

立法會
Legislative Council

LC Paper No. CB(1)1383/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ PS/1

Panel on Public Service

**Minutes of meeting held on
Monday, 18 January 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LEE Cheuk-yan (Chairman)
Dr Hon PAN Pey-chyou (Deputy Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon LEUNG Kwok-hung
Dr Hon LEUNG Ka-lau
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Member attending** : Hon WONG Kwok-hing, MH
- Member absent** : Hon WONG Sing-chi
- Public officers attending** : **Agenda item IV**
Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Mr Patrick CHAN Nim-tak, JP
Director of General Grades

Agenda item V

Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Mrs Agnes ALLCOCK, JP
Deputy Secretary for the Civil Service 3

**Attendance by
invitation**

: Agenda item IV

Hong Kong Civil Servants General Union

Mr CHUNG Tak-cheung
Vice Chairman

Mr AU YEUNG Chun-kit
Vice Chairman

HKSAR Government Employees General Union

Mr SIU Leung-hing
Chairman

Mr KONG Ming-chung
Vice Chairman

Hong Kong Chinese Civil Servants' Association

Ms LI Kwai-yin
Vice President

**Clothing Industry, Clerical and Retail Trade
Employees General Union**

Ms CHEUNG Lai-ha
General Secretary

Miss LAU Shu-yin
Executive Committee Member

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

Action

I Confirmation of minutes of meeting
(LC Paper No. CB(1)870/09-10 — Minutes of meeting on
19 October 2009)

The minutes of the meeting held on 19 October 2009 were confirmed.

II Information papers issued since last meeting

2. Members noted that no information paper had been issued since the last meeting.

III Items for discussion at the next meeting scheduled for 22 February 2010

(LC Paper No. CB(1)860/09-10(01) — List of outstanding items
for discussion

LC Paper No. CB(1)860/09-10(02) — List of follow-up actions)

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting on 22 February 2010 –

(a) An update on integrity enhancement initiatives for civil servants; and

(b) An overview of the retirement, resignation and age profile situation of the civil service.

- IV Use of agency workers**
(LC Paper No. CB(1)860/09-10(03) — Administration's paper on use of agency workers)

Briefing by the Administration

4. The Secretary for the Civil Service (SCS) briefed members on the Administration's paper on the use of agency workers by bureaux/departments (B/Ds).

Presentation of views by deputations

Hong Kong Civil Servants General Union
(LC Paper No. CB(1)862/09-10(01))

5. Mr CHUNG Tak-cheung, Vice Chairman of the General Union, briefed members on the salient points of the General Union's views as detailed in its submission –

- (a) The General Union was opposed to the recruitment of non-civil servants (i.e. non-civil service contract (NCSC) staff or manpower supplied by employment agencies) to provide government services that should be performed by civil servants. It was of the view that such arrangements had given rise to the problem of "different pay for the same job" and hence conflicts and in turn difficulties in implementing Government policies;
- (b) The General Union considered it disappointing that the 2006 review of the NCSC Staff Scheme identified only some 4 000 NCSC positions for conversion to civil service posts; and
- (c) The use of agency workers had resulted in labour exploitation and damaged Government's image. To prevent exploitation, the Government should conduct random checks, enhance the transparency of the contracts concerned, and impose heavier sanctions to ensure that the wages of the agency workers assigned to work in the procuring B/Ds would not be less than the quoted wages in the relevant bids for the whole duration of the contracts.

HKSAR Government Employees General Union
(LC Paper No. CB(1)887/09-10(01))

6. Mr KONG Ming-chung and Mr SIU Leung-hing, Vice Chairman and Chairman respectively of the Union, together briefed members on the Union's submission. The Union urged the Administration to cease the use of agency

workers by B/Ds. In the Union's view, the Government should directly recruit civil servants to meet B/Ds' additional manpower needs instead of using agency workers in order to avoid the following problems –

- (a) Deterioration of service quality as a result of the lack of systematic vocational training for agency workers and their high turnover;
- (b) Overloading of the management staff of the procuring B/Ds, who had to make extra efforts to manage and supervise the agency workers' performance; and
- (c) Middle-man exploitation because employment agencies might, in trying to secure the relevant service contracts, lower the contract price by suppressing the wages they paid to their workers.

