

C.A. Construction of Statute = ss 67(3) & 68 Jamaica Constabulary Force Act - Whether to be construed in a restrictive sense - whether prevents Police Federation from affiliating with other unions or is wide enough to inhibit all contact with other unions or their members. Police Federation reheard before Industrial Tribunal by officers of other trade unions. Mischief which statute intended to remedy. Held (Forte JA dissenting) Police Federation had no legal agent to be represented by officers of other unions. [Amical against judgment of Industrial Tribunal] [Case No. 100/2020]

IN THE COURT OF APPEAL

[Forte JA dissents!]

SUPREME COURT CIVIL APPEAL NO: 110/92

BEFORE: THE HON. MR. JUSTICE CAREY, J A  
THE HON. MR. JUSTICE FORTE, J A  
THE HON. MR. JUSTICE WOLFE, J A

BETWEEN THE GOVERNMENT OF JAMAICA PLAINTIFF/APPELLANT  
AND THE POLICE FEDERATION DEFENDANT/RESPONDENT

Lennox Campbell, Senior Assistant Attorney General for Appellant

Lord Gifford, Q C and Maurice Manning for Respondent

June 27, 28 & July 29, 1994

CAREY, J A

The short point which arises on this appeal is the true construction of Section 67(3) of the Constabulary Force Act. It provides as follows:

"The Police Federation shall be entirely independent of and unassociated with any body outside the Force."

What is to be determined is the ambit of that provision. Is the prohibition to be considered in a restricted sense, that is, that it operates only to prevent affiliation with other unions or is it to be considered as wide enough to inhibit all contact with other unions or their members? I hope this is an accurate representation of the respective postures of the protagonists in this appeal.

The matter arises in this way: The respondent, as the bargaining agent for rank and file members of the Constabulary, have been in negotiations regarding an eighteen points claim for increase in wages and other improvements in conditions of employment with the appellant. Upon the breakdown of those talks, the parties agreed to refer the matter to arbitration. The date

of hearing was set, viz. 12th October, 1992. On 2nd October the respondent invited Rt. Hon. Hugh Shearer and Dr. Trevor Munroe to represent them before the arbitrators. At the hearing, objection was taken to the respondent being represented by these gentlemen on the ground that Section 67(3) of the Constabulary Force Act forbade such representation. The arbitrators stated a special case for the decision of the Supreme Court pursuant to Section 20 of the Arbitration Act. The question was formulated in this way:

"The Question for the decision of the Court is whether on the true construction of the Constabulary Force Act (and in particular Section 67(3) and Section 68) the Police Federation have a legal right to be represented by the Rt. Hon. Hugh Lawson Shearer O.J. and Dr. Trevor Munroe before the Arbitration Tribunal constituted to determine and settle a claim for increased wages and other improvements in the conditions of employment."

Patterson J. by an order dated 30th October, 1992 gave the opinion that:

"... the Police Federation has a legal right to be represented by the Rt. Honourable Hugh Lawson Shearer and Dr. Trevor Munroe before the Arbitration Tribunal constituted to determine and settle a claim for increased wages and other improvements in the conditions of employment of police officers."

He held that the Federation have a right to seek the services of persons of their choice to assist in the preparation and presentation of their case before the arbitrators. Further, he held that the selection of the two gentlemen was in their personal capacities as skilled men and, as such, it would not be a good ground for the arbitrators to exclude them from the hearing.

It is right to point out that we were informed by counsel for the appellant that the arbitration proceedings were, in fact, settled but the government nevertheless wished the question raised

in the special case to be resolved by this court. In endeavouring to satisfy that wish, I start by reminding of the words of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover [1957] 436 at page 461 where he said:

"For words, and particularly general words, cannot be read in isolation; their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use 'context' in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy."

In order, then, to ascertain the meaning of the material words in the relevant provision, I set out below other enacting provisions of the statute which I think bear on the prohibition contained in the provision so that the words can be seen in their true context. Section 67(1) states:

"For the purpose of enabling the Sub-Officers and Constables of the Force to consider and bring to the notice of the Commissioner of Police and the Minister all the matters affecting their general welfare and efficiency, there shall be established in accordance with the Second Schedule an organization to be called the Police Federation which shall act through Branch Boards, Central Conferences and a Central Committee as provided in that Schedule."

This provision creates a police union to deal with the general welfare and efficiency of the Force. Plainly this body would concern itself with pay and conditions of service like any trade union.

Sub-section (2) states:

"No representations shall be made by the Federation in relation to any question of discipline, promotion, transfer, leave or any other matter, unless some question of principle is involved."

The amplitude of the area of concern placed upon this body is however cut down by excluding the matters listed in the provision which otherwise would have been legitimate concerns of the new body. The constabulary, it must be remembered, is a paramilitary organization. Its members are centurions under orders not subject to question unless of course, they are illegal.

We then came to sub-section (3) which has already been set out and which is to be considered. Section 68 provides as follows:

"Subject as aforesaid, it shall not be lawful for a Sub-Officer or Constable of the Force to be a member of any trade union, or of any association having for its objects, or one of its objects, to control or influence the pay, pensions, or conditions of service of any rank of the Force; and any member of the Force who contravenes this provision shall be disqualified for continuing to be a member of the Force; and, if any member of the Force; and, if any member of the Force continues to act as such after becoming so disqualified, he shall forfeit all pension rights and be disqualified for being thereafter employed in the Force.

