the Act of 1947.[14]

Conciliation Officers

Under the Industrial Disputes Act, 1947, it is discretionary on the part of the appropriate Government to appoint Conciliation Officers. A Conciliation Officer may be appointed for a specified area or for specified industries and either permanently or for a limited period. They are charged with the duty of mediating in and promoting the settlement of industrial disputes.[15]

Under section 12, where an industrial dispute exists or is apprehended, the Conciliation Officer must hold conciliation proceedings in public utility services[16] where notice of strike or lock-out is given under

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Disputes Amendment Bill, *Legislative Assembly Debates*, Vol. II, 1938, p. 1737. It is mainly with a view to preventing strikes and avoid precipitating the relations between employer and employees. The Trade Disputes Act, 1929, was amended in 1938. See the speech of Mr. A. G. Glow, Labour Secretary on the consideration of Clauses of Trade Disputes Amendment Bill, *Legislative Assembly Debates*, Vol. II, 1938, p. 1722. The Officers were thought to be more useful instruments as watchdogs of industrial peace than Boards of Conciliation.

14. Section 4, The Industrial Disputes Act, 1947.
15. *Ibid.*
16. Section 2(n): "Public Utility Service" means,—
    (i) any railway service;
    (ii) any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed therein depends;
    (iii) any postal, telegraph or telephone service;
    (iv) any industry which supplies power, light or water to the public;
    (v) any system of public conservancy or sanitation;
    (vi) any industry specified in the Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

    Provided that the period so specified shall not in the first instance, exceed six months, but may, by a like notification, be extended from time to time by any period not exceeding six months, at any one time if, in the opinion of the appropriate Government public emergency or public interest requires such extension.

    The First Schedule of the Act: Industries which may be declared to be public utility services under Sub-clause (vi) of Clause (n) of Section 2.

    1. Transport (other than railways) for the carriage of passengers or goods by land, water or air; 2. Banking; 3. Cement; 4. Coal; 5. Cotton Textiles; 6. Foodstuffs; 7. Iron and Steel; 8. Defence establishments; 9. Service in hospitals and dispensaries; 10. Fire Brigade Service.

sec. 22.[17] In other cases, namely, non-public utility services and in public utility services where notice of strike or lock-out is not given, he may hold conciliation proceedings. A conciliation proceeding in a public utility case is deemed to have commenced on the date on which the notice of a strike or lock-out under sec. 22 is received by the Conciliation Officer.[18] Neither the Act nor the rules require the Conciliation Officer to acknowledge in writing the date on which the notice of strike or lock-out was received under the section. This is apparently an omission. The Conciliation Officer, on receipt of a notice of a strike or lock-out given under rule 71[19] or rule 72,[20] must forthwith arrange to interview both the employer and the workman concerned with the dispute, at such places and at such times as he deems fit, and attempt to bring about a settlement of the dispute in question. In non-public utility services and in public utility services where no notice of strike or lock-out is given, it is not obligatory on the Conciliation Officer to conduct conciliation proceedings. It is discretionary with him[21]

17. Section 22, Prohibition of strikes and lock-outs.
No person employed in a public utility service shall go on strike in breach of contract—
(a) without giving to the employer notice of strike as hereinafter provided, within six weeks before striking; or
(b) within fourteen days of giving such notice; or
(c) before the expiry of the date of strike specified in any such notice as aforesaid; or
(d) during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings. The same thing applies verbatim in the case of employer before lock-out of his workmen.

18. Section 20(1), The Industrial Disputes Act, 1947.

19. Rule 71—Notice of Strike
(1) The notice of strike to be given by workmen in a public utility service shall be in Form 'L'.
(2) On receipt of a notice of strike under sub-rule (1), the employer shall forthwith intimate the fact to the Conciliation Officer having jurisdiction in the matter.

20. Rule 72—Notice of Lock-out
The notice of lock-out to be given by an employer carrying on a public utility service shall be in Form 'M'. The notice shall be displayed conspicuously by the employer on a notice board at the main entrance to the establishment and in the Manager's office:
Provided that when a registered trade union exists a copy of the notice shall also be served on the Secretary of the Union.

21. *Tata Collieries Labour Association* v. *The Management of Digwadih Colliery*, [1953] L.A.C. 638. Rule 10, The Industrial Disputes (Central) Rules, 1957: Where the Conciliation Officer receives any information about an existing

and apparently the proceeding begins only on the date mentioned in the formal notification given by the Conciliation Officer to the parties.[22]

Generally he intervenes unless the demands of the workmen are frivolous or unjustified, or in his opinion, the merits of the dispute do not warrant the initiation of conciliation proceedings. He may start investigation of the dispute on receipt of any information.

