Report on the evaluation of the achievement of the enforcement of the Labour Relations Act B.E. 2518 by the Migrant Working Group

(1) Goals of the evaluation of the achievement of the law

According to the principle of the Constitution of the Kingdom of Thailand B.E. 2560's Section 77, key issues include the following;

(1) A country should only adopt the necessary number of laws. Therefore, laws that are no longer necessary and incompatible with the social status and context should be repealed and be subject to revision to ensure their compatibility.

(2) It aims to ensure the law's compliance with international principles.

(3) A law should be revised to minimize redundancy and incompatibility with other laws.

(4) It aims to minimize legal inequality which may give rise to social inequality and injustice.

(5) It aims to enhance the country's competitiveness, and due to legal protectionism from abroad, it is necessary to ensure our law's compliance with international standards.

Given the goals, the Act on Criteria for the Drafting of Law and the Evaluation of the Achievement of Law B.E. 2562 has thus been promulgated. It requires a public agency whose duties are to enforce the law to have to evaluate to which extent if the law under its charge has been enforced to serve the objectives of the promulgation of the law, if it is worth the burden shouldered by the state and the public or not, or if there is any other impacts that may give rise to the unfairness of an employee or a worker or not, and to what extent.

(2) The evaluation of the achievement of the Labour Relations Act B.E. 2518

2.1 The state of the law

The Labour Relations Act B.E. 2518 (the 1975 Act) is a labour law concerning the system of labour relations. It intends to encourage the employer and the employee to have their associations and to form their own organizations for the benefit of making the demand, negotiation and proposing or revising the employment conditions to ensure their propriety and fairness. It also aims to explore, protect and defend one's own interests concerning employment conditions. The labour relations law thus sets out various rules to ensure both the employer and the employee can proceed to act in accordance with the objectives of the law and to protect the party that institutes a proceeding or exercise their legal rights. However, since the labour

relations regime is concerned with and render overall economic and social impacts, the law thus sets out various measures and mechanisms to ensure the management and settlement of labour disputes. It also bestows on competent officials power to execute their duties as prescribed by law as well as prescribes for criminal punishment. Nonetheless, labour organizations, civil society organizations and some lawyers and labour academics have found certain provisions of the 1975 Act in various Sections tend to assert control, interference and restriction of rights and freedoms in the process to make a demand and to negotiate. Certain provisions are also found to not be in compliance with the International Labour Organization (ILO) Conventions No. 87 and 98 on Freedom of Association and the Right to Organize and Collective Bargaining. In addition, it has been recommended several years ago for the revision of the law, although the process has yet been completed due to political factors including the House dissolution, military coups, etc.

The 1975 Act is classified as a public law and a law concerning public order. In other word, it is concerned with public interest, and the overall economy and society. In principle, by the rule or standard of law, it requires that an employer or an employee or other party is prohibited from making an agreement or committing an act incompatible with the law. Even though an agreement or an act has been made, it shall be void or has no legal effect. In addition, the interpretation of the law must be made stringently.

Nonetheless, given the international relationship and connection of employment and business operation, the labour relations regime and the labour relations law have to be related to international labour standards and international rules including the International Labour Organization (ILO) Conventions concerning core labour standards regarding the right to freedom of association and collective bargaining. Therefore, if there any act that infringes upon or is incompatible with international standards, it shall have the impact on Thailand and it cannot be neglected or disregarded in light of the above principles.

The 1975 Act is therefore a key legislation under the charge and duties of the Ministry of Labour. It is one of the laws that the Ministry of Labour plans to prepare a report of the evaluation of its achievement. To ensure the evaluation of the achievement of the law achieves its purposes, the Alliance of Migrant Workers Networks, which is involved with and is affected by the enforcement of the 1975 Act, has reached a conclusion that the civil society should be involved to offer recommendations on the evaluation of the achievement of the law to the Ministry of Labour and the government serving the intent of the Constitution of the Kingdom of Thailand and directive principles of state policies based on the participation of the employees or workers who are relevant stakeholders to the enforcement of the 1975 Act. It can serve the interest of the development of labour relations regime for the promotion, creation and protection Thailand, and hence the preparation of the report.

2.2 Report on the evaluation of the achievement of the Labour Relations Act B.E. 2518

The report on the evaluation of the achievement of this law has been prepared based on each Chapter of the law within the framework of the evaluation of the achievement to gauge to what extent the promulgation of the law serves its objectives, how it is worth the burden borne on the state and the public, or to what extent it has given rise to unfairness to the public. The civil society and the alliance of labour networks and migrant workers have the following opinions on the enforcement of the law;

Part 1: Scope of its application and concepts

Principles and purposes

1.1 The promulgation of the 1975 Act serves various reasons and its revisions have been made in response to the demand of the government including;

First time The promulgation of this Act has been made pertaining to the Announcement of the Revolutionary Council no. 103 dated 16 March 1972 on the section regarding labour relations. Given its methods which are incompatible with the current economic and social contexts, it is deemed fit to have a labour relations law to determine the criteria concerning the presenting of demand and the settlement of labour disputes more appropriately and comprehensively. The employers may set up an employers' association and the employees a labour union to explore and protect the interest about the employment, the provision of benefits, and the promotion of good relations between the employer and the employee. In addition, the employees may establish the Employees' Committee as an organization to engage in a negotiation with the employers on various affairs to ensure mutual understanding and to seek reconciliation between the employer and the employee for a better outcome, hence the need to promulgate this Act.

Second time The Announcement of the National Peace Keeping Council (NPKC) no. 54 on the amendment of the Labour Relations Act B.E. 2518 dated 28 February 1991. It was cited that since the National Peace Keeping Council (NPKC) considers that the 1975 Act feature methods which are incompatible with the current economic and social context, it should therefore be revised to ensure its propriety and integrity. It is therefore necessary to revise the labour relations law. ***The NPKC Announcement no. 54 requires that an advisor to the presenting of demand and negotiation must meet the qualifications specified by the state and register with the state. The casing of votes of labour union on a strike must be made in secret and the simple majority must be acquired.***

Third time The revision of the Labour Relations Act (no. 2) B.E. 2534 was made based on the reasons that the law on state enterprise labour relations sets out the specific relationships between the employees and the executives of state enterprise different from the provisions in the 1975 Act. Therefore, it is

appropriate to separate state enterprise employees from the 1975 Act and have them subject to the law on state enterprise labour relations, and hen the promulgation of this Act.

Fourth time The revision of the Labour Relations Act (no. 3) B.E. 2544 was made based on the reasons that since the Labour Relations Act B.E. 2518 had been amended by the Labour Relations Act (no. 2) B.E. 2534's Section 4 (4) which prescribes for this Act to not apply to state enterprise activities based on the law on state enterprise labour relations. The State Enterprise Labour Relations Act B.E. 2543's Section 72, however, prescribes that the labour federation according to the law may become a member of the employees' organization council according to the labour relations law. Therefore, an amendment should be made to the Labour Relations Act B.E. 2518 to ensure the compatibility. Hence the promulgation of this Act.

It is deemed that since after the initial promulgation of the law, subsequent revisions have been made possible by policies of the coup makers and the governments exclusively to address any incompatibility of the law leaving out the revision of the core principles of the law. Also, the amendments have not been made in response to the demand or intentions of the labour alliance. The following issues shall be further elaborated.

1.2 This law shall not apply to central, provincial and local administrations as well as state enterprises and other businesses provided for in the Royal Decree ***(Section 4)***.

1.3 It applies exclusively to employment relations based on the employment contract, or between the employer and the employee ***(Section 5)***. Therefore, the employment relations in the hire of work contract (between the employer and the contractor), or a contract in other manners such as a contract whereby a person is to manufacture some goods and the employer shall buy it from the contractor, or a contract whereby a person is hired to transport goods or items in a platform system generally called an informal economy worker, the employment or work relations in such manner shall not be subject to the application of the labour relations law.

Problems and the evaluation of the achievement

(1) This law applies to the employer and the employee according to the employment contract and the person defined by law as the employer and the employee according to the labour law only ***(Section 5)***. It appears that the landscape of employment and business has drastically changed giving rise to a variety of employment relations more than just the traditional relations between the employer and the employee. This has resulted in individuals who engage in new forms of work which is ever evolving fall outside the confine of the application of the law. They stand to enjoy no benefits from the law. A question can be raised if the existing law is comprehensive enough and can respond effectively to the drastically changed social context

or not including the emergence of freelancers and informal economy workers, and if the law is compatible with the international labour standards or not.

(2) The labour relations law tends to segregate between relations and businesses causing the ramification on labour relations standards to vary from sector to sector: This has given rise to different labour relations standards among employment in the state sector, in the state enterprise and private sectors. Meanwhile, the private sector's employment is subject to the application of the Labour Relations Act B.E. 2518 whereas the employment in state enterprises is subject to the State Enterprise Labour Relations Act B.E. 2543, and civil servants and employees of government agency are subject to the government's regulations leading to various labour relations standards.

Due to such legal segregation, the interpretation of the 1975 Act regarding the working condition agreement resulting from the presenting of demand to apply to an employee who is recruited to work after the working condition agreement has come into force as well ***(Supreme Court's verdict no. 1707/2527).*** However, in the case of the labour union of the Aeronautical Radio of Thailand which is a state enterprise, since the law provides that a working condition agreement from the presenting of demand shall apply only to members of the state enterprise's labour union, The Supreme Court, therefore, interpreted that it is possible for the employer to enter into an employment contract with an employee who is not a member of the labour union, which could be a breach of the working condition agreement even though the two versions of the labour relations law uphold the key principle in Section 20 of the 1975 Act ***(Supreme Court's verdicts no. 2165-2209/2565)***

(3) The contract and subcontract employments in workplaces reflect the outdated concept of the law In other word, such forms of employment become a legal obstacle or impediment that stifle the association and the presenting the demand of an employee in various ways including;

--Some employees of a subcontractor responsible for personnel, legal and accounting work in a workplace are not treated in terms of employment conditions equally to other regular employees. Given a lack of the status of employee make it ineligible for them to exercise their right to submit their demands.

--For contract employees, even though according to the Labour Protection Act, their workplaces count as their employer, but such employees shall have no right to join other employees of the workplaces to establish the same labour union due to the interpretation and the public administration that contract employees are part of the labour recruitment and have no right o join with other employees or labour union of the workplaces in presenting the demand to the workplaces.

