

立法會
Legislative Council

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LC Paper No. CB(2)1154/03-04

(These minutes have been seen by the
Administration)

Panel on Manpower

Minutes of meeting
held on Thursday, 18 December 2003 at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon CHAN Kwok-keung, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LI Fung-ying, JP
Hon LEUNG Fu-wah, MH, JP

Members absent : Hon LAU Chin-shek, JP (Chairman)
Dr Hon LUI Ming-wah, JP
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee

Public Officers attending : Item IV
Mr Matthew CHEUNG Kin-chung, JP
Permanent Secretary for Economic Development and
Labour (Labour)

Mrs Jenny CHAN
Assistant Commissioner for Labour
(Employees' Rights and Benefits)

Mr Alan WONG
Chief Labour Officer
Labour Department

Item V

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

Mr TSANG Kin-woo
Assistant Commissioner for Labour (Employment Services)

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

Staff in attendance : Ms Amy WONG
Senior Assistant Secretary (2) 1

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I. Confirmation of minutes of previous meeting and matters arising
(LC Paper No. CB(2)655/03-04)

1.11. The minutes of the meeting held on 20 November 2003 were confirmed.

II. Proposal to undertake an overseas duty visit
(LC Paper No. CB(2)654/03-04(01))

2. The Deputy Chairman said that at the meeting on 20 November 2003, Ms LI Fung-ying suggested, on behalf of Miss CHAN Yuen-han, that consideration be given for the Panel to undertake an overseas duty visit. After discussion with some Panel members, the Chairman suggested that a visit to the Republic of Korea be made to study Korea's policies and initiatives on creating employment opportunities and its training and manpower development strategies and programmes.

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3. The Deputy Chairman further said that as the Panel on Health Services (HS Panel) would be undertaking a study visit to the United Kingdom from 4 to 9 April 2004 and six Panel members were also members of the HS Panel, it was suggested that the study visit to Korea be made from 12 to 16 April 2004. Members could return to Hong Kong in the morning of 16 April 2004 to be in time for the House Committee meeting in the afternoon. The Deputy Chairman added that the regular meeting in April 2004 might need to be re-scheduled.

Clerk

4. Members agreed to the proposed dates of the study visit. The Legislative Council Secretariat would proceed with the preparatory work.

5. Members also agreed to open the study visit to non-Panel Members.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)654/03-04(02) and (03))

6. The Deputy Chairman informed members that with the concurrence of the Chairman, the briefing on the Chief Executive's 2004 Policy Address would be conducted at the forthcoming meeting on 15 January 2004 and the discussion of the regular items would be postponed to the meeting on 19 February 2004.

7. Members agreed that the following items be discussed at the meeting on 19 February 2004 at 2:30 pm -

(a) Creation of temporary jobs as announced in the Chief Executive's 2000 Policy Address and 2001 Policy Address; and

(b) Occupational Diseases Trends and Prevention.

8. Members also agreed to delete item 11 "Review of Self-employment Business Startup Assistance Scheme" from the list of outstanding items for discussion as the Administration had ceased providing loan guarantee for the Scheme with effect from 1 October 2003.

IV. Tackling wage offences
(LC Paper No. CB(2)654/03-04(04))

9. The Permanent Secretary for Economic Development and Labour (PSL) briefed members on the Administration's effort to step up enforcement against wage offences. He stressed that tackling wage offences ranked high on the Labour Department's (LD) agenda. He said that a new Employment Claims Investigation Unit (ECIU) had been set up in September 2002 and the progress was encouraging. As at end October 2003, ECIU had completed investigation of 410 cases, amongst

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which 340 cases involved late payment, non-payment or underpayment of wages. ECIU had secured 170 convicted summonses on wage offences and 73 summonses were to be heard. 50 employers, or 30% of the 165 investigated cases involving non-payment or underpayment of wages, paid the employees after ECIU commenced investigation.

10. Regarding the prosecution efforts of LD, PSL said that in the first 10 months of 2003, a total of 496 summonses for wage offences were heard as compared to 156 in the same period last year. The number of successful convictions which totalled 386, represented a 261% increase over last year. The highest fine recorded in a case was \$50,000. LD also recorded the first case in which a company director of a limited company was convicted for failure to pay wages before the statutory time limit.

11. As regards underpayment of wages to foreign domestic helpers (FDHs), PSL said that LD had secured convictions of 24 summonses involving three employers for underpaying their FDHs as compared to no conviction in 2002. Furthermore, since early 2003, LD had put in place an intelligence system with migrant worker groups and non-governmental organisations (NGOs) to facilitate FDHs to report wage underpayment cases. A total of eight referrals involving 11 FDHs were recorded.

