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

No. 2011 - 4

The Applicant: ○○○ residence: ○○○○○○

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

○○○ Residence: ○○○○○○

The Opposite Party: oooo Co., Ltd.

Located at ○○○○○○

The representative: ○○○, residence: ditto

Name of agent: ○○○, residence: ditto

○○○ Lawyer, address: ○○○○○○

○○○ Lawyer, address: ditto

The dispute between the above parties for dismissal has 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's dismissal practices to the Applicant on January 6, 2012 shall be identified invalid.
2. The Opposite Party should recover the Applicant's original position, the QA operator in Electroplating Section of production Department from the

service day of this Decision Award.

3. The Opposite Party should monthly pay the Applicant original salary NT$39,285 on payday from January 6, 2012 to the date of the Applicant's reinstatement; as the month is of 31 days, then the payment should be NT$40,363.

4. The Opposite Party should not have the practices to improperly influence, impede or restrict the establishment, organization or activities of the Corporate Union of ○○○○ Co., Ltd. from the service date of this Decision Award.

5. Within 7 days from the service date of Decision Award, the Opposite Party should announce the full text of this Decision Award by No. 14 Font of Standard Regular Script on the homepage of the Opposite Party Company's website for seven days, and record the announcement evidences.

FACT AND REASONS

I. Part of Procedures:

Through investigation, the Applicant claimed the Opposite Party terminated the Applicant's employment contract on January 6, 2012 by the Letter of No. yong-cong-zi 1010001, and the Applicant filed this decision application on January 11, 2012 by the above behavior which meets the elements consisting the unfair labor practices set forth in Subparagraph 1, Paragraph 1 and Paragraph 2, Article 35 of Labor Union Act that meets the provisions of Paragraph 2, Article 39, and Paragraph

1, Article 51 of Act for Settlement of Labor-Management Disputes, “The application for a decision 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 is hereby described first.

II. Part of Substantiality:

1. The Applicant claimed:

(1) The Applicant has served as the 13th executive director of ◯◯◯◯ Co., Ltd. Corporate Union (hereinafter referred to ○○ Corporate Union); the Opposite Party sent a letter to ○○Corporate Union on October 16, 2009, indicating “The union members applied for official leave due to union affairs too often and too many hours, affecting the normal working business. Now is under the staff streamlining period due to recession, the union please suspend the application for official leave due to external union affairs.” On March 9, 2010, ◯◯Corporate Union requested for salary increase, but the half-day union affairs leave of the executive director on was stopped by the Opposite Party March 12, 2010. The directors of the○○Corporate Union was reelected in July 2010, and among the 13th executive directors, only the Applicant continued to served as the 14th executive director. On September 29, 2010, the ◯◯Corporate Union sent a letter requesting the Opposite Party to carry out a public explanation in term of its operating conditions before October 4, 2010, or will overall stop overtime work from October 4 to 10, 2010; Subsequently, the Applicant, ○○○ and the vice chairman of the Opposite Party ◯◯

conducted a bargaining on October 4, 2010. On January 18, 2011 with the resolution of the director board of ○○Corporate Union, the union applied for a mediation in terms of year-end bonus to ○○ County Government, and planned assembling some members to propose a ○○ Corporate Union's appeal petition to the Opposite Party in terms of four-wheel models not making money to the upstream manufacturer, ◯◯ Automobile Co., Ltd. (hereinafter referred to ◯◯ Company) on January 22, 2011, and the Applicant and the stationed executive director of ◯◯ Automobile Co., Ltd. Corporate Union (hereinafter referred to ◯◯Corporate Union) were in change of contacting the petition matters. On February 16, 2011, the temporary meeting of board of directors of ◯◯Corporate Union adopted by letter requesting the Opposite Party to conduct the bargaining for such case as union affairs leave, union office and salary. Before the Chinese New Year in 2011, when the Opposite Party's chairman explained the company's profit status in the restaurant at the basement of the company, a verbal dispute with the Applicant occurred. On April 13, 2011 a director of ◯◯◯ Company visited to the Opposite Party (company) to whom the heartfelt of the Opposite Party's employees was transferred by the executive directors, namely the Applicant and ◯◯◯, and the supervisor ◯◯◯ of ○○ Corporate Union. On June 28, 2011, ○○Corporate Union and the Opposite Party carried out a mediation in terms of recovery of the union office in ◯◯County Government, but since the Opposite Party insisted on recovery of the union office, so that the meditation was failed. In August and September 2011, disputes occurred with the Opposite Party in terms

of severance pay, and overtime pay included in the average under the collective agreement between the Opposite Party ○○ and the Corporate Union. In summary, the Applicant in ○○Corporate Union not only served as the executive director, but also was responsible for main task to fight for members' interests in various events, disputing with the Opposite Party, even the one of the minorities who had the qualification with more than two consecutive terms of cadres in the ○○Corporate Union.

