

論雇主支配介入與拒絕團體協商之 不當勞動行為及工會保護 —兼論我國裁決決定之實務案例

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摘要

我國新勞動三法實施之「不當勞動行為制度」，承繼美日制度，因此對於雇主之不當勞動行為類型亦主要區分為「不利益待遇」、「支配介入」與「拒絕團體協商」等三種類型，並分別規範於工會法第35條與團體協約法第6條。但有關於不當勞動行為之(行政)救濟制度則另規範於勞資爭議處理法。其中，有關支配介入之部分，主要規定於工會法第35條第1項之第5款；即雇主「不當影響、妨礙或限制工會之成立、組織或活動。」而有關團體交涉拒絕之部分，則主要於團體協約法第6條第1項之規範勞資雙方「無正當理由」不得拒絕他方所提團體協約之協商，以及同條第2項例示所謂「無正當理由」之雇主行為態樣包括：一、對於他方提出合理適當之協商內容、時間、地點及進行方式，拒絕進行協商；二、未於60日內針對協商書面通知提出對應方案，並進行協商；三、拒絕提供進行協商所必要之資料等。本文除了規範要件之解釋以外，並就我國裁決實務之相關案例加以說明上述不當勞動行為之認定基準。

A Study on the Employers' unfair Labor Practice of Domination Intervention, and Rejection of Collective Bargaining : Concurrently Discussion of the Decisions on the Unfair Labor Practice Cases in Taiwan

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Abstract

The established "Unfair Labor Practice" of the new Labor Laws III has inherited the essence of Japan's and America's system. The primary categories of employers' Unfair Labor Practice include "Disadvantage Treatment", "Domination Intervention", and "Rejection of Collective Bargaining" which are ruled under Article 35 of Labor Laws and Article 6 of Collective Bargaining Agreement (CBA). However, the administrative relief system of the Unfair Labor Practice is ruled under the Labor Dispute Legislation. The main policies regarding Domination Intervention are listed on Article 35 Section 1.5 indicting employers' Unfair Labor Practice on impacting, interfering and limiting unionization and union activities. Article 6 Section 1 of CBA mainly states that either employers' or labors cannot reject the other party's bargaining proposal without a reasonable cause. Article 6 Section 2 further illustrated employers' unreasonable acts such as: (1) refusing to negotiate even if the other party provides adequate negotiating contents, time, location, and methods; (2) failing to respond to a submitted proposal within 60 days; and (3) rejecting to provide necessary data for negotiation. In addition to providing explanation of the policies, this article also illustrated basic elements of Unfair Labor Practice by documenting practical cases.