12. PSL added that in a case of defrauding the Immigration Department by paying the FDH wages below the Minimum Allowable Wage, the employer and operator of the employment agency concerned were convicted and sentenced to four months' and three months' imprisonment respectively.

13. Despite the constraints in prosecuting wage offences such as refusal of employee to serve as witness for the prosecution, the high standard of proof in criminal prosecution and failure to serve summonses on the employer by mail or by personal service in some cases, PSL believed that through continuous and vigorous efforts in workplace inspection, targeted inspection campaigns, investigations, prosecutions and public education, and as the economy improved, the problem of wage offences would improve over time.

14. Mr LEE Cheuk-yan expressed concern about the low ratio of prosecution. He asked about the number of wage offence complaints received by LD each year. To facilitate prosecution, he wondered whether the relevant legislation could be amended to relax the standard of proof. Mr LEE said that trade unions were concerned about the difficulties faced by the workers in making wage claims, having regard to the complicated procedures involved. He asked whether LD would consider providing a one-stop service for handling cases of arrears of wages as suggested at previous meetings.

15. PSL did not agree that the prosecution rate was low. He said that LD received a total of some 31 000 claims by end November 2003. Out of these cases, 9 700 cases were related to wages, similar to last year's figures. The number of prosecution cases

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had been much reduced because 65% of the claimants got their wages after conciliation by LD without involving legal process. He informed members that there had been a change in the strategy of the LD. Should the employer be found to default payment seriously and deliberately, LD would try to encourage the worker to come forward as witness and prosecute the employer. As a result of LD's efforts in the first 10 months of 2003, there was a 261% increase in conviction over the same period last year.

16. Regarding the provision of one-stop service, PSL said that LD had studied the suggestion but found that it would not necessarily help reduce the amount of time required for the different services and the total time spent. To expedite the wage claim process, the Administration was reviewing whether the administrative procedures involved could be simplified and streamlined, e.g. whether the procedures for completing the forms could be streamlined. The Administration was also discussing with the Judiciary with a view to speeding up the process. PSL stressed that it was more important for employees to pursue wage claims promptly. Otherwise, the problem might be shifted to the Protection of Wages on Insolvency Fund (PWIF) in cases of insolvent employers. To tackle the problem at source and in view of the high risk period at year end when liquidity problem of employers was not uncommon, LD had stepped up its inspections to detect wage offences. PSL added that an intelligence system with over 10 major contractors and trade unions in the construction industry had recently been set up to facilitate reporting of wage offences.

17. Mr LEE Cheuk-yan said that the increase in conviction by 2.6 fold was not significant because the base of prosecution cases in the past year was low. In his view, the prosecution rate of 5%, i.e. 500 cases of successful conviction out of 9 000 cases of wage claims, was not amazing. To deter wage offences, he considered that the employer should be prosecuted once found to have violated the law irrespective of whether conciliation was in progress. Mr LEE maintained the view that a one-stop service by LD would save time in wage claims. He pointed out that it might take a few months for an employee to be granted legal aid.

18. PSL said that it was more important that the prosecution was targeted and served the purpose of deterring employers from committing wage offence. There were many cases under processing and the number of prosecution would rise. He reiterated that LD's prime concern was to simplify procedures so as to speed up the recovery of wage entitlements by employees. In this regard, the Administration was exploring how to simplify the procedure for application to PWIF with a view to expediting making of ex-gratia payment to the applicants. He believed that wage offences would be effectively tackled with strengthened workplace inspection and prosecution.

19. Mr LEE Cheuk-yan requested the Administration to provide the number of cases where the court had ordered unpaid wages to be paid by employers out of the 386 cases of successful conviction. PSL agreed.

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20. Mr Andrew CHENG agreed with Mr LEE Cheuk-yan that the prosecution figures were but the tip of the iceberg. He asked -

- (a) whether there was any case of imprisonment imposed on employers in accordance with sections 101 and 101A of the Magistrates Ordinance and if so, how many such cases;
- (b) whether the Administration would explore the feasibility of amending the legislation to prevent the company director from evading his responsibility on outstanding wage payment upon the winding-up of the company; and
- (c) whether it would be feasible to adopt administrative measures to penalise the unscrupulous employers who deliberately defaulted payment of wages by imposing demerits points in their licence applications or tendering for government projects.

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21. Regarding the information referred to in paragraph 20(a) above, PSL said that LD did not have the figure on hand. He would liaise with the Judiciary for the statistics and revert to the Panel.

22. PSL said that the first case in which a company director of the limited company was convicted for failure to pay wages within the statutory time limits was a breakthrough in tackling wage offence and LD would continue to pursue similar effort in future. To address the problem of company directors evading their responsibility to pay outstanding wages, the Financial Services and Treasury Bureau was reviewing the need to amend the Companies Ordinance in conjunction with the Official Receiver's Office (ORO).

