

立法會
Legislative Council

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LC Paper No. CB(2) 1328/04-05
(These minutes have been seen by the
Administration)

Panel on Manpower

Minutes of meeting
held on Thursday, 17 March 2005 at 2:30 pm
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 Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Frederick FUNG Kin-kee, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

Member absent : Hon Abraham SHEK Lai-him, JP

Public Officers attending : Item II

Mr Edward YAU
Deputy Secretary for Education and Manpower

Ms Rebecca PUN
Principal Assistant Secretary for Education and Manpower

Mr Peter CHEUNG
Executive Director
Hong Kong Council for Academic Accreditation

Ms Connie LOK
Senior Registrar
Hong Kong Council for Academic Accreditation

Item III

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

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

Mr Ernest IP
Senior Labour Officer (Labour Inspection)
Labour Department

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

Mr HO Sai-biu
Assistant Director (Grade Management and Development)
Food and Environmental Hygiene Department

Mr Ricky CHUI Kin-ming
Assistant Director (Finance)
Leisure and Cultural Services Department

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

Mr LEUNG Sai-chi
Chief Manager/Management (Support Services 1)
Housing Department

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

Mr Ernest LEE
Executive Director (Enforcement)
Mandatory Provident Fund Schemes Authority

Item IV

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

Mr Fred TING
Deputy Commissioner for Labour (Occupational Safety and
Health)

Mr TSO Sing-hin
Assistant Commissioner for Labour (Occupational Safety)

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

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

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I. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1053/04-05(01) and (02))

Members agreed that the following items proposed by the Administration would be discussed at the next meeting to be held on 26 April 2005 at 4:30 pm –

- (a) Work Trial Scheme to be launched by the Labour Department; and
- (b) A review of the occupational diseases in 2004.

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II. Proposed amendments to the Hong Kong Council for Academic Accreditation Ordinance (Cap.1150)
(LC Paper No. CB(2)1053/04-05(03))

2. At the invitation of the Chairman, Deputy Secretary for Education and Manpower (DSEM) briefed members on the Administration's legislative proposal to expand the scope of responsibility of the Hong Kong Council for Academic Accreditation (the Council) to undertake quality assurance under the Qualifications Framework (QF).
3. Regarding the composition of the Council, Mr WONG Kwok-hing suggested that representatives of labour unions should be appointed to the Council.
4. DSEM explained that about two-thirds of the members of the existing Council had an academic background. The Administration proposed to remove the restriction on the number of academics appointed to the Council. He said that the Administration was working in the direction of appointing members from a wide spectrum of background (including representatives of labour unions to the Council. However, such details would not be set out in legislation in order to maintain flexibility.
5. Mr WONG Kwok-hing asked whether the membership size of the Council would be sufficient for dealing with the increased workload. DSEM responded that the existing size of membership of the Council, which comprised a maximum of 21 members, would be adequate.
6. Mr LEUNG Kwan-yuen asked about the financial implications of the legislative proposal.
7. DSEM responded that, depending on the future development of the accreditation work of the Council, consideration might be given to providing funding support to the Council, if it was involved in the provision of service for a public purpose.
8. Ms LI Fung-ying asked whether consideration would be given to appointing Mainland experts in addition to overseas experts to the Council.
9. DSEM responded that Mainland experts, among other overseas experts, had been appointed to the Council.
10. Ms LI Fung-ying asked whether a heavier penalty would be imposed on repeated false claims.
11. Principal Assistant Secretary for Education and Manpower responded that any person who committed the offence of false claims was liable on conviction to a fine of

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\$50,000. In determining the sentence for a convicted person, the court would generally take into account factors such as the repeated commission of an offence.

12. Mr Vincent FANG asked whether more members with expertise in vocational accreditation would be appointed to the Council. He also asked whether the staff establishment of the Council would be increased.

13. DSEM responded that members from a wide spectrum of background would be appointed to the Council, including persons with expertise or experience in accreditation work, or persons of good standing in commerce, industry, profession, academic or vocational education and training. Where necessary, the staff establishment of the Council would be increased.

14. Regarding the proposed name of the Council, Mr TSANG Yok-sing questioned whether “職能” should be used as the Chinese counterpart of “Vocational”.

15. The Executive Director, Hong Kong Council for Academic Accreditation explained that the Council’s new title was to reflect the Council’s expanded role to cover accreditation of academic education, vocational education and skills training. Mr TSANG Yok-sing considered that setting out the Chinese counterparts in full would be more appropriate than in abbreviation. His view was shared by Miss CHAN Yuen-han.

16. Miss CHAN Yuen-han asked whether there were any transitional arrangements before the legislative proposal was passed by the Legislative Council. She said that it would be difficult for employees who had to work long hours to enrol in training courses. In this connection, the Administration should encourage employers to release employees for taking training courses.

