

立法會
Legislative Council

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LC Paper No. CB(2) 2136/05-06

(These minutes have been seen by the
Administration)

Panel on Manpower

Minutes of meeting
held on Friday, 28 April 2006 at 8:30 am
in the Chamber of the Legislative Council Building

Members present : 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 WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP

Members absent : Hon LAU Chin-shek, JP (Chairman)
Hon Frederick FUNG Kin-kee, 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 NG Ka-kwong, Stanley
Acting Assistant Commissioner for Labour (Labour Relations)

Ms FONG Yuk-sim, Teresa
Acting Senior Labour Officer (Labour Relations)³
Labour Department

Mr WAI Chi-sing, JP
Deputy Secretary for the Environment, Transport
and Works (Works) 2

Ms FUNG Yin-suen, Ada
Deputy Director (Development & Construction)
Housing Department

Item IV

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

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

Mr HO Tit-ying
Chief Occupational Safety Officer (Support Services)
Labour Department

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

**Staff in
attendance** : Miss Josephine SO
Council Secretary (2) 1

Ms Sandy HAU
Legislative Assistant (2) 6

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The Deputy Chairman took the chair as the Chairman was unable to attend the meeting.

- I. Confirmation of minutes of previous meeting**
(LC Paper No. CB(2)1814/05-06)
2. The minutes of the meeting held on 21 March 2006 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1813/05-06(01) and (02))

3. To give way to a Chief Executive's Question and Answer Session which would be held at 3:00 pm on 18 May 2006, members agreed that the next regular meeting originally scheduled for 18 May 2006 at 2:30 pm be rescheduled to 30 May 2006 at 10:45 am.

4. Members agreed that the following items be discussed at the meeting on 30 May 2006 –

- (a) Proposed amendment to the Employment Ordinance to ensure that commission is included in the calculation of statutory entitlements;
- (b) Issues relating to the employment of non-skilled workers engaged in services contracted out by the Link Management Limited; and
- (c) Measures to protect the employment of non-skilled workers engaged in services contracted out by the Housing Department.

(Post-meeting note : The Housing, Planning and Lands Bureau has advised that the subject of tightened measures for Housing Authority's estate management service contracts in protecting the interests of non-skilled workers would be proposed for discussion by the Panel on Housing at its meeting scheduled for 5 June 2006, and members of the Panel on Manpower could be invited to join the discussion. The Chairman and the Deputy Chairman have agreed that item (c) above would not be discussed at the regular meeting on 30 May 2006.)

5. Ms LI Fung-ying drew members' attention to her letter to the Panel Chairman dated 27 April 2006, in which she suggested that the issue of "local precasting of construction components for use in public works and public housing projects to create more job opportunities for local workers" should be discussed by the Panel. Members expressed support and further suggested that a joint meeting with the relevant Panels could be held, if necessary. Government bureaux, including the Financial Services and the Treasury Bureau, the Housing, Planning and Lands Bureau and the Economic Development and Labour Bureau should be invited to the meeting.

(Post-meeting note : The above letter from Ms LI Fung-ying, tabled at the meeting, was subsequently circulated to members vide LC Paper No. CB(2)1885/05-06(01) on 28 April 2006.)

III. Measures to tackle the problem of arrears of wages of workers employed under public housing construction works and public works projects
(LC Paper No. CB(2)1813/05-06(03))

Briefing by the Administration

6. Permanent Secretary for Economic Development and Labour (Labour) (PSL), said that the Administration was aware of the growing concern in the community over wage arrears in the construction industry. Although measures to monitor wage payment to workers employed under public works and public housing projects had been in place already, the Environment, Transport and Works Bureau (ETWB) and Housing Authority (HA) had decided to step up control by implementing improvement measures from 1 May 2006 onwards, in a bid to prevent a repeat of the recent incident in which workers employed by subcontractors of the Dickson Construction Company Limited (Dickson) were owed wages. With the problem of wage arrears arising mainly from multi-layer subcontracting, the improvement measures sought to address the problem at source.

