

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

No. 2011-29

Name of the Applicant: ○○○, residence: ○○○

Name of the Applicant: ○○○, location: ○○○

Name of the agent: ○○○, residence: ○○○

○○○, residence: ○○○

Name of the Opposite Party: ○○○, location: ○○○

Name of the representative: ○○○, residence: ditto

Name of the agent: ○○○, residence: ditto

○○○, residence: ○○○

○○○, location: ○○○

The disputes between the above parties for union affairs leave by a post of the union have been decided, through conclusions of the hearing procedures, by Council of Labor Affairs (CLA) on April 20, 2012 as follows:

MAIN TEXT OF THE DECISION

1. The Opposite Party ○○○ should change the approved personal leave into the official leave to the Applicant ○○○ for making topical reports for the union in Yuren Elementary School, Chiayi City and Chongwen Elementary School, Chiayi City on October 20, 2011.
2. The Applicant's application of other decisions shall be dismissed.

FACT AND REASONS

I. Part of Procedures:

1. The Applicants ○○○○ and ○○○○ of this case filed this decision application on December 27, 2011 by the Opposite Party ○○○○ violated the provisions of Paragraph 1, Article 35 of Labor Union Act and Paragraph 1, Article 6 of Collective Agreement Act; according to the Applicant's claim, the fact of the Opposite Party's unfair labor practices began in October 2011 and up to the present.
2. According to the provisions of Paragraph 2, Article 39 of Act for Settlement of Labor-Management Disputes: "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", and the provisions of Paragraph 1, Article 51 of same Act: "The procedures for decision application filed in accordance with Paragraph 1, Article 35 of the Labor Union Act and Paragraph 1, Article 6 of the Collective Agreement Act shall apply, mutatis mutandis, to Articles 39 of the Act." Therefore, the Applicant filing this decision application on December 27, 2011 after the Opposite Party's unfair labor practices occurred in October 2011 meets the provisions set forth in Paragraph 2, Article 39, and Paragraph 1, Article 51 of Act for Settlement of Labor-Management Disputes.

II. Part of Substantiality:

1. The Applicant's Petition and Claim:

- (1) The Applicant ○○○ serves as the teacher of ○○○ and the chairman of ○○○. The Applicant applied to the Opposite Party for the registration of all personal leaves because handled the union affairs from October 2011 to the end of March 2012 should be amended to official leave registration. In addition, the leave for handling union affairs from April 1, 2011 should also be approved by official leave, and the teaching hours should be reduced.
- (2) However, the request for approval of the union affairs official leave to Chiayi City Government by the Letter of No. 2011 jia-si-shi-kong-zi P100007 on July 13, 2011 was not approved. Subsequently, the Opposite Party sent a Letter of No. Jia-ye-zhong-ren-zi 1000005025 to the Applicant to express there is no provision to approve an official leave for handling the union affairs set forth in Article 4 of Regulations of Leave-Taking of Teachers by the Letter of No. 2011 fu-jiao-xue-zi 1005046073 issued by Chiayi City Government, and therefore did not approve the Applicant's official leave.
- (3) Thus, the Applicant considers the Opposite Party did not approve the Applicant's union affairs leave that is attributed to impede union activities, consisting Subparagraph 5, Paragraph 1, Article 35 Labor Union Act.
- (4) The union affairs official leave is agreed by employers and trade unions in accordance with Labor Union Act, without collective bargaining; even so, despite in accordance with the provisions of Collective Agreement Act, the Applicant ○○○, organizing the

teachers in Chiayi City, which more than half of teachers in Chiayi City have joined, belongs to the professional union set forth in Subparagraph 3, Paragraph 3, Article 6 of Collective Agreement Act.

(5) In accordance with the Letter of No. lao-ci-2-zi 1000126586 issued by CLA of Executive Yuan, a school is the employer of teachers, and one bargaining party in collective agreement and settlement of labor-management disputes, so it may apply for decision to the Board for Decision on the Unfair Labor Practices application. If the union affairs leave of union directors and supervisors is agreed with the employer by collective agreement, and in accordance with the provisions Paragraph 2, Article 10 of the Act, if one party who is the public school with higher competent authority should be approved by the higher competent authority, therefore ○○○ belongs to one party of collective agreement.

