

# **An Airline Labor Union Improves Working Conditions**

Bongsoo Jung / Labor Attorney at KangNam Labor Law Firm

## **I. Introduction**

As a labor attorney, I have usually represented companies on labor issues, but recently I was asked to provide some consulting by a labor union (hereinafter referred to as “the Union”). This particular union is composed of employees of a foreign airline (hereinafter referred to as “the Company”) and was established in April 1989, surviving simply as an entity without a collective agreement for the past 25 years. As soon as the Union was established, the company had treated the Union chairman so disadvantageously (such as moving him from the Seoul office to a workplace at the airport) that he was obliged to resign. In addition, the Union was unable to carry out its duties due to the headquarters’ continuous habit of disadvantaging all succeeding union officers. Although Union members’ salary was superior to that of employees at other airlines in the beginning, their salary increases had not kept pace with their peers’ at other airlines. Through 10 months of collective bargaining, the Union was able to improve its working conditions, including salaries, with the assistance of a professional (this labor attorney) through legal advisory consulting.

This article will describe how the Union concluded a successful collective agreement, and dealt with major issues.

## **II. Company Handling of the Union**

### **1. Company refusal to recognize the Union**

The Company refused to recognize the Union entity, and shut down attempts at collective bargaining by creating an atmosphere of insecurity for Union members and treating them unfavorably. Some of the details are listed below.

(1) When the Union was established in 1989, the Company moved its new Union chairman from the head office in Seoul to the airport branch office, without a promotion or salary increase, after which the Union chairman decided to resign.

(2) Between 2009 and 2012, the branch manager emailed Union members at “director” level (a Korean employment rank designation) and threatened them as pressure to withdraw their membership from the Union. This included public orders to withdraw their membership during wage bargaining meetings, which resulted in several directors withdrawing their union membership. As an explanatory side note, although their Korean title was “Director”, they did not have any practical management authority over lower-ranking employees, and just worked as “persons in charge”. Their English title was still “Employee”: only those with the Korean rank of “Manager” could use their Korean titles in English, as they had actual management authority (Manager = Team leader = Department head). “Director” was simply a title given to recognize their age and their long service.

(3) The branch manager also included threats during labor-management council meetings or the wage bargaining table, saying repeatedly “My company’s wage level is inferior. If you don’t want to work for that wage, then quit.” This prevented any effective bargaining with the employer.

(4) The company also constantly reminded employees through various department heads and the branch manager’s secretary, of its intention to disadvantage any union members refusing to obey company policy.

Together, this kind of environment cowed the Union members against pursuing a collective agreement.

## **2. Disadvantageous changes in working conditions**

**(1) Wage cut:** The Company unilaterally cut out almost 1/3 of its regular bonus in 2009 (normal bonuses equaled 650% of normal salary, but only 450% was paid out that year). Although the Company informed the Union chairman and Union officers in writing in February 2009, the Company designated a particular Union member to sign the agreement, completely ignoring the Union chairman, and used this “agreement” to make the unilateral cut in May of the same year.

**(2) Unpaid incentive (in 2012):** The Company paid incentive bonuses every year in the past when it reached its corporate targets. However, although the Company reached its 2012 targets, no incentive bonus was paid, nor any explanation given.

**(3) Changing menstruation leave from paid to unpaid leave (from 2009):** Prior to 2009, the Company had paid menstruation leave allowances to women, but changed this to unpaid leave without collective consent or Union agreement.

**(4) Unilateral reduction of sales allowances for sales department employees:** Sales employees had received 450,000 won in sales allowance every month, but in 2009, the Company reduced this sales allowance to 350,000 won without notification or explanation to the sales department. It was again unilaterally reduced to 250,000 won in 2012. Unilaterally changing a long-running sales allowance twice is a disadvantageous change of working conditions.

## **III. Details of Collective Bargaining**

### **1. The Company’s attempts to evade collective bargaining**

The Union requested collective bargaining in January 2014, and at the first meeting on February 10, 2014, demanded a collective bargaining schedule. The Union also handed over a draft of the collective bargaining demands, without response from the Company. The Union sent two reminders in writing, but still no response. Then, suddenly, the Korean branch manager (a non-Korean) returned to his home country without notifying the Union of any bargaining schedule. It is assumed that this was part of the Company’s strategy to

maintain the existing situation and avoid making a collective agreement.

## **2. Inducing the Company to engage in collective bargaining through Labor Ministry authority**

When the branch manager returned to his home country in March 2014, the Union decided to exercise its rights guaranteed by the Constitution to force the Company to the bargaining table, and began lawsuit proceedings with the Ministry of Employment & Labor for the Company's unfair labor practices and violations of the Labor Standards Act.

The purpose of the suit was to retrieve the illegally reduced wages, and continue to work out collective bargaining with the Company. The Company's former branch managers were required to attend the Labor Office investigations, coming to realize the power of the Union for the first time. After two months of investigations, in July 2014 the Company had to return the unpaid wages, and also the additional 200% of the regular bonus that was deducted illegally. As the Union accepted the payment of the retroactive wages and trusted the Company's verbal promise to engage in collective bargaining, the Union withdrew the suit it had filed against the Company.