7. Deputy Secretary for the Environment, Transport and Works (Works) 2 (DSETW(W)2) and Deputy Director (Development & Construction), Housing Department (DD(D&C)/HD) respectively briefed members on the measures already implemented as well as the new ones to be adopted by ETWB and HA in public works projects and public housing construction contracts to better monitor and safeguard the payment of wages to workers, as set out in the Administration's paper.

Effectiveness of the improvement measures

Contractors and subcontractors management

8. Mr WONG Kwok-hing pointed out that many construction workers were forced to become self-employed. He was concerned whether the Administration, in devising the improvement measures to manage subcontracting, had taken into consideration the situation of fake self-employment. He considered that the Administration should be more proactive to help workers of Dickson to get back their outstanding wages.

9. Referring to paragraph 4 of the Administration's paper, Ms LI Fung-ying said that the Administration should consider more severe measures in order to combat wage offences by contractors on ETWB's Approved Lists. In her view, the arrangement to suspend any contractors from tendering for public works projects for six months after they had been convicted of three or more offences under the Employment Ordinance (EO) (Cap. 57), including offences on wage arrears, in a rolling 12-month period did not have sufficient deterrent effect.

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10. Mr LEE Cheuk-yan was of the view that the improvement measures could in no way stop the subcontractors from forcing their employees to sign fabricated wage slips. He urged the Administration to address this problem and plug the loophole.

11. In response, PSL and DSETW(W)2 made the following points –

- (a) in an effort to deter the malpractice of false self-employment, contractors were required to take out separate insurance cover for an amount of \$1 million or to extend their employees' compensation insurance to cover self-employed persons as these persons were very often found working without insurance cover. Self-employed workers working in the capacity of a sub-contractor were required to be registered under the Voluntary Subcontractors Registration Scheme (VSRS) introduced by the Provisional Construction Industry Coordination Board (PCICB). Together, these measures would deter any false claim of self-employment;
- (b) the Administration had issued a total of 40 summonses to Dickson for violation of EO, and had helped 141 workers directly employed by Dickson and another 45 workers employed by its subcontractors to recover their outstanding wages in the form of ex-gratia payment from the Protection of Wages on Insolvency Fund (PWIF);
- (c) under ETWB's current contractor management system, a contractor on its Approved Lists convicted of three or more offences under EO in a 12-month period would automatically be suspended for six months from tendering for public works. ETWB had introduced a Subcontractor Management Plan (SMP) since 2003 which included a wage payment monitoring requirement. Together with VSRS introduced by PCICB, the management of subcontractors and non payment of wages under public works contracts were largely brought under control; and
- (d) it was an offence for an employer to wilfully issue forged cheques or force their employees to sign fabricated wage slips. Employees should report such cases to the Police for criminal investigation. With respect to offences on wage default, prosecutions would be taken out against the offending employers once sufficient evidence was obtained.

12. While welcoming the measures mapped out by ETWB and HA to tackle at source the problem of wage arrears arising from subcontracting, Mr Andrew CHENG considered that the Administration should set a limit on the layers of subcontracting for all public works and public housing projects. He further suggested that to increase the protection for construction workers, the Administration should encourage employers in the construction industry to enter into long-term employment with and offer fixed monthly salaries to their employees.

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13. DSETW(W)2 responded that under ETWB's monitoring system, the scope and the number of layers of subcontracting were subject to certain restrictions. ETWB would –

- (a) as a matter of practice, prohibit total subcontracting by the main contractor;
- (b) require the main contractors' core staff, such as project manager, engineer and supervisor, to be their direct employees. In addition, the core staff would not be allowed to take up subcontracting works;
- (c) prohibit subcontracting out certain type of works as specified in the contract; and
- (d) restrict subcontracting of certain work trades as specified in the contract to only two layers.

