

立法會
Legislative Council

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the Administration)

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LegCo Panel on Manpower

**Subcommittee on
Employer and Employee Relations**

**Minutes of meeting
held on Tuesday, 29 February 2000 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon LAU Chin-shek, JP (Chairman)
Hon LEE Cheuk-yan
Hon LEE Kai-ming, SBS, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo

Members absent : Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP

Public Officers attending : Miss Erica NG
Principal Assistant Secretary for
Education and Manpower

Mrs DO PANG Wai-yee
Assistant Secretary for Education and Manpower

Mr TSANG Kin-woo, JP
Assistant Commissioner for Labour (Labour Relations)

Mrs Clare SIU
Chief Labour Officer (Labour Relations)

Mrs Jenny CHAN
Chief Labour Officer (Trade Unions and Wage Security)

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

Staff in attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Meeting with the Administration

(LC Paper Nos. CB(2) 919/99-00 and CB(2)1207/99-00)

At the invitation of the Chairman, Chief Labour Officer (Trade Unions and Wage Security) (CLO(TUWS)) briefed members on overseas legislation on the right to organize.

2. Mr LEE Cheuk-yan considered that the Administration was not doing enough in the protection of trade unions against acts of interference by employers, although this protection was required under the International Labour Convention Number 87 (ILC No. 87) and ILC No. 98 and was guaranteed under the Basic Law. He was disappointed that the Administration would only advise employers to respect the independence of trade unions in managing their own affairs in the next edition of the "Guide on Good People Management Practices". He asked whether the Administration had considered implementing the requirements under ILC through the enactment of legislation in Hong Kong.

3. Assistant Commissioner for Labour (Labour Relations) (AC for L(LR)) responded that there was currently no need to enact legislation for such a purpose, as there were neither evidence nor complaints that employers had interfered into the activities of trade unions. CLO(TUWS) added that the Registry of Trade Unions of the Labour Department (LD) had not received any complaint about interference into trade union activities in the past five years.

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4. Mr LEE Cheuk-yan considered it unacceptable that evidence indicating failure to comply with a constitutional requirement was needed before consideration was given to the enactment of legislation to implement the requirement. He considered that anti-interference legislation should be enacted in the first place.

5. Referring to paragraph 5 of the Administration's paper, AC for L(LR) said that Article 3 of ILC No. 98 provided that machinery appropriate to national conditions should be established, where necessary, for the purpose of ensuring respect for the right to organize. He added that the Report IV(2) on the "Application of the Principles of the Right to Organise and to Bargain Collectively" issued by the International Labour Office for the 31st session of the International Labour Conference held in 1949 stated that there was no intention to place State Members under an obligation to adopt a prescribed method for giving effect to such guarantees. He reiterated that as there was no evidence of interference by employers into the activities of trade unions, there was no need to enact anti-interference legislation.

6. Mr LEE Kai-ming said that many trade unions considered the current protection against acts of interference by employers inadequate. He added that prosecutions against trade union discrimination had been unsuccessful despite the existence of anti-discrimination provisions in the Employment Ordinance (Cap. 57) (EO) and the Trade Unions Ordinance (Cap. 332) (TUO).

7. AC for L(LR) said that EO had already provided protection to an employee against discrimination for being an union officer. It also provided protection for a worker to participate in union activities and associate with others for the purpose of applying for registration of a trade union under the TUO. The prosecutions as referred to by Mr LEE were unsuccessful for reasons related to evidence.

8. Mr LEE Kai-ming said that to his knowledge, trade unions had frequently reflected problems, such as employers prohibiting trade unions to use bulletin boards or requiring the replacement of certain council members of trade unions, to representatives of LD during the latter's visits to trade unions.

9. AC for L(LR) responded that LD had issued internal guidelines on conciliation of labour disputes. He assured members that trade union representatives would not be excluded in the mediation process. Chief Labour Officer (Labour Relations) (CLO(LR)) added that LD always tried its best to help workers to get employer's agreement to union attendance in the conciliation meeting. She observed that employers had become more receptive in recent years because union participation in the conciliation process often helped in resolving disputes. CLO(TUWS) added that as bulletin boards were the property of employers, they had the right to determine the use of the bulletin boards. CLO(TUWS) said that relevant examples could be illustrated in the resource kit on trade union management. She welcomed members' suggestions on the materials to be included in the resource kit.

10. Mr LEUNG Yiu-chung said that there had been few complaints about

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employers' interference into trade union activities because trade unions had a very limited role and status in establishments. Referring to paragraph 9 of the Administration's paper, he asked about the materials to be included in the resource kit on trade union management being prepared by LD. CLO(TUWS) responded that the resource kit would contain information on the protection available to union members and workers' organizations under EO and TUO, including the protection under EO against dismissal on grounds of union discrimination and the immunity from civil suit in certain cases under TUO. The resource kit would also contain information on channels of lodging complaints and information on usual practice in the management of trade unions.

11. Mr LEUNG Yiu-chung considered that these were only very basic information. He said that the right to organize would become meaningless if trade unions did not even have the opportunity to hold any discussion with employers. He asked what trade unions could do under the current trend of reduction in benefits and long working hours.

