



# Labour Bulletin

## ***3000 workers denied Collective Bargaining Rights***

Trade unions are unhappy with Government's failure to implement the new provisions under the Industrial Relations Act 1967 to resolve union recognition claims. The special amendments specifically aimed to speed up settlement of recognition disputes are not enforceable.

Although the amendments were hastily pushed through the Parliament in February 2008, Government has not put in place appropriate regulations required under the law. As a result all recognition claims submitted after February 2008 cannot be processed, says the Human Resources Ministry.

Responding to MTUC's complaint against the controversial amendments to the Industrial Relations Act, Government in a lengthy explanation to the ILO stated that: *the amendments provide for fast and efficient procedure for recognition for collective bargaining purposes.*

Since confirmation of union recognition is a prerequisite for the right to collective bargaining, a number of unions are unable to commence negotiations. More than 3000 workers are left in a limbo.

It is our understanding that regulations can be passed at Ministerial level and as such it is much easier than going through the parliamentary process.

It appears that the Human Resources Ministry is adopting a couldn't care less attitude because they have successfully imposed a ban on all kind of protest action during the pendency of recognition claims.

***G.Rajasekaran***  
***Secretary General***

*Productivity growth  
Labour competitiveness  
cost has improved,  
indicated*

*by a drop in unit labour  
cost of 2.9 per cent-  
Minister of International  
Trade and Industry,  
Datuk Mustapa Mohamed*

### **Kandungan Isu ini**

- 2 Retirement age not stipulated in the employment contract
- 3 Workers Commemoration day
- 4-5 Sambutan Hari Mei 2009
- 6 ILO Regional Conference on Con 87 & 98
- 7 MTUC comments on HR minister's statement
- 8 International News

Wisma MTUC  
10-5, Jalan USJ 9/5T,  
47620 Subang Jaya,  
Selangor.  
Tel: 03-80242953  
Fax: 03-80243225  
email: mtuc@tm.net.my  
www.mtuc.org.my

Disediakan oleh:  
R.Rajeswari  
Setiausaha Penyelidikan



## Dismissal - Retirement age not stipulated in contract of employment

Claimant claim herself been constructive dismissal after the company given the retirement notice:

- Weather the claimant had been aware of the retirement age of the company;
- Retirement age not stipulated in any of the claimant's contract of employment;
- Weather the company's retirement age had been equitable;
- Company refusing to withdraw retirement notice.
- Weather claimant had been bound by the terms in the Employee Handbook;
- Weather the claimant had enjoyed any benefit under the terms of handbook;
- Weather the doctrine of approbation and reprobation had applied in this case.
- Retirement age stipulated in employment handbook of parent company.

### Finding of the court :

- These was no provision in any of the letters of appointment of the claimant by the company (RBSB) that he would be bound by the terms of employment which was provided in the Employees Handbook.

***If the claimant has enjoyed any of the benefits conferred by the employer which are contained in an Employees' Handbook or any other scheme of benefits, then any other provisions which are detrimental to the claimant which are contained in the Employees' Handbook or scheme of benefits will also bind the claimant.***

- *RBSB has failed to prove that the claimant enjoyed any of the increased benefits which were provided in the Employees' Handbook 2004 of Ranhill so that;*
- *So that the doctrine of approbation and reprobation did not apply in this case.*
- *When the management of RBSB implemented the retirement age of 56 years on 1 September 2004, it was implementing the decision of the Board of Directors of Ranhill Bhd. There was no evidence that the Board of Directors of RBSB had agreed to implement that policy for the employees of RBSB.*
- *There is documentary evidence that RBSB is a wholly owned subsidiary of Ranhill Bhd. There was no other evidence of a common management. There was also no evidence that there were common directors in both the companies.*

- *It is trite law that each company is a separate legal entity unless the corporate veil is lifted. There was insufficient evidence to lift the corporate veil of Ranhill Bhd and RBSB. So that the court held that the decision of the Board of Directors of Ranhill bhd did not bind the claimant.*

Court Chairman: Susila Sithamparam

Award No: 255 of 2009

ILR: [2009] 2 ILR 1-240

## Dismissal on the ground past retirement age

Notice of termination been issued to the claimant but:

- The claimant was allowed to work past retirement age on goodwill basis before;

The company had employed the claimant and there had not been any agreement between the parties with regards to the age of retirement.

