

立法會
Legislative Council

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LC Paper No. CB(2)1412/05-06
(These minutes have been seen by
the Administration)

Panel on Manpower

Minutes of meeting
held on Thursday, 16 February 2006 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 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 WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

Public Officers attending : Item III

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

Mr Alan WONG Kwok-lun
Assistant Commissioner for Labour (Labour Relations)

Miss Mabel LI Po-yi
Senior Labour Officer
Labour Department

Mr KOO Chiu-shing
Senior Labour Officer
Labour Department

Miss Emma LAU
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

Item IV

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

Mr Alan WONG Kwok-lun
Assistant Commissioner for Labour (Labour Relations)

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

Mr Bryon NG Kwok-keung
Senior Labour Officer
Labour Department

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

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

Ms Sandy HAU
Clerical Assistant (2)1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1087/05-06)

The minutes of the meeting held on 19 January 2006 were confirmed.

II. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)1086/05-06(01) and (02))

2. Members agreed that the following items proposed by the Administration would be discussed at the next meeting to be held on 21 March 2006 at 4:30 pm –

- (a) Funding requirements of the Pneumoconiosis Ex-gratia Scheme;
- (b) Labour Department's Occupational Health Clinic in Fanling; and
- (c) Problems relating to the Mandatory Provident Fund (MPF) Scheme.

(Post-meeting note : At the request of the Administration and with the concurrence of the Chairman, the discussion of the item referred to in paragraph 2(c) above was deferred.)

3. Regarding the item referred to in paragraph 2(c) above -

- (a) Mr LEE Cheuk-yan said that the following issues should be examined by the Panel –
 - (i) whether severance payment and long service payment should be offset by employers' MPF contribution;
 - (ii) whether housing allowance should be counted towards relevant income in the calculation of employer's MPF contribution;
 - (iii) whether the Mandatory Provident Fund Schemes Authority should be empowered to recover the outstanding MPF contribution from an employer, if the employer had not enrolled in a MPF scheme for one or two years;
 - (iv) whether employers should be allowed to choose MPF schemes for employees;
- (b) Miss CHAN Yuen-han considered that, with the increase in the number of self-employed persons and casual workers in many industries, the extension of Industry Schemes should be studied; and
- (c) Mr Tommy CHEUNG said that employer-employee relations might be undermined, if employers' MPF contribution could not be used to offset severance payment or long service payment.

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4. Mr WONG Kwok-hing asked whether there was a need to hold special meetings to discuss the issues in the list of outstanding items for discussion. The Chairman said that, as was the practice in the past, he would study the list with the Deputy Chairman and the Administration.

III. Measures to protect the statutory entitlement of employees under the Employment Ordinance

(LC Paper Nos. CB(2)1086/05-06(03) and (04))

5. Permanent Secretary for Economic Development and Labour (Labour) (PSL) briefed members on the measures adopted by the Labour Department (LD) to protect the statutory entitlements of employees under the Employment Ordinance (EO). Judiciary Administrator (JA) briefed members on the enforcement of Labour Tribunal (LT) awards.

6. Mr Andrew CHENG said that the measures proposed by the Judiciary were administrative in nature and would have little effect. He considered that problems relating to the enforcement of LT awards should be tackled through providing for the automatic issuance of a writ of execution or a winding-up order in legislation.

7. JA responded that the key role of LT was the adjudication of monetary disputes between employers and employees. It was the responsibility of the parties to a case to execute the judgment, although LD could introduce measures to facilitate such enforcement. PSL said that the automatic issuance of a writ of execution or a winding-up order had wide implications and thus had to be studied cautiously.

8. Referring to paragraph 6 of the paper on enforcement of LT awards, Mr WONG Kwok-hing said that the costs of execution of a LT award should be borne by the Administration or the Protection of Wages on Insolvency Fund (PWIF). The Chairman added that the Administration should be responsible for execution of a LT award. Employees should not be required to bear the costs of execution.

