

# **One Step Forward, Two Steps Back? – A Comparative Analysis of Public Sector Collective Bargaining in Korea, the Philippines and Thailand**

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## **Introduction**

**T**he Asia-Pacific region has been considered as the growth engine of the world economy in the 1970s up to 1997. Its "tiger" economies spearheaded the breaking down of market borders that spawned globalization. But while these development models earned accolades and have indeed uplifted the lives of its people, some of these countries had been ruled by authoritarian regimes. Dictators and military juntas originally presided over these export economies. But as industrialization, modernization and global integration took root, the pressures for democratization slowly emerged eventually resulting to widespread upheaval for change. Thus, parts of globalizing Asia also became democratizing Asia.

These developments had also impacted on the structure of the public sector in many parts of globalizing Asia. The reformed legal system, development policies, budget allocation, fiscal reforms, social services and even security issues have influenced the labor relations system. Unionism closely followed the re-configuration of the state. Democracy or the absence of it has continuously defined the parameters of trade union rights of those who work for the sovereign state – the public employees.

This paper takes a comparative look on public sector collective bargaining in Korea, the Philippines and Thailand— the three Asian countries that had recent episode of democratization. As their respective political transformation opened the legal system for the expansion of human and trade union rights, changes in the system of labor relations in the public sector became evident. In particular, collective bargaining became a central feature in public sector employment rela -

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tions. This paper thus seeks to shed light on several issues: Are the so-called gains in strengthening collective bargaining in these Asian countries beneficial in pushing for stronger unionism? Is the expansion of union rights a step forward or backward for unionism? The paper starts by identifying the main features of unionism and its various intervening factors in the different countries and analyze them against the concepts of industrial relations and the principles of international labor standards. The focus is on the assessment of the key elements and dynamics of the collective bargaining systems. This paper is part of a continuing study that intends to illustrate the various models of public sector labor relations to provide some possible reference for any reform proposals that may be formulated by the players in public sector labor relations.

### **Evolution of public sector unionism**

The three countries - Korea, Philippines and Thailand - have varied historical sketches of unionism among the public employees. The development of their states - with episodes of authoritarianism and military rule - had influenced the extent of trade union rights of the workers in general. Thus, the public sector occupied strategic and critical position in their respective labor relations systems that have evolved in the last eight decades.

The Philippines has the longest history of unionism among public employees. The legalization of unionism in the early 1900s saw the organizing of several state-owned entities like railways, newspapers and even the famous Manila Hotel. Several leading personalities of the emerging trade union movement even came from this sector.

The highly political nature of unionism— being integrated into the independence movement—resulted to restrictions of rights and closer supervision through administrative issuance and court decisions. The post-war period saw the emergence of strong trade unions from both the administrative and corporate segments of the public sector (Añonuevo, 1991). The rights of the workers in the state enterprises were governed by the Industrial Peace Act of 1953 that allowed them to bargain collectively. The rest of the civil servants were allowed to have associations that functioned as consultative and social entities. However, the declaration of Martial Law in 1972 led to the total ban of public sector unions. It was only with the opening of the democratic space following the first salvo of people power in EDSA in 1986 that the civil servants recovered their union rights.

In Thailand, trade unions emerged in 1945 as the manufacturing sector started to develop and state enterprises expanded in a context of political liberalism after the Second World War. But unionism was banned by a military takeover in 1947 and again in 1958. Though collective bargaining became an instrument of industrial relations during this period, unionism did not fully develop due to limited rights and the political situation at that time. Following the widespread

dissent of the student movement in the early 70s, political reforms were made and this included the enactment of the Labor Relations Act of 1975. This law laid down the basic framework of industrial relations as we see it today. Employees in the state enterprises acquired basically the same rights as those in the private sector. A 1976 coup led to the banning of strikes and stricter police supervision of trade unions (Wehmhorner, 1983: 484). In 1981, restoration of some trade union rights became the watershed for the state enterprise unions as they were left out of the reform process. Their right to strike was not given back and their right to bargain for financial benefits was restricted when it was decreed that the Cabinet has the sole decision on issues such as pay and fringe benefits requiring monetary allocation. Though with limited rights, these unions emerged as the stronger pillar of the trade union movement due to their bigger "bargaining units" and thus wider membership.

