

COUNCIL OF LABOR AFFAIRS (CLA), EXECUTIVE YUAN
DECISION AWARD ON UNFAIR LABOR PRACTICES

No. 2011- 3

The Applicant: ○○○○

Located in ○○○○

The Representative: ○○○○, residence ditto

The Opposite Party: ○○○○

Located in ○○○○

The Representative: ○○○○, residence ditto

The Agent: ○○○○, residence ditto

○○○○, residence ditto

The dispute between the above parties for obstruction of the union's congress of members has been decided, through conclusions of the hearing procedures, by Council of Labor Affairs (CLA) on J September 30, 2011 as follows:

MAIN TEXT OF THE DECISION

The Opposite Party should not have the practices to improperly influence, impede or restrict the congress of members held by the Applicant and union activities from the service date of this Decision Award.

1. Upon the receipt of this Decision Award, the Opposite Party should announce the full text of this Decision Award on the bulletin board of the

Opposite Party's website for more than ten days, and record the announcement evidences.

FACT AND REASONS

I. Part of Procedures:

Through investigation, on the Matters of Decision to Be Applied Column of the Decision Application, the Application entered: "Obstruction of ○○○Industrial Union's congress of members". The entry of the matters of decision to be applied is unclear, and after the Applicant was order to correct, the Applicant corrected the matters of decision to be applied into: "○○○ please don't treat ○○○Industrial Union with unfair labor practices again". Subsequently, the Applicant in the 2nd investigation procedures for this case on August 8, 2011, supplemented to correct into: "○○○ should not have any improper practices to ○○○Industrial Union", and supplemented in the inquiry procedures for this case on September 30, 2011 into: "Request the Opposite Party should not have the practices to improperly influence, impede or restrict the congress of members to be held by the union and the execution of union affairs in the future". The correction mentioned above has met the provisions set forth in Subparagraph 2, Paragraph 1, Article 40 of Settlement of Labor-Management Disputes; in addition, the Applicant claimed that the date of the occurrence of this case meeting Paragraph 1, Article 35 of Labor Union Act was May 28, 2011, and the date of the decision application for this case filed by him was June 7, 2011, meeting Article 51 of Act for Settlement of Labor-Management Disputes, and mutatis mutandis to the provisions set forth in Paragraph 2, Article 39, "the application for a decision referred to in the preceding paragraph

shall be submitted within ninety days after the day when the worker(s) is aware of the violation of Paragraph 2 to Article 35 of the Labor Union Act or when the violation has occurred” that is hereby described first.

II. Part of Substantiality:

1. The Applicant claimed:

(1) ○○○ was the ○○○Industrial Union’s executive director, and after the Applicant union established on June 1, 2008, the Applicant sent a letter to the Opposite Party in the middle June to inform the union has been established, and applied for the union affairs leave according to the law. However, the Opposite Party did not respond but doubt the legitimacy of the union established. Originally ○○○ assumed the work of general affairs in ○○○branch, and was transferred into the teller work in the end of June 2008. In the early July of same year, the Opposite Party announced ○○○’s PAS C (○○○ was still awarded a commendation order in 2007). On September 15 of same year, through the assistance of ○○○union and ○○○union, legislator ○○○ in Legislative Yuan to hold a press conference, denouncing the Opposite Party suppressed the union. The Opposite Party terminated the labor contract on September 25, 2008 by the reason that ○○○ seriously insulted the Opposite Party and its person in charge, violating the working rules in severe circumstances, and incompetent, and the Applicant union immediately plunged into the shutdown state too. ○○○ applied to Department of Labor, Taipei City Government for labor disputes. After failure of mediation, and then entering the judicial proceedings, the Applicant filed the appeal for confirmation of

employment relationship. On October 9, 2008, the Applicant also applied for employment discrimination to Taipei City Government, and the employment discrimination was confirmed after resolution by Committee of Employment Discrimination on February 19, 2009, the Opposite Party was fined by NT\$300,000. As for the litigation of confirmation of the employment relationship, Shihlin District Court and Taipei High Court judged in favor of ○○○ on October 16, 2008, and on April 30, 2010 respectively. Finally, the Supreme Court's judgment in favor of the Applicant became final and kept in files on August 12, 2000.

- (2) After losing the case, the Opposite Party transferred the ○○○ to ○○○branch for work in Taishan Dist., New Taipei City (where is distant 19 km from the Applicant's home and union) on October 18, 2000. ○○○ started to execute union affairs after working in the branch; however, the Opposite Party did not stop suppressing. After was reinstated in 2010, the Applicant applied for a 20-day special leaves and union affairs leaves, with actual 35 working days only. The 2010 performance was announced on January 25, 2011, and ○○○ got PAS B-3 (before 2008, the PAS' were Excellent, A, B and C respectively) that ○○○ refused to accept and showed protestation to the branch, and the Head Office, but it was in vain. On January 12, 13, 14, 2011, the Applicant went to ○○○ Kaohsiung, Tainan to promote union affairs; Taishan Branch manager ○○○ worried the Head Office will not approve the leave, but requested ○○○ to apply for a 3-day special leave to go to southern Taiwan, obstructing the development of union affairs, and affecting, injuring ○○○'s interests. In the former half of 2011, ○○○ visited 96 branches of ○○○ to promote union affairs

and issue publicities that was obstructed. Moreover, the Head Office instructed the deputy head of the branch to immediately take the union publicities away after ○○○ left the branch; particularly, assistant manager ○○○ of the Head Office took away the union publicities issued to colleagues in front of ○○○.

