

PUBLIC BILLS

Second Reading

(i) THE EMPLOYMENT RELATIONS (AMENDMENT) BILL

(NO. XXXI OF 2012)

(ii) THE EMPLOYMENT RIGHTS (AMENDMENT) BILL

(NO. XXXII OF 2012)

Order for Second reading read.

The Minister of Labour, Industrial Relations and Employment (Mr S. Mohamed): Mr Speaker, Sir, with your permission, I move that the Employment Rights (Amendment) Bill (No. XXXII of 2012) and the Employment Relations (Amendment) Bill (No. XXXI of 2012) be read a second time. With your permission, Mr Speaker, Sir, I will take both Bills together.

Before I get into all the details pertaining to both pieces of legislation, let me, at the outset, address this particular issue immediately for the benefit of the hon. Members in this august Assembly. There has been a lot of talk that this Bill that came for First reading in December of last year is supposedly being rushed through this august Assembly.

Let me, from the outset, state that I am of the view that all hon. Members need more time to go through the provisions of the amendment that I am proposing in the First reading, and the new ones that I have been circulating to hon. Members last night. I had conversations with the hon. Leader of the Opposition, and I had talks with the hon. Prime Minister, the Leader of the House. We are of the view that this consultative process is very important, and I share the view of the hon. Prime Minister that in essence it is a very important piece of legislation. The reason why things have delayed or are going fast is not because there is any agenda or there is no secrecy or there is no strategy. It is simply because of certain information that I have received, which I will share with the House in a few moments. But, in the meantime, in the spirit of democracy and in the spirit of wishing to learn from all Members of the House, to further the cause of the workers of this country - and the hon. Prime Minister has spoken to him -, I know that, at the end of my intervention, the hon.

Leader of the Opposition will move for adjournment of the debates, and we will have more time, therefore, to go through the process.

Some people say this matter comes very fast to the National Assembly, and others say it is coming too slow. But, in actual fact, consultations have started ever since 2010, when I was made Minister of Labour, Industrial Relations and Employment. We have, together with my officers, my advisers, met the different trade unionists, federations, confederations, the Mauritius Employers Federation and also the ILO that have sent us report as far back as 2011. We have worked a lot on these two pieces of legislation. In actual fact, today, why it is very important that all of us, Government and Opposition, stand together in order to see to it that we put our minds together, we see to it that a piece of legislation of this nature does go through, and that we contribute to make sure that it does go through in an intelligent and constructive manner is because there are people outside, Mr Speaker, Sir, that are adamant on going for illegal strikes. The information that I have, Mr Speaker, Sir, is very clear. It is not something that may happen; it is something that is already being worked upon and will happen. There are people out there who wish to bring this country to its knees. The excellent work that this Government has done in making sure that unemployment stays at 8%, is under control, that we have been successful in prevailing against all the problems that may arise in Europe, in the world, as far as the economic downturn is concerned, that we have shown so much resilience, all this excellent work that is being done by this Government, under the leadership of the hon. Prime Minister, could easily be undone by people who are irresponsible, who believe that it is in order to take advantage of any anomaly in the law to go for illegal strike in certain specific sectors: the port, public transport and the sugar sector.

This is being prepared and that is why it was imperative that I come before this august Assembly with the support of Government, with the support of the Leader of the House to come to you, hon. Members, Mr Speaker, Sir, that we need to get together and see to it that this country, the path that it has taken to keep behind us the dark days and to see before us the brighter days, the brighter future that it is not, in any way, put into jeopardy by people who are not concerned at all by the success of the people of this country by simply their own personal success. Funnily enough, Mr Speaker, Sir, you may, therefore, say that you have yourself lived through those days before. There are certain people who forget that maybe in the seventies things were not as they are today. The laws are not what they are today; the economy is not what it is today. We have moved many light years ahead and it is no

justification for anyone to try to take advantage or abuse the law in order to go for illegal strikes.

You permit me, therefore, Sir, I will now go into the details pertaining to those two pieces of legislation. As the House is aware, the Employment Rights Act and the Employment Relations Act were enacted in August 2008 and proclaimed on 02 February 2009. Following representations made by the Trade Union Movement, and difficulties encountered to apply some provisions of these two Acts as well as new issues that have cropped up in the world of work, Government decided in November 2010 to set up a High-Powered Committee under the chairpersonship of the Deputy Prime Minister, Minister of Energy and Public Utilities and comprising five other Ministers as well as the hon. Attorney General to consider and examine amendments to be brought to the two Acts.

Government's decision, Mr Speaker, Sir, was in line with our commitment to protect the interests of workers, safeguard their rights and be "*à l'écoute*" of their grievances. In that perspective, and in a true spirit of social dialogue, my Ministry proceeded to consult all stakeholders concerned with a view to seeking their views and proposals on amendments to be made to those two Acts. Following bilateral meetings held by my Ministry, representations were made by workers' organisations as well as the Mauritius Employers' Federation. It was after extensive consultations and discussions that the proposed amendments were finalised by the High-Powered Ministerial Committee, approved by Cabinet and introduced in the National Assembly through the Employment Rights (Amendment) Bill and the Employment Relations (Amendment) Bill.

Mr Speaker, Sir, before I am to go into the details of the proposed amendments, I wish to assure the House that Mauritius, as a member of the ILO, is also deeply committed to the lofty ideals of this important international organisation. As a member of this unique and only tripartite UN Agency, Mauritius has to subscribe not only to all ILO Conventions, including the 8 Core Conventions, that we have ratified, but also recently the Decent Work Agenda, which remains the primary goal of the ILO.

Let me remind the House, Sir, that, at the core of the Decent Work Agenda, we have to retain and be guided by the following underlying principles: productive, secure and safer work; respect of Labour Rights; adequate income; social protection; social dialogue; freedom of associations and collective bargaining, amongst others.

In addition to these underlying principles and the ILO Conventions, I must confess and I have to say it here today with a lot of humility that I have let myself, in the preparation of this work, be guided by the ideals and actions of the Labour Party from which we cannot, Sir, dissociate the emancipation of the working class since its inception in 1936.

Let me, at this stage, pay tribute to those founding fathers and leaders of the Labour Party whose actions led the colonial Government in 1938 to set up the Labour Department and the Labour Administration Service following the recommendations of the Hooper Commission of Enquiry, in the wake of industrial unrests in 1937. It was in 1938 again that the Industrial Associations Ordinance was introduced which allowed for the first time ever for workers, as well as employers to form associations.

It would also be interesting to note, Mr Speaker, Sir, that whilst it was the labour movement that led to the creation of the Labour Party in England, here in Mauritius, history has it that it was the Labour Party and its actions that were instrumental in the formation of trade unions. That sequence is of utmost importance and very important for all to remember. It was the Labour Party that led to the formation of Trade Unions. Over the years since 1936 to date, the emancipation of the working class, the introduction of Labour Laws, of Pensions Laws, strengthening of the Welfare State, Labour Day is a public holiday, amongst others - all these are intrinsically connected with the Labour Party and a Labour Government. And whatever I am saying here today, and that is why I am humbled that I am here today and those facts are nothing else, but truth and those are facts agreed upon by the then hon. Leader of the Opposition, hon. Paul Raymond Bérenger. He agrees with all those historical facts because those cannot be denied.

In short, Mr Speaker, Sir, whilst preparing my proposals, let me confess again that, in addition to the unending consultations I had with all stakeholders, I have let myself be inspired by the ideals of the Labour Party - and it an opportunity here that I shall not miss - to which I belong, to the vision and objectives of the ILO and more importantly to all those stalwarts and leaders like Dr. Maurice Curé, Emmanuel Anquetil, Hariprasad Ramnarain, Guy Rozemont, Dr. Sir Seewoosagur Ramgoolam and I say proudly, Sir Abdool Razack Mohamed.

Those are people from whom I get my inspiration, inspiration what is in our mind. Our foremost cause here is to protect the weak, to protect the workers of this country, that is, the Mauritius Labour; that is what we lived by. This is what we wake up every day to do and this is what we do. Just to mention a few of those people, a few who have been closely linked with the emancipation of the working class of this country.

Today, when the Labour Party is celebrating its 77th anniversary and when the Ministry of Labour is celebrating its 75th anniversary of the setting up of its Labour Department in 1938, the introduction of these new amendments, Mr Speaker, Sir, in this august Assembly will remain as another important milestone in the history of Mauritius.

I have recently been looking at some press coverage and another background which is of utmost importance, on a light-hearted note, is the following. I am starting this debate here and the background is the very difficult situation on the home front that shows the Home Affairs Minister. It happens that my wife has been hearing that I am '*zomme patron*' and she was convinced that I was her only man and no one else's and she has told me that she does not want to share me with anyone. And I have tried to tell her that I am not '*zomme*' of anyone, but I confirmed I am '*zomme of my femme*' and on one else. And when my son heard that he said: whose '*zomme*' and what '*zomme*'?

And it also reminds me of the days when, once upon a time in the seventies, when my father was then hon. Minister of Labour, Industrial Relations, and you, Mr Speaker, Sir, also became hon. Minister of Labour, Industrial Relations in 1979 if I am not mistaken. In those days, the Prime Minister was Sir Seewoosagur Ramgoolam and in those days they used to call my father the same thing. Things repeat themselves. They used to call my father '*Avocat patron*'. Now, they are calling the son '*zomme patron*'. Lies continue coming from the same quarters and that is what is really consistent. Some people will never learn that they should differentiate between simple, cheap, baseless and classless propaganda. But then others just because they have got no idea of what the truth is, because they revel in lies, they will continue being so excited by the words of *zomme patron* or *avocat patron*. That is the real tragedy we live in, in this country.

Mr Speaker, Sir, having said this, the object of the Employment Rights (Amendment) Bill was to –

- (1) create a legal framework for the operation of shift work by limiting the maximum number of working hours per day and the maximum number of working days per week;
- (2) provide an appropriate framework to regulate fixed term contracts of employment to prevent employers from having recourse to such contracts abusively;

- (3) extend the grant of paid annual and sick leave to workers reckoning more than 6 months' but less than 12 months' continuous employment and to part-time workers governed by Remuneration Order;
- (4) review the process of disciplinary hearing to ensure that such hearing is held in a fair and independent manner;
- (5) introduce the concept of reinstatement in cases of unfair termination of employment on grounds of redundancy, discrimination and victimisation for participation in trade union activities;
- (6) provide for the setting up of an independent Employment Promotion and Protection Division within the Employment Relations Tribunal to determine, within a specific time frame, whether cases of redundancy or closing down of enterprises are justified or not;
- (7) provide for the payment of a death gratuity in cases of death of workers reckoning more than 12 months' continuous employment;
- (8) increase the quantum of meal allowance from 50 rupees to 70 rupees per day where a worker is required to perform more than 2 hours overtime after having completed a normal day's work, and
- (9) increase the quantum of recycling fee from 3 days' to 6 days' basic wages per year of service for employees reckoning between 12 months' and 36 months' continuous employment.

On the other hand, the object of the Employment Relations (Amendment) Bill was to amend the Employment Relations Act in order to, *inter alia* -

- (1) promote collective bargaining with groups of workers;
- (2) correct anomalies which presently exist in the administration of trade unions;
- (3) increase the fine related to the protection of workers against discrimination and victimisation from 75,000 rupees to 100,000 rupees and other fines for failure to comply with other provisions of the Act so as to better protect trade unions and workers;
- (4) review the process for recognition of trade unions of workers so as to facilitate and promote collective bargaining in an orderly manner;
- (5) limit the report of labour disputes relating to wages and conditions of employment where a collective agreement is in force, and

- (6) provide a conciliation service by the Minister to the parties to a labour dispute at any time before a lawful strike takes place and for any agreement reached following such conciliation to have the effect of a collective agreement.

Those were the objects as we started out at the time of the First Reading last year.

Mr Speaker, Sir, the House will recall that when those two Bills came for the First Reading on 11 December 2012 and were on the Agenda of the National Assembly at the sitting of 18 December 2012 for the Second Reading, before the two Bills came for the Second Reading, representations were received on 16 December 2012 from four workers' organisations, namely the General Workers' Federation/Joint Negotiating Panel, the Sugar Industries Labourers' Union, the Artisans General Workers' Union and the Union of Bus Industry Workers to withdraw the two Bills from the National Assembly.

Following those representations, Mr Speaker, Sir, we also received other representations on 17 December 2012 from other unions. One was formed and was called the *Platform Kont La Loi Travay Anti-Travayer* and from the *Conseil des Syndicats* regrouping the Confederation of Free Trade Unions, the Congress of Independent Trade Union, the Mauritius Labour Congress, the Mauritius Trade Union Congress and the National Trade Union Confederation (NTUC).

Toujours, M. le président, dans l'esprit de dialogue, I met separately, on 18 December 2012, the representatives of *Platform Kont La Loi Travay Anti-Travayer* and *Le Conseil des Syndicats*. I invited the General Workers Federation/Joint Negotiating Panel to come and meet the *Conseil des Syndicats* just as I have been meeting with the *Platform Kont La Loi Travay Anti-Travayer*. But the General Workers Federation/Joint Negotiating Panel chose not to attend the meeting. Subsequent to the meetings I had, memoranda were received from the Federation of Civil Service and Other Unions, the *Platform Kont La Loi Travay Anti-Travayer*, the Mauritius Labour Congress, *le Conseil des Syndicats* and the Primary Schools Employees' Union.

I wish to point out that the General Workers Federation/Joint Negotiating Panel did not submit any memorandum to me, but decided to send some petition of some 15 Trade Unions/Federations/Confederations and 33 other unions to Dr. the hon. Prime Minister, the Leader of the House who in turn sent it to me. Their demands are actually, Mr Speaker, Sir, the same ones as they had made on 16 December 2012.

Following the submission of various memoranda received from the unions and following all the meetings I had with the *Platform Kont La Loi Travay Anti-Travayer*, the Federation and other unions on 06 and 12 February 2013 to discuss the issues raised by them, I also met the Mauritius Employers' Federation on 15 February 2013 to have their views on the two Bills. In a memorandum, the Federation, while acknowledging that certain proposed amendments aimed at improving labour management relations, others were squarely very prescriptive and rigid, and thus could not be accepted given today's economic outlook. So, as we stand right now, following the last consultations that I had with unions and the Mauritius Employers' Federation, it was clear that whatever was being proposed by the General Workers' Federation/Joint Negotiating Panel had already been proposed by *Le Platform Kont La Loi Travay Anti-Travayer* and *Le Conseil des syndicats* and *La Fédération des services civils* and that is why I find that it is very important for certain unions to have understood as opposed to others that it was very important for us to continue the consultative process. The consultative process does not stop for any reason because one has to satisfy one's own personal ego because, Mr Speaker, Sir, in this whole process I have come to one conclusion: I am not an important element of the equation. I am nothing. That is the truth because when I prepare something, I am only a vector, a tool of the people of this country who have decided to place their trust in this Government led by the hon. Prime Minister. I am only a vector to change. When we bring change, we bring it not for tomorrow, but for the day after tomorrow, for the years after and for the generations to come. We are, but as my hon. friend, Reza Issack already said: '*Nous ne sommes que des poussières*'. We are nothing. We are not important. What we believe our differences, our cause for infighting, for telling each other off is neither here nor there, what we have to do is to put the people first as we always used to say ever since 2005. We have this time shown once again that we have not done differently but we have put the people first.

In order to ensure that we are proceeding in line with the International Labour Organisation and the instruments of the ILO to which Mauritius has adhered to, I proceeded on 13 and 14 March 2013 to the ILO Office in Geneva where I discussed the proposed amendments to the two Acts as well as the subsequent views expressed by both the trade unions and the Mauritius Employers' Federation, with the new Director-General of ILO, Mr Guy Ryder who was very impressed and had very commending words about Mauritius that we took the time to come and consult the ILO to ensure that what we were doing was in line with the international labour standards. We believe in Tripartism. We believe in continuous negotiations and consultations. We believe that it is imperative that since we have adhered to

certain Conventions and ratified certain Convention of the ILO, we have to go up to the ILO and ask for advice because we learn always. I, for one, Mr Speaker, Sir, will not say that I have the monopoly of knowledge, that I know everything about the Labour Laws. No, I learn every day, and the people I learn from are the officers of my Ministry who have shown that they are loyal and dedicated and have done a tremendous job in the preparation of those Bills, and I would like to place on record my thanks to the officers of the Ministry, and my Adviser and my Permanent Secretary; the list goes on.

I wish to inform the House that the ILO has made certain suggestions regarding the right of workers to join more than one trade union in the same bargaining unit and the need for employers to follow certain specific criteria before having recourse to termination of employment for economic, technological, structural and similar reasons. They have further welcomed my proposed move not to proceed further with the provisions allowing a group of workers to initiate negotiation with an employer with a view to reaching a collective agreement where workers are not unionised in spite of the fact that such a proposal is in line with the ILO Convention on collective bargaining. They commended my conciliatory approach on this particular specific issue.

After giving due consideration to the various memoranda received, the views expressed by the stakeholders, and discussions I had with the Senior Experts of the ILO, I am proposing to bring some amendments to the two Bills. These amendments will be considered at Committee Stage.

In respect of the Employment Rights (Amendment) Bill, I shall propose the following - and those are very important proposals in light of what has been said in an irresponsible manner by certain people as to the agenda that I personally am leading as Minister of Labour, Industrial Relations and Employment. The first proposal I have with regards to the Employment Rights Amendment Bill is -

- a) A normal day's work of a worker employed on shift work to consist of 8 hours instead of 12 hours. That is in relation to Clause 8 of the Bill.

As it stands today, Mr Speaker, Sir - and I think it is important for hon. Members of this august Assembly to realise that - is as follows: there is no limitation with regard to shift work and the number of hours that people can work. The former Minister of Labour knows that. Other people who are knowledgeable about the Labour Laws know that; you know that, Sir. There is no limit. The only limit there is with regard to shift work is the maximum of 90

hours fortnightly. In other words, as we speak today, employers can get their employees to work 90 hours on a fortnight. As we speak today, employers can get their employees to work with no limit on the number of hours and nothing is paid to those workers for this shift work. If it is night shift, nothing extra is paid to them. What we had proposed initially was, in fact, 12 hours. I am proposing that it will be reduced from 12 hours to 8 hours. This is something which, in spite of the fact that we have not ratified the Convention issue on shift work, we are in line as far as the hours are concerned, at least with the convention of the ILO on shift work.

- b) The existing provision of the Employment Rights Act to the effect that no employer shall terminate a worker's agreement for reasons related to the worker's misconduct unless he has within, 10 days of the day on which he becomes aware of the misconduct, notified the worker of the charge made against him be maintained and the provision of the Bill that the employer could notify the worker of the charge against him within 14 days of the completion of the investigation be removed. So, we are correcting the initial Bill.
- c) Where an employer suspends a worker pending the outcome of disciplinary proceedings, any extension to the delay made by or on behalf of the worker, to be on full pay for a period not exceeding 10 days instead of 7 days. So, we are extending the number of days when the full pay will be paid to this worker, where the worker is found not guilty of the charge made against him. If this is not in line with a conscientious effort to give a more secure work environment to the worker, what is? If the structure that we are placing from 12 hours to 8 hours on shift work, if this is not in line with a better work environment, a decent work environment to a worker, what is?

Mr Speaker, Sir, additionally -

Every employer, irrespective of the number of workers employed - and that is a very historical change in our Labour Laws. As we speak today, everyone here and everyone out there, and the citizens of this country, are aware that if someone works for two years as a driver or as a maid or anything there is no obligation to give him a document that could be the particulars of his employment, his salary, where he comes from, what are the conditions

of employment. There is no such condition in our law. How many people working as maid servants, as domestic workers - a Convention by the way that we have only just ratified? The first country in Africa to have ratified the Convention and the second country worldwide to have ratified the convention on domestic workers. Can you imagine right now that there is a lot of people who are working in this country, who are toiling or cleaning houses, as an example, and many other sectors of employment that they are there waiting to be represented in such a way that at least they get a document where they can say those are the conditions of my employment. In other words, it is equivalent to my contract of employment. How many years have not gone by since they have made this request? A lot of those people who are '*les sans voix*' have not obtained satisfaction many years now. Why? It is because they do not have, a lot of them, trade union representatives and that is why, I think, it is a historical move for every single Mauritian, every employer irrespective of the number of workers employed, to provide a written statement of particulars and, most importantly, when those particulars are provided, it has to be also communicated to the Permanent Secretary of my Ministry within 30 days. This will ensure that people who do not register, who register falsely maybe also at the offices of the Ministry of Employment, we will find them out. This will ensure that contribution is being made to the NPF and NSF for all those people, that they will be entitled to a retirement one day, those who were the forgotten many; not the forgotten few, but the forgotten many. What is most innovative here is that not only must the contract of employment be in English but we are making provisions here by way of regulations. The law will enable us to make regulations to provide for the first time ever that this contract of employment will be in French. What is more historical than anything else, it is the introduction of Creole in our legislation, that contract of employment will also be in Creole because we want everyone to understand what exactly they are out for. This has never been done in the past. No one has ever introduce Creole language for this labourer of this country to feel secure, but it is this Mauritius Labour Party that is making historical move by introducing Creole for this worker, the labourer of this country, to feel secure, to know where he is, where he is at and what he is working for, and for his children, for his grandchildren to know if ever something happens to him, this is what he was working for and this is what he is entitled to until his death. We avoid the lies of people who like not to register their workers and hide and do not give the truth and sometimes everyone knows a worker finds himself before the Industrial Court, there is no evidence that he was, in fact, working and he gets nothing when he is just simply kicked out at the whim and the happiness of these employers. These would be things of the past.

Also, a 10% allowance on the basic wage for work performed during night shift. 10%! Today, you are at, how should I say, *au plaisir de votre employeur. Si l'employeur ne veut rien vous payer, il y a rien. Mais par contre, ici, ce qu'on prévoit* is 10%; the minimum. A 10% of the basic wage for work performed during night shift.

With regard to meal allowance; the payment of the meal allowance whenever a worker performs more than two hours overtime after having completed a normal day's work irrespective of the finishing time. That is a big difference because in the past we were given this meal allowance after two hours overtime, but you had to work after 6.00 p.m. But, here now, it is irrespective of the time. You have to recognise the effort of the worker; you have to recognise the sweat of the worker. If he is working overtime, you give him the meal allowance.

I will talk about the hotel industry before I come to the hotel industry in a big way. How many of us do not know those workers working in all sectors, not only in the hotel industry, because I have got a little something to say about the hotel industry in a few minutes after my meeting with Saint Géran earlier today. How many people do not know of all those workers who have finished work and who have to wait an hour, two hours or three hours for their transport to go? They think they have finished work at one or two or three o'clock in the morning. It is not that they will get home at 2.30 a.m. or even if home is one hour away, they will not get home at three o'clock. Sometimes they will get home after two hours, three hours, or four hours, because their employer do not find it fit - some of them at least - to provide them with transport and they keep on waiting there in the yard or in the middle of the night with the cold of the night and asking for a lift in order to go back to their family. So, what we are doing now is making sure that things like that do not happen again.

- where an employer fails to provide a worker with a means of transport within 45 minutes after cessation of work, the worker will be entitled to payment of wages at normal rate in respect of the waiting time;

That is historical. The people will no longer wait on the side of the roads for transport to go home.

(Interruptions)

This afternoon I had the pleasure of meeting a group of hotel and I said just now, it was Saint Géran. When I met with Saint Géran, I made only a simple request - it was my

fifth meeting with them - to them and I said to them: 18 people have been made redundant for economic reasons. Hon. Roopun wanted to know; unfortunately, your question did not reach. So, I will give the answer today in my speech. When I asked them: 'I want an example'. I asked the workers who were there: 'I want to know who has worked the longest for this hotel', and someone raised his hands - it was a man and a lady raised their hands and said: 'We both; 37 years and 5 months'. 37 years and 5 months! And, what this man for instance was doing, Mr Speaker, Sir, there, he was the head butler. When I asked the *préposé de*

l'hôtel, his Legal Adviser, his Human Resource Manager, his General Manager 'Listen, you mean to say that One & Only does not have a head butler anymore. You have fired your head butler. You mean to say no one supervises that work'. The answer was: 'No'. I said: 'Do you mean to say that there are no butlers there at the moment?' 'Yes, there are. We are a five-star hotel. We have butler service'. 'Very good! No one to supervise that they are doing their job properly or to coordinate their work?' 'Well, you know someone else is doing the job, but he is not a head butler'. 'So, you have given the job to someone else, but you have changed the appellation and that someone else is 20 years younger than that person whom you have fired?' So, the least you could do, because in this law of the Employment Rights Act of 2008 brought by my good friend, hon. Dr. Bunwaree, who was then Minister of Labour, there was a code of practice there with regard to redundancy.

What is good governance in matter of human resource management? What is good governance in matter of industrial relations? What to do when you are going to get someone to be fired for economic reasons? What do you do? And, the code of practice says exactly what is said in the recommendation of the ILO on redundancy and the Convention and, if I am not mistaken, it is Convention 158. So this was provided for in the code of practice and I asked the *préposé* of Saint Gérard: 'How did you inform this man after 37 years and 5 months that he was being fired? Did you, at least, speak to him? Try to see what he could do otherwise; try to consider other possibilities of not firing him for economic reasons; try to reduce his hours of work; get the permission of the Permanent Secretary of the Ministry of Labour, Industrial Relations and Employment; consider other options in order to protect his job; retrain him in order to put him in

another department; did you consider all that?' Obviously, when I put the question, Mr Speaker, Sir, I already knew the answer, because I will not put a question to which answer I am not aware. Lawyers normally know that; we don't normally put questions we don't know

what the answer is. He never, no one else informed that man that he was going to be fired. He had worked the whole night, he had worked overnight and at seven o'clock in the morning, they called him in the office and said: 'By the way, thank you very much for 37 years. Could you leave and leave everything here?', and they have him searched by the Security Officer. Thank you very much!

Now, my question is: yes, we want investors in this country; yes, we encourage investment; yes, the climate of investment is good, but why is it that they do not do what is expected, which is decent? You do not take someone who is younger and fire someone, we do not protect his 37½ years of service, toiled away to make you One & Only, but today Saint Gérard is not known as a One & Only Enterprise for comfort for tourists, but it is known as the One & Only Enterprise that has shown itself indecent to the workers of this country and it is because of companies like this, they have made an abuse of an excellent piece of legislation. That is what makes our country unique; our employers are excellent at making an abuse. They do not know what good practice is. They are good at making excellent speeches. They are good at making excellent moves and excellent motions at the ILO, but what happens with regard to the workers who are fired for economic reasons. So, this Government has decided the following - I have decided to propose and Cabinet has approved, and I am coming here now to say that -

'no employer shall reduce the number of workers in his employment either temporarily or permanently/close down his business unless he has, in consultation with the trade union concerned, explored the possibility to avoid redundancy/closure by such means as -

- i. restriction on recruitment;
- ii. retirement of workers who are beyond the retirement age;
- iii. reduction in overtime;
- iv. shorter working hours to cover temporary fluctuations in manpower needs, or
- v. provision of training for other work within the same enterprise.

where redundancy has become inevitable, an employer has to establish which workers are to be made redundant and the order of discharge on the basis of the principle of last in first out'.

We have to protect people who have worked for years at the service of a company and if you believe that they are not productive; terminate their employment for them not being productive, but do not hide behind a lame excuse of economic reasons. The reason why you hide behind that lame excuse is because you do not want to pay them their dues as retirement gratuity and severance allowance are concerned. That is why you hide!

(Interruptions)

Mr Speaker, Sir, what I had said when I started my intervention was simply what?

(Interruptions)

Mr Speaker: Order, don't interrupt the hon. Minister!

Mr Mohamed: My intervention is what? I am someone in love with my country. I am going to put aside all political differences, today, to a certain limit, but we have to think that - as I have said earlier on - there are people who are suffering. There is no need for me to say that more than 30,000 people have lost their jobs for economic reasons, and a lot has been invented. I could also go as far as to say that between 2006 and 2013, those are the figures; 30,000 or so people have lost their jobs. I could also say that before 2005, 57,000 or so people lost their jobs, but it would be pointless for me to go as far into those figures to say 'well, you did worst than we did.' That would be childish. I don't want to do that. So, what I expect from people here today is to, please, let us put our heads and our minds together. The good practice in Austria, at this moment, is that there is full employment there when their next door neighbour is going through an unemployment problem. Germany is now feeling how come Austria is doing so well. We learn from examples from all around the world, and what we do here is not basically smirk and say 'well, you voted that law.' When we voted that law in 2008, this was something which was approved by the ILO again. But what happened is that there are a lot of employers who, unfortunately, did not play an honest game. A lot did, but a lot also did not. That is why what is important here is not to cry over split milk, but to come up with a solution. If the Opposition have any other solution that they would like to propose, we are all ears. Let's not forget that I wrote a letter to the hon. Leader of the Opposition as he was then, last year. I did invite them to communicate because we are here to listen to all proposals. We are here to work for the interest of the workers of this country. I am still waiting for their proposals.

With regard to a worker who remains in continuous employment with the same employer after the age 60, up to the retirement age, the worker and the employer may agree. Very often, what you have now is a worker who is going to finish working at the age of 65. But here, we are giving the opportunity of employer and employee to agree on a pre-retirement benefit equivalent to what he would get when he retires at 60, or at least 75% of what he was going to get if he had retired at 60. Why? Because we give a chance to someone who has worked all those years to, at least, benefit, start getting an early harvest of what his retirement gratuity will be.

As we speak today, the maternity allowance in all sectors ranges from Rs300 to Rs2000. In other words, there are certain women who are getting a maternity allowance of only Rs300, depending on the Remuneration Order. There are certain women who are getting a maternity allowance between that range. There is discrimination, as we speak, in the maternity allowance that women should get. So, we are correcting that discrepancy, and we are making it a maternity allowance of Rs3000 to be applicable to all sectors of employment; that is with regard to clause 13(1A) of the Bill.

There are certain people, Mr Speaker, Sir, who work in certain sectors and who are not covered by Remuneration Order, and payment of their end of year bonus is based on their basic salary. We have disparity. Certain people are based on earnings, and some people are based on basic salary. So, the payment of an end-of-year bonus equivalent to one twelfth of earnings to workers who have remained in continuous employment with the same employer in a year and those who have taken employment during the course of the year, who are still in employment as at 31 December, and who have performed a number of normal days' work equivalent to not less than 80% of the working days during their employment in that year.

The worker has to now be assisted in a disciplinary committee by both his trade union representative and his legal representative; because many employers were saying 'either/or.' What we are saying here is the more the merrier. If a lawyer wants to go in, he goes in. If he wants to have a trade union representative, he goes together, if he wants to have someone represented from the Ministry; everyone can go on board. The more the merrier. At least that will give more chances to the employee to be represented correctly.

A lot of colleague Ministers have spoken to me about the fact that a lot of people come to my Ministry and ask for a Job Contractor Permit from the Permanent Secretary of my Ministry in order to work as a job contractor. A lot of people are being *arnaqués* right

now, as we speak, because very often, in order to get a job contract from a main contractor, they have to go and share the money they get from the main contractor because they use an affidavit from the main contractor who has got experience whereas they are the little companies; and they have to share their profits as well. There is an *arnaque* going on at the moment. What we have decided is the following: with a view to promoting business facilitation and democratisation of the economy, the provisions of the Act whereby any person has to obtain a permit from the Permanent Secretary of my Ministry in order to work as a job contractor, is now being removed. There is no longer need for Job Contractor Permit. It is over. Hon. Cader Sayed-Hossen has spoken to me many times about this. The job contractor will, however, continue to be recognised as an employer, and as such will have to comply with all relevant legislation, and to fulfil all the duties and responsibilities of an employer.

With respect to the Employment Relations Bill, I am proposing the following: the provisions to allow a “group of workers” as I explain earlier. I met with the platform called ‘*la loi anti-travailleur*’. I met with *conseil des syndicats*. I met with Mr Sadien, Mr Chuttoo, Mrs Jane Rago, Mr Benydin, Mr Atma Santo. Mr Subron does not want to meet me, and I feel very sad. I feel so lonely without him. He does not want to see me. What I am trying to say here is the following. I met them, and they took their time out to explain to me the following. In spite of the fact that it is in line with the Convention of the ILO on collective agreements, that group of workers can and must be able to negotiate in the absence of a recognised trade union. When I went to the ILO on 13 and 14 March, they said ‘hon. Minister, it is in line with the Convention. Why do you want to get rid of it?’ I said to them ‘if the majority of trade unionists in Mauritius don’t want it, who am I to say that we should have it?’ This is not something which I necessarily want to insist upon. For those reasons, we are removing it. Clause 3 of the Bill is being removed.

The provisions regarding the prohibition to report a labour dispute on terms and conditions of employment while a collective agreement is in force is being reviewed, so as to make it possible to report a labour dispute on issues which were not canvassed during the bargaining process leading to a collective agreement, during any period which may have been agreed for the renegotiation of the collective agreement or the statutory time frame of three months which we are providing for, for a collective agreement to be renegotiated. We are providing for issues that were not canvassed during the negotiation for this collective agreement. I will ask hon. Members to understand and here is where you have certain trade

unionists out there who say that I am allegedly threatening their fundamental rights to strike. This is totally untrue, totally uncalled for, and totally misinforming the public. I am not, in any way, challenging the fundamental right to strike. What I am saying here, what I am proposing here is the following. The trade unionists have always complained and said that employers do not take the pain to enter into collective agreements, employers do not take the time to negotiate collective agreements; *ils sont réfractaires*. What I am saying here is that if you negotiate on certain issues and that the issues that you have negotiated upon last for two years, you have in other words negotiated industrial peace for two years.

What I am saying here is that if you negotiate on certain issues and that the issues you have negotiated upon last for two years, you have, in other words, negotiated industrial peace for two years. If there are certain issues which were not canvassed during the negotiation period, you cannot raise it day in day out, every week, every month during the two years of the collective agreement and declare dispute, and have strikes. Because if that is the case no employer will be interested to enter into collective agreements and if they are not interested to enter into collective agreements, they will just say simply: refer the matter to the National Remuneration Board. That is not the way forward. We have to enhance collective negotiations. We have to enhance collective agreements and in the process what we are saying is that we have created a statutory time limit: three months before the expiry of the collective agreement – *trois mois avant et avant la fin de l'accord collectif pendant ces trois mois, il peut y avoir* renegotiation and they can raise issues that were not raised during the negotiations and they can declare a dispute. They can go to the Commission for Conciliation and Mediation. If they so wish, they can simply go for ballot and if the workers so decide they can very well go for a strike, but they should do it in a structured manner and the name of the game shall not be: every day of the week we go and have threats of strikes; every day of the week we are going to have people who are saying in spite of a negotiation of two years I have obtained what I had to attain. *Mais maintenant je ne me satisferais pas simplement* of the cream and the strawberry; now I want even the person who has made the milk. We cannot basically have that. We need to have industrial peace. Now what is also of importance? The existing provisions of the Act that the Union shall be entitled to recognition, that is, when it has a support of 30% of the workers in the bargaining unit and to sole recognition; where it has the support of more than 50% of workers in the bargaining unit. This has to be re-established; the existing provisions of the Act whereby two or more trade unions may form a Federation, or two or more Federations may form a Confederation be re-established, and with

regard to the organisation of strike, the Commission for Conciliation and Mediation has informed me as Minister and my officers that the nature of its work is to conciliate, to mediate. In other words, it does not feel it has the ability, the knowhow and the knowledge to be responsible in any way whatsoever for the organisation of a ballot in relation to strike. The trade unionists have explained to me that even for the Employment Relations Tribunal the same principles should apply. So what I have provided for therefore. The ERT, I am changing it, I am amending it and I am saying that it should simply be done in the presence of the Permanent Secretary of the Ministry instead of the Employment Relations Tribunal.

Now, with regard to my intervention as Minister or any Minister of Labour for that matter – I here see hon. Soodhun, hon. Obeegadoo, hon. Bappoo, hon. Bunwaree, hon. Faugoo – a lot of us, if I am not mistaken, I have not missed anyone out, had been Minister of Labour; the Speaker himself. When we are asked to intervene in matters, to act as a mediator, there is no legal foundation in the Employment Rights or Relations Act that says we can intervene as a mediator. Maybe a lot of us have not realised that. Hon. Soodhun is a bit surprised. Yes. Even when I have done it, he has done it, we have all done it, there is no legal foundation to say that we have the right to intervene. So what we are saying is: if, at the request of both parties, only at the request of both parties, if they wish that we intervene to act as a mediator, and only then we will be allowed to intervene. We are making provisions for that at Clause 36 of the Bill.

In order to counter the proliferation, the ILO has said there is a proliferation of trade union movement in Mauritius. Here, in Government, we want strong unions. We want unions that are representatives of the wide scope of workers, many workers. We do not want many small unions that are weak. We want strong unions that can represent their workers. That is what we want. So, in order to do that, strong does also mean responsible and not irresponsible. Then again, I mean, everyone is free to be responsible or irresponsible, who am I to judge. Now, what we want therefore is to say what the ILO says we are right in proposing. A worker may not join more than one trade union of his choosing. At this moment, as we are speaking, let me use the Cargo Handling Corporation as example. We have five unions at the Cargo Handling Corporation. Most workers or a lot of workers there are members of all five unions. Their salaries are being checked off for contribution for all five unions, but when they vote, they will vote only one man, one vote pertaining to the union they belong to. That does not make sense. This, in fact, encourages proliferation. We want strong unions. From now on, the fact that it has been brought to my attention by the ILO is

being corrected. A worker may not join more than one trade union of his own choosing in the same enterprise. A worker, at the level of the enterprise, must choose one union and it is quite normal. I cannot be member of the Labour Party which is an association and, at the same time, member of the MMM or the MSM. It does not make sense. The Members of the Opposition side cannot do that also. It does not make sense. So, if we are to keep this discipline, I think that union members, who are representatives of workers, have to follow the same discipline because otherwise, we would have proliferation of political parties. We don't want that. We want democracy, but a strong democracy not a weak one.

In the present difficult global economic context, it is essential that our regulatory framework, while catering for workers' fundamental rights, also takes into account the need to build resilience to external shocks and maintain the country's competitiveness so as not to jeopardize employment creation. The review of our labour legislation is, therefore, meant to encourage the development of new patterns at work that tend towards mutually beneficial industrial relations.

The above amendments to the Bills, Mr Speaker, Sir, which are considered to be fair and reasonable, will undoubtedly strengthen industrial relations bringing along a win-win situation for all stakeholders. You will appreciate Sir that the other requests of the trade union movement cannot unfortunately be taken on board as they may jeopardize Government's efforts to facilitate business for employment creation.

Let me now take you, Mr Speaker, Sir, through the rationale behind the salient provisions of the Bills together with the amendments which I am proposing.

