Chapter 17

Mediation and Conciliation in Collective Labor Conflicts in China

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17.1 Introduction

On February 28, 2014, the Walmart Changde Store reported to the Changde City Federation of Trade Unions that the store will close down due to poor management. On March 5th, the company unilaterally posted the “Closed Business Announcement” and “Notice of Staff Settlement Agreement”. The company announced that it had ceased operations since March 19 and provided staff with settlement plans for relocation and N+1 economic compensation plans for termination of the labor contract. Employees of the store under the leadership of the chairman of the trade union took actions to safeguard their rights and believed that the company’s procedures for dismissal were illegal and required payment of double compensation. In the following two weeks, Changde City Federation of Trade Unions, the Municipal Bureau for Letters and Calls (*Xinfang*), and the district government each hosted four mediation meetings, attempting to settle this collective labor dispute, but none of them were able to help Walmart and the employees reach an agreement. At the mediation meetings chaired by Changde City Federation of Trade Unions on March 7th and the meeting chaired by the Municipal Bureau for Letters and Calls on March 12th, only the store union and workers’ representatives showed up. At the mediation meetings chaired by the district government on March 14th and 18th, all parties were present, and the district government concluded that the Walmart’s settlement plan was legal and also that Walmart denied all employees’ demands based on the investigation results provided by the labor supervision department. The failure of mediation embarked on the road to arbitration. On April 25th, 69 employees and the trade union of Walmart Changde Store respectively initiated arbitration to Changde City Labor Arbitration

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Committee. Fifty-one employees accepted the mediation-arbitration result, while the rest 18 employees and the union did not accept the mediation outcome and proceeded to the arbitration. The arbitral award issued by the Labor Arbitration Committee on June 25th rejected all the claims of the labor party. The trade union of Walmart Changde Store disagreed to this arbitral award and continued to bring an action in the people's court of Wuling District, Changde City. On July 22th, the court rejected all claims of the labor party.

This is a typical collective labor dispute case in China with Chinese characteristics. First, mediation is an important mechanism that is commonly used in settling collective labor disputes. This is because compared to arbitration and litigation, mediation saves judicial resources, increases judicial efficiency, and the method is more thrift, simple, flexible, and secret. Emphases on mediation in China also reflect traditional cultural preferences for non-confrontation, which is rooted in Confucian and Maoist principles. Second, mediation is important but not perfectly regulated in China. As can be seen from the Walmart case, Changde City Federation of Trade Unions, the Municipal Bureau for Letters and Calls, and the district government all hosted the mediation meetings, but none of them were specialized mediatory agencies. Due to the lack of specific collective labor disputes mediation laws and regulations, all kinds of agencies can mediate collective labor disputes, such as enterprise mediation committees, community and village agencies, township authorities, county and district authorities, etc. China's labor dispute mediation system is still in an early stage of development, thus many of the collective labor dispute cases continue to be brought to a labor dispute arbitration committee after mediation, until that finally the case is settled by arbitration, just like the Walmart case. Third, the government has a strong influence in the mediation process and outcome. As is widely known, China has its unique political system. The Chinese Communist Party and Chinese government play decisive roles in China's political, economic, cultural and social life. As collective labor disputes may have great social impacts, the mounting pressure on local government to maintain social stability has made mediating collective labor disputes a top priority, so that conflicts can be quickly brought under control and defused.

The Walmart case is just one of the many collective labor disputes happening every year in China. Since the beginning of China's reform and opening up in 1979, the labor relations in China have undergone a series of major reforms, and profound changes have taken place. The impact of events such as the international financial crisis and the implementation of the Labor Contract Law further heightened the tension in labor relations. Under the combined impact of historical accumulation, economic system reforms, and responses to economic difficulties, these tensions reflected in labor relations in such a way that the total number of labor dispute cases runs at a high level, the collective labor disputes increase, and the content of appeals is complex. Figure 17.1 shows the number of collective labor disputes in China from 1996 to 2015. It can be seen that in 2008, which is the year when the Labor Contract Law enacted, the number of collective labor disputes and the number of laborers involved in collective labor disputes reached a peak. Then with a three-year decline, it has risen again since 2011.