--In the beginning, the labour unions submitted the demand on the benefits of contract employees who are not members of the labour unions (they cannot become a member since the public agencies interpret that the business of the employer of contract employee is service work, and not part of the business of the workplaces which are the contractors). In such cases, even though the working condition agreement has been made, it cannot be enforced according to the decisions made by the Supreme Court *(Supreme Court's verdicts no. 1634/2534, 4208/2530, 4648/2531, and Supreme Court's verdict no. 5506/2538).*

Around 2009, the Matsushita labour union (electrical appliance business as part of the Panasonic Group) has litigated on the demand of the labour union regarding contract employees asserting that they counted as employment conditions under the Labour Relations Act B.E. 2518. The Supreme Court ruled that the plaintiff, as the labour union, and the defendant, as employer, have mutually reached a working condition agreement. And according to the working condition agreement's Clause 5, regarding the employment of contract workers of the company (the defendant), it provides that the recruitment of subcontractors shall not exceed 25% of all the workers of the company (the defendant). If necessary, the company (the defendant) may increase the recruitment of such workers, but overall, it shall not exceed 30% of all the workforce of the company (the defendant). And an increase of subcontract workers in the company (the defendant) shall be reported to the labour union (the plaintiff) in advance and in writing and the employment shall not last longer than six months.

Later the defendant has entered into an employment contract with a subcontractor company to employ subcontract workers to work in the defendant's workplace, not exceeding 30% of all the defendant's workforce. *The Labour Court Region 2 (Chonburi) ruled that the working condition agreement's Clause 5 was tantamount to other agreement, but a working condition agreement according to the Labour Relations Act B.E. 2518's Section 5.*

The Supreme Court ruled to interpret the legal employment conditions to mean the employment or work-related conditions that determine the working date and time, wages, benefits, termination of employment, or other benefits between the employer or the employee related to the employment or the work. Therefore, the working condition agreement's Clause 5 between the plaintiff and the defendant, even though it concerns the employment of contract workers, it is a part of the employment conditions or other benefits of the defendant or the employee according to the definition. Otherwise, if the defendant's employment of contract workers is not subject to the working condition agreement's Clause 5, that would allow the defendant to increase the recruitment of contract workers causing a decrease of the employment of workers directly employed by the defendant based on employment contract. Without such restriction, it would

impact the employment of workers directly employed by the defendant in terms of their wages and benefits which will become stagnant. Such agreement is therefore considered lawful and has binding force on the employer *(Supreme Court's verdicts no. 1306/2557).*

(4) The underpinning concept of labour relations law tends to focus on control and restriction of rights and freedoms in the labour relations regime, which gives rise to the incompatibility with international standards including;

--The formation of an organization of the employee and the employer is required to get registered with the state and an employee must be a Thai national. The registrar also has power to dissolve an employers' organization and a labour organization as well *(Sections 55 ,87 and 88).*

--It restricts the right to settlement of labour dispute, lock-out, and strike and determines businesses which are prohibited from conducting a lock-out and a strike *(Sections 23, 24 and 25).*

Recommendations

(1) The law should be revised to ensure comprehensive protection of workers in all professions, regardless if the workers have legal relations as the employer and the employee, or not and to set out a universal labour relations regime. This principle has been advocated for by civil society organizations and political parties including the Move Forward Party which has prepared a draft law that recognizes such principle.

(2) Codify one single labour relations law, otherwise, if it needs to be drafted into several versions, an effort must be made to ensure workers in private sector and state enterprises, and workers in public sector and informal economy must attain the same labour relations standards to ensure workers in both state and private sectors are able to become a member of the same labour union. This can help to empower and reinvigorate labour movements and prevent any deviation from the labour relations principles and standards in which case it may give rise to inequality. It can also ensure compliance with international principles and standards including;

-- The 1975 Act should allow one workplace to have several labour unions. But according to the 2000 Act, one state enterprise can only have on labour union.

--According to the applicable law, for private businesses, those eligible to present the demand including the employees who sign their names up and the labour unions with members of at least one fifth of the entire workforce. *If the number of employees related to the demand, or if members of the labour union account for two thirds of the entire workforce, the working condition agreement shall have binding force of all employees (Section 19). But for state enterprise sector, the law only allows the labour unions to have the*

right to submit \the demand and the working condition agreement shall have binding force exclusively on the labour union's members, even though their members account for less than two fifth of the workforce.

(3) The key principles that should be incorporated into the law including;

(3.1) The labour relations in good faith and with creativity

This principle was embraced by the Office of Council of State in some draft laws using the term *"good labour relations principle"* with clear provisions to *rely on good faith and nurturing understanding or promoting mutual good relations.*

Nonetheless, regarding the good labour relations or mutual good relations, they have often been interpreted and defined to support or give favor to one particular party. It is important to clearly understand that good labour relations mean both the employer and the employee, or the labour union, respect each other's rights, rely on reasons and adopt mechanisms or channels to present their demand, to discuss and negotiate in order to explore the solutions based on reasons and mutual listening. It does not mean a lack of mutual understanding or the existence of conflict or the presenting of demand or the exercise of rights democratically can be interpreted to refer to poor labour relations.

(3.2) Involvement of various sectors to promote and enhance labour relations

Various sectors should be involved in the labour relations regime including local community organizations, civil society organizations which work to serve public interest and do not work for profit, academic organizations, etc. This is because certain sections of the law adopt provisions that excessively restrict rights and freedoms and this shall not enhance and develop the labour relations regime including;

Section 32 Any person other than the employer, employee, director of the employers' association, director of the labor union, director of employers' federation, director of labor federation, representative or advisor related to the demand shall proceed or participate in any act related to the demand, negotiation, conciliation, award the labor dispute, lock-out or association with the strike.

(3.3) Interpretation in demand presenting and collective bargaining process

Interpreters provided should be aware of labour rights, international labour relations standards, be ethnical and professional and be able to speak the languages understood by the employer and the employee, or the worker, to perform their duties in the demand presenting and negotiation process, or to address conflict or labour dispute as interpreters play a key role in such processes.

Note

Concerning the principle of the labour relations law, the labour movements including the Thai Labour Solidarity Committee and civil society organizations working on labour issues including the Arom

Pngpangan Foundation, the Human Rights and Development Foundation (HRDF) and labour historians, including Mr. Sakdina Chatrakul Na Ayudhya, used to propose key principles including;

(1) Codify a single labour relations law

To maintain the principles and standards of labour relations which are connected and should comply with international labour standards, ***particularly the International Labour Organization (ILO) Conventions No. 87 on Freedom of Association and the Right to Organize and no. 98 on the Right to Organise and Collective Bargaining.***

By separating the law, it has resulted in the enforcement of the law regarding the principles on the working condition agreement from the presenting of demand shall apply to the employees who get recruited to work following the coming into force of the working condition agreement ***according to the Supreme Court's verdicts no. 1707/2527.*** However, in the case of the labour union of the Aeronautical Radio of Thailand which is a state enterprise, since the law provides that a working condition agreement from the presenting of demand shall apply only to members of the state enterprise's labour union, The Supreme Court, therefore, interpreted that it is possible for the employer to enter into an employment contract with an employee who is not a member of the labour union, which could be a breach of the working condition agreement even though the two versions of the labour relations law uphold the key principle in Section 20 of the 1975 Act ***(Supreme Court's verdicts no. 2165-2209/2565)***

(2) Allow workers in all professions to have the right to form all forms of labour union

This includes a labour union of artisans or workers in the same professions, an ordinary labour union, or a multidisciplinary labour union, etc. complying with the principle of freedom, voluntariness, and non-discrimination or free of state intervention based on rights and freedoms principles and human equality. This is because the 2000 Act requires that in one state enterprise, there shall only be one labour union established while the 1975 Act requires that there shall be one labour union for the same employer in the same undertaking and only for employees who are superior officers and ordinary workers only.

(3) The establishment, the objectives and the operation of a labour union shall promote rights, freedom and liberty without control or the requirement for approval.

(4) The expansion of employment conditions to cover benefits concerning labour union,

For example, the use of the employer's resources for the operation of a labour union, the requirement of an employer to deduct from wages to pay for membership fee or dues of a labour union since those who own a labour union are employees or workers. ***The Supreme Court, however, interpreted that the***

interest of the labour union is not the interest of the employee, and therefore, this cannot be enforced as an employment condition.

Part 2: Chapter 1 Working condition agreement

Principles and purposes

2.1 Scope of working condition agreement

A workplace having twenty or more employees shall have the working condition agreement under the provisions of this Chapter. The working condition agreement shall be made in writing. If it is suspected whether there is the working condition agreement in such workplace, it shall be deemed that the regulation related to work which shall be provided by the employer under the Labour Protection Act B.E. 2541 is the working condition agreement under this Act. ***(Section 10)***

The working condition agreement shall have at least the following statements: (1) employment or working conditions; (2) working days and hours; (3) wages; (4) welfare; (5) termination of employment; (6) petition procedure for the employee; (7) an amendment or renewal procedure of the working condition agreement. ***(Section 11)***

2.2 The adoption or revision of the working condition agreement, key principles and term of the working condition agreement

(1) Those eligible to present the demand for the adoption or revision of the employment conditions only include employees as at least 15% of all the employee related to the demand can sign up the petition and a labour union with members of at least 20% of the entire workforce, and the employer or the employers' association. The labour federation, the employers' federation, or the employees' or the employees' organization council and the formation of the employees and the employers in other manners other than those prescribed in law including the club of electrical appliance businesses, the club of jewelry businesses, etc., the neighborhood or the network of migrant workers, have no right to present the demand. And according to this law, the demand has to be submitted in writing.

(2) The working condition agreement resulting from presenting the demand shall apply to those related to the demand., if the agreement has been proposed by the employees or the labour union. But if more than two thirds of all the employees have signed up to propose the demand, the agreement shall apply to all the employers and the employees.

When a working condition agreement resulting from presenting the demand becomes applicable, it is prohibited for the employer to enter into an employment contract with an employee in breach or in violation of the working condition agreement, except when such contract do more favor to the employees.

The term of a working condition agreement shall be as agreed, but not longer than three years. If it is agreed for the term to exceed three years, it can only last three years. If no term has been agreed, it can only last for one year.

