

LegCo Panel on Manpower
Sub-committee on employer and employee relations
(For meeting on 29 February 2000)

Legislation on the right to organise in other countries

Introduction

At the Sub-committee meeting held on 9 December 1999, a Member requested the Administration to provide information on legislation in other countries on the right to organise.

2. This paper provides information available to the Labour Department on employees' right to form and join trade unions and the machinery of ensuring the independence of workers' organisations in 22 overseas countries. These countries are Australia, Austria, Belgium, Canada, Denmark, France, Germany, Indonesia, Italy, Japan, Malaysia, Netherlands, New Zealand, Papua New Guinea, the Philippines, Poland, Singapore, South Africa, Sri Lanka, Sweden, the United Kingdom and the United States of America.

Relevant International Labour Convention on right to organise

3. Article 2 of the International Labour Convention (ILC) No. 87 on freedom of association and protection of the right to organise provides that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.

Relevant ILC on independence of workers' and employers' associations

4. Article 2 of ILC No. 98 on the right to organise and collective bargaining provides that workers' and employers' associations shall enjoy adequate protection against acts of interference by each other or each other's agents or members in their establishment, functioning or

administration. It further specifies that acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' associations, 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.

5. Furthermore, Article 3 of the Convention provides that **machinery appropriate to national conditions shall be established, where necessary**, for the purpose of ensuring respect for the right to organise. It is pertinent to mention that in Report IV(2) on the *Application of the Principles of the Right to Organise and to Bargain Collectively* issued by the International Labour Office for the 31st session of the International Labour Conference held in 1949, it was stated that there was no intention to place the State Members under an obligation to adopt a prescribed method for giving effect to such guarantees.

Overseas legislation on employees' right to form and join trade unions

6. The salient features of the mechanisms for safeguarding employees' right to form and join trade unions in the 22 countries are outlined below :

- (i) In countries such as Austria, Denmark, Germany and the Netherlands, the right to form associations is guaranteed in their constitution. In these countries, there is generally no legislation specifically on the formation of workers' organisations.
- (ii) Legislation on employees' right of association and formation of workers organisations can be found in most of the other countries. In a number of countries such as Belgium, France, Italy and New Zealand, their legislation also provides for the right not to join trade unions.

Overseas legislation on independence of workers' and employers' association

7. Of the 22 countries, 14 do not have legislation to ensure the independence of workers' and employers' organisations. For the remaining 8 countries, some have enacted legislation of a general nature incorporating the words in Article 2 of ILC No. 98 and others have made more specific provisions. These provisions include:

- (i) In Canada, the United States of America, Malaysia and Japan, the law states that, subject to certain exceptions, employers should not interfere with the formation or administration of trade unions/labour organisations, or contribute financial or other support to them. Complaints about alleged acts of interference are examined by an agency of the state or a court which can issue appropriate remedial orders, such as prohibiting the continuance of the acts.
- (ii) In Italy, it is unlawful for an employer to set up or financially or otherwise, support any form of workers' association. In Sri Lanka, unfair labour practices, which include interfering with the conduct of a trade union by employers, are punishable offences. In the Philippines, it is an unfair labor practice and a criminal offence if an employer initiates, dominates, assists or otherwise interferes with the formation or administration of any labour organisation, including the giving of financial or other support to it or its organisers or supporters.
- (iii) In the United Kingdom, a trade union may apply to the authorities for a certificate of independence. An independent union is one which is not dominated or controlled by an employer and is not liable to interference by the employer tending towards such control. Amongst other rights, union members enjoy protection for participation in the activities of an independent trade union. On the other hand, there is no legislative provision for remedial action or sanction on acts of interference by employers.

Conclusion

8. The legislative and administrative measures which are adopted in Hong Kong to apply the two ILCs are outlined in the Administration's paper submitted to the Sub-committee in December 1999.

9. To strengthen employees' awareness of the right to organise, the Registry of Trade Unions of the Labour Department is preparing a resource kit on trade union management which will include materials on the rights of union members and workers' organisations. When it is ready, the kit will be distributed to all trade unions and will be covered in our trade union educational courses. Similar information will be placed on the Labour Department's homepage on the Internet. We will also advise employers to respect the independence of trade unions in managing their own affairs in our promotion activities for employers. Such advice will also be incorporated into our "Guide on Good People Management Practices" when it is next revised.

Labour Department
February 2000