

立法會

Legislative Council

LC Paper No. CB(2)1073/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

Panel on Manpower

Minutes of meeting
held on Thursday, 20 December 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon KWONG Chi-kin (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, SBS, 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, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Members absent : Hon LAU Chin-shek, JP (Chairman)

Public Officers attending : Item III

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mrs HUI LAM Yin-ming, Erika
Deputy Commissioner (Occupational Safety and Health)
Labour Department

Mr TSO Sing-hin, JP
Assistant Commissioner (Occupational Safety)
Labour Department

Item IV

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr WONG Kwok-lun, Alan, JP
Assistant Commissioner (Labour Relations)
Labour Department

Ms LAM Sau-ching
Senior Labour Officer (Employment Claims
Investigation)
Labour Department

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

Staff in attendance : Ms Janet SHUM
Senior Council Secretary (2) 8

Miss Helen DIN
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)629/07-08)

The minutes of the meeting held on 15 November 2007 were confirmed

II. Date of the next meeting and items for discussion
(LC Paper Nos. CB(2)628/07-08(01) and CB(2)628/07-08(02))

2. Members agreed that the next meeting scheduled for 17 January 2008 would be held at 4:30 pm instead of 2:30 pm to avoid a clash with the Chief Executive's Question and Answer Session scheduled for 17 January 2008.

3. Members agreed that the following items would be discussed at the next meeting -

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- (a) latest progress of the Labour Department's Youth Employment Resource Centres;
- (b) provision of a further sum for non-compliance with compulsory order of reinstatement or re-engagement; and
- (c) report on the result of the Census and Statistics Department's survey on "Benefits of employees under the Employment Ordinance".

4. Mr LEUNG Kwok-hung expressed concern whether the increase in wages of workers could catch up with the inflation rate and asked whether the Labour Department (LD) could provide the relevant information.

5. Commissioner for Labour (C for L) responded that it was within the jurisdiction of the Government Economist to collect relevant data. She added that wages were determined by market-forces.

6. In response to Miss CHAN Yuen-han's enquiry, C for L said that the Administration planned to report on the progress of the Wage Protection Movement for employees in the cleansing and guarding services sectors and the preparatory work for introduction of legislation for a minimum wage at the meeting in February 2008.

III. Hong Kong's occupational safety performance in the first half of 2007

(LC Paper No. CB(2)628/07-08(03))

7. C for L highlighted that there was a decrease in the number of occupational injuries in all workplaces in the first half of 2007. As for the increase in the number of industrial fatalities, it was mainly attributed to the recent upsurge in construction activities. She said that the Administration would continue to keep up efforts to minimize work accidents in partnership with all stakeholders.

8. Referring to a fatal industrial accident related to the operation of tower crane in July 2007, Mr WONG Kwok-hing asked about the measures taken to minimize similar industrial fatalities.

9. C for L said that the Administration had taken stringent enforcement measures pursuant to the fatal accident, such as launching territory-wide inspections at all construction sites, initiating prosecutions and issuance of suspension/improvement notices, organizing training courses for construction site workers and safety seminars for members of the trade. She also said that

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the fundamental issue involved in occupational health and safety was the need to promote a safety culture among the trades.

10. Assistant Commissioner (Occupational Safety), Labour Department (AC(OS)) said that the Committee on Construction Site Safety (the Committee) under the Construction Industry Council (CIC) set up an Informal Task Force (ITF) to carry out a study with a view to improving the safe operation of tower cranes. Members of ITF comprised representatives from trade associations, professional bodies, trade unions, academia and government departments. ITF would soon submit a report to CIC recommending improvement measures. The proposed measures, among others, were as follows -

- (a) all critical components and key members of the crane should be thoroughly examined and certified to be safe before delivery to sites for erection;
- (b) checklists on key components, certificates of examination and testing and maintenance should be kept available for on-site inspection;
- (c) a supervising engineer should be employed to directly supervise the erection, telescoping, lowering and dismantling of cranes;
- (d) the structural integrity of the foundation set-up, wall ties and its sitting structure should be assessed by a structural engineer; and
- (e) all workers engaged in securing loads should receive a two-day training on rigging activities involving tower cranes.

11. AC(OS) also said that LD would consider issuing suspension notices to suspend operations of the tower crane concerned if the above measures were not being followed. He added that while most of the recommendations would be adopted in early February 2008, the part on enhancing the competency of crane operatives would be implemented in late 2008 because of the time required to train the workers.

