

CHAPTER SEVEN

MACHINERY FOR PAY DETERMINATION

Existing consultative machinery

7.1 At present, consultation on civil service pay and conditions of service takes place at the central level through:-

- (a) the Senior Civil Service Council which includes staff side representatives of the three main staff associations, namely, the Hong Kong Chinese Civil Servants' Association (HKCCSA), the Association of Expatriate Civil Servants (AECS) and the Senior Non-Expatriate Officers' Association (SNEOA);
- (b) the Model Scale 1 Staff Consultative Council which includes staff side representatives of seven staff associations/unions representing the interests of all Model Scale 1 staff;
- (c) the Police Force Council whose staff side comprises four staff associations, namely, the Superintendents' Association, the Local Inspectors' Association, the Expatriate Inspectors' Association and the Junior Police Officers' Association.

7.2 The Senior Civil Service Council was established in 1968 following an agreement (the "1968 Agreement") between the Government and the three main staff associations which subsequently became the staff side of the Council. The Model Scale 1 Staff Consultative Council was formed in December 1982 following the acceptance of recommendations in Report No. 4 of the Standing Commission on consultative machinery in the civil service.

7.3 By virtue of the Police Force Ordinance, police officers are prohibited from becoming members of a trade union, including the three main staff associations which form the staff side of the Senior Civil Service Council. However, in accordance with the Ordinance, police staff associations have been established by the Commissioner of Police who may seek their advice on matters relating to 'welfare and conditions of service' (section 8 of Police Force Ordinance). Before the setting up of the Police Force Council, staff consultation within the police force took the form of 'consultative councils', one for senior staff and another for juniors. The Police Force Council was constituted in 1982 as a result of the acceptance of recommendations in Report No. 4 of the Standing Commission. The Police Force Council has been consulted on all pay and conditions of service matters, e.g. pay trend surveys, the 1986 pay level survey and the introduction of the new pension scheme.

7.4 There is no separate consultative machinery for disciplined services staff other than police officers because their pay and conditions of service matters are referable to the Senior Civil Service Council. Unlike the police, staff of the Fire Services, Correctional Services, Customs & Excise Service and Immigration Service are free to join one of the three main Staff Associations as appropriate, in addition to becoming members if they wish, of their own special associations. The HKCCSA accepts group membership (i.e. affiliated members) in addition to individual members. Through group membership, the following staff associations in the disciplined services have the opportunity to express views to the Senior Civil Service Council through the HKCCSA:-

- (a) HK Fire Services Local Officers Association;
- (b) Association of Customs & Excise Service Non-Expatriate Officers.

Our understanding is that about 6,000 of the 44,000 disciplined services staff have joined the three main staff associations, about 10% of them being in the two affiliated groups. We have been told that the majority of disciplined services staff do not consider that the general staff associations are so constituted as to represent their interests effectively, and that the majority of those who joined did so to obtain benefits other than representation in the consultative process.

7.5 Another 4,800 disciplined services staff have joined the HK Customs Officers Union, the HK Fire Services Control Staff's Union, the HK FSD Ambulancemen's Union and the HK Immigration Service Immigration Assistants Union which are represented indirectly on the Model Scale 1 Council through their affiliation with the Hong Kong Civil Service General Union.

Pay trend survey

7.6 An important element in the existing consultative process is the arrangement under which the annual pay trend survey is conducted to provide estimates of pay trends in the private sector.

7.7 In the pay trend survey data on pay adjustments made in a number of selected companies are collected by the Pay Survey and Research Unit of the Standing Commission. Participating companies are asked to separate general pay increases from those which come under the heading of merit or promotion. Only the general pay increases reported by the companies are taken into account in the calculation of Pay Trend Indicators. If a company cannot distinguish between general and merit increases, the company is excluded from the calculation.

7.8 The pay trend survey field comprises companies in five major economic sectors in Hong Kong. The number of employees in the mix of companies in the five sectors does not necessarily

correspond to the actual number of employees in the mix of companies in Hong Kong as a whole. Weighting is applied to the figures obtained from each sector to bring them in line with the actual size of the sector in Hong Kong. A Pay Trend Indicator for each of the three salary bands - Upper, Middle and Lower - is then calculated. This indicator is simply the weighted average of general pay increases, expressed in percentage term, for employees within each salary band.

