

SOLOMON ISLANDS GOVERNMENT -v- S. I. PUBLIC EMPLOYEES UNION

High Court of Solomon Islands

(Muria Commissioner)

Civil Case No. 104 of 1991

Hearing: 21 May 1991

Judgment: 30 May 1991

P. Afeau for the Appellant

R. Teutao for the Respondent

**MURIA COMMISSIONER:** In this matter both the Solomon Islands Government and Solomon Islands Public Employees Union appeal from the rulings of the Trade Disputes Panel given on 13 May 1991. For the purpose of this judgment, I shall treat the Solomon Islands Government as the Appellant and the Solomon Islands Public Employees Union as the Respondent whose appeal, I shall treat as a cross-appeal.

Following referrals by the Appellant to the Trade Disputes Panel on a number of issues namely,

- (a) a demand for reduction of the Permanent Secretaries' salaries;
- (b) a demand for an increase of salaries of public employees by 16.5% backdated to 1 September 1990;
- (c) withdrawal for recognition by the Appellant of the Respondent; and
- (d) a demand for termination of the contracts of employment of the 15 Permanent Secretaries,

the Trade Dispute Panel sat on 10 May 1991 on a preliminary hearing and considered two preliminary questions raised by Mr Teutao who represented the SIPEU. These questions are:

- (i) Is the legality or illegality of the withdrawal by SIG of its recognition of SIPEU on 16 April 1991 a matter falling within the jurisdiction of the Panel in terms of section 5 of the Trade Disputes Panel Act 1981 given that the SIPEU still satisfies the preconditions to recognition under section 6(5) of the Trade Disputes Act 1981?

- (ii) Is the question of termination of the current 15 Permanent Secretaries and/or the reduction of their salaries a matter falling within the jurisdiction of the Panel in terms of the Constitution and Public Service Commission Regulations 1979?

Having heard submissions from Mr Teutao and Mr Afeau who appeared for the SIG the Panel gave its rulings on 13/5/91. Those rulings are:

1. There is no legal issue arising on the question of withdrawal of recognition by SIG of SIPEU on 16 April 1991. The referral therefore was in order, within the definition of section 5 of the Trade Disputes Panel Act of the word "recognition" and therefore within the jurisdiction of the Panel.
2. The Panel declines jurisdiction in this second question on termination of the 15 Permanent Secretaries.
3. The question of reduction comes within part (a) of the definition of the word "trade dispute". Unlike the issue of termination, reduction of salary is not covered in the Constitution and therefore there is no issue of an inconsistency with the Constitution or a preclusive clause. The item on salary is covered in clause 4(1) of the Agreement and is within the powers of the Minister of Public Service as provided for by the Public Service Act. It is within the jurisdiction of the Panel and the referral on this is in order.

As I have said, it is against those rulings of the Panel that the parties appeal and cross-appeal to this court.

The history surrounding the dispute between the parties which led them to the Trade Disputes Panel and now to this Court are not in dispute, and, for the purpose of this judgement I can summarise them quite shortly. The Appellant is the employer of the members of the Respondent which is a registered Trade Union. There has never been any written recognition agreement between the Appellant and the Respondent although, as both parties stated and I accept as a fact, that throughout the years the Appellant and the Respondent have always dealt with each other on matters affecting the terms and conditions of employment of the members of the Respondent. A dispute arose between the Appellant and the Respondent following a number of demands which I have already mentioned above.

The Respondent wrote to the Secretary to the Prime Minister on 18 April 1991 demanding that if the Appellant did not terminate the contracts of employment of the 15 Permanent Secretaries and/or grant its members a 16.5% salary increase back dated to 1 September 1990 its members would go on strike as from 12 o'clock midday on 19 April 1991. The Appellant did not meet the Respondent's demands and so at 12 o'clock midday 19 April 1991 a letter was sent to the Secretary to Prime Minister informing the

Appellant that the members of the Respondent were now on strike and that the Essential Services employees had also given a 28 days notice.

On the evening of the same day the Prime Minister who is also the Minister responsible for Public Service attempted through Solomon Islands Broadcasting Corporation to persuade the members of the Respondent to return to work on 22 April 1991. The Prime Minister's call was not heeded and on 22 April 1991 the strike still continued. On 5 May 1991 the Appellant awarded a 16% salary increase to all its employees including those who were on strike. That 16% salary increase was back dated to 1 January 1991 and the increase was actually paid on 9 May 1991. Despite that salary increase the members of the Respondent did not desist from their strike action.

The Appellant, then, on 8 May 1991 referred the matters in dispute to the Panel. The strike was not called off until after the Appellant referred on 9 May 1991 the further issue on the termination of the contracts of employment of the 15 Permanent Secretaries. On 10 May 1991, the members of the Respondent returned to work.

Before this Court, the Appellant pursues two grounds of appeal namely:

- (1) The Trade Disputes Panel erred in law in holding that it has no jurisdiction to determine question regarding the termination of the contracts of the Permanent Secretaries as it has accepted the matter as a trade dispute.
- (2) The Trade Disputes Panel erred in law in its ruling that if the Panel accepts jurisdiction and deals with the question of termination of the employment contracts of the Permanent Secretaries and makes an award it would be contrary to section 137(4) of the Constitution.

The Appellant then seeks an order from this Court that:

1. The Trade Disputes Panel hear and/or determine the question regarding termination of the employment contracts of the Permanent Secretaries as a trade dispute.

The second order sought by the Appellant is no longer relevant in view of the order of this Court made on 17th May 1991 in Civil Case No. 102 of 1991.

The Respondent filed six grounds of cross appeal against the Panel's rulings on the issues of withdrawal of recognition and reduction of salaries of the 15 Permanent Secretaries. Those grounds are:

1. That the Panel erred in law in holding that the withdrawal of recognition did not raise a legal question inter alia due to absence of a recognition agreement in writing or orally between the Respondent and the Appellant when as a matter of contract there had been an implied recognition

agreement between the parties due to "past dealings" between them such as to raise a legal question when recognition was withdrawn by the Appellant on 16 April 1991.

