

Labour Bulletin

Government's foreign worker policy Denies women gainful employment

MTUC appreciates DPM Datuk Seri Najib Razak's efforts to increase employment opportunities for Malaysian women. However, there is no need to amend the 1955 Employment Act to promote flexible working time or working from home. There is nothing in the law to prevent such practices.

Employment Act Outdated

Indeed the Employment Act is outdated. The minimum standards law still promotes 48 hours working week and allows widespread discrimination in comparison with employees in the public sector. Last week the Labour Department ruled that an employer in Nibong Tebal was right in refusing to pay for treatment given by the company appointed medical practitioner. Our Labour Department says that under the law the employer is required to pay for consultation only.

Improve Minimum Standards

Therefore there is an urgent need to amend the Employment Act to reduce the 48 hour working time, increase the annual leave, sick leave, public holidays and healthcare benefits. Most importantly Government must establish a minimum wage.

Stop flooding the country with foreign workers

Datuk Seri Najib as the Chairman of Foreign Workers Task Force should stop flooding the country with foreign workers. If Datuk Seri Najib is really serious about according greater opportunity for women to be gainfully employed, as a first step, government should abolish the licenses issued to 225 foreign labour suppliers. As long as the government continues its policy of issuing unlimited work permits without assessing the Labour market needs, government will not be able to encourage employers to employ Malaysian women.

Employers who have no consideration for corporate social responsibility would prefer cheap foreign labour that can be hired and fired without notice. Their only consideration is profits.

G.Rajasekaran
Secretary General

Fuel Price down
by 15 sen

Can the Government ensure that cost of essential food items and vegetable decrease by 5.5%?

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Dismissal by Syarikat Kenderaan Melayu Kelantan- If the Police does not find the Claimant guilty how could the D.I. Panel-Industrial court

The company had employed the claimant as a driver.

Company contention:

- The Company stated that the Claimant was dismissed because he had committed to a serious misconduct when he negligently caused an accident while driving the Company's bus.
- The Company was also penalised by its customer because of the delay in sending the workers of its customer due to the accident.

Company's witness evidence:

- The witness was aware of Claimant's earlier accident in 1999. In the 1999 accident the Claimant told the witness that the brake of the bus had failed to function (the bus was 20 years old). It was not the Claimant's fault that the brake was faulty.
- As a result of the said accident the Claimant was dismissed by the Company. The Claimant lodged a complaint at the I.R. Department and the Claimant was reinstated. The Company stopped Claimant's yearly increment for two years as a punishment for the accident.

Claimant's arguments:

- The accident was due to the condition of the bus. The bus was more than 20 years old and it failed to respond fast enough when the Claimant tried to take a turn.
- The Claimant had been working with the Company for 22 years and it was his first accident.
- The Claimant stated that he was never charged by the Police in relation to the accident. *The Claimant was never summoned or paid any fine as a result of the accident.*
- *He informed the panel of inquiry he was never charged by the Police for the accident during D.I. but was not given any considerations.*
- The Claimant had served the Company for 22 years at the time of his dismissal.

Court findings:

Court not agreed with the evidence produced based on presumption

- During the D.I. the Company adduced two witnesses. The first witness did not visit the scene

of accident and gave his evidence based on a sketch plan prepared by the second witness.

- The Court's view is that his evidence is irrelevant to the charge against the Claimant as he only based his evidence on information from the second witness.
- The witness stated there was no brake marks at the scene. The witness gave his **evidence mostly from his presumption** that he gathered at the scene.

No cogent evidence from the company or police to prove the claimant guilty of charge

- The Court failed to find cogent evidence to prove Company's case in the D.I.
- The Company should be aware that the most important evidence to prove its case is from the Police Investigation Officer and the driver of the Proton Wira involved in the accident.
- Both the important witnesses were not called by the Company. Without the evidence of the two important witnesses, the Court wonders how the inquiry panel found the Claimant guilty of the charge.
- The Police did not issue the Claimant with any summons due to the accident. It is only the Police that can determine the guilty person in the said accident. How could the inquiry panel determine the Claimant was at fault based only on the evidence of the second witness who was not at the scene of the accident when the accident took place. *If the police does not find the Claimant guilty how could the D.I. panel found Claimant guilty without a report of investigation from the Police.*
- Based on the above evidence the court can only conclude that the D.I. conducted was flawed. The panel's finding is therefore wrong and without any basis to convict the Claimant for the accident.

