

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Staff Consultation Mechanism in the Civil Service

Purpose

This paper presents, for Members information, an overview of the staff consultation mechanism within the civil service. As requested by the Panel, this paper also sets out the Government's response to the recommendations made by the Committee on Freedom of Association of the International Labour Organization in its 334th Report arising from a submission made by the Hong Kong Confederation of Trade Unions (HKCTU) concerning the 2002 civil service pay adjustment exercise.

Background

2. The Government values good staff relations in the civil service. Staff are consulted on matters that affect them. Their views are taken into account in the formulation of the relevant policies on civil service matters.

3. There is a well-established consultative machinery within the civil service which is built on three levels: central, departmental and individual. Through this machinery, individual staff members, staff unions/associations and staff consultative bodies are consulted on a wide range of subjects including conditions of service, working environment and various aspects of their work. This consultative machinery is supplemented by other channels of communication between management and staff.

Consultative Machinery

(i) Central consultative councils

4. There are four Central Staff Consultative Councils, namely the Senior Civil Service Council ("SCSC"), the Model Scale 1 Staff Consultative Council ("MOD 1 Council"), the Police Force Council ("PFC") and the Disciplined Services Consultative Council ("DSCC").

5. It is the Government's policy to consult the Staff Sides of the Central Consultative Councils on any significant change to the terms and conditions of service which affects a substantial part of the service. Service-wide issues concerning the terms and conditions of employment of civil servants, such as pay, fringe benefits, measures to improve the overall efficiency of the civil service, etc. are discussed at the Central Consultative Councils.

6. Each Council comprises the Official/Management Side and the Staff Side. Members of the Official/Management Side come mainly from the Civil Service Bureau and other bureaux dealing with issues of concern to staff, while members of the Staff Side are all nominated by recognized staff associations/unions in accordance with the constitution of the respective Council. The Councils hold meetings regularly.

Senior Civil Service Council

7. The SCSC was established in 1968 on the basis of the 1968 Agreement signed between the Government and the three major staff associations existing then, namely, the Hong Kong Chinese Civil Servants' Association; the Association of Expatriate Civil Servants of Hong Kong; and the Senior Non-Expatriate Officers' Association¹. The three associations together constitute the Staff Side of SCSC. Any change to the composition of SCSC requires amendment to the 1968 Agreement and consultation with the Staff Side.

MOD 1 Council

8. The MOD 1 Council was established in 1982 to provide a channel of communication with Model Scale 1 staff. The different conditions of employment of these staff justify the establishment of a separate central consultative forum to deal with matters affecting them. The Staff Side members of the Council consist of not more than two representatives from –

- (a) each of the staff associations with a membership of 1 000 or more Model Scale 1 staff; and
- (b) every 1 000 or more members from staff associations with a combined membership of 1 000 or more Model Scale 1 staff.

The eight constituent staff unions/associations currently on the Staff Side of the MOD 1 Council are – the Hong Kong Chinese Civil Servants' Association; the

¹ The Senior Non-Expatriate Officers' Association has since October 2003 been renamed as the Hong Kong Senior Government Officers Association.

Hong Kong Civil Servants General Union; the Government Municipal Staff General Union; the Government Staff Union; the Government Employees Association; the Agriculture, Fisheries and Conservation Department Staff Association; the Government Property Attendants Association; and the Hong Kong Government Water Supplies Department Employees Union.

Police Force Council

9. The PFC was established in 1982 to promote cooperation between the Government and officers of the rank of Chief Superintendent of Police and below. The Staff Side consists of representatives from four Police staff associations, namely, the Superintendents' Association; the Hong Kong Police Inspectors' Association; the Overseas Inspectors' Association; and the Junior Police Officers' Association.

