

立法會
Legislative Council

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LC Paper No. CB(2) 970/04-05
(These minutes have been seen
by the Administration)

Panel on Manpower

**Minutes of special meeting
held on Thursday, 2 December 2004 at 11:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon LAU Chin-shek, JP (Chairman)
Hon KWONG Chi-kin (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP

Members absent : Hon Andrew CHENG Kar-foo
Hon Frederick FUNG Kin-kee, JP
Hon Vincent FANG Kang, JP
Hon LEUNG Kwok-hung

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

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

Miss Amy TSE
Deputy Secretary for Financial Services and the Treasury
(Treasury) 3
Financial Services and the Treasury Bureau

Mrs Vivian TING
Principal Executive Officer (Tender)
Financial Services and the Treasury Bureau

Miss Carrie CHANG
Senior Administrative Officer (Policy Support)
Labour Department

Mr Donald C K TONG
Deputy Director (Administration and Development)
Food and Environmental Hygiene Department

Mr LO Fu-wai
Assistant Director (Grade Management and Development)
Food and Environmental Hygiene Department

Mr MOK Kam-kwan
Deputy Government Property Administrator
Government Property Agency

Mr Ricky K M CHUI
Assistant Director (Finance)
Leisure and Cultural Services Department

Mr LEE Kang-sum
Chief Manager/Management (Support Services 3)
Housing Department

Mr CHOI Chun-sun
Senior Statistician (Labour) 2
Census and Statistics Department

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

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

I. Mandatory requirement on wage rates for non-skilled workers engaged in services contracted out by the Government
(LC Paper Nos. CB(2) 332/04-05(01) and (02))

At the invitation of the Chairman, Permanent Secretary for Economic Development and Labour (Labour) (PSL), Deputy Secretary for Financial Services and the Treasury (Treasury) 3 (DS(Tsy)), Senior Statistician (Labour) 2/Census and Statistics Department (SS/C&SD) and Deputy Director (Administration and Development)/Food and Environmental Hygiene Department (DD/FEHD) briefed members on the Administration's paper, which was tabled at the meeting, on the mandatory requirement on wage rates for non-skilled workers engaged in services contracted out by the Government. DD/FEHD informed members that in response to the FEHD's additional cleansing service requirements at Cheung Chau, the Champion Cleaning Transport Company Limited (Champion) had agreed to increase the working hours of cleansing workers working on this contract and accordingly increase their monthly wages to about \$4,898. If the cleansing workers agreed to the proposed arrangement, the matter might be settled within a week's time.

(Post-meeting note : The paper tabled at the meeting was issued to members vide LC Paper No. CB(2)332/04-05 on 3 December 2004.)

2. Members noted a letter dated 30 November 2004 from Mr LEE Cheuk-yan requesting the Administration to provide information relating to employment contracts for employees engaged in services contracted out by the Government. Mr LEE Cheuk-yan requested the Administration to provide a response to the issues raised in his letter.

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(Post-meeting note : The letter tabled at the meeting was issued to members vide LC Paper No. CB(2)332/04-05 on 3 December 2004.)

3. Mr LEE Cheuk-yan said that the daily working hours of cleansing workers of Cheung Chau, who were earning monthly wages of about \$4,700 to \$5,100 before the change of contractor, had been reduced by half an hour to eight hours and their monthly wages reduced to about \$4,200, which was lower than the average monthly salary of \$4,898 for cleaners as set out in the Quarterly Report of Wage and Payroll Statistics published by C&SD (the Quarterly Report). He added that the decrease in wages was partly due to the reduction of cleansing services from eight and a half hours to eight hours for Cheung Chau.

