

立法會
Legislative Council

LC Paper No. CB(1)1745/05-06
(These minutes have been seen
by the Administration)

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Panel on Public Service

Minutes of meeting
held on Monday, 20 March 2006 at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon LI Fung-ying, BBS, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon WONG Kwok-hing, MH
Hon KWONG Chi-kin

Public officers attending : Agenda Items II and III

Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew WONG Ho-yuen, JP
Permanent Secretary for the Civil Service

Agenda Item II

Miss Jennifer MAK, JP
Deputy Secretary for the Civil Service (1)

Agenda Item III

Mr Christopher WONG
Deputy Secretary for the Civil Service (3)

Clerk in attendance : Miss Salumi CHAN
Chief Council Secretary (1)5

Staff in attendance : Ms Rosalind MA
Senior Council Secretary (1)8

Ms May LEUNG
Legislative Assistant (1)8

Action

I. Date of next meeting and items for discussion

(LC Paper No. CB(1)1067/05-06(01) — List of outstanding items for discussion

LC Paper No. CB(1)1067/05-06(02) — List of follow-up actions)

Members agreed that the following items be discussed at the next regular meeting scheduled for Thursday, 20 April 2006:

- (a) Review of fringe benefit type of civil service allowances; and
- (b) Resumption of open recruitment for selected grades included in the Second Voluntary Retirement Scheme.

2. On paragraph 1(a) above, members noted that the Administration proposed to seek the Panel's views on the final proposals on the review of fringe benefit type of civil service allowances before submitting the proposals to the Finance Committee for approval at its meeting scheduled for 19 May 2006. As regards paragraph 1(b), members noted that the Administration proposed to consult the Panel on the resumption of open recruitment for selected grades that had been included in the Second Voluntary Retirement Scheme before the expiry of the recruitment freeze imposed on these grades in March 2008 for meeting new essential service needs and addressing manpower planning problems.

3. On the proposed discussion item on "Implementation of five-day week in the Government" scheduled for discussion at the Panel meeting in May 2006, the Chairman advised that in response to members' request raised in January 2006, the

Administration had undertaken to consider whether the briefing for the Panel on the subject could be advanced to April. The Administration had recently confirmed that it would not be ready to brief the Panel on the subject in April and would maintain its proposal to brief the Panel in May.

II. Employment of non-civil service contract staff

(LC Paper No. CB(1)1067/05-06(03) — Paper provided by the Administration

LC Paper No. CB(1)1095/05-06(01) — Letter dated 14 March 2006 from Hon LEE Cheuk-yan

LC Paper No. CB(1)1067/05-06(04) — Background brief prepared by the Legislative Council Secretariat)

4. The Chairman drew members' attention to the Civil Service Bureau (CSB)'s reply dated 18 March 2006 tabled at the meeting. The reply provided a breakdown of "length of continuous service" of non-civil service contract (NCSC) staff by bureau/department, as requested by Mr LEE Cheuk-yan.

(Post-meeting note: CSB's reply dated 18 March 2006 was issued to members vide LC Paper No. CB(1)1123/05-06(01) on 21 March 2006.)

Briefing by the Administration

5. At the invitation of the Chairman, the Secretary for the Civil Service (SCS) briefed members on the employment of NCSC staff. SCS pointed out that the NCSC Staff Scheme was introduced in 1999 with the aim of providing heads of bureaux, departments and offices (hereafter shortened as HoDs) with a flexible means to employ staff on fixed term contracts outside the civil service establishment to meet service needs which were short-term or part-time, or subject to market fluctuations, or where the mode of delivery of the service was under review. As at 31 December 2005, there were 15 687 full-time NCSC staff employed in 68 bureaux/departments/offices. The figure was comparable to the position as at 30 June 2005. The breakdown of NCSC staff by department, by contract duration, by monthly salary range and by length of continuous service were in Annexes 1 to 4 of the paper provided by the Administration respectively.

