

**President's ruling on
Committee Stage Amendments proposed by Hon CHAN Yuen-han to the
Employment (Amendment) Bill 2000**

Hon CHAN Yuen-han has proposed to move amendment to the above bill at its Committee Stage. Her amendments consist of two parts:

- (a) to amend clause 2 by adding a provision to provide that the court or Labour Tribunal may make an order for reinstatement and re-engagement or an award of terminal payments in respect of an employee whose contract of employment is terminated by the employer for reason of the employee's taking part in a strike; and
- (b) to add a new clause 6 to provide that an order of reinstatement/re-engagement in respect of such an employee may be made by the court or Labour Tribunal without the need to secure the consent of the employer.

2. The Secretary for Education and Manpower has been invited to offer his comments on the proposed amendments and Miss CHAN has been invited to respond.

The Administration's view

3. The Secretary for Education and Manpower considers the proposed amendments not relevant to the subject matter, and are beyond the scope of the Bill, hence contravening Rule 57(4)(a) of the Rules of Procedure. The Secretary points out that the scope of the Bill, as defined in the Long Title and explained in the Explanatory Memorandum, is to clarify, for the avoidance of doubt, that the taking part by an employee in a strike is not a lawful ground for an employer to terminate the employee's contract of employment **without notice or payment in lieu**.

4. Miss CHAN's proposed amendment to clause 2 relates to matters of substantive remedies, and is beyond the scope of the subject matter of the Bill and clause 2. It is also not clear whether the amendment seeks to cover the termination of contract of any employee without notice or wages in lieu of notice under clause 2 of the Bill specifically, or under any sections of the Employment Ordinance generally.

5. The Secretary also states that Miss CHAN's other amendment, new clause 6, seeks to amend section 32N(3) of the Employment Ordinance, which is not a section covered by the Bill; and it relates generally to all employees who claim employment protection, which is definitely beyond the scope of the Bill.

Hon CHAN Yuen-han's response

6. Miss CHAN argues that the proposed amendments are not beyond the scope of the Bill. She considers the Bill defective because it has no provision to protect employees who have taken part in strikes. Her amendments are to remedy such deficiency, to improve the Bill, and to make the legislative effect of the Bill clearer.

Opinion of Counsel to the Legislature

7. Counsel to the Legislature advises that the Long Title of the Employment (Amendment) Bill 2000 states that the Bill is to amend the Employment Ordinance to clarify, for the avoidance of doubt, that the taking part by an employee in a strike is not a lawful ground for an employer to terminate the employee's contract of employment without notice or payment in lieu. It further emphasizes the limited purpose of the Bill by stating in the Explanatory Memorandum of the Bill that "the purpose of the Bill is limited to the making of a clarifying amendment to the Employment Ordinance (Cap. 57) to the effect that the taking part by an employee in a strike is not a lawful ground under section 9 of the Ordinance for the termination of the employee's contract of employment without notice or payment in lieu". Such a way of describing the Bill does have the effect of narrowly prescribing the objective of the Bill, thus limiting any possible substantive amendments to it.

My opinion

8. I am unable to dispute the fact that the subject matter of the Bill is to clarify the existing legislative position, and is not intended to bring in the new elements regarding employment protection which Miss CHAN's amendments seek to achieve. If the Government's Bill is passed without amendment, the only effect is to clarify that an employer shall not terminate an employee's employment summarily, without notice or payment in lieu, by reason of the employee's taking part in a strike, but the employer may still terminate the employee's employment by giving notice or making payment in lieu. Miss CHAN's proposed amendments are therefore outside the scope of the subject matter of the Bill because they seek to introduce the reinstatement/re-employment of, or the award of terminal payments to, the employee who has

been dismissed for taking part in a strike, whether with or without notice or payment in lieu.

Ruling

9. Having considered the points made by the Secretary and Miss CHAN, together with the opinion of Counsel to the Legislature, I rule that Miss CHAN may not move her proposed amendment for the reason that they are not relevant to the Bill within the meaning of Rule 57(4)(a) of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

23 June 2000