Chapter Five: Dispute Resolution Process in Labour Matters

1. The background

Formerly Thai economy was mostly based on agricultural sectors, conflicts in connection with labour matters between workers and employers in manufacturing were, therefore, in small numbers. Such conflicts were basically treated as ordinary civil disputes, an employer or an employee whose rights had been violated by another party might bring the case to the civil court. The plaintiff normally had to hire a lawyer for litigation and pay court fees for filing the case. Accordingly, the litigation by employees was not practical.

After the World War II Thailand is transforming from an agricultural country to a newly industrialized country. Thai national economic development plans since 1961 have constantly aimed to promote industrial and investment growths. As a result of such industrial development, the number of labour conflicts both in manufacturing level and national level have remarkably increased. The valid example is the escalation of labour cases in the Labour Court, arising from 1,214 cases in 1980 to 23,235 cases in 1998.[1]

The problems in connection with labour conflicts seem to be realised by Thai government since the late 1950s. Some mechanisms have been created to promote good relationship between workers and employers in the establishment and to eradicate or resolve labour conflicts where they have occurred.

With regard to settling of industrial disputes, the Labour Act B.E. 2499 (1956) was enacted as the first comprehensive act in respect of labour matters. This act provided minimum floor of rights for employees, such as working hours, holidays and overtime payment etc, together with industrial relations' rights, for example the employee's right to found a labour union and the right to jointly create a collective bargaining agreement with the management. The Industrial Relations Commission was also firstly established under the act, among other things, to adjudicate industrial disputes and unfair labour practice complaints. Unfortunately, the act was repealed in a year after becoming into force. The Industrial Relations Commission was reestablished by the Labour Relations Act B.E. 2518 (1975). This act also provided others significant mechanisms in preventing and resolving labour disputes arising in the establishment *i.e.* workers committees and labour disputes conciliation officials.

As far as the adjudication of courts is concerned, it is widely recognised that characteristics of labour disputes are different from ordinary civil disputes in many aspects and labour disputes should be coped with by one who possesses good knowledge and deep understanding of labour matters under specific and appropriate procedures.

[1] Information Division, the Central Labour Court.

In 1980 the Central Labour Court was set up under the Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), being as the first special court dealing with labour disputes.[2] It was created on the basis of being accessible, inexpensive, fast and informal. A panel of labour court is made up of a career judge, an associate judge representing employers and an associate judge representing employees. The labour court has been widely and rapidly recognised by the parties concerned. This reflects from the considerable growth of labour cases in the labour court by beyond 250% in a year and by 640 % in a decade (from around 1,200 cases in 1980 to around 4,100 cases in 1981 and to 8,600 cases in 1990).

Because of the outbreak of labour cases to the labour court, apart from expansion of the Central Labour Court's branches in regions, in 1998 the government created a quasi-judiciary mechanism to reduce numerous labour court's cases. Labour inspection officials, normally civil servant of the Ministry of Labour Protection and Social Welfare, have been empowered of quasi-judiciary in the sense that an employee whose any right to receive some of money according to the Labour Protection Act B.E. 2541 (1998) is infringed may file a complaint to the officials for adjudication. Since 1998, apart from filing the case directly to the labour court, the employee may file a complaint to the labour inspection official for resolving the disputes.

In respect of the law on workers compensation and the law on social security, in 1972 the Workers Compensation Fund was founded by the Notification of the National Executive Council No 103 dated 16 March B.E. 2515 (1972). This fund is now governed by the Workers Compensation Act B.E. 2537 (1994) and supervised by the Office of Social Security, the Ministry of Labour Protection and Social Welfare. According to the act any employer in the establishment which has 10 employees and upwards has to contribute to the fund. Workers who are injured or become ill as a result of their performance according to the employment contract are entitled to obtain compensation and benefits provided by the law.

In addition, since 1990 apart from having been entitled under the law on workers compensation, employees have been protected under the Workers Compensation Act B.E. 2537 (1994). An employee who is suffered, for example, from injury or illness without caused by the work, being incompetent, giving childbirth or unemployment is eligible for obtaining compensation and benefits according to the law from the Social Security Fund.

2. Outline of Labour dispute cases

Types of labour disputes cases are not specifically categorised by the law. However, they may be divided into five following categories:

1) Cases of dispute concerning rights and duty under employment contracts or collective bargaining agreements. These cases result from conflicts of rights and duty between an employer and an employee in respect of terms and conditions of an employment or a collective bargaining agreement. An employee, for example, files a complaint against his employer for paying

[2] Government Gazette, Volume 96, Part 76 date 11 November BE 2522 (1979).

remuneration according to employment contract or bonus as stated by the collective bargaining agreement. During 1996-2000 around 90% of total labour cases submitted to the Central Labour Court were cases of dispute concerning rights and duty according to employment contracts or collective bargaining agreements.[3]

2) Cases of dispute concerning rights and duty under the law on labour protection or the law on labour relations. These cases cause from violation of statutory rights, mostly employee statutory rights, as stated by labour protection law and labour relations law. For instance, an employer is sued by his employee because of paying wages at the rate below minimum wages rate or not paying severance pay for a dismissed employee according to the Labour Protection Act B.E. 2541 (1998). In terms of statistical data, in 1997 around 16% of the Central Labour Court's total cases were cases of dispute in this topic.[4]

3) Cases in which rights must be exercised through the court under the law on labour protection or the law on labour relations. These cases mostly are cases where employers submit requests to the labour court for approval of taking disciplinary sanctions against or dismissing their employees who are members of worker committees. In 1997 around 270 cases from 17,000 total labour cases filed in the Central Labour Court were cases that employers requested the labour court for exercising their rights according to this issue.[5]

4) Cases of appeal against decisions of the competent officer under the law on labour protection or the law on labour relations. In many cases required by the labour law that an employer or an employee has to exercise his/her statutory right through the competent official. If the official's decision is not satisfied by the employer or the employee concerned, such employer or employee may bring the case to the labour court. According to the Social Security Act B.E. 2533 (1990), for example, an employee who injures without cause of performing employment duty submits a request to the social security official for being paid compensation. If the request is dismissed by the official, the employee may appeal to the social security board of appeal. Where the board dismisses the appeal, the appellant may filed a complaint to the labour court for repealing the competent official's decision. During 1996-2000 around 17% of total labour cases in the Central Labour Court were cases in accordance with this topic.[6]

5) Cases arising from cause of infringement between the employers and the employees due to labour disputes or in connection with work performance under the employment contracts. These cases normally are tort cases resulting from the contravention of employee or employer's rights done by another party. Employees, for example, take an unlawful strike causing damages to their employer. The employer may file a complaint to the labour court for being paid compensation. The number of these labour cases submitted to the Central Labour Court during 1996-2000 is small number, only around 4.07% of total labour cases in each year.[7]

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[3] Government Gazette, Volume 96, Part 76 date 11 November BE 2522 (1979).
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*

The proportion of labour cases filed at the Central Labour Court in 2000 is being as follows:

Table 1: Number of labour cases filed and examined at the Central Labour Court by types of issues during 1996-2000.

