

# The Roles of Labor Unions and Employee Representatives in Taiwan

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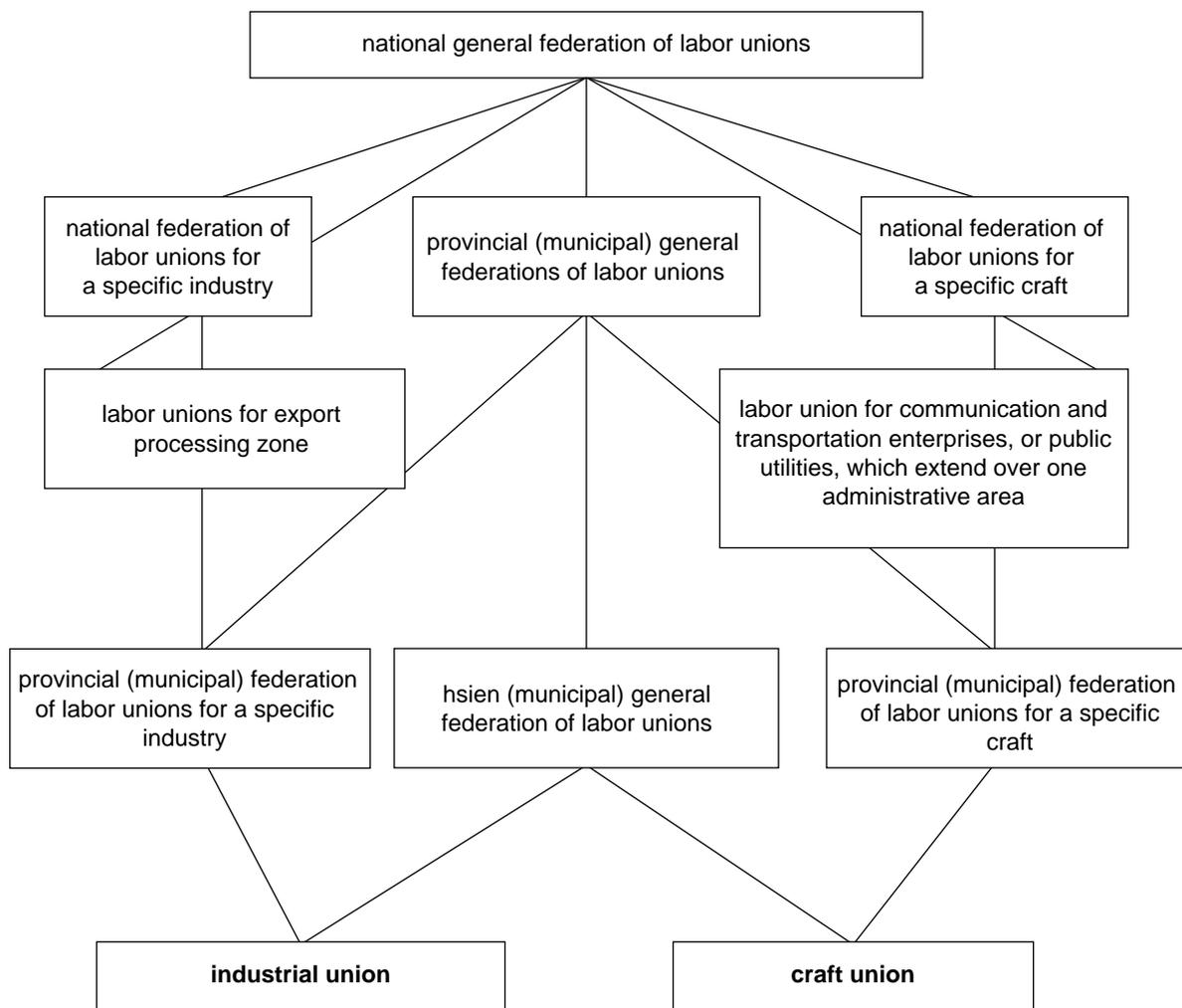
## I. Features of the Labor Union Law and Labor Union in Taiwan

Taiwan's *Labor Union Law* (hereinafter the "*Labor Union Law*") was enacted in 1929, of which the main features include: (1) Doctrine of Compulsory Organization of Labor Union, whereby an industrial union or a craft union should be organized in accordance with the law for those workers attaining full twenty years of age, of the same industry in the same area or in the same craft, and exceeding the number of thirty (See Article 6 of the *Labor Union Law*); (2) Doctrine of Compulsory Association to the Labor Union, whereby all workers having attained full sixteen years of age shall be obliged to join and become a member of the labor union (See Article 12 of the *Labor Union Law*); (3) Doctrine of Enterprise Union, whereby the formation of a industrial union is limited only to those workers hired by the same enterprise or factory (See Article 6 of the *Labor Union Law*); (4) Doctrine of Single Labor Union, whereby only one labor union is allowed to form for each and every industry or craft (i.e. "One Factory One Union Only"). Under this doctrine, in each and every one administrative area, only one labor union shall be organized (Article 8 the *Labor Union Law*). Hence, ranging from the basic-level enterprise union or craft union, to the upper-level Hsien (city) or municipal general federation of labor unions, or even to the national-level labor union, only one labor union of its corresponding level shall be organized in accordance to the law (See Table 1).

It should be noted that first, the Doctrine of Compulsory Organization of Labor Union and regulations pertaining to Compulsory Association to the Labor Union only apply to public-sector enterprises while private-sector enterprises are basically exempt from such rules. That is to say, it is not compulsory for private-sector enterprises having workers exceeding the number of 30 to form an enterprise union—even if a labor union is organized, workers belonging to that industry still have the rights to weigh their options of whether or not to join the enterprise union. Secondly, the Labor Union Law limits the scope of industrial labor union to generally include those of industries or factories; therefore, it is fair to say that the term "industrial union" in the *Labor Union Law* actually refers to "enterprise union" in most cases.

Since late 1980s, democratic movements have invigorated in Taiwan, marking the end of an authoritarian era. As the society has moved towards high levels of democracy and plurality, the un-satisfaction of the out-dated *Labor Union Law* expressed by the workers, combined with Taiwanese government's endeavor to respond to the calls for democratizing industries, these factors contribute to the amendments of *Labor Union Law*, *Collective Agreement Law*, and *The Settlement of Labor Disputes Law*, despite revisions of such laws have not yet completed. For the past decade, as Taiwanese society has been democratized, changes are also reflected in labor unions. For example, even though according to the *Labor Union Law*, only one single National Labor Union shall be organized, nonetheless, as a result of the break-up of the National Labor Union, such organization has multiplied itself to seven,

Table 1. Organizational System for Labor Unions in Taiwan



as announced by the government. Likewise, in a few Hsien (city)/(municipalities), the labor union corresponding to that level is also numbered more than one. That being said, as the upper-level and lower-level labor unions are loosely connected, the upper level labor unions often fail to cement the support from those of lower level, which in turn leads to the failure of the upper level labor unions, be they at the national or regional level, in holding big-scaled collective bargaining. By the same token, it is rarely seen that the upper-level labor unions would participate or assist in the collective bargaining intended to achieve by those of lower-levels or by the enterprise unions<sup>1</sup>.

