

論外國人勞工（移工） 團結權之行使與保護 ——ILO規範基礎、工會組織實務 與團結政策

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摘 要

就我國集體勞動關係而言，無論是藍領或白領外勞，就集體勞動權的保障上，無論是法制面或實務面，相對於本國勞工而言，外國人勞工乃明顯處於相對不利益之地位，甚至就團結權行使之實踐上，於法令上仍受到相當之限制。但就實務上，相對於白領外勞（移工）之長期無工會化現象，藍領外國人勞工（近似客工）長期在相關權利保障之不足或受到忽視（包括勞動契約以及一般日常生活之不利益地位）而逐漸發展各種「集體性組織」，甚至於近年就特定職業領域成立相關職業或產業「工會」之組織型態，例如漁業工作者或看護工作者之工會組織。就我國社會之外國人勞工於勞動關係實務上之觀察，很明顯的，對於個別勞動關係的保護性規範（勞動條件基準）之需求或期待乃高於集體勞動關係規範之保障；又，就組織行動面向的觀察，

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藍領（客工）之集體行動程度（集體權行使之結果）亦高於白領外勞（移工）甚多。本研究從 ILO 國際勞動法規範之分析，並介紹臺灣與日本移工行使團結權之實務發展與爭議，最後並從政策面提出工會政策與移工集體勞動權保障之方向。

關鍵詞：外國人勞工、移工、客工、集體勞動關係、工會、國際勞動法

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The Exercise and Protection of the Right to Solidarity of Foreign Workers (Migration) — ILO Convention, Trade Union Organization Practices and Policies

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Abstract

As far as Taiwan's collective labor relations are concerned, whether it is blue-collar or white-collar foreign workers, and in terms of the protection of collective labor rights, whether legal or practical, foreign workers are clearly in a relatively uninterested position relative to domestic workers. Even in the practice of exercising the right to solidarity, there are still considerable restrictions on laws and regulations. However, in practice, compared to the long-term non-unionization of white-collar foreign workers (migrant workers), blue-collar foreign workers (approximately guest workers) have long been inadequate or neglected in the protection of related rights, and gradually develop various "collective organizations", and even in recent years have established related occupations or industrial "union" or-

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ganization types in specific occupational fields, such as fishermen or care workers' unions. Observing the labor relations practices of national laborers outside our society, it is clear that the need or expectation for the protective norms (labor conditions criteria) of individual labor relations is higher than the protection of collective labor relations norms; Observation of action orientation, the degree of collective action (the result of the exercise of collective rights) of blue-collar workers (guest workers) is also much higher than that of white-collar foreign workers (migrant workers). This research is based on the analysis of ILO international labor law norms, and introduces the practical development and controversy of Taiwan and Japan's migrant workers' exercise of the right to solidarity. Finally, it proposes the direction of union policies and collective labor rights protection of migrant workers from the policy side.

Keywords: Foreign Labor, Migration, Guest Workers, Collective Labor Relations, Trade Unions, International Labor Law