There are certain administrative instructions to guide the conciliation officers in initiating conciliation proceedings in respect of non-public utility enterprises and of public utility services where notice of strike or lock-out has not been given.

One of the instructions is that a dispute over recognition of a trade union by the employer should not normally be taken up in a conciliation proceeding and should not be recommended for reference to a Tribunal. In the past, when such cases have been referred, the trend of decisions by the Tribunals has been that such controversies do not constitute industrial dispute within the meaning of the Act.[23] The fact of non-recognition of a union by the management does not deprive the employees of their freedom to raise disputes on all other issues. In such a dispute, when the management refuses to meet with the representatives of the unrecognized labour union, the Conciliation Officer may hold separate meetings with the parties. Conciliation officers have been instructed not to discriminate between recognised and unrecognised unions when a dispute arises. On the question of recognition, it was recommended in the Second Five Year Plan[24] that statutory provision should be made for securing recognition; but the Government's attitude has been that compulsory recognition was not likely to solve the problem. On the contrary there is a chance that the parties might become more legalistic in their attitude. The Informal Con-

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or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

22. Rule 10, The Industrial Disputes (Central) Rules, 1957.

23. See *Sahitya Mandir Press Ltd., Lucknow* v. *The Government of U.P.* (Labour Appellate Tribunal at Lucknow) [1951] 1 L.L.J. 246; *Lakurka Colliery* v. *Their Workmen*, (Central Government Industrial Tribunal, Dhanbad) [1952] 1 L.L.J. 212. If a registered trade union comes before a Conciliation Officer and on the plea of non-recognition by the employers the latter refuse to sit with the labour, the Conciliation Officer has only to meet the parties separately.

24. *Second Five Year Plan, Labour Policy and Programmes*, Ch. XXVII, p. 573.

sultative Committee of Parliament attached to the Ministry of Labour and Employment has also been in favour of adoption of a code or convention regarding recognition, rather than legislation. [25] The trend of opinion among both workers and employers is the same. At the same time, these groups agree that certain conventions should be evolved for regulating the voluntary recognition of unions by employers. Accordingly, at the 16th Session of the Indian Labour Conference held at Nainital in 1958, certain conventions were evolved for the voluntary recognition of unions. [26] These are given in Appendix 'A' to this report.

The conciliation officers have been directed by an instruction to initiate formal conciliation proceeding when a dispute is raised during the statutory notice period by workmen as a result of notice of change in conditions of service given by their employer under sec. 9-A of the Act. [27]

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25. Memorandum on Industrial Relations—Summary of Proceedings of the Indian Labour Conference, 16th Session, Nainital, p. 65.

26. Report of the Committee on Industrial Relations—Summary of the Proceedings of the Indian Labour Conference, 16th Session, Nainital, pp. 41–42.

27. Section 9-A, The Industrial Disputes Act, 1947:
No employer, who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice....

The Fourth Schedule to the Act :

Conditions of service for change of which notice is to be given :

1. Wages including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowance;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change usage;
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;

The Conciliation Officer is required by the rules framed by the Central Government under section 38 [28] to conduct the proceedings expeditiously and in such manner as he deems fit.[29] Discretion could thus play a large part. In accordance with the rules as amended in December, 1957, the party representing the workmen of a public utility service is required to forward a statement of its demands along with a copy of the notice prescribed under rule 71 to the Conciliation Officer concerned. In the same way, the party representing workmen of a non-public utility service is bound to forward a statement of its demands to the Conciliation Officer concerned before such date as may be specified by him for commencing conciliation proceedings. The venue of a conciliation proceeding is to be mentioned in the notice to the parties concerned.

On the day fixed for the commencement of conciliation proceedings, the representatives of both parties meet at the place fixed by the Conciliation Officer. He may hold a meeting with the representatives of both parties jointly or with each party separately.[30]

Since the Conciliation Officer is not acting in a judicial or quasi-judicial capacity [31] under sec. 12 of the Industrial Disputes Act, no

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10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen ;
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not due to forced matters.