6. SCS also pointed out that CSB would conduct a special review of the NCSC staff situation on a department-by-department basis to better understand individual department's overall manpower situation. The review would take some six months' time to complete, which was a very optimistic estimation given the large number of departments involved.

Discussion

Concern about possible abuse of NCSC Staff Scheme

7. Referring to the information provided in Appendix I of the background brief prepared by the Legislative Council (LegCo) Secretariat, Mr WONG Kwok-hing was concerned about the increase in the number of NCSC staff with length of current contract of one to three years from 10 460 as at 30 June 2004 to 11 230 as at 30 June 2005. In reply, the Permanent Secretary for the Civil Service (PSCS) explained that the NCSC Staff Scheme aimed at providing flexibility for HoDs to employ staff on fixed term contracts to meet their operational needs under specific circumstances. As such, the number of NCSC staff employed by different bureaux/departments/offices was subject to changes at different periods. On the length of contracts, PSCS pointed out that in response to concerns of Panel members expressed at previous meetings, CSB had reviewed its guidelines on employment of NCSC staff and reminded HoDs to avoid offering short contracts where the service needs justified employment of a longer duration.

8. Noting that 4 045 NCSC staff (25.8%) had continuous service of three to less than five years and 2 318 NCSC staff (14.8%) had continuous service of five years or more as at 31 December 2005 (Annex 4 to the paper provided by the Administration), Mr WONG Kwok-hing was concerned whether the NCSC Staff Scheme had been abused by HoDs to employ NCSC staff to meet long-term operational needs. Quoting the example of the NCSC staff who had been employed for performing cleansing duties in the Food and Environmental Hygiene Department (FEHD) continuously for eight years through repeated renewal of contracts, Mr WONG opined that the long-term operational need of these NCSC posts should have already been established. In this connection, he pointed out that the Chief Executive (CE) had undertaken at an earlier meeting with representatives of the labour sector that the Administration would review the long-term operational need of the posts filled by NCSC staff and offer long-term appointment to the staff concerned if the need was established. Mr WONG also enquired about the benchmarks to be used in assessing the long-term operational need of the NCSC posts in the upcoming review.

9. Ms LI Fung-ying shared the concern of Mr WONG Kwok-hing. She pointed out that when the NCSC Staff Scheme was introduced in 1999, NCSC staff were employed on fixed-term contracts of up to three years. However, over 6 000 NCSC staff had continuous service of three years or more as at 31 December 2005. Ms LI also pointed out that she had received complaints from staff of the Leisure and Cultural Services Department (LCSD) that the Department had employed more and more NCSC staff after the departure of civil servants in the two rounds of voluntary retirement schemes and through natural wastage. She was concerned whether HoDs had observed the principle that the appointment of NCSC staff would not replace the making of civil service appointments.

10. SCS pointed out that in the guidelines issued by CSB to HoDs, it was stated that NCSC staff should be employed on fixed-term contracts of up to three years.

However, HoDs might offer a further contract to NCSC staff upon expiry of the current one, having regard to relevant factors such as the continued operational need for the staff concerned. In this connection, SCS pointed out that some NCSC staff were employed to meet time-limited projects such as the territory-wide removal of unauthorized building works programme undertaken by the Buildings Department and such projects might last several years. Moreover, some NCSC staff were employed to provide services of which the mode of delivery was being reviewed. Such review could take time as the Administration had to conduct thorough consultation with the relevant LegCo Panels and staff bodies. Given the variety and complexity of the circumstances under which NCSC staff were employed, SCS hoped that Members would appreciate the difficulties in applying uniform benchmarks across the board.

