

**President's ruling on
Employment (Amendment) (No. 3) Bill 2000
proposed by Hon Andrew CHENG Kar-foo**

I have been requested by Hon Andrew CHENG to give a ruling on his proposed Employment (Amendment) (No. 3) Bill 2000 which he intends to introduce into this Council. I am required to rule whether the Bill relates to the restrictions prescribed in Rule 51(3) and (4) of the Council's Rules of Procedure.

Rule 51(3) and (4) of the Rules of Procedure

2. Rule 51(3) and (4) reads as follows:

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

Purposes of the Bill

3. The object of the Bill is to impose requirements on the employer to stipulate in writing and to solicit an employee's consent to any variation of the terms of the employee's contract of employment, and to allow an employee to elect to calculate his severance and long service payments from his average wages over the 12 months prior to any reduction in wages that had occurred within the 24 months prior to the date when the employee resigned or was dismissed.

4. Clause 1 of the Bill also provides that the Bill, if enacted, shall take effect from the date it is published in the Gazette, in order to deter employers from terminating contracts of employment or reducing the wages and employment benefits of their employees in anticipation of the enactment of the Bill.

5. The Bill is essentially the same in substance as the Employment (Amendment) Bill 1999 proposed by Mr CHENG, which I ruled in July 1999 as relating to Government policies within the meaning of Rule 51(4) and

therefore required the written consent of the Chief Executive for introduction. Nevertheless, in line with the usual practice, I have again sought the views of the Secretary for Education and Manpower (SEM) on the Bill and invited Mr CHENG's response to the Secretary's views.

The Administration's views

6. SEM is of the view that Mr CHENG's bill seeks to change existing government policies on labour relations by proposing to regulate wage reduction matters by law. The existing government policy is that such matters should be dealt with through direct and voluntary negotiation between employers and employees, instead of through legislation. SEM says that government's policies on such issues were clearly promulgated in the speech of the Secretary for Education and Manpower during the debate on the motion "Amending legislation to regulate wage reduction" at the Council meeting on 18 November 1998. The Labour Department has also issued a set of guidelines called "Guidelines on what to do if wage reductions and retrenchments are unavoidable" to offer advice to employers and employees on how to deal with wage reductions and retrenchments. The Bill is therefore inconsistent with the settled Government policy on wage reduction matters.

7. SEM also says that the Bill seeks to change existing government policies on the calculation of severance payment and long service payment; such calculation has already been stipulated in the existing provisions of the Employment Ordinance, i.e. an employee may elect to calculate his severance and long service payments on the basis of his wages for the previous month or his average wages over the twelve months prior to his resignation or dismissal.

8. Lastly, SEM states that clause 1 of the Bill is inconsistent with the Government's legal policy to not introduce legislation which has retrospective effect unless there are specific justifications.

Response from Hon Andrew CHENG

9. In response to my invitation, Mr CHENG has stated that he has no comments to make in response to SEM's views.

My opinion

10. In my previous rulings relating to Rule 51(4), I have stated my opinion that the government policies referred thereto are those that have been decided by the Chief Executive or Chief Executive in Council under Basic Law 48(4) and 56. They also include those decided by former Governors and

Governors in Council prior to the implementation of the Basic Law which are still in force, and those decided by authorized public officers and promulgated in the Legislative Council or its committees. Also, policies reflected in legislation are government policies for the purpose of Rule 51(4).

11. I note that the Labour Department has issued guidelines on wage reduction matters as a result of the discussion by the Labour Advisory Board, which is a tripartite consultation machinery established to deal with policies on employer-employee relationship. It is evident that the Administration has taken action in this particular case to achieve the objective of encouraging negotiation between employers and employees, instead of regulating such negotiation through legislation as proposed by the Bill. This process was promulgated at a meeting of the Legislative Council by the Secretary for Education and Manpower on 18 November 1998.

12. The Bill also seeks to change the method by which severance payment and long service payment are calculated. I am satisfied that there is a government policy on the method of calculating severance payment and long service payment. Such policy is reflected in relevant provisions of the Employment Ordinance.

13. As regards SEM's claim that clause 1 of the Bill is inconsistent with the Government's legal policy to not introduce legislation with retrospectivity unless there are specific justifications, my view is that this so-called government legal policy is but a well recognized general principle of fairness and, in the present context, could not be turned into a government policy within the meaning of Rule 51(4) of the Rules of Procedure. The fact that clause 1 may be contrary to that principle for being a retrospective provision is not relevant to my consideration of whether the Bill relates to the government policies referred to in Rule 51(4).

Ruling

14. As the implementation of the Bill will have substantive effect on existing government policies, I rule that the Bill relates to government policies and therefore its introduction requires the written consent of the Chief Executive.

(Mrs Rita FAN)
President
Legislative Council

15 February 2001