*Hong Kong Chinese Civil Servants' Association
(LC Paper No. CB(1)929/09-10(01))*

7. Ms LI Kwai-yin, Vice President of the Association, briefed members on the Association's submission. In gist, the Association opined that agency workers should be used to meet special service needs only, such as service needs that were urgent or unforeseen, or which lasted for a defined period of time. This was because abuse of the use of agency workers could give rise to many problems, such as increase in the complexity of supervisory work and hence management difficulties; deterioration of service quality; the problem of "different pay for the same job" and middle-man exploitation. It was noted that some agency workers performing clerical work in the government were receiving monthly wages of only \$5,000-6,000 although the wage level specified in the relevant contract was \$8,000. It was also noted that some agency workers performing cleansing work for the government were receiving monthly wages of about \$5,000 although the wage level specified in the relevant contract was \$7,000. To address these problems, the Administration should tackle the long-term staff shortage problem in various B/Ds by reviewing the continued need for certain existing services, streamlining work procedures, and allowing B/Ds to recruit more staff where warranted. Most important of all, the Administration should conduct a comprehensive review of the civil service establishment and the Government's human resources policy.

Clothing Industry, Clerical and Retail Trade Employees General Union

8. Ms CHEUNG Lai-ha, General Secretary of the Employees General Union, briefed members on the Employees General Union's views. In gist, the Employees General Union was opposed to the continued use of agency workers by the Government on grounds that it would give rise to middle-man exploitation. It was noted that some agency workers were receiving monthly

wages as low as only \$4,900 and enjoyed very few or no fringe benefits. Moreover, as some contracts were renewed every three months and sometimes even re-let, the staff concerned could never qualify for maternity leave or Severance Payment/Long Service Payment, or be entitled to annual or sick leave. In some cases, the wages of agency workers were even reduced substantially following a re-letting of the concerned service contracts. There were also cases where agency workers had been used for up to five years by repeated renewal of the relevant contracts, reflecting that the service needs concerned were indeed long- and not short-term, and that it might be more desirable to employ the workers concerned as NCSC staff instead.

9. Miss LAU Shu-yin, Executive Committee Member of the Employees General Union and being an agency worker herself, echoed the above points and presented her case, where her pay had been cut by 15% when the relevant contract was renewed. She considered it necessary to enhance the transparency of the procurement of the service of employment agencies to prevent abuses and middle-man exploitation.

The Administration's initial response to the deputations' concerns

10. In response to the concerns expressed by the deputations, SCS made the following points –

- (a) While the bulk of Government employees should be civil servants, there remained a need to provide B/Ds with a flexible means to draw additional manpower outside the civil service establishment to provide timely services in response to ad hoc or urgent operational needs. A recent example was the ad hoc service needs arising from operating swine flu emergency hotlines. The Civil Service Bureau (CSB) had requested B/Ds to provide a snapshot of the situation of their use of agency workers as at 30 September 2009. The information was at the Annex to the Administration's paper. The use of agency workers by B/Ds was necessary in order to meet short-term or urgent service demands as well as the need to ensure prudent use of public resources;
- (b) As to concerns about the civil service establishment, the number of civil service posts had in fact been increased by 1 500 to 1 600 each year after 2006-2007 when the target of reducing the civil service establishment to around 160 000 was achieved. B/Ds could recruit civil servants to fill civil service vacancies as appropriate if there was a genuine staff shortage problem, or if there was a long-term need for new or improved services which should more appropriately be performed by civil servants;

- (c) Regarding the wage level of agency workers, the Administration had since 2004 required service providers for service contracts that relied heavily on the deployment of non-skilled workers to offer to such workers monthly wages which were no less than the average monthly wages for the relevant industry/occupation as published in the latest Census and Statistics Department (C&SD)'s Quarterly Report of Wage and Payroll Statistics at the time when tenders were invited. The procuring B/Ds were also required to ensure that the contracted service providers complied with the wage requirement, and that non-compliance would be penalized;
- (d) As set out in the Administration's paper, the Administration would issue guidelines on the use of agency workers to B/Ds' for reference. One of the new measures to safeguard the wage level of agency workers was that bids for contracts to provide agency workers would not be considered should the quoted wages be less than the average monthly salary of miscellaneous non-production workers in all selected industries published in the latest C&SD's Quarterly Report on Wage and Payroll Statistics at the time when bids were invited; and
- (e) The Administration agreed with the depositions that the abusive use of agency workers should be avoided. As such, CSB intended to advise B/Ds that only under those circumstances as set out in paragraph 13(a) to (d) of the Administration's paper should the use of agency workers be considered.