With regard to the Employment Rights Act, I have talked about the shift work issue. I have talked about night work which, in fact, has no definition in our law today. It is now being defined. We are providing for definition and the definition shall be all work which is performed during a period of not less than seven consecutive hours, from 6.00 p.m. to 6.00 a.m. Provision is being made that no worker shall be required to perform work on more than four consecutive nights. As you will all recall, in Mauritius, at the moment, an employer can have people work for more than four consecutive nights. In actual fact, what basically we were saying is that provision is being made that no worker shall be required to perform work on more than four consecutive night shifts except in sectors or industry as may be prescribed or to follow more than eight hours during a shift unless the worker voluntarily agrees to do so. Now, if he voluntarily agrees to do so, fair enough, but he has to voluntarily agree to do

so and it cannot be imposed upon him. Shift work will have to be scheduled on a monthly roster and night shift allowance – I talked about 10% will be paid. An employer will have to take measures to ensure that alternative to night work, day work is available to women workers for eight weeks before and eight weeks after childbirth - that is important - upon production of a medical certificate certifying that she is or was pregnant, thus offering some protection for female workers before and after childbirth. That is new also.

Let me also, Sir, say that the House may wish to note that I have been inspired here by the ILO Night Work Convention No. 171 of 1990 as well as measures in the field of safety and maternity protection.

I'll come to a very important issue now which is the lack of framework. As we are speaking, there is no framework to regulate fixed term contracts of employment. At this moment, everyone of us know Members of this august Assembly, you have people who are on contract for 9/10/11 months, there is a break in their contract and then they are perpetually being renewed in terms of their contractual work. At the same time, they are not getting any refund for local leave or sick leave; at the same time, they have no security of work; at the same time, they are drowning in precarious jobs, day in day out, in not a fixed term contract of employment. So, what we are providing for is to regulate the fixed term contract of employment.

In order to prevent employers from having recourse to contracts of employment of determinate duration abusively, the amendments proposed by myself are as follows:

- It will no longer be possible for an employer to make a contract of employment with a worker for jobs that are permanent by nature for a period exceeding 24 months.

Therefore, after the 24 months, automatically, it becomes *un contrat à durée indéterminée*.

- Where such a contract of employment exceeds 24 months, the contract of employment shall be deemed to be a contract of indeterminate duration and the worker shall be entitled to the payment of severance allowance for unjustified termination of employment.

So, imagine all those workers who are being fired and who do not have the safety net, who do not have access to this payment of severance allowance for unjustified termination of employment, they would be entitled to that, they would be protected *et le travail précaire sera quelque chose du passé*, at least, for those people.

- An employer will only be able to enter into an agreement with a worker for a contract of determinate duration for more than 24 months for –
 - completion of some specified work within a specific date; or
 - specific training contracts; or
 - works and activities that are temporary, seasonal – harvest, for instance, and
 - substitution of another worker who is absent from work – only in those situations.

If it is outside the parameter of the situations, you shall not be allowed to enter into a contract which is of a determinate duration of less than 24 months.

The paid annual and sick leave to workers reckoning more than 6 months' but less than 12 months' continuous employment and to part-time workers reckoning more than 12 months service governed by a Remuneration Order.

The proposed amendments provide that –

- Workers reckoning more than 6 months' service but less than 12 months' service shall be entitled to 1 day's annual leave and 1 day's sick leave for each subsequent month of service provided he is present on all working days.

As we speak now before these amendments are being considered, we have to wait for 12 months. So, what we have here is a novelty, something in the favour of the working class, in the favour of workers. So, I fail to see here, once again, after all that I have said, I still do not understand where is '*zomme patron*'.

- A part-time worker who is governed by the provisions of any Remuneration Order shall be entitled to annual leave and sick leave on a pro-rata basis on the quantum of annual leave and sick leave prescribed in the relevant Remuneration Order.

Presently, workers reckoning more than 6 months but less than 12 months continuous employment and part-time workers governed by a Remuneration Order are not entitled to such privileges.

We are also reviewing the process of disciplinary hearing to ensure that all disciplinary hearings are held in a fair and independent manner. Law is here – how many of us have not, at one point or the other, gone to a Disciplinary Committee where we feel that

there is no fairness, where we feel that there is no independence in the person who is chosen to chair Disciplinary Committees! So, this is what we are doing now and I will also prepare regulations pertaining to Disciplinary Hearings in order that it is structured.

There is no concept of reinstatement in Mauritius, in our Labour laws. There is no concept of reinstatement. This is what is important; this is how we have respect for the trade union movement. In order to prevent discrimination, victimisation on grounds of discrimination and trade union activities, the proposed amendments provide that in case the Industrial Court finds that the termination of employment of a worker is effected by reason of

–

- a worker's race, colour, national extraction – and we go on – religion, political opinion, sex, sexual orientation;
- a worker becoming or being a member of a trade union,- this is what we are adding - we are elevating the position of a trade unionist by putting him at par with all those important issues where discrimination is condemned by law, we are elevating and putting him there.

Then, the Court will have the power to reinstate the worker with continuity of service with payment of remuneration from the date of termination of employment or to pay severance allowance at the rate of three months remuneration per year of service. Is this anti-union to elevate the position of a union movement? Is this anti-union to introduce the concept of reinstatement? Is this anti-union to ensure that if there is discrimination, because of the appurtenance to a union movement or his working union that he is reinstated or he is paid three months' severance allowance? Is this anti-union?

Most importantly, let us get back to the St. Géran case. What I am providing for now and I did say that to the Managers of St Géran in my office just now. I was very, very upset, disappointed and disgusted by their *insouciance*. I cannot say exactly what I said, it would be unparliamentary. However, what I did say is with the creation of the Independent Employment Promotion and Protection Division - a new Division of the Employment Relations Tribunal - when you want to fire someone, retrenchment for causes of economic reasons structural or otherwise, when you have after consultations with trade unions to explore all other possibilities - the case of Saint Géran is an ideal case that I believe could be sent to this particular Division of the Employment Relations Tribunal. Once we send it there, after it goes to the Permanent Secretary of my Ministry who forwards it to the Division of the

Employment Relations Tribunal, the Independent Employment Promotion and Protection Division, the matter will have to be resolved within 30 days. Within 30 days the Board will have to be convinced; that Division will have to be convinced that, indeed, there is a true economic reason that justifies the dismissal of those employees for economic reasons. They will have to be satisfied and the burden of proof will be, therefore, upon the employer to satisfy the Board that economic reasons do exist, structural reasons do exist, that they have not come up and invented it and within 30 days, the Board will have to be convinced. That is the important case for Saint G eran, if the Board is not convinced. The Board has the power to order reinstatement. When I mean the Board, I mean that Division. The Division of that Employment Relations Tribunal will have the power to order reinstatement if it is not convinced that the economic reasons are true. This is new; this is to protect the workers who are being abused by certain employers who abuse the situation for economic reasons, their own economic benefit of firing people – not economic reason for the company suffering. This Division will be able to order reinstatement and if the worker decides that he does not want to go there and work anymore, it is his choice. If he does go there and work, they will have to pay him all the salaries for the time that he has not worked; they will pay him a salary from the moment he was dismissed to the decision of the Tribunal. That is something which is really new, really different. Some people were asking for the Termination of Contract Service Board. I believe that the Opposition is responsible enough and they are not going to come and tell us that we should go for the Termination of Contract Service Board again. Because as we are talking right now, it is only in 17.5% of countries, members of the ILO, that the Termination of Contract Service Board method is being used. In other words, it is not the preferred solution, it is not a solution that encourages employment creation, it is not a solution that gives a rapid solution to an employee who is suffering, it is not a favoured solution of the International Labour Organisation. And we are not going along that way because that would be going backwards and not going forward. What we are doing is being approved by the ILO and I shall, later on, refer to the document by the ILO that, basically, says exactly what I am saying. Whatever we propose today is a great step forward in the cause and the fight for the liberty and the freedom and the security of employees. I have the document in my possession and I will be able to send it.

But then again, it could be that Members of the Opposition could come and say the ILO is wrong. But then again, I will have nothing to say. If people say that they believe the ILO is wrong. Then, I will say: well, if you know better than the ILO so be it, let's agree to

disagree. Because at this moment in time, we can do nothing, people just simply send a letter to the Minister and then people are put down, the workforce is reduced, then what more can we do?

With regard to improving the functioning of the Workfare Programme and the benefits there from for laid-off workers -

- Workers employed on determinate contracts of employment for more than 6 months will be entitled to join the Workfare Programme, which is not the case presently.
- The delay within which a worker whose employment has been terminated has to register himself in the Workfare Programme and to make his option for an alternative employment or training or setting up his own business has been extended from 7 to 14 days.

Because a lot of people lose out if it is 7 days only. We give them an opportunity to come and register with the Workfare Programme.

- The rate of Recycling Fee which is payable between 12 and 36 months is been increased from 3 to 6 days for every 12 months.

So, they are going to get more money in terms of recycling fee.

- And as I have said, if there is a case where the Permanent Secretary enters proceedings before the Court on behalf of a worker who has a *bona fide* case, the worker has become gainfully employed, he shall be entitled to be paid an allowance equivalent to the Transition Unemployment Benefit, from the date of the termination of his employment up to the date he has taken up employment.

Now, regarding the computation of Severance Allowance/Gratuity on Retirement on the basis of remuneration instead of basic wages, the proposed amendment provides that the remuneration for the computation of severance allowance and gratuity on retirement be calculated in the manner best calculated to give the rate at which the worker has been remunerated over a period not exceeding 12 months prior to the termination of his employment or the worker's last month remuneration whichever is the higher. At the moment it is being computed on basic salary.

With regard to the Payment of Gratuity on Retirement/Death Gratuity, the proposed amendments provide that –

- an employer shall not require a worker to retire before the new retirement age notwithstanding any agreement or enactment to the contrary;

Because at the moment, in certain sectors if a worker wants to go on working and there is an agreement to the contrary, they are forced to retire at 60 and that shall no longer be the case. It is the choice of the worker now.

- where a worker remains in continuous employment with the same employer after the age of 60 up to the retirement age, the worker and the employer may agree on an advance payment as I explained earlier;
- a death gratuity of 15 days remuneration per year of service is payable in case of death of workers reckoning more than 12 months' continuous employment;

We have also, Mr Speaker, Sir, carried out some corrections with regards to anomalies existing in the administration of trade unions. For example -

- where, under the rules of a trade union, provision is made for any special fund, the rules applicable to that special fund shall not be altered except by a resolution approved by a majority of the members present and voting at a General Assembly. Presently, the rules can only be altered by a resolution approved by a General Assembly and in accordance with the rules of the special fund which make it very difficult to amend the rules of the special fund;
- But, most importantly, Sir, the Registrar of Association will now be able to carry out an enquiry in the administration of a trade union upon a complaint made by 1% of the members of the union instead of 5%.

With regard to the recognition of trade unions of workers, we are now proposing to review the process for the recognition of trade unions of workers so as to facilitate and promote collective bargaining in an orderly manner as follows -

- by guaranteeing that where a trade union or group of trade unions has been granted recognition as a sole bargaining agent or joint negotiating panel, respectively, for a bargaining unit in an enterprise or industry, no other trade union shall be entitled to recognition for the bargaining unit except by virtue of an order or determination of the Tribunal;

Mr Speaker, Sir, what we are also providing for amongst other measures, and I would like to highlight it, the other amendments that I am also proposing are -

- a. where a worker resigns from his employment, his employer shall provide him with a certificate of service. Presently, an employer is bound to provide a certificate of service only where the employer terminates the employment of the worker.

But here no, even if the employee decides to stop, he has to be provided with a certificate of service.

- b. any unwarranted conduct based on sex – maybe that will wake up Members now - in the course of employment shall constitute harassment. Maybe you will be surprised that in our laws, as it stands right now, the definition of harassment, sex is not in there as defined. So, we have to include that as well. Presently, the law does not include the term ‘sex’ as a ground for harassment. And we are making that correction.

Let me conclude, Sir, and I will now go to the last hour of my speech. And I am inspired by hon. Soodhun, Mr Speaker, Sir, when I see him like that, I want to go on. That is harassment and I can assure it is not sexual in any way. To conclude, let me emphasise that the above proposed amendments translate the Government’s vision for a sound legal framework ensuring that workers’ rights are fully safeguarded whilst at the same time enabling a friendly business environment to prevail. The overall aim is to allow a shift from an adversarial to a partnership mode in our industrial relations system while imparting adequate protection to the more vulnerable groups for a more just and peaceful society.

I am all for the fundamental right to strike. But there is an element here that I have not covered at all. It is pertaining to section 9 (2) of the Employment Rights Act of 2008. With regards to section 9 (2) of the Employment Rights Act of 2008, there is a provision there that says that a worker cannot, in any way, have his contract of employment terminated if he participates for the first time in an unlawful strike. The ILO, Mr Speaker, Sir, recognises very important preconditions to the organisation of a strike. And I have taken some time out to read the white paper of the new legal framework for industrial relations in Mauritius dated September 2004. Maybe hon. Soodhun has forgotten. But he had prepared that white paper for the then Government of 2004 and when I go through that, there is at page 14, a paragraph called “Right to Strike”. And a right to strike, rightly so ...

(Interruptions)

Mr Speaker, Sir, when the hon. Member hears what I am about to say he will say, even though there is no signature there, it is mine. In fact, you rightly say in this document that the ILO Committee on Freedom of Association has accepted the following conditions on the right to strike. There are seven conditions to a right to strike for it to be lawful - and rightly so - the -

- (i) obligation to give prior notice;
- (ii) obligation to have recourse to conciliation/mediation and arbitration procedures;
- (iii) obligation to observe a certain quorum and to obtain the agreement of a specified majority;
- (iv) obligation to take strike decisions by secret ballot;
- (v) adoption of measures to comply with safety requirements and for the prevention of accidents;
- (vi) establishment of minimum service in particular cases, and
- (vii) guarantee of the freedom to work for non-strikers.

Those are the seven conditions recognised by the ILO Committee on the Freedom of Association as fundamental pre-conditions for a strike to be considered to be lawful. That is in the White Paper of the then Government.

(Interruptions)

I say they were right to put it there because, in fact, they are just saying and they are agreeing, therefore, that they recognise that it is important to stick to the provisions provided for by the ILO and, Mr Speaker, Sir, what the then Government is saying is that they are themselves all out for lawful strikes, but totally against unlawful strikes. That is why I commend them. Hon. Soodhun is totally right; he is totally right when he, in other words, says in this document ever since 2004, that he is not in agreement in other words with any union that say they are entitled to carry out an unlawful strike and we are on the same wavelength.

Hon. Bodha, in order to try to be different or interesting, tries to say in other words that - maybe he is not sure what he means here - he says the ILO says that, but it does not mean that because, he has, maybe, to side with the unions in order to be politically correct to serve his own interest. That is why I believe that hon. Soodhun, Mr Speaker, Sir, should brief hon. Bodha on the fundamentals of the ILO...

(Interruptions)

...and it would be wrong to underestimate hon. Soodhun on that issue.

Let me also say that I would be failing in my task if I do not convey my gratitude to all those who have helped me directly or indirectly in this venture. My foremost thanks and gratitude go to the hon. Prime Minister. I said 'thank you' and the Prime Minister did not understand why, but I said 'thank you' because he has given me

(Interruptions)

I am not like certain people who are so adamant that without politics, they do not have a life. I have a life without politics. I am sorry. This is me. Learn if they do know how to do it!

(Interruptions)

My foremost thanks and gratitude go to the hon. Prime Minister for his unflinching trust in me, for his support in this endeavour. My heartfelt thanks go also to the Deputy Prime Minister, the hon. Dr. Rashid Beebeejaun, the Chairperson of the High-Powered Committee who, at moments, when I thought things were in a very difficult situation, each and every time made use of his wisdom to encourage me to go on because he saw that there were measures that were being taken in the interest of workers. I thank him for his support and encouragement.

(Interruptions)

I am also grateful to the Permanent Secretary of my Ministry, the former Director who is now in Australia and who has just retired, the new Director, his team and all the staff of my Ministry, my adviser, Mr Dev Luchmun. I cannot but forget obviously my good friend, the hon. Attorney General, the Parliamentary Counsel, Mrs Narain, the Assistant Parliamentary Counsel, Mr Aujayeb, Mrs Maherally, the State Counsel for their dedication and hard work related to these amendments. I seize this opportunity to convey my deep appreciation to the Director General of the ILO and staff for their guidance and unflinching support.

I would like to say here - and I have kept this for the last - I have a document that hon. Obeegadoo thought I did not have, but it is here: the ILO Memorandum on Technical Comments on the Employment Relations Bill 2013 and the Employment Rights (Amendment) Bill 2013 of Mauritius dated 25 March 2013. I obtained it early in the

morning. When I go through that document - I will gladly give a copy to the hon. Leader of the Opposition with whom I have willingly communicated all documents I may have in my possession only because I believe in democracy and I wanted to show and prove that we are in no way have any agenda or any strategy, but we are here to put our minds together to help workers, as I have said. I would like to read a part of that document that I have just received

—

“The Office welcomes this initiative of the current labour law reform which aims at adjusting the legal framework to evolving labour market realities in Mauritius. The Office notes that most comments provided in 2011 by the ILO were taken into account to prepare the subsequent version of the Bills. The Office also welcomes the fact that the labour law reform aims at further incorporating international labour standards in national labour legislation. This Office notes several amendments which reflect a clear commitment to reforming the labour law so that it can function effectively and efficiently. The Office welcomes the new provisions concerning such issues as discrimination and harassment, equal pay for work of equal value, written particulars of work agreement, fixed terms contract, maternity protection, wages and recycling fees, shift work and working time, dismissals and process of disciplinary hearing.”

It goes on to even comment that it is in total agreement with the Employment Promotion and Protection Division which shall be a new division of the Employment Relations Act. It is a document that says that this Government has shown its commitment, *son sérieux* to bring amendments that are all in line with the international labour standards. We have no hidden agenda like certain people out there. We do not want to bring this country to its knees. We do not want to destroy this country. Imagine, if we are to continue along this line where certain people do not think that the last recourse would be a strike, people say that the first choice now is ‘let us strike’, the ILO does not agree with threats, left, right and centre: ‘If you do not do this I will strike’. Before even any negotiation, we have certain ‘*syndicalistse*’ who are threatening to strike even before having embarked on any negotiation, that is something that is condemned by the ILO. When it is condemned by the ILO that supposed ‘*syndicaliste*’ condemns the ILO in return. This is the country we live in! If we want this country to go down to its knees then the Opposition and Government have to work against one another. If you want this country to have general strike and certain people want to emulate the hon. Paul Raymond Bérenger of the 70’s, they have got a long way to go

to do that because those days and those contexts were different and he cannot even reach *le talon et la cheville* of hon. Paul Raymond Bérenger when it comes to his fight for workers. I say that!

I would like to say something else

(Interruptions)

At the end, let me share with this House the following quote from Steve Jobs –

“Being the richest man in the cemetery doesn't matter to me. Going to bed at night saying we've done something wonderful, that's what matters to me.”

In fact, Mr Speaker, Sir, I remember, and let me say that, one of the reasons why a lot of people have told me: “what you have provided for as Minister of Labour here goes in the interest of workers. You have thought about the daily lives of workers. You have thought about all the difficulties they go through that very often we seem to forget, not because we are not concerned, but because they are so simple things but which matter a lot.” A lot of people tell me that this Government has done so much and each and every time that the law of employment has changed in this land, it has always been the Mauritius Labour Party, never any other Government! Never any other party! It was always the Mauritius Labour Party! People tell me: “how is it that you have done such an important work and still people call you”

(Interruptions)

Zomme patron! Then they talked about, as I said earlier on, and let me finish on that, my father has been *avocat patron*. Let me here pay homage to the father, the former Minister of Labour, that they call *avocat patron!* It is because of his upbringing that today I will fight until my last breath for each and every worker of this country because this is my mission, my dream, and I am living it today. I thank the hon. Prime Minister for it.

With these words, Mr Speaker, Sir, I commend the Bill to the House.

The Deputy Prime Minister rose and seconded.

Mr Ganoo: Mr Speaker, Sir, I move for the adjournment of the debate. May I, Mr Speaker, Sir, appeal to the Leader of the House that the Opposition be allowed sufficient time

to go through this Bill, the amendments which have been circulated, since we need to make some consultations with the different trade union organisations. We have listened to the hon. Minister; taken note of Government wish to push through this Bill as soon as possible, but if the Leader of the House could give the Opposition a few weeks, for us to react.

The Prime Minister: Mr Speaker, Sir, I was going to say just a few words that I usually say, but since the hon. Leader of the Opposition is asking for more time, I was going to put Parliament on Friday so let's do it ...

(Interruptions)

So, Thursday would be too early. Thursday would be even less time.

Mr Uteem rose and seconded.

Question put and agreed to.

Debate adjourned accordingly.

Second Reading

(iii) THE EMPLOYMENT RELATIONS (AMENDMENT) BILL

(NO. XXXI OF 2012)

(iv) THE EMPLOYMENT RIGHTS (AMENDMENT) BILL

(NO. XXXII OF 2012)

Order read for resuming adjourned debate on the Employment Relations (Amendment) Bill (No. XXXI of 2012) and the Employment Rights (Amendment) Bill (No. XXXII of 2012).

Question again proposed.

(5.35 p.m.)

Mr S. Soodhun (Second Member for La Caverne & Phoenix): Mr Speaker, Sir, I think that I am going to speak on behalf of the Opposition and also various workers outside.

Mr Speaker, Sir, first of all, this afternoon, I stand up for the second time for the same Bill; first in 2008 and second today. In fact, Mr Speaker, Sir, most of the hon. Members will agree with me that these two Bills, the way they have been processed, has created a lot of confusion. In fact, I am, in this august Assembly, for nearly more than twenty years and I have never witnessed that for a Bill presented by any hon. Minister, after the Second Reading and then, there is a long list of amendments circulated after. I don't know whether the hon. Minister will again have a Second Reading; I don't know. In fact, it was not one or two amendments which could be taken at Committee Stage. In fact, there are amendments on amendments. So, everybody is confused. I am sure the hon. Minister himself is confused. The fact that there is a lot of contradictions between the amendments, the other amendments, the third amendments and the fourth amendments, which have been brought in December last, this has created a catastrophe.

Mr Speaker, Sir, I don't think many hon. Members in this House have had the opportunity to serve workers of this country as a trade unionist. Hon. Paul Bérenger and I are two in this august Assembly who have been related with the working class. This does not mean that other hon. Members do not understand. It concerns me. I have been working for

more than 20 years with the trade union movements and I have been very close to the working class of this country. You have been the Minister of Labour in the past. In fact, Mr Speaker, Sir, I have had the opportunity to serve the workers in this country and also, as a hon. Minister, to defend the interests of the workers which I am really honoured to. I understand carefully the situation of the workers. I have witnessed and gone through hunger strikes many times. I have even been in prison.

(Interruptions)

This is a fact. I want to show that I am not a person who is going to speak only for the sake of a speech, Mr Speaker, Sir. I am speaking on facts and experiences that I personally have had. I have been in the trade union movement at nearly the age of 18 and today I am nearly 60.

(Interruptions)

Mr Speaker: No interruptions!

Mr Soodhun: Mr Speaker, Sir, I can say that for nearly a quarter of a century I have been fighting against the Industrial Relations Act 1973 and the Labour Act. My family and I have suffered a lot as well as the working class of this country. Today, let me remind the hon. Members that in 1980s, I have been a trade union leader and, as I mentioned, I have been together with them. Today, I would like to pay tribute to *ce grand homme, grand syndicaliste, grand défenseur de la classe des travailleurs, l'honorable Paul Raymond Bérenger.*

(Interruptions)

Mr Speaker: Don't interrupt!

Mr Soodhun: Mr Speaker, Sir, it is a very serious piece of legislation. I make an appeal to my hon. colleagues that they have to, at least, listen because I don't disturb anybody. This is very important, Sir. I say that because it is no secret that I was inspired by people like Manilall Doctor, Guy Rozemont, Maurice Curé, Adolphe de Plevitz, Emmanuel Anquetil, Hariparsad Ramnarain, Chand Bhageerutty, Sharma Jugdambi and our good friend, hon. Paul Raymond Bérenger, as a trade union leader. This is not a secret.

Today, Mr Speaker, Sir, we cannot compare the Labour Party of 1950s with the Labour Party of today. It is totally different. There is a complete difference. The latter has

betrayed the legacy and the fight that some of their founders have so strongly supported. Today, I would like to pay tribute to all the people I mentioned for their contribution to the fight in favour of the working class in this country.

In fact, Mr Speaker, Sir, I had to take a decision in 2000 as a Minister. Today, we are discussing this Bill. Since 2008, the former Minister of Labour brought the amendment to the Freedom of Association of 1987. Let me remind hon. Members that the then Government, between 2002 and 2005, requested me as the then Minister of Labour and Industrial Relations, to ratify the Convention of Freedom of Association. It is a fact that when we ratified the Convention, there was a time bar given by the ILO to amend the existing laws, that is, the Industrial Relations Act of 1973 and the Labour Act of 1975. It was a must. As I have just mentioned, I have been with the working class since I was very young. So, when I was the Minister of Labour, the first opportunity I got, I ratified the Convention. This is why today we are bound to amend the Industrial Relations Act because I have ratified the Convention at ILO level. Many people are not aware of it.

Today, we are having this debate and I am glad to participate. But, unfortunately, the way the debate is going on and amendments are being brought, I was of the opinion that my friend, the hon. Minister of Labour, would have a workshop, have discussions with all the trade unions. Forget who is the leader of the trade union! Let's have a workshop with the Ministry, the ILO expert from the Department of Freedom of Association - there is a legal department, as we all know, Mr Speaker, Sir - the trade unions and the employers. This is the way it should have proceeded because we are amending a law which existed since 1975. This law will remain, as the hon. Minister rightly mentioned, for future decades.

This is why it is very important that we get all the people on board and the opinion of all the people. It does not matter whether it is accepted or not but, at least, to have discussions with these representatives, listen to them, as the hon. Minister rightly listened to a few trade unions leaders, and they submitted some suggestions which the Minister has taken on board. It is good. Even I have worked out a White Paper and there are some points which the hon. Minister has taken on board. That's good. But, at least, we should have avoided out there what is happening today. It does not please anybody, be it the Opposition, the Government, the trade unions or the employers. I have never said that I am in favour of some sort of gathering. We are living in a democratic country.

(Interruptions)

Mr Speaker: Carry on!

(Interruptions)

Mr Soodhun: Listen!

Mr Speaker: Carry on! I am listening to the hon. Member.

Mr Soodhun: Mr Speaker, Sir, maybe the hon. Minister has good intention. I have no doubt about it. There will be some sort of outcome later on in my speech, a blame for the former Minister. So, what I would suggest is for the Government to have a *table ronde*, bringing all the people around the table to have discussions. Again, I would have advised the hon. Minister to do that. As I mentioned, this law is not for one, two or 10 years. It is for the coming decades.

Mr Speaker, Sir, really we are disappointed with the way it has been done because he could have done better than what he is proposing today. As I mentioned, when I was Minister I had the opportunity to rectify five Conventions and, in 1998, the first time, as Member of the Parliament with the collaboration of ILO, I introduced the first Welfare Fund namely EPZ Welfare Fund but without the collaboration of the then Minister, it would not have been possible. This goes in the right direction. I have to thank hon. Mrs Bappoo, she collaborated, she helped a lot to bring this piece of law. In 2008 when the former Minister came forward with the amendment on the two Bills - first time in the history of this Parliament, Members of the Opposition brought twenty eight amendments - it is not easy - without any technician. I am not a legal man. I have been a trade unionist but to come with twenty eight amendments, I am sure, my good friend, the Attorney-General will agree with me, it is not easy. It is not easy to come forward with twenty eight. I brought twenty eight amendments and if the former Minister had listened and taken care of what I suggested, we could have saved today Sir nearly 20,000 jobs – it is a pity due to the law passed in 2008. This is why I say it does not make us happy that people outside are telling the Minister is an anti-worker, that is, *anti travailleur* by the trade unionists, not me telling that. That does not make us happy, but they also wonder whether the Minister has a hidden agenda. God knows. I think the trade unionists know what they are telling. Sir, four years back we were debating on the Employers Rights Act and the Employment Relations Act. It is again a sad day in the history of our nation and this shows us how this Labour Party has nothing in common in the 1950s one. It is an insult

to the late Emmanuel Anquetil, Dr. Maurice Curé and others who lost their life so that the workers be given due respect through their efforts. Indeed the ultra liberalists had control on the so badly called *Alliance sociale*. Mr Speaker, Sir, I could have given some credit to the present Minister of Labour when I heard that amendments in these two legislations were circulated. I thought there is something coming for the benefit of the workers in general. *Je me suis dit qu'enfin il a eu un peu de courage mais toutefois c'est faux pas. Un pas en arrière pour les travailleurs de ce pays. Est-ce cela la récompense envers les bâtisseurs de notre nation? Non!*

Mr Speaker, Sir, the proposed amendments show clearly that it is another step by this Government to implement a pro-employer agenda. These two labour legislation have created much harm to the Mauritian family and will go to create a lot.

Mr Speaker, Sir, the amendment proposed is fundamentally based on the whole concept of divide and rule and we have seen since some months how the Minister reacted towards some trade unions. The Government had to backpedal with the amendments proposed last December. They, themselves, are not sure what they are going. Call the expert of ILO. Call other people. We have people. We don't have experts in another field, but in the labour laws we do have experts. *Donc une fois de plus l'histoire marquera que la lutte syndicale a encore triomphé par certaines propositions.* As mentioned, there are some propositions that the Minister has taken on board. I don't understand why the Minister of Labour refused to discuss with certain trade union/federation? I cannot understand. We know that, in the same Government, people try to bypass the Minister and give a special treatment. We know that. I would ask the Minister, for the sake of the workers, to forget the internal or individual problems of human beings. This happens. I, myself, have been Minister, I have got the problem. You know it very well, but we have to forget it. *C'est l'intérêt commun qu'il faut voir, ce n'est pas l'intérêt individu.* So, the Minister should not forget that, without the contribution of the workers, a nation cannot be built. This is why we should consider that trade unionists and employers federations as social partners. Always we need this boss. I am not against the employer. I am the first one to consider the request of the employer and also of the working class so that we can judge. When you are in Government then you have to judge and see in the interests of the country. They said that they are a socialist Government but these legal provisions show clearly that they are here *pour défendre le patronat et le gros capital. Ce gouvernement restera dans l'histoire comme celui qui a voulu la fin du mouvement syndical* with this amendment. When you go deeper in this amendment then you

will see that the trade unions *sont en train de perdre leurs droits acquis*. It will happen that in ten, fifteen or fifty years, the trade unions are going to disappear. We will have one or two trade unions which have been formed by the employer - judge and party as if the prison officers are going to have a trade union movement and will have the Commissioner of Police to be the negotiator. *Ce n'est pas étonnant quand nous savons qu'il y a certains qu'on considère comme antidémocrates quand on vient avec cette loi*. The amendments proposed were based on the Machiavelli strategy to create division. The employers would have a complete control on a group of workers if finally we vote this law. Moreover, the amendments proposed for the unrecognition is an attempt to weaken and get rid of the trade unions. I'll explain, Mr Speaker, Sir. The previous amendment of 2008-2009 - I will not go into the detail for the clauses but, for the Joint Recognition Panel, there was a provision of 30% to 50% of members. Above 50%, the trade unions get sole recognition whereas with the new one it is 35% instead of 30%; instead of 50% it is 70% but to get the sole recognition they have to obtain 70% for the sole recognition power. What will happen, Sir, if the employer imposes to a new employee a contract that interdicts him to form part of the trade unions? We all know that due to the present unemployment situation, some people may accept with some imposed and unfair conditions of service. *Les chômeurs sont dans une situation vulnérable et le gouvernement ne fait rien qui puisse protéger ce qui freine l'emploi*.

M. le président, dorénavant, nous verrons des contrats de travail consistant à interdire un nouvel employé à se syndiquer. This will be very sad and we cannot endorse all this cause. The amendment proposed by the Government to the Employment Rights Act 2008 is an admission that the workers, the trade unions and the Opposition were right to oppose the legislation which was clearly against the interests of the workers. While the amendments proposed to the Employment Rights Act in 2008 is a major setback to industrial democracy as it aims to weaken the trade union's movement and is inconsistent with the development of the collective bargaining and the goal of social dialogue which is a pillar...

Mr Speaker: I am sorry, I have to interrupt you. We are not debating the 2008 Employment Rights or Employment Relations Act. We have amendments proposed before this House. You have spoken enough, I have listened to you, I have been lenient to you. I want to hear you now on the amendments.

Mr Soodhun: Mr Speaker, Sir, I am not against your ruling, due respect that I have for you. In fact, why do we refer to 2008? Because the first amendment of the Industrial Relations Act was proposed in 2008 and then the Minister came for the amendment in 2008.

Mr Speaker: In 2008....

Mr Soodhun: Yes, this was coming with another amendment in December. I have to refer to it. In fact, I am going to say that the Act of 2008 was good in certain clauses. If I do not mention, I would not be able to do that, Mr Speaker, Sir, with due respect that I have for you.

So, Mr Speaker, Sir, there is one thing that I would just want to quote. Mr Speaker, Sir, the House will recall that during the debate on the introduction of the Employment Rights Act I made proposal to introduce concept of reinstatement in case of termination for economic reasons where workers were victimised by their employers and to reintroduce the TCSB. Honestly, Mr Speaker, Sir, I had some expectation that the Government will amend the law and bring a better compensation in case of termination of employment. It should be the same as it was in the formal Employment Rights Act. As you are well aware, Mr Speaker, Sir, today in many cases, we do not have normal rate and we do not have six times the normal rate in case of unjustified dismissal. So, this also is a handicap for the workers today in case they terminate the contract on unjustified dismissal.

Mr Speaker, Sir, let me come now to the right of strike which is very important. It has been one of the fundamental rights of our democracy of workers since long. There have not been any trade union leaders from our biggest trade union leaders and politicians of this country through fault. The strike is the last resort of trade union for the workers. Mr Speaker, Sir, I just mentioned section 9 where the Minister is repealing the subsection (2) of the Employment Rights Act which reads, I quote –

“No worker shall cease in continuous employment of an employer reason for his participation for the first time in the strike which is unlawful under the Employment Relations”.

This is where I say that I agree with what the former Minister brought. I congratulate him for that. I agree with him. Today, Mr Speaker, Sir, repealing this section will leave a room for employers to hire and fire. Legal procedures have to recourse to a strike are more and more lengthily and this amendment is making it more difficult for workers to organise themselves. Nobody, Mr Speaker, Sir, wants to go on strike, not even the workers of trade unions nor the employers, definitely, nor the Minister. As I said, I have to give credit to the Minister who provided that no punitive action be taken against a worker who participated in a strike for the first time. However, this amendment proposed today is a back step in our democracy. So,

instead of moving forward, this Government is moving backward – *comma dir kamaron*, you know *kamaron* is not going forward, but backward. Mr Speaker, Sir, *c'est une insulte à la lutte pour les travailleurs de ce pays*.

Mr Speaker, Sir, section 77 of the Employment Rights Bill is empowering the employers. This provision is the end of the right of strike. The amendment proposed that no recourse to strike or right to strike exists in a collective agreement or an award relating to wages and conditions of employment is in force. I would like to know what will happen in case of termination of contract of a group of workers, will there be a right of strike? Mr Speaker, Sir, the new amendment proposed on Friday last is another gift for the *gros patron* in the sugar industry, in the port, even in the transport. I take the words of the Minister, in his speech, he mentioned he is not *zom patron*, he is *zom his madam*. I congratulate him. He considers now bringing this amendment, he is *zom certains patrons*, *certain patrons* in the sugar industry, in the port, in the transport. So, Mr Speaker, Sir, I, myself, *je dis que je suis complètement bouleversé*. What will happen, Mr Speaker, Sir? Let us say, if tomorrow, there is a negotiation carried out between the employer and the trade unions. There are ten points. On seven points there has been an agreement and what happens if we take into consideration that an employer has no reason to resolve the other three points because the worker will have no issue. Tomorrow there can be a negotiation going on, a collective agreement between the employer and the trade union, a negotiation is going on, there are 20 points, 15 points have been agreed, five points have not been agreed. So, five items remain. What happens? This will not refer to any institution to see what we can do with the five items and this will remain for 24 months, you are not allowed even to go and negotiate, this will be sent to another institution as it has been done in the past.

Let me take an example which is very easy for people to understand. Once you cannot refer to the institution, you cannot negotiate. Let us say that you agree, and there has been an agreement on 20 points, but in the course of the year, maybe some conditions will change. The workers' conditions are changed, or something crops up. So, then, what will happen? You cannot do anything, and you have to wait. This is what we are suggesting because there are some *méchants patrons*. What can we do? The hon. Minister knows better than any hon. Member here.

(Interruptions)

He himself stated in this august Assembly that we have some unscrupulous employers. What will happen? The hon. Minister has mentioned that, since 2008-2009 till today, for the first time there is a provision that they can go for a strike. Can anybody in the House tell me that we have witnessed one illegal strike? No! Not at all!

(Interruptions)

Menace! What I am just proving is that this is something we will never accept - the Opposition, and even some hon. Members in the Government. If you are going to talk individually, they will say “yes, you are right.” That cannot just scrap, just *enlever le droit acquis depuis des siècles et des siècles*. We are fighting that the workers can go on strike, but *on a des garde-fous*. We cannot! It is impossible to accept it! I can cry when I think that tomorrow we are going to take out this clause.

(Interruptions)

This is because you have never been to the workers. I have been to the workers and seen how they suffer.

(Interruptions)

Ki ena pou dire ! Ou pas ti la, mone fek dire li. Mone fek dire oune aide nou dans 88. Mone dire li sa.

Mr Speaker: Address the Chair, please!

Mr Soodhun: *M. le président*, I mentioned that the hon. Minister is bringing a few amendments, which are positive - the suggestions that have been made by the trade unions and me. But now, Mr Speaker, Sir, we come to the amendment to section 78 concerning the ballot, where the Supervising Officer will replace a Conciliation and Mediation Commission. This is, according to me, an attempt to the impartiality of the procedure for a strike. The Conciliation and Mediation Commission is an independent body. We cannot give the power to the Permanent Secretary. The Permanent Secretary cannot be the judge. He is a good friend of mine. He is a very good Permanent Secretary. All the Permanent Secretaries are very good. But, you cannot give them that. I have been Minister, and you are Minister.

(Interruptions)

Can you tell me if a Permanent Secretary will refuse to listen to the Minister? Will he say “I am not going to obey your instruction”? *Transfer mo croire dans 24 heures ou bisin ale* on retirement *prematuré!* What I am telling you is that this also I think is *un faux pas*.

Mr Speaker, Sir, let me tell you what the Committee on Freedom of Association of ILO has pointed out. I quote –

“The Committee has maintained that –

Respect for the principle of freedom of association requires that the workers should not be dismissed or refused to re-employment on account of their having participated in a strike or other industrial action.”

My hon. friend knows it very well. I have no doubt, Mr Speaker, Sir.

Mr Speaker, Sir, as I mentioned, this Government pretends to be a socialist Government, but they are empowering the pro-capitalism sector since 2005. The two labour legislations are only two steps in the conclusion of the economic and political strategy. Today is another enforcement of these fine-tuned methods by the *ultralibéralisme* of the other side of the House.

