

立法會
Legislative Council

LC Paper No. CB(2) 1143/99-00

(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

LegCo Panel on Manpower

Minutes of meeting
held on Thursday, 27 January 2000 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon LAU Chin-shek, JP (Chairman)
Hon LEE Kai-ming, SBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon Michael HO Mun-ka
Hon LEE Cheuk-yan
Hon CHAN Kwok-keung
Hon CHAN Yuen-han
Hon CHAN Wing-chan
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon YEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon SZETO Wah

Members absent : Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP
Dr Hon LEONG Che-hung, JP

Public Officers : Item III
attending

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Mrs DO PANG Wai-yee
Acting Principal Assistant Secretary for Education
and Manpower

Mr Thomas CHAN
Principal Assistant Secretary for Civil Service

Mr Alfred W K CHAN, JP
Deputy Commissioner for Labour (Labour Administration)

Mr TSANG Kin-woo, JP
Assistant Commissioner for Labour (Labour Relations)

Item IV

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Mrs DO PANG Wai-yee
Acting Principal Assistant Secretary for Education
and Manpower

Mr Alfred W K CHAN, JP
Deputy Commissioner for Labour (Labour Administration)

Mr TSANG Kin-woo, JP
Assistant Commissioner for Labour (Labour Relations)

Item V

Mr Herman CHO
Principal Assistant Secretary for Education
and Manpower

Mr LAM Kam-kwong
Principal Assistant Secretary for Education
and Manpower (Designate)

Mr William W L SIU
Assistant Commissioner for Labour
(Occupational Safety)

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

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

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I. Confirmation of minutes of special meeting held on 4 November 1999 and meeting held on 25 November 1999 and matters arising
(LC Paper Nos. CB(2) 889/99-00, CB(2) 951/99-00 and CB(2) 927/99-00(01))

The minutes of the special meeting held on 4 November 1999 and the meeting held on 25 November 1999 were confirmed.

List of follow-up actions required of the Administration

2. Members noted the list of follow-up actions required of the Administration.

Panel's overseas duty visit

3. The Chairman invited members' views as to whether there was any need for the Panel to conduct a duty visit overseas. Mr LEE Cheuk-yan suggested that a duty visit be made to Singapore on its training system and its manpower development strategy. Members agreed that a four-day duty visit be made to Singapore in late April or early May 2000.

Special arrangement on driving duties by foreign domestic helpers

4. The Chairman recalled that he had requested the Administration at the joint meeting of the Panels on Manpower and Security on 21 December 1999 to issue letters to Executive Council Members, Legislative Council Members and senior Government officials reminding them of the restrictions on driving duties by foreign domestic helpers. He requested the Administration to follow-up the issue.

Withdrawal of Mr CHAN Kam-lam from the Panel

5. Members noted the withdrawal of Mr CHAN Kam-lam from the Panel with effect from 30 December 1999.

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II. Date of next meeting and items for discussion

(LC Paper No. CB(2) 927/99-00(02))

6. Members agreed to discuss the following items at the next meeting to be held on 24 February 2000 at 2:30 pm -

- (a) Impact on local employment of the recent economic transformation and China's accession to World Trade Organization;
- (b) Manpower training in the information technology sector;
- (c) Consultancy review on the Employees Compensation Assistance Scheme; and
- (d) Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) (Amendment) Regulation.

Members noted that discussion of item (c) was subject to progress on the issue.

7. As regards item (a), Deputy Secretary for Education and Manpower (DSEM) informed members that the Secretary for Education and Manpower was considering the formation of a working group comprising representatives from the Financial Services Bureau and Census and Statistics Department to review the issue. He hoped to inform members of the results of the assessment on the implications in July or August 2000.

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Review on re-instatement

8. In response to Mr LEE Cheuk-yan, Deputy Commissioner for Labour (DC for L) said that the Administration hoped that the issue would be further discussed by the Labour Advisory Board in March 2000. He added that the Administration had done a lot of negotiation work on the issue.

