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법무법인(유) 세종

Seoul High Court Finds Principal Companies' Refusal to Bargain with Subcontractor Unions Did Not Constitute an Unfair Labor Practice Under the Pre-Amendment Trade Union Act

Case 1 — Company B

Union A sought collective bargaining with Company B on behalf of its branch comprising employees of Company B's on-site subcontractors. The request covered four issues: (i) occupational safety and health; (ii) rectifying discriminatory treatment; (iii) the principle of direct employment and conversion of illegally dispatched workers into regular employees; and (iv) cessation of hiring through subsidiaries (collectively, the "Collective Bargaining Request"). Company B neither posted a notice of the Collective Bargaining Request nor agreed to bargain, on the grounds that it had no employment relationship with the subcontractor employees.

Union A filed a petition for relief alleging an unfair labor practice. The Regional Labor Relations Commission dismissed the petition, finding that Company B was not an employer required to bargain with the union. On re-examination, however, the National Labor Relations Commission (the "NLRC") recognized Company B as an employer under the Trade Union and Labor Relations Adjustment Act (the "Trade Union Act") with respect to occupational safety and health, one of the four bargaining issues, and found that its refusal to bargain on that issue constituted an unfair labor practice.

Company B challenged the NLRC's decision in an administrative lawsuit. The trial court dismissed the company's claim, finding that Company B was in a position to exercise substantial and specific control over the subcontractor employees' working conditions.

On appeal, however, the Seoul High Court accepted Shin & Kim's arguments on behalf of Company B and held that the pre-amendment Trade Union Act governed the dispute. The Court explained that the amended Trade Union Act, which introduced a provision recognizing entities exercising substantial control as employers, did not apply. Instead, employer status under the pre-amendment law had to be determined based on the existence of an express or implied contractual employment relationship, consistent with the legal standard reaffirmed by the Supreme Court's *en banc* decision of May 21, 2026 (2018*Da*296229). The Court also held that ILO Convention No. 98 did not apply directly to the case because it entered into force for Korea on April 20, 2022, after both the Collective Bargaining Request and the NLRC's decision.

Applying that standard, the Seoul High Court found no implied contractual employment relationship between Company B and the subcontractor employees. The Court further held that even though an appellate court, in a separate employment-status lawsuit under the Act on the Protection of Temporary Agency Workers (the "Worker Dispatch Act"), had granted certain subcontractor employees' claims seeking to compel the employer to express its intent to employ them, a direct employment relationship could not be deemed to have existed unless and until that judgment became final and conclusive. Nor could a duty to engage in collective bargaining under the Trade Union Act be derived from the Worker Dispatch Act, which governs individual employment relationships.

The Seoul High Court accordingly reversed the trial court's judgment and revoked the NLRC's decision.

Case 2 — Company C

On April 22, 2022, Union A sought collective bargaining with Company C on behalf of its branch comprising employees of Company C's on-site subcontractors. The request covered five issues: (i) payment of performance bonuses; (ii) tuition assistance; (iii) protection of union activities; (iv) occupational safety; and (v) prohibition of interference with employment. Company C neither posted a notice of the bargaining request nor agreed to bargain, maintaining that it had no employment relationship with the subcontractor employees.

Union A filed a petition for relief alleging an unfair labor practice. The Regional Labor Relations Commission dismissed the petition, finding that Company C was not an employer required to bargain with the union under the Trade Union Act. On re-examination, however, the NLRC distinguished between Company C's two actions: it found that the failure to post a notice of the bargaining request did not constitute an unfair labor practice, but that the refusal to bargain did.

Both Company C and Union A filed lawsuits seeking revocation of the NLRC's decision. The trial court found that Company C was in a position to exercise substantial and specific control over the subcontractor employees' working conditions with respect to three of the five bargaining issues—performance bonuses, tuition assistance, and occupational safety. It therefore held that both the failure to post a notice of the bargaining request and the refusal to bargain on those issues constituted unfair labor practices.

On appeal, the Seoul High Court accepted all of Shin & Kim's arguments. The Court held that the pre-amendment Trade Union Act, rather than the amended law, governed the dispute and that employer status under the pre-amendment law had to be determined based on the existence of an express or implied contractual relationship for employment, consistent with the legal standard reaffirmed by the Supreme Court's *en banc* decision of May 21, 2026 (2018*Da*296229).

Finding no such contractual relationship between Company C and the subcontractor employees, the Court concluded that Company C was not an employer subject to the duty to engage in collective bargaining under the pre-amendment Trade Union Act. Accordingly, neither its failure to post a notice of the bargaining request nor its refusal to bargain constituted an unfair labor practice.

The Seoul High Court accordingly modified the trial court's judgment, revoking the portion of the NLRC's decision that had found Company C's refusal to bargain to be an unfair labor practice, while upholding the NLRC's conclusion that the

failure to post a notice of the bargaining request did not constitute an unfair labor practice.

Significance

Both decisions are significant because the Seoul High Court applied the pre-amendment legal standard reaffirmed by the Supreme Court's *en banc* decision to collective bargaining demands made by subcontractor unions against principal contractors before the amended Trade Union Act took effect. Applying that standard, the Court found that neither principal contractor qualified as an employer under the pre-amendment Trade Union Act, overturning the trial courts' decisions based on the "substantial control" test.

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