Industrial Court Chairman : YA Syed Ahmad Radzi
Award : 919 of 2008

AMESU GENERAL MEETING

More than 800 members participated in the Triennial General meeting of All Malayan Estate Staff Union held in Kluang on August 10, 2008. Members enthusiastically debated General Secretary Jeykumar's presentation on Executive Council's decision to demand a 30% salary adjustment next year.

Avoid the Industrial court

Speaking at the opening session of the meeting MTUC Secretary General G.Rajasekaran advised the union to make serious effort to resolve the new collective agreement through direct negotiations with MAPA. We should avoid going to the Industrial court because the court do not seem to understand the practices in the private sector said G.Rajasekaran.

Even some of the decisions by the court relating to Productivity Linked Wage System(PLWS) failed to address problems arising from arbitrary and discriminatory decisions by employers. The court awards have also failed to give clear direction on the need to be transparent in dealing with company profits said Rajasekaran.

Bro. Titus Gladwyn Gomez and Bro. R.Jeykumar were returned unopposed as President and General Secretary respectively for another 3 years term.

JRKS– worker made multiple contributions but Socso only allows compensation based on single contribution

The Deceased had worked for more than one employer (10 employers) and the Applicant was seeking social security benefits cum survivor's pension from Socso for himself as well as his 4 children.

Issue:

The mode, duration and manner of computation of the rate of survivor's pension to be paid to the survivors of the Deceased.

Socso's decision:

- Even though two or more contributions are paid in respect of the same insured person for the same month, they shall be counted as a single monthly contribution;
- Computing the average of assumed wages for the purposes of calculating the rate of pension or benefits payable, two or more monthly contributions paid in respect of the same insured person for the same month shall be treated as a single monthly contribution.

Socso Appellate Board judgement:

If an insured person paid more than one contribution he would in turn legitimately expect that the benefit he would entitled to would be paid in accordance with those multiple contributions and not expect to be short-changed.

Appellate Board Sarawak: YA Muniandy Kannyappan

Ref: [2008] 1 ILR 1

AMESU Third Triennial General Meeting 10 August 2008



Members debating the 30% wage increase.

Bro. G.Rajasekaran, Secretary General MTUC and Bro Mohamed Shafie BP Mammal, President UNI-MLC also present at the meeting





Seminar on Strengthening Social Protection System in Asean– The Way Forward

18-20 August 2008:Kuala Lumpur

The Ministry of Human Resources Malaysia with the cooperation of GTZ(German Agency for Technical Cooperation and ASEAN Secretariat organised a seminar on Strengthening Social Protection System in Asean– The Way Forward. 3 representatives from each ASEAN countries (only representatives from government) participated in this important meeting. Experts from Germany, European Commission and ILO were invited to present their views on social protection.

Seminar participants realise that due to the countering effects of globalisation-workforce mobility, urbanisation and migration the social protection system within the ASEAN countries has deteriorated.

