

# **Asia Pacific Labour Law Review**

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## **Workers' Rights for the New Century**

**Asia Monitor Resource Centre**

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## **Asia Monitor Resource Centre Ltd.**

AMRC is an independent non-governmental organisation  
that focuses on Asian and Pacific labour concerns.

The Center provides information, research, publishing, training, labour networking  
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AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.  
In order to achieve this goal, AMRC upholds the principles  
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### Editorial Team

Stephen Frost, Omana George, and Ed Shepherd

### Layout

Tom Fenton

### Cover Design

Eugene Kuo

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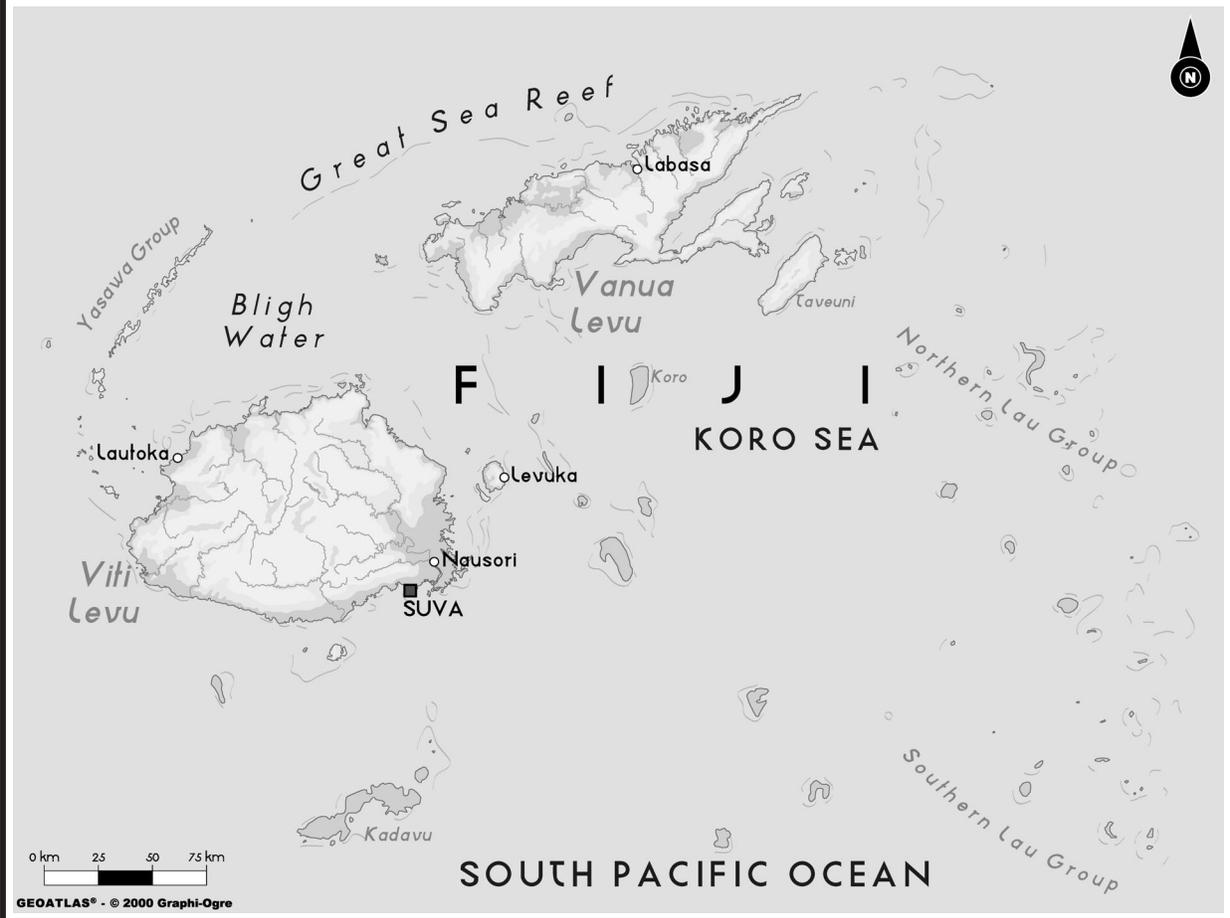
# Fiji – Labour and the Law

