be called for earlier than 90 days from the end of the two years, i.e. the date on which the two years expires, or if it is a shorter period, then the date on which the period ends.

If the collective agreement does not specify the period of its duration, but is what is called "open-ended", then the "specified period" is to be two years from the date on which it was scheduled to commence, or alternatively two years from the date of its execution, and it becomes "vulnerable" at two year intervals thereafter.

In these regulations the Minister has sought to lay down guidelines as to when he will cause a ballot to be taken under the Act. This is useful and desirable. It is however necessary to point out that both the regulations and the Act give the Minister an unfettered power to call for a ballot if he thinks that the circumstances, new or unforeseen, in his opinion justify the taking of the ballot, Regulation 3(1)(c); and that in fact his power under section 5(1) of the Act is quite unlimited. What has however happened in this case, unlike the Ex parte NWU case, is that the Minister has declined to exercise his residual or general power but has chosen to justify

his position under the regulations that have been made.

It is now necessary to examine the evidence which was offered as to the existing collective agreement or agreements, and to see how the regulations apply. The UAWU, seeking to persuade the court to make the declarations sought, had the burden of presenting such evidence as it could come by. This was not easy. It was no party to the existing collective agreement, whatever that was, and so itself had no copy. Further, it was seeking to have interpreted a document or documents which it had had no part in making, a disadvantage in pressing an interpretation. Still, while appreciating these difficulties, there seems to have been no reason why it should not have employed the normal procedures of discovery against Hampden Estates and the Sugar Producers Federation and so have secured whatever was the current collective agreement.

Be that as it may, the UAWU presented all told some four documents for consideration. They were exhibits to two affidavits by its vice-president Mr. Lambert Brown, and for ease of reference will be referred to not only by date but by their "affidavit" number.

The first such document, L.B. 1, was undated and unsigned. It was at first presented as being an agreement made in 1974 and as being the main current collective agreement between the employers and the NWU and BITU. It transpired that it was not. It was a draft circulated but never signed. It was apparently a "dressed-up" version of another document, dated the 13th December, 1974, and designated L.B. 21. Comparison between these two documents will show that many of the clauses in L.B. 21 appear verbatim or unchanged in L.B. 1, but that the latter has several necessary and useful clauses which do not appear in L.B. 21. There is no evidence which shows whether L.B. 1 was ever de-facto adopted or its true status. It can however be ignored in this case.

L.B. 21 constitutes then the earliest collective agreement proferred in this case. Dated the 13th December, 1974, it is headed: "Agreement between the Sugar Producers' Federation of Jamaica and the Bustamante Industrial Trade Union and the National Workers Union". Immediately underneath this title occurs the following clause:

"EFFECTIVE DATE:

This agreement applies to all sugar workers engaged in the Factory, Field, Distillery and departments ancilliary thereto.

The terms and provisions of this agreement shall form part of the existing Labour Relations Agreement which otherwise remains in force.

This agreement shall be effective from 1st January, 1975 or the commencement of the crop whichever is earlier and it shall continue and be in force for a period of one (1) year and shall continue thereafter from year to year unless amended or terminated by agreement or by notice given before the expiration date." (Emphasis supplied)

It is clear on the face of this document that it refers to an earlier existing Labour Relations Agreement. That agreement was never produced, though it would have been within the power of the Sugar Producers' Federation and or Hampden Estates to produce it. A defect in the existing system or if you like an improvement that might be made would be to provide that copies of agreements of this sort should be lodged in the Ministry of Labour for purposes of record and use in disputes, arbitrations and cases before the Industrial Disputes Tribunal. The letters of Mr. Irons of the Ministry indicate that the Ministry and the Minister were acting on advice by the Sugar Producers Federation. (See his letter of 24th January, 1985). But the Ministry does not seem to have had a copy: if they did, their failure to produce it in this case in inexplicable. They are charged with the duty of mediating between worker and employer, not taking one side or the other. The failure of the employers, who were parties, to produce this document is explicable on the ground that they seem to have chosen the role of non-cooperation: perhaps they were afraid of both lots of unions? They offered no evidence whatever, but the UAWU allege that it was the employers side that furnished them with L.B. 21.