Mr Speaker, Sir, with regard to the allowance, the intention is good for the night allowance of workers who work between 6 p.m. to 6 a.m - 24 hours. But what will happen? Most of the workers are working in hotels, in free zones, in call centers. They even work seven hours, but they will not fall under this section. So, it is not fair. I make a request to the hon. Minister to revisit this section because it is going to penalise a lot of workers.

Concerning the ICT and BPO sector, which now is an important pillar of the economy, Mr Speaker, Sir, there is no Remuneration Order that exists, and my hon. friend knows it very well. Today is high time. We have thousands and thousands of workers working in call centers, in BPO and ICT. But, they are not governed by a Remuneration Order! The employers give them the salary that they want, the conditions of work that they want. It is now high time that the hon. Minister considers coming forward with a Remuneration Order for this sector. If not, these workers are going to continue to suffer and be victimised because of their work.

M. le président, depuis 2009, le monde fait face à une crise économique sans précédent. Nombreux pays ont revu leur système financier, et le modèle économique et

plusieurs mesures prises sont au détriment du peuple. L'île Maurice aussi, on doit le reconnaître, n'est pas épargnée par la crise. Nous vivons dans un monde global, et l'île Maurice accueille de plus en plus d'étrangers, que ce soit pour notre secteur du tourisme ou des travailleurs étrangers. Notre succès et miracle économique reposent sur nos ressources humaines. C'est notre atout, et il nous faut le préserver. Je ne pense pas que des mesures au détriment du mouvement syndical apporteront une sérénité et permettront à notre pays d'avancer dans un environnement sain. Il nous faut préserver les protections contre les licenciements, et préserver les acquis des travailleurs. Toutes les lois du travail doivent être faites pour l'avancement des travailleurs de ce pays, et ne doivent pas être un recul, M. le président.

I make an appeal to the hon. Minister to withdraw this amendment. Come again with a new one after consultation with all stakeholders because it is not a simple piece of law, a simple amendment. If the hon. Minister insists, the Opposition is going to resist and will be against this amendment.

Thank you very much, Mr Speaker, Sir.

(6.10 p.m.)

The Minister of Foreign Affairs, Regional Integration and International Trade (Dr. A. Boolell): Mr Speaker, Sir, I have listened like all colleagues to the speech delivered by the former Minister of Labour, Industrial Relations and Employment. I do not intend to be nasty to say that the speech delivered by the hon. Member has been an exercise in futility, nor would I be nastier to say that he has been beating about the bush - like trying to find a needle in a haystack. But, having said so, Mr Speaker, Sir, it is good to remind hon. Soodhun, that when he was Minister, he did move for the First Reading of the Employment and Labour Relations Bill.

(Interruptions)

No, there was a White Paper, but you intended to move the Bill.

(Interruptions)

No, there was a White Paper in 2004, but then he intended to come with a Bill.

Now, Mr Speaker, Sir, this is not the first attempt that the Government, then under the Prime Ministership of Sir Anerood Jugnauth, has tried to move labour legislation. I am not going to refer to TURA nor to the Bill, which the hon. Member intended to move, but which was never moved.

In 2005, Mr Speaker, Sir, we embarked upon a broad reform and we had an all inclusive package. The Employment Relations Bill and the Employment Rights Bill were introduced in 2008. There was extensive discussion, Mr Speaker, Sir. There were wide discussion at the bar of public opinion and all the stakeholders were taken on board. The hon. Minister knows very well that when it comes to gathering the views of one and all, when it comes to achieving consensus on a Bill which can be very sensitive, where you may have divergence of views expressed by those who are keen to move the process or others who are reluctant to move the process, it becomes very cumbersome.

My friend, the then hon. Minister of Labour, Dr. Bunwaree, had extensive consultation, notwithstanding the Ministerial Committee that was chaired by the then Deputy Prime Minister, and present Deputy Prime Minister, but it was an exercise that ultimately had achieved a consensus. We know that the two Bills were introduced in Parliament and, today, we are reaping the benefits of those Bills.

(Interruptions)

Mr Speaker: Silence!

Dr. A. Boolell: Mr Speaker, Sir, it is fact. My hon. friend should know that these are legislation are very dynamic, very fluid and the legislation have to be flexible. There is no way out, Mr Speaker, Sir. It has to be flexible for basic reason because our economic landscape has changed and 80% of our economy is service-oriented in a few years to come. Therefore, I will, Mr Speaker, Sir, make comments of general nature.

Mr Speaker, Sir, I will refer to the chronology of events since the first Bill was moved by the hon. Minister on 11 December 2012. I will highlight some of the contentious issues that have been the subject of wide discussion outside the House and I will make concluding remarks.

But, it is good to walk down memory lane, Mr Speaker, Sir. There are simple, but I hope effective questions. Why is it that despite an average growth of more than 6% between

1992 and 2004, we ended up with a jobless growth and we ended up with loss of jobs at a dizzying speed? A sizeable number of workers lost their jobs. We have to ask basic questions again? How many of those workers who have lost their jobs obtained fair compensation? Where were the creditors and where did they rank the workers who were made redundant, Mr Speaker, Sir? Those workers were left stranded, fell by the wayside and lost their dignity. Of course, I am talking of circumstances, which were not difficult then. People were talking about blue sky, calm sea and nice sea breeze. Those were the days, Mr Speaker, Sir, when despite changes on the international scene, despite a new economic landscape they persisted to maintain two legislation which had outlived their purpose. I have in mind the Industrial Relations Act and the Labour Act of 1975.

Mr Speaker, Sir, my good friend, hon. Soodhun, was referring to these two legislation and informed us of things that we know, that because of the provisions of those legislations, when he championed the cause of workers he was thrown into jail by the then Prime Minister, Sir Anerood Jugnauth. He was asked to keep company with mice, bugs and termites. Of course, had it not been for his good uncle, late Sir Satcam Boolell, he would have remained confined to the perimetry of the four walls. But then, this is history and this is the philosophy of the Labour Party to come to the rescue of trade unions who championed the cause of workers.

Let me remind the House also, when Algoo had his hand cuffed to the bed in the hospital, suffering from heart problem, again based on principles and values of the Labour Party, in spite of the fact that we were in Government, we saw to it that Algoo should be released and be treated with all the dignity and respect that he commanded.

Earlier this morning, the hon. Prime Minister was saying that 45 journalists fighting for freedom of association, fighting for democracy, human rights, were arrested and thrown into jail. Now, you want to know the vast difference that there is between them and us, Mr Speaker, Sir. We are people of principle, Mr Speaker, Sir, and we are a party deeply rooted in the values of socialism, but there is no such thing as *status quo*, Mr Speaker, Sir. The world moves on. We have become a tiny winy hamlet in the global village, Mr Speaker, Sir. Therefore, we cannot live with rigidity and anachronistic legislation. This is why we have to loosen the rigidity of the labour law and we have to be active and pro-active.

Since 2005, my colleague, the then hon. Minister of Labour, has had extensive discussions; not only did he have intensive discussions, Mr Speaker, Sir, with those

stakeholders, but sought the views of our friends from ILO, because we subscribe to the Convention of ILO (Conventions 87 and 98) which led to the introduction of two legislations which respond to the needs of a nation which is on a march, Mr Speaker, Sir. Our objective is not to confine workers to low income or low productive job. In fact, the policy of the Government, in its all-inclusive package, is to empower workers, Mr Speaker, Sir, putting the country and the workers first, but, at the same time, we have to be faithful to our mixed policies, Mr Speaker, Sir. You have to create the conducive environment, to attract investment, to widen the circle of opportunities for workers, trade unions, employers and for everybody. There was a time when we say that to be successful, you need to have a Three-Legged Stool: private sector, public sector and trade union. Today, we need a Four-Legged Stool: private sector, public sector, trade union and NGO. The process has to be inclusive. There is no alternative to an inclusive process, Mr Speaker, Sir. And when I think of the fate of those workers who stage a protest when IRA and the Labour Act were in force, what was the instruction given, Mr Speaker, Sir, to the SSU to wheel the baton and charge those workers who had been made redundant and fighting for their basic rights.

I ask the question again ...

(Interruptions)

Yes, if you want to walk down memory lane and recall wildcat strikes: paralysis of the port, Mr Speaker, Sir, setting sugarcane on fire, bringing the country to a standstill, putting at risk the export of our basic commodity, which was the mainstay of the economy, sugarcane. We can walk down memory lane and I will accompany you in our perambulation down memory lane.

Mr Speaker, Sir, I ask the question: when those workers were made redundant, did they have any accompanying measure? Could they register on the workfare programme? There was no workfare programme. Would they be eligible to a transition unemployment benefit? Could they be skilled and re-skilled? Because if you want to empower our workers, we need to raise the profile of the workers and we need to make sure that through training, they become dignified. Did they have the opportunity then, Mr Speaker, Sir, to have start up to start small micro-enterprise? Did they have any support from SMEDA, Mr Speaker, Sir? What was the relevance then of the termination of the service and contract board vis-à-vis those redundant workers? Was reinstatement, Mr Speaker, Sir, possible for those when there

was a *prima facie* case of unfair dismissal? What were the criteria for closure? Were these clearly spelt out, Mr Speaker, Sir?

Mr Speaker, Sir, this is the difference that we make. We make the difference because we champion the cause of workers and we believe in human capital, Mr Speaker, Sir. I had the visit two weeks ago of a newly appointed Chinese Ambassador and he was there to pay courtesy call, but we talked for an hour and you know what he told me, notwithstanding that he was full of praise of our decision-making process to turn the economy round, following the abysmal inheritance or legacy that was bequeathed to us in 2005.

Today, China, Mr Speaker, Sir, is pro-market economy and they are having a fresh look at labour legislation. They are revamping, Mr Speaker, Sir, their public sectors because the name of the game is competitiveness and what is true for China, now a prominent member of the World Trade Organisation, is equally true for New Zealand, and in New Zealand one of the most enterprising companies is a company run by cooperative society – Fonterra, Mr Speaker, Sir, exporting agro processed products to Europe and to the Far East and Middle East, Mr Speaker, Sir. So, what is it that we have to do? We constantly, together with our trade union, need to work together, act in unison and be mindful how events are unfolding on the international scene.

Mr Speaker, Sir, we are negotiating with the objective of concluding a complete EPA agreement and, of course, we need to monitor carefully what would be the outcome of a post 2015 AGOA. It is very important because when you have your reliable and most trustworthy partner, your predictable partner, negotiating trade agreements with third parties, we have to be careful of the impact that these agreements, call it FTA, will have upon our export: tuna, sugar, textile and garment, Mr Speaker, Sir. This is why I say it is a very competitive world and it is tough outside. So, I am glad that there is a carve-out in the amendments that are being brought to ensure that our export-oriented sectors do have what I would call some legitimate advantages, Mr Speaker, Sir.

And it is good also, that employers have adopted new procedures. Today, there is a new mindset; new mindset because we need to adapt. If we don't adapt, Mr Speaker, Sir, I am not going to say that we are going to perish, but certainly we will suffer huge setbacks. When you look at the production unit of - let me take the case of Leisure Garments which exports most of its products to USA; they have what they call deskilling of the Production Unit, to make it easy to attract young people to come and work, and whether we like it or not,

we need to have a workforce which is also multi-skilled. Because when you look, Mr Speaker, Sir, at the cardinal principles of the two legislations, Mr Speaker, Sir, we have to refer to flexibility in the labour market, to allow for horizontal and vertical mobility of workers and we have to make sure that enterprises become more adaptable in a world, as I have said, where firms have to be globally competitive. We need security for workers and I talked earlier of support to face risks to enable workers to move from one job to the other.

I mentioned earlier the industrial relation that reflect new and more varied needs of employees and sophisticated relations between employers and employees and, of course, collective bargaining that is fair to employers and to the population in case when the general welfare of the population is involved. But at the end of the day, Mr Speaker, Sir, if I want to share the cake and I want to ensure that there is fair and equitable distribution, I have to create the conducive environment to make the cake bigger and this is why I come back to the all-inclusive package where we put a lot of premium upon the two legislations that have been introduced, two legislations which are very dynamic and because they are so dynamic, we have no choice but to constantly amend the legislation.

Mr Speaker, Sir, but, there is seriousness of purpose and my colleague has been very thorough when he moved the Second Reading of the Bill. I read carefully the speech that he delivered; a masterpiece, stroke of a Minister, Mr Speaker, Sir, who is a rising star. I must say, not a single provision of the legislation was left out, Mr Speaker, Sir. I recall when hon. Dr. Bunwaree introduced these two legislations, we saw to it that we would leave no stone unturned. What was the criticism levelled at us then? More of a perception than reality, a misconception that it would be easy to hire and fire, Mr Speaker, Sir. But then, Mr Speaker, Sir, it was not the case.

Let me refer, Mr Speaker, Sir, to the set criteria established before there is closure of factory and the icing on the cake in respect of the legislation is, what we call, the Employment Promotion and Protection Division. This is the icing on the cake. What it does, Mr Speaker, Sir is that it compels the employer to justify his or her action. The vast difference, Mr Speaker, Sir, is the possibility for reinstatement. This is the icing on the cake.

Mr Speaker, Sir, of course, we want full participatory approach, and to have it, we need to empower the Trade Union. We have to make sure that the level of preparedness is excellent, because we don't want any oligarch in the Trade Union Movement, Mr Speaker,

Sir. Only oligarchs think that they can call strike at their own whims and caprices, because they think that others do not have the same level of preparedness.

Access to information has become a right and not a privilege of a handful few, Mr Speaker, Sir. What we are saying is that Government is there to dispense support to Trade Union. When you look at the provision in respect of affiliation to Trade Union, powers given to Trade Union to enter into collective bargaining and agreement, we want to ensure that they are able to recruit the best lawyers, the best accountants, the best economists, Mr Speaker, Sir. Whether, you are in the Green Room in Geneva of the World Trade Organisation or at the oval or round table, Mr Speaker, Sir, we need to put arguments forward and we need to have the power to rebut arguments put forward by those who can destroy emotion, because no nation thrives on emotion alone, Mr Speaker, Sir. We need substance and substance, Mr Speaker, Sir.

So, when we look at all the provisions in the legislation to empower workers, these are decisions not taken lightly. Besides wide discussions at the bar of public opinion, advice was sought from the ILO, Mr Speaker, Sir, and there was a memorandum of technical comments on the Employment Relations Bill and Employment Rights Bill which were submitted. I don't know whether it is fate, but I was told that my good friend, hon. Soodhun, was given a senior post at the ILO, Mr Speaker, Sir. Maybe, he would have been there to endorse this document but, unfortunately, Mr Speaker, Sir, perception is not always a mirror image of reality.

Let me refer, Mr Speaker, Sir, to the chronology of recent events. It is good to again reiterate what the hon. Minister stated from the time he moved the Bill for the First Reading and the interactive session he had with workers organisations notwithstanding a document that was forwarded to the Prime Minister which, of course, was sent to the Minister of Labour, Industrial Relations and Employment. But, Mr Speaker, Sir, there was ongoing dialogue. I can understand, as I say, that we cannot rally everybody to our views. Mr Speaker, Sir, you have been an excellent Minister of Labour and Industrial Relations and you know how difficult it is, especially when out there, Mr Speaker, Sir, there are people hell-bent to undermine the economy. I will recall those days, but we moved on with time, like we say, this is a new era. An era, Mr Speaker, Sir, where 80% of our economy has become service-oriented and we need new mindset with new legislations. This is why it was important that the dialogue was ongoing. I cannot blame others who chose to stay elsewhere,

Mr Speaker, Sir. We know what has been the outcome of the strike that they organised; an outright, an abysmal, failure because today people are aware. As I say, knowledge is widely disseminated.

The hon. Minister had given interviews to all the press, had several interactive sessions, and had aired his views on the radio. So, the nation was apprised of the merits of these two legislations, Mr Speaker, Sir. We had meetings with the MEF, *Platform kont lalwa travay anti-travayer*, Federation of Civil Service, etc. But then, what was the criticism levelled? One, that there was no structured dialogue. I can understand my friends from the Employers Federation or from the Trade Union Movement. They have to voice out their feelings, otherwise they will be in oblivion. They have to be heard.

But, ultimately, Government has to assume its responsibility, and a responsible Government, Mr Speaker, Sir, has to be seen to be convincing and the nation has acquired to the arguments that we have put forward to them, Mr Speaker, Sir. And precisely, why we take decisions where others failed, Mr Speaker, Sir, it's because in the furtherance of the interest of workers and the nation at large, we have to empower our people. We don't have to look back, but we look in the rear mirror to give a better interpretation to the present and the future, Mr Speaker, Sir.

Mr Speaker, Sir, let me come to the right to strike. We know that the Prime Minister under the previous legislation had the power to call off a strike. But he had surrendered this power when the new legislation was introduced. Only the Supreme Court can declare a strike illegal. The Prime Minister has the right to apply to the Supreme Court, prohibiting the continuance of a strike. But we need to ask basic questions. The right to strike, under section 76, is entrenched in our law. It is a fundamental right. It cannot be taken away, Mr Speaker, Sir. But, however, sacrosanct the right is, is it an absolute right? I ask the question. Is it an absolute right, Mr Speaker, Sir? Irrespective of the jurisprudence, rights, Mr Speaker, Sir, are conditional. Each right has a reciprocal duty. And what is this reciprocal duty, Mr Speaker, Sir? We cannot send wrong signals to foreign investors. Our social harmony should not become brittle. Even then, Mr Speaker, Sir, the hon. Minister in his wisdom, protects the worker, Mr Speaker, Sir.

Employees, Mr Speaker, Sir, should understand the importance of discipline at work and the meaning of man, that is, productivity and competitiveness. This brings me to the status of collective bargaining which is a contractual obligation between parties. In the

middle of an existing contract, how can we discuss on the enforceability of a document that is already existing and parties are bound by the provisions? I have in mind, Mr Speaker, Sir, of course, enforceability of collective agreement between the Joint Negotiating Partners and the MSPA in the present collective agreement, only if there are varying circumstances of major impact, export oriented economy. If we don't export, we die. If we don't attract investment, we have setbacks, Mr Speaker, Sir and again a backdrop of financial and economic crisis. We have to export, we have to export and we have to export. Can we afford to allow anybody to paralyse our airport or our sea port, Mr Speaker, Sir? This is the harsh reality. When there are varying circumstances of major impact, when there is a major increase in the cost of living, can there be negotiations even if the contract is in force? The onus is to prove that there is an exigency proved with concrete evidence that there have been varying circumstances, I refer to section 58 (b) substantial change of circumstance.

Mr Speaker, Sir, when the hon. Minister moved the Second Reading of the Bill, he warned the House and the country at large of impending strifes; of those, Mr Speaker, Sir who were hell-bent to use existing provisions to leverage their alleged clout. But as I have said, Mr Speaker, Sir, they have been caught literally with their pants down.

Mr Speaker, Sir, I am not going to highlight the host of measures taken by the hon. Minister to reinforce powers of workers and to make it possible for workers to be more mobile because there is no such thing as job protection. In fact, we have to safeguard the interest of workers.

Mr Speaker, Sir, there have been some proposals made by responsible trade unions. On the issue of portable severance allowance, I am not going to highlight the merits or the demerits, but it is something that we need to give some thought. I know that the hon. Minister of Labour is presently in consultation with the International Labour Office with a view to be provided with an expert to advise as appropriate on the matter.

Mr Speaker, Sir, since 2005, we have been bold and we had the audacity to change, to turn the economy round, to be credible vis-à-vis development cooperating partners, to raise our profile vis-à-vis the International Labour Organisation in respect of the conventions that we signed. Of course, I have in mind also, convention on domestic workers. I have in mind convention on night shift. When I look at the host of measures taken to dignify workers, Mr Speaker, Sir, and to send strong signals to all partners that there is a need for fair and equitable distribution; provided, of course, we instil discipline and you work efforts. No one

owes us a living, Mr Speaker, Sir. The world is dynamic and as a teeny-weeny hamlet in the global village, we have to mainstream, be active and pro active.

Thank you very much.

(6.45 p.m)

Mr R. Uteem (Second Member for Port Louis South & Port Louis Central): Mr Speaker, Sir, after five years of sufferings, tears and thousands of job losses, after five long years of protests by workers, trade unions and Members of the Opposition in and outside Parliament, Government finally comes forward with two Bills to amend the Employment Rights Act and the Employment Relations Act. Hopes and expectations were high. The hon. Minister of Labour promised a lot, but in the end, he turned out to be nothing more than a perceived '*zom patron*', *un ministre patron*, *un ministre* perceived to be at the beck and call of the large corporations and the sugar barons. For truly, save for a few bits and pieces here and there; there is nothing, nothing in the proposed amendments to these two legislations to improve the lot of the workers, nothing to brag about. It is no surprise, therefore, that the trade unions and workers from all quarters have unanimously rejected the amendments. It serves no purpose for the hon. Minister to try to capitalise on the rift between the trade unions. The fundamentals are unchanged. The reasons why the Opposition and the workers have rejected the Employment Rights Act and Employment Relations Act when they were introduced in 2008, have not been addressed. No new social contract is being proposed.

Mr Speaker, Sir, the two existing legislations are largely regarded as being unduly biased in favour of the employer. He has the right to hire and fire. All that this employer needs to do is to argue that the employment of the worker is being terminated for economic, technological, structural or similar nature affecting the employer's activities. Once he has done this, the only thing he needs to do is to pay a meagre recycling fee of either three days, six days, 10 days or 15 days of basic salary for every 12 months of continuous employment. That is all! Only between three and 15 days of basic salary! Of course, the Bill does propose to amend the recycling fees which these employers have to pay: by how much? The recycling fee will now be increased from three days to six days of basic salary for every 12 months. Yes, Mr Speaker, Sir, from three days to six days. What an achievement! This is how we are going to make the employer contribute to the welfare of workers. Truly a caring Government! A Government that cares for the pockets of the employers. Thanks to '*zom patron*', le grand patron will only have to fork out six days of salary per year of service for

workers up to ten years of service. That is not even half of the normal severance allowance which used to be two weeks per year of service. That is not even 7% of the severance allowance at punitive rate which used to be three months per year of service.

Today, the employer only has to fork out between six days and 15 days. Once the employer dismisses the worker on economic grounds, the worker can either sue the employer before the Industrial Court or he can join a workfare programme, but he can't do both. If you want to be paid transitional unemployment benefit, if you want to benefit from the workfare programme, you can't go to court. That's the stick! Only the Permanent Secretary of the Ministry can decide whether you can go to court and enjoy your workfare programme. The Ministry of Employment has the duty to try to find a settlement between the employer and the workers. It is only when he can't find a settlement between the worker and the employer that he has to start investigating and considering whether there is a genuine *bona fide* case to go to Court.

Unfortunately, Mr Speaker, Sir, a lot of us, Barristers, who deal with workers who have been laid off after the coming into force of the Employment Rights Act, know the uphill battle which workers have to undergo in this country when they are facing employers who have dismissed them for reasons of economic, structural or technological changes. And I speak from experience when I say that the labour officers in the Ministry are ill-equipped to ascertain, verify and determine whether dismissal on economic grounds is justified or not. They do not have the necessary skills and expertise to undertake a review of the financial situation of the employer. They do not have the skills and expertise to determine whether the employer's alleged economic difficulties are genuine or not; whether they are cyclical or permanent, and because of this major shortcoming, they pressure the workers to accept a settlement with the employer.

A Member of my constituency was telling me the other day, Mr Speaker, Sir, how, through trickery, his employer terminated his employment. For a number of years he had been working for one of the flagship companies of Mauritius, one of the big listed companies in Mauritius. And then, one day, the HR Manager called him and said "we are restructuring our operations, and you will no longer work at the Head Office for this company. We are going to make you work for a subsidiary." Two years later, the subsidiary closed down. He was sacked; terminated on economic grounds. He went to see the Ministry for help, and the Ministry invited him to join the workfare programme, telling him to go and negotiate with the employer. Do you know, Mr Speaker, Sir, what was the outcome of the negotiation? The

employer gave him back his job in another subsidiary on the express condition that he waives all his existing years of service and benefits, and accepts a reduced pay.

This is what workers of this country have to go through because of the existing legislation. The system is abused by the employers, and workers are not adequately protected. The hon. Minister himself concedes that this provision is being abused by the employers.

Answering to a PQ, which I asked him on 10 May 2011, the hon. Minister stated that 6,932 workers had lost their jobs since the Employment Rights Act was proclaimed, and out of the 6,932 workers, only 369 - not even 5% - cases of workers laid off had been lodged in the Industrial Court. Only 5%. What happened to the others? They just settle. He said, and I quote -

“Ever since the proclamation of the Act, it is clear that certain employers have made use of the term ‘economic reason’ in order to make certain people redundant, and all sorts of schemes and measures are sought after and devised by certain employers, in order to make people redundant. The hon. Member is totally right that there are some operators who make an abuse of the system, and they call it economic reasons in order to avoid to pay compensation”.

He then added, and I quote -

“Let me also add that I have recently received many representations by trade unions, who have asked that there should be some sort of amendment made to the Employment Rights Act in order to have a filtration process whereby this abuse made by certain employers could be reduced. Those suggestions are very interesting and are indeed being studied. Our objective thereby is to avoid this abuse because we believe that we should not allow any employer, not even one, to come and put forward the economic reason as the reason for redundancy because this would be an easy way out for them not facing the responsibility of paying compensation. We are seriously studying the proposals made by the unions”.

That was in 2011.

“We are seriously studying the proposals made by the unions.”

Two years ago! It’s okay! He was a new Minister; he needed time to study the points; he no doubt also needed to discuss these proposals, which he found very interesting, with *le grand patron*. So, a year later, when nothing had been done, on 08 May 2012, answering a PQ from hon. Alan Ganoo, the hon. Minister stated that 15,538 workers had lost their job since the Act was proclaimed. About 9,000 more workers had lost their jobs while the perceived ‘*zom patron*’ was seriously studying proposals made by the unions. This is

what the hon. Minister said in this House. In the space of one year, from around 7,000 to 15,000 laid off. And to give the impression that he actually was doing something about it, he stated, and I quote -

“I have already gone to Cabinet with proposed amendments. We are, in fact, setting up a new institution in order to see to it that the abuse that certain employers make will no longer exist. We are also making very important changes with regard to termination of employment in the Employment Rights Act. We are also bringing some positive changes to the workfare programme that works in the advantage of laid off workers. Therefore, I can assure the hon. Member that Cabinet has already approved those changes, and every single change that is being brought will precisely address this Situation, which I totally agree with him, must be addressed because there are certain employers who make an abuse of the situation”.

Now, let us pause for a minute, Mr Speaker, Sir, and reflect on what the hon. Minister said a year ago when considering proposed amendments. As far back as May 2012, one year ago, he informed us that Cabinet had already approved the proposals. One year ago, Cabinet has already approved the proposals, and here we are today, one year later, the hon. Minister is still proposing amendments to amendments to amendments of the new law. How indecent it is, Mr Speaker, Sir, that after the hon. Minister had done the Second Reading, he comes up with further amendments, which we received during the weekend? And then, further amendments to the amendments he circulated during the weekend, which were only communicated to us yesterday. What is this? How are we going to interpret these amendments? These were circulated after he did his Second reading. What type of respect there is for Members of this august Assembly? And this, Mr Speaker, Sir, is so characteristic of this Government! They don't know where they are going. They don't know what they are doing. They govern by trial and error, as was rightly said by the Director of Audit a few years ago. They simply do not trigger the thought process before they take a decision. To call them *amateurs* would be flattery. They are simply *limités* and incompetent, and thousands of workers have lost their jobs because of their incompetence.

So, in May 2012, the hon. Minister announced that he is bringing some positive changes to the workfare programme that works in the advantage of laid off workers. Cabinet has already approved the positive changes to the workfare programme. What are these? Mr Speaker, Sir, I have struggled my way like all my friends, I am sure, on both sides of the House, through the layers of amendments that have been communicated to us over the few weeks. But I could find nothing about how the workfare programme is being improved,

except that the delay for the worker to join the programme has been extended from seven days to 14 days.

The amount to be paid to the worker under Transition Employment Benefit is not being increased. The compensation payable to workers is not being increased. This compensation will still terminate if the worker becomes gainfully employed, or worse, if he refuses an offer for job placement for a second time, irrespective of the type of job and salary offer.

But then, why did the hon. Minister state to this House that he would improve the workfare programme, that Cabinet has already considered his proposals one year go? And then he fails to deliver on what he has stated. Did he receive representation from his masters - a term which he likes to use for others - not to improve the lot of the laid off workers? That reminds me of a song '*parole parole*'. It is easy for anyone to say anything anytime, anywhere, but only men of honour stand by their word. That reminds me of a song - parole, parole. It is easy for anyone to say anything any time anywhere but only men of honour stand by their words "honour" surely not part of the vocabulary of those who want to control everything and yet be responsible for nothing.

So we are told that changes are being proposed which will address the situation because in the words of the hon. Minister there are certain employers who make an abuse of the situation. Will the situation change with the proposed amendments? Mr Speaker, Sir, I am quite sceptical about it. The Bill proposes the setting up of an Employment Promotion and Protection Division of the Employment Relations Tribunal which will determine whether reduction of workforce is unjustified. This Division, according to the proposed amendments, will consist of the President or Vice President of the Tribunal and of two independent members with proven experience in field of employment relations and finance respectively. Two independent members - what does 'independent members' mean, Mr Speaker, Sir? Do independent members mean that he cannot be a worker? Does it mean that he cannot be a trade unionist? Does that mean that he cannot be an employer? It would seem that the Minister has absolute discretion in the matter, but I hope that, in his summing up, he can indicate to us what are the criteria to be used to determine what 'independent members' mean.

Now, this new body will only have jurisdiction to hear cases involving employers of not less than 20 members. Why 20? We all know that most SMEs would not qualify. A lot of small companies will not qualify. A lot of people, who are employed by these SMEs, will not have the benefit of that Tribunal. On the contrary, it will encourage large groups to split their

operations in smaller units and employ less than 20 employees so that they fall outside the purview of the Tribunal. Next, we need to consider who can refer cases to the Division. No surprise here again - only the Permanent Secretary of the Ministry can; not the worker; only the PS. And there we see the very same cut and paste provision which has to be followed under the existing law before the Permanent Secretary could refer the matter to the Industrial Court, the very same procedure which has been condemned by trade unionists, workers and Members of the Opposition. The Permanent Secretary still needs to promote a settlement between the parties and he still needs to determine that the worker has a bona fide case. Again the worker has absolutely no say. If the worker is not happy and wishes to refer the matter to the Industrial Court - a stick again – he loses his right to transition unemployment benefit. He is thrown out of the welfare programme. The British has an expression, Mr Speaker, Sir, to qualify this state of affairs – “old wine in new bottle” – I prefer our very old expression: *bouz fix vir ki tourne, tourne ki vir* much of the same thing. The Division, if it is called upon to consider a case will hopefully be better equipped than the Ministry, but the fundamentals are unchanged. The root of the problem has not been tackled. The employer can still hire and fire at will. He does not need to go through the Division before he sacks a worker. This makes all the difference because this puts the employer in a strong bargaining position. The workers, having lost their job, are in financial difficulties; they are vulnerable and will accept any compensation from the employer. This is precisely what *patron là* wants. That’s exactly what *zom-patron là* is offering to him on a *plateau*. Nothing will change. The employers will continue to abuse the situation. Workers will still be arbitrarily sacked, a total failure.

Mr Speaker, Sir, I agree that in the proposed amendment, the employer now has to consult trade union or group of workers and explore the possibility of avoiding a reduction in workforce, but this is only a formality. There is no legal obligation for the employer to agree with the worker. There is no obligation on him to take any of the measures set out in the proposed section 39(a)(iii). There is not even a prescribed time frame for consultation just an absolute eyewash. The employer only has to state that the redundancy has become inevitable after meeting the trade unions and we all know how accounts, Mr Speaker, Sir, can be prepared to paint a picture of doom and gloom.

Mr Speaker, Sir, we are pleased to see that the Division and the Industrial Court will now have the power to reinstate employees. For too long, workers have been subject to arbitrary dismissal and management got away with it by signing a cheque. There is nothing worse for a worker than to be innocent and yet lose his job. This is such a great injustice. You

are innocent, you lose your job; they are wrong in dismissing you yet they stay in their job. We all remember, Mr Speaker, Sir, the case of Mrs Rehana Ameer. This case was the subject of a PNQ in this House. She was summarily dismissed. The management of MBC/TV was clearly at fault, but she had all the trouble of the world to get her due and be reinstated. I salute her today. I salute her because there are very few people especially women who will stand up against the “Jigri Dos” of the Prime Minister, master of manipulation and head and chief of Navinchandra propaganda. Even the hon. Minister of Labour had to suffer the humiliation of being snubbed by the hon. gentleman who refused to meet him when he was summoned to appear before the Ministry. Yet this gentleman indecently stayed in his office and comes here every Tuesday; fed by the compulsory licence fees which workers of this country have to pay even if they can't stand watching cheap politicians impose their image every day and night on TV. Most recently we had the case of Ms Asha Rampadaruth who had to undergo a hunger strike together with trade unionist Jack Bizlall to seek justice after being unfairly dismissed. She wanted to be reinstated. She wanted to work, but, in the end, she had to do with compensation when the employer refused to reinstate her.

Mr Speaker, Sir, the proposed legislation is also correcting a long-standing injustice suffered by workers who have a contract of fixed duration. We all know how some unscrupulous employers employ workers for eleven months of the year then comes the month of November they are sacked, the contract is terminated. In January, February, they are given a new contract. By doing so, the unscrupulous employer does not have to pay end-of-the-year gratuity and the workers are vulnerable because, not having stayed for more than one year in employment, they don't get some of the acquired rights like annual leave, sick leave and the rest. At the end of the expiry of his contract, the vulnerable worker receives no compensation. But, let us not forget Mr Speaker, Sir, how this loophole or anomaly in the legislation has been abused by this very Government. After the general election, especially in 2005, they engineered what I call political cleansing, the notorious *lev pake aller* to terminate the employment of dozens of workers. In the obsession to put their own people first, they would lay off social workers employed on a contractual basis. I have in mind the trade unionist, Eddy Sadien, who was inelegantly told to *lev pake aller* after the Labour Government came into power. He went all the way to the Supreme Court, but the Supreme Court applied the black letter law; refused to consider the successive employment contract and rejected his claim for continuous employment.

Mr Speaker, Sir, when the two legislation were enacted in 2008, they were largely perceived to be as a trade-off. First, the Industrial Relations Act was repealed - something

which trade unionists have been asking for years. So, that was for the workers, for the trade unions. The Employment Relations Act was enacted and the Labour Act was repealed and replaced by the Employment Rights Act which is pro-employer, giving them the right to hire and fire without having to go through the Termination of Contract of Service Board.

Unfortunately, today with the proposed amendment certain acquired rights of workers under the Employment Relations Act are being revoked, while the acquired rights of the employer under the Employment Rights Act are being preserved. It is for this very reason that the Minister is widely regarded as '*zom patron*'. One of the acquired rights of workers under the Employment Relations Act was a right to strike. Of course, procedures had to be followed, but ultimately, when there was a dispute which was not resolved and a strike ballot had successfully been taken, workers had the right to strike.

Mr Speaker, Sir, the right to strike is not a new demand. The Select Committee of this House set up in 1982, in relation to the repealing and replacing of the Industrial Relations Act, considered lengthily the right of strike and stated, I quote –

“Your Committee strongly considers that irrespective of the nature and function of industrial relations machinery, the right to strike should, as a fundamental human right, remain the ultimate weapon of the worker in the furtherance of his rights.”

This fundamental human right was recognised by hon. Dr. Bunwaree - when he was then Minister of Labour - who presented the two Bills in 2008. He said, and I quote –

“The right to strike, Mr Speaker, Sir, is an intrinsic corollary of the right of association and has been adequately provided for in Part VII of the Employment Relations Bill along the line advocated by the ILO.”

Even the hon. Prime Minister commented during the debate as follows –

“The right to strike has been a subject of much heated debate in Mauritius. One major hurdle to the right of strike is the power vested in the Minister by the current legislation to refer a dispute for compulsory arbitration. It deprives the worker of a fundamental right and deprives the trade unions of what they consider to be the most effective means at their disposal to forge a solution which is to the advantage of the members. This will no longer be the case in this proposed legislation. In fact, the law will now allow the workers to decide in a democratic manner whether or not to go on strike. Though the right of strike is an intrinsic part of freedom of the association, it

should also be used as a last resort after all attempts at conciliation and mediation fail.”

Unfortunately, Mr Speaker, Sir, today, what is being proposed before this august Assembly seriously curtails the right of workers to strike. The hon. Minister is expanding the cases where workers cannot report a labour dispute and this is a pre-condition to calling a strike. I tend to agree with Mr Ashok Subron when he states that the proposed amendments are tailor-made for the sugar barons and meant to prevent workers from the sugar industry from going on strike.

The proposed amendment to section 67 of the Employment Relations Act goes beyond what is accepted in a democratic State which respects the right of workers. The Minister is also proposing to amend section 9(2) of the Employment Rights Act which prevented a worker from being dismissed for reasons of his participation for a first time in a strike. This provision was not inserted by mistake, as the hon. Minister would have it. *C'est l'aboutissement d'une longue lutte des travailleurs*, a struggle which, indeed, was supported by the real Labour, and by this, I mean Dr. Maurice Curé, Guy Rozemont, Emmanuel Anquetil and the like, not by the fake Labour, the usurper who suppressed trade unions and enacted the Industrial Relations Act, a struggle that was continued by Paul Bérenger and others.

Mr Speaker, Sir, the Report of the Select Committee in 1982 provided, and I quote –

“As for the legal effect of strike, your Committee are of the opinion that on no account should a worker be exposed to criminal sanction on the sole ground that he has participated in a strike and on no account should the contract of employment of a worker be terminated on the sole ground that he has participated in a strike.”

That was back in 1982. Today, ‘*zom patron*’ is talking about an anomaly in our law. Guy Rozemont must be rolling over in his tomb, the same Guy Rozemont who is reported to have said, and I quote –

“S’il y a des capitalistes au paradis, ce qui est fort improbable, je n’hésiterai pas à provoquer une révolte des anges.”

Non, Monsieur Rozemont, ils ne sont pas au paradis ! Ils sont tous là dans notre auguste Assemblée, en face de nous, représentant ce qui fut jadis votre parti ! What has become of the Labour Party? What has become of the champions of workers’ right?

(Interruptions)

Mr Speaker: Order!

Mr Uteem: Mr Speaker, Sir, throughout his speech, the hon. Minister shed his venom on the trade unionists who were not present in this House; trade unionists who could not defend themselves, because they were absent from the House; they had no right of audience.

Today, I want it to be recorded that we, on this side of the House, have always and will always stand by the side of the trade unionists whose aim is, and has always been - and I am sure will always be - to better the standard of life for all those who work for wages and to seek decency and justice and dignity for all workers in this country.

Thank you.

Mr Speaker: This is the proper time to suspend for one hour and fifteen minutes.

At 7.26 p.m. the sitting was suspended.

On resuming at 9.03 p.m. with the Deputy Speaker in the Chair.