11. PSCS added that from his understanding, CE had not made any undertaking to offer long-term employment to NCSC staff. Instead, CE had expressed appreciation of the concern of the labour sector and agreed that follow-up actions would be taken to examine the issues relating to the employment of NCSC staff. In this connection, CSB would examine the NCSC staff situation on a department-by-department basis with a view to getting detailed information on the types and nature of services provided through the employment of NCSC staff and whether such employment was in line with the purposes of the NCSC Staff Scheme. Both SCS and PSCS assured members that if it was established by the review that certain posts filled by NCSC staff were required to meet service needs on a long-term basis, CSB would devise feasible measures with the concerned HoDs.

12. Mr LEE Cheuk-yan reiterated his concern raised at the last Panel meeting on 28 February 2006 on whether NCSC Staff Scheme had been abused by HoDs. Mr LEE pointed out that at the last meeting, he had requested CSB to provide the Panel with a breakdown of NCSC posts by bureau/department, showing the duration of the posts and whether the posts were created for any of the following purposes:

- (a) To meet service need that was short-term or did not require keeping staff on a long-term basis;
- (b) To meet service need that required staff on a part-time basis;
- (c) To meet service need where the mode of delivery of the service was under review or likely to be changed; and
- (d) To meet service need on a long-term basis.

13. Mr LEE Cheuk-yan was dissatisfied that CSB had not provided the required information mentioned in paragraph 12 above. SCS explained that the information was not readily available as CSB did not collect such detailed information from bureaux/departments/offices. She stressed the need for CSB to concentrate its efforts

in the following six months to conduct the special review of the NCSC staff situation on a department-by-department basis.

14. Mr LEE Cheuk-yan requested CSB to review the situation where large number of NCSC staff had been continuously employed for five years or more by some government departments, such as LCSD. In this connection, Mr LEE referred to the information sheet he had tabled at the meeting on the establishment and strength of civil servants and NCSC staff in the public libraries of LCSD. Pointing out the long-term operational need of public library services, Mr LEE considered it unacceptable for LCSD to employ NCSC staff to fill the majority of the Assistant Librarian posts and all the Library Assistant posts. He also pointed out that many of the NCSC staff working in the public libraries had been continuously employed for seven years or more. He therefore queried whether the posts filled by these NCSC staff were created for any of the five purposes set out in paragraph 3(a) to (e) of the paper provided by the Administration.

(Post-meeting note: The information sheet tabled at the meeting by Hon LEE Cheuk-yan was issued to members vide LC Paper No. CB(1)1123/05-06(02) on 21 March 2006.)

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15. Regarding the purposes for employment of NCSC staff by LCSD for public library services, SCS undertook to confirm with the HoD concerned and report to the Panel in due course. She also pointed out that in line with the principle of “Big Market, Small Government”, the Administration would consider alternative mode of delivery of public services other than by the direct labour employed by the Government. She noted that for some services, alternative modes of delivery might be more cost-effective. She further noted that the mode of the delivery of library services might be under review by LCSD, hence the employment of NCSC staff to deliver these services for the time being.

16. While expressing doubts on the long lead time (up to seven years) required by LCSD to review the mode of delivery of its library services, Mr LEE Cheuk-yan stated his opposition to such a review and the outsourcing of library services to the private sector. In response, SCS reiterated that despite the dissenting views held by some LegCo Members on the delivery of public service through alternative means, the Government was committed to ensuring delivery of public services in the most cost-effective manner having regard to the principle of “Big Market, Small Government”.

17. Referring to CSB’s reply dated 18 March 2006 tabled at the meeting, Mr Howard YOUNG noted that 2 318 NCSC staff had been continuously employed for five years or more as at 31 December 2005. He considered it unfair to the NCSC staff concerned if they were continuously employed on NCSC terms to meet long-term service needs. Mr YOUNG urged CSB to review the situation in those bureaux/department/offices which had employed NCSC staff continuously for a long period of time and examine critically the purposes for the employment of such staff.

Where the long-term service needs of specific posts were established, the Administration should devise feasible measures for meeting these service needs. On the other hand, Mr YOUNG noted that LCSD and the Post Office had each employed over 12% of the total number of NCSC staff. He enquired whether the majority of NCSC staff were employed by these two departments to meet service needs that were seasonal in nature.