2. That the Panel erred in law in holding that it had jurisdiction to deal with the issue of withdrawal of recognition on the basis that no legal question arose inter alia due to absence of a recognition agreement in writing or orally between the Respondent and the Appellant thereby bringing the question of withdrawal of recognition within the definition of "recognition issue" in s. 5 of the Trade Disputes Act 1981 and therefore within the jurisdiction of the Panel when in view of the "past dealings" between the parties as to the "terms and conditions of employment of members of the Respondent" there was as a matter of contract law an implied recognition agreement in existence between the parties before 16 April 1991 such as to raise a legal question when recognition is withdrawn thereby bringing the issue of withdrawal of recognition outside the definition of "recognition issue" in section 5 of the Trade Disputes Act 1991 and therefore outside the jurisdiction of the Panel.
3. That the Panel erred in law in holding that a recognition of the Respondent by the Appellant without a recognition agreement or a "mutual understanding" between the parties could not crystallise into a legally enforceable contract when as a matter of contract law "dealings at arms length" over a period of time between parties does give rise to an implied (recognition) contract enforceable at law.
4. That the Panel erred in law in holding that the question raised by counsel for the Respondent viz, "whether in terms of the Trade Disputes Act, Solomon Islands Government could use extraneous issues which fall within the ambit of Solomon Islands Public Employees Union's Constitution and matters within the Trade Unions Act as grounds to withdraw recognition" was irrelevant as no legal question arose from the withdrawal of recognition due to inter alia lack of a written or oral recognition agreement between the parties when as a matter of contract law there was an implied recognition agreement from the "past dealings" between the parties such as to raise a legal question when the implied recognition agreement was withdrawn thereby making the question raised by the Respondent's counsel relevant.
5. That the Panel erred in law in holding that the referral by the Appellant of the issue of reduction of salary of the present Permanent Secretaries was a matter falling within its jurisdiction when as a matter of law the Panel does not have jurisdiction on the issue of reduction of salary of the present Permanent Secretaries as the said issue is covered by S.116(1) of the Constitution which relates to "disciplinary control" as read with regulations 60(b) and 61 of Public Service Commission Regulations 1979

such that in terms of Section 137(4) of the Constitution the Panel is precluded from exercising jurisdiction under paragraph (a) of the schedule to the Trade Disputes Act 1981.

6. That the Panel erred in law in holding that the salary issue is covered by clause 4(1) of the Agreement of Service and therefore falls within the powers of the Minister of Public Service under the Public Service Act 1988 when in fact the real issue is one of "salary reduction" which is not covered by clause 4(1) of the Agreement or falling within section 4(1) of the Public Service Act 1988 but a matter falling within section 116(1) of the Constitution as read with regulations 60(b) and 61 of PSC Regulations such as to deny the Panel jurisdiction over the issue under paragraph (a) of the schedule to the Trade Disputes Act 1981 in view of section 137(4) of the Constitution.

In short the Respondent's contentions are that firstly, the question of withdrawal of recognition raises a legal issue; secondly, in view of the "past dealings" between the Appellant and Respondent on the "terms and conditions of employment of the members of the Respondent" there was as a matter of contract law an 'implied recognition' such as to raise a legal question when 'recognition' was withdrawn thereby bringing the issue of withdrawal of recognition outside the definition of "recognition issue" in section 5 of Trade Disputes Panel Act and as such the Panel did not have jurisdiction to deal with that issue of 'withdrawal of recognition'; thirdly, that as a matter of law, 'dealings at arms-length' over a period time between the Appellant and Respondent gave rise to an implied recognition enforceable at law; and fourthly, that the Panel did not have jurisdiction to deal with the matter of reduction of salaries of the Permanent Secretaries as that is a matter falling within section 116(1) of the Constitution and Regulations 60 and 61 of PSC Regulations 1979.

The Respondent seeks the following orders from this Court:

1. An order setting aside the ruling of the Panel that it has jurisdiction to deal with the referral as to the withdrawal of recognition by Appellant (SIG).
2. An order setting aside the ruling of the Panel that it has jurisdiction to deal with the referral as to salary reduction of Permanent Secretaries.

I deal now with the arguments advanced by counsel for the Appellant. In his submission, counsel conceded that by virtue of the provisions of the Constitution, in particular section 116(1), the Trade Disputes Panel has no power to deal with the question of termination of the contracts of employment of the 15 Permanent Secretaries. Section 116(1) provides:

*"(1) Subject to the provisions of this Constitution, power to make appointments to public offices, (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices is vested in the Public Service Commission."*

It is crystal clear from the above section that the power to remove or dismiss or terminate the employment of a public officer vests in the Public Service Commission. The 15 Permanent Secretaries are by virtue of section 144(1) of the Constitution, public officers. Section 144(1) defines:

*"public office" means, subject to the provisions of the next following section, an office of emolument in the public service.*

*"public officer" means, a person holding or acting in any public office.*

*"public service" means, the service of the Crown in a civil capacity in respect of the government of Solomon Islands"*

It is therefore equally clear from the above provisions that the 15 Permanent Secretaries as public officers can only be removed from office by the Public Service Commission. Their appointment, however, is made by the Public Service Commission with the concurrence of the Prime Minister under section 128(1) of the Constitution which states:

*"(1) Power to make appointments to the office of Permanent Secretaries shall vest in the Public Service Commission acting with the concurrent of the Prime Minister.*

*(2) Power of posting or transfer of a person holding the office of Permanent Secretary shall vest in the Prime Minister acting after consultation with the Public Service Commission."*

The Courts in Solomon Islands have had occasions to consider these constitutional provisions relating to the Public Service Commission's powers to appoint and terminate public officers. In *Peter Wateoli -v- Public Service Commission* CC 229 of 1988, the appellant, Wateoli, challenged the Trade Disputes Panel's decision that it had no jurisdiction to question his dismissal by Public Service Commission. His Lordship, Ward CJ, after considering the provisions of section 116, 137 and 138 of the Constitution said:

*"It is clear that section 116(1) vests the power to dismiss public officers firmly in the Public Service Commission had, by section 137(4), that is not subject to any review or control by the Trade Disputes Panel unless it is a court of law and is thus saved by section 138. The Panel concluded that it is not a court of law and therefore is not empowered by section 138 to exercise jurisdiction."*

In a more recent case of *Wheeler -v- Attorney General* CC 153 of 1989 this Court once again reiterated that the power to appoint, remove and discipline public officers vests in the Public Service Commission. Wheeler who was an expatriate and a Senior Store Officer in the Ministry of Transport, Works and Utilities was terminated from his employment, not by the Public Service Commission but by the Minister responsible for

Public Service. Ward CJ stated, after considering the powers of the Government in relation to Public service and section 116 of the Constitution:

*"The words of that section are perfectly plain. Subject to certain clearly defined exceptions which are not applicable to this case, the power to appoint, remove and discipline public officers is vested in the Commission. The power is the power of the Government but it must be exercised through the Commission."*

This constitutional power of the Public Service Commission was again confirmed in *Buto and Others -v- Attorney General* CC 194 of 1990, where Ward CJ again stated clearly:

*"The power to remove public officers rests in the Public Service Commission by section 116 of the Constitution ....."*

However, despite all the clear and firm authorities on the power to remove public officers, counsel for the Appellant did not shrink from his contention that the Trade Disputes Panel nevertheless has the power to enquire into the question of termination of the contracts of employment of the 15 Permanent Secretaries in order to find out the circumstances surrounding the demand for termination and to enquire into the reasons for the demand as well as the reasons why the Government was not acceding to the demand. The Trade Disputes Panel so counsel's argument goes, was the only forum where such enquiry can be done as it had accepted the matter as a "trade dispute". Counsel further suggested that the Trade Dispute Panel should invoke section 4 of the Trade Disputes Panel Act and that if the matter could not be settled, the Panel should proceed under section 6(1) of the Act. Having enquired into the matter, counsel argued, the Trade Disputes Panel must make an award bearing in mind section 7(4) of the Act; and that at the end of all the hearing and enquiry, the Panel would have no option but to rule that it had no jurisdiction by virtue of section 137(4) of the Constitution.

