
A COMPARISON OF LABOR ARBITRATION PROCEDURES IN THE U.S. AND CHINA

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ABSTRACT

The purpose of this paper is threefold: 1) compare the labor arbitration procedures of the U.S. and China; 2) identify labor issues that may be problematic for China in the future; and 3) recommend how China may address future workplace problems in its emerging economy. It is generally accepted that American labor arbitration is not a perfect process, but it is a reasonable Alternate Dispute Resolution (ADR) Procedure. More importantly, it is less expensive than litigation, and it provides finality to workplace disputes. In the volatile industrial economy of China, one could reasonably expect that there is the potential for future labor disputes that may seriously affect its economic growth and prosperity. Therefore, a proactive strategy for managing the concerted activities of the workers and the subsequent labor disputes is of utmost importance to the economic welfare of China and to foreign investors. The massive workforce and the steady flow of rural workers to highly industrialized urban areas not only provide cheap labor but also the potential for labor unrest. To assure its future in the global economy, China must prepare a sound labor relations strategy that minimizes workplace disputes and keeps labor unrest at a minimum. Accordingly, this paper will posit how the present Chinese laws and regulations may best be utilized to meet that objective.

INTRODUCTION

This paper will compare the major differences between arbitration procedures in the U.S. and in China, and it will make general recommendations for any improvements in the Chinese system. As China becomes more capitalistic, economic theory suggests that the prosperity of this country will have a significant dependence upon the productive use of human capital. This dependence can best be managed by maintaining a peaceful workplace that is free of crippling labor disputes. Although the U.S. labor arbitration procedure is not perfect, it is an established and effective system by which nearly all U.S. collective bargaining agreements in both the private and public sectors are enforced with minimal labor unrest (Budd, 2005, p. 333). The key to the success of most collective bargaining agreements is the use of a well-defined grievance procedure

that ends with voluntary final and binding grievance arbitration. This Alternate Dispute Resolution (ADR) procedure is well accepted by both employers and the unions for resolving disputes over negotiated rights in the workplace. The general consensus is that workplace problems would likely be significantly more prevalent and worker discontent significantly higher if grievance arbitration were not available or were not so consistently applied in nearly all unionized workplaces of the U.S. Thus, the U.S. economy has been more stable than volatile, and the economic health of the country has remained overall good, as the result of few serious workplace disruptions. If an organization establishes a collective bargaining agreement, it uses grievance arbitration as the final step in nearly all disputes. There are few exceptions to this rule of using grievance arbitration. Therefore, it is arguably more likely than not that, without the wide acceptance of this well-tested ADR procedure, labor unrest in the U.S. would be much greater.

Every organization has unique workplace problems, and these problems must be addressed in a manner acceptable to both the employers and the unions. Moreover, most workplace problems can be minimized if the parties participate in some form of formal or informal dialogue with one another. Providing an outlet for complaints while permitting production to continue is one way to increase productivity (Fossum, 2006, p. 434). In this regard, a review of Chinese laws and workplace customs suggests that China has successfully utilized several ADR procedures, and all of these strategies have shown some degree of success. However, in the case of using labor arbitration as an ADR strategy, the differences between the procedures of each country are generally quite disparate. Essentially, the U.S. labor unions do not defer to management any contentious issues, unlike Chinese labor unions (Carrell & Heavrin, 2007, p. 566). More importantly, the various Chinese labor laws and especially their political structure tend to favor the process of mediation over arbitration (even when the law suggests arbitration). Therefore, a critical comparison of American labor arbitration procedures and Chinese labor arbitration procedures will provide insight into how China may better adapt its arbitration system as this country addresses workplace disputes in its emerging economy.