Another successful coup in 1991 even led to the total prohibition of any notion of collective bargaining within the state enterprises. Unions were reduced into mere associations with minimal consultation rights. Their efforts to regain their bargaining rights finally succeeded when the State Enterprise Labor Relations Act of 2000 was enacted. The procedure of bargaining was restored.

The Korean experience also followed the contours of politics and economic development. The series of military Presidents presiding over export-oriented growth facilitated a strong state intervention and wide managerial prerogatives in industrial relations. The year 1987 was the start of the democratization process in Korea and the labor laws were overhauled (Lee and Lee, 1999). The teachers and other public servants also started organizing associations to press for trade union rights during this period. But it was only in the heels of the Asian crisis and the election of the long-time dissident Kim Dae-jung in 1997 that the expansion of trade union rights for other public employees was discussed at the national tripartite level. In 1998, the other segments of the public sector were merely allowed to form workplace associations but the following year the primary and secondary teachers' unions were legalized and allowed to bargain collectively.

### **The legal framework**

The three systems of labor relations that are being compared were established at the heels of democratization and political reforms. Korea had its "Great Democratic Struggle" that started in 1987 and then leapfrogged in 1997. This resulted to several phases of massive reforms in the labor laws. The Philippines was riding the euphoria of the 1986 People Power Revolution when the new Constitution granted union rights to government employees. The democracy uprising in 1992 and the subsequent adoption of a new Constitution provided the political atmosphere for the Thai State enterprise unions to reclaim their lost rights. The various democratic transitions certainly provided the

seedbed for expanded trade union rights. But the success in providing the mechanisms of unionism and bargaining has been accompanied by some obvious downsides—both in form and in substance.

There are two main laws that cover the public sector bargaining in Korea — a “dual system” similar to many countries. For those with full-blown trade union rights, the Trade Union and Labor Relations Adjustment Act of 1997 (TULRRA) is in effect. On the other hand, teachers’ unionism is governed by the Act Concerning the Establishment and Operations of Teachers Unions that took effect in 01 July 1999. It covers 270,000 public school teachers and 70,000 private school teachers. Both laws define the steps of union registration and the procedure for bargaining. But organizing at the school level is effectively banned. The Act covering teachers defines the parameters of industrial actions and dispute settlement covering conciliation, mediation and arbitration. The teachers are, however, not allowed to conduct any form of industrial action including strike. Mediation and arbitration are the main mode of dispute settlement.

Other public servants are not allowed to unionize and are simply represented through staff associations at the workplace. The Act Concerning the Establishment and Operation of Workplace Associations for Public Officials (1998) for all intents and purposes prohibits unionism in a very significant segment of the public sector. These associations are not considered as trade unions under the TULRRA which merely covers 338,000 out of the 930,000 public servants (ILO Website, 2001).

In the Philippines, the main law is the Executive Order 180 that was promulgated by former President Corazon Aquino in 1987 using her revolutionary powers after the People Power Revolution. It provides for the right to organize unions within national agencies, local government units, state corporations, and in state colleges and universities. There are around 1.4 million government employees in these sub-sectors. The law prohibits the military, police, jail guards and firefighters from joining unions. Bargaining is categorized as ‘collective negotiations’ to differentiate it from the full bargaining rights of the private sector workers. It covers very limited items such as social activities, leaves, career and professional advancement, union rights and privileges, a signing bonus, and the grievance machinery. Strikes are prohibited based on many previous court decisions and administrative issuances.

In Thailand, the latest legislation governing public sector unionism is the State Enterprise Labor Relations Act (SELRA 2000). It provides for the right to organize in the state enterprises. There are 61 enterprises (government owns at least simple majority stake) employing 320,000 workers. This law sets the procedure for the creation of labor relations committee at the national and enterprise level. The procedure for union registration is also defined, the unions’ organizational rights and responsibilities outlined, and a dispute settlement system also elaborated. It must be noted that previous gains in collective bargaining are already integrated into the existing terms and

conditions of employment. Strike is expressly prohibited in the law. With SELRA's applicability limited to the state enterprises and the lack of other law for the other state employees, the rest of the employees in the state administration, public schools and local administrations have no union rights.