11. The Chairman requested SCS to respond to a deputation's suggestion that for service needs that required the continued use of agency workers for over five years, such service needs should not be regarded as "short-term" and should be met by civil servants instead. SCS responded that, excluding staff of the term contracts centrally administered by the Office of the Government Chief Information Officer (T-contract) which was a special category of agency workers and agency workers in public libraries (an arrangement which was under current review), the Administration was of the view that short-term service demands which entailed the use of agency workers should generally be taken as service needs which lasted for a continuous period of not more than 12 months, and any exceptional cases should be fully justified.

Discussion

12. Mr WONG Kwok-hing considered that the number of agency workers (some 3 600 including T-contract staff) in the Government as at September 2009 was large. He highlighted that these workers were deprived of wage increases, promotion prospects, fringe benefits, job security and medical

insurance. He said that the use of agency workers had given rise to the problems of middle-man exploitation and "different pay for the same job". Addressing Mr WONG's concern about labour exploitation, SCS pointed out that as employers of agency workers, employment agencies had to fulfil the obligations of an employer under the Employment Ordinance and other relevant laws. Besides, the Administration had devised a number of improvement measures as detailed in paragraphs 13 to 16 of the Administration's paper to guard against exploitation of agency workers assigned to procuring B/Ds.

13. Ms LI Fung-ying considered it regretful that although the employment terms and conditions for NCSC staff were poor, they were already much better off than those for agency workers. She enquired about the differences between the circumstances under which NCSC staff were employed and those under which agency workers were used. She called upon the Administration to discontinue the use of agency workers to protect the employees concerned from different forms of exploitation, such as the denial of such basic employee benefits as Severance Payment/Long Service Payment and maternity leave. She asked about the extent to which the proposed new guidelines could help protect the agency workers.

14. SCS responded that under the proposed guidelines, B/Ds would be advised to use agency workers to meet service needs which lasted for a short period of, say, 12 months or less or which required staff to work odd hours or different hours of the day. She further highlighted the improvement measures as set out in paragraph 16 (a) to (d) of the Administration's paper which sought to protect agency workers from middle-man exploitation. Ms LI Fung-ying requested the Administration to provide a paper on the circumstances under which NCSC staff might be employed and those under which agency workers might be used. SCS agreed to provide an information paper for members' reference.

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15. Ms LI Fung-ying said that as far as she knew, some T-contracts lasted for durations ranging from 12 to 24 months. The Chairman considered that service needs which lasted for 12 months should more appropriately be met by NCSC staff. He personally considered that the use of agency workers should be considered to meet ad hoc service needs which lasted for only six months or less.

16. SCS clarified that the new guidelines on the circumstances under which use of agency workers might be considered as set out in paragraph 13(a) to (d) of the Administration's paper would not apply to the use of the T-contract staff to provide information technology (IT) service, and to the use of agency staff to provide public library service as the mode of delivery of public library services was under review. SCS advised that the employment of T-contract staff dated back to the 1980s, and the relevant contracts were of longer durations of two to

three years. The approach enabled technology transfer between IT personnel in the civil service and IT professionals in the private sector. It was welcomed and supported by the IT industry.

17. The Chairman commented that the Government was creating social conflicts by tolerating middle-man exploitation in the use of agency workers. He considered that B/Ds had resorted to the use of agency workers due to manpower shortage as a result of the control imposed on the civil service establishment. Mr LEUNG Kwok-hung opined that cost consideration and resource constraints were the main reasons behind B/Ds' use of agency workers. He criticized the Administration for, on the one hand, devoting substantial public resources to the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link which would not benefit the general public and, on the other hand, failing to suitably expand the civil service establishment to meet new service demands. He considered that the Government only protected the interests of large corporations and, in tolerating middle-man exploitation, the Government had set a bad example for the private sector. He added that the use of agency workers had worked to suppress the wage level of employees in the society.

18. SCS responded that to ensure the efficient use of public resources, individual B/Ds had been advised of the need to constantly review existing service needs and to re-prioritize or redeploy resources as appropriate to meet new service needs. She added that over the past three years, the civil service establishment had already seen an annual increase of 1 500 to 1 600 posts, over 90% of which were non-directorate posts.

19. Mrs Regina IP shared Ms LI Fung-ying's views on the need to ensure sufficient deterrence against employment agencies' malpractices, and urged the Administration to consider implementing a marking scheme under which marks would be deducted from bidders of contracts to provide agency workers if the bidders were found to have engaged in malpractices of labour exploitation. Where circumstances warranted, they should be blacklisted and prohibited from bidding for Government service contracts again. SCS responded that there were already a marking scheme and a demerit point system in place which required procuring B/Ds to take into account bidders' past record of compliance with certain statutory and contractual obligations. Procuring B/Ds could make reference to the relevant details and put in place similar arrangements in procuring the service of employment agencies to supply agency workers.