Problems and the evaluation of the achievement

(1) Problems concerning the employment conditions within the legal framework

(1.1) The employment conditions ***does not apply to the benefits of a subcontract employee*** employed in the workplace, and ***applies to certain benefits of a contract employee.***

(1.2) The working condition agreement according to this law has to be made in writing. ***Still, there exists a verbal working condition agreement practically or literally*** by the employer or the employee. Instead, the working condition agreement should be made in writing.

(1.3) The operation of a labour union concerning the rights and benefits of an employee according to the labour law including the use of building or property of the employer as an office of the labour union, the deduction of wages of an employee who is a member of the labour union, has been interpreted as not part of the legal employment conditions, since it only benefit the labour union.

(1.4) The state policies that affect livelihood of an employee including the policies that affect pricing of goods and services shall have the bearing on the work as an employee. ***However, according to the existing law, such problems do not count as an employment condition according to the law which may allow*** the employees or the labour union to present the demand to the employer

(2) Problems concerning the presenting of the demand and the adoption of the working condition agreement

(2.1) What is the lawful timing for each party to have the right to present the demand? Since there is no legal prescription, the Ministry of Labour has issued an administrative measure to seek cooperation to have the demand submitted within 60 days before the term of the working condition agreement.

(2.2) The law provides in detail for criteria or conditions in each stage of the demand and negotiation as well as the settlement of dispute and such process is lawful since the beginning and throughout the process

For example, the number of employees who sign up to present the demand, or the number of members of labour union while a decision is made to present the demand reached the legal requirement. Later, however, such number no longer reaches the requirement according to the law, and such labour dispute becomes void since the day the number of the signers does not meet the requirement. As a result, the process collapses and massive damage is done to those who seek to have the employment conditions revised.

There is a legal precedent in this case as the Supreme Court ruled in its verdict no. 3415/2525 that if the number did not reach the legal requirement, even though more people sign up to reach the requirement later, it would not make the demand become lawful pursuant to the Supreme Court's verdicts no. 3241/2527 and 3998/2528.

(2.3) The law provides as principle that when the working condition agreement resulting from presenting the demand becomes applicable, it is prohibited for any party to present the demand since the incumbent working condition agreement remains effective. Therefore, in a force majeure case or the occurrence of natural disasters or communicable diseases that gravely affect society, both the employer and the employee have no right to present the demand. This deprives the law of its flexibility and in the past, it has deprived the solutions and has led to the layoff or termination of employment, or shutdown of businesses, or a conflict or a labour dispute that affects both the employer and the employee and society.

(2.4) Upon the expiry of the working condition agreement, and no party presents the demand to revise the employment condition, the law provides that the agreement shall be applicable further for one year. Such agreement is, however, not accepted as an agreement resulting from presenting the demand whereby the employees or the labour union shall not receive the protection concerning the demand and negotiation.

Therefore, legal measures concerning the timing for the presenting of the demand, and the protection in the working condition agreement resulting from presenting the demand whose enforcement has been extended by law to ensure the clarity and the protection.

(2.5) Problems concerning employers' representatives to negotiate the demand who often claim to have no power to make a decision and are required to consult with the persons legally authorized to act on behalf of the employer and this may protract the negotiation process, otherwise, it could be put off by some tactics which are considered an uncreative labour relations process.

(2.6) Restriction since the employer or their business network who get hold of key information and evidence concerning the demand and the negotiation refuse to disclose or present such key information during the negotiation process This may protract the negotiation and makes it fail to reach a solution even though by presenting such information in the process may increase the possibility to reach a settlement or an agreement.

(2.7) The legal frameworks concerning the demand, the adoption, or the implementation of the working condition agreement resulting from presenting the demand do not take into consideration the situations or the factors that may affect the implementation of the working condition agreement including when the country is confronting a disastrous event or flood, or is in the midst of epidemic, i.e., the Covid-19 making it impossible for the employer to act in compliance with various requirements in the working condition agreement. In addition, according to the law and the working condition agreement, it provides no alternatives or contingency measures in response to such situation. As a result, this may deprive the employee and the labour union of various benefits which may amount to several million baht for a workplace.

Recommendations

(1) Add in the principle to require the employer and the employee ***to present the demand within 60 days*** before the expiry of the existing working condition agreement expires, except if the existing working condition agreement provides otherwise.

(2) Add in the principle that ***the demand submitted by the employees shall continue to be lawful and not void,*** even though later the names and signatures of the employees do not reach 15% of the entire workforce related to the demand.

(3) Upon the expiry of the existing working condition agreement, if no demand has been submitted before the expiry of the existing working condition agreement, ***such working condition agreement shall be applicable further for one year*** since the day of expiry of the existing working condition agreement, ***although such working condition agreement shall be accepted as the working condition agreement resulting from presenting the demand according to the law.***

(4) When there is an incidence that bear a critical or serious impact on the employment condition, the employer or the employers' association has the right to request the other party to negotiate to minimize the impact or to solve the problems. And when an effort is made to settle a labour dispute, both parties shall take action in good faith.

(5) If no new working condition agreement can be adopted prior to the expiry of the existing working condition agreement, and if the negotiation between the parties is still ongoing to adopt a new

agreement, the existing working condition agreement shall be applicable until the new working condition agreement can be adopted.

(6) The employer shall provide the information that they have or are supposed to have and upkeep to ensure the normal operation of their business and such information can rationally be used for the benefit of the negotiation. In such case, the employer *is obliged to provide in full to the labour union such information* to enhance the understanding and negotiation on the matters concerning employment conditions and the demand.

This can ensure the negotiation reaches a fair result for both the employer and the employee, whereas representatives of the employee shall not disclose such information in a manner that is in breach of the objectives.

(7) The working condition agreement shall be applicable to all the concerned workers, or shall be applicable without discrimination on any ground.

(8) When the working condition agreement becomes applicable, it is prohibited for the employer to enter into an employment contract with an employee in breach or in violation of the working condition agreement, except when such contract do more favor to all the employees. This has to be done without discrimination to ensure the employer shall not offer greater benefits to an employee or a worker who is not a member of the labour union as a retaliation to the labour union.

(9) If the employer transfer the business in part or in whole to other person through a merger, reorganization of the business, or through the change of legal status of the employer, the person who becomes the employer as a result of the process shall have to bear both rights and duties with regard to the employees or the worker, the labour union as well as the demand, the negotiation, and the existing working condition agreement. This can ensure the employer cannot prevent the exercise of rights of the other party to make the demand, to carry out the negotiation process and to avoid their obligations through such tactic.

(10) When the employer initiates the restructuring of the organization, the overhaul of the organization, the manufacturing process, the distribution or the services through the adoption of new machines or technologies or through the transformation of such machines or technologies, which as a result may give rise to the need to downsize the number of employees or workers, the privatization of state enterprise, the merger, the relocation of workplace, the business rehabilitation or bankruptcy, or other operations in the same manner by the employer which may affect the employment condition, *the employer is required to first seek a negotiation with the concerned labour union before making such decision.* This may help to minimize the impact or the harm that may result from such change. The employer is required to present to the labour union

and the employees or the workers all concerned information and the potential impacts to ensure all efforts shall be made by all parties to reach an agreement with the minimal impacts.

This can help to uphold the principle of inclusivity and access to information which may affect the employees or the workers to prevent, address, and remedy impacts felt by the workers including the layoff.

(11) There should be a Section to provide clarity on the validity of the working condition agreement including after both parties have signed the working condition agreement without having to wait until the registration of the working condition agreement.

When an agreement has been reached and the negotiation has since adjourned, if it happens that one of the parties refuses to sign their name in the agreement, the representative of the other party who participated in the negotiation on the demand shall have the right to apply to the Court to order that the results reached by both parties pursuant to the minutes taken from the negotiation shall become an agreement and the Court's ruling shall reflect the intent to commit to the agreement. (Such problem often occurs in workplaces without labour union, or when the employees lack legal knowledge including migrant workers in all sectors.

Part 3: Chapter 2 Methods to settle labour dispute

Principles and purposes

3.1 The law strictly provides for a procedure for the presenting of demand, negotiation and mediation to settle a dispute.

Following the presenting of demand by the employee, or the employer, or the labour union, or the employers' association, and there is no negotiation, or there is a negotiation but it fails to lead to an agreement, such labour dispute has to proceed to a mediation by the conciliation officer according to the criteria and conditions and within the period of time prescribed by law. Following the mediation, if no agreement can still be reached, this would become an unconcluded labour dispute which would give rise to the right to hold a lock-out or a strike, or both parties may decide to appoint an arbitrator to award the unconcluded dispute.

3.2 Settlement of labour dispute for certain undertakings and certain situations

3.2.1 Following an unconcluded labour dispute in certain undertakings prescribed by law, the law restricts the right to hold a strike and a lock-out by requiring that the dispute must be brought into the

awarding process of the Committee or the persons prescribed by law including the Labor Relations Committee.

Section 23 If there is unconcluded labor dispute in the undertakings as follows:

(1) railway; (2) port; (3) telephone or telecommunications; (4) production or distribution of energy or electricity to public; (5) water supply; (6) fuel oil production or refinery; (7) hospital or infirmity; (8) other undertakings as prescribed by the Ministerial Regulations;

The conciliation officer shall refer such labor dispute to the Labor Relations Committee for award and shall notify the two parties for acknowledgement within thirty days as from the date of receiving such labor dispute.

The employer, employers' association, employers' federation, employees, labor union or labor federation shall have the right to appeal to the Minister within seven days after receiving the award. The Minister shall consider the appeal and notify the appeal decision to the two parties within ten days after receiving the appeal.

An award of the Labor Relations Committee which has not been appealed within the prescribed period and the appeal decision of the Minister shall be final and conclusive which the party presenting the demand and the party receiving the demand shall comply therewith.

3.2.2 Measures for settlement of labour dispute in certain situations

The law authorizes the Minister to have power to intervene to settle a labour dispute in an exceptional circumstance including during the state of emergency, or the declaration of Martial Law, or the labour dispute that may have adverse effect to the country's economy or public order, but whether or not such issues comply with the ILO Conventions no. 87 and 98.