28. Section 38, The Industrial Disputes Act, 1947.
    (i) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.
29. Rule 12, The Industrial Disputes (Central) Rules, 1957.
30. Rule 11, The Industrial Disputes (Central) Rules, 1957.
31. The nature of conciliation proceedings has been very well set out in *Royal Calcutta Golf Club Mazdoor Union* v. *State*, A.I.R. 1956 Cal. 550. The High Court of Calcutta observed in that case :

> " [T]he duties of a conciliation officer are not judicial, but are administrative. It will be observed from the provisions of sec. 12 that the Conciliation Officer has to do a variety of things. He has to investigate the dispute and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of the disputes. If it was to be held that the duties of a Conciliation Officer were judicial, then in connection with everything that he does, the formalities of a judicial trial will have to be observed, e.g., he could not ascertain from one side its views except upon notice to, or in the presence of, the other parties. It is but patent that no conciliation proceedings could be carried on under such conditions. The main task of the Conciliation Officer is to go from one camp to the other

writ of *certiorari* can be issued against him.[32]

Section 36 specifically lays down the persons who are empowered to represent the parties.[33] Sub-section 3 of sec. 36 categorically says that no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceeding. The representative of the employer and non-organized workers must produce a letter of authority from the employer and the workers respectively. Rule 37 provides that a party appearing by a representative shall be bound by the acts of that representative.

The Act and the rules are silent as to whether the proceedings before the Conciliation Officer are to be held in public or in private. But the uniform practice is that the Conciliation Officer conducts the proceedings in private.[34]

To carry out the duties imposed on him under the Act, the Conciliation Officer has been empowered to enter the premises occupied by any establishment to which the dispute relates, after giving reasona ble

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and find out the greatest common measure of agreement. That being so, the grievance that the investigations have not been carried on in the manner that a judicial proceeding should be carried on, is without substance."

32. *The Employees in the Caltex (India) Ltd., Madras* v. *The Commissioner of Labour and Conciliation Officer, Government of Madras*, A.I.R. 1959 Mad. 441 at p. 444.

33. Section 36(1): "A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—
   (a) an Officer of a registered trade union of which he is a member;
   (b) an officer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;
   (c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

   (2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—
   (a) an officer of an association of employers of which he is a member;
   (b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;
   (c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in the industry in which the employer is engaged and authorised in such manner as may be prescribed.

34. The Bombay Industrial Relations Act, 1946 (sec. 60(2)), and the Central Provinces and Berar (Industrial Disputes Settlement) Act, 1947 (sec. 20(4)), provide that the proceedings before a Conciliation Officer will be held in camera.

notice to the parties, and inspect the same or any work machinery, appliance or articles therein or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject-matter of the conciliation.[35] He can call for and inspect any document which he has ground for considering to be relevant to the dispute or necessary for the purpose of verifying the implementation of any award and in this connection he enjoys the same powers as are vested in a Civil Court under the Code of Civil Procedure.[36]

If the parties come to a settlement in the course of the proceedings, the Conciliation Officer is required to send a report thereof to the appropriate Government together with a memorandum of settlement signed by the parties to the dispute.[37] The memorandum of settlement is to be signed by the employer himself or his authorised agent and by the president or the secretary or any other office-bearer of a trade union on written authority from the president or the secretary to sign the settlement in question.[38]

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35. Section 11(2), The Industrial Disputes Act, 1947, and rule 23, The Industrial Disputes (Central) Rules, 1957.

36. Section 11(4) of The Industrial Disputes Act, 1947. Sections 30, 32 and Order XI, Rule 14 of The Code of Civil Procedure deal with the power of the Court to compel the production of documents.

    Section 30 : "The Court may, at any time, either of its own motion or on the application of any party,—

    (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents or other material objects producable as evidence.

    (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid."

    Section 32 : "The Court may compel the attendance of any person to whom a summons has been issued under S. 30 and for that purpose may—

    (a) issue a warrant for his arrest ;

    (b) attach and sell his property ;

    (c) impose a fine upon him not exceeding Rs. 500/- ;

    (d) order him to furnish security for his appearance and in default commit him to the Civil prison.

37. Section 12(3), The Industrial Disputes Act, 1947. A settlement arrived at in the course of conciliation proceedings or otherwise shall be in Form 'H'. (Rule 58) The form is given in Appendix 'B'.