Legislative amendments to improve the system of settlement of compensation claims in work-related fatal accidents

9. Mr LEE Cheuk-yan expressed concern that legislative amendments to improve the system of settlement of compensation claims in work-related fatal accidents, which were proposed some two years ago, had not yet been introduced into the Legislative Council (LegCo). DSEM responded that the Administration was still working on the drafting of the legislative amendments. It aimed to introduce the legislative amendments into LegCo in this legislative session.

Admission of Talents Scheme

10. Miss CHAN Yuen-han asked about the Administration's response to her request at the last Panel meeting for regular provision of information on applications under the Admission of Talents Scheme (the Scheme). DSEM responded that subsequent to the

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last Panel meeting, he had referred the request to the Secretary for Security (S for S), who agreed to provide members with quarterly information on the number of applications received, number of applications approved and a brief description of approved applications. He informed members that the Scheme was launched on 27 December 1999. By 25 January 2000, the Administration had issued more than 4 000 pamphlets and applications forms. It had also answered about 1 200 enquiries on the Scheme. Out of 19 applications received, four involved employment in the information technology and multi-media technology sector, two in the chemical materials sector, two in the engineering and environmental protection sector, five in the Chinese medicine sector and six in miscellaneous areas such as agriculture and fishery, education and administration. As further information on the applications were required, no application had been approved so far. Members requested the Administration to provide, in addition to the information undertaken by S for S, information on the remuneration package, academic qualifications and the number of employers involved in its regular written report to the Panel. They considered that the report should be provided to the Panel at two-month intervals.

Role of Vocational Training Council in the education system of Hong Kong and its system of technical education and vocational training

11. Mr LEE Cheuk-yan suggested that a joint meeting be held with the Education Panel to discuss Vocational Training Council's (VTC's) role in the education system of Hong Kong and its system of technical education and vocational training. The Chairman said that as the issue was within the purview of the Panel, the Panel could convene a special meeting and invite all other LegCo Members to the meeting.

12. Miss CHAN Yuen-han expressed concern about VTC's use of an annual financial provision of \$2.5 billion. She questioned about the measures adopted by the Administration to monitor VTC and address its problems. She suggested that the Panel might consider holding an inquiry on the issue. The Chairman cautioned that according to past experience, an inquiry would involve a substantial amount of time and resources. He considered that it would be more appropriate for the Panel to convene a special meeting on the issue before deciding on the way forward.

13. Members agreed that a special meeting of the Panel be scheduled for 2 March 2000 at 4:30 pm to discuss the issue.

Panel meeting in March

14. Members agreed to reschedule the regular meeting in March from 23 March 2000 to 30 March 2000 at 10:45 am to avoid a clash with special meetings of the Finance Committee.

III. Review on the applicability of the Employment Ordinance to Government employees on non-civil service contract terms, employees who worked less

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than 18 hours per week and service contract employees
(LC Paper No. CB(2) 927/99-00(03))

15. At the invitation of the Chairman, DC for L highlighted the salient points of the Administration's paper on the application of the Employment Ordinance (Cap. 57) (EO) to employees who worked less than 18 hours per week and persons engaged under contracts for service. Principal Assistant Secretary for Civil Service (PAS(CS)) briefed members on the application of EO on government employees on non-civil service contract terms. Members noted that the Administration did not see a need to extend the coverage of EO to these persons.

16. In response to Mr LEE Cheuk-yan, DC for L said that "unreasonable and unlawful dismissal" in paragraph 2(f) of the Administration's paper included the dismissal of employees for pregnancy, injury arising from work, trade union discrimination, dismissal during sick leave where sickness allowance was payable and for giving evidence in court proceedings under EO.

