

C/4/O/020602

13 June 2002

The Hon Mrs Selina Chow, JP  
Chairman of the Bills Committee  
Public Officers Pay Adjustment Bill  
c/o Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Mrs Chow,

**Public Officers Pay Adjustment Bill**

I write, on behalf of the Heads of Universities Committee (HUCOM), to request that your Committee will, in the deliberations of the captioned Bill, give due attention to the serious legal implications of the proposed civil service pay reduction on the UGC-funded sector.

First and foremost, in the face of the economic hardship Hong Kong is experiencing today, we, as part of the subvented sector of the Government, see it as our moral obligation and responsibility to follow the civil service pay reduction, once the proposed Government Bill seeking for such pay reduction is approved.

At the same time, the Government's subvention principle is such that the terms of service for staff employed in the subvented organisations cannot be better than those of comparable ranks in the Civil Service. Hence, despite the Government's proclaimed stance that the pay and other appointment matters of staff working in the subvented sector are generally matters between the organizations as employers on the one hand and the staff as employees on the other, *there is in fact no choice for the Institutions not to effect a similar pay reduction for their employees.* As a matter of fact, the UGC has already written to the Institutions on 3 June 2002, indicating that "*if the approval of the legislature is obtained on the civil service pay reduction, it will reduce government funding to those subvented organizations whose subventions are price-adjusted on the basis of formulae including a factor of civil service pay adjustment.*"

In preparing and planning for the implementation of the pay reduction, however, it has come to the attention of HUCOM that according to legal advice sought and obtained by the individual institutions, pay reduction constitutes a variation in terms of employment and as such, it will *not* be lawful for the UGC-funded Institutions to impose a pay cut unilaterally without obtaining the express consent of individual employees. Under the circumstances, and in accordance with the provisions of the Employment Ordinance, HUCOM is given to understand that the Institutions may be sued by the appointees for breach of contract as well as for claims of damages and/or remedies arising out of the breach.

Your Committee's attention is drawn to Section 32 A(1)(b) of the Employment Ordinance in which it is stipulated that, "*an employee may be granted remedies against his employer.....where he is employed under a continuous contract and the employer, without his consent and, in the absence of an express term in his contract of employment which so permits, varies the terms of his contract of employment because the employer intends to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by this Ordinance.*"

On the proposition that the Institutions could proceed to seek staff consent and may even choose to terminate the contract of those staff who do not wish to give their consent, HUCOM is wary that such a position would be very risky to take, because Section 32K of the Employment Ordinance clearly provides that "*an employee who has been dismissed by the employer shall, unless a valid reason is shown for that dismissal within the meaning of Section 32K, be taken to have been so dismissed because the employer intends to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by this Ordinance.*" The valid reasons given under Section 32 K are: "*(a) the conduct of the employee; (b) the capability or qualifications of the employee for performing his work; (c) redundancy or other genuine operational requirements of the business of the employer; (d) statutory requirements; or (e) any other reason of substance.*" It would be arguable if "pay reduction" could fall within any of the above categories.

Moreover, many of our staff are highly trained academics and professionals who are difficult to recruit and replace; and the UGC-funded sector is unique in that a considerable number of employees are further protected by "substantiation" and/or "good cause", and cannot be terminated without going through a set of established procedures and on giving a valid reason for termination. It would be highly divisive and damaging for staff morale if the Institutions were forced to impose pay reduction only on those staff members whose contracts could be terminated but not on others who are protected under "substantiation" or "good cause".

Given the Government's position on the one hand that funding will definitely be cut as soon as the civil service pay reduction is approved by the legislature, and the subvention principle on the other that the terms of subvented staff cannot be better than those of comparable ranks in the Civil Service, it is almost certain that the UGC-

funded Institutions will be left with no choice but forced to go down the route of imposing a pay cut unilaterally against resounding legal advice and to find their own means to meet the costs of lawsuits and compensation payments. We wish to forewarn that this will not only be highly disruptive to the teaching and research work at the Institutions, affect staff morale, tarnish the Institutions' local and international reputation, but will also further deplete the already strained financial resources of the Institutions. In the end, the education quality of the students will suffer.

Notwithstanding the fact that the Civil Service is exempt from the provisions of the Employment Ordinance, the Government is seeking legislation to avoid the risk of losing a legal battle with the Civil Servants. ***In the absence of any coverage under the captioned Bill and subjected to the provisions of the Employment Ordinance, it is the view of HUCOM that the UGC-funded Institutions are placed in an even more vulnerable position than the Government in implementing a similar pay reduction for staff in the Institutions.***

We should therefore be grateful if your Committee could look into this situation and deliberate on whether it would be advisable to include the UGC-funded sector in the captioned Bill.

Thank you very much for your attention and kind consideration.

Yours sincerely,

C F Ng  
President & Vice-Chancellor, HKBU  
Convenor, HUCOM

c.c. HUCOM Members