

Judgment Criteria regarding Disciplinary Punishment and Unfair Labor Practice

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- 1. Protection of the Company's Right for Corporate Order**
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[Protection of the Company's Right for Corporate Order]

- ▶ A labor union officer has been wearing a vest decorated with union propaganda. Although the company has warned him several times informing him that he would be punished according to company regulations if he continues to wear the vest during working hours, he disregarded the company's instruction. Therefore, the company decided to discipline him by suspending him from office for two months. That was not unfair labor practice. (July 15, 2001, Central LRC 2001buno32).

- ▶ Although a behavior is partly related to union activities, if the disciplinary dismissal was for a reason stipulated clearly in the Rules of Employment, then the dismissal is not an unfair dismissal. (Supreme Court on August 10, 1990, 89nu8217).

- ▶ Where the company dismissed an employee due to his anti-government agitation, promotion of mutual distrust, lying on a resume, etc., if the company's dismissal was not to retaliate for his union activities, but to take disciplinary measures against the harm to company order, then this is not an unfair labor practice. (February 18, 1991, Central LRC 90buno251).

- ▶ Despite an employee's status as a labor union officer, so long as there was no evidence that the company took disciplinary action on account of its dislike for the union, then the action cannot be said to be an unfair labor practice. (June 12, 2000, Central LRC 2000buno35).

- ▶ If the disciplinary dismissal for an illegal industrial action and the employee's contempt for the representative director was justifiable and not nominal, then it is not regarded as an unfair labor practice. (Admn court on October 5, 2000, 99gu35764).

[Labor union activities]

- ▶ In order for an employee's behavior to be categorized as justifiable union activities the Supreme Court has held that the following requirements must be met: (Supreme court on May 15, 1990, 90do357; April 10, 1992, 91do3044).
 - First, the behavior must be seen as an activity on behalf of the labor union or to obtain implied authority or approval for the labor union. (Characteristic).
 - Second, the behavior must be necessary to maintain and improve the employees' working conditions and to enhance their economic and social status, and must assist in enforcing employee unity. (Purpose).
 - Third, the activity must be outside working hours, except for special provisions granting permission to the contrary in the Rules of Employment or Collective Agreement, or except for repeated labor practice or the employer's consent. (Time).
 - Fourth, union activities inside the workplace shall follow the reasonable conditions based upon the employer's right to manage the facility and the activities must not involve violence to persons or property. (Method).

- ▶ If a union member does not follow the union's opinion determined by the decision-making process of the labor union, or if the union member opposes or criticizes a labor union decision or policy, the behavior is considered voluntary and a purely personal activity, and is not considered union activity. (Supreme court on September 25, 1992, 92da18542).

- ▶ Running for a position as a union delegate is clearly engaging in union activity. Furthermore, applying to the Ministry of Labor for unpaid allowances such as bathing allowance and reserve army training allowance pursuant to the Rules of Employment shall be considered union behavior if the purpose is to improve the employees' working conditions and enhance their economic and social status, which can be interpreted as the behavior to obtain the implied authority or approval of the labor union. This is justifiable and permissible union activity. (Supreme court on August 10, 1990, 89nu8217).

- ▶ Even though it is company policy to require the company's prior approval or permission in case of distribution of a handout, this requirement cannot prohibit every

union activity including justifiable activity to maintain and improve working conditions. Whether such activity is justifiable shall not only be judged by the company's position but also various other factors, such as the handout's contents, number of pages, time and method of distribution, effect on the company or the work, etc. (Supreme court on December 23, 1997, 96nu11778).

- ▶ Distribution of handouts during non-working recess hours is permissible even if the union member did not obtain prior permission, unless the distribution negatively affected other employees' work, obstructed free use of their recess hours, or corrupted the company's order concretely. Although the handout distributed by the union member is designed to promote working conditions, if its content created extreme distrust or hatred toward management and endangered public morals by distorting or exaggerating conditions, the employer's disciplinary dismissal is justifiable and such action is not an unfair labor practice. (Supreme court on February 9, 1993, 92da20880).
- ▶ Some contents stipulated in the handout damaged the character, honor, reputation, etc. of other employees or some parts of the contents stipulated in the document were falsified, exaggerated or distorted, then if the purpose of distributing the handout was not to infringe on other employee's right or interest, but to maintain and improve working conditions, to promote employees' welfare and to enhance their economic and social status, and if the content of the handout was true as a whole, the employee's handout is a justifiable union activity. (Supreme court on May 22, 1998, 98da2365).
- ▶ The handout distributed contained contents slandering the company. The handout might cause hostile feelings against the company and it was not handed out directly to the employees, but was spread over the employer's plant in secret. Even though distributing time of the handout is during the labor union's election campaign of delegates, this handout may bring concrete danger by infringing on the employer's right of facility management and violating corporate order and so it is not justified. (Supreme court on June 23, 1992, 92nu4253).
- ▶ The company stipulated in its Rules of Employment that handouts distributed inside the workplace shall obtain the employer's prior approval and the company may take a disciplinary action against an employee who violates the Rule. The Rule cannot be

invalidated just because it might violate the provision of the Constitution guaranteeing freedom of speech. (Supreme court on September 30, 1994, 94da4042).

- ▶ Although the labor dispute was solved, the company's operation returned to normal, and the union repeatedly urged the union member to come back to his job, he did not return to his driving job for an extended period because he was still participating in the labor union activities and trying to disrupt the operation of the company. If the company dismissed him for the above reason, this decision is hard to categorize as an unfair labor practice taken to retaliate against his union activities, such as participating in strikes occurring previously. (Supreme court on October 23, 1990, 89nu4666).
- ▶ In cases where the labor union in the day and night shift-changing company had to hold a general meeting to discuss the pros and cons of an industrial action, and informed the employer of the general meeting, although the general meeting was held during working hours, it is permissible union activity. (Supreme court on February 22, 1994, 93do613).

[Labor union officer's position and activity]

- ▶ When the employee received a personnel order to change jobs or transfer to another department under the employer's rightful authority, the employee was absent from work for over 20 days and disobeyed the personnel order, concluding that the company was retaliating against him for his demands for improved working conditions. Since the behavior was a severe violation, the termination of his labor contract was justifiable.
- ▶ A labor union full-time officer basically maintains labor relations with the employer, keeping his status as an employee, but he is considered suspended from duty and exempt from his work obligation. On the other hand, as the employer implements a training programs during working hours, and the employees are obliged to attend, such occasion is like providing work to the company. If there is a special provision according to the Collective Agreement, it is difficult to treat participating in the training as wrong. (Supreme court on November 23, 1999, 99da45246).
- ▶ When a union member was absent on the reason that he was campaigning for election

as a labor union delegate, this is not justifiable reason for absence from work and therefore is cause for dismissal by the company. (Supreme court on February 11, 1992, 91da5976).