(2) When the Opposite Party in the operating explanation meeting in November 2011, ○○ Corporate Union requested the year-end bonus should be bargained from November 5, 2011 in order to response to the holidays of Chinese New Year starting from January 21, 2012. Originally the Opposite Party has already agreed, but rebuffed bargaining by too late to do the account in the operating explanation meeting in November 14 of same year, and requested to start bargaining on January 16, 2012. ◯◯Corporate Union considered the Opposite Party is lack of sincerity, and then mobilized members to refuse overtime work and requested bargaining on January 3, 2012. November 28, 2011 all directors and supervisors of the ◯◯ Corporate Union adopted to issue publicity which were singed for confirmation, and then issued to the employees within the factory; on January 6, 2012 at noon, the Applicant received a letter notice of No. yong-cong-zi 1010001 from the Opposite Party, indicating that the Applicant was discharged on the grounds of undermining the feelings of the employer and employees in name of all cadres of the ◯◯ Corporate Union, in accordance with Paragraph 4, Article 60 of

Working Rules. However, in recent years the Opposite Party gradually adopted adverse measures to operations of ○○Corporate Union in such issue as union official leave for going out, the stationed executive director handling business, and the union office, and now even directly discharged the Applicant; as the publicity were signed by all directors and supervisors of ○○Corporate Union, and the stationed executive director in November 2011 and January 2012 was not the Applicant, so that those publicity were not issued by the Applicant; moreover, those publicity were amended and confirmed by ○○Corporate Union cadres, and then issued by ◯◯◯, rather than issued making use of the names of all directors and supervisors of the ○○Corporate Union.

(3) In addition, general manager ◯◯◯ of the Opposite Party invited the ◯◯ Corporate Union cadres to bargain the year-end bonus issues of 2011 outside of the canteen on January 3, 2012 afternoon. General manager hoped ◯◯ Corporate Union to promote members making efforts overtime work in order to exchange the Opposite Party's goodwill response. Over January 2 to 6, 2012, the Applicant coordinated overtime work, and on the morning of January 6, 2012 when the Applicant was charged, he early went to the Opposite Party (the Company) to coordinate overtime work for one hour, without the behavior launching denial of overtime work without authorization.

(4) The Opposite Party said that ○○Corporate Union cadres apologized to chairman, proving untrue contents of the publicity. However, according to the statements of witnesses ◯◯◯ and ◯◯◯, ◯◯Corporate Union cadres what the chairman, and general manager

apologized was against the Applicant's support with brotherhood in order to exchange the Applicant back to work on the Opposite Party (the Company) that did mean there was untrue content of the publicity issued on November 28, 2011. Accordingly, the Applicant petitioned for recovery of the right to work and the monthly payment of salary; for 30 days of a month, the monthly salary should be NT$39,285 (including base salary, meal allowance, special responsibility allowance, tenure bonus, overalls, and bonus for perfect attendance); and for 31 days of a month, then the monthly salary should be added with one-day salary NT$1,078.3.

The matters of decision to be applied:

A. The Opposite Party violating Subparagraph 1, Paragraph 1, Article 35 of Labor Union Act did the firing practices to the Applicant as the executive director of the union.
B. The Opposite Party's firing practices are invalid due to violating Paragraph 2, Article 35 of Labor Union Act.
C. The Opposite Party should monthly pay the Applicant NT$39,285 on the payday from January 6, 2012 to the date of his orignal duties being recovered; as the month is of 31 days, then the Opposite Party should pay the Applicant NT$40,363.

2. The Opposite Party argued:
   (1) The Applicant's petition should be dismissed.
   (2) As the executive director of ◯◯ Corporate Union abused the name of union affairs, leaving the workpalce by a daily half-day time alternately with the excuses to handle union affairs in the union office without

asking for leave that affects the manpower deployment of the unit he works with over time, not only delaying his original duties, but causing other employees to disgruntle this privilege phenomenon, so that affects the overall atmosphere of the team. After considering the demands on this Company's manpower and space, the Opposite Party sent a letter on March 12, 2000 requesting ◯◯Corporate Union to improve the situation described above, hoping that before applying for a union affairs official leave, the union cadres must prove the necessity to handle union affairs. This is the legitimate management practices of the Opposite Party basing on operating consideration, nothing to do with the year-end bonus or salary increase. The ◯◯Corporate Union has applied for meditation to ○○County Government, but withdrew afterwards that is enough to prove the Opposite Party did not suppress the union.