(2) If any question arises whether any body is a trade union or an association to which this section applied, the question shall be determined by the Permanent Secretary to the Ministry of Labour."

This section absolutely forbids sub-officers and lower ranks being or becoming members of a trade union on pain of dismissal. Plainly, that guarantee of freedom of association granted to all citizens by the Constitution is restricted by this section in the case of policemen. Section 23 of the Constitution ordains as follows:

"23 (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

"(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) which is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights or freedoms of other persons; or

(b) which imposes restrictions upon public officers, police officers or upon members of a defence force."

Thus, the relevant prohibition contained in Sections 67(3) and 68 of the Constabulary Force Act falls within the ambit of this constitutional limitation, thereby giving force to the view that parliament intended that in the interest of public safety and order, clear limits were to be set on the rights and freedoms of police officers. To ensure that meetings of the Federation and its various committees are secret, non-members of the Force are not allowed entry without the prior consent of the Commissioner. This is reinforced by a provision, Section 70, which prevents disclosure of the deliberations and decisions of the Federation to any person outside the Force without the consent in writing of the Commissioner or other authority specified in the provision. Section 70 states:

"70-(1) A person who is not a member of the Force shall not without the consent in writing of the Commissioner attend a meeting of a Branch Board, Central Conference or Central Committee.

(2) A person who is a member of the Force shall not without the consent in writing of the Commissioner publish or communicate to any person other than the Minister, a member of the Police Service Commission or a member of the Force any information (however obtained) relating to the proceedings, deliberations,

"recommendations or decisions or decisions of a Branch Board, Central Conference or Central Committee or to any matter whatever arising out of or concerning the duties of the Federation.

(3) Every person who contravenes any of the provisions of this section shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars, or to imprisonment with or without hard labour for a term not exceeding six months."

It would seem to me that Section 67(3) must be seen in a context in which Parliament intended the Federation to be isolated and insulated from contacts with trade unions or any association having for its object, or one of its objects, to control or influence improved pay and conditions of service. It is intended to obviate even the risk of taint. Because the constabulary is a para-military body, the prohibitions explicitly enacted in the provisions cited, were plainly intended to prevent the possibility of trade union tactics and methods from infecting the ranks. Parliament would not be unmindful of the links in this country between trade unions and political parties, at any rate, at the time of the enactment of these provisions.

The important words in Section 67(3) are "entirely independent of and unassociated with any body." Among the meanings ascribed to "independent" - in the Concise Oxford Dictionary are - "not depending on authority; unwilling to be under obligation to others." With respect to the word "unassociated", the meanings ascribed to "associate" are: join, (one with another); make oneself a partner in; combine for common purpose. The adverb "entirely" demonstrates a very high degree of separation. From the plain meaning of the words, the intention of Parliament was to preclude any links with, or intercourse between or joining together with, any other trade union or similar body or association. If the Federation is to keep itself apart from other trade unions,

that must imply that it can have no dealings whatsoever with the officers or members of another trade union. No member of the Federation could provide any instructions, information regarding deliberations, decisions or the like to any member or officer of any trade union. The fact that section 70 makes meetings of the Federation secret so that disclosure of deliberations requires the Commissioner's authorization and forbids the presence of civilians at meetings without authorization by the Commissioner, demonstrates in my view, the extent of insulation from any association outside the Force or from persons connected to such organizations.

Lord Gifford submitted that what was sought to be avoided was association in its primary sense, meaning organizational or institutional links, not a personal link or a consultative consortium. The clear dictionary meaning of "association" he said, requires affiliation with another body. Further, even on the wider meaning the Federation has not associated with the "bodies" to which Shearer and Munroe are connected, accordingly there was no institutional link.

I would agree that the phrase "unassociated with any body" lends itself to the contention of Lord Gifford. But those are not the only words in the provision which require interpretation. Included in the enactment is the phrase "entirely independent of", which according to the dictionary includes, as well, not being influenced by others in one's ideas or conduct. Applied to the particular circumstances of this case, I have difficulty in appreciating what difference in ideas exists between Mr. Shearer qua trade unionist and the Bustamante Industrial Trade Union (BITU), the body he represents. It would not be unfair or inaccurate to say he is the embodiment of the BITU, and the same is true of Dr. Munroe in respect of the University and Allied Workers Union (UAWU).

I was not impressed with the argument which found favour

with Patterson, J. that Mr. Shearer and Dr. Munroe were each invited to associate himself with the Federation in his private capacity, whatever that is. Both gentlemen were officers of their respective unions. Section 67(3),, explicitly forbids association with any other body and impliedly forbids association with another union. "Association", from any practical perspective, must include association between members of the Federation and members of a trade union at an official level. Obviously, the prescribed association is not to be understood in the sense of a personal or individual link. Accordingly, it seems to me to follow that if there can be no links, in the sense I have indicated, then another union member cannot represent members of the Federation. That association can only be described as official. Again, I do not think that it is right to say as the learned judge in his judgment (page 21):

"I do not understand the Federation to be seeking the assistance of trade unions or any other body to present its case. The request is made to two persons whom Government admits can contribute greatly to the Federation's case, and that must be because of their personal skill and ability. It has nothing to do with the trade unions to which they are affiliated or which they represent. Even assuming that I accept the wide meaning attributed to S.67 (3) by Mr. Campbell, I could not say that the appointment of the two persons would inexorably lead to a breach of that section by the Federation. It is quite possible for a person to wear several hats, as it were, but at different times. What is germane to the issue is the capacity in which he is acting on the particular occasion."