- Nowhere in the letter mentioned about the claimant had been appointed on either a contract or a year to a year basis after the age of retirement.
- The company allowed him to continue with his duties for another year on a goodwill basis.
- Unfortunately later the company informed him (letter was issued) that they wished to retire him.
- The claimant attempted to see the MD for explanation was unsuccessful. Thus he issued a protest letter to MD.

### Court's finding

- *Evidence from the former MD shows that there had been many employees in the company who had worked well past the age of 55 and he himself had issued a memo to make it clear that employees could work up to 65 years.*

Chairperson: Yamuna Menon

Award No: 246 of 2009

ILR: [2009] 2 ILR 1-240

# Workers Commemoration day

Majikan harus peka dan prihatin terhadap keselamatan dan kesihatan pekerja. Kelalaian majikan telah mengorbankan banyak nyawa pekerja.



Beribu-ribu pekerja terpaksa mengorbankan hidup dan nyawa mereka akibat dari kelalaian majikan bagi menyediakan serta patuh pada undang-undang keselamatan dan kesihatan pekerja. Undang-undang ini hanya dianggap sebagai *self regulation* yang masih tidak menjadi amalan dikalangan majikan-majikan.

Lebih kurang 70 pemimpin-pemimpin dan ahli kesatuan sekerja telah berhimpun di ibu Pejabat MTUC bagi meraikan hari memperingati pekerja-pekerja yang menjadi mangsa ketika bekerja. 28 April adalah hari bersejarah yang disambut diseluruh dunia. Turut hadir dalam majlis yang bersejarah ini ialah Tuan Hj Mohd Shafie BP Mammal Presiden UNI –AP.

Pendedahan tentang pentingnya keselamatan dan kesihatan dikalangan pekerja-pekerja adalah amat jauh ketinggalan. Malahan ada di antara mereka yang mengambil mudah perkara-perkara sedemikian.



Presiden MTUC, Sdra. Syed Shahir telah menyalakan lilin memperingati peristiwa Kematian dan Kecederaan pekerja-pekerja di tempat kerja. Dalam ucapannya beliau memperingatkan kepentingan untuk mengadakan undang-undang yang memberi perhatian dan

tanggungjawab terhadap keselamatan dan kesihatan pekerja-pekerja di tempat kerja. Perlaksanaan undang-undang ini haruslah diwajibkan serta dikuatkuasakan secara tegas supaya jaminan hak pekerja dan nyawa pekerja-pekerja dilindungi.

Manakala dalam sesi wawancara bersama Pegawai PERKESO, beliau menegaskan bahawa PERKESO kini sedang berusaha untuk memberi faedah kembali kerja bagi pekerja-pekerja mengalami kecederaan serta pelbagai faedah lain sedang dikaji.





# MAY Day 2009



*Pemimpin-pemimpin MTUC bersama Dato'Adnan Md Ikshan dan Dato Sivasubramanian*



*Bacaan ikrar telah di ketuai oleh Jawatan kuasa Belia dan Wanita MTUC*



Sambutan Hari Mei 2009, MTUC telah diadakan pada hari Jumaat di Komplek Sukan USJ Subang Jaya.

Lebih kurang 2000 ahli telah bersama-sama dengan pemimpin-pemimpin MTUC serta kesatuan-kesatuan gabungan telah turut bersama dalam majlis yang gilang gemilang ini.

Tema yang ditetapkan tahun ialah:

**"Hapuskan  
Penindasan dan  
Diskriminasi-  
Martabatkan Hak  
Pekerja**

Tetamu khas Dato Sivasubramanian dari SUHAKAM dan Yang Berbahagia Dato'Adnan Md Ikshan, Yang DiPertua, Majlis Perbandaran Subang Jaya turut bersama dalam majlis ini.

Dalam ucapan Hari Pekerja 2009, Presiden MTUC menggesa agar Perdana Menteri baru memberi ruang kepada MTUC untuk mengadakan perbincangan yang terbuka bagi menangani pelbagai permasalahan kaum pekerja yang masih tertunggak sejak lama lagi umpamanya terhadap isu gaji minima, tabung pemberhentian pekerja, pindaan terhadap akta pekerjaan serta keselamatan di tempat kerja.



