

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Civil Servants' Right to Strike

Purpose

This paper sets out the Administration's policy and practice in applying Civil Service Regulations ("CSRs") on absence from duty and deduction of salary to civil servants participating in a strike.

Background

2. At the meeting of the LegCo Panel on Public Service held on 13 October 2005, following a discussion about the right of civil servants as citizens to participate in a strike, Members requested the Administration to provide a paper setting out how the CSRs on absence from duty and deduction of salary were being applied to civil servants participating in a strike, dealing specifically with the question of whether the relevant policy and practice were consistent with Article 27 in the Basic Law. The relevant meeting records and a letter dated 31 October 2005 from a Member to Clerk of the Panel seeking further information on civil servants' right to strike are reproduced at Annexes A and B respectively.

Relevant CSR

3. CSR 610 governs deduction from salary on absence from duty, etc. It is reproduced at Annex C.

Relevant Legislative Provisions

Articles 27 and 39 of the Basic Law

4. Civil servants are Hong Kong residents. The right and freedom of Hong Kong residents to strike is protected under Article 27 of the Basic Law (**Annex D**). Article 39 of the Basic Law (**Annex D**) also provides that 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 in the Hong Kong Special Administrative Region.

The Trade Unions Ordinance

5. There are certain statutory immunities given to registered trade unions under Part VI of the Trade Unions Ordinance (Cap. 332), such as immunity from civil suit, charges of conspiracy in the restraint of trade and tortious acts committed in furtherance of a trade dispute. Sections 65(b) of this Ordinance (**Annex E**) nevertheless provides that nothing in the Ordinance shall affect any agreement between an employer and those employed by him as to such employment.

6. An employee who takes part in a strike is therefore not excused from his obligations pursuant to his employment agreement. In this context and similar to the treatment of industrial action in the private sector, action taken under the CSRs (which form part of the employment agreement between a civil servant and the Hong Kong Special Administrative Region Government) by the Administration to deduct pay for duties not performed by a civil servant engaged in industrial action does not contravene the Ordinance.

Application of CSR on Deduction of Salary for Absence from Duty

7. The three issues raised in the Member's letter referred to in paragraph 2 above, as we understand them, arose from the strike action taken by the Hong Kong & Kowloon Life Guards' Union on 1 August 2005. On that day, around 270 lifeguards of the Leisure and Cultural Services Department ("LCSD") were found to have absented themselves from duty

without approval. The Department obtained the agreement of the Secretary for the Civil Service to invoke CSR 610 for the deduction of salary covering the period of absence from duty by the concerned staff. The paragraphs below address each of the three issues raised by the Member.

(i) Does CSR 610 forbid civil servants from participating in a strike?

8. The basic rationale underlying CSR 610 is the “no work, no pay” principle. CSR 610(1) states the circumstances and the manner in which deduction of salary may be administered in the case of an officer not performing his duties. CSR 610(2) specifies that “for the purposes of this regulation” i.e. for the purposes of the deduction of salary in the event of an officer not performing his duties, “it shall not be a reasonable excuse that an officer absented himself from work or refused or omitted to perform any of his usual duties or any part of them in connection with a trade dispute”.

9. The Member has expressed concern about the existing regulations “forbidding civil servants from participating in a strike”. We would like to stress that there are no provisions under the CSRs forbidding civil servants from participating in a strike. This concern is, therefore, unfounded.

(ii) Is deduction of salary under CSR 610 a form of disciplinary action?

10. The deduction of salary under CSR 610 is based on the “no work, no pay” principle. It is not a form of disciplinary action. Nor is it an infringement on the right of civil servants to strike.

(iii) What is the purpose of placing copies of correspondence with staff in their personal files?

11. It is a general civil service practice to place copies of the correspondence with individual staff in their personal files. This practice does not undermine the protection afforded to staff under the Basic Law and other legislative provisions with regard to their right to strike.

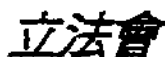
Concluding remarks

12. The Administration fully respects civil servants’ right and

freedom to form and join trade unions and to strike. The deduction of salary from concerned civil servants for the period of their absence from duty in connection with a strike action is based on the “no work, no pay” principle. This measure does not constitute an infringement on a civil servant’s right to strike.