For the appellants, the Minister and the Attorney General, Mr. Langrin has argued that this reference to an existing agreement means that the true existing collective agreement was never produced in evidence, and that this means the courts are powerless to decide this case. It is true that this poses a difficulty, but I do not think it is one on which the appellants can rely. They had the opportunity and the duty, by virtue of their office, to produce the existing collective agreement if there is

"3. (7) In paragraph (4) 'specified period' means -

(a) in relation to a collective agreement which specifies (in whatever manner) any period, not exceeding two years, during which that collective agreement shall remain in force, the entire period so specified;

(b) in relation to any other collective agreement -

(i) the period of two years from the date of commencement (or where no date of commencement is mentioned in that collective agreement, the period of two years from the date of execution) of that collective agreement;

(ii) every additional period of two years after the period specified in sub-paragraph (i);

(iii) any fractional part of two years remaining after any period specified in sub-paragraph (i) or sub-paragraph (ii), as the case may require."

It was contended before us on behalf of the appellants that the principal Collective Agreement involved in this case was an open-ended agreement which fell within Regulations 3 (4) and 3 (7) (b) of the L.R.I.D.A. Regulations and therefore it would require clear, definite, specific words in an amending agreement to transform the essential characteristic of the agreement from an open-ended one to an agreement for a specified period. Mr. Langrin drew our attention to the fact that the Amending Agreement dated 3rd March, 1986 (L.B.12) in its heading stated that the Agreement was "In Respect of Wages, Bonus and Fringe Benefits" and that in the body of the Amending Agreement reference was to "This Agreement." He submitted, therefore, that the duration clause in the amending agreement L.B. 12 was to be confined to the matters

one. They relied on it in their correspondence, and a case of this sort cannot be conducted on the basis of "hide and seek". In this situation the court must do its best, and that is to assume that the agreement dated 13th December, 1974, L.B. 21 is the collective agreement referred to in the later documents, or and even if it is not, that its opening clause "Effective date" replaced whatever clause there was governing duration in the missing document, and is the clause to be construed under the regulations. That clause created an agreement that was to run for a year, and thereafter from year to year. Such a collective agreement would fall under Regulation 3 paragraph 7(a), and the anniversary date of its commencement or the anniversary date of its termination would be the 31st December, 1975 and successive 31st December each year, unless or until changed.

Two other documents were presented as being collective agreements, one dated 17th April, 1985, L.B. 8, and the other dated the 3rd March, 1986, L.B. 12.

The agreement of 17th April, 1985 (L.B. 8) was a one page document. It contained no duration clause, and provided that it should come into effect on 1st January, 1985, or the commencement of the 1985 crop, whichever is earlier. Paragraph 10 of this agreement states:

> "The above agreement is an amendment to the existing Collective Agreement between the parties."

(The parties were the Sugar Producers Federation and the BITU and NWU).

The agreement of 3rd March, 1986, (L.B. 12), is entitled: "An Agreement .... in resepct of wages, bonus and fringe benefits." Paragraph 1 of this agreement reads:

> "1. DURATION OF AGREEMENT
>
> This agreement shall be effective from 1st January, 1986, or from the commencement of Crop, whichever is earlier, and shall be in force for two years to the 31st December, 1987."

This clause also appears to fall within paragraph 7(a) of regulation 3 Whether it is regarded as replacing the clause in the 31st December, 1974 agreement (L.B. 21) or being related solely to the items wages, bonus and fringe benefits, the result will be the same. The end of the "specified

period" within paragraph 4(a) of regulation 3 is in my view the 31st December, 1987. In the result I agree with the view to which Rowe P. has come, though I have reached it by a slightly different path. The respondents are entitled to the judgment made in their favour by Morgan J.