In the year of 2004, the total number of enterprises in Taiwan amounted to 1.19 million, of which, categorized by industrial scale, small-to-medium-sized enterprises totaled 1,164,000, comprising 97.80% of the total number of enterprises. In contrast, the number of big-scaled enterprises accounted for 26,000, comprising 2.20% of the total number of enterprises. In 2004, the number of workers totaled 10.24 million, among which, the employment numbers were 9.786 million, the jobless 0.454 million, and those being hired 7.131 million, making the rate for labor participation being 57.66% and the rate for unemployment 4.44%. Statistics

<sup>1</sup> Yung Sheng Chen, "Studies on the Joint Organization of Labor Unions in Our Country" (1998), p. 83 ff.

above also shows that the number of people being employed by the small-to-medium sized businesses has increased to reach 4.903 million, at the ratio of 68.75%<sup>2</sup>. It is fair to say that the small-to-medium sized businesses constitute as the main productive force in Taiwan, with nearly 70% of workers are employed by them.

By year 2004, labor unions at various levels numbered 4,290, with 2.965 million individual members involved. Of which number, industrial unions speak for 1,109, having members of 594,000; craft unions represent another 3,024, having members of 2.371 million (See Tables 2 & 3). The number of craft unions almost triples that of industrial unions, while membership to the former almost quadruples that to the latter. In addition, as of year 2002 through 2004, the number of industrial unions maintains around 1,100 while the number of membership had increased from 560,000 to 590,000. The power of the industrial unions roughly maintains at the current level, without any particular changes.

With respect to the official statistics provided by Taiwanese government, there are three emphases to be made:

1. In spite of the numbers of craft unions and their membership base are greater than those of industrial unions, nonetheless, due to the idiosyncratic feature of Taiwan's legal system, except for some craft unions belonging to docks workers, the craft unions' business concerns mainly the dealing of labor insurance and national health care insurance, which in turn means that the craft unions in Taiwan do not generally carry the meaning of labor unions and hence does not exert any influence.
2. The stage of Taiwan's collective employer-worker relationship is extended to individual business. In the light of this, the enterprise union comes about to become the true force of labor union, with its influence strengthened by the protectionism through two doctrines pertaining to "compulsory organization of labor union" and "compulsory association to the labor union". As a result of this, such unions enjoy benefits from huge membership base as well as wield considerable influence over collective employer-worker relationship<sup>3</sup>. Small-to-medium sized businesses are the main productive force in Taiwan, and on such a basis their enterprise unions are construed. Accordingly, the enterprise unions tend to be on a small-to-medium scale, too. To this end, a small number of memberships combined with a weak financial base are considered to contribute to the conservativeness of the laborers' collective actions. The employer-worker relationship is generally amicable; consequently, initiatives prompted by workers themselves to institute a labor union would generally be construed by their employers as an act that would hinder industrial development<sup>4</sup>. Small-scaled enterprise unions are weakened by their collective negotiation power, to this effect, by the end of 2004, there were only 260 entities having entered into collective agreements, through either craft unions or business units. Of which, 241 entities were industrial unions and the other 19, craft unions (See Table 4).

<sup>2</sup> See "The 2004 White-Covered Book Regarding Taiwan's Small-to-Medium Sized Businesses", edited by Office of the Ministry of Economics Governing Small-to-Medium Business. The term "Small-to-Medium Sized Businesses" is defined, in the White-Covered Book, as those among the following three industries—manufacturing, construction, and mining and quarrying—with an outstanding capital of under New Taiwanese Dollars (N.T.\$) 80 million, which usually hires less than 200 people. For other industries, it refers to those businesses with revenue from previous year of less than N.T.\$100 million, or usually hiring under 50 people.

<sup>3</sup> Due to the lobbying of public-sector enterprise labor unions, Article 35 of the *Regulation Pertaining to the Management of State-Owned Businesses* prescribes that "among the general council members and supervisory council members of a state-owned business, shares representing the government should be held for no less than 1/5, and the government representatives are to be delegated by representatives of labor unions having been appointed by the competent authorities of the state-owned businesses.

<sup>4</sup> See page 6 of "Research Report entrusted by the Council of Labor Affairs of the Executive Yuan", in "Topical Analyses on the Current Situations of both the Internal Group Negotiation within Enterprises of our Country and the Labor-Management Conference", a program hosted in 2003 by Ing-Zhong Huang.

3. Labor unions of all-levels in Taiwan account for a number of 4,290, from there deducted by the number of 3,024 pertaining to craft unions, the remaining 1,109 stands for the number of industrial unions. Compared with Taiwan's overall number of enterprises totaled 1.19 million, that means only 0.1% of businesses in Taiwan have actually formed labor unions. Furthermore, members for industrial unions consist 594,000, compared to those 7.131 million being hired, the actual rate for forming such association only accounts for 8.2%.

Table 2. Situations in Labor Unions of Each Level

Class of Labor Unions	Number of Labor Unions			Individual Number of Members (/1000)		
	End of 2002	End of 2003	End of 2004	End of 2002	End of 2003	End of 2004
Total	4,093	4,158	4,290	2,860	2,902	2,965
General Federation of Labor Unions	39	48	53	-	-	-
Federation of Industrial unions	22	23	23	-	-	-
Federation of Craft Unions	80	82	81	-	-	-
Industrial unions	1,104	1,103	1,109	561	558	594
Craft Unions	2,848	2,902	3,024	2,299	2,344	2,371

Source of Information: The Council of Labor Affairs of the Executive Yuan, *Report of Year 2005 Annual Statistics*.

Table 3. Numbers for Industrial unions, Craft unions, and Respective Members

Unit: Union, People

Industrial Unions	Number of Unions	Number of People	Craft Unions	Number of Unions	Number of People
Total	1,109	593,907	Total	3,024	2,370,70

Source of Information: The Council of Labor Affairs of the Executive Yuan, *Report of Year 2005 Annual Statistics*.

## II. Major Models Concerning Enterprises' Decisions on the Conditions of Labor

Models concerning Taiwanese enterprises' decisions on the conditions of labor hinge fundamentally on the working rules set by the employer; other methods for such decision-making include the collective agreement, the labor-management conference, and the employees' welfare committee. Details are as follows:

### 1. Model for Work Rules

The *Labor Standards Act* prescribes that where workers of 30 or greater than that number are being hired, the employer shall set work rules concerning relevant conditions of labor based on the nature of enterprise. These work rules shall be publicly announced after being approved by the competent authority (See Article 70). The employer, while setting work rules, does not need to consult with his/her employees neither do such work rules need to be consented by workers, that means the employer holds great power in determining the conditions of labor. In order to prevent unfairness caused by the arbitrariness of the employer, this Article requires the employer report work rules to the competent authority for approval. According to an interpretation made by the Ministry of the Interior, work rules would not

come into effect without first being approved by the competent authority<sup>5</sup>. It is observed that this Article carries significant legislative meaning as it grants power to the competent authority to examine the fairness of the unilateral work rules set by the employer. To fully implement the policy, should the employer fail to submit work rules for the competent authority's approval, an administrative fine ranging from N.T. 2,000 to 20,000 can apply to the employer, as imposed by the competent authority. The administrative fine can be imposed continuously (Article 79). However, according to a Supreme Court judgment, as long as work rules are not against the compulsory or prohibited clauses prescribed by the law or against other collective agreement applicable and pertaining to that line of business, such work rules are still held effective even without the competent authority's approval<sup>6</sup>. According to this, in practice, the employer is allowed to determine, unitarily, the conditions of labor.

Having the employer unitarily determine the work rules is the model most prevalent in Taiwan. Such practice, despite convenient for the employer, disregards the workers' will and is, from a legislative point of view, contrary to the principles of democracy. Hence, it has been widely criticized.

