

立法會
Legislative Council

LC Paper No. CB(2) 1462/02-03
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

Panel on Manpower

Minutes of meeting
held on Thursday, 23 January 2003 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon LAU Chin-shek, JP (Chairman)
Hon CHAN Kwok-keung (Deputy Chairman)
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon YEUNG Yiu-chung, BBS
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP

Member attending : Hon Abraham SHEK Lai-him, JP

Members absent : Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon SZETO Wah
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee

Public Officers attending : Item III

Mr W S CHAN
Deputy Secretary for the Environment, Transport and Works
(Transport and Works) W2

Mr Helius NG
Principal Assistant Secretary for the Environment, Transport and
Works (Transport and Works) W4

Mr CHOW Tung-shan, JP
Assistant Commissioner for Labour (Occupational Safety) 1

Item IV

Mr Matthew CHEUNG Kin-chung, JP
Permanent Secretary for Economic Development and Labour
(Labour)

Mrs Jenny CHAN, JP
Assistant Commissioner for Labour (Rights and Benefits)

Mrs Jennie CHOR, JP
Assistant Commissioner for Labour (Labour Relations)

**Attendance by :
Invitation**

Item III

Hong Kong Construction Industry Employees General Union

Mr CHOI Chun-wa
Chairman

Mr CHO Kai
Vice Chairman

The Federation of Hong Kong Electrical & Mechanical
Industries Trade Unions

Mr LAI Chi-wah
Vice Chairman

Mr SIN Kai-ming
Secretary

Hong Kong & Kowloon Electrical Engineering & Appliances
Trade Workers Union

Mr WAN Koon-sun
Chairman

Mr CHU Yuk-ching
Deputy Secretary

Construction Site Workers General Union

Mr SUNG Chee-tak
General Secretary

The Hong Kong Construction Association Ltd

Mr Billy WONG Wing-hoo
President

Mr Patrick CHAN Wing-tung
Secretary General

The Real Estate Developers Association of Hong Kong

Mr Robert TSOI
Representative

The Hong Kong Electrical and Mechanical Contractors'
Association Limited

Mr James CHIU
President

Mr Paul CHONG
Hon Secretary

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2) 1

Staff in attendance : Ms Dora WAI
Senior Assistant Secretary (2) 4

Action

**I. Confirmation of minutes of previous meeting and matters arising
(LC Paper No. CB(2)913/02-03)**

The minutes of the meeting held on 18 December 2002 were confirmed.

Action

II. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)922/02-03(01) and (02))

2. Members agreed that the following items be discussed at the next meeting to be held on 20 February 2003 at 2:30 pm -

- (a) Special project for vulnerable trainees of the Youth Work Experience and Training Scheme; and
- (b) Guide on rest break.

3. With regard to the item concerning improvement to the content of the Labour Department's webpage for employment in the Mainland proposed by the Administration, members agreed that, instead of including it as an agenda item for the next meeting, the Administration should be requested to provide an information paper on the subject for circulation to members.

4. Members also agreed to accept the invitation extended by the Vocational Training Council to visit its training centres in Wanchai, Kwai Chung and Tsing Yi on 21 February 2003 from around 10 am to 2 pm.

(Post-meeting note : On the instruction of the Chairman, the visit has subsequently been cancelled.)

5. Members proposed that the Administration should be invited to give a briefing to the Panel on issues/initiatives relating to the labour and manpower portfolios under the Population Policy once it was announced. Members expressed particular concern about the Admission of Mainland Professionals Scheme which, they believed, was being dealt with under the Population Policy exercise spearheaded by the Chief Secretary for Administration. Members were of the view that the Scheme should not fall under the purview of the Security Bureau as it involved policy issues relating to local employment and manpower resources.

6. The Chairman suggested that members should inform the Clerk should they have any views/suggestions concerning the items on the list of outstanding items for discussion by the Panel, as some of these items had been included on the list for quite some time which might warrant updating. The Administration should also be invited to provide an updated position on the items on the list.