With respect, I find counsel's argument unsound in law. In my judgment if the Trade Disputes Panel lacks jurisdiction to hear and determine the question of termination of the employment of the 15 Permanent Secretaries, it has no authority to deal with the matter, be it a trade dispute or otherwise.

I will return to this question of jurisdiction later. But in the light of counsel's argument, I now turn to the provisions of the Trade Disputes Panel Act. Section 4(1), (3) and (4) provides:

*"(1) A party to a trade dispute may at any time refer the dispute to the Trade Disputes Panel.*

*(2) .....*

*(3) On a reference of a dispute under this section, the panel shall first consider whether the dispute is likely to be settled by negotiation between the parties.*

(4) *If in their opinion it is likely to be so settled, they shall offer the parties to the dispute their assistance with a view to bringing about a settlement."*

And section 6 provides as follows:

*"(1) Where a trade dispute is referred to the Trade Disputes Panel and (whether or not they have offered assistance under section 4) the panel are not of the opinion that the dispute is likely to be settled by negotiation, they shall themselves inquire into the dispute and shall make an award.*

*(2) Where the panel decide to enter on an inquiry under subsection (1), they shall forthwith give notice in writing to the Minister and the parties to the dispute of the date on which the inquiry is to begin.*

*(3) In inquiring into a dispute under this section, the panel shall, as well as giving the parties to the dispute an opportunity of submitting evidence (either orally or in writing), also give such an opportunity to the Minister, and may give such an opportunity to any person who, in their opinion, has an interest in the dispute."*

Clearly, the Panel can do all the things specified in sections 4 and 6 of the Act but in my view, only if it possesses the competence to do so.

The thrust of counsel's argument, as I understand it, is that as the Panel had accepted the issue on the termination of the 15 Permanent Secretaries as a "trade dispute" it can still proceed to hear and make an award provided it is not inconsistent with section 137(4) of the Constitution. This calls for examination of the meaning of the word "trade dispute". The words "trade dispute" is defined in the Act as:

*"A dispute between employees and employers, or between groups of employees, which is connected with one or more of the following matters -*

- (a) terms and conditions of employment or the physical conditions in which employees are required to work;*
- (b) engagement or non-engagement, or termination or suspension of employment of the duties of employment of one or more employees;*
- (c) allocation of work as between employees or groups of employees;*
- (d) matters of discipline;*
- (e) membership or non-membership of a trade union; and*
- (f) machinery for negotiation or consultation, and other procedures relating to any of the matters mentioned above, including the recognition of any trade union by an employer."*

On the face of it, the question of termination of Permanent Secretaries would appear to fall within paragraph (b) of the definition as it is a dispute between employees and employer which is connected with "termination of employment of one or more employees". If one looks closer into the definition one may be driven to a totally different view. A dispute does not automatically become a trade dispute simply because



it involves employees and employers but it must be connected with one or more of the matters in paragraphs (a) to (f). The matters specified in paragraph (a) to (f) are the subject-matters of a trade dispute. On the question as to who are the parties to a trade dispute, the definition clearly mentions that a trade dispute is a dispute between employees and employers or between groups of employees i.e. employees and employers. Another question which may also be asked is: what is the purpose of a trade dispute? The definition does not give us the kind of purpose a trade dispute must have. But there are certain types of dispute which, though they may fall literally within the definition, may not have the appellation of trade dispute.

Let us look at each of these elements of what a trade dispute is.

Subject-matter of a trade dispute:

As I have already said, the subject-matter of a trade dispute must be connected with one or more of the matters specified in paragraphs (a) to (f) in the definition of the word trade dispute.

We are concerned here with the subject matter of termination of employment of the 15 Permanent Secretaries. Counsel for both the Appellant and Respondent relied on the decision of this Court in *Solomon Islands Broadcasting Corporation - v- Solomon Islands National Union of Workers* [1985/86] SILR 136 where Wood CJ, held that a demand for the termination of the General Manager and Deputy General Manager of the Corporation was a trade dispute within the meaning of the Act. His Lordship said on 139:

*"However much it may be considered unreasonable for the workers to demand the dismissal of the two top executives in the corporation it is in my judgment just as much a trade dispute as the alternative where re-instalment is demanded and not dismissal. Perhaps a closer analogy would be where the strike action is called to dismiss an employee because management has employed a non-union member. On that basis I have little if any doubt that the action taken is in furtherance of a trade dispute between the parties. Whether or not the Union's action was reasonable is irrelevant."*

The *SIBC case*, however, did not discuss the questions as to: who were the parties to the dispute and what was the purpose of the dispute before the court could firmly say, "Yes, this is a trade dispute within the meaning of the Act."

Parties to a trade dispute:

In the present case the parties to the dispute can be none other than the employees and the Appellant. The Respondent Union cannot be a party to the dispute as the Act clearly states that trade dispute is "a dispute between employees and employees or between groups of employees" that is, employees and employees. The Respondent can, however, be a party only in its representative capacity on behalf of its members. It is this representative status that gives the Respondent the Locus standi to represent its members in the present dispute. The locus of Unions to represent employees has been considered in a number of cases. See *N.A.L.G.O -v- Bolton Corporation* [1942] All E.R. 425.

Thus, in view of the definition, in my opinion a dispute to which a union as such or an employers' Association as such is a party cannot be treated as being necessarily a trade dispute. A union or association must be seen to be acting on behalf of its members, if the dispute is to be a trade dispute.

The employees whom the Respondent represents in the present dispute are those employees who are in dispute with the Government. In terms of the Act, the dispute must be connected with the terms and conditions of employment or engagement or non-engagement or termination or suspension of employment of those employees who are themselves disputants. In other words, the dispute must be connected with the subject-matter which must also be connected with the parties to it. Further, when one looks at the word "employees" in the definition, it must refer to the employees who are in dispute with the employers. Such an interpretation may appear to be restrictive but in my judgement the use of the words "a dispute between employees and employers" and "connected with" justifies the strict approach on the definition of the word "trade dispute" within the meaning of the Trade Disputes Act. In the case of *Larkin -v- Long* [1915] AC 814, the Court of Appeal, speaking of the Trade Disputes Act of 1906, said at p. 832-833:

*"An Act of this sort ought, according to principles which have hitherto prevailed in construing Acts of the Legislature, to be construed with reasonable strictness and not to be given a wider meaning than the words used will justify."*

Our Trade Disputes Act must also be construed with reasonable strictness accordingly to the rules of interpretation of statutes passed by Parliament. To do otherwise, would be an adventure into the twilight world.