In the U.S., collective bargaining is considered the first phase of any labor dispute resolution process and binding grievance arbitration is considered a final last phase. In between these two points, the ADR procedures of fact-finding, mediation, and conciliation are intermediate steps that are frequently used successfully to settle workplace disputes both in the U.S. and China. These strategies work well in many instances. However, the dynamics of some organizations require the unique features of final and binding grievance arbitration in order to end disputes. On the surface, labor arbitration appears to be similar in style and effectiveness in both countries. However, a primary difference between the two versions is that labor arbitration in China generally does not have the same immediate finality as does the process in the U.S. In the Chinese version, the current form of labor arbitration cannot be considered final and binding because either party can appeal to the People's Court, according to Article 79 (Labor Law, 1994). Moreover, the majority of future arbitrations are not going to be final, even under the new arbitration law that will take effect on May 01, 2008, since this new law continues to allow parties to seek litigation after the final arbitration award (Articles 47,

48, 49, Law on Labor Dispute Mediation and Arbitration of 2007). More importantly, the Chinese form of arbitration mandates: "The principal of mediation shall apply to the procedures of arbitration and lawsuit" (Article 77, Labor Law of 1994). These are significant differences between the two approaches because, while the U.S. attempts to end disputes, China permits an appellate process to ensue. Consequently, since the Chinese arbitration system is generally subject to court review, there is scant opportunity to provide finality to a labor dispute, without ultimately utilizing litigation.

U. S. LABOR ARBITRATION

U.S. labor arbitration is a quasi-judicial process in which the parties agree to submit unresolved disputes to a neutral third party for binding settlement, and arbitration in the U. S. comes as a result of a collective bargaining agreement. A basic tenet of labor arbitration is that a qualified third-party neutral will be able to look at the disputed issue objectively and fashion a reasonable remedy based on the merits of the dispute. Since most U.S. arbitrators are certified only after meeting rigid standards by various governmental and non-governmental agencies, both employers and unions generally consider the arbitration process to be an appropriate mechanism for dealing with workplace disputes. When employers and unions mutually agree by contract to arbitrate their differences, it is called voluntary arbitration. In examining this part of the process, it is important to note a distinction between "rights disputes" and "interest disputes." Disputes as to rights pertain to the interpretation of a workplace agreement, whereas disputes as to interest involve the establishment of the basic terms and conditions of employment (Elkouri & Elkouri, 2003, p. 108). Therefore, rights arbitration involves both the interpretation and enforcement of established terms and conditions of employment, as defined by an already established collective bargaining agreement. In addition, rights arbitration is referred to as grievance arbitration because it comes after a grievance procedure. On the other hand, interest arbitration involves formulating a written collective bargaining agreement that the parties mutually agree to follow for a specified period of time. Logically, interest arbitration would occur before the rights arbitration, in order to establish the framework for rights arbitration. The most appropriate use of interest arbitration in the U.S. is in the public sector area, in which employees have limited options to bring economic pressure (i.e., strikes or walkouts) against the employer.

In the present-day U.S. system, the majority of arbitration cases involve the adjudication of rights disputes over existing collective bargaining agreements, in which the parties have agreed to final and binding arbitration. This rights arbitration or grievance arbitration is the most widely accepted system of ADR throughout most major U.S. workplaces. This format continues to be the choice of parties to resolve intracontractual differences that cannot be negotiated or mediated (Fossum, 2006, p. 459). The legal view of this form of ADR is that labor arbitration is a substitute for court litigation because experts in the field of arbitration know the law of the workplace more thoroughly than judges do. Consequently, not only is arbitration less costly than litigation, but it is also an effective means by which to prevent disruptions in production due to labor unrest. Since U.S. courts generally refuse to hear labor disputes, the use of an ADR procedure reduces relying on time-consuming formal litigation or suffering

from costly strikes. Even the U.S. Supreme Court acknowledges that arbitration, rather than court litigation, is the superior method of resolving disputes under collective bargaining agreements because such judgments are usually not within the competence of courts (Elkouri & Elkouri, in Ruben ed., 2003, p. 11). Furthermore, courts generally refuse to review the merits of an arbitration award, unless there are serious concerns about the arbitrator's competence or ethics (Carrell & Heavin, 2007, p. 482).

