

TRIPARTITE GUIDELINES

on Union Representation of Executives

Introduction

In September 1999, the Tripartite Committee on Union Representation of Executives was formed and tasked to study issues relating to the representation of executives by trade unions and to make appropriate recommendations for the Government's consideration.

In its deliberation, the Committee noted that the profile of our local workforce had changed with more employees joining the executive ranks. It also held the view that as the number of executives and managers grew larger, the formation of executive unions, and hence an increase in the number of unions within a workplace, would be inevitable. This would be undesirable as multiple unions by their very nature, tend to represent sectional interests which very often may be at the expense of wider interest. Indeed, the experience of other countries confirms that the dynamics arising from many unions within a workplace hinders labour-management cooperation and teamwork resulting in lowered productivity. Within a single union, the interests of employees could be better harmonised. Hence, the Committee recommended that certain executives and managers should be allowed representation by rank-and-file unions to provide them with an additional avenue to seek redress on their disputes.

To address employers' concern that such representation would give rise to conflict of interest and undermine management effectiveness, the Committee recommended that senior management staff and certain core management personnel should not be represented. These included those involved in hiring, firing, reward, promotions, or disciplinary duties; those with access to confidential information such as payroll and budgetting information; those who represent employers' interest in union-management matters and those whose union affiliation would give rise to conflict of interest. It has also recommended that executive employees be represented by rank-and-file union on an individual basis but not for collective bargaining purpose; that representation be limited to only three areas of disputes, i.e dismissal, retrenchment benefits and breach of contracts; and that executive employees should not be involved in industrial action, although they could hold union office to help enhance the leadership of rank-and-file unions. The Committee's recommendations were accepted by the Government and is now effected in the Industrial Relations (Amendment) Act 2002.

To facilitate the process of executives joining the rank-and-file unions, the following Guidelines are issued by the Tripartite Working Group:

(1) Limited Representation of Executive Employees by Rank-and-File Unions

Notwithstanding section 16 of the Industrial Relations Act, a rank-and-file union may represent an executive individually, and not as a class, for all or any of the following purposes:

- a) to make representations to the Minister under section 35(2);
- b) upon the retrenchment of the executive employee, to negotiate with the employer with a view to resolving any dispute relating to the retrenchment benefit payable to the executive employee;
- c) to negotiate with the employer with a view to resolving any dispute relating to a breach of contract of employment by the executive employee or the employer;
- d) to represent the executive employee in proceedings before a Court in respect of the dismissal or reinstatement of the employee in circumstances arising out of a contravention of section 82 or any matter referred to in paragraph (b) or (c).

(2) How to determine Eligibility of Executives

Employer may object to such representation on the ground that the executive employee:

- a) is employed in a senior management position or performs or exercises any function, duty or power of a person employed in a senior management position, including the control and supervision of major business operations, accountability for operational performance, formulation of business policies, plans and strategies and provision of leadership to other employees;
- b) performs or exercises any function, duty or power which includes decision making, or the power to substantially influence decision making, on any industrial matters including the employment, termination of employment, promotion, transfer, reward or discipline of other employees;
- c) performs any function or duty which includes representing the employer in any negotiation relating to any industrial matters;
- d) has access to confidential information relating to the budget and finances of the employer, any industrial relations matter or the salaries and personal records of other employees; or

- e) performs or exercises any other function, duty or power which may give rise to a real or potential conflict of interest if he is represented by the trade union.

Notwithstanding section 30(B)(2) of the Industrial Relations Act, union and management may, by mutual consent, adopt the following criteria to determine the eligibility of executives to be represented by rank and file unions:

- a) Salary level as a proxy;
- b) Ratio of executive/managerial employees to rank-and-file employees

Dispute

Where no agreement could be reached between a union and management on the eligibility of certain or all executives for representation by a rank-and-file union, either party could seek conciliation assistance from the Ministry of Manpower. During conciliation, the dispute may be resolved in accordance with the provisions made under section 30(B)(2) of the Industrial Relations Act or by mutual consent and without prejudice, based on the two criteria stated above. If no agreement could be reached through conciliation, union and management shall submit the dispute to arbitration by a joint application.

Sharing of Information

Both management and union should work closely in the spirit of cooperation to reach an agreement on the eligibility of executives for limited representation by rank-and-file unions. To facilitate an agreement to be reached, management should share relevant information with the unions, such as the company's organisational structure, number and grades of executives, as well as their duties and responsibilities.

(3) Retrenchment Benefit

An executive employee may be represented by rank-and-file unions in negotiations on matters relating to the payment of retrenchment benefit.

Quantum of Retrenchment Benefit

The amount of retrenchment benefit payable to executives may be negotiated between the management and union. In determining the amount of retrenchment benefit payable, companies, unions and employees should exercise flexibility, taking into consideration the following:

- a) the market norm, the company's financial position, the reason for retrenchment, and labour market conditions, among other relevant factors;
- b) the need to help individuals tide over the transition period before they secure alternative employment; and
- c) that the formula adopted for computing the retrenchment payment for an executive employee does not have to be based on that used for a rank-and-file employee.

Dispute

Where the dispute on the payment of retrenchment benefit cannot be resolved at the company level, it may be referred to the Ministry for conciliation. If no agreement could be reached through conciliation, union or management may make a request in writing to the Registrar that the trade dispute be submitted to arbitration.

(4) Dismissal

Section 35(2) of the Industrial Relations Act

A Union may make representation to the Minister under section 35(2) of the Industrial Relations Act on behalf of an executive who considers that he has been dismissed without just cause or excuse. The representation must be in writing and made within one month of the dismissal.