(3) the Applicant union held the 2nd term, the first congress of members at National Federation of ○○○ located in ○○○ on May 28, 2011 at 2:00 p.m.; however, the Opposite Party appointed the assistant manager ○○○ of the Head Office leading about 60 colleagues of ○○○ to obstruct the meeting to be held by the union (all staff were not union members), and the members dare not appear to attend the meeting due to fear. One of ○○○ abused ○○○ “Fuck you!” (Taiwanese), and then ○○○ immediately called 110 for police, and reported to local police station of ○○○ Branch on June 1, filing the complaint of public insult. In the case of four police officers to maintain order, ○○○ announced the dissolution about 2:30 p.m. that day, and then everyone left. The Applicant also was announced adjournment by ○○○ at 3:00 p.m. or so, and on June 1, 2011, an official letter was sent to notify Department of Labor, Taipei City Government union the reason of adjournment. ○○○ filed an appeal of employment discrimination about year 2000 PAS B-3 to Labor Affairs Department, New Taipei Government on June 2 of same year. The Applicant union now remained 26 members only (including one director, and two supervisors); colleagues and members dared not to assume directors and supervisors of the union because fear of no job.

(4) The Applicant supplemented additionally, on May 28, 2011 about 2:30

p.m. or so, assistant manager○○○ announced “dissolution” to the crowd, and then all left that police have collected evidence by video, and the field policemen informed of pressure put by superiors. ○○○ reported to ○○○ police station of ○○○ Branch, Taipei City Government Police Bureau on June 1, 2011. A deputy head also personally said that the case was of pressure put by superiors. At that time, ○○○ called “110” for report and there were three police officers collected evidence at the scene and marinated order that with witnesses and evidences, how the Opposite Party could try to shift there was no evidence?

- (5) On June 7, 2011, 72 letters by registered with AR from the Opposite Party’s Head Office were received by recipient ○○○. However, after the Applicant took photos as evidence, all letters were returned (with photos as evidence). If it is the case of personal behavior, how 72 letters will be sent from same place at same time? And afterwards, the member of Taipei City Council ○○○ intervened, through Department of Labor of Taipei City Government transferred 72 copies of ○○○union membership application to the Applicant. The original membership application mentioned above have been handed over ○○○ by junior manager○○○ personally, accompanied by assistant manager○○○, and junior manager ○○○ before the witnesses section chief○○, executive officer○○of Department of Labor, Taipei City Government, and secretary-general ○○○of ○○○union when this union held the 2nd term, the first congress of members (the second congress of members was adjourned too). How the Opposite Party with such a group action and behavior can try to shift as individual behavior

and be completely unaware of it?

2. The Opposite Party argued:

(1) First, the Applicant stated that the Opposite Party obstructed the 2nd term, the first congress of members held by the Applicant in ○○○○ on May 28, 2011 at 14:00 is no basis, and is not in line with the facts.

(2) The Applicant did not give any written notice indicating such meeting matters as time and place of the congress of members to the Opposite Party. Until CLA sent to us the information attachment related to the union's decision application on June 20, 2011 by letter of No. lao-zi-3-zi 1000126034 (i.e. the Council of Labor Council of Executive Yuan Unfair labor Practices Decision Application, and the application signed by the executive director ○○○○ of ○○○○ union), the Opposite Party just knew the Applicant held the 2nd term, the first congress of members at ○○○○ (National Federation of ○○○○ Union) on May 28, 2011 at 14:00. Before then, the Opposite Party has no idea about the meeting. Since the Opposite Party did not know when and where the Applicant held the meeting, how can obstruct the union's congress of members to be carried out? The Applicant's statements are no basis, and are not in line with the facts.

(3) In addition, regarding the Applicant stated that the Opposite Party appointed the assistant manager ○○○○ of the head office leading about 60 colleagues of ○○○○ to obstruct the meeting to be held by the union, the Opposite Party inquired employee ○○○○, who knew the existence of ○○○○ Industrial Union; however, according to the best of his knowledge, actually the union does not operate. Originally he

intended to join the union and participate in the union activities. After receiving the notice about the Industrial Union's the 2nd term, the first congress of members meeting which was conveyed by his colleague, he bringing the employee ID card, intended to attend the meeting and join the members. He, in holiday (May 28, 2011 is Saturday holiday), joined the union activities that simply is the execution of individual right, what is the relation with the Opposite Party? There is no such case as leading 60 colleagues of ○○○ to obstruct the union meeting; on the contrary, he attended the meeting according to the meeting notice issued by the Applicant, but was very dissatisfied with the meeting was obstructed by ○○○ of the Applicant and unknown persons for no reason that; ○○○'s "self-statement" is enclosed for reference.

