

J. Y. Interpretation No.351 (June 17, 1994) *

ISSUE: Is the provision of the Act Governing the Conversion of State Owned Enterprises, providing that those workers who will not transfer to the new private enterprise simultaneously shall “ receive an additional pay equivalent to six-months’ salary,” also applicable to those workers who remain in employment?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Article 8 of the Act Governing the Conversion of State Owned Enterprises into Private Enterprises (公營事業移轉民營條例第八條) ; Article 16 of the Labor Standards Act (勞動基準法第十六條) .

KEYWORDS:

the conversion of state owned enterprises into private enterprises (公營事業移轉民營) , severance payments (離職給與) , additional payment (加發薪給) , advance-notice salary (預告工資) , settle accounts for years of service (年資結算) , lay off (資遣) . **

HOLDING: Paragraph 2 of Article 8 of the Act Governing the Conversion of State Owned Enterprises into Private

解釋文：公營事業移轉民營條例第八條第二項係就不隨同移轉之從業人員所作之規定，其第三項則係就繼續

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Enterprises applies to those employees that do not transfer with the conversion from state owned enterprises into private ones, whereas Paragraph 3 of the same article applies to those who do transfer. As provided in the first half of Paragraph 3, Paragraph 2 is only applicable to the settling of accounts for years of service for those remain with the enterprises when the state owned enterprises are converted into private ones. Considering the provision of the whole statute, the additional six-month payment, which is provided for in Paragraph 2, is not applicable to those who remain with the enterprises, so as to give equitable treatment to those who do not remain.

REASONING: This interpretation is in response to the Letter (82) T.Y.I. No. 2317 of July 5, 1993, a petition for unified interpretation filed by the Legislative Yuan.

According to Paragraph 2 of Article 8 of the Act Governing the Conversion of State Owned Enterprises into Private Enterprises, “Those who are not willing to

留用之從業人員所作之規定，依該第三項前段規定，僅在就繼續留用人員之原有年資辦理結算範圍內，始依前項（第二項）所定結算標準辦理。綜觀該條全文立法意旨，在移轉民營當時，對於繼續留用人員之給與，並不包括第二項關於加發六個月薪給在內，以維持不隨同移轉人員與繼續留用人員待遇之平衡。

解釋理由書：本件依立法院中華民國八十二年七月五日(82)台院議字第二三一七號函意旨，係聲請統一解釋，合先說明。

公營事業移轉民營條例第八條第二項「公營事業轉為民營型態時，其從業人員不願隨同移轉者或因前項但書約定未隨同移轉者，應辦理離職。其離職

transfer after the conversion from state owned enterprises into private ones shall leave; the severance payments shall be in accordance to the Labor Standards Act, regardless of age or years of service; and six months' additional payment with another month's advance-notice salary shall be paid. Those who were not eligible under the Labor Standards Act shall be eligible in this case." The above provision is for those employees who do not transfer when the state owned enterprises are converted to private ones. Paragraph 3, which states, "The original enterprises shall settle accounts for years of service on the day of transfer for those who remain with the converted enterprises; The settling of accounts shall be in accordance with what is provided in the previous paragraph, but without the advance-notice salary; Those who are laid off within 5 years' time from the conversion shall be entitled to the six-month additional payment with one month advance-notice salary and the best applicable severance payment based on their salary on the day of conversion", is only applicable to those who remain with the enterprises when they are converted from

給與，應依勞動基準法退休金標準給付，不受年齡與工作年資限制，並加發移轉時薪給標準六個月薪給及一個月預告工資；其不適用勞動基準法者，得比照適用之」，係就不隨同移轉之從業人員所作之規定。其第三項「移轉為民營後繼續留用人員，得於移轉當日由原事業主就其原有年資辦理結算，其結算標準依前項規定辦理，但不發給預告工資。其於移轉之日起五年內資遣者，按從業人員移轉民營時或資遣時之薪給標準，擇優核給資遣給與，並按移轉民營當時薪給標準加發六個月薪給及一個月預告工資」，則係就繼續留用（隨同移轉）從業人員所作之規定。其中前段既謂「就其原有年資辦理結算，其結算標準依前項（第二項）規定辦理」，而非謂「就其原有年資及加發薪給辦理結算，其結算標準依前項（第二項）規定辦理」，自係限在年資結算範圍內，始依前項（第二項）規定辦理，而非謂連同加發薪給亦應依前項（第二項）規定辦理。又因加發薪給與加發預告工資性質不同，前者並未規定於勞動基準法，後者則已規定於勞動基準法第十六條第三項。而第二項所定之文字，有「應依勞動基準法退休金標準給付，不受年齡與工作年資限制」等語，為表達繼續留

state owned to private ones. The first half of this paragraph states that, "...shall settle accounts for years of service. The settling of accounts shall be in accordance with what is provided in the previous paragraph (Paragraph 2)", but not "...shall settle accounts for years of service with the additional payments. The settling of accounts shall be in accordance with what is provided in the previous paragraph (Paragraph 2)". Moreover, the nature of the additional payment is different from that of the advance-notice salary. The previous is codified in Paragraph 3 of Article 16 of the Labor Standards Act whereas the latter is not. The language of Paragraph 2, "the severance payment shall be in accordance with the Labor Standards Act, regardless of age or years of service", clearly states that the remaining employees are not entitled to the advance-notice salary which is provided in the Labor Standards Act. Paragraph 3 also clearly states, "but without the advance-notice salary". The additional payment is not and need not be included in the language of Paragraph 3, because it is not codified in the Labor Standards Act, thus there is no

用人員，不得依勞動基準法之規定請求加發預告工資之用，故特於第三項前段設「但不發給預告工資」之限制。至於加發薪給則原為勞動基準法之所無，不虞繼續留用人員援該法以請求，即無須於第三項贅增「但不發給六個月薪給」之明文。此種按原有年資辦理結算之繼續留用人員，雖不獲加發薪給及預告工資，但依第三項後段規定，則係於移轉之日起五年內資遣時再一併如數加發之，使原從業人員於移轉民營當時離職者與其後五年內資遣（離職）者，所受之離職優惠給與一致，以維持兩者待遇之平衡。若謂繼續留用者於移轉民營當時辦理原有年資結算之際，亦可如同離職者獲得加發六個月薪給，則祇須於留用後五年內之任何一日（包括留用後之第二日）資遣，均可重複獲得加發六個月薪給，成為雙重離職優惠，無異鼓勵原從業人員於移轉民營當時不離職，而延後於五年內之任何一日再離職（資遣），增加公營事業移轉民營之困擾，顯非立法之本意。本件係就現行法律依其文義及論理所為之統一解釋，不涉及立法問題，併此說明。

concern that the remaining employees will request it according to the Labor Standards Act. Should those who remain, and are thus not entitled to the additional payment, be laid off within 5 years' time, they then will be entitled to such payment, just as those who leave at conversion. Allowing those who remain to receive the six-month additional payment will simply encourage employees to remain and then leave within 5 years' time, so as to receive double the additional payments. This would create problems for the conversion of state owned enterprises into private ones, and is certainly not the purpose of the statute. This interpretation is made concerning the language and the underlying theories of the statute. Therefore, it does not pertain to any legislative issues.

Justice Cheng-Tao Chang filed dissenting opinion.

本號解釋張大法官承韜提出不同意見書。