One question is worth noting—If an enterprise were to face recessions or encounter operational crisis, under such circumstances, could its employer unilaterally change the conditions of labor to its workers' disadvantage? The *Labor Standards Act* is silent on this matter, and the situation is clarified through the rationale underlying judicial decisions. Supreme Court's interpretation has it that once work rules have been announced and come into effect, they become part of the bilateral agreement between the employer and the workers; later on, should the employer wish to change the work rules to the workers' disadvantage, such changes in principal should be consented by the workers. Nonetheless, where reasonability falls into place, even if the workers did not consent or if the workers opposed to disadvantageous changes, adverse changes are exceptionally acceptable and can have binding force on the workers<sup>7</sup>. This Supreme Court decision creates leeway for the employer to unilaterally adjust conditions of labor, nevertheless, the court maintains a very strict attitude while applying the rule of exemption; in turn, reasonability is rarely recognized by the court while examining adverse changes unilaterally made by the employer.<sup>8</sup>

To sum up, according to the *Labor Standards Act*, even though the employer enjoys a great deal of leeway in making changes to the conditions of labor through (re)setting work rules; in legal effect, once the work rules have been announced and come into effect, unless the workers' consent is obtained, it is extremely difficult for the employer to unilaterally change the conditions of labor to the workers' disadvantage.

<sup>5</sup> Letter No.#415571 provided by the Ministry of the Interior on June 25, 1986.

<sup>6</sup> No. #2492 of Supreme Court Judgment, granted in 1992.

<sup>7</sup> No. #1696 of Supreme Court Judgment, granted in 1999. This judgment is heavily influenced by the court decisions made in Japan. References are available in Neng Juen Wang, *Studies on the Rationale behind the Precedents regarding Working Rules*, p. 250 ff., and Chih-Poung Liou, "The Legality of Working Rules and its Effect towards Disadvantageous Changes", in *Labor Law Theories and Studies* (2000), p. 259 ff.

<sup>8</sup> No. #30 of Taipei District Judgment on Labor Law Claims, granted in 1998, which states that "Salary can be fairly suggested as the most important element in the conditions of labor. Adverse changes in salaries, if intended to have a binding force on the workers, it demands high level of necessity. In this case, the employer recklessly changes the salary structure in the hope of seeking a breakthrough for business operations, the employer failed to claim neither did he prove his company's finance or operation had worsened to such an extent that unless by changing the original salary payable to their manager, otherwise the company were not able to continue. In the light of this, based on the information made available by the defendant at the court, it can hardly come to the conclusion that such disadvantageous changes have high level of necessity."

## 2. Model for Collective Bargaining

### (1) Current Situation for Collective Agreement

The respective numbers of collective agreements settled by Taiwan's labor unions are as follows: 302 (in 2002) and 274 (in 2003). By the end of 2004, the number of labor unions of all levels stands for 4,290—of which, 260 agreements were settled by industrial unions, craft unions, and business units, on such premise, it indicates that the number of collective agreements has been dwindling.

What interesting is a survey—concerning comparative analyses between the level (of labor protection) in collective agreements vs. legislative standards—indicates that of all these collective agreements, 16% of which are more favorable than legislative standards, 22% coinciding with legislative standards, 44% merely attaining the labor standards, and the remaining 18%<sup>9</sup> basing the rules set by respective businesses. Among a few business entities that have signed collective agreements, limited function of collective agreements is observed in providing favorable terms of the conditions of labor. In a 1993 essay concerning the collective agreements having been signed in Taiwan, two features were being noted: (i) In most cases enterprise unions are the parties of the collective agreement; in this line of thought, as the enterprise unions are subject to the influence of their employers, the contents of collective agreements are usually influenced by the employers; (ii) Content-wise, such as wages, working hours, overtime payments and holidays are usually of the same terms and conditions prescribed in the *Labor Standards Act*, while management participation and dispute settlement, terms and conditions ascribing to collective employer-worker relationship, are rarely touched. These two features indicate that the contents of collective agreements are merely a formality<sup>10</sup>. Furthermore, a research in 1995 regarding the results of public-sector enterprises' collective agreements also indicates that of all the terms and conditions herein, their significance, in most cases, is only on paper. Even if there exists some substantial meaning—on topics concerning wages, hiring & lay-offs, and commendation & punishment—in practice, the negotiation room is quite limited; whereas, some peculiarity is seen on terms and conditions relating to other issues such as safety, sanitation, and employer-worker settlement & cooperation. As to the hard-to-reach issues, which include working time, wages, warfare and benefits, participation by labor unions is expected<sup>11</sup>. In addition, based on another investigation conducted in 2003, with respect to terms and conditions in collective agreements, of concerns from both parties (i.e. the employer and the workers) are working time, warfare measures, hiring, dismissal, lay-offs, separation, retirement, and wages. Labor unions also did not show high-level of interest in management participation<sup>12</sup>.

Overall, in Taiwan, collective bargaining between the employers and unions have not secured enough popularity. Collective bargaining models are mostly adopted by public-sector enterprises and private-sector enterprises of big scale. Of all contents signed in collective agreements, most of them are duplicates of the *Labor Standards Act* or the internal rules set by individual enterprises; and in actual effect fail to govern collective workers. Little distinction could be made for such a phenomenon, regardless of whether they are within

<sup>9</sup> Tsi-Huei Wu, "Research on the System of Taiwan's Collective Agreements—with Pragmatic Studies on Taipei Hsien and Taipei City", in 1993 Masters' Thesis from the Labor-Law Graduate Program of National Cheng-Chi University, p. 93 ff.

<sup>10</sup> Sheng Shiu Chen, "Analyses of the Contents of the Collective Agreement in Our Country", in 1993 Masters' Thesis from the Labor-Law Graduate Program of National Chung-Zheng University, p. 51 ff.

<sup>11</sup> Ke Yi Ren, "Studies on the Result of Collective Agreement by Our Country's Public-sector enterprises—Analyses From Strategic Policy Perspective" in 1995 Doctoral Dissertation from the Public Administrative Law, Graduate Program of National Cheng-Chi University, p. 121.

<sup>12</sup> Ing Chung Wu, *supra* Note 3, p. 69 ff.

public-sector or private-sector enterprises.

## (2) Reasons for Analyzing the Inefficiency of Collective Bargaining

The *Collective Agreement Law* was enacted amidst December 1930, and came into effect in 1933. At the time of the enactment, Taiwan's *Collective Agreement Law* reflects entirely its equivalent German law, by introducing and legalizing the most popular thoughts in Germany's Weimar Era. To that end, Taiwan's *Collective Agreement Law* was deemed very advanced<sup>13</sup>, compared with the equivalent laws of other countries in the world. By now, as the 1933 *Collective Agreement Law* becomes quite out-dated, it does not reflect the actual practice within Taiwan's business and labor union organizations. For this reason, Taiwanese government has drafted amendments to the *Collective Agreement Law*, which is scheduled for Congress' Review in 2006.

The *Collective Agreement Law* prescribes that the labor party of a collective agreement must be a labor party having legal person status (i.e. the labor union). The *Labor Union Law* in the 1930s stipulated that a labor union shall be organized under circumstances where workers must attain full 20 years of age, of the same industry in the same area, exceeding the number of 50. Due to the lengthy and complicated process and other restrictions, in 1945, prior to the Nationalist Party (also known as "Kumindong") retreated to Taiwan, there were very few qualifying for the organization of labor unions. Accordingly, the function of collective agreement in governing the collective conditions of labor was curtailed to a very low level.

Why are there so few collective agreements in Taiwan? Reasons can be found through analyzing the features of both the labor union organization and labor law in Taiwan.