Mr J. F. François (Third Member for Rodrigues): M. le président, mesdames et messieurs les honorables membres, le pays traverse un moment exceptionnel après avoir subi les tragédies résultantes d'une calamité naturelle, les *flash floods*, un phénomène qui relate aussi à certaines provisions de l'*Employment Rights Act* et de l'*Employment Relations Act*.

M. le président, permettez-moi d'abord de rendre hommage aux victimes de cet évènement apocalyptique que vient de vivre toute la nation Mauricienne et au nom du peuple de Rodrigues que je félicite d'ailleurs, j'exprime notre totale solidarité sans condition dans cet élan d'unité nationale face à ce drame envers ceux qui sont dans la détresse et aussi en mémoire des victimes en partageant les peines des familles.

M. le président, le projet d'amendement à l'*Employment Rights Act* et l'*Employment Relations Act* est d'une portée sensiblement historique dont nous débattons aujourd'hui avec des provisions nouvelles et aussi dans un cadre des avis divergeant sur le *timing* et certaines provisions proposées. Je suis ravi que l'honorable ministre ait décidé que certaines provisions contradictoires seront enlevées lors de l'examen en comité. Permettez-moi quand même de souligner que la présentation de ces amendements, que ce soit avec détermination ou conviction, en action et en pensée se trouve dans une situation de résistance continue mais démocratiquement importante.

M. le président, mon intervention ce soir se situe dans un contexte précis de ces amendements surtout en tant qu'élus du peuple de Rodrigues tout en saisissant l'opportunité de progrès collectif et d'un changement de regard historique pour la République. Evidemment, j'apporte en particulier mes réflexions personnelles en ligne avec les principes fondamentaux de mon parti, l'OPR, qui a toujours lutté pour plus de justice sociale pour le mieux-être de notre peuple et, plus particulièrement, la classe travailleur. J'apporte aussi sans parti pris - je dis bien, sans parti pris - la voix venant des syndicats de Rodrigues. Et là, M. le président, dans le cours de la seconde lecture de ces amendements, j'ai fait un devoir d'aller rencontrer les syndicats de Rodrigues notamment le *Rodrigues Government Employees' Association (RGA)*, le *Rodrigues Public Service Workers' Union (RPSWU)* et d'autres syndicats du secteur privé et Monsieur Milazar, le président de la *Rodrigues Commission for Conciliation and Mediation* pour prendre connaissance de leurs appréciations et positionnements vu qu'ils sont les plus concernés techniquement sur le plan local en la matière.

M. le président, dans le cadre de ces amendements, la grande question que chacun de nous doit poser reste quel droit du travail et de relation, pour quel développement pour le progrès de l'avenir économique, social et politique pour notre pays. M. le président, l'objectif primaire de ces amendements est de protéger les intérêts des travailleurs, régulariser certains manquements pour les employés et accentuer les rôles de l'État même parfois s'ils sont controversés.

Coming now to the Employment Relations Bill, Mr Deputy Speaker, Sir, the various objects of the Bill to amend the principal Act, as set out, define an avenue for more practicable piece of law such as –

“to have recourse to strike - a very important piece of information - if need be, where no settlement is reached at the level of the Commission.”

To build productive employment relationships through the promotion of good faith in all aspects of the employment environment and others as set out in the Explanatory Note. They do provide some newness to the Principal Act, certainly, Mr Deputy Speaker, Sir. At section 29(1) of the Principal Act it is said that provision is made for the right of workers to freedom of association and this, in line with the International Labour Organisation Convention to establish or join as a member of trade union of his own choice without previous authorisation

and without distinction whatsoever, discrimination of any kind, including discrimination as to occupation, age, marital, sex and others.

Mr Deputy Speaker, Sir, I have paid particular attention to the Second Reading Speech of the hon. Minister Mohamed. I have also scrutinised the various reactions in the general public since 11 December 2012 for its First Reading of the two Bills and what have been voiced also by the hon. Members just then. In that connection, my contribution will be very brief indeed for those amendment Bills. As the Bill is before us, Mr Deputy Speaker, Sir, it is our responsibility to make it work, to amend it where necessary and it is clear that any piece of legislation introduced in this Assembly must have as main aim the best interest of one and all to make our democratic Republic a modern and progressive developed one. Here, I have to quote the inspiring Mr Abdul Kalam, Former Indian President who wrote, and I quote –

“I call to my people to rise to greatness. What are the forces which lead to the rise or fall of a nation and what are the factors which go to make a nation strong?”

And he answered that three factors are invariably found in a strong nation –

- (i) a collective pride in its achievements;
- (ii) unity, and
- (iii) the ability for combined action.

In that case, Mr Deputy Speaker, Sir, if the hon. Minister’s intention is to bring about a re-essence to the employer/employee relations and rights, the proposed amendments must allow people to reason from their good intentions and their wishes with positive response.

Mr Deputy Speaker, Sir, the employment relations in our Republic is in a period requiring far reaching and general positive reformation particularly insofar as policy framework is concerned. I think all, and we have the capacity to bring legal amendments, not to repeat the error of other countries with regard to the uncertain public and private policy direction in as far as employment relations and employment rights are concerned. In fact, our employment relations practices shall not be subject to controversial and highly **adversarial situation.**

Mr Deputy Speaker, Sir, the hon. Minister has been wise enough, I believe, to delete a few controversial sections of the proposed new amendments. One important issue brought to

light by the democratisation of our economy, and which calls for our attention today is: what is the appropriate role of Government? Should it be in the Employment Relations and Rights Environment? Generally, one will reply that it should not, in any case, give way to interfering, nor to allow for an over control of same with hidden agenda. Mr Deputy Speaker, Sir, the good thing is that our laws do provide us with protection of same. It is quite time that the law be enforced so that employees, in all economic sectors in our Republic, are not deprived of their rights of freedom.

Coming to freedom of association, Mr Deputy Speaker, Sir, under section 32 of the Employment Relations Act, freedom of association, which is the fundamental rights of a worker, is guaranteed under the ILO Conventions, namely, the Convention No. 87 on Freedom of Association and Protection of the Right to Organise, and secondly, the Convention No. 98 on the Right to Organise and Collective Bargaining Convention which have been ratified by Mauritius as mentioned by hon. Soodhun.

In the proposed amendments, Mr Deputy Speaker, Sir, I positively note that there is a will to allow all workers to be unionised through collective agreement even where there is no trade union or bargaining unit. Some may say 'yes' or 'no', but I do think so. Trade unionism remains an indispensable institution for the protection of workers' rights and employment conditions for our country. In the same line, public authorities also, shall not interfere in such a way to restrict the right or impede the lawful exercise of union. However, the strength of trade unions will be greatly enhanced by the extent of their *représentativité* and internal cohesion, their grabs of the pressing issues of macro and microeconomic conditions and the extent to which they can evolve a proactive strategic role for themselves as partners in national development.

Mr Deputy Speaker, Sir, being given that our economy is operating in a vulnerable world of business, it does face a certain degree of vulnerability. Everyone knows that to be true. The new object in these Amendment Bills do provide for conciliation service by the hon. Minister and I think, new section 79(a), constitutes a good thing under this Bill.

Having talked on the conciliation service, I move to the Rodrigues Commission for Conciliation and Mediation. Mr Deputy Speaker, Sir, I extrapolate section 99 of the Principle Employment Rights Act as will be amended, and that is correct. This will bring the status of the President at par with that as established with section 87(2)(a) of the Principle Act.

In line with the Employment Relations Act of 2008, provision is also made at section 99(1)(a) for the establishment of a Rodrigues Commission for Conciliation and Mediation, the RCCM, which has the same function as that in Mauritius. The hon. Minister of Labour, Industrial Relations and Employment is amending section 99(1) (a) where provision is made for the Rodrigues Commission for Conciliation and Mediation to change the status of a President from a part-time basis to the rank of a full-time President. I have to point out, Mr Deputy Speaker, Sir, that it was wrongly advised in 2008. This amendment will certainly better consolidate and upgrade the RCCM to fulfil its obligation for the betterment of labour disputes between employees and employers in Rodrigues.

I put on record the present excellent works being done by the present President of the RCCM in the interest of agricultural workers in Rodrigues. In the same line, I do believe also that there should have been an amendment to a change of name of the Rodrigues Commission for Conciliation and Mediation because the word 'Commission' creates confusion to the Commission for Labour and Employment within the Rodrigues Regional Assembly. I do hope the hon. Minister will take note of that. However, Mr Deputy Speaker, Sir, it is worth noting that it is only with the appointment of members of this present Rodrigues Commission in April last year by the actual Regional OPR Government that a programme of work has been worked out and established to the satisfaction of aggrieved workers and employers in Rodrigues.

Mr Deputy Speaker, Sir, having gone through the objects of the Employment Rights (Amendment) Bill, I have noted one or two things. It is the innovative and challenging new directions in the applicability of certain provisions of the Bill. Again, through its historical bearing, the proposed amendments do concern employees and employers of our entire Republic. Mr Deputy Speaker, Sir, one of the critical things was how we get the relationships right between those who are on collective agreement and those who are on individual agreement. It is also imported to point out that employers should not be prevented from providing all employees with the same terms and conditions of employment so long as the bargaining has been carried out in good faith. Certainly, the amendments come to regulate the regime of fixed term contracts of employment to prevent employees from having recourse to such contracts abusively.

Mr Deputy Speaker, Sir, I know the experience of jobs scarcity where job seekers face, what I call, unacceptable languages from employers. We have been facing with : *'si to*

pa envi travay, ena mille dimounn dehor ki pe attann et ki kapav vinn fer travay la dan to plas'. This is a sort of common language used by some employers, and I believe this sort of language should be punished by law in the interest of employees and job seekers. It is right that the amendments support the promotion of best practice so that employers can use the correct procedure towards employees.

Coming to personal grievance issues, especially the procedural requirements for dismissals and disciplinary actions irrespective of what legislation we have, there will always be personal grievance arrangements. Section 37(6)(b) of the Employment Rights Act -

“Subject to section 39B(2), where an employer terminates the employment of a worker, he shall, on the date of the termination of the employment, give written notice of that fact to the Permanent Secretary.”

Mr Deputy Speaker, Sir, I think in a modern and innovative way, this amendment could provide that the employer before terminating the employment of a worker, shall, before the date of termination of the employment, give written notice of that fact to the Permanent Secretary. This is in order to protect the employee.

Mr Deputy Speaker, Sir, I think I have to congratulate the hon. Minister for the historical move to insert the Creole and French written contracts in the schedule. Employees will have the opportunity to gain full understanding of the contract terms and conditions.

Employees will have the opportunity to gain full understanding of their contract's terms and conditions. I have witnessed a terrible example where the stipulated terms and conditions written in English have never been fully explained to employees thus leading to ignorance. Mr Speaker, Sir, it is the recent controversial case of 243 general workers severely criticised by the Director of Audit, formerly employed on a contractual basis by the Regional Assembly in Rodrigues, who have been exploited as a matter of ignorance, mainly by irresponsible politicians in Rodrigues. Allow me, Mr Deputy Speaker, Sir, to put this on record, to enlighten the House about this issue. It was clearly stipulated in one clause of their contractual agreement, that I quote –

“Your employment will be on a purely temporary month to month basis for a period of up to twelve months and liable to termination by one month notice on either side and will not give you any claim to permanent appointment in the Government

service. The employment may be terminated without notice or compensation in *lieu* of notice in the event of incompetence, misconduct or insubordination”.

This is simple and crystal clear English Mr Deputy Speaker, Sir, the workers were asked to sign this in their contractual agreement to secure their jobs which changed status from a yearly to a month to month contract and there Mr Deputy Speaker, Sir, I have to say for the benefit of the House, certain politicians by the prejudice of politics failed to explain the exactness of these conditions. Instead they exploit them for their ignorance simply for political gains in quest to win elections. They keep telling these poor persons that they should have been employed on a permanent basis in the public service by the present Regional Government. Unbelievable! Ironically, Mr Deputy Speaker, Sir, they were same politicians or former Governors of Rodrigues who were in power, who endorsed the same contractual agreement. Mr Deputy Speaker, Sir, I thank the hon. Minister with the terms and conditions of a contract written in creole or French - such problems as faced by the 243 general workers for ignorance will no more be an issue to worry at and I thank him for that.

Mr Deputy Speaker, Sir, the new clause 8 A will call employers to treat properly workers for the terms and conditions for meal allowance. These have often been ignored by many employers in this respect to employees to what we call in creole – *pé fer l'économie chandelle lor roche chaud*. To be only profit driven and it is good that the hon. Minister is bringing amendment to that section. Clause 11 with amendment to section 27 and clause 28 with amendment to section 49 brings justice to worker to be entitled for annual leave and sick leave which is new to the legislation. The paid annual and sick leave which is subject to workers reckoning more than six months, but less than 12 months continuous employment and to part-time workers reckoning more than 12 months service governed by a remuneration order. Very good!

This is a positive step ahead for pregnant women also offering some protection for them before and after child birth. Coming to end of year bonus Mr Deputy Speaker, Sir, my question with regard to new section 31(a) sub section (1), entitlement of end of year bonus for workers employed in a year to end of year bonus is as follows –

What is the status for employees who have been on a month to month contract for a period of 10/11 or 12 months consecutively with the same employer?

Does the law provide for an answer as may be stipulated by section 2A of the same section 31 A, where every worker who takes employment during the course of a year or should there be any amendment somewhere. I am not quite sure, but I hope that the hon. Minister will clarify this later on. This is where also Mr Deputy Speaker, Sir, where I will propose that section 31(a) sub section 2b should be amended by deleting the following words - 31 December in that year. Why?

By replacing it with - 20 December in that year bearing in mind also that the worker has been in employment for at least 11 months as I have proposed. This will tally with section 31A subsection 3 which requires payment of end of year bonus to worker not later than five clear working days before 25 December of that year. This is clearly spelt out in sub section 3 and that is why I am asking to look into the possibility for this amendment.

Concernant les licenciements, M. le président, la section 39 (b) est intéressante vu la disposition relative à la sécurité de l'emploi qui protège les travailleurs contre les licenciements abusifs. En présence d'un licenciement sans motif, valable, plusieurs types de sanction peuvent apparaître adéquats d'intégration, dommage et intérêt, avec ou sans limitation et les représentants de travailleurs doivent être consultés et l'autorité compétente notifiée en cas de licenciement collectif pour motif économique. Il y a certains abus à ce niveau par rapport à certains employeurs, M. le président, et c'est bien qu'une autorisation préalable de l'état est requise et l'état simplement doit agir comme un garant des travailleurs et là la suppression de l'autorisation administrative préalable au licenciement économique présente les avantages suivants qui sont intéressants -

- (i) Un délai de réponse plus court;
- (ii) Une meilleure adaptation de l'entreprise à la réalité économique du pays et la richesse d'une solution négociée comme elle est stipulée.

Coming to the workfare programme, Mr Deputy Speaker, Sir, provision has been made at section 41(1) of The Employment Rights Act for the establishment of workfare programme. The amendments proposed by the hon. Minister to extend from seven days to 14 days. The period within which a worker whose employment has been terminated can make an application to join the Workfare Programme - this is supported. This measure will give the worker enough time to fulfill the administration procedure in case of termination of contract, but the problem remains; the situation for workers who have a work for determinate duration mostly on a month to month basis, consecutively and they are not entitled to this programme.

For example, a company may renew the contract of a worker for say 10 months consecutively, and then the workers are not entitled to the programme, if I am quite right, and I think this is not correct. Fortunately, there is the Human Resource Development Council which section 44 (4), transition and employment benefit of a principal act provides for the HRDC, the Human Resource Development Council and it is worth be noted, Mr Deputy Speaker, Sir, that it took Rodrigues four years since 2008 for the setting up of a branch of the Human Resource Development Council for training and re-skilling scheme in Rodrigues. There again the former regional Government did not find it important to establish same and they failed to do so. I thank the hon. Minister Dr. Bunwaree, the Minister for Training and Skills and others as a partner who came to Rodrigues to inaugurate same last year in the presence of the new Regional Executive Council. This is a positive move ahead.

Mr Deputy Speaker, Sir, section 46 (3B) stipulates that no entitlement for admission to the Workfare Programme, if proceedings are before the court. This poses some problems and I think hon. Uteem also raised that point.

Mr Deputy Speaker, Sir, my question is what will be the duration of the court proceedings? No one knows. We all know how long it takes for our Court to deliver rulings and I believe the law should have also been amended to avoid the sole discretion of the court to decide the time frame, and that the time frame shall be clearly defined in the law to avoid long awaiting time by those people who have their cases before the court.

Mr Deputy Speaker, Sir, one component that needs further consideration is the period of 12 months in employment for a worker. We all know that basically many contractual employees do not technically work for full 12 months in a year. For example, most of the working sites start in the month of January and may end in at the first or second week of December. It is a fact. In that case, I propose for a review of the issue of the 12-month period, and that it be replaced by at least 11 months in the interest of employees.

Mr Deputy Speaker, Sir, the objects of the Employment Relations (Amendment) Bill create a legal framework for the fixed term of contracts of employment to prevent employers from having recourse to such contracts abusively - I mentioned that before. But what I want to say is that we all know that there is considerate abuse by some employers in that connection. For example, in the hotel industry in Rodrigues, I have just been made aware that the salary of workers is being effected weeks after normal paydays repeatedly, Mr Deputy Speaker, Sir. In that particular case, salary for December 2012 was effected on 08

January; for the month of January, payment was effected on 13 February together with about Rs1,200 to Rs2,000 cut-off for two days' non-payment for a non-agreed strike against the abuse of their rights by the employer.

On the other hand, Mr Deputy Speaker, Sir, the law does not provide clearly for any sanctions against the employers who have committed, what I would say, a fault against these employees' rights. I think it is not quite clear in the law, if I am not mistaken. *Actuellement aussi, M. le président, il y a d'autres compagnies privées qui ne respectent pas les conditions de paiement des sous-contracteurs. Certains paiements sont faits avec plus de deux mois de retard.* Certainly, they will be taken to task shortly by the Commission for Employment and Industrial Relations. I am relating to some cases in Rodrigues.

M. le président, je souligne que le meilleur moyen d'éviter des licenciements pour motif économique est d'avoir des entreprises performantes et concurrentielles, comme soutenu par l'honorable Dr. A. Boolell dans son discours précédemment. Revenons sur certains points précis concernant Rodrigues, M. le président. J'ai rencontré des syndicats à Rodrigues, comme je l'ai mentionné, pour éclaircir des zones d'ombre concernant ces amendements. N'empêche qu'il y a encore lieu de faire un peu de lumière sur certaines provisions. Les syndicats déplorent le manque de consultations vu la réalité différente de Rodrigues et celle de Maurice. Les syndicats remettent en cause la transparence des décisions, et c'est aussi un système où chaque institution a sa place, avec des rôles et missions clairement définis pour que le public s'y retrouve, et la classe travailleur aussi. Et là, M. le président, j'ai reçu une lettre de ces syndicats. Vu la pertinence de ces amendements, les syndicats, au nom de la classe travailleur de Rodrigues, demandent encore la tenue d'une session de travail conjointement avec le ministère, les employeurs, les travailleurs et le Bureau international du Travail pour le manque de consultations sur le plan local concernant ces amendements. Ce sont leurs souhaits, que je crois qu'il faut quand même prendre en considération.

M. le président, moi j'adhère aux droits du travail qui assurent une protection des travailleurs en tenant compte de son impact sur l'efficacité économique et la productivité pour le pays, aussi bien que l'entreprise directement. Je crois que l'intention du ministre est d'apporter un certain équilibre entre les intérêts des travailleurs et ceux des employeurs, ainsi que leurs relations. Par contre, ce qui suscite quelques réactions c'est ce droit fondamental et acquis des droits du travail et des travailleurs. C'est là l'importance de consolider l'élément

de confiance entre tous les partenaires. Je crois que le ministre a quand même raison d'appuyer l'impact de l'efficience économique contre toute tentative des syndicats. Il promet la confiance entre les travailleurs et les employeurs si elle est appliquée d'une façon transparente, correcte et bien. Mais, nous sommes dans une démocratie. Que peut-on faire?

M. le président, la liberté syndicale de constituer ou d'adhérer librement à l'organisation de leur choix doit continuer à être garanti aux employeurs et aux travailleurs. La nouvelle clause 29(1) B (a) stipule que -

“to join only one trade union of his own choice in the enterprise where he is employed or his bargaining unit..”

Que je considère contraire à cette liberté. J'ai des réserves. Only one trade union. Shall we maintain the words 'a trade union' or replace it by the words 'only one'? I don't really get the insight of these amendments, but I hope the hon. Minister will clarify this question of only one trade union later on.

M. le président, je suis d'avis que les employeurs et les travailleurs doivent jouir de cette grande autonomie dans leurs relations mutuelles. S'ils le souhaitent, ils peuvent faire appel à l'État en cas de désaccord. Cette autonomie est favorable à la stabilité des relations professionnelles, très importante pour le pays. Mais nous savons très bien combien les employeurs, je redis, abusent de cette relation pour exploiter les travailleurs. C'est là que je salue la nouvelle clause 79 (a) qui donne cette possibilité, à la requête des parties concernées, dans l'esprit de démocratisation des relations industrielles, de faire appel à l'État.

M. le président, je souligne que les organisations des travailleurs et des employeurs doivent être libres de décider à quel niveau elles veulent mener leurs activités, notamment en matière de négociations collectives. Les organisations des employeurs et des travailleurs doivent continuellement être consultées lors de l'élaboration des politiques économiques et sociales, y compris des programmes d'ajustement structurel, comme a été le cas pour le nouveau rapport du PRB. Je ne vois pas par conséquent nécessaire d'améliorer le fonctionnement des dispositifs tripartites de consultation sur les questions sociales et économiques importantes. Mais cela, certainement, influencera des réflexions nouvelles vers l'avenir en ce qu'il s'agit de la négociation et l'application de ces amendements et de ces deux lois.

Mr Deputy Speaker, Sir, I won't go any further. To conclude, that will be, in brief, my contribution and support to the positive amendments, and to have raised concerns for those that required further scrutiny.

Mr Deputy Speaker, Sir, I thank you for your attention.

(9.28 p.m.)

The Minister of Business, Enterprise and Cooperatives (Mr J. Seetaram): Mr Deputy Speaker, Sir, allow me to seize this opportunity to congratulate my colleague, the hon. Minister of Labour, Industrial Relations and Employment, for introducing this Bill to the House.

The proposed amendments to our labour laws aim at better regulating the interests and relationship of important shareholders in the economic process, that is, our employees and employers, and this Bill has undertaken the delicate mission of juggling between employer and employee satisfaction. This is a demanding task. To do so, hon. Mohamed has had numerous consultations with local trade unions and the International Labour Organisation, which is highly commendable. All the provisions brought forward today are results of these consultations.

In these times of economic slump, where economies around the world are struggling to keep their heads above the water, it would be irresponsible and suicidal for a government not to tackle efficiently labour disputes or all types of controversies, whereas our solution is negotiation, as pointed out by the hon. Minister of Labour, Industrial Relations and Employment, and this Government believes in tripartism. Indeed, Mr Deputy Speaker, Sir, business, labour, State affiliations within the economy should each act as a social partner to create economic policy through cooperation, consultation, negotiation and compromise.

Mr Deputy Speaker, Sir, allow me to touch upon the impact of this Bill on the SME and Cooperative Sector, which are limbs of my Ministry. The main challenges before us are to democratise our economy, promote inclusive growth and promote sustainable enterprise. SMEs, including cooperatives are important actors who have a significant share in our GDP which is around 37% and employing no less than 250,000 people directly and indirectly, that is, one fifth of the population.

The appropriate strategy is to simultaneously ensure competitiveness of our enterprise and satisfaction of our employees. Indeed, employees' satisfaction is essential to the success of any business and one of the aspects which I am particularly satisfied is with the section 2 of the Employment Rights Amendment Bill, whose aim is to regulate the fixed term contract of employment so that workers won't see their contract repeatedly terminated before one year, then being renewed after a break so that they don't get any refund for sick leaves, causal leaves, etc.

I am glad that this Bill corrects this inhumane situation and also it creates a legal framework for the operation of shift work by limiting the maximum numbers of working hours per day and the maximum numbers of working hours per week. This altogether, Mr Deputy Speaker, Sir, comes at a juncture where it formalises *le secteur informel*. It gives the informal sector, as we say, a legal structure. It has a structure, firstly, where the employee has a contract of employment. He is aware of the number of hours that he is going to perform per week or in a month. Further, that particular employee is aware that, if in a scenario where he works more than six months, but less than twelve months, he is granted a paid annual sick leave and, secondly, in the event that there is a disciplinary committee, he will obtain a fair disciplinary committee, not the usual prototype where you have a disciplinary committee just put forward so that the employee runs through a procedure and is sacked at the end of the day. Here, there is an independent and fair disciplinary committee and also the issue of reinstatement of the employment. The concept of reinstatement has shed a new light in our labour law.

I would wish to point out also that we will have the informal workers, like a cook, a cleaner, a private driver, or even a gardener and all of them would have the opportunity of getting a contract of employment, that is, a legal scheme of duty which they can be proud of. I believe it is an advancement; I don't think that with the introduction of such a piece of legislation we can call that coming from a '*ministre patron*'. Not at all, only the contrary!

I would also mention the aspect of the cooperative model. Typically the cooperative model does not have any great difficulty in abiding with the labour laws.

I, therefore, welcome the proposed changes and the cooperative sector by definition of value-based enterprises which operate for the benefit of their members and the community at large. In most cases, employees of cooperatives are members of the societies who would consequently wish to have an industrial relationship which is more humane and cordial,

whereas in the SME sector the scenario is different. The SME operates with a relatively small labour force and are heavily affected by a labour turnover and the whole process, especially the production and marketing system, suffer severe blows with dismissal, even at some point, of one employee.

With such a legislation that has been brought forward, it only strengthens the right of the employee and this does not come from a '*ministre patron*', Mr Deputy Speaker, Sir.

Therefore, SMEs who are development-oriented have a strong interest in abiding by labour laws and in creating and maintaining good industrial relations. These amendments, Mr Deputy Speaker, Sir, will minimise job losses, thereby keeping unemployment at bay and the ideal formula for SMEs to create a greater synergy between employers and employees so that production as well as distribution of its benefit would be done in an optimum way which will ensure survival and growth of SMEs in the medium and the long run.

Ideally, Mr Deputy Speaker, Sir, we would wish to encourage employees to contribute towards the share capital of their enterprises, promote the concept of workers' participation. This will be in line with our democratisation project and will ensure prosperity for all.

On the other hand, Mr Deputy Speaker, Sir, we also encourage workers' cooperatives that also may encourage a change in the employer and employee relationship, that is, of a shareholder and member relationship.

I wish to conclude, Mr Deputy Speaker, Sir, that we shall enforce the capacity of SMEs and cooperatives, not only to comply with the labour laws, but also to strive for favourable industrial relations which is a pre-requisite to development of the economy. We also wish that SMEs and cooperatives graduate to higher levels concerning the aspect of industrial relation.

On my ending note, I would state that such a piece of legislation and all the aspects that I have mentioned, the contract of employment and all the booster for the employee, the leaves, the fairness for the disciplinary hearings, it only acts as an empowerment for the employee and not at all this can come from a '*ministre patron*', because it can only can come from a '*ministre des travailleurs*'.

Thank you very much.

(9.37 p.m)

Mr V. Baloomoody (Third Member from GRNW and Port Louis West): Mr Deputy Speaker, Sir, there is no doubt that we are discussing an important piece of legislation and amendments to an important piece of legislation.

We, on this side of the House, totally disagree with the way Government has handled this file. There have been amendments and amendments; amendments even after Second Reading. Not later than yesterday, we were in our meeting and amendments were circulated. It shows the disregard, the disrespect that this Government has, against not only the hon. Members of Parliament, but also the 500,000 or so workers outside there.

Can you imagine that some trade unions have not had an opportunity to look at the amendments which were circulated yesterday? We received it yesterday at 07.00 p.m. and this Government wants us to believe that they have at heart the interest of the workers? No way!

History repeats itself, Mr Deputy Speaker, Sir. In 1973, we had a Labour-PMSD Government. What labour law did we have? The IRA, the POA to crush the struggle that the workers were leading there! That was in 1973.

Once again, in 1988, when we had the Labour-PMSD Government, what did we have? Again, a law which was passed where the only party in that tripartite were the *patrons* who were happy! The Opposition were against, the unions' outcry outside, and today, history repeats itself, we are having the outcry outside and there is only one side of the tripartite...

(Interruptions)

The Deputy Speaker: Order, please!

Mr Baloomoody: ...or two sides of the tripartite who agree with this is this Government and *grand patron!*

(Interruptions)

If there are two parties who agreed with these amendments, it is this Government and *grands patrons* and not the trade unions, Mr Deputy Speaker, Sir, not the Opposition and not the workers!

The Deputy Speaker: Hon. Members, I will request you not to interrupt the hon. Member during his intervention. Hon. Minister Jeetah! Hon. Assirvaden! Because so far there have been no interruptions during the intervention of any hon. Member so, I will have the same rules implemented. Yes, hon. Baloomoody, please go ahead.

(Interruptions)

Mr Baloomoody: 1973, 1988 and 2008 same Government, same approach to the workers and, of course, take advantage of the division in the trade union sector. We remember in 2008, there was a division among the workers. The Government rushed in to pass the law and today ...

(Interruptions)

Shut up! *Alle mett to lunette ta. Bann volères!*

The Deputy Speaker: Hon. Baloomoody, please take your seat.

(Interruptions)

Mr Baloomoody: *Mette ça dehors; alle vann lunette do.*

(Interruptions)

The Deputy Speaker: Hon. Hossen, I am calling you to order and I don't want you to interrupt the hon. Member.

Mr Baloomoody: Today, we have the same...

(Interruptions)

Dr. Jeetah: With your permission, Mr Deputy Speaker, Sir, on a Point of Order, the hon. Member uttered the word “*volère*”.

(Interruptions)

Mr Baloomoody: I maintain and I withdraw.

(Interruptions)

There is a ruling from the Speaker; hon. Ms Deerpalsing said it. She maintained.

The Deputy Speaker: The hon. Member did utilise the word and he is withdrawing.

(Interruptions)

Mr Baloomoody: I withdraw and I maintain it. I maintain that I utilised the word “*volère*” and I withdraw it.

The Deputy Speaker: The final word is that you are withdrawing.

Mr Baloomoody: *Pardon!*

The Deputy Speaker: You are withdrawing finally.

Mr Baloomoody: Withdrawing the word, which I maintain I used “*volère*”.

(Interruptions)

So, after having said that we disagree with the procedure; the approach used by the Government - I won't blame only the hon. Minister because all these have gone through Cabinet. So, they were not considering, they were not caring, they were not aware what was going in Cabinet. So, they came with amendment, amendment and amendment. So be it!

Now, Mr Deputy Speaker, Sir, I have listened carefully to the speech of the hon. Minister and he wants us, at the outset, before entering into the details of the amendment, to paint a serious picture, apparently, there is fire in the cockpit. There will be general strike in the country. All the important sectors of the economy will be at its knee. And this is why we have to rush in urgently with this Bill. That was said on the Second Reading, a fortnight ago, and we had to plead to postpone. We asked for two weeks, we could not get two weeks. The hon. Leader of the Opposition said, the hon. Prime Minister said we will move only for one week postponement because there were so many big problems outside. If we don't vote this, the country will go to its knee and I am glad that the opinion of the hon. Minister, my hon. friend is not shared by a Member of the Government. Let me read what one Member of the Government had to say. After having been asked a question about the Industrial Relations Act, he said -

“However, what I think is unfortunate is that the clash of ego between two men is being carried over into this very important debate.”

And for the first time I will share; I agree with the hon. Member. I may be wrong, but no. I don't think Shakeel - referring to the hon. Minister, of course - is right when he talks about a repeat of 1970s. And I don't think it was necessary to be so personal in a debate which should strictly be about substance and not about malingering characters.

(Interruptions)

So, even on the other side, they don't agree with the approach that Government is taking, but, unfortunately, they don't have the courage to say it in this House, because her name is not on the list of *orateurs*.

(Interruptions)

The Deputy Speaker: Hon. Ms Deerpalsing!

Mr Baloomoody: She will say it out there. Go and say it for publicity!

The Deputy Speaker: Hon. Ms Deerpalsing, please do not interrupt the hon. Member.

Mr Baloomoody: Anyway, we will see how she will vote later. Now, this was what the Minister said and it is unfortunate that on such an important issue, the hon. Minister has taken side when it comes to the union. As a Minister of the Republic, he should have done his effort to ensure that there have been consultations with all the trade unions. We have been meeting the trade unions recently, myself, the hon. Leader of the Opposition and my colleagues who are going to take part in the debate and they have informed us. One has been invited and the other was on the day of the invitation apparently he had to go to Court to furnish bail because on the day the Bill was introduced, they were arrested. They did not have any official invitation whatsoever subsequently, official invitation. Perhaps an officer had phoned or what, but official invitation by the hon. Minister ...

(Interruptions)

No, if the hon. Minister has sent a document inviting them officially, this can be produced.

(Interruptions)

The Deputy Speaker: Hon. Minister Mohamed, you will have the time to reply! You will have the opportunity to rebut during the summing up. So, allow the hon. Member to intervene uninterrupted.

Mr Baloomoody: I say it again. It is unfortunate that all the trade unions did not receive the same treatment, the same welcome, they were not given the same consideration with regard to this law.

(Interruptions)

And this should have been an exercise of paramount importance when we are doing such exercise of amending a labour law.

Now, Mr Deputy Speaker, Sir, when hon. Dr. Bunwaree presented the two Bills, Industrial relations Act and the Industrial Rights Act, the main disagreement on those two bills were - in fact, there were three, mainly the way employers were allowed to make workers redundant of economic and other technological reason, secondly, with regard to the right to strike and thirdly, right of counsel for disciplinary committees. I must say and it is known that for the last 29 years, I have been associated with trade unions and workers as their lawyers and I know what I am talking about. These were the main three issues, there are others, the cosmetical one but not main one, but this today has not changed. The fundamental remains, we have the same law. It is only cosmetic. The bones are being given to the workers, but the meat has been kept by the baron, *le patron*. And this is what amendment we are having to.

Mr Deputy Speaker, Sir, the hon. Minister of Labour, who did not participate in the debate of the Bill when hon. Dr. Bunwaree presented that Bill although he was a Member. He was a backbencher, but I do not know whether he was a Member of Government. But he did not participated, but has since being nominated Minister, on each and every occasion he meets the workers and on each and every occasion, he addresses the public on a May day, he comes to stud the people, telling them, don't worry, I will bring amendment and you will be happy. This is the expectation that he has created all throughout and this is the expectation that, unfortunately, he has not been able to deliver in this amendment. And this is why today there is that outcry outside. And this is why today we, on this side, we are going to oppose the amendment because it does not change anything that was in the law of 2008. There is an outcry outside and this is why today we, on this side, are going to oppose the amendment

because this doesn't change anything that was in the law of 2008 and, to be consistent with ourselves, we will be on the side of the workers and not on the side of the patron and we will vote against this amendment. What the workers are expecting; let's take the basic one. Apparently there is now reinstatement - workers can ask their right to be reinstated, but reinstated when; when you have been sacked. When you are being sacked, we know the case of Rehana Ameer - when she was called upon to be reinstated, was she given the same place, the same job. Okay the salary was the same; the work was more or less the same, but was she given the same job. In the case of State Bank, she wanted to be reinstated, hon. Arvin tried to give a helping hand to get her reinstated, has he been successful? So, the power still remains with the employer. Reinstatement, although your life may be hell there but sometimes if you are reinstated, it is with certain conditions. This is why we say this is not a big deal. In many cases sometimes it's better to get your punitive rate, your term of service and go elsewhere than be reinstated, be penalised and be traumatised in the same work back because the patron has the last say. So reinstatement is not a big deal. Compensation should have come and compensation at punitive rate - this is how it should be even in case of redundancy for economic reasons. Disciplinary committee: I heard my friend, who is a lawyer, say that this law now gives you an independent disciplinary committee. Either he has not attended any disciplinary committee while he was at the Bar or if he has he doesn't understand where he was. Disciplinary committee, how it is done today. It is the patron who nominate the chairman. Okay today we are saying it should be independent but in big corporate, they will get a Head from the other departments to come and chair it. What is worse, Mr Deputy Speaker, Sir, right to Counsel is fundamental; right to be defended by a Counsel is fundamental. Today, if an employer suspends a worker, do you know when he fixes a disciplinary committee - at 10 o'clock in the morning on a Friday or on a Monday knowing well that at 10 o'clock on a Monday or a Friday or a Tuesday or a Wednesday, lawyers are always engaged in court? So, once as the worker decides to retain the services of a lawyer is punished because the lawyer will ask for a postponement and he won't get any salaries. You are penalised if you retain the service of a lawyer. This has not changed. They have put now you can come with a lawyer - auparavant c'était 'and/or' maintenant with a Labour Officer. So again what has changed in the disciplinary committee? What we want is a disciplinary committee which is independent and - it should be in the law - the proceedings of that disciplinary committee should be given to the worker so that he can be challenged in the Industrial Court. Today, you have disciplinary committees which are fake, which are a sham and when we want to question same in the Industrial Court, evidence is not allowed because

you don't have the proceedings to produce; it is not given to the workers. It is cooked, re-cooked and booked by the employer. Now my friend, hon. Seetaram is saying: 'we have put disciplinary committee'. What is new? Nothing. The question of the welfare programme again...

(Interruptions)

The Deputy Speaker: Hon. Seetaram, you have already intervened.

Mr Baloomoody: There are some people in this House who are doing politics to make business. I am not of this type of people. Since I have been there I have been fighting for the rights of people not to make business.

The Deputy Speaker: Hon. Quirin, hon. Henry, please no cross-talking!

Mr Baloomoody: Now let's come to the welfare programme. Again what do we have? What has changed? Today only if the Permanent Secretary decides to take the case to the Tribunal, then you can go on the welfare programme, but many people want to take lawyers of their choice, attorney of their choice. They want to fight their own case. Why should they be penalised? Again discrimination when it comes to workers every time they want assistance; every time they want legal advisers; every time they want to be protected they are penalised financially, be it at disciplinary committee level, be it at the welfare programme level.

Now we have that famous Division; that Division which has been created with regard to reduction of workforce and closing down of enterprise. So, what will happen now? When the workers were asking for protection not to be made redundant now you are fired first, then asked questions later. This is a principle. You are given a shot first then they ask you questions. So now the trauma, the moral anguish is on the worker after he has been sacked - and this applies only to those who employ more than twenty workers. Now what happens? Apparently there is a section - reduction of workforce section 39(b)(i)...

(Interruptions)

You know I have never been arrested at the custom for having illicit products with me. Tell those people there to keep quiet. I have never been arrested by the custom for bringing illegal products...

(Interruptions)

So please shut up. There are consultations between the patron and the workers when it comes to reduction of workforce; consultation - can you have consultation if it is not prescribed in the law how the consultation should be. Can you have consultation if the law does not

provide for disclosure of information? Can you have consultation if the law does not tell the patron that you have to bring your books, your project and then we sit down, we discuss? Just a consultation – what consultation?

