

III. Organisations to Handle Labour Disputes

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survivor's benefits, pension, social insurance benefits and wage; 3) other cases if necessary. Legal aids are granted in the forms of: 1) offering legal advice; 2) drafting legal documents; 3) acting as legal counsel in civil or administrative proceedings; 4) non-litigation affairs; 5) issuing notarial deeds; 6) other forms. With focus on handling labour disputes, trade unions provide its members living in poverty, its workers and grass-root level trade unions with legal aids in forms of offering legal advice, drafting legal documents, acting as legal counsels in arbitration and litigation proceedings in order to safeguard their legitimate rights and interests.

Application for legal aids should be made to the local legal aid organisation in the jurisdiction of people's court handling the case. The organisation will determine whether to offer legal aids

Lawyers, notaries and grass-root level legal workers are requested to provide free-of-charge legal aids in certain amount as stipulated by provincial department of justice, and they also have to render paid services assigned by legal aids organisations. If they refuse to perform the duty or perform it in such a negligent manner that brings about great loss to aids recipients, legal aids organisations may suggest that relevant departments impose punishment on them or refuse to renew their licenses.

III. Organisations to Handle Labour Disputes

1. Enterprise Labour Dispute Mediation Committee

An enterprise may set up a labour dispute mediation committee to be responsible for mediating labour disputes within the enterprise. The mediation committee is usually composed of representative(s) of employee(s), representative(s) of the enterprise, representative(s) of the enterprise trade union. The employees' representative(s) is nominated by the congress of employees' representatives or employees' congress. The enterprise representative(s) is appointed by the enterprise director or manager. The enterprise trade union representative(s) is appointed by the enterprise trade union committee. The number of members to the mediation committee should be determined through negotiations between employees' congress and the enterprise director or

manager, at the proposal of the former. The number of enterprise representative(s) should not exceed one third of the total. The post of chairman of the mediation committee should be taken up by a representative of the enterprise trade union. The mediation committee sets up its secretariat at the enterprise trade union committee. In an enterprise without trade union, the establishment and composition of the mediation committee should be determined through negotiations between the employees' representatives and the enterprise representatives.

Labour Dispute Mediation Committee is different from People's Conciliation Committee, which aims at mediating minor civil cases and petty criminal cases under the guidance of grass-root level People's Court. The differences between the two Committees are as follows:

- They have different scope of coverage. When the Labour Dispute Mediation Committee works with parties acting as employee and employer, People's Conciliation Committee deals with parties, which can be employer and employee, employees of the same enterprise, or employees from different enterprises.
- They handle different disputes or cases. Labour Dispute Mediation Committee mediates labour disputes, which takes place in the enterprise, and People's Conciliation Committee mediates minor civil cases and petty criminal cases.
- The committees work under guidance of different organisations. Labour Dispute Mediation Committee functions under the guidance of trade unions associations at all level, while grass-root level People's Court and People's government provide guidance to People's Conciliation Committees.

Labour Dispute Mediation Committee is responsible for:

- Mediating labour disputes within the enterprise, arising from resignation and demission of employees; performance of labour contracts; implementation of laws and regulations on working time, wage, social insurance, welfare, training and occupational safety. The committee also

deals with other disputes, if it is stipulated by legal provisions. Usually, the committee does not handle disputes over dismissal of employees by enterprise.

- Supervising and prompting parties to a dispute to perform the mediation agreement. Since parties are not legally bound by the agreement, what the committee can do at this stage is to monitor and prompt parties to implement the agreement.
- Carrying out publicity of labour laws and regulations, as well as other activities to prevent labour disputes. Abiding by the principle of “highlighting prevention, combining prevention and mediation”, the committee aims to prevent and minimise the occurrence of labour disputes through publicity campaigns, and settle disputes at grass-root level.

2. Labour Dispute Arbitration Committee

Labour Dispute Arbitration Committee is arbitral organ to handle labour disputes, established in accordance with legal provisions. Counties, cities and city districts should set up labour dispute arbitration committees. When necessary, provincial government (including autonomous region and municipality directly under the central government) may set up Labour Dispute Arbitration Committee and determine its jurisdiction. The arbitration committee is usually composed of representative(s) of labour administrative department at the same level, representative(s) of enterprises, representative(s) of trade union. The members to the arbitration committee must be in odd numbers. The committee consists of 1 chairman, 1-2 vice-chairmen and members. Members are selected by the three above-mentioned organisations respectively. The post of chairman is to be taken up by an official in charge of the labour administrative department. The vice-chairman (chairmen) is elected by members of the committee through negotiation.

The secretariat of the arbitration committee shall be located at the labour dispute settlement division of the labour administrative department, and be responsible for dealing with its day-to-day routine.