17. DSEM responded that the Administration was setting up Industry Training Advisory Committees (ITACs), which were represented by employers, employees, professional bodies and other stakeholders, to develop competency-based qualifications for the industries. The Administration was working with ITACs in formulating an appropriate Recognition of Prior Learning mechanism for their respective industries to recognise the skills, knowledge and relevant experience of workers. To his knowledge, the subject of maximum working hours, which was outside the ambit of the Education and Manpower Bureau, was still being discussed by the Labour Advisory Board.

III. Standard employment contract for use by government service contractors in employing non-skilled workers

(LC Paper Nos. CB(2)1053/04-05(04) and CB(2)1111/04-05(01))

18. Members noted a submission from Hong Kong Federation of Trade Unions (HKFTU), which was tabled at the meeting.

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(*Post-meeting note* : The submission tabled at the meeting was circulated to members vide LC Paper No. CB(2)1119/04-05 on 18 March 2005.)

19. At the invitation of the Chairman, Permanent Secretary for Economic Development and Labour (PSL) briefed members on the Administration's progress of drawing up a new standard employment contract for use by government service contractors in the employment of non-skilled workers. He informed members that -

- (a) a tender offer for government service would not be considered if the tenderer concerned had a total of three convictions under the Employment Ordinance (EO), the Employees' Compensation Ordinance (ECO) or the Immigration Ordinance, or received a total of six demerit points during the 12-month period prior to the tender closing date;
- (b) in the previous year, procuring departments including the Food and Environmental Hygiene Department (FEHD) and the Leisure and Cultural Services Department (LCSO) had issued 56 default notices, of which 11 were employment-related, to seven contractors and deducted a total of some \$127, 000 from the payments to the contractors in relation to such notices;
- (c) procuring departments had set up hotlines for lodging complaints, displayed employment-related provisions of the relevant contracts at relevant workplaces and conducted random checks on the payroll of non-skilled workers;
- (d) the staff establishment of a task force in the Labour Department (LD) responsible for inspections relating to outsourced government contracts would be increased from six to 18 to tie in with the implementation of the standard employment contract;
- (e) in the past 14 months, there were 18 successful convictions involving three contractors. 15 successful convictions were related to one of these contractors and the relevant contract had been terminated on 1 March 2005;
- (f) 31 summonses involving seven contractors and 25 workers were still awaiting hearing by the court; and
- (g) while consulting operators in the cleansing and security industries to introduce the new standard employment contract, some associations of contractors had recently expressed concern that over-regulation by the Administration might hinder the operation of contractors.

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20. Mr WONG Kwok-hing, Miss CHAN Yuen-han and Mr Frederick FUNG commended PSL and the Administration for taking prompt actions to draw up the proposed standard employment contract.

21. Referring to the termination of the employment of eight workers who lodged complaints against a contractor in the previous year, Mr WONG Kwok-hing said that adequate protection should be provided for employees who reported improper or unethical practices of employers.

22. PSL responded that LD had provided job matching service for the eight workers concerned, among whom seven had successfully sought employment. He said that the Administration would consider setting out in the Guidance Notes on Signing of Standard Employment Contract the protection provided under section 72B of EO, which provided that no employer should terminate the employment of an employee for the reason that the employee had reported illegal acts of the employer. He added that LD would deal with complaints fairly, irrespective of whether the complaints received were substantiated.

23. Mr LEE Cheuk-yan said that a few workers had been dismissed after lodging a complaint against a contractor of LCSD and other contractors were unwillingly to employ these workers. He considered that the standard employment contract should set out explicitly that if an employee was dismissed after lodging a complaint against his employer, the procuring department had the right to order reinstatement. PSL agreed to study the suggestion.

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24. Mr Andrew CHENG considered that employees would be better protected, if they were allowed to lodge complaints in confidence.

25. Referring to the submission from HKFTU, Mr WONG Kwok-hing suggested that the standard employment contract should stipulate that wages would be paid for the meal breaks of employees.

26. Principal Executive Officer (Tender), Financial Services and the Treasury Bureau (PEO(T)/FSTB) said that the Administration promulgated a mandatory requirement on wage rates for government service contracts for tender assessment in May 2004. Under the mandatory requirement, a tender offer would not be considered if the monthly wages offered by the tenderer were less than the level of the average monthly wages for the relevant industry/occupation in the Quarterly Report of Wage and Payroll Statistics published by the Census & Statistics Department (the Quarterly Report) when the tender was invited. According to the Census & Statistics Department, meal breaks and rest breaks had not been included in the definition of normal working hours in the Quarterly Report. As there was ambiguity in respect of the monthly wages and working hours of workers in the existing employment contracts for workers employed by contractors of government service contracts, a standard employment contract which set out clearly the monthly wages and working hours of the employee

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was proposed to ensure that the wages of non-skilled workers engaged by government service contractors were not lower than the relevant market rates.