III. Registration requirements under the proposed Construction Workers Registration System

(LC Paper No. CB(2)922/02-03(03))

7. Deputy Secretary for the Environment, Transport and Works (Transport and Works) W2 (DS for ETW) briefed members on the requirements for obtaining registration under the proposed Construction Workers Registration System (the

Action

proposed System) as set out in the Administration's paper.

Meeting with deputations

*Hong Kong Construction Industry Employees General Union
(LC Paper No. CB(2)922/02-03(04))*

8. Mr CHOI Chun-wa presented the views of the Hong Kong Construction Industry Employees General Union as set out in its submission.

*The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions and
Hong Kong & Kowloon Electrical Engineering & Appliances Trade Workers Union
(LC Paper No. CB(2)922/02-03(05))*

9. Mr WAN Koon-sun of the Hong Kong & Kowloon Electrical Engineering & Appliances Trade Workers Union presented the views of The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions and the Hong Kong & Kowloon Electrical Engineering & Appliances Trade Workers Union as set out in the joint submission from the two deputations.

*Construction Site Workers General Union
(LC Paper No. CB(2)922/02-03(06))*

10. Mr SUNG Chee-tak presented the views of the Construction Site Workers General Union as set out in its revised submission.

(Post-meeting note : The revised submission from the Union was circulated to members vide LC Paper No. CB(2)1040/02-03 on 27 January 2003.)

*The Hong Kong Construction Association Ltd
(LC Paper No. CB(2)922/02-03(07))*

11. Mr Billy WONG said that the views of The Hong Kong Construction Association Ltd were set out in its submission. He supplemented that the proposed System would bring about the following advantages -

- (a) enabling direct employment of construction workers by principal contractors in certain types of work should the latter be able to know the skill levels of individual workers; and
- (b) reducing the chance of in-service construction workers losing their jobs because of the competition arising from the lower wages asked for by non-skilled workers from outside the industry, thereby enhancing the employment of in-service workers.

12. Mr Billy WONG also pointed out that at present, there was a requirement commonly found on construction contracts, whether private or Government, that a large

Action

proportion of the workers engaged should possess the respective trade test certificates. It was, therefore, envisaged that workers without the respective trade test certificates might encounter increasing difficulties in securing employment in the construction industry.

13. Mr Billy WONG further said that based on the information from the Census and Statistics Department, there were in average around 80 000 workers engaged in the construction industry in the past five years. The latest information from the Construction Industry Training Authority (CITA) revealed that nearly 50 000 in-service workers had either passed the trade tests for skilled workers or the intermediate trade tests for semi-skilled workers. In other words, there were only around 30 000 in-service workers who had not yet passed the trade tests. As these 30 000 workers included general workers who would not be subject to the trade test requirement, therefore, the actual number of workers who had yet to acquire the respective trade test certificates should be less than 30 000.

14. Mr Billy WONG considered that trade testing would not only achieve the purpose of recognising the skill levels of workers, but would also help enhance the safety performance of workers at construction sites. He pointed out that the underlying reason for proposing the exemption mechanism was to avoid creating an insurmountable psychological barrier, which might be brought about by the trade tests, to "senior workers (老行尊)" who had 10 years' or more relevant experience in the construction industry. In fact, according to his understanding from CITA, a great number of experienced workers who possessed the requisite skills were not scared of taking the trade tests.

15. Mr Billy WONG added that most of the new intakes in the construction industry were in average below the age of 20. Therefore, it was unlikely that the taking of the trade tests would create an insurmountable psychological barrier to this group of workers as they, even after having worked in the industry for 10 years, would only be around 30. Indeed, many of the in-service workers over 40 were undergoing or had already passed the trade tests of their respective trades. In view of the above, the Association strongly considered that the 10-year requirement should not be relaxed.

The Real Estate Developers Association of Hong Kong

16. Mr Robert TSOI presented the views of The Real Estate Developers Association of Hong Kong as outlined in his speaking note.

(Post-meeting note : A copy of Mr TSOI's speaking note was circulated to members vide LC Paper No. CB(2)1087/02-03 on 4 February 2003.)

