

J. Y. Interpretation No.373 (February 24, 1995) *

ISSUE: Is the provision of the Labor Union Act, prohibiting technicians and janitors of an educational enterprise from organizing a labor union, in violation of the Constitutional?

RELEVANT LAWS:

Articles 14, 23 and 153 of the Constitution (憲法第十四條、第二十三條、第一百五十三條); Articles 4, 5, 6, 12, 20 and 26 of the Labor Union Act (工會法第四條、第五條、第六條、第十二條、第二十條、第二十六條).

KEYWORDS:

labor unions (工會), technicians (技工), maintenance workers (工友), educational enterprises (教育事業), administrative agencies (行政機關), munitions industries (軍火工業), right of association (結社權), labor conditions (勞動條件), social and economic status (社會及經濟地位), collective bargaining (團體交涉), dispute resolution (爭議解決), social order (社會秩序), public welfare (公共利益), mediation (調解).**

HOLDING: Under Article 4 of the Labor Union Act, which stipulates that “Persons employed in administrative or

解釋文：工會法第四條規定：「各級政府行政及教育事業、軍火工業之員工，不得組織工會」，其中禁止教

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** Contents within frame, not part of the original text, are added for reference purpose only.

educational agencies of government at any level, and persons employed in ammunitions industries shall not organize a labor union,” technicians and maintenance workers employed by educational agencies are not permitted to organize labor unions. However, due to the service-oriented nature of work associated with such technicians and maintenance workers, prohibiting the organizing of labor unions for those engaged in this line of work unnecessarily deprives them of their basic rights. This prohibition actually oversteps the imposed threshold of Article 23 of the Constitution, and infringes upon the aforementioned workers’ constitutionally guaranteed right of association. The prohibition is to be abolished within one year following the delivery of this interpretation. Any necessary changes to be made in regards to the labor rights on the basis of the nature of work associated with technicians and maintenance workers employed by educational agencies are to be evaluated and amended by the legislature in the aforementioned time period.

育事業技工、工友組織工會部份，因該技工、工友所從事者僅係教育事業之服務性工作，依其工作之性質，禁止其組織工會，使其難以獲致合理之權益，實已逾越憲法第二十三條之必要限度，侵害從事此項職業之人民在憲法上保障之結社權，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。惟基於教育事業技工、工友之工作性質，就其勞動權利之行使有無加以限制之必要，應由立法機關於上述期間內檢討修正，併此指明。

REASONING: Article 14 of the

解釋理由書：憲法第十四條規

Constitution stipulates that citizens shall have the freedom of association. Additionally, Paragraph 1 of Article 153 of the Constitution reiterates the duty of the State to enact laws and implement policies that protect workers so as to better their livelihood and improve productive skills. Workers employed in all lines of work organize labor unions in order to improve labor conditions, and to raise their social and economic status. This basic labor right is generally recognized by countries with modern legal systems, and its safeguarding was the intent of Article 153 of the Constitution. Labor union laws promulgated by the State shall allow workers to enjoy the right to collective bargaining and dispute resolution, as long as social order and public welfare are secured. Article 4 of the Labor Union Act stipulates that: "Persons employed in administrative or educational agencies of government at any level, and persons employed in munitions industries shall not organize a labor union," and among those groups, technicians and maintenance workers working for educational agencies are not permitted to organize labor unions. Although the

定人民有結社之自由。第一百五十三條第一項復規定國家為改良勞工之生活，增進其生產技能，應制定保護勞工之法律，實施保護勞工之政策。從事各種職業之勞動者，為改善勞動條件，增進其社會及經濟地位，得組織工會，乃現代法治國家普遍承認之勞工基本權利，亦屬憲法上開規定意旨之所在。國家制定有關工會之法律，應於兼顧社會秩序及公共利益前提下，使勞工享有團體交涉及爭議等權利。工會法第四條規定：「各級政府行政及教育事業、軍火工業之員工，不得組織工會。」其中禁止教育事業技工、工友組織工會部分，因該技工、工友所從事者僅為教育事業之服務性工作，其工作之性質，與國民受教育之權利雖有關連，惟禁止其組織工會，使其難以獲致合理之權益，實已逾越憲法第二十三條規定之必要限度，侵害從事此項職業之人民在憲法上保障之結社權。應自本解釋公布之日起，至遲於屆滿一年時，失其效力。又工會為保障勞工權益，得聯合會員，就勞動條件及會員福利事項，如工資、工作時間、安全衛生、休假、退休、職業災害補償、保險等事項與僱主協商，並締結團體協約；協議不成發生之勞資間糾紛事件，得由工會調處；亦得為勞資爭議申

nature of their work is linked to the citizenry's right to education, by prohibiting the formation of labor unions, it deprives the aforementioned workers of their basic rights, exceeds the imposed threshold of Article 23 of the Constitution and infringes upon these workers' constitutionally guaranteed right of association. This prohibition is to be lifted within one year following delivery of this interpretation. To safeguard their labor rights, members of labor unions should organize, negotiate, and conclude agreements with employers on matters related to working conditions and welfare issues such as wages, working hours, health and safety, vacations, retirement, work accident compensation, insurance, etc. If negotiations fail or labor disputes arise, labor unions shall help mediate such impasses. Should all mediation fail to resolve a labor dispute, labor unions may go on strike if legal procedures are adhered to. The Labor Union Act (Articles 5, 6, 12, 20 and 26), the Collective Bargaining Act and the Settlement of Labor-Management Disputes Act provide related regulations for reference. The nature of work for technicians and maintenance workers working

請調解，經調解程序無效後，即得依法定程序宣告罷工，以謀求解決。此觀工會法第五條、第六條、第十二條、第二十條、第二十六條及團體協約法、勞資爭議處理法有關規定自明。基於教育事業技工、工友之工作性質與國民受教育權利之保護，諸如校園之安全、教學研究環境之維護等各方面，仍不能謂全無關涉；其勞動權利之行使，有無加以限制之必要，應由立法機關於一年內檢討修正，併此指明。

in educational agencies may not compromise protection of the right of citizens to education, such as in aspects related to school safety and safety within educational and research environments. Any necessary changes to be made in regards to the labor rights on the basis of the nature of work associated with technicians and maintenance workers employed by educational agencies are to be evaluated and amended by the legislature in the aforementioned time period.

Justice Tieh-Cheng Liu filed dissenting opinion, in which Justice Tong-Schung Tai joined.

本號解釋劉大法官鐵錚、戴大法官東雄共同提出不同意見書。