7.9 The Pay Trend Indicators are presented to the Pay Trend Survey Committee, which include representatives of the staff sides and the Police Force Council. The survey report is issued as soon as the Pay Trend Survey Committee has agreed to the calculations. At this stage, the Administration will begin to consider the civil service pay adjustment in consultation with the staff sides and the Police Force Council.

Pay determination - possible development

7.10 A number of submissions have expressed considerable dissatisfaction with the existing machinery for determining pay in the disciplined services. The major issues have been the police view that there should be a separate machinery and a separate pay scale for the police; and the view expressed in the other services that present arrangements for consultation discriminate against them because they do not have a direct channel of communication as staff of the disciplined services with the Administration and can only be represented with other civil service groups through the Senior Civil Service Council, while the police have direct and separate representation through their own Police Force Council. It is strongly contended in support of the case for improved machinery that under the existing arrangements the special conditions and problems of the disciplined services have not been given the consideration they require. There is also general concern that the private sector is considered to have too powerful an influence in the determination of civil service pay, and widespread distrust of the information collected in the pay trend survey. It is suggested that this information does not adequately reflect the general movement of pay in the private sector at the levels surveyed, mainly but not wholly because the exclusion of merit payments provides the opportunity for the returns to conceal what amount to general pay rises.

Machinery for determining police pay

7.11 Two main considerations (more fully set out in our summary of the police submissions in Chapter 8) underlie the police representation that they should have separate machinery :-

- (a) the argument of principle, that the police cannot be associated in pay matters with other groups

represented by trade unions or be parties to negotiations which may end in disputes which might take on a political dimension or which they might require to police;

- (b) the argument of practice, that the existing pay machinery has failed to recognise the needs and conditions of the police service and to match them properly in pay and conditions.

7.12 The second argument obviously can be applied to other services also, and would not preclude the setting up of special machinery embracing all the disciplined services, if this were thought desirable; but the first argument might appear to preclude such an arrangement. It has substantial implications and requires careful consideration. For the purposes of this Preliminary Report we shall set out the arguments as we understand them, and try to explore where they lead.

7.13 The Police Force Ordinance (Cap 232) forbids trade union membership (section 8). There is no similar provision in the ordinances governing the other disciplined services.

7.14 Perhaps because the idea of a police strike was simply unthinkable, there is no provision in law or in any of the relevant regulations which simply prohibits the police from striking; but section 62 of the Police Force Ordinance clearly prohibits the organisation of any kind of industrial action by the police, and thus effectively prohibits striking. It provides that :-

"If any person causes, or attempts to cause, or does any act calculated to cause disaffection amongst the members of the police force, or induces, or attempts to induce, or does any act calculated to induce any member of the police force to withhold his services or to commit breaches of discipline, he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$2,000 and to imprisonment for 2 years."

A similar provision applies to the Immigration Service.

7.15 These two provisions together reflect in statutory form the need to ensure that the police role in the preservation of law and order cannot be weakened through their possible involvement in industrial disputes. The police at all levels whole-heartedly accept that they have no right to join a trade union or to go on strike, and regard these restrictions as functional necessities.

7.16 The police further argue that these restrictions mean that their associations cannot take any effective part in pay negotiations or consultations alongside groups who might take or threaten to take industrial action. A situation could arise in

such joint consultations in which the police voice would be decisive for agreement or disagreement, and in which disagreement could lead to an industrial dispute. In these circumstances the police would be inhibited from expressing what might be very strongly-held views, which they would be entirely free to argue with all the force they could command if they were engaged in separate consultations.

7.17 The police also consider that their service is large enough and complex enough in its structure, duties, and the details of its work and conditions to justify the setting up of separate pay machinery which could formulate pay recommendations which would match the complex requirements of the service.

7.18 Two possible models have been suggested to us. One, originally put forward by the staff side of the Police Force Council in December 1986, was an "independent consultative and negotiating organisation to consider police pay and conditions". This was to be a much enlarged Police Force Council chaired by a member of the Judiciary and having an official side membership drawn from the Executive and Legislative Councils and a staff side representing the police at almost all levels, except the topmost ranks. The alternative, which now appears to command most support among the police, would be a Standing Commission on Police Pay and Conditions of Service, to perform for the police the same functions as the Standing Commission and the Standing Committee on Directorate Salaries and Conditions of Service currently perform for the whole civil service.