- (4) Basing on above, the Applicant's meeting notice was not sent to the Opposite Party, and the meeting place was not the place owned by the Opposite Party. The Opposite Party cannot know such specific matters as what, when and where the Applicant held the meeting; before the Applicant filed this decision application, the Opposite Party did not know the above case. The Opposite Party did not obstruct the Applicant's meeting, without violating related to provisions of Act for Settlement of Labor-Management Disputes, and Labor Union Act. Moreover, subject to the Opposite Party afterwards asked ○○○ mentioned in the decision application, who said he is an employee, and the spontaneous behavior with his own initiative wanting to join the union organization is purely to execute his individual right that no one convened to launch or assign. As the freedoms of peaceful assembly and association is the one of the people's rights to freedom guaranteed

by the Constitution, and subject to the provisions of Labor Union Act, workers have the right to organize and join the union, which any employee who is qualified has the right to select whether joins or not. The Opposite Party respects employees execute the right to join the union. The Applicant stated that the Opposite Party appointed persons to obstruct the union's congress of members and so on is absolutely no basis. We hereby request CLA to investigate and inquire the employee who executed the right to assembly on that day that is related to the reason and process of the case in order to clarify the truth.

- (5) As for the Applicant ○○○ indicated that he got PAS B-3 in year 2000, to Kaohsiung, Tainan to promote union affairs was treated by special leaves, and issuing publicities was obstructed because the employer's continuous suppression, as every related departments of the Opposite Party to conduct the performance appraisals of their personnel is accordance with such provisions related to the company's performance appraisal criteria, and work evaluation, incentives and disincentives regulations; in another word, cadres and heads of the units rate such contents of evaluation items as work performance, work attitude, moral ethics and spirit of service of the employee to be evaluated, to approve the appraisal evaluation ranking. The Applicant got PAS B-3 in year 2010 in the unit he subordinated was came from the appraisal evaluation ranking of Mr. Chen's performance integrated by appraisers, nothing to do with the Applicant's status of the union's executive director, without employment discrimination; as for whether the kind of leave applied was treated by special leave or union affairs leave should be that the person who intends to apply for leaves decides for himself the kind of

leave and fills out the leave form according to the reason of his application of leave, and then submits the leave application to the unit he subordinated, rather than the head decides the kind of leave of every employee; as for how he and his head bargain the leave application, of course should be handled according to the bargaining results. The staff leave form of the Applicant ○○○ served in Taishan Branch from January to June 2011 is enclosed for reference. In addition, the Opposite Party never obstructed ○○○ issuing the publicities for promotion of union affairs, and through investigation, many employees have personally received the publicities issued by ○○○; the Applicant ○○○ accused by empty words everything which is not satisfied by him was suppressed by the Opposite Party that cannot be confirmed by any proof and is inconsistent with the facts.

3. Non-disputed fact between both parties

- (1) The Applicant union was established on June 1, 2008, and ○○○ assumed the union executive director.
- (2) The Opposite Party transferred ○○○ into the teller work on June 26, 2008; in the early July of 2008, announced ○○○'s PAS C, and terminated the labor contract on September 25, 2008 by the reason that ○○○ seriously insulted the Opposite Party and its person in charge, violating the working rules in severe circumstances, and incompetent that the Applicant filed the appeal for confirmation of employment relationship, which was kept in files (the Supreme Court Civil Judgment of No. 2010 tai-shang-zi 1501), and was reinstated on October 18, 2010.

- (3) The Opposite Party announced ○○○'s PAS B-3 of year 2010 on January 25, 2011.
 - (4) The Applicant union held the 2nd term, the first congress of members at 3F, No. 35, Sec. 1, Chang-an E. Rd., Taipei City on May 28, 2011 at 2:00 p.m.
 - (5) Assistant manager ○○○ of Administration Management Department, and the assistant manager ○○○ of Credit Card Department of the Opposite Party's Head Office, and 72 petitioners who petitioned to Department of Labor, Taipei City Government from July 5, 2011 to July 8, 2011 attended the congress of members held by the Applicant union's on May 28, 2011.
4. There are two major points of dispute in this case: (1) Whether the Opposite Party instigated its assistant manager ○○○ of Administration Management Department, and assistant manager ○○○ of Credit Card Department, head Office, and 72 petitioners who petitioned to Department of Labor, Taipei City Government from July 5, 2011 to July 8, 2011 to attend the congress of members held by the Applicant union's on May 28, 2011? (2) If they are instigated by the Opposite Party, and then whether the behavior constitute the practices to "improperly influence, impede or restrict the establishment, organization or activities of a trade union" set forth in Subparagraph 5, Paragraph 1, Article 35 of Labor Union Act? The abovementioned points of dispute are hereby described as follows:
- (1) The Opposite Party should have instigated its assistant manager ○○○ of Administration Management Department, and assistant manager ○○○ of Credit Card Department, head Office, and 72

petitioners who petitioned to Department of Labor, Taipei City Government from July 5, 2011 to July 8, 2011 to attend the congress of members held by the Applicant union's on May 28, 2011:

