

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：

公務員參加職工會及其活動的權利

公務員事務局在《立法會 CB(1)1288/05-06(02)號文件》中指出：

- (一) 《僱傭條例》(第 57 章)第 IVA 部(職工會不受歧視的保障)和第 VIA 部(僱員享有僱傭保障的權利)不適用於政府；
- (二) 香港法例並沒有明文訂定，如政府因公務員行使參加職工會及其活動的權利而終止該名公務員的僱傭合約，或懲罰或以其他方式歧視該名公務員，須面對列事起訴；及
- (三) 如公務員因參加職工會及其活動而遭政府歧視，可根據《香港人權法案條例》(第 383 章)第 6(1)條尋求補救。

就此，本人希望行政當局在立法會公務員及資助機構員工事務委員會 2006 年 6 月 19 日的會議前提供文件，澄清和解答下述問題：

- (一) 國際勞工組織第 98 號公約(即《1949 年組織權利及集體談判權利公約》)第 1 條，是否適用於公務員和非公務員合約員工？如是的話，就參加職工會及其活動的權利而言，公務員和非公務員合約員工是否應該獲得猶如其他一般僱員享有的同等保障(即《僱傭條例》第 IVA 和 VIA 部的保障)？
- (二) 當局有否訂立機制或程序，處理公務員因參加職工會及其活動而遭歧視的個案？如有的話，該機制或程序的詳情為何，包括：
 - (a) 負責處理的機構或人士是否如勞工處處長般擁有查訊和搜證的法定權力；

- (b) 對公務員作出歧視職工會作為的人士將會受到的懲處；
- (c) 因參加職工會及其活動而遭歧視的公務員可獲的補救；及
- (d) 該機制或程序是否適用於非公務員合約員工？
- (三) 根據《僱傭條例》第 VIA 部的規定，除非僱主能夠證明其解僱是基於該部指明的正當理由，否則勞資審裁處可在考慮個別申索後，推定僱主是不合理地解僱僱員。前港英政府在 1993 年 10 月發出題為《有關香港勞資關係制度的檢討》的立法局參考資料摘要（文件編號 EMB CR 1/3051/93 II）亦指出：「違反（歧視職工會的）規定是很難證明的，因為隱藏的動機縱是歧視，也常可以其他表面的原因掩飾……為了進一步防止歧視職工會，以及解決有關在法庭上證明僱主蓄意歧視的技術困難，現建議假如僱員遭解僱的理由是由於他是職工會會員或他參與職工會的活動，僱員可向勞資審裁處提出補償聲請，而僱主應負起舉證責任，證明此解僱非屬歧視」。如公務員或非公務員合約員工因參加職工會及其活動而遭歧視，並根據《香港人權法案條例》第 6(1)條尋求民事補救，公務員或非公務員合約員工的僱主（即政府）是否需要負起同樣的舉證責任？

煩請 閣下代向政府當局轉交上述問題。如有任何垂詢，請致電 9308 0767 與本人助理方約恆先生聯絡。

有勞之處，不勝銘感。



李卓人 謹啓

2006 年 5 月 18 日

C98 Right to Organise and Collective Bargaining Convention, 1949

Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Note: Date of coming into force: 18:07:1951.)

Convention:C098

Place:Geneva

Session of the Conference:32

Date of adoption:01:07:1949

Subject classification: Freedom of Association

Subject classification: Collective Bargaining and Agreements

Subject: **Freedom of Association, Collective Bargaining, and Industrial Relations**

[See the ratifications for this Convention](#)

Display the document in: [French](#) [Spanish](#)

Status: Up-to-date instrument This instrument is one of the fundamental conventions.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

- a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;
- b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
- c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year

following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 14

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

Cross references

[Constitution: 19:article 19 of the Constitution of the International Labour Organisation](#)

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**For further information, please contact the International Labour
Standards Department (NORMES)
by email: infonorm@ilo.org**

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