(Interruptions)

In the European law...

(Interruptions)

The Deputy Speaker: Hon. Members, please keep quiet.

Mr Baloomoody: Consultation - Mr Deputy Speaker, Sir, in other countries, in other jurisdictions, they prescribe the procedure...

(Interruptions)

The collective consultation should be in an Act of Parliament if you want a proper consultation; consultation where, as of right, there should be disclosure of information, disclosure of statistics, disclosure of bank statements, disclosure of your programme. This is what consultation is. It is just added in the law consultation and when it comes to the MSPA can you sit down with them and have consultation. If there was no threat to the strike, there would have not been the deal with the MSPA and the Joint Negotiating Panel. Now can you sit down with the MSPA and have consultations if they intend to have a mass redundancy programme? Don't be a Government of theory, be practical!

I have spoken on the issue of disclosure. Now let us come to the most important amendment, the jackpot to the *patron*. Mr Deputy Speaker, Sir, there was a deal ...

(Interruptions)

The Deputy Speaker: Hon. Assirvaden, I think you are interrupting the hon. Member. Can't you remain silent?

Mr Baloomoody: I am not somebody who can be easily interrupted. Don't worry!

The Deputy Speaker: Please, remain silent! Allow the Member to express himself!

Mr Baloomoody: They can bark all they want, I won't be interrupted. Don't worry! Thank you for your protection anyway!

Mr Deputy Speaker, Sir, I was talking about this abolition of section 9(2). In 2008, there was a deal with the union and the employer. I am sure hon. Dr. Bunwaree will agree that we should give a limited right of strike to the workers and you know what they got? The right to sack workers on economic reason! This was the trade off: give the workers an opportunity - because not all the workers would like to go on strike - to have a first strike,

you do not sack him, but then in return I give you the right to make them redundant on economic reason. Today,

what we are having? Today, after the hon. Minister of Labour and Industrial Relations has given the expectation to the workers, for the last three years, that amendments will come in their interests, this right of strike is being abolished. A right, like many others have said, for which there have been many struggles; struggle by the founder members of the Trade Union in Mauritius, be it the founder members of the Labour Party - not this Labour Party – and the founder members of the MMM. We should not forget that at a certain time, the Labour Party abolished their ideal for trade unions, for workers' protection, for workers' rights and this was taken up by the MMM under the leadership of hon. Paul Bérenger.

Mr Deputy Speaker, Sir, when the workers are sitting before the *patrons*, they are not on level playing field. The *patrons* have their money behind them; the *patrons* have the contract of employment of the staff and of the workers in his pocket. The worker has only his sweat and his knowledge, nothing more. He is at the mercy of the *patron*. This is why he must have the right to withdraw his cooperation. Threaten, if need be - but not necessarily to withdraw – threaten to withdraw his cooperation so that the patron can sit down at the table and negotiate with them. This is what exactly happened recently in the MSPA Joint Negotiating Panel. Had the Joint Negotiating Panel not voted for a strike, there would have been no agreement with the MSPA because, Mr Deputy Speaker, Sir, the right to strike is a human right, not only a fundamental right. The right to withdraw your labour in case of urgency to protect your interests is a human right. International Treaties say so, Mr Deputy Speaker, Sir, and Mauritius has signed many of these international treaties. It begins with the International Labour Organisation Convention on the right to organise and bargain collectively of 1948. There is the question, Mr Speaker, Sir, which is another fundamental right for workers to protect their rights. It is the law which will allow workers and their unions to have solidarity and sympathy strike. This is a right which is recognised by the International Labour Organisation: solidarity and sympathy strike. Mr Speaker, Sir, *l'union fait la force*. If you are on your own, you cannot bargain. The main purpose of joining a union, Mr Speaker, Sir, is to be mutual in times of need. So, this is why I say, by doing away with section 9(2), not only we are giving the *patrons* all the powers with regard to negotiation, but we are depriving the workers of a fundamental tool, a fundamental right.

Mr Deputy Speaker, Sir, the European Court of Human Rights has ruled that the right to freedom of association in Article 11 of the European Treaty must include the right to strike. Some countries in Europe did not want to. The European Court has said that in collective bargaining the right to strike should be included. So, we are saying clearly and loudly, on this side of the House that we are against the amendment, the more so that it removes section 9(2) which is the main tool for bargaining for the trade unions.

Mr Deputy Speaker, Sir, I have listened to the hon. Minister on radio sometimes. He seems to tell the country: "You know, because of this, the country has been paralysed since 2008." I just want to ask him - I hope in his summing up he will answer: how many legal strikes there have been in this country since 2008? It would have been legal because the law allows it. None! Zero, Mr Deputy Speaker, Sir! This was the pretext to come with a strike, to come to amend the law because we have strikes. The exercise, Mr Deputy Speaker, Sir, of the right of strike is the mark of a free society where discord is accepted as normal and conflict regarded as healthy. You can have a right to strike; you must recognise the difference of others. Strikes may be inconvenient and they may be frustrating. So is the exercise of other human rights. But if you do not want strikes, it is up to the Government to provide a better atmosphere *vis-à-vis* bully employer who can tear up contracts and impose unilateral change to working conditions knowing that the workers have no option, but to accept.

This is why, Mr Deputy Speaker, Sir, I conclude by saying: we make an appeal to Government, appeal will be rejected; we will vote against that Bill, they have the majority in this House, but they do not have the majority out there. The majority are with us out there and we tell the majority out there, "you won't have too long to wait, time will come when you will get what you want."

Thank you, Mr Deputy Speaker, Sir.

Mr S. Obeegadoo (Third Member for Curepipe & Midlands): M. le président, il y a des moments où la lutte des classes, cette dynamique qui sous-tend les enjeux économiques et sociaux de nos sociétés est mise à nu. Il y a des moments où les masques tombent, où l'Etat qui se prétend neutre affiche ses couleurs, prend position dans la lutte qui, depuis la nuit des temps, oppose capital et travail. M. le président, s'il est vrai aujourd'hui que de l'autre côté de la Chambre je ne vois personne qui aurait été syndicaliste comme le furent les fondateurs du Parti travailliste, je n'en vois pas qui ont été associés aux combats de la classe ouvrière.

Chez nous il y a des syndicalistes à l'instar de l'honorable Madame Ribot, de l'honorable Soodhun...

(Interruptions)

...de l'honorable Paul Bérenger. Il y a de nombreux avocats...

(Interruptions)

qui toute leur carrière durant, à l'exemple de l'honorable Ganoo, l'honorable Baloomoody ont été aux côtés des syndicats, ont fait le choix de la classe ouvrière dans le combat inégal qui oppose les travailleurs aux employeurs, M. le président.

(Interruptions)

Mais même s'il...

(Interruptions)

n'y en a plus...

(Interruptions)

de l'autre côté de la Chambre...

(Interruptions)

The Deputy Speaker: Hon. Bundhoo, Minister of Health and Quality of Life!

(Interruptions)

Mr Obeegadoo: I shall not give way!

(Interruptions)

I shall not give way unless it is a point of order.

(Interruptions)

The Deputy Speaker: Go ahead, please!

Mr Obeegadoo: M. le président...

(Interruptions)

The Deputy Speaker: I do not want any hon. Member to interrupt the hon. Member who is intervening !

Mr Obeegadoo: M. le président, j'en appelle néanmoins à l'esprit travailliste de ceux qui, à l'instar de l'honorable Deerpalsing, hier encore exprimaient leur soutien aux syndicats de l'industrie sucrière dans le conflit qui les opposait aux employeurs. L'on surveillera tout à l'heure au moment du vote la décision que prendra chacun de l'autre côté de cette Chambre.

M. le président, ces amendements dont nous débattons aujourd'hui, à notre sens, représentent une attaque frontale contre les travailleurs et les travailleuses de ce pays, contre les salariés Mauriciens. S'ils sont adoptés par la Chambre, seront un coup de massue pour les syndicats, pour la classe ouvrière organisée. C'est pour cela que de ce côté de la Chambre, tout au moins pour l'alliance MSM/MMM, nous opposerons un nom catégorique à ces amendements tant dans la forme que sur le fond.

M. le président, les lois du travail sont partout et toujours au sein de nos sociétés capitalistes l'expression d'un rapport de force entre capital et travail. Situons le contexte historique du débat d'aujourd'hui. Après l'indépendance, la grande agitation dans le monde ouvrier du début des années 70, l'introduction par le gouvernement travailliste alors soutenu par le PMSD de l'IRA, une loi dont la logique répressive est connue de tous, qui fut qualifiée de loi scélérate par la classe ouvrière qui interdisait dans les faits, qui rendait illégale toute grève, et puis deux ans plus tard, le *Labour Act* représentant en compromis un rapport de force entre employeurs et employés avec la montée des syndicats à cette époque. Puis de 73 à 75 le cadre légal évolue peu. Il y a des amendements en 82 au *Labour Act*, par exemple, pour garantir en sus de trois mois, 120 jours de compensation à ceux qui sont licenciés pour des raisons économiques. Mais le cadre légal dans son ensemble ne change pas jusqu'en 2008 lorsque le gouvernement travailliste introduit les deux législations que nous cherchons à amender aujourd'hui, passant par le biais de son ministre du Travail d'alors, le docteur Bunwaree, lesquelles lois représentent ce que tout à l'heure mon collègue l'honorable Baloomoody décrivait comme un *trade off*, un échange. D'une part la reconnaissance d'un droit de grève partiel, théorique mais la reconnaissance d'un droit de grève et, de l'autre côté, en contrepartie, l'abolition de l'obligation faite de se soumettre à un arbitrage obligatoire et surtout la liberté de licencier - pour raisons économiques - accordée aux employeurs, l'abolition du *Termination of Contract Service Board*.

Le MMM, le MSM, l'Opposition d'alors prirent position résolument contre. Il est important de s'en souvenir pour comprendre la logique de notre prise de position aujourd'hui. Déjà, l'honorable Paul Bérenger, en 2008, dénonçait à la fois le procédé, c'est une habitude sous le gouvernement travailliste de forcer le passage à la va-vite de cette loi d'alors en 2008 avec des amendements en dernière minute comme aujourd'hui encore et, d'autre part, le recul que représentaient ces deux lois. L'honorable Paul Bérenger soulignait le fait qu'on avait attendu depuis 1973 et 1975 qu'il y ait une loi progressiste remplaçant l'IRA et le Labour Act, à la place l'on a hérité des deux lois en vigueur aujourd'hui avec la disparition du TCSP, avec des changements en ce qui concerne le *severance allowance*, concept fondamental dans nos lois, avec les procédés pour faire grève, très lourds et le rôle résiduel confié au *National Remuneration Board* dans cette logique d'abolition de l'arbitrage obligatoire. Je ne répéterais pas ce que disait alors l'honorable Ganoo, notre *Leader* de l'opposition d'aujourd'hui. Je suis sûr qu'il reviendra sur sa prise de position de 2008 mais, je rappellerais...

(Interruptions)

Vous ne perdez rien à attendre, le *Leader* de l'opposition interviendra tout à l'heure. Je pense qu'il était très pertinent lorsque l'honorable Cuttaree, qui n'est plus avec nous au sein de cette Chambre, disait que face à l'inégalité entre capital et travail, face au contexte particulier du faible taux de syndicalisation, au manque de moyens des syndicats que l'Etat avait un devoir d'intervention. L'Etat ne pouvait pas se contenter d'une déréglementation du monde du travail ; d'une déréglementation des relations industrielles qui jouerait inévitablement en faveur des employeurs, du capital, mais qu'il y avait un devoir d'intervention à travers la loi du travail pour l'Etat. Et il faisait donc l'argumentaire en faveur de la protection pour les travailleurs dans le cas des licenciements pour raisons économiques.

Aujourd'hui, cinq ans plus tard, nous voilà devant une proposition d'amendements. Vous savez que les effets de ces lois **ne se sont pas fait attendre. Il y a eu de nombreuses interpellations parlementaires, depuis 2008, de la part de l'honorable Alan Ganoo, de l'honorable Veda Baloomoody, de l'honorable Reza Uteem et de moi-même, pour essayer de mesurer l'impact de cette libéralisation par rapport au licenciement pour raisons économiques. Les chiffres parlent d'eux-mêmes. En 2009, 4,461 licenciés pour raisons économiques; en 2010, 4,291; en 2011, 5,320, et rien que pour les neuf premiers mois de l'année 2012, 4,800. Bref, de février 2009 à septembre 2012, 18,892 licenciés**

pour raisons économiques, ne bénéficiant de pratiquement rien en termes de compensation. Aujourd'hui, ils devraient avoir dépassé les 20,000.

Donc, l'on attendait avec impatience ces amendements pour corriger les injustices criantes des législations de 2008. On attendait surtout le ministre du Travail eu égard aux licenciements économiques. L'honorable ministre Mohamed, lui-même, comme le soulignait un peu plus tôt l'honorable Reza Uteem, nous avait habitué à ces dénonciations des abus de la part des employeurs, ici même au sein de la Chambre. Et puis, on a eu droit à ce document qui s'appelait 'Salient Features' ; des amendements à venir, présentés en avril 2012, et qui ne touchaient évidemment pas au droit de grève. Et puis, arrivent les amendements. Ces amendements représentent plus qu'une déception ; une trahison des espoirs placés en lui de la part des syndicats et de la classe ouvrière, une trahison des engagements pris ; ce qui a suscité un sentiment de colère unanime.

Aujourd'hui, M. le président, même si le gouvernement cherche à tirer profit de la division syndicale, comme en 2008, il y a un refus unanime de la part des syndicats pour les amendements qui nous sont présentés aujourd'hui, parce que ces amendements, je le répète, sont à la fois inacceptables et condamnables, tant dans la forme que sur le fond.

Dans la forme d'abord, à cause de ce procédé incroyable qui fait, qu'à la fin de l'année dernière, un premier projet d'amendement est circulé. Ensuite, en mars de cette année, le 25 mars plus précisément, sont circulés des amendements aux amendements de novembre dernier. Et puis, le 8 avril, sont circulés cette fois des amendements aux amendements aux amendements de novembre dernier, jusqu'à ce que ce matin, atterrisse un dernier amendement aux amendements aux amendements aux amendements proposés en novembre dernier.

M. le président, d'abord il y a là un non-respect des principes bien établis du fonctionnement de cette auguste Assemblée. Lorsqu'un ministre intervient pour la deuxième lecture d'un projet de loi, cela est censé être le point culminant d'un long processus qui commence par un travail de préparation d'amendement avec le concours du parquet, en réponse à un travail préliminaire du ministère, qui fait l'objet ensuite de consultations avec les partenaires sociaux, avant que cette proposition, cette ébauche soit révisée et ensuite présentée au Conseil des ministres, approuvée par le Conseil des ministres, et circulée au Parlement. Donc, lorsqu'intervient le ministre en deuxième lecture, il présente le projet de loi tel qu'il sera soumis au vote à la fin des débats en deuxième lecture, évidemment quitte à

ce qu'il y ait des amendements mineurs lors de l'examen en comité du projet de loi. Cette fois-ci, le ministre intervient, et s'ensuivent deux séries d'amendements auxquelles, bien évidemment, il n'a pas pu se référer en deuxième lecture. Nous devons donc, nous, commenter des amendements qui n'auront pas été évoqués évidemment lors de la présentation en deuxième lecture, puisque cette présentation était antérieure aux amendements.

(Interruptions)

L'honorable ministre est le seul parmi nous qui pourra intervenir deux fois. Donc, je pense qu'il pourrait, pendant mon intervention, se taire, en attendant qu'il ait l'occasion de parler tout à l'heure.

The Deputy Speaker: Just allow me one minute. Hon. Minister Mohamed, you will be the last person to intervene on this piece of legislation.

(Interruptions)

I am sorry. I am on my feet. So, you will be able to rebut all the arguments put forward by the hon. Members from the Opposition side. Your reaction at this stage is a little premature.

Mr Mohamed: I apologise. I was just trying to avoid the hon. Member making mistakes. So, I will stop.

The Deputy Speaker: Hon. Minister, please take note.

Mr Obeegadoo: Precisely. And learn your Standing Orders! M. le président, je disais donc...

(Interruptions)

The Deputy Speaker: Okay, enough!

Mr Obeegadoo: M. le président, nous nous posons la question, de ce côté de la Chambre, de savoir ce que cache cette cascade d'amendements aux amendements aux amendements. Est-ce une mystification, cherchant à nous jeter tous dans un état de confusion? Ou est-ce plutôt la manifestation d'un amateurisme sans précédent au sein de cette Chambre? L'on se le demande. De même, dans la forme, nous objectons à la façon qu'a eu le ministre, lors de la présentation en deuxième lecture, de se focaliser sur une personne,

un syndicaliste absent de la Chambre, pour faire son procès derrière le dos. Je me réfère à Ashok Subron.

De ce côté de la Chambre, nous ne partageons pas nécessairement toutes les options idéologiques d'Ashok Subron. Mais nous sommes des gens d'honneur, qui savons très bien que l'on ne s'attaque pas à une personne derrière son dos en son absence. Si l'honorable ministre veut régler ses comptes avec Ashok Subron, qu'il aille le faire en public ou en cour, ou sur un terrain autre que le Parlement, où Ashok Subron ne siège pas. C'est cela aussi l'élégance dont on s'attend d'un ministre de la République, M. le président. Sur le fond, malgré la division syndicale, je le répète, ces amendements sont unanimement rejetés par les syndicats du pays.

D'abord, l'*Employment Rights Act*. Quelques mesures que le gouvernement voudrait nous faire croire positives, progressistes, mais qui, mises en relation avec la menace que font peser les dispositions fondamentales de ces deux amendements, ne représentent qu'une carotte qu'on agite devant les salariés du pays pour les leurrer, pour servir de trompe-l'œil quant au vrai motif de ces amendements.

Le *Employment Rights Act*, sur le fond en lui-même, comporte des dispositions très dangereuses. Je ne suis pas sûr si mon collègue, l'honorable Veda Baloomoody - dont j'ai raté le début de l'intervention - s'est référé à cela, mais j'ai en tête l'abolition du *Job Contractor's Permit*, M. le président, que nous considérons comme très dangereux du côté de cette Chambre.

J'ai écouté la présentation de la deuxième lecture du ministre et je n'ai pas compris quelle était la motivation profonde qui pousserait le gouvernement - à moins qu'il s'agisse de petits copains politiques dont on voudrait libérer de certaines entraves. Pourquoi il faudrait abolir, à ce stade, le *Job Contractor's Permit* qui existe depuis les années 60, et qui vise à réglementer le secteur informel, où, une personne a recours à l'emploi pour accomplir des tâches limitées dans le temps ?

Le *Job Contractor's Permit*, je le rappelle, permet au ministère du Travail de mener des enquêtes appropriées pour considérer l'aspect de la sécurité au travail. Vous savez que le *Job Contractor's Permit* a souvent cours dans le secteur de la construction, là où les accidents au travail sont les plus fréquents. C'est une garantie, c'est une mesure de sécurité essentielle. En abolissant l'impératif du *Job Contractor's Permit*, on ouvre les vannes et tout devient dès lors possible ; ce sera la loi de la jungle en 2013.

Je voudrais, aujourd'hui, ici, très solennellement, au nom de l'Opposition, attirer l'attention de tous les parlementaires de la majorité sur le danger que comporte cet amendement non-expliqué, non-motivé et qui ne pourrait en aucun cas se justifier.

The Employment Rights Act, qui, avec ces amendements, pourrait constituer un leurre pour la classe ouvrière de ce pays. Mais, sur le fond, pourquoi sommes-nous opposés par ces amendements ? Parce qu'ils ne changent en rien les dispositions fondamentales de *l'Employment Rights Act* et de *l'Employment Relations Act*, auxquels nous avons objecté déjà, en 2008 et en 2009 !

Le licenciement économique, je pense que tout le monde est au courant de cela. Je ne vais pas répéter ce qu'a été dit avant moi par mon collègue, l'honorable Veda Baloomoody. En ce qui concerne cette histoire d'avoir à justifier *post facto* les licenciements, nous savons que dans la pratique cela ne sert pratiquement à rien. Pour tous ceux qui, parmi nous, ont été au côté des travailleurs, syndicalistes et avocats, nous savons que cela ne marchera pas et de toutes les façons vous savez que, dans la réalité des choses, le problème restera toujours le même qu'à présent.

L'employé qui ira contester le bien-fondé de son licenciement ne bénéficiera pas du *Workfare Programme* et il restera sujet au jugement que portera le *Permanent Secretary* du ministère du Travail pour décider s'il y a un *prima facie case* permettant d'aller en cour pour contester le bien-fondé du licenciement.

Donc, en ce qui concerne les dispositions fondamentales de ces deux lois, tout autant scélérates que l'IRA de 1973, rien ne change. Les dispositions fondamentales restent les mêmes et pour cela tout comme nous avons opposé le passage de ces lois en 2008, pour être cohérent, il est tout à fait logique que nous opposions aujourd'hui les amendements que nous présente le gouvernement, qui ne change en rien ces deux lois.

Je voudrais, là, dénoncer, M. le président, les larmes de crocodile du ministre, eu égard aux employés de l'hôtel St. Gérán. Vous savez, ces employés, nous les avons rencontrés nous-aussi. Les honorables Alan Gano, Veda Baloomoody et moi-même, nous les avons rencontrés et je n'oublierai jamais cet ancien employé qui vient de dépasser l'âge de la retraite et qui a travaillé pendant une trentaine d'années au St. Gérán. Il nous disait que, arrivée à l'âge de la retraite, il aurait pu, il aurait dû prendre sa retraite avec tous les avantages qui y sont attachés, telle que la compensation qui va avec en proportion avec toutes ses années de service. Mais, il ne l'a pas fait, M. le président, parce qu'il a toujours deux

filles à l'Université de Maurice. Donc, il s'est dit, je vais travailler encore un an, deux ans, trois ans, tant que je pourrais le faire, et l'argent que je gagnerai servira pour financer les études de mes enfants, en attendant de toute manière à ce que je prenne ma retraite et que j'obtienne la compensation qui m'est due. Puis, à peine quelques mois après, on le licencie pour raison économique, sous la loi de l'honorable Dr. Bunwaree et du gouvernement Travailleiste. Sous cette loi de l'honorable Mohamed ne modifiant, en rien les dispositions fondamentales, cette personne n'obtiendra rien qu'un mois de préavis. Les amendements - que ce soit claire - que nous considérons aujourd'hui ne changent en rien cette injustice criante que subisse tous ces anciens employés du St. Géran et c'est pour cela que nous dénonçons l'hypocrisie et les larmes de crocodile versées par le ministre du Travail, eu égard aux employés du St. Géran.

Mr Mohamed: On a point of order, Mr Deputy Speaker, Sir. The hon. Member has just stated that I am a hypocrite and that I have basically versé *des larmes de crocodile*, which is basically saying that I am a hypocrite. That is very unparliamentarian. I insist that he withdraws that; he is imputing motives. He cannot, as a hon. Member, stand there and say that I am a hypocrite. He cannot do that!

Mr Obeegadoo: We are debating policy, and I state, and I maintain that the Minister represents the voice of the employers; he is defending the interests of the employers. This Bill is a danger, it is a threat for the working class of this country and I stand by what I said.

Mr Mohamed: I stood up to raise a point of order, Mr Deputy Speaker, Sir, and it is very simple. The hon. Member cannot say that I am a hypocrite and I ask that he withdraws that, the rest he can keep on saying *ad nauseum*; but saying that I am a hypocrite, that is unparliamentarian.

The Deputy Speaker: Did the hon. Member call the hon. Minister a hypocrite?

Mr Obeegadoo: This is the quotation of the hon. Minister who is calling himself a hypocrite.

Mr Mohamed: The hon. Member used the word 'hypocrite'.

The Deputy Speaker: I am sorry; I am simply asking the hon. Member whether he did utilise the word 'hypocrite' at the address of the hon. Minister.

Mr Obeegadoo: Not that I can recall, Mr Deputy Speaker, Sir. But, I maintain that the stand of the Government is hypocritical.

Mr Mohamed: The hon. Member said 'hypocrite'.

The Deputy Speaker: I am sorry! Please, sit down. I am again asking you, hon. Obeegadoo to...

(Interruptions)

Hon. Obeegadoo, I am talking to you, please. I am again asking whether you did utilise the word to qualify the hon. Minister.

Mr Obeegadoo: Mr Deputy Speaker, Sir, I do not recollect using the term; if I did, I am quite happy to withdraw it. I maintain that the stand of the Government is a hypocritical stand.

The Deputy Speaker: That is a different matter.

Mr Obeegadoo: It is not a different matter, it is the same.

The Deputy Speaker: It is a different matter altogether. If you did use the word 'hypocrite' at the address of the hon. Minister, please, withdraw it. It is so simple.

Mr Obeegadoo: I have done it.

The Deputy Speaker: Please, go ahead now!

Mr Obeegadoo: M. le président, sur le fond du *Employment Relations Act*, nous sommes contre parce que c'est très dangereux et, je vais rapidement rappeler certaines clauses auxquelles je ne pense pas que mes collègues, les honorables Reza Uteem, S. Soodhun et Veda Baloomoody, avant moi, se sont référées.

Et je vais me référer à un excellent document qu'a fait circuler la GWF and le *Joint Negotiating Panel* aujourd'hui, je crois, à tous les honorables membres de la Chambre sinon à tous ceux qu'ils ont pu joindre; et qui, nous fait la liste rapidement des problèmes fondamentaux avec cette législation.

And I will lapse into English; maybe it will be easier to comment the law. Section 77, this is the section about the limitation to strike when there is a collective agreement. Mr Deputy Speaker, Sir, this is fundamentally dangerous. The hon. Minister is proposing to amend the law so that when there is a collective agreement, even on issues that have been raised and not settled in the course of negotiations or on an issue which was not raised in the course of negotiations, a trade union can no longer report, go on a strike, because this now concerns any issue. The moment that there is a collective agreement, you can no longer do it

and what is very dangerous, as the Unions have pointed out, is that the employers can now sign a collective agreement with a Pro-employer Union that represents less than 50% of the labour force there, which has less than a 50% membership in a given bargaining unit and, therefore, there is a collective agreement that binds everybody and there can no longer be a strike. This is section 77.

Section 67 is another case in point. This concerns the limitation of the report of labour disputes. Now, again, this time the provision of the law is being broadened so that when a collective agreement is in force, and I am quoting -

“A labour dispute on matters relating to wages and terms of conditions of employment which either are contained in a collective agreement or have been canvassed but not agreed upon during the negotiation process leading to the collective agreement or, third, and worst have not been canvassed during the negotiation process except during a period of negotiation for the renewal of the collective agreement.”

So, and I quote here, this document for the Union –

“It eliminates at one go the possibility of ever raising issues and reporting of any labour dispute on any issue upon which no agreement was reached during the course of any collective bargaining process.”

This has never been seen, not even in the IRA, Mr Deputy Speaker, Sir. It was such a strait jacket imposed upon Unions to such an extent that they cannot discharge their normal legitimate function of defending the interest of their members.

Likewise, if we go back to the definition of labour dispute in section 2 of the Employment Relations Act, henceforth, the new definition is now that –

“Labour dispute does not include the dispute that is reported more than three years after the act or omission that gave rise to the dispute.”

Do we understand what the hon. Minister is trying to do there? It means that if there is a condition of employment which has been in force for more than three years and which forms part of a collective agreement, once the three years is passed, you cannot declare a dispute. So, you can never declare a dispute again, concerning that disposition. And if you have a new Union which comes up, which is democratically chosen to represent the employees to the extent that the term of employment dates back to more than three years, it cannot report a

dispute concerning that matter. This reaches an incredible level of absurdity and I am surprised that the very able and experienced officers of the Ministry of Labour, Industrial Relations and Employment would have gone along with the hon. Minister to the extent of such absurdity.

The next one, Mr Deputy Speaker, Sir, is section 78. We know that the law imposes a ballot in the case of strike. In 2008, when hon. Dr. Bunwaree presented the Employment Relations Act to the House, he talked about the independence, the autonomy, being given to Unions who can now regulate their own matters and I reread this morning his speech then, and this time around, hon. Minister Mohamed would have it that a Supervising Officer under the authority of the Minister will go and attend the holding of a strike ballot. This is unwarranted, shameful, improper interference in the internal affairs of a Union and cannot be justified by any means.

Section 58 of the Employment Relations Act, Mr Deputy Speaker, Sir, speaks of the variation of collective agreement. On the one hand, it is now proposed that –

“Where a party to a collective agreement which is in force refuses a variation of the agreement, any party may apply to the Tribunal for a variation of the agreement and the Tribunal, on hearing the parties, shall vary the agreement where it is satisfied that the variation is warranted in accordance with subsection (1).”

So, on the one hand, the Union cannot declare a dispute, cannot go on a strike. On the other hand, the employer can, at any point in time, request a variation and it can have its way. You can see, Mr Deputy Speaker, Sir, why we are so adamant on this side of the House that this is a Pro-Employer and Anti-Union (Amendment) Bill throughout.

Mr Deputy Speaker, Sir, I have nearly finished. There is the section 38 which relates to order for recognition of a Trade Union of workers. In the past, under the law of 2008, there needed to be recourse to a referendum before the Tribunal could reject an application. This time around, the Tribunal without having recourse to a democratic referendum can arbitrarily reject the application for an order for recognition.

Finally, Mr Deputy Speaker, Sir, the crux of the matter. Le point le plus fondamental, le plus grave, ce à quoi s’est référé mon collègue, l’honorable Veda Baloomoody, la disposition 9 (2) de l’*Employment Relations Act* qui stipule qu’un ouvrier, qu’un travailleur, se met en grève pour la première fois ne saurait être sujet à des sanctions de la part de son

employeur. M. le président, le ministre a cherché à nous faire croire que cette disposition particulière relèverait d'un malentendu, d'un oubli, d'un accident de parcours, qui aurait perduré pendant cinq ans jusqu'à ce que soudain le Ministère du Travail réalise qu'il y a là, problème, et nous présente cet amendement. Selon les syndicats que nous avons consultés, cette disposition avait été proposée par le BIT pour inscrire dans notre loi, le droit à la grève, mais que face à la résistance farouche des employeurs, cette disposition fût formulée de telle manière à ce qu'elle soit très limitée, seulement la première grève, qu'elle soit sujette à bon nombre de conditions. Cette disposition n'a jamais été utilisée. Mais elle était le premier pas, un pas certes limité, insuffisant, mais qui reconnaissait aux travailleurs le droit d'évoquer une menace de grève dans le cours normal des négociations.

Vous savez, M. le président, aucun travailleur ne se met en grève par plaisir. Mais ce recours au droit de grève est un droit fondamental et un outil essentiel dans le processus de négociation. Sans la menace de grève, jamais au sein de l'industrie sucrière, serions-nous parvenus à un accord à la onzième heure l'an dernier. Le droit de grève est un droit fondamental pour lequel se sont battus tous les précurseurs et les fondateurs du Parti Travailleuse. Willy Mootoo, en 1922, tentant pour la première fois de créer un syndicat, se faisant ignorer, rejeter par le pouvoir colonial d'alors. Toute la lutte des tribuns travailleuses, d'Emmanuel Anquetil, de Maurice Curé et de Ramnarain, c'était par rapport à ces deux principes: de la liberté de se syndiquer, la liberté d'association et, *the other side of the coin*, le droit de grève fondamental.

En fait, le Parti Travailleuse fut fondé dessus et, aujourd'hui, -même je ne pourrais pas dire ce même Parti Travailleuse - ceux qui se réclament du Parti Travailleuse qui viennent trahir ce principe fondamental. Vous savez, M. le président, en écoutant la thèse du ministre du travail qui essayait de créer une psychose, la grève menace, il y aurait grève au sein de l'industrie sucrière, du port, du secteur du transport, je me suis rappelé ces années où Anquetil se faisait déporter à Rodrigues avec son fils par le pouvoir colonial, par le Gouverneur Clifford à cause de cette soi-disant menace que représentait l'agitateur communiste qui était Emmanuel Anquetil, selon le pouvoir colonial. Je me suis souvenu du sort de l'honorable Paul Bérenger au début des années 70 et lorsque les lois répressives sont votées par le gouvernement Travailleuse d'alors avec le soutien du PMSD d'alors, n'était-ce pas la même chose? La psychose à propos des grèves, le danger de l'instabilité et, aujourd'hui, c'est exactement la même chose que nous vivons à nouveau. Cette disposition 9 (2) que l'honorable ministre cherche à abroger est - j'insiste là-dessus - une remise en

question du droit de grève qui représente une liberté fondamentale pour tout employé, qui représente l'ultime recours essentiel pour la classe ouvrière, M. le président. C'est pour cela que nous estimons extrêmement dangereux ce que cherche à faire le Parti Travailleiste aujourd'hui.

M. le président, je vais terminer en disant que pour les raisons que j'ai énoncées, nous ne pouvons qu'opposer de manière catégorique et implacable à ces amendements. J'en appelle une dernière fois à la conscience travailleiste, des députés de l'autre côté de la Chambre. Il est rare dans l'histoire d'un pays que nous débâtons sur le fond des lois du travail. Depuis l'indépendance, cela fait plus de 45 ans, il y a eu les lois de 73/75, il y a eu les lois Bunwaree de 2008 et, aujourd'hui, pour la troisième fois depuis l'indépendance, nous allons débattre des dispositions fondamentales de notre droit du travail. Ce sont des moments historiques ; ce sont des moments solennels où chacun est appelé, face à l'histoire, face à sa conscience, à assumer ses responsabilités. Au delà de la loyauté vis-à-vis du gouvernement, je demanderai aux députés de l'autre côté de la Chambre de réfléchir aux dispositions précises, particulières, de ces amendements et de faire très attention au moment du vote car l'opinion publique, la classe ouvrière, les syndicats et les salariés de ce pays ne pardonneront pas la trahison que constituera l'acte de voter ces amendements. Pour notre part, au sein de l'alliance MMM MSM, nous assumerons pleinement nos responsabilités face aux travailleurs et aux travailleuses et à l'histoire de notre pays.

Merci, M. le président.

(10.55 p.m)

The Attorney General (Mr Y. Varma): Mr Deputy Speaker, Sir, I take this opportunity to congratulate my good friend, the hon. Minister of Labour, Industrial Relations and Employment for proposing amendments to the Employment Rights Act and the Employment Relations Act; these amendments being long awaited by all the stakeholders concerned.

In fact, hon. Members of this House will recall that these two Acts which have repealed and replaced the Labour Act of 1975 and the Industrial Relations Act 1973 respectively were enacted in 2008 and came into operation in February 2009. Thereafter, following representations from stakeholders concerned, namely, the workers organisations

and trade unions, Government took the decision in November 2010 to set up a High Powered Committee to consider and examine amendments to be brought to these two Acts.

Mr Deputy Speaker, Sir, I was a Member of that High Powered Committee and it goes without saying that when a new piece of legislation is being enacted or existing ones are being amended, it is very difficult to fully satisfy the expectations of all parties concerned and this is probably due to conflicting interests which may be in contention. Mr Deputy Speaker, Sir, when it comes to employment legislation, the task is even more strenuous having regard to the diametrically opposed positions of the main actors concerned, namely workers and workers organisation on the one hand, and employers and employers organisations, on the other hand.

Mr Deputy Speaker, Sir, I am, therefore, sure that hon. Members of this House do realise the difficult task that the Government and, particularly, the Minister of Labour, Industrial Relations and Employment, has had in bringing about these amendments.

Mr Deputy Speaker, Sir, it is being proposed to create a legal framework for shift work by limiting the maximum number of working hours per day to 8 hours. Members of the House will surely note that in the Bill introduced in December of last year, the proposed number of working hours per day on shift work was 12. But following representations made by trade unions, it is now proposed to reduce the number of working hours per day to 8. Presently, the Employment Rights Act does not provide for a limit on the number of hours work per day for shift workers. It simply allows the worker and the employer to agree on the number of hours of work to be performed in the shift subject to a maximum of 90 hours per fortnight. It is as per section 14(8) of the Employment Rights Act. Hon. Members will notice that the proposed amendments put an obligation on the employer to schedule shift work on a monthly basis and above all, to hand over to the worker, the schedule at least one week before the schedule is due to be put into place.

Mr Deputy Speaker, Sir, this is indeed a very positive measure. While this will surely enable workers to organise the life outside work, that is allow them to balance the lives at work with their family and social activities and also help the employer to organise the work in a more organised and a timely manner thus minimising last minute disruptions. Mr Deputy Speaker, Sir, this proposal is surely going to lead to a win-win situation for both employers and employees.

Another new measure that is being proposed in the Bill is the payment of an allowance of 10% of the basic wage for work performed during night shift work. So far payment for an additional allowance was generally prescribed for piece rate work, that is, the additional payment was related to productivity. This newly proposed measure seeks to compensate the disabilities associated with night shift work. No doubt this additional financial reward will bring satisfaction to workers' concern and will contribute to make work during night shift more attractive and more acceptable to a large majority of our work force, especially at the present juncture, when sectors like BPO and call centers, for instance, which operate on shift system and are proving to be vital for the contribution to our economy.

Mr Deputy Speaker, Sir, allow me to address the proposal on maternity benefits. Under the Labour Act now repealed women were only entitled to 12 weeks maternity leave on full pay for those reckoning 12 months' continuous service with the same employer. No payment for maternity allowance was provided for. With the coming into force of the Employment Rights Act in 2009, a maternity allowance of Rs2000 was introduced for those reckoning 12 months continuous service. So, female workers started to be eligible to an additional payment of Rs2000 after confinement. Now, the Government is proposing to increase this allowance to Rs3000 which is a very commendable measure indeed.

Mr Deputy Speaker, Sir, what is more interesting is that this maternity allowance of Rs3000 is being extended to all sectors of the economy irrespective of the lesser amount prescribed in the Remuneration Regulations. Some of these regulations, Mr Deputy Speaker, Sir, still provide for the payment of a sum as insignificant as Rs300 for maternity allowance. In this salt manufacturing industry and the tea industry for instance, the allowance is Rs500. Mr Deputy Speaker, Sir, for female workers in these sectors, the proposed increase in maternity allowance is very significant and this will surely alleviate the burden in times of need.

Mr Deputy Speaker, Sir, additionally the Bill also seeks to provide greater protection to workers in the disciplinary process by ensuring that an oral hearing is held in a fair and independent manner.

Mr Deputy Speaker, Sir, what has been the practice so far? A disciplinary committee set up by the employer, the Chairperson is selected by the employer, is paid by the employer and many times it happens that the employee does not get the opportunity to be properly represented. And what is being proposed as regards disciplinary committee, for the aims at

eliminating any perception of injustice. It is proposed to do so by expressly legislating on the independence of the Chairperson in such disciplinary hearings. The Chairperson, as proposed, should be someone who has not been involved in the investigation and who is able to make an independent decision thus ensuring enhanced due process in disciplinary matters.

Mr Deputy Speaker, Sir, I am sure that Members of the House will surely agree that presently, as I stated earlier on, certain employers resort to a disciplinary hearing only with a view to complying with the law such that they may avoid payment of severance allowance for unjustified dismissal at the rate of three months remuneration for every 12 months of continuous employment.