18. In reply, PSCS advised that the purposes for the employment of NCSC staff varied in different cases. For example, NCSC staff were employed by LCSD as lifeguards to meet seasonal service needs in summer and by the Post Office for sorting, loading and unloading mail, and they were required to work less than the conditioned hours required of civil servants. PSCS advised that the length of continuous service of NCSC staff would be one of the factors to be considered in the special review but not the primary factor for consideration.

19. Mr KWONG Chi-kin said that he had received a number of complaints about the abuse of the NCSC Staff scheme. Given that 2 318 NCSC staff had been continuously employed by government departments for five years or more as at 31 December 2005, this was an area which merited attention in the special review to be conducted by CSB. Mr CHEUNG Man-kwong shared Mr KWONG's view. Mr CHEUNG was dissatisfied that despite the concerns repeatedly expressed by LegCo Members and the staff about the NCSC Staff Scheme in recent years, the problems had not been properly addressed by the former SCS. Both Mr KWONG and Mr CHEUNG welcomed the special review of the NCSC staff situation. In this connection, they requested that CSB should review whether there was an abuse of the NCSC Staff Scheme by ascertaining whether the NCSC posts were created for any of the five purposes set out in paragraph 3(a) to (e) of the paper provided by the Administration. In particular:

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- (a) Priority should be given to the 10 124 NCSC posts in the following eight bureaux/departments which had employed 5% or more of the total number of NCSC staff (as at 31 December 2005):
 - (i) Buildings Department (800 posts) (5.1%);
 - (ii) Department of Health (1 060 posts) (6.8%);
 - (iii) Education and Manpower Bureau (1 339 posts) (8.5%);
 - (iv) Electrical and Mechanical Services Department (1 036 posts) (6.6%);
 - (v) FEHD (1 006 posts) (6.4%);
 - (vi) LCSD (1 995 posts) (12.7%);

(vii) Post Office (1 952 posts) (12.4%); and

(viii) Social Welfare Department (936 posts) (6%).

(b) Priority should also be given to the posts filled by the 2 318 NCSC staff who had been continuously employed for five years or more (as at 31 December 2005).

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20. Other members supported the requests of Mr KWONG Chi-kin and Mr CHEUNG Man-kwong. SCS agreed that in conducting the review, priority would be given to those departments which had employed large number of NCSC staff.

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21. Ms LI Fung-ying remarked that in taking forward the review, CSB should assess whether the NCSC Staff Scheme had any adverse impact on bureaux/departments/offices, e.g. whether it had given rise to any imbalances in manpower situation, any succession problems, and any adverse impact on quality of service.

Conversion of some NCSC posts to civil service posts

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22. Ms LI Fung-ying opined that the Administration should consider, after the review, whether some of the NCSC posts, in particular those created to meet service need on a long-term basis or those filled by NCSC staff continuously for five years or more, should be converted to civil service posts. Mr WONG Kwok-hing, Mr LEE Cheuk-yan, Mr CHEUNG Man-kwong and Mr KWONG Chi-kin supported Ms LI's view. Given that civil service establishment would be reduced to around 162 000 by 31 March 2006, Mr Howard YOUNG considered that the Administration might consider increasing the establishment to cope with operational need on a case-by-case basis.

23. Mr LEE Cheuk-yan was concerned whether the review of the NCSC staff situation would be constrained by the Government's target to reduce the civil service establishment to about 160 000 by the end of 2006-07. In response, SCS assured members that the review of the NCSC staff situation and the target to reduce the civil service establishment were two separate issues. With a clearer picture on the overall manpower situation upon the completion of the review, CSB would assess whether the target level of civil service establishment would need to be modified and any decisions on such modifications would be made by the highest level of the Government.