- A. The Applicant claimed that the Applicant union held the 2nd term, the first congress of members at ○○○ (the address of National Federation of ○○○) on May 28, 2011 at 2:00 p.m.; however, the Opposite Party appointed assistant manager○○○ of the Head Office leading about 60 colleagues of ○○○ to obstruct the meeting to be held by the union. During the period, ○○○ abused ○○○ with dirty words to produce conflicts, and members the members dare not appear to attend the meeting due to fear. Afterwards, ○○○ announced the dissolution at the scene, and then all attended members left. The applicant considered the Opposite Party's practices mentioned above has constituted unfair labor practices that was denied by the Opposite Party. The Opposite Party defended the Applicant did not give any written notice indicating such meeting matters as time and place of the congress of members to the Opposite Party. Until CLA sent to us information attachment related to the union's decision application on June 20, 2011 by letter of No. lao-zi-3-zi 1000126034, the Opposite Party just knew the Applicant held the 2nd term, the first congress of members at ○○○ (National Federation of ○○○ Union) on May 28, 2011 at 14:00. Before then, the Opposite Party has no idea about the meeting and so on.
- B. Through investigation, the Applicant applied for union affairs leave to the Opposite Party's branch manager ○○○ on May 9, 17, 20,

2011 in order to prepare the 2nd term, the first union's congress of members, and the reasons of leave recorded by "preparation for union's congress of members" that can be evidenced by the ○○○'s staff leave form, the appendix 2 of the Opposite Party's statement of defense. It is enough to prove that on May 9, 2011 branch manager ○○○ has known the Applicant union is going to hold the congress of members; and ○○○ also stated in the 1st investigation procedures of CLA that after the Applicant decided the time and place of the congress of members, he has enclosed the meeting notice to branch manager ○○○ and so on. Even though witness ○○○ in the 2nd investigation procedures of CLA denied he knew the time and place of the congress of members held by the Applicant union, and ○○○ has enclosed the meeting notice while applying for leaves on May 9, 2011, also denied that he has submitted the Applicant's leave form to the Opposite Party and so on. However, since ○○○ was the executive director of the Applicant union, and the representative of the Applicant union, with special status, the Opposite Party, based on the need of operating management, to the important information of when and where the Applicant will hold the congress of members, should have investigated carefully and hold the information mentioned above. Witness ○○○ denied that he knew the time of the meeting to be held by the Applicant union, and has submitted ○○○'s leave form to the Opposite Party and so on, is significantly contrary to the common sense. In addition, the statements mentioned above are insufficient admissible as which are contradictory with that witness

○○○ stated in the 2nd investigation procedures of CLA: “There is no secret that the union held the congress of members before May 28, before then the chairman also issued related information everywhere, so to obtain which is not difficult...”. As even the employee of the Opposite Party can easily obtain the information with respect to holding the Applicant union’s congress of members, but the Opposite Party as the position of operating manager said the information mentioned above was nothing learned that is inconsistent with common sense. Moreover, the Opposite Party’s agent in the 2nd investigation procedures of CLA also stated that assistant manager○○○ of personnel department knew it and has accompanied ○○○ to every units of the Opposite Party to issue publicities. It evidently shows that the Opposite Party could clearly hold the time and place of the publicities issued by ○○○, how could it not know the important information as date of the congress of members held by the Applicant union? The Opposite Party argued, before CLA sent the Applicant’s the decision application, completely did not know the matter of the congress of members held by the Applicant and so on that is unworthy to believe.

C. The Opposite Party argued again, ○○○ et. al to attend the congress of members held by the Applicant union on May 28, 2011 was the spontaneous behavior with ○○○ et. al their own initiative wanting to join the union organization is purely to executive their individual right that no one convened to lunch or assign, nothing to do with the Opposite Party and so on; and both witnesses ○○○ and ○○○ denied they accepted the Opposite

Party's instruction to attend the congress of members held by the Applicant union on May 28, 2011. Through investigation, the title of ○○○ is the assistant manager of Administration Management Department, the head office of the Opposite Party, who stated in the 2nd investigation procedures of CLA that the contents of his duties are responsible for the administrative work having more than 20 subordinates; ○○○ is his head, and the basic information of ○○○, ○○○ provided by the Opposite Party shows that ○○○ assumes the assistant manager of Operations Management Department of the Opposite Party's branch from September 1, 2006, and the contents of his duties are marketing planning and performance appraisal. Significantly, ○○○ was engaged in the work of unit personnel assessment of his unit in the past, and then ○○○'s title was manager; furthermore, he acted the head of Operations Management Department of the Opposite Party's branch from September 1, 2006, being the direct supervisor of ○○○; ○○○ acted the unit head, the manager of Human Resources Department of the Opposite Party from July 13, 2009, and promoted to the unit head, the assistant vice president of Human Resources Department of the Opposite Party from February 6, 2010. In another word, ○○○ was the unit head of Human Resources Department of the Opposite Party from July 13, 2009, and acted the head of ○○○ from September 1, 2006 to January 8, 2009, and afterwards whether he is still the head of ○○○ cannot be noticed from the basic information mentioned above, but ○○○ confessed his current head on the position was ○○○.