(1) Apart from the businesses under Section 23, if deemed fit by the Minister that such unconcluded labour dispute may have adverse effect to the country's economy or public order, the Minister shall have power to instruct the LRC to award the labour dispute, and after thirty days of which, the award shall be final. ***(Section 24)***

(2) During ***the declaration of Martial Law according to the law on Martial Law , or the declaration of the state of emergency according to the law on public administration in emergency situations,*** or when ***the country is confronted with adverse economic problems;***

The Minister shall have power to have the unconcluded labour dispute under Section 22 paragraph three in any vicinity or in certain undertakings to be awarded by a group of individuals determined or appointed by the Minister. The award made by the group of individuals shall be final and conclusive in which the party presenting the demand and the party receiving the demand shall comply therewith ***(Section 25).***

3.3 Measures to award the unconcluded labour dispute of one's own volition

If there is an unconcluded labour dispute under Section 22 paragraph three, the employer and the employee ***may agree to appoint one or several labor dispute arbitrators*** to award the labour dispute.

By reviewing the labour dispute, the arbitrator must allow the party presenting the demand and the party receiving the demand to present their evidence and witnesses. The labor dispute arbitrator shall make the award in writing and the award order must contain at least the following statements;

(1) date in which the award has been made; (2) issue of the labor dispute; (3) facts as found in the arbitration; (4) reason of award; (5) award to be carried out, or refrained from, by either party or both parties. The award shall be made known within three days as from the date the award has been made to all parties concerned and a copy of the award shall be posted at the place where the employees related to the demand are working.

3.4 Protection of those related to the demand during the demand and the negotiation process

Upon the presenting of the demand under Section 13, ***if the demand is still pending the negotiation, or the mediation, or the labour dispute arbitration under Sections 13-29, the employer shall not dismiss or transfer from duty of any employee, representative of the employe e, director, member of the labor union or that of the labor federation related to the demand;*** *except if such person has committed a legal offence such as;*

(1) being dishonest in the discharge of duty or commits a criminal offence intentionally against the employer;

(2) intentionally causes damage to the employer;

(3) violates the rule, regulation or lawful order of the employer after a written warning or caution has been given by the employer, except where such violation is serious. In this case, such rule and regulation shall not be issued with a view to obstruct such person to carry out the demands;

(4) neglects his or her duty for three consecutive days without rea sonable ground.

No employee, representative of the employee, director, member of the labor union or that of the labor federation related to the demand shall support or cause a strike ***(Section 31).***

In such case, an employee, or an employee in such situation which has been subject to the law may invoke Section 31 to bring a case to the Labour Court. This law is not part of the unfair treatment law and it is not required to have to first complain with the LRC.

Problems and the evaluation of the achievement

(1) If the process does not comply with the conditions, criteria, and timing prescribed by law, the process to present the demand according to law has to immediately cease.

(2) The composition of individuals, group of individuals and the LRC which have powers and duties to award the labour dispute as prescribed by law or as determined by the Minister of Labour is still inappropriate, lacks diversity, and there should be the inclusion of experts as well.

(3) The various processes for legal labour dispute arbitration are still concerned with internal management and lack the clear format or processes whereas the employees or the workers are neither informed nor involved with such processes to ensure their accuracy, transparency and efficacy.

(4) The power is bestowed on the administration to determine the undertakings in which lock-out and strike are prohibited. ***This does not comply with the international labour standards.***

(5) The power is bestowed on the administration to restrict the right to hold a lock-out and a strike by invoking special laws including the Public Administration in Emergency Situations B.E. 2548 (2005), or the exercise of power by the Minister of Labour in an unconcluded labour dispute may have adverse effect to the country's economy or public order ***(Sections 24 and 25),*** in which case the state may impose a law to prohibit the exercise of the right to hold a strike and a lock-out and to order the Labor Relations Committee, or an individual, or a group of individuals to award such dispute as since the state tends to exercise its power summarily, it may restrict labour rights and ***does not comply with international labour standards.***

(6) In certain cases, part of the demand could be settled and lead to a working condition agreement, but the remainder of the demand has to be awarded. The period or the term of the demand can vary and the timeframe within which the demand has to be resubmitted may have to hinge on the working condition agreement, although there is no clarity in the law.

(7) the critical time of the presenting of demand and the negotiation in order to adopt or revise an employment condition lies during the process and it should cover the steps to hold a lock-out and a

strike as well. The existing law, however, confine it to only Sections 13-29 and this is not comprehensive enough.

(8) Issues concerning access to key information during the negotiation of the employees or the labour union, and the roles of the state to explore solutions to ensure the fair working condition agreement.

Recommendations

(1) Section 31 should be amended based on the following principles;

(1.1) It should apply to the stages of the exercise of the right to hold a lock-out or a strike.

(1.2) Any action under this Section warrants a hearing at the Labour Court and has to be first permitted by the Court. ***In such case, the dismissal of worker is allowed in the following events*** (1) being dishonest in the discharge of duty or commits a criminal offence intentionally against the employer; (2) intentionally causes damage to the employer; (3) violates the rule, regulation or lawful order of the employer after a written warning or caution has been given by the employer, except where such violation is serious. In this case, such rule and regulation shall not be issued with a view to obstruct such person to carry out the demands; and (4) neglects his or her duty for three consecutive days without rea sonable ground.)

(2) When there is any legal contestation, or any issue concerning the lawfulness of the presenting of demand, the negotiation process, and the lock-out or the strike, the labour union or representatives in the negotiation of the demand ***should have the right to apply to the Court to make the arbitration with immediate effect, whether the parties invoke their right to appeal or not.*** An amendment could be applied to Section 31.

(3) The timeframe during which each party is required to act in compliance with the legal procedure should be reviewed. This can help to prevent the dismissal of the demand which may cause excessive damage to the party presenting the demand including when the employer refuses to negotiate within three days, or the requirement that the employees or the labour union having presented the demand have to notify the dispute within 24 hours, or even if it gets changed to 48 hours, it may still be considered too much haste, etc.

Note:

1) The issues during this procedure can be significantly minimized, if the law plays an active role to promote the empowerment of the workers' freedom of association and collective bargaining and to engender an understanding of the creative labour relations regime for both the employers and the workers. It

should provide legal and administrative measures to prevent or address the issues to ensure the employees who take the lead or play an important role can do their work effectively.

(2) An effort should be made to guarantee access to key information concerning the demand and the issues negotiated.

(3) An individual, or a group of individuals, or the LRC should be encouraged to play a role in the mediation of labour dispute, or to make an award of a labour dispute in order to explore the solutions and to reach a working condition agreement as desired by the party presenting the demand and commensurate to the circumstance.

Part 4: Chapter 3 Lock-out and strike

Principles and purposes

4.1 Key principles include the proposal to hold a lock-out or a strike, the demand, the appointment of representatives to participate in the negotiation and other processes concerning the demand and the lawful negotiation as well as the procedure concerning the unconcluded labour dispute which has to be subject to the mediation by the conciliation officer.

A labour union can propose a strike when there is an unconcluded labour dispute, although such decision has to be made at a general meeting and supported by more than one-half of the total number of members of the labor union, and the votes have to be cast in secrecy (Section 103 (8)).

4.2 A restriction is imposed on the lock-out or strike, and it is required to refer it to the award by the LRC.

4.3 If the Minister of Labour deems that the lock-out or strike may have adverse effect to the country's economy or public order, the Minister has power to order the cease to the exercise of such right.

Problems and the evaluation of the achievement

(1) Various undertakings ***are still subject to the law the restricts the right to lock-out or strike, which does not comply with the international labour standards.***

(2) There are still issues at the practical level and concerning various legal provisions including the lock-out or strike on particular sections and lock-out on particular persons, strike or lock-out at different phases, are they feasible? Should workers who did not sign up and are not a member participate in the strike?

(3) For workplaces which employ contract employees, during the presenting of the demand, and when the employer exercises their right to lock-out, it would inadvertently affect contract employees, who according to the law, cannot be classified as the employees related to the demand and the workplaces may cite the employment contract to shift the contract employees back to their employer. In most cases, these contract employees are often employed in a workplace located in another province or in a distant province.

(4) If the employers and the employees are having a conflict with each other, or when the labour relations are not positive, during the presenting of demand, it would affect the negotiation, or it could make such negotiation unsuccessful. Meanwhile, the employers tend to rush the process in order to quickly call the lock-out and are not willing to negotiate to seek a solution. *The law does not provide the timeframe or conditions as to how long the lock-out can take place. In most cases, it has been found the lock-out might continue endlessly until the employees can face a lot of trouble.*

In addition, *for employees or members of the labour union who get pregnant or get sick and is under medical treatment during the lock-out, it would exacerbate their situation since there are still no legal measures or policies to tend to these employees or workers.*

(5) During the lock-out or strike, the employers tend to adopt various methods concerning recruitment and management in order to maintain its manufacturing capacity. This should be taken as a violation of the spirit of the law and there have to be clear and necessary legal measures.

(6) The exercise of power by the Minister of Labour invoking Section 35 concerning lock-out or strike, may have adverse effect to the country's economy . Otherwise, would cause problems to the people or may become a threat to national security or wreak havoc public order. The Minister of Labour has power to call off the lock-out and the strike or to have personnel recruited to replace the employees on strike or subject to lock-out and to order the LRC to award the labour dispute. It is a legal issue that bestows immense power on the state. There are no legal frameworks to set legal criteria to control the use of discretional power. It could encourage the abuse of power or the use of excessive power which can easily give rise to discrimination and affect the material rights in in the labour relations regime.

Recommendations

(1) Even though the process of presenting the demand and the negotiation may proceed to the proposed stage of lock-out or strike, both parties can still agree to bring the matter to the mediation, or may decide to negotiate with each other, or to appoint an arbitrator. Any party which is not satisfied with the award can still bring the case to the Labour Court.

(2) It is deemed appropriate that measures for the lock-out and strike in a business which is not concerned with public services should be as follows;

(2.1) Critical public services including electricity, tap water, telecommunication, aviation services, transportation by land, water and air along with supporting services, businesses required by the LRC's Notification to have to prepare a minimum and necessary service management plan in advance in case of a lock-out or strike to ensure the sustainability of the services and safety in life and public health.

The employers and representatives the labour union, or representatives elected by the employees can collectively prepare a minimum and necessary service management plan which shall be incorporated into the law. The minimum service plan shall be applicable to the employers, the labour union, the employees and those who are required to act in compliance with the plan. And prior to proposing a strike in such business, the party that proposes the strike needs to notify the employers at least seven days in advance and inform the public in advance within the same period of time.

(2.2) During the lock-out or the strike, it is prohibited for the employers to enter into an employment contract or manage in any way to allow other individuals or juristic persons to work to replace the employees who are on strike or on the employers' lock-out.

