

Study on the building of harmonious labor relations under China's Labor Contract Law

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□ The concept and criteria of harmonious labor relations

What is harmonious labor relations? Currently there are different opinions. In my opinion, a harmonious labor relations should include three basic features. First, the two parties of the work have common interests and can cooperate with each other. They treat equally with each other, living in harmony, do what they can do, and gain what they deserve. Second, the operation system of the labor relations can be achieved fairly and standardly. Third, the coordination manners should have liberalization, as well as in a market-oriented way.

What criteria are used to judge a harmonious labor relations? In September, 2006, an enterprise with a harmonious labor relations in Zhejiang Province was judged by the following contents: labor contract, labor protection, the wage system, protection of special employees, social security, labor security and health, labor disputes and settlements, the Trade unions system, enterprise democracy, vocational training and so on. He qiu shuo(2005) regards that, we can start our judgement from the following three aspects, that is the employment rate and the wage level, the employment environment and the protection level, and the future of the employees and the democracy level. Therefore, we can judge from the contents of labor contracts, employment training, wage, working conditions, working hours, social security, as well as the Trade unions, the rate of labor disputes, and economic benefits and culture. In my opinion, I agree with Jiang ying(2006), who recognizes that, a harmonious labor relations should be judged from three levels, i.e. individual labor relations, collective labor relations and social labor relations.

A harmonious individual labor relations is a state that employees can sign labor contracts on their own willings, working conditions and standards can be realized easily, the rights of economy, democracy and development can be achieved, and "decent work" can also be gained. We can judge from the self-employment rate, the index of employment discrimination, the satisfaction of labor contract, the rate of work injury, the coverage rate of the social insurance, the satisfaction of employees' welfare, the satisfaction of the Trade unions' work, the satisfaction of democracy among employees and so on. A harmonious collective labor relations is one that the formulation process of working conditions and standards are relatively fair and the employers will take its own obligations actively so as to achieve common success through cooperation. As a result, we can judge from collective bargaining, democratic participation, the rate of labor disputes, the satisfaction of regulations and systems, the recognition of corporation culture, the satisfaction of corporation's social responsibilities and so on. A harmonious social labor relations is a state that the

adjustment platform of the relations is complementary, the society is stable, the allocation of the revenue is rational, the employment is sufficient, and the national economy is developed in a healthy, sustainable and stable way. Hence, we can judge from the satisfaction of labor laws, the brightness of social development, the Gini coefficient, the revenue gap between the rural and urban areas, the unemployment rate, the coverage rate of the protection for underprivileged people and so on.

□ The requirements of a harmonious labor relations under China's labor contract law

Labor contract law adheres to China's basic national conditions, pays attention to promote the establishment of long-term labor relations between the two parties, enhance the stability of employment, and fully reflects the idea of scientific development and common efforts to promote harmony.

(□) Requirements of stable labor relations are made through employment protection

□ Encourage to sign long-term and open-ended employment contracts in order to prevent they are being shorted. An long-term and open-ended employment contract is the trend and mainstream of the future. It is conducive to the stability of labor relations, which will benefit both parties. On the one hand, employees will commit to the corporation and are willing to make research on their business. On the other hand, employers will reduce their cost of frequent mobility. Therefore, an outstanding characteristic of China's Labor Contract Law is to encourage and guide employers to sign long-term and open-ended employment contracts with their employees, which is conducive to the maintenance of labor relations' stability.

□ Carry out fire protection to prevent disputes caused by terminating employment contracts arbitrarily. Short-term and unstable labor contracts will lead to unemployment or semi-unemployment of employees. As a result, the basic rights and interests of employees are hard to safeguarded. So Labor Contract Law has put forward three measures on this aspects: reasons for dismissal, advance notice and economic compensation. If employers want to terminate the contract on their own sides, it is must on the conditions that employees have made mistakes or the contract is ineffective. Besides, it must inform the Trade unions for these reasons ahead.

□ Stipulation on special employments. The law has made special regulations on the forms of employments in order to address problems of lacking of standardization, especially in the forms of invading employees' rights seriously. It is stipulated in the law that, the employment contracts between staffing firms and the Employees to be placed shall be fixed term employment contracts with a term of not less than two years. The placement of Employees shall generally be practiced for temporary, auxiliary or substitute job positions. It is also stipulated the rights and obligations of the three parties. There are all made to prevent employees' rights from companies' invasions in new forms.