At the outset, we can observe that the Philippines has the widest scope of coverage for the right to organize unions. EO 180 allows government workers from the different branches of the bureaucracy including government corporations to organize. For Thailand and Korea, sectoral coverage is limited. The former allows organizing only among the state enterprises workers while the latter distinguishes the state enterprises, manual workers including railway and postal workers, and the teachers as the only segment of the public sector that can form unions and negotiate. Both still prevent unionization within a big portion of the civil service. This limitation falls short of the spirit of the freedom of association provisions of their respective Constitutions as well as the right to self-organization enshrined in ILO Convention 87, in particular to the principle that freedom of association applies to all workers "without distinction whatsoever" including employees of the State.

With these obvious deficits of coverage, it is common among the three countries that those without union rights or those who feel that they are shortchanged had tried to exercise their union rights arguing the freedom of association provision of their respective Constitutions. Some teachers in Thailand tried to register their group as a union citing their freedom of association. In the Philippines, some unions went on strike arguing their freedom of expression and the right to engage in concerted actions. The public servants groups in Korea even consolidated itself into an umbrella group of quasi-union to assert for more trade union rights. But all these efforts were outside the workplace nature of public servants association thus considered by the government as illegal actions. Nevertheless, all these challenges to the legal parameters of unionism indicate that the discourse on the limitations of union rights will persist.

### **The public sector unions and their coverage**

Most of the Thai unions are organized under the State Enterprise Workers Relations Confederation (SERC). The single-sector unionism in Thailand makes the whole public sector union density substantially low. However, there is a significant membership density among the state enterprises. According to a Ministry of Labor report, out of the 61 state enterprises 44 have unions with about 160,000 members. This pegs union membership at 50 percent of all the 320,000 state enterprise workers -- a membership density that is high not only within the public sector but also within the whole Thai trade union movement. The same report revealed that there are 23 unions that submitted their bargaining demands since the enactment of SELRA

**Table 1. Overview of the Labor Relations Systems in the  
Public Sector**

	<b>Korea</b>		<b>Philippines</b>	<b>Thailand</b>
<b>Main Law</b>	Trade Union and Labor Relations Adjustment Act (1998) [TULRAA]	Act Concerning the Establishment of and Operations of Teachers Unions (1999)	Executive Order No. 180 (1987) [EO 180]	State Enterprise Labor Relations Act (2000) [SELRA]
<b>Coverage</b>	Manual Workers, Hospital Workers, and State Enterprises	Teachers of Private and Public Elementary and Secondary Schools	National Agencies, Local Governments, State Colleges and Universities, and Government Corps.	State Enterprises
<b>Name of Agreement</b>	Collective Agreement	National Collective Agreement or Provincial/City Collective Agreement	Collective Negotiations Agreement (CNA)	Collective Agreement
<b>Bargaining Level</b>	Enterprise and possible on regional level	National and Provincial or City	Enterprise/ Agency or Regional Office	Enterprise
<b>Bargaining Employer</b>	Enterprise management	1. Ministry of Education 2. Provincial Superintendent	Head of agency	Enterprise management
<b>Determination of Bargaining Agent</b>	By registration and application of single union principle by rejecting any new union application (unified bargaining channel begins in 2002)	By registration and inclusion to unified bargaining channel	Accreditation for single unions or Certification Election for multiple unions	Merger, Registration of the bigger union, or "drawing of lots"

**Table 1. Overview of Labor Relations systems in the Public Sector (continued)**

	Korea		Philippines	Thailand
<b>Bargaining Channel</b>	Single Union (Unified bargaining channel by 2002)	Unified Bargaining Channel	Majority Union	Single Union
<b>Coverage of Agreement</b>	Union members or to the whole agency/enterprise if covering more than half of the workers or regional level if covering two-thirds of workers in a geographical are	Union members but "effectively all the public school teachers "	As defined by the collective negotiation unit	Union members
<b>Term of Agreement</b>	Maximum of two years	One year	Maximum of three years but two and five year CNAs exist	Depending on the parties but should not exceed three years
<b>Dispute Settlement Agency</b>	Special Mediation Committee for Public Services then the Labor Relations Commission for arbitration as applicable	Labor Relations Adjustment Commission for Teachers	Public Sector Labor-Management Council (PSLMC)	State Enterprise Labor Relations Committee (SERC)
<b>Right to Strike</b>	<ol style="list-style-type: none"> <li>1. Right to strike for ordinary public service enterprises</li> <li>2. Compulsory arbitration for essential public services</li> </ol>	No right to strike	No right to strike	No right to strike

Sources: Trade Union and Labor Relations Adjustment Act of 1998 and Act Concerning the Establishment of and Operations of Teachers Unions of 1999 (Korea); Executive Order 180 of 1987(Philippines); State Enterprise Labor Relations Act 2000 (SELRA); and Kim (2001).

but only nine concluded agreements have so far been registered (Ministry of Labor, April 2001).