(3) Before filing a meditation application to ◯◯ County Government on March 23, 2000, the Applicant did not discuss with another executive director ○○○ in terms of the contents hereof, and that "since the Company's capital is a Sino-Japanese joint venture, the Company's financial position is not made transparent, and even takes the mode that the Japanese parent company (◯◯◯ Co., Ltd.) transfers orders to Taiwan for production, and kidnaps or arbitrages the operating profits back to Japan," set forth in the mediation document is false slander. Then, the general manager of the Opposite Party has clarified the fact and verbally warned the Applicant. Unexpectedly, the Applicant's attitude remained unchanged, continuing to protest by pulling cloth at the entrance of the Company or sent untrue letters to

the president ○○○ of Japan company to scatter the statements not conducive to the Opposite Party. Later, on November 28, 2011 the Applicant, in name of so-called "◯◯Corporate Union all cadres" without authorization, with leaflets spread false rumors about the Opposite Party's financial position and the circumstances of their dealings with customers, in order to produce employees against the Company and seriously damaged to the feeling of the employer and employees. The clear facts and evidences has constituted a dismissal reason.

(4) To the Applicant's behavior described above, in order to avoid employee's understanding to cause confrontation, the general manager, and the chairman of the Opposite Party personally explained respectively to all employees about the Company's operating conditions, the calculation of the year-end bonus of 2011, and guaranteed company's finance is absolutely right in the morning assembly on January 2, 3, 2012. Meanwhile, they clarified the contents of the disseminated leaflets are not true, and thanked to the hard work of the over the past year, as well as promised the year-end bonus of 84 days at least to encourage employees' morale. However, indiscriminately, the Applicant who seems not to hear still continued to spread untrue the Opposite Party's finance and the fact not to conducive to the Opposite Party, even externally said to the ◯◯Corporate Union staff, having mobilized employees to boycott overtime to produce the pressure of the Opposite Party. We learned that by understanding, the Applicant so-called launching employees to boycott overtime work and so on, was not approved by the resolution

of the ○○ Corporate Union, purely his personal unauthorized behavior. However, the long-term cooperative ◯◯Company still requested the Opposite Party to check and report the stock everyday, and carried out a comprehensive inspection on the Opposite Party's supplies from January 5 to 20, 2012. Evidently, the Applicant's personal behavior seriously undermined the trust of the employees to the Company, and with untrue rumors damaged the harmonious labor relations. The Opposite Party thought the Applicant's behavior has caused irreparable damage to the Opposite Party, violating provisions set forth in Article 60 of Working Rules, and in Subparagraph 4, Paragraph 1, Article 12 of Labor Standards Act, and then terminated both parties' labor contract.

(5) The Opposite Party' chairman and general manager were in company with the executive director ◯◯◯ of ◯◯Corporate Union, and the chairman◯◯◯ of Corporate Union of ◯◯◯◯ Automobile Co., Ltd on January 9, 2012, re-explained ◯◯Corporate Union cadres the operating conditions, and clarified facts. After the attended ◯◯◯ and other union cadres understood, all admitted that the contents of leaflets spread in name of all ◯◯ Corporate Union cadres on November 28, 2101 were untrue, and stood up to apologize.

(6) The subject for this termination of labor contract in this case was the Applicant's personal unfair labor practices who repeatedly spread false rumors which is not conducive to the Opposite Party to undermine the feeling of the employer and employees, having nothing to do with his participation in union affairs, of course the Applicant cannot be free from binding of working rules with the identity of the union cadre. In

accordance with the Supreme Court judgment of No. 2009 tai-shang-zi 1042, although the employee assumes the union office, the employer still may terminate the labor contract by law.

3. Non-disputed fact between both parties

(1) The Applicant serviced as the 13th and the 14th executive director of the ○○Corporate Union.

(2) The publicity of Exhibit 18 (i.e. Exhibit *1*) were issued on November 28, 2011.

(3) On January 6, 2012, the Opposite Party sent a letter notice of No. yong-cong-zi 1010001 to discharge the Applicant in accordance with Subparagraph 4, Paragraph 1, Article 12 of Labor Standards Act, and Paragraph 4, Article 60 of Working Rules on the grounds of the Applicant "in name of all cadres of the ◯◯ Corporate Union to issue the statements of false contents to undermine the feelings of the employer and employees, misleading the public very substantially, meeting Paragraph 4, Article 60 of the Company's Working Rules".