*The Hong Kong Electrical and Mechanical Contractors' Association Limited
(LC Paper No. CB(2)977/02-03(01))*

17. Mr James CHIU presented the views of The Hong Kong Electrical and Mechanical Contractors' Association Limited as set out in its submission.

Action

Issues raised by members

18. Mr Abraham SHEK said that he was in support of the proposed System, including the 10-year requirement, provided that a fine balance between protecting the employment of existing competent workers and maintaining the creditability of the proposed System would be struck. In his view, it was ironic to consider a worker with only five years' experience in the construction industry as a "senior worker". Moreover, he considered that relaxing the 10-year requirement would be unfair to those who had already taken/passed the respective trade tests.

19. Mr Abraham SHEK shared the view that the certification of the skill levels of workers through trade tests should be able to enhance employment opportunities for them. For example, workers might choose to develop their career in places outside Hong Kong should they possess recognised certificates. He suggested that the parties opposing the 10-year requirement should view the proposed System from a longer term perspective and not insist on having such requirement relaxed.

20. Mr Ambrose LAU enquired whether construction workers were, at present, not required to obtain registration for working at construction sites whereas only registered workers would be allowed to work at construction sites after the implementation of the proposed System. DS for ETW answered in the affirmative.

21. Noting that construction workers would be divided into three categories, namely skilled workers, semi-skilled workers and general workers, under the proposed System, Mr Ambrose LAU enquired whether the work currently carried out by general workers would have to be performed by skilled or semi-skilled workers upon the implementation of the proposed System. He also enquired whether the proposed System, if implemented, would adversely affect the employment of existing general workers.

22. DS for ETW said that under the proposed System, certain types of work which required a certain level of skills would have to be performed by skilled workers or semi-skilled workers. Indeed, general workers would also be allowed to perform these types of work provided that the relevant work processes were carried out under the supervision of skilled or semi-skilled workers. In view of this, he did not consider that the proposed System would create an adverse impact on the employment of existing general workers.

23. DS for ETW added that in working out the proposed System, the Administration had taken into account the need to avoid rendering existing competent workers out of work and minimise any possible disruption to the construction industry. To achieve these aims, there would be transitional and provisional registration arrangements for workers who had substantial work experience but did not possess the requisite qualifications or had yet to pass the relevant trade tests for registration.

Action

24. Mr LEE Cheuk-yan considered that the proposed exemption mechanism should not necessarily be targeted at "senior workers". In fact, workers with less than 10 years' experience in the respective trades might also possess the skills required of a skilled worker. If this was the case, these workers, even if they had only five years' experience in the construction industry, should also be exempted from the trade test requirement. He sought the views of trade associations in this respect.

25. The Chairman held the view that seniority should not be the prime consideration under the exemption mechanism. Otherwise, a worker aged 55 who joined the construction industry at 50 should also be considered as a "senior worker" even if he had only five years' experience in the industry. What was more important was to devise an exemption and trade testing mechanism which was acceptable to all the parties concerned.

26. Mr Billy WONG of The Hong Kong Construction Association Ltd said that he was unable to comment on whether the skill levels of a worker with five years' experience in the construction industry would meet the standards required of a skilled worker, as the ability to master the requisite skills might vary from one to another. Therefore, the Association considered it necessary and appropriate to have an objective mechanism, i.e. trade tests, for assessing the skill levels of workers.

27. In response to the enquiry made by the Chairman and Mr LEE Cheuk-yan about the criteria and requirements for obtaining registration under the proposed System, DS for ETW briefed members on the following registration requirements -

Categorisation	Years of experience required	Pass in trade test
(A) Formal registration		
(i) Skilled worker	Not less than four years in the respective trade	Required
(ii) Semi-skilled worker	No specific requirement	Required
(iii) General worker	No specific requirement	Not required
Remarks : All workers would be allowed to take the respective trade tests repeatedly until they passed them.		
(B) Provisional registration		
(i) Skilled worker	Not less than six years in the respective trade	Not required
(ii) Semi-skilled worker	Not less than two years in the respective trade	Not required

Action

Remarks : All applications for provisional registration should be made in the first eight months after the coming into effect of the proposed legislation, after which a period of three years would be allowed for these workers to pass the respective trade tests to formally register as skilled or semi-skilled workers.		
(C) Registration for "senior workers" without the requisite qualifications (i.e. the exemption mechanism)		
(i) Skilled worker	Not less than 10 years in the respective trade	Not required (but subject to passing an interview)
Remarks : All applications for exemption should be made in the first eight months after the coming into effect of the proposed legislation.		