DOWNER, J.A., (Ag.):

When is the Minister of Labour obliged to hold a poll to determine which union should have the bargaining rights for certain categories of workers at Hampden Sugar Estate? The Minister of Labour, on the advice of the Attorney General, asserts that by virtue of the collective agreement in force, the earliest date is October 1988, while the claimant, the University and Allied Workers Union, holds that the earlier date of October 1987 is correct on the true construction of the same agreement on which the Minister of Labour relies.

The matter is justiciable so the Union and Cordell Stewart, one of their members, went before Morgan, J., who granted them declarations in favour of the earlier date.

The substance of the wording of the declaratory order, was that the collective agreement between the Sugar Producers Federation of Jamaica on the one hand and the Bustamante Industrial Trade Union, and the National Workers Union on the other was that the agreement in force, terminated on 31st December, 1987, and further that the existence of the agreement "did not prevent the Minister from causing a ballot to be taken as of the 2nd October, 1987 at the earliest to determine which union should be recognised as having bargaining rights for certain workers at Hampden Estates."

In the Court below and in this Court, the issue of law was whether the duration clause in L.B. 12, the amending collective agreement of January 1986, replaced the comparable clause in L.B. 21, the collective agreement of 1975; or whether it only amended the subject matters with which it deals, namely, wages, bonus and fringe benefits. In order to determine which contention should prevail, it is best to set out the relevant clauses of both agreements.

The clause which gave the duration in L.B. 21, the original agreement, reads as follows:

"AGREEMENT

between

THE SUGAR PRODUCERS' FEDERATION OF JAMAICA

and

THE BUSTAMANTE INDUSTRIAL TRADE UNION

and

THE NATIONAL WORKERS UNION

EFFECTIVE DATE:

This agreement applies to all sugar workers engaged in the Factory, Field, Distillery and departments ancillary thereto.

The terms and provisions of this agreement shall form part of the existing Labour Relations Agreement which otherwise remains in force.

This agreement shall be effective from 1st January, 1975, or the commencement of the crop whichever is the earlier and it shall continue and be in force for a period of one (1) year and shall continue thereafter from year to year unless amended or terminated by agreement or by notice given before the expiration date."

This style of drafting, as reflected in paragraph three, with no specified time for the termination of the contract was adjudicated upon in R. v. Minister of Labour ex parte National Workers Union [1978] 27 WIR 239, and it is an agreement of indefinite duration. The central feature of this type of agreement is that unless the parties terminate it at the end of a one year period by amendment, agreement or notice, it continues. Such an agreement could prejudice the rights of the workers who may wish to have another Union to negotiate on their behalf. The only resort is to appeal to the Minister in such circumstances and that was what happened in ex parte National Workers Union (supra). It is perhaps appropriate to emphasise that quite apart from the Regulations which govern this case, the Ministry of Labour

is empowered to take a ballot if there is any doubt or dispute concerning representational rights - see section 5 of the Act - and this is not surprising as the statutory provision was in furtherance of the workers constitutional rights to belong to a trade union of their choice. See section 23 of the Constitution and Banton & Ors. v. Alcoa Minerals [1971] 17 W.I.R. 275. In industrial relations practice this type of duration clause is labelled an open ended agreement. After the National Workers Union case and the amendments to the Labour Relations and Industrial Disputes Regulations 1975, made pursuant to the Act, a different type of duration clause came to the fore. This is typified in L.B. 12. The relevant clause reads:

"DURATION OF AGREEMENT

> This Agreement shall be effective from 1st January, 1986, or from the commencement of Crop whichever is earlier, and shall be in force for two (2) years to the 31st of December, 1987."

The significant feature of this type of clause with a fixed date of duration is that it is easy to construe so there is no scope for dispute as to when the agreement ends. This is of no little advantage in the explosive field of industrial relations.

Of critical importance as to the effect of these two Clauses is the amending clause in L.B. 12, which is as follows:

> "13. The above Agreement is an amendment to the existing Collective Labour Agreement between the parties."