Fig. 17.1 Number of collective labor disputes in China. *Data source* China Labor Statistical Year Book 1997–2016

Faced with increasing collective labor disputes, China developed unique systems to settle collective labor disputes. China's current labor dispute handling system mainly focuses on individual disputes. There is no clear and unified regulation for the concept definition, type division and processing mechanism of collective labor disputes. Based on the current status and existing regulations of collective labor disputes in China, collective labor disputes can be divided into three categories: collective labor disputes in a narrow sense, collective contract disputes, and collective action disputes (Kai & Feng, 2014).

Collective labor disputes in a narrow sense are defined by the “Labor Dispute Mediation and Arbitration Law”, in which Article 7 stipulates that “Where a labor dispute involves more than ten employees and the employees have a same claim, they may recommend their representatives to participate in the mediation, arbitration, or litigation.” (Labor Dispute Mediation and Arbitration Law of the People's Republic of China, 2008). The essence of such collective disputes is that multiple workers have common claims for rights, so this kind of collective disputes are resolved according to the procedures for individual disputes (Cheng, Xie, & Wang, 2015).

Collective contract disputes include disputes over the termination of collective contracts and disputes over the implementation of collective contracts. Article 84 of the “Labor Law” stipulates that “Cases of disputes resulted from the termination of collective contracts shall be handled through consultation by all the parties concerned brought together by the labor administrative department of a local people's government if these cases cannot be handled through consultation between the parties involved. Cases of disputes resulted from the implementation of collective contracts shall be brought to a labor dispute arbitration committee for arbitration if these cases cannot be solved through consultation between the parties involved. (Labor Law of the People's Republic of China, 1995).” The disputes arising from the termination of collective contracts are handled through negotiation and coordination, which are

similar to the Western developed countries. However, there are no clear provisions on who in the labor administrative department will negotiate and how to negotiate. The disputes arising from the implementation of collective contracts are disputes related to the rights already provided in the existing collective contracts. Thus, this kind of collective labor disputes can be handled directly through the individual labor disputes settlement system. However, there are very few disputes in the implementation of collective contracts in China so far, and there is also lack of public data.

Collective action disputes are actually closely related to the termination of collective contracts. During the collective bargaining process, laborers take some collective actions, such as work stoppage to exert pressure on the employer. Thus, collective action disputes are handled through communication and negotiation instead of mediation.

Due to the unique characteristics and present settlement system of China's collective labor disputes, this paper mainly discusses the mediation of collective labor disputes in a narrow sense and disputes over the implementation of collective contracts (hereinafter referred to as collective labor disputes). Thus, the handling of collective labor disputes in China involves four processes of negotiation, mediation, arbitration and litigation. Negotiation and mediation are voluntary choices for employees and employers. Arbitration is a mandatory procedure before litigation, and litigation is the last remedy. Unlike western countries, parties can still go to court after arbitration. This is a unique character of China's labor dispute settlement system. Among them, the mediation of collective labor disputes has the advantages of low cost and high efficiency, and it has certain value recognition in the social culture because it fits the tradition of "harmony" in China. Thus, In China's collective labor dispute settlement system, mediation is an important form that is commonly used.

17.2 Collective Labor Dispute Mediation System in China

17.2.1 The Evolution of Collective Labor Dispute Mediation System in China

At present, there is no special legal regulation on the handling of collective labor disputes in China. The mediation system is the same as the individual mediation system. The "Interim Provisions on the Handling of Labor Disputes of State-Owned Enterprises" implemented by the State Council in 1987 required for the first time the establishment of a multi-level mediation committee and made provisions for mediation procedures.