The system of grievance arbitration works well because the parties have confidence that the internal procedures will put an end to most workplace disputes that result from the interpretation of a collective bargaining agreement. In unionized workplaces, the grievance rate is approximately 10 per 100 employees but no more than 2.5 of them even go to arbitration (Fossum, 2006, p. 419). In addition, the process has an extensive, well-trained cadre of non-governmental, third-party neutrals to hear and decide individual cases, no matter what the nature of the dispute happens to be. New arbitrators are placed into the system through training and apprenticeships, and the system provides a pool of experts in nearly every conceivable area in which the employer and union may disagree. Moreover, these third-party neutrals are private consultants that the parties hire. The fee of the arbitrator usually is split between the employer and the union. Thus, the parties select an arbitrator to hear the contractual issues related to their particular dispute from among a panel of usually five well-qualified arbitrators that is provided by an agency of the parties' choosing. The agency is sometimes governmental and sometimes private; however, the parties decide before each dispute which agency will supply the arbitrator and what qualifications that particular arbitrator must have.

In addition, the labor arbitrator is granted only the power necessary to interpret and apply meaning to the current collective bargaining agreement because both parties have negotiated the extent of that power into their collective bargaining agreement. Since the parties have previously agreed to abide by the ruling for that specific workplace (voluntary arbitration), the arbitrator issues a final and binding award which generally cannot be appealed in a court. Thus, the dispute is reviewed by a neutral third-party expert, who is paid by the parties and who will reach a final and binding decision for only that dispute. Conversely, no such limitations are placed on Chinese arbitrators. In addition, Chinese arbitrations are normally conducted by three arbitrators (Article 31, Law on Labor Dispute Mediation and Arbitration of 2007) who may or may not be an expert on the disputed issue. More importantly, the parties do not pick their own arbitrators; normally, the arbitrators are appointed by the arbitration committee, and this entire process may be subject to political influence.

The agreement to arbitrate disputes is normally in exchange for a no-strike or a no-lockout clause in the parties' collective bargaining agreement (Budd, 2005, p. 333). Due to forced negotiations brought about by a multi-step grievance procedure, only a fraction of the grievances ever reach arbitration. Thus, the vast majority of disputes in the U.S. system are handled internally without the need of an arbitrator. Employers and unions specifically design an appropriate number of steps into the grievance procedure so that nearly all workplace disputes can be resolved without outside intervention. Moreover, when arbitration is required, only a fraction of those awards ultimately end

up in litigation because, as previously mentioned, the courts refuse to review the merits of an arbitration award. Therefore, the final phase of the grievance arbitration process, wherein the parties try to resolve workplace problems by consulting a qualified, neutral third-party, has generally been successful in securing more timely and more meaningful settlements of workplace disputes. Of course, the process requires constructing well-defined, time-dependent steps, with the final step being binding arbitration. Once the arbitrator rules, the parties consider the dispute settled and no strikes or lockouts occur that would interfere with production.

Although the U.S. arbitration system is firmly established and satisfies both parties as a worthwhile dispute-resolution mechanism, no ADR procedure is perfect. For instance, the procedure can sometimes be slow because the collective bargaining agreement may require a lengthy timeline for negotiating a settlement in the grievance procedure; also, there may be difficulty in finding a mutually-agreeable date for a hearing because schedules of the arbitrator, the employer, and the union may conflict. Moreover, the arbitrator must interpret the collective bargaining agreement if it is vague and ambiguous and, because of which, may have precipitated the dispute in the first place. When this happens, the “rule of reasonableness” must prevail to prevent an unreasonable, harsh, absurd, or nonsensical result (St. Antoine, 2005, p. 81). Moreover, the arbitrators’ decisions are based on the “Common Law of the Workplace” and that also can be subject to different interpretations among all of the parties (Budd, 2005, p. 335). Nevertheless, grievance arbitration works well overall and provides a solid ADR mechanism for resolving workplace disputes. On balance, both opponents and proponents are relatively satisfied with the system (Fossum, 2006, p. 461).