How does a Court of construction decide on the scope and effect of this amending clause? Morgan, J., based her ruling on the submissions of Mr. Richard Small and found that

the effect of the amending clause was that the 'Duration Clause' of the L.B. 12, the second agreement, replaced the 'Effective date' of the original agreement, and that the unamended clauses in the first agreement together with the amendments in the subsequent agreement is now the collective agreement in force and this new agreement terminated on 31st December, 1987. In the words of Morgan, J., "the agreement as it now is, has a fixed date of termination being 31st December, 1987. Because it has a fixed date, it is no longer an Open-Ended agreement."

Mr. Langrin on the other hand challenged this ruling in his ground of appeal, which reads:

> "The learned trial judge misconstrued the effect of the terms of the principal Labour Relations Agreement and the terms of the Collective Labour Agreement dated 3rd March, 1986 in so far as it relates to the duration of the contractual period."

The thrust of his submission was that the second agreement, as well as the unamended clauses of the first, are both collective agreements in the eyes of the law. To support that, he cited section 2 of the Act which contains the following definition of collective agreement:

> " 'collective agreement' means any agreement or arrangement which—
>
> (a) is made (in whatever way and in whatever form) between one or more organizations representing workers and either one or more employers, one or more organizations representing employers, or a combination of one or more employers and one or more organizations representing employers;
>
> (b) contains (wholly or in part) the terms and conditions of employment of workers of one or more categories."

The basis of the appellants contention is that the caption of this second agreement is that it was "In Respect Of Wages, Bonus And Fringe Benefits" and that it was legitimate to read the amending clause

as altering only those subjects. It was, therefore, submitted that this second Duration Clause related to those parts of the collective agreement covered both by L.B. 12 and L.B. 21. So far as the unaltered clauses of L.B. 21 were concerned, they would still be governed by the Effective Date clause of L.B. 21, which is of indefinite duration. For instance, the issue of provision of scholarships, building and construction work and the Standing Committee would remain in force until 1988. The Standing Committee consists of representatives of both Unions and the Sugar Producers Federation and its function was to clarify certain outstanding matters and further to examine proposals which required in-depth study and special treatment. To show the importance of these subjects to the 'condition of employment of workers', a sum of $2,280,000. was set aside during negotiations for guranteed employment during the out-of-crop period. Another subject of great importance was the establishment of production incentive schemes on each estate. The gist of the dispute, therefore, is whether the duration clause of L.B. 12 amended the duration clause of L.B. 21 as Morgan, J., found, or that it only amended the mattersof wages, bonus and fringe benefits as Mr. Langrin contended.

Since these were two competing interpretations, it is necessary to choose that which better promotes the intendment of the Act and resort to the appropriate canon of construction to determine the matter. It must be stressed that although the collective agreement was made between the employers and two trade unions, third parties, i.e., the claimant union have the important right to request a poll ninety (90) days before the termination of the contract, and these rights are entrenched constitutional and statutory rights. The issues raised, therefore, are of exceptional importance. The time when the Minister ought, in law, to hold a poll was dependent on the date of

termination of the contract and that in turn depends on which clause governs the duration of the contract. It is, therefore, necessary that the ambiguity in the collective agreements should be resolved in such a way to promote the intendment of the Act of which Section 4 reads:

> "4.—(1) Every worker shall, as between himself and his employer, have the right—
>
> (a) to be a member of such trade union as he may choose;
>
> (b) to take part, at any appropriate time, in the activities of any trade union of which he is a member."

After Banton's case, the legislature recognised and made provisions in the Act for machinery to resolve inter-union rivalry through balloting to determine which unions should have bargaining rights. In such a situation, the common law is not lacking in interpretative techniques to resolve the ambiguity in collective agreements. The canon of construction which I find useful to resolve the ambiguity as to which duration clause applies to the collective agreement in force, is the contra proferentem rule. Odgers in Construction of Deeds and Statutes 5th Edition 1967 at 95 states the rule thus:

> "This means that if two positive meanings remain after all admissible evidence to arrive at the true meaning has been employed, then that meaning will be adopted which is most against the person using the words or expressions which have given rise to the difficulty in construction subject to this, that the construction thus adopted must not work a wrong."