With regard to the appeal for fostering long-term employment in the construction industry, the Administration needed to take into account the characteristics of the construction industry and the contractual agreements made between employers and employees. However, the Administration would continue with its effort to encourage multi-skill development to facilitate the keeping of staff on a long-term basis.

Wage payment monitoring system and records

14. In respect of the requirement that wages to workers should be paid through auto-pay bank account, Ms LI Fung-ying considered that further safeguards should be put in place to ensure that wages due were paid on time and on a regular basis. Mr LEE Cheuk-yan echoed Ms LI's view.

15. Mr LEUNG Yiu-chung opined that the protection for construction workers might not be sufficient especially when many of them were employed on a short-term or temporary basis. He enquired about the duration that would qualify an employment as a long-term employment where auto-payment through designated bank account would be arranged for workers.

16. DSETW(W)2 and DD(D&C)/HD advised that –

- (a) all workers, with the exception of casual workers working less than a total of seven days in the same contract, would be required to enter into written employment contracts with their respective employers. The contracts would stipulate clearly the employment terms, including wage level, wage period, due date for wage payment and details of the auto-pay arrangement; and
- (b) casual workers would be paid by personal cheques and this would also be

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monitored.

17. DD(D&C)/HD further said that wage payment to workers employed on a short-term or temporary basis would normally be made by cheques, given the difficulty in setting up auto-pay accounts within seven days.

18. DSETW(W)2 also said that about 20% of the workforce in the construction industry had difficulty in opening a bank account in Hong Kong, as they resided on the Mainland and did not have a local address. As an alternative, employers were required to pay wages to these workers by personal cheques and produce evidence of wages received by their workers afterwards.

Employment of Labour Relations Officers by main contractors

19. Ms LI Fung-ying asked about the duties to be performed by Labour Relations Officers (LROs) apart from handling complaints on arrears of wages. In her view, the Administration should ensure that the LRO-to-worker ratio was reasonable. Otherwise, LROs would not be able to discharge their duties properly and achieve the expected results.

20. Mr LEE Cheuk-yan expressed reservations about the requirement of employing on-site LROs by the main contractors as the arrangement might lead to a conflict of interests when the LROs discharged their duties. He held the view that LROs should be employed by ETWB or HA direct.

21. DSETW(W)2 and DD(D&C)/HD said that –

- (a) for consultant administered public works contracts, LROs would be employed by Government through the consultant;
- (b) for all other public works or housing contracts, LROs would be provided by the contractor as a contract requirement. LROs were required to station on site and within the supervising Engineer/Architect's site office. Their main duties were to monitor payment of wages, check employment records, receive complaints and enquiries about wage payment from workers, and report irregularities to the Engineer/Architect supervising the contract or the Labour Department (LD);
- (c) LROs would be accountable to the relevant Engineer/Architect supervising the contract, although they were employed through the construction contracts; and
- (d) it was the initial plan to require the main contractors to employ one LRO on every construction site. The Administration would closely monitor

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the situation and review the workload of LROs to assess whether more LROs should be employed to suit work demand.

22. PSL said that LD would be working closely with ETWB and HA to provide suitable training to LROs, if necessary.

Recovery of outstanding wages in proven cases of wage default

23. Mr WONG Kwok-hing sought clarification whether the liability of the main contractors in wage payment would cover all the wages owed to the workers. Citing the Dickson case, he questioned whether the workers concerned could get back all their outstanding wages.

24. Mr WONG Kwok-hing also expressed concern about HA's proposal of incorporating some form of "performance bond" into the construction contracts. He considered the information given in the Administration's paper not detailed and comprehensive. He hoped that HA would revert to the Panel once a conclusion was reached. Mr LEE Cheuk-yan echoed Mr WONG's view and added that ETWB should likewise consider incorporating "performance bond" into contracts for public works.