Abdul Samad Khan

## Introduction

Fiji consists of 332 islands, spread over three million square kilometres of ocean in the South Pacific with a total area of 18,333 square kilometres. Around a third of these islands are inhabited by a population of approximately 762,000 (1995 estimate). Fiji lies between 15° and 22° south of the equator and enjoys a tropical maritime climate without great extremes of heat or cold. Situated in the hub of the Southwest Pacific, Fiji has become a crossroads of many nationalities and being rich in diverse cultural backgrounds, Fiji has become a home for Fijian-Indians, Europeans, Chinese, and other Pacific islanders.

The economy of Fiji is primarily agrarian with sugar as the backbone of the economy; gold, copra, fish, and coconut oil are major export earners together with tourism as the highest foreign income earner. Since secondary industries are mainly resource-based, due to growth in garment sector, manufacturing is beginning to contribute significantly to the economy. According to a report by the Bureau of Statistics, the labour force for the year 2001 totalled 341.4 (e) and the number in paid employment was 104.0 (e).



### Historical background

The first labour legislation was called the Native Labour Ordinance 1883-1890. The legal provisions were developed to allow native Fijians to work on plantations. However before engaging a native employee, the employer had to obtain permission and a license from the Native Commissioner. This was consistent with a policy that encouraged native Fijians to remain in the villages to help preserve their way of life. It also prompted the colonial administration to recruit indentured labour from India to work the cane fields. The ordinance also prescribed wages.

In 1888 the Masters' and Servants' Ordinance was enacted. This act allowed employment of Indian immigrants. In 1895 the Fijian Labour Ordinance replaced the Native Labour Ordinance. The Fijian Labour Ordinance was amended in 1905 and the Master and Servants Ordinance in 1910.

Under the provisions of the above laws, workers were employed for a period of one year under written contracts. Under these laws workers faced penalties if an employee without excuse did not start the work for which s/he was engaged or where s/he had started service, neglected or refused to perform the duty. Employees were also subject to penal sanctions for failing to keep their dwellings clean.

According to a Labour Department report of 1944, 49 employees were prosecuted for breaches of labour laws; no employers were prosecuted in this period. Penalties against employees featured until abolished on 1 August 1947. In 1947 Labour Ordinance 23/47 repealed and consolidated old labour legislation into the existing law known as the Employment Act. Major changes were made to this Act in 1974/75.

In the 1940s the Industrial Association Ordinance and the Industrial Disputes (Conciliation and Arbitration) Ordinance, and the Workmen's Compensation Ordinance were enacted. The Trade Disputes Act 1973 replaced Industrial Disputes (Conciliation and Arbitration) Ordinance. The Workmen's Compensation Ordinance is still in force. In 1957 the Wages Councils Ordinance was enacted to provide for the establishment of wages councils and the Factories Ordinance. Whilst the Factories Act was replaced by the Health and Safety at Work Act in 1999 the wages councils legislation is still effective with few minor changes.

In 1991 and 1992 significant reforms were made to the following labour legislation:

- The Industrial Association Act (1942);
- The Trade Unions Act (1964);
- The Trade Union (Recognition) Act (1976);
- The Trade Disputes Act (1973).

The changes were made after the military coup of 1987 by an interim government, particularly to reduce the powers of the unions in collective bargaining. All these changes are still intact despite pleas to return to the pre-1991 situation. The changes brought about a new direction for industrial relations in Fiji.

### Major current labour legislation

#### Employment Act

This Act is designed to ensure that most employees are covered by minimum standards. An employee is defined to mean any person employed on a contract of service for wages and includes apprentices and domestic servants. Those excluded from its application are employed by the Government and are subject to 'general orders' for the public service of Fiji, and those whose terms and conditions of service are prescribed by other legislation.

Under the Act an employer shall provide his employee with work unless his contract of service is frustrated or its performance is prevented by act of God. The notice for termination of service can be given orally or in writing and the notice period relates to the payment period.

An employer can only summarily dismiss an employee in the following circumstances:

- where an employee is guilty of misconduct inconsistent with the fulfilment of the express or implied conditions of contract of service;
- wilful disobedience of lawful orders given by the employer;
- lack of the skill which the employee expressly or by implication declares;
- habitual or substantial neglect of duties;
- For continual absence from work without the permission of the employer and without other reasonable excuse.

