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Paper for the LegCo Panel on Manpower

Report of the Subcommittee on Employer and Employee Relations

Purpose

This paper reports on the deliberations of the Subcommittee on Employer and Employee Relations.

The Subcommittee

2. At the Panel meeting held on 28 October 1999, some members expressed concern about the deterioration in employer and employee relations. Members decided that a subcommittee be formed to study in detail issues of employer and employee relations. The membership and terms of reference of the Subcommittee are in **Appendices I and II** respectively.

3. Under the chairmanship of Hon LAU Chin-shek, the Subcommittee has held three meetings with the Administration.

Deliberations of the Subcommittee

4. The Subcommittee has examined thoroughly issues on the right to organize, protection against anti-union discrimination, collective bargaining and right to strike. A gist of the deliberations is summarized below.

Right to organize

Interference by employers

5. The Administration has explained that under Article 2 of the International Labour Convention (ILC) No. 98, "interference" is defined as "acts which are designed to promote the establishment of workers' organizations under the domination of employers or employees' 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".

6. Some members have expressed concern 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. The Administration has responded that whether such an act would constitute interference would depend on whether there is an intention to control the trade union. The Administration has pointed out that ILC No. 98 does not require the protection of workers and trade unions against interference by employers to be made through legislative measures. Although there is no provision in the Trade Unions Ordinance (TUO) to prohibit interference by employers, an employee's right to take part in union activities is protected under section 21B of the Employment Ordinance (EO).

7. Some members consider that the Administration is not doing enough in the protection of trade unions against acts of interference by employers, although this protection is required under ILC No. 87 and No. 98 and is guaranteed under the Basic Law. They have asked whether the Administration would consider implementing the requirements under ILC through the enactment of local legislation.

8. The Administration has responded that there is currently no need to enact legislation for such a purpose, as there is neither evidence nor complaint that employers have interfered in the activities of trade unions. The Administration has assured the Subcommittee that the Administration would closely monitor the situation and review the need for the introduction of legislative measures.

Restriction on eligibility as council members of trade unions

9. Some members have expressed concern that under the TUO, a person cannot be a council member of a labour union if he or she is not engaged or employed in a trade, industry or occupation with which the trade union is directly concerned. Persons outside the trade of the labour union concerned therefore cannot represent the labour union in negotiations. The Administration has explained that approval to be a member of the trade union can be given by the Registrar of Trade Unions (the Registrar) for persons who do not meet the requirement. Between 1980 and November 1999, there are 32 applications from persons who do not have the occupational requirements, all of which

have been approved by the Registrar. The Administration has informed the Subcommittee that the Administration is in the process of consulting the Labour Advisory Board (LAB) on the issue. The Administration has undertaken to report the results of the Administration's review to the Panel in due course.

Use of trade union funds

10. On the use of trade union funds, the Administration has explained that trade union funds should be used for the promotion of the rights and welfare of its members. Under the TUO, funds of trade unions could only be used in relation to the elections of the two tiers of councils.

11. Some members consider that the Administration should take steps to amend legislation that restricts trade unions' right to organize. Some members also consider that the prohibition under the TUO on the use of trade union funds for political purposes other than elections of the two tiers of councils is an act of interference of trade unions activities. The Administration has advised that the review on the use of trade union funds is being considered by the LAB. The Administration has undertaken to report to the Panel the results of the Administration's review in due course.

12. The Subcommittee has noted that 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' organizations. The resource kit, when ready, will be distributed to all trade unions and will be covered in the Administration's trade union educational courses.

Discrimination against trade unions

13. Some members have expressed concern that employers' discrimination against trade unions is a serious problem in Hong Kong. Some employers are only willing to negotiate with employee representatives who sit on joint consultation committees and refuse to have any dialogue with representatives of trade unions. The Administration has responded that joint consultative committees (JCCs) are established channels of communication between employers and employees in many organizations. The Administration considers that JCCs are effective channels of communications between employers and employees and that the use of such a channel for negotiations should be encouraged. The Administration has stressed that it is in support of voluntary dialogue between employers and employees. Voluntary participation is one of the important principles under collective bargaining.