Types of labour cases	Year				
	1996	1997	1998	1999	2000
1. Cases of dispute concerning rights and duty as stated by the employment contract or collective bargaining agreement.	9,190	13,532	21,352	10,342	9,352
2. Cases of dispute concerning rights and duty under labour protection law or labour relations law.	969	2,814	873	7,470	4,296
3. Cases in which rights must be exercised through the labour court under labour protection law or labour relations law.	133	267	347	152	711
4. Cases of appeal against the ruling of the officials who enforce labour protection law or labour relations law.	30	37	46	198	1,127
5. Cases of commission of tort resulting from labour disputes or work performance.	5	490	617	1,347	1,074
Total	10,327	17,140	23,235	19,509	16,533

Source: Information Division, the Central Labour Court.

3. Organizations or Institutes for dispute resolution

Nowadays, the significant organizations, institutions and persons being responsible for labour dispute resolutions can be stated as follows:

- Workers Committee
- Labour Union
- Labour Dispute Conciliation Official
- Industrial Relations Commission
- Labour Inspection Official
- Labour Court

3.1 Workers Committee

According to the Labour Relations Act B.E. 2518 (1975), employees who work in the establishment having got 50 employees and upwards may set up their representatives namely a "Workers Committee". The amount of workers committee's members is from 5 persons to 21 persons, depending on the number of the employees in such establishment.[8]

Table 2: Proportion of number of workers committee' s members and workers in the establishment.

Number of employees in the establishment	Number of members of the workers committee
50-100	5
101-200	7
201-400	9
401-800	11
801-1,500	13
1,501-2500	15
2,501 and upwards	17-21

The workers committee may be set up through the following three methods:

A. All its members are elected by the employees. This method is used where the establishment has no labour unions or has a labour union but its members are not beyond by one-fifth of all employees.

[8] The Labour Relations Act B.E. 2518 (1975), Section 46.

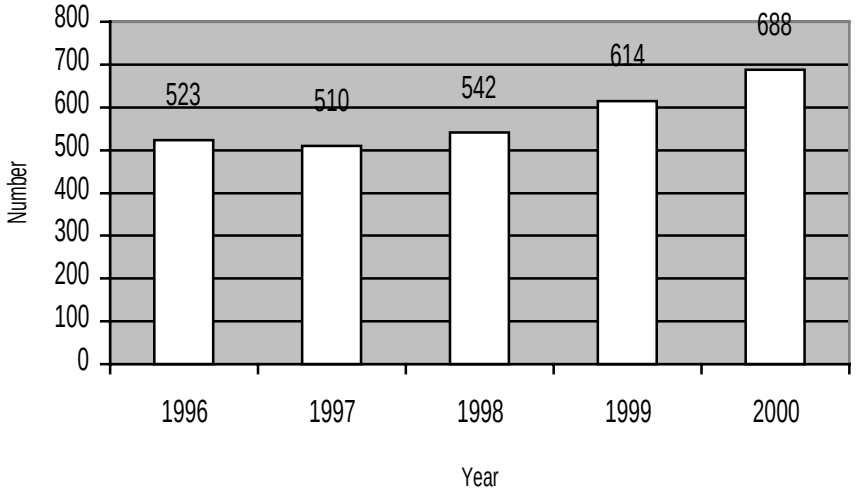
B. Some members of workers committee are elected by the employees and others are appointed by the labour union. Where the labour union in the establishment has its members beyond by one-fifth of all employees but not beyond by a half of all employees, the workers committee's members are appointed by the labour union in amount of a half of all members plus one person. Other remaining members are elected by the employees.

C. All its members are appointed by the labour union. In the event that the labour union has its members beyond by a half of all employees, all members of the workers committee are appointed by the labour union.

The workers committee's members hold a term of office of three years.

The establishment of the workers committee is based on voluntary system. It is found that the amount of workers committees has been slightly increased. By the year 2000 around 688 workers committees were set up in privates enterprises in the whole kingdom.

Bar Chart: Number of workers committees established in private enterprises during 1996-2000.



Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare.

Its substantial function is to act as the employees' representative in convening with the management to find out cooperation between the labour force and the management of the enterprise. It is required by the Labour Relations Act B.E. 2518 (1975) that the employer must hold the convention between the management and the workers committee in every three months or where being requested by majority of workers committee members or by the labour union. The convention is held for discussing the following issues:

- Supplying of welfare or benefits to the employees.
- Setting up working rules.
- Considering an employee's grievance.
- Settling labour disputes in the establishment.[9]

With regard to the last one, even through statistic concerned is far from clear that how many Labour disputes can be resolved by workers committees, it is sufficient to say that workers committees have played significant role in settling labour conflicts through negotiation with the management.

It should be noted that in performing their duty, workers committees are safeguarded by the act. Employers, for example, may take disciplinary sanctions against or dismiss employees who are members of workers committees only with approval of the labour court.[10] In the year 2000 around 250 requests were submitted by the employers to the Central Labour Court for approval of taking disciplinary sanctions against or dismissing members of workers committee.

Table 3: Number of requests for approval of taking disciplinary sanctions against or dismissing members of workers committees submitted to the Central Labour Court during 1993-2000.

Year	Total labour cases	Number of requests
1993	11,384	216
1994	9,833	155
1995	11,202	228
1996	10,327	140
1997	17,140	275
1998	23,235	212
1999	19,509	161
2000	16,533	254

Source: Information Division of the Central Labour Court.

[9] The Labour Relations Act B.E. 2518 (1975), Section 50.
[10] Department of Labour Protection and Welfare, *Analytical Report on Statistical Labour B.E. 2543*. (2000), p 39.

3.2 Labour Unions

Apart from setting up a workers committee, employees are entitled to set up a labour union to act as their organized labour. Under the Labour Relations Act B.E. 2518 (1975) the labour union's objectives are to discover and protect all employees' benefits regarding conditions of employment and to promote good relationships between employers and employees and among employees themselves. After being registered, the labour union becomes a juristic person.

There are two types of labour unions in Thailand *i.e.* industrial unions and enterprise unions. The former are unions whose members are the employees working in the same industrials while the latter are unions whose members are the employees of the same employer. In year 2000, 588 industrial unions and 496 enterprise unions performed their duties as organised labour in Thailand.[11]

The establishment of labour unions is on voluntary basis. The procedures of setting up a labour union may be summarized as follows;[12]

1). Any ten or more employees being Thai nationals, being of legal age and working in the same industry or the same employer may act as the promoter by lodging an application for establishment of a labour union to the registration official. The application must be stated names, surnames, ages, occupations and addresses of the founder and attached with three copies of drafts of labour union's regulations.