The purpose of a trade dispute

I have already mentioned the definition of trade dispute in the Act makes no mention of what sort of purpose a dispute must have before it can be properly regarded as a trade dispute. There are instances where a dispute although it may appear literally to be within the statutory definition, cannot be properly

regarded as a trade dispute. One such dispute is where a dispute arises between one group of employees and another over a demand for the dismissal of one of the employees but the predominant purpose for the demand was to penalise the employee for not paying a union fine imposed on him. In such a case a dispute exists between the two groups of employees which is connected with employment or non-employment or engagement or non-engagement of an employee but it would not be a trade dispute because the predominant purpose was to compel the employee to pay the union fine or to penalise him for refusing to pay the fine. The case in point on this is *Conway -v- Wade* [1909] AC 506; [1908-10] All E.R. 344. In that case, the plaintiff, Conway, was a member of the National Amalgamated Union of Labour. In 1900 he was fined for breach of a union rule. The plaintiff refused to pay the fine. About eight years later, the plaintiff was employed by Readhead and Co. and he was promoted to charge-hand with a high wage. His promotion arouse jealousy among his fellow-workmen and union officials and they procured his employer to dismiss him by threats that unless his employer dismissed him, the union men would leave off work which was not true. The plaintiff was forced to leave his employment as a result of the threats. The plaintiff sued the defendant who was a union official for damages. The defendant relied on section 3 of the 1906 Trade Disputes Act which is similar to section 24 of our Trade Unions Act (Cap. 76) which protects union, its officials or members from civil suit if the act done was "in contemplation or furtherance of a trade dispute." The defence failed as the House of Lords held that the defendant's action was not done in contemplation or furtherance of a trade dispute but for the purpose of compelling the plaintiff to pay the fine or to punish him for refusing to pay and the motive was to force him to abandon the position to which he had been promoted. Lord Shaw said at p. 351-352:

*"In this view, what is meant by the words "in contemplation or furtherance of a trade dispute"? I think that the argument was well founded that the contemplation of such a dispute must be the contemplation of something impending or likely to occur, and that they do not cover the case of coercive interference in which the intervener may have, in his own mind, that if he does not get his own way he will thereupon take ways and means to bring a trade dispute into existence. To "contemplate" a "trade dispute" is to have before the mind some objective event or situation - with those elements of fact or probability to which I have adverted - but does not mean a contemplation, meditation, or resolve in regard to something as yet wholly within the mind, and of a subjective character. I think that any other construction would be ill-founded, and would lead to strange and mischievous results. With regard to the term "furtherance of a trade dispute, I think that must apply to a trade dispute in existence, and that the act done must be in the course of it, and for the purpose of promoting the interests of either party or both parties to it."*

This purposive approach toward determining the meaning of the word "trade dispute" is one which in my view well within the minds of those who framed our Trade Disputes Act. I am strengthened on this view, firstly, when one looks at the term "trade" in the phrase "trade dispute" which implies that a dispute connected with the

matters in paragraphs (a) to (f) is a trade dispute only if its predominant purpose is to promote trade interests of the parties to the dispute. The preamble to the Act clearly lends support to this approach when it passed the Act "to encourage settlement of trade disputes." Lord Loreburn, LC must have the same approach in mind when speaking of the interpretation to be given to the 1906 Trade Disputes Act said, in *Conway -v- Wade* (supra) at page 346:

*"I prefer to say nothing as to some opinions expressed in the court of Appeal with regard to this Act and the motives supposed to have actuated those who passed it. If the Act is to be interpreted or applied in the view that stirring up strife is the aim and object of any part of it, then indeed it will be a fountain of bitter waters"*

It cannot be the aim or object of the Trade Disputes Act, 1981 or any part of it to stir up strife because by virtue of section 59(1) of the Constitution, Parliament may only make laws:

*"for the peace, order and good government of Solomon Islands."*

and this is reflected in the preamble to the Trade Disputes Act.

Thus in determining whether a dispute is a trade dispute within the definition in the Act, it is my opinion that the elements which I stated above are essential and which must be established.

I have dwelled into this area of the law as the submission by counsel that the issue of termination of the 15 Permanent Secretaries is a trade dispute and thereby giving the Panel jurisdiction begs the question: What is a "trade dispute?" It is not the purpose of this judgement, nor this court is being asked, to actually determine if the issue of termination of the 15 Permanent Secretaries is a trade dispute or not. That question must await another day.

I return to counsel's submission on the jurisdiction of the Trade Disputes Panel. Counsel urges the Court to accept the proposition that if the Panel enquires into the issue of termination of contracts of employment of the 15 Permanent Secretaries and makes a decision in accordance with the provisions of the Trade Disputes Act based on those findings the Panel would not be contravening section 137(4) of the Constitution. Counsel for the Respondent on the other hand in a clear, concise and erudite argument on this point pointed out that the combined effect of sections 4 and 10 or sections 6 and 10 of the Trade Disputes Act would produce a result which section 137(4) of the Constitution does not allow.

Mr Teutao further pointed out that whether the Panel's decision is termed "settlement" or "award" makes no difference as far as section 137(4) is concerned. I am attracted to Mr Teutao's argument. The Constitution is the supreme law of Solomon Islands and any law that is inconsistent with the Constitution must, to the extent of

inconsistency, be void. Equally, any decision or order that has the effect of contravening the provisions of the Constitution must be null and void. (*See Attorney - v- Wheeler CC No. 6 of 1989, Court of Appeal*).

The power to appoint, remove and discipline public officers is vested in the Public Service Commission by virtue of section 116(1) of the Constitution. Those powers must be independently exercised by the Public Service Commission. That independence is guaranteed by section 137(4), so that:

*"In the exercise of their functions under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority except where otherwise provided by this Constitution."*

Similar constitutional independence guaranteed by the Constitution can also be found in other constitutional provisions, in particular, sections 91(7) in relation to the office of Director of Public Prosecutions, and 92(7) in relation to the Office of the Public Solicitor. The phrase "shall not be subject to the direction or control" had been considered by the Supreme Court in Papua New Guinea in the *Constitutional Reference NO. 1 of 1978* [1978] PNGLR 345. Under section 176(5) of the Papua New Guinea Constitution it is provided that:

*"..... in the performance of his functions under this Constitution the Public Solicitor is not subject to direction or control by any person or authority."*

Considering the constitutional independence of the Public Solicitor in that case, Pritchard J. stated at p. 384:

*"The second consideration is the guarantee of independence in the performance of his functions given to the Public Solicitor in section 176(5) of the Constitution. He is not subject to direction or control by any person or authority in such performance. It is stressed by Mr Cory that the power of the Ombudsman Commission is to investigate and to make recommendations only, and in exercising this role, it cannot be said that the Commission is in any way attempting to direct or control the Public Solicitor in the performance of his function. Fundamentally I agree with this, but if the Commission decided to launch a wholesale investigation on its own initiative into the administration of the Public Solicitor's Office it could virtually frustrate the Public Solicitor's ability to carry out his responsibilities and in that sense he would be 'controlled' by the Commission in that he is prevented from performing his constitutional functions."*

Although the above comments by Pritchard J. arose from a constitutional challenge on the extent of the jurisdiction of the Ombudsman Commission over the Office of the Public Solicitor in Papua New Guinea, those comments touching on the guarantee of independence of an Office established under the Constitution are relevant for our present purpose. In Solomon Islands, the Public Service Commission is established by the Constitution and guaranteed independence by section 137(4) of the Constitution and cannot be subject to the control or direction of any person or authority. If the Trade Disputes Panel were to be accorded jurisdiction, even to enquire or investigate into matters falling within the constitutional functions of the Public Service Commission with a view to making recommendations or an award that will be

creating in-roads into, the constitutional independence of the Public Service Commission and in my judgement will amount to 'controlling' and 'directing' the Public Service Commission, the exercise of its functions.