24. Mr WONG Kwok-hing expressed concern that according to some NCSC staff, they were warned by their supervisors that their contracts would not be renewed if they took further actions to fight for the conversion of NCSC posts to civil service posts. He considered that by giving such advice, the departmental management was in a way threatening the NCSC staff and discouraging them from fighting for their rights. Mr WONG suggested that the Administration should take a snapshot of the

existing NCSC staff with continuous service of five years or more and undertake to offer long-term employment to them if the posts being filled by them were converted to civil service posts after the review.

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25. Mr LEE Cheuk-yan was of the view that if it was decided after the review that some NCSC posts should be converted to civil service posts, the NCSC staff with continuous service of five years or more should be given priority in open recruitment in recognition of their proven ability and suitability for the posts in their past years of service. Mr LEE also suggested that if such NCSC staff were selected to fill the civil service posts, consideration should be given to waiving the requirement for the staff concerned to complete the three-year probationary period and three-year agreement period (i.e. the “3+3” period) before they were considered for appointment on the new civil service permanent terms.

26. In reply, SCS stressed that officers of CSB and departmental management would not in any way threaten their NCSC staff. She pointed out that appointments to the civil service were based on the principle of open and fair competition. Civil service vacancies were filled by selection from among eligible candidates through a competitive process on the basis of merits. While NCSC staff with relevant working experience in bureaux/departments/offices should have an advantage over other candidates in an open recruitment exercise, they still needed to compete with other candidates and there was no guarantee that they would be selected to fill civil service posts. SCS said that some NCSC staff might have mistaken the explanation of the recruitment process by their departmental management as threats against their participation in actions to fight for employment as civil servants. Given the established policy and procedures for making civil service appointments on the principles of openness and fairness, SCS advised that there would be great difficulties for CSB to take forward the suggestion of offering civil service appointment without going through an open recruitment process to the NCSC staff with continuous service of five years or more if the NCSC positions filled by them were converted to civil service posts.

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27. Mr KWONG Chi-kin and Ms LI Fung-ying appreciated the need for selecting suitable candidates to fill civil service posts through an open recruitment process. They however considered that the relevant work experience of NCSC staff should be given due recognition in considering their suitability for filling the civil service posts concerned.

Terms and conditions of employment of NCSC staff

28. Mr LEE Cheuk-yan was concerned that the Government had been taking advantage of NCSC staff by requiring them to perform similar duties as their civil service counterparts but offering them less favourable terms and conditions of employment.

29. In reply, SCS stressed that the Government would not take advantage of any of its employees. In deciding the employment package for NCSC staff, HoDs had to observe the guiding principles that the terms and conditions of service for these staff should be no less favourable than those provided for under the Employment Ordinance (EO) (Cap. 57) and no more favourable than those applicable to civil servants in comparable civil service ranks or comparable levels of responsibilities. HoDs would conduct annual pay review for their NCSC staff and make upward or downward adjustments according to market circumstances as appropriate. SCS pointed out that in 2005, some departments had offered pay increases to NCSC staff after the annual pay review.

30. Mr LEE Cheuk-yan pointed out that compliance with the statutory provisions under EO was the obligation of all employers. He remained concerned that although NCSC staff performed similar duties as their civil service counterparts, they were offered less favourable terms and conditions of employment. Mr LEE also doubted whether any upward pay adjustments had been offered to NCSC staff after the annual pay review and sought information on such cases since the introduction of the NCSC Staff Scheme in 1999.

31. SCS pointed out that when the NCSC Staff Scheme was introduced in 1999, the Administration had clearly stated that NCSC staff would be employed on terms and conditions different from those of the civil service. According to CSB's guidelines, NCSC staff were not entitled to increment during their contract period but if appropriate, HoDs might adjust the pay of NCSC staff according to prevailing market circumstances. At Mr LEE Cheuk-yan's request, SCS undertook to provide a breakdown of the 1 995 NCSC positions in LCSD, showing the pay level, pay adjustments and fringe benefits offered to each of the staff concerned since the positions were first created.

