

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

No. 2011 - 1

The Applicant:	<input type="radio"/> <input type="radio"/> Industry Union	Located in Taipei City
The Representative:	Lin, <input type="radio"/> <input type="radio"/>	Residence, ditto
The Agent:	Lawyer Liao, <input type="radio"/> <input type="radio"/>	Residing in Taipei City
	Pai, <input type="radio"/> <input type="radio"/>	Residing in New Taipei City
The Opposite Party:	<input type="checkbox"/> <input type="checkbox"/> Company	Located in Taipei City
The Representative:	Lin, <input type="checkbox"/> <input type="checkbox"/>	Residence, ditto
The Agent:	Yu, <input type="checkbox"/> <input type="checkbox"/>	Residence, ditto
	Wen, <input type="checkbox"/> <input type="checkbox"/>	Residence, ditto
	Tseng, <input type="checkbox"/> <input type="checkbox"/>	Residence, ditto

The disputes between the above parties for denial of checking off the union dues of the union's members has been decided, through conclusions of the hearing procedures, by Council of Labor Affairs (CLA) on July 1, 2011 as follows:

MAIN TEXT OF THE DECISION

1. From the date upon receipt of this Decision award, the Opposite

Party shall not further express to the Applicant the intention to stop checking off the dues of the Applicant's members who joined the union before April 30, 2011, nor shall stop checking off the union dues of one month before the Applicant's member who joined the union before April 30, 2011 on monthly payday of the Opposite Party, and transfer the union dues being checked off to the Applicant.

2. Within six months from the date of receipt of this Decision Award, the Opposite Party shall monthly report to the central competent authority about the situation of the union dues of the month being checked off within seven days from the payday.

FACT AND REASONS

I. Part of Procedures:

Through investigation, the Opposite Party verbally informed the Applicant on April 11, 2011 that it will stop for the Applicant checking off the union dues from May 1, 2011 before the Applicant obtains the written consent from its members; again on April 19 of the same year, the Opposite Party sent a letter to the Applicant reiterating that it will stop for the Applicant checking off the union dues from May 1, 2011 before the Applicant obtains the written consent from its members, and made same statement on May 30, 2011 when CLA carried out the first investigation; then, the Applicant applied for this decision with the above behavior which is attributed to the unfair labor practices set forth in Paragraph 1, Article 35 of Labor Union Act, 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) The Opposite Party verbally informed the Applicant on April 11, 2011 that it will stop for the Applicant checking off the union dues from May 1, 2011 before the Applicant obtains the written consent from its members; again on April 19 of the same year, the Opposite Party sent a letter to the Applicant reiterating that it will stop for the Applicant checking off union dues from May 1, 2011 before the Applicant obtains the written consent from its members.

2) Paragraph 3, Article 28 of new Labor Union Act provides that, “When a corporate union receives the consent of its members, the employer shall check off union dues from members’ wage on the date when they formally become union members and transfer the dues to the labor union.” Prior to the implementation of the new Labor Union Act, since the Applicant was established on May 1, 1958, the Opposite Party never stops checking off its union dues, except the five-year

interruption due to labor dispute, which is expressly set forth in the withholding “union dues” column on the salary envelope that both parties never dispute, so objectively, it is enough to consider that there is consent or implied consent undoubtedly between the said members and the Opposite Party in terms of the dues to be checked off monthly. Moreover, whether or not the members agree the union dues to be checked off is attributed to the relationship between the union and the members, the Opposite Party cannot use this as a reason for not to withhold the dues. In addition, as otherwise agreed by both the employer and the workers, the principle that wages shall be paid in full directly to the workers can be excluded is clearly shown in the provisions of proviso in Paragraph 2, Article 22 of Labor Standards Act. And the provisions of Article 28 of Labor Union Act do not exclude the application of Article 22 of Labor Standards Act.