The only skill and ability which the selected gentlemen can provide is derived from the fact that they hold high office in another trade union. Dr. Munroe was not invited by the Federation because he has read political science and holds a doctorate. He was not invited to deliver a lecture in his field. I was not clear what expertise other than his trade union skills which Mr. Shearer was being called upon to demonstrate before the arbitrators. The Federation is not prevented from having



as their representative an Attorney or any person skilled in industrial relations, but the Federation is, in my judgment, precluded from having as its representative, any person who is an officer of another trade union. This limitation is imposed by law, viz., the Constabulary Force Act, and in particular section 67(3).

Lord Gifford argued that there would be no encroachment on the independence of the respondent merely by engaging two persons as their representatives. He said that the essence of engaging representation, for example, legal representation, is that it is the person who retains, that instructs. The independence of the Federation is inviolate. The respondent, he said, was not associated with either the BITU or the UAWU. The unions were not making common cause with the respondents because the unions were not approached.

I cannot agree. By inviting representatives of other unions to present their case to the arbitrators, those unions were adding their voices to the Federation's in their quest for improved conditions. I understand that to be making common cause with another body. Neither the inanimate BITU nor UAWU could be approached except through its officers, Mr. Shearer and Dr. Munroe. In my judgment, for these officers to appear on behalf of the Federation was a clear infraction of section 67(3). The Federation in the ordinary use of English could not be said to be "entirely independent of" and "unassociated with" a body when high officers of that body were representing the interests of the Federation before the arbitrators.

One cannot ignore the prohibition against members of the rank and file of the Constabulary becoming members of a trade union. If that were permitted, then obviously policemen would be represented by their own trade union officers. To allow these official of another union to be associated with officers of the Federation to represent rank and file policemen in their

endeavours to obtain increased pay and the like, is to take Mohammed to the mountain since the mountain cannot go to Mohammed. I would add as well that it must be difficult to find any case where a representative of one union has appeared on behalf of members of a different union.

In my view, on an examination of every word of the provision in its context in its widest sense, and having regard to the mischief which the statute, was intended to remedy, I have come to the firm conclusion that on a true construction of the Constabulary Force Act (and in particular section 67(3)), the Police Federation have no legal right to be represented by the Rt. Hon. Hugh Shearer, O.J. and Dr. Trevor Munroe before the Arbitration Tribunal constituted to determine and settle a claim for increased wages and other improvements in the conditions of employment of their members. I would, therefore, allow the appeal and make the order prayed for in the notice of appeal.

FORTE J A (DISSENTING)

As a result of a long outstanding dispute over an eighteen points claim for increase in wages and other improvement in conditions of employment, between the Government of Jamaica and the Police Federation (The Federation), both parties on the 1st October, 1992 entered into an Arbitration agreement in an attempt to settle the dispute. The Agreement for convenience is set out hereunder:

"MEMORANDUM OF AGREEMENT AND TERMS OF  
REFERENCE OF AN ARBITRATION FOR  
DECISION IN THE DISPUTE BETWEEN THE  
GOVERNMENT OF JAMAICA ON ONE HAND AND  
THE MEMBERS OF THE JAMAICA CONSTABU-  
LARY FORCE REPRESENTED BY THE  
JAMAICA POLICE FEDERATION ON THE OTHER  
HAND

WE THE UNDERSIGNED having voluntarily agreed that existing dispute between the Government of Jamaica on the one hand and the members of the Jamaica Constabulary Force represented by the Police Federation on the other hand, over increased wages and other improvements in conditions of employment should be referred to Arbitration by the three (3) Arbitrators for determination.  
DO HEREBY undertake that our respective organizations will abide by and follow the decisions arrived at by such Arbitrators in respect of the matters in dispute within the Terms of Reference set out below.  
WE AGREE that the Award of the Arbitrators shall be final and binding on the parties to the dispute.  
WE ALSO AGREE THAT Professor Gladstone Mills (Chairman), Mr. Godfrey McAllister and Mr. Nathan Richards shall be appointed as Arbitrators.  
WE FURTHER AGREE that the Terms of Reference of the Arbitrators shall be as follows:

"To determine and settle, the dispute between the Government of Jamaica on the one hand and the members of the Jamaica Constabulary Force represented by the Jamaica Police Federation on the other and over the Federation's claim for increased wages and other improvements in conditions of employment of its members."

