

立法會
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LegCo Panel on Manpower

**Subcommittee on
Employer and Employee Relations**

**Minutes of meeting
held on Thursday, 9 December 1999 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon LAU Chin-shek, JP (Chairman)
Hon LEE Cheuk-yan
Hon LEE Kai-ming, SBS, JP
Hon Ronald ARCULLI, JP
Hon CHAN Kwok-keung
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo

Members absent : Hon Cyd HO Sau-lan
Hon CHAN Yuen-han

Public Officers attending : Mr Matthew K C CHEUNG, JP
Commissioner for Labour

Miss Erica NG
Principal Assistant Secretary for Education and Manpower

Mr TSANG Kin-woo, JP
Assistant Commissioner for Labour (Labour Relations)

Mrs Clare SIU
Chief Labour Officer (Labour Relations)

Mrs Jenny CHAN
Chief Labour Officer (Trade Unions and Wage Security)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

I. Election of Chairman

Mr LAU Chin-shek was elected Chairman of the Subcommittee.

II. Terms of reference

(LC Paper No. CB(2) 558/99-00(01))

2. Members endorsed the terms of reference of the Subcommittee.

III. Meeting with the Administration

(LC Paper No. CB(2) 558/99-00(02))

3. At the invitation of the Chairman, Commissioner for Labour (C for L) presented the Administration's paper, which provided information on measures adopted by the Administration to implement its obligations under the International Labour Convention Number 87 (ILC No. 87) and ILC No. 98 in Hong Kong. He informed members that the conventions were applied in Hong Kong by a combination of legislative and administrative measures.

4. Members agreed to Mr LEE Cheuk-yan's suggestion of classifying issues related to employer and employee relations under the following categories -

- (a) right to organize;
- (b) discrimination against trade unions;
- (c) collective bargaining; and
- (d) right to strike.

Action

Right to organize

Interference by employers

5. Referring to paragraph 12 of the administration's paper, Mr LEE Cheuk-yan asked whether there was a definition for the term "interference". He asked whether it would amount to interference if an employer prohibited a trade union from using bulletin boards or distributing newsletters within the work site outside working hours.

6. Chief Labour Officer (Trade Unions and Wage Security) (CLO(TUWS)) responded that interference was defined in Article 2 of ILC No. 98, which stated that "acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article". Whether the acts as cited by Mr LEE would constitute interference would depend on whether there was an intention to control the trade union. She said that ILC No. 98 did not require the protection of workers and trade unions against interference by employers to be made through legislative measures. Although there was no provision in the Trade Unions Ordinance (Cap. 332) (TUO) to prohibit interference by employers, an employee's right to take part in union activities was protected under section 21B of the Employment Ordinance (Cap. 57)(EO).

7. The Chairman asked what actions would be taken by the Administration if interference by employers on the functioning or administration of trade unions was suspected. Mr LEE Cheuk-yan considered that without legislation for protection against interference by employers, there was very little the Administration could do even if interference was identified. He added that in the United States (US), there was legislation on unfair labour practice. CLO (TUWS) responded that ILC No. 98 required the prevention of acts of interference by employers through the provision of financial support. If an employer had made donations to a trade union, the Administration would seek information on the purpose of the donation both from the trade union and the employer. She added that members of a trade union should be made aware of any donation to the trade union and the purpose of the donation. The obligations under ILC No. 98 were adequately implemented in Hong Kong through administrative measures and therefore anti-interference legislation was not needed.

8. Mr Ronald ARCULLI said that much of Hong Kong's obligations under a number of international conventions were not implemented through enactment of legislation. Labour relations in Hong Kong had been relatively good even among the world. He asked whether the Administration would introduce legislative measures in the face of pressure from labour unions. C for L shared the view that labour relations in Hong Kong was good. He assured members that although some of Hong Kong's obligations under ILC No. 98 were implemented through administrative measures, the Administration would closely monitor the situation and review the need for introduction of legislative measures.

Action

Restrictions on eligibility as council members of trade unions

9. Mr LEUNG Yiu-chung said that legislative measures had sometimes imposed restriction on labour unions. He expressed concern that under TUO, a person could not be a council member of a labour union if he or she was not engaged or employed in a trade, industry or occupation with which the labour union was directly concerned. Persons outside the trade of the labour union concerned therefore could not represent the labour union in negotiations. On the other hand, employers could be represented by legal representatives. This had put labour unions in a disadvantaged position in negotiations. As the International Labour Organization (ILO) required that trade unions should be given full freedom to choose their leaders, the Administration should consider relaxing the requirement.

10. C for L responded that the original intent of the requirement was to protect trade unions against control by external parties. Nevertheless, approval could be given by the Registrar of Trade Unions (the Registrar) for persons who did not meet the requirement. CLO(TUWS) added that between 1980 and November 1999, there were 32 applications from persons who did not have the occupational requirement, all of which had been approved by the Registrar. C for L added that the Administration was in the process of consulting the Labour Advisory Board (LAB) on the issue. He undertook to report the results of the Administration's review to the Manpower Panel in due course. In response to Mr LEUNG Yiu-chung's question on whether changes would be proposed to the requirement, he said that consideration was being given to introducing flexibility, where possible, in the requirement. However, he was not in a position to provide any details at this stage.

