J. Y. Interpretation No.726（November 21, 2014）*

【Legal Effect of the Separate Agreement under Article 84-1 of the Labor Standards Act without Filing with the Competent Authority】

ISSUE: Is a separate labor-management agreement for working hours and other issues without filing with the competent authority still subject to the restrictions under the Labor Standards Act ?

RELEVANT LAWS:

Articles 15 and 153 of the Constitution（憲法第十五條、第一百五十三條）；J.Y. Interpretation Nos. 185, 494 & 578（司法院釋字第一八五號、第四九四號、第五七八號解釋）；Article 71 of the Civil Code（民法第七十一條）；Articles 1, 24, 30, 32, 36, 37, 39, 49 & 84-1 of the Labor Standards Act（勞動基準法第一條、第二十四條、第三十條、第三十二條、第三十六條、第三十七條、第三十九條、第四十九條、第八十四條之一）

KEYWORDS:

Labor Standards Act（勞動基準法）, working hours（工作時間）, regular days off（例假）, holidays（休假）, female workers' night work（女性夜間工作）, approval and record（核備）, wages（工資）, overtime wages（加班費）, separate labor-management agreement（勞雇雙方另行約定）,

* Translated by Yen-Chia CHEN

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labor right（勞工權益）, effect in public law（公法效果）, freedom of contract（契約自由）, violation of mandatory or prohibitive regulations（違反強制或禁止之規定）, self-governance（私法自治）, state control（國家管制）, labor relations（勞動關係）, mandatory regulations（強制規定）, uniform interpretation（統一解釋）**

HOLDING: Article 84-1 of the Labor Standards Act is a mandatory regulation whereby the agreed upon working schedule, regular days off, vacation, and night shift for female workers' night work shall be filed with the local competent authority. Failing to do so will not preclude the restrictions imposed by Articles 30, 32, 36, 27, and 49 of the Act on the agreement, and will result in unfavorable legal consequences to the employer under public law, and, in the event of a civil dispute, the court shall, taking into account the particular circumstances of each individual case, adjust the arrangement in accordance with the above stated Article 30 and so forth and calculate the wages in accordance with Articles 24 and 39 of the

解釋文：勞動基準法第八十四條之一有關勞雇雙方對於工作時間、例假、休假、女性夜間工作有另行約定時，應報請當地主管機關核備之規定，係強制規定，如未經當地主管機關核備，該約定尚不得排除同法第三十條、第三十二條、第三十六條、第三十七條及第四十九條規定之限制，除可發生公法上不利於雇主之效果外，如發生民事爭議，法院自應於具體個案，就工作時間等事項另行約定而未經核備者，本於落實保護勞工權益之立法目的，依上開第三十條等規定予以調整，並依同法第二十四條、第三十九條規定計付工資。

Act, in order to fulfill the legislative intent of protecting workers' rights and benefit.

REASONING: Article 84-1 of the Labor Standards Act (hereinafter the Act) provides: "(First Paragraph) After the approval and public announcement of the Central Competent Authority, the following types of workers may arrange their own working hours, regular days off, holidays, and female workers' night work through other agreements with their employers. These agreements shall be submitted to the local competent authorities for approval and record and shall not subject to the restrictions imposed by Articles 30, 32, 36, 37 and 49 of the Act: (1) Supervisory, administrative workers, and professional workers with designated responsibility; (2) Monitoring or intermittent jobs; and (3) Other types of job in special nature. (Second Paragraph) The agreement made under the preceding paragraph shall be in writing and shall use the basic standards contained in the Act as reference and shall not be detrimental to the health and well-being of the workers" (hereinafter the Disputed Provision).

解釋理由書：勞動基準法（下稱本法）第八十四條之一規定：「經中央主管機關核定公告之下列工作者，得由勞雇雙方另行約定，工作時間、例假、休假、女性夜間工作，並報請當地主管機關核備，不受第三十條、第三十二條、第三十六條、第三十七條、第四十九條規定之限制。一、監督、管理人員或責任制專業人員。二、監視性或間歇性之工作。三、其他性質特殊之工作。（第一項）前項約定應以書面為之，並應參考本法所定之基準且不得損及勞工之健康及福祉。（第二項）」（下稱系爭規定）係為因應部分性質特殊工作之需要，在法定條件下，給予雇主與特定勞工合理協商工作時間等之彈性，而於中華民國八十五年十二月二十七日增訂公布。

This Provision was amended and promulgated on December 27, 1996 in order to meet the needs of some types of work with special characteristics. This Disputed Provision sought to provide flexibility for certain types of workers to negotiate reasonable working hours, among other things, with their employers in accordance with requirements prescribed by the law.