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32. Mrs Sophie LEUNG pointed out that all along, the Administration had explained that the appointment of NCSC staff supplemented civil service appointments and the NCSC staff would be appointed on terms and conditions different from those of the civil service. She was of the view that the Administration should make it clear to the public and all NCSC staff this key feature of the Scheme to avoid any confusion between the terms and conditions of employment of NCSC staff and those of the civil service.

Concept of "just-in-time employment"

33. Mrs Sophie LEUNG pointed out that as a result of economic transformation and advancement in technology, the concept of "just-in-time employment" had become increasingly important in the labour market, i.e. employment of suitable talent required at a certain point in time. Mrs LEUNG was of the view that in addition to the five purposes for employment of NCSC staff set out in paragraph 3(a) to (e) of the paper provided by the Administration, NCSC staff might also be employed to meet service needs which required special skills or talents at a certain point in time. To

keep pace with the latest development in the labour market, the Administration should promote the concept of “just-in-time employment” to encourage its employees (civil servants and NCSC staff alike) to continuously upgrade their work skills.

34. SCS noted Mrs Sophie LEUNG’s view. She agreed that some work in the civil service might become outdated as a result of advancement in technology or changes in circumstances. She assured members that the Administration endeavoured to provide training and re-training programmes to upgrade the work skills of its employees, including civil servants and NCSC staff, to facilitate them in taking up new tasks or duties. The Administration also promoted the concept of continuous learning and readiness to adapt to changes in work nature among its staff.

Conclusion

35. The Chairman requested CSB to take into account the views expressed by members at the meeting and provide the information requested by members, and report to the Panel on the outcome of the review in due course. SCS agreed that CSB would follow up accordingly.

Admin

III. Civil servants’ right to strike

(LC Paper No. CB(1)251/05-06(01) — Letter dated 31 October 2005 from Hon LEE Cheuk-yan to the Clerk to the Panel, attaching correspondences between the Hong Kong & Kowloon Life Guard’s Union and the Director of Leisure and Cultural Services in August 2005

LC Paper No. CB(1)251/05-06(02) — Civil Service Regulation 610 (Deduction from salary on absence from duty, etc.)

LC Paper No. CB(1)1067/05-06(05) — Paper provided by the Administration)

Briefing by the Administration

36. At the invitation of the Chairman, SCS highlighted the salient points in the paper provided by the Administration. She pointed out that the basic rationale underlying Civil Service Regulation (CSR) 610 was the “no work, no pay” principle. The deduction of salary under CSR 610 was based on this principle and was not a form of disciplinary action. Nor was it an infringement on the right of civil servants to strike.

Discussion

Concerns about the present drafting of CSR 610

37. Mr LEE Cheuk-yan pointed out that under CSR 610(1), if an officer, without reasonable excuse, for any period was absent from his place of work, then there might, by order of the approving authority, be a deduction from his salary or wages for the month in which the absence occurred. Under CSR 610(2)(a), it should not be a reasonable excuse that an officer absented himself from work in connection with a trade dispute. Mr LEE was concerned that the present drafting of CSR 610(1) and (2) implied that civil servants participating in a strike were absent from duty without reasonable excuse, and that such provisions infringed civil servants' right to strike provided under the Basic Law. He also considered it unfair for the Administration to deduct salary of the civil servants concerned. Mr LEE enquired whether the Administration had sought legal advice on the legality of CSR 610.

