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Freedom of Speech and Responsibility

I. Introduction

Freedom of speech is a fundamental right of democracy guaranteed by the Constitution, but abuse of that right has consequences. Employers can freely conduct business with ownership-based management rights, but when they attempt to dominate or intervene in the activities of a labor union, they are subject to punishment or legal remedies if a legal claim is raised against them of unfair labor practices. Workers are also liable for criminal charges and civil judgments, and are subject to disciplinary actions if they damage the employer's reputation while exercising their three labor rights (rights to establish a labor union, engage in collective bargaining, and take collective action). In this regard, Article 21 of the Constitution states, "Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honor or rights of other persons, claims may be made for the damage resulting therefrom." In practice, there are many cases of conflict with the rules prohibiting domination and intervention that infringe on the employer's freedom of speech and expression guaranteed by the Constitution and the three labor rights guaranteed by the Trade Union and Labor Relations Adjustment Act (hereinafter, "Trade Union Act"). In this case, it is necessary to examine the criteria for determining wherein lies the balance and how these criteria are applied in actual cases.

II. Freedom of Speech

1. Criteria for Judging Freedom of Speech

Although employers are guaranteed freedom of speech, they must not dominate or interfere with the organization or operation of a labor union. The question here is whether the employer's expression of opinion came out of an intention to control or interfere in operation of the union. In response, the court has said, "Employers have the freedom to express their opinions. An employer may simply express a critical opinion of the union's activities or hold a collective briefing session for workers to explain the company's business situation and policy direction and seek understanding. It should not be judged that the employer has the intention to dominate or interfere in the organization, operation, and activities of the labor union just because they have taken such action. What is at issue is whether the threat of disadvantage such as disciplinary action or the promise of benefits is included. And whether there are factors that could undermine the independence of the union, such as the circumstances of other domination-interferences."[1]

[1] Supreme Court ruling on Jan. 10 2013: 2011do15497.

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2. Cases Recognizing Freedom of Speech

(1) In 2011, the Korea Railroad Corporation held a tour briefing session for workers just before a strike. The company expressed a critical opinion of the strike planned by the labor union from the employer's point of view, such as by explaining the overall status of the Korea Railroad Corporation and the impact the strike would have on the company, appealing for them to be cautious about participating in the strike. This was within the scope of the freedom of speech allowed on the employer's side.[2]

(2) In 2006, during an interview with Christian media, a senior pastor emphasized the religious interrelationship between the church and its employees who are Christian believers from a religious standpoint. He expressed his conviction that it was not desirable that they participate in union activities. It is difficult to say that the senior pastor made such a statement with an intention to dominate and interfere with the labor union.[3]

(3) In order to cover the living expenses of a dismissed union leader, the union delegates decided to increase the deduction for union membership fees from 1% to 1.5% of wages at the union representatives meeting, and asked the company to makes such deduction. However, when the company did not make the deduction since individual union members had not submitted their written consent, the union slandered the company through handouts. Accordingly, the company writing an article explaining the union's claims and posting it at various stores cannot be regarded as controlling or interfering in the union's activities.[4]

(4) In judging whether the education provided by an employer to the workers amounts to unfair labor practice, even if the content of the education included some criticism of the union's activities or the union's current status, it is not an unfair labor practice if there is no intention to control or interfere with union operations or activities.[5]

(5) Even if documents distributed as a labor union activity are likely to damage or lower views of the character, credibility, or honor of others, and even if some of the facts stated in the document are false or somewhat exaggerated in their expression, if the purpose of distributing the document is not to violate the rights or interests of others, but for unity of union members or the maintenance and improvement of working conditions, and if the contents of the document are truthful as a whole, the act of distributing such documents falls within the scope of a labor union's legitimate activities.[6]

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[2] Supreme Court ruling on Jan. 10, 2013: 2011do15497.
[3] Seoul High Court ruling on Aug. 14, 2008: 2006nu18364.
[4] National Labor Relations Commission decision on Aug. 20, 2001: 2001buno69.
[5] Seoul High Court ruling on Aug. 20, 2014: 2013nu47452.
[6] Supreme Court ruling on Dec. 28, 1993: 93da13544.

