

Flexible Handling the Problems of Labor Disputes in Liaoning Province

TRAITER DE MANIERE FLEXIBLE LES PROBLEMES DE CONFLITS DE TRAVAIL DANS LA PROVINCE DE LIAONING

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Abstract

Labor Disputes in China increasingly presents complex and diversified its settlement mechanism in practice exposed many drawbacks in the stage of the proceedings and it lacks timely and effective solution. However, labor relations are the most basic and wide social relations, if the labor dispute can not be solved promptly or handled improperly, it will affect the entire social and economic development and social harmony, stability. We should perfect interface between the cut-trial relations, strengthen the judicial supervision of arbitration, and establish arbitration legal authority.

Key words: Labor disputes; Flexibility; Flexible handling

Résumé

Les conflits de travail dans la présente Chine est de plus en plus complexe et diversifié par son mécanisme de règlement dans la pratique de nombreux inconvénients exposés dans le stade de la procédure et il lui manque une solution rapide et efficace. Cependant, les relations de travail sont les relations les plus fondamentaux et de vaste sociaux, si le conflit de travail ne peut pas être résolu rapidement ou n'est pas manipulé correctement, il aura une incidence sur l'ensemble du développement social et économique et l'harmonie sociale, la stabilité. Nous devrions parfaire l'interface entre les relations de coupe au procès, de renforcer le contrôle judiciaire de l'arbitrage, et rétablir l'autorité de l'arbitrage juridique.

Mots clés: Conflits de travail; La flexibilité; Soup-

lesse de manipulation

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1. THE PRESENT STATUS OF DEALING WITH THE PROBLEM OF FLEXIBLE LABOR DISPUTES IN LIAONING PROVINCE

1.1 Increase in Labor Dispute Cases

1.1.1 The Basic Situations in 2008

In 2008, labor dispute arbitration committee of Liaoning Province dealt with 7551 cases of labor disputes. Among them, there are 188 unfinished cases last year and 7363 this year (see Figure 3-1); Till December 31, 7142 cases have been closed and 409 are not finished (see Figure 3-2), the filing rate of 100% accuracy.

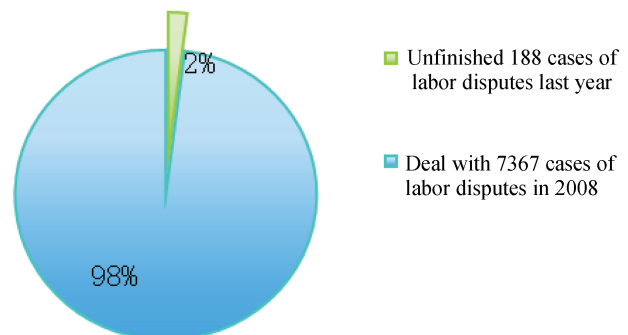


Figure 3-1
Dealt with Cases of Labor Disputes

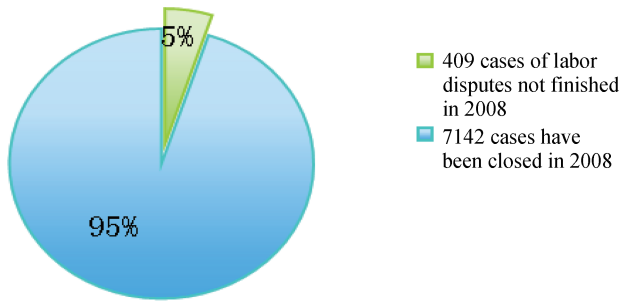


Figure 3-2
Accepted Cases of Labor Disputes

Source: Shi Jing, Shenyang City, the analysis of the labor disputes arbitration and labor disputes in Shenyang City Court of Arbitration of 2009 (3), the following charts are from the same data.