(6) In accordance with the Letter of No. lao-ci-2-zi 1000126586 issued by CLA, Executive Yuan, “the competent authority of education of a city government” is not the employer of teachers, cannot be the opposite party of a decision; however, public junior high schools and elementary schools belong to a product of public administration, without independent status, but is a part of the city and county governments. Therefore, Department of Education of Chiayi City Government improperly interfered and detracted from the strength of the union, suppressed the development of the union, and guided the Opposite Party to

suppress the Applicant union development, constituting the directly or indirectly adverse treatment to the Applicant union and its members. Therefore, the Applicant requested to expressly ask in writing local competent authority of educational administration do not have improper acts to suppress the union that “the Opposite Party with unfair labor practices and its higher competent authority should execute thoroughly under this Decision” shall be set forth in this Decision Award.

(7) As for the rest, please see the Applicant’s administrative debate intention pleading and the attached exhibits of the pleading.

2. The Opposite Party argued:

(1) For the Applicant’s application for union affairs leaves, the official leave has been approved if there is related evidence.

(2) To identify the employer of the public school teachers, should consider the nature of a public school as the administrative authority and the particularity of an employment contract of public school teachers attributed to the administrative contract, so, the Opposite Party is not the employer of the Applicant, and public schools in the definition of “employer” is unknown. The Opposite Party on the proposed decision matters lacks of authority, without obtaining the approval right from higher competent authority in accordance with Paragraph 2, Article 9 of Act for Settlement of Labor-Management Disputes, so the Opposite Party is non eligibility in decision.

(3) In the Applicant ○○○ memorandum, general members refer

to all public/private universities, colleges, senior high schools, professional high schools, junior high schools, elementary schools and kindergartens within Chiayi City. The Applicant only raised the joined number of public junior high school and elementary school teachers more than one half is not enough, so that the joined teachers of Applicant union did not exceed one half of members without bargaining qualification set forth in Paragraph 3, Article 6 of Collective Agreement Act.

- (4) In accordance with the Letter of No. 2011 fu-jiao-xue-zi 1005046073 issued by Chiayi City Government, there is no circumstance of official leave approved due to the need of handling union affairs among various circumstances of official leaves set forth of Article 4 of Regulations of Leave-Taking of Teachers, and in accordance with the opinions of the Supreme Court judgment, to handle union affairs leave still need to measure whether the necessity and verbosity, and provide relevant documents that the employer has the right to review whether the contents of union affairs is true or not. Moreover, the Opposite Party leniently identified to approve an official leave in accordance with Regulations of Leave-Taking of Teachers, and therefore denied unfair labor practices.
- (5) Regulations of Leave-Taking of Teachers with the nature of legal orders cannot be changed by the private consensual convention.
- (6) Whether Department of Education of Chiayi City Government constitutes directly or indirectly adverse treatment to the Applicant union and its members is not the authority of Opposite

Party.

(7) As for the rest, please see the Applicant's administrative debate intention pleading and the attached exhibits of the pleading.

3. Non-disputed fact between both parties

(1) The Applicant went to Mincu Elementary School to make a topical report for the union on October 18, 2011, and the Opposite Party approved an official leave.

(2) The Applicant went to Yuren Elementary School to make a topical report for the union on October 20, 2011, and the Opposite Party approved a two-hour personal leave.

(3) The Applicant went to Chongwen Elementary School to make a topical report for the union on October 20, 2011, and the Opposite Party approved a two-hour personal leave.

(4) The Applicant went to Sixien Elementary School to make a topical report for the union on October 25, 2011, and the Opposite Party approved a three-hour personal leave.

(5) On November 23, 2011, the Applicant handled the union affairs, and the Opposite Party approved a one-hour personal leave.