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III. The Employer's Freedom of Speech and Unfair Labor Practices

1. Criteria for Judging Labor Practices as Unfair and Amounting to Domination or Interference

Whether the employer's media dominates or interferes in operation of the union is judged by the following three factors. ① Subject: It must be an action by the employer. "Employer" means a business owner, a person responsible for management of a business or a person who acts on behalf of a business owner with regard to matters concerning workers in the business; ② Whether the three labor rights are violated: There must be an act of controlling the employer's labor union or interfering with its activities. However, it does not demand the consequences of violation of the three labor rights. ③ Intention to dominate or interfere: From an objective and comprehensive point of view, if the intention to control or interfere with the organization or activities of the union can be inferred, the action can be judged as an unfair labor practice.

2. Related Court Ruling

The criterion for judging unfair labor practices is whether an employer's anti-union speech or behavior is merely an opinion or criticism of the union, or actual attempt to dominate or interfere. The employer exercising his/her freedom of speech does not necessitate a judgment that the employer attempted to dominate or interfere with the union's activities. However, if the employer's remarks are intended to impede or interfere with workers' freedom to engage in labor union activities beyond the limits of simple remarks, unfair labor practices are established.[7] In response to this, the court has stated, "If an employer expresses an opinion through a speech, company broadcast, bulletin board, or letter, the contents of the expressed opinion and the circumstances, time, place, and method in which it was made and how it affects the operation or activities of the labor union shall be considered. If the intention to dominate or interfere with the organization, operation, or activities of a labor union is recognized upon summing up the effects it has had or may have had, such speech amounts to an act related to the 'domination of or interference with the organization or operation of a workers labor union' according to Article 81 (4) of the Trade Union Act, and therefore constitutes an unfair labor practice. In addition, the establishment that an unfair labor practice took place in the form of domination/interference does not necessarily require that the workers' right to organize was violated in actual fact."[8]

3. Cases Deemed Unfair Labor Practice

(1) The president of a university called an employee leading the establishment of a union and said, "Don't form a union. Can a union mobilize opinions that represent all of our employees? A

[7] National Labor Relations Commission decision on Feb. 25, 1997: 96buno103.
[8] Supreme Court ruling on Jan. 10, 2013: 2011do15497.

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union will cause more conflict as a third party. We will create a general organization for employee meetings, and you can communicate there." And, "Unions level all kinds of charges through the media in order to create justification. I'm asking you to never form a union." This amounts to interfering with the organization or operation of a labor union.[9]

(2) In an email on October 1, 2010, the head of a hospital said, "If staff go on strike and leave the hospital with no suitable facilities, equipment, or services, patients will turn their backs on us in an instant. We may not recover from that. Where do your salaries come from? Without patients, there will be no money for your salaries or mine." On October 4, 2010, the same head of the hospital stated his view that a vote for or against industrial action was a vote of confidence for or against himself, and said that if the union members chose to go on strike, he would step down from his position as head of the hospital.[10] Such expression of opinion can be seen as originating from an intention to influence the judgment and actions of individual members beyond the level of simply expressing personal opinions on a vote for or against industrial action.

(3) Immediately after an employer realized a union was formed, he continued to make anti-union remarks to all employees. The employer's remarks were repeated several times and included statements of disadvantage towards participants in terms of future personnel management, etc., so it can be seen that the remarks were made with the employer intending to use their superior position to dominate and interfere with union activities. After the employer's remarks, the number of union members decreased significantly, with 12 submitting a letter of withdrawal from the union. Considering these points, this was an unfair labor practice by the employer for attempting to dominate the union and interfere with its operation.[11]

IV. Other Liabilities Relating to Freedom of Speech

1. Defamation of Character and Related Liability

Defamation of a person in relation to freedom of speech is subject to criminal punishment,[12]

[9] Supreme Court ruling on Mar. 24, 2016: 2015do15146.
[10] Seoul Administrative Court ruling on Sept. 22, 2011: 2011guhap16384.
[11] National Labor Relations Commission ruling on Dec. 24, 2015: 2015buhae 1056.
[12] Criminal Act: Article 307 (Defamation)
(1) A person who defames another by publicly alleging facts shall be punished by imprisonment or imprisonment without prison labor for not more than two years or by a fine not exceeding five million won.
(2) A person who defames another by publicly alleging false facts shall be punished by imprisonment for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won.
Article 310 (Justification)
If the facts alleged under Article 307 (1) are true and solely for the public interest, the act shall not be punishable.