The 102 Tai-Shang Zi No. 1866 Civil Judgment of the Supreme Court held that, for works being approved and announced by the Central Competent Authority to be applicable under the Disputed Provision, a separate laborer-management agreement concerning daily work schedule, basic monthly working hours, overtime hours, and calculation method of overtime pay is not invalid under the Disputed Provision, despite the fact that it is not filed with the local competent authority and is in violation of administrative regulations. The meaning and purpose of the judgment, in its totality, holds the separate agreement between the employees and management is nevertheless enforce-

最高法院一０二年度台上字第一八六六號民事判決認為，經中央主管機關核定公告得適用系爭規定之工作，其由勞雇雙方所為，有關每日正常工作時間、每月基本服勤時數、加班時數及加班費費率計算方式之另行約定，依系爭規定，並非無效，不因未報請當地主管機關核備，有違行政管理規定，而有不同。綜合該判決整體意旨，勞雇雙方之另行約定，雖未經當地主管機關核備，仍有規範勞動關係之效力，從而可排除本法第三十條、第三十二條、第三十六條、第三十七條及第四十九條規定（下合稱第三十條等規定）之限制。惟最高行政法院一００年度判字第二二六號判決則認為，系爭規定明定須在「勞雇雙方另行約定」並「報請當地

able on the labor relationship, and thus being able to exclude the application of Articles 30, 32, 36, 37 and 49 (hereinafter Articles 30 and so forth), even without the filing approval and recording by the local competent authority. However, the 100 Pan Zi No. 266 Judgment of the Supreme Administrative Court held that the Disputed Provision explicitly states that a separate agreement is not subject to the restrictions under Articles 30 and so forth only if both the requirements of "separate laborer-management agreement" and "filing with the local competent authority" are met. It follows that the labor relationship under the separate agreement between the employer and employee is still subject to the restrictions under Articles 30 and so forth without being filed with the local competent authority. The 98 Cai Zi No. 400 Ruling of the Supreme Administrative Court took the same rationale. Therefore, there is an inconsistency between the opinions held by the Supreme Court and the Supreme Administrative Court, the two highest courts of final instance of the two different judicial systems, on the legal effect and scope of

主管機關核備」二項要件具備下，始不受本法第三十條等規定之限制。循其見解，勞雇雙方之另行約定，如未經當地主管機關核備，其勞動關係仍應受本法第三十條等規定之限制。最高行政法院九十八年度裁字第四００號裁定亦持相同見解。是最高法院及最高行政法院二不同審判系統之終審法院間，就勞雇雙方依系爭規定所為之另行約定，如未經當地主管機關核備，效力是否受影響及其影響程度為何，發生見解之歧異。

a separate agreement between a employer and employee without filing with the local competent authority.

Article 15 of the Constitution provides: "The right of existence, the right of work, and the right of property shall be guaranteed to the people." Article 153 of the Constitution provides: "(First Paragraph) The State, in order to improve the livelihood of laborers and farmers and to improve their productive skill, shall enact laws and carry out policies for their protection. (Second Paragraph) Women and children engaged in labor shall, according to their age and physical condition, be accorded special protection." Based upon this meaning, the Act seeks to protect workers' rights and interests, strengthen the laborer-management relationship, and promote social and economic development by stipulating the minimum standards of working conditions concerning wages, working hours, regular days off, holidays, retirement, and compensation for occupational accidents. While an employer may, taking into consideration the nature of its business and the labor