(□) Increase the game ability of the weak weakers and realize equity by

legislation unparallelly

As for the numerous labor forces and the outstanding employment problems, as well as the weak status of employees, it is useless to stipulate to sign a contract on an equal and self-willingness basis, for it can't change the unequal reality in labor relations. If we want to make the contract system play a more positive role in maintaining the stability in labor relations, we should make our parallel leans towards employees. The contract law reflects leans to weak employees and enhances their abilities to win the games on the basis of consideration for employers' interests, so as to ensure fair and promote harmony. It can be clearly seen from following:

□ Enhance employers' responsibilities in the contract. If they refuse to sign the contract, they will have to pay double wages. Lack of contracts is an outstanding problem for China in its contract system. According to a sample-test, there are only about 40% employees have a contract with their companies, 30% of the rural farmers, and less than 20% in small and medium-sized non-public enterprises. The law reinforces employers' responsibilities, by stipulating that if an Employer fails to conclude a written employment contract with a Employee within one month, the employer should pay double wages. If an Employer fails to conclude a written employment contract with a Employee within one year from the date on which it starts using the Employee, the Employer and the Employee shall be deemed to have concluded an open-ended employment contract.

□ Vocational hazard are included as a must in the contract. Currently, there are over 200 million employees who suffered from vocational hazard, among which most are rural farmers. The law has added relevant terms, which stipulates when employing new workers, we have not only to tell the truth of the vocational hazard, but also have to write clearly the hazard and prevention measures in the labor contracts.

□ Intensify employers' payment obligations. The law has stipulated that, employers must pay sufficient wages timely according to the law. If failed, they can call for help from the local people's court, and the court should send out payment command. Besides, it also stipulated that employers should strictly observe the standard of working hours. They are not allowed to focus employees to work extra hours. If it is unavoidable, they should pay for extra wages.

□ If employers failed to observe the law, employees can ask for the terminate of the contract. The law stipulated that, if employers failed to provide demanded working conditions or labor protection, or pay for wages sufficiently and timely, or hand over social insurances, or its systems are contrary to laws and regulations and invade the proper rights and interests of employees, or make the contract inefficient due to employers, employees can terminate the contract and get economic compensation from employers. Employees can refuse employers' unreasonable requirements to work under dangerous conditions. It is a legal act.

□ Restrictions on employees' responsibilities to contrary to the law. The law has stipulated limitations on funds pay by employees when they break the law. Except for the break of service-period agreements and the personnel subject to competition restrictions, an Employer may not stipulate with a Employee provisions on the bearing

of liquidated damages by the Employee.

What needs to be pointed out is that leans towards legislation is just one means, and it also should be limited in a certain range. Too much will only lead to bad effects, and the self-adjustment ability will be reduced, as well as the decrease of efficiency of labor resources optimization and distribution. At the same time, it will also lead to an unbalanced interests between the two parties and finally an unharmonious labor relations.

(III) Taking the accomplishment of the balance between the interests of workers and the interests of the enterprises as the basic means for the construction and development of harmonious and stable labor relations

To accomplish the balance between the interests of workers and the interests of the enterprises is the objective of establishing the harmonious labor relations. Labor Contract Law not only regard the balance mentioned above as the legislative purpose, but also accomplish the balance through the consultation much more flexible according to the new circumstance. Labor Contract Law prescribe: Business rules and regulations should be developed in consultation. In addition, Labor Contract Law encourage the free consultation within the legal scope. pay attention to intensify the role of coordinating labor relations of the Trade unions.

(IV) through the designation of substantive rights and the legal procedures, to balance the relationship between the business efficiency and the protection of workers' interests In fact

With economic lay-offs Labor Contract Law relaxes the substantive conditions of lay-offs, at the same time, place some restrictions on the process of economic lay-offs. On the one hand, Labor Contract Law allows enterprises to restructure according to the Enterprise Bankruptcy Law or its serious difficulties or technological innovation and adjustment, etc .On the other hand, the law also provides the procedural conditions to lay-offs such as the intervention of trade unions on job cuts, the notice period, the employment protection of lay-offs. This provision not only recognizes the companies to reduce staff based on the need for competition, but also ensures that staff to be compensated, and individual poor groups to enjoy the special protection, from the aspect of the substantive rights and procedure to regulate the balance the interests between enterprises and workers and to seek a balance of interests between employers and employees.

III New problems of the establishment of harmonious labor relations

(I) The imbalance of strong capital and weak labor will exist for a long time.

