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房屋署工會大聯盟 Alliance of Housing Department Staff Unions

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中華人民共和國香港特別行政區 立法會公務員及資助機構員工事務委員會秘書 陳美卿小姐

陳小姐:

承蒙 貴委員會主席譚耀宗議員之邀請參加十二月二十日的 會議,不勝感激,現謹書專函向譚耀宗議員及委員會各議員致謝, 並附上本聯盟的意見書一份(附件一),供各委員會議員參閱。

此上

順頌

房屋署工會大聯盟召集人 林民焯^謹啟

一九九九年十二月十四日

公務員在部門層面的諮詢機制以房屋署公司化的個案作剖析

簡介與背景

房屋署共設有四個部門諮詢委員會(Departmental Consultative Committees),分別是(一)初級職員協商會(二)房屋管理專業人員協商會(三)工務部人員協商會及(四)一般職系及借調職員協商會。每一個協商會(諮詢委員會)平均三個月召開一次會議,理論上所有協商會可討論任何議題,員方由工會代表出席會議,管方代表是由各級首長擔任,而主席則由一位總監擔任。

房屋署專業管理及工務人員暨初級人員的工會代表是上述頭三個協商會的員方代表,可惜,過往悠久以來的經驗告訴我們,這些協商會並不是管員雙方可以在平等基礎上,進行溝通和議事論事的地方,在一般事項上雖然雙方還可以達成協議,但於政策事項和涉及架構改組上,員方代表就變得非常被動。員方的意見或建議幾乎從來動搖不了管方的既定方向和議案。無論員方的建議如何合理,訴求如何懇切,也不能越雷池半步,在雙方有爭議或沒有爭議的情況下,管方始終祗顧執行自己的一套。這是房屋署內大部份工會的一致感受,所以大家對部門諮詢會沒有任何好感。因此當今年五月六日房委會拍板通過擴大私營參與計劃時,房屋署工會大聯盟上下憤而通過杯葛部門諮詢委員會。

房屋署擴大「私營化」(較「公司化」一詞正確)個案

房屋署工會大聯盟希望指出,部門曾利用諮詢委員會向員方「推銷」它的擴大私營參與計劃,員方亦嘗試盡力提出有關的反建議,比如第六方案,即員方自強方案,曾在管方另設的一個特別(協商)會議上提出。

部門最初企圖利用羅兵咸永道的顧問報告來證明員工不夠競爭力,員方 則希望通過兩年時間來證明我們是有競爭力的。我們支持改革,但任何改變, 自然也好,震痛也好,都應令員工心服口服。公務員是理性的,是忠心的, 只要合情合理,相信他們都願意接受任何合理的改革。事實上我們也是在改 變過程中成長,有時需要我們作出適當的犧牲,也在所不辭。原則很簡單, 我們的理念與行政長官董建華先生所提出的是一致,即是:

通盤構思 切實可行 合理合法 循序漸進 群策群力 穩中求變

但部門在諮詢會議中,因爲在沒有受到第三者的制衡,其本質恆久以來都是一些「簡報會」及「硬銷會」,管方祗是做門面功夫與員方溝通和對話,他們十居其九不會接納員方的建議,所以管方代表的態度往往是固執和強硬,完全忽視董先生之至高原則。員工的意見,部門慣常是聽而不取,例如在我們的第六方案就建議部門用兩年時間來證明公務員的成本效益,。我們相信在公平競爭之下,可以提高員工的成本效益至超越中央定下公務員資源增值的指標之上,絕對有信心在一個公平的評審機制下,可以證明我們比以營利爲主的私營公司更加物有所值,更受廣大公屋居民的歡迎。

可惜得很,房委會爲了擴大私營化而私營化,並沒有通盤構思,沒有考慮到房屋署的工作已有八成已外判了,現在的擴大私營化計劃是在「判無可判還要外判」的情況下進行,連公屋建築的監管工作也嘗試外判,故此出現了天頌苑不規則沉降的事件。

在擴大私營化過程中,員方在諮詢會議上盡力提了不少切實可行的建議,目標是希望能以循序漸進方式實施,避免令現職房署公務員產生不安、甚至不滿的情緒。但委員會表面說一套,實際卻急風驟雨式進行擴大外判範圍,衝擊著房屋署內公務員的合法權益。就擴大私營化計劃,房委會還未拍板,部門便「偷步」不斷擴大外判的範圍,例如八七年開始便引進私營物業管理公司慢慢「侵食」房署員工的基本工作,甚至令部份職系人爲地有剩餘人手。