憲法第十五條規定：「人民之生存權、工作權及財產權，應予保障。」第一百五十三條規定：「國家為改良勞工及農民之生活，增進其生產技能，應制定保護勞工及農民之法律，實施保護勞工及農民之政策。（第一項）婦女兒童從事勞動者，應按其年齡及身體狀態，予以特別之保護。（第二項）」基於上開意旨，本法乃以保障勞工權益，加強勞雇關係，促進社會與經濟發展為目的，規定關於工資、工作時間、休息、休假、退休、職業災害補償等勞工勞動條件之最低標準。雇主固得依事業性質及勞動態樣與勞工另行約定勞動條件，但仍不得低於本法所定之最低標準（本院釋字第四九四號、第五七八號解釋參照）。衡酌本法之立法目的並考量其規範體例，除就勞動關係所涉及之相關事項規定外，尚課予雇主一定作為及不作為義務，於違反特定義務時亦有相關罰則，賦予一定之公法效果，其規範具有強制之性質，以實現保護勞工之目的（本法第一條規定參照）。而工作時間、例假、休假、女性夜間工作（下稱

condition, separately negotiate terms of employment contract with workers, such terms may not fall below the minimum standards prescribed by the Act (*see* J.Y. Interpretation Nos. 494 and 578). Factoring in the legislative purpose and the regulatory style of the Act, in addition to providing regulations on matters related to labor relations, the Act further imposes certain duties on what the employer should act or not to act, as well as penalties for breach of certain duties. Thus the Act carries certain features of public law and its provisions are mandatory by nature so asto protect workers (*see* Article 1 of the Act). Given that working hours, regular days off, holidays, and female workers' night work are the core issues of labor relations, and can have significant impact on the health and well-being of workers, the Act thus provides Article 30 and so forth to govern these matters, and sets the minimum standards of working conditions guaranteed by the law. Unless the Act provides otherwise, neither the laborers nor the employers may usurp them in the name of freedom of contract.

工作時間等事項）乃勞動關係之核心問題，影響勞工之健康及福祉甚鉅，故透過本法第三十條等規定予以規範，並以此標準作為法律保障之最低限度，除本法有特別規定外，自不容勞雇雙方以契約自由為由規避之。

The characteristics, responsibilities, and performance of different types of work vary from one to another due to the continuing development of the society and the vast expansion of economic activity. The legislature, therefore, set up minimum standards for different types of working conditions. In order to meet the needs of certain special types of works, the Disputed Provision allows laborers in those categories , as approved and publicly announced by the Central Competent Authority, to engage in separate negotiations with their employers on working hours and other matters to preclude the restrictions imposed by Article 30 and so forth if such an agreement has been filed to the local competent authority for approval and recordation. The requirement for public announcement by the Central Competent Authority and filing with the local competent authority is to realize the protection of workers' rights and benefit, as well as to prevent arbitrary and abusive practice in determining of the scope of special types of work, and the agreement between laborers and management. Accordingly, for those approved and pub-

惟社會不斷變遷，經濟活動愈趨複雜多樣，各種工作之性質、內容與提供方式差異甚大，此所以立法者特就相關最低條件為相應之不同規範。為因應特殊工作類別之需要，系爭規定乃就經中央主管機關核定公告之特殊工作者，容許勞雇雙方就其工作時間等事項另行約定，經當地主管機關核備，排除本法第三十條等規定之限制。中央主管機關之公告與地方主管機關之核備等要件，係為落實勞工權益之保障，避免特殊工作之範圍及勞雇雙方之約定恣意浮濫。故對於業經核定公告之特殊工作，如勞雇雙方之約定未依法完成核備程序即開始履行，除可發生公法上不利於雇主之效果外，其約定之民事效力是否亦受影響，自應基於前述憲法保護勞工之意旨、系爭規定避免恣意浮濫及落實保護勞工權益之目的而為判斷。

licly announced special types of works, if a labor-management agreement should have been carried out without completing the filing and approval process prescribed by law, it can create detrimental effect to the employer under public law. In addition, how the agreement may be impacted under the civil law hinges upon the consideration over the aforementioned constitutional intent to protect workers, as well the legislative purpose of the Dispute Provision to prevent arbitrary abuse, and to realize the protection on workers' rights and benefit.