(6) The Opposite Party sent the Letter of No. jai-ye-zhong-ren-zi 1000005025 to the Applicant to express there is no provision to approve an official leave for handling the union affairs set forth in Article 4 of Regulations of Leave-Taking of Teachers by the Letter of No. 2011 fu-jiao-xue-zi 1005046073 issued by Chiayi City Government, and therefore, did not approve the Applicant's official leave.

(7) The number of teachers of junior high schools and elementary schools in Chiayi City who applied to join the Applicant ○○○ has exceeded one half of the number of teachers of junior high schools and elementary schools in Chiayi City.

4. Dispute points of this case

(1) Whether the Applicant union can deem the Opposite Party as the bargaining object of a collective agreement?

(2) Whether the Applicant union can use other way to bargain with the Opposite Party for union affairs leave?

(3) Whether the Opposite Party reviewed the Applicant's request for union affairs leave in contention deserve such unfair labor practices as improper influence and impede union activities set forth in Subparagraph 5, Paragraph 1, Article 35 Labor Union Act?

5. Justification

The Applicant claimed that the Opposite Party reviewed the Applicant's request of treating the union affairs leave in contention constituting the unfair labor practices set forth in Paragraph 1, Article 35 of Labor Union Act and Paragraph 1, Article 6 of Collective Agreement Act, and therefore applied for decision as: (1) the part that the registration of personal leave to the Applicant ○○○ who applied for leave to handle the union affairs from October 2011 to the end of March 2012 should be amended to registration of official leave; (2) the part that the application for approval of reducing 10 to 14 teaching lessons every week for the Applicant's chairman, and 4 to 8 teaching lessons as union affairs official leave every week for its

secretary-general, directors and supervisors, and should not add similar condition on approval of leave that the union affairs official leave needs the Applicant to implement during the period of no lectures, and the substitute costs derived from union affairs official leave shall be agreed by both parties; and the leave due to handling union affairs from April 1, 2011 should be approved by official leave too; (3) the request for local competent authority, Chiayi City Government (Department of Education) should not have the behavior to suppress the Applicant union. It is to describe as follows:

(1) Regarding whether the Applicant union can deem the Opposite Party as the bargaining object of a collective agreement?

A. The public school teachers are appointed by the school and the employment contract entered by both parties is attributed to the administrative contract in terms of nature; however, to observe from labor relations, after being appointed, teachers accept the school's direction and supervision, providing teaching labor which is attributed to the labor contract providing labor as main purpose. Therefore, the labor relation exists between teachers and schools. A school should be the employer of teachers that is no doubt. In this regard, although the Opposite Party claimed that public schools have utterly no right to decide the salary, hiring, appointment and tenure of teachers necessary to employee-employer relations, it is hard to say public schools or principals are the employers of teachers and or so (referring to the Opposite Party's statement of

defense dated on April 20, 2012). But this is the internal division of powers and responsibilities between public schools and their higher competent authority, and which still cannot be used to deny public schools are the employers of teachers.

B. Second, the Paragraph 3, Article 6 of Collective Agreement Act provides that, "The labor side with bargaining qualification in accordance with the preceding paragraph denotes to the following labor unions: 3. The professional union or comprehensive union whose members are joined by more than one half of employees with the same professional skills employed by the other party of bargaining". According to "The Collective Bargaining Commissioned Consent and Communication Voting Proposal Sheet of Public Junior High Schools in Chiayi City" provided by the Applicant, the number of teachers organized in the Opposite Party is 90 of which the number of the Applicant's members is 26 does not exceed one half. Thus, regarding the issue of union affairs leave in contention, the Applicant union is still not qualified to the bargaining of collective agreement with the Opposite Party.

(2) Whether the Applicant union can use other way to bargain with the Opposite Party for union affairs leave?

A. In accordance with Paragraph 1, Article 36 of Labor Union Act: "In case that it is necessary for the directors or supervisors of a labor union to handle union affairs during

their working hours, the labor union may reach an agreement with their employer to provide them with a certain number of hours as official leave.”, the agreement set forth in this Article refers to the hours of official leave required to handle union affairs within working time which should reach to a consensus between the union and the employer through negotiation; the way of negotiation can be the bargaining set forth in Collective Agreement Act, and may also be the general collective bargaining (referring to the Letter of No. lao-ci 2 zi 1000126586 issued by CLA, Executive Yuan on October 28, 2011). As mentioned above, regarding the union affairs leave in contention, if the Opposite Party is the bargaining subject, the Applicant union is not qualified to the bargaining of collective agreement; however, it does not impede the Applicant union using the way of general collective bargaining to request the Opposite Party to bargain the matters of union affairs leave in contention.

