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

No. 2012- 32

The Applicant : ○○○○ Corporate Union

located at Rm 1107, No. 206, Songjiang Rd., Zhongshan Dist., Taipei City

Representatives: Yang ○○ residence: ditto

Lan ○○

Ge ○○

Zhao ○○

Wang ○○

Agent: Zhuang○○

The Opposite Party : ○○○○ Co., Ltd.

located at No. 168, Zhuangjing Rd., Xinyi Dist., Taipei City

Representative: Kuo ○○ residence: ditto

Agent: Lawyer Cui ○○ residence 10F of the address same above

Lawyer Yu ○○ located at 9F, No. 201, Dunhua N. Rd., Taipei City

The dispute between the above parties for fair labor practices has been decided, through conclusions of the hearing procedures, by Council of Labor Affairs (CLA) on October 5, 2012 as follows:

MAIN TEXT OF THE DECISION

1. Upon receipt of this Decision Award, the Opposite Party should not dot unfair labor practices to reject the bargaining for a collective agreement with the Applicant.

2. Within sixty days from the date of receipt of this Decision Award, the Opposite Party should provide a corresponding program against the bargaining notice in writing from the Applicant to carry out the bargaining for a collective agreement basing on the principle of good faith.

3. Upon receipt of this Decision Award, the Opposite Party should announce the full text of this Decision Award on the bulletin board of the Opposite Party's website for more than ten days, and record the announcement evidences.

FACT AND REASONS

I. Part of Procedures:

The Applicant claimed that with the letter of No. (101) nan-shou-fa-zi 076 dated June 15, 2012 and the letter of No. (101) nan-should-fa-zi 84 dated June 22, 2012, the Opposite Party rejected to carry out the bargaining for a collective agreement with the Applicant, meeting the elements constituting Paragraph 1, Article 6 of Collective Agreement Act unfair labor practices, and then filed this decision application on June 27, 2012 meeting the provisions of Paragraph 2, Article 39 and Article 51 of Settlement

of Labor-Management Disputes that 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 1, Article 6 of Collective Agreement Act or when the violation has occurred" that is hereby described first.

II. Part of Substantiality:

1. The Applicant's requested and claimed:

   (1) Decision of the Opposite Party against 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."

   (2) On May 30, 2011 The Applicant sent a letter to request carrying out the collective bargaining; however, the Opposite Party replied by letter of No. (101) nan-shou-fa-zi 076 dated June 15, 2012 and the letter of No. (101) nan-should-fa-zi 84 dated June 22, 2012 to deny the Applicant as the labor side with bargaining qualification, rejecting to carry out the collective bargaining with the Applicant. Although the Opposite Party sent a representative to attend the second collective bargaining meeting on July 19, 2012 (the original first collective agreement meeting was cancelled due to typhoon), the Opposite Party refused to recognize the meeting is "collective bargaining meeting" and reject to sign in, and because both parties could not reach a consciousness due to photography (video)

procedures, the meeting cannot be proceeded. Therefore, the meeting cannot be conducted is derived from the Opposite Party refused to recognize the Applicant as the labor side with collective bargaining qualification. Its behavior was attributed to reject the collective bargaining without justifiable reasons, so the Applicant applied to decide the Opposite Party violating Paragraph 1, Article 6 of Collective Agreement Act.

(3) As for the rest, please see the Applicant's decision application, complemented pleadings (including the issues coordination pleadings) dated May 3, 2012, and written submission dated September 12, 2012, and previous attached exhibits.

2. The Opposite Party responded:

(1) The Applicant's petition should be dismissed.

(2) To the Applicant's bargaining invitation, the Opposite Party immediately replied by letters dated June 15 and June 22, 2012 respectively intending to send related supervisors to listen to the Applicant's opinions. Although the above replied letter claimed business staff are not the workers employed by the Opposite Party, the Opposite Party continued to talk with the Applicant about related issues provided by the Applicant, and sent a letter on June 22, 2012 that both parties' talk should be in accordance with the principle of first procedures and after substance to first discuss the meeting etiquette and procedural matters that the Applicant replied to agree by letter dated July 17, so the Opposite Party did not violate the principle of good faith in bargaining.