2). The registration official examines the application and the drafts. If qualifications of the promoters and drafts of labour union's regulation are complied with the law and the labour union's objective is not against the public orders, registration of the labour union will be made and its license will be issued.

3). In the case that the registration has declined, the promoter may appeal against the registration official's decision to the Minister of the Ministry of Labour Protection and Social Welfare within 60 days from the day of receiving the decision. The Minister examines the appeal and notifies his/her decision to the appellant within 30 days from the day of receiving such appeal. If the Minister's decision has not been satisfied, the appellant may refer the case to the labour court.

4). After the labour union is registered, the promoter must conduct the first ordinary general meeting within 120 days after registration in order to elect its committee, to hand over the business to the committee and to approve its regulations. Then the labour union committee may act on behalf of the labour union.

According to statistical data organized by Labour Studies and Planning Division, Department of Labour Protection and Welfare, by December .2000, 1,084 private enterprise labour unions were set up and around 80 % of them are situated in regions.

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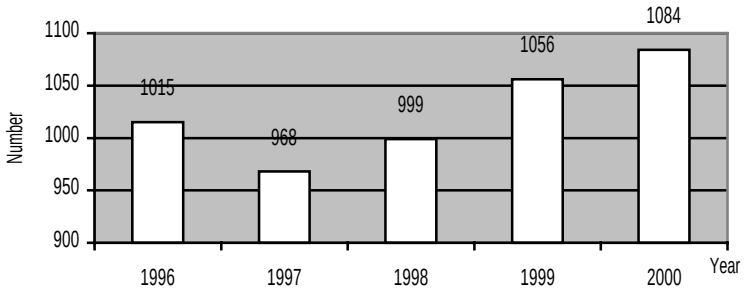
[11] *Ibid.*

[12] The Labour Relations Act B.E. 2518 (1975), Sections 88-95.

Bar Chart: Number of trade unions set up during 1996-2000



Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare.

Labour unions not only have the duty to protect employees' rights and benefit but also the duty to bargain in good faith with employer. Thus, where a labour dispute occurs in the establishment the labour union shall act on behalf of employees to find out settlement with the management. The statistic shows that during 1995-2000 around 11.3% of labour all labour disputes led to strikes and lockouts.

Table 4: Number of labour disputes, strikes and lockout during 1991-2000.

Year	Labour disputes		Strike				Lockout			
	Number	Workers involved	Number of strike	Workers involved	Dura -tion	Mandays losts	Number	Workers involved	Dura -tion	Mandays losts
1991	135	37,819	7	5,316	240	142,131	7	4,729	148	93,898
1992	195	52,318	20	6,614	576	215,186	14	1,765	268	23,156
1993	184	46,771	14	4,817	437	214,029	9	1,387	280	28,774
1994	165	41,353	8	4,186	94	42,933	7	3,944	100	38,270
1995	236	56,573	22	8,950	270	117,196	17	7,832	297	102,738
1996	175	51,394	17	7,792	109	44,911	1	890	53	47,170
1997	187	56,603	15	8,850	248	71,896	8	3,059	290	78,624
1998	121	35,897	4	1,209	249	128,872	4	935	307	84,688
1999	183	74,788	4	909	25	8,422	13	6,958	226	134,491
2000	140	50,768	3	2,165	189	192,845	10	3,804	140	57,403

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare

It should be noted that where the negotiation fails, the labour union may file complaint on behalf of employees against the employers at the labour court. It is found that around 300 cases were brought to the Central Labour Court by the trade unions in 2000.

Table 5: Number of labour cases brought by labour unions to the Central Labour Court during 1991-2000.

Year	Total labour cases	Labour cases brought by labour unions.
1991	9,173	6
1992	9,329	10
1993	11,384	9
1994	9,833	7
1995	11,202	6
1996	10,327	2
1997	17,140	2
1998	23,235	1
1999	19,509	8
2000	16,533	310

Source: Information Division of the Central Labour Court

3.3. Labour Dispute Conciliation Officials

Labour dispute conciliation officials are the persons appointed by the Minister of Ministry of Labour and Social Welfare.[13] They are civil servants attached to the Ministry of Labour and Social Welfare.

Labour dispute conciliation officials' qualifications in respect of legal education, specific knowledge and experience in settling labour disputes are not specifically required by the law.

[13] The Labour Relations Act B.E. 2518 (1975), Section 5.

The Minister may appoint labour dispute conciliation officials from the following civil servants:[14]

- Civil servants no less than level 3 working in the center and the Permanent Secretary Office of the Ministry of Labour Protection and Welfare.
- Directors and Deputy Directors of districts of the Bangkok Metropolis.
- Provincial Governors, Deputy Provincial Governors, Provincial Secretaries, District Governors and District Secretaries.

The main function of labour dispute conciliation officials is to conciliate the party who confronts with a "labour dispute". According to the Labour Relations Act B.E. 2518 (1975), in order to vary or settle a collective bargaining agreement, employees or a trade union and an employer or an employer's association may notify of the written allegation to another party. Each party possesses the right to appoint its representatives not exceeding 7 persons to negotiate with another. Negotiation must be held within 3 days from the date of receiving the written allegation.[15]

In the case that negotiation has neither been convened on the period of time nor has reached the party the settlement, the initiated party must notify such labour dispute in writing to the labour dispute conciliation official within 24 hours from the time occurring the labour dispute.[16]

After receiving such written notification, the labour dispute conciliation official must conciliate and persuade the party to reach an agreement within 5 days from the date of receiving the written notification.[17]

A labour dispute occurring in Kawasaki Enterprise Co Ltd which is situated in Rayong Province, for example, on November, 27, 2000 the Kawasaki Motors Thailand Labour Union submitted a request to the management for varying collective bargaining agreement in connection with increasing annual wages. After twice of negotiation between the union and the employers, the parties could not reach the settlement. On December, 14, 2000 the labour conciliation official of Rayong Provincial Office of Labour Protection and Welfare was informed such labour dispute. The conciliation was held on December, 19, 2000 but the parties were unable to reach a compromise and industrial actions by the labour union seemed to be taken place. However, the second conciliation was then organised, the labour union and the employers reached settlement on November, 27, 2000.[18]

In term of statistical data, in 1999 labour disputes occurred in 159 establishments with 60,174 workers involved. Such disputes in 124 establishments (77.98%) with 50,174 workers involved (83.28%) were reached the settlement by conciliation of the labour dispute conciliation officials.[19]

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[14] Ministerial Orders No 145/2537 Re: appointment of Labour Dispute Conciliation Officials dated 1 August B.E.2537 (1994)
[15] The Labour Relations Act B.E. 2518 (1975), Section 13 and 16.
[16] The Labour Relations Act B.E. 2518 (1975), Section 21.
[17] The Labour Relations Act B.E. 2518 (1975), Section 22.
[18] Department of Labour Protection and Welfare, *Labour Relations Situations*, Volume 2/2543, pp 44-45.
[19] The Ministry of Labour Protection and Social Welfare's Annual Report of B.E. 2542 (1999), p 91.