○○○ assumes the head of Human Resources Department which is attributed to the position related to personnel arrangement, and considerable sensitivity with participation in union affairs. He and ○○○ have close relation in duties on the direction and supervision of subordinate's relationship for many years, and ○○○ person also has engaged in the work of personnel assessment in his unit. Second, witness ○○○ as the assistant manager of Credit Card Department of head office, in the 2nd investigation procedures of CLA, confessed he is the personnel supervisor of Credit Card Department, engaged in the cadres work of Accounts Section of personnel business in that department that also is considerable sensibility with participation in union affairs. Both he and ○○○ acted the assistant managers of Business Management Department of the Opposite Party from July 13, 2009 to February 10, 2010, both were colleagues of same department with same title, and should have quite close relation in duties. Thus, whether ○○○ and ○○○ will attend the congress of members held by the Applicant union on May 28, 2011 was the spontaneous behavior with their own initiative wanting to join the union organization, rather than the Opposite Party launched or instigated that is doubtful. Besides, the Applicant mentioned in the decision application and in the first investigation procedures of CLA that when ○○○ went to 96 branches of the Opposite Party in Taiwan in the first half of 2011 to issue publicities in order to promote union affairs, ○○○ took away the publicities issued to employees in front of ○○○ and so on that the Opposite Party did not dispute in

term of this. In comparison with ○○○○ and the assistant vice president ○○○○ of Human Resources Department in duties on the direction and supervision of subordinate's relationship for long time, the behavior mentioned above taking away the publicities which have been issued by ○○○○ and the case that ○○○○ assumes the personnel supervisor of Credit Card Department, it is difficult to consider that the behavior of ○○○○ and ○○○○ participating in the Applicant's congress of members was not launched and instigated by the Opposite Party.

- D. Moreover, when witnesses ○○○○ and ○○○○ were asked by CLA in investigation procedures with such question as: "Have you ever participated in union activities in the past?" , "Before then, have you responded views to the union" , "Have you ever contacted with other union staff ?" , both answered: "No." ; and to the inquiry from CLA: "Do you worry about being treated disadvantageously after joining the union?", ○○○○ answered: "My experience is from labor meeting and Employee Welfare Committee; if the union operates reasonably and normally, why should I worry about the thing I do not have to worry about?" and so on; and then ○○○○ answered: "No, I don't, because the union in which originally the employee can participate, the company will not have any obstruction.", and so on. However, to judge by common sense, neither the two persons have never participated in or contacted with the union activities, nor responded views to the union by three years from June 1, 2008 when the establishment of the Applicant union before May 28, 2011 when the Applicant union held the congress of members; neither

they did not actively participate in union affairs, nor has ever inquired the Applicant about the information related to joining the union, but suddenly and actively wanted to join the union three years after the establishment of the Applicant union that is really unusual. Moreover, due to engaging in union affairs, the Applicant union's representative ○○○ was continuously treated disadvantageously as transferred, lowered performance appraisal and dismissed by the Opposite Party commencing from the end of June, early July and September 25, 2008. To judge according to the rule of thumb, the Opposite Party carrying out transferring, lowering reducing performance appraisal, and dismissal to ○○○ who joined the union and assumed the union's executive director is attributed to disadvantageous treatment; for general employees, they more or less will be little to worry about facing similar disadvantageous treatment imposed by the Opposite Party after joining the union. However, uncharacteristically the two person answered they completely don't worry about the occurrence of such facts; the two persons' answer mentioned above is really contrary to common sense. In addition, ○○○ confessed he has never seen the copy of meeting notice for the congress of members made by the Applicant, then decided to participate in the union's congress of members. Looking at the two above-mentioned testimonies is contrary to common sense and difficultly admissible. The said two witnesses stated their participation in the Applicant union's congress of members on May 28, 2011 is the exercise of individual rights, rather than instigated by the Opposite Party and so on that is not

admissible.