9. PSL responded that the recommendations of the Judiciary were a useful step forward. Nevertheless, the Administration would examine how problems associated with enforcement of LT awards could be addressed.

Adm

10. Referring to paragraph 3 of the paper on measures to protect the statutory entitlements of employees under EO, Mr WONG Kwok-hing expressed concern that prosecution would be instituted against an employer only when the employee concerned was willing to serve as a witness. He considered that prosecution should be instituted against an employer whenever there was sufficient evidence.

11. PSL responded that the Administration had sought the views of the Department of Justice (DoJ) on the suggestion of directly taking statements from the employees

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concerned without asking the employees whether they were willing to testify before the court when dealing with cases involving wage offences. The Administration noted that guidelines on prosecution had been laid down by the DoJ and that the court had previously stated that instituting prosecution without sufficient evidence would be a waste of court resources. PSL stressed that LD had stepped up publicity and education for employees and encouraged them to serve as witnesses.

12. Mr LEUNG Kwok-hung said that employees would generally be more willing to serve as witnesses in the early stage when their wages were outstanding. He considered that LD should cooperate with labour unions to combat wage offences. He added that the repeal of some labour-related legislation after reunification was the major factor leading to insufficient protection for employees.

13. Miss CHAN Yuen-han expressed concern that where an employer appealed against the decision of LT, the employee would often be faced with high costs of litigation. She considered that legal aid should be provided to such employees.

14. Referring to paragraph 6 of the paper on measures to protect the statutory entitlements of employees under EO, Mr LEE Cheuk-yan said that it was not cost effective to carry out means test on 762 applications for legal aid from employees merely to screen out 12 applications. He considered that the Administration should be fully responsible for execution of LT awards or bear the costs of execution. Alternatively, employers should be required to deposit a certain sum of money with LT before adjudication for the purpose of settling execution costs.

JA

15. JA responded that LT was empowered under the Labour Tribunal Ordinance (LTO) to order the payment of a certain sum of money as security under certain circumstances. She undertook to provide members with information on the relevant provisions in LTO. She added that the Working Party appointed by the Chief Justice to review the operation of LT had recommended that the power of the Presiding Officer to order security upon adjournment should be extended by legislation to cases where the Presiding Officer was satisfied that a party was guilty of delaying the process. She stressed that any proposals on the order of payment as security should be considered prudently on sufficient legal grounds, as the issue of access to justice would be involved.

16. Referring to paragraph 25 of the paper on enforcement of LT awards, Ms LI Fung-ying said that legislative amendments should be introduced to require all awards to be paid through LT.

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17. JA responded that there were many cases where the parties to a case agreed on how the award should be paid. Requiring all awards to be paid through LT might restrict the flexibility in effecting payment. The Judiciary had thus recommended that payment of awards should be made through LT, unless both parties expressly agreed on other methods of payment.

18. Referring to paragraph 5 of the paper on measures to protect the statutory entitlements of employees under EO, Ms LI Fung-ying expressed concern that there were 223 cases in 2005 where employers defaulted payment of awards made by LT or the Minor Employment Claims Adjudication Board involving wage claims. She asked about the minimum and maximum penalties imposed in the 110 convicted summonses on wage offences for cases of defaulted payment of awards.

19. PSL responded that the maximum sentences imposed on an employer for defaulted payment of award in respect of wage offences in 2005 was a fine of \$44,000 and 70 days' imprisonment, suspended for two years. Ms LI Fung-ying considered that the existing penalty level had no deterrent effect.

20. Miss CHAN Yuen-han expressed concern that some workers who had been awarded compensation by LT could not afford to bear the execution costs. She said that employees should be exempted from payment of such costs. Alternatively, the Administration should be required to bear such costs.

21. JA responded that the Judiciary was not empowered to exempt employees who were judgment creditors from payment of the costs of execution of LT awards.

22. The Chairman said that the enforcement of LT awards was related to a person's right under EO rather than disputes between individuals. He requested the Administration to consider executing LT awards on behalf of employees. PSL agreed to look into the suggestion with the relevant bureaux and departments.