In 1993, the "Regulations on the Handling of Labor Disputes of Enterprises" issued by the State Council established the labor dispute mediation system for the first time and expanded the scope of labor disputes from state-owned enterprises to various types of enterprises. The organizational form and mediation rules of the enterprise labor dispute mediation committee are stipulated.

The “Labor Law” implemented in 1995 raised the labor dispute mediation system from the administrative regulations to the level of the national basic law and extended the principle of mediation to labor dispute arbitration and litigation procedures.

The “Labor Dispute Mediation and Arbitration Law” implemented in 2008 reformed the labor dispute mediation system. The composition of the mediation committee was changed from the company’s representatives, union representatives, workers’ representatives to employee representatives and company representatives. The scope of the mediation organization has been expanded. It has been clarified that “Where a labor dispute arises, a party may apply to any of the following mediation organizations for mediation: (1) Labor dispute mediation committee of an enterprise; (2) Grassroots people’s mediation organization legally established; and (3) Organizations with the labor dispute mediation function established in a township or neighborhood community. In China, all the mediation organizations are rather local. For example, the Walmart case was handled at the district and city level.

Moreover, the laws have given the mediation agreement some legal binding force, “where a mediation agreement is reached on a matter of delayed payment of labor remunerations, medical expenses for a work-related injury, economic indemnity, or compensation, and the employer fails to execute it within the period of time prescribed in the agreement, the employee may apply to the people’s court for a payment order based on the mediation agreement and the people’s court shall issue a payment order according to law.”

The evolution of mediation in collective labor dispute settlements reflects a change in the government’s strategy for handling collective labor relations. In the face of mounting labor conflicts as well as other kinds of social unrest, the government requires more flexible and effective means and more discretionary powers to maintain stability and even bypass the law and legal procedures.

17.2.2 China’s Collective Labor Dispute Mediation System at Present

(1) Mediation Organization

At present, there is no written system for the mediation of collective labor disputes. China is still developing the mediation system, searching and implementing it through different means, including grassroots mediation, people’s mediation, administrative mediation, joint mediation and mediation-arbitration. Under these mediation mechanisms, the participants are very diverse. In China, organizations that can conduct mediation of collective labor disputes mainly include: Enterprise Labor Dispute Mediation Committee, Six-Party Joint Labor Dispute Mediation Center, Township Labor and Personnel Disputes Mediation Organization, Grassroots People’s Mediation Organization, etc.

These mediation mechanisms are led by different local authorities, and their development level and abilities to settle collective labor disputes vary across regions. Some

regions have a long history of constructing administrative mediation mechanisms, then in these regions administrative mediation mechanism should play a more important role in settling collective labor disputes.

There are various participants involved in grassroots mediation. There are labor dispute mediation organizations established at the enterprise, in township, neighborhood community and regional industries. At the same time, local industrial and commercial associations have also begun to participate in, or establish regional and industry labor dispute mediation organizations to mediate the collective labor disputes.

People's mediation organization is the grassroots people's mediation committee. It is a grassroots mass organization that resolves civil disputes. At first, they are not designed to settle labor disputes. After December 2007, the Labor Dispute Mediation and Arbitration Law was enacted, people's mediation organizations were given the statutory power to mediate labor disputes.

Administrative mediation is a mechanism with China's characteristics. Due to collective labor disputes' great social impact and governments' important role in coordinating labor relations, labor administrative authorities and its affiliated institutions also have the right to mediate collective labor disputes.

Joint mediation is a new labor disputes mediation mechanism developed in some big cities like Beijing and Guangzhou where there are great numbers of labor disputes. Joint mediation is an institutional mediation network by integrating trade unions, government agencies (for example, Bureau for Letters and Calls), labor arbitration commissions, judicial administration department, the courts and enterprise confederation. The mediation organization is the Labor Disputes Mediation Center in every district of the city.