4. Mr LEE Cheuk-yan expressed concern that although the Annex to the Administration's paper on the extension of the mandatory requirement for employment terms for non-skilled workers engaged in projects or services contracted out by the Government to public bodies for the Panel meeting on 18

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November 2004 indicated that no cleaners were offered monthly wages lower than \$4,898, their actual take-home wages might be less than \$4,898 per month. He questioned why meal breaks were excluded from the normal working hours of the cleansing workers of Cheung Chau, especially given that the cleansing workers might have to provide emergency cleansing services during their meal breaks.

5. Mr LEE Cheuk-yan said that the meal breaks of civil servants performing civilian duties were included in their daily working hours. He considered that the wages of workers employed by contractors of government outsourced services should be \$4,898 per month, if their daily working hours reached eight hours. Referring to the Annex to the Administration's paper for the meeting on 18 November 2004, he questioned whether the wages referred to in the Annex were take-home wages. The Chairman added that many members had thought that the wages in the Annex to the Administration's paper for the meeting on 18 November 2004 were take-home wages.

6. DD/FEHD responded that FEHD had not required the cleansing workers of Champion to work or standby for emergency cleansing duties during their meal breaks. He said that the meal break arrangements for the cleansing workers of Champion were in line with the general arrangements for workers employed by contractors of FEHD's outsourced services. Nevertheless, consideration had been given to enhancing the cleansing services on Saturdays, Sundays and Mondays with extension of the cleansing period so that the working hours and wages of cleansing workers could be increased.

7. DS(Tsy) said that under the mandatory requirement on wage rates for government service contracts (the mandatory requirement), a tender offer would not be considered if the monthly wages offered by the tenderer to their non-skilled workers were less than the level of the average monthly wages for the relevant industry/occupation in the Quarterly Report when the tender documents were issued. According to C&SD, meal breaks were not included in the definition of normal working hours in the Quarterly Report.

8. Deputy Government Property Administrator/Government Property Agency said that the wages of workers employed by contractors of services outsourced by the Government Property Agency were calculated on the basis of the actual number of hours for which they had worked.

9. Assistant Director (Finance)/Leisure and Cultural Services Department said that workers engaged in cultural services outsourced by the Leisure and Cultural Services Department (LCSD) were provided with an hour's meal break and their wages were calculated on the basis of the actual number of hours worked. Regarding workers engaged in recreational services outsourced by LCSD, some of them had to stay at their venues during meal breaks for operational reasons and hence meal breaks were included in their working hours. Regarding workers who

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were not required to stay at their venues during meal breaks, their meal breaks would not be included in the working hours. As most of the opening hours of LCSD's recreational venues were more than eight hours, their monthly wages would not be less than those stipulated in the Quarterly Report.

10. Chief Manager/Management (Support Services 3), Housing Department said that the wages of workers engaged in services outsourced by the Housing Department were calculated on the basis of eight working hours per day and 26 working days per month. Meal breaks were not included in the working hours of cleansing workers. In the case of a security guard, a meal break would be included in the working hours, if he was required to stay at his guard kiosk during a meal break. Where a security guard was not required to stay at his guard kiosk during a meal break, the meal break would not be included in his working hours.

11. Mr LEE Cheuk-yan asked whether all the 440 cleansing workers in FEHD's contracts referred to in the Annex to the Administration's paper for the meeting on 18 November 2004 were only earning a monthly wage of about \$4,200.

12. DD/FEHD responded that the 440 cleansing workers referred to in the paper were distributed among three different cleansing contracts engaged in cleansing services for Cheung Chau, Kwai Tsing and Tai Po. The daily shift hours of cleansing workers employed by the cleansing contractor for Kwai Tsing and Tai Po ranged from eight hours to eight and a half hours and there had not been any change in their shift hours when the cleansing contracts for the two districts were renewed.

13. Mr WONG Kwok-hing said that the working hours of civil servants and many other employees included an hour's meal break. If C&SD's definition of normal working hours was adopted, it would mean that these employees had to give up their meal breaks or perform an extra hour's work per day.