Children under the age of 12 can only be employed for light work in an agricultural undertaking, which is owned and operated by the family.

Table I: Minimum hourly wage rates

Wage council	Year	Rates (F\$)
Hotel and catering trades	2002	Licensed outlets: 1.65 – 1.84 Other outlets: 1.46 – 1.62 Student trainees: 1.25 – 1.27
Road transport	2000	Over 18 years of age: 1.68 – 2.35 Under 18 years of age: 1.57 – 1.69
Printing trades	2002	Over 18 years of age: 1.85 Under 18 years of age: 1.60
Mining and quarrying	2002	1.76 – 2.75
Building, civil and electrical engineering	2002	Over 18 years of age: 1.75 – 2.51 Under 18 years of age: 1.57
Wholesale and retail	2001	Over 18 years of age: 1.77 – 1.97 Under 18 years of age: 1.63 – 1.83
Garment industries	1999	Non-interns: 1.26 Interns: 1.05
Manufacturing	1999	Other than temporary workers: 1.65 Temporary workers: 2.02
Logging and saw-milling	1998	2.08 – 2.41

Source: Legal Notices, various years

A child is defined as a person not having attained fifteen years of age; young persons are those who are below 18 years and above 15 years.

Children and young persons cannot be employed in work which is injurious to health, dangerous, or otherwise unsuitable. A child cannot be employed in ships, mines, and industrial undertakings using machinery.

A child is not permitted to work for more than six hours a day or for more than two hours without 30 minutes' break. If the child attends school, total hours at school and employment must not exceed seven a day.

No young person is to be employed for more than five hours without a break of not less than 30 minutes or more than eight hours a day. If attending school, total hours shall not exceed nine per day. The restriction of hours of work for young persons is not applicable if employed under a legally recognised deed of apprenticeship.

A female is not to be employed underground work.

Wages must be paid in legal currency and can be paid to the bank account or credit union account of the employee. Deductions from wages are restricted to a maximum 50 percent of the wages.

When paying an employee the employer is required to provide a written statement containing the following particulars:

- employee's name and Fiji National Provident Fund;
- job classification;
- the days of hours worked;
- the rate of wages;
- type of wages;
- gross wages;
- deductions;
- net wages due.

This applies to weekly paid employees. Other employees are provided details only on the first payment and when there is a change in wages.

A female worker with a minimum 150 days' service before confinement is entitled to maternity leave of 42 days before and 42 days after confinement. During her absence she is entitled to a daily allowance of \$5.

All employees are entitled to ten paid working days leave per annum. Pro rata leave is due to those with three or more months in employment.

### Wages Councils Act

This Act provides for establishment of wages councils by the minister after consultation with the Labour Advisory Board. The councils are vested with powers to make proposals for minimum remuneration and conditions of service. Proposals are submitted to the minister for endorsement, which then becomes law, referred to as Wages Regulations Orders. The membership of councils is tripartite with equal representation from employers and workers organisations.

Nine Wages Regulations Orders are currently in operation. These orders are enforceable and government labour officers are responsible for their administration.

The orders are:

- Wages Regulations (Mining and Quarrying Industries) Order;
- Wages Regulations (Wholesale and Retail Trade) Order;

- Wages Regulations (Saw milling and Logging Industry) Order;
- Wages Regulations (Printing Trade) Order;
- Wages Regulations (Road Transport) Order;
- Wages Regulations (Hotel and Catering Trade) Order;
- Wages Regulations (Manufacturing) Order;
- Wages Regulations (Building, Civil & Electrical Engineering Trade) Order;
- Wages Regulations (Garment Industry) Order.

The orders however, are not applicable to workers whose normal earnings exceed \$150 per week.

**Workmen’s Compensation Act**

Compensation is payable to workers or dependants for injuries contracted during employment and in respect of occupational diseases. It applies to all employees including personnel and officers in the police force, prison service and military forces.

For the purposes of calculating compensation, the injuries have been categorised as temporary, permanent partial incapacity, permanent total incapacity, and death.