(1) Cases Accepted

In 2008, labor disputes arbitration committee of Liaoning Province received a total of 7363 cases of labor disputes. Among them, 2356 cases are due to the workers to ask for payment for labor disputes, accounting for 32% of the year; 2772 cases are due to the disputes of employers non-payment of social insurance and welfare deductions, accounting for 38% of the year; the cases of leaving workers' demanding economic compensation are 771, accounting for 10% of the year; confirming the labor relations cases are 294, accounting for 4% of the year; signing, fulfilling modification, rescission, termination of labor contracts and dispute cases are 343, accounting for 5%; other reasons to apply for arbitration cases are 827, accounting for 11%.

Among the cases of labor disputes, there are 108 collective disputes, involved 1662 people, and the total number of people involved accounted for 18%.

(2) The Status of the Case

In 2008, the labor disputes arbitration committee of Liaoning Province handled a total of 7142 cases, accounting for 95% of the total cases. Among them, the mediation of cases closed are 1143, 2071 ruling case closed, concluded cases are 461 and other cases 3467, accounting for 16%, 29%, 6% and 49% of the total processing cases (see Figure 3-3); according to the results, there are 1500 cases in favor of the employer, 4214 in favor of the workers and 1428 in favor of the two sides part, accounted for 21%, 59% and 20% of the total processing cases (see Figure 3-4).

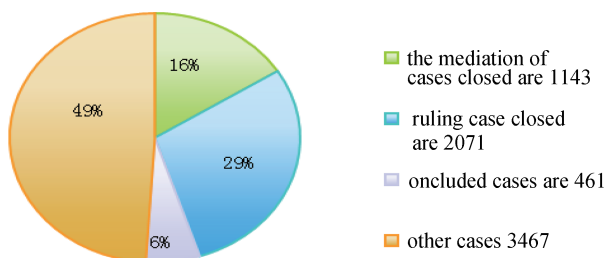


Figure 3-3
Dealt with Cases of Labor Disputes in 2008

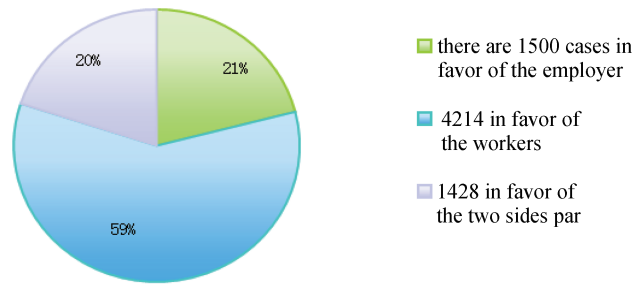


Figure 3-4
In Favor of the Employer

1.1.2 The Status in 2009

Liaoning Province Labor Dispute Arbitration Committee accepted the cumulative 2973 cases of labor disputes during the first quarter of 2009. among them, last year pending cases are 409, 2564 accepted this quarter; handled cases closed are 2140, not closed pending cases are 833, the accuracy of 100%.

(1) The Admissibility of Cases of Labor Disputes

the Arbitration Commission of Liaoning Province received a total of 2564 cases of labor disputes during the first quarter of 2009. Among them, 949 cases of disputes are to ask for payment for labor, accounting for 37% this quarter; dispute cases of non-payment of social insurance premiums and deduction of the welfare due to the employing unit are 766, accounting for 30%; demanded economic compensation of leaving workers cases are 198, case the amount of 8% during the quarter; confirmation of labor relations cases are 102, accounting for 4% in the quarter.

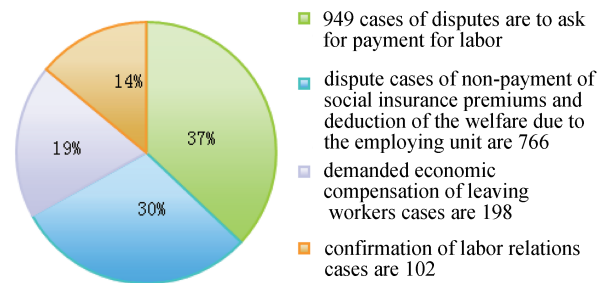


Figure 3-5
The Arbitration Commission of Liaoning Province Received Cases of Labor Disputes

In the first quarter of 2009, among the admissibility of cases of labor disputes, there are 7 collective dispute cases involved 230 people, covering 8% of the total number of people of cases (see Figure 3-5).

