

Abstract of Workplace Dispute Resolution in Vietnam

Lee, C., Clarke, S., & Quynh Chi, D. : International Labor Organization, (2006). *Strikes and industrial relations in Vietnam: Industrial relations at crossroad in Viet Nam*. Retrieved from website: http://apirnet.ilo.org/resources/industrial-relation-dispute-settlement-in-vietnam/at_download/file1

Abstract:

This ILO discussion paper is based upon field research on IR in November 2004. The ILO team visited ten enterprises in Hanoi and HCMC and interviewed tripartite industrial relations actors at the national and provincial level.

As excerpted by the authors, “This ILO discussion paper will attempt to review the current system of strike regulation in Viet Nam in the broader context of industrial relations development with a view to identifying policy options for tripartite partners to consider in their discussion on designing new regulatory framework on strike. We will first review the recent patterns and causes of strikes, and analyze evolving nature of strikes in Viet Nam. Second, we will review the current strike regulation with a particular focus on labour dispute settlement machinery and its relations with industrial actions. Thirdly, we will examine the most crucial issue of patterns of workers’ representation by enterprise unions primarily through collective bargaining, and its relations with specific patterns of strikes in Viet Nam. Finally, this ILO discussion paper will identify a number of broader policy issues which would help to create environment for prevention of labour disputes and sound industrial relations at the enterprises.”

This study starts with the supposition that the nature of strikes evolves along with the industrialization of countries. At first, strikes are caused by the violation of worker rights, reflecting the weak capacity of the government to enforce the laws. Workers strike only to obtain rights to which they are already entitled but are denied by employers. These actions are generally passive and defensive. Many researchers claimed strikes were prompted by ignorance of labour law and cultural misunderstandings between foreign employers and local workers. Today, strikes have an economic motivation and demonstrate a transition of collective action from passive means to more active means to advance their economic interests. These strikes demand better meals, higher salaries, and less overtime. In the absence of real collective bargaining, cultural differences are merely a trigger for disputes over interests.

There are several unique aspects of strikes in Vietnam. First, all strikes are wildcat, outside of the legal framework and without trade union involvement. Second, strikes occur prior to collective bargaining, not after it. Third, strikes are highly organized with significant solidarity among workers. Fourth, the strikes do not have predetermined demands to settle the case, but rather an accumulation of grievances and perceived unfairness. Next, none of the strikes went through the process of conciliation or mediation before the cessation of work. The government provided ad hoc mediators, but after the strike started. Finally, it is less common for the workers to play a part in resolving the dispute; rather, the negotiations occur in private between the employer and government officials, with the trade union providing a mediation or observer role. Finally, workers always receive backpay and are never penalized for their actions. A strike ends as either a victory or a draw.

In this unusual context, the observation is that the ad hoc nature of resolving strikes fails to address the underlying issues and fails to establish a bridge of communication, thus ensuring more strikes. As a result, the government negotiators become the “substitute” to what should be the legitimate role of the union and the workers. Contrary to claims of the researchers or politicians that the workers are ignorant of the law, in fact the workers fully understand the law and logically select the only rational option to achieve a

change in terms and conditions of employment.

The article also examines the history and effectiveness of the labour conciliation councils that are required to be established by each enterprise. The article proceeds to examine the history and effectiveness of the provincial labour arbitration councils (a form of compulsory advisory arbitration), which are essentially dormant.

Several innovative ideas proposed include:

- A new combination of compulsory conciliation and voluntary arbitration with binding award
- Application of “no work no pay” principle during the period of strike regardless of legal status of strikes
- Better legal protection for workers’ representatives who lead collective bargaining and initiate strike actions against unfair labour practices by employers.
- The capacity for DOLISA to assist the disputing parties at the enterprise to reach agreement through the process of a third-party assisted negotiation, prior to any strike.
- DOLISA conciliators—and conciliators from social partners’ organization—need to be equipped with knowledge and skills to facilitate voluntary negotiation between workers’ representatives and employers with a particular focus of conciliation of interests.
- The relevance of the Labour Conciliation Council needs to be reviewed thoroughly, with the institutionalization of labour-management consultation committee as a main two-way communication channel between workers and employees.
- Legal systems in most countries envisage a situation where enterprises are not unionized. It would therefore be logical that workers, even though they are not represented by trade unions, be granted the right to strike under certain conditions.
- The domination of trade unions by members of management must end by law.
- The key to avoiding strikes is to improve the representational capacity of trade unions.
- Collective bargaining must involve real negotiation of new terms and conditions of employment at the enterprise, not just a formal process to replicate legal minimum standards with a few minor modifications in the collective agreements.”

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