The arbitration committee shall follow the principle of decision by a majority vote. The system of arbitrators and arbitration tribunals shall be adopted by the

arbitration committee in the settlement of labour disputes. The arbitration committee may engage personnel from the labour administrative department or from other relevant government departments, trade union officials, experts, scholars and lawyers as full-time or part-time arbitrators. Part-time and full-time arbitrators shall enjoy equal rights in discharging their duties of arbitration. In handling a labour dispute, the arbitration committee shall form an arbitration tribunal, which shall be composed of three arbitrators. A simple labour dispute may be handled by a single arbitrator appointed by the arbitration committee. For collective labour dispute involving more than 30 employees, special arbitration tribunal should be formed with more than three odd number of members. The arbitration tribunal may submit major or complicated labour dispute cases to the arbitration committee for deliberation and decision. The arbitration tribunal must implement the decisions of the arbitration committee.

Labour Dispute Arbitration Committee is responsible for:

- Handling labour disputes within its jurisdiction, arising from resignation and demission of employees; dismissal and discharge of employees by enterprise; implementation of laws and regulations on working time, wage, social insurance, welfare, training and occupational safety; performance of individual labour contracts and collective labour contracts. The committee also deals with other disputes, if it is stipulated by legal provisions.
- Recruitment and administration of part-time and full-time arbitrators. The arbitration committee may engage personnel from the labour administrative department or from other relevant government departments, trade union officials, experts, scholars, and lawyers as full-time or part-time arbitrators. The committee administers arbitrators in accordance with *Directions on Recruitment and Management of Labour Dispute Arbitrators*, issued by the Ministry of Labour.
- Providing guidance to and supervising secretariat of the arbitration committee and arbitration tribunals in handling disputes. The secretariat is responsible for dealing with day-to-day routine of the committee; administering arbitrators and form arbitration tribunals with authority of the

committee; maintaining documents, archives and stamps of the committee; providing consultation on relevant laws and regulations; guiding and supervising arbitration tribunals in carrying out arbitrations, including acceptance of disputes, formation of tribunals, and withdrawal of arbitrators, mediation and arbitration of disputes.

3. People's Court

People's Court, exercising juridical power on behalf of the state, is also responsible for hearing labour disputes and making judgments.

If a party to a labour dispute refuses to accept arbitration decision, it can appeal the decision to People's Court. The disputes should be 1)disputes surrounding implementation of individual labour contracts and collective labour contracts; 2) disputes between employees and employing units, which have not concluded written labour contracts but formed de facto labour relations; 3)claims of retirees for pension, medical costs, employment injury benefits and other social insurance benefits to employing units, which have not participated in the social insurance pooling scheme. People's Court will accept the dispute, if the dissenting party appeals the arbitration decision with a set time limit. People's Court will not accept disputes without prior arbitration by arbitration committee. A dispute should be appealed to the People's Court in the place, where the employing unit is located or where the labour contract is implemented. Final judgment over a dispute will be made at People's Court of second instance. Parties to a dispute are not allowed to make repetitive appeal to court, grounding on the same fact or same reason.

When a party petitions with People's Court for enforcement of the arbitration note or award, which has come into effect, People's Court shall refuse to enforce the arbitration note or award, if it is found: 1) the dispute does not fall into the jurisdiction of labour dispute arbitration or the labour dispute arbitration committee does not have authority to deal with the dispute; 2) there is wrong application of laws and regulations; 3) the arbitrator engaged in malpractice and broke the law in making decision; 4) the arbitration decision is against public interests. Within 30 days after receiving the court's

order of refusal to enforce an arbitration note or award, the party to a dispute may bring a lawsuit over the dispute in court.

4. Tripartism Mechanism in Collective Labour Dispute Settlement

Tripartism mechanism in collective labour dispute settlement refers to the mutual consultation and negotiation between labour administrative department, trade union and representatives from enterprises with an aim to settle collective labour dispute.

Directions on Establishment and Improvement of Labour Relations Tripartism Coordination Mechanism, jointly issued by the Ministry of Labour and Social Security, All-China Federation of Trade Unions and China Enterprises Confederation on August 13, 2000, points out that labour relations tripartism coordination mechanism is an effective way to regulate labour relations and promote harmonious labour relations, hence important for creating stable environment for reforms and opening up.

Currently, the labour relations tripartism coordination mechanism has been established in more than 20 provinces (autonomous regions and municipalities directly under the central government). Tripartism collective labour dispute settlement mechanism is an important component of the labour relations tripartism coordination mechanism, as it investigates major collective labour disputes and “mass incidents”, proposes suggestions on prevention and reconciliation of such disputes, offers guidance in dealing with disputes arising from conclusion and performance of collective contracts. The tripartism mechanism shifts its focus along with the changing situation, highlighting priorities and sticking to issues of workers’ common concern, which may have impacts on labour relations. In the provinces, where the coordination mechanism has been set up at provincial level, it should be replicated to cities and counties so as to form a multi-level tripartism coordination system.