(2) The Status of the Cases

In 2009, the labor disputes arbitration committee of Liaoning Province handled a total of 2140 cases, accounting for 72% of the total cases. Among them, the mediation of cases closed are 222, 720 ruling case closed, concluded cases are 195 and other cases 993, accounting for 10%, 34%, 9% and 47% of the total processing cases; according to the results, there are 547 cases in favor of the employer,

1098 in favor of the workers and 495 in favor of the two sides part, accounted for 26%, 51% and 23% of the total processing cases.

1.1.3 The Status in May, 2010

In May 2010, the province received a total of 310 various types of cases, involving 454 workers and economic target of 8.97 million yuan. Two collective labor disputes are received involving 105 workers. According to dispute type, labor remuneration disputes are 84, accounting for 27.1% of the number of completed cases; Insurance benefits disputes are 94, accounting for 30.3% of completed cases (including work-related injuries treatment disputes are 85 pieces, accounted for 27.4% of the case number); other controversial cases are 132 (including economic compensation, damages, liquidated damages, and fulfilling , change, termination, dissolution of labor contracts and other disputes), accounting for 62.6% of the accepted number. Handle the closed 278 labor disputes cases, arranging clearance rate of 100%. Mediation of the city closed cases are 176, 40 ruling concluded cases, respectively accounting for 63% and 14% of the total number of closed cases. In the handling of closed cases, 102 cases in favor of workers; 31 cases in favor of the employers, 145 in favor of two parts, accounting for 37% and respectively 37%, 11% and 52% of the total number of closed cases.

1.1.4 Status of the First Quarter in 2011

In the first quarter of 2011, the labor dispute arbitration institutions at all levels of received a total of 1129 cases of various kinds, involving 1236 workers (including 609 migrant workers, involving the dispatch workers up to 11), involving 23.47 million yuan of economic subject. Collective labor dispute cases involving more than 10 people was one, involving 117 workers, classified according to dispute type, 328 payment for labor disputes, accounting for 29.1% of the number of completed cases; 391 social insurance disputes, accounting for 34.6% of completed cases (including 334 work-related injuries treatment controversy, accounted for 29.6%); 410 other controversial cases (including the confirmation of labor relations, lifting, and termination of labor contracts, to fulfill the employment contract and other disputes), accounting for 36.3%. In the first quarter of 2011, the city arbitration dealt with the labor dispute cases closed for 1052 (including 174 prior year carry-over cases), arranging clearance rate of 100%. The city stressed that 951 closed the withdrawal cases, and withdrawal rate of 90.4%; 101 ruling cases were closed, the ruling rate of 9.6%. In the handling of cases closed, 307 in favor of the workers; 69 in favor of the employers, 676 cases in favor of two parts, respectively, accounted for 29.2% 6.6% and 64.2%.

1.2 Lack of Funds for Flexible Processing of Labor Dispute Cases

Before Mediation and Arbitration Law is implemented the application for labor disputes handling have to pay the labor dispute cases “processing fees” and “accepting fees”, in which cases acceptance fee are 50 yuan, and receive a certain percentage of the case handling fee according to the amount in disputes. After “Mediation and Arbitration Law” is implemented, the labor dispute handling charges are abolished, and the necessary procedures can not be implemented because of financial reasons. There are a lot of funds problems, which is the guarantee of smooth handling of labor disputes.

1.3 Compared with Foreign Countries, Enterprise Labor Dispute Mediation Committee is not yet Generally Established in Our Province

Western countries divided the labor disputes into the dispute of rights, the dispute of interests, the individual labor disputes and collective contract disputes, and take different procedural laws. The division in disputes of rights and interests is the basis of the procedural legislation and even an important basis for jurisdiction.