CHINESE LABOR ARBITRATION

With a rapid expansion of its economy in the global marketplace, China is carefully evaluating its strategies for addressing workplace disputes. Various efforts by the Chinese government signal its belief that unrest in the workplace can be mitigated by giving a voice to employees through a contract-based arbitration process (Fox, Donohue, & Wu, 2005, p. 22). However, in order to understand the manner in which China administers its arbitration system, a review of some of the applicable laws and regulations related to labor arbitration is necessary.

Modern Chinese labor relations essentially began in 1986 when China first initiated a labor contract system that permitted labor contracts in all state-owned enterprises. Later, the statute, “Labor Law of 1994,” which covers a wide range of employment issues, required employers to conclude their recruitment of employees with written labor contracts. As a result, a governmental system to encourage collective contracts emerged. Article 33 of this statute stipulates that a collective contract should be signed jointly by the union representatives and by the enterprise. More importantly, employees may engage in consultation with that enterprise, through trade union representatives, in regard to working hours, rest times, vacation, and issues involving safety, hygiene, insurance, and welfare (Labor Law, 1994). Therefore, it is not unusual to have labor contracts and some form of collective bargaining in Chinese workplaces. The All-China Federation of Trade Unions reported that 49% of the total employees in China

are currently covered by collective contracts. The Federation's party secretary, Zhang Qiuqian, said in a news conference of May 24, 2007, that there were a total of 862,000 signed collective contracts in 2006 that involved 1.538 million enterprises and covered 112.455 million employees (Zhang, 2007).

On November 8, 2000, the Ministry of Labor and Social Security released the "Probationary Methods on Collective Bargaining of Wages," a statute that requires both the employer and the employees to sign a special supplementary collective contract on wage issues. For those parties who already had signed a collective contract, an agreement on salaries became appropriate to combine with that contract, and it had the same legal effect as the collective contract (Ministry of Labor and Social Security, PRC, 2000). With this legislation, the Chinese government attempted to protect worker rights, especially their wages. A more specialized collective contract statute was enacted on January 20, 2004, by Ministry of Labor and Social Security, PRC, called the "Collective Contract Statute", to regulate collective bargaining and collective contract for enterprises and institutions (Collective Contract Statute, 2004).

China's first arbitration law took effect in 1990 when the China Ministry of Justice promulgated a fundamental approach to arbitration called the "Method of Mediation on Civilian Disputes." In 1993, the "Regulation of the People's Republic of China on Settlement of Labor Dispute in Enterprises" was developed for settling the labor disputes of all enterprises, institutions, and government units. Following that legislation, the "Arbitration Law of 1994" (Article 2) required that contract disputes between employers and workers use arbitration. This law attempts to use arbitration as a final step, even though Chinese arbitration is seldom as final and binding as arbitration in the U.S. Article 5 of the Arbitration Law attempts to limit the mechanism for appealing arbitration cases only to those in which the "agreement is invalid" because one party or the other makes that claim. Therefore, such arbitration cases are routinely appealed in the People's Court. Also, Article 9 recommends only "one ruling" and, after that one ruling is made, if a litigant files another application for arbitration or brings a lawsuit in the People's Court over the same dispute, the arbitration commission or the People's Court is not supposed to accept it. Nonetheless, non-compliance with the arbitration verdict simply takes the case forward to the People's Court (Articles 50 & 51, Law on Labor Dispute Mediation and Arbitration of 2007). Thus, the arbitration decision under this legislation is not final and binding but, rather, a prelude to the appeal procedure requiring more litigation. Consequently, this process can lack a timely resolution of disputes, thereby causing unnecessary tension in the workplace – a situation that is usually eliminated through final and binding arbitration.