12. AC for L(LR) said that LD was putting much effort in the promotion of employer-employee dialogue at industry level through the setting up of tripartite committees comprising representatives of employers, employees' organizations and LD. They served as a forum for the discussion of industry specific issues. Six tripartite committees had been formed and the atmosphere in these committees was very harmonious. He added that representatives of trade unions were also invited to give lectures about trade unions in the educational courses for employers and practitioners in personnel management. AC for L(LR) further said that according to his observation, employers were generally not opposed to trade unions. However, the latter could also do more to improve their relationship with employers.

13. Miss CHAN Yuen-han said that many trade union representatives were not allowed to take part in discussions with employers in labour disputes. She asked about the measures adopted by the Administration in protecting the right of trade union representatives in discharging their duties. AC for L(LR) said that employers who refused to hold any discussion with trade union representatives in labour disputes were usually willing to do so after the conciliation of LD.

14. Miss CHAN Yuen-han said that she had been refused from taking part in negotiations relating to a labour dispute a few years ago when she was a Member of the Legislative Council. She was very disappointed that her participation in discussions was refused by employers even though representatives of LD were present at the scene. She asked whether the Administration considered such a situation desirable. AC for L(LR) said that from time to time the LD would review its operation with a view to improving the conciliation service.

15. Mr CHAN Kwok-keung said that there was a case in which senior staff members carried out very frequent surprise visits to the refreshment corner of a trade union. He asked whether such an act amounted to interference into trade union activities.

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16. CLO(TUWS) responded that whether such an act constituted interference into the activities of trade unions would depend on the circumstances of each case. LD was looking into the case as referred to by Mr CHAN Kwok-keung. It was gathering information from the trade union and requesting the government department concerned to look into the issue. With the consent of the trade union concerned, it had also informed the Civil Service Bureau about the case. The Chairman considered it inappropriate for the government department concerned to investigate into the case. CLO(TUWS) responded that it was necessary to get both sides of the picture and the investigation was mainly related to identifying the purpose of the surprise visits. LD would follow up with the department concerned.

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17. Mr CHAN Kwok-keung asked whether it would be stated in the resource kit that such an act was inappropriate. CLO(TUWS) said that consideration would be given to spelling out in the resource kit the importance of the protection of trade union premises. At the request of the Chairman, AC for L(LR) agreed to provide the resource kit to the Legislative Council (LegCo) Panel on Manpower, when available.

18. Miss CHAN Yuen-han said that it was very difficult for trade unions to play a role in labour disputes. As it was very difficult for LD or LegCo Members to play a role in labour disputes, it would even be more difficult for representatives of trade unions to play any role, especially in recent years.

Adm

19. Mr LEIUNG Yiu-chung asked whether a review had been carried out by the Administration on its mechanism for mediation of disputes and whether problems had been identified in the review. He also requested the Administration to provide members with the report of the review. AC for L(LR) responded that the system for conciliation of labour disputes was kept under constant review by LD. As these were not formal reviews, review reports were not compiled. AC for L(LR) added that employers were more reluctant to make concessions in the past two years, because of financial difficulty due to the economic downturn and because the new provisions introduced under the Employment Ordinance, such as those on employment protection against unlawful dismissal, had rendered conciliation more difficult. Nevertheless, LD had managed to settle 60% of labour disputes. At the request of the Chairman, AC for L(LR) agreed to provide information on the system of conciliation to the LegCo Panel on Manpower.

20. The Chairman asked about the progress on issues relating to reinstatement, use of trade union funds for political purposes and restrictions on eligibility as council members of trade unions. AC for L(LR) responded that the issue of reinstatement was scheduled for discussion at the meeting of the Labour Advisory Board (LAB) in March 2000. Subject to the availability of time, the other two issues might also be discussed at the same meeting of LAB. Miss CHAN Yuen-han said that she would move a Committee stage amendment relating to reinstatement in the Employment (Amendment) Bill 2000.

21. Mr LEE Cheuk-yan said that he was disappointed that the Administration had not

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introduced additional measures to address the particular difficulties in the past two years. He suggested that the Administration should provide response to the issues raised by the Subcommittee and the latter should conclude its report to the LegCo Panel on Manpower only after responses to all the issues raised had been received from the Administration.

Adm

22. Mr LEE Cheuk-yan asked when the Administration would respond to the issues raised in the 318th Report of the Committee on Freedom of Association of the International Labour Organization (the Committee) on Hong Kong. AC for L (LR) said that the Administration's response had already been provided to the Committee. At members' request, AC for L(LR) agreed to provide the Subcommittee with a copy of the response to the Committee. He added that the Administration was promoting collective bargaining through the establishment of tripartite committees.

II. Date of next meeting

23. AC for L(LR) said that the Administration had responded to the issues raised by the Subcommittee.

24. Members agreed that the next meeting would be scheduled when the Administration's further response to the issues raised by the Subcommittee, including the issue of reinstatement, use of union funds for political purposes, protection of trade unions against interference by employers, collective bargaining, restrictions on eligibility as council members of trade unions and civil remedy in respect of trade union discrimination of a non-dismissal nature, was available.

25. There being no other business, the meeting ended at 3:30 pm.

Legislative Council Secretariat

22 May 2000