The new proposal reinforces the right of workers and with the additional safeguards providing that a worker may now be assisted at a disciplinary hearing by both his trade union and his legal adviser. I am sure that Members of the House - there are many Barristers on the other side of the House - will find in these new proposed amendments to be a significant improvement in the rights of workers

Mr Deputy Speaker, Sir, the doing away with a Termination of Contracts Service Board, has been the subject of endless criticism by workers organisations since there exists no institution to decide upon the justification or not of collective dismissals, but temporary or permanent reduction of workforce or closing down of enterprises. It is noted that the Bill proposes the creation of an Employment Promotion and Protection Division as a new division of the Employment Relations Tribunal. The role of this new Division is to determine whether the temporary or permanent reduction of the workforce or the closing down of enterprises is justified or not.

Mr Deputy Speaker, Sir, what is even more interesting, is that the Employment Promotion and Protection Division is also empowered to order an employer to reinstate a worker in his former employment where the latter consents to such reinstatement and to pay the worker remuneration from the date of termination of his employment to the date of his reinstatement. So, the concept of reinstatement is finally expressly being included in our law. Members of the House surely know of so many cases where workers have struggled in vain to be reinstated. In some cases they have even resorted to hunger strikes.

Now, the Employment Promotion and Protection Division has been given the power to order reinstatement. This power to order reinstatement is even extended to the Industrial

Court in specific circumstances, namely, in cases of unfair dismissal on grounds of discrimination and victimisation for participation in trade union activities. Mr Deputy Speaker, Sir, a lot has been said by the orator before me on the issue of unlawful strike.

The Employment Rights Act presently provides in section 9(2) that no worker shall cease to be in the continuous employment of an employer for reason of his participation for a first time in a strike which is unlawful under the Employment Relations Act. I have just been informed, Mr Deputy Speaker, Sir, of the number of illegal strikes by migrate workers.

In 2009, it was 10; in 2010, it was 20; in 2011, it was 15 and last year it was 11. The Employment Relations Act, Mr Deputy Speaker, Sir, provides for a set of procedures to be followed before resorting to a lawful strike. Section 83 of the Employment Relations Act provides and I quote -

“The contract of employment of a worker shall not be broken by reason of his participation in a strike which is not unlawful.”

Clearly, in the two legislations which both deal with employment matters, there is a contradiction as regards the effect of a strike on the individual contract of employment. I am sure, Mr Deputy Speaker, Sir, Members of this House will realise that the two Acts have to be harmonised and a better and more realistic view has to prevail, that is, an unlawful act cannot by any means be made lawful. Hence, the proposal to do away with section 9(2) of the Employment Rights Act thereby ensuring efficient industrial and employment relations that will eventually lead to social peace which is an imperative in the prevailing worldwide precarious economic situation.

Coming to the Employment Relations Act, the Mauritian industrial relations system needed a fresh makeover to reflect the changes in the system and our society. Consequently, the Industrial Relations Act of 1973 was repealed in and replaced by the Employment Relations Act which was enacted to consolidate the law relating to trade unions; fundamental rights of workers and employers; collective bargaining; labour dispute and related matters. The first proposed amendment, Mr Deputy Speaker, Sir, to the Employment Relations Act is the conciliation service by the Minister in person to the parties to a labour dispute. As the hon. Minister of Labour, Industrial Relations and Employment stated, it is a long-standing practice for Ministers of Labour to personally assist parties to a labour dispute with a view to bringing the parties to a consensus. However, there is presently no legal basis for such

conciliation service; such that from a purely legal standpoint, the agreement resulting from such conciliation can again be subject to a labour dispute. There was recently a case where the hon. Minister of Labour offered his service to conciliate two parties to a labour dispute and an agreement was signed on some of the issues in dispute. However, another trade union, which was not a party to the agreement, contested the agreement reached thereby challenging its validity. Should things like this be allowed to repeat, a chaotic situation is likely to ensue; hence the rationale of this new proposal, Mr Deputy Speaker, Sir. The Minister will have the power to provide a conciliation service to the parties to a labour dispute where the dispute remains unresolved at the level of the Commission for Conciliation and Mediation and a dispute is not referred to arbitration as well as, at any time, before a lawful strike takes place. However, the Minister will offer his services only at the request of the parties. Also, any resulting agreement is going to have the effect of a collective agreement. This means that the agreement will remain in force for, at least, 24 months and will be binding on the parties to the agreement as well as on all the workers in the bargaining unit to which the agreement applies.

Mr Deputy Speaker, Sir, this is surely a means of ensuring industrial peace which is vital to our economy. Mr Deputy Speaker, Sir, the amendment to the Employment Relations Act also seeks to limit the membership of workers to only one trade union of his own choice in the same enterprise or bargaining units. This will help in the strengthening of trade unions. It is noted from the general survey of the 2012 ILO Committee of Experts on the Application of Conventions and Recommendations, at paragraph 91, the Committee refers to the legislation in certain countries which stipulate that members of a trade union must belong to the same or a similar profession, occupation or branch of activity or imposes a general structure on the trade union movement. The Committee views that such restrictions may only eventually be applied to first level organisations on condition that these organisations are free to establish inter-occupational organisations and to join federations and confederations in the form and manner deemed appropriate by the workers or employers concerned. In the proposed amendments, the proposed amendment restrictions are imposed only in respect of the same bargaining unit or enterprise. Workers are free, Mr Deputy Speaker, Sir, to join more than one trade union where the trade unions do not cater for one and same bargaining unit. Additionally, by virtue of section 16 of the Employment Relations Act, the trade unions are free to join and/or federations and confederations in the manner approved by the rules of each trade union or federation.

Mr Deputy Speaker, Sir, I am confident that the proposed amendments aim at providing a better framework for employment legislation to operate more efficiently and to reinforce the underlying spirit of the principal Acts themselves which seeks to afford better protection to the workers of this country against unfair treatment. These Bills are, in my view, of utmost importance as they represent yet another landmark in individual and collective contractual obligations of workers in Mauritius.

With these Bills, Mr Deputy Speaker, Sir, we are adding more rights of our labour force, one of the most valuable resources which our country possesses.

I thank you for your attention.

At this stage, Mr Speaker took the Chair

(11.21 p.m.)

Mr P. Jugnauth (First Member for Quartier Militaire & Moka): M. le président, beaucoup a été dit sur les amendements qui sont présentés aujourd'hui devant la Chambre. Je souscris entièrement à tout ce qui a été dit par mes collègues de l'opposition. Mais je ferai quelques commentaires sur la philosophie - surtout en présentant ces amendements - que représente ce gouvernement, surtout le Parti travailliste d'aujourd'hui, et je vais certainement faire quelques commentaires sur certaines sections de ces amendements.

M. le président, permettez-moi, au départ, donc, d'exprimer mon indignation de la façon dont le ministre du Travail et des Relations industrielles a procédé pour présenter ces amendements aux deux lois du travail qui concernent plus de 500,000 employés de ce pays. En décembre 2012, le ministre s'était empressé, et puis pour des raisons jusqu'à présent, peut-être en partie inconnue, il a dû se rabattre. Pour la rentrée parlementaire 2013, nouvel empressement, le ministre présente, à la dernière minute, des amendements aux amendements de décembre 2012, sans aucune consultation avec les syndicats. Encore une fois, on a vu d'autres amendements qui ont été présentés. Vendredi, après la réunion du Cabinet, le ministre a circulé une troisième génération d'amendements, encore une fois sans consulter les syndicats, et encore une fois dans l'empressement. Les amendements ont été circulés hier, et mon collègue, l'honorable Soodhun, a eu ces amendements à sept heures du soir.

M. le président, le ministre va peut-être nous dire tout à l'heure que ces amendements *are not very consequential. Maybe!* Mais lorsqu'on regarde amendement après amendement, tout d'abord il faut faire un travail pour aller voir chaque section des lois respectives où le

ministre vient dire *that he is deleting* - je ne sais combien de sections ; clauses 7, 8, 14, 15, 19, 21, 22, 24, 30, 35. Cela peut paraître une lecture facile, mais pour nous qui devons légiférer, qui devons faire des commentaires, on a le devoir d'aller vérifier chaque clause, et de voir qu'est-ce que le ministre est en train de proposer, de retirer, de changer, d'ajouter, et quelles sont les conséquences de ces amendements. Hier, lorsque j'ai reçu d'autres amendements aux amendements qui ont été proposés, je dois vous dire que c'est comme un labyrinthe ; *it is a maze*. J'ai écouté l'*Attorney General* qui disait tout à l'heure qu'il y a bon nombre de légistes. Je dois dire que moi-même, en tant que légiste, aller voir chaque amendement proposé n'a pas été facile. Donc, je ne comprends pas, tout d'abord, l'empressement.

Je me souviens quand le *Leader* de l'opposition avait *adjourned the debate* la dernière fois, et avait demandé à ce qu'on puisse avoir quelques semaines, le Premier ministre avait dit - en passant - qu'au contraire, il pensait réunir la Chambre le vendredi au lieu du mardi qui suivait. Mais quand même, il a pris en compte notre demande, et cela a été renvoyé pour mardi. Et puis, par la suite, nous avons eu la tragédie. Donc, les projets de lois ont été renvoyés encore une fois. Et là, je ne comprends pas cet empressement. Lorsque j'ai écouté le discours du ministre qui vient dire qu'il y a une situation urgente, parce qu'il y a des syndicalistes, qu'il a qualifiés d'irresponsables, qui sont en train de préparer une grève, que ce soit dans l'industrie sucrière, le port et le transport, je me demande si, au contraire, le ministre, lui, n'a pas un agenda caché. Je n'aurais jamais imaginé, M. le président, que le gouvernement travailliste pouvait autant trahir les travailleurs, surtout depuis 2006. Je me pose la question !

Revenons sur les amendements. Allons dire que si le Premier ministre avait insisté pour que le Parlement siège le vendredi, si on avait débattu les deux projets de lois, les deux projets de lois auraient été votés. Mais ces amendements qui sont venus après ! Peut-être qu'on aurait encore renvoyé les débats, et je peux parier qu'il y aurait encore eu des amendements à ces amendements. Mais, passons, puisqu'on est, aujourd'hui, pour terminer le débat sur ces deux projets de lois.

Mr Speaker, Sir, the proposed amendments to the labour laws that were enacted in 2008 come at a time when workers of this country are, in fact, going through very hard times on the social and economic fronts. J'ai entendu un orateur du côté du gouvernement, l'honorable Dr. Boolell, qui a consacré une grande partie de son intervention à décrire la

situation au niveau mondial, mais surtout la situation à l'île Maurice qui est difficile et, pour lui, c'est cette situation en particulier qui justifie qu'on vienne faire ces amendements.

The standards of living are, in fact, deteriorating for the workers. Poverty is on the rise, the middle-class is decimated, and job precariousness has become workers' nightmare. Unemployment is on the increase and indebtedness has reached alarming proportions. What has led our country and the workers to such an appalling situation? Since 2006, I am consistent in my analysis and today I will say it again in this House that the drama lies in the ultra liberal policies adopted by this Government.

Since 2006-2007 Budget, our country has been led on the path of ultra liberalism inspired from IFM and World Bank doctrines where workers are mere puppets in the hands of the employers and where the rich, in fact, become richer and the poor poorer.

Mr Speaker, Sir, we should not forget the context within which the two new labour laws were voted in this House. As I said, the agenda of the then Government was being implemented full swing with the blessing of the hon. Prime Minister. I can recall this philosophy when the rupee had been depreciated by a massive 20% to fill the coffers, to use the term of a hon. Member of the Government "to fill the coffers of the fat cats of the private sector".

Workers and the population at large, in fact, bore the brunt of the cascading price increases. I remember how subsidies were slashed on the SC and HSC...

Mr Speaker: No! Sorry, the hon. Member has to give way. This is not a debate on the Budget. I would appeal to the hon. Member to stick to the amendments.

Mr Jugnauth: Yes, Mr Speaker, Sir, however, a lot of latitude was being given to, for example, hon. Dr. A. Boolell, who intervened for thirty five minutes and spoke thirty minutes on everything else and five minutes on the Bill!

(Interruptions)

Yes, we can check and we will see what he has been stating. So, I need to reply to what hon. Members of the Government have been saying!

(Interruptions)

I was talking about the subsidies that were slashed on the SC and HSC examination fees for the majority of our students. The decision was even taken to deprive school children of a loaf of bread. The tripartite mechanism for determining salary compensation for the increase in the cost of living was dismantled and the much contested National Pay Council was set up. Workers were in fact being robbed of their dues in terms of salary compensation. Again, employers saved millions of rupees in respect of salary compensation! And again, their coffers were being filled while the purses of workers were being emptied!

We reached a situation where for the first time since the glorious days of economic miracle in the 80s, the then Minister of Finance himself said: “we had absolute poverty in our country”. But, that did not prevent the then Government to continue to pursue on its ultra liberal track and to bring the new anti-worker labour laws.

Mr Speaker, Sir, the essence of the new anti-worker labour laws had been presented by the then Minister of Finance in the 2006-2007 Budget Speech. Let me quote –

“Our greatest deficiency is the misery we have imposed on our workers. By protecting jobs, we have made it impossible for our younger workers to find employment and for those who lose their jobs to get back to work.

The inflexibility of some laws and the rigidity of some regulations and practices have consigned tens of thousands of our compatriots to the margins of development. They have been excluded by the very system that purports to protect them.”

And for the Minister then who had the full support of Government, job security was, in fact, a deficiency and a misery for workers! Could you have imagined a Labour Government speaking such a language! As remedy to the newly found misery, the then Minister of Finance, in concurrence with the Government, proposed reforms to the labour laws in accordance with IMF predicaments and MEF’s long time request.

In fact, over the years, the Mauritius Employers Federation had - I can recall when we were in Government - been systematically requesting for hiring and firing powers. The *Alliance sociale* satisfied that employers’ earnest desire when they came up with the labour laws that took away from workers many of their acquired rights.

M. le président, le gouvernement d’alors a donné le pouvoir aux patrons pour transformer les travailleurs de ce pays en véritable paillassons. Les travailleurs sont

aujourd'hui à la merci de leurs employeurs. Ce gouvernement a légiféré en faveur de l'insécurité et de la précarité de l'emploi, et le coût de licenciement a été réduit aux profits des patrons. Le préavis de licenciement a été réduit de trois mois à un mois. Le licenciement sans compensation pour raison économique a été introduit, des provisions ont été votées pour que les heures supplémentaires soient payées qu'après 90 heures de travail normal.

Et le *Termination of Contract Services Board* a été aboli entre autres, sans oublier les pouvoirs accrus accordés au ministère du Travail qui ne sont pas en pratique dans l'intérêt des travailleurs. Le comble dans tout ce massacre social demeure la déduction obligatoire d'un pourcent des salaires des travailleurs pour subventionner leur éventuel licenciement, si cela devait arriver!

M. le président, en un trait de plume le gouvernement Travailleiste avait trahi tout un combat du Parti Travailleiste, tels que Anquetil, Rozemont, Pandit Sahadeo et tant d'autres tribuns ! Et comme l'a si bien dit l'honorable Soodhun, les travailleurs de ce pays n'oublieront jamais le combat de l'honorable Paul Bérenger pour améliorer les conditions de travail et garantir les droits fondamentaux des travailleurs. D'ailleurs dans le discours de l'honorable ministre, je vois que lui aussi aujourd'hui reconnaît cela.

Mr Speaker, Sir, at a time when the Employment Rights Bill and the Employment Relations Bill were being discussed outside and inside this House, we in the Opposition, said forcefully that the new labour laws would be detrimental to the workers and we condemned the anti-worker *modus operandi* of the then Government. We warned that employers would be using the new provisions of the labour legislation to fire as they wish and when they wish.

I remember hon. Soodhun, came with as many as 32 amendments that were meant to safeguard the acquired rights of workers. Government at that time did not listen. They rejected all the amendments outrightly. I heard the hon. Minister saying in the Second Reading of his speech, that we have not come forward with proposals. But proposals had been made a long time ago and they justified everything. They pretended that the new laws would improve work conditions and that workers would be better off. They voted the new labour laws giving extensive powers, as I said, to fire on economic reasons.

Mr Speaker, Sir, what we apprehended actually materialised. Employers used and are using the firing provisions of the new labour legislation to sack workers unjustly. Since the new legislations have been proclaimed, as many as I understand, 30,000 workers have been

fired by employers on the basis of economic reasons. The hon. Minister himself has been saying in this House that employers have been and are making an abuse of that section of the law, which is causing misery and havoc amongst hundreds of families. In the face of this drama attributable to the new philosophy, the ultra liberal and pro-employment agenda, this Government is now trying to correct its own blunder.

Après avoir été l'auteur du crime envers les travailleurs, le gouvernement joue maintenant au justicier et brandit l'arme favorite que l'honorable Premier ministre utilise à chaque fois qu'ils sont acculés. Ils donnent l'impression d'attaquer les patrons. Ils les accusent d'avoir abusé de la nouvelle loi, alors que dans le fond, l'agenda ultra libéral, pro-capitaliste et anti-travailleur reste le même. En tout cas, ils sont bien, bien loin des idéaux du parti Travailleuse de Rozemont et d'Anquetil.

But while putting the blame on the employers, the hon. Minister is still saying that the Government was right in giving firing powers to employers. The hon. Minister said, and I quote –

“It was an excellent piece of legislation.”

Quelle contradiction, M. le président ! Mais je note quand même des claques magistrales à l'ancien ministre du travail. L'honorable ministre, Shakeel Mohamed, blâme son collègue et, en même temps, l'honorable Premier ministre, pour avoir, entre autres, cru dans la bonne foi des employeurs, pour n'avoir pas mis de limite en termes d'heures de travail par rapport au *shift work*, et pour avoir été trop diligent envers l'employeur quand il s'agit de notifier son employé au cas où ce dernier est accusé de mauvaise conduite. En gros, l'honorable ministre reproche à son ancien collègue d'avoir bâclé le travail. Des mots qui sont ronflants, ont été utilisés par l'honorable ministre comme pour mieux faire comprendre qu'il est en train de faire beaucoup pour les travailleurs. Maintenant, l'honorable ministre, va corriger les crimes commis par le deuxième gouvernement du Premier ministre, le Dr. Navin Ramgoolam. Et il va jusqu'à faire la leçon lorsqu'il affirme, *and I quote what he said* –

“I am not like certain people who are so adamant that without politics, they do not have a life. I have a life without politics. I am sorry, this is me. Learn if they do not know how to do it.”

Donc, l'enfant terrible, M. le président, il menace, il n'a pas de leçon à prendre de qui que ce soit, et quid de quitter la politique même si on lui reproche quoi que ce soit.

Il fait le procès des employeurs, donnant l'impression encore une fois, qu'il est le grand défenseur des travailleurs comme l'ont été les illustres tribuns qu'il a mentionné du parti Travailleiste des premières années. Mais dans les faits, M. le président, l'honorable ministre poursuit la logique du gouvernement de l'alliance sociale. Lui aussi, il a succombé à la sirène des employeurs. Je pense bien parce que c'est la façon de procéder le conseil des ministres, les honorables membres du gouvernement ont dû certainement analyser et bien étudier ces amendements et on verra combien vraiment d'entre eux sont d'accord avec ces amendements. Je ne vais pas mentionner ce que l'honorable Ms Deerpalsing a déjà déclaré et cela a été déjà dit. En tout cas, cela ne m'a pas surpris. Je dois dire personnellement pour avoir évolué dans ce gouvernement pendant quelques temps et cela ne me surprend guère, la façon de faire et la façon de se dissocier à un certain moment avec certains membres du gouvernement. Mais pas dans la Chambre; elle préfère parler ailleurs, chacun son style et chacun sa façon de faire.

Mais pire encore, l'honorable ministre prend les syndicalistes et les travailleurs pour des ignorants et il s'efforce à essayer de convaincre. Je vais donner certains exemples en ce qu'il s'agit des différentes sections des amendements qu'il propose.

Let me start with the new proposed amendments to the Employment Rights Act 2008, regarding redundancy or reduction of workforce. Despite a vain safeguard in the new proposed section 39(b) in clause 19 as proposed in the new amendment, they do not cure anything in reality. The Labour Government has successfully eroded the rights of the workers in such a situation. We have gone from getting prior permission from the Ministry before such a redundancy is effected in the Labour Act, to informing the Ministry prior to such an Act, under

the ERA 2008. Now, the Ministry is only informed by the employer after such a reduction of the workforce.

So, the new safeguard in clause (h) ushering in the newly proposed sub-section 19(3); introduces a consultation phase, but does not say what happens, if the employer fails to do so. No sanction is, in fact, provided. I call that mere eye wash. Now, with the proposed amendment, the employer would be informing only after firing for economic reasons. I ask the question again. I will not repeat what the hon. Members of the Opposition have been saying. I have read a number of his public interventions, where the hon. Minister reassured the workers that 'this is a situation that cannot continue and I am going to do something about

it.' I must say that he did not say specifically what he was going to do, but the way he spoke and from the contents of his different interventions, made an ordinary person to believe that he was going to make profound amendments to that section of the law. But I am afraid that for me it equates to fooling the working class.

Quel culot de la part du ministre pour venir affirmer qu'il s'agit d'un progrès législatif pour les travailleurs! En fait, les employeurs ont toujours la carte blanche pour licencier. Ils sont autorisés à commettre leurs crimes et venir par la suite justifier leurs actes. Quelle trahison donc pour le parti Travailleiste d'aujourd'hui envers les travailleurs.

In fact, the floodgates are still wide open for even more abuses. I don't want to as if make forecast, but time will tell just like time has told us now. Since 2008, when hon. Soodhun and Members of the Opposition were – *on avait attiré l'attention du gouvernement d'alors de regarder ce qui va se passer et effectivement, avec le temps maintenant, le ministre vient de dire qu'il y a eu des abus et les employeurs et les patrons ont licencié et ils se sont saisis de cette section de la loi pour licencier.*

The second blatant example, Mr Speaker, Sir, refers to the amendments to the Employment Relations Act as regards the limitation on the right to strikes or recourse to lockouts in the circumstances where a collective agreement is in force and the immediate effect of this amendment - as highlighted by a number of trade unionists - would be that the right to strike of labourers and artisans of the sugar industry will be quashed during the negotiations between the MSPA and the Unions this year. This is the tragedy. The Minister himself is party to that agreement that was signed on 17 August 2012 between the MSPA and the trade unions of the sugar sector, whereby commitment has been taken to engage in negotiations for a new collective agreement that would come into force in January 2014. This is very important for the workers, where end results and new issues would be taken up. The Prime Minister, Members of his party including the Chairperson of the Commission for the Democratisation of the Economy - *le titre de ce comité est ronflant.* But we have criticised the MSPA for refusing to negotiate on behalf of the sugar producing companies.

Je ne vais pas entrer dans les détails. Tout en négociant comme une entité collective, à un certain moment, ils viennent dire aux travailleurs que maintenant il faut aller discuter avec chaque compagnie sucrière. Mais, franchement, si déjà avec la loi qui existait les patrons de l'industrie sucrière se sont comportés de cette façon, maintenant venir enlever, this was, in fact, a tool in the hands of the workers so that they are able, at least, to try to put

themselves - I would put it that way - on the same level playing field as the employers. *Mais on a vécu cela et on a vu ce qui s'est passé.* We would all have thought that it was a victory for the labourers and the artisans of the sugar sector. *Mais c'était donner trop de crédit au ministre et à ce gouvernement. Chassez le naturel il revient au galop. Cet adage s'applique parfaitement à ce gouvernement. Trahison envers les travailleurs une nouvelle fois. Et avec l'amendement proposé à la section 77(b) de L'Employment Relations Act, M. le président, s'il y a litige ou deadlock lors des négociations entre la MSPA et les syndicalistes du secteur sucrier durant le reste de 2013 où le collective agreement de 2010/2013 est toujours en vigueur, il ne peut y avoir je dirais aucun recours. Qu'est-ce que les travailleurs vont pouvoir brandir contre les patrons? Le ministre et ce gouvernement travailliste rend ainsi caduque un accord qu'ils ont eux-mêmes discuté et finalisé avec les employeurs du secteur sucrier en août 2012.*

Ce qui est proposé dans l'amendement à la section 67 C (3) et circulé le 5 avril est encore plus grave. La porte est solidement verrouillée pour plaire davantage au secteur sucrier et au patronat. De part ces amendements, aucun litige ne peut être déclaré pendant une période de 24 mois suivant la signature d'un *collective agreement* sur des sujets qui n'ont même pas été discutés durant la période des négociations. C'est extraordinaire et cela même si les travailleurs sont indûment affectés par un problème concernant leur salaire et des conditions de travail. Encore une fois les travailleurs sont livrés à la merci des employeurs. C'est révoltant, M. le président, de constater qu'un gouvernement peut devenir à ce point - je dirais plutôt - l'alliée des patrons contre les travailleurs. Pour moi, c'est un crime envers les travailleurs du secteur sucrier et pourtant on a l'habitude d'entendre le Premier ministre dire : *tant qui mo là qui ou peur.* Quand il prétend s'attaquer au patronat sucrier, je me demande qui dois avoir peur avec ce gouvernement et ce Premier ministre; les travailleurs ou les patrons ? Clairement dans les faits, ce sont les travailleurs qui sont les perdants ; ils ont été bernés et le parti Travailliste va leur faire croire toujours qu'il est leur défenseur. Cela me fait rappeler, M. le président, le Premier ministre s'était attaqué aux patrons sucriers en décembre 2007. Monts et merveilles avaient été promis aux travailleurs de l'industrie sucrière comme les fameuses actions directes dans toutes les entités sucrières. La baisse des tarifs d'électricité après révision des accords entre le CEB et les producteurs privés d'électricité. Tout cela n'a été que du vent jusqu'à présent. Il n'en fut rien jusqu'à ce jour. Plus de cinq ans se sont écoulés depuis et les travailleurs attendent toujours. Par contre, le Premier ministre a agi rapidement en faveur de ces mêmes patrons sucriers auxquels il s'est

toujours attaqué. Il leur a accordé, en catimini s'il vous plait, même que j'ai posé une question à l'honorable ministre de l'agriculture. Il a avoué dans cette chambre que lui-même il n'avait pas le contenu d'une section de l'accord qui a été faite avec les sucriers. Le *deal* où ce gouvernement a fait un cadeau de cinq milliards de roupies en approuvant une augmentation de 600% du prix du sucre sur le marché local. Les travailleurs et la population sont épluchés grâce au bon vouloir du Premier ministre et du gouvernement Travailleiste. Et ce même Premier ministre viendra dire à la population qu'ils ont déclaré la guerre et le terme qu'ils utilisent est : les barons sucriers. Donc, les masques sont tombés et ils continuent à tomber. Et la population sait maintenant qu'elle a affaire - pour utiliser le terme qu'a utilisé mon collègue, l'honorable Obeegadoo - à un gouvernement hypocrite et arnaqueur.

And, a third example, Mr Speaker, Sir, relates to the amendment as regards an allowance of 10% of basic wage for work performed during night shift, and looking at it, one would tend to believe that the hon. Minister has been generous towards workers, but when you look at the details you discover that a worker will have to work for seven consecutive hours and that also between 6.00 p.m. and 6.00 a.m. to qualify for this allowance. The question I ask is: how many workers would, in fact, benefit from this measure? How many employers also, would actually be paying this allowance? *Encore une fois attendons voir.* Now, the amendments with regard to shift work cannot be a standalone and if Government was really serious, it would have come with appropriate amendments to the remuneration orders in order to harmonise same.

A fourth example relates to the proposed amendment to Section 67 (2) of the Employment Relations Act. Now, we have voted, the new amendment will again undermine the negotiations in the sugar sector this year and interdict the reporting of issues which were canvassed, but not settled, in 2010. In fact, employers can use a new provision to restrict labour disputes resolution and strike action. Also, the proposed new definition of labour dispute which excludes labour dispute, that is reported more than three years after the act or omission that gave rise to the dispute could result in a situation where, in fact, any existing terms and conditions which are in force for more than three years would not be subject to change. This, Mr Speaker, Sir, I find absurd and by no means constitutes any advancement for the workers.

A fifth example concerns the proposed amendments to Section 78 of the Employment Relations Act. Strike ballot would be held in the presence of the Permanent Secretary of the

Ministry of Labour, Industrial Relations and Employment under the authority, of course, of the hon. Minister. The hon. Minister proposes to act as conciliator and is giving, in fact, himself powers under the law. What is the agenda? I ask myself, the hon. Minister is going to act as a supervisor, as a 'sirdar', for the employers. Could not this amendment be interpreted as, in fact, Government's interference in the independence of the Trade Union Movement? Is the hon. Minister not deliberately usurping the role of the Commission for Conciliation and Mediation? I asked myself, why are institutions being sidelined? Again, what is the agenda? Can a Minister or a Permanent Secretary be more independent and objective than an independent institution?

Clearly, Trade Unionists and workers have all the reasons to worry about as with the new process and with the conditions that are being imposed, the possibility for workers to go on strike is almost reduced to nil and the more so, when Section 9 (2) of the Employment Rights Act is being repealed altogether to punish workers who participated in a strike even for the first time, and workers of this country are, in fact, losing one of their fundamental rights. I have asked myself the question, this section, well, I must say, the much criticised labour laws that were proposed by former Minister Dr. Bunwaree at that time had included this Section. There must be a reason. I don't want to go into the detail of whether there was a set-off, a bargain, a trade-off or by whatever name you call it, but it was there and has existed for so long. Why is it that now this Government wants to get rid of that Section? I, again, say that was at least one of the fundamental rights of the workers. *Mais encore une fois, trahison de la part du Parti Travailliste envers les travailleurs et je dirais trahison surtout envers les tribuns travaillistes qui avaient engagé tout un combat pour que les travailleurs obtiennent le droit de grève, et je ne crois pas que feu Abdool Razack Mohamed aurait été fier de cette œuvre.*

A sixth example, Mr Speaker, Sir, relates to the proposed amendment whereby the number of days where a worker could absent himself from work without reasonable cause is now being reduced, for a first time reduced, to two days from three days. Again, I ask the question, I don't see the reason: was it urgent, has it caused problems? Again, this is in the interest of the employers and, once again, I would say the bias is shown and the loser, the one being pressurised, the one being unduly targeted, is the worker.

Another point I wish to raise is the proposed creation of the Independent Employment Promotion and Protection Division within the Employment Relations Tribunal and we all

know that the ERT is an instance of appeal. Now, if we put the proposed division under the ERT, would we not be making of the ERT, judge and party? I ask the question.

Mr Speaker, Sir, the attempt to secure the employment of the worker by supposedly providing that an employer cannot employ a worker on a contract of determinate duration for more than 24 months in a position which is of a permanent nature and for such contract to be deemed to be an indeterminate duration is again for me not a major change. What will happen? We know it used to be for a lesser period before, what employers used to do is to try to terminate the contract just before the end of that period and then, to re-employ that worker again. So, we will see again, time will tell how this new measure will work.

Now, the hon. Minister by introducing new undefined concepts such as position of a permanent nature is, in fact, creating room for confusion and, in practice, in the absence of a clear definition of same, the situation will be muddled leaving to the employer the liberty to choose and define the position of a permanent nature. Again, I ask the question: is it not deliberate to leave room for confusion, to grant employers the right to have their own interpretation and justify their action against workers?

Mr Speaker, Sir, I note a number of other flaws in the amendments to the Employment Rights Act as clearly highlighted by some Trade Unionists; Portable Severance Allowance Fund is still not being introduced although the idea has been canvassed time and again by the Trade Unionists and has, in fact, been the subject of much discussion when portable pension was introduced in our statute books. Punishment linked to disciplinary measure is not very clear. The related proposed amendments stipulate that no worker should be suspended for more than four days without pay if found guilty of charge. Nothing has been said on either remuneration or basic wage and refund of untaken annual leave is not outright to all employees.

Mr Speaker, Sir, as I said at the beginning of my intervention, the Minister has, in fact, rushed twice with a number of new amendments to those proposed in December last year. The least that we could expect was that he would have engaged discussions with the trade unionists and given, in fact, reasonable time - I say reasonable time - to all stakeholders, including ourselves, representatives of the people, to study those new amendments, and make representations because we cannot study those amendments in a hastily manner. We also have to make consultations. If the Minister feels that he has made sufficient consultations, if he feels that he has had time, and feels that he does not want to make further consultations,

however, when we received those amendments, we need to consult not only trade unionists, but we need to consult other people who are knowledgeable in this area of the law. Again, we have been denied a right to do so. What was again the agenda of the Minister? When looking closely into some of the new amendments, we realise how, and I will say it bluntly, he has been *de mèche* with employers to inflict more pain on the workers. I have given many examples to prove what I am saying.

Mr Speaker, Sir, when the *l'Alliance sociale* Government came with its so-called Economic and Labour Law Reforms, the Prime Minister and many of his Ministers at that time said there was no other alternative. We have not forgotten the *Tina walas* who claimed nothing else could be done except inflict pain on the population and the workers with reforms cut to the size of the fat cat pockets. I am proud to stand up and say today that I have proved the Prime Minister and his *Tina walas* wrong. Non seulement c'est grâce à mes engagements et ceux de mon parti, le MSM, pour corriger les crimes commis contre la population entre 2005 et 2010 par le gouvernement de l'Alliance sociale que la victoire de l'Alliance de l'Avenir a été acquise lors des dernières élections générales, mais aussitôt que j'ai assumé mes fonctions en tant que ministre des Finances en mai 2010, j'ai tenu mes engagements l'un après l'autre. Les travailleurs et la population se rappelleront que j'ai démantelé le *National Pay Council* et restitué les tripartites pour déterminer le *quantum* de la compensation salariale. J'ai aboli les taxes injustes qu'ont été la *National Residential Property Tax*, les taxes sur les intérêts, rétabli les subsides sur les frais d'examens du SC et du HSC et, pour une grande majorité de nos étudiants, rétabli les exemptions fiscales sur les prêts logements et les frais universitaires, rétabli les exemptions pour les petits planteurs, doublé *l'income support* pour les plus démunis, et réduire drastiquement la taxe sur le *hedging loss* sur les produits pétroliers. J'ai prouvé qu'il y avait effectivement d'autres alternatives, et les travaillistes étaient vexés. Peut-être qu'ils voyaient en moi un danger pour leur agenda ultralibéral et pro-capitaliste. Ce fut l'une des multiples raisons pour lesquelles ils ont comploté contre moi et mon parti. Mais, M. le président, j'ai prouvé mes convictions.

Mr Speaker: I want to know what all this have to do with the amendments. I told you that this is not Budget time. You have to stick to the amendments. I have given you enough time to talk about things that should not have been told.

Mr Jugnauth: But I have been expressing my views on the labour laws.

Mr Speaker: Let us, at least, be relevant. Don't abuse of my leniency, please.

Mr Jugnauth: En tout cas, M. le président, tout ce que j'ai fait, je l'ai fait pour les travailleurs, pour la population, pour le pays, et j'en suis très fier.

M. le président, je ne vois pas comment les amendements qui sont proposés aux lois du travail de 2008 vont apporter un *sound legal framework, ensuring that workers' rights are fully safeguarded*, comme le prétend le ministre et le gouvernement. Au contraire, les travailleurs resteront plus que jamais à la merci des employeurs ; ils continueront d'être exploités, et le Premier ministre à la tête de ce gouvernement, comme durant le mandat 2005-2010, portera la responsabilité devant l'histoire, comme étant celui qui a trahi la cause des travailleurs et les idéaux du Parti travailliste d'Anquetil, de Rozemont et des autres tribuns travaillistes. Tout n'est qu'une question de leadership, M. le président.

Je citerai, pour conclure, les propos inspirateurs du *leadership guru, Dr. John Maxwell*, et je cite -

"Everything rises or falls on leadership"

Malheureusement, notre pays n'a pas de leadership. Les travailleurs et la population en général en paient lourdement les conséquences, et un vrai leader socialiste n'aurait jamais légiféré pour transformer les travailleurs en paillason des patrons.

Mr Speaker, Sir, this Government, led by the Prime Minister, is again turning its back to workers of this country, and is continuing on the ultraliberal and the IMF dictated reform agenda, et la trahison envers les travailleurs se poursuit. Le patronat a trouvé son Messie, et il se nomme le Dr. Navinchandra Ramgoolam.

Merci, M. le président.

Mr Speaker: Hon. Leader of the Opposition!

(00.16 a.m)

The Leader of the Opposition (Mr A. Ganoo): Mr Speaker, Sir, good morning. Mr Speaker, Sir, after so much having been said from the benches of the Opposition, I will attempt to be as brief as possible because I don't want to repeat what has already been said. I would like to thank the Members on the side of the Opposition who have already made the case for the Opposition beautifully, and if I were in the place of the young hon. Minister, I would have given myself some time and a lot of thought to what has been said from here.

The hon. Minister perhaps might not have appreciated the tones, the manner in which things have been said from here; granted. But I am sure he must have been able to evaluate and to assess the sincerity and profoundness of the proposals, suggestions and reflections that have been made by the Opposition tonight. I say that, Mr Speaker, Sir, not because I consider myself to be *un donneur de leçons*. I say that because *je suis un peu maintenant un vieux de la veille*. I am the oldest parliamentarian in this House, since the Leader of the Opposition has gone to undergo treatment, besides you, Mr Speaker, Sir.

Mr Speaker: I think the one behind you maybe.

Mr Ganoo: What I want to say, Mr Speaker, Sir, is that I have been very close to unions, trade unions, labour laws legislation. In fact, this debate and those of 2008 give me some occasion to walk down memory lane, to go back to the Hansard. I found out that, in 1988, I asked a question to Mrs Bappoo - she is not here - about the question of reinstatement; whether she will take steps to ensure that in suits of unjustified dismissal, the courts be empowered to order the reintegration of workers after such dismissal by their employers. *En 1988, je crois que l'honorable ministre était en garderie à l'époque. N'est-ce pas?* Be it as it may, Mr Speaker, Sir, the labour legislation is something very complex. No doubt about that. I can understand what is happening in this House today but, I think, the hon. Minister should have realised that, complex as it is, labour legislation hinders a lot on compromise, negotiations, social and political compromise.

Mr Speaker, Sir, I don't want to indulge in political arguments too much, but it is true that when we look at the history of our country, in terms of labour legislation, in fact, there have been *deux étapes, deux grandes phases*. And here again, when I go back to the Hansard, Mr Speaker, Sir, I see that in 1988 when the Occupational Health, Safety and Welfare Bill was being discussed, *les droits des travailleurs* were, of course, in the forefront during the debates.