Article 71 of the Civil Code provides: "A juridical act which violates an imperative or prohibitive provision of the act is void except voidance is not implied in the provision." This provision aims to balance between state control and the principle of self-governance. The purpose and content of a state regulation should certainly be taken into consideration in determining whether it is mandatory under this Article , as well as the legal effect resulting from its violation. Although an administrative procedure, the filing of a spe-

民法第七十一條規定：「法律行為，違反強制或禁止之規定者，無效。但其規定並不以之為無效者，不在此限。」係在平衡國家管制與私法自治之原則。在探究法規範是否屬本條之強制規定及違反該強制規定之效力時，自須考量國家管制之目的與內容。勞雇雙方就其另行約定依系爭規定報請核備，雖屬行政上之程序，然因工時之延長影響勞工之健康及福祉甚鉅，且因相同性質之工作，在不同地區，仍可能存在實質重大之差異，而有由當地主管機關審慎逐案核實之必要。又勞方在談判中通常

cial labor-management agreement to, and seeking approval of, the local competent authority in accordance with the Disputed Provision is a necessary step to conduct a cautious and substantial review over each case in light of the significant impact on the health and well-being of workers from the extension of working hours. In addition, works of the same nature may still vary greatly from one region to another, which warrants a substantial review by the local competent authority on a case-by-case basis. Furthermore, given that the labor side tends to be the weaker in an negotiation and more receptive to undue influence, . Since the filing requirement of the separate agreement between the labor and management to the local competent authority under the Disputed Provision is both a direct control over the contents of labor relations and entails control over more than a mere providing of the agreement content, it follows that the Disputed Provision should naturally be deemed to have the authority of direct intervention of civil labor relations. To construe otherwise, i.e., where the filing requirement only results unfavorable to the employer

居於弱勢之地位，可能受到不當影響之情形，亦可藉此防杜。系爭規定要求就勞雇雙方之另行約定報請核備，其管制既係直接規制勞動關係內涵，且其管制之內容又非僅單純要求提供勞雇雙方約定之內容備查，自應認其規定有直接干預勞動關係之民事效力。否則，如認為其核備僅發生公法上不利於雇主之效果，系爭規定之前揭目的將無法落實；且將與民法第七十一條平衡國家管制與私法自治之原則不符。故系爭規定中「並報請當地主管機關核備」之要件，應為民法第七十一條所稱之強制規定。而由於勞雇雙方有關工作時間等事項之另行約定可能甚為複雜，並兼含有利及不利於勞方之內涵，依民法第七十一條及本法第一條規定之整體意旨，實無從僅以勞雇雙方之另行約定未經核備為由，逕認該另行約定為無效。系爭規定既稱：「……得由勞雇雙方另行約定……，並報請當地主管機關核備，不受……規定之限制」，亦即如另行約定未經當地主管機關核備，尚不得排除本法第三十條等規定之限制。故如發生民事爭議，法院自應於具體個案，就工作時間等事項另行約定而未經核備者，本於落實保護勞工權益之立法目的，依本法第三十條等規定予以調整，並依本法

under public law, will not only fail to fulfill the aforementioned legislative purpose of the Disputed Provision, but also contradict the principle of balancing state control and self-governance under Article 71 of the Civil Code. Accordingly, the "filing to the local competent authority as well" requirement within the Disputed Provision should be deemed to be mandatory under Article 71 of the Civil Code. Given that matters concerning working hours, among other things, in a separate labor-management agreement can be rather complex, and may entail issues both favorable and unfavorable to the labor side, viewing the meaning and purpose of Article 71 of the Civil Code, and Article 1 of the Act in its entirety, that separate labor-management agreement cannot be simply and summarily avoided on the ground that it is not filed for approval. Now that the Disputed Provision provides: ". . . labor and management may agree otherwise . . . and filed with the local competent authority for approval without subjecting to the restrictions of. . .," it follows that failing to do so will not preclude the restrictions imposed by Articles 30 and so forth of the

第二十四條、第三十九條規定計付工資。

Act on the agreement. In the event of a civil dispute, the court shall, taking into account the particular circumstances of each individual case, adjust the arrangement in accordance with the above stated Article 30 and so forth and calculate the wages in accordance with Articles 24 and 39 of the Act, in order to fulfill the legislative intent of protecting workers' rights and benefit.

With regard to the petitioners' request for a uniform interpretation from the inconsistency between the 102 *Tai Shang* Zi No. 1866 civil judgment and J.Y. Interpretation No. 494, since the interpretations of the Judicial Yuan have the binding effect upon every institution and person in the country (*see* J.Y. Interpretation No. 185) the J.Y. Interpretation prevails if a court should hold differently. this portion of the petition is hereby dismissed as it is inconsistent with Article 7, Paragraph 3, of the Constitutional Court Procedure Act.