Adm

23. Referring to paragraph 3 of the paper on measures to protect the statutory entitlements of employees under EO, Miss CHAN Yuen-han expressed concern that the percentage of cases where employers settled outstanding wages as a result of actions taken by the Employment Claims Investigation Division was low. She recalled having referred 13 cases of wages in arrears relating to a contractor of the Housing Authority to LD. She queried why no prosecution was instituted in any of the cases. She considered that the retention money held by the Housing Authority in respect of the contractor should be used to settle the outstanding wages.

24. PSL reiterated that LD took a very serious view on wage offences and would prosecute employers who had contravened wage provisions under EO whenever there was sufficient evidence. Among more than 900 prosecutions instituted against employers for wage offences in 2005, LD had secured successful convictions of over 500 summonses for wage offences. He said that LD had received wage claims from

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about 500 workers of the contractor concerned. Of these, about 300 had successfully received their outstanding wages.

25. Mr LEUNG Kwok-hung considered that the Administration should strengthen its monitoring of contractors. He said that the Administration should encourage employees to serve as prosecution witnesses. DoJ should request the judge to impose heavier sentences on employers convicted of wage offences.

26. PSL reiterated that LD took a serious view on wage offences. LD had taken the initiative to introduce legislative amendments to raise the maximum penalty for wage offences from a fine of \$200,000 and one year's imprisonment to a fine of \$350,000 and three years' imprisonment. However, if the employee concerned was unwilling to serve as witness, the Administration would not be able to take out prosecution.

Adm

27. The Chairman said that once LT had awarded compensation to an employee, the Administration had a responsibility to assist the employee to recover such award from the employer. He requested the Administration to look into the issue.

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

“為切實保障僱員在《僱傭條例》下的法定權益，–

- (一) 促請政府負責代僱員追討裁決的欠薪；
- (二) 反對勞工處以僱員願意出任控方證人為前題，才進行檢控的政策。要求政府盡速檢討，以堵塞此檢控的漏洞，加強政府主動檢控違例僱主的角色。”

(Translation)

“That, in order to earnestly protect the statutory entitlements of employees under the Employment Ordinance, this Panel:

- (a) urges the Government to take up the responsibility of recovering the outstanding wages awarded to the employees on the latter's behalf; and
- (b) opposes the Labour Department's policy whereby prosecutions are instituted only on the premise that the employees concerned are willing to serve as prosecution witnesses; and requests the Government to expeditiously conduct a review to plug such loopholes in prosecution and strengthen its role of initiating prosecutions against offending employers.”

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29. The Chairman put the motion to vote. Five members voted in favour of the motion and no member voted against the motion. The Chairman declared that the motion was carried.

IV. Labour Department's overall performance in labour administration in 2005

(LC Paper No. CB(2)1086/05-06(05))

30. PSL briefed members on the overall performance of LD in various programme areas in labour administration in 2005.

31. Mr WONG Kwok-hing commended LD for the efforts it had made in 2005. He said that the Administration should expedite its review of EO and take the lead to adopt good employer practice. Referring to paragraph 9 of the Administration's paper, he asked why 78 participants of the Work Trial Scheme (WTS) had resigned and 30 participants had been dismissed.

32. PSL responded that LD would continue with its efforts and conduct a thorough review on EO. He said that the resignation of participants from WTS was inevitable, especially when the market situation had improved. Some participants whose performance could not meet the required standards of the employers had been dismissed.

33. Miss CHAN Yuen-han expressed concern that the percentage of participants of the Social Welfare Department (SWD)'s Support for Self-Reliance Scheme who had secured employment was low.

34. PSL responded that updated information on the job vacancies received by LD was made available at the Vacancy Search Terminals installed in all Social Security Field Units of the SWD and the Public Enquiry Service Centres of the Home Affairs Department. Most of the Job Centres of LD and the Social Security Field Units of SWD were either adjacent to each other or located in the same building. Miss CHAN Yuen-han requested the Administration to provide information on the number of participants of the Self-Reliance Scheme who had secured employment through LD.