The administrative structure of labor dispute arbitration in China has three components, as provided by the "Law on Labor Dispute Mediation and Arbitration of 2007": the arbitration committee, the office of the arbitration committee, and the arbitration court where the dispute is heard. The arbitration committee is organized by the government and is a specialized institution that handles only labor disputes. An arbitration committee is only responsible for disputes occurring in its area of governance (usually geographic, both at the county and city levels). There is no administrative hierarchy among arbitration committees (Article 17, Law on Labor

Dispute Mediation and Arbitration of 2007). The arbitration committees are tripartite, consisting of employee representatives, union representatives, and enterprise or employer representatives. The members of this tripartite group constitute a coordination organ to conduct communication and consultation on major problems relating to labor relations, and to put forth suggestions on the drafting of labor and social security regulations that concern the interests of the three parties. The arbitration committee then establishes an administrative office to deal with its routine affairs (Article 19). Finally, the arbitration court, consisting generally of three arbitrators, is the origin of arbitration decisions or the place where awards are ultimately made (Article 31).

In August 2001, the Ministry of Labor and Social Security, All-China Federation of Trade Unions, and China Enterprise Association jointly established the State Tripartite Conference System of Labor Relations Coordination, and convened the first national tripartite conference of labor relations coordination, setting a standard and stable operating mechanism for China's labor relations coordination. Subsequently, all provinces and most cities established their own tripartite coordination mechanisms. At the end of 2006, there were a total of 8,030 Tri-party organs established (Ministry of Labor and Social Security, 2007). More importantly, the statute attempts to maintain a high quality of Chinese arbitrators. The "Arbitration Law of 1994" (Article 13) requires that members of an arbitration committee be "fair minded and respectable" and satisfy *one* of the following characteristics:

- Have eight years of arbitration experience
- Have experience in law for eight 8 years
- Must have served as a judge for eight years
- Must have studied law or been involved in educational work and now have a senior professional title

The "Law on Labor Dispute Mediation and Arbitration of 2007" becomes effective on May 01, 2008, and is intended to improve previous regulations for the following reasons:

- 1) The application deadline is increased for arbitration from 60 days to one year (Article 27) and that gives workers more time to consider their choices and countermeasures.
- 2) Specific cases are identified and made subject to the final and binding arbitration under the following conditions (Article 47):
 - i. Disputes over salaries, work injury medication fee, economic compensation with the amount less than the total amount of twelve month's salary calculated on the local minimum wage.
 - ii. Disputes over execution of the national standard on work hours, break or vacation, and social insurance etc.
- 3) There is no charge for arbitration and the arbitration committee is financed by the local government (Article 53).
- 4) The processing time for arbitration cases is shortened from 60 to 45 days (Article 43).

- 5) Workers under the appointment system with the Chinese public institutions are now permitted to settle their labor dispute issues (Article 52).

At this point, there seems to be many differences between the “Regulation on Settlement on Labor Dispute in Enterprises of 1993” and the “Law on Labor Dispute Mediation and Arbitration of 2007.” However, the new legislation will be too current and, therefore, untested for consideration in this paper regarding what its eventual impact may be on labor arbitration.

CURRENT CHINESE ARBITRATION PROCEDURES

In the “Labor Law of 1994” (Article 84, p. 15), it states: “Where a dispute arises from the conclusion of a collective contract and no settlement can be reached through consultation by the parties concerned, the labor administrative department of the local People’s Government may organize the relevant departments to handle the case in coor-