The handling of labor disputes in western countries usually take the trade unions and collective bargaining. Trade unions are an important part of the mode of national labor legislation, labor checks and balances, such as Germany, Austria, preferring “industry democratization”. In addition to operating the council system, it strengthens the rights of trade unions, on behalf of employers and employees to compete mode; the respected trade union ideal such as France and Italy emphasize labor relations autonomy. Corresponding with the legal status of trade unions, the countries have established a relatively perfect collective bargaining legal mechanism, and it is much more than just signing a collective contract or group contract, but on the right of association, the right of action organic systems, labor consultation on the basis of the “unity of the three powers”.

The labor dispute processing modes in western countries are a single arbitration agency model and a single judiciary mode. Law prescribes that Honor judges, under special protection, are elected regularly under the law on a regular basis. Due to both employers and employees on behalf of the hearings, coupled with the trial process as much as possible to pursue the principles of voluntary and consultation, thus contributing to the friendly pursuit of labor disputes and peaceful settlement; the program settings often take into account the nature of the labor dispute cases, and take the simple and rapid ways to avoid the excessive delay of the proceedings which led to both employers and employees contradictions.

The government in our province and administration academia pays close attention to handling of labor disputes in recent years. Compared with western countries, the study and practice of resolving labor disputes start relatively late in our province, but this flexible processing of the labor dispute is regarded as an effective solution

and remedies in the administrative field with a wide range of attention. However, considering the impact of Chinese national conditions, corporate mediation committee in our province is not as mature as that in western countries and labor dispute laws and regulations are not very sound.

2. FLEXIBLE LABOR DISPUTES HANDLING PROBLEMS IN LIAONING PROVINCE

2.1 Urging Enterprises to Establish Internal Mediation Mechanism to Resolve the Problem of More People and Less Cases

In the past, if there are labor disputes between employees and enterprises, they need to apply for labor arbitration, then court proceedings, which are expensive and time-consuming. If there is a labor dispute mediation committee, some small contradictions and disputes within the enterprise can be resolved to avoid the trouble of the arbitral proceedings or court proceedings. The mediation commission director will be elected by a union representative or recommended by both parties. The Conciliation Commission shall establish an office, and is equipped with the necessary staff. Offices may be established in the trade union as well or set up in other departments which can carry out their functions.

The internal settlements of labor disputes greatly reduce the time and money of enterprises and employees, and as much as possible reduce the hostile relations of the enterprise and its employees so that they do not make conflicts. Therefore, companies are more willing to establish the adjustment mechanism of labour disputes.

2.2 Helping to Increase the Primary Labor Dispute Mediation Organizations and Mediator Team Building

A large number of base labor disputes are unclear because the workers do not understand labor laws and related policies. Strengthening people's base organization of the labor dispute mediation and building the mediator team is beneficial to help to understand and master labor laws and related policies for workers. So you can radically prevent and reduce labor disputes between enterprises and workers. Mediation organizations also mediate controversies, difficulties subsidies by helping active workers to solve their practical difficulties, making the dispute solved. Let employees solve their own problems, which will greatly enhance the enthusiasm of the staff, making them have identity and belonging to the enterprise.

2.3 Helping Workers to Improve Mediation Awareness and Legal Quality

The emergence of labor disputes is due to a dispute between workers and enterprise over own interests. The primary labor dispute mediation organizations are an

important part of the labor dispute arbitration, also the first line of defense of labor dispute handling. The flexibility of the labor dispute is to strengthen the relationship between workers and enterprises, and workers have the right to solve their own problems, and will be more self-aware of the relevant legal knowledge.

2.4 Improving Laws and Regulations of the Labor Dispute Mediation (Compared with Foreign Countries after the New Proposal)

In terms of implementations of the measures of the flexibility of the labor disputes, many western countries have become a pioneer. Therefore, our reference in the implementation of reform successfully takes the advantages of foreign mechanism into their own use.