Application of EO to employees who worked less than 18 hours per week

17. Mr LEE Cheuk-yan expressed concern that according to a survey conducted in early 1999, about 30 000 out of 116 000 part-time employees were working less than 18 hours per week. They were therefore not entitled to "continuous contract" benefits, such as rest days, annual leave, sickness allowance, severance and long service payments. As the number of part-time workers had increased to about 200 000 in the third quarter of 1999, he expressed concern that there was an upward trend of employment of workers not meeting the continuous contract requirement. To his knowledge, Wellcome supermarkets were employing a large number of workers for a maximum of 17.5 hours per week. Mr LEE Kai-ming added that station assistants of the three railway companies in Hong Kong were also required to work less than 18 hours per week.

18. Miss CHAN Yuen-han said that similar cases were also found in the Hong Kong Jockey Club and McDonald's. She said that the Administration should take steps to protect the rights of workers especially when there was an imbalance of bargaining power between employers and employees. She added that the employment of part-time workers for less than 18 hours per week was also found in the catering industry. She expressed concern that there would be social unrest if the problems were not addressed. She asked about the Administration's time-table for conducting a review on the issue.

19. The Chairman said that some business establishments were found to be employing workers for a maximum period of three weeks to avoid the four-week requirement of a continuous contract. Mr LEUNG Yiu-chung added that some employers were reported to arrange their employees to work 60 hours on a certain week and less than 18 hours in the subsequent week to avoid continuous employment. He considered that the Administration should examine the different ways used by employers to avoid the continuous contract requirement before formulating plans to

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address the issue.

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20. DC for L responded that the employment of part-time workers were needed under some circumstances, such as when there was a fluctuation in production volume. It offered flexibility both for employers and employees. There was no evidence of employers deliberately employing workers for less than 18 hours per week to avoid the payment of benefits such as sick leave and long service payments. Nevertheless, he would look into the employment of part-time workers of the organizations quoted by members. The Chairman requested the Administration to report its findings to the Panel.

21. DC for L informed members that the Mandatory Provident Fund (MPF) Scheme would cover employees working less than 18 hours per week. Mr LEUNG Yiu-chung said that MPF was intended for meeting an employee's future needs rather than immediate needs. He added that MPF could not substitute benefits such as sick leave and annual leave.

22. Referring to paragraph 2(d) of the Administration's paper, Mr LEE Kai-ming said that if all employees were entitled to the granting of statutory holidays irrespective of their hours of work, they should all be entitled to paid annual leave. He added that under the existing definition of a continuous contract, employees who did not meet the 18 hour per week requirement would never enjoy the "continuous contract" benefits. DC for L responded that annual leave was different from statutory holidays. He assured members that the Administration would regularly review the definition of continuous contract. He added that the increase in the number of part-time workers might be due to the economic downturn.

23. Mr CHAN Wing-chan questioned why no amendment was proposed to the definition of continuous contract of employment under EO despite many changes in the labour market in the past. DC for L responded that the definition of a continuous contract of employment had been revised some years ago from working for four weeks with six hours on three working days of a week to working for four weeks with 18 hours per week. This had already resulted in more persons being covered by EO.

24. Mr HO Sai-chu expressed support in principle for the Administration's proposal of not amending EO. He considered that the general employment of more part-time workers was due to the poor economic situation. The employment of part-time workers should decline with the economic recovery. He expressed support for the Administration's investigation into the organizations quoted by members. He considered that the Administration should also review whether employee benefits had created a heavy financial burden on employers. Mr LEE Kai-ming said that the problem of abuse by employers could be addressed by removing the 18-hour requirement under the definition of continuous contract. Mr HO Sai-chu considered that this might result in the reduction of number of workers employed.

Application of EO to persons engaged under contracts for service

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25. Mr CHAN Wing-chan expressed concern that there was an increasing trend of employers requiring their drivers to obtain a business registration and enter into a contract for service for the transportation of containers. With this arrangement, the employer would no longer have to provide benefits such as long service payment to employees. He said that the situation was especially serious in the cross-border container transportation industry. DC for L responded that unilateral change of employment terms by the employer was prohibited under EO. Severance payment would be payable to the employee if there was a change in the employment terms. A contract for service differed from contract of service. If a driver was engaged on the basis of contract for service, he would have full freedom in determining his working hours and could accept transportation orders from any company. Contract for service had become quite common many years ago amongst drivers in the transportation of concrete materials and amongst workers in the garment manufacturing industry.