28. DS for ETW said that the service requirement of four years for registration as a skilled worker was proposed having regard to the view of the construction industry that a minimum of four years' experience was generally required for a worker to acquire the requisite skills of a skilled worker. Such requirement was adopted after thorough discussions by the Working Group on Registration of Construction Workers (the Working Group).

29. DS for ETW further said that the provisional registration arrangements would enable experienced workers who had not yet acquired the respective trade test certificates or equivalent qualifications to obtain provisional registration as skilled or semi-skilled workers so that they could continue to work in the industry while taking the trade tests.

30. DS for ETW added that in recognition of the craftsmanship of highly experienced "senior workers" and their contributions to the industry over the years, there would be a one-off transitional provision for these workers to register as skilled workers without the need to pass the respective trade tests. This arrangement would help avoid an embarrassing situation where an experienced "senior worker" had to undergo a trade test invigilated by his former apprentice.

31. DS for ETW pointed out that during discussions by the Working Group and its Sub-group formed to study related issues, some members had suggested that a minimum of 15 years' relevant experience was required for granting an exemption while some other members had considered that a period of six years would suffice. The existing 10-year requirement was agreed and adopted after much deliberations by the relevant parties.

32. Ms LI Fung-ying said that she was in principle supportive of the objective of the proposed System. Given that the prime consideration under the exemption mechanism for "senior workers" was their good craftsmanship rather than their seniority, she

Action

considered that emphasis should be put on working out a minimum number of years of experience which was generally required for a worker to acquire the skills of a skilled worker. As the construction industry involved a great number of job types, she suggested that if trade associations considered that the minimum number of years of experience required for obtaining an exemption should be set at 10, they should provide concrete information to support their argument. In her view, the proposed exemption requirement, if implemented, would have an adverse impact on the employment of existing workers.

33. Mr Billy WONG of The Hong Kong Construction Association Ltd said that in the view of the Association, all construction workers should undergo an objective assessment for certification of their skill levels. Failing to pass the respective trade tests might mean that the workers concerned did not meet the minimum standards required of the posts being held by the workers. To ensure the quality and safety of construction works, the Association considered that these "incompetent" workers should not be allowed to retain their original posts.

34. DS for ETW said that as the trade tests were conducted in a manner very much like the day-to-day work carried out by workers on site, it should not be difficult for an experienced worker to pass the test. He pointed out that as one of the major objectives of the proposed System was to enhance the quality of construction works, it was therefore important to have an effective mechanism to ensure that only "competent" workers would be allowed to work on construction sites.

35. Mr Patrick CHAN of The Hong Kong Construction Association Ltd said that the need to avoid creating negative impacts on the employment of serving construction workers had been thoroughly discussed by the relevant parties when working out the proposed System. Hence, the provisional registration arrangements were proposed and a period of three years would be allowed for the workers concerned to pass the respective trade tests. He further said that training courses to upgrade the skills of workers who failed the trade tests would be provided by CITA. Having regard to the need to enhance the quality of construction works, he did not support that the proposed registration requirements should be further relaxed.

36. Noting that the registration requirements for skilled workers were four years' relevant experience in the construction industry plus possession of the respective trade test certificates, Mr LEE Cheuk-yan and Ms LI Fung-ying asked about the basis for proposing a minimum of six years' relevant experience in the industry as the provisional registration requirement for skilled workers and a minimum of two years' relevant experience for semi-skilled workers.