Therefore, the ambiguity must be resolved against the Sugar Producers Association of Jamaica, and the Bustamante Industrial Trade Union and National Workers Union, as they drafted it. Because of this, the claimants construction of the agreement ought to be preferred. Therefore, I find that the duration clause in L.B. 12 applies to the new agreement. This agreement includes the unamended clauses of L.B. 21,

the first agreement and the amendments contained in L.B. 12 and they be must/read together. Thus, the contract ends in December 1987 and the choice of union can be made with promptitude. When commercial matters are adjudicated upon in the Courts, the law's answer is that 'Time is of the essence', and the law gives the same answer on matters of industrial relations.

Once the date of determination of the contract is decided, the earliest date for the Minister to hold the poll falls into place by virtue of the regulations. These regulations are made pursuant to Section 27 of the Act and they are for the better carrying out of its provisions. Paragraph 3(1) of the Regulations reads:

> "3.— (1) The Minister may cause a ballot to be taken under section 5 of the Act if—
>
> (a) a request in writing so to do is made to him by a trade union (hereinafter referred to as the applicant) and a certificate in the form set out as Form No. 1 in the Schedule is supplied to him;"

The unchallenged evidence in this case is that the claimants here made a request. After stating the Minister's duty to hold a poll the Regulations proceed to specify in paragraphs (4) and (7) the details of when the poll is to be held -

> "(4) If any collective agreement containing the terms and condition of employment of the workers in relation to whom the request for the ballot has been made is in force—
>
> (a) the Minister shall not cause the ballot to be taken earlier than ninety days before the date on which any subsisting specified period of that collective agreement is due to expire;
>
> (b) the Minister's decision that a ballot should be taken shall be subject to the conditions that:—
>
> (i) that collective agreement shall not be affected by the result of the ballot; and
>
> (ii) no negotiations for the making of a new collective agreement in respect of those workers shall be concluded before the ballot is taken."

"(7) In paragraph (4) 'specified period' means—

(a) in relation to a collective agreement which specifies (in whatever manner) any period, not exceeding two years, during which that collective agreement shall remain in force, the entire period so specified;.

(b) in relation to any other collective agreement—

(i) the period of two years from the date of commencement (or where no date of commencement is mentioned in that collective agreement, the period of two years from the date of execution) of that collective agreement;

(ii) every additional period of two years after the period specified in sub-paragraph (i);

(iii) any fractional part of two years remaining after any period specified in sub-paragraph (i) or sub-paragraph (ii), as the case may require."

If the duration clause in L.B. 21 remained unamended, it would govern the termination of the Collective agreement in full and the contract would end in 1988 although those aspects pertaining to wages, bonus and fringe benefits would terminate in 1987. It would be an open-ended agreement commencing in 1975 with no specified date for termination. Its date of termination would now be determined by paragraph 7(b)(i). The arithmetic would be that since it commenced in 1975, the two year series stipulated in paragraph 7(b)(ii) for every additional period of two years would end in 1988. That was the effect of the careful submissions of Mr. Langrin.

On the other hand, Morgan, J., found the duration of the contract was December 1987. The specified period pursuant to paragraph 7(a) is two (2) years and the agreement L.B. 12 as amended commenced in January 1986. For greater clarity, the draftsman sets out the termination date as 31st December, 1987. I am in agreement with the learned trial judge for the reasons I have given. This determination recognises that the Minister is a referee, and that his duty is to be fair to existing union and claimants in performing his important duties under the Act. Additionally, it gives due regard to the time element which is of

utmost importance to a claimant union.

Against this background, the declarations granted by Morgan, J., were correct and the Minister was not precluded from holding a poll as of 2nd October, 1987. I, therefore, have reached the same conclusion as Rowe, P., and Carberry, J.A., that the appeal should be dismissed.