

(English Translation)

**LegCo Panel on Public Service
Meeting on Thursday, 23 May 2002 at 2:30 pm
in the Chamber of the Legislative Council Building**

Agenda Item III: 2002 Civil Service Pay Adjustment

Views of the Police Force Council Staff Side

Dear President and Members,

First of all, on behalf of the four Staff Associations of the Police Force Council, I would like to thank the Panel for giving us the opportunity to express the views of the Staff Side on this issue. We also wish to take this opportunity to raise some concrete proposals to resolve the problem. Although the Secretary for the Civil Service did make a clarification on the Government's intention to implement a pay cut on civil service through legislation by saying that the Government would follow the existing pay trend survey mechanism to adjust civil service pay, officers' worries had by no means been alleviated. It is mainly because of the unacceptable assumption and announcement of a reduction in civil service pay to be implemented in October 2002.

The Cultural Revolution of the Hong Kong Civil Service

In early 2002, a publication under the authority of the Finance Bureau published an anonymous letter entitled 'A typist with a conscience' which marked the beginning of the Cultural Revolution of the Hong Kong Civil Service and stunned the various sectors in the society of Hong Kong. Up till now, we still have not seen any follow-up disciplinary actions taken by the Secretary for the Civil Service to: investigate whether there were any directorate officers who had neglected their duties, wasted human resources and allowed their subordinates to be lazy at work; or to find out if there were anyone who had published the anonymous letter without verification, damaged the good reputation of the civil service of Hong Kong and acted in contravention to the Civil Service Regulations intentionally. The Secretary for the Treasury then surprised all of us by delivering the ridiculous message that 'deflation had already enabled the civil servants to enjoy an additional 12% of salary increase'. This has intensified the antagonism and differences between the public and the civil servants and turned the latter who have been praised all along as outstanding 'public

servants' into 'public enemies'. At the Legislative Council, the Secretary for the Treasury and the Financial Secretary even, in one concerted act, misled the public that the 'expenditure in civil service emoluments' was one of the major causes for the financial deficit of the Government. Thus the civil servants were put on trial by the public opinion, and became anxious and restless with no peace of mind.

Finally, the Financial Secretary announced the assumption of a 4.75% reduction of the civil service pay across the board in his Budget Speech and the intention to introduce a bill into the Legislative Council to achieve his goal of a pay cut. He also implied that if the civil servants did not accept the pay cut, they would be regarded as unwilling to stand by the rest of the community in this time of difficulty and share the burden. At the same time, the Secretary for the Civil Service released to the public that there was a precedent for civil service pay cut in Hong Kong. Although we had pointed out that this was wrong, he did not admit his mistake frankly but instead said that we were too stubborn. Such acts of bureau secretaries has already destroyed the morale and image of the civil service thoroughly and pushed them to a new low.

The Staff Side of the Police Force Council is aggrieved by the despicable method that the Government used to force the civil servants to accept the pay cut, which has made us lose our dignity and misled the public.

The existing effective civil service pay adjustment mechanism

The Government has all along followed the existing Pay Trend Survey mechanism and would always wait till the release of the results of the Pay Trend Survey to adjust the civil service pay. According to the existing mechanism, the Government would have to consider the results of the pay trend survey as well as other factors including budgetary considerations, economic condition, living standard index and, the claim and morale of the civil service. We would also like to reiterate here that the results of the pay trend survey only serves as a reference and it is not obligatory for the Government to stick to the results. If the Government and the various major civil service staff associations cannot achieve a consensus and agreement on the pay adjustment, the Government should refer the issue to an independent investigation committee for arbitration.

However, the Financial Secretary implied in his Budget that the pay adjustment this year would be a reduction of 4.75% well before of the release of the pay trend survey results. This act not only disrespect the existing pay trend survey mechanism

and the civil service staff associations, but also disrespect the independence of the Pay Trend Survey Committee.

In our views, the Government has ignored all proper consultations and has deliberately undermined the well recognized and effective Pay Trend Survey mechanism, a mechanism we have previously been assured to be adhered to. The repeated announcements by senior government officials in this respect through the media rather than the direct consultation channels, have done much to undermine our confidence. Our members are aggrieved at the lack of genuine consensus building.