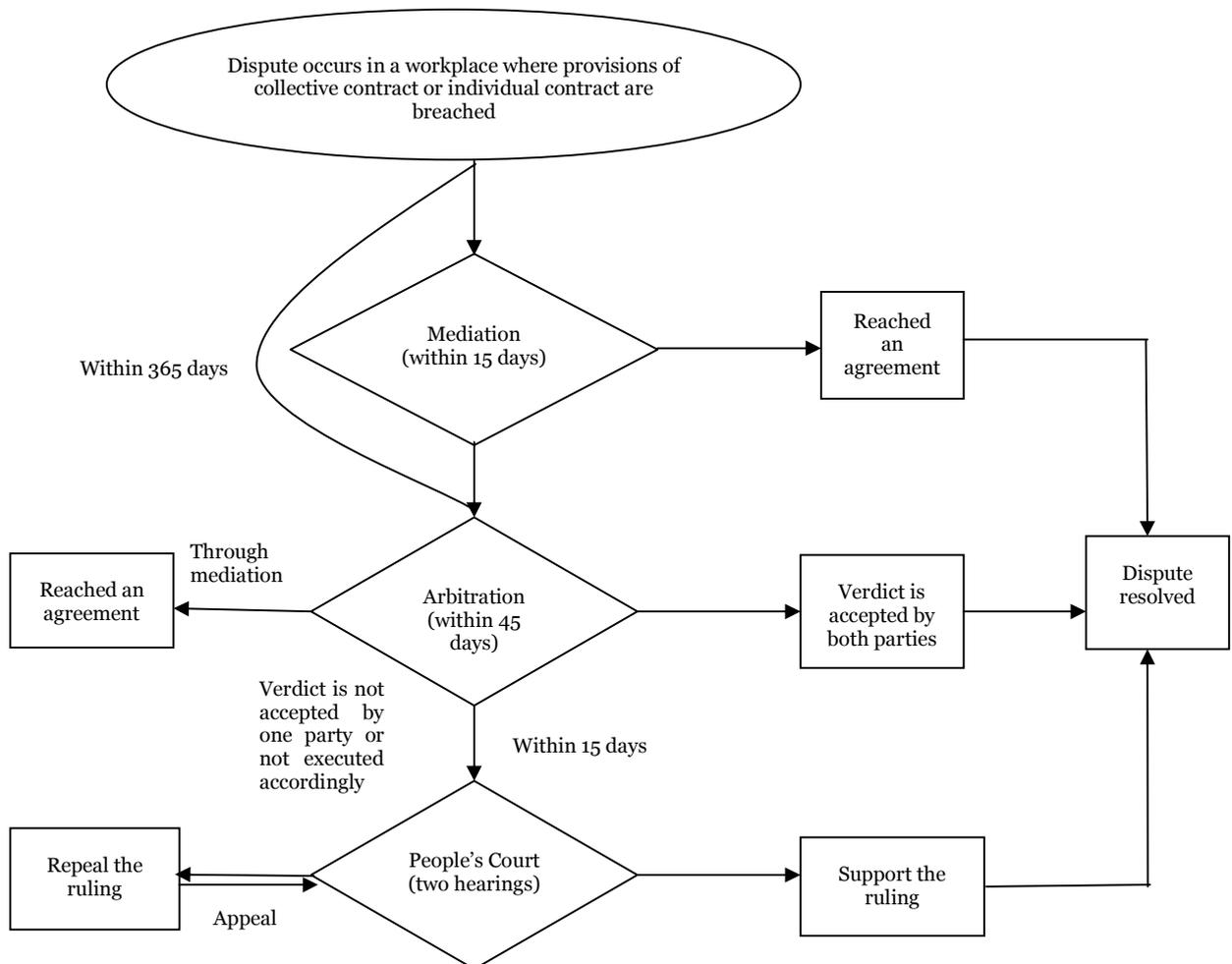


Figure 1: Chinese Labor Mediation/Arbitration Process

dination.” In Article 84, it also states: “Where a dispute arises from the implementation of a collective contract and no settlement can be reached through consultation by the parties concerned, the dispute may be submitted to the labor dispute arbitration committee for arbitration. Any party that is not satisfied with the adjudication of arbitration may bring a lawsuit to a people’s court [sic] within 15 days from the date of receiving the ruling (p. 15). Figure 1 above shows the basic procedure of arbitration in China. Under such circumstances, the procedure is quite different from the U.S. grievance arbitration system because it is offered to the People’s Court for a final and binding decision.