37. Mr LEE Cheuk-yan and Ms LI Fung-ying pointed out that some serving skilled workers might not possess six years' or more relevant experience in the construction industry. As a result, these workers might not be able to obtain provisional registration as skilled workers if they failed to acquire the respective trade test certificates after the proposed System had come into force. Under the circumstances, the skilled workers in question might have to be downgraded to semi-skilled workers if they had to remain in

Action

the construction industry to earn a living. Likewise, serving semi-skilled workers who had not yet passed the respective intermediate trade tests upon the implementation of the proposed System might also have to be downgraded to general workers. Mr LEE and Ms LI asked how the Administration would handle this situation. Ms LI also enquired about the timetable and implementation details of the proposed System.

38. DS for ETW said that serving skilled workers might not necessarily obtain provisional registration in the first instance. Skilled workers who had four years' or more relevant experience in the construction industry might opt to take the respective trade tests and, if passed, formally register as skilled workers immediately after the implementation of the proposed System. He assured members that the examining authorities concerned would give priority to handling applications for trade tests with a view to ensuring that there would not be any unnecessary delay in the registration process.

39. Mr LEUNG Yiu-chung expressed concern whether workers would be able to provide documentary proof of their employment in the past 10 years. He also expressed the view that there should be more relaxed requirements under the provisional registration arrangements so as to help workers better cope with the changes brought about by the proposed System during the transitional period.

40. DS for ETW said that the issue of provision of documentary proof of workers' previous employment had been considered by the Working Group. It was agreed that proof issued by previous employers, trade associations or labour unions would all be acceptable for registration purpose. If a worker was unable to obtain proof of employment from any of these channels, he might present his case to the Registrar. Any grievances concerning the decisions of the Registrar might be referred to the Review Committee or the Appeal Board for follow-up.

41. Dr LUI Ming-wah expressed support for the objective of the proposed System. Considering that the skill levels of individual workers might vary from one to another, he suggested that skilled workers employed by reputable developers at a wage level comparable to the market rate should also be exempted from the trade test requirement when applying for registration as skilled workers.

42. Mr LEUNG Fu-wah said that the major argument over the proposed System seemed to lie on whether the service requirement under the exemption mechanism should be maintained at 10 years as supported by trade associations or reduced to five years as proposed by labour unions. In this connection, he asked whether the Administration would consider setting up a working group with representatives drawn from trade associations, labour unions and the Administration to further pursue the matter with a view to finalising a proposal acceptable to all the parties concerned.

43. DS for ETW said that the Working Group, which comprised representatives from trade associations, labour unions and the Administration, had been set up in 1999 to study the proposal for implementing a registration system for construction workers. During the deliberations of the Working Group over some three years, there had on

Action

many occasions been different views among trade associations and labour unions over the service requirement for the granting of exemption under the proposed System. The existing 10-year requirement was a consensus reached by the Working Group after much discussions. Since there were divergent views again, the matter would be referred to the Working Group for further consideration.

44. The Chairman urged the Administration, trade associations and labour unions concerned to resolve the differences.

Adm 45. In response to Mr LEUNG Fu-wah's request for details of the nearly 50 000 workers who had already passed the respective trade tests, Mr Billy WONG of The Hong Kong Construction Association Ltd undertook to provide the information after the meeting.

IV. Government's efforts in strengthening tripartite cooperation to maintain harmonious labour relations, stepping up enforcement against wage offence and combating illegal employment
(LC Paper No. CB(2)922/02-03(09))

46. Permanent Secretary for Economic Development and Labour (Labour) (PS for EDL (Labour)) briefed members on the Government's efforts in strengthening tripartite cooperation to maintain harmonious labour relations, stepping up enforcement against wage offences and combating illegal employment as set out in the Administration's paper.

47. In response to Mr LEUNG Fu-wah's enquiry, PS for EDL (Labour) said that there were 1 447 employment agencies in Hong Kong. Of these 1 447, 888 were providing services in respect of recruitment of foreign domestic helpers (FDHs). Inspection visits to each of these employment agencies would be paid at least once a year. In the past, the licence of an employment agency would not normally be revoked unless the licensee/operator had been convicted for non-compliance with the relevant statutory provisions. To enhance the conduct of employment agencies, a new strategy was adopted under which the Commissioner for Labour would exercise her statutory power to revoke, or not to renew, the licence of an employment agency if the Commissioner had reasonable ground to believe that the agency had contravened any of the relevant provisions or had acted improperly.