Protection for the civil servants in the Basic Law

Article 100

“Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.”

Why are there such provisions in Article 100 of the Basic Law? We believe that the spirit of stipulating this minimum standard was to enable the original civil servants to stay in the service to serve the people of Hong Kong loyally at ease, but not to put a full stop to the improvement of the pay, allowances, benefits and conditions of service in the civil service.

Article 39

“The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

We take the police work as our life long career. We work from before dawn till after dark, under all weather conditions and at the risk of outbreak of incidents that might endanger our lives to contribute to the stability and law and order of Hong

Kong. We only hope that we can have three meals a day and a shelter to live under, and that we can support the living of our wives and children. Are we, police officers, part of the labour force? Are police officers protected by the international labour conventions mentioned in Article 39 of the Basic Law? What protections do police officers have with regard to our labour rights?

Article 160

“Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee for the National People’s Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention to this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.

Documents, certificates, contracts, and rights and obligation valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong Special Administrative Region, provided that they do not contravene this Law.”

Does a contract exist in the employment relation between the civil servants and the Government? According to the judgment of the cases Choi Sum and Others V A.G. (No. 211 of 1976), Lam Yuk Ming and Others V A.G. (1980 HKLR 815), and Harold William Newnham Fynn (CA NO. A3562 of 1990) of the High Court of Hong Kong in the past, there exists a contract in the employment relation between the civil servants and the Government. If the Government introduces a bill on pay cut and you, the honourable members of the Legislative Council, accept and pass the bill, then you would become the accomplices of the Government in destroying the Basic Law.

The fixed salary income of the police officers and its restrictions

Like the average civil servants, police officers have a fixed income. Many officers would therefore keep their family expenditures such as school fees, mortgage installments etc. within the limit of their income. If our salaries were suddenly reduced, the budget of our income and expenditure would be severely affected. For those officers with a negative asset, this would increase the chances of their application for bankruptcy.

The impact of the reduction of civil service pay at basic ranks on the society of Hong Kong

If the civil service pay were reduced, it would be true that the expenditure of the Government could be reduced, but the consequences could not be ignored! We learn from our members that should the Government implement a pay cut, they could not avoid the necessary payment of their daily family expenditures. What they could only do is to reduce some inessential expenditure such as donations and leisure expenses in order to offset the reduction in their income. If the 180,000 civil servants, and the employees in the government subvented organizations (including teachers, social workers etc.) who has made up a total of no less than 300,000 people, all cut their leisure expenses together, it would make the already frail consumer market to lose another 6 billion dollars a year. Will this impose a critical impact on the service industries which are already very vulnerable? How many employees would lose their jobs consequently? How much money would the Government need to spend to run training courses for these dismissed service industries employees? Will the financial deficit of the Government of the Special Administrative Region be improved accordingly?

Pay cut and the labour legislation

Salary, benefits and the conditions of work are all parts of the contract of employment. Both parties should respect the content of the contract which has been made either orally or in written form when the employee reported duty. Any changes must be agreed by both parties. Any unilateral change of the contract should not be carried out. Therefore, if the employer announces a pay cut unilaterally and the employees have expressed their disagreement, the employer cannot insist on the pay cut. The implementation of a pay cut without the employees' consent can be regarded as unlawful reduction of salaries and is an illegal act. The employees can make a claim on that. Of course, the employers still have a golden tool – to dismiss the employees who disagree. Dismissal under such circumstances is unreasonable and therefore must be compensated. If the Government implements the pay cut by legislation, it would be exploiting the labour rights of the civil servants, messing up law by passing law and destroying the spirit of rule of law in Hong Kong.

Conclusion

The unique and important role of the Force has generally been recognized in the society of Hong Kong. This is reflected in the existence of a separate Police Pay Scale. This, along with the good performance of the Force in service and in the improvements in efficiency in the past few years, do not seem to have been adequately considered or recognized by the Government. We believe that through good management the Force can provide sufficient fiscal savings and there will be no need for a pay cut in this fiscal year or in future years.

The Government should not underestimate the adverse effect on staff morale and stability in the Force if there were a reduction of pay in October 2002. The dissatisfaction of the officers and their families is expected to grow if there is no effort to explore alternative ways to produce fiscal savings.

Police Force Council Staff Side