In Korea, public sector unions are affiliated to the bi-polar trade union movement composed of the Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU). KCTU has been consolidating its public sector unions for bigger bargaining units. Its affiliates in the subway-railways, public and social services, and the federation of public sector unions merged in March 1999 to create the Korean Federation of Transportation, Public and Social Services Workers' Unions (KPSU). This federation covered at the time of its formation 110 individual unions with around 100,000 and the effort is seen as a step "...for the creation of a national single public sector union" (KCTU, 2001) with the end view of sectoral bargaining. Other unions in the public sector in KCTU include the Korean Health, and Medical Industry Union, the Korean Federation of Clerical and Financial Workers Unions and the Korean Teachers and Educational Workers Union (KTU). The KTU claims a membership of 64,000 during its formation and was legalized only when the law on teachers' unionism was enacted in 1999. The FKTU for its part has the Korean Union of Teaching and Educational Workers (KUTW) with 25,000 members. It has similar federations in the public sector which organize the workers in the railways, power generation, banks, financial institutions, transportation, and other state-supported entities.

The Philippines is well known for trade union multiplicity and for the ideological delineation of the labor movement during the Marcos years. This continued after the 1986 EDSA Revolution and did not spare the public sector unions. There are seven major federations in the Philippines though they do not have legal personality under Executive Order 180. They have evolved into de facto representatives of the 1.5 million public employees. The August 2001 data of the Department of Labor showed that there are 860 registered unions covering 197,180 workers. This represents a mere 13.6 percent of the total public sector. Moreover there are only 247 unions accredited to be bargaining agents and so far there are only 40 registered agreements covering 25,860 employees or a mere 1.78 percent of the government personnel. Broken down into sectors, the highest density of CNA coverage are the government corporations and local government units. An informal survey conducted by the author in 2001 revealed that there are about 85 to 100 concluded CNAs already.

The highest trade union density is understandably in Thailand. The single union principle and the monolithic movement among the state enterprise workers pushed union membership to 50 percent of all the employees in the corporate sector. The bi-polar movement in Korea was fitting in the unified bargaining channel system. It manages trade union competition and ensures cooperation. With the single union principle in TULRAA ending this year, the pluralist-cooperative system will define how unions will ensure greater bargaining

power. The strong trade union traditions also enhance the organizing coverage of the public sector unions. In the Philippines, the trade unions will continue to compete in the elimination system and at the same time face the anti-union stance of many government officials. The Philippines has the smallest trade union density among the compared countries.

### **The collective bargaining structure**

Flanders (1965:94) defined collective bargaining thoroughly as "essentially a rule-making process".

It could be more appropriately called joint regulation; since its distinctive feature is that trade unions and employers or their associations act as joint authors of rules made to regulate employment contracts and, incidentally, their own relations. They may sometimes use third-party assistance in form of conciliation, mediation, arbitration and public inquiry, but serves only as an auxiliary aid to reach their own agreements, for whose contents and observance they are equally responsible.

Another definition even emphasised the framework of public sector unionism and reiterated the corollary role of industrial action Clegg (1976:5) argued that "dealings between unions and governments rank as collective bargaining only where the governments are acting as employers; otherwise they are regarded as political action. The process is called bargaining because each side is able to apply pressure on the other. Mere representation of views or appeal for consideration is not bargaining. The best-known forms of pressure are the strike and the lock-out, but there are many others".

In general, the agency or enterprise is the locus of collective bargaining. The only exception is the national and provincial level bargaining for Korean teachers. However, it must be noted too that an exercise of national collective bargaining was undertaken in the Philippines in 1989 when a unified bargaining panel was able to forge a Memorandum of Undertaking in the Public Sector (MOUIPS). This national agreement provided for the granting of Personnel Emergency Relief Allowance (PERA) and a seed capital of P 10-million fund for cooperative and livelihood undertakings.

