



ADDRESS : 5nd Government Bldg., 1 Chungang-dong, Kwachon-city, Kyonggi-do,
KOREA 427-760 / TEL (02) 504-7338~9 / FAX (02) 507-4755

FACSIMILE COVER SHEET

TO	Name	Mr. Bruce Van Voorhis	
	Department	Communication officer	
	Receiving Office		
	FAX. NO.	+852 2698 6367	
FROM	Ministry of Labor		
	Name		
	Tel	(82-2) 504-7338~9	
No of pages including cover sheet		6	pages
MESSAGE / COMMENT			



Korean Government's Response to Asian Human Rights Commission

Dear Communication Officer,

Introduction

1. The Ministry of Labor of the Republic of Korea avails itself of this opportunity to thank the Asian Human Rights Commission (AHRC) for having such a keen interest in the developments of labor and management relations in Korea. The E-Land Group incident is very regrettable to the Korean government as well. The Korean government is now making every effort for the parties concerned to settle their dispute as soon as possible and of their own accord by stimulating negotiations between them. Nonetheless, it is the Ministry's wish to present its disappointments and reservations at the same time on some of the points raised in the AHRC's letter regarding the E-Land Group incident as those are either factually incorrect or analytically wrong simply because it was just based on not only politically oriented but also biased information, and thus can possibly draw a different picture for the people outside the country from what has really happened. In this regards, the Ministry hopes that the following information will allow the Commission to have a balanced view on the incident.

Background Information

2. The E-Land Group is an enterprise operating large-scale retail stores mainly dealing in low or middle-priced goods, which has affiliated companies such as New Core Outlet and Homever
3. Issues are different between New Core Outlet and Homever. In the case of New Core Outlet, the management tried to streamline its business by introducing a new calculation system and outsource relevant work. Accordingly, this met with strong resistance from the trade unions fearing that it might lead to restructuring, which led to a dispute between labor and management. On the other hand, the Homever management selectively transforming non-regular workers with more than 24 hours of employment to regular workers. However, there were the collective agreements made at the time of takeover of Carrefour that the company shall not terminate employment relationship with employees whose employment period with the company exceeded 18 months after they had been hired simply because of the end of employment contract. Because of these

reasons, the trade union argued that if the company tried to terminate employment relations with employees with more than 18 months of employment it could be the violation of the collective agreements and it insisted that the company guarantee the employment security of the employees with more than 3 months.

4. Consequently, the union demanded that the company convert all of its existing short-term workers while the management insisted that it would convert the status of workers employed for 18 months or more according to the collective agreements into regular ones but that those who had worked less than 18 months would be selectively employed. As both sides failed to reach an agreement, the union went on a strike by exclusively occupying several workplaces in a forceful way.

Some arguments made in the AHRC's letter are different from the facts.

5. First of all, the argument that there was a massive dismissal of 900 non-regular workers seems groundless. According to the government's data, the number of employees who quit their jobs in E-Land Group was about 500, and most of them left their company not because of dismissal but because of natural expiration of short-term labor contract period. Most of them had worked under a short-term contract valid for three to six months. So their act of leaving their jobs due to the termination of their contracts should not be interpreted as a dismissal.
6. Secondly, Regarding Police Intervention and Civil Suits by Employers, the exclusive occupations of New Core Outlet and Homever stores were forceful and illegal behaviors, which were far from what unions call a simple "sit-in strike". The trade union, in connection with its upper-level trade union (Korean Confederation of Trade Unions), kept waging concentrated struggles beyond the limits of legitimate union activities. So the government could not help performing the nation's obligation needed to protect the business of small shop owners in those stores and maintain law and order while at the same time continuously trying to settle the dispute through dialogue between both parties. However, the rallies organized by the union caused a full stop of the business and caused tremendous amount of economic losses because, as the AHRC's letter rightly pointed out, those strikes lasted for weeks. Because of these occupations, shoppers in need of daily necessities had to turn around in front of the closed entrance and small shop owners who rented their shop spaces inside