20. The Chairman pointed out that employment agencies could deny their workers' fringe benefits without contravening the relevant labour laws. This could be done by, e.g. renewing contracts with these workers under different company names. Mrs Regina IP urged the Administration to ensure that the contractual employment terms of agency workers complied not only with the

relevant labour legislation but also met the higher standards of corporate social responsibility. She suggested that the Administration should make reference to international labour practices, which had incorporated benchmarks devised on the basis of the higher standards of corporate social responsibility. SCS pointed out that in working out the terms and conditions of the contracts to be entered with successful bidders, due regard had to be given to the enforceability of the contractual terms under the existing legal framework.

21. Mr CHEUNG Man-kwong considered it necessary to strike a balance between the needs to attain optimal use of public resources and to protect employees working in the Government including NCSC staff and agency workers. In order to demonstrate to the public that the motive behind the Administration's use of agency workers was not to use cheap labour to meet short-term service needs, he suggested that agency workers should be offered a wage level equivalent to the entry pay points of their civil service counterparts. He considered that by stipulating this in the contracts with the successful bidders, the problem of middle-man exploitation could be prevented. Moreover, as the Administration had also acknowledged that the quality of the agency workers and the quality of their service was related to the wages they received, the proposed arrangement was desirable as it would work in the interest of securing the service of reasonable quality agency workers.

22. SCS invited members to note that under the current proposals as set out in paragraph 16 of the Administration's paper, the wage level of the agency workers assigned to work in the procuring B/Ds was required to be no less than the quoted wages in the bids, which would not be less than the average monthly wages of miscellaneous non-production workers as set out in paragraph 16(b) of the Administration's paper. This proposal would not preclude the successful bidders from offering wages higher than the quoted wages in the bids to their employees concerned. Besides, in vetting bids from employment agencies, both price and quality would be taken into consideration. Where the contract sum was large, a two-envelope system would be adopted whereby bids would be evaluated separately on the basis of quality and price. Normally, departments would not open the envelopes containing the price bids until after completion of the quality assessment of the tenders received. Mr CHEUNG Man-kwong, however, pointed out that it would not suffice just to require employment agencies to offer monthly wages which were no less than the average monthly wages of miscellaneous non-production workers because this meant that agency workers' monthly wages would also go down following decline in the average monthly wage level at a time of economic downturn. In response to Mr CHEUNG's concerns, SCS explained that in coming up with this new measure, the Administration had taken note of the fact that the rate of fluctuation of the average monthly wages of the quarterly surveys in the past one and a half years was only within a 5% range. The period was from March 2008 (before the financial tsunami) to September 2009 (one year after the onset of the tsunami).

23. SCS further explained that she had reservations about aligning the pay for agency workers with the entry pay points of their civil service counterparts because, while agency workers were employed to perform relatively specific tasks, their civil service counterparts were required to be capable of performing a greater variety of tasks in the Government. The entry requirements of the two in terms of qualifications and work experience were therefore very different. In short, the Administration had higher demands in respect of the calibre of candidates when recruiting civil servants.

24. Mr CHEUNG Man-kwong said that if his proposal was adopted, the Administration could correspondingly raise the relevant requirements in respect of agency workers to be engaged by B/Ds. He further said that his proposal was reasonable because agency workers did not have any fringe benefits, job security, increment credits or promotion prospects. SCS pointed out that after a service contract entered between B/D and an employment agency came to an end, the agency workers concerned might subsequently be redeployed by the agency to serve its other clients. So, the agency workers did not necessarily become jobless upon expiry of the relevant government contract.

25. Dr LEUNG Ka-lau expressed support for Mr CHEUNG's proposal. Pointing out that it was the general phenomenon of the labour market that the pay for temporary workers was higher than the standard pay for workers hired on a long-term basis, the Chairman opined that the Administration should seriously consider Mr CHEUNG's proposal to prevent the occurrence of exploitation-related grievances.

26. Mr WONG Kwok-hing urged the Administration to consider his earlier proposal that CSB should centrally recruit and co-ordinate the supply of non-skilled workers to meet urgent or unforeseen service needs of B/Ds instead of through employment agencies. SCS responded that since the types of work required to be performed by agency workers in different B/Ds could vary a lot, it was neither desirable nor viable to centrally maintain a pool of workers to meet service needs as they arose. Also, the proposal might not be conducive to the proper use of public resources. She invited members to note that to minimize abuse, B/Ds would be advised to ensure that every proposal to procure the service of employment agencies to supply agency workers would be considered and approved personally by a directorate officer at Directorate Pay Scale D2 or above.