12. Mr WONG Kwok-hing asked whether the Administration would consider specifying diseases triggered by overnight work as occupational diseases in response to the World Health Organization's recent findings that overnight work was probably carcinogenic to humans.

13. C for L said that as the findings of World Health Organization's study had not conclusively proven overnight work to be cancer causing, the Administration had no plan to prescribe cancers allegedly caused by night work as occupational diseases at this stage; however, it would keep in view the development in this respect.

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14. Ms LI Fung-ying expressed concern about the increase of industrial fatalities and urged the Administration to enhance its efforts to minimize work accident. Ms LI asked why the two small and medium-sized enterprises (SMEs) sponsorship schemes for safety equipment for work-at-height and safe working in confined spaces received a relatively small number of applications.

15. C for L said that the Administration was equally concerned about the increase in industrial fatalities. She trusted that in tandem with the construction workers registration system implemented in mid-2007, the Administration's proposal to make amendments to the Building Ordinance for the setting up of a minor works control system and a new register of minor works contractors would facilitate LD to take follow-up actions where appropriate and to target its construction safety promotion more effectively.

16. C for L and AC(OS) added that OSHC had put in efforts to promote the SMEs sponsorship schemes such as reaching out to the trade by conducting outreach visits. They surmised that the requirement for the participating companies to send their employees to attend the related free OSHC safety training courses might have deterred SMEs from applying for the sponsorship. The Administration would continue with its publicity efforts on these schemes.

17. Mr LEUNG Kwok-hung asked why only 48 supermarkets were inspected amongst the 2 612 inspections of wholesale and retail establishments conducted between March and April in 2007.

18. C for L and AC(OS) explained that the supermarkets inspected under the territory-wide inspection campaign were large establishments and such inspections were time consuming.

19. Mr Andrew LEUNG said that the Administration should step up its efforts to conduct more inspections at work premises and enhance the industrial safety awareness of employees. He asked what proactive measures had been taken to increase workers' awareness of work safety and encourage them to enhance their technical knowledge by attending training courses voluntarily.

20. C for L said that the measures taken included the following -

- (a) workers of six high-risk areas of work were required to possess training certificates prior to working on site;
- (b) provision of subsidies for workers attending training courses organized by OSHC;

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- (c) SMEs participating in the sponsorship schemes for safety equipment were required to send their employees to attend training courses;
- (d) casebooks of occupational fatalities were published for reference by workers and members of the public; and
- (e) intensive publicity campaigns were organised to arouse safety awareness of all concerned parties towards high-risk areas of works.

21. Mr LEE Cheuk-yan enquired whether enhanced measures had been taken to minimize fatalities in construction sites, and whether the Administration had considered implementing measures to regulate working in very hot weather and promote eight hours of works for construction workers. He considered that workers should suspend work in very hot weather.

22. C for L responded that the Committee had looked at various issues including safety of heavy equipment at construction sites, safety of renovation and maintenance works, and working in hot weather. The Committee's preliminary finding was that it would be difficult to regulate working in hot weather as the precise temperature would vary according to the specific location of the works as well as the worksite arrangements. Hence, guidelines which set pertinent points to note and consider in selecting context-specific measures would instead be issued. The Administration had stepped up measures to minimize industrial accidents which included, among others, putting in place a referral mechanism with property management companies to enable surprise inspections to be conducted on premises with unsafe renovation works, conducting additional inspections during weekends, and encouraging workers to attend safety training courses through different channels.

23. AC(OS) supplemented that CIC planned to issue guidelines for working in very hot weather to the trade before the next summer. Mr LEE Cheuk-yan considered it more effective to regulate working in very hot weather by legislative means.

24. Referring to a recent industrial accident where workers were struck by the moving object during its transportation, Mr WONG Kwok-hing considered it essential to provide training to front-line workers so as to enhance their technical knowledge in specified jobs.

25. AC(OS) noted Mr WONG's view. He said that under the existing legislation, employers/contractors were required to conduct risk assessment and put in place safety measures prior to such works. Mr WONG urged the Administration to step up publicity on the requirements among workers.

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26. Ms LI Fung-ying enquired why agriculture and fishing industry ranked the highest in occupational injuries in all workplaces with an increase of 23.9%, and why striking against fixed or stationary object was the most frequent type of accident in catering industry. She considered it more effective for safety promotion launched by LD to be targeted at those sectors with the highest risk of accidents.