(4) On the publicity of Exhibit 18 (i.e. Exhibit *1*), " the statements of false contents" refers to "the vice chairman of the Opposite Party, Mr. ◯◯ led assistant manager ◯ of sales department, personally to ◯◯ to show thanks for ◯◯ giving ◯◯ such a large order an good profit; the union learned from ◯◯union that the profit was nearly 10% from the quotation of ◯◯ to ◯◯. From this, the Company's turnover is nearly NT$1.4 billion, and we can imagine the Company should have a considerable profit this year" .

4. Disputes

(1) Whether the Opposite Party's dismissal practices on January 6, 2012 is because the Applicant assumes an office of the union and was discharged in accordance with Subparagraph 1, Paragraph 1, Article 35 of Labor Union Act, and whether it is invalid in accordance with provisions set forth in Paragraph 2 of Article 35?

(2) How much is the Applicant's monthly wage?

5. The justification

(1) Whether the Opposite Party discharged the Applicant on January 6, 2012 is in accordance with Subparagraph 1, Paragraph 1, Article 35 of Labor Union Act: " Refusing to hire, dismiss, demote, reduce the wage of, or render other unfair treatment to an employee who organizes or joins a labor union, participates in activities held by a labor union, or assumes the office of a labor union", and whether it is invalid in accordance with the provisions set forth in Paragraph 2 of the Article?

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 refusing to hire, dismiss, demote, reduce the wage of, or render other unfair treatment to an employee who organizes or joins a labor union, participates in activities held by a labor union, or assumes the office of a labor union" set for forth in Subparagraph 1, Paragraph 1, Article 35 of Labor Union Act, should take all circumstances of objective facts to consider whether the employer's behavior refuses to hire, dismiss, demote, reduce the wage of, or render other unfair treatment to an employee who organizes or joins a labor union, participates in activities held by a labor union, or assumes the office of a 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.

A. The Opposite Party did not prove the Applicant issued the publicity in contention on November, 2011.

   The layoff punishment on the Applicant announced by The Opposite Party on January 6, 2012 of No. yong-cong-i 101001 was on the grounds of the Applicant "in name of all cadres of the ○○Corporate Union to issue the statements of false contents in November 2011 to undermine the feelings of the employer and employees"; however, in the 2nd Investigation Meeting of CLA on March 15, 2012, witness ○○○stated, "I was the stationed executive director in November 2011, and ◯◯◯ was the union's stationed executive director in January", "the publicity of Exhibit 18 were issued to employees in the Company, rather than issued by the

Applicant ○○○, but distributed by ○○○ to every unit, and then issued by the union cadres of every unit.“ Witness ○○○ also stated, “November 2011 and January 2012 were the transition period of two union executive directors ○○○ and ○○○ for the union’s stationed executive director.” , “ I have issued Exhibit 18, which was given by ○○○, and I issued it in my responsibility area group immediately. In the meeting, a resolution was made to issue the same by every responsibility area, but I don’t know the actual situation of the issuance.” From the testimony of two witness mentioned above, it is enough to prove that the publicity in contention were issued by ○○○’s responsibility, and since the Applicant was not the stationed executive director in November 2011, of course not the staff to execute the resolution adopted by board of directors. The Applicant claimed the publicity in contention were not issued by him significantly in line with the rule of thumb; moreover, until now the Opposite Party does not prove the publicity were issued by the Applicant, so significantly it is no reason that the Opposite Party discharged the Applicant on ground of the Applicant’s issuance of the publicity of false statements.

B. The publicity in contention was actually issued by the resolution of ○○Corporate Union’s all directors.

(a) The Opposite Party claimed that the publicity in contention were issued by the Applicant making use of the names of all ○○Corporate Union cadres; according to the 2nd investigation meeting of CLA on March 15, 2012, witness ○○○stated, “I

have read the publicity of Exhibit 18, the contents of which were agreed in the meeting of union's board of directors on November 12, 2011, and read by all board of directors, after being amended and signed, to be issued through resolution. All directors signed the original manuscript, and I did too. When signed, I also saw the signature of ○○○ and ○○○. The resolution in that day indicating to issue after the original manuscript being read and signed by all. The original manuscript was put in ○○○'s place." Witness ○○○stated, "I have read the Exhibit 18, the publicity were agreed to issue by all directors of the union; in the directors meeting in early November 2011 adopted a resolution to issue publicity and increase salary……in the meeting, the original manuscript of the publicity was shown, and everyone in the meeting has seen the contents of original manuscript. Because the meeting was going to the end, a piece of original manuscript was issued to everyone to bring back and on which to express the contents required to amend. Subsequently, ○○○ integrate the opinions of everyone, and ○○○ made the final manuscript. Since the resolution to issue publicity in the meeting was adopted by directors and supervisors with signature, so when ○○○ showed me for signature, where were 3 or 4 personal signature. Because the original manuscript of the publicity after being signed was put in ○○○'s place, so on which I have no idea how many people's signature." Since the publicity in contention was issued according to the resolution