(2.3) The requirement for the decision to call a strike to be supported by the votes of more than one-half of the total number of members of the labor union and the votes have to be cast in secret should be repealed.

Part 5: Chapter 4 Labor Relations Committee

Principles and purposes

5.1 Labor Relations Committee (the LRC) is composed of ***a Chairperson and not less than eight, but not more than fourteen members. The members shall consist of representatives of the employer and the employee at least three of each party.***

The Minister shall have power to appoint the Chairperson and members.

At a meeting of the LRC, the presence of not less than five members, of which at least shall be a representative of the employer and a representative of the employees, shall constitute a quorum.

If such meeting is organized to consider a labor dispute under Section 23, Section 24 or Section 35 (4), the presence of not less than one- half of the total number of members, of which at least shall

be a representative of the employer and a representative of the employees, shall constitute a quorum. (Section 40)

5.2 The LRC shall have power to award the labour dispute under Sections 23, 24 , or 35 (4), to give to the Minister recommendations related to the demand, negotiation, settlement of labor dispute, strike and lock-out, to call a strike and make the award on the unfair practices under Section 41 which prescribes that the Labor Relations Committee shall have powers and duties as follows;

(1) to award the labor dispute under Section 23; (2) to award the labor dispute under Section 24 or Section 35 (4); (3) to award labor dispute as authorized or entrusted; (4) to decide the complaint under Section 125. In the case where the Labor Relations Committee decides that there is unfair practices, it shall have power to order the employer to admit the employees back to work, pay compensation thereto or compel the violator to do or refrain from doing any act as appropriate; (5) to give recommendation related to the demand, negotiation, settlement of labor dispute, strike and lock-out as entrusted by the Minister; (6) to issue meeting regulations and lay down rules and procedure for considering and awarding the labor dispute and for considering and making award on unfair practices and on the ma king of order of the Labor Relations Committee, etc.

Problems and the evaluation of the achievement

(1) If the Labor Relations Committee decides that there is an unfair practice, it has power to order the employer to admit the employees back to work, pay compensation thereto or compel the violator to do or refrain from doing any act as appropriate. This is deemed as an effective protection of the employees who play a proactive role in the process of the demand and the negotiation. Therefore, the law must bestow on the LRC power to order the employer to admit the employees back to work since the employees have been subject to harassment due to their exercise of the legal rights. The LRC should not be allowed to use its discretion to choose between the order of reinstatement or the provision of compensation.

(2) There are always problems when the LRC orders the employer to admit the employees back to work, the employer would seek to file the case with the Labour Court to repeal the LRC's order and fails to act in its compliance. Both cases are different. In fact, there is no legal provision that provides that by filing the case with the Court to repeal the LRC's order, it would justify the suspension of the LRC's order. In addition, it has never appeared that the LRC has tried to hold the employer who fails to act in compliance with its order criminally responsible.

(3) A meeting to consider a labor dispute under Section 23, Section 24 or Section 35 (4) requires the presence of not less than one- half of the total number of members, of which at least shall be a

representative of the employer and a representative of the employees to constitute a quorum. However, in a meeting to consider an unfair practice under Section 121-123, there is no requirement about the quorum to meet even though the review of unfair practices should be equally important to the former case.

Recommendations

(1) The recruitment of the LRC members is subject to the regulation prescribed by the Minister of Labour. ***How can we ensure the LRC work professionally, be composed of experts who have genuine knowledge about labour relations*** and labour protection regarding the right to association and collective bargaining process?

(2) The LRC has power to review and make orders to protect workers who exercise their right to association and collective bargaining process, and according to the law, it can order the workers' reinstatement, or the payment of compensation, or any act as appropriate.

Section 41 (4) should be amended to have the LRC orders the workers' reinstatement together with the payment of compensation due to the unfair practices. If it is not feasible for the workers' reinstatement, then the payment of compensation can be an option. This can give clarity to the issues concerning the protection when there is an unfair practice.

An amendment must be applied to Sections 121 through to 123 to ensure the payment of compensation due to the unfair practices according to the law. This is because such matter impedes the right to association to present the demand and the negotiation to adopt a fair working condition agreement.

(3) The LRC should strictly ***take legal action to hold the violator of its order criminally liable.***

(4) ***The Committee to Promote Labour Relations*** should be established to have the following duties and powers;

-- To recommend policies and action plans to promote the right to freedom of association to prevent and address issues concerning the overall labour relations to the Minister and to determine measures and guidelines for to prevent and address issues concerning labour relations to empower the overall bilateral labour relations regime.

--To give recommendations and advice to the employers' organization and workers' organizations regarding the measures and guidelines to appropriate solve labour issues based on the principle of good faith and the promotion of labour relations regime among all parties.

--To support, assist, coordinate and take concerned actions to prevent and address issues concerning labour relations with all concerned parties and to propose a report of the outcome of the performance of the Committee to Promote Labour Relations to the Minister at least once a year.

-- To give recommendations on how to revise the law on labour relations to the Council of Ministers and to issue Ministerial Regulation, rule, and announcement to ensure the implementation of this Act to the Minister.

-- To give recommendations on the nomination of representatives of the employers and the workers to participate in meetings of the International Labour Organization and other activities pertaining to the implementation of the ILO's Conventions.

--To appoint a subcommittee or a working group to take any action as prescribed by the Committee to Promote Labour Relations.

--To execute other duties as prescribed by the Minister of Labour.

All of these are geared toward supporting the tripartite organization to take a proactive role to promote labour relations.

Part 6: Chapter 5 Employees' Committee

Principles and purposes

6.1 Roles and duties of the Employees' Committee

The Employees' Committee is the organization that represents all the employees and its number is proportionate to the number of the employees in a workplace as elected by the employees, or appointed by the labour union based in the number of its members in the workplace. The employees of a workplace having fifty or more employees may establish employee committee of such workplace.

-- Powers and duties ***(Section 50) The employer shall organize the meeting with the employee committee at least once every three months*** or upon request of more than one-half of the total number of the employee committee or the labor union for the following reasons: ***(1) to provide employees welfare; (2) to consult for the determination of working regulation which may be beneficial to the employer and employees; (3) to consider complaints of the employees; and (4) to compromise and settle disputes in the workplace.***

In the case where the employee committee is of opinion that an act of the employer is unfair or causing excessive grievance to the employees, the employee committee, employees or labor union may request the Labor Court for decision.

6.2 A member of the Employees' Committee has to vacate office as the employer may make such request to the Court when;

(1) fails to perform their duty in good faith; (2) conduct unsuitable act which may deteriorate public order; or (*3) unreasonably disclose business secrecy of the employer (Section 51)*

6.3 Legal protection

No employer shall dismiss, reduce wage, punish and withhold the performance of duty of members of the Employees' Committee which may cause members of the Employees' Committee to continue working, provided that the permission in so doing has been given by the Labor Court (Section 52)

6.4 The Employees' Committee shall serve as the Welfare Committee in a workplace

If the employees in a workplace is yet to set up the Welfare Committee according to the Labour Protection Act B.E. 2541, the Employees' Committee shall execute the duties of the Welfare Committee in the workplace.

Problems and the evaluation of the achievement

5.1 In certain undertakings, i.e., banks, department stores, or wholesale businesses with workplaces in various provinces or have several outlets in the same province, the law provides for 21 as the maximum number of members of the Employees' Committee, which is perhaps not commensurate to the reality of the businesses and the performance of duties of the Employees' Committee.

5.2 The execution of legal duties of the Employees' Committee could make the employer unhappy, or could give rise to a conflict with the employer. *This may have a bearing on the evaluation of their performance and the consideration of their merits. As a result, an employee who is a member of the Employees' Committee could unfairly receive lower scores in the evaluation and the merit ranking since the issues of attitude, working hours, or their presence to work in the organization are factored in as an indicator.*

5.3 If the employer request the Court to make an order on the performance of duties of members of the Employees' Committee and to prohibit members of the Employees' Committee from continuing their work pursuant to the employment contract, it could cause the Employees' Committee members to not receive various benefits and welfare, particularly the remuneration of their work which shall have a bearing on their livelihood and the families of the employees.

5.4 There are no legal provisions to uphold the rights of the Employees' Committee members while the employer exercises their right to file the case or to seek an order from the Labour Court to punish or to dismiss them since ***during the court proceeding, the employer tends to prevent the Employees' Committee members from coming back to work and as a result, they are unable to perform their duties as the Employees' Committee members*** as it should be. It may escalate to the level of the stifling or impeding the performance of duties of the Employees' Committee members. This will also prevent them from receiving benefits related to their employment and their work.

5.5 There are no legal criteria or conditions to support the Court's decision whether to terminate the employment of the Employees' Committee members or not. It is all subject to the Court's discretion which is found to be too excessive. As a result, the Employees' Committee members could be easily dismissed. The law should be amended to provide better clarity.

Recommendations

(1) The maximum number of the Employees' Committee members at 21 should be reviewed since certain undertakings i.e., banks, department stores, or wholesale businesses have workplaces in various provinces or have several outlets in the same province. This will ensure the number of Employees' Committee members that is commensurate to the workplaces.

(2) The performance of duties as Employees' Committee members should be part of the evaluation of overall performance and the consideration of merits since an Employees' Committee member is also an employee who is obliged to work pursuant to the employment contract and is duty-bound according to the law to work for public interest and for the benefits of the employers, the employees and the nation.

(3) If the acts of the employers cause the employees to be unfairly treated or to bear excessive suffering, the Employees' Committee, the employees, or the labour union have the right to ask the Labour Court to make a ruling. This is an important principle to uphold the necessary roles and to encourage the Labour Court to play a role to address unfair practices in a workplace. ***However, according to the draft law prepared by the Prayut Chan-ocha government, the Office of Council of State has left out all of such principle.***

(4) The law should be amended including Section 52 to provide for reasonable and clear legal criteria or conditions based on which the Court can make a ruling on the dismissal of the Employees' Committee members including

--Having committed a severe violation of the law

--Having disclosed the employer's business confidential information which has been acquired during their performance of duties as a Employees' Committee member

--Having seriously abused their office as a Employees' Committee member

--When the employer shuts down or dissolve business, etc.

Part 7: Chapter 6 Employers' Association

Principles and purposes

Section 54 The employers' association shall be established by virtue of this Act.

The employers' association shall have objectives to acquire and protect benefit related to working condition and to promote good understanding between the employer and employees and among the employers themselves.