- 3) Regarding the impact of no checking off union dues on the Applicant: The Applicant claimed that if the Opposite Party stops checking off union dues, it could not immediately collect the dues of members in the company around the country because the Applicant union only has three full-time staff, so it will have an impact on the income of dues which is the critical for the union subsisting.
- 4) The Opposite Party refused to continue checking off the Applicant’s union dues, but uniquely endowed related party 1, ◇◇ Factory and related party 2, ◎◎ Factory of the union

that the dues of which the Opposite Party agreed to continue checking off without confirmation. In addition, the way used by the Opposite Party to check off the dues of the said unions was same to the Applicant, without asking its members to issue a consent; particularly, after May 1, this year (2011), nor the Opposite Party asked the union's member, ◎◎ Factory to issue the consent. As there is no consent of the union member, ◎◎ Factory's in membership application provided by the Opposite Party, it can be learned that the Opposite Party indeed treated the Applicant and other unions differentially.

- 5) The Opposite Party refused to check off union dues having other motives: The motivation of the Opposite Party's intention to stop checking off the union dues up to 10 years is related to recent series of disputes deadlocked by both parties. First, in the labor-management conference on September 27, 2010, the Applicant proposed a 3% pay increase requirement as per the outsider, the affiliated corporate, △△ company that became the unspoken issue between the Opposite Party and the Applicant; subsequently, the Applicant submitted eight representatives of Employee Welfare Committee which are more than half seats of fifteen members specified in the Articles of the Committee; however, plus three persons reported by ◎◎ Factory and Sanxia ◇◇ Factory, a total of eleven people is more than ten persons elected by the union which is the limit set out in the Articles of the Committee. Therefore, both parties had been deadlocked and delayed in

finalizing. Since the committee owns enormous assets, including real estate, fixed deposit, and 2.5% equity of the outsider, △△ Company, so that the Opposite Party was afraid that cannot continue to dominate the committee, and thus supported its three factories, △△ Factory, △△ Factory and △△ Factory to establish three plant unions, and additionally established a union in its affiliated corporate, △△ Company before the implementation of new law in time. Followed by various unions submitted the member list of the Welfare Committee, the reported number was a total of as many as 16 persons that noticeably was in order to weaken the strength of the applicant by establishment of the four unions. Also, the Applicant had applied to Department of Labor, Taipei City Government for mediation in term of this, and upon investigation, indeed there were members said the fact that the supervisors of the plant's personnel and general affairs dominated. In addition, since the Opposite Party agreed in the mediation, "an employer shall not improperly influence, impede or restrict the establishment, organization or activities of labor union", so that the mediation was only established. In summary, apparently the Opposite Party indeed dominated the establishment of new unions. Furthermore, the Applicant originally scheduled for holding the 3rd General Meeting of 18th term in May of this year (2011), the Applicant pursuant to former examples (the Opposite Party agreed to the official leave for all attended delegates in the 1st and the 2nd General

Meeting of 18th term), requested the official leave to the Opposite Party for the attended delegates; however, after the establishment of the new unions, the said request was refused by the Opposite Party who was unauthorized to agree by the reason that there was other union's personnel in the plant, resulting in the General Meeting cannot be held as scheduled.

6) In summary, the behavior that the Opposite Party expressed it will stop checking off the union dues has constituted the unfair labor practices as domination and intervention set forth in Paragraph 1, Article 35 of Labor Union Act that the Applicant's council adopted a resolution to file this decision, requesting an order that the Opposite Party should continue to check off the union dues of the members who joined the union before May 30, 2011, and forward the dues to the Applicant; as for the members who did not agree to check off the union dues are not within the scope of this application.

2. The Opposite Party argued:

1) According to the provisions set forth in Paragraph 3, Article 28 of new Labor Union Act that without members' consent, a company may not check off the union dues. If the Opposite Party does not obtain the consent of the members, it has no legal basis to check off the union dues.

