

Legislative Council

LC Paper No. CB(2) 186/98-99
(These minutes have been
seen by the Administration)

Ref : CB2/SS/2/98

**Subcommittee on Government Motions under
Section 48A of the Employees' Compensation Ordinance (Cap 282)
and Section 40 of the Pneumoconiosis (Compensation) Ordinance (Cap 360)**

**Minutes of Meeting
held on Thursday, 16 July 1998 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members Present : Hon CHAN Kam-lam (Chairman)
Hon HO Sai-chu, JP
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon LEE Kai-ming, JP
Hon Ronald ARCULLI, JP
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon CHAN Wing-chan
Hon LEUNG Yiu-chung
Dr Hon TANG Siu-tong, JP
Hon Andrew CHENG Ka-foo

Member Absent : Dr Hon LUI Ming-wah, JP

Public Officers Attending : Mr Matthew K C CHEUNG
Acting Secretary for Education and Manpower

Mr Herman CHO
Principal Assistant Secretary for Education and Manpower

Miss Aubrey FUNG
Assistant Secretary for Education and Manpower

Mrs Jenny CHAN
Acting Assistant Commissioner for Labour
(Employees' Rights and Benefits)

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Ms Joanne MAK
Senior Assistant Secretary (2)4

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I. Election of Chairman

Following the election of Hon HO Sai-chu as the presiding Member, Mr CHAN Kam-lam was elected Chairman of the Subcommittee.

II. Meeting with the Administration

(LC Papers Nos. CB(3) 55/98-99; LS 12 and 13/98-99; and CB(2) 51/98-99 (01) and (02))
(LC Paper No. CB(2) 75/98-99 - paper tabled at the meeting)

2. The Acting Secretary for Education and Manpower (SEM(Atg)) informed members that the current compensation levels under the Employees' Compensation Ordinance (ECO) and the Pneumoconiosis (Compensation) Ordinance (PCO) came into effect on 1 January 1996. The levels of compensation were normally revised every two years to take into account wage movements, inflation and other changes. As the motions to revise the compensation levels did not satisfy the test of "essentiality" laid down by the Preparatory Committee for the Hong Kong Special Administrative Region (HKSAR) for legislative activities by the Provisional Legislative Council, the motions to revise the levels were now put forward to the Legislative Council (LegCo). The Administration had originally intended to introduce the motions into LegCo on 22 July 1998. However, as requested by the House Committee at its meeting on 10 July 1998, the Administration had agreed to postpone the motions to a later date.

3. SEM(Atg) said that the motions proposed to revise the levels of compensation under the ECO and the PCO with effect from 1 August 1998 to

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take into account the price or wage movements for the full years from 1996 to 1998. The proposals had been endorsed by the Labour Advisory Board and the Pneumoconiosis Compensation Fund Board.

4. With reference to paragraphs 5 to 13 of the Administration's paper, the Acting Assistant Commissioner for Labour (Employees Rights and Benefits) (ACL(Atg)) explained how the revised levels of various compensation items under the ECO and the PCO were calculated.

Presentation by representatives of Pneumoconiosis Mutual Aid Association (the Association)

5. The representatives of the Association criticized the Government for the delay and requested that the revised level of compensation for pain, suffering and loss of amenities under the PCO be backdated to 1 January 1998. They also requested that in future the revision exercise should be conducted annually based on inflation, and that the levels of compensation payable to those confirmed as suffering from pneumoconiosis before and after 1981 should be the same.

Motion under section 40 of the PCO

Compensation for pain, suffering and loss of amenities

6. Mr LEUNG Yiu-chung suggested that the proposed revised level of compensation for pain, suffering and loss of amenities under the PCO should be backdated to 1 January 1998 to ensure that the recipients could obtain the exact amount of additional compensation which should have been payable to them since 1 January 1998. In response, SEM(Atg) said that based on legal advice obtained from the Department of Justice, such an arrangement would involve amendments to be made to the principal ordinance and this process would be very time-consuming. He was worried that such a move would further delay the implementation of the new rates of compensation.