- B. As for the main difference between bargaining way set forth in of Collective Agreement Act and general collective bargaining way is set forth in Paragraph 1, Article 6 of Collective Agreement Act: “Both the labor and the management shall proceed in good faith when bargaining for a collective agreement; any party without justifiable reasons cannot reject the collective bargaining proposed by the other party.”. Evidently, the Collective Agreement Act

imposes the union and the employer with bargaining obligations that one party who refuses bargaining without proper reason or carries out dishonest bargaining may constitute the unfair labor practices set forth in Article 6 of Collective Agreement Act; on the other hand, in terms of this case, if the union uses the way of general collective bargaining, originally the employer is not obliged to bargaining legally; however, if something happens enough to prove that the employer refused union's request of general collective bargaining, with understanding and motivation of unfair labor practices, may according to its situation still constitute 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 Labor Union Act; furthermore, if the employer gives the adverse treatment to the laborer who proposed or participated in collective bargaining (including the bargaining of collective agreement and general collective bargaining), may also deserve the unfair labor practices set forth in Subparagraph 3, Paragraph 1, Article 35 of Labor Union Act.

- C. With respect to the bargaining of union affairs leave in contention, from the Applicant's statement: "Regarding the official leave of this union's staff due to handling union affairs, this union has sent letters to Chiayi City Government to request legal bargaining for approval." (Referring to the

Applicant's "Explanation of ○○○ against the Unfair Labor Practices Made by ○○○, and Chiayi City Government" on March 9, 2012) and so on. As motioned above, of course the Applicant union may take the Opposite Party as subject, through the way of general collective bargaining to request the Opposite Party to bargain the union affairs leave in contention; however, can the higher competent authority of the Opposite Party, Chiayi City Government (Department of Education) be the bargaining subject? In this regard, CLA considers that looking around the related practices and jurisprudence of labor relations in Taiwan's public sector is still in bud development, when the higher competent authority of the Opposite Party can participate in bargaining (including the bargaining of collective agreement and general collective bargaining) as an employer status that should be dialogued for resolution by Taiwan's relevant government department as soon as possible. And as motioned above, CLA admits the Applicant union may take the Opposite Party as the employer to conduct general collective bargaining with the union affairs leave in contention, and in general collective bargaining, the higher competent authority may send staff to participate in bargaining through the Opposite Party's internal negotiation as necessary. If so, the policy and the point of view of the higher competent authority should be appeared in the bargaining process. If it is necessary to make a consistent

treatment on bargaining matters, should be realized through the conventions of the Applicant and the Opposite Party too. For the higher competent authority of the Opposite Party, there will be no risk of difficulty to convey and implement its policies. Therefore, at the present stage, the Applicant's right to bargain under collective agreement (in this case, the Applicant union could not take the Opposite Party as subject to conduct collective bargaining due to not meet the provisions of Subparagraph 3, Paragraph 3, Article 6 of Collective Agreement Act), and the general collective bargaining right will not be affected seriously because the doubt of when the higher competent authority of the Opposite Party, Chiayi City Government (Department of Education) bargains as the employer status need to solve.

(3) Regarding whether the Opposite Party reviewed the Applicant's request for union affairs leave in contention deserve such unfair labor practices as improper influence and impede union activities set forth in Subparagraph 5, Paragraph 1, Article 35 Labor Union Act?