There may be similarities in the level of bargaining in the three countries but the bargaining processes of specific bargaining units vary. The Thai unions and some of the unions under the TULRAA bargain within their respective enterprises. The agreement covers only the members of the negotiating union. The Philippine case however sustains the tradition of multiplicity even in bargaining units. The agency-level unionism actually allows for the regional offices or attached agencies to organize their own unions. Thus, several unions can be organized and conclude a CNA within one national entity. This

system may spawn "retail bargaining" and even fan multiplicity and union competition. The case of the Department of Environment and Natural Resources – one of the biggest national agencies with numerous regional offices and attached agencies—has evolved into multi-sided union competition and into a legal question.

For the Korean teachers, the bargaining occurs at two levels. On one hand, the national agreement covers all the union members of the negotiating unions though it effectively applies all the public school teachers in the country (Kim, 2001). This is the biggest bargaining unit existing among the three systems. On the other hand, there are 16 provincial bargaining units but three failed to negotiate due to conflicts in forming the bargaining panels. However, this two-tiered bargaining is still seen by the trade unions as violating the teachers' rights because it practically bans union organizing at the school level.

### **Determination of bargaining agents**

The determination of the bargaining agent is widely varied among the countries. For the teachers in Korea and the whole public sector in the Philippines, trade union pluralism may exist. But the exact procedure of determination differs. Korea provides for a unified bargaining channel and this has been practiced already in national bargaining (1999-2000) wherein the KTUW and KTU formed a common bargaining panel. In the Philippines, a single existing union in a bargaining unit may be accredited as bargaining agent if it gets to sign the majority of the employees. However, in case of multiple unions, plurality in bargaining is eliminated through a certification election — a majority representation system wherein the voted majority union becomes the sole and exclusive bargaining agent.

For Thailand and those covered by TULRAA in Korea, the "single union principle" is practiced. Both systems prevent trade union pluralism at the registration stage. The SELRA provides for three options to deal with potential trade union pluralism. In case of two or more applicants for registration, the first option is for the Ministry of Labor to encourage them to merge. The other option is simply to register the union with the bigger membership. In case of equal number of membership, unions "draw lots" to determine who should be registered.

In Korea's TULRAA, any application for trade union registration for a workplace or business where a trade union exists shall be rejected (Article 5 Addenda). However, this procedure would have ended on 31 December 2000 and union pluralism at the enterprise/agency would have been allowed. A system of single bargaining channel would have been set-up by the start of 2002.

The key issue in the determination of bargaining agents is the principle of trade union pluralism. Anchored on the issue of freedom of association, it emphasizes that "workers should have the right to establish trade unions of their own choosing" (ILO Convention No.87). Thailand has the most restrictive system because it forces mergers or

simply declines the smaller union. Korea's approach is however mixed. Under the TULRAA, the single union principle has ended in 2001. Other unions may now register and joint bargaining channel is being set up in enterprises/agency with more than one union.

The Philippines for its part employs a "winner-takes-all" system. Since multiple unionism is more or less the rule rather than the exception, certification election is the way to "kill" the other unions. It forces transfers of membership to the winning union or at the very least impose "agency fees" to those who stay in the losing ones. The most recent illustration is the two-way election for the Post Office where a difference of about 609 votes covering 12,000 workers practically led to the near-disintegration of the losing union. Though ILO upholds the principle of representativity and the concept of exclusive bargaining agent, the intensity of division spawned by the elections add on to the splitist and divided character of the Philippine unions.

Determination of the bargaining agent is basically linked to union registration. There are no major controversies that can be identified in the registration requirements but variables like the anti-union stance of the management or the existence of competing unions impact at this stage of the unionization process. Only the SELRA procedure of Thailand is contentious due to its forced mergers. In the context of trade union plurality, the use of unified bargaining channel is more conducive to trade union consensus and consolidation rather than the "elimination approach" of sole and exclusive representation. Though it must be pointed out that the determination of the single channel may fail as in three provincial bargaining units for teachers in Korea, it remains as the crucial mechanism for unity and representativeness.