26. The Chairman expressed concern that apart from the change of relationship from an employment one to a contract for service, there was virtually no material change in the employment conditions in most of the cases. DC for L said that the employment relationship would continue to exist if there was no material change in the employment conditions. Mr LEE Cheuk-yan considered that the change of employment might result in a change of the remuneration package. This might constitute a material change that resulted in no employment relationship. Referring to the concrete material transportation industry quoted by DC for L, he said that the logo of the employer's company could still be found on the trucks. The drivers therefore could not use the trucks to provide service to any other companies. Mr LEUNG Yiu-chung shared the same view. He added that there were cases in the textile industry in which a foreman was forced to terminate his employment and entered into a contract for service with his employer. The foreman concerned subsequently became liable for the salary payment of workers when the employer failed to effect the payment. There were also cases in which the trucks of drivers who entered into contracts for service were still owned by the employers.

27. DC for L responded that whether there was an employment relationship depended on the facts and circumstances of individual cases rather than whether there was a written contract for service. He said that in the examination of alleged cases, the Labour Department (LD) would look into the circumstances of each case. Where necessary, legal advice would also be sought. However, there had to be a complainant for a case to be brought to the Labour Tribunal (LT). If the cases quoted by members were brought to LT or the court, the employees concerned might still have a case to prove that employment relationship still existed between them with their employers. There were a number of precedents in which the court held that an employment relationship existed despite the existence of a written contract for service, but with only slight changes in the conditions or remuneration package.

28. Miss CHAN Yuen-han said that an increasing number of employers were changing the employment of their employees to contracts for service. The situation was also found in the retail sales industry. She considered that publicity should be launched by the Administration to educate employers that an employment relationship

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might still exist with such a change. She added that the Administration should carry out a review on the issue.

29. Mr HO Sai-chu said that the changes might be due to the poor economic climate. He considered that while employers should not abuse contracts for service, employees should not be deprived of the right to become self-employed. He added that labour unions could also launch publicity to bring the issue to the awareness of workers.

Application of EO to government employees on non-civil service contract terms

30. Mr Andrew CHENG expressed concern that the employment of non-civil service contract staff under employment terms no less favourable than those provided for under EO and the Employees' Compensation Ordinance (Cap. 282) (ECO) was only a principle adopted by the Administration. A principle was not legally binding and could be easily changed by the Administration. As there were only about 4 000 non-civil service contract staff, the Administration should consider extending the coverage of EO to these non-civil service contract staff.

31. PAS(CS) responded that the employment terms of non-civil service contract staff, which were formulated with reference to the provisions of EO and ECO, were incorporated into the employment contracts. These contractual provisions were binding on the Government. Although there had been some complaints about the employment terms of non-civil service contract staff, most cases had been resolved through mediation and discussion. He did not see any need for extending EO to cover non-civil service contract staff at this stage.

32. The Chairman asked whether the Administration would be in breach of the law if the employment terms of its non-civil service contract staff were lower than those provided for under EO and ECO. PAS(CS) responded that if the Administration had spelt out the principle and provided employment terms no less favourable than those provided for under EO or ECO in the employment contract, it would be in breach of the contract if the principle was not adhered to. He added that the Administration was subject to monitoring by LegCo Members and the media. The Chairman requested the Administration to consider Mr Andrew CHENG's suggestion.