Employees on temporary incapacity are paid two-thirds weekly earnings for three days or more. The maximum duration of payment is five years.

In the case of permanent partial incapacity, the payment is determined by a percentage stipulated in the Act and earnings from 260 weeks. The total payment is restricted to \$24,000.

In the case of permanent total incapacity, the amount payable will be total earnings for 260 weeks. The maximum cannot exceed \$32,000 and the minimum payment is \$6,000. Where the worker requires constant help of another person, an additional 25 percent is payable.

Where an employee dies, any dependant is entitled to 208 weeks earnings of the deceased. The maximum compensation payable is \$24,000 whilst the minimum is \$9,000.

An employer is required to report all accidents within 14 days and must refund reasonable travel expenses of up to \$500 to the worker, meet expenses incurred for medical and hospital treatment of up to \$1,200, and pay \$600 for supply and maintenance of artificial appliances.

The employer is not legally required to insure employees with regard to compensation.

Non-payment of compensation due is not an offence.

**Trade Disputes Act**

The Trade Disputes Act 1973 provides machinery to settle trade disputes. The Act has two disputes categories - Dispute of Interests and Disputes of Rights, each with separate procedures, as shown in Appendices 1 and 2. These were incorporated in the Act following changes in 1992.

The conciliation process is an extension of in-house negotiation, which only follows when all consultation at enterprise level has been exhausted. The intervention by Minister is not automatic unless the dispute involves an essential service. In non-essential services the Minister is powerless to order parties to compulsory arbitration. This clearly indicates that Government wishes parties to resolve differences through voluntary agreement.

However under the provisions of the Act, the Minister can declare strikes or lockouts unlawful where required ballots have not been held. The Minister also has powers to declare strikes unlawful where agreed procedures described in collective agreements have not been followed. Essential services cannot strike since the Minister could order parties to compulsory arbitration even before a report of the dispute is made. Where a dispute is referred to compulsory arbitration any strike which continues thereafter is illegal. In the Act lawyers’ involve-

Table 2: Hourly wage rate by enterprise type (F\$)

	1993	1997	1998
Public or statutory body	2.18	3.38	3.46
Public limited company	2.68	3.05	2.78
Central government	2.62	2.79	2.96
Local government	2.27	2.69	2.68
Private limited company	1.79	1.97	2.04
Non-profit organisation	1.82	2.02	1.98
Partnership	1.60	1.89	1.80
Individual ownership	1.59	1.74	1.76
Co-operative	1.41	2.00	1.36
Other	2.24	2.24	2.42

Source: Annual Employment Survey

ment in dispute committees and conciliation is prohibited. This gives parties to the dispute the opportunity to resolve the dispute themselves. Even in arbitration tribunals only lawyers with permission are allowed to represent their parties.

Essential service unions cannot take strike action without giving 28 days notice to the Ministry of Labour, stating the workers involved and the date of contemplated strike action. If the notice is insufficient it is deemed not to have been made and strike action is illegal. Essential services include water, electricity, health, air traffic, fire prevention, and tourism.

The dispute settlement machinery is restricted to recognised trade unions.

### **Trade Unions Recognition Act 1976**

Recognition of unions may be voluntary by the employers or may be obtained compulsorily by the unions on application to the Permanent Secretary for Labour. Recognition is determined by the number of persons who belong to a union in an enterprise. Where no rival union exists in an enterprise, a union needs 50 percent or more employees of that enterprise as members. In case where two or more unions exist in an enterprise the union to be accorded recognition needs to have 30 percent membership in that enterprise. The Act also provides for certain classes of employees to be excluded from recognition,

as determined by the Permanent Secretary on application by the employer.

When recognition is refused the union is required to wait six months before making another request. The employer must apply six months in advance to the Ministry of Labour for withdrawal of union recognition. Obtaining recognition is the biggest hurdle faced by trade unions.

### **Trade Unions Act 1964**

Seven or more persons may form a trade union. The application for registration of a trade union has to be forwarded to the Registrar of Trade Unions within one month of formation. The union secretary can be a person from outside the trade or industry. All the other officers have to be from the respective industry. The secretary has to have satisfactory education. Union registration is determined by the Registrar of Trade Unions in consultation with the Trade Union Advisory Committee.