Section 55 *The employers' association shall have its regulation and shall be registered to the Registrar. The employers' association shall, upon registration, be a juristic person.*

Section 56 Persons who have the right to establish the employers' association **shall be employers in the same undertaking, being sui juris and having Thai nationality.**

Part 8: Chapter 7 Labour Union

Principles and purposes

8.1 The establishment, objectives and types of labour union,

The labor union shall ***have objectives in acquiring and protecting interest s relating to working conditions and promoting good understanding between employer and employees and among employees themselves. (Section 86)***

A labor union shall have its regulation and **shall be registered to the Registrar.** A labor union shall, upon registration, be a juristic person, and;

Persons who have the right to establish the labor union shall be employees of the same employer or being employees who work in the same undertaking irrespective of the number of the employer, being sui juris and **having Thai nationality.**

There are two ways to establish a labour union including ***a labour union under the same employer and a labour union under several employers in the same undertaking or industry.*** It could also be

divided into ***a labour union of employees who are the supervisors and a labour union of employees who are ordinary workers.***

8.2 Powers and duties of the labour union,

For the benefit of its members, the labor union shall have the powers and duties as follows:

- to make a demand, negotiation and acknowledge an award or enter into agreement with the employer or employers' association for its members;

- to manage and perform any act for the benefit of its members subject to the objectives of the labor union;

- to provide information service so as to facilitate its members in making contact related to work seeking;

- to provide consulting service in solving any problem or eliminating any dispute related to business management and work;

- to provide services related to the allocation of money or properties to be welfare of its members or public interest subject to the resolution of the general meeting;

- to collect membership fees and dues at the rate as determined by the regulation of the employers' association. ***(Section 98)***

8.3 Rights of the labour union,

(1) ***In the case where the labor union performs any of the following acts for the benefit of its members other than business related to politics, the employee, labor union, director, member of sub-committee and officer of the trade union shall be exempted from any accused or charge for criminal or civil liability:***

- to participate the negotiation with the employer, employers' association, employee, other trade unions, employers' federation or employees' federation with a view to right or benefit of its members;

- to strike or assist, induce or encourage its members to strike;

- to clarify or publish facts related to labor disputes;

- to organize rally or attend the strike peacefully

Except when such act is a criminal offence on harm to public offence, life and body offence, liberty and reputation offence, property offence and civil liability in concerning with those criminal offence. ***(Section 99)***

(2) The right to leave for conducting the labor union business

-- The employee who is a director of the labor union shall have right to leave for conducting the labor union business as a representative of the employees in a negotiation, conciliation and arbitration of labor dispute, and shall have right to leave for attending the meeting held by the officials. In this regard, such employee shall notify his or her leave to the employer in advance and shall present relevant evidence, if any, therewith. *(Section 102)*

(3) The right to request the Labor Court for decision

In the case where the employee committee is of opinion that an act of the employer is unfair or causing excessive grievance to the employees, the employee committee, employees or labor union may request the Labor Court for decision. *(Section 50)*

Problems and the evaluation of the achievement

(1) The law imposes a requirement on having Thai nationality in order to have the right to establish a labour union and being director of a labour union, as a result of which migrant workers that have been recruited to work by various schemes of the Thai government whose number could be as much as three million baht shall be deprived of such right. This is the deprivation of a key fundamental right not in compliance with international labour standards. At present, there are around 2.2 million migrant workers who have been registered and recruited thanks to the cabinet's resolutions and are deprived of such right.

(2) The labour union's objectives are confined to acquiring and protecting interest s relating to working conditions and promoting good understanding between employer and employees and among employees themselves, which is rather narrow. As a result, labour unions fail to take action commensurate to the changing situation and the evermore complicated labour issues.

(3) The forms of a labour union are rather limited being confined to those working for the same employer and those working in the same undertaking, and the division between a labour union of ordinary workers and a labour union of employees who are the supervisors. *This arrangement is not compatible with a democratic principle and international labour standards.*

(4) The right to leave for conducting the labor union business while being paid under Section 102 is too narrow and does not respond to the evolving situation of labour relations of employers and employees in various undertakings including;

-- The activity of labour union and its alliances in the automobile and electrical appliance industries

-- The activity of labour union and community or network of Informal economy workers or freelancers

-- The activity of labour union concerning human rights and international campaigns including climate change and global warming, etc.

(5) The law to protect the performance of duties as directors of labour union does not reflect the current situation and may not yield concrete outcome including under Section 99 when conducting a negotiation to reach an agreement, the settlement of labour dispute, the clarification of facts concerning labour dispute and strike in order to be exempted from any accusation or charge for criminal or civil liability:

(6) The power of the registrar to dismiss a director or the board of directors of the labor union (Section 106) is a breach to the ILO Convention no. 87 which provides that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Recommendations

(1) Repeal the provisions that requires that a labour union shall become a juristic person upon the registration with the registrar only.

(2) Repeal the provisions regarding the qualification of a person who has the right to establish a labour union and to be a director of a labour union, or a director of other forms of labour organizations by leaving out the requirement that they are to be the employees of the same employer, or the employees in the same undertaking, and *removing the requirement that the person has to reach the age of majority and have Thai nationality.*

(3) Revise the key principle concerning the establishment of labour union by the employees by bestowing on them the right to establishment by filling an application and the regulation for the certificate of registration for the establishment of labour union based on the criteria and methods with the Director General of the Department of Labour Protection and Welfare, without having to register with the registrar, but instead it should simply be the filing of notification.

Reasons supporting (1) through to (3) are such acts are deemed an interference of the rights to freedom of association and not compatible with international labour standards.

(4) It is deemed fit to add to the objectives a labour union concerning an action taken concerning the policies of the employers or the employers' organization and the change in policies of the employer, business sector and the government which have an impact on workers or labour since such

matters are relevant to and have a bearing on labour issues. It also complies with the principle that encourages participation in social policy making and negotiation based on international labour standards.

(5) Since there has been an expansion of the scope of employment conditions and objectives of labour union, coupled with the fact that the issues concerning labour relations, policies concerning labour relations between labour union and employer and the employer's business or within the industry have greatly evolved.

Therefore, there should be a revision on the legal provisions concerning the right to leave for conducting the labor union business including in Section 102 to make it more appropriate covering the activity of labour union and its alliances in the same undertaking, the activity of labour union and local community, and the activity of labour union concerning climate change and global warming, etc.

(6) Amend Section 99 while engaging in a negotiation to reach an agreement, to solve a labour dispute, to clarify labour dispute and strike, to offer protection including being exempted from any accusation or charge for criminal or civil liability.

Part 9: Chapter 8 Employers' Federation and Labour Federation, Employers' Organization Council and Employees' Organization Council

Principles and purposes

9.1 The establishment of objectives of the employers' federation and the labour federation, (Section 112 –Section 115)

Section 112 Two or more employers' associations having members who operate the same undertaking may jointly request for a registration to establish the employers' federation so as to promote good relationships between those employers' associations and to protect benefit of those employers' associations and individual employer.

Section 113 ***Two or more labor unions and each: labour union,***

(1) ***whose members are the employees working for the same employer***, irrespective of whether they are employees in the same undertaking; or

(2) ***whose members are employees in the same undertaking,*** irrespective of whether they are employees of the same employer, may jointly request for a registration to establish the labor federation so as ***to promote good relationships between those labor union and to protect benefit of those labor union and individual employee.***

Section 114 The establishment of, and the admission to be a member of, the employers' federation or the labor federation under Section 112 or Section 113 shall be made upon the approval of the members of each employers' association or trade union. In this case, ***the approval shall be made by more than one-half of*** the total number of its members.

Section 115 The registered employers' federation and the registered labor federation shall be a juristic person.

Section 118 ***The provisions on employers' associations of Chapter VI and on labor unions of Chapter VII shall be applied to the employers' federation and labor federation mutatis mutandis.***

9.2 The establishment of employers' organization council and the employees' organization council,

Section 119 ***Not less than five employers' association or employers' federation may establish the Employers' Organization Council for promoting study and labor relations.***

The Employers' Organization Council shall have regulation and shall be registered to the Registrar. The Employers' Organization Council shall, upon registration, be a juristic person.

Section 120 ***Not less than fifteen employees' association or employees' federation may establish the Employees' Organization Council for promoting study and labor relations.***

The Employees' Organization Council shall have regulation and shall be registered to the Registrar. The Employees' Organization Council shall, upon registration, be a juristic person.

The provisions on the employees' association of Chapter VII and on employees' federation of Chapter VIII shall be applied to the Employees' Organization Council mutatis mutandis.

Problems and the evaluation of the achievement

(1) According to the law, the labour federation and the employers' federation have no right to presenting the demand on the working condition agreement.

(2) The scope of legal objectives of the employers' organization council and the employees' organization council is too narrow. As a result, the roles of such national labour organizations are restricted inappropriately and incompatibly with the evermore complicated labour issues and they are deprived of their participation in the policy making and social negotiation.

(3) The labour union of private business and the labour union of state enterprise are prohibited from forming a labour federation and a employees' organization council, or from becoming a member of a labour federation and a employees' organization council,.

Recommendations

(1) A labour union at the level of an undertaking or an industry, or a labour federation (including an employes' organization at the same level of an employees' organization) shall have the right to present the demand related to employment conditions at the level higher than the workplace level, or which are concerned with the overall interest of the employees at the industrial, or territorial, or national levels.

(2) The employees' organization council and the employers' organization council shall have a role and participation in the state policies concerning labour and other aspects which have a direct bearing on labour.

Part 10: Chapter 9 Unfair Practices

Principles and purposes

10.1 Unfair practices according to the legal framework

(1) terminate the employment or act in any manner which may cause an employee, a representative of the employee, a director of labor union or a director of labor federation being unbearable to continue working with due to the fact that the employee or labor union calls for a rally, files a complaint, submits a demand, participates a negotiation or institutes a law suit or being a witness or submits evidence to the competent officials under the law on labor protection or to the Registrar, conciliation officer, labor dispute arbitrator or Labor Relations Committee under this Act or to the Labor Court, or due to the fact that the employee or Labor union preparing to do so;

(2) terminate the employment or act in any manner which may cause an employee being unbearable to continue working with due to the fact that such employee is a member of the labor union;

(3) obstruct the employee from being member of the labor union or cause the employee to resign from membership of the labor union, or give or agree to give money or property to the employee or officer of the labor union in lieu of the refusal to apply for membership, or to admit the applicant to be membership, of the labor union or in lieu of the resignation from the labor union;

(4) obstruct the operation of the labor union or labor federation or obstruct the exercise of the right of the employee in applying for membership of the labor union; or

(5) illegally interfere the operation of the labor union or labor federation.