### **Subjects of bargaining**

Since collective bargaining deals with the joint determination of the terms and conditions of employment, the subjects of bargaining comprise a key element in ascertaining the value of any collective agreement. The substantive parts are the main indicators if trade union influence is strong or if the bargaining systems that exist are more "motion rather than substance".

The core item in bargaining is salaries and wages. For some industrial relations practitioners, an agreement without wages is not an outcome of collective bargaining. In the Philippines, public employees are deprived of the right to influence issues requiring monetary/financial allocation. Thus, the collectivities of workers are formally acknowledged as unions but the bargaining process is qualified as "collective negotiations" because it does not cover monetary issues. For the three countries, the existence of a salary structure defined by public authorities like the parliament and the Cabinet already prevents free collective bargaining. Though some enterprises (e.g. Thai Airways, Bank of Thailand, Development Bank of the Philippines, Social Security System etc.) have higher rates for some positions or are

even totally exempted from the standardized salary scheme, wage determination remains in the realm of consultation and effectively in unilateral decision-making.

The Korean experience on wage bargaining however is mixed. Public sector workers under TULRAA can negotiate their wages like any private sector union but under the supervision of the Ministry of Planning and Budget through issuance of wage guidelines. The experience of the teachers in national bargaining reflects the contradictions of the so-called "sovereign employer". The very first national bargaining resulted into an agreement on adjustments in allowances and other monetary benefits. However, the law states that some agreed items will not "take effect as collective agreements, in case they are stipulated by the law, by laws, and budget" (Act Concerning the Establishment and Operations of Teachers Unions, Article 7 [1]). As a result, portions of the national agreement were rejected by the Ministry of Planning and Budget by stating that the "budgetary principles and policy direction set by the government is non-negotiable" (EI, 2001:16; cited in Kim 2001). The subsequent pressures by the union resulted in the imprisonment of many teacher-unionists.

An interesting dimension of collective bargaining, at least in Thailand and the Philippines, is the "negotiations" for existing benefits and rights. When labor standards are repeated in collective agreements as provisions, the essence of bargaining disappears. It is like using the agreement as a primer of employee benefits and personnel policies. It appears that the CNAs are emerging as a means to inform rather than to bargain for new benefits.

In a sample of four translated collective agreements of Thailand that covers 25 provisions, six merely restated principles and benefits that already exist, and eight provisions pertain to representation and consultation arrangements. Another three defined the full-time arrangement for the union leaders as provided by SELRA. The same is true to the CNAs in the Philippines. A sample CNA from the National Food Authority shows that some provisions simply refer to the granting of benefits as stipulated by existing circulars and memoranda from the central personnel agency and the budget department. These include overtime and loyalty pay, incentives and awards, compensatory day-off, and rehabilitation leaves. This observation is affirmed by the separate studies being undertaken by the Civil Service Commission and the Confederation of Independent Unions in the Public Sector. Both unfinished studies covered 54 CNAs.

The establishment of the bargaining system, though limited in substantive issues, has assisted the strengthening of the trade union organization. This is the most common provision in the various collective agreements. It practically ensures union security. The collective agreements provided for check-off dues collection ensuring regular financial inflow to the union. The provision for union leaves and full-time trade union work has also contributed to the institutionalization

of the union. Union leaders and members can attend to union activities on official time. In the teachers' agreement as well as in the CNAs, granting of facilities for trade unions such as office, equipment, fixtures, and bulletin boards facilitate in creating operational unions. Finally, a very high percentage of provisions also provide for consultation or participation in several decision-making organs within the workplace. These are illustrations that workers are already partaking in managerial prerogative thereby enhancing the representative function of the unions.

If we are to use the basic objectives of collective bargaining as practiced by private sector unions as benchmark for collective negotiations, there are several obvious deficits in the public sector. In terms of securing benefits not in the law and improving on the existing labor standards, the SELRA agreements and the CNAs partly fail based on the examples cited earlier. Some gains were made in minimizing management prerogatives but some core issues like salary, personnel policies, and other benefits are still decided unilaterally. While consultations occur, its non-binding character still falls short of joint regulation of work relations. Nonetheless, the objective of promoting compliance of law is widely achieved in CNAs and in SELRA agreements.