關於聲請人認最高法院一〇二年度台上字第一八六六號民事判決與本院釋字第四九四號解釋理由書表示之見解有異，而聲請統一解釋部分，按本院大法官解釋有拘束全國各機關及人民之效力（本院釋字第一八五號解釋參照）；故如法院見解與本院大法官解釋有異，自應以本院解釋為準。此部分之聲請，核與司法院大法官審理案件法第七條第一項第二款之要件不符，依同條第三項規定，應不受理。

Justice Mao-Zong HUANG filed a concurring opinion.

本號解釋黃大法官茂榮提出之協同意見書；陳大法官敏提出，林大法官

Justice Ming CHEN, filed a concurring opinion, in which Justice Sea-Yau LIN, joined.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

Justice Hsi-Chun HUANG filed an opinion concurring in part and dissenting in part.

Justice Yeong-Chin SU filed an opinion dissenting in part and concurring in part.

錫堯加入之協同意見書；陳大法官春生提出之協同意見書；陳大法官碧玉提出之協同意見書；陳大法官新民提出之部分協同部分不同意見書；黃大法官璽君提出之部分協同部分不同意見書；蘇大法官永欽提出之一部不同一部協同意見書。

EDITOR'S NOTE:

Summary of facts: The Kaohsiung branch of the G4S Security Corporation Taiwan (hereinafter G4S) hired petitioner Jun-Cai Pang and other six petitioners as security guards for cash-in-transit. Both sides signed and executed an employment contract but failed to file with the local competent authority for approval. The petitioners argued that the clause "shall not subject to the restrictions imposed

編者註：

事實摘要：聲請人龐俊財等 7 人受僱於臺灣士瑞克保全公司高雄分公司 (下簡稱士瑞克公司) 擔任現金運送保全員。勞雇雙方簽訂僱用合約書，惟該公司未將合約書報請當地主管機關核備。聲請人等認勞動契約未經核備，無勞動基準法第 84 條之 1 規定「不受…規定之限制」之適用，仍應受同法第 30 條工時上限之限制，亦應依第 24 條關於延長工時加計工資方法計付加班

by Articles 30, 32, 36, 37 and 49 of the Act" provided in Article 84-1 of the Act does not apply since the agreement was not filed and their working hours are still subject to the restriction under Article 30 of the Act and their overtime wages shall also be calculated in accordance with the methods set forth under Article 24 of the Act. The petitioners sued for overtime paid, alleged that G4S paid much lower overtime wages than the average hourly wages of the petitioners, thus in violation of the agreement, and also apparently lower than the amount calculated in accordance with Article 24 of the Act. The 102 *Tai Shang* Zi No. 1866 Civil Judgment of the Supreme Court, in its final disposition, dismissed the case.

費。然士瑞克公司所給付之加班費，遠低於聲請人等之平均時薪，違反僱用合約內容，亦顯低於依第 24 條計算之數額，乃訴請給付加班費。案經最高法院 102 年度台上字第 1866 號民事判決駁回確定。

The petitioners argued that there is an inconsistency between the Supreme Court judgment and prior rulings of the Supreme Administrative Court on the application of the Articles, since the Supreme Court held that failure to file a separate labor-management agreement is "not invalid," and is still subject to the restrictions under Articles 30 and so forth of

聲請人認該最高法院民事判決表示勞雇雙方依系爭規定所為另行約定未經核備「並非無效」仍受同法第 30 條等規定限制之見解，與最高行政法院 100 年度判字第 226 號判決及 98 年度裁字第 400 號裁定適用同一法律所表示，須勞雇雙方另行約定並經核備始不受限制之見解歧異，亦與釋字第 494 號解釋理由書意旨有異，爰聲請統一解釋。

the Act whereas the Supreme Administrative Court has held otherwise. In 100 *Pan Zi* No. 266 Judgment and 98 Cai Zi No. 400 Ruling, the Supreme Administrative Court held that a separate agreement is not subject to the restriction under Article 30 of the Act only if it is filed with the competent authority. The petitioners also argued that the Supreme Court judgment is inconsistent with the reasoning of J.Y. Interpretation No. 494 and petitioned for uniform interpretation.