Mediation-arbitration is a mediation process conducted by arbitrators before or during arbitration. The Article 42 of Labor Dispute Mediation and Arbitration Law stipulates that "Before rendering an award, an arbitral tribunal shall conduct mediation first. Where an agreement is reached through mediation, an arbitral tribunal shall make a mediation record." Therefore, mediation-arbitration is also an important part of the collective labor dispute mediation in China.

In summary, China's collective labor dispute mediation system consists of five mechanisms. Before the arbitration process, collective labor disputes can be mediated through grassroots mediation, people's mediation, administrative mediation, and joint mediation. If these mediations are not successful, and the collective labor disputes enter the arbitration process, they can still be mediated through mediation-arbitration. Each mediation is performed by the corresponding mediation organizations, as shown in Fig. 17.2.

(2) Mediation Procedures

Though the mediation mechanisms and organizations are various in China, the mediation procedures are almost the same, described as follows (Fig. 17.3):

- ① The parties (employees or employers) apply to the mediation organization for mediating a collective labor dispute, and may submit the application orally or in writing. Both parties have to agree to using mediation. If one of the parties

Fig. 17.2 Multi-level Mediation Organizations

- deny the mediation request, other methods are used to resolve the dispute, such as arbitration.
- ② Once the mediation organization receives the mediation application from the applicant, it shall promptly complete the mediation registration form and the mediation work account and conduct preliminary communication with the applicant.
 - ③ The mediation organization reviews the applicant’s mediation application, makes a decision on whether to accept this case within 3 working days, and notifies the parties.
 - ④ The mediation organization arranges the relevant mediators in charge of the mediation case and records the mediation process. If the mediation succeeds, a mediation agreement will be issued. If the mediation fails, a mediation statement of termination is issued. The mediation applicant can be informed that they can go to the labor dispute arbitration committee and other related departments to continue to exercise the right to appeal.
 - ⑤ The mediation of labor disputes ends within 15 working days from the date the parties apply for mediation. Mediation and arbitration are free for both parties in China. Only litigation has cost.

Fig. 17.3 Mediation process

(3) **Mediator**

In China, there are full-time and part-time mediators. Both of them must meet certain requirements. Article 9 of the “Labor Dispute Mediation Organization Work System” stipulates that mediators shall be appointed by mediation organizations and shall have certain knowledge of labor laws, policies, and relevant job skills. Full-time mediators need to have a labor dispute mediator certificate. The labor dispute mediator certificate is regulated by Article 11 of the Labor Dispute Mediation and Arbitration Law, “A mediator of a labor dispute mediation organization shall be an adult citizen who is fair, decent, and enthusiastic for the mediation work and has a certain level of knowledge of law, policy and culture. Adult citizens engaged in mediation work in the labor dispute mediation organization may obtain a labor dispute mediator certificate.” The labor dispute mediation certification is regulated by the Ministry of Human Resources and Social Security (MHRSS) of each province, autonomous region, and municipality directly under the Central Government. To obtain the certificate, a person needs to acquire required training and also pass the certification exam administered by the Ministry of HRSS.

At present, most mediators are part-time. Take people’s mediator for example, at the end of 2017, there are 3,172,000 part-time people’s mediators in the country, accounting for 86.5% of the total number of mediators, and 49,7000 full-time people’s mediators, accounting for 13.5%.¹ Part-time mediators lack the necessary professional training, making collective labor dispute mediation less effective. In practice, the mediator of collective labor disputes must have a strong ability to negotiate to seek a compromise that can be accepted by both parties. The ability of the mediator determines to a large extent whether the mediation can reach an agreement, and also affects the two sides’ confidence in mediation. The lack of professional and qualified labor dispute mediators in China restricts the effectiveness of collective labor dispute mediation.

17.3 Trends in Mediation

In this section, we present data to show the trends in mediation in the recent years since 2010.

17.3.1 Trends in Mediation-Arbitration

As mentioned previously, mediation-arbitration is one of the key mediation mechanisms. Many collective labor dispute cases entered quasi-judicial procedures, that is, labor dispute arbitration. In the arbitral proceedings, mediation also exists because

¹www.sohu.com/a/229686670_161795.