Sgd:.....	Sgd:.....
Representing the	Representing the
GOVERNMENT OF JAMAICA	POLICE FEDERATION

Sgd:.....  
WITNESS

At the first sitting of the Arbitration Tribunal, Sgt. James Forbes, President of the Police Federation announced that the Federation would be represented by the Rt. Hon. Hugh Shearer and Dr. Trevor Munroe. He explained the reason for the representation thus (as taken from the case stated) -

"He said that in the 125 years history of the Jamaica Constabulary Force (The JCF), the police had never been interested in Arbitration and that they were quite ignorant as to the procedures. He said that the Federation had therefore made its choice out of its consideration that it needed persons who had the relevant experience. It had therefore solicited the services of two individual Jamaicans who had particular skills which could assist its member's case."

Mr. Lennox Campbell, Senior Assistant Attorney General, who appeared for the Government of Jamaica then objected to such representation on behalf of the Federation, because, he contended, representation by two well-known trade Unionists, and Chairmen of two unions, would be in breach of Sections 67 and 68 of the Constabulary Force Act.[The Act]. As a result, the Arbitration Tribunal stated a special case for the decision of the Supreme Court pursuant to Section 20 of the Arbitration Act. In the case so stated the question asked to be determined was recorded thus:

"20. The Question for the decision of the Court is whether on the true construction of the Constabulary Force Act (and in particular Section 67(3) and Section 68) the Police Federation have a legal right to be represented by the Rt. Hon. Hugh Lawson Shearer O.J. and Dr. Trevor Munroe before the Arbitration Tribunal constituted to determine and settle a claim for increased wages and other improvements in the conditions of employment."

Before considering the merits of the appeal by the Government of Jamaica, it should be recorded that after the ruling of Patterson J, both parties agreed to proceed with the Arbitration, and at the time of the hearing of this appeal the disputes had been adjudicated on by the Arbitration Tribunal, the award of which, both parties accepted, and have already honoured. In the event no live issue remains in respect of the substantive matter, but out of deference to the Government's wish to have the question finally settled, for my part, I consented to the continuance of this appeal.

In the matter coming on for hearing, and having heard submissions of counsel over a period of two days on the 29th - 30th October, 1992, Patterson J, answered the question in the affirmative. It is from this Order that this appeal now lies.

In answering the question Patterson J, gave his reason succinctly as follows:

"The contention that such appointments offend the spirit and intent of S. 67 (3) of the Act, in my opinion, is unfounded. I do not understand the Federation to be seeking the assistance of trade unions or any other body to present its case. The request is made to two persons whom the Government admits can contribute greatly to the Federation's case, and that must be because of their personal skill and ability. It has nothing to do with the trade unions to which they are affiliated (sic) or which they represent. Even assuming that I accept the wide meaning attributed to S. 67 (3) by Mr. Campbell, I could not say that

"the appointment of the two persons would inexorably lead to a breach of that section by the Federation. It is quite possible for a person to wear several hats, as it were, but at different times. What is germane to the issue is the capacity in which he is acting on the particular occasion. Having given due regard to the able submissions made by counsel for the Government and counsel for the Federation, I held that the Federation have a right to seek the services of persons of their choice to assist in the preparation and presentation of their case before the arbitrators. Further, I hold that the selection of the Rt. Honourable Hugh Lawson Shearer and Dr. Trevor Munroe is in their personal capacities as skilled men, and as such, it would not be a good ground for the arbitrators to exclude them from the hearing."

Before us Mr. Campbell challenged the finding of Patterson J, and contended that the learned judge fell into error when he attempted to interpret the provision of Section 67(3) of the Act. He maintained that the intention of the subsection was intended to insulate the Police Federation from outside influences, and to restrict any formal or informal liaison with other organizations including Trade Unions. He argued that the request by the Federation to the Presidents of two major Trade Unions to assist in the presentation and preparation of its case in an industrial dispute, is a device to circumvent the clear intention of the Legislature as expressed in Sections 67, 68 & 70 of the Act.

By Section 68 sub-officers or Constables are prohibited from membership in any trade union or any association having for its objects, or one of its objects, to control or influence the pay, pensions or conditions of service of any rank of the Force. Consequently, it is correct to say that the members of the Federation cannot be members of Trade Unions or any Association, dealing in like matters. As there is no allegation of any member of the Federation becoming a member of any Union, Section 68 is irrelevant

With that I am satisfied and consequently will adhere to the dicta of Lord Diplock in Inland Revenue Commissioners and another v. Rossminster Ltd and Related Appeals [1980]

1 All E R 80 at page 90 as follows:

"[But] judges, in performing their constitutional function of expounding what words used by parliament in legislation mean, must not be over-zealous to search for ambiguities or obscurities in words which on the face of them are plain, simply because the members of the court are out of sympathy with the policy to which the Act appears to give effect."

As the section is clearly directed at organizations and not individuals, the issue must be whether the evidence reveals that the Federation either became dependent upon or associated with another organization. The allegations are that the Federation retained solely for the purpose of representation at the Arbitration, two individuals who were Presidents of two Trade Unions. The determining factor consequently is whether they were employed in their capacities as Trade Union members and so acted, in which case it could be argued that it was the Trade Union with whom the Federation was associating, or whether they were retained as individuals in their private capacity. The letters of request to both gentlemen were addressed as follows:

"October 2, 1992

Rt. Honourable Hugh Lawson Shearer, M.P.  
The Chairman  
Joint Trade Union Research Development Centre  
Hope Boulevard  
Kingston 6

Dr. Trevor Munroe  
Department of Government  
University of West Indies  
Mona Campus  
Kingston."

and identically worded as follows:

"Dear Sir,

Kindly accept the Police Federation's best regard.