Table 6: Number of labour disputes, strikes and lockouts in the whole kingdom during 1995-2000.

Year	Labour disputes		Strike				Lockout			
	Time	Workers involved	Num-ber	Workers involved	Dura-tion	Manday lost	Num-ber	Workers involved	Dura-tion	Manday lost
1995	236	56,573	22	8,950	270	117,196	17	7,832	897	102,738
1996	175	51,394	17	7,792	108.5	44,910	1	890	53	47,170
1997	187	56,603	15	8,850	248	71,986	8	3,059	290	78,624
1998	121	35,879	4	1,209	249	128,872	4	935	307	84,688
1999	183	74,788	3	909	25	8,422	13	6,958	226	134,491
2000	140	50,768	3	2,165	189	192,845	10	3,804	140	57,403

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare.

3.4. Industrial Relations Commission

The industrial relations commission is a national committee in respect of labour relations, set up under the Labour Relations Act B.E. 2518 (1975), consisting of a chairperson and 8 –14 members. It is presently made up of the Permanent Secretary of the Ministry of Labour Protection and Social Welfare being as the chairperson, 4 governmental agencies, 5 employers' representatives and 5 employees' representatives. They are appointed by the Minister of the Ministry of Labour Protection and Social Welfare with a term of three years in office.

It should be noted that specific knowledge or experience of the industrial relations commission's members is not required by the law.

The industrial relations commission has power and duty as follows:[20]

- To adjudicate irreconcilable labour disputes in specific enterprises, *i.e.* railway, port, telephone or communication, generating or supplying energy or electricity to the public, waterworks, producing or refining petroleum, hospital and other enterprises as stated by Ministerial Regulations.
- To adjudicate labour disputes submitted by the Minister of the Ministry of Labour Protection and Social Welfare.

[20] The Labour Relations Act B.E. 2518 (1975) Section 41.

- To adjudicate labour disputes as being appointed or assigned.
- To adjudicate unfair labour practice's complaints.
- To give recommendation with respect to allegations, negotiations, labour dispute resolutions, strikes and lock-outs assigned by Minister of the Ministry of Labour Protection and Social Welfare.

In respect of adjudicating labour disputes, as mentioned above, where the labour dispute conciliation official has failed to persuade the party to reach a settlement within five days from the date of receiving written notification, the labour dispute is treated as an "unsettled labour dispute."[21] Then, after giving an advance notice of at least 24 hours to another and to the labour dispute conciliation official, the party may take industrial actions, such as strikes or lock-outs, against another.[22]

However, the party is not entitled to take such industrial actions if the unsettled labour dispute has occurred in some specific enterprises including railway, communication, generating or supplying electricity, waterworks etc. In this circumstance, the labour dispute conciliation official must refer such unsettled labour dispute to the industrial relations commission for adjudication. The industrial relations commission shall determine the dispute and notify its decision to the party within 30 days from the day of receiving the dispute. In practice, a sub-commission is appointed by the Industrial Relations Commission in order to investigate and gather evidence involved together with presenting its recommendation to the commission. In the year 2000, for example, 6 labour disputes with 5,972 workers concerned were examined by the commission.[23]

The party may appeal against such decision to Minister of the Ministry of Labour Protection and Social Welfare within 7 days from the day of receiving the decision. The Minister's decision is final and binding the parties concerned.

With regard to ruling of unfair labour practice complaints, the employee who thinks that he/she is a victim of an unfair labour practice under the Labour Relations Act B.E. 2518 (1975) may lodges an unfair labour practice complaint against the employer at the Office of the Industrial Relations Commission. The complaint must be lodged within 60 days from the day of violation.[24] It was found that in the year 2000 around 1,500 unfair labour practice's complaints were adjudicate by the commission.[25] After receiving the complaint the industrial relations committee must determine it and issue its decision within 90 days from the day of receiving the complaint.[26] The period of 90 days may be extended by the Minister of the Ministry of Labour

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[21] The Labour Relations Act B.E. 2518 (1975) Section 22.
[22] The Labour Relations Act B.E. 2518 (1975) Section 35.
[23] Labour Statistics Branch, Department of Labour Protection and Welfare, *Yearbook of Labour Statistics 2000*, Bangkok: Borpit Printing Co Ltd, 2543 (2000), p 73.
[24] The Labour Relations Act B.E. 2518 (1975) Section 124.
[25] Labour Statistics Branch, Department of Labour Protection and Welfare, *Year Book of Labour Statistics 2000*, Bangkok: Borpit Printing Co Ltd, B.E. 2543 (2000), p 73.

[26] The Labour Relations Act B.E. 2518 (1975) Section 125.

Protection and Social Welfare. In the case that the industrial relations committee finds the arising of unfair labour practice, it may issue an order of reinstatement, paying of compensation or doing or not doing something as it thinks fit.

Table 7: Orders of the Labour Relations Commission on unsettled labour disputes and unfair labour practice complaints in the whole kingdom during 1995-2000.

Year	Labour disputes		Unfair labour practices	
	Number of cases	Workers involved	Number of cases	Workers involved
1995	2	11,100	105	1,225
1996	2	1,815	350	921
1997	3	4,250	430	430
1998	1	53	982	982
1999	3	547	391	391
2000	6	5,972	1,494	1,494

Source: Office of the Labour Relations Committee.

3.5. Labour Inspection Officials

Labour inspection officials are the persons, normally civil servants, appointed by the Minister of Ministry of Labour and Social Welfare for execution of the Labour Protection Act B.E. 2541 (1998). They were firstly created by the Notification of the National Executive Council No 103 dated 16 March B.E. 2515 (1972) and are presently governed by the Labour Protection Act B.E. 2541 (1998).

The Minister may appoint labour inspection officials from persons as stated by the Ministerial Orders No 158/2541 Re: Appointment of Labour Inspection Officials dated 19 August B.E. 2541 (1998) including:

- Civil Servants not less than level 3 working in the center or the Permanent Secretary Office of Ministry of Labour Protection and Social Welfare.
- Civil Servants not less than level 3 working in Provincial Offices of Labour Protection and Social Welfare.
- Police Officials having rank of police sub-lieutenant or its equivalent upwards.