27. AC(OS) said that although agriculture and fishing industry had the highest increase by percentage in occupational injuries, the actual number of injuries in the trade was small when compared to other major economic activities. As for the industrial accidents in catering industry, most of them took place in Chinese restaurants where employees were easily exposed to the risk of striking against fixed or stationary object. He said that the Administration had adopted a target-oriented approach all along and would continue to step up its promotion efforts in future.

IV. Findings on a review of section 64B of the Employment Ordinance on the criminal liability of the responsible persons of a body corporate with regard to wage offences

(LC Paper No. CB(2)628/07-08(04))

28. C for L briefed members on the findings on a review of section 64B of the Employment Ordinance (Cap. 57) (EO) on the criminal liability of the responsible persons of a body corporate with regard to wage offences.

29. Mr WONG Kwok-hing expressed dissatisfaction about the conclusion of the Administration that amendment to section 64B of EO was not necessary. He said that should the Administration, upon advice of the Department of Justice, considered the suggestions from labour groups to amend section 64B not viable, it should propose other alternatives to protect employees against wage offences. Mr WONG was of the view that the Administration should amend section 64B so as to hold all responsible persons strictly liable criminally for wage offences committed by the body corporate.

30. C for L responded that as the responsible persons of a body corporate might have no role to play in the wage default incidents, imposing on them strict criminal liability was not considered fair and reasonable and would likely be in conflict with the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Basic Law. She said that the operational experience over the past two years had proved that the new investigation strategies adopted by LD to strengthen its capability in evidence collection and intelligence gathering (e.g. employing ex-police officers as Investigation Officers) were effective in stepping up prosecution against the responsible persons of a body corporate for wage offences.

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31. Ms LI Fung-ying asked about the details of the eight company directors who were given jail sentence, suspended jail sentence or subject to community service order in 2006 and January to November 2007. Regarding LD's difficulty in locating the responsible persons, Ms LI asked whether the Administration would consider tackling the problem by prohibiting the responsible persons of a corporate body committing wage offence from leaving Hong Kong.

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32. C for L said that from January to November 2007, five company directors and one employer were given jail sentence or suspended jail sentence, and one company director was imposed a community service order. She agreed to provide further information on the sentences imposed on such cases. She reiterated that with the implementation of new enforcement strategies, the investigation skills of LD's enforcement officers were enhanced and more prosecutions and successful prosecutions had resulted.

33. Senior Labour Officer (Employment Claims Investigation), Labour Department added that Investigation Officers would help to locate the whereabouts of the responsible persons through various means such as visiting other establishments still operated by them and contacting parties who might have their new addresses.

34. Mr LEE Cheuk-yan said that the number of convicted summonses was still low in comparison with the total number of wage default cases. He enquired about the ratio of the 115 convicted summonses in proportion to the actual number of wage offence cases in January to November 2007, and how many of the convicted were company directors. Miss CHAN Yuen-yan also enquired about the total number of summonses issued in 2006 and January to November 2007, and the trade distribution of the convicted summonses in the same period.

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35. Assistant Commissioner (Labour Relations), Labour Department (AC(LR)) said that amongst the convicted summonses on wage offences involving responsible persons in 2006 and 2007, 66 were from the catering industry, 34 from printing and publishing industries, 25 from travel and transportation industries, and 59 from other industries. C for L said that the total number of summonses issued was higher than the actual number of wage offence cases, as several summonses might be issued in one case. However, the Administration would try to provide the figures as far as possible.

36. Mr LEE Cheuk-yan considered it appropriate to remove the required elements of offences, i.e. "consent", or "connivance" or "neglect", so as to hold all responsible persons strictly liable criminally for wage offences committed by the body corporate. A responsible persons could use "with knowledge of" as an excuse in defending his case. He quoted the wage default cases of Sing

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Pao as an example for the need to amend section 64B of EO. Mr LEUNG Yiu-chung echoed the view of the Sing Pao case.

37. C for L said that while there were many wage claim cases, not all of them necessarily involved criminal element. In fact, most of the wage claim cases could be resolved through conciliation or civil litigation. According to section 64B, the prerequisite of holding responsible persons criminally liable was evidence to prove that they have committed either one of the three elements of offences, namely "consent", "connivance", or "neglect". To remove these elements would have the effect of imposing strict criminal liability on all the responsible persons for wage offences committed by the body corporate which would be a significant change in terms of legal principle. AC(LR) added that contravention of section 64B would attract a maximum penalty of three years imprisonment and a fine of \$350,000.