CONCERNS IN THE CHINESE SYSTEM

The authors have concluded that the basic problem with the Chinese system in the past has been that it attempts to address workplace disputes more through conciliation or mediation than through grievance arbitration. In spite of the process being referred to as arbitration, it is more accurately a combination of the other forms of ADR. The newly issued Arbitration Law of 2007, effective May 01, 2008, attempts to address some of the basic problems in the arbitration system. However, there are several areas in which China may want to improve its general approach to the labor arbitration procedure, in order to better utilize its workforce and avoid the possibility of lengthy and disruptive labor disputes. The authors identified the following five important areas of concern in the Chinese arbitration system:

System Concerns

The roles of the Arbitration Committee and the Arbitration Court are ambiguous and ill-defined. The ambiguity is obvious in the Arbitration Law (Article 20, Clause 1, 1994). It states: “Disputants who dissent the arbitration agreement, may request the arbitration committee for a verdict or may request the People’s Court to make a verdict.” In other words, a verdict should be made by the arbitration committee, not pushed to the arbitration court or the People’s Court. In the authors’ opinion, this dual jurisdiction means that the actual decision maker in labor disputes is ambiguously defined, and this unclear designation of power could cause settlement problems in the future.

Government Involvement

Government intervention is prevalent at all levels of the dispute procedure, thus making the outcome less favorable for workers than it might be otherwise. The “Arbitration Law of 1994” in Article 12, Clause 2, states: “The director, deputy directors, and members of the arbitration commission shall be held by legal, economic or trade experts and persons with working experience. Legal, economic or trade experts shall make up at least two-thirds of the arbitration commission.” However, at the same time, Article 10, Clause 2 allows the people's government to organize relevant departments to form the arbitration commissions. This gives the government administrative power over the establishment of the committee, thereby permitting political influence over the operation of arbitration committees. Such influence may not serve the best interests of the workers and, in the opinion of the authors, may become the basis for continued and unnecessary workplace unrest. Unfortunately, the new mediation and arbitration law

still prescribes involvement of local governments in labor arbitration process and labor arbitration committees (Articles 18 & 19, Law on Labor Dispute Mediation and Arbitration of 2007).

The Problem of Finality

Even though a certain number of workplace disputes are resolved through the process of arbitration, a significant number of them end up in the People's Court. Tong (2005) offered the following statistics: there were a total of 688,000 labor dispute cases processed by all levels of arbitration committees in China from 1998 to 2002, while there were 420,000 labor dispute cases heard in the People's courts. In 2003, the arbitration committees settled 226,000 labor dispute cases, while the People's courts settled 137,656. By the end of 2006, the total labor dispute cases received by all levels of arbitration committees reached 447,000, 9.9% higher than that of 2005. Among them, 130,000 cases were settled by mediation; 317,000 cases were handled through the arbitration process, involving 680,000 persons. Among the arbitration cases, 140,000 were collective labor dispute cases involving 350,000 persons (Ministry of Labor and Social Security PRC, 2000). According to the 2007 work report of the China National Supreme Court, in 2006 the number of cases that went to courts after arbitration was 180,000, about 40% of total cases in arbitration. Although the "Arbitration Law of 1994" (Article 4 to Article 9) attempts to provide final and binding rulings, researchers argue that the current arbitration system (i.e., that is effective until May 01, 2008) fails because the process provides only an unfinished part of the dispute resolution process, thus becoming an intermediate step toward litigation. The lack of finality weakens the authoritativeness of labor arbitration (Zhou, 2003, p. 16). The situation may get better after the "Law on Labor Dispute Mediation and Arbitration" becomes effective in May of 2008 because the shortened processing time of arbitration (Article 43) and the removal of arbitration fees (Article 53) may prevent the worker unrest indicated in Tong's article (2005). Nonetheless, the authors still contend that the arbitration commission should play a major role in the dispute resolution process, whereas the People's Court should defer all workplace disputes to this agency.