(3) The bargaining meeting of both parties dated July 19, 2012 not to be conducted as scheduled shall be attributable to the Applicant. As the Opposite Party has sent four related supervisors and one appointed lawyer to go to talks, but because the Applicant, without consent of the Opposite Party, expelled the attended representatives of the Opposite Party by signing and photography (video) mattes, causing the meeting cannot be conducted. Therefore, the Opposite Party did not violate the principle of good faith in bargaining, so that requested to dismiss the Applicant's application.

(4) As for the rest, please see the Opposite Party's statement of defense dated July 31, 2012, statement of defense (2) dated August 15, 2012, issues coordination pleadings dated August 29, 2012, oral argument import pleadings dated September 12, 2012, and attached exhibits of the above pleadings.

3. Non-disputed fact between both parties

(1) The Applicant sent letters on May 30, 2012 and June 4, 2012 respectively to request the Opposite Party conducting the collective bargaining at the Applicant's office on June 20 of the same year at 10:00 a.m. (priority discussion on such labor rights issues as labor insurance and national health insurance), and requested the Opposite Party to reply the outline of contents, attending staff and number hereof that the Opposite Party replied by the letter of No. (101) nan-shou-fa-zi 076 dated June 15, 2012 and the letter of No. (101) nan-should-fa-zi 84 dated June 22, 2012.

(2) The Opposite Party replied the Applicant by the letter of No. (101) nan-shou-fa-zi 076 dated June 15, 2012 to agree sending representatives to talks. The gist of the letter indicated: “regarding the matter that your unit invited this company to talk by letter, this company intended to sent representatives to listen to your union’s opinions to communicate in good faith, referring to the Explanation, please note.”, and explained: “3. The contractual relationship between this company and business staff is not attributed to labor contract; since business staff are not the workers employed by this company, that both parties knowingly agreed to this fact without objection while signing the contract; moreover, recently more than 25,000 business persons executed contract confirmation to reaffirm the intention of the parties, so the legal relationship between this company and business staff is not the object applicable to the Collective Agreement Act. Then your unit’s demand cannot represent most business staff’s opinions and is illegally. 4. Besides, persons who organize, join a trade union and assume the cadres hereof are limit to workers; persons without worker status should not organize, join the union, and assume the cadres hereof. Although the representative members of your unit are engaged in various activities in name of this company’s corporate union, the related persons are the business staff of the contractual relationship with this company, other than the workers employed by this company, so the legality of your unit’s operation by the position of corporate union is still doubted. As for the issues related to in-house employees this company is

inappropriately interfered by the business staff without labor status. 5. Quasi, your unit misunderstood the business staff were the workers employed this company, and requested to conduct collective bargaining set forth in the collective agreement that does not meet the law, so this company cannot agree. However, this company still upholds the principle of sincere concern to value every business staff's opinions, so intends related supervisors to listen to your unit's opinions, communicating in good faith to create harmony."

(3) The Opposite Party reported to CLA, Executive Yuan, by the letter of No. (101) nan-should-fa-zi 84 dated June 22, 2012 and copied to the Applicant, explaining the Opposite Party intends to talk with the Opposite Party in accordance with the principle of first procedures and after substance to first discuss the meeting etiquette and procedural matters, confirming the rules of both parties' talks to conduct transactional communication sequentially.

(4) The original first collective bargaining meeting dated June 20, 2012 was cancelled by some reason. The Applicant requested the Opposite Party by the letter of No. (101) kong-zi 101062801 dated June 28, 2012 to conduct the second collective bargaining meeting on July 19 of same year, and then the Opposite Party immediately replied by the letter of No. (101) nan-shou-fa-zi 105 dated July 12, 2012 to agree sending representatives to talks. The Applicant replied by the letter of No. (101) kong-zi 101071703 dated July 17, 2012 to the Opposite Party, in the meeting dated July 19, 2012, the Applicant will attend by

representatives Yang ○○, Lan ○○, and Ge ○○, and the Opposite Party appointed four supervisors of legal department and business department, and one appointed lawyer to attend; however, the meeting is not conducted by some reason.

4. The major dispute in contention of this case is: whether the Opposite Party rejected to conduct the bargaining for a collective agreement with the Applicant by “whether the legal relationship between both parties is applicable to the Collective Agreement Act is still doubted”, constitutes the unfair labor practices violating Paragraph 1, Article 6 of Collective Agreement Act, “without justifiable reasons reject the bargaining under collective agreement”? The illustration concerned is made as follows:

   (1) As “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.” is set forth in Paragraph 1, Article 6 of Collective Agreement Act, and Subparagraph 1, Paragraph 3 of same Article expressly provides, “the labor side with bargaining qualification in accordance with the preceding paragraph denotes to corporate union, etc.”, the Applicant in this case is a corporate union established in accordance with Labor Union Act that can be evidenced by Taipei City Labor Union Registration Certificate (No. bei-shi-kong-zi 431), and subject to above provisions of Subparagraph 1, Paragraph 3, Article 6 of Collective Agreement Act, the Applicant is qualified to the bargaining for a collective agreement should be no doubt.

