

For information on
19 March 2013

Legislative Council Panel on Manpower

Protection for participation in trade unions

Purpose

This paper briefs Members on the measures relating to the protection for employees with regard to their participation in trade unions and trade union activities.

Right to form and join trade unions

2. The rights to form and join trade unions are guaranteed by the Basic Law and the Hong Kong Bill of Rights. Article 27 of the Basic Law and Article 18(1) of the Hong Kong Bill of Rights unequivocally provide for, apart from freedom of association, the right to form and join trade unions.

Protection for trade union participation

3. The Trade Unions Ordinance (TUO) provides members or officers of a registered trade union with a number of rights, including those concerning acts done in contemplation or furtherance of a trade dispute. Members or officers of a union are immune from civil suits for certain acts done in this connection, including inducing someone to break a contract of employment. It is also lawful for a person acting on behalf of a trade union, in contemplation or furtherance of a trade dispute, to conduct peaceful picketing at or near a place where workers work or people carry on business.

4. The Employment Ordinance (EO) provides employees with protection against anti-union discrimination. Section 21B(1) of the EO

provides for the following rights for an employee: -

- (a) the right to be or to become a member or an officer of a trade union registered under the TUO;
- (b) where he is a member or an officer of any such trade union, the right, at any appropriate time, to take part in the activities of the trade union;
- (c) the right to associate with other persons for the purpose of forming or applying for the registration of a trade union in accordance with the provisions of the TUO.

5. Section 21B(2) further stipulates that it is an offence for any employer or any person acting on behalf of an employer who:-

- (a) prevents or deters, or does any act calculated to prevent or deter, an employee from exercising any of the rights conferred on him by section 21B(1); or
- (b) terminates the contract of employment of, penalises, or otherwise discriminates against, an employee by reason of his exercising any such right.

6. Furthermore, an employee who is dismissed owing to his exercising trade union rights under section 21B(1) of the EO within 12 months immediately before the dismissal is entitled to make a claim for remedies against the employer for unreasonable and unlawful dismissal. It should be noted that on such a claim for remedies, it is the responsibility of the employer to show that the dismissal is for a valid reason¹ and not an

¹ Section 32K of the Employment Ordinance provides that it shall be a valid reason for the employer to show that the dismissal was by reason of -

- (a) the conduct of the employee;
- (b) the capability or qualifications of the employee for performing his work;
- (c) redundancy or other genuine operational requirements of business;
- (d) statutory requirements (that is, it would be contrary to the law if the employees were to continue in that employment); or
- (e) other substantial reasons.

anti-union discriminatory act as specified in section 21B(2)(b) of the EO. Where the employer fails to do so, the Labour Tribunal (LT) may make an order for reinstatement or re-engagement of the employee subject to the consent by both parties. Where no order for reinstatement or re-engagement is made, LT may award the employee terminal payments and/or compensation up to a maximum of \$150,000.

Promoting trade union rights

7. The Labour Department (LD) actively promotes public awareness on and understanding of the EO, including the provisions on protection for trade union participation. Through publications, roving exhibitions, seminars, etc, the public is made aware of the various rights conferred on persons participating in trade unions. Furthermore, the Registry of Trade Unions provides advice on the formation of trade unions and organises training courses for trade unionists to foster sound administration of unions.

Law enforcement

8. LD is committed to protecting our workforce against acts of anti-union discrimination. LD accords high priority to investigating complaints on suspected acts of anti-union discrimination. While stringent prosecution requirements in taking out criminal prosecution have to be satisfied in each case, prosecution will be instituted wherever there is sufficient evidence following investigation.

Proposed enhancement in protection

9. To further enhance protection for employees taking part in union activities, the Administration plans to introduce an amendment bill into the Legislative Council later this year. The bill under preparation aims at amending the EO so as to empower LT to make a compulsory order for reinstatement or re-engagement of an employee who has been unreasonably and unlawfully dismissed, without the need to first secure the agreement of the employer, if LT considers making such an order appropriate and compliance by the employer reasonably practicable. The proposed

amendment bill, if and when enacted and brought into operation, would strengthen the prevention of anti-union discrimination acts and provide workers with additional protection.

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