Adm

Use of trade union funds

11. Mr LEE Kai-ming said that in anticipation of the possible abolition of the municipal councils, a trade union had recently passed a resolution at its biennial general meeting to amend its rules in respect of the use of its electoral fund from elections of "three tiers of councils" to "all tiers of councils". He questioned why the registration of the amended rule was rejected by the Registry. CLO (TUWS) responded that trade union funds should be used for promotion of the rights and welfare of its members. The purposes for which trade union funds might be used were listed out in detail in TUO, under which funds of trade unions could only be used in relation to the elections of the three tiers of councils. As "all tiers of councils" might include councils that were outside the three tiers of councils, registration of the amended rule was rejected by the Registry. Mr Ronald ARCULLI said that the Registry should at least propose some alternative solutions for the trade union concerned. The Chairman considered that it would be unreasonable for the Registry to exclude any council that might be established by legislation in the future. He requested the Administration to look into the issue. Mr LEE Kai-ming added that the Administration should take steps to amend any legislation that restricted trade unions' right to organize.

12. Mr LEUNG Yiu-chung said that the prohibition under TUO of the use of trade

Action

union funds for political purposes other than elections of the three tiers of councils was an act of interference of trade unions.

13. Mr LEE Cheuk-yan expressed concern that under TUO, approval had to be sought from the Chief Executive (CE) for donations by trade unions to a trade union outside Hong Kong. C for L said that although approval had to be sought for such use of funds, all requests of this nature had been approved by CE in the past. He assured members that the requirement only sought to ensure that trade union funds were used for the promotion of rights and welfare of its members.

14. Mr LEE Cheuk-yan said that the provision would prohibit the use of funds on elections of CE in the event that he or she was elected by general elections in the future. Mr Ronald ARCULLI said that even under the current method of election of CE, the use of funds for election of labour union representatives to the Election Committee would be prohibited under TUO. The Chairman requested the Administration to look into the issue. C for L responded that consideration could be given to introducing necessary amendments to TUO in future should circumstances so warrant.

15. Mr LEE Cheuk-yan said that to his knowledge, funds had been used by trade unions for the preparation of banners about election for CE and the democratic movement of 1989. However, the Administration had not taken actions against such use of trade union funds for political purpose. He raised query about the need for the provision which restricted the use of trade union funds. C for L reiterated that trade union funds should be used for promoting and protecting the interests of its members. The Administration had no intention of interfering in the autonomy of trade unions. He said that the review on use of trade union funds was being considered by LAB. The results of the Administration's review would be reported to the Panel on Manpower in due course.

Participation of trade unions in overseas trade union activities

16. Mr LEUNG Yiu-chung asked whether local trade unions' participation in overseas labour movement during the recent conference of the World Trade Organization would be regarded as participation in political activities and whether the use of funds for such activities would be regarded as use of funds for political purpose. Assistant Commissioner for Labour (Labour Relations) (AC for L) responded that under TUO, the use of funds for political purpose, apart from those in relation to the elections of the three tiers of councils, was prohibited. Participation in overseas trade union activities was allowed if the purpose of the activity was for the promotion of workers' rights and welfare. C for L added that local trade unions were allowed to participate in the activities of ILO. Mr Ronald ARCULLI considered that the contribution of membership fee by a local trade union to a federation of trade unions in the United States (US) which provided financial assistance for international labour union movement might not be regarded as use of funds for political purpose.

Adequacy of measures against interference by employers

17. Mr Andrew CHENG expressed concern about whether the Registry's inspection

Action

of account books of trade unions was sufficient for ensuring non-interference by employers on trade unions. He asked about the number of complaints against interference by employers received by the Registry in the past five years. He added that it might be helpful to identify the general difficulties faced by trade unions in respect of the right to organize. C for L responded that besides the inspection of account books, visits were also made to trade unions. There were sufficient channels for trade unions to lodge complaints against employers. CLO (TUWS) said that visits were made by the staff of the Registry to all trade unions. Promotional visits were made by the staff of the Registry and the Labour Relations Promotion Unit of the Labour Department to trade unions and employers. The Administration would strengthen publicity in this aspect. She added that the Registry had not received any reports of acts of interference by employers.

Adm

18. Mr Andrew CHENG requested the Administration to provide information on overseas legislation relating to the right to organize. C for L undertook to provide information relating to protection of workers' organizations against interference by employers.

Other related issues

19. In response to Mr LEUNG Yiu-chung, C for L said that besides reviews on the occupational requirement of council members of trade unions and use of trade union funds for political purposes, LAB was also considering the issue of reinstatement.

20. Mr LEE Cheuk-yan said that he would provide members with information on ILO's stance in respect of interference and US legislation relating to interference by employers on trade unions.