Ministry of Labor
Republic of Korea

- the retail store also accordingly had to close their shops – the only source of income - for a long time. Regretfully, many of the participant of the violent actions were not trade union members of New Core Outlet or Homever: they were either from upper-level union (the Korean Confederation of Trade Unions), members of the Labor Party, or students(according to police).
7. Consequently, the protestors were taken by the police but they were immediately released after a simple questioning only except some union officials who were actually arrested owing to the result of repeated illegal acts, such as forceful occupation of the stores and obstruction of business, beyond the boundaries of legitimate collective actions. They also paralyzed the business of those who rented shop space and run their business there, inflicted property damage, caused inconvenience to the lives of the general public, thereby seriously undermining law and order of our society for a long period.
 8. Inevitably, the government took measures to secure nation's law and order and to protect other people's rights and properties that had been seriously infringed. It should be noted that the ILO's Digest of Decisions of the Committee on Freedom of Association also says that if a trade union occupies a whole workplace and obstructs business under the pretext of collective action, it is considered as the abuse of the right to strike that constitutes a criminal act beyond the legitimate exercise of the right to strike and is not protected under the principle of freedom of association (Digest 5th edition, para 651~652).
 9. For your reference, the management filed a civil suit in July against trade unions for the loss of about 2.5 million US dollars. This was a result of exclusive occupation of the stores and the subsequent stop of business running. Recently, the small shop owners who were infringed their property rights filed a law suit for more than 10million US dollars against trade unions, upper-level union (the Korean Confederation of Trade Unions) and the Labor Party in combined damages. All cases are currently pending at the court and will be dealt with in due course.
 10. Thirdly, AHRC's letter maintains that the government did not investigate illegal acts by employers such as altering employment contracts or forcing workers to sign "0-month" contracts. However, the government when it detected alleged irregularities in employment contracts in New Core Outlet and Homever, launched an investigation of E-Land Group at 62 stores nationwide from May 7 to June 25. The government found 19 cases of violations and corrected them. There were some other trivial cases that could be considered wrong or careless



for employers to do such as omitting of employment period in contracts or change in the contract term. The government provided administrative guidance so that such or similar cases must not happen again.

Except for E-Land Group, there is no big workplace experiencing such a serious dispute in relation to the enforcement of the 'Irregular Workers Protection Act'.

11. Actually, the E-Land Group is the only company that is experiencing major labor-management conflicts over the issue of non-regular workers. Almost all other firms are addressing the issue in a wise manner and through close collaboration between labor and management. Although there might have been some disagreements on certain issues, continued talk between labor and management must have been the key to success in many other firms including Shinsekye or Lotte Shopping to name a few even in the same industry to which the E-Land Group belongs. This suggests that the E-Land Group is not a typical example: it is rather an exceptional case. As can be seen in the greater number of examples of success stories, labor and management cooperation and harmony is the key prerequisite.

The Irregular Workers Protection Act does not contain any worrisome loopholes mentioned in the letter. The Korean government will continue to make its utmost effort to ensure the successful entrenchment of the Act.

12. The "Act on Protection etc. of Fixed-term and Part-time Employees" stipulates in Article 4(2) that if an employer hires fixed-term contract workers for more than 2 years, the workers in question shall be regarded as workers whose contract period is not definite. Also, Addendum 2 of the same Act says that Article 4 shall be applied in case a contract in question is newly made, renewed, or extended after the enforcement date of the law. So technically speaking, the earliest mandatory conversion of fixed-term contracts into permanent contracts will only take place after July 2009. Up until now, there has been no case of massive dismissal. Not only is the E-Land Group case exceptional but there have appeared many workplaces which have converted fixed-term contracts into permanent ones in line with the intent of the law. The government will continue to monitor the process of firmly establishing the law.
13. Regarding protection of workers reporting discrimination, the "Act on Protection etc. of Fixed-term and Part-time Employees" stipulates in Article 16



that an employer shall not dismiss or take other disadvantageous measures against workers who reported discrimination to authorities. Any violations will result in an imprisonment of up to 2 years or a fine not exceeding 10 million won. In fact, as of September 2, 2007, a total of 118 cases had been reported for a redress to Labor Relations Commissions and the Ministry expects that this number will certainly increase by a big margin in the near future.

14. With regard to the scope of jobs allowed for temporary agency work, the criticisms had been raised that the existing legislation on temporary agency workers does not properly reflect the reality of the labor market. In response to such criticisms, a revision bill was drawn up. With the passage of the bill through the National Assembly, the legal ground was laid for partially extending the scope of jobs permitted for temporary agency work and a ban on discrimination against temporary agency workers without rational reasons and procedures for correcting such discrimination were introduced. All this helps the balance between labor and management to be maintained. In major advanced countries, no limitation tends to be put on the scope of jobs allowed for temporary agency work.

Closing

15. The Asian Human Rights Commission is known to be a responsible body that produces dependable analysis on various issues relating to human rights in Asia. However, it is quite regretful this time that it wrote a letter about a sensitive issue in a country based on misguided information. The Ministry in this regard, hopes that future products of the Commission will be much more balanced and well grounded. Nevertheless, the Ministry repeats its appreciation to the Commission's interest in the developments of labor and management relations in Korea.

Lee, Jae Kap

Director-General

International Cooperation Bureau

Ministry of Labor

Republic of Korea