First of all, features of Taiwan's labor union organization indicate the reasons to include: (a) A Lack of Ideology among Workers—that is, except for some craft unions belonging to docks workers, the craft unions' business concerns mainly the dealing of labor insurance and national health care insurance, and it is for the exact same reason workers join labor unions to become members; (b) Very Few Number of Labor Unions—as most workers are employed by small-to-medium sized businesses, where the workers intend to form a labor union would generally be construed by their employers as an act that would hinder industrial development. Therefore, such actions would be halted strongly by their employers, and also feared by the workers averting to get on this path; (c) Labor Union's Low Negotiation Power—that is to say, the function of labor unions bases mainly on providing services (such as labor education and labor warfare), rather than making collective negotiation; (d) There is a lack of understanding by the workers towards the meaning and function of collective agreement. As a result, collective agreement is viewed as harmful to the harmonious relationship between the employer and the workers<sup>14</sup>.

Secondly, the features in Taiwan's labor law suggesting the *Collective Agreement's* failing to progress include: (a) Taiwan's labor law policy emphasizes the protection of individual workers. Conditions of labor, such as wages, working hours, vocational injuries, and workers' pension, are put into legislation in a comprehensive fashion. These legally recognized conditions of labor do not necessarily stand for the basic standards. As such, the obligations imposed on the employers by the labor law are beyond the scope of acceptance for most small-to-medium sized businesses with only small capital base; following that the collective negotiation room becomes narrowed between the employer and labor unions<sup>15</sup>. For instance, the *Labor Standards*

<sup>13</sup> Cheng Guan Huang, "Collective Agreement", p. 6. This paper was presented in Taiwan Legal Academic Forum in 2005.

<sup>14</sup> Tsi-Hui Wu, *supra* note 9, p. 73 ff.

<sup>15</sup> Shih Wei Pan, "Preliminary Proposal to Make Sound of Our Country's System for Collective Negotiations", in 2003, National Policy Research Foundation (an Assets-Backed Legal Person).

*Act* stipulates that a worker may apply for voluntary retirement under either one of the following conditions: (i) where the worker attains the age of fifty-five and has worked for fifteen years (ii) where the worker has worked for more than twenty-five years. This requirement may subject the employer to pay a lump sum equaling forty-five units of the worker's average salary, thus creating a huge financial burden on the employer<sup>16</sup>. (b) Aside from labor unions, the employee's welfare committees and the labor-management conference have simultaneously been set up, allowing them to participate in the determination of employees' welfare and conditions of labor. This creates a delicate relationship for competition, as the employees' welfare committees and the labor-management conference even replace the original function pertaining to the labor unions. Details will be further provided as below.

### **(3) Layers, Procedures, and Items of/for Collective Negotiations**

#### **(a) Layers of Collective Negotiations**

The *Collective Agreement Law* prescribes that "the term 'collective agreement' as used in this law refers to a written contract concluded between an employer or an incorporated organization of employers (with legal person status) on the one hand, and an incorporated organization of workers (with legal person status) on the other hand, for the purpose of specifying labor relations (See Article 1)." In detail, "the Employer Party" can be either individual employer or an incorporated organization of employers with legal person status (such as "same business union" or its federated organizations), whereas, "the Worker Party" is generally considered to include the labor union with legal person status<sup>17</sup> or the federated organizations of labor unions. Accordingly, the collective negotiation can be undertaken by the federated labor unions and the employer or the incorporated organization of employers. Furthermore, the *Collective Agreement Law* states that "the Worker Party" is limited to include only the labor unions with legal person status; consequently, other workers' representatives should not possess the rights to negotiate with the employer for a collective agreement.

As aforesaid, the main force of Taiwan's enterprises lies within the enterprise labor unions, and the relationship between upper-level labor unions and the enterprise labor unions is loosely connected. Therefore, in practice, almost all the collective agreements are completed internally within the enterprise, undertaken by the employer party of the enterprise and the enterprise labor union (factory labor union)<sup>18</sup>. Even though by now, the government announces to have seven national labor unions in Taiwan, nonetheless, as these newly added national labor unions do not directly participate in the internal enterprise collective negotiation, this does not change the fact that the scope of collective agreement is still limited to that within the enterprises; accordingly, the parties subject to the collective agreement are only the management and labor parties within each individual business unit.

#### **(b) Procedures for Collective Negotiations**

The *Collective Agreement Law* does not provide the procedures for collective

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<sup>16</sup> The *Workers' Pension Act*, which came into effect on July 1, 2005 and fundamentally changes the workers' pension system set forth in the *Labor Standards Act*, aims to lessen the heavy financial burden rested on the employer.

<sup>17</sup> See Article 2 of the *Labor Union Law*, which states that "a labor union shall be a legal person." As a result, the labor union recognized by the *Labor Union Law* is limited to those with legal person status.

<sup>18</sup> Tsi-Huei Wu, *supra* note 9, p. 86.

negotiation<sup>19</sup>. In regards to the practice of the collective negotiation, according to a survey on Taipei Hsien and Taipei City, of the 10 business units receiving interviews, most of them expressed that a draft collective agreement would usually be put forth by the labor union. Furthermore, in order to make the draft collective agreement, the labor union would usually refer to the current related laws and regulations, as well as other collective agreements that have been signed, and finally to the model contract entitled “How to enter into a Collective Agreement” and prepared by the Labor Bureau of the Hsien (City). For the labor union, while in preparing for the draft agreement, the most troublesome aspect of which lies in the difficulty of obtaining enough information. In turn, the draft agreement provided by the labor union is often criticized by the employers as “unacceptable” and “rapacious”. In situations where the negotiation went into a deadlock, the interviewed private business labor union would often say that “Our goal is to sign on the collective agreement first, which would then become the first base for founding the rights and for further amendments. Therefore, whenever there is a deadlock, as long as the management party would not insist on something that is totally unacceptable to us, quite often, we would settle for the deal.” However, in publicly-operated enterprises, as the authority conferred to the management’s representatives is often limited, deadlocks are almost inevitable during the course of negotiation. In such a circumstance, turning petition to the upper-level competent authority is often observed<sup>20</sup>.

#### (c) Items for Collective Negotiation

In order to facilitate the over-all economic development, the *Collective Agreement Law*, while enacted in the 1930s, placed restrictions on the contents of the collective agreement due to the concerns of over-tipping the power of labor union, otherwise. For instance, “any provision in a collective agreement placing restrictions upon the employer in respect of the use of a new type of machinery or the improvement of the method of production or the purchase of refined or processed products shall be null and void (See Article 13).” However, due to the Taiwanese enterprise union’s weak negotiation power, a collective agreement involving forcefully interfering with the employer’s management cannot yet be seen so far. Most of the collective agreement mainly concerns with the conditions of labor (including but not limited to wages, working hours, and safety & hygiene); nevertheless, as to the hard-core matters concerning the employer’s management, could they also become the subjects of a collective agreement? Most scholars view that personnel matters (e.g.: the dismissal and transfer of labor union members, which should be consented by the labor union) and production management matters (e.g.: business transfer, material investment, or renewal of equipment) should become the subjects of a collective agreement as they deeply affect the rights of laborers, even though such subject matters belong to the scope of management<sup>21</sup>.

#### (4) Priority for Application in Collective Agreement

Collective Agreement has not gained its popularity in Taiwan. Therefore, it is rarely seen to have both the management and worker parties adjust flexibly the conditions of labor via

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<sup>19</sup> The *Collective Agreement Law* does not touch on issues of negotiation duties, principles of honesty, and procedures during the process of negotiation, as well as the obtainment of negotiation information. In the draft *Collective Agreement Law* reviewed by the Legislative Yuan in 2004, such problems had been discussed. Legislative ordinance was also intended in trying to solve these issues, however the legislation process has not yet been completed. By now, the Council of Labor Affairs of the Executive Yuan is reviewing drafts of the collective labor laws, including the *Collective Agreement Law*, *Labor Union Law*, and *The Settlement of Labor Disputes Law*. They are scheduled to be reviewed by the Legislative Yuan again this year (in 2006).