The argument by counsel for the Appellant that the Trade Disputes Panel has the power to enquire into the issue of termination of the 15 Permanent Secretaries and make a decision within the provisions of the Trade Disputes Panel Act bearing in mind that at the end of all that, the Trade Disputes Panel would have no choice but to rule that, it had no jurisdiction to terminate the Permanent Secretaries by virtue of section 137(4) of the Constitution raises another jurisdictional question as to at what point a tribunal's jurisdiction is determinable. The view that the jurisdiction of an inferior tribunal was determinable only at the outset of its inquiry was repudiated by the House of Lords in *Anisminic Ltd -v- Foreign Compensation Commission*[1969] 1 All E.R. 208. At page 213, Lord Red said:

*"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. but if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide rightly. I understand that some confusion has been caused by my having said in *Armah v. Government of Ghana* that, if a tribunal has jurisdiction to go right, it has jurisdiction to go wrong. So it has if one uses "jurisdiction" in the narrow original sense. If it is entitled to enter on the enquiry and does not do any of those things which I have mentioned in the course of the proceedings, then its decision is equally valid whether it is right or wrong subject only to the power of the court in certain circumstances to correct an error of law."*

However de Smith in his *Judicial Review of Administrative Action* 4th ed. at page 113 observed the difficulty, the formulations in *Anisminic* and other cases in the House of Lords face, where the courts are under the duty to give effect to statutory language. He observed:

*"More recently, it has been said that the already fine distinction between jurisdictional and non-jurisdictional errors of law should no longer prevent a court from setting aside a decision based upon clear legal error, despite the existence of a "no certiorari" clause. No doubt the formulations advanced in the House of Lords invited this conclusion, but it is certainly difficult to reconcile it with duty of the courts to give effect to statutory language."*

In Solomon Islands, the jurisdictional formulations as expounded in the *Anisminic* must be viewed in the light of our supreme law, the Constitution and the courts in Solomon Islands will be obliged to give effect to the provisions of the Constitution and other statutes.

In the present case, the language as contained in section 137(4) of the Constitution and the likely effect of any usurpation thereof by the Trade Disputes Panel, left me in no doubt that the Panel does not possess the competence to enquire into for the purpose of giving any decision on the question of termination of contracts of employment of the 15 Permanent Secretaries.

The Trade Disputes Panel's ruling that it had no jurisdiction to do so was therefore correct.

For the reasons set out, I would dismiss this ground of appeal.

In relation to the second ground of appeal, counsel for the Appellant is really advancing the same proposition as in his first ground of appeal but put in another way. In its first ground, the Appellant was saying that the Trade Disputes Panel erred in law in holding that it had no jurisdiction. In this second ground the Appellant is saying that the Trade Disputes Panel was wrong in holding that it accepted jurisdiction and dealt with the question of termination of the contracts of employment of the Permanent Secretaries and made an award it would contravene section 137(4) of the Constitution.

I have already held that the Trade Disputes Panel has no jurisdiction to enquire into and deal with the question of termination of Permanent Secretaries as that is a matter for Public Service Commission and that if the Panel enquire into that issue and make an award that would be nothing but a clear contravention of section 137(4) of the Constitution.

I see no merit in this ground and it would also be dismissed.

I turn now to the Respondent's grounds of appeal. The Respondent's argument challenge the Panel's rulings that -

- (1) it had jurisdiction to deal with the issue of withdrawal of recognition, and
- (2) it had jurisdiction to deal with the issue of reduction of salary of the present Permanent Secretaries.

In his submission counsel for the Respondent argued that the issue of "withdrawal of recognition" raised a legal question and as such only the High Court has jurisdiction to determine the legality of such withdrawal. Counsel went on to submit that in view of the "past dealings" between the Appellant and the Respondent on matters relating to "terms and conditions of employment" of the members of the

Respondent there was, as a matter of contract law an implied recognition agreement in existence between the parties before 16 April 1991 and the withdrawal of that recognition raised a legal question. That, counsel argued, made the issue of withdrawal of recognition fall outside the definition of "recognition issue" as defined in section 5 of the Trade Disputes Panel Act - and as such the Panel did not have jurisdiction to deal with that question of "withdrawal of recognition". Counsel further urged the court that due to past dealings between the parties over the years "at arms-length" there was an implied recognition agreement between them enforceable at law. Basically those, in the main, are counsel's argument on grounds 1, 2 and 3.

I turn first to the provisions of the Trade Disputes Act referred to by counsel. Section 5 reads:

"5 (1) In this Act, "recognition issue" means an issue arising from a request by a trade union for recognition by an employer, including (where recognition is already given to some extent) a request for further recognition.

(2) Where a dispute including a recognition issue is referred to the Trade Disputes Panel, the panel may, in such manner as they think fit, consult the employees in respect of whom recognition is sought to be granted; and the consultation may take the form of a ballot of the employees.

(3) The powers conferred by this section may be exercised by the panel either to assist the parties to reach a settlement by negotiation or to assist the panel in making an award."

Counsel further referred to section 6(5) which provides:

"(5) Where the dispute involves a recognition issue, the panel shall, in deciding whether by their award to grant recognition, consider -

- (a) whether the trade union would have the support of substantial proportion of the employees in respect of whom recognition is sought to be granted; and
- (b) whether the resources and organisation of the trade union are such as would enable it to represent those employees effectively."

I agree with counsel that in interpreting the provisions of an Act, it is a rule of construction that where a word used is an ordinary word having a clear meaning, that meaning must be given: *Stephens -v- Cuckfield RDC* [1960] All E.R. 716, 719 which was considered in *Maeke -v- S.I. National Provident Fund* [1985/86] SILR 244.

The word "recognition" is defined in the Act to mean:

*"In relation to a trade union, means the recognition of the union to any extent by an employer for the purpose of collective bargaining".*



Section 5(1) of the Act speaks of "recognition issue" as an issue arising from a request by a trade union for recognition by an employer and includes a request for further recognition. It can be seen from the words "arising from a request by a trade union for recognition by an employer" that the issue of recognition arises when a trade union requests for recognition of it by an employer for purpose of collective bargaining.

Subsection (2), however, deals with a dispute being referred to the Trade Dispute Panel and that such a dispute may include the issue of recognition. The sub-section simply provides that "where a dispute including a recognition issue is referred to the Trade Disputes Panel....." Who refers the dispute to the Trade Dispute Panel is provided for in section 4 of the Act which says:

*"A party to a trade dispute may at any time refer the dispute to the Trade Disputes Panel."*

Thus either a trade union representing the employees of the employer or the employer can refer the dispute on recognition to the Trade Disputes Panel.