As you are aware, the Government of Jamaica and the Jamaica Constabulary Force are presently in dispute in respect of our salary negotiations. This dispute is set to be settled by way of arbitration.

The panel has now been named and the Central Committee humbly request your assistance in preparing and presenting the Police Federation's case.

Looking forward to working with you.

Sincerely Yours,

James Forbes  
Chairman."

The contention of the appellant rests on the factor that the Rt. Hon. Hugh Shearer is President of the Bustamante Industrial Trade Union and Dr. Trevor Munroe is President of the University and Allied Workers Union, both Unions being very active in union representation of many employees throughout Jamaica. However, the letters requesting their assistance are addressed to both gentlemen in their personal capacities, Mr. Shearer as Chairman of the Joint Trade Union Research Development Centre, not a Trade Union, and to Dr. Munroe in his capacity as a member of Department of Government at the University of the West Indies. There is no evidence that these gentlemen, in representing the Federation, purported or were purporting to act in their capacities as union members, and consequently there was no "institutional link" established (as put by Lord Gifford) between the BITU and UAWU on the one hand and the Federation on the other.

In my view, in order to succeed the appellant would have had to establish that the Federation retained the Unions to represent them, and not individuals who are not proven to be answerable to the Unions for their conduct in that particular undertaking. If we were to read into the section, an association with an "individual", then it would lead to an absurdity where



any person, being a member of another organization e.g. the Bar Association, or the Association of Chartered Accountants, could never be retained to represent the Federation or offer the benefit of his/her expertise to that body on a particular issue. The sub-section is obviously directed to prohibiting the surrender of the Federation's independence to, or any lasting or more permanent relationship with, another organization, which one could not say is applicable to a call for assistance of an expert in a single matter to be arbitrated by the Federation with the Government, and which would terminate at the end of that particular Arbitration.

In the course of the arguments, a lot was made of the provisions of section 70(2) of the Act which reads as follows:

"(2) A person who is a member of the Force shall not without the consent in writing of the Commissioner publish or communicate to any person other than the Minister, a member of the Police Service Commission or a member of the Force any information (however obtained) relating to the proceedings, deliberations, recommendations or decisions of a Branch Board, Central Conference or Central Committee or to any matter whatever arising out of or concerning the duties of the Federation."

In my view this section is not of assistance in the issue to be resolved. It deals with divulging information relating to proceedings, deliberations, recommendations and decisions of meetings without the consent in writing of the Commissioner. In any event, in this case, there was an agreement that the parties would settle their dispute at Arbitration, and in addition, the Permanent Secretary writing on behalf of the Ministry of the Public Service impliedly consented to the appointment of an "Advocate, Advisors/Consultants" by the Federation in letter dated 7th October 1992 when he wrote to the Chairman of the Federation:

"Please be advised that all the other costs regarding the arguments to be presented such as fees for an Advocate, Advisors/Consultants and Witnesses must be borne by your Federation where such persons are engaged by your Federation."

In fact in a subsequent letter dated 8th October 1992, the Permanent Secretary while writing to object to the selection of Mr. Shearer and Dr. Munroe offered:

"The Ministry however, in addition to paying the total costs of the Arbitration Panel, has offered to assist the Federation in meeting the costs of alternative advocates. Recognizing the undoubted contribution that the two persons selected can make to the Federation's case, we wish to remind you that there should be no conflict with the law if Mr. Shearer and Dr. Munroe were to appear as witnesses on behalf of the Federation."

These letters indicate that the Minister of the Public Service through his Permanent Secretary, recognized that the Federation needed an Advocate and/or Advisors and Consultant in order to advance its case before the Arbitration Tribunal. It would create, in my view, a great injustice to interpret Section 70(2), as prohibiting the Federation from giving information to its Advocate, Advisor or Consultant which would enable the Federation to properly present its case before the Arbitration Tribunal. In this regard credit should be given to the Minister of the Public Service, who recognized that this was necessary, and objected to Mr. Shearer and Dr. Munroe only on the basis that they are Trade Union Presidents. In any event, there is nothing to suggest that instructions that had to be given to the Federation's representatives involved "any matter whatever arising out of or concerning the duties of the Federation", as the Arbitration was concerned solely with emoluments and conditions of service of its members. Significantly also, the Ministry had no objections to the two representatives, being called

as witnesses which suggests that an association with them would be approved so long as they did not come to the Arbitration as Advocates to advance what they may have advanced as witnesses.

For these reasons, I am of the opinion that the retainer by the Federation of the Right Hon. Hugh Shearer and Dr. Trevor Munroe in their personal capacities is not an infringement of Section 67(3) of the Act. In the event, I would dismiss the appeal and affirm the order of the Court below.

WOLFE, J.A.:

The Jamaica Police Federation is an organization established by section 67(1) of the Constabulary Force Act "for the purpose of enabling the sub officers and constables of the Force to consider and bring to the notice of the Commissioner of Police and the Minister all the matters affecting their general welfare and efficiency." Section 67(3) of the said Act enacts that "The Police Federation shall be entirely independent of and unassociated with any body outside of the Force."