38. In reply, SCS said that the right and freedom of Hong Kong residents to strike was protected under Article 27 of the Basic Law. Civil servants, as Hong Kong residents, could exercise their right to strike and the Government did not impose any restriction on its employees to exercise this right under the law. Nevertheless, civil servants who took part in a strike were not excused from their obligations pursuant to their employment agreement. According to the advice of the Department of Justice (DoJ), the provisions in CSR 610, which empowered the Administration to deduct salary for a civil servant's absence from duty in connection with his participation in industrial action, did not contravene the Basic Law or the Trade Union Ordinance (TUO) (Cap. 332). Section 65(b) of TUO provided that nothing in the Ordinance should affect any agreement between an employer and those employed by him as to such employment. As such, action taken under CSR 610 (which formed part of the employment agreement between a civil servant and the Government) to deduct salary for duties not performed by a civil servant engaged in industrial action did not contravene the Ordinance.

39. Mr LEE Cheuk-yan maintained his view that the provisions in CSR 610 infringed civil servants' right to strike provided under the Basic Law. He urged the Administration to review CSR 610. Mr KWONG Chi-kin shared Mr LEE's view and was surprised to note DoJ's advice on CSR 610. Given that CSR 610 was drafted long before the provision of civil servants' right to strike under the Basic Law, Mr KWONG considered that the Administration should review how the relevant provisions could be improved. A suggested option was to provide in the CSRs a new chapter on civil servants' right to strike, setting out clearly the circumstances under which civil servants' participation in a strike would/would not be regarded as absence from duty. For example, civil servants who had given prior notice to the departmental management of their participation in a strike would not be regarded as absence from duty and therefore, would not be subject to deduction of salary.

40. In response, SCS drew members' attention to the heading of CSR 610, i.e. "Deduction from salary on absence from duty, etc.". The CSR set out the circumstances and the manner in which deduction of salary might be administered. In this connection, SCS pointed out that there was a fundamental difference between members' views and the Administration's policy. It was the Administration's policy to deduct, in accordance with the "no work, no pay" principle, salary from officers who had absented themselves from duty without approval. Such deduction would not in any way infringe civil servants' right to strike under the Basic Law. Regarding Mr KWONG Chi-kin's suggested amendments to the CSRs, SCS advised that given the complexity and range of issues involved, considerable time would be required to reach a conclusion on whether and how amendments should be made.

41. Mr LEE Cheuk-yan pointed out that as far as he knew, there were cases in which the departmental management did not deduct the salary of their staff who had participated in a strike. In other words, there was inconsistency in the application of CSR 610. In response, SCS pointed out that CSR 610 should be observed by all departments without any discretion. HoDs should, in accordance with the regulation, deduct salary from their staff who had absented themselves from duty without approval.

42. To facilitate the development of collective bargaining between civil service unions and departmental management, Mr LEE Cheuk-yan urged the Administration to consider allowing flexibility for HoDs to decide whether or not CSR 610 should be invoked in respect of staff participation in a strike. Mr LEE also queried whether the requirement for HoDs to deduct salary without discretion had contravened civil servants' right to strike. He requested the Administration to provide the legal advice it had obtained on the subject.

43. In reply, SCS reiterated that CSB had obtained the legal advice from DoJ that CSR 610 and the application of the "no work, no pay" principle did not contravene Article 27 of the Basic Law. She also pointed out that it was not common practice for the Administration to provide LegCo with copies of the legal advice it had obtained from DoJ in its original form.

44. Ms LI Fung-ying and Mr WONG Kwok-hing shared the views of Mr LEE Cheuk-yan and Mr KWONG Chi-kin that the present drafting of CSR 610 needed to be improved. Ms LI pointed out that civil servants' participation in a strike was normally a collective action in response to the calls of their unions, and the civil servants concerned should not be regarded as absent from duty. As far as she knew, civil servants normally gave prior notice to their departmental management about their participation in a strike. SCS advised that while departmental management might have basic information on an industrial action, they did not have prior knowledge of the exact number of staff and which one of them would actually participate in the action.

45. Mr KWONG Chi-kin further urged the Administration to review the drafting of CSR 610(1) and (2). He considered that civil servants' participation in a strike should be considered as a reasonable excuse for their absence from work, and that the principle of "no work, no pay" should be reflected in the CSR. SCS undertook to consider whether and how technical amendments should be made to improve the drafting of CSR 610.