Section 122 No person shall:

(1) compel or threat the employee, directly or indirectly, to be a member of the labor union or to resign therefrom; or

(2) do any act which may cause the employer to act in violation of Section 121.

Section 123 During the enforcement of the working condition agreement or award, no employer shall dismiss the employee, representative of the employee or director, member of Sub- committee or member of the labor union or the director or member of the Sub-committee of the labor federation who related to the demand, provided that such person:

(1) being dishonest in the discharge of duty or intentionally commits a criminal offence against the employer;

(2) willfully causes damage to the employer;

(3) violates the regulation, rule or lawful order of the employer after a written warning or caution has been given by the employer. If there is a serious circumstance, such warning or caution may not be made. In this regard, the aforesaid regulation, rule or order shall not be made with a view to obstruct such person from doing any act related to the demand;

(4) unreasonably neglects his or her duty for three consecutive days;

(5) performs any acts which encourage, assist or induce any person to violate the working condition agreement or award.

Regarding the unfair practices under Sections 121, 122 and 123, the party which has complained with the LRC and does not agree with the LRC's decision, has the right to request the Labor Court for decision. The law does provide protection during the presenting of the demand and the negotiation separately in Section 31, if they want to exercise the right to request the Labor Court for decision.

Problems and the evaluation of the achievement

(1) The legal provisions do not apply to all actions during the preparation or the initiation of the establishment of the organization. This may include training to raise the awareness and understanding

about the principles of labour relations and other activities for the preparation in other aspects not confined to just the meetings of the promoters or the submitting of application for registration.

(2) The level provisions are rather passive. In other word, the employer has the right to first terminate the employment, or to act in any way against the employees or the workers related to the mobilization or the demand, and then to exercise their judicial right in the Labour Court. As a result, it may render the employees to be unable to exercise their right to association and negotiation. Meanwhile, they have to shoulder the burden by being taken to court. This may not serve the purposes of the law to ensure such protection.

(3) For the enforcement of the law, the LRC and the Labour Court adhere to the rationale and logic that might not be so reasonable and not reflect the reality. Civil society sector this notice the deviation of the purposes of the law including;

-- The employer may terminate the employment of leaders who are some directors of the labour union leaving the remainder of the labour union's directors to continue to perform their duties and this shall not count as an attempt to dismantle or dissolve a labour union.

-- For migrant workers who need to rely on their employers to renew their work permits every three months through to the end of their employment term of three or four year, if such employees decide to gather their signatures to present the demand related to the working condition agreement as several cases that have happened, the employer might not be happy with the presenting of the demand. And if this takes place when the employment contracts need to be renewed, the employer may decide against extending the employment contracts. The law can be interpreted that the act is done not because of the conflict or as a retaliation. It could be interpreted solely on the basis of whether to renew the employment contracts or not, and it is the right of the employer to decide if they want to extend the employment or not.

--There have been cases of the interpretation about unfair practices which give weight to the various reasons cited by the employer, or proven to be reasonable, and it has thus been adjudicated to not constitute an unfair practice. In other word, if the incidence cited by the employer is reasonable, then it will be count as an unfair practice including when the employer is suffering a loss and needs to downsize the workforce, or has to restructure the organization, or needs to have business rehabilitation. And even though, there clearly exists the conflict related to the demand and negotiation, or there exists the acts as prescribed under Section 121, it could be interpreted that the employer has done it reasonably and has no intent of harassment ***(including the case of Royal Orchid and Thai Airways).***

Note: The protective mechanisms against unfair practices were originally prescribed during the presenting of the demand ***(Section 31)*** and fall under the purview of the Labour Court. But according to Sections 121-123, the issues concerning unfair practices fall under the purview of the LRC before the Labour Court respectively. But according to the draft law prepared by the Office of Council of State, all such powers are centralized with the LRC, and then the Labour Court. Should the issue be addressed, and how?

Observations

(1) There have been the amendments to alter and increase penalties in various Sections including the violation of the award regarding the presenting of the demand related to the employment conditions which is liable to a fine of not exceeding one hundred thousand baht.

(2) Whoever violates the office of unfair practices shall be liable to a fine of not exceeding five hundred thousand baht (Office of Council of State).

(3) It is prescribed in Section 130 through to Section 133 to include issues under Section 31 as part of the topic of unfair practices and require the compliant to be filed with the LRC (there are both pros and cons).

(4) Add more content and change wording to make it more concise, consistent and complete including the protection during the establishment of a labour union, when being a member of Employee Committee, separating the demand according to this law, the instituting of a lawsuit or being a witness in a labour case, the submitting of evidence to the competent officials under this law, the Labour Court, by incorporating all of them under the labour law, etc.

Recommendations

(1) There should be legal measures to protect an employee or a worker who prepares for the establishment of a labour union from facing the termination of employment or disciplinary action, or any other acts which aim to harass or oppose a labour union. Such protection should become effective since the day the employer is aware of the preparation for the establishment of a labour union and within six months since the inception of the labour union ***(including the amendment of Section 121).***

(2) There should be legal measures to protect the founding directors of a labour union, directors of a labour union, the subcommittee established by the labour union and representatives engaging in the negotiation of the demand and advisors to the negotiation of the demand from facing the termination of employment or disciplinary action, or any other acts which aim to harass or oppose, or affect the performance of duties according to the law. Such acts cannot be committed ***except when the matter has been tried and***

permission has been granted by the Court and criteria for such termination of employment are clearly prescribed by law.

(3) Expand the scope of protection under Section 121 to apply to all kinds of submissions of complaint or exercise of legal rights related to labour issues. This may include the laws concerning the employment of migrant workers and the management of public employes.

The protection should also be expanded to apply to when the employer and the employee related to the demand or the labour union are engaged in a court case, irrespective of whether it is a labour case or other cases concerning labour issues.

(4) Amend Section 121 to ensure its applicable to various issues including;

(4.1) *The employer refuses to recruit an applicant as an employees or a worker* citing that the person used to be a member of the labour union, or a director of the labour union, or used to engage in the labour union business.

(4.2) The case when an employee or an employees' organization ***exercise their right to complain against their employer with the National Human Rights Commission, the business ethical mechanism, and the business and human rights mechanism.***

(5) Amend Section 121 through to 123 to ensure the payment of compensation due to the unfair practices according to the law since such acts have a bearing on the right to mobilize and establish an organization, or to mobilize to present the demand and negotiation to ensure the fair working condition agreement.

(6) Amend Section 121 through to 123 to offer protection that is related to other concerned Sections including when the LRC order an immediate act in compliance with its order, and failure to do so may prompt the LRC to pursue a criminal action. It is also believed that by revising the legal measures at the original process, it can help to empower a labour union and mitigate impacts from various problems.

Part 11: Chapter 10 Penalties

Principles and purposes

11.1 Criminal liability exists on some matters, albeit the law has been used for a long time and has never been amended on this issue. Such criminal punishment is rather archaic and not effective in practice, for example.

Section 129 bis A person who acts as the adviser of the employer or the employees without registration under Section 17 paragraph two shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding twenty thousand baht, or to both.

Section 130 The employer who violates or fails to comply with Section 18, Section 20 or Section 22 paragraph two in conjunction with Section 18 shall be liable to a fine of not exceeding one thousand baht.

Section 131 The employer or employee who violates or fails to comply with the registered working condition agreement or award under Section 18 paragraph two, Section 22 paragraph two or Section 29 paragraph four while such working condition agreement or award is still in force shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding one thousand baht, or to both.

Section 132 The employer, employee, employers' association, labor union, employers' federation or labor federation who violates or fails to comply with the award of the Labor Relations Committee or the appeal decision of the Minister under Section 23 shall be liable to imprisonment for a term of not exceeding two years or to a fine of not exceeding forty thousand baht, or to both.

Section 133 *Any person who violates or fails to comply with the award under Section 24, Section 25 or Section 35 (4) shall be liable to imprisonment for a term of not exceeding one yea r or to a fine of not exceeding twenty thousand baht, or to both.*

Section 158 *The employer who violates Section 121 or Section 123 shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand baht, or to both.*

Section 159 Any person who violates Section 122 shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand baht, or to both.

Problems and the evaluation of the achievement

(1) The criminal punishment is still inappropriate and unenforceable and shall not compel the employer or the violator or the offender to change their behavior, or to fear the penalty. Also, in reality, such criminal measures have never been used to force compliance with the purposes of the law. On the contrary, such criminal measures have been used against leaders of a labour union, or an employee who is the leader, or other persons who provide assistance to the employees during the process related to the demand and the negotiation.

(2) There is still a debate about the inflicting of criminal punishment on a not severe offence as the state holds on to the idea that a criminal offender may not warrant a criminal punishment. This has given rise to the legal concept underpinning the levying of regulatory fine in lieu of criminal punishment for

various offences prescribed by law. This has been codified and promulgated as the Act on Imposition of Non-Criminal Regulatory Fines, B.E. 2565 already.

(3) The criminal measures have been used by the power that be and the state as a tool to criminalize the dissenters, or to stifle the exercise of their labour right. Meanwhile, such criminal measures can hardly serve to protect or defend an employee or a worker who exercises their right to association and collective bargaining process, and to ensure compliance with the working condition agreement.

Recommendations

(1) Such criminal measures and punishment should be reviewed appropriately in light of the situation and the circumstance around the offence against the core legal principle. An effort should be made to cluster or classify the criminal offences and to determine proportionate punishment. For a not severe offence that does not violate the core legal principles, or public interest, the imposition of a regulatory fine is probably proportionate.

(2) Apart from the criminal measures, there are other measures which are of importance and should have a role to address the problems or to enhance labour protection related to labour relations including the promotion of understanding and positive attitude regarding the labour relations regime to all sectors in society, the mechanism of business ethics which relates to business and human rights, etc.