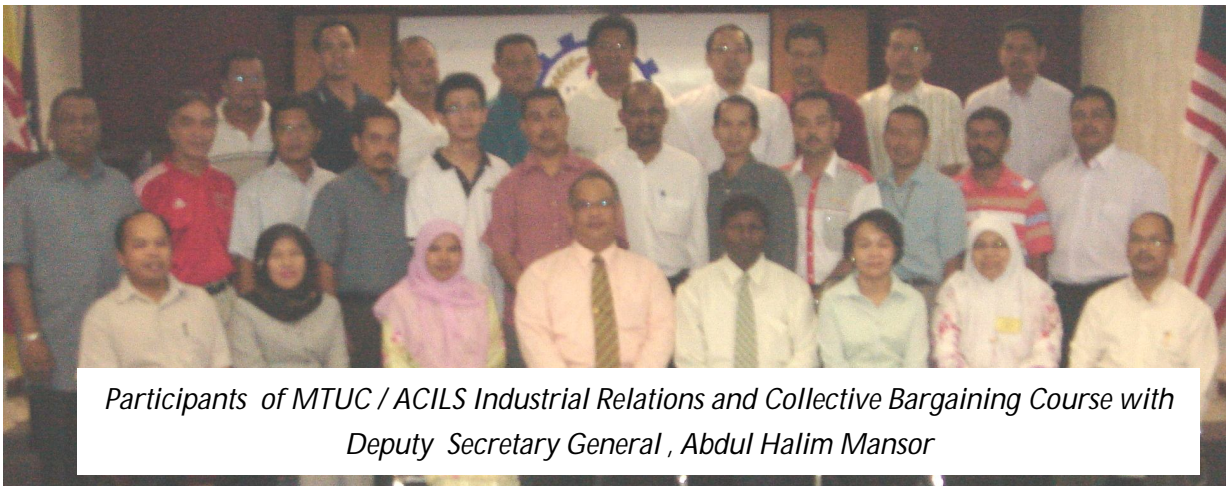
ASEAN countries need to carefully examine the design of their national social protection systems to move in the right direction as well as to ensure the long term sustainability and viability of the system. They felt that, the issues of social protection should not be perceived from an individual national agenda alone, instead it is part of the strategic thrust to the realization of the ASEAN Social-cultural community. Its particularly true as ASEAN is moving along the way forward to support an ASEAN single market and production based by 2015, where the free flow of skilled labour within ASEAN countries should be supported by a sound and dependable social protection system at the regional level (*Datuk Thomas George, Secretary General, Ministry of Human Resources*).

MTUC representative invited to participate as observer stressed that in order to achieve the decent work agenda, it will be more meaningful for Human Resource Ministry to give opportunity for the trade union representatives from all countries to participate so that it will foster more fruitful discussion on social protection issues in accordance with International Labour standard which talks about the fundamental social protection for workers.

MTUC / ACILS Industrial Relations and Collective Bargaining Course

28 Trade union activists from Peninsular, Sabah and Sarawak participated in this course. Among them four were women participants. Representation from manufacturing, banking, utilities, service and transport industry participated in this five days course.

Salient subjects introduced: Collective Bargaining Issues confronting Trade Unions, Role of IRD in



Participants of MTUC / ACILS Industrial Relations and Collective Bargaining Course with Deputy Secretary General , Abdul Halim Mansor



Dialog and closing session with Secretary General, G.Rajasekaran

handling trade disputes on CA matters, Role of Statistics Dept in determining CPI, Employer on importance of Industrial Harmony in company's, Corporate Tax Consultant on understanding company's balance sheet and P&L, Advocate & Solicitor on development in Industrial Court on Collective Bargaining Awards, Preparation and negotiation skills to negotiate CA's; Globalization on CBA's and ILO Convention on Industrial Relations. The training was concluded with a dialogue session by the Secretary General of MTUC.

ISU GAJI MINIMA di DEWAN RAKYAT

SOALAN:

IR. HAJI HAMIM BIN SAMURI (Ledang) meminta Menteri Sumber Manusia menyatakan bilakah kerajaan akan menguatkuasakan gaji minima dalam semua sektor pekerjaan memandangkan permintaan kuat keatasnya sekarang.

Jawapan: YB Menteri Sumber Manusia

Kadar gaji sektor swasta di negara ini ditentukan mengikut kuasa pasaran(*market forces*). Penetapan ini dibuat berdasarkan kepada permintaan dan penawaran(*supply and demand*). Ini bagi memastikan negara sentiasa kompetitif dalam persaingan ekonomi diperingkat global. Institute for Management Development (IMD) World Competitiveness Yearbook pada tahun 2007 melaporkan bahawa kedudukan Malaysia adalah di tempat ke-23 daripada 55 buah negara dari aspek daya saing. Berdasarkan kepada laporan tersebut, kedudukan ini perlu diperbaiki dan elemen-elemen peningkatan kos tanpa peningkatan produktiviti perlu dielakkan.