14. DS(Tsy) responded that the average wages for the relevant industry/occupation as published in the Quarterly Report of C&SD were based on eight working hours per day and 26 working days per month. Meal break was not included in the calculation of working hours. She pointed out that meal breaks were included in the working hours of civilian staff but not non-skilled workers in the civil service.

15. SS/C&SD said that the wage information published in the Quarterly Report of C&SD was compiled from the Labour Earnings Survey in accordance with internationally adopted methodology and definitions. Such information was also used for the calculation of labour productivity. It was not specifically compiled for the mandatory requirement on wage rates.

16. Mr WONG Kwok-hing considered that the Economic Development and Labour Bureau (EDLB) had failed to discharge its duty to protect labour rights. He

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said that he had received complaints about deduction of wages for mandatory provident fund (MPF) contributions and holidays for the reason that they had not been specified in the employment contracts.

17. PSL responded that the purposes of the mandatory requirements were to strengthen the monitoring of the contractors of outsourced services and to ensure that the average wage rates offered to non-skilled workers by these service contractors would not be lower than those in the relevant industry or occupation in the market. He said that the Administration was concerned about the case in Cheung Chau and representatives of the Labour Department (LD) had taken part in the conciliation of disputes in the case. He pointed out that meal break had never been included in the definition of the normal working hours per day as set out in the Quarterly Report since 1982.

18. PSL said that the Labour Advisory Board (LAB) had discussed the subject of meal breaks and rest breaks for a number of years. LAB had come to the conclusion that in view of the different operational needs of different businesses, the issuing of guidelines would be more appropriate than enactment of legislation on rest breaks. He added that the Administration had found that there was no evidence suggesting that Champion had violated the terms and conditions of its service contract with FEHD. Whether wages would be paid for meal breaks was one of the terms of employment. Nevertheless, FEHD and LD were looking into the case concerned.

19. Mr WONG Kwok-hing questioned why FEHD had not noticed the differences in meal break arrangements for cleansing workers between the old and new service contracts for Cheung Chau.

20. DD/FEHD responded that an hour's meal break was specified in the service contracts where the work shift of a worker was eight hours or more. He said that in the case concerned, the net working hours of the cleansing workers had been shortened from seven and a half hours to seven hours, thus resulting in a reduction of wages for workers in comparison with their wages under the previous contract. He stressed that if there was any evidence suggesting a violation of the Employment Ordinance, FEHD would certainly follow up the case concerned.

21. The Chairman considered that the monthly wage of cleansing workers whose daily working hours reached seven or seven and a half hours should not be lower than the mandatory requirement on wage rates.

22. Mr LEUNG Kwan-yuen considered that an employer should act in a lawful and reasonable manner. He said that Champion should establish good relations with its employees and raise the monthly wages of cleansing workers to \$4,898. The Administration should also promote good employers' practices, such as the employment of more full-time employees and offering higher wage rates to

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employees, through awarding higher marks for such employers in the marking scheme for assessment of tenders.

23. DS(Tsy) responded that the Financial Services and the Treasury Bureau (FSTB) had always sought to maintain a procurement policy which was fair and transparent. Procuring departments were provided with the flexibility to determine contract details in accordance with their own operational needs and circumstances. Before the introduction of the mandatory requirement, the Administration had already been awarding higher marks in the marking scheme for assessment of tenders for employers who adopt good practices.

24. DD/FEHD said that wage rate of non-skilled workers offered by the tenderers was already one of the factors considered by FEHD in the assessment of tenders before the mandatory requirement was introduced. After the mandatory requirement was introduced, a tenderer would be disqualified if the monthly wage rates for non-skilled workers offered in the bid were less than those in the mandatory requirement. FEHD would accord higher marks to a tender offer if the wage rates for non-skilled workers were higher than those in the mandatory requirement. In the case concerned, FEHD had explained to Champion the importance of establishing harmonious relations with employees. Champion had recently agreed to increase the total monthly working hours of its cleansing workers, which would enable the wages of cleansing workers to be increased to about \$4,898 per month.