adopted by board of directors of the ◯◯Corporate Union after directors and supervisors confirmed the manuscript, obviously not issued by the Applicant making use of the names of all ◯◯Corporate Union cadres Although the Opposite Party claimed that two witness generally referred to on the original manuscript of the publicity in contention there were the signature of all union directors, there is no evidence to prove what they said, witness ◯◯◯, ◯◯◯ the publicity has been confirmed and signed, and then issued by ◯◯◯ too; according to the rule of thumb, it can be proved that the publicity in contention was issued by ◯◯◯ after being confirmed by all directors and supervisors. In addition, as witness ◯◯◯ stated, the manuscript of publicity in contention was finalized by ◯◯◯, and the Opposite Party claimed which was the Applicant making use of the names of all ◯◯Corporate Union cadres to issue that the perpetrator making the publicity was mistaken. In addition, when the two witness signed the publicity in contention, although there are different of how many people's signature on which, since the time of witnesses giving evidence have been three months from November 2011, and they stated there was just a little difference of the number of signatures; it is difficult to require their memory completely correct. Even though their testimonies are somewhat different, it will not affect their real testimonies.

(b) The contents of publicity in contention are not different with the contents resolved by the board of directors.

The Opposite Party claimed that on November 12, 2011, the contents of resolution adopted by the board of directors was to make publicity only for requiring the Opposite Party to immediately bargain the issue of year-end bonus; as for the false statements in contention nothing to do with year-end bonus were added and decided by the Applicant himself who was responsible for writing; however, although witness ○○○ stated only, “the main content of the publicity to be issued was the issue about year-end bonus. It is expected to require the employer to carry out the bargaining of year-end bonus on January 3, 2012, other than on January 16, 2012 said by vice chairman ○○.”, witness ○○○ has stated, “the resolution adopted in the directors’ meeting in early November 2011 was to issue the publicity and increase salary, the rest was out of my memory; as for the contents of publicity, because the ○○union cadres said in former board of directors that ○○ vice chairman brought ○assistant manager to ○○ to thank the huge profits brought in this past year, and the orders placed to ○○ this past year, so to issue the publicity was included in the discussion. Seemly, the contents of the publicity was decided in next meeting, but I forgot what kind of publicity was going to be issued; in the meeting, the original manuscript of the publicity was shown, and everyone in the meeting saw the contents of the original manuscript, and

Because the meeting was going to the end, a piece of original manuscript was issued to everyone to bring back and on which to express the contents required to amend." It is enough to prove that the contents decided in terms of publicity by board of director are corresponding to the contents of the publicity in contention. As the negotiation of year-end bonus is involved in the Opposite Party's turnover and profit ratio, and "I believe we all know that the new year approaches. It is tough for a whole year, while this year's turnover also created considerable figures; the moment to share is coming" was set forth in the first paragraph of the publicity in contention, and "this union was going to bargain with Company about the year-end bonus in the beginning of January" was set forth in Paragraph 3. It is enough to prove that the contents of the publicity in contention is with the year-end bonus issue, and in line with the contents of the resolution adopted by the board of directors.

C. There is basis of the contents of publicity in contention

The Opposite Party claimed that the Applicant's "the statements of false contents" refers to "the vice chairman of the Opposite Party, Mr. ◯◯ led assistant manager ◯ of sales department, personally to ◯◯ to show thanks for ◯◯ giving ◯◯ such a large order an good profit; the union learned from ◯◯union that the profit was nearly 10% from the quotation of ◯◯ to ◯◯. From this, the Company's turnover is nearly NT$1.4 billion, and we can imagine

the Company should have a considerable profit this year". However,

(a) The above witness ◯◯◯stated, "since the ○○union cadre ◯◯◯ presented the contents described above in the union board of directors in November 2011, so we used it; as for the basis of the contents said by ○○○ was not clear." ◯◯◯ stated, "the contents of the publicity was because the ○○ union cadre said in former board of directors that the vice chairman ◯◯ led assistant manager ◯◯ to ◯◯ to thank for giving ◯◯ the order of last past yea, so to issue a publicity was to be discussed." And the witness applied by the Opposite Party to be served, the executive director ○○○ of ○○ Corporate Union also stated in the 3rd investigation meeting of CLA on March 23, 2012, "I heard such information from the Company's purchase department, but I was not clear about assistant manager ◯; in the meeting, the colleagues of purchase department talked because the orders in 2011 were quite large, and Mr. ◯◯ has expressed the above statement to the company in the cooperation meeting of the company's parts department. I have talked to the ○○union cadres about the above information heard from the purchase department was misunderstood with the loss situation known by the ◯◯union; some assistant manager was there, but I was not clear about assistant manager ◯.", "I was learned from the director ◯◯◯ of purchase department.". Since witness ◯◯◯ is the executive director of ○○Corporate Union, apparently he is a