Because of the long-term situation of labor oversupply, labor supply has to abandon the demand of protecting its legitimate rights and make a employment agreement with labor demand so as to win a job in the fierce competition, which thus

results in a vicious competition in labor market.

The structure of labor supply has been changed and will change. Over the years, college graduates are increasing year by year as the result of the university expansion and all types of colleges admit more than 600 million students. A significant portion of college graduates will enter the workforce, bringing workforce a knowledge-based development. This change will have profound impact on economic and labor relations.

The differentiation of the labor market, the lack of workers involving in corporate democratic management and the social's honest and law-abiding environment have weakened the status of workers. The stratification of labor market makes a large number of low-quality labor force become the vulnerable groups. Some of them are difficult to find jobs, often being unemployed or underemployed; more are forced to engage in the low level occupations with low wages, job instability, and no social security and welfare; workers hardly participate in the corporate democratic management.

(II) the flexibility of labor market causes the increase of insecurity in the labor market

In the case of the development of market economy and economic globalization, the competition is increasingly fierce and the market is changing more and more faster. So in order to avoid risks, more and more companies employ workers in a variety of non-traditional and flexible forms of employment. Usually flexible employment relations is precarious with the lack of pension, health care, work-related injuries and other social insurance benefits

Economic globalization has a direct impact on the flexibility and safety of the labor relations. In economic globalization, in order to pursue maximum profit, the manufacturers will make a flexible and effective response including what to produce, how many to produce and when to produce, that is, the pursuit of "flexibility" standardized by cost and efficiency. On the other hand, in response to some special countries's labor forces, social forces and the government's protect to workers, firms will change the inflexible labor relations that they think through economic globalization. The consequence of economic globalization is enhancing the flexibility of labor relations through substitution, competition and economic fluctuations, but it reduces the safety of labor relations.

(III)Income insecurity results in "working poor" and the expansion of the gap between rich and poor

Labor and capital has an unequal interest relationship because of the strong capital and weak labor, On one hand, the improvement of labor market flexibility makes many low-quality workers' jobs more and more unstable, labor income more and more unsafe. on the other hand, the income of workers is very low as the result of the oversupply in the labor market. They often gain only a few hundred, which results in poverty resulted from work. In contrast, the capital side benefits a lot from the policy of government's investment promotion

Uneven income distribution directly results in the rapid polarization of society in China. On the one hand, workers gain so little that their economic and social status are weakened. And the conflict of the labor relations has been reality, which makes the labor relations more and more disharmony. On the other hand, the differentiation of the rich and the poor in China constitutes a potential danger which impacts social stability seriously. According to the Gini coefficient which is internationally accepted as measurement of income disparity, China's Gini coefficient is as high as 0.458, and some scholars even think that is above 0.49.

(IV) The insecurity of combination leads to "the marginalization of labor"

Some public enterprises use the opportunity of restructuring to reduce lots of staff who stay in the company for a long time and employ new workforce, which leads to more and more redundant employees employed in non-formal sectors and reduces the employee's employment cycle in the enterprise. The decreasing of the staff's stability combined with the marginalized situation of non-regular employment in the social security system results in an increasing number of non-regular employees who becomes the vulnerable groups in the urban labor market.

Seen in the existing trade unions and its operation mode, it is difficult to avoid the insecurity of the combination of workers. Since the mid-90's of last century, along with the adjustment of economic structure and the restructuring of the state-owned, a number of trade union organizations have been merged and the employees in traditional industries significantly reduced whereas young workers in emerging industries do not have a strong centripetal force to the trade unions; some non-public enterprises take an unco-operative attitude on establishing trade unions and carrying out trade union activities. At the same time, because trade union is restricted by the operators, its activities lack the necessary independence and the power of trade unions is weak. Therefore, it is difficult for trade union to play a great role in some serious violations such as firing workers casually, overtime, deduction wages and so on and it is impossible to form an effective mechanism of labor relations.

IV The mechanism of building a harmonious labor relations in China

(I) To build a "harmonious labor relations", we must improve the labor organizations and establish the co-operation mechanism of workers, employers and the Government firstly

Labor union is a product of labor conflicts, and the balance of labor-management conflicts, and it is the spokesman for the legitimate rights and interests of workers. It is an important issue that how the labor union to carry out its basic function better to build a harmonious labor relations in the current background of China. The author argued that labor unions must to change the mode and expand the coverage of organizing labor unions first of all, so that the majority of migrant workers can be admitted into labor union organizations. Secondly is to change the work and selection mechanism of the person in charge of labor union organizations. It is necessary to

establish of trade union activities in accordance with the wishes of works, to strengthen the dominant position of its members to further enhance the attractiveness of labor union organization and cohesion.