In 1992 the Police Federation and the Ministry of the Public Service, the Ministry responsible for negotiating with Government employees re salary and other conditions of employment, were engaged in negotiations concerning salary and other conditions of employment.

The negotiations reached a stage of deadlock and both parties agreed to refer the matter to arbitration. The Federation invited the Rt. Hon. Hugh Lawson Shearer, P.C., a former Prime Minister of Jamaica, President of the Bustamante Industrial Trade Union, a registered trade union in Jamaica, and Chairman of the Joint Trade Union Research Development Centre along with Dr. Trevor Munroe, a distinguished lecturer in politics at the University of the West Indies, General Secretary of the University and Allied Workers Union and former Chairman of the Workers Party of Jamaica, to assist in preparing and presenting its case in the Arbitration Proceedings. The letters of invitation to both gentlemen are set out hereunder:

"October 2, 1992

Rt. Honourable Hugh Lawson Shearer, M.P.  
The Chairman  
Joint Trade Union Research Development Centre  
Hope Boulevard  
Kingston 6

Dear Sir,

Kindly accept the Police Federation's best regard.

As you are aware, the Government of Jamaica and the Jamaica Constabulary Force are presently in dispute in respect of our salary negotiations. This dispute is set to be settled by way of arbitration.

"The panel has now been named and the Central Committee humbly request your assistance in preparing and presenting the Police Federation's case.

Looking forward to working with you.

Sincerely yours,

James A. Forbes  
Chairman."

"October 2, 1992

Dr. Trevor Munroe  
Department of Government  
University of West Indies  
Mona Campus  
Kingston

Dear Sir,

Kindly accept the Police Federation's best regard.

As you are aware, the Government of Jamaica and the Jamaica Constabulary Force are presently in dispute in respect of our salary negotiations. This dispute is set to be settled by way of arbitration.

The panel has now been named and the Central Committee humbly request your assistance in preparing and presenting the Police Federation's case.

Looking forward to working with you.

Sincerely yours,

James A. Forbes  
Chairman."

On October 7, 1992, the Permanent Secretary, Ministry of the Public Service, wrote to the Chairman of the Police Federation in the following terms:

"Ref No 16033

7th October 1992

Sergeant James Forbes  
Chairman  
Jamaica Police Federation  
79 East Street  
KINGSTON

Dear Sergeant Forbes

RE: PAYMENT OF FEES TO THE CHAIRMAN AND MEMBERS OF THE ARBITRATION PANEL APPOINTED TO DETERMINE AND SETTLE THE DISPUTE BETWEEN THE GOVERNMENT OF JAMAICA ON THE ONE HAND AND THE

" JAMAICA POLICE FEDERATION ON THE  
OTHER HAND OVER INCREASED WAGES  
AND IMPROVEMENTS IN OTHER CONDI-  
TIONS OF EMPLOYMENT

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This confirms the Government's offer to pay the fees to the Chairman and the other two (2) members of the Arbitration Panel in respect of the captioned subject.

Please be advised that all the other costs regarding the arguments to be presented such as fees for an Advocate, Advisors/Consultants and Witnesses must be borne by your Federation where such persons are engaged by your Federation.

Yours sincerely,

George A. Briggs  
Permanent Secretary

GAB/mc

cc Permanent Secretary  
Ministry of National Security and  
Justice

Commissioner of Police."

This letter was followed by a letter dated October 8, 1993, which is set out below:

"Sergeant James Forbes  
Chairman  
Jamaica Police Federation  
79 East Street  
KINGSTON

Dear Sergeant Forbes

Re: Arbitration of Jamaica Police Fed-  
eration Claim Representation for the  
Federation

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I would like to refer to the announcement that the Jamaica Police Federation has selected Rt. Hon Hugh L Shearer OJ, PC, President of the Bustamante Industrial Trades Union (BITU) and Dr Trevor Munroe, General Secretary of the University and Allied Workers Union, to marshal the evidence on your behalf before the Arbitration Panel. I refer also to today's meeting between the Jamaica Police Federation and ourselves to discuss the issue and I now formally advise you of the response of the Ministry of the Public Service to this development.

As indicated the Ministry of the Public Service is of the opinion that the selection of leaders of two Trade Unions to marshal the evidence on behalf of the Police Federation is not in the national interest nor in the best interest of the Jamaica Constabulary Force. It is also

"our view that under the Jamaica Constabulary Act, the Jamaica Police Federation cannot be associated with any Trade Unions. The position of the Ministry is supported by the advice of the Hon Attorney General that the involvement of the persons selected is in breach of both the spirit and the letter of the Law, in particular Section 67(3) of the Constabulary Force Act. In the circumstances, the Federation has been asked to reconsider its choices and we regret that the posture of the Federation is to seek a legal resolution to the matter.