(2) Although the Opposite Party claimed that the contractual relationship with business staff is not attributed to a labor contract, and the legal relationship between both parties is not the object applicable to the Collective Agreement Act, and claimed that legality of the Applicant's operation by the position of corporate union is still be doubted, and so on. Brought forward, the corporate union established by the Applicant in accordance with Labor Union Act can be evidenced by Taipei City Labor Union Registration Certificate that if the Opposite Party doubts, may seek for relief by judicial means. However, since the Applicant is a corporate union established and registered, and qualified to the bargaining for a collective agreement legally, but the Opposite Party repeatedly to deny the legality of the Applicant by non-labor contract relationship with business staff that significantly is without justifiable reasons.

(3) According to the provisions set forth in Article 2 of 1948 International Labor Organization (ILO) Convention No. 87: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.". 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", the item 254 set forth in which: "By virtue of the principles of freedom of association, all workers—with the sole exception of members of the armed forces and the police—should have the right to establish and join organizations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship, which is often non-existent, for example in the case of agricultural workers, self-employed workers in general or those practice liberal professions, who should nevertheless enjoy the right to organize."

(4) Although the Opposite Party claimed that a few business representative have claimed to the Opposite Party the rights related to labor contract through civil litigation and all previous civil judgment consider no labor contract relationship existed between them and the Opposite Party, whether there is labor

contract relationship between the Opposite Party and few sales representatives, and whether the Applicant is qualified to the bargaining for a collective agreement are two different things, by that the Opposite Party rejected to conduct the bargaining for a collective agreement with the Applicant actually, in fact, does not have justifiable reasons. Moreover, the contractual relationship between the Opposite Party and business staff has been identified as employment relationship by the letter of No. bei-shi-lao-er-zi 09910535600 dated February 12, 2010 issued by Department of Labor, Taipei City Government, and the contract entered between the Opposite Party and business staff attributed to the labor contract set forth in Labor Standard Act through identification by the supreme administrative court's judgments of No. 2011 pan-zi 2117, 2226, and 2230; the Opposite Party took the civil verdict of few cases to claim no room for both parties to conduct a collective agreement in accordance with the law. It, after being reviewed, has violated the unfair labor practices as "without justifiable reasons reject the bargaining under collective agreement" set forth in Paragraph 1, Article 6 of Collective Agreement Act.

(5) In addition, the Opposite Party supplemented the dispute in contention, "Whether the Applicant bargaining representatives are generated in accordance with the provisions of Article 8 of Collective Agreement Act?" in the issues coordination pleadings dated August 29, 2012, and claimed that the Applicant bargaining representatives, i.e. Yang ○○ and other four persons are not the bargaining representatives generated in accordance

with provisions of Article 8 of Collective Agreement Act that they, in name of union, requested the Opposite Party to conduct the bargaining for a collective agreement is illegally. However, for this part, the Opposite Party has never provided in dispute process in this case; in addition, this dispute of contention at the premise as both parties are applicable to the bargaining for a collective agreement significantly is contradictory to the Opposite Party's previous claim, "non-labor contract relationship with business staff is not applicable to collective agreement" that is hereby described first.

(6) In addition, in accordance with provisions of Paragraph 1, Article 8 of Collective Agreement Act: "When a labor union or an employer organization bargains a collective agreement, its bargaining representatives shall be selected by one of the following methods: 1. In accordance with its charter. 2. In accordance with the resolution of its members or member representatives meeting. 3. After noticing all members and receiving written consents from more than one half of total members." The Applicant appointed executive directors Yang ○○, Lan ○○, Ge ○○, Zhao ○○, Wang ○○, Liu ○○, Yen ○○ as the bargaining representatives that has been adopted by the resolution in the 5th terms, the second Applicant's member congress in 2012 that can be evidenced by the resolution in the minute (2) of the said Applicant's member congress. Hence, the Applicant appointed Yang ○○ and other four bargaining representatives meeting the provisions of Paragraph 1, Article 8 of Collective Agreement Act. The Opposite Party claimed that

the Applicant's request of the bargaining for a collective agreement was illegally because Yang ○○ and other four persons were not the bargaining representatives generated in accordance with the provisions set forth in Article 8 of Collective Agreement Act is inadmissible.