Counsel for the Respondent submitted that in terms of section 6(5) of the Act, the Panel only had jurisdiction if there was a "recognition issue" raised. He further submitted that the words "recognition issue" meant a specific question which must be raised. I am not at all sure what counsel is intending to raise by his submission but in my opinion, section 6(5) lays down the pre-requisites which the Panel must consider before deciding whether to make an award granting recognition. Those pre-requisites are:-

- (a) whether the trade union would have the support of substantial proportion of the employees in respect of whom recognition is sought to be granted; and
- (b) whether the resources and organisation of the trade union are such as would enable it to represent those employees effectively.

I return to counsel's argument that the "withdrawal of recognition" raises a legal question. The combined effect of sections 4(1), 5(2) and 6(5) of the Act would show that when a party refers the dispute to the Panel and the dispute includes the issue of 'recognition', the Panel may consult the employees in respect of whom recognition is sought to be granted and may also take a ballot of the employees. That process enables the Panel to assist the parties to reach a settlement. If settlement is reached and the parties consent, the Panel shall then incorporate the terms of the settlement in order which will be legally enforceable between the parties. Further, the process just described will assist the Panel when it comes to making the award whether or not to grant recognition after considering the pre-conditions in section 6(5). If an award is made granting recognition then that is enforceable between the parties under section 9 of the Act. Section 9(3) of the Act creates the duty of the parties to comply with the award. Section 9(3) says:

*"It shall be the duty of every party to the award to take all such steps as are reasonably practicable to comply with the award and not to seek to induce any other party to the award to break any of its terms."*

It follows that if an award is made granting recognition the duty imposed by section 9(3) is to comply with it and not to break any of its terms. A unilateral withdrawal of the recognition granted under the provisions of the Act will be in breach of section 9(3) and thereby enabling the other party to the award to apply to the High Court for enforcement. In my search through the Act, I am unable to find a provision entitling a party to an award to unilaterally withdraw from such an award.

In a recent Malaysian case of *Kennesion Brothers SDN BHD -v- Construction Workers Union* (1990) Commonwealth Law Bulletin p.500 the Supreme Court considered the issue of 'revocation of recognition'. In that case, the Respondent Union served a claim for recognition under section 9(2) of the Industrial Relation Act, 1967. The Appellant company applied to the Director-General for ascertainment whether all the workmen in respect of whom recognition was being sought could be classified as workers in the construction industry to enable the Respondent to represent them. That issue was referred to the Registrar of Trade Union by the Director-General and the Registrar found that the Respondent was not competent to represent all the workmen employed by the Appellant. Six months later the Respondent served a second claim for recognition but, this time, only for recognition in respect of workers employed by the Appellant at a particular place called Batu Cave worksite. By a letter dated 1 July 1985, the Appellant accorded recognition to the Respondent not only in respect of workers at Batu Cave but also in respect of workers at Hulu Langat quarries. That recognition was accorded pursuant to section 9(3)(a) of the Industrial Relations Act. On 3 April 1987, the Appellant company took the unusual step of unilaterally revoking the recognition granted on 1 July 1985. The Respondent Union applied to the High Court for a declaration that once recognition was accorded under section 9(3)(a), there was no power under the Act to withdraw or revoke unilaterally. The trial judge allowed the application holding that once recognition had been accorded by an employer, that recognition could not be revoked. On appeal to the Supreme Court, it was held that once the employer has accorded recognition under section 9(3)(a) of the Industrial Relations Act, there appeared to be no provision in the Act enabling the employer to act unilaterally in withdrawing or revoking the recognition.

In our Trade Disputes Act, 1981 there appears to be no provision too enabling an employer to withdraw or revoke recognition once granted under section 6 of the Act. In my judgement, where there is no provision entitling a party to an award granted by the Trade Disputes Panel under the Act, granting recognition, to withdraw or revoke such recognition, that party cannot unilaterally withdraw or revoke the recognition.

To return to the facts in the present case, the Government and the Union have never entered into any recognition agreement between them nor has any referral ever made to the Trade Dispute Panel on the issue of recognition and as such there has never been any award granting recognition. The parties have simply been dealing with each

other on matters relating to "terms and conditions of employment" of members of the Union.

Counsel strenuously argued that there has been an implied recognition in this case based on the parties "past dealings" and the "dealings between them at arms-length" over a period of time. I have looked at documents submitted by the Respondent and considered them together with Mr Tauariki's evidence. I have looked at the Trade Disputes Panel award in 1984 and the only matters in dispute before the Panel then were:

- (1) Post-graduate and other training,
- (2) Paternity leave,
- (3) Housing, and
- (4) Salary increase.

I am satisfied on the evidence before me that there has never been any written recognition agreement between the Appellant and the Respondent nor has there been any written document from the Appellant to the Respondent stating that recognition has been granted by the Appellant, nor has there been at any time before 16 April 1991 any referral to the Trade Disputes Panel on recognition of the Respondent by the Appellant. I am equally satisfied that the parties have simply taken for granted that one is the employer and the other is the Union with whom the employer has always been dealing on matters affecting the "terms and conditions" of employment of public servants.

I have already held that where an award granting recognition is made pursuant to the provisions of the Trade Disputes Act, a party to that award has no power to unilaterally withdraw or revoke such recognition. What is the position where there is no such recognition granted under the Act and the parties simply rely on their "past dealings at arms-length" over a period of time? Can there be implied recognition of the Respondent by the Appellant? Counsel for the Respondent argued that the "past dealings" between the parties over a long period of time and "at arms-length" gave rise to an implied recognition which, as a matter of contract law, is binding on the parties. He submitted that this is a simple contract founded on the words and conduct of the parties. He cited Halsbury's Laws of England, 4th Ed. paragraph 212, page 88, where it says:

*"Simple contracts include all contracts which are not contracts of record or contracts under seal. Simple contracts may be express or implied, or partly express and partly implied. Contracts are express to the extent that their terms are set out distinctly either by word of mouth or in writing. They are implied to the extent, if any, to which their terms are a necessary inference from the words or conduct of the parties. Express contracts may, of course, besides the terms which are expressed contain additional terms which are implied, and in that case they are partly express and partly implied. but any*

*implication either as to the existence, or as to the terms, of a contract, must be founded on the intention of the parties as evinced by their words or conduct."*

The above passage relied on by counsel, in my view applies more to contracts other than contracts of service since the law draws implication into a contract in order to give efficacy to the transaction and prevent failure of consideration which the parties could not have contemplated when they first entered into the contract. The position we are faced with in this case involves a contract of service situation. The members of the Respondent are employees of the Appellant. Can there be such implication of recognition of the Respondent by the Appellant as the representative of the employees of Appellant?