A. As the legislative purpose of establishment 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 determining 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. For the part that the Applicant applied several times to the Opposite Party for approval of union affairs leave, the Opposite Party's representative ○○○ stated in the investigation procedure of CLA on March 29, 2012: "(Would you please tell me when the Applicant applied for

the Opposite Party to approve official leave necessary to handle union affairs, whether the Opposite Party registers personal leave followed by a approval of official leave for the first time only? If so, what is the reason?). The Applicant ○○○ applied for official leave by the reason of going to Mincu Elementary School to make a topical report for the union in the first time. At that time, ○○○ has sent an official letter to this school, and I approved an official leave in accordance with Regulations of Leave-Taking of Teachers. In the second time and the third time, the Applicant ○○○ expressed going to Yuren Elementary School and Chongwen Elementary School respectively to conduct topical reports for the union that ○○○ has sent an official letter to this school too; however, I thought the union topical report has nothing to do with ○○○, and then asked for instructions from City Government. According to the letter replied by the City Government, the said two elementary schools did not held the said activity, and urged this school's attention to the presence and absence situation of the Applicant, so I approved the personal leave. In the fourth time, the Applicant ○○○ went to Sixien Elementary School to conduct the union topical report; however, without ○○○'s official letter, I did not ask for instructions from the City Government, and registered the personal leave. In the fifth time, the Applicant ○○○ applied for an official leave by the reason of handling the union affairs. Since there was no

specific record of what kind of union affairs to be handled on the leave form, so I personally approved the personal leave in accordance with identification of the facts. Why I approved the official leave in the first time, and from the second time, I approved the personal leave only? Because there are many elementary schools in Chiayi City, if the Applicant applied for official leave every time, may affect his teaching. Besides, I have asked for instructions from Department of Education of Chiayi City Government many times, hoping they gave me a clear standard to approve official leaves. I personally think that ○○○'s demand on the union leave should be dialogued and bargained with Department of Education of Chiayi City Government” and so on. In this regard, the Applicant stated: “The reason why I did not go to Yuren and Chongwen Elementary School to make topical report was because the responsible person of the two schools’ union branch contacted me, but the school expressed I did not obtain the union affairs official leave, so the school was not convenient to let me go there to make topical reports for the union, rather than the said two school did not hold the activity of union topical report. In the fourth time, I went to Sixien Elementary School to discuss the matters of union activities with part directors of original teachers association in the school. In the fifth time, I went to Mincu Elementary School, because we were understaffed, I personally went to receive the membership application

forms and membership fees” and so on. It can be seen from check of above two persons’ statements as follows:

(a) In the first time, the Applicant ○○○ applied for an official leave with the ground of going to Mincu Elementary School to make a topical report for the union; then ○○○ had sent an official letter to the Opposite Party. The Opposite Party stated he approved the official leave in accordance with Regulations of Leave-Taking of Teachers. To observe since then, evidently, the Opposite Party has the right to approve the union affairs leave of the Applicant. In this regard, later, the Opposite Party argued in the investigation procedures of CLA: Regulations of Leave-Taking of Teachers do not adequately regulate the union affairs leave, so before the amendment of Regulations of Leave-Taking of Teacher, the school has not the leave approval authority and so on (referring to the Opposite Party’s statement of Defense dated January 31, 2012) inconsistently that is hard to admit.

Second, compare to the Opposite Party’s complement pleading dated on March 22, 2012 which stated: To the Applicant ○○○ applied for union affairs leave, the handling situation was that on April 22, 2011 (The 8th Meeting of the National Federation of Teachers Union (NFTU) Promotion Association, an official leave was approved); on May 20, 2011 (NFTU Promotion

Association Promoters Conference and the First Preparatory Meeting, an official leave was approved); on July 11, 2011 (The First Member Congress of First Term NFTU, an official leave was approved); on October 18, 2011 (made a topical report for the union in Mincu Elementary School; an official leave was approved); on October 20, 2011 (went to Yuren Elementary School to make a topical report for the union; an personal leave was approved); on October 20, 2011 (went to Chongwen Elementary School to make a topical report for the union; a personal leave was approved); on October 25, 2011 (went to Sixien Elementary School to make a topical report for the union; a personal leave was approved); on November 23, 2011 (handed the union affairs; a personal leave was approved); on September 22, 2011 (Chiayi City Annual Business Professional Group Regulations Seminar, an official leave was approved); on October 11, 2011 (promoted CLA 2011 three labor Acts, an official leave was approved); on November 15, 2011 (CLA 2011 Collective Bargaining and Handling Labor-Management Handling Personnel Training Courses, an official leave was approved). In addition, in accordance with Article 36 of Labor Union Act and Article 32 of Enforcement Rules of the Act, the official leave should be identified by the facts. From the establishment of the Applicant union, to the invitation