# Sambutan Hari Mei 2009

Setiausaha Agung MTUC pula meluahkan rasa tidak puas hati dengan keadaan ekonomi yang tidak menentu yang secara beransur-ansur menghakis hak kaum pekerja dan keengganan majikan untuk mengadakan rundingan serta perbincangan turut memberi implikasi yang signifikan kepada kesatuan sekerja di negara ini. Tema Hari Pekerja amat berseesuaian dengan persekitaran dan keadaan semasa hari ini.

Beliau menegaskan bahawa majikan yang tidak bertanggungjawab sentiasa mengambil kesempatan dengan cuba memberi keutamaan kepada pekerja-pekerja asing dan mengenyepikan pekerja-pekerja tempatan. Pelbagai helah digunakan oleh majikan untuk melarikan diri dari tanggungjawab dan mematuhi hak perundangan buruh. Apatah lagi mereka terus mendapat sokongan dari pihak berkuasa sendiri untuk mendapatkan pekerja asing.

MTUC mengucapkan tahniah kepada kontinjen Perodua dan Proton yang memberi komitmen padu bagi memeriahkan suasana Hari Pekerja 2009. Turut diucapkan terima kasih kepada semua kesatuan gabungan yang hadir bagi merencanakan lagi aktiviti hari Pekerja 2009.

Some 300 migrant workers joined the Mayday gathering organised by MTUC to show their support and pledge toward achieving decent work and labour rights.



*bersatu kita teguh.bercerai kita roboh!!!*





## Level of ratification of Con. 98 and Con.87 lowest in Asia Pacific Region

### ILO/ITUC-AP/MTUC Asia Pacific Conference on Rights to form Unions and the Right to Collective Bargaining

ILO/ITUC-AP/MTUC Asia Pacific Conference on Rights to form Unions and the Right to Collective Bargaining, a Campaign for Ratification and Implementation of ILO Conventions 87 and 98, was held in Subang Jaya Selangor Malaysia from 6 May to 8 May 2009, with the participation of 45 persons, representing 29 countries in the region. Representatives from ITUC-AP, Global Union Federations, Malaysian Bar Council, Human Right Commission, Malaysia and ILO (ACTRAV, NORMES, and SRO Bangkok) were present at the Conference.

In a globalizing economy and as a result of the global financial crisis, the nature of employment has been dramatically changing towards more precarious, irregular and contingent jobs such as outsourcing work, contract labour, and informal work. In addition, unfriendly corporate environments have been developed, substantially restricting trade union rights and making organizing campaign extremely difficult. Workers' rights are not adequately respected in almost all sectors.

The Conference was held to mark the occasion of 60<sup>th</sup> anniversary of two ILO core conventions No.87 (Freedom of Association and Protection of the Right to Organise, 1948) and No. 98 (Right to Organize and Collective Bargaining, 1949) and hence to redesign trade union strategies for the promotion, ratification, and effective implementation of these salient instruments. The conference came up with a joint action which should follow up at the national level, together with ITUC-AP, GUFs and ILO:

#### Promotion of effective implementation

- Revision of labour legislation towards the right to organize and collective bargaining, in particular for self-employed and contract labour;
- Strengthening labour administration, establishment of Labour Courts (where they don't exist), and effective functioning of Labour Courts;
- Capacity building of trade unions through various training to change the mindset of union leaders, funds-raising, education infrastructure development, and trade unions administration;
- Mainstreaming the agenda of Freedom Of Association(FOA) and Collective Bargaining in the DWCPs
- Dialogue with IFIs including IMF, WB and ADB as well as regional and international forums – ASEAN, APEC, and South Pacific Forum, etc – to ensure the implementation of fundamental workers rights, including FOA and right to collective bargaining.





# MTUC's comments on HR Minister's statements

16 Selasa 28 April 2009  
BA PILIH 16A 28 (emel)

## 'Pembantu rumah tak boleh tubuh kesatuan'

**KUALA LUMPUR:** Kerajaan tidak akan membenarkan hampir 300,000 pembantu rumah warga asing yang sedang bekerja di negara ini untuk menubuhkan kesatuan sekerja khusus untuk melindungi serta menjaga kepentingan mereka.

Menteri Sumber Manusia, Datuk Dr S Subramaniam, berkata ini kerana Akta Pekerjaan yang sedia ada sekarang turut memberi perlindungan kepada pembantu rumah warga asing selain kementerian juga memantau syarat kontrak yang ditandatangani mereka bersama majikan masing-masing.