Discrimination against trade unions

Local legislation which were in discrimination of trade unions

21. Mr LEE Kai-ming said that some pieces of legislation in Hong Kong were in discrimination of trade unions. Following the abolition of a night-time bus service by a company in the new airport, a trade union which took over the provision of night-time bus service for the workers was prosecuted by the Transport Department (TD) for provision of the bus service. He questioned why the employer was allowed to provide the bus service whereas the trade union was prohibited from providing such a service, which was provided solely for the welfare of workers. He added that if the Clubs (Safety of Premises) Ordinance (Cap. 376) (CSPO) was strictly enforced, most trade unions would have to wind up, as most of them were located in private residential buildings which could not accommodate too many members at one time. He asked whether the Administration would review the existing legislation which discriminated against trade unions. C for L responded that there was no local legislation which discriminated against trade unions. There would be more protection in respect of employees compensation if the night-time bus service was provided by the employer. He undertook to refer the issue relating to CSPO to the Home Affairs Department.

Action
Adm

AC for L added that to his knowledge, the decision of TD was based on the Public Bus Services Ordinance (Cap. 230).

Employers' discrimination against trade unions

22. Mr LEE Kai-ming said that employers' discrimination against trade unions was a serious problem in Hong Kong. Some employers were only willing to negotiate with employee representatives who sat on joint consultation committees (JCCs) and refused to have any dialogue with representatives of trade unions. C for L said that joint consultation committees were established channels of communication between employers and employees in many organizations. The use of such a channel for negotiations should be encouraged especially if it had already provided an effective channel of communication between the employers and employees. AC for L added that many members of JCCs were executive council members of trade unions.

23. Mr LEUNG Yiu-chung questioned why trade union representatives were allowed to represent workers in hearings of the Labour Tribunal, but not allowed to represent workers in negotiations with the employer even in the absence of a JCC in the organization. He opined that such a requirement might constitute discrimination against trade unions. C for L responded that the Administration was in support of voluntary dialogue between employers and employees. He said that voluntary participation was one of the important principles under collective bargaining. A publication of ILO stated that "collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion, which would alter the voluntary nature of such bargaining" and "Nothing in Article 4 of the Convention places a duty on the Government to enforce collective bargaining by compulsory means with a given organization. Such an intervention would clearly alter the nature of bargaining". He added that the establishment of tripartite committees which the Labour Department was actively promoting was a move in the direction of collective bargaining. He added that in member countries of the Organization for Economic Cooperation and Development, there was a trend towards less collective bargaining and more joint consultation between employers and trade unions in resolving problems.

Prosecutions against trade union discrimination

24. Mr LEE Kai-ming asked whether any case of discrimination against trade unions had been successfully prosecuted since the enactment of TUO. C for L responded that since 1990, there were more than ten cases in which the Administration tried to prosecute the employer concerned. However, prosecutions were either unsuccessful or not proceeded with due to insufficient evidence. Nevertheless, remedies had been introduced to EO in 1997 to address the problem. Chief Labour Officer (Labour Relations) (CLO(LR)) added that the remedies available under EO to an employee who was dismissed on grounds of union discrimination included reinstatement, subject to the prior mutual consent between employer and employee, termination payments and award of compensation up to a maximum of \$150,000. There was one successful compensation case under the provision in 1998. Mr LEE Cheuk-yan said that there

Action

was no civil remedy in respect of trade union discrimination of a non-dismissal nature. To his knowledge, some employers had discriminated against trade union representatives through transferring them to a remote work site or assigned them to drive vehicles with embarrassing licence plate numbers. He considered that the Administration should consider introducing civil remedies in this respect. As there was already legislation against sex discrimination, disability discrimination and family status discrimination, he questioned why legislation against trade union discrimination could not be introduced. His view was echoed by Mr LEUNG Yiu-chung and Mr Andrew CHENG. Mr Ronald ARCULLI considered that civil remedies might not be a solution to all problems related to employer-employee relations. AC for L shared the view that legislative measures might not be a solution to all such problems.

25. To overcome the difficulty in proving beyond doubt that an employer discriminated against an employee, Mr LEE Cheuk-yan suggested that the requirement of proving an employer's discrimination against trade unions might be amended along the line of "has reasonable cause to believe that those conducts are likely to prevent or deter the employee from exercising the right to participate in trade union activities". CLO(LR) explained that the employee's right to participate in trade union activities was protected under EO. The employer would commit an offence under section 21B(2) if there was sufficient proof that he had prevented or deterred the employee from, or dismissed him for, exercising such right.

Statistics on complaints received from trade unions

26. Mr Andrew CHENG said that trade unions had lodged various sorts of complaints against their employers. He requested the Administration to provide information on the number and nature of complaints received from members of trade unions against their employers in the past five years.

Adm

III. Date of next meeting

27. Members agreed to schedule the next meeting for 11 January 2000 at 10:45 am to continue discussion with the Administration.

28. There being no other business, the meeting ended at 4:30 pm.

Legislative Council Secretariat

31 January 2000