Disciplined Services Consultative Council

10. The DSCC was established in 1990 to promote cooperation between the Government and staff of the disciplined services other than the Police Force. The Staff Side comes from 15 recognized staff associations/unions in the five general disciplined services, namely, Customs and Excise Department; Correctional Services Department; Fire Services Department; Government Flying Service; and Immigration Department. At least one representative from each of the staff associations but not exceeding a total of five representatives from each service is represented on the Council. At present, there are 25 Staff Side members on the Council.

(ii) Departmental consultative committees

11. At the departmental level, departments with more than 100 staff are encouraged to set up Departmental Consultative Committees ("DCC") comprising the departmental management and the staff representatives who are elected by the staff themselves or nominated by their staff associations. A Civil Service Bureau representative attends the DCC meetings to explain central government policies and practices and acts as a bridge between central government and departments. A DCC aims to achieve better understanding and cooperation between management and staff through regular discussions on matters affecting the well-being of the staff in the department.

12. A DCC normally discusses matters connected with such topics as departmental consultative arrangements, pay scales of different grades within the department, conditions of service of individual grades within the department, appointment and promotion criteria for individual grades within the department, departmental welfare and recreational activities, improvement of office

organization and methods, and productivity of staff, etc.

13. Some departments also set up sub-committees to their DCCs (Sub-Departmental Consultative Committees), for example, the General Grades Consultative Committee, to facilitate communication between a particular group of staff and management within the department. At present, there are 85 Departmental Consultative Committees and 90 Sub-Departmental Consultative Committees in 63 bureaux/departments.

(iii) Individual level

14. Individual members of the civil service as well as individual staff associations/unions have ready access to the respective heads of departments or grades as well as to the Civil Service Bureau to make known their views. There are also established procedures for staff to lodge complaints.

(iv) Other channels of communication between management and civil servants

15. Apart from the above consultative machinery, the Government updates staff on major civil service issues and solicits their views on issues of mutual concern through informal meetings with major staff associations and theme-based open fora. The Secretary for the Civil Service also writes regularly to all staff to share with them his views on civil service matters and to keep them posted on significant developments on matters of concern to civil servants. For major civil service issues, consultation documents may also be issued to solicit staff's views. Through these various channels of communication, civil servants are encouraged and are given ample opportunities to, either individually or collectively through their unions/associations, put forward their views on civil service matters so that management can take them into account before making a decision.

16. The three-tier consultative machinery forms the backbone of the machinery for consultation in the civil service. In addition, the Government establishes customised procedures/fora for consultation with staff on specific subjects where the circumstances so warrant. The Consultative Group on Civil Service Pay Adjustment Mechanism set up in April 2003 is a case in point.

17. To take forward the development of an improved civil service pay adjustment mechanism in support of the established policy that civil service pay should be broadly comparable to private sector pay, the Government has set up a Consultative Group as a regular forum for intensive discussions between management and staff representatives on a broad range of issues related to the exercise. The staff side of the Consultative Group comprises the Staff Sides of

the four Central Consultative Councils and the staff representatives of the four major service-wide staff unions. Since its establishment in April 2003, the Consultative Group has held 23 meetings/discussion sessions, and will continue its deliberations until the improved mechanism is drawn up.

Recommendations of the Committee on Freedom of Association of the International Labour Organization in its 334th Report

18. Arising from the submission of the HKCTU concerning the 2002 civil service pay adjustment exercise, the Committee on Freedom of Association of the International Labour Organization made four recommendations in its 334th Report.

19. The first recommendation of the Committee on Freedom of Association was that the Government should be requested to engage in consultations with the Staff Sides of the Central Consultative Councils without delay with a view to taking the appropriate legislative measures so as to establish a collective bargaining mechanism allowing public employees who are not engaged in the administration of the State to negotiate collectively their terms and conditions of employment in accordance with Article 4 of Convention No.98².