reliable channel of the information within ◯◯ Automobile Co., Ltd., and significantly, the information provided by him was the basis of the publicity in contention to be made.

(b) Regarding the part of the contents of publicity in contention that " the profit was nearly 10% from the quotation of ◯◯ to ◯◯. From this, the Company's turnover is nearly NT$1.4 billion, and we can imagine the Company should have a considerable profit this year". Although witness ○○○stated, "I don't know the cost of ○○parts, and the amount of the single product released to ○○Company, so there cannot be such statements; we simply means that the parts order placed by ◯◯Company will have reasonable profit, and will not cause the loss of ◯◯.". However, he also stated, "I have talked to the union cadre at dinner time about the pre-tax profit and after-tax profit of traditional production manufacturing are about 8%-10% and 4%-5% respectively, and we can use this foundation to talk with the Company; we also talked many factors affecting the profits of the Company, but still needs to talk objectively. I do not quite remember the dinner time which should be before the occurrence of the ◯◯◯ labor disputes." Therefore, although the Opposite Party having nearly 10% profit from the ◯◯Company was not said by witness◯◯◯ who still considered the Opposite Party's pre-tax profit 8% to 10% could be taken as the base for negotiation, so the contents of the publicity in contention was not free from base too.

Second, as freedom of union activities within an enterprise is the key to survival of the Corporate Union, and excluding the employer to interfere and impede union activities is the core protection for labor to exercise solidarity. Employers should tolerate the existence and functioning of the labor organization. Namely, employers in launching personnel right, right to command the labor, or right to manage property, are obliged to concession within a certain range. In other word, when the union activities in the form even conflict to the employer's authority mentioned above are protected because of legitimate exercise of the right to organize that employers should be obliged to tolerate within a certain range. Basing on this, a union launching the critical remarks against the employer is the scope of the freedom of union activities; if the facts are true, even though the contents are more exaggerated or intense, it is enough that the employer can take advantage of remark channel more effective than the union to clarify or respond to the union speech, but cannot with the reason to deny the legitimacy of the union speech, and then launch the personnel right to impose the union cadre unfavorable treatment. Therefore, since witness ○○○ has confirmed the Opposite Party should have a good profit, the publicity in contention with nearly 10% as appeal contents which is equivalent to the profits of general traditional manufacturing, on which it is based, and should be the range that the Opposite Party can tolerate and with basis.

D. The ◯◯Corporate Union cadres did not admit false contents of the publicity in contention

The Opposite Party claimed that the Opposite Party' chairman and general manager were in company with the executive director ◯◯◯ of ◯◯Corporate Union, and the chairman◯◯◯ of Corporate Union of ◯◯◯◯ Automobile Co., Ltd on January 9, 2012, re-explained ◯◯Corporate Union cadres the operating conditions, and clarified facts. After the attended ◯◯◯ and other union cadres understood, all admitted that the contents of leaflets spread in name of all ◯◯ Corporate Union cadres on November 28, 2101 were untrue, and stood up to apologize. However, witness ◯◯◯ stated, "On the morning of that day, the general manager first communicated with us, 7 or 8 union directors. He said the chairman's mood is better today, if we apology to the chairman, then ◯◯◯ can go back to work. ◯◯union cadres ◯◯◯ and ◯ chief commissioner and us communicated and negotiated with the chairman in the afternoon, and had apologized to chairman; It mentioned in the meeting that ◯◯◯ can back to work on condition of apology and recording demerits that has been mentioned in the meeting." Witness ◯◯◯ stated, "the discussion contents is about making an apology to the chairman in a flexible way in order to allow ◯◯◯ to back to work. Before then, the Board of directors has discussed the way about making an apology to the chairman in order to allow ◯◯◯ to back to work, and the chairman said he would consider. At that time, the higher union and all directors have apologized to the chairman." Witness ◯◯◯

stated too, “in the meeting, executive director ◯ stood up and led all union cadres to apology to the chairman, hoping to ease the ◯◯◯ case and recover ◯◯◯’s work as soon as possible.” It is enough to prove that although ◯◯◯ led union cadres to apology to the Opposite Party’s chairman apologized, it is a compromise with main purpose to recover the Applicant’s work that shows significant gap with recognition of untrue contents of the publicity in contention.