23. PSL further said that there were provisions in the government contracts which allowed for termination of service contracts and disqualification from tendering government projects if the contractors were found contravening labour laws, for example, committing wage offences or employing illegal workers.

24. Mr Andrew CHENG asked the Administration to consider adopting a demerit point system for employers with records of defaulting payment of wages in licence applications. PSL said administrative measures might not work if the relevant licensing legislation did not allow the authorities to consider such records in handling licence applications.

25. Mr Andrew CHENG considered that company directors should bear the responsibility to pay the outstanding amount of wages owed. He suggested that the Employment Ordinance, which covered employment protection, could be amended to deal with such situation. Mr CHENG requested the Administration to provide the

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number of cases where the court had ordered payment of unpaid wages, but the employer failed to settle the unpaid wages without giving valid reasons.

26. Miss CHAN Yuen-han said that she had come across some cases where the employer concerned ignored the decision of the Labour Tribunal (LT) and did not settle the outstanding wages. She asked what measures the Administration had taken to follow up on these cases.

27. PSL said that Labour Inspectors would assist in investigating cases in which the employer defaulted payment awarded by LT. He informed members that in the first 10 months of 2003, LD had recommended 128 cases for prosecution of wage offences in which the employers defaulted payment of such awards. Of these cases, 116 summonses were heard and 97 summonses were convicted. However, 43 employees declined to serve as prosecution witnesses after getting back their wages. He stressed that LD took a serious view on wage offence and would prosecute the wage offenders when there was sufficient evidence.

28. Miss CHAN Yuen-han expressed doubt whether the measures undertaken by LD was really effective in tackling default wage payment. She asked whether workers who required legal aid to pursue their outstanding wages awarded by LT could be exempted from paying the fees involved or from the means test when applying for legal aid.

29. PSL said that exemption from means test touched on legal aid policy. If means test exemption was granted to employees suffering from arrears of wages, similar exemption might have to be granted to, for example, rental cases. Nevertheless, the Administration would endeavour to render assistance to employees in need.

30. Miss CHAN Yuen-han pointed out that this was a different situation because the employee had won the case in LT. However, he was unable to recover the unpaid wages because the employer appealed against the LT's decision. She urged the PSL to bring this issue to the attention of the government departments concerned. PSL agreed.

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31. Mr LEUNG Fu-wah said that he was pleased to note the willingness of LD to prosecute employers for wage offences. He asked -

- (a) whether there would be any special campaigns to detect wage offences in the year end;
- (b) whether there would be any room for amending the legislation so that employers would attach great importance to not defaulting payment of wages; and

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- (c) with only three employers convicted of underpaying FDHs, whether there were any measures taken to encourage the FDHs to come forward as prosecution witnesses.

32. PSL responded that in the last two weeks LD had held meetings with the major contractors and trade unions to remind them to keep a close watch for possible wage offences, particularly whether the sub-contractors would pay wages on time. Since end October 2003, Occupational Safety Officers had inspected 3 700 sites to help detect wage offences. He believed that the problem would be brought under control with more preparation done this year.

33. PSL said that under existing legislation, employers were liable on conviction to a maximum fine of \$200,000 and imprisonment for one year for committing wage offences. One common constraint impeding the prosecution process was that the employees declined to serve as prosecution witnesses in the last minute after getting their wages. By strengthening education and publicity efforts, the employers would be reminded of their statutory obligation to pay wages on time and the employees would be encouraged to lodge their wage claims promptly and to come forward as prosecution witness.

34. Regarding FDHs, PSL said he had meetings with the NGOs, the FDH labour groups and consulates and asked them to help encourage the FDHs to report wage offence cases. He believed that their mindset would be changed with LD's continuous effort of education and publicity.

35. Mr LEUNG Fu-wah asked whether the legislation could be amended to give priority to award outstanding wages to employees, as in the case of default wage payments of seafarers where the vessels of the shipping company could be auctioned for settling the payments. He also asked whether the registration of outstanding wage claim and taking of statement could be dealt with at the same time.

36. PSL said that the civil proceedings on outstanding wage claims and taking of statements for offence investigation would proceed at the same time if the employee agreed to be prosecution witness. LD would not tolerate unscrupulous employers who deliberately defaulted wage payments. He said that at present employees who were owed wages could seek to enforce the court award against the employers properties to recover their entitlements.

37. Ms LI Fung-ying said that the crux of the problem was that the penalty was too light. With enormous resources spent on putting employers to prosecution, the light penalty would not deter the employers from committing wage offences and might not justify the cost of the efforts. She requested the Administration to provide statistics on the maximum, minimum and average penalty of the convicted cases in the first 10 months of 2003. She also requested the Administration to provide the number of

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wage offence cases reported by the employees against those revealed after investigation by LD.