- E. Then look the petition attached to the Opposite Party's statement of defense, on which there are 12 petitioners, according to the Applicant's statement in the 1st investigation procedures of CLA: "○○○, the junior manager of Business Department; ○○○, the junior manager of Human Resources Department; ○○○, the assistant manager of Auditing Department; ○○○, a colleague of Auditing Department; ○○○, the staff of Operations Management Department or Human Resources Department; ○○○, the assistant manager; ○○○, an employee of Auditing Department; ○○○, Assistant Manager of Credit Card Department; ○○○, a colleague of Administration Management Department; ○○○, the junior manager or assistant manager of Information Department; ○○○, no idea; ○○○, no idea; however, the above persons are the employees of the Opposite Party's Head Office", and so on. The Opposite Party, in terms of the Applicant's above statement, only said among which there are no persons of Human Resources Department, but did not dispute about those 12 petitioners are the employees of the Opposite Party's Head Office, and all with the titles as junior manager and assistant manager. From this, the case that the above petitioners are the employees of the Head Office, and all with titles as junior manager, and assistant manager, without an employee of branch or low-level employee is suspicious, and they most belong to different departments, but also can constantly file the petition jointly by similar organized and planning way that significantly is contrary to common sense. As ○○○, ○○○, and

petitioners are most assistant managers, minority as junior managers, but all belong to middle-level position, fairly evenly, no other low-level employees to participate in; and ○○○, ○○○ stated in CLA's investigation procedures that they joined the union is because of personal factors, and they individually went to participate in the Applicant union's congress of members on May 28, 2011, but could connect other employees of total 72 persons who could not join the union within short time, and jointly filed the petition to Department of Labor, Taipei City Government within three days from July 5 to July 8, 2011. Their high mobilization efficiency, similar organized and planning group action of consistency is really incredible, if which is not launched or instigated by the Opposite Party.

- F. In addition, CLA sent a letter to Department of Labor, Taipei City Government to access to the letter of No. bei-shi-lao-zi-zi 10035474800, issued by the Department on July 13, 2011, regarding the information related to the petition case undertaken by the Department that City Councilman ○○○ coordinated ○○○ and other 71 persons who intended to join the Opposite Party's union. With the letter of No. bei-shi-lao-zi-zi-10038277200, Department of Labor, Taipei City Government provided such information as the minutes of coordination meeting held in ○○○City Councilman Office, the letter replied by ○○○ union, the letter sent by the Department, ○○○ employee's petition, and photocopies of the kept letters on September 2, 2011. CLA found that the above 12 petition employees shown in the Opposite Party's pleadings are

same petitioners who petitioned to Department of Labor, Taipei City Government for being unable to join the Applicant union, among them, ○○○ and ○○○ two persons are included in the petitioners. By such information as the petition submitted by Department of Labor mentioned above, it shows that there are total 72 petitioners, and the dates they delivered the petition were quite close from July 5 to July 8; and jointly, City Councilman ○○○ held the coordination meeting on July 7, 2011, which ○○○, ○○○ and ○○○ three persons and other four employees jointly attended. Although above petitioners are not the unit head or the head or deputy head of personnel unit who represented the Opposite Party to exercise the right to manage may join the union in accordance with the provisions of Article 14 of Labor Union Act, and Article 6 of the union memorandum, as mentioned above, with ○○○'s and ○○○'s duties, experience, and the sensibility of engaging in the position related to personnel, the said two persons still represented to attend the coordination meeting; such similar organized, planning group action of consistency is unusual. In addition, above 72 petitioners sent the union membership application by registered mail with AR to ○○○ respectively on June 7, 2011, and the sender address on all envelopes is the address of the Opposite Party's Head Office, significantly such group action of consistency is different from individual action; such individual action sending 72 pieces of membership application in same time and place to ○○○ is contrary to common sense too, and the Applicant union is not the receipt. Then view the contents of the

petitions they filed to Department of Labor, Taipei City Government, is attributed to consistency criticism about such negative contents as they could not enter the place where the Applicant union's congress of members was held on May 28, 2011, cannot join the Applicant union, the Applicant union has never reelected, and one person controlled the union for long time. We can see that all of those 72 petitioners doubted the operation of the Applicant union subjectively, and with same position of the Opposite Party's doubt about delay of reelection of the union's executive director of expiration (referring to the letter of No. ○○ cong-ren-zi-zi 1000015880 the Opposite Party sent to CLA on August 23, 2011). In addition, Taipei City Councilman ○○○ is the lineal child of the Opposite Party's representative, having quite close relationship with the Opposite Party. And then above 72 petitioners actually so coincidentally filed the petition in common to City Councilman ○○○ and Department of Labor, Taipei City Government, and the councilman of special status, with his status in position, asked Department of Labor, Taipei City Government to actively be involved in coordination that more prove the petition practices of ○○○, ○○○ and above 72 petitioners should be launched or instigated by the Opposite Party.