### G. Rajasekaran says :

Minister is fully aware that the Employment Act doesn't cover domestic workers. Therefore the Minister's statement is completely misleading.

**Second comment:** The Minister's statement again seen to be contradicting. Earlier he said maid s are not allowed to form a union and yet now he is saying that they can join the existing union . Which union he is referring to?

Subramaniam berkata demikian bagi mengulas desakan Kongres Kesatuan Sekerja Malaysia (MTUC), Khamis lalu supaya kerajaan membenarkan pembantu rumah asing di negara ini membentuk kesatuan sekerja untuk melindungi kepentingan mereka.

Bagaimanapun, Subramaniam berkata, walaupun tenaga kerja itu tidak dibenarkan menubuhkan kesatuan sekerja, mereka masih boleh menyertai kesatuan sekerja sedia ada di negara ini.

## Bosses might have to bank in maids' wages

### MTUC reiterates call for foreign maids union

**PETALING JAYA:** The Malaysian Trade Union Congress yesterday reiterated its call to the government to allow foreign maids to form a union or at least an association to protect their interests.

Its secretary-general, G. Rajasekaran, told a press conference that the 300,000 maids in Malaysia, unlike in neighbouring countries, were not protected by any legislation.

"They are not even covered under the Employment Act 1955 and as such they are open to exploitation by errant employers," he said.

Rajasekaran said it was only after almost 60 years that the International Labour Organisation was taking steps to adopt a convention to safeguard this group of workers, who were deemed "most vulnerable", from further exploitation.

Tenaganita director Irene Fernandez said the non-governmental organisation had received numerous reports from maids on abuse by their employers.

She pointed out that although Malaysia had passed the Anti-Trafficking in Persons Act 2007 which safeguarded against human trafficking for purposes of labour exploitation, it was all too common to find domestic workers being trafficked for labour exploitation and forced labour. - Bernama

by Tan Yi Liang  
newsdesk@thesundaily.com

**PETALING JAYA:** The Human Resources Ministry is considering making it mandatory for employers to credit the wages of domestic helpers into banks or other financial institutions to prevent abuse.

Industrial Relations Department director-general Mohd Yunus Razzaly said yesterday the ministry was studying proposals to amend the Employment Act 1955 to introduce such a ruling.

"This is to ensure domestic workers are not victimised and deprived of their remunerations," he said in a keynote address at the opening of the Malaysian Trade Union Congress national consultation on the International Labour Organisation's "Decent Work Agenda for Domestic Workers" here.

Mohd Yunus said there were gaps which led to the abuse of domestic workers, such as the high cost

of recruitment.

"Workers' lack of credit results in high borrowing and indebtedness to agents and employers, which contributes to dependency and abuse," he said.

The ministry was acting on cases of ill-treatment of domestic workers and hoped to see a reduction in the number of such cases, he said.

"Seventy-eight cases were reported to the Department of Labour from 2007 to 2009 and action has been taken," Mohd Yunus said, citing the case of Nirmala Bonat as an example.

However, he said, the majority of domestic workers enjoyed "good conditions", with some becoming extended members of the families in which they were employed.

Later at a press conference, Mohd Yunus said the drafting of legislation to protect domestic workers from abuse and exploitation would have to take into account all agencies and factors involved, including the number of working hours, a minimum wage and weekly leave.

"The different working conditions and types of service, the ability of employers to pay and other issues (have to be studied)," he said.

"We have to look at the rights of both the employer and the maid. If an employer makes RM5,000 a month and employs a maid, and the maid works more than the eight hours stated in the Employment Act, can the employer afford to pay overtime? The Act also states that an employee can work for no more than 12 hours a day. There are specific restrictions."

### G. Rajasekaran's comments:

The proposal to require employer to bank in maids wages last 4 years but nothing has happened. We hope the Minister will stop talking and take steps to fulfil his promises.

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## Code of conduct for industrial harmony to be legalised

**PETALING JAYA:** The Human Resources Ministry plans to include parts of the code of conduct for industrial harmony as provisions in the Industrial Relations Act beginning next year.

Its minister, Datuk Dr S. Subramaniam, said yesterday the proposed amendments to the law was aimed at making employers enforce the code of conduct as well as provide better protection for them and also the workers.