M. le président, le combat pour la sécurité au travail a connu, je dirais, deux phases distinctes, deux étapes différentes. Les premiers jalons furent posés pendant des années qui précédèrent et qui suivirent la création du Parti Travailliste - je veux dire le grand Parti Travailliste. Ce furent les années de l'éveil de la classe ouvrière, la revendication de ses droits et de meilleures conditions de travail. Est-ce une coïncidence que les premières dispositions de loi concernant la sécurité du travail furent mises en place en cette période ? Le *Boilers Act* de 34, le *Safety of Dockers Act* de 37, le *Workmen's Compensation* de 2936 furent

le résultat et le fruit de lutte de nos tribuns travaillistes face à l'Etat colonial. Les jalons furent posés dans un deuxième temps, dans les années 70 à 75, de divers *Remuneration Orders* préconisant les meilleures conditions de travail, et finalement le *Health and Safety Regulations* de 1980, que nous amendons aujourd'hui, sont les résultats du second souffle de la lutte de la classe ouvrière mauricienne. Ce nouveau regain de confiance et ces années d'effervescence syndicale furent sous l'impulsion d'un *autre grand parti qui a marqué l'histoire de ce pays, je cite bien sûr le MMM.*

Mr Speaker, Sir, it was a matter of regret for the working class of this country when the gloomy days came and the IRA was legislated and, we all know, Mr Speaker, Sir, what was the effect of this law, which was passed by the Labour Government then and whose final objective was, as you will remember, to render the quasi totality of the industrial actions and strikes illegal, allow the imprisonment of workers, granting powers to employers to impose compulsory arbitration, intervene in the internal administration of trade unions with a lot of victimization against workers, trade unionists and so on.

Mr Speaker, Sir, the attempts to do away with the IRA had occurred on many occasions. The Select Committee to the IRA in 1982, - referred to by my friend, hon. Uteem - the Garrioch Committee of 1990, the TURA of 1994 and during the last mandate of the MSM/MMM Government, the White Paper produced by hon. Soodhun who was then Minister and then the law of 2008 came and which we are amending today, but *l'histoire se répète.*

History repeats itself, Mr Speaker, Sir, and sometimes not in the same manner - I was listening to hon. Jugnauth just now. This is true and, Mr Speaker, Sir, we cannot delete the record of history. It was this very Government which, when it took office in 2005, embarked itself unfortunately on an exercise which finally led to the tying of the hands of the trade unions, emasculating the trade unions.

Mr Speaker, Sir, we remember how the Trade Union Trust Fund was *asphyxié* and how the embedded tripartite negotiations which had existed, in fact, during the days of SSR and when Sir Veerasamy Ringadoo was Minister of Finance. It was in those days that the tripartite negotiations were set up in the old Labour days, Mr Speaker, Sir; but, they were done away with by the Government which took office after 2005 and the National Pay Council was substituted. The wage setting mechanism which had provided so much security and peace to this country was brutally done away with.

Mr Speaker, Sir, then we came to the 2008 legislation which was promulgated in February of 2009 - I made the point when I intervened in the 2008 debates. That again, I say, unfortunately, because this Government is supposed to be a Labour Government. But the proposals in the Employment Rights Act of 2008 were heavily inspired by the private sector, by a document called 'Towards a New Future' - as far as I remember - where all the proposals in this private sector document found their way insidiously into the Employment Rights Act of 2008. So be it, Mr Speaker, Sir.

It is with legitimacy that, since 2008, because the Government of the day had its majority, the laws were adopted by this House. And it was with legitimacy that from that time onwards, since 2009, when the two pieces of legislation were promulgated that the unions have been constantly asking for amendments to these pieces of legislation.

Mr Speaker, Sir, I will not come to all the different clauses that have already been commented upon by my friends on the side of the House.

But, suffice it to say, Mr Speaker, Sir, that not only in terms of *contenu* - to which I will come very briefly. But, today, as Leader of the Opposition, I would like to associate myself to what has been said, in terms of procedure, Mr Speaker, Sir. *On ne fait pas ça de gaité de coeur*, but we have to have a go at the hon. Minister, to denounce him for the manner in which this Bill has come to this House today. I will not repeat what has been said. I think this is unprecedented, so many amendments upon amendments when the first main amendments dates back to December 2012. And, today, we have used the words "lost in a judicial maze". That is true, Mr Speaker, Sir. *De ma longue experience*, I have never seen so many amendments *tombés* after the main Bill has been circulated.

This is why I wonder whether the hon. Minister should not have come with the new Bill instead of harassing the Members of this House with different amendments week after week.

Mr Speaker, Sir, I think the hon. Minister, I am saying differently what has been said before me, in fact, *s'est fait une fixation à l'égard de monsieur* Ashok Subron. Quelqu'un avait dit c'est un *scaremongering*, but I think we are debating now this piece of legislation *à une heure moins vingt*. I think we should have been more serene in approaching this piece of legislation. Although there are some positive aspects, some positive features in this Bill to which I agree, but I am sure if the hon. Minister had given more time to himself for

consultation with the unions, a lot more could have been done. This Bill would have contained a lot more positive clauses and perhaps also, Mr Speaker, Sir, if he had yielded to the proposals of the other bloc, that is, the GWF and the JNP, I am sure the situation would not have been as tense as it is between him and this Federation. Be it as it may, Mr Speaker, Sir, what I wish to say today as far as this Bill is concerned. I said that the Bill contains some positive amendments but I must hastily add that these positive contributions were, as a result of the long and protracted negotiations that the hon. Minister had with the *plateforme contre la loi anti travailleurs*; Ms Jane Rago, Reaz Chuttoo and his team, and their collaborators. I wish, Mr Speaker, Sir, to place on record our appreciation, our thanks to these trade unionists. They have done a good job by convincing the Minister; by making the Minister backpedalling. This is not an insult to the hon. Minister. This is *un constat, une constatation de faits*. We know that a lot of discussions had taken place so they have prevailed upon the Minister and the Minister, himself, I think, *avait exprimé ses remerciements à ces syndicalistes là - l'équipe de Jane Rago et les autres - pour être arrivé à certains compromis. Tant mieux, M. le président.*

Yes, this Bill does contain *des avancées* and we have to thank these trade unionists who have been able to convince the Minister to accept their proposals. As we know, since the first amendments were circulated in December 2012, much water has flown under the bridge, Mr Speaker, Sir; much water has flown in terms of the discussions between the hon. Minister and the trade unionists whom I have just mentioned. It is a good thing that the Minister has backpedalled. This is, in fact, the essence of labour legislation: compromise, negotiations because nobody owns the truth. I am happy that, when he interfaced our trade unionist friends, the hon. Minister, therefore, agreed to change many of the initial proposals that he came with in the amendments of 2012 so much the better for the working class of this country. But we have also, in the same breath, to express our disagreement with the hon. Minister. The term has been used here by many friends before me the fundamentals have not changed in spite of having taken so much time to come to this House with this Bill. The fundamentals have stayed the same; the Minister has not budged in any way. *D'une façon très exigeante*, Mr Speaker, Sir, I think this is what he has done. *Il a été vraiment* within the expecting, Mr Speaker, Sir, to hold on to his position as he has done because we have questioned him so many times, for example, on this question of redundancy. He, himself, talked about the abuses of the *patron* and so on. When all this was taking place to us in the Opposition and more so to the working class of this country the hon. Minister was giving hope to all of us. This is why, Mr Speaker, Sir, we have today to be very critical like some of

us have done when we have criticised the Minister for having left the fundamentals as they were in the 2008 legislation.

Therefore, to us, the Minister has Disraeli failed as a Minister responsible to protect, to show his protection on the workers of this country when he has not taken on board many issues and suggestions made by the trade unions. Mr Speaker, Sir, this Bill can give rise to a lot of debates; it has already done. We have been debating this Bill since this afternoon because it contains so many, not only controversial but important serious matters to which my friends have already referred to. This question of redundancy, reinstatement, collective bargaining, labour disputes, secret ballots, the Section 9 of the Employment Rights Act; this question of job contractors which has been referred to by my hon. friend, Steve Obeegadoo.

But I would like to come, Mr Speaker, Sir, to the few points where the Minister has backpedalled since 2012 where he has fortunately retained the proposals of the platform. I would like to raise a few points: the shift work from twelve hours to eight hours. In the 2012 amendment, he proposed the twelve hours, now he has agreed that the shift should be of eight hours. Again we thank the unions for that. Sick and Local Leaves: one day after six months - this is also another case where he has taken on board the suggestion of the trade unionists. The extension of delay of a worker who requests a postponement from a disciplinary committee - now this is ten days; a good thing Mr Speaker, Sir, *une avancée*. Again thank you Ms Jane Rago and her other collaborators. When a worker is found guilty after a disciplinary committee, the maximum of four days to be deducted from his wages; *c'est une victoire de la plateforme syndicale*. Written statements of particulars of employment to be provided to all workers: this again *est une grande victoire des syndicats*. So, Mr Speaker, Sir, maternity benefits and so on, I can go on. There are a few other victories, I would say, of the trade unionists. In fact, I would like also to say that even Mr Ashok Subron, who leads the other bloc, has publicly written a letter where he has expressed his strength and his gratitude indirectly, in fact, to his other colleagues who have done a good job and who are responsible for having been able to prevail upon the Minister to include in this piece of legislation these new proposals.

I could go on Mr Speaker, Sir, there are few other points, but to sum up, bravo donc aux syndicalistes. *Ils ont pu faire leur travail et ils ont pu maintenant*, they have reaped, Mr Speaker, Sir, so many fruits which the working class of this country will be able to benefit from.

Mr Speaker, Sir, the Employment Relations Act also, there are still a few points which the unions have expressed their disagreement. I would not come back on all these points, but I am sure my friends have already commented on these points. I will now come back, Mr Speaker, Sir, to the question of redundancy. Mr Speaker, Sir, regarding this question of redundancy, we must go at the basics. All our friends have commented upon this issue of redundancy. I would like to remind the hon. Minister, Mr Speaker, Sir, that why are we today insisting that the law, the TCSB was to be found in our Labour Act. The 2008 Bill came, did away with it. Mr Speaker, Sir, I would like just to explain to the House this question of severance allowance. On this question of termination of agreement, on this question of redundancy, severance allowance, Mr Speaker, Sir, it is good to remind the hon. Minister – and I am sure he knows about it – that we must be aware, that the ILO Convention No. 158 states, in very clear terms, in Article 12, Mr Speaker, Sir, and I quote –

“1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to -

- (a) a severance allowance or other separation benefits, the amount of which shall be based, *inter alia*, on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions;”

So, Article 12, Mr Speaker, Sir, of this ILO Convention talks about the termination of employment and that the severance allowance must be paid to the worker and so on, depending on the length of service. So, this is why, Mr Speaker, Sir, we cannot understand, in spite of all this campaign that has been made for all these years, since 2008, questions put in the Assembly to the hon. Minister why, Mr Speaker, Sir, all these proposals with regard to redundancy and reinstatement have not been addressed properly by the hon. Minister. I will not come back on what has been said before me, for myself, Mr Speaker, Sir, I asked several questions about the number of people who have lost jobs, together with my friends, hon. Baloomoody or hon. Reza Uteem or hon. Soodhun, the workers who have lost their jobs since this new law has been enacted and we know the figures, it is about 5,000 to 7,000 per year, Mr Speaker, Sir. So, this question of the onus of proof and this question of severance allowance have been abundantly dealt with, I will not make further comments. I want just to say that the employers, as the hon. Minister himself has said, have been making an abuse of

the right to put an end to employment based on this question of economic technology or structural reason.

Mr Speaker, Sir, the Minister in his speech addressed rightly the weaknesses of the former TCSU in terms of the time taken to reach his decision and so on. We ask him the same question: what about the new body that has been set up by the law, the IEPPD, there is nothing as to whether there is a well-defined mechanism, time limits must be clearly defined, the onus of proof, Mr Speaker, Sir, the services of experts should be put at the disposal of employees and so on. We fundamentally disagree with the institutions with the setting up of these institutions, with the mechanism that has been provided in the law. I am also saying that even certain aspects, certain features have not been sufficiently dealt with by law.

Further, Mr Speaker, Sir, the question of reinstatement, the choice to accept reinstatement or compensation should be exercised by the employee after the finding of the division. Furthermore, I think that the scope of appealing against the decision of the IEPPD should be limited to points of law, as is the case for the Tribunal of Environment.

Mr Speaker, Sir, coming to this question of reinstatement, I must also disagree with the Minister. The Minister said in his speech: "There is no concept of reinstatement in Mauritius in our Labour Laws." No! I think the Minister was ill advised when he said that. I am asking him to make reference to our defunct Labour Act of 1975 section 39(vi) and I am asking him also to look in the definition of the labour dispute in the Employment Relations Act where reinstatement is defined. Our case law also makes mention of the concept of reinstatement. *Concorde Tourist Guide Agency against the TCSB*, a judgment of 1985. Reinstatement, Mr Speaker, Sir, should be possible before the Industrial Court when an employee brings his case under the Employment Rights Act or even under the Employment Relations Act before the proposed division of the ERT and it should not be restricted to cases of victimisation as is proposed in our law today.

If we agree on reinstatement, we know that the question asked by employers or employers' lawyers regarding the constitutionality of such a provision, my suggestion is that the intention of the Minister must be clear. Today, when he sums up, *as the travaux parlementaires* can be used for interpretation purposes before our Courts. I am sure the hon. Minister understands very well what I am saying. So, if he agrees to broaden reinstatement and restrict it only in cases as to be found in his Bill, I think, therefore, Mr Speaker, Sir, the intention of the Minister must be clear as *travaux parlementaires* are usually used for

interpretation purposes. So, reinstatement, according to me, should be possible for reasoning of unjustified dismissal and, obviously, it should be at the option of the employed. As I said, the Industrial Court should be able to pronounce on either reinstatement or severance allowance. Obviously, the powers of the Industrial Court will have to be reviewed in the House if the Minister wants to achieve real progress on reinstatement.

Mr Speaker, Sir, I will not dwell long on the question of bargaining, on the question of section 70(7)(ii), but let me tell the hon. Minister candidly. To us, no doubt the industrial conflict between the MSPA and the unions – the GWF and the GNP – have inspired the Minister to amend the existing section 72 of the ERA whereas under the existing provisions one cannot participate in a strike if the strike occurs on an issue which is already covered in a collective agreement or an award in force, the hon. Minister, in December last, came with the following proposal. I am quoting the law –

“A person shall not take part in a strike or lockout where the strike or the lockout occurs whilst a collective agreement or an award relating to wages and conditions of employment is in force.”

This, obviously, Mr Speaker, Sir, and, rightly so, provoked the unions to the extent that they felt that the right to strike under section 76 was nullified by the backdoor. Another way of putting it: it is the *loi ad hominem* that is, when we pass a law to target somebody. In fact, in this case we are passing the law to target a specific situation and this is why I think we should disagree with what the hon. Minister is saying. I will remind the hon. Minister that when he was under pressure by the unions while the MSPA and the unions negotiations were going on, the hon. Minister himself rejected the proposal that was put forward by the *patrons*, by the MSPA on the same issue as the amendment that he is now proposing. Isn't that true? I am sure the hon. Minister will remember that when the MSPA union negotiations were going on, the MSPA came with a proposal which the hon. Minister is proposing today in this House. But, at that time, the hon. Minister was not agreeable. But, it seems now that the hon. Minister is aligning himself with the sugar industry employers and closing the door on issues not covered by the collective agreement.

Mr Speaker, Sir, this is why we say that the provisions existing under the Employment Relations Act should be maintained in order to preserve industrial peace in this country. We are jeopardising the right to strike, if we go along with this amendment, Section

76 would be an empty shell and of no value. Mr Speaker, Sir, the question of labour disputes also has been dealt with and I do not think I will dwell further on this issue.

I will come to the question of section 92, Mr Speaker, Sir. In his book *'Introduction au Droit du Travail Mauricien'* by Dr. Daniel Fok Kan - who is well known to all of us, who is unfortunately no more in Mauritius now – has made some some comments on section 92 of the Act and this is what he says, Mr Speaker, Sir, and I quote –

« Par rapport à la grève le législateur va même plus loin pour prévoir une continuation du continuous employment en cas de grève illégale, à condition que ce soit pour la première fois que l'employé est absent pour une grève illégale. »

The crux of section 92, the fundamental concept is 'continuous employment'. So, the section is not an anomaly or a mistake as suggested by the hon. Minister. It has been won over by the unions after long years of struggle, Mr Speaker, Sir. Therefore, this concept of employment relationship overrides the limited concept of contracts of employment. Basically, what section 92 does is to protect the regime of contract of employment and the employment relationship by not shifting the first time strike through unlawful into the regime of penal law. To us, therefore, this section needs to be maintained as we are convinced, besides all the arguments which have been put forward by my hon. friends on this side of the House, as industrial peace may be jeopardized if job losses are at stake if workers go on strike. This is why, Mr Speaker, Sir, the hon. Minister should revisit *sa copie* because workers going on strike, sounding a bell of warning in circumstances where they feel they have not had the ears of the authority. Therefore, for the sake of industrial peace, our suggestion is that we must maintain that section.

The hon. Minister has failed to consider a lot of points which have been advanced by the unions, Mr Speaker, Sir. The question of: overtime should not be calculated after 40 hours of work and not 90. The ILO Convention on shift works needs to be ratified. The amendment brought to do away with job contractors for the reason that there has been an *arnaque* between main contractors who want to share profits with sub contractors, to us is totally unacceptable as my friend hon. Obeegadoo has submitted. Rather than throwing out the baby with the bath water, the hon. Minister should have come with more stringent regulation with regard to job contractors and even impose health and safety and security provisions.

The hon. Minister must know the number of fatal accidents occurring on the site of the job contractors. Now, without permit, without any regulatory framework, they will be operating in a jungle, Mr Speaker, Sir and this deregulation tantamount to creating a jungle. In view of the many fatal accidents with regard to job contractors, we suggest that they should not be made to operate without a legal framework.

Mr Speaker, Sir, I will end by saying what I said at the beginning. We had thought together with the workers of this country and the unions that the new legislation that the hon. Minister would bring would build a stronger partnership, a sounder relationship in a democratic framework ensuring the proper development of our economy, Mr Speaker, Sir. We were expecting a legal framework which would have been conducive to the advancement of the working class in this country. But, unfortunately, it has been a letdown, *une grande désillusion*, Mr Speaker, Sir. *Le ministre, d'après nous, s'est dérobé de ses responsabilités. C'est une autre occasion ratée, M. le président.* Labour legislation, I repeat, must be built on social, political compromises and negotiations. This, unfortunately, the hon. Minister has failed to do and this is why we are going to vote against these two Bills.

(12.57 p.m.)

Mr Mohamed: Mr Speaker, Sir, at the very outset I wish to convey my heartfelt thanks to Dr. the hon. Prime Minister for the trust he has placed in me for the steadfast support that he has extended to me through this very arduous task. I also wish to extend my thanks to all my colleagues who have always been fully supportive to me and to all those, on both sides of the House. I must say, I have listened to the hon. Leader of the Opposition and he was totally right when he rightly identified that I was not at all happy with the tenure and the manner in which the criticisms were put forward by some Members of the Opposition. However, I must say that when he came up with his intervention, I noted in there the wisdom, the experience, in that he, at least, had the courage in the Opposition to straightaway say that there were positive measures that he commended. Obviously, I do not expect the Opposition, and far from it, I never expected the Opposition to congratulate this Government or me, as hon. Minister of Labour, for what I had done. I expected exactly what I have heard but, I thank the hon. Leader of the Opposition for his tact in having addressed this whole issue and the manner in which he brought the views of the Opposition forward, which I believe was very constructive. We may not agree, we shall agree to disagree. But I say it again, the

manner in which it was done, I thank him for that from the bottom of my heart. I make the difference between what was said by other Members of the Opposition.

But, then again, having said so, I would like to remind the hon. Leader of the Opposition that in 1988 I was not in kindergarten. Well, I thank him for the compliment. I am not that young. In 1988, I was already at University. It is 45 years already and 21 years as lawyer. *Si jeunesse savait si vieillesse pouvait!* In other words, we need one another. I do commend the hon. Member for his experience. I do recognise his experience. I must say that I have listened carefully to all orators, not only the hon. Member. I would like to react to their comments and suggestions. Before I go into the details, the first person who has intervened for the Opposition was hon. Soodhun. I was trying to delay what I have to say because I want him to come back and hear what I have to say. I am sure the hon. Member will come back in a few minutes, I hope so.

The Employment and Labour Relations Bill (No. XVIII of 2005) is, in fact, the Bill which was prepared following a White Paper of 2004 by the Government of the day, the MSM/MMM in those days. As far as this Bill was concerned, it was introduced in the National Assembly and came for First Reading on 11 April 2005. The object of this Bill was to replace the Industrial Relations Act. This was verified in the Library. So, I guess that a lot of years have gone by, and obviously, hon. Soodhun or the hon. Members of the Opposition do not recall that they were in an Alliance then and they had brought a piece of legislation which was the Employment and Labour Relations Bill (No. XVIII of 2005) to the National Assembly. When I have listened to all the hon. Members of the Opposition and also to all hon. Members on this side of the House, I am not saying that they are *donneurs de leçon*. Far from it! I have just listened to the facts. The facts are that they have given or tried to give me a lesson. It is a fact. They have gone as far as to say that they are pro-workers, I am *pro-patron* and this Government is *pro-patron*. Fair enough, those are facts.

As I have said earlier on, Mr Speaker, Sir, I do not expect the Opposition to do anything else different. Some of them would say that it is their role to criticise. Normally, I would end up my speech with a quotation. I have thought that I would end up my summing today with a quotation on criticism. But, then again I am going to go for the quotation at the beginning of my intervention. Theodore Roosevelt, who was the 26th President of the United States, said -

“It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is not effort without error and shortcoming; but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least he fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat”.

The Opposition came up with this Bill in 2005. I listened to them and I was under the impression that, for truth, they were talking with sincerity. I have no reason to say that they are not talking with sincerity. I thought that listening to them, they were *les plus grands défenseurs des droits des travailleurs*. I will go back in the history, Mr Speaker, Sir, and you would recall that in the early, mid and late 1970s; what did the Opposition do? They say history repeats itself, yes it does. Who are the politicians that we find in the Opposition today? What had they not said about the Industrial Relations Act, *la loi scélérate*. They have promised the world to the workers of this country that when they came to power, they would change the law. They would do away with l’IRA. I heard a hon. Member of the Opposition - if I am not mistaken, it was hon. Uteem - who talked about a Select Committee of 1982, where they had studied the implications of doing away with l’IRA. But when you listened to all that have been said, anyone will start believing that really those are the only people in this country that hold a solution to the plight of the workers of this country. They are the ones who will speak the truth and give the solution to the workers, forever and ever. Amen! They hold the solution.

But, each and every time that those people who have spoken today, Mr Speaker, Sir, have had the opportunity while being in power, to come up with changes to the Labour legislations. Have they ever done it? That is the question that one has to answer.

(Interruptions)

The former Prime Minister, Sir Anerood Jugnauth; did he ever come up with any piece of legislation, to do away with l’IRA? No!

(Interruptions)

Then we had another former Prime Minister, the one who once upon a time - hon. Obeegadoo is comparing him to the stalwarts of the Labour Party. Post independence, the hon. Member has said that he has done a lot. I am not saying that he has not. But, what I was going to point out here is when he had the opportunity did he do anything? Did he? No!

(Interruptions)

As from 1982, when the former Leader of the Opposition was in power; did he do anything? No! When the former Leader of the Opposition was the Prime Minister; did he do anything? No! Was he in jail then?

(Interruptions)

He was trying to send other people who were innocent to jail.

Mr Speaker: Hon. Minister, please address the Chair!

(Interruptions)

Mr Mohamed: You should find out who had him released?

What I would like to know here, Mr Speaker, Sir, is the Bill that was prepared by the former Minister of Labour, Industrial Relations and Employment. It was approved by Cabinet, chaired by the then Prime Minister, hon. Paul Raymond Bérenger, brought to this Parliament for First Reading and when I look at clauses 26 and 66 of that Bill, that will be of interest to the hon. Members of this House. Now, we have to know exactly how many hats do they wear? Are they really consistent with what they said? Or is it that when they get to the Opposition, all of a sudden they just change their hats in order to suit the occasion? I have only one hat and I do not change it ever. In clause 26 ...

(Interruptions)

The hon. Member is talking out of his hat right now.

In clause 26, misapplication of funds, it is said –

“where on complaint from any member of a Trade Union or after any member of a Trade Union”,

Here, we have certain hon. Members of the Opposition, who are coming to say that I am an anti-union and I am an anti-worker. I am interfering in the administration of the union issues; 5% brought down to 1% in terms of complaint for an investigation is too much for them. Here, according to what was prepared by the MSM/MMM Government, 1% was enough for a complaint. The Chief Registrar is of the opinion that the trade union is incurring expenditure.

(Interruptions)

So, I am sorry! One complaint, court or not court!

In section 66, they talked about their right to strike.

(Interruptions)

Mr Obeegadoo: The hon. Minister should not mislead the House, if he is quoting from a section of the law, he should read the section in its entirety and not mislead.

Mr Mohamed: The hon. Member said that I am misleading the House, that is very serious. He just now refers to section 92 of the Employment Rights Act and when he referred to, he voluntarily decided to drop one word out of his interpretation and his reading. He refused to mention the word 'unlawful' and he himself said: "I am not referring to unlawful", and when hon. Attorney General referred to the word 'unlawful' he kept quiet. So, let me make it clear. I say it again: any one Member who makes a complaint, going to Court or not to Court, it shows that they deliberately brought in a Bill into this House where they wanted to meddle into the affairs openly and easily of the Union Movement. That is the truth and to substantiate what I am trying to say here, Mr Speaker, Sir, let me show them section 66. They talked about declaring of dispute, about *trahison*. Have they forgotten what they themselves approved in Cabinet and brought to this august Assembly in 2005.

Mr Speaker: Address the Chair, please!

Mr Mohamed: Yes, I am addressing the Chair!

Mr Speaker: Yes, don't look back!

Mr Mohamed: Section 66 - they are saying that the Permanent Secretary is a member of the Executive and is being control by the Minister as far as supervision of strike ballots are concerned and it should not be the Permanent Secretary, because the Permanent Secretary is someone who is on the beck and call of the Minister. In other words, that is what they have said. But they have gone as far as to say that we have curtailed the right to declare a dispute

and by extension directly we have curtailed the fundamental right to strike. This is what the Opposition has said. But what did they propose in 2005 in the first reading of this Bill approved by Cabinet of an MSM/MMM Government? The Permanent Secretary may reject a dispute made under section 65. In other words, reporting of a dispute relating to employment and labour relations may be reported to the Permanent Secretary by or on behalf of any party to the dispute. So, what they had proposed was reporting of a dispute to the Permanent Secretary and if the Permanent Secretary so decided he could reject that dispute, thereby closing the door to any possible strike at all by the workers of this country. Now, if this is not true, this forms part of the records of the National Assembly. One can try to shake one's head left right or even to the centre, but the fact is that this is now part of history. What the MSM/MMM Government does not want the people to know is that they have several hats. When they were in Government they have tried to stifle the right of the Trade Union Movement and the workers to go on for strike, but when they are in the Opposition, they wear another hat, because it suits their purpose.

(Interruptions)

Now, let me get to something else.

(Interruptions)

Mr Speaker: Silence!

Mr Mohamed: They talked Mr Speaker, Sir, about the ILO, about fundamental rights. I have here document, and hon. Obeegadoo was not here the last time when I was referring to this document, and the reason why I had mentioned that he was not here, is because as rightly pointed out by the hon. Leader of the Opposition, we, on this side of the House and, I, as Minister of Labour of this Government, I believe in consultation, and if they have seen all changes being brought even until the last minute is because we want to continue consultations because consultations bring change. But, last year, I wrote personally a letter to the former hon. Leader of the Opposition. Why did I write a letter to hon. Bérenger? It is because I thought it was important for me to get the views of the hon. Members of the Opposition. In that letter, I invited the Members of the Opposition to come forward with any suggestions, to meet wherever they wanted, at any time, I would make the move to come to them, to listen to them and I would want to know what their views were. Why did I wanted to know their views is because I think that they have experience, they have things that they could share, maybe they have their own position paper, maybe they could inspire themselves

and come up with something constructive? We have listened to them since this afternoon talking about this legislation. They have only talked about what unions, the JNP, GWF have talked to me for the past two and a half years. Have we received any opinion or views or stand or position paper of the Parliamentary Opposition? The answer is no. The letter that I have sent *est restée lettre morte*. The letter that I have sent to the hon. Leader of the Opposition inviting them to meet on their agenda, wherever they wanted, was never answered until today. They could, at least, have written to me and say please refer to the 2008 debate! Not even that! There was not even an acknowledgement of receipt, but there was a comment by the hon. Leader of the Opposition in the press conference that said: he acknowledges having received *une lettre d'amour* from the hon. Minister of Labour, he said it. But I expected something from them. I is easy as Theodore Roosevelt has said –

“To come up today and say everything we are doing is wrong.”

But, as I say again, the only person whom I believe spoke with sincerity when he said that he thinks that there are positive measures there, is the hon. Leader of the Opposition, and I thank him again for that, and that is the big difference. It has been pointed out, Mr Speaker, Sir, that I have rushed with the amendments of the two Bills. Hon. Obeegadoo said obviously what I had stated during my intervention at the second reading must be different to what was proposed in the amendments he received yesterday. The answer to that, I say it very candidly, whatever I said in my intervention for the second reading is exactly letter to the letter, to the figure, to the *virgule*, to the full stop in what he received yesterday and all Members received yesterday as far as the amendments are concerned. There was an error in that he had received things that were not the final draft. That is why when we verified it, we said, wait a minute, they have not received what Cabinet has approved, and it has to be sent to them properly, as I had explained and expatiated upon, in my second reading. So, there is no difference. *S'il avait pris la peine de lire ce que j'avais dit dans mon discours la semaine d'avant*, he would have seen clearly that what I had said is exactly what is in the amendments that have been circulated since yesterday. But, then, again simply because one wants to criticise, simply because one have to be different, they cannot come and say that Government is doing anything positive. We've had experience, but the others in the Opposition they think that nothing has been done which is good. Nothing at all! I have not rushed. As far back as 2010 the Trade Union Movement made representations to the effect that the laws must be amended to safeguard the right of the workers.

There have been numerous *manifestations* that the Trade Union Movement have held in order to press for the review of the Acts. The Opposition must know what they want. They are saying that I am rushing; hon. Jugnauth said I have taken such a long time to bring it to Parliament. Which is which? Hon. Jugnauth said that I have taken such a long time to come to Parliament; the others are saying I am rushing. Which is which? The House will recall all those *manifestations*. I would like to stress upon the fact that following the withdrawal of the two Bills, I received further representations from Union Groups under the '*Platform kont lalwa travay anti-travayer*' and the *Conseil des Syndicats*. I had meetings; I must say that the hon. Leader of the Opposition says that I should have treated them the same way.

(Interruptions)

Because you have said it, I want to say what exactly happened. Mr Speaker, Sir, last year, I received representations about this whole issue of the First Reading of the Bill. When it was coming for Second Reading at lunchtime, I had already asked my officer, the Director, Mr Ramasamy, to call all the trade unionists - he is now retired and I pay homage to him. I wanted to see them in my office, because following my meeting I had to decide whether I would proceed or not with the amendments or whether I would move for Second Reading or not. He managed to reach every single trade unionist by telephone. He told them to come and meet the hon. Minister to see whether we can come to a decision. The hon. Prime Minister was made aware of that decision and the Joint Negotiating Panel (JNP) and GWF responded by rejecting the invitation and launching insults against my person on the telephone to my Director. That was the attitude. Fair enough! I decided to meet whoever was ready to meet and I had taken the decision not to proceed for the Second Reading. Following that, while I was meeting the trade unionists, Jane Rago, Reaz Chuttoo, Atma Shanto, Benydin and others, Jane Rago received a phone call from Mr Ramjuttun of the JNP. We were present while she was having this phone call and, once again, she did not agree with what was said to her, that she should not be discussing with the hon. Minister, but that they should be in front of Parliament on the day that Parliament is sitting pour *une manifestation*. All be it illegal, it does not matter. This is the attitude. So, do not come and tell me that I did not give them the chance to talk. I wanted to talk with them until the last day. Why did I go to the ILO one week before coming to Parliament? It is because I wanted the ILO to give me their views. So, do not say that no one was treated the same way. They were treated *avec déférence, avec respect*, because I believe in trade unionism and I want to have a strong trade union. But, Mr Speaker, Sir, they decided to throw insults and threats to my person and this is not something

that I am going to accept. I was there and I know what happened. The hon. Member was not there and he cannot talk about what happened. Unless he is used to talking about things when he was not there and he is used to relying to other people because it suits his purpose - that is the type of person he is anyway.

Taking into consideration those proposals, I received...

(Interruptions)

I am happy that he asked. I had meetings with the ILO. One thing I would like to say here, certain trade unions have expressed their satisfaction because they are talking unanimously that the Trade Union Movement is not happy. Certain trade unions have expressed their satisfaction to the amendments that I have proposed. Here, I can refer to a letter that I received from the 'Platform kont lalwa travay **anti-travayer**', where it is clearly stated - to cite one example - in a correspondence dated 26 March 2013 addressed to my Ministry that they acknowledged that many of their proposed amendments have been retained by me. According to them, in the Employment Rights (Amendment) Bill, nineteen of their proposals have also been retained and in the Employment Relations Bill, six of their proposals have also been retained.

Even Mr Ashok Subron of the Joint Negotiating Panel (JNP) does not deny that the amendments I am proposing include positive proposals which go in line with our objective to further protect workers of this country and improve their condition of work. Mr Subron expressed reservations on the issues of first time strike, limitation on report of labour dispute while a collective agreement is in force and the organisation strike ballot by trade unions in the presence of the Supervising Officer of my Ministry.

As far as first time strike is concerned, Mr Speaker, Sir, hon. Members here and the hon. Leader of the Opposition have made reference to Convention 158, if I am not mistaken. I am talking about the first time strike, at Section 9 (2) of the Employment Rights Act and even with regard to the Convention that we have ratified on the freedom of association. Nowhere is it said in that Convention, as I said last time, that a first time strike illegal all be it is in order. That is why, here, I come back to this document of the ILO - which is in my possession - which has been written by the ILO following meetings with them, and I will table this whole document today. I will not in any way hide anything, I want to be transparent. I want all hon. Members of the Opposition and the country at large, Mr Speaker,

Sir, to know exactly what the ILO told me, because when I communicated with the ILO, I did not give them only what we wanted - as you will see in this document.

They were put in presence of the proposals of all the unions, including the proposals of Mr Ashok Subron, the GWF and the Joint Negotiating Panel. They were in presence of the proposals of the '*Platform kont lalwa travay anti-travayer*'. They were in presence of all the proposals of all the confederations and they sent me this document where, clearly, they make certain observations. I understand the hon. Leader of the Opposition says that they were against the removal of the Termination of Contract Service Board. What was the termination of Contract Service Board? The Termination of Contract Service Board is precisely where dismissals must be authorised by a public authority; dismissals for economic reasons or structural reasons - or what have you - need to be authorised *au préalable* by a public authority.

There is a document which is being prepared by Ms Angelika Muller in 2011. She works for the ILO and there is a document which she prepared, as an expert, entitled 'Employment Protection Legislation tested by the Economic Crisis: a global review of the regulations of collective dismissals for economic reasons', prepared by the Industrial and Employment Relations Department, ILO, Geneva.

What the Opposition wants us to do, therefore, is to reinstate - if I understand correctly - the Termination of Contract Service Board. They want us to do exactly what 17.6% of countries out of the 125 countries practise. The Opposition wants us, and certain union members, to do exactly what is done in Afghanistan, Angola, Colombia, Congo, Egypt, Gabon, Greece, Honduras, India, Iran, Jordan, Mexico, Morocco, Netherlands, Pakistan, Panama, Seychelles - and Seychelles are doing away with it - Spain, Sri Lanka, Syria - even India is doing away with it - and Zimbabwe. 17.6% of countries of the 125 of the ILO members, before dismissing someone for economic reasons, need to be authorised by the public authorities. What we are proposing and what is being proposed in this Bill is that the law requires the employer to consult workers' representatives - as is proposed here, it is mandatory - and inform the competent public authorities.

67% of countries of the ILO do exactly that and, out of it, when you look at the list of those countries you have successful countries, successful economically, where people are happy because of the economic success of the country. So, the Opposition, just because they want to side with the union movement - for political gain - they are ready to sacrifice the

national gain of this country. But, is it not simply because they side with what Mr Subron wants: the possibility to carry out an illegal strike? What I fail to understand is that hon. Obeegadoo has quoted section 9(2) of the Employment Rights Act having wilfully avoided to mention the word stipulated in the statute 'unlawful' and he goes as far as to say that we are in some way attacking the fundamental rights to strike off the workers of this country. If that is what he honestly believes, Mr Speaker, Sir, then he is oblivious - I am sure he is not - of section 83 of the Employment Relations Act of 2008 because section 83 clearly also states that if someone carries out a strike in a lawful manner, he cannot in any way be fired. No measures can be taken against him. Why is it that he forgets that part of the law? At no time did he refer to section 83.

(Interruptions)

And I will table this document now...

(Interruptions)

...where it is clearly stated that everything that this Government has proposed in this Bill, does not, in any way, go against the fundamental right of strike. The law is clear; you have a right to strike but it should be done lawfully in line with the freedom of association convention that we have ratified, in line with the provisions of the law that countries of the ILO have ratified. What is shocking here is that once again when one looks at the rhetoric of hon. Obeegadoo, it is clear that he has to criticise for the sake of criticising because he himself he is not convinced in his own criticism. He is not even convinced because if he were to be convinced, he does not hold a single logical argument to try to explain how is it, therefore, that the Committee of experts of the ILO agree with what I am saying? How is it? The ILO has come to Mauritius; almost ten times they have sent delegations to Mauritius to meet the Government, to meet the employers and unions in order for us to finalise the law. They have come to Mauritius ten separate times, but then, again, am I to practise the same policy of the former MSM/MMM Government? Which is simply what? Promise to change the IRA and do away with it! But not even do an iota to do that. They have even been able to get rid of it. Why is it, therefore, that each and every time that they promise to the workers of this country that they would get rid of the IRA when they had the opportunity of doing so, why is it that they did not do it? Five years they were in power, 2001 to 2005, why is it that they could not do so?

(Interruptions)

Two months before an election in order to achieve what? Political clout with the unions! Why is it that they did not do it? I will also say something else. Hon. Soodhun was not here, Mr Speaker, Sir. Strike was, in fact, threatened by the Bill. Why was it threatened? He was not here, I repeat myself.

(Interruptions)

I will table a copy. It is already in the Library.

(Interruptions)

Mr Speaker, Sir, as I have said, and for those who have not understood, I will say it again.

(Interruptions)

”To report a labour dispute is what you had to do in order to carry out a strike. You had to report a labour dispute first and the dispute had to be reported to the Permanent Secretary and the Permanent Secretary has the right to reject the labour dispute.” In other words, using their own argument, the executive could stop and *barer la route à la grève* which was their fundamental right.

(Interruptions)

Mr Speaker, Sir, as I have already stated, the House will surely agree that once a collective agreement has been concluded, industrial peace must prevail. That is also what the ILO says -

“During the lifespan of the collective agreement, a trade union cannot report every now and then a labour dispute on new issues.”