E. The Applicant did not launch denial of overtime work.

The Opposite Party also claimed that the Applicant externally said to the ◯◯Corporate Union staff, having mobilized employees to boycott overtime to produce the pressure of the Opposite Party. They learned that by understanding, the Applicant so-called launching employees to boycott overtime work and so on, was not approved by the resolution of the ◯◯ Corporate Union, purely his personal unauthorized behavior. However, the long-term cooperative ◯◯Company still requested the Opposite Party to check and report the stock every day, and carried out a comprehensive inspection on the Opposite Party’s supplies from January 5 to 20, 2012. Evidently, the Applicant’s personal behavior seriously undermined the trust of the employees to the Company, and with untrue rumors damaged the harmonious labor relations. The Opposite Party thought the Applicant’s behavior has caused irreparable damage to the Opposite Party, violating provisions set forth in Article 60 of Working Rules, however,

(a) In the Taiwan High Court judgment of No. 2010 lao-cong-shang-zi 3, it is set forth that “Articles 11 and 12 of Labor Standards Act are scheduled with the employer’s statutory dismissal reasons. For the labor properly informed the changes of legal relationship they may face, employers based on the principle of good faith should be obliged to inform labor the dismissal reasons. Based on the intention to protect the labor, employers should not arbitrarily reclassify their dismissal reasons. Similarly, employers also should not change the original reasons listed on the dismissal notice with other reasons in litigation to discharge employees.” The Opposite Party’s letter of No. yong-cong-i 101001 issued on January 6, 2012 indicating the dismissal reason is the Applicant issued the publicity of false statements, nothing to do with whether the Applicant lunched to boycott overtime work, so the Opposite Party should not claim afterwards the Applicant lunched to boycott overtime work to discharge the Applicant.

(b) Second, although the Opposite Party claimed with Exhibit 4, the Overtime Statistical Table that there was boycott of overtime on January 2 to 5, 2012, whether the reduced number of overtime workers set forth in the statistical table is because of boycott of overtime work that the Opposite Party did not prove, and whether the Applicant lunched to boycott overtime was no proof either. Moreover, according to the Overtime Statistical Table, the number of overtime workers was 36 in January 4, 43 in January 5, 38 in January 9, 38 in January 10, and 37 in

January 11 respectively, so in the statistical table, no situation of boycott of overtime claimed by the Opposite Party can be proved. In addition, witness ◯◯◯ stated, "(Q: After the meeting in November 2011, did you know ○○union intend to launch denial of overtime work?) Did not hear such information". Significantly, the Opposite Party claimed that the Applicant launched to boycott overtime work and was discharged thereby also is no reason.

In summary, the Opposite Party has not reason set forth in the letter dated January 6, 2012 of No. yong-cong-i 101001 to discharge the Applicant, and obviously did the disadvantageous treatment to the union cadre because the Applicant was the executive director of ◯◯ Corporate Union, and struggled to the Opposite Party in terms of the disputes of year-end bonus. The said layoff deserves Subparagraph 1, Paragrph 1, Article 35 of Labor Union Act: " Refusing to hire, dismiss, demote, reduce the wage of, or render other unfair treatment to an employee who organizes or joins a labor union, participates in activities held by a labor union, or assumes the office of a labor union", and of course is invalid in accordance with Paragraph 2 of same Article.

(2) The Opposite Party discharging the Applicant on January 6, 2012 violated Subparagraph 5, Paragraph 1, Article 35 of Labor Union Act: "improperly influence, impede or restrict the establishment, organization or activities of labor union". The Opposite Party without reason illegally discharged the Applicant who assumes the core cadre

of the union that will cause the chilling effect to the colleagues of the Opposite Party, impeding the organization and activities of the union significantly. According to Subparagraph 5, Paragraph 1, Article 35 of Labor Union Act: An employer or supervisory employees who represent the employer in exercising the managerial authority shall not have the following practices to "improperly influence, impede or restrict the establishment, organization or activities of labor union", the Opposite Party's layoff practices in contention apparently deserves the practices as domination and intervention set forth in Subparagraph 5, Paragraph 1, Article 35 of Labor Union Act. In this regard, although the Applicant only claimed the Opposite Party's dismissal should deserve the disadvantageous treatment set forth in Subparagraph 1, Paragraph 1, Article 35 of Labor Union Act, CLA, based on the fact through investigation, shall identify the dismissal in contention shall deserve domination and intervention set forth in Subparagraph 5, and be not bound by the Applicant's claim.