7. Assistant Legal Adviser (5) (ALA(5)) referred to the PCO and pointed out that it was specified therein that the monetary amounts of compensation could be amended by LegCo by resolution. There was, however, no restriction on the determination of the effective dates of these amendments. In response to Mr LEUNG Yiu-chung's enquiry, ALA(5) said that there was no restriction laid down in the PCO to prevent any revisions in respect of the compensation amounts from taking retrospective effect. Mr LEUNG Yiu-chung further enquired whether, in this case, it was mandatory to amend the principal legislation in order to revise the compensation rates with retrospective effect from 1 January 1998. In reply, ALA(5) said that this could be done either by

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way of primary legislation or simply by resolution.

8. Having regard to the legal advice given by ALA(5), members unanimously supported that the proposed revised level of compensation for pain, suffering and loss of amenities under the PCO should be backdated to 1 January 1998. Mr LEE Cheuk-yan said that if the proposed course of action was impracticable due to the technical difficulties as suggested by the Administration, the revised compensation level to take effect from 1 August 1998 should be increased to such a level that it would make up for the amount of additional compensation foregone by the recipients since 1 January 1998.

9. Mr Ronald ARCULLI suggested that the Administration could consider granting the recipients the additional compensation foregone by them since 1 January 1998 in the form of an ex-gratia payment. Mr LEE Kai-ming recalled that when the subject was discussed at a previous Council meeting, SEM had undertaken to propose to the LegCo of HKSAR that the revised level of compensation for pain, suffering and loss of amenities under the PCO should be backdated to 1 January 1998. However, SEM(Atg) referred to the minutes of the Council meeting and clarified that SEM had only agreed to put forward to the first LegCo of HKSAR the two motions on revising the levels of compensation under the ECO and the PCO as early as possible; and that the Administration would consider whether or not it would be legally and technically feasible to backdate the revised level of compensation retrospective to 1 January 1998. SEM(Atg) then reiterated the legal advice of the Department of Justice and appealed to members to appreciate the time constraint and the urgent need to pay the new rates of compensation to the recipients. SEM(Atg) highlighted that the current proposal sought to make up for the amount of additional compensation foregone by the recipients since 1 January 1998 by taking into account the actual and projected inflation for the period from 1 January 1996 to 31 December 1998.

Compensation for bereavement under the PCO

10. Mr LEE Cheuk-yan noted that the amount of compensation for bereavement payable under the Fatal Accidents Ordinance (FAO) (Cap 22) had been raised from \$70,000 to \$150,000 in May 1997. He considered that, similarly, the proposed amount of compensation for bereavement provided under the PCO should also be increased from \$70,000 to \$150,000 instead of \$100,000. ACL(Atg) explained that the amount of compensation for bereavement under the FAO had remained at \$70,000 since it was first set in 1991. In 1997 it was revised to \$150,000 to take into account inflation during the interim years. On the other hand, the current amount of compensation for bereavement provided under the PCO (\$70,000) was set in July 1993. It was now proposed to be raised to \$100,000 to take into account inflation from 1 July 1993 to 31 December 1998. At the request of Miss CHAN Yuen-han, ACL(Atg) agreed to provide details of the calculations in respect of the

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Admin. inflationary adjustment made to this compensation item under the FAO for the period between 1991 to 1997.

11. The Administration disagreed with Mr LEE Cheuk-yan that the amount of compensation for bereavement payable under the PCO should be on par with the amount for the similar item under the FAO. ACL(Atg) pointed out that the two Ordinances actually addressed different matters as the FAO dealt with the award for damages for injuries covered by common law. When the item of bereavement was first introduced to the PCO, the previous compensation amount of \$70,000 payable under the FAO had only been used by the Administration as a point of reference in setting the amount for the PCO. The Administration had decided that the amount for this compensation item should be adjusted on the basis of actual inflation and not to be on par with that under the FAO. However, Messrs. Ronald ARCULLI and LI Cheuk-yan did not accept the Administration's explanation and considered that the levels of compensation for the two items should be the same since they were of the same nature.

Motion under section 48A of the ECO

12. Mr LEE Cheuk-yan was dissatisfied with the proposed \$21,000 as the ceiling of monthly earnings for calculating compensation for death and permanent total incapacity. He considered that the existing level of \$18,000 was already unreasonably low. He took the view that there should be no ceiling imposed. If any ceiling had to be imposed, the number of injured employees whose earnings had exceeded \$21,000 and who would thus be affected should be taken into consideration.

