

**Progress Report by the
Government of the Hong Kong Special Administrative Region
on the 311th Report of the Committee on Freedom of Association
(Case No. 1942)**

It has been the policy of the Government of the Hong Kong Special Administrative Region (HKSAR), People's Republic of China to improve progressively employee rights and benefits in step with the pace of Hong Kong's social and economic development, while ensuring a reasonable balance between the interests of both employees and employers.

The HKSAR Government also adheres firmly to the long-standing principle of consulting the Labour Advisory Board (LAB), the most respectable and representative tripartite consultative body, on labour matters including any draft legislative proposal prior to its introduction into the Legislative Council and the application of international labour Conventions. The LAB comprises government representatives and equal numbers of employee and employer representatives. Among the six employee representatives, five are freely elected biennially by a system of one trade union one vote and the remaining representative is appointed by the Government. This well-established mechanism has served the territory well, as evidenced by the greatly improved labour rights and benefits and the harmonious labour relations in Hong Kong over the past few decades.

We have carefully considered the recommendations made in the 311th Report of the Committee on Freedom of Association (Case No. 1942), and would like to report the present position in the following paragraphs.

Recommendation (a)-(b) :

To take steps to repeal sections 5, 8 and 9 of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance, 1997 (ELRO), which respectively restrict union office to persons actually employed in the trade, industry or occupation of the trade union concerned; subject the use of union funds in certain instances to the approval of the Chief Executive of the Hong Kong Special Administrative Region; and institute a blanket prohibition on the use of union funds for any political purpose.

Present Position :***Qualification of trade union officers***

The HKSAR Government wishes to clarify that the Trade Unions Ordinance (TUO) does not restrict union office to persons actually employed in the trade, industry or occupation of the trade union concerned. Section 17(2) of the TUO provides that persons who have previously been engaged or employed in the trade can become officers of the union.

In addition, section 17(2) of the TUO allows any person who is not or has not been engaged or employed in the trade to be an officer of a trade union with the consent of the Registrar of Trade Unions. So far, all applications for consent have been approved. There is therefore already sufficient flexibility in the law on the election of trade union officers who come from another trade. Despite this flexibility, we are actively reviewing the occupational requirement of trade union officers and will consult the LAB in due course on the outcome of the review.

Use of trade union funds

We wish to point out that Section 33A of the TUO does provide that trade unions can set up an electoral fund to defray the expenses incurred in the elections of the District Boards, the two municipal councils and the Legislative Council. The fund may be used to pay expenses incurred by a candidate or prospective candidate for elections, holding meetings or preparation and distribution of literature or documents in support of a candidate or prospective candidate, and the registration of electors or selection of a candidate for elections. For unions which have not set up an electoral fund, they can pay for election expenses with the authorisation of a majority of its voting members present at a general meeting.

In fact, some trade unionists have been successful in the elections and become members of the councils or boards in question.

By confining the use of union funds for political purposes to the foregoing election activities, we seek to ensure that trade unions perform their true and prime functions of promoting and protecting the interests of their members and are not engaged essentially in political activities.

On the other hand, section 33(1) of the TUO specifies the areas in which unions may expend their funds. Those specifications are broad enough to enable trade unions to use their funds to promote the interests of their members. To cater for the needs of individual unions, the Chief Executive of the HKSAR can give his approval for unions to contribute or donate funds to trade unions established outside Hong Kong and for other purposes.

We believe that the TUO provides sufficient flexibility on the use of union funds and does not in any way hamper the development of trade unions. Nevertheless, we are actively reviewing the provisions on union funds under the TUO and will consult the LAB in due course on the outcome of the review.

Recommendation (c) :

To review the Employment (Amendment)(No. 3) Ordinance, 1997, with a view to ensuring that provision is made in legislation for protection against all acts of anti-union discrimination and the possibility of the right to reinstatement which would not be conditional upon the prior mutual consent thereto of both the employer and the employee concerned.

Present Position :

The Employment Ordinance provides protection against acts of anti-union discrimination. The acts are not confined to dismissals only.

Under Part IVA of the Employment Ordinance, an employee has the following rights: (a) every employee shall have the right to be a member or an officer of a trade union; (b) an employee being a member or an officer of a trade union shall have the right to take part in the activities of the trade union at any appropriate time; (c) every employee shall have the right to associate with other persons for the purpose of forming or applying for the registration of a trade union.

Any employer who prevents, deters, dismisses, penalizes or discriminates against an employee from exercising the above rights shall be liable to prosecution and, upon conviction, to a fine of HK\$100,000. Equally, an employer who makes it a condition of employment that an employee must not join a trade union, must relinquish any union membership, or must not

associate with other persons for forming a trade union shall be liable to prosecution and, if convicted, to a fine of HK\$100,000.

Moreover, Part VIA of the Employment Ordinance which came into operation on 27 June 1997 has, among others, strengthened employment protection against various forms of unreasonable and unlawful dismissal including dismissal on ground of union discrimination. Since then, the Ordinance provides for reinstatement/re-engagement subject to prior mutual consent between the employer and the employee, termination payments and award of compensation up to a maximum of HK\$150,000.

The HKSAR Government has undertaken to review the requirement of mutual consent for reinstatement under Part VIA of the Employment Ordinance. The review is well in progress. Once it has been completed, we will consult the LAB.

Recommendation (d) :

To give serious consideration to the adoption of legislative provisions laying down objective procedures for determining the representative status of trade unions for collective bargaining purposes which respect freedom of association principles.

Present Position :

We wish to point out that within the Hong Kong community, there are sharply divergent views on whether there is a need to introduce compulsory collective bargaining and related matters by legislation. Indeed, the Legislative Council - the fully elected legislature responsible for enacting the laws of the HKSAR - does not have a consensus on the issue. This is reflected by the outcome of two recent motion debates on the subject. On 9 December 1998, the Legislative Council voted down a motion requesting the Government to submit to the Council for reconsideration, among others, the repealed legislation on compulsory collective bargaining. On 28 April 1999, the Council also voted down a motion requesting the Government to consider, among others, legislation for compulsory collective bargaining. An amended motion requesting legislation to be introduced for a bargaining mechanism and union recognition was also voted down at same sitting.

Meanwhile, we will continue to promote voluntary collective bargaining. Recently, we have started to promote tripartite dialogues at the industry level with representatives from trade unions, employers and Government to discuss labour matters of mutual concern. So far, tripartite committees have been established in the catering and construction industries.

Although there are no statutory provisions requiring employers to recognise trade unions for the purpose of collective bargaining, adequate protection has been provided under the EO and the TUO for employees to form and join trade unions.

The HKSAR Government has always recognised the positive and useful role of trade unions in labour relations. All the six employee members of the LAB are union officers. They play an important role in advising the Government on labour policies and legislation.

Where there is a dispute between employees and the employer, the Labour Department provides conciliation service to help both parties resolve problems. Very often, trade unions take part in the conciliation process and contribute to the amicable settlement of disputes. The part played by trade unions in the negotiation and mediation of trade disputes has all along been fully accepted.

Conclusion

In conclusion, the HKSAR Government has to consider carefully the best overall interests of the community and the pace of Hong Kong's socio-economic development when considering legislative proposals on the labour front. The Government upholds the principle of tripartite consultation and will consult the LAB on the results of the reviews which we are currently conducting. We are committed to making improvements progressively and to meeting our obligations under the international labour Conventions applicable to the HKSAR.

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