最遺憾的是,房委會仍不肯與我們群策群力地攜手改革,極不合理地單方面製定擴大私營化的計劃,破壞了房署內九千多名員工的穩定性,更因此而衝擊著基本法第 100 條,爲變而變,並沒有與員方從長計意。這個趨勢在部門的諮詢會議上表露無遺,故此我們所提議的兩年公平比拼建議不獲接納,員工建議公平的評審機制也不被考慮,管方只按部門的決定,用「簡報方式」,通過諮詢會議,欲想「硬銷」給員方接受。

房委會及房署就擴大私營參與計劃而成立的專責及工作小組

在改革過程中,部門沒有積極的態度以員方作爲合作伙伴,房委會和房署分別成立了專責小組及工作小組,擴大私營化雖然是員方切身關注的課題。房屋署工會大聯盟曾三番四次表示要成爲推動私營化計劃的合作伙伴,要求全面參與製定管員雙方可以接受的計劃,但委員會和房署都拒絕大聯盟加入上述小組,也不容許加入房署工作小組之下的兩個附屬小組。祗有員工自組公司及第六方案這兩個附屬工作小組設有員方代表席位,但兩者都是按上述(假)諮詢性質而運作,因此員方最後於九月被迫退出了第六方案小組。其後部門爲了「推銷」員工離職方案,「揮手」讓大聯盟加入由部門及公務員事務局安排的「員工安排委員會」。大聯盟最後亦因爲類似的不合理議事方式而被迫中途(十月底)退出。

結論

在房屋署推行擴大私營參與計劃的過程當中,清楚證明現存的諮詢模式及渠道,不足夠使員方在互諒互讓,互相信任和雙贏基礎上參與計劃,員方已多次表示他們不相信這是一套爲員工謀出路的計劃。相反,員工卻深信這是管方一意孤行逐步「遣散員方的計劃」。目前的互信基礎已蕩然不存,要從拾員工的信心,大聯盟相信仍有一線生機,剛從網上看到「第三者介入」(Third Party Intervention)的一篇文章(附件二),這是英國採用來解決管員雙方之間的工業糾紛,而仲裁(Arbitration)曾經普遍被採用來解決公營部門內的爭拗。根據此從網頁取得的資料,目前慣用的模式是「鐘擺式仲裁」(Pendulum Arbitration)。一般而論,祗要仲裁員或仲裁小組具有專業操守和獨立性,爭拗雙方都會容易接受仲裁的結果,而不致輕易產生工業行動。大聯盟相信詳細研究引入雙方可接受的仲裁,無論是傳統的仲裁或是新款的(New-style)「鐘擺式仲裁」,都有機會解決房屋署就擴大私營參與計劃而產生的紛爭。

房屋署工會大聯盟 一九九九年十二月十四日

(立法會秘書處譯本,只供參考用)

房屋署工會大聯盟意見書 (立法會 CB(1)624/99-00(12)號文件)

附件 2

第三者的介入

"第三者的介入"是集體談判的副產品。管理階層和工會如願意的話,是可以藉引進第三者解決他們之間的分岐。備有或採用這種方法並不表示不用或減少採取工業行動(所羅門(Salamon))。第三者介入的方法只在正常或正式的方法(例如雙方同意採取某一解決紛爭的方法)無法解決問題後才會予以採用。

定義

- 2. 第三者介入可以分爲(a)傳統及(b)革新兩種:
- a) 傳統的第三者介入

傳統的第二者介入主要是"爲了維持和衷共濟的局面"(祈勒斯及卑利士(Kessler & Bayliss)),可視爲"集體談判的一個不可分割的部分"(所羅門(Salamon))。傳統的介入包括和解(conciliation)、調解(mediation)及仲裁(arbitration),詳細定義如下。

- (i) 所羅門(Salamon)把"和解"界定為"一種策略,由第三者分頭進行談判,協助雙方找出分岐的成因及程度,找出其他解決的方法,以及這些方法引致的後果,並致力找出一個雙方均認為可以接受的解決方法"。
- (ii) "調解"是指"由第三者積極主動地協助雙方找尋可以接受的解決方法,甚至提出自己的建議"的程序。(ILO)
- (iii) "仲裁"則是第三者"並非以法庭的身分,但卻獲授權爲了解決紛爭而作出決定"的程序(ILO)。爭論的雙方對解決紛爭一事完全失去控制權(活特(Wood))。解決紛爭的決定由仲裁人作出,而不是由爭論的雙方共同作出;仲裁人就可作出的選擇任擇其一,或在兩項選擇中找出中庸的定位。此點適用於傳統的仲裁。
- (iv) 在鐘擺式仲裁(pendulum arbitration)中,仲裁人"須在雙方最後提出的建議及聲稱可享有的權益中作出選擇"(祈勒斯(Kessler)),在這件事情中,他不能在二者中取其中庸。最後建議仲裁的作用在於藉提供第三者的具約束性的