Tiga cara yang digunakan oleh kerajaan untuk penetapan gaji adalah melalui kuasa pasaran (*market forces*), Perjanjian Kolektif(*Collective Agreement*) dan Majlis Penetapan Gaji(MPG). Majlis Penetapan Gaji ditubuhkan di bawah Akta Majlis Penetapan Gaji 1947 bagi golongan pekerja yang mudah terjejas (*vulnerable*) iaitu yang bekerja di sektor di mana tiada satu mekanisma yang berkesan dalam menetapkan gaji dan syarat pekerjaan. Sehingga kini, kerajaan telah menubuhkan 11 MPG yang akan menetapkan gaji minima dan syarat-syarat pekerjaan bagi golongan pekerja dalam sektor-sektor yang ditentukan. Kerajaan akan sentiasa mengkaji dan menentukan gaji minima mengikut sektor pekerjaan, sekiranya terdapat keperluan untuk penubuhan tersebut.

Kerajaan berpendapat bahawa penetapan gaji minima kebangsaan (National Minimum Wage) untuk semua sektor pekerjaan adalah kurang wajar pada masa ini. Ini kerana sebarang peningkatan kos dalam menjalankan perniagaan di Malaysia akan menjejaskan daya saing negara dalam menarik pelaburan asing ke Malaysia dan mengekalkan pelabur-pelabur sedia ada.

Selaras dengan hasrat agenda pembangunan negara, kerajaan sedang mempromosikan sistem upah yang dikaitkan dengan produktiviti (*Productivity Linked Wages System-PLWS*). Dasar ini bertujuan menjamin daya saing negara di samping menyumbang kepada peningkatan kualiti hidup pekerja.

MTUC's comment

Trade unions are thankful to YB IR Haji Hamim Bin Samuri for expressing concerns on government's failure to establish a national minimum wage for all workers in the country.

Human Resources Minister's response is illogical and ridiculous.

Human Resources Minister is concerned that world Competitiveness Year Book has listed Malaysia at 23rd place out of 55 countries and he has stressed the need to improve that.

Is the Human Resources Minister suggesting that wage levels should be further reduced?

Human Resources Minister in his reply to Hj Hamim has stated that Malaysia has established 11 wages councils, especially to help workers in vulnerable sectors. He has said "Government will always study, review and determine minimum wages".

Let us review how our government has reviewed the minimum wages set by wages councils over the last 25 years.

Sectors with a Minimum Wage

- Hotel and catering- Minimum monthly wage of RM 185 for those 18 years and above since 1982.
- Cinema workers- Minimum monthly wage of RM 175 for tickets sellers, mechanics, technicians, electricians and carpenters for cinemas with four daily showings since 1981.
- Cargo handlers and lighter men- Minimum monthly wage of RM 120 for hatch men since 1977.
- Shop assistants- Minimum monthly wage of RM 250 for those 21 years and above in the Klang Valley since 1981.

It is obvious government has turned a blind eye to the plight of workers under the above sectors. They have failed miserably in managing the wages councils. Human Resources Minister has stated that a National Minimum wage for all sectors is not necessary. Is the cost of fuel different depending on the sector one is employed? Is the cost of food and essential commodities made available at different prices dependent on the sector one is employed?

Government claims that wage levels have to be suppressed in order not increase the cost of doing business. How will the new electricity tariffs effect the cost of production and competitiveness? Has the Government given thought to the far reaching implications on the industries?

MTUC urge the Government to be more logical and considerate.



Trade union rights

Suhakam: A need for ratification of ILO convention 87 to foster trade union rights in Malaysia

The Government should allow all workers, including foreign ones, to form unions to protect their welfare, said the Human Rights Commission of Malaysia (Suhakam).

Commissioner Datuk N. Siva Subramaniam said that as a member of the United Nations and in keeping with the Federal Constitution and Human Rights Act, Malaysia should have by now automatically recognised and ratified the International Labour Organisation (ILO) Convention 87 on freedom of association.

"Associations and unions are not kongsi gelap (secret societies) but to protect workers' welfare, employment terms and entitlement while ensuring that labour laws are followed," he told reporters at the Suhakam roundtable talk with trade unions yesterday.

He also said foreign workers needed a formal avenue to voice their plight and get redress. The discussion was participated by MTUC, Cuepacs, Bar Council, Tenaganita, Suaram and the Malaysian Employers Federation.

Suhakam vice-chairman Tan Sri Panglima Simon Sipaun said the views relayed would be studied by Suhakam, which would then make recommendations to the Government.

