

Thoughts on Perfecting Labor Disputes Mediation System in China

Jiaqi Zhang

North China Electric Power University, Beijing, 102206, China

Email:18811187855@163.com

Key words: Labor dispute mediation, Mediation procedure, Mediation organization, Mediation agreement

Abstract. The establishment of China's labor dispute mediation system is aimed at diverting and filtering the majority of labor dispute cases and then relieving the opposition between labor and management. However, with the increasing number of labor dispute cases in China in recent years, labor dispute mediation system is far from its expected goal, which is closely related to the imperfect of labor dispute mediation system in our country. By means of exploring and studying the existing problems in the labor dispute mediation in China, I am inclined to suggest the improvement of China's labor dispute mediation system from the mediation procedure, mediation organization, mediation agreement and other aspects.

The Problems in the Labor Dispute Mediation System in China

The Present Situation of China 's Labor Dispute Mediation System. Labor dispute mediation refers to the labor dispute that the basic people's mediation organizations adopted between the employers and the employees, which takes the national labor laws and regulations as the yardstick and makes the both parties reach an agreement by negotiation to eliminate the dispute [1]. Labor dispute mediation organizations in China include enterprise labor dispute mediation committee, the basic people's mediation organizations established by law and the organizations with labor dispute mediation function established in towns and streets.

In the past 14 years(2001- 2014), the number of individual labor disputes in China has increased by 4.6 times and the employees involved have increased by 2.1 times while the number of labor disputes and the employees involved are both in the expansion [2]. In view of the current situation of China, the labor dispute mediation system is the best choice comparing with the less binding of the negotiation between the both parties and the high cost of arbitration and litigation. However, there are still some problems in China's labor dispute mediation system, which result in its failure to play its expected role.

The Analysis of Problems. In view of the problems, this article mainly analyzes them from the mediation procedure, mediation structure and mediation agreement.

The unnecessary procedures of the labor dispute mediation affect its role to play. According to the convention, the labor dispute mediation system should be widely used by virtue of its advantages such as its lower cost and shorter time. Yet it is not difficult to conclude that the number of cases accepted by the mediation committee is far lower than the number of cases accepted by the arbitration commission based on the different accepted case numbers. One is from the mediation committee while the other is the arbitration commission whose cases do not go through the mediation procedure. It is not only because the unnecessary procedures of the labor dispute mediation but also the above-mentioned drawbacks existed in the mediation, which lead to the fact that many of the parties lost confidence in the mediation system and they will not choose this way to resolve the dispute, making mediation proceedings cannot play its due role.

The Problems Existed in China's Labor Dispute Mediation Organization. According to the Labor Dispute Mediation and Arbitration Law, the labor dispute mediation organizations in China include the enterprise labor dispute mediation committee, the basic people's mediation organization and the labor dispute mediation organization in towns and streets.

The lack of independence and impartiality in the enterprise labor dispute mediation committee. The Article 80 of the Labor Law of the People's Republic of China stipulates that the labor dispute

mediation committee shall be set up within the employing unit rather than be an independent organization. At the same time, the Labor Dispute Mediation and Arbitration Law of the People's Republic of China stipulates that the enterprise labor dispute mediation committee is composed of employee representatives and enterprise representatives, which would easily lead to two problems. On the one hand, the enterprise labor dispute mediation committee is easily manipulated by the enterprise and lacks independence because the enterprise provides the mediation committee funding, office space and the staff who is also employed in the enterprise. On the other hand, the mediation need a neutral third-party coordination. However, the enterprise labor dispute mediation committee is composed of members of both parties to participate in the work, which means it is difficult for them to maintain a neutral mediation position. According to Article 6 of the Labor Union Law, the basic duty of labor union is to protect the legitimate rights and interests of employees. If the labor union is regarded as the third party, it would be burdened with dual responsibilities. It acts both as agent of the labor and as mediator of both labor and management. It is obvious that the two roles are contradictory.

The basic people's mediation organization has a low level of expertise and authority. Although the development of China's basic people's mediation organizations is relatively perfect, they are not specialized in the labor dispute mediation cases. The objects of the mediation include but not limited to labor disputes and most are the disputes happened between the family and the neighbors. The labor dispute case is different from ordinary civil cases. The labor dispute case involves more complex legal facts and numerous legal knowledge is also required. But the demanding skills for a mediator of the Labor Dispute Mediation and Arbitration Law of the People's Republic of China is low. Actually, the mediator is difficult to qualify.

The labor dispute mediation organization in towns and streets lacks mature rule system. To a certain extent, the labor dispute mediation organizations in towns and streets have realized the socialization of labor dispute mediation but their practical operation is not strong because of the lack of laws and regulations on the establishment, operation procedure, personnel composition, funding sources and other aspects of the township labor dispute mediation organizations. Moreover, these organizations are mostly established in large and medium-sized cities with comparatively developed economy, and their density in the cities is small. They have not reached the expected goal of system design for China's growing labor dispute cases.