2) The Applicant claimed that whether there was other motivation for the Opposite Party to check off the union dues or not. However, through investigation:

- A. About the part of salary increase case: the Opposite Party has repeated said to the Applicant that to increase salary should consider the Opposite Party's overall operating results, so it was willing to continue to negotiate and to grasp the best time to apply for. Hence, making improper links with a stop of withholding union dues should not be done. If the Opposite Party stopped checking off the union dues as a means to suppress the Applicant, why it actively expressed to the Applicant its willingness to assist in consultation with the members' consent?
- B. About the disputes for the Welfare Committee: In accordance with the provisions set forth in Article 5 of ○○○ Joint Staff Welfare Committee Memorandum that 10 among the 15 delegates shall be elected by the union, but the total number of 11 persons submitted by the Applicant and other unions, ○○○ and ○○○ have exceeded 11 persons, the number specified by the memorandum. So, the Opposite Party sent a letter to the said three unions on October 13, 2010 for their own negotiated settlement. In this time, the Applicant alleged that tree plant unions, ○○○ and affiliated corporate union were not yet established; thus it is apparently not to meet the fact as the Applicant alleged that the Opposite Party feared cannot dominate the Welfare Committee and then established new unions and so on.
- C. About the rejection of official leave for union business:

when the Applicant requested for leave, to the doubt whether granting leave of absence is applicable to laws, after the Opposite Party inquired the competent authorities by letter, and the later has replied granting the leave of absence on May 30, 2011. The Applicant should not take the doubt of applicable laws to confuse with unfair labor practices.

- 3) About the Applicant alleged that the Opposite Party stopped checking off the union dues of the Applicant only, but continued to check off other union dues and so on. Through investigation, the Opposite Party also obtained the consent of other unions' members before checking off the union dues that can be evidenced by the consent of other unions' members. So, the Opposite Party did not treat the Applicant differentially.
- 4) In summary, the Opposite Party expressed the intention to stop checking off, on behalf of the Applicant, the union dues from May 1, 2011 before obtaining the written consent of the members that is according to the provisions set forth in Paragraph 3, Article 28 of Labor Union Act, without unfair labor practices at all. Accordingly, it is hereby to state the dismissal of the Applicant's request.

3. Non-disputed fact between both parties

- 1) Since the Applicant union was established in 1959, the Opposite Party had monthly checked off the union dues of Applicant's members, except stop during a period of five years due to labor

disputes.

- 2) The Opposite Party verbally informed the Applicant on April 11, 2011 that it will stop for the Applicant checking off the union dues from May 1, 2011 before the Applicant obtains the written consent from its members after the implementation of Labor Union Act; again on April 19 of the same year, the Opposite Party sent a letter to the Applicant reiterating the above content.
 - 3) After the implementation of new Labor Union Act on May 1, 2011, the Opposite Party only expressed to the Applicant the intention to stop checking off the union dues of the Applicant's members before the Applicant obtains the written consent of its members, but did not express to other unions the intention to stop checking off the union dues of their members.
 - 4) When issuing the salary of May on June 7, 2011, the Opposite Party still checked off the union dues of May of the Applicant's members before joining the union on April 30, 2011.
4. Through investigation, after the implementation of new Act, the corporate union (the Applicant) and the industry union before the establishment of new Act are identified in organization that both parties did not dispute either as hereby described first. Through investigation, there are two points of dispute in this case: one is after the implementation of Labor Union Act, whether the Applicant should provide the consent to check off the union dues from the members who have joined the union before the implementation of

Labor Union Act, then the Opposite Party has the obligation to check off the union dues of Applicant's members? The other is the Opposite Party expressed to the Applicant the intention to stop checking off, on behalf of the Applicant, the union dues from May 1, 2011 without obtaining the written consent from the Applicant's members constitutes the unfair labor practices set forth in Subparagraph 5, Paragraph 1, Article 35 of new Labor Union Act, "Improperly influence, impede or restrict the establishment, organization or activities of labor union."? The abovementioned points of dispute are hereby described as follows:

- 1) Regarding the part that after the implementation of Labor Union Act, whether the Applicant should provide the consent to check off the union dues from the members who have joined the union before the implementation of Labor Union Act, then the Opposite Party has the obligation to check off the union dues of Applicant's member?
 - A. As the purpose of the provisions set forth in Paragraph 3, Article 38 of Labor Union Act that an employer obliged to check off the union dues is to stabilize the labor relations between a corporate union and an employer, and it can save the time wasted and trouble caused for corporate union to collect union dues, rather than intend to increase the condition of the member's consent to make change of the labor relations regarding the system of checking off the union dues, which has already existed, or it will violate the legislative purpose to "stabilize the labor relations between