At this point, Mr Speaker, Sir, allow me to bring before the House some clarifications because there seems to be confusion, maybe it is on purpose or maybe not. The clarification is as to whether the above amendments *mettent en cause* the agreement. That is very important. The amendments which I am proposing, *est-ce que cela met en cause l'accord qui a été signé entre le* Mauritius Sugar Producers Association and the Joint Negotiating Panel en août 2012 upon my intervention? Following the MSPA's decision to decentralise as from January 2013, the negotiations for a new collective agreement to take effect *en janvier 2014*

at the level of each of its 15 members, the JNP reported to the Commission for Conciliation and Mediation, a labour dispute on two issues not covered by the collective agreement which binds the MSPA and the JNP up to December 2013. On the non-settlement of the dispute at the level of the CCM, the JNP opted to have recourse to strike action. I intervened and an agreement was reached between the MSPA and the JNP in August 2012. The agreement provides *inter alia* that the MSPA, the JNP and the other recognised trade unions shall engage in negotiations as from January 2013 for the conclusion of a new collective agreement that will take effect as from 01 January 2014. All existing procedure agreement shall continue to remain in force as from 17 August 2012 up to 30 June 2016. Any collective agreement reached between the MSPA, the JNP and other recognised unions will be upheld in its entirety by the individual sugar companies. The Ministry of Labour has to withdraw 21 issues referred to the NRB and to refer to only 3 issues concerning night shift, retirement age and computation of gratuity on retirement on the basis of 2.5 months per year of service. The MSPA and the 15 individual companies, to withdraw their application for judicial review at the level of Supreme Court and the JNP to call off strike action.

In the Employment Relations (Amendment) Bill circulated in December 2012, it was proposed to amend section 67 of the Act and to provide also that – ‘where a labour dispute is reported to the President for the Commission for Conciliation and Mediation, no party to the dispute may report a labour dispute relating to wages and conditions of employment where collective agreement is enforced.’

Following the point made by the Joint Negotiating Panel on the issue in their memorandum to the hon. Prime Minister, the proposed amendment was reconsidered and in the proposed amendment to the Amendment Bill to be moved at Committee Stage, it is being proposed to remove the above proposed amendment and to provide instead – and that is where it is important - that where a labour dispute is reported to the President of the CCM, no party may report a labour dispute while a collective agreement is enforced on matters relating to wages, terms and conditions of employment which are contained in the collective agreement or have been canvassed during a negotiation process leading to the collective agreement. On the other hand, disputes on issues not canvassed can be reported only during the period of re-negotiation for the renewal of the collective agreement.

So, everyone who has spoken on the part of the Opposition, they have simply forgotten to mention that there is a change where the three months are statutorily being

provided for minimum period for re-negotiation and that during those three months, the issues are different. The issues can be raised again. The aim of this new proposed amendment is to allow a trade union, while a collective agreement is in force, to report during the renegotiation period a labour dispute on terms and conditions of employment which were not canvassed during the bargaining process of the collective agreement. If some issues were not canvassed at all during the three months or any other longer period as provided for in the collective agreement, they may be raised and disputes can be declared and they can go for a strike if they decide to do so, but lawfully.

I wish, Mr Speaker, Sir, therefore, to reassure the House that there is nothing in the proposed amendments which puts *en cause* the agreement between the MSPA and the Joint Negotiating Panel. The more so, the MSPA is bound to start negotiations with the Joint Negotiating Panel in January 2013, to renew the collective agreement that will expire in December 2013. I must also add that according to information that I have, no negotiation request has been sent to the MSPA by the Joint Negotiating Panel. We are already in April 2013. They could have started negotiations in January 2013 according the agreement. They have not sent a request for negotiation as yet. The MSPA and the 15 individual sugar companies have already withdrawn their applications for judicial review and I have already withdrawn the 21 issues before the NRB and referred only the three issues as agreed by the parties.

Mr Speaker, Sir, it is very difficult, if not to say impossible, to accede to all proposals made by the trade union movement. It is so easy to sit down in the Opposition and say they would accede to the request of the trade union movement. The trade union movement has been very critical of the Opposition. Mr Subron, particularly, has been so critical of the Opposition because he has accused them of being quite resigned from their official responsibility to supposedly agree with him. Now, in order to catch up - because they were caught sleeping - they are siding with the trade unions. But what had they done when - I say it again - *ils ont été au pouvoir en 2000 jusqu'au 2005? Ils ont eu l'occasion de faire tout ce qu'ils ont promis aujourd'hui. Ils ont eu l'occasion de venir de l'avant avec des pieces of legislations to really substantiate that they really mean what they say, that they would have really put it into action when they had the opportunity, Mr Speaker, Sir. They failed lamentablement.*

I have always let myself be guided by the fundamentals of industrial relations whereby the interests of the workers have to prevail. However, any responsible Government has to ensure that the business environment is conducive for growth and it provides space for enterprises to operate. Enterprises create jobs when there is stability and when the law is certain. In 2011, hon. Jugnauth always talked about the jobs that were lost, 18,000 jobs. I honestly, Mr Speaker, Sir, have the impression that the Members of the Opposition are playing an interesting game of willfully forgetting the facts as they are. They talked about 18,000 jobs having been lost because of those two pieces of legislation. What have we done? We are coming up with legislation. What are we doing to stop the abuse? We are coming up with legislation. What did they do when people lost their jobs? *Entre 2001 et 2005*, more than 50,000 people lost their jobs for economic reasons. Those are the Central Statistics figures - I am sorry - they talked about the TCSB; they talked about 57,593 people lost their jobs *entre 2001 et 2005*. Did they have the Workfare Programme then for them to get anything? Did they have the transitional unemployment benefit for the workers to get anything? No! They were left *sans filets de protection*. That is what was a caring MSM/MMM Government that was caught napping on the job!

(Interruptions)

I am sorry, they are full of good suggestions, but when the time comes to prove that they can really conclude and implement what they really say, they have been tried, they have been tested and they have failed. Let me reassure the House, Mr Speaker, Sir, that the proposed amendments will afford additional protection to the workers and will, in no way, curtail their acquired rights. One cannot talk about acquired right by making something unlawful become lawful. That does not make legal sense. That is not an acquired right. I wish, Mr Speaker, Sir, to stress on the fact that the new provisions of shift work are called for in the prevailing context where many enterprises have to operate on a 24/7 basis.

Moreover, such provisions will contribute to enhance protection not only to workers performing night work, but also to female workers before and after child birth. Actually, Mr Speaker, Sir, there is no legal framework for workers working on shift work. This leads to an abusive situation where workers work for more than 6 days consecutively. Night work being the hardest, a 10% allowance for such workers is fully justified. But then again, I recognise that the hon. Leader of the Opposition has congratulated Government for this ...

(Interruptions)

...or has failed to congratulate. But, obviously, he will never congratulate Government because his job is to criticise and full stop.

Now, with regard to the fix term contract, we had an opportunity to bring changes to legislations. We have done it for fix term contract, but instead of trying to say: well, those are means that are different, those are measures that are new, those are measures that are modern, daring, the Opposition says it will not work. But, as hon. Jugnauth said, let us see, maybe it will, but he will criticise in the meantime.

Now, with regard to the Employment Promotion and Protection Division, I have already commented on it. I do not want to follow practice in 17% of countries of the ILO. I want to follow what is already tried and tested and has shown success to certain economies in more than 60% of countries.

Now, with regard to the nonpayment of recycling fee by employer in cases of gross misconduct, as the law stands now, a worker who commits a gross misconduct and is subsequently dismissed may join the Workfare Programme and the employer is bound to pay the recycling fee. This goes against the spirit of natural justice. The new provisions that recycling fee will not be payable in case of gross misconduct, has been introduced because certain employers have refused to pay the recycling fee contending that such a provision is against the Constitution. At any rate, the fact that an employer will not pay the recycling fee will not debar the worker from joining the Workfare Programme to benefit from the transitional unemployment benefits. Besides, Mr Speaker, Sir, let me remind the House that under the repealed Labour Act, a worker dismissed on ground of misconduct was not entitled to any severance allowance or compensations. Whereas now, it is different, better than the position at the Labour Act.

With regard to the job contractor situation, once again, the Members of the Opposition have forgotten one important part. As I had said in my intervention for the second reading, the proposal to remove the obligation on a job contractor to hold a permit aims at easing business democratising economy and promoting entrepreneurship. They may not agree with it. However, that is the most important limb that they voluntarily forget. It should be noted that the job contractor falls within the definition of employer and as such the legal responsibilities and duties that are on the job contractor still remain. The only thing is that he does not need a permit to make himself be a contractor. That is the difference. *La responsabilité* before the law is there. Once again, we do something which is different; we do

something that is in the interest of entrepreneurship; we do something keeping in mind the importance of legal duty and responsibility *aux yeux de la loi*, the Opposition will again find something wrong to say about it because it suits them.

(Interruptions)

As far as process of recognition of trade unions is concerned, with regards to limitation of the right to strike, I have talked about that; investigation by Registrar, it was worse under the Bill of 2005. With regard to limitation the right to strike, I have talked about that; the investigation by Registrar it was worse under the Bill of 2005. As I have said, the group of workers, in the absence of recognised trade unions, we are not proceeding with that.

Mr Speaker, Sir, those amendments I am proposing today are in line with the vision of our Government to provide a legal framework where the workers' rights, interests and welfare are fully safeguarded without jeopardising the sound business environment. Furthermore, those amendments are in line with the decent work agenda which is the primary goal of the ILO; the decent work as advocated by the ILO encompasses work which is productive and generates a fair income; security at workplace; social protection for families as well as better prospects for personal development and social integration. In fact, we have been guided throughout the process of amending the labour legislation by the four strategic objectives of the ILO namely the creation of jobs; guaranteeing rights at work; extending social protection and promoting social dialogue.

As far as guaranteeing rights at work, I have already expatiated upon it, but, most importantly, one of those four strategic objectives of the ILO, as I have said, is the creation of jobs. In 2011, 3000 new jobs were cheated. In 2012, 9000 new jobs were created. Those are important facts and figures. Our approach is that of a responsible Government. We have heard the voice of workers. We understand the expectations and apprehensions. We also understand the realities of our economy. We have to settle for what is best in the interests of the country. Those diverging interests can be reconciled, what is required is that we put aside our personal gains. We have done that on the side of Government. We have decided to be responsible. We have decided to put aside any personal agenda; any personal gain. We have not tried to be *bassement* politicians with regard to those issues. What we need here is industrial peace. Those amendments proposed are bold and daring, but they remain compliant with international instruments which we have an obligation to observe. The amendments are groundbreaking because they challenge the status quo, a status quo which some want to keep

to suit their personal agenda, as I have said, and thrive thereon. Government philosophy is clear and unambiguous. We want to protect workers yet we want to also preserve their jobs and we want to create new jobs. We want to increase job security; at the same time, we want the workers to continue to draw income in a guaranteed manner but, above all, we want a stable Mauritius. There is no other high imperative than industrial peace for our economy and this Government has the firm conviction of not compromising the future of our citizens. I do not want to live the days again and I do not want to see the days again. The people of this country do not want to see the days again when we have *ce qu'on appelait la grève sauvage*. We do not want to see the days again where people from Vacoas Transport have had to come and suicide because, of desperate situations, they have been put in by people who had their own agenda and have created illegal strikes in this country for their political benefit and political gain. We do not want to see those days again. We want industrial peace and stability in this country. This is what we want to do. People here talk about the modern. I am a member of the Labour Party. I have told about the stalwarts of the Labour Party. When it suits the MMM and the MSM they criticised the stalwarts of the Labour Party when it suits them again they will pay homage to the stalwarts. I have heard hon. Pravind Jugnauth talk about Sir Abdool Razack Mohamed would not be happy about what I am doing.

(Interruptions)

Mr Speaker: Carry on!

Mr Mohamed: What is really shocking is that it suits the MSM today to make reference to Sir Abdool Razack Mohamed, but they are the very people that contributed to his downfall and destruction by a campaign of lies and calumnies against his person so please let us, at least, try to be honest in our approach. We will be judged for the actions we have taken in difficult times not by the White Paper and the Bill that we will bring at the end of our mandate and we have not failed to keep our promise. Like the MSM and the MMM, they have failed to keep their promise that they had promised prior to the 1982 elections and never kept that promise. So it is easy for them to come and talk. Inaction is not a solution. I do not want to do what the Opposition does - inaction, talk, committee as, once upon a time, they used to say even on *corbeaux* they had a lot of committees and actions. We realise the difficulties in balancing the needs of workers; the needs of enterprises, but any responsible Government has to make a compromise taking into account the best interests of the nation.

To conclude, let me reassure the House that with a view to maintaining industrial peace and safeguarding the rights of workers, I deem it necessary to come up with such amendments which will undoubtedly improve further the industrial relations climate. I also

wish to point out that my task has far from being easy but I remain confident that my proposals will generate a win-win situation for all stakeholders.

Before I go to my endnote, I had representations only yesterday from workers, from employers groups who are very angry at this moment in time. Why? Because we are bringing changes in the legislation, Mr Speaker, Sir, that talk about gratuity on retirement that is being calculated now based on our amendments; it will be calculated on earnings not on basic salary. We have gone as far as to say that it will be backdated to February 2009; therefore, those, who have already retired since February 2009 and have not benefitted from this calculation on earnings, will benefit from that calculation on earnings and interestingly enough the Opposition fait *l'impasse là-dessus* because it does not therefore suit their argument; of hon. Uteem to come and, in a very condescending insulting manner, say that I am *enn zom patron*. He said it. Why is it therefore that he did not raise the issue of gratuity on retirement having been changed by this Government and proposed by me, the Minister of Labour, to calculate it on earnings, meaning to say there is a backdating since February 2009, meaning to say all those retired workers that have not benefitted will benefit. How is this pro-patron? It does not suit their logic that is why they keep quiet; there is a deaf ear to that. As an endnote,...

(Interruptions)

People go on, Mr Speaker, Sir, and say in 2008, I did not talk. They are so good at criticising and hon. Obeegadoo is so good at criticising in 2008 I did not talk. Maybe then I have to tell him what member of my family had died on that day and what funeral I had gone to, that is why I did not talk. So, before you talk, before anyone is going to make a comment, maybe then I should have shared the grief I had in my heart in 2008 when I went to the funeral of a member of my family. That is good of him at criticising because it suits him then he was happy there. I wish to make a humble appeal – I did that last time – to all hon. Members of the House. It is a golden opportunity that we have here to consolidate labour legislation, we have done so: the protection and the right of workers, the interest of workers and employers and the promotion of collective bargaining in a sound environment conducive to a partnership mode in the industrial system. The reason and the only reason that the Opposition - and I cannot say all the Opposition, I have to be honest not all the Opposition, not the hon. Leader of the Opposition, but hon. Obeegadoo - the reason why he is so adamant and critical about this; you know why he is critical because what he does not realise, hon. Obeegadoo, is that in being so critical to those amendments, he is doing exactly what the employers want: congratulations, keep on working for them.

Thank you.

PUBLIC BILL

COMMITTEE STAGE

(Mr Speaker in the Chair)

**THE EMPLOYMENT RELATIONS (AMENDMENT) BILL
(No. XXXI of 2012)**

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3 (Section 2 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move the following amendments in clause 3 –

- (i) by deleting paragraphs (a), (b), (d) and (e);
- (ii) in paragraph (c), by deleting subparagraph (i);
- (iii) in paragraph (g), by deleting the definition of “group of workers”;

Amendment agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clause 5 (Section 7 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that in clause 5 paragraph (b) be deleted.

Amendment agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

Clause 7 (Section 14 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 7 be deleted.

Amendment agreed to.

Clause 8 (Section 16 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 8 be deleted.

Amendment agreed to.

Clause 9 (Section 20 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 9 be renumbered as clause 7.

Amendment agreed to.

Clause 9 renumbered 7 accordingly

Clause 7 ordered to stand part of the Bill

Clause 10 (Section 21 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 10 be renumbered as clause 8.

Amendment agreed to.

Clause 10 renumbered 8 accordingly

Clause 8 ordered to stand part of the Bill

Clause 11 (Section 28 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 11 be renumbered as clause 9.

Amendment agreed to.

Clause 11 renumbered 9 accordingly

Clause 12 (Section 29 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 12 renumbered as clause 10 be amended –

"12. Section 29 of principal Act amended

Section 29 of the principal Act is amended, in subsection (1) –

- (a) in paragraph (a), by deleting the words “to establish” and replacing them by the words “subject to subsection (1A), to establish”;

(b) by inserting, after subsection (1), the following new subsection

—

(1A) A worker shall have the right to join only one trade union, of his own choice, in the enterprise where he is employed or his bargaining unit."

Amendment agreed to.

Clause 12 renumbered 10 accordingly

Clause 10 ordered to stand part of the Bill

Clause 13 (Section 31 of principal Act amended)

Mr Mohamed: I move that clause 13 be renumbered as clause 11.

Amendment agreed to.

Clause 13 renumbered 11 accordingly

Clause 11 ordered to stand part of the Bill

Clause 14 (Section 32 of principal Act amended)

Motion made and question proposed: "that the clause stands part of the Bill"

Mr Mohamed: I move that clause 14 be deleted.

Amendment agreed to.

Clause 15 (Section 35 of principal Act amended)

Motion made and question proposed: "that the clause stands part of the Bill"

Mr Mohamed: I move that clause 15 be deleted.

Amendment agreed to.

Clause 16 (Section 36 of principal Act amended)

Motion made and question proposed: "that the clause stands part of the Bill"

Mr Mohamed: I move that clause 16 be renumbered as clause 12.

Amendment agreed to.

Clause 16 renumbered 12 accordingly.

Clause 12 ordered to stand part of the Bill

Clause 17 (Section 37 of principal Act repealed and replaced)

Mr Mohamed: I move that clause 17 be renumbered as clause 13.

Amendment agreed to.

Clause 17 renumbered 13 accordingly

Clause 13 ordered to stand part of the Bill

Clause 18 (Section 38 of principal Act repealed and replaced)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 18 be renumbered as clause 14.

Amendment agreed to.

Clause 18 renumbered 14 accordingly

Clause 14 ordered to stand part of the Bill

Clause 19 (New Section 38A inserted in principal Act)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 19 be deleted.

Amendment agreed to.

Clause 20 (Section 39 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 20 be renumbered as clause 15.

Amendment agreed to.

Clause 20 renumbered 15 accordingly

Clause 15 ordered to stand part of the Bill

Clause 21 (Section 40 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 21 be deleted.

Amendment agreed to.

Clause 22 (Section 41 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 22 be deleted.

Amendment agreed to.

Clause 22 renumbered 15 accordingly

Clause 23 (Section 51 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 23 be renumbered as clause 16.

Amendment agreed to.

Clause 23 renumbered 16 accordingly

Clause 16 ordered to stand part of the Bill

Clause 24 (Section 53 of principal Act amended)

Mr Mohamed: I move that clause 24 be deleted.

Amendment agreed to.

Clause 24 renumbered accordingly

Clause 25 (Section 55 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 25 be renumbered as clause 17.

Amendment agreed to.

Clause 25 renumbered 17 accordingly

Clause 17 ordered to stand part of the Bill

Clause 26 (Section 57 of principal Act amended)

Mr Mohamed: I move that clause 26 be renumbered as clause 18.

Amendment agreed to.

Clause 26 renumbered 18 accordingly

Clause 27 (Section 58 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 27 be renumbered as clause 19.

Amendment agreed to.

Clause 27 renumbered 19 accordingly

Clause 28 (Section 64 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 28 be renumbered as clause 20.

Amendment agreed to.

Clause 28 renumbered 20 accordingly

Clause 20 ordered to stand part of the Bill

Clause 29 (Section 65 of principal Act amended)

Mr Mohamed: I move that clause 29 be renumbered as clause 21.

Amendment agreed to.

Clause 29 renumbered 21 accordingly

Clause 21 ordered to stand part of the Bill

Clause 30 (Section 67 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 30 be renumbered as clause 22.

Amendment agreed to.

Clause 30 renumbered 22 accordingly

Clause 22 ordered to stand part of the Bill

Clause 31 (Section 69 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 31 be renumbered as clause 23.

Amendment agreed to.

Clause 31 renumbered 23 accordingly

Clause 23 ordered to stand part of the Bill

Clause 32 (Section 72 of principal Act amended)

Motion made and question proposed: “that the clause stands part of the Bill”

Mr Mohamed: I move that clause 32 be renumbered as clause 24.

Amendment agreed to.

Clause 32 renumbered 24 accordingly

Clause 24 ordered to stand part of the Bill.

Clause 33 (Section 77 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 33 be renumbered clause 25.

Amendment agreed to.

Clause 33 renumbered 25 accordingly.

Clause 25 ordered to stand part of the Bill.

Clause 34 (Section 78 of principal Act repealed and replaced)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 34 be renumbered clause 26 and amended as follows -

34. Section 78 of the principal Act amended –

- (a) in subsection (1) –
 - (i) by inserting, after the word “decision”, the words “to have recourse to a strike”;
 - (ii) by deleting the word “Commission” and replacing it by the words “supervising officer”;
- (b) in subsection (2), by deleting the words “a representative of the Commission” and replacing them by the words “the supervising officer”;
- (c) by repealing subsection (4).

Amendment agreed to.

Clause 34 renumbered 26 accordingly.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 35 (Section 79 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 35 be deleted.

Amendment agreed to.

Clause 36 (New section 79A inserted in principal Act)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 36 be renumbered clause 27 and amended as follows –

“by deleting the words “provide a conciliation service to the parties to a labour dispute” and replacing them by the words “, at the request of parties to a labour dispute, provide a conciliation service with a view to conciliating the parties”;

Amendment agreed to.

Clause 36 renumbered 27 accordingly.

Clause 27, as amended, ordered to stand part of the Bill.

Clause 37 (Section 80 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 37 be deleted.

Amendment agreed to.

Clause 38 (Section 81 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 38 be deleted.

Amendment agreed to.

Clause 39 (Section 85 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 39 be renumbered clause 28.

Amendment agreed to.

Clause 39 renumbered 28 accordingly.

Clause 28 ordered to stand part of the Bill.

Clause 40 (Section 86 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 40 be renumbered clause 29.

Amendment agreed to.

Clause 40 renumbered 29 accordingly.

Clause 29 ordered to stand part of the Bill.

Clause 41 (Section 95 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 41 be renumbered clause 30.

Amendment agreed to.

Clause renumbered 30 accordingly.

Clause 30 ordered to stand part of the Bill.

Clause 42 (Section 99 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 42 be renumbered clause 31.

Amendment agreed to.

Clause 42 renumbered 31 accordingly.

Clause 31 ordered to stand part of the Bill.

Clause 43 (Section 100 of principal Act amended)

Mr Mohamed: I move that clause 43 be renumbered clause 32.

Amendment agreed to.

Clause 43 renumbered 32 accordingly.

Clause 32 ordered to stand part of the Bill.

Clause 44 (Section 102 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 44 be renumbered clause 33.

Amendment agreed to.

Clause 44 renumbered 33 accordingly.

Clause 33 ordered to stand part of the Bill.

Clause 45 (Section 103 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 45 be renumbered clause 34.

Amendment agreed to.

Clause 45 is renumbered 34 accordingly.

Clause 34 ordered to stand part of the Bill.

Clause 46 (Section 104 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 46 be renumbered clause 35.

Amendment agreed to.

Clause 46 renumbered 35 accordingly.

Clause 35 ordered to stand part of the Bill.

Clause 47 (Second Schedule to principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 47 be renumbered clause 36.

Amendment agreed to.

Clause 47 renumbered 36 accordingly.

Clause 36 ordered to stand part of the Bill.

Clause 48 (Fourth Schedule to principal Act amended)

Motion made and question proposed: "that the clause stand part of the Bill".

Mr Mohamed: I move that clause 48 be deleted.

Amendment agreed to.

Clause 49 (Savings and transitional provisions)

Motion made and question proposed: "that the clause stand part of the Bill".

Mr Mohamed: I move that clause 49 be renumbered clause 37 and amended as follows -

- (i) by deleting subclause (1), the existing subclauses (2) to (6) being renumbered (1) to (5);
- (ii) in subclause (3), as renumbered, by deleting the words "subsections (1) and (5)" and replacing them by the words "subsection (4)";

Amendment agreed to.

Clause 49 renumbered clause 37 accordingly.

Clause 37, as amended, ordered to stand part of the Bill.

Clause 50 (Commencement)

Motion made and question proposed: "that the clause stand part of the Bill".

Mr Mohamed: I move that clause 50 be renumbered clause 38 and amended as follows:-

To be deleted and replaced by the following clause –

"50. Commencement

- (1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.
- (2) Different dates may be fixed for the coming into operation of different sections of this Act."

Amendment agreed to.

Clause 50 renumbered 38 accordingly.

Clause 38, as amended, ordered to stand part of the Bill.

Title

Motion made and question proposed: “that the title stand part of the Bill”.

Mr Mohamed: I move to insert the following long title -

‘To amend the Employment Relations Act’

Amendment agreed to.

The title was agreed to.

The enacting clause was agreed to.

The Bill, as amended, was agreed to.

On the Assembly resuming with Mr Speaker in the Chair, Mr Speaker reported accordingly.

THE EMPLOYMENT RIGHTS (AMENDMENT) BILL

(No. XXXII of 2012)

Clauses 1 to 4 ordered to stand part of the Bill.

Clause 5 (Section 8 of principal Act repealed and replaced)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move for the following amendments in clause 5 –

- (i) by numbering the proposed provision as subsection (1);
- (ii) in the newly numbered subsection (1) –
 - (A) by deleting the words “who employs 10 or more workers,”;
 - (B) by inserting, after the word “Schedule”, the words “, or in such form in French or Creole as may be prescribed”;
- (iii) by adding, after the newly numbered subsection (1), the -following new subsection –

(2) A copy of the statement of particulars shall be submitted to the Permanent Secretary within 30 days after the worker has completed 30 consecutive working days' service.

Amendment agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clauses 6 and 7 ordered to stand part of the Bill.

Clause 8 (New section 14A inserted in principal Act)

Motion made and question proposed: "that the clause stand part of the Bill".

Mr Mohamed: I move to amend clause 8, in the proposed new section 14A, as follows –

(i) by deleting subsection (1) and replacing it by the following subsection

–

(1) An employer shall not, without a worker's consent, require the worker on shift work –

(a) to work more than 8 hours in a day;

(b) to perform night work on more than 4 consecutive nights, except in such sector or industry as may be prescribed.

(ii) by inserting, after subsection (4), the following subsection, the existing subsection (5) being renumbered (6) –

(5) Every worker shall be paid an allowance of 10 per cent of his basic wage in addition to his normal day's wage for work performed during night shift.

Amendment agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

New clause 8A (Section 19 of principal Act amended)

Motion made and question proposed: "that the clause stand part of the Bill".

Mr Mohamed: I move that a new clause 8A be added as follows -

8A. Section 19 of principal Act amended

Section 19 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection –

- (1) Notwithstanding any other enactment or Remuneration Regulations, where a worker is required to perform more than 2 hours' extra work after having completed a normal day's work, he shall, in addition to any remuneration due for overtime work, be provided by the employer with an adequate free meal or be paid a meal allowance as specified in paragraph (a) of the Third Schedule.

The Chairman: The question is that new clause 8A be read a second time.

Question put and agreed to.

New clause 8A ordered to stand part of the Bill.

Clauses 9 and 10 ordered to stand part of the Bill.

New clause 10A (Section 26 of principal Act amended)

Motion made and question proposed: "that the clause stand part of the Bill".

Mr Mohamed: I move that a new clause 10A be added as follows -

10A. Section 26 of principal Act amended

Section 26 of the principal Act is amended by inserting, after subsection (2), the following new subsection –

- (2A) Where an employer provides a worker with a means of transport under subsection (1), the employer shall pay to the worker wages at the normal rate in respect of any waiting time exceeding 45 minutes after he has stopped work.

The Chairman: The question is that new clause 10A be read a second time.

Question put and agreed to.

New clause 10A ordered to stand part of the Bill.

Clauses 11 and 12 ordered to stand part of the Bill.

Clause 13 (Section 30 of principal Act amended)

Motion made and question proposed: "that the clause stand part of the Bill".

Mr Mohamed: I move that clause 13 be amended as follows –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) A female worker who remains in continuous employment with the same employer for a period of 12 consecutive months immediately preceding the beginning of leave under this section shall, on production of a medical certificate, be entitled to 12 weeks' maternity leave on full pay to be taken either –

- (a) before confinement, provided that at least 6 weeks' maternity leave shall be taken immediately following the confinement; or
- (b) after confinement.

- (b) by inserting, after subsection (1), the following new subsection –

(1A) Notwithstanding any other enactment or Remuneration Regulations and subject to subsection (2), where a female worker, who remains in continuous employment with the same employer for a period of 12 consecutive months, gives birth to a child, she shall, on production of a medical certificate, be paid within 7 days of her confinement an allowance as specified in paragraph (b) of the Third Schedule.

- (c) in subsection (7), by deleting the words “or work during night shift”.

Amendment agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14 (Section 31 of principal Act amended) ordered to stand part of the Bill

New clause 14A (New section 31A inserted in principal Act)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that a new clause 14A be added as follows -

14A. New section 31A inserted in principal Act

The principal Act is amended by inserting, after section 31, the following new section –

31A. End of year bonus

(1) Where a worker remains in continuous employment with the same employer in a year, the worker shall be entitled at the end of that year to a bonus equivalent to one-twelfth of his earnings for that year.

(2) Every worker who –

- (a) takes employment during the course of a year;
- (b) is still in employment as at 31 December in that year; and
- (c) has performed a number of normal days' work with that employer, equivalent to not less than 80 per cent of the number of working days, during his employment in that year,

shall be entitled at the end of that year to a bonus equivalent to one-twelfth of his earnings for that year.

(3) A sum amounting to 75 per cent of the expected bonus specified in subsections (1) and (2) shall be paid to the worker not later than 5 clear working days before 25 December of that year, and the remaining balance shall be paid to him not later than on the last working day of the same year.

(4) For the purpose of this section, every day on which a worker –

- (a) is absent with the employer's authorisation;
- (b) reports for work but is not offered work by the employer; or
- (c) is absent on grounds of –
 - (i) illness after notification to the employer under section 28(4)(a); or
 - (ii) injury arising out of and in the course of his employment,

shall count as a working day.

The Chairman: The question is that new clause 14A be read a second time.

Question put and agreed to.

New clause 14A ordered to stand part of the Bill.

Clauses 15 to 17 ordered to stand part of the Bill.

Clause 18 (Section 38 of principal Act amended)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 18 be amended as follows –

- (i) in paragraph (b), by deleting subparagraphs (i) and (iii);
- (ii) by inserting, after paragraph (c), the following new paragraph –
 - (ca) in subsection (4), in paragraph (a), by deleting the words “; or” and replacing them by the words “, or both; or”;

- (iii) in paragraph (f), in the proposed new subsection (7)(b), by deleting the figure “7” and replacing it by the figure “10”;

Amendment agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19 (New Part VIIIA inserted in principal Act)

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that clause 19 be amended as follows –

In the proposed new section 39B, to delete subsection (3) and replacing it by the following subsection –

(3) Notwithstanding this section, an employer shall not reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise unless he has –

(a) in consultation with the trade union recognised under section 38 of the Employment Relations Act, explored the possibility of avoiding the reduction of workforce or closing down by means of –

- (i) restrictions on recruitment;
- (ii) retirement of workers who are beyond the retirement age;
- (iii) reduction in overtime;
- (iv) shorter working hours to cover temporary fluctuations in manpower needs; or
- (v) providing training for other work within the same enterprise;

(b) where redundancy has become inevitable –

- (i) established the list of workers who are to be made redundant and the order of discharge on the basis of the principle of last in first out; and
- (ii) given the written notice required under subsection (2).

Amendment agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clauses 20 to 26 ordered to stand part of the Bill.

Motion made and question proposed: “that the clause stand part of the Bill”.

Clause 27 (Section 49 of the Principal Act amended).

Mr Mohamed: Mr Chairperson, I move in clause 27, to delete paragraph (a) and replace it by the following paragraph –

- (a) by inserting, after subsection (1), the following new subsections

–

(1A) (a) Where a worker who has attained the age of 60 remains in continuous employment with the same employer up to the retirement age, the worker and the employer may agree on an advance payment of the total gratuity payable at the retirement age, amounting to the gratuity payable at the age of 60 calculated in accordance with subsection (2).

(b) Advance payment of the gratuity, where agreed upon under paragraph (a), shall be effected upon the worker attaining the age of 60.

(1B) Notwithstanding any agreement or any provision to the contrary in any other enactment, an employer shall not require a worker to retire before the retirement age.

Amendment agreed to.

Clause 27, as amended, ordered to stand part of the Bill.

Clauses 28 to 31 ordered to stand part of the Bill.

Motion made and question proposed: “that the clause stand part of the Bill”.

Mr Mohamed: I move that a New clause 31A be inserted after clause 31, by adding the following new clause –

“31A. Section 55 of principal Act repealed

The principal Act is amended by repealing section 55.”

The Chairman: The question is that New clause 31A be read a second time.

Question put and agreed to.

New Clause 31A ordered to stand part of the Bill.

Clauses 32 to 34 ordered to stand part of the Bill.

Motion made and question proposed: “that the clause stand part of the Bill”.

Clause 35 (Third Schedule to principal Act amended)

Mr Mohamed: Mr Chairperson, I move that clause 35 be deleted and replaced by the following clause –

“35. Third Schedule to principal Act amended.

The Third Schedule to the principal Act is amended –

- (a) in paragraph (a), by deleting the words “Rs 50.00” and replacing them by the words “Rs 70.00”;
- (b) in paragraph (b), by deleting the words “[Section 30(1)(b)]” and “Rs 2,000” and replacing them by the words “[Section 30(1A)]” and “Rs 3,000”, respectively.”

Amendment agreed to.

Clause 35, as amended, ordered to stand part of the Bill.

Clauses 36 to 38 ordered to stand part of the Bill.

Motion made and question proposed: “that the clause stand part of the Bill”.

Clauses 39 (Savings and Transitional Services)

Mr Mohamed: Mr Chairperson, I move the following amendment in clause 39 –

“(i) by deleting subsection (1) and replacing it by the following subsection –

“(1) Where, before the commencement of this Act, a worker and an employer have entered into one or more determinate agreements for a total period of more than 24 months as specified in section 5(3) of the principal Act, the agreement shall, at the commencement of this Act, be deemed to be an indeterminate agreement with effect from the date the first agreement was entered into.

(ii) by deleting subsection (2), the existing subsection (3) being renumbered (2);”

Amendment agreed to.

Clause 39, as amended, ordered to stand part of the Bill.

Motion made and question proposed: “that the clause stand part of the Bill”.

Clause 40 (Commencement)

Mr Mohamed: Mr Chairperson, I move to delete clause 40 and replace it by the following clause –

“40. Commencement

(1) (a) Subject to paragraph (b) and subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(b) Different dates may be fixed for the coming into operation of different sections of this Act.

(2) Section 27(d) shall be deemed to have come into operation on 2 February 2009.”

Amendment agreed to.

Clause 40, as amended, ordered to stand part of the Bill.

Title

Motion made and question proposed: “that the title stand part of the Bill”.

Mr Mohamed: Mr Chairperson, I move to insert the following long title –

“To amend the Employment Rights Act”

Amendment agreed to.

The title, as amended, was agreed to.

The Schedules ordered to stand part of the Bill.

The enacting clause were agreed to.

The Bill, as amended, was agreed to.

On the Assembly resuming with Mr Speaker in the Chair, Mr Speaker reported accordingly.

Third Reading

The motion was made and seconded for the Employment Rights (Amendment) Bill (No. XXXII of 2012) be read a third time and passed.

Mr Ganoo: Mr Speaker, Sir, I move for a division.

(Division Bells were rung)

On question put, the House divided.

NOES

1. Hon. R. Uteem
2. Dr. the Hon. R. Sorefan
3. Hon. S. Soodhun
4. Hon. M. K. Seeruttun
5. Hon. P. Roopun
6. Hon. Mrs L. Ribot
7. Hon. Mrs M. J. Radegonde-Haines
8. Hon. J. P. F. Quirin
9. Hon. S. Obeegadoo
10. Hon. Mrs A. Navarre-Marie
11. Hon. K. Li Kwong Wing
12. Hon. G. P. Lesjongard

13. Hon. Mrs F. Labelle
14. Hon. P. Jugnauth
15. Hon. P. Jhugroo
16. Hon. Mrs S. B. Hanoomanjee
17. Hon. A. K. Gungah
18. Hon. Mrs L. D. Dookun-Luchoomum
19. Dr. the Hon. S. Boolell
20. Hon. N. Bodha
21. Hon. J. C. Barbier
22. Hon. V. Baloomoody
23. Hon. S. M. A. Ameer Meea
24. Hon. R. A. Bhagwan
25. Hon. A. Ganoo

ABSENT

1. Hon. K. Ramano
2. Hon. D. Nagalingum
3. Hon. E. Guimbeau
4. Hon. J. F. François
5. Hon. C. M. Fakeemeeah
6. Hon. P. R. Bérenger
7. Hon. J. C. Leopold
8. Hon. S. Anquetil
9. Hon. L. H. Aimée
10. Hon. S. V. Faugoo
11. Dr. the Hon. N. Ramgoolam

AYES

1. Hon. Mrs P. K. Bholah
2. Hon. Mrs M. J. Perraud
3. Hon. D. S. Khamajeet
4. Hon. A. R. G. M. Issack
5. Hon. A. H. Hossen
6. Hon. J.H.T. Henry

7. Hon. P. G. Assirvaden
8. Hon. Mrs K. B. Juggoo
9. Dr. the Hon. B. Hookoom
10. Hon. Ms K. R. Deerpalsing
11. Dr. the Hon. R. R. Hawoldar
12. Hon. M. Peetumber
13. Hon. S. Moutia
14. Hon. Mrs M. F. Martin
15. Hon. J. Seetaram
16. Hon. S. Dayal
17. Hon. S. C. Sayed Hossen
18. Hon. L. Bundhoo
19. Hon. J. M. Yeung Sik Yuen
20. Hon. S. Mohamed
21. Hon. M. Choonee
22. Hon. S. Ritoo
23. Hon. L. J. Von-Mally
24. Hon. T. Pillay-Chedumbrum
25. Dr. the Hon. R. Jeetah
26. Hon. D. Virahsawmy
27. Dr.the Hon. V. Bunwaree
28. Hon. Mrs S. Bappoo
29. Dr. the Hon. A. T. Kasenally
30. Dr. the Hon. A. K. Boolell
31. Hon. A. Bachoo
32. Hon. X. L. Duval
33. Dr. the Hon. A. R. Beebeejaun

AYES : 33

NOES : 25

ABSENCES : 11

Mr Speaker: The Ayes have it.

On the Assembly resuming with Mr Speaker in the Chair, Mr Speaker reported accordingly.

Third Reading

On motion made and seconded, the following Bills were read the third time and passed -

- (a) The Employment Relations (Amendment) Bill (No. XXXI of 2012)*
- (b) The Employment Rights (Amendment) Bill (No. XXXII of 2012)*