The courts have been strongly warned against over-ready implying terms into contracts. At paragraph 362 of Halsbury's Laws of England, Vol 9, page 237, it is stated:

*"A term will not be implied on grounds that it would give efficacy to the contract merely because it would have been reasonable for the parties to have included it; and there has been a strong warning given against over-ready application of the principle to justify the implication of terms."*

In the same paragraph (paragraph 362), it has also pointed instances where the courts had refused to imply terms into certain cases. One of such cases is that:

*".....in a contract of employment no implied term that an employer will always recognise a particular trade union as the negotiating body for a particular employee during the entire period of his contract."*

The rejection of implying terms into a contract of employment had also been decided in *Gallagher and Another -v- Post Office* [1970] 3 All E.R. 712. In that case Gallagher and others were members of the National Guild of Telephonists ("the guild") which was a union or staff association representing the male telephonists who were about 13,000. The female telephonists, number about 39,000 belonged to the Union of Post Office Workers ("the Union"). For over 40 years both the guild and the Union had been recognised as negotiating bodies for the telephonists employed by the Post Office. Gallagher entered into employment with Post Office in 1961 as a trainee and was later confirmed. In 1969 the Post Office Act, 1969 was passed and the Post Office was to turn into a public corporation. In preparation for the changeover, the plaintiff was given a form concerning the 'Reorganisation of the Post Office' and offered him continued employment with the Post Office on terms and conditions specified in the form. The plaintiff accepted the offer of employment. The Post Office considered it necessary to have only one trade union to represent its employees and notified the guild that as from 1 September 1970 it intended to withdraw recognition of the guild. The Plaintiff suing the Post Office on behalf of the guild claiming that the withdrawal of recognition was a breach of contract and sought injunction to prevent the withdrawal of recognition. It was held by the Court that it was not an implied term of the plaintiff's contract of service that Post Office should continue to recognise the guild. Further the information contained in the form (CS1) did not bind the Post Office to an indefinite recognition and further the withdrawal was not in breach of statutory duty

because the Post Office has an absolute discretion as to the organisations it would consult and schedule 1 to the Post Office Act did not impose a duty not to withdraw recognition from particular trade unions.

Counsel's argument on behalf of the plaintiff was that in order to give business efficacy to the contract of service it is necessary to imply a term that the Post Office will continue to recognise both unions as negotiating bodies during the continuance of that contract of employment.

At page 718, Brightman J said:

*"In my judgement this argument is not correct. I think that the statement by the Post Office instructress that the first plaintiff was entitled either to join the guild or the union or neither was purely informative and not contractual. It was not expressed to be a term of the contract of employment. It did not need to be a term of the contract of employment. If an employee can join trade union X or trade union Y or neither without any term at all. Nor would I expect a Post Office instructress to be the likely medium through whom terms of a contract of employment would be conveyed. The first plaintiff's notice of appointment as probationary telephonist was in fact signed by a head postmaster. Later, his CSI was signed by the telephone manager for Lancaster. Two other CSI's which are before me were also signed by a telephone manager. It seems to me altogether too far-fetched to suggest that when training employees are told by their instructors that they are at liberty either to join specified unions or no union, that becomes an express term of their employment which introduces, under the compulsion of necessity, the further and unspoken term that the employer will always during that contract of service continue in all circumstances to recognise the chosen trade union as a negotiating body in respect of that employee."*

Following further argument by counsel that the implied term existed as a term in the plaintiff's first employment as a civil servant with the Post Office before the change over, Brightman, J. had this to say also at page 718:

*"It was urged on me by counsel for the Post Office that in any event the supposed implied term can only have started its life as term of the first plaintiff's engagement as a civil servant of the Crown; that, there is ample authority that civil servants are not engaged on contractual terms of employment as a matter of law; therefore there was no contract of employment into which a term could be implied."*

Returning to the facts of the case now before this court, the members of the Respondent are employees of the Government of Solomon Islands in the public service which is the service of the Crown. Appended to the GO B (Appendices 1 and 3) are the forms of Letters of Appointment to the Public Service. There is no mention in those Forms any terms and conditions regarding recognition by the Government of trade unions or Staff Association as part of the employee's terms and condition of service. GO C 601 provides for Staff Association or Union representing employees of the Government. It says:

*"1. For the purpose of this Order a recognised Staff Association or Union shall be an Association or, in the case of a Union, a Trade Union duly*

*registered under the Trade Unions Act Cap.76 which has been recognised by the Government as representing Officers or non-established employees - as defined in GO C504(1)(d) or a particular section or class of such officers or employees.*

2. *Government will normally recognise an Association or Union if it has demonstrated that it represents a substantial number and cross section of the categories of officers or non-established employees in the service of the Government it purports to represent."*

There has been some dispute as to the membership of the Respondent. According to Mr Tauariki there were over 4,000 members and changed every week as new members joined. According to Mr Maenu'u in his letter of 16 April 1991 attached to his affidavit, he said in the fourth paragraph:-

*"We have also discovered that SIPEU no longer has members. No recent register of current members of SIPEU is available at the Office of the Registrar General as of today. It would seem therefore that SIPEU is technically defunct and is no longer capable of functioning as a trade union."*

The letter from Mrs. Tongarutu of the Registrar General's Office dated 30 April 1991 made no mention of the Register of members but she appeared to be saying that the membership of the Union had been affected by the cessation of deductions by the Accountant General from members' salaries. *"Consequently there is no full financial members of the union who can nominate and vote at the forthcoming Annual General Meeting except may be the current members of the National Executive who commenced to hold office on 30 April 1990 as per The Notice of Change of Officers dated 30 April 1990 and registered in this Office on 4 May 1990"*. Whatever the true position is as to membership of the Respondent, it seems surprising that the Respondent having received the letter of 16 April 1991 from the Secretary to the Prime Minister putting the Respondent on notice that its membership Register had been questioned did not see fit to request confirmation from the Registrar of Trade Union's office as to whether or not Mr Maenu'u's letter was correct. The Vice President of the Respondent wrote to Registrar of Trade Unions on the 29 April 1991 and, although I have not seen a copy of that letter, the reply from Mrs Tongarutu of 30 April 1991 covered only the question of Annual General Meeting and union membership fees. I am far from being satisfied that there was any membership register as required by Regulation 15 of the Trade Unions Regulations.

Counsel for the Respondent seeks to persuade this Court that the Respondent has demonstrated that it represents the majority of the members of the public servants and that in terms of GO C601(2) the Appellant must recognise the Respondent and has been so recognised in view of the long standing "past dealings" between them. Despite counsel's forceful argument on the evidence before me, I am driven to doubt whether the Respondent in fact demonstrates that it represents substantial numbers of the public servants whom it purports to represent.