- Director of Occupational Health Division, doctors, environmentalists and scientists level 3 working in Occupational Health Division Department of Health the Ministry of Public Health
- Civil Servants not less than level 3 working in the Office of Provincial and District Public Health etc.

It should be noted that labour inspection officials' qualifications with regard to level of education, major area of study, or experience in settling labour disputes etc are not required by the law.

Labour inspection officials possess authority to take legal actions to employers who do not comply with labour protection laws. In carrying out their duties they have power as follows:[27]

- To enter into the place of business or office of the employer and working place of the employees during business hours so as to inspect the working condition of the employees and conditions of employment, payment of wages and remuneration, safety at work etc.
- To send notice of inquiry or summons to the employer, the employees or person concerned to clarify facts or to send relevant items or documents to support their consideration.
- To issue written orders requiring the employer or the employee to comply with the Labour Protection Act B.E. 2541 (1998)
- To adjudicate a complaint submitted by an employee in the case where the employer violates or fails to comply with the provisions concerning the right to receive any sum of money under the Labour Protection Act B.E. 2541 (1998).

With regard to proceeding for settling labour disputes conducted by labour inspection officials, it may be summarized as follows:[28]

1). An employee, who thinks his/her statutory rights to receive any sum of money according to the Labour Protection Act B.E. 2541 (1998) has been violated, may lodge a grievance to the labour inspection official of locality in which the employee works or the employer is domiciled.

2). When the grievance is submitted, the labour inspection official shall investigate the facts and issue an order within 60 days from the date of receiving such grievance.

In order to obtain the facts, the labour inspection official shall gather all evidence concerned, enter into working place of employment, hear witnesses and examine documentary evidence and direct evidence presented by the employee, the employer and persons concerned. It should be noted that in practice the labour inspection official may also conciliate the party to reach the settlement.

[27] The Labour Protection Act 2541 (1998) Section 123 and 139.
[28] The Labour Protection Act 2541 (1998) Sections 122-125.

The period of 60 days may be extended as necessary not exceeding 30 days by the approval of the Director-General of the Department of Labour Protection and Welfare or his/her delegate.

3). When the labour inspection official finds the employee is entitled to any sum of money which the employer is obligated to pay under the Act, the labour inspection official shall issue an order requiring the employer to pay such money to the employee within 15 days from the date such order is acknowledged or deem to be acknowledged.

4). The employer may pay money according to the order at the work place of the employee, office of the labour inspection official or other place as agreed upon between the employer and the employer.

5). If the employer or the employee is not satisfied with the order, a lawsuit may be brought to the labour court within 30 days from the date of the order became known.

In case that the lawsuit is brought to the court by the employer, in order to proceed with the case, the employer must place a deposit with the court equal to the amount under the said order. When the labour court passes the final decision that the employer is obliged to pay any money to the employee, it has the power to pay such deposit to the employee or statutory heir of the employee who died.

In terms of statistical data, it was found that during 1996 to 2000 more than 6,000 grievances were submitted to labour inspection officials and more than 30,000 employees were concerned in each year. Major issues of the grievances were severance pay, wages and damage deposit. In the year 2000 around 74.2% of all grievances were held that the complainants had statutory rights to be paid. It is not clear in terms of the number of grievances being withdrawn or reached the settlement by conciliation of the labour inspection officials.

Flow Chart: Proceeding in settling labour disputes by labour inspection officials

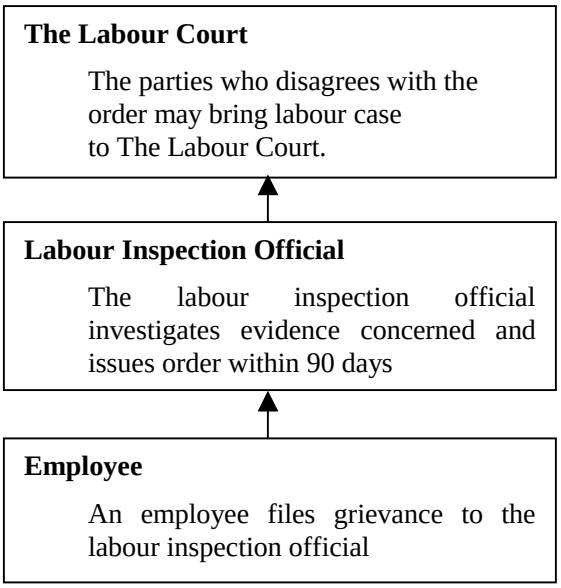


Table 9: Number of grievances filed and examined by labour inspection officials during 1996-2000.

Year	Grievances received		Grievances examined that workers were entitled to receive money.		
	Number	Workers involved	Number	Workers involved	Money (bath)
1996	6,488	56,787	4,446	42,376	252,443,087
1997	8,252	75,815	5,187	52,510	483,524,510
1998	9,081	64,707	5,716	49,930	613,267,088
1999	7,708	40,555	5,561	32,406	264,283,537
2000	7,070	31,380	5,247	24,551	233,072,047

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare

Table10: Types of grievances filed and examined by the labour inspection officials.

Issues of grievances	Grievances received		Grievances examined that workers were entitled to be paid money		
	Number	Workers involved	Number	Workers involved	Money (bath)
Wages	3,085	17,763	2,416	15,102	67,836,180
Minimum wages	16	148	16	74	107,046
Overtime pay	40	54	25	30	144,680
Holiday work pay	13	16	10	12	69,767
Accumulative fund	44	70	31	57	1,187,375
Damage deposit	322	921	284	902	2,255,333
Wages on delivered day	19	19	17	17	95,894
Wages on sick leave	29	29	28	32	72,562
Severance pay	1,282	4,090	771	2,184	54,835,765
Others	163	393	159	272	2,306,270
Total	7,070	31,398	5,247	24,551	233,071,047

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare

3.6. The Central Labour Court

As mentioned above, formerly labour disputes had been treated as ordinary civil cases and determined by the civil courts with a few numbers of cases. Since 23 April 1980 the Central labour Court, headed by the Chief Judge of the Central Labour Court, has been in charge of settling all labour disputes cases. It was set up under the Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979).

According to the Act, there are three kinds of labour courts i.e. the Central Labour Court, Regional Labour Court and Provincial Labour Court. However, Regional Labour Courts and Provincial Labour Courts have not been established yet. The Central Labour Court has, therefore, jurisdiction cover all labour cases in the realm. In order to facilitate more accessible of the litigant 13 branches of the Central Labour Court were found in regions of Thailand.