Combining the characteristics of China's national conditions and the labor dispute itself, we can avoid weaknesses and learn from the experience of other countries. China is a civil law country, but does not yet have the conditions to establish a labor court of the judicial system. Under the current national conditions, China's courts at all levels within the system can set up specialized labor courts, to establish initially a relatively independent labor litigation system. In addition, according to the labor dispute itself, the unique properties can also learn from mandatory mediation system, focusing on the mediation of labor disputes, and strive to labor conflicts to resolve to a minimum, so that the two sides continue to work together to solve the worries of workers.

3. MEASURES FOR FLEXIBLE HANDLING OF LABOR DISPUTES IN LIAONING PROVINCE OF COUNTER

3.1 Integration of Resources, the Formation of the Pattern of a Major Adjustment

For the problems of "more cases less people", deepen institutional reforms to achieve the organic integration of the arbitral institutional, by increasing the recruitment of legal professionals, internal transfers of labor business backbone to achieve the specialization of the labor dispute arbitration, to raise the work level, reduced caseload.

Strengthen the training of professional guidance, the development of guidance, unified law applicable to the scale, thereby improving the quality of the arbitrator's legal and operational levels, to enhance the labor dispute handling the overall upgrade effectiveness to solve the physical construction to promote the slowness of case closing and problem of less investigators.

Establish arbitrator qualifications access mechanism and the arbitrators' repository. Improve the business level and ability of the arbitrator can reduce the error rate of handling the case, and save resources. Part-time arbitrators play an important role in the arbitration hearing, providing the arbitrator repository; on one hand, it offers a large

number of arbitrator's resources, on the other hand, it can also provide room for selecting arbitrators for the parties of the labor disputes.

3.2 Mediation First and Reducing the Rights Awareness of Workers

From the practice the world of labor disputes handling, the vast majority of the labor dispute can be solved at the enterprise level. This not only greatly reduces the pressure on labor arbitration institutions, but also resolves the labor dispute through mediation to maintain relationship between employers and employees. Therefore, we must establish the effective system of labor dispute mediation, sound trade unions and collective bargaining system as a basis for the work task.

Explore the implementation of the mediation proposal system actively. Strengthen grass-roots labor dispute mediation organization building, in a, the higher number of larger scale enterprises set up full-time mediator, and establish the enterprise dialogue mechanism which can benefit two parts.

3.3 "Sunshine Arbitration" Increases Handling Transparency

Keep standards of service strict, and provide civilized services. The staff of the Court of Arbitration to both parties always insisted on the "three hearts", which is keen to serve, listen patiently and solve sincerely. And resolutely put an end towards the cold and hard language, horizontal work procrastination, and ruling unfair phenomenon.

Carry out the "sunshine in handling cases" to improve public transparency. To achieve the work open, transparent and impartial adjudication of the effect, in the case approval procedures scrutiny aspects of the trial should be done step by step. A collegial panel is composed of a presiding arbitrator and the other two arbitrators, to ensure that the case open and fair trial; equipped with the hardware, office equipment, using the law of the court hearing in terms of standards and regulations, and reflects the seriousness and authority of the arbitration according to law. During course of the trial, computer shorthand records the course of the trial can be implemented, the parties to the dispute can be clear during the trial operation. Implement the responsibility of the arbitrator and wrong cases investigated system strictly. Arbitrators who do human case and corrupt administration

will be punished by disciplinary measures, even to be removed from the arbitration team up to pursue their legal obligations. Due to the negligence of the wrong case, they will take job training, re-passing the examination before appointment.

Perform service efficiently and raise the work efficiency. All labor cases in Court of Arbitration, from the acceptance, filing, trial, and concluded, delivery and archiving, strict handling procedures, should be in accordance with the laws and regulations apply. Ensure fair and equitable schedule closing the premise that we could achieve "four-speed": accept fast, mediate fast, review fast, and close fast. Some simple cases that do not have to enter the court proceedings, for the Court of Arbitration give full play to "mediation as a main function" in the labor dispute arbitration. Before the arbitration proceedings, intervene to mediate firstly, and further improve the efficiency of handling labor disputes, so that the parties can minimize the loss.

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