

LABOUR RELATIONS: THE LEGAL SIGNIFICANCE OF STRIKES

With worldwide publicity surrounding recent political protests in Thailand, renewed focus has been placed on the force and effect of protest movements in all facets of Thai society. One area in which this social phenomenon has particular force is in organised labour disputes and, specifically, the growing influence of employee strikes in Thailand.

In general, a protest is defined as a formal or informal announcement made by a person concerned about some act about to be done or already performed, whereby there is an expression of dissent or disapproval, or an affirmation that an act has been committed against one's will. In contrast, a strike is defined as the act of stopping work for the purpose of forcing an employer to comply with previous employee demands. While protests do affect public relations and company operations, it is the highly disruptive nature of strikes that concerns employers most.

Employee strikes may be either legal or illegal depending on several factors. The following are examples of illegal employee strikes for which an employer has the right to take disciplinary action. This is possible when employees strike:

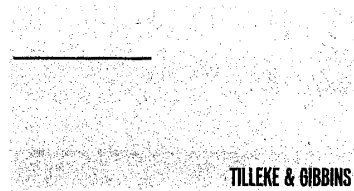
- ◆ because they are unsatisfied with employer policies;
- ◆ in order to force the employer to increase wages or bonuses without submission of a formal labour demand;
- ◆ to protest against what they believe is employer discrimination;
- ◆ without first providing formal notice to a government labour officer; and
- ◆ without informing the employer in advance.

In the examples above, the employer has the legal right to take disciplinary action against the employees for their illegal strikes. It is exceedingly important for an employer to understand when such strikes are permissible and when, as above, they are without legal merit.

Under the Labour Relations Act, there are specific procedures that employees must satisfy before they may legally strike. For example, if employees want to submit a labour demand, they must obtain the support of at least 15% of all employees. In addition, if a labour union submits a labour demand on behalf of its members, the labour union must have union membership totalling at least one-fifth of the total number of employees.

It is important to note that after formal demands are made to an employer, if the demand is made during the course of negotiations, settlement or arbitration of a labour dispute, the employer cannot terminate or transfer the employees, employee representatives, committee members or members of the labour union or labour federation committee. The only exceptions allowing for termination of such persons would be when an employee commits the following acts:

- ◆ Performs dishonestly or has intentionally committed a criminal offence against the employer;
- ◆ Intentionally causes damage to the



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employer;

- ◆ Violates the employer's work rules, regulations or lawful orders, with the employer having already given a written warning to the employee for matters not deemed serious; or

- ◆ Neglects his or her duties for a period of three consecutive work days without reasonable cause.

Once a formal demand is received, parties must begin negotiations within three days. If parties are then able to reach settlement, they may enter into a written agreement signed by their representatives. Within three days from the signing, the employer must then display such agreement at the workplace for a period of at least 30 days and must also register the agreement with the Labour Ministry within 15 days from the date of signing.

If no negotiation takes place within the prescribed period or if parties fail to reach an agreement after negotiation, the labour demand will become a labour dispute. In this circumstance, the employees must inform the labour dispute mediator in writing within 24 hours after the lapse of the three-day period or from the time the negotiations failed. The labour dispute mediator is then obliged to seek resolution with the parties within five days. If a settlement is reached, the employer must proceed with the same notice requirements observed above. If not, then parties may appoint a labour dispute arbitrator, the employer can order an employee lockout or the employees can go on formal strike. If the employees proceed with a strike, they must give notice to the labour dispute mediator and to the employer at least 24 hours prior to striking.

In short, if employees strike without observing the required procedural rules, the employer may have the right to terminate or take disciplinary action against the employees. However, if the employees follow all legal procedures prior to executing a strike, then they will be protected under Thai labour laws.

For example, if the employer then terminates the employees, the employees may have the right to submit a civil case against the employer for reinstatement and compensation. In addition, in some circumstances they may even have the right to lodge a criminal charge against the employer for violation of the Labour Relations Act, conviction for which could result in fines and/or imprisonment.

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