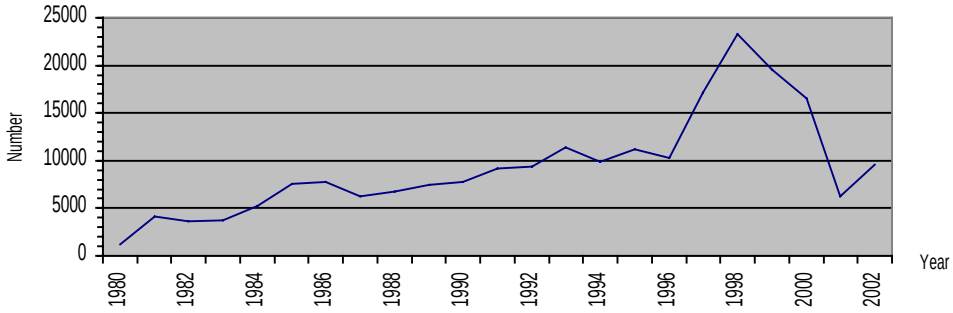
It has the authority to consider, decide or issue orders on the following matters:[29]

- Cases of dispute concerning rights or duty under employment contracts or collective bargaining agreements;
- Cases of dispute concerning rights and duty under the law on labour protection or the law on labour relations;
- Cases in which rights must be exercised through the court under the law on labour protection or the law on labour relations;
- Cases of appeal against decisions of the competent officer under the labour protection or of the Labour Relations Committee or the Minister under the law on labour relations;
- Cases arising from cause of infringement between the employers and the employees due to labour disputes or in connection with work performance under the employment contract;
- Labour disputes that the labour courts are requested by the Minister of Labour Protection and Social Welfare to decide under the law on labour relations.

In the event a question as to whether any case being within the jurisdiction of labour courts or not arises, it is decided by the Chief Judge of the Central Labour Court

[29] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979) , Section 8.

Line Chart: Number of labour cases filed at the Central Labour Court since its establishment.



Source: Information Division, the Central Labour Court.

In respect of labour courts' judges, labour courts must have judges, associate judges on the employers' party and associate judges on the employees' party each in equal number for a quorum to be present for proceedings. The career judges are appointed from judicial officials under the law of judicial service who are knowledgeable and have good understanding of labour problems. Due to the fact that an appeal against judgment or order of the labour court may be made only in the point of law, in practice, labour courts' career judges are, therefore, normally senior judges with strong experience in deciding cases. Labour court professional judges are made up of a chief judge, deputy chief judges, senior labour court judges, labour court judges and a secretary of the Central Labour Court.

Associate judges are directly elected by the employers associations and the trade unions having duly registered their offices located within the territorial jurisdiction of the labour court. They must have the qualifications and not have the forbidden characteristics as follows:[30]

1) Being Thai nationals;
2) Being of legal age;
3) Having domicile or office situated in the territorial jurisdiction of such labour court;
4) Not being bankrupt, incompetent or quasi-incompetent persons;
5) Having never been penalised by imprisonment by final judgment to imprisonment, except for an offence committed through negligence or petty offence;
6) Being persons who have good faith in democratic government under the King;
7) Having never been convicted of an offence under the law on labour protection or the law on labour relations, or otherwise having been released from punishment for a period not less than two years or the period of suspended execution of sentence having expired;

[30] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979) , Section 14.

8) Not being political officials, members of political parties or officials in political parties parliamentary members or members of Bangkok Metropolis Council or members of local councils from election or lawyers.

After being appointed, associate judges must receive training on the matters of labour courts, authority and duties of associate judges and relevant procedures as well as how to conduct oneself as associate judges in accordance with the training rules set forth by the Ministry of Justice.[31] In addition, before assuming office, they must make a vow to the Chief Judge of the Central Labour Court. They shall hold a term of office of two years and may be reappointed to the office after expiration of the office term. Currently, 150 associate judges representing employers and 150 associate judges representing employees perform their duties in the Central Labour Court.

Procedures of the labour court are on the basis of an inquisitorial system. In other words, the labour court obviously plays an active role in finding out real facts of the case and passes its decision based on the finding facts rather than acting as a referee of the contest as being in ordinary civil cases. The labour court, for example, has power to call for evidences as necessary before passing its decision[32], may summon witnesses and take evidence itself as deemed appropriate and the party or the lawyer can examine the witnesses only with approval of the court.[33]

The procedures also provide duty of the court to persuade the party to reach an agreement in order to maintain good relations of the party rather than to adjudicate the party's disputes. The labour court, for instance, must mediate the parties at the first hearing[34] and notwithstanding how far the trial has developed it always has power to mediate both parties for compromise or settlement.[35]

The labour court procedures may be summarized as follows:

1). A plaintiff may file a charge in writing or make verbal allegations in the presence of the labour court. If the plaintiff makes allegation verbally, the court has the power to make investigation as necessary for the purpose of justice and then make a record of the allegation and read it out to the plaintiff and have the plaintiff append his signature thereon.

The employers and the employees may give power of attorney to the employers association or the labour union of which they are members. Furthermore, the employees may ask for legal officials of the Ministry of Labour Protection and Social welfare to take legal action or to make prosecution under the law on labour protection or the law on labour relations on their behalf.[36]

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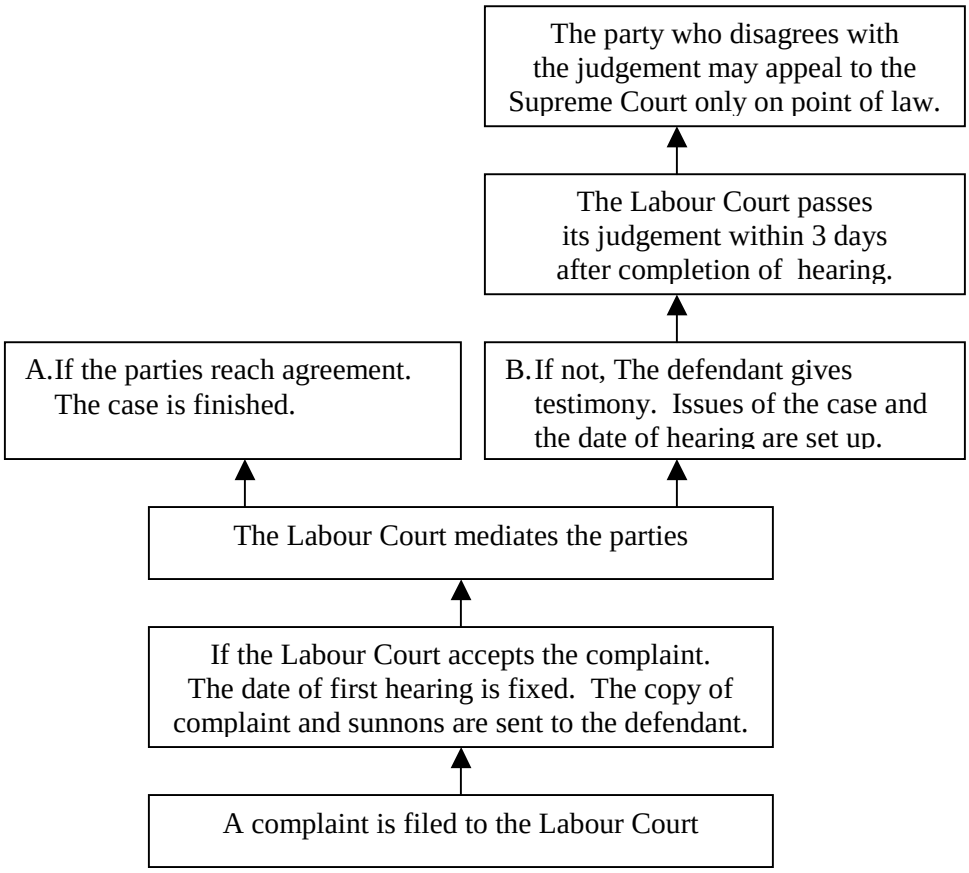
[31] See Regulation of Ministry of Justice relating to orientation of Associate Judges of the Labour Court B.E. 2522 (1979).
[32] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 42.
[33] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 45.
[34] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 38.
[35] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 43.