Other disciplined services

7.19 The submissions from the other disciplined services express less concern over the machinery for pay determination than the police. The main subject of concern is that under the existing arrangements (see para 7.4 above) the staff of these services have in practice little effective opportunity to express their views in the Administration's consultations on the annual pay settlement, whereas the police do have such arrangements in the Police Force Council. The staff associations/unions in the four services have formed a Disciplined Services Staff Unions/Associations Liaison Group, one of whose objects is to press for better consultative arrangements. So far we understand they have had two meetings with Civil Service Branch.

7.20 The Liaison Group asked for a meeting with us, and at that meeting they expressed the view that what was needed was joint consultative arrangements on pay and conditions covering all five disciplined services but separate from that for the rest of the civil service. We have much evidence yet to hear, but our impression so far is that there would be a good deal of support among the staff of the four services for an arrangement

of this kind. Such an arrangement would not of course meet the arguments advanced by the police.

Options for the future

7.21 It is worth noting at this point that the total number of disciplined staff in the five services are as follows :- Police 26,829; Fire Services 6,672; Correctional Services 5,312; Customs and Excise 2,634; and Immigration 2,822. In view of these numbers, and looking to the coverage of the Standing Commission (181,787 staff), we do not consider that separate arrangements for each of the five services on the lines of what has been proposed for the police could possibly be justified and we are therefore minded to exclude this option from further consideration.

7.22 This appears to leave four main options :-

- (a) The status quo.
- (b) To continue to use the existing machinery (the Standing Commission and the Standing Committee) for the disciplined services, but to modify and strengthen it, possibly with specialist sub-committees, to enable more close and detailed attention to be given to police and other disciplined services pay and conditions.
- (c) To establish separate machinery - perhaps in the form of a new Standing Commission or Committee - to cover all five disciplined services together, possibly with separate consultative arrangements for the police so that their associations would not be involved in discussions alongside the associations representing the staff of the other four services.
- (d) To make two entirely separate new arrangements, with one body covering the police and one covering the other four services.

Within these options, a number of variants are obviously possible.

7.23 Whatever the form of the machinery might be, it seems to us at this stage of our deliberations that under any arrangements the annual adjustment of pay to reflect pay trends in the private sector and general economic, social and budgetary conditions would have to be the same for the disciplined services as for the rest of the civil service. The work of any separate body or bodies that might be set up would be to determine from time to time as appropriate what special adjustments were needed to pay and conditions of

service in the disciplined services in the interests of recruitment, retention, and motivation, and to reflect special needs and developments in the services.

The future of the pay trend survey

7.24 One element in the machinery for pay determination to which at an early stage in our work we thought we should require to give some detailed attention was the method by which the annual pay increase for the disciplined services was determined. We had observed that an important factor in the acceptability in the U.K. of the Edmund-Davies Report on the police and the Fire Service pay agreement of 1978 had been the arrangements made for the annual up-rating of pay. In the case of the police, the index used, which directly determines the amount of the annual increase, is the annual movement of the published monthly index of average earnings, produced by the New Earnings Survey. In the fire service case, the average earnings of firemen are approximately equated to the average earnings of the upper quartile of adult male manual workers, and thus are up-dated by reference to the corresponding part of the earnings index produced by the New Earnings Survey. We should add at this point that we recognise that the simple application of earnings indices in this way is open to a great deal of criticism. In our view the simple movement of a single index should not be the sole basis for the adjustment of disciplined services pay.

7.25 Since much of the concern we have heard expressed about pay determination machinery relates to the pay trend survey we had considered examining alternative sources of information about the movement of pay and earnings in the private sector as a possible means of helping to remove one source of discontent among staff. Since it is total earnings and not basic pay that determine one's standard of living, and since the measurement of movements in total earnings might help to remove one source of distrust of the Pay Trend Survey, it seemed important to us that movements in earnings should at least be considered in the pay-determining process; and we were glad to learn from Census and Statistics Department that a good deal of information about earnings is collected already, though not for the purpose of helping in the determination of pay.

7.26 However, since we were appointed the Government has announced that it intends to appoint a Committee of Inquiry to examine the issues arising in the recent dispute with non-directorate staff over the 1988 pay adjustment; and we understand that a requirement to review the current pay trend machinery will be central to its terms of reference. In these circumstances we do not consider we should pursue this matter further, and we do not intend to deal with it in our Final Report, other than to record the concern that has been expressed to us about the current survey procedure.