20. In line with its general policy to take measures appropriate to local conditions to encourage and promote³ negotiations between employers and employees or their respective organisations on a voluntary basis, the Government has established within the civil service an elaborate staff consultative machinery (see paragraphs 3 – 17 above), which encourages effective communication between management and staff on matters concerning the terms and conditions of employment of civil servants and allows participation of staff representatives in the determination of such matters. Although there is no legislation providing for collective bargaining in the civil service, nor is such a legislative approach appropriate to the local conditions of Hong Kong as explained in paragraph 25 below, the principles for the operation of the staff consultative machinery in the civil service are similar to many of those underlying collective bargaining (e.g. voluntary nature of negotiation, the

² Article 4 of Convention 98 reads: “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”

³ During the preparatory work for Convention No.154, the Committee on Collective Bargaining agreed that “the word ‘promotion’ (of collective bargaining) should not be capable of being interpreted in a manner suggesting an obligation for the State to intervene to impose collective bargaining” (International Labour Office, Record of Proceedings of the 67th Session of the International Labour Conference, 1981, p.22/6, para.49). The obligation to promote collective bargaining thus excludes recourse to measures of compulsion.

principle of good faith and the objective of regulating the terms and conditions of employment by means of agreement).

21. In line with the provisions of Convention No.98, the Government recognises the right of civil servants to join and form staff associations or unions for the purpose of promoting the well-being of civil servants⁴ and effective consultation on conditions of service. Staff unions enjoy the right to resort to industrial action under the Trade Unions Ordinance. The staff sides of the Central Consultative Councils are made up of staff representatives who are nominated by the recognised staff unions/associations themselves in accordance with the constitution of the respective Council.

22. The four Central Consultative Councils discuss, among others, matters concerning the terms and conditions of service which affect a substantial part of the civil service as a whole. In line with the principle of good faith⁵, the Government and the Staff Sides of the Central Consultative Councils have committed themselves to discussing in a spirit of goodwill any matters that fall within the scope of the Central Consultative Councils and to reaching agreement if possible. It is the Government's policy and practice that it will not make any considerable change in conditions of service without prior consultation with the staff sides.

23. In the event that agreement cannot be reached after full staff consultation and after exhausting other existing administrative channels, the matter may be referred to an independent committee of inquiry as provided for in the 1968 Agreement and the constitution of the PFC, subject to conditions laid down therein. The recommendations of the committees of inquiry will be binding on both the Official/Management Side and the Staff Side⁶.

24. Reinforcing the staff consultative machinery are various

⁴ On grounds of public safety and public order, members of the Police Force are prohibited by Section 8 of the Police Force Ordinance, Chapter 232, from joining any trade union. Nevertheless, the Commissioner of Police has recognized four staff associations composed only of police officers. The views of these associations are sought through the Police Force Council on matters related to the welfare and conditions of service of police officers.

⁵ The Committee on Freedom of Association has stated that the principle of good faith implies making every effort to reach an agreement, conducting genuine and constructive negotiations, avoiding unjustified delays, complying with the agreements which are concluded and applying them in good faith; to this may be added the recognition of representative trade union organizations (International Labour Office, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the International Labour Organization, 1996, paragraphs 814-818; and Case No. 1919 (Spain) in the 308th Report of the Committee on Freedom of Association, paragraph 325).

⁶ The recommendations will be subject to any decision thereon of the Chief Executive in Council and/or the Legislative Council or the Finance Committee thereof whenever the Chief Executive considers that reference to any of those bodies is necessary.

independent bodies⁷ which provide impartial advice to the Government on matters concerning the pay and conditions of employment for the civil service. Members of these advisory bodies are appointed from outside the Government. In general these bodies take into account the views expressed by staff and management before tendering their advice to the Government.

25. In Hong Kong, the Administration formulates policy proposals on matters concerning the terms and conditions of employment of the civil service, after consulting the staff sides, for consideration and decision by the Chief Executive in Council. Where the Administration's policy decisions, such as those related to civil service pay, can only be implemented with the funding support of the Legislative Council or the enactment of legislation, such decisions will be subject to the scrutiny of the Legislative Council, which is vested with the powers and functions, among others, to make laws and to approve public expenditure. Hence, the terms and conditions of employment of the Hong Kong civil service cannot be determined solely between the Administration and the staff sides.