a corporate union and an employer”. “when a corporate union receives the consent of its members” set forth in the regulation not only refers to obtaining the consent of the members respectively, but also includes the circumstances of the resolution of union (delegates) meeting and the enactment of memorandum, and that is the exceptions of “Wages shall be paid in full directly to the worker” referred in the proviso of Paragraph 2, Article 22 of Labor Standards Act. In addition, the obligation of an employer’s to check off the union dues set forth in the same Article was initiated by Labor Union Act, so the employer is obliged to check off the union dues just from May 1, 2011, the implementation date of this Act. As for before or after the implementation date, the validity of conventions or practices for checking off union dues which already have existed or newly established between both parties of employers and employees will not be affected due to the enforcement of Paragraph 3, Article 28 of Labor Union Act.

- B. Through investigation, since the Applicant union was established in 1959, except the five-year interruption due to labor dispute, the union dues of the Applicant’s members were checked off from the members’ monthly wages by the Opposite Party, and then the Opposite Party transferred the collected union dues to the Applicant; besides, on the monthly salary envelope of the Applicant’s members, there is Union Dues Column where a “80” word is shown; namely,

the Opposite Party checked off NT\$80, the monthly union dues from the salary of the Applicant's members that can be evidenced by the member's salary envelope of May 2011 provided by the Applicant. The Opposite Party's behavior to check off the union dues has been for decades. Overall looking at the above facts, it is sufficiently to identify that the implied consent exists between the Opposite Party and the Applicant's members in terms of the Opposite Party checking off the union dues for many years, and that has become a convention between both parties. The Opposite Party expressed the intention to stop checking off the union dues by the reason that after the implementation of new Labor Union Act, without the consent obtained from the Applicant's all members, the Opposite Party has no legal obligation under Paragraph 3, Article 28 of Labor Union Act that is unlawful.

2) Regarding the part whether the Opposite Party expressed to the Applicant the intention to stop checking off, on behalf of the Applicant, the union dues from May 1, 2011 without obtaining the written consent from the Applicant's members constitutes the unfair labor practices set forth in Subparagraph 5, Paragraph 1, Article 35 of new Labor Union Act, "Improperly influence, impede or restrict the establishment, organization or activities of labor union."?:

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”. Regarding the employer’s behavior to stop checking off the union dues was set forth in Paragraph 435, “The withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided.” 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 labor union”.

- C. There is implied consent of withholding dues between the Opposite Party and the Applicant’s members who joined the union before April 30, 2011, as described above; so, the Opposite Party expressed to the Applicant the intention to stop withholding on the grounds of no legal basis is in violation of Paragraph 3, Article 28 of new Labor Union Act. Whether a breach of the obligation constitutes unfair labor practices, still need to examine whether it constitutes the elements of Subparagraph 5, Paragraph 1, Article 55 of Labor Union Act, “Improperly influence, impede or restrict the establishment, organization or activities of labor union”. As a union is an independent labor organization and the union dues are the main source of funds for their organization and activities. The agreement of withholding the dues between employers and employees is to provide a convenient facility, which does not violate the autonomy of trade unions; and the withholding dues system is the union subsisting basis which has a deep relationship with execution of the right to organize; furthermore, an employer should avoid withdrawal of the check-off facility

to lead to financial difficulties for trade union, and which is not conducive to the development of harmonious industrial relations that was the decision made by Committee on Freedom of Association of ILO according to Nos. 87 and 98 Convention as mentioned above. Therefore, between the Opposite Party and the Applicant's members in this case, on the existence of the case as long-term withholding dues practice by the Opposite Party, and its unilateral intention to stop withholding, since the Opposite Party understood the said behavior will lead to financial difficulties for the Applicant union and which is not conducive to the development of harmonious industrial relations, thus its behavior should constitute unfair labor practices for weakening the union. Through another investigation, the Applicant's members are throughout the country and there are only three full-time staff members of the Applicant that the Opposite Party did not dispute; in fact, with three staff members, it is hard to collect the dues of the Applicant's entire members. Moreover, the three full-time staff had constant work, so whether they could further be responsible for the collection of monthly dues of the Applicant's entire members is not no doubt. The Opposite Party was knowing this situation, and then its intention to stop checking off the union dues between the Opposite Party and the Applicant's member has been enough to affect the

organization and activities of the Applicant union, that constitutes unfair labor practices which Improperly influence organization or activities of labor union, set forth in Subparagraph 5, Paragraph 1, Article 55 of Labor Union Act.