activities or gatherings of organs, the official leave will be approved; furthermore, the Applicant union is a professional union with little relevance to the Opposite Party, and so on. Accordingly, the Opposite Party recognized, shall be in accordance with the provisions of Labor Union Act and shall decide whether approve an official leave after identifying by the fact; evidently, the Opposite Party indeed has the authority to approve an official leave.

(b) The Applicant ○○○ went to Yuren Elementary School and Chongwen Elementary School to make topical reports for the union at the second time and the third time respectively; also ○○○ has sent an official letter to the Opposite Party, but the Opposite Party considered the union topical report has nothing to do with ○○○, and after asking for instructions from the City Government, approved the personal leave; evidently the Opposite Party has the leave approval authority. As for why the Opposite Party did not ask for instructions from Chiayi City Government when he approved the official leave to Applicant ○○○ in the first time, but when the ○○○ applied for leave in the second time and the third time, asked for instructions from Chiayi City Government that is the internal administrative co-ordination between higher and lower agencies of the Opposite Party, and still does not affect

- CLA to recognize the identification of the Opposite Party having the leave approval authority.
- (c) Since there was no ○○○'s official letter when the Applicant ○○○ went to Sixien Elementary School to make a topical report for the union at the fourth time, the Opposite Party did not ask for instructions from the City Government, but directly register a personal leave. Accordingly, it can testify the Opposite Party has the leave approval authority again.
- (d) The Applicant ○○○ applied for an official leave by the reason of going to Mincu Elementary School to handle the union affairs at the fifth time, and the Opposite Party approved a personal leave by indentifying facts because there was no specified record of what kind of union affairs to be handled on the leave form. It is also enough to identify the Opposite Party has the leave approval authority.
- (e) According to Article 36 of Labor Union Act: "In case that it is necessary for the directors or supervisors of a labor union to handle union affairs during their working hours, the labor union may reach an agreement with their employer to provide them with a certain number of hours as official leave (Paragraph 1). In case that a corporate union and the employer do not reach such an agreement as prescribed in the preceding paragraph, its chairperson of the board of directors may

be entitled to have an official leave for half a day or a whole day, and other directors or supervisors may have an official leave for up to fifty hours per month to handle union affairs (Paragraph 2).” Its true legislative intention is that after workers and their employers conclude the labor contract, workers provide labor and the employers pay the wage under the contract, this is the purpose of the conclusion of the labor contract. Therefore, unions based on the need to handle the affairs, which are to be handled in the working hours, should bargain with employers; after obtaining the consent of the employer, the obligation to provide labor in working hours are exempt. As for whether workers should still complement the labor out of working time, or whether the employer should pay the wage during the period of handling union affairs (including the amount of the wage payment) are subject to both parties’ bargaining. Corporate unions are characterized in that: with the business establishment as the scope of their activities, inherently, there is necessity of engaging in union activities in the cooperate, and the corporate union recruits the employees of the corporate as its members; moreover, under the circumstances that the scale of Taiwan’s corporate is small, so the corporate unions composed are small scale, weak financial resources, and without financial viability to employ a

full-time staff for union affairs. Therefore, there are special provisions that when the corporate union and the employer fail to bargain the union affairs leave, the employer is imposed to give union affairs leave to such cadres as directors, supervisors of the corporate union, in order to protect the corporate union's right of activities; however, this is limited to corporate unions only, not extent to industrial unions or professional unions. In other word, when industrial unions or professional unions intend to strive for union affairs leave, they still follow Paragraph 1, Article 36 of Labor Union Act to bargain with the employer, and when the outcome of bargaining is pending, the Applicant is not of course entitled to union affairs leave.