MTUC Secretary General G. Rajasekaran said the Government had reasoned that Malaysia was still at a developing stage and was not ready to adopt the ILO Convention No. 87.

Source: the Star, 12 August 2008



Labour laws severely obstruct growth of trade unions in the country

Speaking as a panellist at the workshop on trade union rights (11/08/08) organised by the Human Rights Commission MTUC Secretary General G. Rajasekaran said that the Trade Unions Act (TUA) is designed with the deliberate intention to obstruct the birth and growth independent and strong unions in the country. In fact every amendment to the TUA since merdeka 51 years ago, has burdened the workers and trade unions with additional restrictions.

Although the Industrial Relations Act specifically prohibit employers from imposing any restriction on workers rights to join a union, often the Department do little or nothing to enforce this positive provision. The Industrial Relations Act has made the union recognition process cumbersome and inefficient. Unions have to wait for two to three years to obtain recognition which is a prerequisite to commence collective bargaining on wages and working conditions.

Ex-Immigration chief charged with corruption

Former Immigration Department director-general Wahid Md Don pleaded not guilty in the Kuala Lumpur Sessions Court today to receiving a RM60,000 bribe from a businessman to speed up the approval of visas for 4,337 Bangladeshi workers.

Wahid, 56, is alleged to have received the money from Low Chang Hian at his house at No 3167, Jalan Lembah Ledang, off Jalan Duta, on July 10.

If convicted, he faces not less than 14 days and not more than 20 years in jail and can be fined up to five times the bribe involved or RM10,000, whichever is higher.

Source: Aug 19, 08 Malaysiakini

Don't harass workers to endorse petition in support of Syabas and Puncak Niaga-CAWP

MTUC and Coalition Against Water Privatisation (CAWP) disagreed with the management of Syabas and Puncak Niaga in forcing their workers and their families to sign the 'Memorandum Bantahan'

Malaysian Trades Union Congress (MTUC) and Coalition Against Water Privatisation (CAWP) stand on 'Memorandum Bantahan' by Persatuan Pengguna-Pengguna Prihatin Selangor, Wilayah Persekutuan Kuala Lumpur Dan Putrajaya - opposing the Selangor State Government's take-over of Syabas and Puncak Niaga.

MTUC and CAWP welcome Selangor state government's plan to take over water management in the state. We congratulate the state government's bold and positive initiative. In fact the restructuring of the water management by the state government would be welcomed by the citizens of the state.

At present, the Persatuan Pengguna-Pengguna Prihatin Selangor, Wilayah Persekutuan Kuala Lumpur Dan Putrajaya is mobilising public support via signature campaign to oppose the restructuring of the water management in Selangor, Wilayah Persekutuan and Putrajaya.

The restructuring involves the take-over of all water players including Syabas and Puncak Niaga Holding Berhad by Kumpulan Darul Ehsan Berhad (KDEB) a subsidiary of the Selangor State government

The signature campaign is addressed to the YAB Prime Minister of Malaysia, Datuk Seri Abdullah Ahmad Badawi.

MTUC and CAWP are not opposing the 'Memorandum Bantahan' of the Consumer group. This is because MTUC and CAWP believe in the Right to free speech and dissent.

What MTUC and CAWP are concerned about is the manner in which the signature campaign is being conducted.

a) It is also very unusual that the Consumer group's

'Memorandum Bantahan' is being circulated for support and aggressively promoted by managements in work places owned by Syabas and Puncak Niaga.

b) The management of Syabas and Puncak Niaga are forcing their workers and their families to sign the 'Memorandum Bantahan'. Workers in these establishments are threatened and intimidated with no - increment, bonus or promotion if they do not sign.

c) Five reasons were put forward demonstrating consumer satisfaction with Syabas and Puncak Niaga, justifying the continued Syabas role in water management in the state. They include: 1) providing clean drinking water; 2) the efficiency of PUSPEL; 3) less water disruption; 4) reduction in overcharging; and 5) and Puncak Niaga's role during the 1998 water crisis. There is no place in the 'Memorandum Bantahan' has the consumer group provided credible facts and figures to justify their consumer satisfaction assertion.

