

LHAG INSIGHTS

EMPLOYMENT & INDUSTRIAL RELATIONS

15 JULY 2026

BUSINESS AS USUAL DURING SECRET BALLOT IS NOT DEEMED UNION BUSTING

by Shariffullah Majeed, Arissa Ahrom & Sarah Heyrissa

KESATUAN PEKERJA-PEKERJA PERUSAHAAN LETRIK v KONICA MINOLTA BUSINESS TECHNOLOGIES (MALAYSIA) SDN BHD
(Award No.: 819 of 2026)

The right of employees to participate in lawful trade union activities is a protection that employers must actively respect as provided under Section 4 (1) of the Industrial Relations Act 1967 (“IRA 1967”):

“No person shall interfere with, restrain or coerce a workman or an employer in the exercise of his rights to form and assist in the formation of and join a trade union and to participate in its lawful activities.”

The significance of this protection is particularly apparent in a trade union’s claim for recognition. A claim for recognition is an important step, as it is only upon recognition being accorded to the trade union of workmen concerned that the trade union will have the ability to commence a collective bargaining process with the employer or trade union of employers pursuant to

LHAG

KEY LAWYERS

SHARIFFULLAH MAJEED
Partner
sha@lh-ag.com



ARISSA AHROM
Partner
aa@lh-ag.com



SARAH HEYRISSA
Pupil
heyrisa@lh-ag.com



Section 13 of IRA 1967. In the event that an employer does not accord recognition, under Section 9 (4A) of IRA 1967, the matter may be referred to the Director General of Industrial Relations (“DGIR”), who may direct that a secret ballot be conducted to ascertain whether the trade union has the requisite support from the employees concerned.

An employer’s conduct throughout a secret ballot may come under close scrutiny as actions that would ordinarily be regarded as part of normal workplace management may, in the context of a recognition exercise, assume a very different character. What appears on its face to be routine communication, or ordinary operational activity may instead be viewed as pressure, inducement, or even subtle coercion if it has the effect of discouraging employees from freely exercising their right to vote.

In the case of **KESATUAN PEKERJA-PEKERJA PERUSAHAAN LETRIK v KONICA MINOLTA BUSINESS TECHNOLOGIES (MALAYSIA) SDN BHD**, a trade union dispute arose after recognition was not accorded to the Union upon failing to achieve a simple majority of support by the Company’s eligible employees following a secret ballot that was held for 2 days. Based on this outcome, the Union alleged that the Company had interfered with the secret ballot process and the employees’ freedom to vote. The alleged acts of interference included:

- (a) a routine town hall session that was held 2 days before the first secret ballot day 10th June 2023;
- (b) the presence of Human Resources personnel at the canteen area, and
- (c) having RELA members stationed at Company’s premises.

However, the Industrial Court held that the Company’s activities and conduct were part of its ordinary day-to-day business operations and did not constitute interference with employees’ freedom to vote. The town hall sessions conducted was part of its broader employee engagement initiative introduced to promote communication, transparency and alignment with the Company’s goals and values. Importantly, the Company was able to demonstrate that there were no discussions regarding the Union or the secret ballot during the town hall sessions.

As for the presence of Human Resources personnel, the Company established that its Human Resources team had been conducting open interviews every Tuesday at the canteen area since May 2023 itself, weeks before the secret ballot was even held. Coincidentally, the first secret ballot day fell on a Tuesday, which coincided with the scheduled interview session. Similarly, the Court found that the presence of RELA members did not constitute interference, as they had been engaged by the Company since 2022 to ensure the security and safety of its employees as well as to assist with traffic control, especially during peak hours. Importantly, the Human Resources personnel and RELA members were situated away from the polling stations, and there were no complaints that any employee had been prevented from exercising their right to vote.

The Industrial Court found, among others, that the secret ballot process was conducted in compliance with the Industrial Relations Regulations 2009 (“**IRR 2009**”) and that the Company had complied with the DGIR’s directions leading up to the secret ballot days by:

- (a) allowing Department of Trade Union officers to visit the Company’s premises for the purpose of investigating the Union’s claim for recognition on 14th December 2022;
- (b) submitting the required employee details through Form **B** on 27th March 2023 as required by the Industrial Relations Department (“**IRD**”);
- (c) attending meetings on 11th May 2023 and 25th May 2023 with the IRD and the Union to agree on the secret ballot arrangements; and
- (d) displaying Form **C** on the Company’s notice board in the canteen for seven consecutive days before the secret ballot days.

This decision provides a useful framework for assessing whether an employer’s conduct during a secret ballot is likely to be regarded as legitimate business activity or unlawful interference. While employers are not required to suspend their ordinary workplace operations during a secret ballot, any communication or activity carried out during this period should remain neutral, genuinely business-related and unrelated to employees’ decision on union recognition. Employers should therefore avoid any conduct that may reasonably be perceived as an attempt to influence employees’ voting decisions, for example:

- (a) communicating with employees to discourage support for the union or encouraging employees to vote against the union;
- (b) making statements that suggest employees may suffer negative consequences if they support the union;
- (c) offering benefits, incentives or favourable treatment in connection with the secret ballot or union support;
- (d) conducting meetings or discussions specifically to address the union or persuade employees on how they should vote; and
- (e) positioning management personnel or representatives in a manner that may intimidate or influence employees approaching the polling station.

Even where there is no intention to interfere, conduct that creates a perception of pressure or influence may expose the employer to allegations of interference. As a practical guide, employers should consider the following points in relation to any activity that will be carried out during the recognition process in order to determine whether the same would amount to interference or union-busting:

- (a) Is the activity planned before the secret ballot?
- (b) Is the activity consistent with past practice?
- (c) Does the activity serve a legitimate business purpose?
- (d) Is the activity unrelated to the union or the voting process?
- (e) Are employees free to vote without obstruction or pressure?
- (f) Can the employer produce documentary evidence to support its explanation and demonstrate the neutrality of the activity?

The Company was represented in the Industrial Court by partners Shariffullah Majeed and Arissa Ahrom of Lee Hishammuddin Allen & Gledhill.

The Industrial Court Award may be found [here](#).

*If you have any queries, please contact **Shariffullah Majeed** (sha@lh-ag.com) or **Arissa Ahrom** (aa@lh-ag.com).*

Head Office

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122

Johor Office

Suite 21.01
21st Floor, Public Bank Tower
No.19, Jalan Wong Ah Fook
80000 Johor Bahru, Johor
Tel: +607 278 3833
Fax: +607 278 2833

Penang Office

51-12-E, Menara BHL Bank,
Jalan Sultan Ahmad Shah,
10050 Penang
Tel: +604 299 9668
Fax: +604 299 9628

Email

enquiry@lh-ag.com

Website

www.lh-ag.com

Published by Employment & Industrial
Relations Practice © Lee Hishammuddin
Allen & Gledhill All rights reserved.