To strengthen the concept of the social responsibility of the corporation and the concept of the interest community between employers and employees.. In labor relations, the managers should be recognized that it is their social responsibility to build a harmonious labor relations in the gain of the benefit, to assume the social responsibility and to return to society initiatively in order to reflect the social value. Enterprise cooperation is also a community of interests of labors. It is necessary to advocate and strengthen the concept of the values of harmony community of interests and enhance interdependence, stakeholders, and win-win development.

Governments assume an important function in the coordination of labor relations. In addition to having to establish an effective mechanism for supervision and management, the government need to use legal and institutional coercive means to restrict the various violations of the legitimate rights and interests , and the establishment of labor relations cases of sudden emergency mediation mechanism, the focus should be to promote the establishment of tripartite consultation and dialogue mechanism to work, for the protection of a harmonious and stable labor relations and cooperation mechanism s.

(II) establish and perfect the rights and interests safeguard mechanism to prevent labor disput

Harmonious society is not a society without contradictions , conflicts between employees and employers always exist. Pursuing the max bebenefit is inevitable of the market economy, the key point is both sides should through a certain mechanism and orderly competition and confrontation of interest to achieve the harmonious balance of labor relations and interests at one stage . At present, The more powerful of the employer and employee's weakness make some employees are deprived of their legitimate interests; labors are getting cheaper and weaker resulting that the interests of employees are damaged. Therefore, we need to use legal, administrative, economic and other means, including the establishment of a Protection of Wages, wage payment, social security , employers escape rights and other protection mechanisms for vulnerable groups to help them realize their own legitimate interests, so that they share the fruits of social progress.

(III) the establishment of a flexible and safe labor market balance mechanism

The balance of interests of both parties is the basis for harmonious labor relations, therefore, in the labor market, Not only should we improve labor market's flexibility and operating efficiency to meet the demand of labor required by company , but also give full consideration to job security of workers , stability, improve the quality of employment, which requires to establish a flexible and safe labor market balance mechanism s. The establishment of a flexible labor market mechanism must adhere to the principal of impartiality and fairness. Under fairness and impartiality, first of all, we must build a strong legal basis of harmonious labor relations. Thus we could protect

the basic rights through laws, particularly protect the rights of vulnerable workers and democratic rights, to prevent the hollowing out of the tendency of labor rights. Second, both employers and employees should be guided by sound laws and regulations to require their own interests. By complying with laws and regulations, we could promote the equal bargaining and collective contract system as the core interests of the construction of coordination mechanisms, so that employees and employers could achieve utmost mutually benefit through negotiations and consultations, self-adjustment, and achieving operation of the labor market flexibility and security of a unified legal system consultation Regulation .

(□) Establish the good contradictory unblocking and the warning mechanism

1. Establish the good contradictory unblocking mechanism. Contradictions and conflicts in society exist objectively , and there are contradictions in the interests of labor relations. To prevent conflicts of interest into a conflict, resulting in impact on the community, it is necessary to establish a good contradictory unblocking mechanism through which to maintain harmonious labor relations. At present, some areas of China to resolve labor conflicts in relieving the already established internal co-ordination group of labor relations, enterprise unions and the management of enterprise communication and co-ordination body, the opening of labor and social security policies such as legal advice. These measures in a timely to divert a large number of labor disputes, effectively reducing management costs, to prevent the accumulation of contradictions and precipitation, to enhance the ability to resolve contradictions and conflicts, and promoting the building of a harmonious labor relations have made a good effect. These practices should be promoted.

2. Establish the sensitive to the early warning mechanism. Establish a scientific and sensitive labor relations in early-warning mechanism can timely detect and prevent of major disputes in timely, as soon as possible to seize the issue of preference, through the policies and objectives of the adjustment, the effective prevention of the impact of social harmony and stability of the incident spread. Therefore, the Government should promote the establishment of a sound early warning mechanism for labor relations, make full use of forecasts, the pre-trial, forecasting, pre-control measures, timely information on labor relations caused by lack of co-ordination of socio-economic contradictions, through regular analysis of feedback and other measures to improve government decision-making and policy.

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