27. Miss CHAN Yuen-han considered that meal break arrangements should be set out in the standard employment contract.

28. Mr LEE Cheuk-yan said that the Panel had passed a motion at its meeting on 2 December 2004, requesting 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) should be stipulated at the average wage rates for the relevant industry as published in the Quarterly Report. He considered that the standard employment contract should set out that meal breaks were included in the normal working hours of the employee concerned. His view was shared by Mr Frederick FUNG.

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29. PSL responded that including meal breaks in the normal working hours had wide implications. Nevertheless, the Administration would examine the wordings used in the standard employment contract.

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30. Referring to the submission from HKFTU, Mr WONG Kwok-hing said that the standard employment contract should stipulate that allowances would be paid for employees required to be on duty when black rainstorm warning or typhoon signal number eight or above was hoisted. His view was shared by Miss CHAN Yuen-han. PSL agreed to consider the suggestion.

31. Mr WONG Kwok-hing and Mr Andrew CHENG considered that the administrative sanction that a government service contract would be terminated if the tenderer had three convictions or received a total of six demerit points within a year could be further tightened. Mr Wong Kwok-hing expressed concern that some contractors might deliberately establish a number of companies with different names to avoid such administrative sanction.

32. PSL responded that disqualifying a tender offer when the tenderer had three convictions or received a total of six demerit points within a 12-month period before the tender closing date was a severe sanction. He stressed that a contractor's past record would be considered in the evaluation of tenders. PEO(T)/FSTB added that the three convictions referred to the conviction of any offence under the three relevant ordinances, and convictions would count for both government and private contracts. As past performance record would be taken into consideration in the evaluation of tenders, a new company would have a lower chance of success in tendering.

33. Mr LEE Cheuk-yan said that the standard employment contract should set out that the employee concerned would join the Mandatory Provident Fund Scheme (MPFS). This would prevent employers from exploiting employees through arranging them to join occupational retirement schemes instead of MPFS.

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34. PSL responded that the Administration could not prevent employees from choosing between qualified occupational retirement schemes and MPFS, if this was permitted under the existing legislation. Executive Director (Enforcement), Mandatory Provident Fund Schemes Authority (ED(E)/MPFA) said that Mandatory Provident Fund Schemes Authority (MPFA) was concerned about the retirement protection of low-income workers. Where it was aware that an employer forced its employees to opt for occupational retirement schemes without having explained to them the implications, MPFA would discuss the matter with the employer concerned with a view to persuading him to allow employees to join the MPF scheme if the latter so chose. He informed members that MPFA had, since 2004, prosecuted four employers who were contractors providing security and cleansing services with a total of 22 summonses. In addition, six employers in 2004 and six employers in the first few months of 2005 had been fined \$5,000 each for breach of the MPFS Ordinance where prosecution was not possible because employees were unwilling to serve as prosecution witnesses. An additional task force would be set up from 1 April 2005 onwards to deal with serious and repetitive offenders, including contractors engaged in government service contracts.

35. Mr LEE Cheuk-yan said that although the MPFS Ordinance allowed an employee to choose between MPFS and occupational retirement schemes, employees did not have the choice in practice. He said that there was no reason why the terms in the standard employment contract could not be slightly better than that provided in legislation by making it mandatory for all employees to join MPFS.

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36. ED(E)/MPFA responded that MPFA would follow-up the matter, and would enhance targeted publicity. He said that posters on the requirements under the MPFS Ordinance and a complaint hotline would be displayed at the workplaces of such workers.

37. In response to Mr Frederick FUNG's question about paragraph 6(d) of the Administration's paper, PSL explained that workers were allowed to be deployed for working in other workplaces within the same region only on an ad hoc and limited basis or under exceptional circumstances.

38. Referring to item 8 of the standard employment contract, Mr Frederick FUNG said that it should be explicitly stated that medical insurance and other insurance expenses should not be borne by employees. PSL responded that only deduction permitted under the law was allowed.

39. Mr Frederick FUNG said that the standard employment contract should be adopted by all public funded organisations. PSL responded that the Administration would encourage public funded organisations to adopt the standard employment contract. He said that the Administration had written to all public funded organisations about a year ago encouraging them to adopt the new mandatory requirement on wage

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rates for non-skilled workers engaged in outsourced service contracts. At Mr FUNG's request, PSL agreed to examine whether information on the public funded organisations which had adopted the mandatory requirement was available.