### **Binding Effect and the Power of the Purse**

A key problem in public sector collective bargaining is the determination of the so-called "ultimate employer". It impacts on the legality of agreements, the procedure of granting the provisions, and on the institution that will finally accept or grant the agreed items. Yemin (1993: 482) cited two grounds that establish limitations on the legality of collective agreements in the public sector. First, there is the complexity of representation wherein the negotiating employer - though acting as the principal- reserves the right of flexibility of approval in cases of violation of budget and policy constraints. Second, the separation of powers within the government also comes into play. Decisions in an agreement in many cases must come in the form of legislation in order to be acknowledged and take effect.

The rejection of some provisions of the Korean teachers' national agreement by the Ministry of Planning and Budget is a classic example of the first limitation. There are 17 items from the agreement that has to be integrated into the national budget but only six items were included in the modified form (KCTU, 2001). The government simply dismissed the financial items as "non-negotiable". This contradicts the principle asserted by the ILO Committee of Freedom of Association which states that "...the exercise of *financial powers by public authorities* in a manner that prevents or limits compliance with collective agreements entered into by public bodies is not consistent with the principle of free collective bargaining (CFA, 1996: para. 895).

SELRA and EO 180 also underscore the "sovereignty of the state" over financial matters. The SELRA ensures that the Cabinet or

the SERC shall approve any revision to conditions of employment that pertains to financial affairs of the state enterprise. EO 180 even listed items that cannot be subjected to negotiations because they require appropriations.

The budget and financial authorities also had episodes of intervention in parameters of collective bargaining. The Ministry of Planning and Budget of Korea for example issued directives that withheld budget releases to several state enterprises and agencies that failed to comply to reform plans like revising retirement allowance and innovation programs. As a result, it did not only infringe on the collective agreements but also violated labor standards due to the non-payment of wages in some cases. In a similar vein, the Department of Budget and Management of the Philippines reined in collective negotiations by setting a P 5,000 ceiling on the signing bonus by issuing Circular No. 2000-19.

It is also discernible that there exist an "intra-employer bargaining". The teachers' agreement, the CNAs, and a SELRA agreement contain commitments that the immediate employer will "promote", "secure the required budget", "recommend" or "submit proposal to proper authorities" on specific items requiring financial outlay. This again illustrates the different layers of decision making on the side of the public authorities. The key institutions here include the central personnel agencies, the budget and finance ministries, the Cabinet, and the legislature. This dilemma pushes the trade unions to propose either a consolidated national bargaining with the cited institutions or a direct negotiation with either the budget or the finance ministry. Both ways, it calls for the establishment of centralized bargaining—in effect bigger bargaining units— for sub-sectors where common benefits and standards are applicable.

### **Dispute settlement and the right to strike**

The main mode of dispute settlement in collective bargaining disputes is arbitration. Though mediation is provided, the arbitration agencies take a central role. The tripartite (the Cabinet, the managers and the employees) State Enterprise Relations Committee in Thailand arbitrates disputes. Likewise, the Public Sector Labor Management Council in the Philippines also provide facilities for settling disputes but decides on them with finality.

In some instances, the cultural factor enters the handling of labor disputes. In the Bangkok Metropolitan Waterworks Authority, the union demands were relegated to recommendations to SERC. This was considered as "face saving" for both the bargaining parties — to show that the union did not fail representation role and that the management did not reject the workers' demands (Vorapeboonpong, 2001).

Since disputes may end up unresolved and may result to industrial actions, strikes are described as "...part of the bargaining

landscape, the continuation of bargaining by other means" (Edwards, 1995: 456). All the three countries have prohibitions on strikes in the public sector. For Korea, the teachers are expressly banned from undertaking strikes. Those with full bargaining rights under the category of ordinary public services can strike after mediation procedures and cooling-off period exhausted while those in "broadly-defined essential public services" are handled by a special mediation panel in which mediation and compulsory arbitration is applied (OECD, 2000: 40-41). Thailand's SELRA bans strikes under Section 33 while in the Philippines, the previous court rulings of strike ban were upheld by Memorandum Circular 6 Series of 1987 from the Civil Service Commission.