<sup>20</sup> Tsi-Huei Wu, supra note 9, p. 110.

<sup>21</sup> Ling Huei Kuo, “Collective Agreement and Collective Negotiation”. This paper was presented in Tai-wan Legal Academic Forum in 2005.

collective agreement. Most extant collective agreements having been signed are only those within individual enterprises. Collective agreements signed at the regional level are rarely seen, either. Accordingly, in practice, there is not yet a single case that demands the resolution of conflict settlement between the individual enterprise collective agreement and the regional collective agreement.

Rather yet, in Article 5 of the *Collective Agreement Law*, it states that “When two or more collective agreements deal with the same labor relation and there is no provision in any of these collective agreements as to priority of application, the collective agreement affecting the smaller scope of craft shall apply first; or, if the collective agreements are not on a craft basis, the agreement covering a wider scope of area or greater number of persons shall apply first.” Based on this, where two or more collective agreements can apply simultaneously, the order of priority should be determined upon whether there is a special provision provided in the former collective agreement which has an earlier effective date. If a special provision is in place, then it should be applied directly, whereas, if there is no special provision available, then the situation can be further divided into two: (i) if the collective agreements are on a craft basis, then, the collective agreement affecting the smaller scope of craft shall apply first; (ii) if the collective agreements are not on a craft basis, the agreement covering a wider scope of area or greater number of persons shall apply first.<sup>22</sup>

The *Collective Agreement Law* is silent on whether the conditions of labor ascribing to the individual enterprise collective agreement can be lower than those standards set in other regional-or-national level collective agreements? There is not yet such a case existing in Taiwan. However, should there be a simultaneous application between the individual enterprise collective agreement and other regional-or-national level collective agreements, then, for the sake of argument, Article 5 of the *Collective Agreement Law* should apply to conciliate the differences. In the light of this, if the individual enterprise collective agreement has an earlier effective date, and its specifically provisioned contents (conditions of labor) are lower than those standards set in regional-or-national level collective agreements, then, such lower standards should be permissible by the *Collective Agreement Law*.

#### **(5) The Effect of the Collective Agreement**

Article 16 of the *Collective Agreement Law* provides that “The conditions of labor laid down in a collective agreement shall as a matter of course constitute part of a labor contract concluded between an employer and a worker who are subject to the collective agreement. If any provisions of such labor contract vary with the conditions of labor laid down by the collective agreement, such provisions shall be null and void, and shall be replaced by the pertinent provisions of the collective agreement; provided, that the variances, if permissible by the collective agreement or purported for the benefit of the workers and in the absence of express banning provisions in the collective agreement, shall remain valid.” Based on this, it can be concluded that (a) the collective agreement is enforceable—that is to say, the conditions of labor ascribing to the collective agreement become automatically part and partial of the contents contained in the labor contract, regardless of whether parties to the labor contract are aware of or have consented to these contents; (b) “favorable principle” is recognized—in other words, in the absence of express banning provisions in the collective agreement, it is permissible for the employer and the worker to specify conditions of labor that are more favorable than those provisions within the collective agreement; (c) in terms of “the variances, if permissible by the collective agreement”, as provided in this Article, it actually enables parties of the collective agreement to abandon part or all of the enforcement effect pertaining to the collective agreement. By the same token, this term can also work to change

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<sup>22</sup> Cheng Huei Huang, *Labor Law* (2000), p. 349.

the conditions of labor to the workers' disadvantage once the consent has been obtained<sup>23</sup>. That being said, none of a similar case has happened yet so far.

### 3. The Labor-Management Conference

#### (1) Legal Base for the Establishment

The *Labor Standards Act* provides that "A business entity shall hold labor-management conference to coordinate worker-employer relationships and promote worker-employer cooperation and increase work efficiency." With the authorization by this Article, the government lays down the *Convention Rules of the Labor-Management Conference*, aiming to provide some standards for the industry to call for such meetings. Under the structure of worker-employer cooperation, the Labor-Management Conference is designed to enable both parties (the employer and the workers) to discuss various affairs concerning the worker-employer relationships, in order to reach a resolution based on majority consent, coordinate worker-employer relationships and improve conditions of labor.

According to the *Convention Rules of the Labor-Management Conference*, "a business entity shall convene labor-management conference in accordance with the provisions of these Rules. If a branch organization of such entity exceeds 30 employees, a separate conference may be convened for the branch (See Article 2)." Despite this, no punishment provisions are in place as to punishing those business entities not holding the labor-management conference according to the convention rules. In turn, each business entity can determine whether to hold the labor-management conference or not. However, the government, in order to promote the business entities' holding of labor-management conferences, takes the holding of such conferences as one standard for reviewing the applications by the business enterprises for trading on the market or over the counter. Due to such practice, the labor-management conference has a huge development over recent years and has become a common internal communications system within Taiwan's publicly-listing or over-the-counter companies.

In addition, as the purpose of the labor-management conference is to coordinate worker-employer relationships and the members of which include both parties' representatives (from the workers and the employer), therefore, it goes without saying that the labor-management conference does not enjoy the rights for strike.

#### (2) The Structure of Labor-Management Conference

According to the *Convention Rules of the Labor-Management Conference*, "the labor-management conference shall have an equal number of representatives from the workers and the employer. There shall be a number of 2 to 15 representatives from each side according to the size of the employment base of the business entity. However, if business entity has an employment base of 100 or more, the number of representatives from each side shall be no less than 5" (See Article 3); and "management representatives of the labor-management conference shall be chosen by an employer from those who are well-versed in the business & labor affairs of the business entity" (See Article 4); furthermore, "labor representatives of the labor-management conference shall be elected by union members or union assembly if there is a labor union in the business entity. In case there is no labor union, they shall be elected directly by all workers (See Article 5). What needs to be pointed out is "members of the general council as well as members of the supervisory council of a labor union in the business entity may be elected as the workers' representatives at the labor-management conference, provided that the number of such representatives shall not exceed two thirds of the total number of the workers' representatives (See Article 6)".

<sup>23</sup> Ling Huei Kuo, *supra* note 21, p. 15.

### **(3) The Election of the Labor-Management Conference Representatives**

“The election of workers’ representatives shall be conducted by the labor union, if any, in the business entity. In cases where no labor union is yet organized, the business entity shall publish a notice to request the workers to elect their own representatives. Expenses incurred by such election shall be borne by the business entity (See Article 9)”.

“A worker who has attained the age of 20 and has continuously worked in the same business entity for one year or more may be elected as workers’ representative at the labor-management conference (See Article 7)”; and “the highest ranking executive officers who are authorized to conduct management on behalf of the employer cannot act as the workers’ representatives (See Article 8)”.

### **(4) Scope of Matters for (Labor-Management) Conference Discussion**

The functions of labor management conference include the following:

- (a) Reports
  - (i) on the execution of the decisions made in the last conference;
  - (ii) on labor turnover;
  - (iii) on production plans and business conditions;
  - (iv) on other matters
- (b) Discussion
  - (i) on matters relating to the harmonization of labor relations and labor-management cooperation;
  - (ii) on matters relating to labor conditions;
  - (iii) on the planning of labor welfare;
  - (iv) on the increase of labor productivity
- (c) Suggestions

### **(5) Rules for Representing in the (Labor-Management) Conference**

“Representatives of labor-management conference shall do their utmost to exercise the spirit of harmony and cooperation during the conference. Management representatives shall be responsible to the employer, and workers’ representatives elected by a labor union shall be responsible to the labor union for their respective opinions expressed in the conference (See Article 12)”. And, “a meeting of the labor-management conference must be attended by the majority of the representatives from the workers’ side as well as the management’s side. The decision of such meeting must be made with the approval from more than three quarters of the representatives present at the meeting (See Article 19)”.