錯誤! 找不到參照來源。 ACL(Atg) said that in 1997, there were 3,509 such cases (representing 20% of the total relevant cases) involving injured employees earning more than \$18,000, and some 1,900 cases involving employees earning more than \$21,000. Therefore, by raising the ceiling of monthly earnings from \$18,000 to \$21,000 as now proposed, the Administration would enable some 1,550 additional cases to receive a higher rate of the compensation for death and permanent total incapacity. However, Mr LEE Cheuk-yan pointed out that theoretically with the annual increase in earnings, there would still be 20% of cases being affected even though the ceiling was raised to \$21,000. On the other hand, Mr Bernard CHAN pointed out that in 1997, about one-third of the total employee compensation cases were related to death and permanent total incapacity, out of which 10% had involved employees earning more than \$18,000 a month. Based on the information, Mr LEE Cheuk-yan said that the figures supported that the number of the relevant cases involving employees earning more than \$18,000 was so small that it would cost the employers little if the ceiling was raised above \$21,000 or scrapped. Mr Bernard CHAN said that Mr LEE's suggestion

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might lead to a slight increase of about 2% in the compensation cost borne by insurance companies but he was not sure whether this would cause any increase to the amounts of premium paid by employers. He suggested that the views of employers be sought.

13. ACL(Atg) explained that it was necessary to impose a ceiling of monthly earnings for this compensation item because the compensation was paid to the entitled employee irrespective of whether the accident causing injury to him had happened as a result of negligence committed by him. However, Mr LEE Cheuk-yan considered that the employers' interest had already been safeguarded by the fact that the amount of compensation payable was capped by 48, 72 or 96 months of service depending on the age of the employees concerned.

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14. Mr Andrew CHENG enquired whether the Administration had kept records of the comments made by judges on the current levels of compensation in their verdicts of concluded employee compensation cases over the past five years. ACL(Atg) replied that the Administration did not have such information. Mr Andrew CHENG considered that the Administration should start compiling such records as they would provide useful reference to members in deliberating about employee compensation matters.

Biennial revision of the levels of compensation under the ECO and PCO

15. Mr LEUNG Yiu-chung supported the suggestion made by the Association in its submission that the levels of compensation payable under the PCO should be revised annually based on the price or wage movements. In response, ACL(Atg) explained that the revision exercise was quite complicated which involved a lot of liaison work and collation of information which were only available at different points in time from various government departments. Therefore, it would be better if the adjustment was done once every two years. However, Mr LEUNG considered that there should be no technical problem to have the adjustments done annually. He pointed out that if the rates were revised annually, the recipients would get the new rates earlier without having to wait for two years. Mr LEE Cheuk-yan supported the suggestion and SEM(Atg) agreed to give thought to it.

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Conclusion

16. SEM(Atg) drew members' attention to the fact that the current proposals had the support of the Labour Advisory Board and the Pneumoconiosis Compensation Fund Board and any amendment would have

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to be discussed by the Boards again. In particular, if amendment was required to be made by primary legislation, it would cause a longer delay and he was worried that the Administration would not be able to submit the resolutions to LegCo before 29 July 1998. As a result, the revised levels of compensation could not take effect on 1 August 1998. He appealed for members' support for passing the motions on 22 July 1998 and he committed that he would further deliberate on members' suggestions later. He considered that it was most important to pay the new amounts of compensation to the recipients as early as possible to minimize their loss.

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17. Miss CHAN Yuen-han took the view that there was no policy implication in backdating the proposed revised level of compensation for pain, suffering and loss of amenities under the PCO to 1 January 1998. She requested the Administration to decide on the amendment soon or else it would be moved by the Subcommittee. In view of the technical difficulties involved and the time constraint, members agreed that the Administration should move the motions on 22 July 1998 subject to waiver of the requisite notice by the President. They also agreed that the Administration should review the proposed level of compensation for pain, suffering and loss of amenities under the PCO in order to make up for the amount of additional compensation foregone by the recipients since 1 January 1998 and inform the Subcommittee of its decision as soon as possible. As the Subcommittee did not agree to an amendment to increase the compensation for bereavement provided under the PCO to \$150,000, Mr LEE Cheuk-yan said that he would move the amendment himself.

Clause-by-clause examination of the proposed amendments

18. ALA(5) confirmed that the drafting of the proposed amendments was in order.

20. The Chairman would make a verbal report on the outcome of the Subcommittee's deliberations to the House Committee the following afternoon.

21. The meeting ended at 4:10 pm.

Legislative Council Secretariat

10 August 1998