Section 35(1A) of the Industrial Relations Act

Where a dismissal occurs in circumstances arising out of a contravention of Section 82 of the Industrial Relations Act, the Union may make representation to the Minister seeking a direction that the dispute relating to the dismissal be submitted to arbitration. Under section 35(1A) of the Act, the Industrial Arbitration Court may consider a dispute relating to the dismissal of an employee or make an award relating to the reinstatement of an employee in circumstances arising out of a contravention of section 82 of the Act. Ministerial power to direct such a dispute to arbitration is given under section 31(d) of the Act.

For dismissal disputes under section 35(2) and 35(1A), union and management are encouraged to resolve them through informal negotiation and conciliation. Adjudication should be the last resort.

(5) Breach of Individual Contract of Employment

A Union may represent an executive on disputes relating to a breach of contract of employment by the executive or the employer. In general, a breach of individual contract may arise from the following circumstances:

- a) when terms of employment stated in an executive's letter of appointment are breached;
- b) when there is non-compliance in the provision of company benefits; and
- c) when there is any other breach of employment terms which affect executives individually.

To minimise disputes, employers are encouraged to state clearly the terms of employment in their executives' letters of appointment.

Dispute

Where a dispute relating to a breach of an individual contract of employment could not be resolved amicably at the company level, either union or management could refer the dispute to the Ministry for conciliation. If no agreement could be reached through conciliation, union or management may make a request in writing to the Registrar that the trade dispute be submitted to arbitration.

(6) Victimisation or Serious Disciplinary Action with a View to Dismissal

The union may represent an executive on matters arising from the following circumstances:

- a) where, based on an alleged misconduct, an employer takes serious disciplinary action against an executive with a view to dismissal (for e.g. the executive has been issued with a final warning letter and she/he is likely to face dismissal); or
- b) where an executive considers that he has been victimised and the victimisation is likely to lead to his dismissal.

Companies and unions are encouraged to address such matters in the following manner:

- a) the executive should take the matter up himself through the company's grievance/appeal procedure and resolve it at the company level;

- b) if the matter is not resolved, the executive may seek union representation to further the discussion with management at the company level; and
- c) if the matter is still not resolved, it may be referred to the Ministry for conciliation.

Discussion between union and management on disputes relating to alleged victimisation or serious disciplinary action with the view to dismissal should end at conciliation. To facilitate the resolution of such disputes, companies are strongly encouraged to put in place a set of grievance and appeal procedures to enable grievances/disputes to be resolved amicably at the company level.

Dismissal resulting from Alleged Victimisation or Serious Disciplinary Action

Where the dispute relating to alleged victimisation or serious disciplinary action cannot be resolved, and the affected executive is subsequently dismissed, the dismissal dispute should be handled in accordance with Section 4 of this Tripartite Guidelines.

(7) Union Leadership

Executives who are represented by rank-and-file unions may stand for election and hold office.

As office bearers, they may represent the rank-and-file unions and engage employers in collective bargaining in respect of terms and conditions affecting the rank-and-file members. They may also represent the rank-and-file unions and engage employers in negotiation on matters affecting executives on an individual basis. Union representation on such matters is limited to dismissal, retrenchment benefit and breach of contract.

(8) Participation in Industrial Action

A rank-and-file union shall not commence, promote, organise or finance any strike or any form of industrial action in connection with any trade dispute between executives and their employer.

An executive member shall not commence, promote, organise, participate or otherwise act in furtherance of any strike or any form of industrial action taken by the rank-and-file union.

A rank-and-file or executive member shall not commence, promote, organise, participate or otherwise act in furtherance of any strike or any form of industrial

action in connection with any trade dispute between executives and their employer.

(9) Representation Rights of Executives in Existing Unions

Currently, there are some industries where both rank-and-file employees and executives are represented by their respective unions in their companies. These members enjoy full collective bargaining rights as stipulated in the Industrial Relations Act. In the event of a merger between these separate unions, the following should be observed:

- a) in companies where both rank-and-file and executives are represented by their respective unions prior to the merger, executive union members should continue to enjoy full representation and collective bargaining rights in the merged union. New members of the same categories should also enjoy similar representation and collective bargaining rights;
- b) in companies where rank-and-file employees are represented by a rank-and-file industry-wide union and the executives are not represented by an executive industry-wide union prior to the merger, eligible executives may join the merged union on an individual basis with limited representation rights; and
- c) in non-unionised companies, eligible executives may join a merged industry-wide union with partial representation rights only if their rank-and-file counterparts have successfully sought recognition for representation by the merged union.

Notwithstanding (b) and (c) stated above, union and management have the flexibility to agree as to whether executives in these companies could be accorded limited or full representation rights in the merged union.

It is noted that there is a small number of companies in which certain categories of employees designated as executives have been represented by rank-and-file unions for full collective bargaining. Such situations have arisen because the employers concerned do not see any conflict of interest in the full representation of these “executive employees” by rank-and-file unions. In these companies, such “executive employees” should continue to enjoy full collective bargaining rights.

(10) Memorandum of Understanding

In accordance with these guidelines and the provisions of the law, companies and unions are encouraged to draw up MOUs on matters relating to the representation of executives by rank-and-file unions. The MOUs should include the following:

- a) the categories of employees eligible for representation and other related issues;
- b) a provision to allow companies and unions to conduct appropriate review to the MOUs;
- c) a provision to refer disputes to MOM for conciliation, in the event the disputes arising from the implementation of a MOU could not be resolved at the company level;
- d) an appeal or grievance procedure to enable grievances to be settled expeditiously at the company level; and
- e) the sharing of information between management and union to facilitate discussion on matters relating to the representation of executives by the rank-and-file union.

Companies and unions are encouraged to forward a copy of their respective MOU to MOM, SNEF and NTUC for information.