In their view these consumer satisfaction indicators are purely assertions. Thus, people are being asked to sign on to a memorandum which is not credible nor adequately substantiated. Only a credible independent performance audit of these companies can resolve this issue. We hope that the Prime Minister concurs with this view.

MTUC and CAWP urge the state government to proceed with its strategies to ensure that this essential service remain under the ownership and control of the state government.

Date : 21 August 2008

Menjawab soalan yang diungkitkan oleh YB Tuan Charles Santiago (MP Klang) dalam Dewan Rakyat, Menteri Tenaga, Air dan Komunikasi menjawab soalan berkaitan pemotongan bekalan air:

"Pada tahun 2007, jumlah pemotongan bekalan air adalah sebanyak 237,655 unit. Jumlah caj terkumpul bagi pemotongan dan penyambungan semula pada tahun tersebut adalah sebanyak RM8.2juta. Untuk tempoh bulan Januari hingga Mei 2008, jumlah pemotongan adalah sebanyak RM54,033 unit dan caj yang dikenakan adalah berjumlah RM1.9juta".



International news

Home-based women workers to launch union

Islamabad: To claim and advocate for their rights more effectively, home-based women workers plan to launch a registered union at the national level on August 22.

Under the name of 'Home-based Aurat Workers Union Pakistan (HBAWUP)', the union will be the first of its kind in the country. The announcement in this regard was made at a press conference organised at the ActoinAid office on August 19.

Highlighting the aim of this initiative, Manager Social and Women's Rights for ActionAid, Aqsa Khan said that in addition to providing home-based women workers a platform for claiming their rights, the union would strengthen their ability for collective bargaining so as to strongly negotiate with middle agents and investors. She said that it would also enable them to advocate with the government for signing and ratifying United Nations ILO convention. "Representation from all four provinces in local, provincial and national structure would convert the union into a strong voice against unjust and exploitative market trends," she added.

Source: Labourstart; August 20, 2008

WTO Isn't Keeping Up with the World

So once again global trade talks have hit a stone wall. Once again the *Washington Post* sheds tears over the latest collapse in negotiations. A July 30 *Post* editorial finds it "particularly dismaying" that the People's Republic of China cast a veto on the World Trade Organization's latest proposal to save the so-called Doha Round.

Those ungrateful Chinese! After all, "U.S. supporters of Chinese inclusion in the WTO [including the *Post*] argued that drawing China into a system of multilateral give-and-take would mute its nationalistic tendencies. Evidently, the Chinese see the matter differently. They, and the world, will be poorer because of it." Well, the Chinese are not the only ones who see matters differently from the *Post*.

"Don't cry for Doha," says the title of economist Dani Rodrik's July 30 [Weblog](#). He writes: "There was not a whole lot at stake to begin with for poor nations as a whole...Panicky statements about dire consequences and protectionist spirals will be more damaging than the actual effects of the collapse of the trade talks."

Be assured: robust world trade will continue, regardless. Robert Wade, professor at the London School of Economics, explains that :

"There is almost no chance that the global economy would become less integrated as a result of 'failure' [of the Doha talks]. The producers of most goods and services in the major economies are much more integrated into complex cross-border systems than between 1914 and the 1930s, when the world economy did become less integrated."

The WTO suffers from a much bigger failure than the current one in Geneva. The overall failure is this: *the world trading system has simply not kept up with the world*. That's not an opinion; it's a fact.

Source: Robert A. Senser , 30 July 2008: *Human Rights for workers*

REVIEW NAFTA?

NAFTA is the U.S. government-devised model for dozens of trade and investment agreements in the past 15 years and also for agreements the Bush administration is still pursuing. That model, vigorously defended by the trade elite who wrote it, has many flaws. The most fundamental among them can be boiled down to this indictment: it creates and enforces a large set of cross-border rights and privileges for multinational corporations and investors without any corresponding duties.

You will seldom hear a criticism of NAFTA put that way. Instead, critics usually fault it for a lack of enforceable labor and environmental standards. The solution offered is to tack on those standards. But that won't suffice, because NAFTA as a whole is unbalanced, so much so that it should be called the North American property rights and investment rights agreement. Source: Robert A. Senser , 6 March 2008: *Human Rights for workers*