- G. Last, both parties did not dispute about the fact that the assistant manager ○○○ of Administration Management Department, Office the assistant manager ○○○ of Credit Card Department of the Opposite Party's head office and above 72 petitioners attended the Applicant union's congress of members on May 28, 2011. An on

May 28, 2011 at 2:00 p.m. or so, during the meeting process of the Applicant union's congress of members, witness ○○○於 stated in the 3rd investigation procedures of CLA: "...there were 3 or 4 leaders who should have the status of head; they clamored on the spot, requesting to enter the meeting, and said why they cannot enter? I reiterated members can enter the meeting only. They said they want to join the union to become members on the spot, but I said that do not meet the procedures, and then they doubted how many persons attend the meeting there?...", "...afterwards, those 3 or 4 people as suspected heads said to other colleagues on the spot such negative remarks as the union is useless. Those 3 or 4 people as suspected heads said to the colleagues on the spot: 'Everyone can leave, it's over, no need to stay', and then everyone left. Later, a ○○○union member ringed the doorbell, and we let him in ..." and so on. CLA considered that no matter the number of the Opposite Party's employees on the spot is 60 claimed by the Applicant, or 30 to 40 stated by witness ○○○ in CLA, or 70 to 80 mentioned by ○○○ in "self statement", according to the petition provide by Department of Labor, Taipei City Government, there were 72 petitioners, and all of them petitioned who cannot enter the meeting on May 28, 2011, it can be learned that apart from the Applicant union's members, there should be 72 people at least of the Opposite Party's employees attending the Applicant union's congress of members on May 28, 2011. And subject to the above witness ○○○'s statement that 3 or 4 people as suspected heads represented to speak and announce, 'Everyone can leave, it's over, no need to stay' and so on,

and then everyone left, can be confirmed that such similar organized and planning group action of consistency led by a small number of people should be instigated by the Opposite Party. As mentioned above, the contents of the petitions filed by 72 petitioners to Department of Labor, Taipei City Government, is attributed to consistency petition about such negative contents as they could not attend the meeting of the congress of members on May 28, 2011, and cannot join the union; they have up to 72 people intending to join the Applicant union one time; moreover, they criticized the Applicant union has never reelected, and one person controlled the union for long time that is different from the case of people who intend to join the union to become members. If they are instigated by the Opposite Party, it is afraid that above such similar organized and planning group action of consistency will not be occurred on those petitioners. It can be learned from the dilemma as in comparison with that upon the establishment of the union, the representative of the Applicant union ○○○ was imposed by the Opposite Party on such disadvantageous treatment as transferring, lowering performance appraisal and dismissal, and the Applicant stated in the first investigation procedures of CLA that from January and before May 28, 2011, about ten members were recruited only, no employee of Head Office employees to join; the Applicant union remained about 26 members only (including one director and two supervisors), and members dare not assume directors and supervisors of the Applicant union.

H. Summing up the above reasons, and observing all cases that from

the establishment of the Applicant union on June 1, 2008. The Opposite Party consecutively imposed such disadvantageous treatment as transferring, lowering performance appraisal and dismissal on ○○○ who assumes the union's executive director, and after ○○○ reinstated, the Opposite Party transferred him to ○○○branch, New Taipei City, CLA considers that the Opposite Party should have instigated he assistant manager ○○○of Administration Management Department, Office the assistant manager ○○○ of Credit Card Department of the Opposite Party's head office, and 72 petitioners who filed the petition to Department of Labor, Taipei City Government to attend the congress of members held by the Applicant union on May 28, 2011.

- (2) The practices that the Opposite Party instigated the assistant manager ○○○of Administration Management Department, Office the assistant manager ○○○ of Credit Card Department of the Opposite Party's head office, and 72 petitioners who filed the petition to Department of Labor, Taipei City Government to attend the congress of members held by the Applicant union on May 28, 2011 have consisted the practices to "improperly influence, impede or restrict the establishment, organization or activities of a trade union" set for forth in Subparagraph 5, Paragraph 1, Article 35 of Labor Union Act:

- A. As the legislative purpose of creation of the unfair labor practices decision system is to avoid the employer with its economic advantages taking unfair labor practices against the union organization and related activities to the laborers executing the right

to organize, right to collective bargaining, and right to dispute conferred by law, and to quickly recover related interests of the infringed laborers. Therefore, comparing with judicial remedy, the administrative remedies for unfair labor practices, in addition to determine the presence or absence of rights, in judgment, they should focus on the legislative purpose to avoid the employer's unlawful infringement in economic dominance, and quickly recover the laborer's interests, in order to prevent unions' and their member' rights from infringement, and seek quickly recovering their rights. Basing on this, to judge whether an employer's behavior constitutes the unfair labor practices as "Improperly influence, impede or restrict the establishment, organization or activities of labor union" set forth in Subparagraph 5, Paragraph 1, Article 35 of new Labor Union Act, should take all circumstances of objective facts to consider whether the employer's behavior improperly influences, impedes or restricts the establishment, organization or activities of labor union; as for the subjective elements of the perpetrator constituting the unfair labor practices are not to limit to intentionally or negligently, as long as the perpetrator has awareness of the unfair labor practices is enough.