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33. Mr LEE Cheuk-yan said that two employees of Radio Television Hong Kong (RTHK) had recently lodged complaints relating to their employment to LT. LT took the view that the handling of disputes involving government employees was not within its jurisdiction and suggested the complainants to bring their cases to the court. He questioned why government employees were deprived of the right to bring their cases to LT for adjudication. PAS(CS) responded that he was not in a position to comment on the jurisdiction of LT. Legal advice had not given a clear indication on the issue. Nevertheless, the Administration was following up the case with RTHK. As employment contracts had been made with these employees, the Administration had a responsibility to discharge its obligations under the contracts. He added that any government employee who wished to complain or seek redress on alleged breach of employment terms could address his complaint to his supervisor, the personnel unit of

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his department, the head of his department or the Civil Service Bureau (CSB). Other channels of complain included lodging a complaint with LegCo Members. It was also not uncommon that such complaints were brought to the attention of the media. He assured members that the Administration would endeavour to resolve any complaints or disputes relating to the employment of individual staff. The Chairman requested the Administration to provide members with more details of the legal advice on the role of LT.

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34. In response to Mr LEUNG Yiu-chung, DC for L said that any labour dispute relating to government employees would be dealt with initially by the related department. Where necessary, CSB would also assist in resolving the problem.

35. In response to Mr James TIEN, PAS(CS) said that the employment terms of non-civil service contract staff were no less favourable and also no more favourable than those provided for under EO and ECO. As regards whether these staff were entitled to severance payment, PAS(CS) said that these staff were usually employed for a specified contract period. They would be entitled to severance payment if they met the requirements provided under EO.

36. Mr LEE Kai-ming asked whether a reduction in the gratuity from 15% to 10% of total salaries of non-civil service contract staff on renewal of contract would constitute a change of employment terms, thus leading to entitlement of severance payment. PAS(CS) responded that end of contract gratuity was not a part of an employee's salaries. It was separately determined in respect of each contract. DC for L added that if the employee did not agree to such a reduction on renewal of contract, he would be entitled to long service payment or severance payment as provided under EO.

IV. Review of the wage provisions under the Employment Ordinance (LC Paper No. CB(2) 927/99-00(04))

37. At the invitation of the Chairman, DC for L briefed members on the results of a review conducted by the Labour Department on the provisions on wages under EO. He informed members that the review concluded that no change should be made to the wage-related provisions of EO.

38. Members noted that under the existing EO, overtime pay should be taken into account in calculating the wages of an employee for the purpose of reckoning various statutory benefits if the monthly average of his overtime pay over a period of 12 months immediately preceding the date of termination of employment was equivalent to or exceeded 20% of his average monthly wages during the same period (the 20% rule).

39. Mr LEE Cheuk-yan said that the Hong Kong Confederation of Trade Unions had always maintained the view that in calculating wages, all overtime pay should be taken into account regardless of whether the 20% rule was satisfied. As the hourly rate of the overtime pay of some employees were much lower than the hourly rate of

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their normal salary, he asked whether the 20% rule could cover employees whose overtime hours of work were equivalent to or exceeded 20% of his average monthly working hours. DC for L responded that it was a requirement under EO that the 20% rule applied to the amount of overtime pay rather than the number of overtime hours of work. He added that it was not mandatory under EO to compensate overtime work with overtime pay.

40. In response to Mr James TIEN, DC for L said that the review was made in response to some major employers' concern that owing to the employment size of their establishments and their payroll procedures, they might not be able to effect all of the overtime pay within the statutory limit of seven days after it became due. As most employers had now computerized their payroll system, the calculation of overtime pay was no longer a difficult task. Employers should no longer find it difficult to effect wages not later than seven days after the last day of the wage period of termination of employment.

V. Occupational Safety and Health (Personal Protective Equipment) Regulation

(LC Paper No. CB(2) 927/99-00(05))

41. At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) presented the Administration's proposal to make a new Regulation under the Occupational Safety and Health Ordinance to establish a regime for controlling the provision of suitable personal protective equipment to employees of industrial and non-industrial undertakings.

42. Members made no comments or queries on the proposal.

43. There being no other business, the meeting ended at 4:30 pm.

Legislative Council Secretariat

18 February 2000