25. DSETW(W)2 explained that one of the measures to improve workers' protection was to hold the principal contractors contractually responsible for the arrears of wages in their construction sites. Accordingly, in cases of wage default, the Government had the right to pay directly to the workers who were owed wages after the Labour Tribunal had awarded in favour of the workers, and to recover the payment so made from the contract fees due to the contractor under the contract. The workers should, however, report the arrears of wages to LRO within seven days after they were owed wages. The idea of incorporating "performance bond" into the public works contracts would not be considered for the time being, but would be reviewed when HA had completed the study on the feasibility of such an option.

26. Noting the concern about the "performance bond", DD(D&C)/HD said that HA would take a decision after consulting the banking and the insurance sectors. Meanwhile, the study was underway and was expected to be completed in three months' time. DD(D&C)/HD added that by introducing the improvement measures from 1 May 2006, HA would be empowered to deduct fees due to the contractors under the contracts for direct payment of outstanding wages to workers in proven cases of default.

Award of contracts

27. Mr LEUNG Yiu-chung considered that labour exploitation would not come to an end even with the introduction of improvement measures, so long as the Government continued with its practice to award contracts for public works and public

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housing projects to tenders of the lowest bid. Mr LEUNG suggested that the Administration should review its long-established policy of “lowest-bid selection”.

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28. DSETW(W)2 said that ETWB had since 2002 adopted a marking scheme covering assessment of all quality aspects for selection of tenders. Greater emphases were placed on past performance and technical aspects in selecting public works contractors, and only tenders with the highest combined scores would be recommended for acceptance. Of all contracts awarded in the past few years, about 30% of them did not offer the lowest bid. In this regard, Mr LEUNG requested the Administration to provide the statistics in greater detail.

Ways to enhance the improvement measures

Difficulties encountered in the trial contracts

29. Referring to the difficulties encountered in ETWB’s public works trial contracts in Annex 4 of the Administration’s paper, Ms LI Fung-ying asked whether the monitoring group had come up with any counter-measures.

30. DSETW(W)2 responded that the Working Group and the monitoring group led by ETWB with the participation of relevant government departments, labour unions and trade associations to develop contractual conditions governing timely wage payment would continue to review and examine the effectiveness of the monitoring system, and make adjustment and refinement as and when necessary. Indeed, ETWB was considering some proposals for enhancing the effectiveness of the improvement measures, for example, the employment of LROs by the consultants, if any, instead of the main contractors.

Way forward

31. Mr LEE Cheuk-yan expressed concern whether the Administration would promote the good practice of monitoring wage payment and subcontracting management in the private sector.

32. Mr Andrew CHENG noted that the improvement measures mapped out by ETWB and HA to tackle the wage arrears problem were by and large the same but with some variations. For example, HA would allow more layers of subcontracting. He considered that HA should model on ETWB’s measures and should not allow too many layers of subcontractors.

33. In response, PSL and DD(D&C)/HD made the following points –

- (a) in respect of layers of subcontracting, more layers might be required for

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building construction projects, given the size, complexity and types of specialists involved. For instance, more layers of subcontracting might be allowed for plastering trade but piling/foundation contracts would be allowed to have no more than one layer of subcontracting. Non-value added multi-layer subcontracting would not be allowed;

- (b) with a view to achieving continuous improvement, HA would engage a consultant to examine the improvement measures to ascertain whether adjustments were needed. The review would be carried out one year after the implementation of the measures; and
- (c) notwithstanding the differences between the measures formulated by ETWB and HA at the outset, they were implemented to tackle at source the problem arising from subcontracting. While the measures might be subject to further refinement in the light of implementation experience, any adjustments would not deviate from the cardinal principle of protecting workers' rights and entitlements.

34. Miss CHAN Yuen-han said that she could not agree to the Administration's statement claiming that HA had long been concerned about the problem of wage arrears, as stated in paragraph 3 of its paper. She said that had adequate efforts ever been made to address the problem, there would not be so many wage default cases in the past few years. The Dickson incident had reflected that not much had been done by HA to protect the rights of workers.