There is no time limit within which the certificate of registration of the union is issued. The union seeking registration must submit at the time of registration four copies of its constitution together with names, occupations, and addresses of the persons seeking to register the union. The Act allows the Registrar to deregister trade unions where union funds have been used for pur-

Table 3: Gender wage differentials (weekly wages in F\$), 1997 – 1998

Sector	1997			1998		
	Male wage	Female wage	F wage as % of M	Male wage	Female wage	F wage as % of M
Agriculture	78.62	70.90	90	77.52	67.25	87
Mining	128.70	98.91	77	131.13	101.85	78
Manufacturing	105.00	59.45	57	100.41	63.40	63
Electricity	133.10	137.00	03	135.93	138.00	02
Construction	116.20	96.68	83	116.30	95.56	82
Wholesale/retail/hotel	103.70	93.52	90	105.34	96.02	91
Transportation	111.50	110.83	99	114.03	109.49	96
Finance	91.58	89.71	98	93.48	88.38	95
Community services	120.40	92.12	77	122.03	79.36	65
Overall	109.30	75.53	69	108.62	75.63	70

Source: Chand, 2001.

poses other than those stipulated in the Act. Use of trade unions funds for political purposes is illegal. Since 1991 trade unions have had no immunity from prosecution. The employers thus have the liberty to take legal actions for losses incurred through unlawful industrial actions. Trade unions are also not free to exercise the fundamental right of strike action without first holding a ballot supervised by the Registrar or a representative. Strike actions are only allowed if 50 percent or more of voting members agree to strike. Ballots must be secret, and prior to holding a ballot unions are required to give Registrar of Trade Unions 21 clear days notice specifying the date, place and the issue over which the ballot is to be conducted. Under the Act, secret ballots are required for:

- Change of constitution
- Election of office bearers
- Amalgamation
- Dissolution of the union

### **Arbitration tribunal**

Provisions in the Trade Disputes Act exist to appoint ad-hoc arbitrators and for the appointment of permanent arbitrators. Arbitrators should have extensive industrial relations experience, hold a degree in economics, or be qualified as a judge.

The arbitrator has wide powers to conduct hearings as s/he deems necessary. Under the legislation s/he has 28 days to issue an award from the time a case was referred to a tribunal. The award must be submitted to the Minister who may publish it in the manner s/he thinks fit.

An interpretation of the award may be sought but parties concerned cannot make application until nine months after the award is issued.

Awards are subject to challenge in the High Court by both parties in judicial review proceedings. Employers often resort to this court.

### **Industrial Associations Act**

This Act provides for the formation, registration and regulation of industrial associations, where industrial association means any number of employees or persons associated together for the purpose of promoting or furthering professional interests. These associations cannot act as trade unions. At end of year 2000 there were a total 85 associations.

### **Fiji National Provident Fund Act**

The 1966 Act allows for compulsory savings by employees. Under the Act employers are required to contribute \$0.16 per dollar for all employees aged 15 years and over who have been employed for 12 days or more in a month. The employer may recover half the contribution from the employees' wages. Domestic servants are excluded from the scheme. Upon retirement at 55 years of age members of the scheme have the following options:

- life pension;
- joint pension;
- part lump sum, part life pension;
- part lump sum, part joint pension;
- part lump sum, part life, part joint pension;
- full lump sum.

The scheme also allows members to partially withdraw from the fund before 55 for housing, medical and education assistance. There is no provision for employees to partially withdraw savings when unemployed or made redundant.

Contributions are required to be remitted monthly to the Fund by the employer and failure to comply is an offence under the Act.

Since its inception, the assets of the funds have grown significantly and now exceed \$2 billion.

### **Health and Safety at Work Act**

On 28 June 1996 the Act was enacted, becoming fully operational on 1 November 1997 because of phasing out the Factories Act. The Act allows parties to jointly manage health and safety at work by establishing health and safety representatives and committees.

Where less than 20 persons are employed, a worker representative may be elected by the workers to raise issues on health and safety with the employer.

