On site Protection and Challenges in Organising Migrant workers

Malaysian Trades Union Congress.
Bala Subramanian
Myanmar 2014
MTUC – Migrant Resource Centre

Objective:

- To provide support services to Migrant workers. MRCs centres are established in Penang/ KL-Selangor/ Johor.
- To conduct workshop on organizing migrant workers.
- To increase migrant workers participation in Union Activities.
- To enhance Bilateral cooperation with countries of origin.
- To use evidence based documentation for policy advocacy.
MRC Activities

- Dissemination on Labour Rights and Rights on Arrest and Detention.
- Case management – Rescues and conflict resolution, documentation, case monitoring and analysis.
- Represent Claimant(s) at Industrial Dispute and Labour Claims.
- Identifying and Training of peer leaders.
- Training on Labour related laws and Union Rights.
- Networking with local and sending country civil society/Trade Union partners.
- Collaboration with Labour Attaches of sending countries for effective case management.
- Advocacy for promotion and protection of migrant workers.
Case Management: Referral and Intervention

- Hospitals
- Sending/country referral – continue case follow-up/safe repatriation/advocacy
- Employers: Negotiation for early settlement (Case to case basis)
- Police for rescue & criminal investigation
- Immigration
- Relevant Embassy
- Legal Representation
- NGO Partners – support/join case intervention and advocacy
- Shelter and other supports
Referral for Case intervention

**Labour Dept**
- Filing complaint for investigation on Labour Violation
- Filling Claims for unpaid wages / overtime/ wrongful deduction and dismissal

**Industrial Relation Department**
- Breach of Contract
- Collective Bargain
- Trade Union Activities

**Immigration Dept**
- Reporting violation pertaining to Immigration Law such as withholding passport/ failure of employer to renew work permit/
- Application for visa pending court case and clearance for repatriation.
- Blacklisting employers and recruitment agents

**Hospital**
- Physical and sexual abuse.
- Health related admission .
- Follow up on medical treatment and psychiatric session.

**Police**
- Lodge first information report on criminal violation and withholding of passport.
- Intervention for rescue in Labour Trafficking cases / ATIP
- Follow-up with status of case
- 112 Statement / follow-up on remand order

**Sending country referral**
- Facilitate safe repatriation.
- Follow up
- Advocacy
### Challenges at work place.
- Dismissal
- Employer may cancel her/his work permit.
- Force to vacate her/his hostel.
- Force repatriation.

### Social Challenges
- No place to stay.
- May not have sufficient saving
- Highly dependant on friends for support

### Challenges in accessing Legal redress
- Cases takes time as both parties need time to prepare for their cases.
- Workers need assistance in Legal Representation.

### Challenges in Claimant’s documentation and Immigration Policies.
- Once a work permit is cancelled the worker’s status from documented becomes undocumented
- Once undocumented the worker requires a letter from Courts / Embassy/ to legalize his stay pending court case.
- Immigration Practice is to issue a special pass that only allows him to stay for maximum 90 days but cases may take longer than that.
- Immigration Policies do not allow them to seek alternative employment pending the outcome of their cases.
- Cost of Special Pass is RM100 for 30 days.
MTUC experiences and Challenges in Case Managements

- Most complaints received are related to Employment dispute and documents such as withholding of passport and non-renewal of work permit.
- Migrant workers walk in with multiple complaints. Thus needs multiple interventions
- Most migrant workers fear to complaint as she/he may risk termination and be chased out of their hostels.
- Migrant Workers are also challenged in seeking redress as Immigration Policies do not allow them to stay longer than 90 days.
- Migrant Workers are denied right to work while waiting for the outcome of their cases. Sometimes they have no means of support while waiting for the conclusion of their cases. Thus they resolve to early settlement by accepting a lesser claims.
MTUC experiences and Challenges in Organising workers for union recognition.

- Migrant workers are often threaten not to take part or involve in Organizing activities.
- Some employment contract prohibits migrant workers to be a member of Union or Association. Though this is in conflict of Labour Laws, but workers still fear losing their work.
- Migrant workers are only allowed to be a member but are not allowed to hold position.
- Cases have shown that workers who have participated in Union activities have been dismissed and repatriated within 24 hours, preventing them from seeking redress for reinstatement.
- Out sourcing services weakens Union Activities.
Case management

- Documentation: Accurate Detailed and Credible
- Identify redress strategy
- Verify facts and gather evidence to strengthen case.
- Empower migrant workers
- Constant monitoring and follow up
- Analyze case to identify strength and weakness and gap in protection.
- Evidence gather is used as tool for advocacy
Procedure for organising workers

- The formula for secret ballot as per the Industrial Relation Act 1967 (IRA) is 50 + 1
- Membership of any union is confined to those employed under a particular industry, establishment, trade and occupation.
- Managerial, executive, confidential and security employees cannot be members of a non-executive union nor can they represent in collective bargain.
- IRA also prohibits employees working as a confidential or security position to join a union.
- Establishment of In-house union with 7 members
Challenges

- **Time factor** – Date of submission of recognition to the date of secret ballot itself may take up to 3 years.

- Within this time, migrant workers would have return after completing their contract. Nevertheless these workers are considered as eligible votes and their absence is counted as against Union.

- **Competency:** Companies frustrate union recognition by challenging the competency of Union.

- The Trade Union Department neither states any explanation why it is not within the competency nor does it state which union is competent.
Challenges: continue

- **Constant change in Today’s trend:** Constantly changing the operation and production for instance from electrical to electronic and vice versa, making it more difficult to determine the competency of the Union.

- **Out-sourced workers:** Are not recognised as direct employee of the parent company thus not eligible to be a member in the Union. Employer favour out – sourced worker to evade accountability.
Challenges: continue

- **Formation of In-house Union**: In – house establishment only requires membership of 7.
  - In- house union clearly does not represent the collective voice of majority.
  - Does not effectively represent the voice of workers as they would succumb to the management control and pressure.

- **Migrant Workers are more challenged**: to participate towards Union recognition for fear that their livelihood would be affected with sudden dismissal or cancellation of work permits thus subjected to immediate expulsion, making it more difficult for them to seek redress for termination
### Example of cases:

<table>
<thead>
<tr>
<th>Company</th>
<th>Date served recognition of claims</th>
<th>Date Secret ballot Conducted</th>
<th>Out-come of Secret Ballot</th>
<th>Est Number Of work Force</th>
<th>Current status Nov 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic Industry Renesas Semiconduct or KL (M) S/B</td>
<td>8th Sept 2011</td>
<td>7th, 8th and 9th Jan 2014</td>
<td>72.69% of 1600 eligible votes</td>
<td>14 voted against Union</td>
<td>1700 500 600 Pending Judicial Review. Stay order for Collective Bargaining</td>
</tr>
<tr>
<td>Chemi Con (M) S/B</td>
<td>12th July 2011</td>
<td>2nd July 2014</td>
<td>66%</td>
<td>1 vote against Union</td>
<td>300 400 300 Pending ministry order for recognition</td>
</tr>
<tr>
<td>Nichicon (M) Sdn Bhd</td>
<td>12th Dec 2012</td>
<td>6th and 7th Feb 2014</td>
<td>63.88%</td>
<td>8 vote against Union</td>
<td>400 300 300 Pending Judicial Review. Stay order for Collective Bargaining</td>
</tr>
</tbody>
</table>