35. Responding to Miss CHAN's comments, DD(D&C)/HD said that HA took a very serious view on wage offences and would make every effort to help prosecute employers who contravened wage provisions under EO. Indeed, HA had already set up a hotline in 2005 to facilitate workers to report wage arrears.

IV. Proposed commencement of paragraphs (f) to (j) in Part II of the Schedule to the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation
(LC Paper No. CB(2)1813/05-06(04))

36. PSL briefed members on the Administration's proposal to bring into effect paragraphs (f) to (j) in Part II of the Schedule to the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (the Regulation) in September 2006, under which training courses for the operators of certain machines used in construction sites would be recognised.

37. Miss CHAN Yuen-han and Mr WONG Kwok-hing noted the Administration's implementation plan with concern. Ms CHAN asked whether any difficulties had ever been encountered while the first phase of the Regulation was implemented. Mr WONG said that he had received a number of complaints from workers who operated

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loadshifting machines which were covered under the first phase. The complainants' main concerns were –

- (a) the mandatory requirement for operators in possession of a training certificate (commonly known as the “green card”) to attend a refresher course for the renewal of the certificate every three or five years;
- (b) the high training fees charged by course provider(s) for different certificates;
- (c) the timing of the training and refresher courses might not be convenient to workers with active employment; and
- (d) given the current employment situation, those with various certificates still had difficulty in finding employment.

38. PSL said that as new technologies and safety requirements were introduced from time to time, the refresher courses were vital to assist operators to keep themselves abreast of the technical development and latest safety standards and measures. However, in recognising the difficulties which loadshifting machines operators faced, the Administration would explore whether the following measures could be introduced to alleviate the problem –

- (a) to charge course fees on a “cost-recovery” basis;
- (b) to review the pre-requisite that existing operators who attended the refresher training must have three years of relevant working experience within a span of five years; and
- (c) to ask course provider(s) to consider the feasibility of arranging training and refresher courses in the evenings or at weekends.

39. Mr LEE Cheuk-yan and Ms LI Fung-ying shared Mr WONG's concern whether the course fees would be affordable to the machine operators. Specifically, Mr LEE commented that the estimated course fees in relation to the operation of compactors and dumpers in the region of \$1,000 to \$3,000, as stated in paragraph 24 of the Administration's paper, were far too high to the workers. He requested the Administration to consider providing subsidies for the mandatory training and refresher courses to alleviate the financial burden on the workers operating the specified machines on construction sites.

40. PSL said that providing subsidy to course participants would be a new policy. In fact, some of the cost in running the courses had already been absorbed by the training body.

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41. Deputy Commissioner for Labour (Occupational Safety and Health) said that the fee for a two-day training course for forklift truck operators was \$420, and the certificate issued in respect of this particular machine was valid for 10 years. As regards the half-day refresher course which aimed at updating and reinforcing the safety awareness of operators, the fee was \$110 and the certificate issued upon completion of the course would be valid for another 10 years. He added that, in an attempt to help the workers, LD had discussed with the course provider(s) the level of training and examination fees for refresher courses. Some fees were subsequently reduced.

42. Ms LI Fung-ying questioned the necessity to require operators already in possession of a certificate to attend the refresher course for renewal of certificate. She held the view that renewal of certificate should be automatic if the holder had all along been working with the same type of machine. With regard to the various training certificates issued by different course providers, Ms LI suggested that the Administration should consider introducing a smart card so that different certificates could be subsumed into one card for the convenience of the workers.

43. Miss CHAN Yuen-han supported Ms LI's proposals and suggested that the Administration should consider –

- (a) offering financial assistance to those machines operators who could not meet the training expenses;
- (b) streamlining the procedures for obtaining and renewing the training certificates; and
- (c) liaising with course provider(s) for providing training or refresher courses after working hours or at weekends.

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44. PSL agreed to look into the issues raised by members in conjunction with the relevant parties and revert to the Panel.

45. There being no other business, the meeting ended at 10:30 am.