14. On members' question as to whether there has been any case of discrimination against trade unions being successfully prosecuted since the enactment of TUO, the Administration has responded that since 1990, there have been more than ten cases where the Administration has tried to prosecute the employer concerned. However, these prosecutions are either unsuccessful or not proceeded with due to insufficient

evidence. The Administration has explained that remedies are available under the EO to an employee who is dismissed on grounds of union discrimination. There was one successful compensation case under the provision in the EO in 1998.

15. Some members has pointed out that there is no civil remedy in respect of trade union discrimination of a non-dismissal nature. A member has suggested that to overcome the difficulty in proving beyond doubt that an employer discriminated against an employee, the requirement of proving an employer's discrimination against trade unions be amended along the lines 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". The Administration has responded that legislative measures may not be a solution to all problems related to employer-employee relations. The employees' right to participate in trade union activities is protected under the EO. The employer would commit an offence under section 21B of the EO if there is sufficient proof that he has prevented or deterred the employee from, or dismissed him for, exercising such right.

Collective bargaining

16. Some members have expressed concern about the Administration's lack of action in the promotion of collective bargaining through legislative means. They have asked whether the Administration would establish an objective mechanism for determining the representative status of trade unions in collective bargaining. They consider that the establishment of such an objective mechanism would benefit both employers and employees.

17. The Administration considers that it is not an appropriate time to introduce compulsory collective bargaining by legislation in Hong Kong as the community has no consensus on the issue. This is reflected by the fact that two separate motions on the introduction of legislation on compulsory collective bargaining were voted down at two previous meetings of the Legislative Council. The Administration has pointed out that ILC No. 98 allows the taking of measures appropriate to national conditions, where necessary, to promote the full development and utilization of machinery for voluntary negotiation between employers or employees' organizations and workers' organizations. The Administration is promoting the establishment of tripartite committees comprising representatives of employers, employee's organizations and the Labour Department. The Administration has informed the Subcommittee that five such tripartite committees have so far been formed. These committees serve as useful forum for the discussion of industry-specific issues on a voluntary basis. The aim is to foster voluntary collective bargaining.

18. As regards employer and employee communication at establishment level, the Administration has informed the Subcommittee that the Workplace Consultation Promotion Unit of the Labour Department is providing a wide range of services including assisting employers to set up or improve their in-house machinery for

effective communication, consultation and voluntary negotiation, and organizing promotional activities to improve communication between employers and employees.

19. Some members have pointed out that the function of tripartite committees, regardless of whether they are formed at establishment or industry level, is limited. As employee representatives have no legally representative status, they are in fear of being dismissed when they engage in bargaining with employers. These members consider it very important for the employee representatives to have a legal representative status in their dialogue with employers. They have questioned when the Administration consider that it would be an appropriate time to introduce legislation on collective bargaining.

20. The Administration has responded that it would be an appropriate time for the introduction of compulsory collective bargaining when there is a consensus support in the community as well as among employers and employees. As the two motions on the issue were voted down at previous meetings of the Legislative Council, the Administration considers that there is no consensus view in the community on the issue.

21. Some members are of the view that the Administration has been promoting voluntary collective bargaining for many years without success. These members consider that legislation on collective bargaining should be introduced.

22. The Administration has informed the Subcommittee that the system for conciliation of labour disputes is kept under constant review by the Labour Department. At the request of the Subcommittee, the Administration has taken to provide information on the system of conciliation to the Panel.

Right to strike

23. The Subcommittee has noted that the Employment (Amendment) Bill 2000 was introduced into the Council on 23 February 2000. The Bill seeks to clarify that taking part in a strike is not a lawful ground for the termination of an employee's contract of employment without notice or payment in lieu. The Bill is currently being scrutinized by a Bills Committee.

Recommendation

24. The Subcommittee recommends that the Administration should review the issues of -

- (a) the use of trade union funds for political purposes other than election of the two tiers of councils; and

- (b) the restriction on persons who are not engaged or employed in a trade, industry or occupation with which the trade union is directly concerned from being a council member of that trade union.

Advice sought

25. Members are invited to note the work of the Subcommittee and support the recommendation made by the Subcommittee in paragraph 24 above.

Council Business Division 2
Legislative Council Secretariat
30 May 2000

LegCo Panel on Manpower

Subcommittee on Employer and Employee Relations

Terms of reference

To examine in detail the issue of employer and employee relations and to make recommendations to the Panel where necessary.