### **(6) The Effect of the Labor-Management Conference**

“The decisions made at the labor-management conference shall be forwarded by the business entity to the labor union or to the department concerned for implementation. In case the decisions made are un-implementable, they may be referred back to the next meeting for further consideration (See Article 22)”.

### **(7) Current Practice and Effect of Implementing the Labor-Management Conference**

As mentioned earlier, the respective numbers of collective agreements settled by Taiwan’s labor unions are as follows: 302 (in 2002), 274 (in 2003), and only 260 (in 2004). It indicates that the number of collective agreements has been dwindling. On the other hand, the numbers of business entities holding the labor-management conference are as follows: 2,701 (in 2002), 3,469 (in 2003), and 4,386 (in 2004), signifying its growth at a very fast pace. Take the year of 2004 for example, the number of publicly-operated enterprises having held the labor-management conference is 947, compared to the previous year’s number, the increase is

by 282 or at a growth rate of 42.41%. In parallel, the number of privately-operated enterprises having held the labor-management conference is 3,439, compared to the number of past year, the increase is by 675 or at a growth rate of 24.42%.

According to the “Year 2002 Report of Survey on the Industrial Unions’ Current Situations” by the Council of Labor Affairs of the Executive Yuan, of all having held the labor-management conference, 95% of which has conversed on the matters pertaining to the scope of conference discussion, while 89.08% of which on the conditions of labor; 85.49% of which on labor welfare; and 82.61% of which on the labor-management relationships. Only 32.47% of which has discussed on the matters concerning the increase of labor productivity. Details of the aforesaid four categories of discussion are provided as below:

(a) On Matters Relating to the Labor-Employer Relationship

With the highest frequency, 67.30% of discussion centers on “participation of personnel management job”; followed by 59.48% on “improvement of work procedures”; 53.56% on “improvement of production technology”; and 40.35% on “other cooperation matters”.

(b) On Matters Relating to the Conditions of Labor

With the highest frequency, 59.19% of discussion centers on “year-end bonus”; followed by 56.45% on “wages”; 48.87% on “time-off”; 48.55% on “overtime pay”, 48.38% on “working hours”; 46.30% on “pension”, 38.88% on “shifts”, and 17.74 on “others”.

(c) On Matters Relating to Labor Welfare

With the highest frequency, 72.27% of discussion centers on “employee welfare facilities”; followed by 68.73% on “leisure activities”; 62.18% on “education training”; and 13.62% on “others”.

(d) On Matters Relating to the Increase of Labor Productivity

Observed by different line of businesses, except for the “public administration business” failing to enter into a discussion, the “industrial and commerce businesses” tops on the frequency of holding discussions (at 100% rate); followed by the “construction business” (at 60%); the “mining and quarrying business” (at 50%), “water, electricity, & gas supply businesses” (at 46.15%), and others (at between 20-34%).

As to the labor-management conference’s implementation effect, 94.97% of the industrial unions consider it having effective results, signifying the importance of labor-management communications. The respective items having attained the implementation effect include 67.10% (with the highest rating) on “the improvement of the labor-management relationship”; followed by 60.92% (with the 2<sup>nd</sup> highest rating) on “promoting labor welfare”; 55.46% (with the 3<sup>rd</sup> highest rating) on “advancing the degree of labor-management cooperation”; 47.70% on “increasing the labor productivity”; 46.70% on “increasing the centripetal force of the employees”; and 40.37% on “raising the conditions of labor”.

## (8) The Relationship between the Labor-Management Conference and the Collective Bargaining

The Labor-Management Conference has thrived in recent years and has played an ever active role within the industry. However, there are some shortcomings pertaining to the labor-management conference:

(a) The Labor-Management Conference’s Low Legal Status

Article 83 of the *Labor Standards Act* provides the base for the establishment of the labor-management conference. However, no provisions of punishment are in place for business unit failure in implementing the labor-management conference, as so

Table 4. Current Situation of Labor-Management Relationship System  
(Categorized and Counted by the Respective Business Units)

Item	Collective Agreement						Labor-Management Conference	
	Total		Industry		Craft		Publicly-Operated	Privately-Operated
	Publicly-Operated	Privately-Operated	Publicly-Operated	Privately-Operated	Publicly-Operated	Privately-Operated		
By End of 2002	108	175	108	173	-	2	630	2,071
By End of 2003	100	174	100	172	-	2	665	2,764
By End of 2004	98	162	87	154	11	8	947	3,439

Source: Labor Vital Statistics, *Annual Report of Year 2005*, by the Council of Labor Affairs of the Executive Yuan.

required by the same Article of the same Act. Consequently, the establishment of the labor-management conference very much hinges on the discretion of the respective business entity. In the light of this, except for those companies applying to become publicly-listed or go over-the-counter, implementation of the labor-management conference in other industries is hard to achieve.

(b) The Labor-Management Conference's Low Binding Force

"The decisions made at the labor-management conference shall be forwarded by the business entity to the labor union or to the department concerned for implementation. In case the decisions made are un-implementable, they may be referred back to the next meeting for further consideration (See Article 22)". Despite this, are there convocation rules for "the next meeting for further consideration"? Also, what if no decision could be made in "the next meeting for further consideration"? if so, what should be dealt with? All these issues are not yet put into regulation and therefore there is very low binding force on both parties (i.e. the employer and the workers).

(c) Blurry Distinction between the Labor-Management Conference and the Collective Bargaining

The nature of the labor-management conference is for the harmonization of labor relations and labor-management cooperation, while the nature of the collective negotiation is exemplified by the antagonistic relationship between the employer and the labor union; both are subject to different systems. However, according to the *Convocation Rules of the Labor-Management Conference*, in case a labor union has been organized within a business unit, the workers' representatives shall be elected by representatives of labor union members and shall be responsible to the labor union for their respective opinions expressed in the conference; in the mean while, representatives of the management shall also be responsible to the business unit. By such rule, even though both the business unit and the labor union can exercise supervision power over representatives from both parties (i.e. the workers and the management), this inevitably intensifies the antagonism between the business unit and the labor union to the labor-management conference system<sup>24</sup>, contrary to what

<sup>24</sup> Ji Sheng Chen etc., "Legal System Research Concerning the Participation of the Business Management by Workers of Our Country", in 1993, a research entrusted by the Council of Labor Affairs of the Executive Yuan.

the labor-management conference has originally objected itself in harmonizing the employer-labor relationship. Furthermore, items such as labor-management relationship, conditions of labor, and labor welfare are originally subject to the scope of collective negotiation by the labor union. It is viewed accordingly that the tasks of the labor-management conference and the collective negotiation are overlapped, which may explain why the relationship between the labor-management conference and the collective negotiation has been blurred.