- C. Regarding to the union affairs leave in contention, the Opposite Party has the leave approval authority as mentioned above. The Opposite Party approving the official leave or the personal leave only was in different standards of approval, and in the investigation procedures of CLA, the Opposite Party's explanation was also no consistent that actually easily leads to the trouble of the Applicant to apply for leave and therefore affect the promotion of union affairs. In this regard, the Applicant ○○○ stated in the inquiry procedures of CLA on April 20, 201 that: "(After ○○○ established, when applying for the union affairs leave, did you ever said to the Opposite Party that no union affairs

official leave approved will affect the promotion of union affairs?) ○○○ was established on May 1, 2011 before that, I served as the chairman of Chiayi City Teachers' Association, and then ○○○ approved me the reduced teaching hours of five lessons every week, in order to facilitate promoting the establishment of the teachers' union. After ○○○ was established, until the end of September, ○○○ still approved me the reduced teaching hours of five lessons every week. However, from September 2011, ○○○ cancelled the reduced teaching hours of five lessons every week, and then I said to the principle more than once, in such case, it was difficult to promote the union affairs of teachers' professional union, I had no choice but applying for decision.". In consideration of general common sense, the Opposite Party should recognize that if the Applicant ○○○ could use the official leave to execute union affairs, should better promote the union affairs. However, the Opposite Party indicated (roughly): There are many elementary schools in Chiayi City, if the Applicant applied for official leave, probably will affect the Applicant's teaching; I asked for instructions from Department of Education of Chiayi City Government, hoping them give me a clear standard to approve the official leave; I personally think that ○○○'s demand on the union leave should be dialogued and bargained with Department of Education of Chiayi City Government; in this regard, CLA considers that

the Opposite Party would have leave approval authority, and the Opposite Party claimed to approve the union affairs official leave is necessary to ask the opinion of Department of Education of Chiayi City Government (for example, the share of substitute fee) and so on is the internal communication issues between the Opposite Party and its higher competent authority; if the higher competent authority considers it is necessary to uniformly handle the union affairs leave, should agree with the Opposite Party and the Opposite Party should handle it with the Applicant as soon as possible. But, in any event, the Opposite Party still should not prevaricate by the reason of asking for instructions from higher competent authority; furthermore, the Opposite Party stated Regulations of Leave-Taking of Teachers are legal orders which cannot be changed by private consensus, and Regulations of Leave-Taking of Teachers do not provide the union affairs leave and so on; in this regard, CLA considers union affairs leaves are provided in Paragraph 1, Article 36 of Labor Union Act. Regarding union affairs leave should be resolved by bargaining of both employers and employees, and whether Regulations of Leave-Taking of Teachers expressly provide union affairs leaves are two things. The Opposite Party should not respond the Applicant by the reason that Regulations of Leave-Taking of Teachers do not provide union affairs leaves, so need to ask for instructions from its higher competent

authority. In summary, the Opposite Party knows whether the Applicant ○○○ has the union affairs leave will affect the promotion of union activities, and the Opposite Party had the authority to approve the Applicant's union affairs leave, but approved the official leave or personal leave with the reason of necessary instructions asked for from its higher competent authority, without consistent standards of leave approval, affecting the Applicant's union activities that should be considered the Opposite Party's behavior reviewing the Applicant's application for the union affairs leave in contention has deserved the unfair labor practices as improper influence and impede union activities set forth in Subparagraph 5, Paragraph 1, Article 35 of Labor Union Act.