25. Miss CHAN Yuen-han supported the views of Mr LEUNG Kwan-yuen. She said that it had been an adopted practice for full-time employees in Hong Kong that meal breaks were included in the net hours of work. Champion's exclusion of meal breaks from the net hours of work had violated such a practice. The practice should be maintained and the Administration should only procure services provided by good employers. She considered that EDLB and FSTB should carry out a comprehensive review on the meal break arrangement in the mandatory requirement.

26. The Deputy Chairman said that there had not been any case where wages were deducted for the meal breaks of employees. He considered that all the bureaux and departments concerned should carry out a comprehensive review on the meal break arrangement in the mandatory requirement.

27. Mr LEUNG Yiu-chung considered that it was inappropriate to convert monthly wages into hourly wages. He said that if meal breaks were allowed to be excluded from working hours, some employers might also exclude rest breaks from the working hours of employees.

28. PSL said that the bureaux concerned would study the views of members. He pointed out that there had rarely been cases of disputes relating to meal breaks and

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LD and FEHD were closely following up the case concerned. He informed members that the provision of rest breaks was one of the terms of employment.

29. DS(Tsy) added that FSTB had laid down the mandatory requirement that the monthly wage rates offered to non-skilled workers employed by contractors of government outsourced services should not be less than the level of the average monthly wages for the relevant industry/occupation in the latest Quarterly Report. However, FSTB had not laid down requirements on the working hours or whether wages should be paid on a monthly or hourly basis.

30. Mr WONG Kwok-hing moved the following motion –

“本委員會要求政府把所有外判服務合約招標書的範本中關於僱傭條件的部份交本會討論及通過後才簽約。”

(Translation)

“That this Panel requests the Administration to submit the parts concerning employment terms in model tender documents for all outsourced service contracts to this Council for discussion and endorsement before such contracts are signed.”

31. Mr Albert HO considered that the role of the Panel was to examine policy matters rather than the details of provisions in contracts. The Chairman said that to his understanding, the motion only involved the examination of policy aspects of the model tender documents. The Deputy Chairman added that the motion was focussed on the model tender documents but not the detailed provisions in individual contracts.

32. The Chairman put Mr WONG Kwok-hing’s motion to vote. Six members voted in favour of the motion and no member voted against the motion. The Chairman declared that the motion was carried.

33. Mr LEE Cheuk-yan moved the following motion –

“本委員會要求政府規定外判承辦商在八小時服務合約(包括膳食時間)應支付工人月薪工資為統計處《工資及薪金總額按季統計報告》的有關工人平均工資。”

(Translation)

“That this Panel requests the Administration to require that the monthly wages to be paid by contractors of outsourced services to their workers in the eight-hour service contracts (covering meal breaks) be stipulated at the average wage rates for the relevant industry as published in the Quarterly

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Report of Wages and Payroll Statistics of the Census and Statistics Department.”

34. The Chairman put Mr LEE Cheuk-yan’s motion to vote. Six members voted in favour of the motion and no member voted against the motion. The Chairman declared that the motion was carried.

35. DS(Tsy) informed members that all tender invitations were published in the Gazette and the tender documents were made available to the public. She said that as different government departments might have different requirements, the provisions in service contracts might vary depending on the circumstances of each service contract.

Admin 36. The Chairman requested the Administration to provide a response to the two motions.

Admin 37. With regard to his motion, Mr WONG Kwok-hing said that the Administration should provide members with information on the number of service contracts which would expire shortly, the number of contracts under processing and the number of contracts which would soon be signed. He said that the Administration should also suspend the tendering process for tenders already invited and tenders planned to be invited.

(Post-meeting note : The Administration’s response was circulated to members vide LC Paper No. CB(2)591/04-05 on 7 January 2005.)

38. There being no other business, the meeting ended at 1:15 pm.

Council Business Division 2
Legislative Council Secretariat
28 February 2005