#### (9) Increased Function of the Labor-Management Conference—on “Working Hours”

Before the amendment of the *Labor Standards Act* in 2002, if the employer intends to implement the system of “Averaging Working Hours over a Two-Week Period” or “Averaging Working Hours over a Four-Week Period”, majority consent from either the labor union or the workers should be sought. The legislative concern may be that first, as Taiwan’s *Labor Union Law* adopts the structure of both “the doctrine of compulsory organization” and “the doctrine of compulsory association”, therefore, if the employer has obtained the labor union’s consent for implementing the working-hours averaging system, the scope of application should cover all labor union members (i.e. the business entity’s employed laborers altogether, under the doctrine of compulsory association). Secondly, in cases where no labor union is yet organized, the minority opinion would be negated via the democratic principle of majority votes (meaning having the minority conform to the majority). What needs to be pointed out here is, as mentioned earlier, “the doctrine of compulsory association” has not yet been fully implemented; consequently, even if a labor union does exist, not all workers have become its members. In turn, even if the labor union has consented to the working-hours averaging system, theoretically speaking, it can only have binding force on its members only and which cannot be extended to the non-members. Furthermore, some essays also note that Taiwan’s enterprise union has a weak nature, therefore it is suggested that the employer can circumvent paying overtime by forcing the weak labor union to consent to the implementation of the working-hours averaging system. Other questions also include: what enables the employer to implement the working-hours averaging system simply by obtaining majority consent from the workers? Is this a fair treatment to other workers who do not consent to that?<sup>25</sup>

The amendment of the *Labor Standards Act* was made in December 2002, which states that if the enterprise intends to implement modified working time system, extend working hours, or have female workers perform her work at night, in cases where no labor union is yet organized, then consent should be obtained through the labor-management conference (See Table 1-5).

The underlying reasons for this amendment are: it is not without question as to whether majority consent from the workers can truly reflect their intentions; furthermore, as representatives of the workers are elected by the workers themselves, the opinion of the contingent can better represent that of the labor union. The labor-management conference is led into the system<sup>26</sup>, in order to consolidate the spirit of labor autonomy. Following the amendment of the *Labor Standards Act*, the labor-management conference, once was regarded as merely a platform for labor-management communication, has now turned into a system that can exercise the right to consent on modified working time, extension of working hours and female workers’ working at night.

<sup>25</sup> Yu Chuan Lee, “Research on Issues of the Legal System Pertaining to Working Hours in Our Country and its Further Prospect”, in 2000 Master’s Thesis from the Labor-Law Graduate Program of Culture University, p. 77 ff. In page 88 of this thesis, it is also suggested that should the employer intend to implement the working-hours averaging system, such a decision can consider to be made through the labor-management conference. Under such a system, the workers would possess autonomy in regards to the working-hours averaging system.

<sup>26</sup> Juan Yen Chiou, “Working hours”, in *Interpretations of the Labor Standards Act—20-Year-Anniversary of its Implementation, in Retrospect, and its Future Prospect* (2005), p. 308.

Table 5. Comparison between Old and New Regulations

	Old Regime	New Regime (as of December, 2002)
Averaging Working Hours over a Two-Week Period (Article 30, Paragraph 2, of the <i>Labor Standards Act</i> )	Majority Consent from the Labor Union or the Workers	(i) Consent from the Labor Union (ii) Consent from the Labor-Management Conference (in cases where no labor union is yet organized)
Averaging Working Hours over a Four-Week Period (Article 30-1, of the <i>Labor Standards Act</i> )	Majority Consent from the Labor Union or the Workers	(i) Consent from the Labor Union (ii) Consent from the Labor-Management Conference (in cases where no labor union is yet organized)
Extension of Working Hours (Article 32 of the <i>Labor Standards Act</i> )	Consent from either the Labor Union or the Workers	(i) Consent from the Labor Union (ii) Consent from the Labor-Management Conference (in cases where no labor union is yet organized)
Female Workers' Working at Night (Article 49 of the <i>Labor Standards Act</i> )	Consent from either the Labor Union or the Workers	(i) Consent from the Labor Union (ii) Consent from the Labor-Management Conference (in cases where no labor union is yet organized)

#### (10) Increased Function of the Labor-Management Conference—on the *Protective Act for Mass Redundancy of Employees*

Over the past decade, Taiwan's business entities faced fierce competition among their global counterparts. In order to survive, quite a few businesses opted to invest in China and other places, while others staying in Taiwan also sought to streamline their industrial organization. During the process of undergoing management adjustment, disputes arise as a result of business closure, which then leads to massive lay-offs. To settle disputes, the Taiwanese government in February 2003 promulgated the *Protective Act for Mass Redundancy of Employees*.

According to this Act, the term "mass redundancy of employees" shall refer to the circumstance where a business entity has a need to lay off its employees on account of any of the conditions set forth in Article 11 of the *Labor Standards Act* (including suspension of business, long-term business loss, or merger). Such circumstances include where a site in the business entity having fewer than 30 employees intends to lay off over 10 employees within 60 days; or where a site in the business entity having more than 200 employees intends to lay off more than 1/3 of the total number of its employees within 60 days, or more than 50 employees within one day. To implement massive lay-offs, the business entity shall, at least 60 days prior to the occurrence, inform the officials of the competent authority and other relevant agencies of its plan for lay-offs, through written notice and publicly announcing it (See Article 4, Paragraph 1). Notice to be given to relevant authorities/agencies shall include the following matters in order: (a) the labor union to which the employees to be laid off belong; (b) the labor representatives of the labor-management conference; (c) the entire employees of the business entity (See Article 4, Paragraph 2). The massive lay-off plan to be submitted by the business entity shall contain the following particulars: (a) the cause of such massive lay-offs; (b) the

department to be affected by such massive lay-offs; (c) the scheduled effective date of such massive lay-offs; (d) the number of employees to be laid off; (e) the criteria for selecting the subjects of such massive lay-offs; (f) the method for calculating the severance payment and the job transition assistance project.

Within 10 days from the date of submission of the massive lay-off plan, the workers and the employer shall enter into negotiations in the spirit of autonomy (See Article 5, Paragraph 1). In the event the workers and the employer refuses to enter into negotiations or cannot reach an agreement, the competent authority shall, within 10 days, invite the workers and the employer to form a Negotiation Committee to negotiate the terms for the massive lay-offs and propose alternatives whenever appropriate (See Article 5, Paragraph 2).

The Negotiation Committee shall have five to eleven (5-11) members. Chairman of the Negotiation Committee is designated by the competent authority. Representatives of the employer shall be designated by the employer. Representatives of the workers shall be designated by the labor union(s); if there is no labor union but a labor-management conference has been formed, the representatives of the workers shall be designated by the labor representatives of the labor-management conference. If there is neither a labor union nor a labor-management conference, the representatives of the workers shall be elected by the entire employees. In the case where the workers and the employer cannot designate or select their respective representatives before the lapse of 10-day deadline, such representatives shall be designated by the competent authority ex officio within 5 days following the expiration of the deadline (See Article 6, Paragraphs 1&2). The agreement reached by the Negotiation Committee shall have binding force on the employees (See Article 7, Paragraph 1). The agreement concluded by the Negotiation Committee shall be put in writing (See Article 7, Paragraph 2). The competent authority shall, within 7 days from the date of conclusion of the agreement, submit the written agreement to the court having competent jurisdiction for its examination and approval (See Article 7, Paragraph 3). In the case the written agreement approved by the court prescribes the payment of a specific sum of money, any other substitute, or valuable securities, such agreement may serve as the title for compulsory execution (See Article 7, Paragraph 5).

There are some features pertaining to the Negotiation System in the *Protective Act for Mass Redundancy of Employees*:

- (a) The negotiation set forth in the Act is compulsory by its nature and is divided into two stages. At the first stage, the negotiation parties are represented by representatives of both the workers and the employer. If the first stage of negotiation fails to go through, government representatives step in and work as the chairperson of the negotiation committee; therefore, the negotiation is conducted by three parties.
- (b) The object of the negotiation is the lay-off plan submitted by the employer. The scope of negotiation covers the lay-off plan's ought-to-be particulars: (i) the cause of such massive lay-offs; (ii) the department to be affected by such massive lay-offs; (iii) the scheduled effective date of such massive lay-offs; (iv) the number of employees to be laid off; (v) the criteria for selecting the subjects of such massive lay-offs; and (vi) the method for calculating the severance payment and the job transition assistance project (See Article 4, Paragraph 4). The lay-off plan actually records the relevant conditions of labor whereby the massive lay-off is involved.