These limitations on strike and outright prohibitions run counter to the international labor standards and principles. There is no particular and explicit standard on strikes but supervisory bodies of the ILO acknowledged that strikes are crucial means for the workers to protect and promote their interests (Ackerman, 1994: 386-387/Yemin, 1993: 487). Though the right to self-organization for "...public servants does not imply the right to strike (CFA, 1996: para. 531), specific limitations are only provided for the following: (1) who are exercising authority in the name of the State, and (2) those employed in essential services in the strictest terms". A close look on this principle reveals that some sectors and particular enterprises and agencies fall outside these restrictions and may have the right to strike. Thus, the teachers' sector; state enterprises like banks, financial institutions, and transport companies; postal services; ports; radio and television stations; and even the government Mint may be exempted from the strike ban.

Even the concept of "negotiated minimum service" that may be applied instead of an outright strike ban is not considered. Korea's "...labour law provisions seem to go farther than in other Member countries in that they set out an unusually broad definition of "essential services" where a strike ban covering entire sector is maintained" (OECD, 2000:41). Thailand and the Philippines simply apply the strike ban to the whole public sector exercising the right to self-organization. The ban or prohibition on the right to strike is certainly a big obstacle for public sector unions in the three countries in stepping forward for the exercise and enjoyment of full trade union rights.

### **Conclusion and Recommendations**

The systems of collective bargaining in Korea, Philippines and Thailand are still works-in-progress. The democratization process certainly expanded labor rights. However, the gains or steps forward have their own corresponding obstacles that make trade union rights of the public employees as "half full-half empty". The establishment of mechanisms in collective bargaining is a good step forward for trade union rights but the substantive and procedural dynamics surely push

back these gains. One can argue that the "motion is substance" analogy can best describe public sector collective bargaining in these three countries. The most graphic contradiction in the various democratization projects is the continuing persecution and violence against Korean public servants.

The most significant limitation is the lack of effective procedure for bargaining on economic benefits specially salaries. The so-called "consultations", "negotiations" and "bargaining" are mere motions to soften unilateral wage decision-making. The power of the purse remains basically with the public authorities. This is further reinforced by the experience in the Philippines and Thailand wherein benefits already provided for are merely repeated in collective agreements.

One major gain is on the organizational needs of the trade unions. The limited bargaining rights is somehow compensated by privileges of the unions to sustain its structure and operations. Facilities for dues collection and full-time work are crucial. They assist the operations of the unions in further expanding their services and conduct regular program. This "institutionalization" is also seen as a platform for greater intervention in changing the public sector labor laws. This is a critical handle for reforms. The other gains on some allowances, leave benefits, participation in decision-making in administrative and mandate-oriented policies, and even in professional development can be valued as the unions' success in the areas of reducing managerial prerogative and increasing workplace democratization.

The paper pointed out the gaps and the dynamics of the collective bargaining system in the subject countries. The primary recommendation is to apply the freedom of association principle "without distinction whatsoever" to the discriminated groups and occupations in the public sector. Thailand and Korea are particularly falling short in this aspect.

Second is to review the right to strike as applied in the three countries. The ILO standards and principles have elaborated the parameters of strike restrictions and the need for compensatory guarantees for the employees subjected to strike limitations. All the countries have blanket prohibition on the right to strike with clear disregard of the concept of essential services.

Thirdly, the discrepancies and deficits in collective bargaining have to be sorted-out and analyzed within the framework of international labor standards and actual practices from other countries. Harmonizing of bargaining levels and units is a key consideration as well as the determination of the "ultimate employer" to rationalize the binding effect of agreements.

Another recommendation impacts on the aforementioned proposals. There is an imperative to increase the comparative studies and researches not only by the academe but by the trade unions as well. The empirical evidence from other countries will help in testing any reform proposal that will come from both the employing public

authorities and the trade unions. The deficits in trade union rights and in the collective bargaining systems have to be settled through a process of discourse and compromises within the countries concerned. For the trade unions, it requires the development of concepts, arguments and justification.

Finally in this globalizing Asia as well as in the rest of the world, the ILO complaint system has to be utilized. The gaps and the deficits in any labor relations systems have to be matched to the template of international norms and universally accepted principles on workers rights. The goals of global labor governance are more pressing in our current context and it is quite unfortunate that those who are in service of the State are the ones who are both experiencing and are threatened by the lack of decency and fairness in their workplaces. The government should proceed further to what is expected from it — *to be the model employer in this roller coaster world of globalization.*

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