The labor dispute mediation agreement has no legal effect. The effectiveness of the mediation agreement in the labor dispute mediation system can determine the work of the mediation system's effect that whether the system really plays a role or not. According to Article 17 of the Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Examination of Labor Dispute Cases and Article 15 of the Labor Dispute Mediation and Arbitration Law of the People's Republic of China, the effect of the agreement is the same as the labor contract that if one party does not obey, what the other party can do is to apply for arbitration rather than for enforcement. Although Article 16 of the Labor Disputes Mediation and Arbitration Law of the People's Republic of China stipulates that in certain special cases the employees with a mediation agreement can go directly to the people's court. The court would continue the supervisory process provided that the other party in accordance with the provisions of the law objections has no disagreement. However, if the other party really does not, the employees still need litigation to achieve the rights for a relief. Based on the above two cases, the law further provides for the court application of judicial confirmation and the application of labor and personnel dispute arbitration committee review. What is more, the law uses mediation statement to replace the mediation agreement to strengthen the effectiveness of mediation agreement, which there are still big problems existing: The first one is that only the mediation agreement under the auspices of the people's mediation committee can obtain judicial confirmation which there is no clear definition for the other two types of organizations to promote the mediation agreement. The second is the replacement by arbitration used to strengthen effectiveness of the mediation agreement when the employing unit is the enterprise. The absence of the legal effect of the mediation agreement tends to dampen the enthusiasm of the parties. So urgency needed to take measures to strengthen the

effectiveness of mediation agreement.

The Labor Dispute Mediation System in Other Countries

At present, most countries and regions in the world have established a complete labor dispute mediation system. The characteristics of the labor dispute mediation system in the developed countries and regions around the world can be used to perfect the labor dispute mediation system of our country through comparing and summarizing the different processing models of the labor dispute mediation system in those countries.

The Labor Dispute Mediation System in the United States. The mediation agency in the United States is the Federal Mediation Conciliation Service (FMCS) established by the government. Throughout the whole mediation process, the mediator is a member of the Federal Mediation Conciliation Service who is hired based on his experience in handling labor and capital relationship and provided specialized on-the-job skills training by the Federal Mediation Conciliation Service. The mediators' work is across the United States under the coordination of a single federal agency. At the same time, any agreement reached between the both parties may be enforced by the court [3].

The Labor Dispute Mediation System in the British. The labor dispute mediation agency in the UK is a government-funded advisory, conciliation and arbitration service committee (ACAS) and whose main function is to provide advice, conciliation and arbitration on labor issues. It also has different mediation procedures according to different individual and collective disputes. Of course conciliation agreements are binding on the parties but ACAS cannot enforce the parties' obligations under the agreement.

The Labor Dispute Mediation System in Australia. Australia is renowned for its highly efficient labor dispute mediation system, which greatly reduces the pressure on labor dispute resolution. Led by the Department of Workplace Relations, Employment and Small Business of The Commonwealth of Australia, the National Labor Conciliation Commission is to function the tripartite negotiation system more smoothly which is represented by labor unions and employers. In the meanwhile, Australia is also actively encouraging the development of civil third-party mediation organizations. Among which the companies whose function is the coordination of labor relations play a significant role in the settlement of labor disputes through communication between labor and management, promoting the mediation and the payment of compensation [4].

We can Summarize Some Characteristics of Labor Dispute Mediation System in the Developed Countries and Regions. Firstly, for the mediation organization, there are organizations specialized in the mediation work with independence and neutrality and they conform to the tripartite principle. The public power plays an active role. Secondly, for the mediation agreement, some measures have been taken to guarantee the effectiveness of the mediation agreement. Thirdly, for the mediation procedures, the mediation is prior to other measures, with the combination of voluntary and compulsory mediation.

Suggestions on Perfecting the Labor Dispute Mediation System in China

The guide to the preferred mediation system for the labor and management and the compulsory mediation for part of the labor dispute cases. The government can unite the labor unions and employers' organizations to promote the advantages of the labor dispute mediation system through the activities of propaganda, education and consultation and also adopt the measures to fuel the enthusiasm of employees to choose mediation through free charge and providing assistance. Above all, the final purpose of these activities is to stream arbitration and reduce litigation pressure.

Relative to the labor dispute mediation system, the labor dispute arbitration and litigation system cost more, which should be used to solve complex and large amount of cases to avoid duplication of resources waste. Therefore, for small cases with clear facts and legal relations, mediation should be the first choice and if mediation fails, the next choice could enter the arbitration procedure, which can not only solve the labor dispute in a timely manner but also facilitate the convergence of

mediation and arbitration and litigation system.