27. Mr IP Wai-ming asked about the total amount of contract sums paid to employment agencies in the past three years. Mr WONG Kwok-hing enquired about the number of employment agencies supplying manpower to the Government and the profits so made by them. SCS responded that the Administration did not maintain information on these aspects. Mr IP considered that the Administration should cease the use of agency workers and

directly recruit short-term staff itself where necessary. Dr PAN Pey-chyou considered that the Administration should not turn a blind eye to the exploitation of agency workers and the issue of "different pay for the same job" as already pointed out by deputations. The Administration should note that although the median wage had only dropped by some 2 % in the past year, the wage of Government agency workers had significantly dropped by about 20%, indicating that there was indeed middle-man exploitation.

28. SCS said that agency workers were used to meet service needs which were urgent or unforeseen and required immediate staff reinforcement, or which required staff to work odd hours or different hours of the day. Given the recruitment procedures of the Government, speedy supply of manpower would not be viable unless secured through employment agencies. As regards concerns about protection offered to agency workers, SCS explained that the relevant employment contracts contained provisions specifying that the employment agencies had to comply with the existing labour laws. Moreover, with the introduction of the proposed improvement measures as set out in paragraph 16(a) to (d) of the Administration's paper, the protection rendered to the wage level of agency workers would be much enhanced.

Supplementary comments from deputations

29. At the Chairman' invitation, the following representatives of deputations supplemented views as follows –

- (a) Ms LI Kwai-yin pointed out that abuse of agency workers was common among B/Ds. For example, an agency worker working full-time as a clerical assistant was receiving pay as low as \$4,950 under a one-year contract which had been repeatedly renewed. Some B/Ds had attributed the above situation to difficulties in securing approval for increases in civil service establishment to meet increasing service needs and the restrictions imposed on the employment of NCSC staff. The Government should therefore review the civil service establishment and more vigorously regulate the use of agency workers;
- (b) Ms CHEUNG Lai-ha added that the pay of the agency worker quoted above was originally over \$5,000, and that with repeated renewal of contract, the agency worker concerned had in fact already served the same B/D for over five years. The service need concerned was therefore long- and not short-term. Moreover, the change of company names whenever the contract was renewed had deprived the worker concerned of staff benefits which would otherwise be available to him/her. The Government should make efforts to plug the relevant loopholes

in law; and

- (c) Mr CHUNG Tak-cheung pointed out that the General Union was opposed to the performance of civil servants' work by non-civil servants. To prevent middle-man exploitation, agency workers should be made aware of the terms of the relevant service contracts. The General Union sympathized with the agency workers exploited. For the sake of social justice, it called for tightened monitoring of employment agencies, and the imposition of more effective sanctions in the event of non-compliance.

30. In response to the deputations' points above, SCS said that the Administration was willing to make improvements where feasible. As such, CSB had looked into the use of agency workers by B/Ds and planned to provide broad guidelines in this regard for general reference by B/Ds. The Chairman urged the Administration to give thought to members' suggestions raised at this meeting and consider stopping the use of agency workers.

V Update on national studies and Basic Law training for civil servants

- (LC Paper No. CB(1)860/09-10(04) — Administration's paper on update on national studies and Basic Law training for civil servants
- LC Paper No. CB(1)866/09-10 — Background brief on the national studies and Basic Law training for civil servants)

31. SCS briefed members on the Administration's paper providing an update on the provision of the national studies and Basic Law programmes and related training activities to civil servants.

32. Ms LI Fung-ying enquired whether officers had to take leave to attend training programmes organized by the Administration. SCS responded that apart from web courses, civil servants were released from their duties during office hours to attend training programmes organized by the Government, CSB and individual B/Ds.

33. Ms LI Fung-ying further enquired whether a civil servant would need to take leave to attend courses or activities co-organized by his own staff union and institutions on the Mainland. SCS responded that very often, office bearers or representatives of a civil service staff union were invited to visit their counterparts on the Mainland. They could apply for authorized absence

not counting as leave to attend the visit activities if they were of labour education nature or related to the work of the departments in which the staff representatives worked. For training courses organised on the Mainland by a staff union, authorised absence for members of the union to attend the course would be considered subject to exigencies of service and that the course programme was of labour education nature or related to the work of their respective departments.

VI Any other business

34. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
1 April 2010