Adm

35. Miss CHAN Yuen-han expressed concern about the employment situation of elementary workers. She asked whether the Administration would facilitate economic activities to create more employment opportunities.

36. PSL responded that the Administration had been promoting the development of the tourism industry and the logistics industry, which had created many job opportunities for elementary workers.

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37. Miss CHAN Yuen-han enquired whether travel allowance, similar to that offered under the Special Incentive Allowance Scheme for Local Domestic Helpers (LDHs), could be offered to people with disabilities.

Adm

38. PSL pointed out that the scheme for LDHs was introduced to address the mismatch in supply and demand arising from geographical locations and working hours in the LDH market, and that whether travel allowance should be provided to disabled persons was a different matter. He, however, agreed to consider the suggestion.

39. Referring to paragraph 9 of the Administration's paper, Mr LEE Cheuk-yan asked whether the low participation rate in WTS was due to the poor response of employers or employees.

40. PSL responded that the Administration would step up publicity on WTS, which had only been launched for a few months. Assistant Commissioner for Labour (Employment Services) added that the low participation rate was largely due to the improvement in the job market.

41. Mr LEE Cheuk-yan said that the intervention of LD in recent labour disputes had failed to produce material results. He asked how LD would improve employer-employee relations.

42. PSL responded that LD would continue to seek improvement of employer-employee relations through various means.

43. Referring to paragraph 28 of the Administration's paper, Ms LI Fung-ying asked about the reasons for the increase in the number of employers arrested for employing illegal workers. She also asked about the industries where such illegal employment was found.

44. PSL responded that the number of employers arrested for employing illegal workers had increased after LD stepped up its effort to combat the problem at source. Such employers were mainly engaged in catering, sales of dried food or operation of market stalls.

45. Ms LI Fung-ying asked whether LD had any plans to increase its manpower. PSL responded that LD had tried its best to deploy its manpower to cope with its workload. Where necessary, requests would be made for additional manpower.

46. Mr LEUNG Yiu-chung expressed concern that although there was a recent increase in job vacancies, the unemployment rate was still more than 5%. He asked whether the Administration had analysed the situation and how the Administration would tackle the problem.

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47. PSL responded that the problem stemmed from the mismatch in demand and supply in the labour market as a result of economic restructuring. The majority of the unemployed were aged above 40 and possessed low academic qualifications and low skills. To address the problem, the Administration would facilitate economic development and promote overseas investment in Hong Kong to create more job opportunities. Mr LEUNG Kwok-hung considered that such unemployed persons could not benefit from the recent economic recovery.

48. Mr LEUNG Yiu-chung asked whether the Administration would introduce legislative amendments to strengthen its role in settling labour disputes. He said that legislation should be enacted to strengthen employees' right to collective bargaining. Mr LEUNG Kwok-hung added that the rights of employees to collective bargaining should be strengthened, especially given that labour unions were not given recognition in Hong Kong.

49. PSL responded that LD was mainly addressing labour disputes through conciliation. In this connection, he informed members that the successful conciliation rate of LD had nearly reached 70% in 2005, which was the highest since 1994.

50. Miss CHAN Yuen-han expressed concern about recent labour disputes relating to the Hong Kong Jockey Club and the Hong Kong Disneyland. The Chairman said that members might wish to discuss the issue with the management of the relevant organisations. PSL said that informal meetings could be arranged between members and the management of such organisations.

51. Miss CHAN Yuen-han asked whether there was any progress on the recognition of sick leave certificates issued by chiropractors as valid sick leave certificates.

52. PSL responded that the issue was being studied by a working group. The Census and Statistics Department was commissioned to conduct a survey on the incidences and characteristics of persons having received chiropractic treatment in Hong Kong.

53. The meeting ended at 4:30 pm.