48. Mr LEUNG Fu-wah asked whether the Administration would consider staging an "undercover" operation to detect whether there was any non-compliance by employment agencies providing FDH recruitment services.

49. PS for EDL (Labour) said that it was not appropriate for him to disclose details of specific operations. However, he informed members that a special task force comprising representatives of the Economic Development and Labour Bureau, the Labour Department (LD), the Immigration Department (ImmD) and the Police had been set up to clamp down on illegal practices, such as overcharging of commission by

Action

employment agencies and underpayment of wages to FDHs. Indeed, a system for reporting underpayment of wages to FDHs had already been worked out with the relevant parties. To further enhance enforcement on this front, cooperation and exchange of intelligence between LD, ImmD and the Police would be strengthened.

50. Mr LEUNG Fu-wah noted the marked increase in the number of prosecutions against wage offences in 2002, and enquired whether a majority of these prosecutions had been taken out in the latter half of the year.

51. PS for EDL (Labour) answered in the affirmative. He supplemented that the Administration had stepped up enforcement against wage offences in the latter half of 2002 having regard to the continuing increase in the number of wage claims. Hence, the number of prosecutions had increased considerably during the period, which had in turn raised the whole-year figure.

52. Ms LI Fung-ying expressed doubt as to whether the industry-based tripartite committees could in effect achieve the purpose of maintaining harmonious labour relations. She pointed out that although a Code of Labour Relations Practice (the Code) and a sample employment contract had been drawn up by the tripartite committee of the catering industry, some employers of the industry were still offering employment contracts of duration of 18 or 20 months with an intent to evade their statutory obligations on employees' rights and benefits. She enquired whether any survey had been conducted on the number of catering establishments which had actually adopted the Code and/or the sample employment contract.

53. PS for EDL (Labour) stressed that the operation of the tripartite mechanism relied heavily on cooperation and voluntary consultation between employers and employees. He said that representatives from major trade associations and labour unions had been invited to serve as members of tripartite committees of the respective industries. Each tripartite committee would deliberate on a wide range of industry-specific issues with a view to setting commonly agreed standards or promoted themes which were of benefit to the industry as a whole. He believed that the standards or practices set by the tripartite committee of the catering industry, although not legally binding, would be followed by individual catering establishments over time.

54. PS for EDL (Labour) added that the Code and the sample employment contract had only been issued to the catering industry recently. Thus, no survey on the response from the industry had been conducted. Members of the tripartite committee had agreed that they would collect feedback from the industry. The Chairman requested the Administration to provide an information paper, in two months' time, on the extent of individual catering establishments adopting the Code and/or the sample employment contract for members' reference.

55. Ms LI Fung-ying questioned why the percentage (24%) of increase in the number of employers prosecuted in 2002 over 2001 was far less than the percentage (56%) of increase in the number of illegal workers prosecuted over the same period.

Adm

Action

56. PS for EDL (Labour) said that the numbers of prosecutions against employers and illegal workers should not necessarily be proportionate as there were cases where an employer hired a number of illegal workers. Furthermore, the availability of sufficient evidence was also a vital element in determining whether prosecution should be taken out.

57. Miss CHAN Yuen-han did not share the Administration's view that Hong Kong was enjoying harmonious employer-employee relations. She cited a recent case of labour dispute as an example, which involved staff redundancies made by a large retail enterprise with a high profit level. The enterprise concerned had refused to pay the redundant employees an ex-gratia payment which had formerly been agreed to be payable to employees with long service upon their termination of employment with the company.

58. Miss CHAN Yuen-han further said that since the supply of labour far exceeded the demand for it, employees were in a very disadvantageous position and had little or even no bargaining power with their employers. Coupled with the fact that some tripartite committees had a larger representation from trade associations, she was doubtful about the effectiveness of the tripartite mechanism. She suggested that the Administration should examine the possibility of putting the tripartite mechanism on a statutory footing so as to better protect the rights and benefits of employees. She also expressed concern whether the Government's efforts in combating illegal employment were adequate in view of the closer link between Hong Kong and the Mainland.