38. Regarding the Sing Pao case, C for L said that the Administration had successfully prosecuted Sing Pao three times. The Administration had filed an appeal to the sentencing of one of the convicted cases.

39. Mr Tommy CHEUNG agreed to the conclusion of LAB that there was no need to amend section 64B. He considered that if all the responsible persons would be presumed to be liable or strictly liable for the wage offences committed by the body corporate, it would have a negative impact on the business environment and the employment opportunities of workers.

40. Mr LEUNG Kwok-hung did not consider it redundant to add "act without reasonable excuse" or "failure to act without reasonable excuse" as the elements of offences, in addition to the existing ones in section 64B. He said that should the Administration consider it not viable to amend section 64B, it should step up protection for employees against wage default such as expanding the scope of the Protection of Wages on Insolvency Fund or simplifying the procedures involved in recovering wages owed.

41. C for L responded that according to legal advice, the addition of the two proposed elements would not in any way lessen the burden of proof on the prosecution for establishing section 64B offences. It would thus be quite redundant to add the two elements. She added that the Administration would not tolerate unscrupulous acts on part of responsible persons of companies and would continue to enforce section 64B vigorously.

42. Mr Alan LEONG said that as the issue involved was to make it easier to hold the responsible person of a body corporate criminally liable for wage offences, the Administration could consider introducing new provisions, such as requiring employers to specify the names of the responsible persons in control of corporate finance similar to that required in the Societies Ordinance, or confine payment of wages within a regulated framework.

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43. C for L said that the Administration would need to give careful consideration and conduct wide consultation regarding any legislative proposal which would have implications on the operational procedures of the business sector, e.g. whether it would be feasible to forestall innocent employees from being so specified by unscrupulous employers as the responsible persons and thus held liable for something which they in effect had little control over.

44. Miss CHAN Yuen-han said that the Administrations should keep an open mind and explore alternatives in order to plug the loopholes in the existing provisions of section 64B of EO.

45. C for L reassured Members that LD would not hesitate to introduce improvement measures and cited as an example LD's initiative to review the modus operandi with regard to the enforcement of section 64B and put in place new measures to step up prosecution against responsible persons for wage offences. She welcomed members' further suggestions for improvement.

46. Mr WONG Kwok-hing urged the Administration to continue pursuing the amendment to EO to deter company directors from committing wage offences. He pointed out that it would be difficult for employees to be prosecution witnesses against their employers unless the Administration could protect them against the risk of being dismissed by employers subsequent to their serving as prosecution witnesses.

47. C for L responded that the Administration would continue to review the provisions of EO and consider any concrete proposals from members, the labour sector or any concerned parties. Regarding the issue of unreasonable and unlawful dismissal, she said that the Administration would, at the next meeting, brief the Panel on a legislative proposal for additional compensation for the employee in case the employer failed to comply with a compulsory order of reinstatement or re-engagement.

48. Mr LEUNG Yiu-chung expressed concern about the continuous rise in the number of wage default cases and the deterrent effect of the enforcement actions against wage offences. He was doubtful whether the operational strategies of LD were effective in lowering the number of wage default cases.

49. C for L said that the enforcement actions were considered effective as the responsible persons were now more ready to clear wages owed by the body corporate on knowing the serious consequences of contravention of section 64B.

50. The Deputy Chairman said that the Administration should continue with its review of amending section 64B. He pointed out that adding "act without reasonable excuse" as an element of offence to 64B would exert pressure on the

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defence to provide "reasonable excuse" in his case. In doing so, the burden of proof would still rest with the prosecution.

51. Mr WONG Kwok-hing moved the following motion -

"促請政府修訂《僱傭條例》第 64B 條，以更好保障僱員合法的權益。"

(Translation)

"That the Government is urged to amend section 64B of the Employment Ordinance for better protection of employees' lawful rights and interests."

52. The Deputy Chairman put the motion to vote. Eight members voted in favour of the motion and one member voted against it. The Deputy Chairman declared that the motion was carried.

53. The meeting ended at 4:27 pm.

Council Business Division 2
Legislative Council Secretariat
18 February 2008