仲裁,消除罷工的可能性。仲裁人不得作出旨在令雙方妥協的決定。受屈、紀律 性質及解僱個案的糾紛均由有關的各方經相關的程序自行解決。只有在談判中呈 現僵局的情況才會交由仲裁人處理。

(v) 新式協議(new style agreement)的談判及紛爭程序是基於有關雙方共同接受的"權益"而進行的。雙方的用意是旨在藉公司內部的談判解決重大事宜上僅餘的"利益"分岐。假如有關利益分岐繼續存在,鐘擺式仲裁將可提供解決方法(貝盧(Burrows))。

(b) 革新介入

革新介入主要爲了避免紛爭及/或就勞資關係作一般性的改革。英國歷史上一直 藉成立不同的機構(例如勞資關係委員會(Commission on Industrial Relations)) 規管這方面的問題。改革第三者介入在英國的重要性自 1980 年以來已告減弱, 原因是政府奉行不干預政策。

3. 不過, 祈勒斯及卑利士(Kessler and Bayliss)(1992)察覺, "實際上, 政府是藉著法律上及公營部門中的改變來進行改革, 同時亦通過財務上的壓搾、私營化等方式進行, 而商界則藉自己的政策及大量聘用私人顧問進行。"

英國當代第三者介入的情況

- 4. 傳統的第三者介入的個案在英國自 1970 年代末期已大爲減少,轉介交由 ACAS 作集體和解處理的個案自 1979 年的 2284 宗,降至 1990 年的 1140 宗,而進行仲裁及調解的個案則由 363 宗減至 200 宗。個案的減少可能是因爲工會的力量變弱所致。
- 5. 私營機構的仲裁一般是自願性質的,即經雙方同意才展開。工會現在不太願意採取工業行動,因此,雙方就力量上的平衡而言,管理階層顯然佔了優勢。
- 6. 公營部門廣泛採用仲裁的方法解決糾紛。不過,自 1980 年以來,當大部分公營部門內員工單方面提出仲裁的權利被撤銷後,採用仲裁的個案數字便告下降。在 1980 年代中,政府在多宗案例中選擇以強制的方式,而非以仲裁的方式解決公營部門出現的紛爭(祈勒斯及卑利士(Kessler and Bayliss) 1992 年)。
- 7. 自 1980 年代以來,英國越來越盛行所謂"新式"單一工會協議,其中大部分均有和電器業工會 EETPU 簽訂。這些協議當中,不少包含一項"和衷共濟條款"(peace clause),其效力是當某事正進行商討,工會不得採取工業行動,而且還訂有鐘擺式仲裁的條文。若干機構如三洋及日立聲稱,有了這些新式協議,人們不再需要採取工業行動(貝盧(Burrows),1986年)。這些載有鐘擺式仲裁的

新式協議,大都載有和解及調停等程序(麥卡夫,米拿(Metcalf, Milner),1992年)。

鐘擺式仲裁的主要好處

8. 鐘擺式仲裁方式鼓勵雙方採取較務實的方式行事,提出較實際的建議,因爲任何一方如提出不切實際的建議或聲稱,很可能會令仲裁人的裁決對對方有利。

主要的缺點

9. 沒有給予仲裁人範圍及靈活性。

爲甚麼要採取鐘擺式仲裁

10. 政府一直支持新式協議。該等協議訂明在雙方談判失敗後便強制性地規定 須進行仲裁。不少協議均訂有有關鐘擺式仲裁的條文。人們亦有訂出單一工會協 議,當中亦訂有強制性仲裁條文,一般是鐘擺式仲裁。

總結

11. 這種介入方式一般來說是成功的,因爲人們均相信調解人或仲裁人是公正的,絕不偏袒任何一方,而在解決紛爭時,政治及外界因素的影響也可減至最低(霍咸及平洛(Farnham & Pimlott))。英國的傳統是反對在仲裁中以法律介入。在新式協議中支持僱員的法律權利是一種進步。第三者介入在英國的勞資關係自中世代以來一直處於舉足輕重的地位。研訊法庭、薪酬檢討組織、薪酬委員會、工會及僱員會均曾作出貢獻,解決了不少勞資糾紛,以及避免出現糾紛,並推動了勞資關係的改革。

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THIRD PARTY INTERVENTION

Third party intervention is intended primarily as adjuncts to the collective bargaining process. Management and unions may, if they wish, seek to resolve their differences by introducing a third party. The availability or use of such process does not automatically mean an avoidance or reduction in the use of industrial action (Salamon). Third party intervention is introduced only after the usual or formal means such as voluntarily agreed disputes procedure to settle industrial conflicts have failed.