Placing copies of correspondence with staff in their personnel files

46. Referring to civil servants' participation in the strike organized by the Hong Kong & Kowloon Life Guards' Union on 1 August 2005, Mr LEE Cheuk-yan expressed concern that the departmental management of LCSD had not only deducted salary of the staff concerned but also placed copies of the letters informing the staff of the deduction in their personnel files. Mr LEE queried the purpose for making such an arrangement and whether it was a threat to the staff concerned. As far as he knew, the same arrangement had not been made for the staff who had participated in the strike last organized by the same union. Moreover, Mr LEE was concerned whether the Administration would make reference to the record on deduction of salary in the personnel files in future recruitment, promotion and performance appraisal exercises. If the Administration would make reference to such record, it might have an impact on the staff concerned when they applied for other government posts or were considered for promotion. Mr KWONG Chi-kin shared Mr LEE's concerns.

47. In response, SCS explained that given the size of the civil service, it was necessary to keep the correspondence between a staff and the departmental management in the staff's personnel file to facilitate future reference. In line with this practice, the letters issued by the departmental management to the staff who had participated in the strike mentioned in paragraph 46 above were kept in the staff's personnel files for record purpose. SCS also pointed out that established systems were in place for conducting recruitment, promotion and performance appraisal within the civil service. For example, in considering a staff's suitability for promotion, the promotion board would consider the staff's performance record and potential for advancement, and any disciplinary sanctions which were still in force. Normally, the board would not consider other information contained in the staff's personnel file.

48. At the request of Mr LEE Cheuk-yan, SCS undertook to provide an information paper, setting out the purposes for which the information contained in an officer's personnel files would be used.

49. Mr WONG Kwok-hing was of the view that the letters issued by the departmental management of LCSD to the lifeguards who had participated in the strike on 1 August 2005 had already constituted discrimination against the trade union and the staff concerned and therefore, a contravention of EO. Under section 21B(2) of EO, it was an offence for an employer to discriminate against an employee by reason of his exercising his right in respect of trade union membership and activities. Mr

WONG queried why the Government took the lead in discriminating against its employees for their participation in trade union activities (i.e. a strike).

50. SCS responded that the letters issued by the departmental management of LCSD to the staff concerned merely set out in an objective manner the fact that the staff concerned had been absent from duty to participate in a strike arranged by a trade union on 1 August 2005 and that salary was deducted for duties not performed on that day. She reiterated that placing copies of the letters in the personnel files of the staff concerned was necessary to facilitate future reference, for example, for answering enquiries from staff on the details of the deduction.

51. Mr WONG Kwok-hing did not accept the Administration's explanation and maintained his view that the letters issued by the departmental management of LCSD constituted discrimination against the trade union and the staff concerned. He requested that his views be put on record.

52. Pointing out that the Government was not bound by the provision on "Rights of employees in respect of trade unions membership and activities" under section 21B of EO, Mr LEE Cheuk-yan suggested that the subject on civil servants' right to participate in trade unions be discussed at a meeting of the Panel. Given that Mr LEE's letter dated 7 March 2006 on the same subject had been forwarded to the Administration for a written response, the Chairman suggested and members agreed that Mr LEE's suggestion should be considered after the Administration had provided its written response.

(Post-meeting notes:

- (a) The information required in paragraphs 45 and 48 above provided by the Administration was issued to members vide LC Paper No. CB(1)1289/05-06(01) on 11 April 2006; and
- (b) Members agreed at the Panel meeting on 20 April 2006 that the subject suggested by Mr LEE Cheuk-yan in paragraph 52 above be discussed at the Panel meeting scheduled for 19 June 2006.)

IV. Any other business

53. There being no other business, the meeting ended at 12:55 pm.