"We will not amend all, but from studies conducted, there are some parts (of the code) which have to be legalised," he said after witnessing the signing of an agreement between MOX-Linde and the Chemical Workers Union of Malaysia here.

Subramaniam said the code of conduct for industrial harmony, introduced in 1975,

laid down areas of cooperation and agreed industrial relations practices, including recruitment, training, retrenchment, collective bargaining, recognition of trade unions, negotiating procedures and collective agreements.

The study had to be conducted as there were complaints from employers and workers' unions on the benefits and protections involved, he said.

Subramaniam said based on the code of conduct, the employers could not terminate their workers indiscriminately.

"The question is, the code only serves as a guideline. The employers can choose to either abide by it or ignore it. So, the ministry feels there is a need to legalise parts of the code to make it fair for both the employers and workers." - Bernama

## Code of conduct for industrial harmony to be legalised

MTUC welcomed the ministry's move to include code of conduct for industrial harmony as a provisions in the Industrial Relations Act by next year.

MTUC hope that this will be enforceable so that will give more meaningful for the industrial harmony rather than just being a written document.





# International news

## Workers punished in war against unions

Private employers in the United States are relying more than ever on coercive and punitive tactics against workers seeking their legal and moral right to union representation.

Punishments include firing, threatening to fire, threatening to close the worksite, reducing wages and benefits, close monitoring of personal activities, and various forms of harassment, which in combination create an atmosphere of fear.

Further, employers often frustrate unionization by delaying the secret ballot vote that the National Labor Relations Board (NLRB) conducts to decide on union representation. In the most egregious cases, those elections were stalled by three to five years.

Even when the NLRB does hold an election and even when the union "succeeds in making it through all the hoops that it takes to win the election," employers can fight on by actively resisting the workers' right to a collective bargaining contract. In fact, according to NLRB data for the 1999-2003 period, 52 percent of newly formed unions had no collective bargaining contract one year after a successful election, 37 percent none after two years.

*Source: Robert Senser, Human Rights for Workers, 20 May 2009*

## Turkey: Metal workers sacked for union membership

A workers' struggle for their jobs and rights at Sinter Metal Đmalat Sanayi AĐ (located in the Dudullu Organized Industrial Zone, Turkey) has gone on for three months.

An overwhelming majority of the 470 workers are members of Birlesik Metal-IS trade union. In December 2008, the company fired 350 workers including union leaders, not due to the economic crisis as the employer attempted to claim, but due to their union membership, as confirmed in a Labour Ministry finding.

The IMF, EMF and unions demand that the company immediately reinstates the dismissed workers, stops violations of workers' rights, and in good faith considers the workers' demands and promptly starts negotiations to reach a fair and just settlement.

*Source: Labourstart 2009*

## Swine Flu: Urgent Action Needed to Reduce Workplace Transmission Risks and Ensure Public Health

Brussels, 22 May 2009: As the H1N1 "swine flu" virus continues to spread around the world, the International Trade Union Confederation is calling for government action on a series of key workplace issues that are essential for reducing the risk of a severe pandemic and for preparing in case a severe pandemic does occur.

*Source: ITUC CSI IGB*

## Taiwanese labor rights groups put pressure on Apple

Apple has become the focus of a conflict over worker rights in Taiwan, local reporters say. Labor groups [carried banners and microphones](#) on the 20 May 2009 outside of Apple's Taipei office, hoping to put indirect pressure on Wintek, a major supplier of flat-panel displays. The latter is accused of firing over 600 workers in December without warning, moreover cutting salaries, and forcing some of its people to work unpaid overtime in order to fulfill rush orders.

A subsidiary of Wintek in Dongguan, China faces accusations of firing 19 employees in April following a strike, which itself was triggered by poor working conditions and non-negotiated wage cuts. Wintek insists that it has followed all regional laws, and further given laid-off workers proper compensation packages. The company has threatened legal action, however, should "company and stakeholders interests" become jeopardized.

Apple has said little about the dispute, except to argue that it regularly audits suppliers, with the goal of ensuring they meet the company's [public ethics standards](#). Such rules were enforced in 2006, when a Chinese factory belonging to Foxconn was similarly found to be [overworking its staff](#). The audit is said to have only been initiated after media reports.

*Source: Labourstart, 21, May 2009*