(7) The Opposite Party claimed additionally that it denied the qualification of the Applicant's bargaining representatives, but did not refuse to talk and communicate with the Applicant. On July 19, 2012, the Opposite Party sent the supervisors of legal department and business department, and the appointed lawyer to the Applicant's office for talks that did not violate the principle in good faith of bargaining. However, according to the Opposite Party's letter of No. (101) nan-shou-fa-zi 076 dated June 15, 2012 and the letter of No. (101) nan-should-fa-zi 84 dated June 22, 2012, the Opposite Party said the Applicant's request to conduct the collective bargaining under the Collective Agreement Act is illegally, and intended appointed related supervisors "to listen to " the Applicant's opinions; in the first investigation meeting of CLA dated August 15, 2012, the Opposite Party's agent said their attitude did not change till July 10, 2010. Therefore, significantly the Opposite Party has no intent to conduct the bargaining in terms of the collective agreement entered with the Applicant, but has the intention to reject the bargaining conducted with the Applicant under the collective agreement.

(8) Last, as the collective agreement entered by unions between employers or employer groups in consensus, the principle of

good faith should be one of the highest guiding principles, and the enactment of legislation that the lawmakers deliberated the United States, Japan and South Korea; it is stipulated in Paragraph 1, Article 6 of Collective Agreement Act that 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, for example, pretend bargaining, delay bargaining, or deliberately boycott bargaining procedures to cause the bargaining cannot be carried out; in addition, the situations of rejection of bargaining without justifiable reasons are listed in the subparagraphs of the Paragraph 2 of same Article. From the above that the principle of good faith in bargaining is on basis of the labor-management autonomy principle in order to facilitate both employers and employees to interact on an equal footing, and the interactive process should not be merely nominal; namely, both labor and the management behold the principle of good faith to carry out the bargaining, so as to reach the conclusion of a collective agreement. Accordingly, even though the Opposite Party repeatedly would like to communicate and bargain, still rejected to conduct the bargaining under a collective agreement with the Applicant by non-labor contract relationship with the business staff and the Applicant was not qualified to bargaining, and the Applicant's representatives were not qualified to collective bargaining; under such situation, although the Opposite Party "listen to" the Applicant's more views and both parties carry

out more talks, it still is afraid cannot conclude the collective agreement. Therefore, The Opposite Party expressly rejected the bargaining for a collective agreement with the Applicant by non-labor contract relationship with the business staff and the Applicant was not qualified to bargaining, and the Applicant's representatives were not qualified to collective bargaining, but then expressed would like to talk, communicate that still constitutes the unfair labor practices as "without justifiable reasons reject the bargaining under collective agreement" set forth in Paragraph 1, Article 6 of Collective Agreement Act.

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 Applicant claimed that the Opposite Party rejected to conduct he bargaining for a collective agreement with the Applicant by "whether both parties' legal relationship is applicable to the Collective Agreement Act is still doubted", consisting the unfair labor practices as "without justifiable reasons reject the bargaining under collective agreement" set forth in Paragraph 1, Article 6 of Collective Agreement Act is admissible.

7. According to the above conclusion, this decision application is reasonable, and with reference to Paragraph 1, Article 22, Paragraph 1, Article 46, and Paragraphs 1 and 2, Article 51 of 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

Wu, Tzu-Hui

Hsin, Ping-Lung

Liu, Shih-Ting

Meng, Ai-Lun

Wu, Shen-Yi

Tsai, Cheng-Ting

Chiu, Chi-Ying

Chang, Hsin-Lung

Su, Yen-Wei

Kang, Chang-Chien

Wang, Neng-Chun

Date: 2012

If any party disagrees this Decision Award with respect to every Subparagraphs of Paragraph 1, Article 25 of Labor Union Act or Paragraph 1, Article 6 of Collective Agreement Act, may file the

administrative proceedings against CLA, Executive Yuan as the defendant agency to Taipei High Administrative Court (No. 1, Lane 1, Sec. 4, Hoping E. Rd., Daan Dist., Taipei City) within two months from day after this Decision Award served.