In establishments with 20 or more workers a committee with equal numbers of representatives from each side is established. The committee is chaired by a worker representative and meetings must be held at least once every three months. The committee is empowered to decide on all matters affecting safety and health at the workplace. In the event of the committee failing to reach consensus on an issue, Health and Safety Department officials can be requested to intervene by either party. The officers have powers to issue compliance orders for im-

provement or prohibition, but only after the employer has been requested to attend to shortcomings within a time frame. The decisions of the officers are final. Spot fines of up to \$500 may be imposed on workers and employers by inspectors for breaches.

### **Workers' federation**

In 1999 there were 64 registered unions. Of the 68 unions registered in 2000, 36 are affiliated to the Fiji Trades Union Congress (FTUC) representing some 42,000 workers. Congress is the official voice of the workers in Fiji and its members are appointed by Government to various boards and committees where labour-related matters are discussed. The FTUC plays an important role in developing labour legislation and acts as a watchdog on exploitation of workers' rights. The FTUC is affiliated to the International Confederation of Free Trade Unions (ICFTU) and the South Pacific Oceania Trade Unions (SPOCTU).

## **Compliance with labour legislation**

### **Labour inspection**

The Ministry of Labour is the administrative authority for minimum labour standards stipulated under the acts described above and oversees inspections, complaints resolutions, and Workmen's Compensation procedure. The Ministry has established seven district officers on Fiji's two major islands, employing 96 staff.

The report for year ending 31 December 2000 states that the total number of employers was 8,448, the number of inspections conducted was 2,080, and the amount recovered as a result of inspection was \$6330.26. The number of complaints received by the Labour Department was 1,624 and monies recovered over labour complaints totalled \$363,385.59. The \$6,330.26 recovered through inspection indicates either the employers were complying with the regulations or the inspection does not reflect the true position of compliance.

Employees not belonging to a recognised trade union have the right to lodge a complaint directly with the Labour Department. The complaint may be filed at the office or in writing. Following receipt of a complaint, inspectors conduct an investigation and if need be de-



Typical garment factory. (Credit: Fiji Trade Union Congress)

mand production of records for wages or any other relevant documents from the employer. Should there be a need to interview other employees, inspectors may enter the employer's premises to investigate. Inspectors may demand payment of amounts owed to the complainants, and upon failure to pay by employers the department may enforce the law to recover overdue amounts. Inspectors may not demand money for non-payment of maternity allowance and for notice pay since no provision for them are made in the Act.

### **Workmen's compensation**

During 2000 a total of 773 accidents were reported and sum of \$1,122,398.69 was paid out to injured workers or their dependants in fatal cases. However, the report states neither how many have been settled nor the total number of outstanding cases.

### **Trade union rights**

Fiji's constitution allows workers to form trade unions to protect their interests and empowers them to engage in collective bargaining. Recognising the rights specified in the Constitution the Government has ratified all eight ILO core conventions, including Conventions Nos. 87, 98, and 151. This followed an agreement signed by the three social partners namely Government, the FTUC, and the Fiji Employers Federation in December 2001.

Despite the above instruments, complete free collective bargaining does not exist in Fiji. To have the right to bargain a trade union must first obtain recognition from the employer as stipulated in the Trade Unions (Recognition) Act. A complete list of conventions ratified by Fiji is shown in Appendix 3.

If the employer refuses to recognise a trade union voluntarily then it must prove to the Ministry of Labour that its membership is over 50 percent of the total workshop employed by the establishment or 30 percent where two or more unions exist in an establishment. To gain recognition workers usually go through a complicated process.

A clear example was faced by the Mine Workers Union of Fiji in 1991 when it tried to ask for voluntary recognition from Emperor Gold Mining Co. Ltd, which was denied. The union then successfully applied to the Ministry of Labour for compulsory recognition in 1992. However the company was immediately called for conciliation but instead of attending it resorted to the High Court. The Ministry lost the case but for unknown reasons did not appeal the High Court decision.

Another case is a dispute between the Fiji Public Service Association (FPSA) and Airport Fiji Limited (AFL). The dispute began on 12 April 1999 as a result of government restructuring. AFL's Chief Executive officer had warned the FPSA that AFL was to be a non-union company. FPSA members defied AFL's pressure to take up individual contracts and 401 members were sacked. The workers were re-employed when the Labour Government came to power and collective bargaining was restored. However when the existing Government came to power, de-unionisation was reintroduced, terminating members who refused to sign individual contracts. Others were suspended when they refused to be relocated to a site contaminated by asbestos. AFL refused to participate in a dispute committee called by Ministry of Labour, instead filing for a judicial review to frustrate the dispute process. AFL also defied the Permanent Arbitration order to reinstate workers who had been terminated. Intervention by the workers' national centre and solidarity support of the Australia and New Zealand unions finally helped to resolve the dispute in June 2002 after 16 months.