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38. PSL agreed to provide the information after the meeting. PSL said that the maximum fine of \$200,000 and one year's imprisonment should have sufficient deterrent effect on employers from committing wage offences. However, the penalty imposed on employers would be a matter for the court, having regard to the merits of individual cases.

39. Ms LI Fung-ying asked about the division of work of the Labour Inspector, the Occupational Safety Officer and ECIU, as all of them were involved in detecting wage offences. PSL explained that the Occupational Safety Officers and Labour Inspectors were front line staff inspecting workplace to detect wage offence and take follow-up actions. Complicated wage offence cases would be investigated by the ECIU.

40. Mr Kenneth TING asked about the number of outstanding wage claims this year as compared with last year. He said that it was important to maintain harmony within the society. In times of economic difficulty, employees should try to share the employer's concerns and mutually work out a solution. In the case of default payment, the employees should report arrears of wages as early as possible, instead of waiting to a late stage when bankruptcy was inevitable, so that the good employers would not have to subsidise the bad ones.

41. PSL said that the number of outstanding wage claims in January to November 2003 was about 9 700, as compared with about 9 600 cases in 2002. With the successful rate of conciliation at 65%, the highest rate since the Asian financial crisis, it reflected that employer-employee relationship was improving despite the economic hardship brought about by the Severe Acute Respiratory Syndrome outbreak.

42. Mr LEE Cheuk-yan pointed out the problem of employers, especially in the catering industry, evading their responsibilities to pay outstanding wages to their employees. He said that very often, employers would transfer their assets before they went into liquidation. He asked what the Administration had done to combat the problem.

43. PSL responded that a special task force comprising representatives from the Commercial Crime Bureau (CCB) of the Police, ORO, Legal Aid Department and LD had been set up to proactively investigate suspected cases of PWIF. So far, 36 cases had been referred to the Police and ORO. The CCB had so far taken arrest actions in four cases. The remaining cases were under investigation by the CCB and ORO. Thorough investigation would be conducted should there be any suspected illegal transfer of assets before the companies went into liquidation.

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V. New measures to enhance the employment services
(LC Paper No. CB(2)654/03-04(05))

44. PSL briefed members on the new measures to enhance employment service provided by LD as set out in the Administration's paper.

45. Ms LI Fung-ying requested the Administration to provide the statistics on the three special employment programmes in terms of the number of job seekers helped, their wages and the nature of their jobs, e.g. part-time, permanent or temporary. PSL agreed to provide the statistics in due course.

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46. Mr LEUNG Fu-wah queried that with only some 3 million labour population in Hong Kong, why the page view rate could record an average of 1.46 million per day. PSL explained that the page view rate was the hit rate, but not the number of viewers. The viewers could include people from overseas.

47. Referring to paragraph 12 of the Administration's paper, Mr LEUNG Fu-wah asked why there were about 18 000 to 22 000 monthly vacancies received from the private sector, but only some 6 000 placements were registered. PSL responded that this was probably due to the mismatch of jobs and difference in the expectation of employers and job-seekers.

48. Assistant Commissioner for Labour (Employment Services) (ACL) elaborated that there might be other factors such as employers using other recruitment sources beside LD, dissatisfaction of job-seekers about the employment conditions offered and their lack of interest in some vacancies particularly those in the retail business which offered relatively low basic salary.

49. PSL said that tailor-made employment service could be provided to employers offering large number of vacancies.

50. Mr LEUNG Fu-wah further asked about the type of job vacancies that were difficult to fill. PSL responded that dim sum chefs and roast meat chefs were some recent examples.

51. In response to the Deputy Chairman's query, ACL said that job vacancies were updated four to six times a day.

52. Mr LAU Hon-chuen asked about the Graduate Employment Training Scheme. PSL said that it was a new scheme launched by the Government in 2003 to assist fresh university graduates to find jobs with on-the-job training. Funding of \$26 million had been secured for 2 000 trainees. For each trainee engaged, the employer would receive a training allowance of \$2,000 per month from LD for up to six months. The seven local universities would be responsible for placing their own graduates, while

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LD would help graduates from other universities and those returning from overseas. So far, over one thousand graduates had secured jobs through the Scheme.

53. PSL further said that the employer was expected to pay market wages including the \$2,000 training allowance to the trainee engaged. ACL added that most of these trainees were remunerated at about \$6,000 to \$8,000 per month.

VI. Any other business

54. There being no other business, the meeting ended at 4:02 pm.

Council Business Division 2
Legislative Council Secretariat
30 January 2004