Trade Union Concerns

Both Zhang-White and Shi (in Fox et al., 2005, p. 20) found that the arbitration process in China today is not well supported by the trade union movement since the union leaders do not have job protection, and their major responsibility is to smooth relations. The increasing unrest in China's workplaces is the result of the strong economic expansion and structural change of that country. The China Labor Movement Observation Report 2005-2006 (China Labor Bulletin, 2007) suggests that the major reason for worker unrest is the absence of trade unions or malfunctioning of the trade unions (meaning the absence of a voice in the process). It also suggests that there would be less labor unrest if trade unions represented a broader spectrum of employee interests and were more actively involved in the formation of collective bargaining agreements. More importantly, employees would have benefited if trade unions had been more of an advocate as permitted in the Trade Union Law (China Labor Bulletin,

2007). The authors concur that trade union officers must be elected by the workers and then protected by tough government legislation.

Social Implications

The present labor laws, arbitration laws, and the trade union laws need to be better explained to Chinese workers since the majority of them are illiterate. The rate of illiteracy is estimated to be less than 12% in Beijing and other large metropolitan areas, but about 40% or more in the rural areas of China (Lin, 1997, p. 68). Of course, the outcome is obvious in cases where illiteracy abounds. If large numbers of workers cannot read the laws and regulations, cannot calculate overtime payment and wages, and cannot fill out an application, they will have great difficulty securing their rights under a contract without proper leadership. In addition to prevalent illiteracy, all workers are hampered by the inaccessibility of educational materials related to workplace laws, especially worker-rights resources. According to a 2006 statistical report from the Ministry of Labor and Social Security, the total number of labor disputes processed was 447,000, involving 680,000 workers. Since China has a workforce of 300 million workers, the number of workers being helped by the present system seems to be meager. Therefore, it is the opinion of the authors that accessibility to resources and representation by knowledgeable advocates for the workers is a growing need in China.

SUMMARY AND CONCLUSION

The authors recommend that Chinese labor relations be enhanced by the strict enforcement of current labor laws and the consideration of new, more protective laws related to trade union representation. There must be a balance of power between the employers and the workers. More importantly, every workplace must be encouraged to establish collective bargaining agreements that will first address workplace grievances in a timely manner. Most of the legal framework and public policy are already in place, but they either need to be strengthened or interpreted as originally designed (or as indicated by their title). It is an obvious fact that employers and workers must live and work in harmony in order for China to grow and prosper economically. Therefore, the authors recommend that there must be timely closure of all labor disputes. When disputes remain unresolved after the failure of intermediate ADR procedures, they must be settled quickly through final and binding voluntary arbitration, not litigation. If disputes are allowed to linger in the court system, the workplace problems will only become worse over time. Therefore, a mechanism for providing a timely and fair solution to employee problems will booster worker morale and ultimately generate higher productivity.

It is imperative that a representative group from the workers, acting as advocates for the workers, help formulate the collective contract. And, these worker representatives must be protected and have the power equal to their employer counterparts in the enterprise. Moreover, the employer must be encouraged to initiate programs that not only help the employer, the city, or the government, but also help and protect the life blood of the enterprise, that is, the workers. To this end, the workers must be part of the process that initially establishes a collective contract, and they must

have representation in the process of adjudicating their disputes through a grievance system that requires final and binding arbitration as the ultimate resolution mechanism. Therefore, the arbitration committee concept must be further strengthened so that the decision made in arbitration is not appealed in the People's Court. More importantly, the arbitration committee must be free of any political influence and the arbitrators must be truly neutral in every sense of the word, although the authors are doubtful that it is possible under the current laws or even under the new arbitration law to take effect in May, 2008.

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