(3) How much is the Applicant's monthly salary?

The Applicant claimed that for 30 days of a month, the monthly salary should be NT$39,285 (including base salary, meal allowance, special responsibility allowance, tenure bonus, overalls, and bonus for perfect attendance); and for 31 days of a month, then the monthly salary should be added with one-day salary NT$1,078.3, in total of NT$40,363. The Opposite Party claimed the bonuses for perfect attendance NT$3,235 as non-recurring payment should not be taken into account the allowance issued on a monthly basis, and did not dispute the rest. From the employees payroll from July 2011 to

January 2012 provided by the Opposite Party, the Applicant received the bonus for perfect attendance every month. The elements for the bonus for perfect attendance shall be the labor without being late, leaving early or absence within a certain period; from the point of view of working time, workers on the circumstance without being late, leaving early or absence of course provide higher labor service quality than the workers who are absent frequently do. In this sense, this payment can be regarded as the consideration of labor service provided workers, with the nature of the remuneration paid for work; furthermore, since the Applicant receives it every monthly, it is attributed to a regular payment, and of course is within the wage range. Since the Opposite Party is unable to accept the Applicant's work provided monthly due to the illegal dismissal reason attributable to the Opposite Party's self, of course the Applicant shall receive monthly full salary compensation including full bonus for perfect attendance.

(4) There are no express provisions of the way to decide the order for relief set forth in the Act for Settlement of Labor-Management Disputes. If the Board for Decision on the Unfair Labor Practices identifies the employer's practices consisting unfair labor practices, what kind of order for relief should be issued is not confined in this Act. The Board for Decision on the Unfair Labor Practices enjoys a wide range of discretion power, not being bound by a party's request, but not aimlessly restricted. In interpretation, order for relief shall not violate forced regulations or moral, the contents of order for relief must be concrete, determined, possible; at the discretion of the

specific content of order for relief, should return to observe the purpose of discretions system endowed to the Board for Decision on the Unfair Labor by Act for Settlement of Labor-Management Disputes. In another word, shall consider and decide the legislative purpose of the relief system is to protect such fundamental rights of workers as right to organize, right to collective bargaining, and right to collective dispute, and through the protection shape the proper and fair collective labor relations. Specifically words, to the occasion that employer's unfair labor practices deserve Paragraph 1, Article 35 of Labor Union Act and are invalid in accordance with Paragraph 2 of same Article, in consideration of how to issue the order for relief the Board for Decision on the Unfair Labor Practices confirms the employer deserves unfair labor practices as the principle; second, to the violation of the provisions set forth in Paragraph 1, Article 35 of Labor Union Act, when the Board for Decision on the Unfair Labor Practices orders the Opposite Party certain acts or omissions of punishment (i.e. order for relief) to do some act or omission in accordance with Paragraph 2, Article 51 of Act for Settlement of Labor-Management Disputes, then is proper to establish the discretion principle necessary and equivalent to the fair labor relations of the event as its discretionary principle.

According to the fact mentioned above, CLA considers the Applicant was discharged due to the Opposite Party's motive to dominate and intervene the union that not only the Applicant person was caught in the state of no work, but also the promotion of the union affairs was affected, so the contents of the issued order for relief, of course are

necessary to the Applicant's original position, the QA operator in Electroplating Section of production Department.

(5) Second, the Opposite Party to discharge the Applicant is attributed to indication of the meaning to refuse acceptance of the Applicant's service, referring to the former section of Article 487 of Civil Code: "If the employer delays accepting the services, the employee may demand for his remuneration without being bound to perform the service subsequently." Accordingly, it is to order the Opposite Party should monthly pay the Applicant original salary NT$39,285 on payday from January 6, 2012 to the date of the Applicant's reinstatement. As the month is of 31 days, then the payment should be NT$40,363.

Moreover, the Opposite Party discharged the Applicant who assumes the executive director of the union, not only impede the development of union, but also have caused adverse effect that other laborers dare not join or engage in union activities, and the promotion of the union affairs is affected too. In order to establish fair labor relations within the Opposite Party (Company) for sound development of the union, CLA considers the discretionary principle to make the order for relief, to order the Opposite Party should not have the practices to improperly influence, impede or restrict the establishment, organization or activities of the Corporate Union, and Within 7 days from the service date of Decision Award, should announce the full text of this Decision Award by No. 14 Font of Standard Regular Script on the homepage of the Opposite Party Company's website for seven days, and record the announcement evidences.

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. 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

April 20, 2012