Table 4: Unionisation rates

Sector	1985-86	1988-91	1992-95
Agriculture	14.6	12.9	12.5
Mining	12.4	26.7	65.8
Manufacturing	48.8	27.7	24.2
Electricity	32.8	25.5	25.5
Construction	54.2	64.1	45.2
Wholesale/retail/hotel	15.8	18.5	17.6
Transportation	33.2	30.5	32.4
Finance	35.3	31.6	42.3
Community services	64.8	58.8	54.9
Overall	45.2	38.4	36.6

Source: G Chand, Labour Market Deregulation in Fiji, in A.H. Akram-Lodhi (ed) Confronting Fiji Futures (Asia Pacific Press, 2000, p.165)

### **Pacific Fishing Company Limited**

Pacific Fishing Co. Workers Union underwent difficult experiences in trying to obtain voluntary recognition from Pacific Fishing Company (PAFCO). The union represents some 600 workers, who are about 90 percent women. Following recognition in 1999 the union lodged claims for its members over numerous issues including an increase in wages. The average wage of a factory worker was between \$75 - \$85 for a 45-hour week.

Despite negotiations on the issue the union has not yet reached an agreement, because the employer refused to grant increases. PAFCO is a state owned enterprise and USA-based multinational, Bumble Bee Seafood Inc. is a major trading partner that wishes to buy equity shares. PAFCO's current turnover is between \$23 and \$25 million; an announcement made by the company expects turnover to reach 50 million by end of 2002.

Despite the union resorting to settle its grievances through Trade Disputes Act procedure, a number of permanent arbitration decisions made by the Disputes Committee have not been honoured by the company. One such issue dates to 1996 when the Permanent Arbitrator ordered the company to reinstate 56 dismissed workers. The company has ignored two other awards made by the arbitration committee.

The Minister of Labour has powers to issue compliance orders in cases of this nature but for reasons unknown has opted not to exercise them.

### **Union density and strike**

Union density has been declining over the years. This followed changes in labour legislation in 1991 when the Trade Unions Act was amended. The sector most affected was manufacturing because the unions were unable to organise the workers.

Table 4 shows the unionisation rates from 1985 to 1995.

Trade unions are active in government departments and in state-owned enterprises. However they have so far been unable to organise workers in local establishments employing 500 or more employees. Workers in such establishments are therefore unable to exert pressure on employers to improve working conditions.

Strikes are permitted but legal provisions must be observed by unions prior to taking strike action. A breach of rules by unions could result in them facing claims from employers for financial losses incurred as a result of strike. There is no ceiling on the amount claimed. Union officials therefore are under serious threat of litigation by employers. During 2000 there were nine strikes and in 2001 13 strikes were staged.

### **Solutions and future directions**

At present unrecognised trade unions cannot register trade disputes. They are therefore unable to refer cases

to arbitration. Unrecognised trade unions have no redress under existing dispute settlement machinery. No legislation exists for unfair dismissal on redundancy payments, restructuring of enterprises, sexual harassment at workplaces, and discrimination. In light of these shortcomings the vulnerable in our society are without adequate protection from the harsh realities of the market place.

Substantial implementation of labour laws must be increased to ensure a fair degree of compliance to legislation.

### **List of important events**

**December 2001** - Letter of intent signed by three social partners on ratification of Convention Nos. 87, 100, 111, 138, and 182.

**March 2002** - Government ratified Convention Nos. 87, 100, 111, 138, and 182.

**June 2002** - A six month dispute between AFL and FPSA over recognition resolved.

**June 2002** - 200 members of National Union of Municipal Workers staged a strike over employers' refusal to comply with Disputes Committee's award. The strike lasted 13 days and was resolved after the Minister's intervention.

**June 2002** - Government rejected the draft Industrial Relations Bill.