

Response
of the Government of the Hong Kong Special Administrative Region
to the 318th Report of the Committee on Freedom of Association
(Case No. 1942)

The Government of the Hong Kong Special Administrative Region (HKSAR) has studied the views of the Committee on Freedom of Association (the Committee) expressed in its 318th Report on Case No. 1942. We would like to provide, in the following paragraphs, an update on the development of the issues concerned.

Qualification of union officers

2. Trade unions in the HKSAR enjoy a high degree of autonomy in electing their officers. Section 17(2) of the Trade Unions Ordinance (TUO) only seeks to ensure that officers of a union should generally have some experience in the trade concerned so that they can know the interests and needs of union members better. This principle is recognized and accepted by the vast majority of trade unions in the HKSAR.

3. To cater for any special needs of individual unions, Section 17(2) already provides flexibility for the Registrar of Trade Unions to approve officers who have not been engaged or employed in a trade, industry or occupation with which the union is directly concerned. The Registrar of Trade Unions has approved all such applications in the past. Therefore, this provision has not, in effect, restricted the freedom of trade unions to elect their officers. Notwithstanding this flexibility, the HKSAR Government has reviewed the occupational requirement of trade union officers and is in the process of consulting the Labour Advisory Board (LAB) - the most respectable and representative tripartite consultative body on labour matters on the outcome of the review.

Use of trade union funds

4. The current provisions on the use of union funds under the TUO seek to encourage the development of healthy and responsible trade unionism in the HKSAR. Their coverage is so broad that in general trade unions are free to administer their funds for advancing the social and economic interests of their members. We have completed a review on the use of union funds under the TUO and are in the process of consulting the LAB on the outcome of the review.

Protection against anti-union discrimination

5. We would like to clarify that section 21B(1) of the Employment Ordinance (EO) provides for the right of employees to trade union membership and to participate in union activities. It also protects an employee against discriminatory acts, including but not confined to dismissals, during employment. Under section 21B(2) of the EO, an employer who dismisses, prevents, deters, penalizes or discriminates against an employee for exercising his trade union rights commits an offence and is liable, on conviction, to a fine of HK\$100,000.

6. Since June 1997, the EO accorded further protection for employees by providing them with the right to claim civil remedies (which include compensation and re-instatement subject to mutual consent) against their employers for unreasonable and unlawful dismissals, including dismissals on ground of union discrimination. We have now completed a review on the requirement of mutual consent for reinstatement and are in the process of consulting the LAB on the outcome of the review.

Collective bargaining

7. We firmly believe in the voluntary nature of collective bargaining and have all along been promoting voluntary negotiation between employees and employers or their respective organizations. This approach has served Hong Kong well as evidenced by our harmonious labour relations over the years. The results of the motion debates in our Legislative Council in 1998 and 1999 illustrate clearly that there is no consensus in our community on the issue of introducing collective bargaining and related matters by legislation.

8. It may be pertinent to mention that paragraph 845 of ILO's publication "Freedom of Association" states that "Collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which alter the voluntary nature of such bargaining."

9. We are fully committed to promoting collective bargaining on a voluntary basis. To this end, the HKSAR Government has stepped up efforts on promoting voluntary collective bargaining at the enterprise and industry levels by setting up a Workplace Consultation Promotion Unit in the Labour Department of the HKSAR Government since April

1998. At the enterprise level, we actively encourage employers to maintain effective communication with their employees or workers' unions and to consult them on employment matters. At the industry level, we are actively putting in place tripartite committees which comprise representatives of worker's unions, employers and their organisations and the Labour Department with the objective of fostering an environment conducive to collective bargaining.

10. Since our last report to the Committee in May 1999, we have set up three new tripartite committees in three trades/industries, i.e. theatre, warehouse and cargo transport and property management. The total number of such tripartite committees established so far amounts to five. These committees meet regularly and are providing a very useful forum for representatives of workers unions and employers of their trade and industry to discuss and agree on industry-specific issues. The Labour Department has firm plans to set up more tripartite committees for other trades/industries.

11. To conclude, it is the policy of the HKSAR Government to make progressive improvements to employees' rights and benefits in the territory. We will continue to do so and will take full account of the best overall interests of the community and the pace of Hong Kong's economic and social development. We also seek to achieve a reasonable balance between the interests of employees and employers.

Education and Manpower Bureau
Government of the Hong Kong Special Administrative Region
People's Republic of China

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