(4) Regarding the Applicant's petition for remedy:

- A. The part that the Applicant applied for the registration of all personal leaves because handled the union affairs from October 2011 to the end of March 2012 should be amended to official leave registration:

To the part the Opposite Party approved the personal leave from October 2011 to the end of March 2012, the Applicant stated: "The reason why I did not go to Yuren and Chongwen Elementary School to make topical report is because the responsible person of the two schools' union branch contacted me, but the school expressed I did not obtain the union affairs official leave, so the school is not

convenient to let me go there to make topical reports for the union, rather than the said two school did not hold the activity of union topical report. In the fourth time, I went to Sixien Elementary School to discuss the matters of union activities with part directors of original teachers association in the school. In the fifth time, I went to Mincu Elementary School, because we were understaffed, I personally went to receive the membership application forms and membership fees.” Through investigation, the part that on October 20, 2011 (went to Yuren Elementary School to make a topical report for the union; a personal leave was approved); on October 20, 2011 (went to Chongwen Elementary School to make a topical report for the union; a personal leave was approved), the Opposite Party did not deny the Applicant ○○○ who conducted the union affairs, but recognized the said activities have nothing to do with the Opposite Party, ○○○ junior high school, so did not approve the official leave and so on. However, as mentioned above, CLA identified the Opposite Party’s behavior reviewing the Applicant’s application for the union affairs leave in contention consists the unfair labor practices set forth in Subparagraph 5, Paragraph 1, Article 35 of Labor Union Act, and in accordance with Paragraph 2, Article 51 of Act for Settlement of Labor-Management Disputes, CLA may order the Opposite Party for certain acts or omissions. Accordingly, CLA ordered the Opposite Party to change the

registration of twice personal leaves to official leaves; second, regarding the part that on October 25, 2011 (went to Sixien Elementary School to make a topical report for the union; a personal leave was approved); on November 23, 2011 (handled the union affairs; a personal leave was approved), the Opposite Party stated because the Applicant did not send the official letter and so on. In this regard, through investigation, the Applicant union is a professional union, and a regional union of Chiayi City teachers as the organization object exist outside of the Opposite Party, and there is no agreement of union affairs leave through bargaining between the Applicant union and the Opposite Party. Therefore, if the Applicant union's chairman needs to apply for leave to handle union affairs, due to no applicable relevant norms, and referring to the spirit of Article 13 of Regulations of Leave-Taking of Teachers that teachers should fill out the leave form to be approved by schools, so in procedures, the Applicant should file a written application to the Opposite Party, in order to facilitate the Opposite Party's review, and determine whether approves an official leave or not. Moreover, the Applicant did not provide the proof stating there is the circumstance under which cannot ask for leave in writing. Therefore, it is reasonable that the Opposite Party approved the personal leave only due to not meet the leave procedures. The Applicant ○○○'s petition about the part that on October

25, 2011 (went to Sixien Elementary School to make a topical report for the union; and a personal leave was approved); on November 23, 2011 (handled the union affairs; a personal leave was approved) should be dismissed.

- B. The petition for approval of official leaves by reducing the teaching hours of 10 to 14 lessons every week to the chairman, and by reducing the teaching hours of 4 to 8 lessons every week to the secretary-general, directors, supervisors of the Applicant shall not be attached with such similar condition of leave approval as the union affairs official leave needs to implement during the period of no Applicant's lectures. The substitute fee derived from union affairs official leave shall be agreed by both parties; as for the part that handled the union affairs from April 1, 2011 should be approved with official leave too:

Through investigation, Paragraph 1, Article 36 of Labor Union Act provides: "In case that it is necessary for the directors or supervisors of a labor union to handle union affairs during their working hours, the labor union may reach an agreement with their employer to provide them with a certain number of hours as official leave." In this regard, CLA considers: How the union affairs leave in contention should be approved is the problem can only be resolved by the Applicant union and the Opposite Party through bargaining; it is not appropriate for CLA to directly establish a standard to approve the union affairs leave in

contention for both parties, so this part of decision the Applicant applied is no reason that should be dismissed.

- C. The part of petition for local competent authority, Chiayi City Government (Department of Education) should not have the behavior to depress the Applicant union:

Since the Applicant in this case applied the decision against ○○○ as the opposite party only, CLA has no need to review the behavior of the third party, Chiayi City Government (Department of Education), so the decision in this item the Applicant applied should be dismissed.

6. 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.
7. In summary, the Applicant's petition is reasonable in one part and unreasonable in the other part; in accordance with Paragraph 1, Article 44, Paragraph 1, Article 46 and Paragraph 2, 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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April 27, 2012