

**Labour Department (Headquarters)**

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23 April 2009

Mr Raymond LAM,
Secretary to Panel on Manpower / Chief Council Secretary,
Council Business Division 2,
Legislative Council Secretariat,
3rd floor, Citibank Tower,
3 Garden Road,
Hong Kong

Dear Mr Lam,

**LegCo Manpower Panel Meeting on 19 March 2009
Follow-up Issues**

During the discussion on "Labour Department's response to the recent labour relations scene amidst the financial tsunami" at the meeting of the Panel on Manpower on 19 March 2009, Members requested the Administration to provide information on (i) the effectiveness of the Labour Department (LD) in facilitating the consultation and communication between employers and trade unions under the existing voluntary negotiation mechanism, and the figures on collective agreements signed by employers and trade unions after negotiation; as well as (ii) the number of unsuccessful applications for ex gratia payment under the Protection of Wages on Insolvency Fund (PWIF) due to failure to obtain legal aid by the employee. Our response is as follows:

(i) Voluntary Collective Bargaining

The Government has all along been committed to promoting voluntary collective negotiation. If employers and employees cannot resolve their disputes through self-initiated negotiations, LD will assist in providing conciliation to facilitate various parties to resolve problems promptly. We believe that the maintenance of harmonious labour relations in Hong Kong is attributable to the discussions and consultations between employers and employees on the basis of mutual understanding. At present, LD commits itself to encouraging and promoting the setting up of a voluntary negotiation

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mechanism between employers or employer associations and employees' organisations at the central, industry and enterprise level.

The Central Level

At the central level, the Labour Advisory Board advises the Government on the formulation of labour policies and legislation. It comprises representatives of the Government, employer associations and trade unions. This mechanism has served Hong Kong well over the years. Through negotiation on the basis of mutual understanding between employer and employee organisations, many major labour policies and important labour legislation have been implemented smoothly.

The Industry Level

At the industry level, LD has set up nine industry-based tripartite committees, covering catering, property management, retail, construction, hotel and tourism, logistics, printing, cement and concrete as well as theatre industries. Through the meetings of these committees, LD has provided a useful forum for representatives of labour unions, employers and their associations to discuss labour relations issues and general matters within the industry of mutual concern, and to seek means of addressing these issues. Some trades such as printing, piping, bar-bending, painting, ship repairing, cargo handling and tourism industries have signed collective agreements on employment terms.

The Enterprise Level

At the enterprise level, we encourage enterprises to maintain effective communication with their employees and trade unions on employment matters in the light of their individual circumstances. In addition, LD also organises publicity activities on a regular basis for employers, employees and human resources practitioners to promote voluntary and direct negotiation in the workplace. A number of major enterprises in Hong Kong have set up a communication mechanism whereby effective employer-employee communication is achieved through regular meetings between employers and trade unions, consultative committee meetings, as well as daily contact and discussions with trade union representatives. As far as we know, employers in the public bus industry, air transport industry, cleaning services industry, food processing industry and security services industry, etc. have reached an agreement on matters relating to the terms and conditions of employment with their employees or their affiliated groups through voluntary and direct negotiations.

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In addition to facilitating resolution of labour disputes by voluntary negotiation between employers and employees, LD takes the initiative to contact enterprises, seek early intervention before outbreak of labour disputes and provide appropriate assistance. In fact, LD's early intervention has forestalled and defused a number of potential labour disputes before they erupt into full-blown conflicts. We have successfully facilitated dialogues between employers and trade unions and established a mechanism for sustaining bilateral communication in the enterprise. Some employers are now willing to allow their employees and union members to participate in and deal with issues of mutual concern. Through LD's proactive encouragement, we observe that employers have adopted a more open attitude towards trade unions in general.

In fact, communication between employers and employees takes place every day in enterprises of all sizes. The discussions involved are numerous, which include employees' remuneration and benefits, roster arrangement, staff discipline, sales strategies, appraisal systems and the like. As LD's direct intervention is not required in most of these discussions, we do not have the statistics on the regular communication between employers and representatives of trade unions and the collective agreements signed between them after negotiation.

In respect of the cases with LD's intervention, we do not have the relevant statistics mainly because the work of LD cannot be easily quantified. In its intervention in labour disputes, LD will take into account the prevailing times and individual circumstances of each case and handle such cases in a flexible and pragmatic manner. Some labour disputes may arise from different interpretations of the Employment Ordinance or the employment contracts while others may be triggered by dissatisfaction over terms of employment such as wage adjustments and work arrangements. In some cases, we can enable both the employers and employees to understand their duties and rights under the law, and facilitate their communication simply through contacts by phone. For most of the cases, LD will hold informal meetings with the employees or employers to understand their positions and narrow their differences. Formal conciliation meetings will be arranged where necessary to enable both parties to resolve their disputes through discussion. In short, conciliation of labour disputes is an interactive process where LD will act as a mediator to assist the employers and employees in narrowing their differences and reaching an agreement through providing a platform for dialogue to resolve disputes.

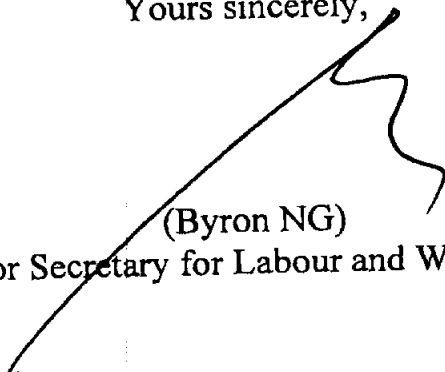
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There have been many incidents in which labour disputes were settled and the employer-employee partnership was re-established through LD's intervention. When a labour dispute is amicably settled, both the employer and the employee may have to sign a collective agreement for implementing the agreed terms. However, there are also cases where both parties choose not to do so as their focus is on building a long-term relationship. A collective agreement is, therefore, not indispensable in resolving labour disputes. It is most important for both parties to handle their dispute in a pragmatic manner and with mutual understanding. We are delighted to see that in some cases, employers, employees and trade unions could reach consensus after the intervention of LD, and they continue to work together on this basis, resorting to dialogue and discussion on their own to resolve issues of mutual concern in the future.

(ii) Unsuccessful Applications for Ex Gratia Payment under the PWIF due to Failure to Obtain Legal Aid

Employees who are owed wages, wages in lieu of notice and severance payment by their insolvent employers may apply to the PWIF for ex gratia payment. In 2008, 4 911 applications for PWIF were approved and 720 applications were withdrawn. Among the latter, 80 were withdrawn as the employees could not present a winding-up/bankruptcy petition against their insolvent employers for various reasons. For example, some employees were not granted legal aid, some employees were unable to submit sufficient documents to the Legal Aid Department for the means test, while there were other employees who could not afford the contribution payments required under the Supplementary Legal Aid Scheme or who did not want to pursue their claims further in view of the insignificant claimed amount. We do not have a breakdown of the number of unsuccessful applications for ex gratia payment under the PWIF due to failure to obtain legal aid.

Yours sincerely,


(Byron NG)
for Secretary for Labour and Welfare