The Ministry of the Public Service fully appreciates the need for the Jamaica Police Federation to get the highest level of representation possible and we understand the practical problems that may arise if they are to seek alternative spokespersons from leading advocates in the Industrial Relations field. The Ministry however, in addition to paying the total costs of the Arbitration Panel has offered to assist the Federation in meeting the costs of alternative advocates. Recognising the undoubted contribution that the two persons selected can make to the Federation's case, we wish to remind you that there should be no conflict with the Law if Mr Shearer and Dr Munroe were to appear as witnesses on behalf of the Federation.

The Ministry once more wishes to state that it is unable to accept the selection of Rt Hon Hugh Shearer and Dr Munroe and invites the Federation to seek alternative persons to marshal the evidence on their behalf.

Yours sincerely

George A Briggs  
Permanent Secretary."

The Police Federation responded in terms of a letter dated October 12, 1992, set out below:

"Permanent Secretary  
Ministry of Public Service  
63 Knutsford Blvd.  
Kingston

Dear Mr. Briggs,

Re: Arbitration of Jamaica Police  
Federation Claim - Representation of  
the Police Federation

This is to acknowledge receipt of your letter on the above caption subject dated October 8, 1992.

Having availed ourselves of the opinion of counsel we hereby confirm that the

"Jamaica Police Federation representatives at the Arbitration Tribunal shall be the Rt. Hon. Hugh Shearer O.J., P.C. Chairman of the Joint Trade Union Research Development Center and Dr. Trevor Munroe, Reader in Government and Head of Department of Government University of the West Indies Mona.

The Federation is ready and willing to proceed but only with the representation of our choice as set out above.

Sincerely yours,

James A. Forbes  
Chairman

cc. Prof Gladstone Mills  
Chairman  
Arbitration Panel."

At the opening session of the Arbitration Proceedings, counsel appearing on behalf of the Government raised an objection to the Federation being represented by the Rt. Hon. Hugh Shearer, P.C., M.P. and Dr. Munroe, as such appearance was in contravention of section 67(3) of the Constabulary Force Act. By and with the consent of the parties a special case was stated for the decision of the Supreme Court pursuant to section 20 of the Arbitration Act. The question for the court was as follows:

"...whether on the true construction of the Constabulary Force Act (and in particular section 67(3) and section 68) the Police Federation have a legal right to be represented by the Rt. Hon. Hugh Lawson Shearer O.J. and Dr. Trevor Munroe before the Arbitration Tribunal constituted to determine and settle a claim for increased wages and other improvements in the conditions of employment."

The matter came on for hearing before Patterson, J. in October 1992 and on October 30 Patterson, J. ruled:

"The opinion of the court is that the Police Federation has a legal right to be represented by the Rt. Honourable Hugh Lawson Shearer and Dr. Trevor Munroe before the Arbitration Tribunal constituted to determine and settle a claim for increased wages and other improvements in the conditions of employment of police officers."

The appeal before us seeks to impugn that order.

Patterson, J., in addressing the provisions of section 67(3), said at page 21 of the record:



"The contention that such appointments offend the spirit and intent of S. 67(3) of the Act, in my opinion, is unfounded. I do not understand the Federation to be seeking the assistance of the trade unions or any other body to present its case. The request is made to two persons who the Government admits can contribute greatly to the Federation's case, and that must be because of their personal skill and ability. It has nothing to do with the trade unions to which they are affiliated or which they represent. Even assuming that I accept the wide meaning attributed to section 67(3) by Mr. Campbell, I could not say that any appointment of the two persons would inexorably lead to a breach of that section by the Federation. It is quite possible for a person to wear several hats, as it were, but at different times. What is germane to the issue is the capacity in which he is acting on the particular occasion."

On the basis of the above finding, let us examine who are the two persons invited to assist the Federation.

The letter of invitation to Mr. Shearer purports to invite him as Chairman of the Joint Trade Union Research Development Centre (JTURDC). Mr Shearer's position as Chairman of the JTURDC is by virtue of his affiliation with the Bustamante Industrial Trade Union. The Constitution of the JTURDC, dealing with eligibility for participation in the JTURDC, states at Rule 2(1):

- "1. A participating union must be a registered trade union or a workers association.
2. Adhere to the provisions of the Trade Union Law."

Rule 3 states:

- "3. The Board of Directors of the Centre shall consist of two representatives from each of the participating members unions and these shall be named by their unions to serve for a period of two years at the expiration of which the unions must re-appoint their representatives to the Board."

A chairman shall be selected from among the Directors..."

It is clear from the above rules that Mr. Shearer's status as Chairman of the JTURDC is by virtue of his membership of one of the participating trade unions. It is not in his private

capacity that he acts when as Chairman of the JTURDC he is invited to participate in negotiations relative to the salary and conditions of employment of workers. In matters concerned with labour relations it is capricious to think that the Rt. Hon. Hugh Lawson Shearer can be divested of his trade union mantle and be clothed in the garb of personal capacity. His role as President of the Bustamante Industrial Trade Union, a registered trade union in Jamaica, is a matter of which judicial notice will be taken. It is fair to say that he enjoys no existence in labour related matters separate and apart from the Bustamante Industrial Trade Union of which he is the President. The same is equally true of Dr. Trevor Munroe, the General Secretary of the University and Allied Workers Union.