The negotiation system embodied in the *Protective Act for Mass Redundancy of Employees* is aimed to bring together both the workers and the employer for them to negotiate the relevant conditions for lay-offs. The legislation, despite full of good intentions, remains doubtful in its design of the system:

- (a) The negotiation process is led by the competent authority; in turn, the negotiation committee is chaired by the representative delegated by the competent authority. The appropriateness of the competent authority's forceful interference into the negotiation

is not without a doubt.

- (b) Representatives of the workers shall be designated by the labor union(s), attend the negotiation committee, and negotiate the lay-off plan with the employer. What needs to be pointed out though is, in cases where reasons for massive lay-offs arise, the labor union could request for negotiating with the employer for the purpose of entering into a collective agreement, without going through the labor-management conference. Accordingly, in theory, the processes for labor-management conference negotiation and the collective negotiation can possibly co-exist. In circumstances like this, what is the distinction between the two?

On the other hand, re-examination is also required for—the case where the negotiation, represented by the labor union’s representatives and the employer’s representatives respectively, has reached an agreement on the massive lay-off plan by the Negotiation Committee; it shall have binding force on the employees (See Article 7, Paragraph 1). And, the agreement concluded by the Negotiation Committee shall be put in writing, and signed by all members of the Negotiation Committee or affixed with their seals (See Article 7, Paragraph 2). Questions arise as to (i) Is the negotiation agreement of the same nature as the collective agreement? (ii) Why can the negotiation agreement bind those general workers who are not members of the labor union? These are not without questions.

- (c) Representatives of the workers shall be designated by the labor union(s); if there is no labor union but a labor-management conference has been formed, the representatives of the workers shall be designated by the labor representatives of the labor-management conference. That being said, the labor representatives of the labor-management conference are elected for the purpose of harmonizing labor relations, rather than negotiating conditions of labor with the employer. In the light of this, their purpose of existence is completely different from that of representatives of the labor union for collective negotiation.
- (d) The workers, while electing their representatives for the labor-management conference, only did so by authorizing their representatives to attend matters concerning the labor-management communication and cooperation, as set forth in the *Convocation Rules of the Labor-Management Conference*. At that time of authorization, the workers usually could not foresee the massive lay-offs in the industry later on. As special authorization is not granted to representatives of the workers (intended only for the labor-management conference) to participate in the negotiation of the lay-off plan, questions then arise as to (i) Without such special authorization, in effect meaning having exceeded the original scope of authorization, why can representatives of the workers directly participate in the negation of the lay-off plan with representatives of the employer? (ii) How could their agreement on the massive lay-off plan oblige the workers? These again are not without questions.
- (e) The agreement reached by the Negotiation Committee shall bind individual employees (See Article 7, Paragraph 1). Accordingly, the workers’ dissenting rights towards the lay-off plan are deprived—whether or not it is appropriate is worth reconsidering<sup>27</sup>.

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<sup>27</sup> Ling Hwei Kuo, “The Measures Taken by Administrative Power and Its Actual Practice towards Massive Lay-Offs of Workers in Our Country” in *Compilations of Academic Papers on the Protective Act for Mass Redundancy of Employees* (2005), p. 347.

#### 4. The Employees' Welfare Committee(s)

*The Employee's Welfare Funds Act* was promulgated in 1943. According to this Act, all factories, mines in the public and private sectors, or other enterprise organizations shall set-aside and allocate employees' welfare funds to process and handle employees' welfare businesses (See Article 1).

The main tasks of the employees' welfare committees include: (a) matters concerning the examination and supervision of employee welfare businesses; (b) matters concerning the planning, safekeeping and usage of the employees' welfare funds; (c) matters concerning the distribution, auditing and reporting of incomes and outlays of the expenses of the employees' welfare businesses; (d) other matters concerning employees' welfare (See Article 11 of the *Organizational Rules of the Employees' Welfare Committees*).

The employees' welfare funds come mainly from: (a) 5% of the total amount of capitals at the time of the employer's establishment of the business; in addition, 0.05% to 0.15% of the total monthly business income shall also be set-aside and allocated towards the employees' welfare funds; (b) 0.5% percent of the monthly salaries or wages of each staff member or workers (See Article 2 of *Employees' Welfare Funds Act*). The custody and usage of the employees' welfare funds shall be processed and handled by the labor unions established pursuant to related laws, and the employees' welfare committees jointly established by factories, mines, or other enterprise organizations themselves. Representatives from labor unions shall not be less than two-thirds of the total number of members of the employees' welfare committee. The Employees' Welfare Committee shall have seven to twenty-one members. However, if the number of staff members and workers is over one thousand people, the number of these members can be increased to thirty-one. As to the constituency of the employees' welfare committee, business entities shall designate one person as ex officio member of these committees and the remainder shall be elected from representatives of staff members who are not allowed to join labor unions in accordance with related laws and members of the labor unions, pursuant to the measures of election prescribed by business entities and labor unions. However, committee members elected from members of labor unions shall not be less than two-thirds of total membership of the committees. When business entities do not have labor unions, their employees' welfare committees shall have one business executive as an ex officio member, and the remainder shall be elected jointly by staff members and workers themselves (See Articles 3 & 4 of the *Organizational Rules of the Employees' Welfare Committees*).

Employees' welfare committees shall have one presiding member to handle generally committee affairs. They may also have one deputy presiding member. Both of them shall be elected among members of the committee themselves. Members of the committees do not get paid. Their terms range from one to three years (See Article 6 of the *Organizational Rules of the Employees' Welfare Committees*).

As the task of the labor union necessarily includes the negotiation with the employer of matters concerning employee welfare, consequently, it is indeed a redundancy by setting additionally an employees' welfare committee. Based on the *Employee's Welfare Funds Act*, in case where there already exists a labor union in the business entity, representatives from the workers can be elected by the labor union and their number shall not be less than one-third of total number of members. In the light of this, in case where there is already a labor union, the establishment of the employees' welfare committee is seemingly redundant. On the other hand, even in the case where no labor union exists within the business entity, the workers can still elect for their representatives to participate in the employees' welfare committee. Accordingly, this would only reduce the necessity as well as the motivation for the workers to organize a labor union.

### **III. Conclusion**

Taiwanese society has achieved high level of democracy, nonetheless, amendments of collective labor laws have been delayed and failed to come to place. The current collective labor laws inherit the system under the authoritarian regime, which basically upholding a suppressive policy towards the labor union. The enterprise unions organized under the small-to-medium sized business structure tend to be small in scale, hence without much power entering into the collective negotiation with the employer. Accordingly, collective agreements are rarely consolidated and in turn fail to implement the due function attached to the collective agreement in prescribing the conditions of labor. By now, most business entities still rely on the employer to determine the conditions of labor by unilaterally prescribing working rules. On the other hand, the process of democracy in Taiwan indirectly contributes to the break-up of the general federations of labor unions, at both the national and hsien-(municipal) levels, which does not help either to raise the strength of the collective negotiation power of the labor union. Overall speaking, in recent years, the number of collective agreements has been in decline.

Interestingly, with government promotion, lately, the labor-management conference has material break-through. In addition to its original role in negotiating labor relations with the employer, it is now also empowered to consent, on behalf of the workers, on the implementation of the flexible working time system, as well as on the massive lay-off plans. As the power of the labor-management conference has increased, the demarcation between the enterprise union and the labor-management conference also becomes blurry.