38. Rule 58(2)(a) and (b), The Industrial Disputes (Central) Rules, 1957 : The settlement shall be signed by—

    (a) in the case of an employer, by the employer himself or by his authorised agent,

    (b) in the case of workmen, either by the President or the Vice-Presiden or the Secretary or the Joint Secretary or the Local Assistant or

If no such settlement is arrived at, the Conciliation Officer has to send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, a settlement could not be achieved.[39]

The Conciliation Officer must keep certain matters confidential in his report provided that such matters are not available otherwise than through the evidence produced and that the trade union, person, firm or company concerned has requested in writing that the matter be kept confidential.[40]

If, on a consideration of the Conciliation Officer's report, the appppropriate Government is satisfied that there is a case for reference to a Board or Labour Court, Tribunal or National Tribunal, it may make such a reference. Where the Government does not make such a reference, it must record and communicate to the parties concerned its reasons for not doing so.[41] Where the Government does none of these things, the Government must be held to have failed to perform the duty cast on it by the statutory provision and either of the parties is entitled to a writ of *mandamus* directing the Government to fulfil its duty.[42]

The expression "may" in relation to making a reference refers to a duty imposed upon a Government which arises as a result of the satisfaction arrived at on a perusal of the report. When the Government is satisfied that there is a case for reference but will not make a reference, the courts would compel the Government by a *mandamus* to discharge its statutory duty. It is obligatory upon Government when it does not make a reference to record and communicate to the parties concerned its reasons therefor. The reasons must be connected

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Group Secretary of a trade union of workmen or by any other office bearer of a trade union on a written authority from the President or the General Secretary to sign the settlement in question, or b five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

The Minister of Labour is not a Conciliation Officer and any settlement come to as a result of his good offices would not be settlement arrived at in the course of conciliation proceedings. *The Employees in the Caltex (India) Ltd., Madras* v. *The Commissioner of Labour and Conciliation Officer, Government of Madras*, A.I.R. 1959 Mad. 441 at p. 444.

39. Section 12(4), The Industrial Disputes Act, 1947.
40. Section 21, The Industrial Disputes Act, 1947.
41. Section 12(5), The Industrial Disputes Act, 1947.
42. *The State of Madras* v. *Swadesamitra Printers Labour Union*, A.I.R. 1952 Mad. 297.

with the inability of the Government to satisfy itself that there was a case for reference. If the stated reasons have no relevance to this point, they would not be reasons contemplated by sub-section (5) and it would be open to the courts to ask the Government to give proper reasons such as the law requires.[43]

The statute provides that a report under sec. 12 must be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government and that the time for the submission may be extended by such period as may be agreed upon in writing by all parties to the dispute.[44] If the conciliation proceedings are allowed to be protracted beyond the prescribed period of fourteen days, the conciliation proceedings are not rendered invalid.[45]

A conciliation proceeding in which a settlement is arrived at is concluded when a memorandum of the settlement is signed by the parties to the dispute; where no settlement is arrived at it is concluded when the report of the Conciliation Officer is received by the Government or when a reference is made to a Labour Court, Tribunal or National Tribunal under sec. 10 during the pendency of conciliation proceedings. [46]

The Supreme Court of India in *Workers of Industry Colliery* v. *Industry Colliery*, [47] held that conciliation proceedings resulting in a report

43. *Firestone Tyre and Rubber Co. of India Ltd.* v. *K. P. Krishnan*, A.I.R. 1956 Bom. 273; *Engineering Staff Union* v. *State of Bombay*, A.I.R. 1959 Bom. 390 at p. 393.

44. Section 12(6), The Industrial Disputes Act, 1947. In Bombay, the total period fixed for the completion of all stages of a conciliation proceeding is one month from the date of which the dispute is entered by the Conciliator in the register or is referred to a Board. (S. 62(1), The Bombay Industrial Relations Act, 1946). In Madhya Pradesh the time-limit for the completion of conciliation proceedings is four weeks. (Sec. 37(7), The Central Provinces and Berar (Industrial Disputes Settlement) Act, 1947). In Bombay the State Government has to publish the report of the Conciliator or the Chief Conciliator except in cases in which the dispute is referred to a Board or the parties to the dispute enter into a submission in respect of it. (S. 58(4)).

45. *State* v. *Andheri Marol Kurla Bus Service*, A.I.R. 1955 Bom. 324. This case was decided before the amendment of the Industrial Disputes Act in 1956 by which a proviso has been added to sec. 12(6) to the effect that the time-limit of fourteen days can be extended by agreement in writing by all the parties.