- B. In addition, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICEESCR) Enforcement Act was adopted in Taiwan in 2009, among which the provisions set forth in Paragraph 3, Article 22 of International Covenant on Civil and Political Rights, "the states party of 1948 International Labor Organization (ILO) Convention regarding

freedom of association and protection of organizational rights should not take legislative measures or the application of the law subject to this Article to impede the guarantee of the Convention.” Therefore, to deal with the appeal cases about member states violating No. 87, “Freedom of Association and Protection of Right to Organize Convention” and No. 98 “Right to Organize and Collective Bargaining Convention”, ILO established the Committee on Freedom of Association in accordance with Article 26 of the Charters of UN, and made the “Digest of Decisions and Principles of the Committee on Freedom of Association”, Article 456 of which indicates, “In view of the fact that in every democratic trade union movement the congress of members is the supreme trade union authority which determines the regulations governing the administration and activities of trade unions and which establishes their programme, the prohibition of such congresses would seem to constitute an infringement of trade union rights.” Of course, the content of above decision can be cited as the basis for the reference in judging whether the employer’s behavior constitutes unfair labor practices, particularly the elements for the type of unfair labor practices set forth in Subparagraph 5, Paragraph 1, Article 55 of Labor Union Act, “Improperly influence, impede or restrict the establishment, organization or activities of a labor union”.

- C. The assistant manager ○○○ of Administration Management Department, Office the assistant manager ○○○ of Credit Card Department of the Opposite Party’s head office, and 72 petitioners who filed the petition to Department of Labor, Taipei City

Government to attend the congress of members held by the Applicant union on May 28, 2011 should be instigated by the Opposite Party. Whether the Opposite Party's above practices constitute unfair labor practices still review whether the same constitute the element of "Improperly influence, impede or restrict the establishment, organization or activities of labor union" set forth in Subparagraph 5, Paragraph 1, Article 35 of Labor Union Act. As the union is an independent labor group, according to the provisions set forth in Article 16 of Labor Union Act: "The congress of members of a labor union shall be the body with supreme authority of the union. However, in case a labor union has a congress of member representatives, the authority of the congress of members shall be exercised by the congress of member of member representatives." Basing on this, the union to hold the congress of members in accordance with the provisions of Labor Union Act is attributed to the union activities, and attributed the internal affairs of the union, nothing to do with the employer, and then the employer should not be involved in meeting of the congress of members, or instigate its employees to join the union to become members. Otherwise, it should constitute the practices to improperly influence, impede the organization or activities of the union. The Opposite Party instigated the assistant manager ○○○ of Administration Management Department, Office the assistant manager ○○○ of Credit Card Department of the Opposite Party's head office, and 72 petitioners who filed the petition to Department of Labor, Taipei City Government to attend the congress of members held by the Applicant union on May 28, 2011, and request to join the union; the

number of participants up to 72 is great different from the number of ten people to attend the meeting stated by the Applicant in the first investigation procedures of CLA that is enough to affect the progress of the Applicant union's congress of members, and further control and weaken the Applicant union. The Opposite Party should have this understanding subjectively that its practices have violated the provisions of above Article 456 of "Digest of Decisions and Principles of the Committee on Freedom of Association", constituting the practices to infringe the union's right, and Improperly influence, impede or restrict the establishment, organization or activities of the union. The Opposite Party argued that the Opposite Party did not know when and where the Applicant held the meeting, how can obstruct the union's congress of members to be carried out?, and without unfair labor practices and so on that is not admissible.

5. The facts and evidence of this case has been clear that both parties' other attack, defense or proof after being reviewed have no effect upon the decision award, so it is not going to expositions that is hereby described.
6. In summary, the Opposite Party should have instigated the assistant manager ○○○ of Administration Management Department, Office the assistant manager ○○○ of Credit Card Department of the Opposite Party's head office, and 72 petitioners who filed the petition to Department of Labor, Taipei City Government to attend the congress of members held by the Applicant union on May 28, 2011, and request to join the union. The Opposite Party's above practices constitute

unfair labor practices to Improperly influence, impede or restrict the establishment, organization or activities of labor union set forth in Subparagraph 5, Paragraph 1, Article 55 of Labor Union Act. Thus, the Applicant applied to order the Opposite Party should not do any improper practice to the Applicant union that is reasonable and should be approved. Accordingly, the decision is made as mentioned in Item 1 of the Main Text. And because the above order for relief made for this case is to ensure the fair labor relation in the future, and in order to reach the said purpose, it is proper that CLA orders the Opposite Party shall, upon receipt of this Decision Award, announce the full text of this Decision Award on the bulletin board of the Opposite Party's website for more than ten days, and record the announcement evidences. Accordingly, the decision is made as mentioned in Item 2 of the Main Text.

7. According to the above conclusion, this decision application is reasonable, and with reference to Paragraph 1, Article 46, and Paragraphs 1 and 2 of Article 51 of Act for Settlement of Labor-Management Disputes, this Decision is made as mentioned in the Main Text.

The Board for Decision on the Unfair Labor Practices, Council of Labor Affairs,
Executive Yuan

Chair of the board Huang, Cheng-Kuan

Members Liu, Chih-Peng

Hsin, Ping-Lung

Wu, Tzu-Hui

Hsieh, Cheng-Ta

Meng, Ai-Lun

Wu, Shen-Yi

Tsai, Cheng-Ting

Chang, Hsin-Lung

Su, Yen-Wei

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September 30, 2011