Definition

- 2. A distinction can be made between a) Traditional and b) Reforming intervention:
- a) Traditional third party intervention
 -is 'essentially concerned with keeping the peace' (Kessler & Bayliss). It may be regarded as an 'integral part of the total collective bargaining system' (Salamon). Traditional intervention includes conciliation, mediation, and arbitration which are defined below.
- (i) Conciliation is defined by Salamon as 'a strategy wherein the third party supports the direct bi-partite negotiating process by assisting the parties to identify the cause and extent of their differences, to establish alternative solutions and their various implications, and to develop and agree a mutually acceptable settlement'.
- (ii) Mediation is a procedure in which 'the third party is more active in assisting the parties to find an acceptable solution going so far as to submit his own proposals for settlement to the parties' (ILO).
- (iii) Arbitration is a procedure 'whereby a third party, not acting as court of law, is empowered to take a decision which disposes of the dispute' (ILO). The disputing parties lose their power over the settlement entirely (Wood). It is the arbitrator's decision, rather than a joint decision of the two parties, which determines the settlement and he/she may accept one or other of the positions put to him/her or determine a point somewhere between the two positions. This is applicable to conventional arbitration.
- (iv) In pendulum arbitration the arbitrator 'has to choose between the last offer and the last claim made by the parties' (Kessler). There being no scope for an award in between. Final offer arbitration is designed to foreclose the possibility of striking by providing third-party, binding arbitration. The arbitrator is precluded from making a decision which is a compromise between the two sides. Grievance, discipline and dismissal disputes are resolved by the parties themselves, through the relevant procedures. It is impasse in negotiation which is referred to the arbitrator.
- (v) The negotiating and disputes procedures in new-style agreements are based on the mutually accepted 'rights' of the parties. The state intention of the parties is to reconcile the few remaining difference of 'interest' on substantive issues by in-company negotiations. Where a difference of interest persists, pendulum arbitration provides an outcome (Burrows).

- b) Reforming intervention
- -is concerned with dispute avoidance and/or the general reform of industrial relations, Historically this has been regulated by government in Britain through the establishment of various institutions e.g. the Commission on Industrial Relations. The extent of reforming third party intervention in Britain has declined considerably since the 1980s as a result of the government's non-interventionist policy.
- 3. However, Kessler and Bayliss (1992) note that 'In reality, the government has sought reform through changes in the law and in the public sector, also through financial squeeze, privatisation and so forth, while private employers have sought reform through their own policies and through the widespread use of private consultants.' Third Party Intervention in Contemporary Britain:
- 4. Traditional third party intervention has declined in Britain since the late 1970s e.g. the number of completed collective conciliation cases referred to ACAS declined from 2284 in 1979 to 1140 in 1990, and the number of arbitration and mediation cases from 363 to 200. This decline may be attributed to a decline in union power.
- 5. Arbitration in the private sector has generally been voluntary ie it can only be invoked by the agreement of both side. Unions are less willing to take industrial action and therefore the balance of power is in management's favour.
- 6. In the public sector, arbitration has been widely used to settle disputes. However its use has declined since the 1980's when the right to unilaterally invoke arbitration was withdrawn in most areas of the public sector. In many case in the 1980s, the government chose to settle disputes by force in the public sector rather than arbitration (Kessler, Bayliss 1992).
- 7. There has been an increasing trend toward so-called 'new-style' single union deals in Britain since the 1980s, the majority of which have been signed with the electrical's union EETPU. Many of these deals include a 'peace clause' which restrains the union from taking industrial action while a matter is under discussion, and include provisions for pendulum arbitration. Certain organisations eg. sanyo and Hitachi claim that these new-style deals make industrial action unnecessary (Burrows, 1986). The majority of these new-style agreements that have provisions for pendulum arbitration also include intermadiary procedures of conciliation and/or mediation (Metcalf, Milner 1992).

Main advantages of Pendulum Arbitration

8. It encouraged realism on the part of both parties because an unrealistic offer or claim was likely to lead the arbitrator to award in favour of the other party.

Main Disadvantages

9. These include the lack of scope and flexibility given to the arbitrator.

Why use pendulum arbitration

10. The government has supported new style agreements which provide for obligatory arbitration if the parties fail to agree. Many provided for pendulum arbitration. There are moves to single union agreements which have compulsory arbitration clause, usually pendulum arbitration.

Conclusion:

11. Such intervention is generally successful because it is believed that the conciliators or arbitrators are as unbiased and impartial as human personality permits and that the political and external influences in settling the dispute are minimized. (Farnham & Pimlott) The voluntary tradition of Britain is against legal intervention in arbitration. What we saw was some advancement made in supporting the legal rights of individual employee. Third party intervention has played a vital role in British industrial relations for generations. Courts of inquiry, pay review bodies, wages councils, and trade unions and employers' associations have all contributed to dispute resolution and avoidance, and industrial relations reform.

END	