The learned trial judge, I dare say, failed to properly address the mischief which section 67(3) of the Constabulary Force Act was designed to prevent. The Jamaica Constabulary Force is the body charged with the responsibility of protecting the security of the nation. Section 67(3) was designed to prevent that body from associating with outside forces which may have a disruptive influence upon it and thereby endanger the security of the nation. Judicial notice will be taken of the fact that in Jamaica all the major trade unions are affiliated to major political parties. The National Workers Union is an active arm of the People's National Party; the Bustamante Industrial Trade Union is an active arm of the Jamaica Labour Party and the University and Allied Workers Union was an active arm of the now defunct Workers Party of Jamaica. Association with unions affiliated with these major political parties makes it possible for the Force to be manipulated for political reasons. Having concluded that Mr. Shearer and Dr. Munroe have no existence separate and apart from their respective trade unions in labour related matters and having regard to the affiliation of these trade unions to political parties, to allow personnel of these unions to participate in negotiations involving labour related matters, on behalf of the Jamaica Police Federation is, in my view, a clear breach of the purpose for which section 67(3) was enacted.

It is in recognition of the dangers inherent in having the security force of the country associating with these outside forces in matters relating to the welfare of its members that the legislature created and gave statutory recognition to the Jamaica Police Federation.

The argument that the assistance of two individuals - skilled in the negotiating art - were invited as opposed to the trade union organizations with which they are associated is nothing but a colourful device to circumvent the prohibition contained in section 67(3).

To contend that the exclusion of these two gentlemen from participating in the negotiations on behalf of the Jamaica Police Federation would be a deprivation of the Federation's right to be represented by the persons of its choice is a wholly untenable argument. I say this, because the constitutionality of section 68(1) has not been attacked and effectively the section has restricted the right of choice by declaring that the members of the Force and by extension the Federation shall not be members of any trade union. It, therefore, means that by statute the choice of representation does not include trade unions which are corporate bodies and which must act through their officers.

If the judgment of the court below were to stand, so as to permit two leading trade unionists to represent the Federation on matters of "general welfare", it would be an indirect means of associating the Federation with the trade union movement and it would lose its status as being "entirely independent" as ordained by the Act.

Section 68(1) does not in my view preclude the Police Federation from employing the services of eminent and experienced counsel skilled in the field of labour relations, and there are such persons available in Jamaica, to represent them. By such representation the mischief which the section is designed to avert would not be offended. Sections 67(3) and 68(1) are consonant with section 23(2)(b) of the Constitution of Jamaica.

In the Jamaican society of today, the majority view is that partisan politics has infiltrated the Jamaica Constabulary Force. To interpret section 67(3) so as to allow The Rt. Hon. Hugh Lawson Shearer and Dr. Trevor Munroe, two eminent trade unionists and well known adherents of political parties, to be able to represent the Jamaica Police Federation at the arbitration would be to entrench that view and would also be contrary to the spirit and intention of Parliament and a grave risk to the stability of the Force and the security of the nation.

The reliance on Haigh v. Haigh (1861) 31 L.J. Ch. 420; (1861) 3 D.E. G.F. & J. 157 (English Report 838) does not assist the cause of the respondent. There was no prohibition against the persons excluded by the arbitrator in Haigh's case. As Knight Bruce, L.J. pointed out at page 340:

"The father's wish to have the presence and assistance of those two individuals seem to me to have been lawful and reasonable."

In the instant case the appearance of the two renowned trade unionists and politicians is prohibited by sections 67(3) and 68(1) of the Constabulary Force Act.

The dictum of Turner, L.J. at page 342 is of absolutely no significance in the instant case. He cautioned therein that care must be exercised in ensuring "that the party who is affected is not prejudiced by the exclusion." There can be no talk of prejudice in this case because the representation sought by the Federation is prohibited by law. In Haigh's case the parties excluded were eligible persons to appear before the arbitrator and, therefore, the discretion to exclude them would have to be judicially exercised, that is, without creating prejudice to the affected party.

Clearly the statement by Patterson, J. that:

"I know of no Act which expressly or by necessary implication limits the common law rights of any person who is sui juris to appoint an agent to act on his behalf in proceedings such as this."

is a misunderstanding of the effect of sections 67(3) and 68(1) of the Constabulary Force Act and section 23(2)(b) of the Constitution of Jamaica. These sections, while not precluding the Federation from being represented, have limited the categories of persons who may be appointed to represent the Federation in matters of this nature.

Finally, Patterson, J's finding that the appointment of Mr. Shearer and Dr. Munroe "would not inexorably lead to a breach of that section by the Federation", is an error in law. The appointment does not have to inexorably lead to a breach of the section. Once the appointment is capable of resulting in the mischief which the section seeks to prevent, it is in breach of the statute and must be avoided.

For these reasons I would hold that Patterson, J. was in error when he made the order which he did. I would, therefore, order that the judgment of the court below be set aside and that the question submitted for the ruling of the court be answered in the negative.

*Cases referred to:*

- ① *Attorney General v. R. E. Ernest Impounding of the [1931] 436*
- ② *Inland Revenue Commissioners and another v. Westminster Ltd and Related Parties [1939] 1 All E.R. 500*
- ③ *Haigh v. Haigh (1861) 3 L.J. Ch. 200; (1861) 3 D.E. & G.F. 2157 (English Report 838)*