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40. Ms LI Fung-ying and Mr LEUNG Yiu-chung asked about the responsibility of contractors and subcontractors in the case of multi-layer subcontracting.

41. PEO(T)/FSTB responded that subcontracting was normally not permitted in government service contracts (excluding construction services) that deploy large number of non-skilled workers and prior approval had to be obtained from the procuring department before sub-contracting for the services to be provided by the main contractor was allowed. PSL said that in exceptional cases where subcontracting was allowed, the main contractor should be held responsible for any subcontractor's breach of the service contract.

42. Ms LI Fung-ying asked why the proposed standard employment contract was applicable to non-skilled workers only. PSL explained that the proposed standard employment contract was mainly intended for the protection of elementary workers.

43. Ms LI Fung-ying said that items 9 to 14 of the proposed standard employment contract should be revised in a manner specifying that the employee concerned was entitled to all the protection provided under EO and ECO. PSL agreed to consider the suggestion.

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44. Mr LEUNG Kwok-hung said that if existing legislation had provided sufficient protection to workers and such legislation was strictly enforced, the problem of contractors exploiting unskilled workers should not have arisen. He considered that the three pieces of labour-related legislation that were repealed after reunification should be restored. Legislation relating to occupational retirement schemes should be amended so that the protection provided by such schemes would be comparable to that provided by MPFS.

45. Referring to paragraph 7 of the Administration's paper, Mr LEUNG Yiu-chung asked why written employment contracts were not signed with temporary relief workers.

46. Assistant Commissioner for Labour (Employees' Rights and Benefits) responded that in view of administrative difficulties, written employment contracts were not required for any temporary employment lasting less than seven days. However, such workers were still entitled to the protection provided under EO.

47. Mr LEUNG Yiu-chung expressed concern that temporary workers, who were mostly employed under verbal agreements, usually found it difficult to recover outstanding wages from employers. PSL noted Mr LEUNG's concern. Mr LEE Cheuk-yan considered that the hourly wages of workers should be specified. PSL

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agreed to consider the suggestion.

IV. Proposal to designate 28 April as the Commemoration Day for Dead and Injured Workers in Hong Kong
(LC Paper No. CB(2)1053/04-05(05))

48. Mr LEE Cheuk-yan considered it more appropriate to designate 28 April as the Commemoration Day for Dead and Injured Workers in Hong Kong to pay tribute to those who lost their lives or were injured in work for their contribution to Hong Kong. He suggested that the wordings “國際勞工組織將每年四月二十八日定為世界工作安全健康日以期喚起各界對工作安全之關注 (The International Labour Organisation has designated 28th April as the World Day for Safety and Health at Work. It reminds us all of the vital importance of work safety.)” should be removed from the proposed inscription on the proposed memorial plaque.

49. Mr Tommy CHEUNG expressed support for paying tribute with the memorial plaque to the deceased and injured workers who had contributed to Hong Kong. He considered that designating the day as the World Day for Safety and Health at Work would be more forward looking and remind people of the importance of work safety.

50. Mr LEUNG Yiu-chung said that the deletion proposed by Mr LEE Cheuk-yan to the inscription on the plaque might be adopted to stand out the tribute paid to the deceased and injured workers, with a separate remark on the plaque that 28 April was the World Day for Safety and Health at Work.

51. Ms LI Fung-ying said that the inscription suggested by Mr LEE Cheuk-yan should be adopted, if the day was designated as the Commemoration Day for Dead and Injured Workers in Hong Kong. If the day was designated as the World Day for Safety and Health at Work, the wordings suggested to be deleted should be retained but moved to the end of the plaque.

52. Mr LEE Cheuk-yan considered that the venue for erecting the memorial plaque should be an open area with more pedestrian traffic, such as the Park Lane Shoppers' Boulevard in Tsimshatsui, instead of the Hong Kong Science Museum. Mr WONG Kwok-hing shared the view of Mr LEE Cheuk-yan. He suggested that the memorial plaque should be located at the west Kowloon reclamation area in the longer term. Mr Tommy CHEUNG however considered that the plaque should not be located at the west Kowloon reclamation area.

53. Mr LEUNG Kwok-hung and Ms LI Fung-ying considered that the memorial plaque should be located at a solemn place.

54. The Chairman said that 28th of April might be designated as the World Day for Safety and Health at Work, while the inscription proposed by Mr LEE Cheuk-yan might be adopted for the memorial plaque.

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55. PSL noted the views of members. He said that the venue for the memorial plaque was proposed in view of the fact that there was an Occupational Safety and Health Gallery at the Hong Kong Science Museum, where there was a reasonable volume of passenger traffic.

56. There being no other business, the meeting ended at 4:45 pm.

Council Business Division 2
Legislative Council Secretariat
20 April 2005