26. It is our understanding that Article 4 of Convention No. 98 does not place an obligation on any ratified countries/territories to establish a collective bargaining mechanism or to adopt legislative measures for the purpose of establishing such a mechanism.

27. The mechanism for determining the terms and conditions of employment of civil service in Hong Kong, which comprises voluntary negotiation through an elaborate staff consultative machinery, impartial advice by independent bodies to the Government and the Legislative Council's scrutiny of proposals from the Administration, has been adopted in the light of Hong Kong's particular circumstances. This well-tried and long-established mechanism operates in compliance with the spirit and principles of Article 4 of Convention No.98.

28. The second recommendation of the Committee on Freedom of Association was that the Staff Sides of the Central Consultative Councils are expected to be allowed in the future to engage in full and frank consultations with the Government over the terms and conditions of employment of public employees who are engaged in the administration of the State in accordance with Article 7 of Convention No. 151.

29. We should reiterate that as explained in paragraphs 3 to 16 above,

⁷ They are (a) the Standing Commission on Civil Service Salaries and Conditions of Service; (b) the Standing Committee on Directorate Salaries and Conditions of Service; and (c) the Standing Committee on Disciplined Services Salaries and Conditions of Service.

an elaborate three-tier mechanism operating in compliance with the spirit and principles of Article 4 of Convention No.98 and Article 7 of Convention No.151 already exists in the civil service for full and frank consultations between management and staff (regardless of whether they are engaged in the administration of the State) on various issues of concern to civil servants, including the terms and conditions of employment of public employees. As is the current practice, the Government will build on the established staff consultation mechanism and put in place customised procedures or fora to engage staff representatives in more intensive consultation on the terms and conditions of employment of civil servants, where necessary and appropriate, as in the case of the development of an improved civil service pay adjustment mechanism (see paragraph 17 above).

30. The third recommendation of the Committee on Freedom of Association was that the Government is expected to accept in the future the appointment of the committee of inquiry provided in the 1968 Agreement between the Government and the main staff associations in case of dispute over the determination of the terms and conditions of employment of public employees.

31. According to the criteria for the appointment of a committee of inquiry as laid down in the 1968 Agreement⁸, the Chief Executive may appoint a committee of inquiry provided that the matter in dispute is not one which, in his opinion, is trivial; or is a matter of settled policy; or affects the security of Hong Kong. The Government will continue to observe the 1968 Agreement and, in the event of a dispute over the determination of terms and conditions of employment of civil servants in the future, consider appointing a committee of inquiry where appropriate and necessary in accordance with the relevant provisions of the 1968 Agreement.

32. The fourth recommendation of the Committee on Freedom of Association was that the Government should avail itself of the technical assistance of the International Labour Office so as to bring its law and practice into full conformity with freedom of association standards and principles.

33. As explained in this paper, the Government is fully committed to complying with the freedom of association standards and principles and will continue its efforts in this regard. The Government will consider seeking technical assistance from the International Labour Office as and when necessary.

⁸ The same criteria for the appointment of a committee of inquiry are laid down in the constitution of the PFC.

Conclusion

34. The Government has put in place effective measures appropriate to the conditions of the civil service in Hong Kong in compliance with the relevant articles of the International Labour Conventions that are applicable to Hong Kong. The existing staff consultative machinery in the civil service, which allows for staff participation in the determination of their terms and conditions of employment, effectively provides for voluntary negotiation of the terms and conditions of employment between staff and the management. We will continue to monitor closely the operation of the staff consultative machinery within the civil service and to make improvements where necessary and appropriate to enhance the effectiveness of consultation with staff on matters affecting their terms and conditions of employment.

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