46. Section 20(2), The Industrial Disputes Act, 1947.

47. [1953] S.C.R. 428; A.I.R. 1953 S.C. 88.

come to a conclusion only on the actual receipt of the report by the appropriate Government. The Court did not uphold the argument of the counsel for the employees who were the appellants in this case that the conciliation proceedings should be held to terminate when the Regional Labour Commissioner (the Conciliation Officer in this case) sent his report within fourteen days of the commencement of conciliation proceedings. The Court observed : " the difficulty in accepting this argument is that while the word 'send' is used in Sec. 12(4) and the word 'submitted' in Sec. 12(6) the word used in Sec. 20(2) (b) is 'received'. That word obviously implies the actual receipt of the Report." [48]

The Conciliation Officer is required to file all settlements effected under the Act in respect of disputes in the area within his jurisdiction in a register maintained for the purpose. [49] The Conciliation Officer is not empowered to make any kind of decision even when a settlement is arrived at between the parties, much less when no settlement is arrived at between them. He only sends a report to the appropriate Government.

During the pendency of any conciliation proceeding before a Conciliation Officer, the employer cannot, in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of the proceeding or discharge or punish, whether by dismissal or otherwise, any such workman for any misconduct connected with the dispute, except with the express permission in writing of the Conciliation Officer. [50] In case of any matter not connected with the dispute pending before the authority, the employer can alter the conditions of service applicable to the workmen. The employer can discharge or punish a workman for any misconduct not connected with the dispute on payment of one month's wages and after making an application for the approval of the Conciliation Officer before whom the dispute is pending. [50a] But the employer cannot discharge or punish whether by dismissal or otherwise

48. *Ibid*, at 89. See also *Andheri Marol Kurla Bus Service* v. *The State of Bombay*, A.I.R. 1959 S.C. 841 at p 843. *State Railway Collieries Union* v. *State Railway Collieries*, [1952] L.A.C. 211 ; *Colliery Mazdoor Congress, Asansol* v. *New Beerbhoom Coal Co. Ltd.*, [1952] L.A.C. 219 at p. 222. Under the Central Provinces and Berar (Industrial Disputes Settlement) Act, 1947, the conciliation proceeding is deemed to have been completed if no settlement is arrived at when the report is submitted to the State Government, (Sec. 37(8)).

49. Rule 75, The Industrial Disputes (Central) Rules, 1957.

50. Section 33(1)(a) and (b), The Industrial Disputes Act, 1947.

50a. Section 33(2)(a) and (b) do

or alter the conditions of employment of any *protected workman* (union officer) during the pendency of the industrial dispute unless he has secured the express permission in writing of the Conciliation Officer before whom the proceeding is pending. [51] Where on an application for permission to dismiss an employee, the Conciliation Officer finds that the employer has made out a prima facie case he has no option but to grant the application. He cannot enter into the question of the quantum of punishment and if the employee has any grievance against the order of his dismissal, it is for him to raise an industrial dispute. [52]

Boards of Conciliation

The Industrial Disputes Act, 1947, also provides for the constitution of Boards of Conciliation by the appropriate Government for promoting the settlement of industrial disputes. A Board consists of a Chairman and two or four other members as the appropriate Government thinks fit who are appointed in equal numbers to represent the parties to a particular dispute. A person appointed to represent a party is to be appointed on the recommendation of that party or if a party fails to make a recommendation within the prescribed time, the appropriate Government is to appoint such persons as it thinks fit to represent that party.[53] The quorum for conducting the proceedings is

51. Section 33(3)(a) and (b), The Industrial Disputes Act, 1947.
A protected workman, in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

52. *M/s. Atherton West and Co. Ltd., Kanpur* v. *The Regional Conciliation Officer, Kanpur*, A.I.R. 1959 All. 406.

53. Section 5, The Industrial Disputes Act, and rule 6, The Industrial Disputes (Central) Rules, 1957.
Rule 6 :

(i) If the Central Government proposes to appoint a Board, it shall send a notice in Form 'B' to the parties requiring them to nominate within a reasonable time persons to represent them on Board.

(ii) The notice to the employer shall be sent to the employer personally, or if the employer is an incorporated company or a body corporate, to the agent, manager or other principal officer of such company or body.

(iii) The notice to workmen shall be sent : (a) in the case of workmen who are members of a Trade Union to the President or Secretary of the Trade Union and (b) in the case of workmen who are not members of a Trade Union, to any one of the five representatives of the workmen who have attested the application made under Rule 3, and in this case a copy of the notice shall also be sent to the employer who shall display copies thereof on notice boards in a