## **3. Concluding a collective agreement through the Labor Relations Commission**

The Company appointed the Busan branch manager as its representative negotiator and began to negotiate a collective bargaining agreement with the Union in July 2014, meeting 8 times up to September 23. However, the Company continually rejected any other working conditions except those agreed on in the rules of employment, claiming that the collective bargaining draft contained so many articles that infringed on Company personnel and management rights. On top of this, the Company also pushed to lower the current working conditions in return for increasing salaries.

The Union decided that this kind of collective bargaining would yield nothing in the way of better working conditions, and on September 25, 2014, applied to the Labor Relations Commission for adjustment of labor disputes towards obtaining the official right to strike (case number: NLRC 2014 mediation 99).<sup>1</sup>

The Labor Relations Commission assigned this case to the Special Mediation Committee of the National Labor Relations Commission for 15 days, as the Company belonged to the public services industry as an aviation service and had workplaces in several cities (Seoul, Busan, Incheon etc.). The Special Mediation Committee held its first investigation meeting on September 29, 2014, and then held a preliminary mediation hearing for 4 hours on

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<sup>1</sup> **LABOR UNION AND LABOR RELATIONS ADJUSTMENT ACT. Article 45 (Mediation before Industrial Action)** (2) No industrial action shall be taken without first undergoing mediation procedures (excluding mediation procedures that come after the decision to end the mediation is made pursuant to Article 61-2) under the provisions of Sections Two to Four of Chapter V. This paragraph shall not apply when mediation procedures do not finish within the period prescribed in Article 54, or when the arbitration ruling is not made within the period prescribed in Article 63.

**Article 53 (Commencement of Mediation)** (1) The Labor Relations Commission shall conduct the proceedings of mediation, without any delay, when one of the parties to labor relations submits a request for mediation to the Labor Relations Commission. The parties concerned shall undertake in good faith the proceedings of mediation.

October 7. The Company had stubbornly rejected the Union's proposals, but displayed serious concerns at the present situation which could lead to a strike by the Union. Although the Company began negotiating more actively than previously, the parties could not reach agreement within the permitted mediation period of 15 days due to the wide gap in their viewpoints.

The Company and the Union agreed to extend the mediation period and an additional 15 days were permitted. The Union focused on obtaining Company recognition of itself and recovering the unfavorably-changed working conditions rather than striking. Labor and Management made the most of the mediation period, intensively negotiating a final agreement on changes related to 28 of the 60 articles in the first collective agreement draft. Both parties submitted the agreed draft to the Special Mediation Committee which in turn accepted it, making the collective agreement official. <sup>2</sup>

This successful outcome was possible thanks to two distinctive factors: (1) the two parties were required to attend the compulsory mediation hearings held by the Labor Relations Commission; (2) three commissioners from the Special Mediation Committee worked hard with labor and management in the process of reaching agreement. If the commissioners had been unsuccessful in persuading the employer, concluding a collective agreement would have been impossible with a company that thought the Union was an organization to be under its control.

## **IV. Evaluation and Lessons**

### **1. Evaluation**

One of the most significant outcomes for the Union was successful conclusion of a collective agreement, something it had not had in its 25 years of existence. Although the collective bargaining agreement contained only 28 of the original 60 articles, the Union was recognized as a real entity through the collective agreement, and obtained the legitimacy and power to negotiate with the Company as an equal bargaining party concerning the determination of terms and conditions of employment. The details of what was obtained in this collective bargaining include a Union office, paid time-off for full-time Union officers, and an equal number of labor and management representatives in the disciplinary action committee. The improved working conditions include restoration of the original sales allowances, restoration of the paid menstruation leave, and stipulations in the collective

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<sup>2</sup> **Article 54 (Period of Mediation)** (1) Mediation shall be completed within ten days in the case of general businesses, and fifteen days in the case of public services, after the request is made for mediation pursuant to Article 53.

(2) The parties concerned may agree to extend a period of mediation under paragraph (1) up to ten days in the case of general businesses, and fifteen days in the case of public services.

**Article 61 (Effect of Mediation)** (2) The contents of the mediated agreement shall have the same effect as a collective agreement.

agreement protecting working conditions that had been previously obtained. As the structure for wage agreement and general collective agreement bargaining was also established in the first collective agreement, the Union is now equipped with knowledge and a recognition of its authority to negotiate improvements to working conditions.

## **2. Lessons**

Article 32, Paragraph 3 of the Korean constitution stipulates, “Standards of working conditions shall be determined by Act in such a way as to guarantee human dignity.” Out of this article came the Labor Standards Act. Here, if the Labor Standards Act existed without the Labor Union Act, improving working conditions would be difficult as employers usually pursue profit over worker benefits. Enhancing working conditions is the reason why the Labor Union Act guarantees three rights for labor: association, collective bargaining, and collective action. Through exercise of these three rights guaranteed by the constitution real working conditions can be improved, based upon mutual determination of working conditions where labor and management can negotiate on equal footing.

## **V. Conclusion**

The foreign airline’s labor union had simply existed without a collective agreement for 25 years, and was unable to represent its members effectively or act collectively towards improving their working conditions. However, through the process of concluding a collective agreement this time, they understood the importance of exercising their three rights of labor in the workplace, and also restored the Union’s real functions and at the same time achieved the power to protect their working conditions through a collective agreement achieved by collective bargaining. It is my hope that this Union will maintain the solidarity that its members showed throughout the collective bargaining process and protect its members’ job security, while also improving their relatively lower wage levels and working conditions when compared to other airlines.