Conclusion of the evaluation of the achievement

1. Regarding the overall labour relations law

Thailand's labour relations law is designed to cater to each of the employees and undertakings including the employees of state sector and civil servants who are subject to the rule or regulation of the state, the employees of private sector subject to the Labour Relations Act B.E. 2518, the state enterprise employees subject to the State Enterprise Labour Relations Act B.E. 2543. They are also regulated by the employment contracts or the statuses of employer and employee according to the law. As to the informal economy workers, otherwise called by the state as freelancers and semi-freelancers, there is no labour relations law that applies to them. IN addition, the forms of employment and business have evolved and become ever more complicated including the short-term employment, subcontract employment, contract employment, platform employment, and employment in informal economy or informal economy workers. It is necessary to design the laws that are relevant to them and ensure equality as well as prevent the forms of employment that become an obstacle to the exercise of freedom of association and negotiation.

As a result of having the law that separate and cater exclusively to each of the employment relations, it has given rise the deviation, unequal and multi-tiered labour relations standards. For example, according to the 1975 Act prescribes, for one employer or one workplace, there can be the establishment of various labour unions and the individuals eligible to present the demand include the employees who sign up their names or the labour unions, but for state enterprises, according to the 2000 Act, for one state enterprise, there can only be one labour union, and only the labour union has the right to present the demand. ***Such issues also do not comply with international labour standards.***

It is therefore recommended to codify one single labour relations law that applies universally to all sectors irrespective of whether there is a legal relation according to the employment contract or not, and there should be provisions concerning the key principles of the labour relations regime as already explained in detail.

2. For the Labour Relations Act B.E. 2518, the key issues concerning its evaluation of the achievement can be summarized as follows;

2.1 The scope of legal employment conditions does not reflect the changing situation including the employers or the businesses that operate as a syndicate or a business conglomerate and carry out public interest policies including white factory, climate change, business and impacts on community, or impacts from industrial development policies on the workers. Several of such issues cannot be interpreted as serving the other interests of the employers or the employees related to the employment or work. As to the labour union, their operation is certainly relevant to the overall interests of the employee and the legal employment conditions, although they can be interpreted as not related to the employment conditions, etc.

It is, therefore, recommended to revise the law to ensure its universal applicability and compatibility to such situation as aforementioned.

2.2 The gathering of employees to establish an organization has to be registered with the state and the individuals who have the right to promote and establish the organization as well as be a director of the labour union must have Thai nationality. As a result, millions of migrant workers are deprived of such rights. Several legal procedures put the burden on the employees depriving them of liberty and freedom to association. In addition, employees of different employers, or different undertakings, subcontract employees, contract employees in workplaces, and all informal economy workers have no right to gather to establish an organization to exercise their rights according to this law. Such arrangements are not in compliance with international labour standards.

It is, therefore, recommended to repeal and revise various concerned Sections to allow employees and labour unions to have liberty and freedom of association and freedom to establish an organization based on the international labour standards as aforementioned.

2.3 The various processes and procedures through to the end of the legal proceeding feature too much detail. They impose timeframes which are incompatible and too strict. Many employees and labour unions are trapped in such processes causing them to call off their presenting of demand, having their organization dissolved, or facing various harassments. It forces the employees and labour unions to shoulder the burden and to seek their judicial recourse through the labour justice proceeding. Many of such cases are involved with civil and criminal liability and become an obstacle to the pursuance of justice through the labour justice process. Both the LRC and the Labour Court fail to ensure the enforcement of the law that result in concrete protection. There is also the problem of legal legitimacy regarding the demand and the negotiation throughout the process. Still, there is no justice process that is compatible (prompt and fair) to make the award on various legal issues and to ensure the process proceeds to serve the purposes of the law.

It is, therefore, recommended to revise the law as aforementioned.

2.4 The settlement of labour dispute is rather concerned with internal management of an organization while there is a lack of clear regulation, efficiency, transparency and adequate participation of all concerned parties. There are no legal measures to ensure access to key information related to the negotiation, the mediation and the professional making of the award among the employees or the labour unions. Meanwhile, the state power is being exercised too excessively with a lack of legal criteria and frameworks that affect labour rights prescribed in the labour relations regime including during the negotiation through the bilateral system, and the lock-out, the undertakings that significantly bar the exercise of the right to hold a lock-out or a strike. Such processes do also not comply with international labour standards.

It is, therefore, recommended to revise the law as aforementioned.

2.5 Protecting the employees' right to freedoms of association and collective bargaining while the legal proceeding and exercise of legal rights lack coherence. There are no legal measures in place to address the right root causes including during the preparation for the establishment, the critical period of negotiation, and even after the adoption of the working condition agreement. There are also no legal measures to substantially protect the leaders or the employees who play an important role since the employers still commit acts of harassment or terminate the employment of the leaders immediate. Whether their actions are lawful or not, this forces the employees to have to request the Court for decision. As a result, the employees are deprived of their access to the justice process. Meanwhile, the justice process, particularly

through the LRC and the Labour Court, fails to ensure the genuine enforcement of the law to bring about the protection that serves the purposes of the law as it should be.

It is, therefore, recommended to revise the law as aforementioned.

2.6 Most employers continue to disrespect or do not accept the employees' right to freedoms of association, presenting the demand and collective bargaining to adopt or revise the employment conditions to ensure their compatibility and fairness, even though there are many legal restrictions against such actions. They have also exercised their dominant economic and other powers to retaliate, dismantle, or harass the employees and the labour unions which exercise their rights causing the employees or directors of labour union become fearful, worried and not confident in exercising their legal rights. This has caused the minimal increase of the exercise of freedom of association among the employees. And it has been generally known that in workplaces or factories where the employees have no organization, the issues of exploitation or the violations of labour rights are more rampant or more violent compared to the employees who can form their own organization.

It is, therefore, recommended for the revise and reform of the law to empower the employees' organizations, to impose conditions, criteria, procedures, timeframes and various measures to ensure the legal implementation which is responsive and does not become an obstacle to the exercise of the rights and to genuinely protect the employees and the labour unions in their attempts to exercise their legal rights in compliance with international labour standards. It is believed that this can be a solution to the problems or help to minimize the risk of the threat or harassment aided and abetted by the businesses or the employers.

2.7 A summary of legal issues that do still not comply or are incompatible with international labour standards

(1) The individual who has the right to establish a labour union and be a director of the labour union has to have Thai nationality, which is in contravention of the ILO Convention no. 87 on Freedom of Association without discrimination.

(2) The criteria concerning the establishment of labour union and its implementation as well as the power of the registrar to order a director of labour union to vacate from office (Section 106) including the requirement that at least employees shall have the right to promote, establish, file the application and seek registration of the organization, the board of directors and the regulation. The authorities also have power to investigate the activities and operation of a labour union, etc., which is incompatible with the ILO Convention

no. 87 that provides that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise of a labour union.

(3) As to the right to form a labour federation, for labour unions in private sector, they are barred from banding together with labour unions of state enterprise to form a labour federation, or an employees' organization council, or the requirement that a state enterprise labour federation has to become a member of the employees' organization council, which is incompatible with the ILO Convention no. 87 on the employees' right to establish and form a federation freely.

(4) The prohibition for the employees who are ordinary workers and the employees who are supervisors to become a member of a labour union which has a different status from theirs, which is incompatible with the ILO Convention no. 87 on Freedom of Association and without restriction.

(5) An advisor on negotiation has to meet the qualifications prescribed for by the state and had to get registered before performing their duties which is incompatible with the ILO Convention no. 87 on the rights of labour union on its management or operation without interference from the state.

(6) The right to strike including a labour union of private sector which plans to hold a strike is required to have the decision supported by more than one-half of the total number of members of the labor union while the votes are casted in secret. The state still has power to regulate the strike or the lock-out, and certain laws prohibit the holding of strike and lock-out, and state enterprises are barred from holding a strike or a lock-out, etc. which is incompatible with the ILO Convention no. 87 that provides that the public authorities shall refrain from any interference in the lawful exercise of labour union, and no. 98 on the prohibition of public authorities from interfering with negotiation.

(7) Regarding the protection of the persons who establish a labour union and initiate the mobilization, the law does not protect the individuals who initiate the establishment of an organization, the law does not prohibit the lock-out imposed specifically on the employees who are members of the labour union, or engage in the presenting of the demand. It also does not prohibit the employers from recruiting new employees or procuring other individuals to work during the lock-out or strike which is incompatible with the ILO Convention no. 98 as the workers do not receive adequate protection or are exposed to interference by the employers.

Therefore, for the overall evaluation of the achievement of this law, this law clearly helps the employees to be able to form an organization and have the right to present their demand to the employers while there is no law to uphold such rights among the workers who are not recognized as an employee. Comparing between the total number of employees nationwide and the number of employees who engage in

presenting the demand, the ratio is clearly very low. Meanwhile, in terms of the power to conduct the collective bargaining and the readiness to call a strike for bargaining, the successful outcome has visibly become much less.

As attested to by the data that currently in Thailand;

--There are altogether 652,111 workplaces and 10,962,770 employees.

--As of February 2024, there are 45 labour organizations including state enterprise labour unions with 140,583 members.

--There are 1,294 labour unions in private sector with 387,497 members.

-- There are 21 labour federations including one state enterprise labour federation.

Regarding the statistics about the presenting of the demand, labour dispute and the award from October 2022 to December 2023;

--The presenting of demand occurred in 693 workplaces with the 555,829 concerned workers.

--Labour disputes occurred in 119 workplaces with 105,805 concerned employees.

The making of award was made on 15 labour disputes concerning 5,833 workers (the making of award invoked by virtue of the Announcement of Martial Law on 12 issues with 4,597 concerned employees, on two disputes in public utilities with 1,076 state enterprise, on one issue of a state enterprise with 160 state enterprise, the registration of the working condition agreement from October 2022 to December 2023 on 562 issues concerning the benefits amounting to 56,978,000,000 baht (fifty six billion, nine hundred, and seventy eight million baht), 19,636 cases were filed with the Labour Court in 2022, 60 of which were related to failure to comply with labour relations law, appeal orders or decisions made in 1,307 cases (all the laws).

As to the employers' acts of harassment or retaliation against the employees related to the mobilization and negotiation, existing legal measures still fail to offer protection to the employees who are leaders or are directors of the labour unions to fulfil the purposes of the law. It is clear that the status and achievement of the enforcement of this law are still not comprehensive and inconsistent. Various processes and procedures remain an obstacle to the exercise of the rights of the employees and restrict the justice process from functioning to ensure the implementation for and the protection of the workers to serve the purposes of the law. It is necessary to urgently revise and reform the labour relations law.

@@@@@@@@