Civil Service Bureau
March 2006

EXTRACT



Legislative Council

LC Paper No. CB(1)121/05-06

(These minutes have been
cleared with the Chairman)

Ref: CB1/PL/PS/1

Panel on Public Service

Minutes of meeting

**held on Thursday, 13 October 2005 at 4:30 pm
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-ikwong
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

Civil servants' right to strike

12. Mr LEE Cheuk-yan expressed concern about the existing regulations forbidding civil servants from participating in a strike. Mr LEE pointed out that while the right to strike was one of the fundamental rights of the residents of Hong Kong as stipulated in Article 27 of the Basic Law, some civil servants had been warned by their departmental management that they would be considered as absent from duty without approval if they participated in a strike. Mr LEE advised that he would provide further information to the Panel in this regard and proposed that the subject be discussed at a future meeting of the Panel.

香港職工會聯盟總書長



General Secretary, H.K. Confederation of Trade Unions

立法會議員李卓人辦事處

Legislative Councillor Lee Cheuk Yan Office

致：立法會公務員及資助機構員工事務委員會秘書

由：立法會議員李卓人

日期：2005年10月31日

公務員的罷工權利

有關公務員的罷工權利，希望行政當局澄清下述問題：

- 《公務員事務規例》第 610 條，把公務員的罷工行動，描述為「未有合理原因而在任何一段時間內擅離工作崗位」，這有否抵觸《基本法》第二十七條保障香港居民（包括公務員）享有「罷工的權利和自由」的條文？
- 根據《公務員事務規例》第 610 條扣除公務員的薪金，是否視作針對該名公務員作出紀律處分？如是的話，這有否抵觸上述《基本法》條文？
- 康樂及文化事務署署長在 2005 年 8 月 22 日致函會在 2005 年 8 月 1 日參加由港九拯溺員工會發起的罷工行動的救生員，並將信件副本送交人事檔案。管理層在甚麼情況下會把給予個別公務員的信件記錄在人事檔案？當局將上述函件記錄在人事檔案的目的為何？這是否構成對參加罷工行動的公務員的滋擾？

CHAPTER IV - SALARIES AND ALLOWANCES

Deduction from salary on absence from duty, etc.

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610 (1) If an officer, without reasonable excuse, for any period : -

- (a) is absent from his place of work; or
- (b) refuses to perform any of his usual duties or any part of them; or
- (c) omits to perform any of his usual duties or any part of them,

CHAPTER IV - SALARIES AND ALLOWANCES

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(Cont'd)

(c) then there may, by order of the approving authority, be deducted from his salary or wages for the month in which the absence, refusal or omission occurs, or for any subsequent month, such proportion thereof as the approving authority shall decide is attributable to : -

(i) the period of the officer's absence from his place of work or the period during which he refused or omitted to perform any of his usual duties; or

(ii) the part of his usual duties which the officer has refused or omitted to perform,

as appropriate.

(2) For the purposes of this regulation : -

(a) it shall not be a reasonable excuse that an officer absented himself from work or refused or omitted to perform any of his usual duties or any part of them in connection with a trade dispute;

(b) "usual duties" means the duties of an officer as described in CSR 401; and

(c) "approving authority" means :

(i) in relation to a Head of Department or a case connected with a trade dispute, the Secretary for the Civil Service;

(ii) Heads of Departments in other cases.



Chapter III : Fundamental Rights and Duties of the Residents

Article 27

Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.

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.

Selection Menu

Select Language

- English
 Chinese

Chapter No.

332

雙語法例資料系統

Individual Section Mode

Contents of Section

Chapter: 332	Title: TRADE UNIONS ORDINANCE	Gazette Number:
Section: 65	Heading: Ordinance not to affect certain agreements	Version 30/06/1997 Date:

Nothing in this Ordinance shall affect-

- (a) any agreement between partners as to their own business;
- (b) any agreement between an employer and those employed by him as to such employment; or
- (c) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.