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and amounts to an illegal civil act that requires compensation.[13] In addition, disciplinary punishment is possible on the basis of violating the rules of employment. The same shall also apply to cases where the employer's reputation has been damaged by postings on the Internet or postings within the company. Even if a person's name is not specified therein, it is equally defamatory if the name(s) can be inferred.[14] However, if it is recognized that the purpose is for the public interest, justification exists and punishment will not be levied under Article 310 of the Criminal Act.

2. Case Review

(1) Case 1: Defamation of a dismissed worker

Workers posted signs that read "Taxi workers, let's work together to find our lost rights," next to placards and signs that read "We condemn xx Company for unfair dismissal!" A driver working for the taxi company since 2009 had been dismissed in April 2014 for failing to comply with company instructions, such as failing to deal with his traffic accidents. In August 2014, the National Labor Relations Commission dismissed the driver's application for remedy against unfair dismissal and unfair labor practices, and in March 2016, the Seoul Northern District Court rejected a lawsuit over the dismissal. The Supreme Court affirmed the lower court's judgment that the driver had sought to defame the taxi company and ordered him to pay a fine of 5 million won.[15]

(2) Case 2: Compensation Paid to C Newspaper Company

In 2003, when reporting on a labor dispute at H Motor Company, an article was published entitled, "Production workers of H Motor Company are receiving 50 million won in annual wages while enjoying 165 to 177 days off a year." This article had been pushed by the media to target H Motor Company's union as enjoying luxurious conditions. The facts in the article were distorted. The court established the facts as: "After conclusion of the collective agreement in 2003, the average wage level of production workers serving the average 14.4 years, is 42.88 million won per year. This figure includes the basic wage plus weekday overtime work allowance, holiday overtime allowance, late night work allowance, and other annual leave

[13] Civil Act: Article 750 (Definition of Torts)
Any person who causes losses to or inflicts injury on another person by an unlawful act, willfully or negligently, shall be bound to make compensation for damages arising therefrom.
Article 751 (Compensation for Non-Economic Damages)
(1) A person who has injured the person, liberty or fame of another or has inflicted any mental anguish on another person shall be liable to make compensation for damages arising therefrom.

[14] Supreme Court ruling on Nov. 14, 1089: 89do1744.

[15] Supreme Court ruling on Apr. 25, 2019.

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allowances, etc. Once bonuses and incentives are added, wages are about 48.27 million won per year. The working hours to obtain the above wages are '10 hours a day for 302 days a year,' which includes 2 hours overtime work on every weekdays and 4 extra holiday work per month (10 hours each). There are only 63 total holiday days per year [including weekly holiday] (365 days - 302 days)." In response, union H sued for compensation against defamation, which the courts awarded.[16]

Article 307 (Defamation) of the Criminal Act provides that a person who intends to defame another by publicly stating facts is subject to criminal punishment. However, for the media reporting general news, Article 310 of the Criminal Act (**fragment of illegality**) stipulates that "if the facts alleged under Article 307 (1) are true and solely for the public interest, the act shall not be punishable." C newspaper company was ordered to render compensation because the facts were wrong, even though the news was reported to be in the public interest.

V. Conclusion

Freedom of speech is guaranteed under the Constitution as long as it does not violate the rights of others. However, abuses are subject to criminal punishment, compensation for civil damages, and disciplinary action. Even in the guarantee of the three labor rights, legitimate union activities are exempt from civil and criminal liability. However, if a union or union member defames an employer with false statements, they shall be held legally responsible. Employers are also subject to punishment or orders for remedy for acts that violate the three labor rights. Therefore, it is necessary to seriously consider that despite our freedom of speech and expression, we are responsible for what we say.

[16] Seoul High Court ruling Oct. 18, 2005: 2004na84063.

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