The labour charge shall be filed with the labour court within whose territorial jurisdiction the cause of the case arises. It is generally assumed that the place of employees' work is the place where the cause of the case arises.[37]

It is important to be noted that the submitting of charges including the execution of any proceedings in labour court shall be excepted from the requirement to pay court fees and costs.[38]

Flow chart of Labour Court Procedures



2) Where the labour court orders the acceptance of a case for adjudication, it shall prescribe the date and time for the first hearing and issue summons ordering the defendant to come to the court by the time fixed. In practice the first hearing is normally fixed within 20 days from the day accepting the complaint.

[36] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 36.
[37] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 33.
[38] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 27.

3) If the plaintiff fails to appear in the court of the first hearing without a notice of such failure, it shall regarded that he/she does not wish to proceed with the case any further and the labour court shall order the disposal of such case from the file.

If the defendant fails to be present at the court without any notice of the reason of such failure, the labour court shall order that the defendant is in default and the trial shall proceed one-sided.[39]

When the plaintiff and the defendant are both present, the labour court shall mediate the parties to come to terms or to reach a compromise.[40] In such reconciliation, where any party make a request or the court deems it appropriate, the labour court may order the execution of secret proceedings in the presence of the parties only.

4) If the parties can reach the settlement, the plaintiff, normally after receiving some money from the defendant, may withdraw the case, or the labour court may pass its judgment according to the parties' settlement. It was found that in 1998 around 55.7% of all cases in the Central Labour Court were finished by the compromise of the parties or case withdrawal of the plaintiffs as a result of the labour courts' mediation.

Table 11: Types of cases finished in the Central Labour Court.

Year	By Judgment	By compromise	By withdrawal	By disposal	By others	Total cases
1995	4,739	3,407	2,473	383	147	11,149
1996	5,525	2,668	2,410	277	620	10,500
1997	5,114	4,738	3,064	684	61	13,661
1998	8,555	8,330	3,964	1,034	173	22,056
1999	7,493	6,316	3,734	883	437	18,863
2000	8,278	6,092	3,739	851	206	19,166

Source: Information Division of the Central Labour Court.

5) In case the labour court has carried out reconciliation but the parties cannot come to terms nor reach a compromise, the labour court shall order the defendant to make a verbal or written testimony. Then, issue of disputes, priority and the date of hearing are fixed by the labour court.

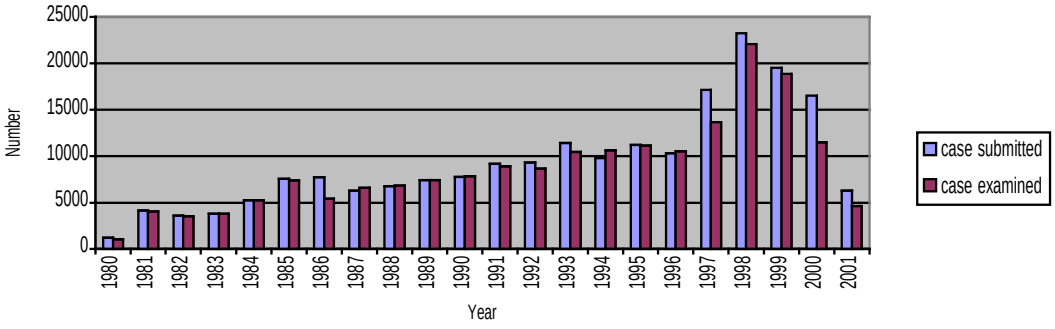
[39] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 40.
[40] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 38.

6) Because Thai labour court procedures rely on inquisitorial basis, the court plays an active role in examination witnesses and investigation real facts of the case. The witnesses, whether they are the witnesses of any party, are directly examined by the court. The plaintiff, defendant and their lawyers are enable to ask questions to the witnesses only when allowed by the court.[41] For purposes of justice in order to acquire the facts of the case, the court has the power to summon witnesses and take evidence as deemed appropriate and may invite the qualified persons or expert give opinion to the court.[42]

According to the act, for speedy proceedings, the labour court shall sit for the hearing continuously with no adjournment except in case of necessity and it shall not make adjournment for more than seven days at a time. However, because of the numerous labour cases submitted in each year and the lack of labour courts' judges, the adjournment, in practice, is often made more than as stated by the law.

7) After having examined witnesses as deemed necessary, the labour court shall read its judgment or order within three days from the completion of the adjudication.[43] The judgment or order is based on majority vote. It must be made in writing and must mention or show the facts in brief and the determination on the point of the case together with the reasons of such decision. In terms of statistical data, in 1998 around 38.7% of all labour cases filed at the Central Labour Court were adjudicated by the court.

Bar chart: Labour cases filed and already examined by the Central Labour Court in each year since its establishment.



Source: Information Division of the Central Labour Court.

8) The party who does not satisfy with the labour court's decision may appeal against the judgment or order only on the point of law to the Supreme Court within fifteen days from the date of the judgment or order reading. In 1998 around 20.1% of labour cases adjudicated by the Central Labour Court were appealed to the Supreme Court.

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[41] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 45.
[42] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 45, 47.
[43] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 50.

Table 12: Number of appeal against judgment of the Central Labour Court during 1995-2000.