59. PS for EDL (Labour) pointed out that the tripartite mechanism was not intended to handle individual cases. Its major functions were to reinforce harmonious labour relations and resolve industry-specific issues. To achieve these aims, the Government would continue to promote the benefits of tripartite consultation to employers and employees at large so as to inculcate a culture of workplace cooperation and voluntary consultation.

60. PS for EDL (Labour) said that labour relations were generally tense but remained relatively stable and harmonious on the whole. He agreed that there was still room for improving the existing labour relations, and considered that one of the effective channels for achieving the purpose was to strengthen the tripartite mechanism. He said that the Administration would continue to explore ways to augment the representation of the labour sector in tripartite committees.

61. PS for EDL (Labour) further said that since the Employment Ordinance (Cap. 57) already provided adequate protection for employees over employment-related matters, conferring statutory powers on tripartite committees would unnecessarily create an overlapping structure. Instead of enacting further legislation, the Administration considered it more appropriate to enhance the communication and relations between employers and employees with a view to enabling them to resolve industry-specific issues through voluntary consultation.

Action

62. Mr Andrew CHENG gathered that some employees, even if they had won the case in the Labour Tribunal (LT), might still not be able to recover the unpaid wages from their employers. In some cases, extra costs, such as fees for hiring court bailiffs in serving court orders to the employers concerned, had to be incurred by employees in the recovery process. He suggested that the Administration should look into the matter and identify ways to improve the situation. To render better assistance to employees in need, he also suggested that the new Employment Claims Investigation Unit should take a proactive approach in handling cases relating to wage offences.

63. PS for EDL (Labour) informed members of a new practice that LT would inform LD of the results of cases heard, once known, if the employees concerned had won the case. Upon receipt of such information, necessary follow-up actions would be taken by LD within a short period of time. In cases where the employers concerned ignored the decisions of LT and failed to settle the unpaid wages without giving valid reasons, LD would initiate prosecutions against these employers immediately.

64. The Chairman appreciated the new practice referred to in paragraph 63 above. However, he was concerned that the employees concerned might still not be able to recover the unpaid wages at an early stage even if prosecution had been taken out by LD. He asked the Administration to explore how the process could be further expedited so as to enable employees to receive early payment of the unpaid wages.

65. PS for EDL (Labour) said that the Administration would discuss with the Judiciary to see whether it was possible for the court, in criminal proceedings where a wage claim was involved, to also determine, in addition to the penalty, the amount of unpaid wages to be paid by the employer. He pointed out that the court would only be able to do so when there was sufficient evidence. This arrangement, if feasible, would save the efforts of the employee lodging a further civil claim to recover the unpaid wages after the conclusion of the criminal case. PS for EDL (Labour) stressed that as the Judiciary was independent, whether the proposal would be adopted fully rested with the Judiciary.

66. Mr LEE Cheuk-yan considered that the tripartite mechanism was unable to achieve practical effects. In his view, the most effective way to provide protection to employees was to legislate on collective bargaining. He pointed out that in cases of arrears of wages, the employees concerned were required to go through a number of processes with different departments, namely LD, LT and the Legal Aid Department, etc. To streamline the procedures involved and to expedite the process, he suggested that the feasibility of LD providing one-stop service for handling cases of arrears of wages should be explored. He also suggested that LD should have its own team of solicitors to handle employment-related claims.

67. PS for EDL (Labour) said that the Administration was committed to stepping up enforcement against wage offences. Prosecution would be initiated at the earliest possible time where there was prima facie evidence and/or the employees concerned were willing to come forward as witnesses. On the proposal to provide one-stop service, he hoped members would understand that it was a very complex issue as the process in

Action

question involved a great number of parties including enforcement departments and the Judiciary. He said that the Administration would continue to discuss the matter with the Judiciary with a view to simplifying and streamlining the existing procedures so as to bring about greater convenience to employees.

68. The Chairman held the view that labour relations nowadays were not as stable and harmonious as that considered by the Administration. He urged the Administration to take a serious view on the need to maintain harmonious labour relations in order to prevent the occurrence of any untoward incidents.

V. Any other business

69. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
12 March 2003