- D. Furthermore, the corporate union referred to Subparagraph 1, Paragraph 1, Article 6 of new Taiwan's Labor Union Act, includes such type of union consisting of a plant, same career and affiliated companies or financial holding companies, so therefore, there will be two or more unions within a corporate. In this case, what kind of relationship should be maintained between employers and every union coexisting plural union, the new Act does not expressively provide. As in accordance with the doctrine and practical insights in Japan, they consider that when many unions coexist within a same corporate, the employer should remain neutral to every union, equally recognize and respect for their right to organize, and should not act the behavior of differential treatment to every union due to different position or campaign lines.
- E. Therefore, in our evaluation of the unfair labor practices, based on the protection of every union's right to organize, we should admit that at coexistence of plural unions, employers have the obligation to remain neutral, but should not treat one union causing the repression of other unions or union; in particular, in provision such facility as

withholding union dues and borrowing offices, employers bear the obligation to equal treatment, or may constitute unfair labor practices which improperly influence organization or activities of labor union.

- F. In this case, the Opposite Party did not dispute the fact that the Opposite Party only expressed to the Applicant, not to other unions, the intention to stop checking off the union dues of the Applicant's members without obtaining the written consent from the Applicant's members, after implementation of new Labor Union Act; but argued it will check off the union dues after obtaining the consent of other union's members, so the Opposite Party did not treat the Applicant differentially and so on, and provided the consent of union's members as evidence. Through investigation, in inquiry, the Opposite Party self-reported that it required other unions than the Applicant in April of this year (i.e. 2011) to provide the consent of members for withholding dues; such unions said there had been the member consents for withholding dues, but provided the withholding member roster and so on. Obviously, other unions only provided the roaster, but did not transfer the consents of that union's all members for checking off dues to the Opposite Party. Referring to the various exhibits provided by the Opposite Party, among which there are just 1 to 2 applications for membership of unions other than the Applicant that is insufficient to prove

the fact as the Opposite Party alleged, it has obtained the consents of other unions' all members for checking off union dues. Since the Opposite Party did not express to other unions the intention to stop checking off the dues without obtaining the consent of members, but only expressed to the Applicant the intention to stop checking off the dues without obtaining the consent of the union's members, while ignoring the existence facts of the implied consent regarding checking off the union dues by the Opposite Party between the Opposite Party and the Applicant's members, also violating the neutrality obligation of the employer that hardly alleged not to constitute the unfair labor practices set forth in Subparagraph 5, Paragraph 1, Article 55 of new Labor Union Act. The Opposite Party argued that this case is purely the issue of legal insights, not the unfair labor practices and so on, is non-recoverable.

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's expression to the Applicant the intention to stop checking off the union dues of the union's members without obtaining the consent of the members influence the basis of the Applicant union's subsisting. At the same time, the behavior continuing to check off the union dues

without obtaining the consents of other union's members also violates the obligation of the employer's neutrality. After review, the Opposite Party's behavior constitutes the unfair labor practices which improperly influence organization or activities of labor union, set forth in Subparagraph 5, Paragraph 1, Article 55 of new Labor Union Act. Thus, the Applicant requested to order the Opposite Party should not express to the Applicant the intention to stop checking off the union dues from the date of receiving this Decision Award, nor on the Opposite Party's payday stop checking off the dues of the Applicant's members one month before joining the union on April 30, 2011, and transfer the dues to the Applicant that is reasonable and should be allowed, so this decision is hereby made as shown in item first of the main text. In addition, the above remedy order is made to recover the fair labor relations order which was infringed; to ensure to reach the above purpose, CLA considers it is proper to order that within six months from the date of receipt of this Decision Award, the Opposite Party should monthly report to the central competent authority about the situation of the union dues of the month being checked off from the payday. Accordingly, this decision is hereby made as shown 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

Kang, Chang-Chien

July 22, 2011