Year	Total cases	Cases adjudicated by the CLC	Number of appeals
1995	11,202	4,739	414
1996	10,327	5,525	2,879
1997	17,140	5,114	730
1998	23,236	8,555	1,724
1999	19,509	7,493	2,966
2000	16,533	8,278	3,280

Source: Information Division of the Central Labour Court.

The labour division of the Supreme Court considers the case from the facts determined by the labour court and give its judgment or order of the case without delay. In the case the facts heard by the labour court are insufficient to determine in the question of law, it shall order the labour court to hear additional facts and send the file back to the Supreme Court without delay. The Supreme Court's decision is final and binding the parties involved.

4. Case study

This section provides case study that illustrates mechanism of labour disputes settlement in respect of labour contracts, industrial accident and labour unions.

4.1 Labour contract

Labour disputes regarding overtime pay between The Domon (1987) Company Limited and the Labour Inspection Official.

A female employee had worked as retailer and cashier with the employer since February 1999. Her monthly wages was 5,000 bath and her regular working times were 6 days a week during 10.a m – 8 p m with one hour of daily rest period. During October 1999 to February 2000 the employee was sent to perform her duty at various employers' branches in Bangkok Metropolis. She thought that she was entitled to be paid overtime pay as a result of her performance. Then, on June 7, 2000 the employee filed a grievance to the labour inspection official at the Office of Labour Protection and Welfare (Patum Wan Area) for being paid overtime by her employers.

After receiving the grievance the official endeavoured to conciliate the parties but the parties could not reach settlement. The employer insisted that the employee was not entitled to be paid overtime pay. The labour inspection official investigated evidence concerned and then issued an ordinance of labour inspection official No 25/2544 dated 3 August 2000 commanding the employer to pay 11,515 bath of overtime pay to the employee within 15 day from the date of receiving the order.

The employer disagreed with the labour inspection official's order. On September, 26, 2000 the complaint for order's revocation was submitted to the Central Labour Court by the employer. The Central Labour Court examined the complaint and accepted it. The copy of complaint and summons were sent to the labour inspection official and the date of first hearing was fixed on October, 15, 2000. At the first hearing the parties could not reach the compromise and the case was postponed due to the defendant wished to appoint an attorney. The next hearing in November 2000 the employee appeared at the court as co-defendant and the parties were able to reach the settlement. The Central Labour Court passed the judgment according to the parties' agreement.[44]

4.2 Workers' compensation

Labour disputes in respect of workers' compensation between Mr Pan Santikul and The Commission of Workers Compensation Fund.

The employee, Mr Pan Santikul, worked as a branch manager of The Thai Samut Commerce and Insurance Limited Company at KhonKhan Provice. On November, 12, 1997 after finish his

[44] The Central Labour Court's Judgment Red cases No 7803/2544.

regular work the employee visited employer sale representatives and was injured during his return to the branch office. The employee, on August, 11, 1998, submitted a request to Khon Khan Social Security Office for receiving workers compensation as stated by the Workers Compensation Act B.E. 2537 (1994). The workers compensation official refused to pay workers compensation by the reason that the accident occurred after the end of employee's working time.

The employee filed an appeal against the order of workers compensation official to the Commission of Workers Compensation Fund. After that on June, 4, 1999 the commission issued the decision that the employee's injury did not cause from performing his duty due to the accident arose after the end of daily working time.[45] The employee submitted the complaint against the commission to the Central Labour Court on July ,20, 1999 for repeal the commission's decision.

The complaint was accepted by the Central Labour Court and the first hearing was fixed on October, 15, 1999. However, the first hearing was postponed because the defendant did not receive summons. In the next hearing, November, 18, 1999, the court mediated the parties concerned but they could reach a compromise. The defendant gave a written testimony. Issues of the case were established by the court. The major issue of the case was whether the employee was injured in cause of employment. After examining all evidence involved in three hearings, the Central Labour Court passed the judgment on March, 17, 2000 that the employee was injured in cause of employment and entitled to be paid workers compensation by the Workers Compensation Fund.[46] The judgment was appealed against by the defendant on the question of law to the Supreme Court. The Labour Division of Supreme Court upheld the lower court' decision. The employee was then paid workers compensation by the Workers Compensation Fund.

4.3 Labour union and collective bargaining agreement

Labour disputes between Thai Durable Textile Workers Union and Thai Durable Textile Public Company Limited.

Thai Durable Textile Public Company Limited is a garment factory undertaking spinning thread and weaving fabric, situated in Samut Prakarn Province with 1,800 employees mostly female. On February, 15, 2000 its union submitted an allegation demanding the employers to vary the collective bargaining agreement in respect of, among other things, the increase of annual wages and bonus. A week later the employers submitted their request against the union for altering the collective bargaining including the increase of wages and bonus by employers' discretion. Twice negotiations were convened but the parties could not reach a compromise.

The union informed the arising of labour dispute to the labour dispute conciliation official at Samut Prakarn Labour Protection and Welfare Provincial Office. The official was unable to persuade the parties to reach settlement within 5 days from the date of being informed. Since

[45] Report of the Commission of Workers Compensation Fund No 11/2542 dated 4 June B.E.2542.
[46] The Central Labour Court Judgment Red cases No 2728/2543.

May, 30, 2000 the union had taken an industrial strike against the employers while the employers had carried out layoff against their employees taking part in the strike since May, 31, 2000. During the strike, union's members were injured by unidentified persons. The industrial strikes were carried out both in the employers' establishment and in public, including at the government house and the Ministry of Labour Protection and Social Welfare. Although the employers revoked the layoff on June, 9, 2000 the labour disputes continued and trended to be harmful to the public. After 6 times of mediation conducted by labour dispute conciliation officials and 12 times of conciliation organised by Department of Labour Protection and Welfare the labour dispute was still unable to be resolved.[47]

For the purpose of public interest, on October, 26, 2000 the Minister of Ministry of Labour Protection and Social Welfare issued an order, according to Section 35 of the Labour Relations Act B.E.2518 (1975), commanding the union to finish its strike and the employer to take their employees back to work together with referring the labour dispute to the Labour Relations Commission for compulsory arbitration.[48] The commission held on 12 January 2000 that the employers had to increase 3 bath of daily wages to the employees and had not to pay bonus due to economic reason.[49] This case reflects framework of labour dispute resolutions in terms of compulsory arbitration for the purpose of public interest.

[47] Department of Labour Protection and Welfare, *Labour Review in Thailand*, Vol.19 No 3 (July-September 2000) pp. 25-26.
[48] Ordinance of Ministry of Labour Protection and Social Welfare No233/2543 dated 26 October B.E.2543 (2000)
[49] Award of the Labour Relations Commission No 1/2544 dated 12 January 2000.