Constructing a Government - led and Multi - participant Mediation Mechanism. A unified labor dispute mediation organizations establishment by the government. The government mediation organization is a mediation institution established by the government, which is taken charge of the labor security executive department and independent from the government and socially specialized [5]. China can refer to the practice of the United States and Japan that the government mediation agency is divided into parts in accordance with the administrative division to ensure that each administrative districts and counties have a special dispute mediation organization.

There are several advantages of the unified labor dispute mediation organization established by the government. Firstly, the government strengthens the supervision and management during the dispute mediation process relying on its administrative power. For example: some employers deliberately delay the dispute settlement process. The government can make them pay the corresponding price through administrative penalties and other means if no legitimate reason can be made to refuse the mediation plan. Secondly, the government mediation organization is set up by the government and has a relatively mature system of rules. In addition, it can be equipped with better access to financial and regulatory mediation. Thirdly, the government mediation organization has stronger authority, more independence and neutrality, which can obtain the trust of employers and employees better.

The "tripartite principle" and professionalism which the composition of the mediators should be based on. The members of the Labor Dispute Mediation Committee are from the government, the laborers and the employing units who shall elect the members respectively. There is no doubt that the three parties are equal and independent in the process of operation. At present, it is common to see a situation where management is stronger than the labor. Because the weakness of the labor unions' power --many labor unions is the tool to oppress the workers-- urgency is needed to take measures to strengthen the power of labor unions to enhance their independence in order to promote equality among the parties in conciliation. In the meanwhile, social public welfare forces could be absorbed in the process of resolving disputes, such as experts, scholars and so on, which can participate in the mediation process to protect the rights and interests of both employers and employees better.

The members of the labor dispute mediation committee shall be professional. The legal knowledge involved in labor dispute cases is complex and professional. In order to strengthen the authority of the mediation organizations and obtain the trust of both parties, the mediator needs corresponding professional knowledge and skilled mediation skills, and good moral literacy and social evaluation are both required.

The establishment of legal consultation and legal aid system refer to the British advisory, conciliation and arbitration service committee (ACAS).

Legal consultation system. With the low quality of the employees and the unfamiliarity to the laws and regulations, it is necessary to set up a legal consultation department in the labor dispute mediation organizations to provide free consultation for the employees. Consultations can be conducted in a variety of ways, such as telephoning, e-mailing and departmental consultations. The content is to explain the relevant laws, regulations and remedies. What is more, active initiate mediation for both parties is allowed in the consultation process. Consultants need to have a certain degree of professionalism, proficiency in relevant laws and regulations, which can use to answer general labor disputes.

Legal aid system. Being generally complicated, labor dispute cases are difficult for employees alone to maintain their legitimate rights and interests. However, the legal aid costs are relatively high which is easy to destroy the enthusiasm of employees. So not only do employees get rid of mediation cost, but also set up the legal aid department providing employees the necessary legal assistance.

The establishment of the labor relations company. In addition to the government--funded unified labor dispute mediation organizations, the establishment of labor relation company in government regulation and permission is allowed. The key to the mediation success and payment for them is to

find both employing units and labors' compromise and reconciliation through the investigation of two sides. Because the ratio of successful mediation influence the enterprise profit, in this way the efficiency of the labor dispute mediation can be promoted. But the government still needs to take a series of measures to carry on the supervision and the management.

To strengthen the effectiveness of mediation agreements. Nowadays, the mediation agreement reached by labor dispute mediation has the same effect as the contract. If one party fail to obey, arbitration will be the only way to resolve disputes, which will make the agreement reached becomes useless, destroying the enthusiasm of the other party, delaying the resolution of disputes, wasting government and national mediation resources. In this case, we can set a reasonable deadline in which any party can go to the court to confirm the effectiveness of any mediation agreement enforcement. The court would confirm the eligible agreements after passing the review of them.

Conclusion

In view of the increasing number of labor disputes, the labor dispute mediation system has played a role in resolving conflicts, resolving disputes and maintaining social stability. Although there are some problems and shortcomings in the mediation system, there is evolutionary process in any system. We need to explore and perfect the labor dispute mediation system and play its great role in reducing the pressure of arbitration and litigation.

Reference

- [1] J.Lin. Labor Law and Social Security Law [M]. Beijing: China Renmin University Press, 2016: 259.
- [2] The data comes from China Labor Statistical Yearbook (2015) [M]. Beijing: China Statistics Press, 2016: 345.
- [3] Beijing Labor and Social Security Law Society. The Analysis of the Frontier Questions of the Labor Relations and Dispute Resolution under New Law [C]. Beijing: Law Press, 2009: 328-329.
- [4] B.Wang. China's Labor Dispute Handling System Analysis [M]. Beijing: Law Press, 2013: 282.
- [5] B.H.Dong. Research on Labor Dispute Settlement System [M]. Beijing: China Labor and Social Security Press, 2008: 214.