There is no doubt that the Appellant have over the years dealt with the Respondent on matters concerning the "terms and conditions of employment" of public

employees who are members of the Respondent. Those employees are public officers and as such their legal position is more one of status than of contract. As such there is no contract of employment into which terms could be implied. Even if there is any such contract of employment no implied term that the Appellant will always recognise the Respondent as the negotiating body for the employees during their entire period of employment can be read into their contract of service. The continuous dealings between the Appellant and the Respondent has been simply on an ad hoc recognition basis for the purpose of dealing with the terms and conditions of employment of the public employees who are members of the Respondent. The continuation of such ad hoc recognition cannot be implied. In the absence of any award made pursuant to Trade Disputes Act provisions the Appellant cannot be estopped from withdrawing its ad hoc recognition. The doctrine of estoppel cannot apply to the state in its governmental, public or sovereign capacity. The only limitation to the application of the doctrine on the state is that it cannot invoke the doctrine of estoppel in order to give itself power which it does not possess: *See Abeywickrema -v- Pathirana & Ors* [1987] LRC 999, where at p. 1023-1024 also Sharvananda CJ said:

*"The State is not subject to estoppel to the same extent as an individual or a private corporation. Otherwise it will be rendered helpless to assert its powers of government and therefore the doctrine of estoppel is not applicable against the State in its governmental, public or sovereign capacity."*

The only limitation on the state of this doctrine of estoppel is in relation to the doctrine of ultra vires. At page 1024 Sharvananda CJ further stated:

*"The doctrine of estoppel or waiver cannot in any event be employed to enlarge the powers of a public authority. In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority power which it does not in law possess. In other words no estoppel can legitimate action which is ultra vires."*

In my judgement therefore the question of withdrawal of recognition by the Appellant in this case raises no legal question such as to deprive the Trade Disputes Panel of its jurisdiction and the "past dealings" between the Appellant and Respondent on an ad hoc recognition basis cannot give rise to an implied recognition enforceable at law. The complaint raised by the Respondent that the Appellant took irrelevant matters in withdrawing recognition no longer matter in view of the findings reached by this court.

I would dismiss grounds 1, 2, 3 and 4 of the Respondent's cross-appeal.

The remaining grounds 5 and 6 challenge the Panel's jurisdiction to deal with the question of reduction of salaries of the 15 Permanent Secretaries.

I have already dealt with sections 116(1) and 137(4) of the Constitution above and I do not repeat them here. I can deal with this matter briefly.

The Public Service Commission is empowered by section 137(1) to make laws for the purpose of regulating and facilitating the performance of its functions. Section 137(1) reads:

*"(1) Any Commission established by this Constitution may by regulations make provision for regulating and facilitating the performance by the Commission of their functions under this Constitution."*

Pursuant to section 137(1), the Public Service Commission Regulations 1979 was made to regulate and facilitate the performance by the Commission of its functions. Counsel for the Respondent submitted that on the issue of reduction of salaries of the Permanent Secretaries, the Panel has on power to decide on that as it is a matter falling within section 116(1) of the Constitution. Reduction of salaries, says Counsel, is a form of penalty imposed following a disciplinary process which is regulated by regulations 60 and 61 of the Public Service Commission Regulations 1979. Regulations 60 and 61 provide:-

*"60. Where the Commission or officer exercising delegated powers is satisfied that any act of misconduct warrants punishment, the following may be imposed, according to the circumstances:-*

- (a) reprimand;*
- (b) severe reprimand;*
- (c) reduction in salary or wages;*
- (d) demotion by one or more grade levels;*
- (e) dismissal.*

*61. Reductions in salary or wages under paragraph 6(c) shall normally be by an amount equal to one or more increments for a specified period, the officer's incremental progression remaining unchanged."*

The question of reduction of salaries is not covered directly in the Agreement of Service of the Permanent Secretaries. Clause 4(1) of the Agreement only provides:

*"(1) The employee shall be paid the salary specified in the schedule. The salary may be reviewed to take into account normal inflation rates and cost of living adjustment."*

The Schedule referred to provides:

*"SALARY [Clause 4(1)]  
\$59,225.00 per annum"*

Clause 4(1) takes into account questions of inflation and cost of living and as such provide for the power to review the salary of a Permanent Secretary. It will be observed that the power to review under Clause 4(1) exists independent of any disciplinary process.



The word "review" is defined in the Oxford Advanced Learner's Dictionary of Current English as to mean:

*"consider or examine again; ....."*

Thus giving the word "review" its ordinary plain meaning, it must mean that in Clause 4(1) of the Agreement of Service the power to review the salary means the power to consider or examine again the salary of a Permanent Secretary taking into account the normal inflation rate and the cost of living adjustment. The employer of the Permanent Secretaries is the Solomon Islands Government, not the Public Service Commission and it cannot be doubted that the Government has the right to set the salaries and conditions of employment of the Permanent Secretaries, and if I may add, of all public officers (*See Tri-Ed Association -v- S.I.C.H.E. [1985/86] SILR 173* and in particular the obiter dictum of Kapi JA at p. 191 on section 137(4)). It is, of course, incumbent on the Government to see that those salaries and benefits should be appropriate to the circumstances of Solomon Islands. The correlative to the right to set the salaries limit is the right to review and, in appropriate situations, reduce salaries according to law.

Counsel's argument is that Clause 4(1) of the Agreement of Service does not apply to the question of reduction of salaries. I would agree with counsel that Clause 4(1) does not apply to the question of reduction of salaries if the reduction of salaries is taken as a form of disciplinary measure to be imposed on the Permanent Secretaries, in which case Part VII of the Public Service Commission Regulations comes into play. I cannot accept the suggestion that when the members of SIPEU demanded reduction of salaries of the 15 Permanent Secretaries they were in any sense demanding that the Permanent Secretaries be disciplined under regulation 60(c) of the Public Service Commission Regulations 1979. The reality of the situation is that the members of SIPEU demanded the reduction of the salaries of the 15 Permanent Secretaries because they felt they were too high. That demand cannot be anything but a demand to review the salaries with a view to reducing them and must be within ambit of Clause 4(1) of the Agreement of Service.

To take counsel's argument that the demand in this case for reduction of salaries of the Permanent Secretaries is a disciplinary matter and therefore falls within section 116(1) of the Constitution and as such section 137(4) does not permit the usurpation of the powers given to the Public Service Commission under section 116(1), one must look at Part VII of the Public Service Commission Regulations 1979 which is made pursuant to the powers under section 137(1) of the Constitution. Part VII is headed - "Discipline." Regulations 44 to 66 cover the disciplinary process of a public officer. Regulation, 60 which counsel relied on provides for punishment for misconduct. It reads:

*"60. Where the Commission or officer exercising delegated powers is satisfied that any act of misconduct warrants punishment, the following may be imposed, according to the circumstances:-*

(c) *reduction in salary or wages;"*

Regulation 60 makes it perfectly clear that to impose the punishment of reduction of salary or wages, the Public Service Commission must be satisfied that an officer is guilty of misconduct. Counsel's argument on section 4(1) and Public Service Act does not advance the matter further one way or the other.

It is therefore plain that for the issue of reduction of salaries to be brought into the exclusive province of Public Service Commission to the exclusion of any person or authority, it must be shown that it is for the purpose of disciplinary action. It has not been demonstrated that the demand for reduction of salaries of the Permanent Secretaries has anything to do with disciplinary control and as such in my judgement it is not a matter falling within section 116(1) of the Constitution as read with regulations 60 and 61 of Public Service Commission Regulations 1979. The Trade Disputes Panel therefore had not erred when it ruled that it had jurisdiction to deal with the demand for the reduction of salaries of the Permanent Secretaries.

I would also dismiss grounds 5 and 6 of the Respondent's cross-appeal.

(G.J.B. Muria)  
COMMISSIONER OF THE HIGH COURT