Fig. 17.4 Number of mediations since 2010 in China. *Source* National Bureau of Statistics of China, Yearbooks of Labor Relations

of Article 42 of the Law of the People’s Republic of China on Labor Dispute Mediation and Arbitration. Therefore, in China, mediation in arbitration is mandatory, and mediation must be conducted by an arbitrator prior to arbitration. If the mediation is successful, the labor arbitration tribunal will directly end. If the mediation fails, the employer and the employee will continue to enter the arbitral proceedings.

Mediation in arbitration has two main characteristics: First, the mediator and the arbitrator are the same person. That is to say, the arbitrator first acts as a mediator. Thus, the arbitrator serves two functions: mediation and arbitration. Secondly, arbitration in mediation combines mediation procedures and arbitral proceedings together, which increases the success rate of collective labor dispute mediation, as employees and employers know better about what the results would be if they enter arbitration procedures.

Figure 17.4 shows the number of labor dispute cases settled through mediation-arbitration from 2010 to 2016. It can be used to handle both individual and collective labor disputes. The number in Fig. 17.4 is the total number of individual and collective labor disputes settled through mediation-arbitration. For comparison, the number of cases settled through arbitration that ends up with litigation was also reported for the same period. As can be seen, the two data series are highly correlated, suggesting that the mediation-arbitration and arbitration award follow the same trends. Moreover, for all these years, the number of cases settled through mediation during arbitration is greater than the number of cases settled through arbitration award.

17.3.2 Trends in Other Types of Mediation

As explained in the previous section, China adopted a multi-level mediation process. In addition to the formal Labor Arbitration Committee that accepted the labor dispute cases and conduct mediations prior to arbitration, various other organizations are involved in mediations, such as mediations conducted by enterprise labor dispute resolution committees, and community dispute resolution committees.

Figure 17.4 also shows the total number of mediations conducted by these other mediation organizations. It is labelled as “non-case mediations” because in this scenario, no formal labor dispute case was filed in the Labor Arbitration Committee. Altogether, Fig. 17.4 shows that the flexible and cost-efficient mediation mechanisms (mediation-arbitration and no-case mediations) are prevalent in China.

17.4 Conclusion

Mediation is an important procedure in China’s collective labor dispute settlement system, as in the face of mounting collective labor conflicts as well as other kinds of social unrest, the government requires more flexible and effective means and more discretionary powers to maintain stability and even bypass the law and legal procedures.

Based on the current status and existing regulations of collective labor disputes in China, collective labor disputes can be divided into collective labor disputes in a narrow sense, collective contract disputes, and collective action disputes. As the disputes arising from the conclusion of collective contracts and collective action disputes are handled through negotiation and coordination, this paper mainly discusses collective labor disputes in a narrow sense and disputes over the implementation of collective contracts.

Due to the lack of specific regulations on collective labor dispute settlement system, China’s collective labor dispute mediation has the same process as individual citizen labor dispute mediation. The essence of most collective disputes is that multiple workers have common claims for rights, so this kind of collective disputes can be mediated according to the procedures for individual disputes.

At present, there is no written system for the mediation of collective labor disputes. China is still in the early stage of development, featuring several mediation mechanisms, including grassroots mediation, people’s mediation, administrative mediation, joint mediation and mediation-arbitration. Under these mediation mechanisms, the participants are very diverse. These mediation mechanisms are led by different local authorities, and their development level and abilities to settle collective labor disputes vary across regions due to different past experience accumulated.

There is no best mediation mechanism, and each of them has its own advantages and disadvantages. Grassroots mediation and people’s mediation have a wide range of organizations and reach almost every corner of the society. Thus, they can intervene

in and mediate collective labor disputes in time and in place. Administrative mediation and joint mediation are more authoritative, as Chinese people always believe that the government can finally resolve their various disputes, and they have professional and expert advantages, as the mediators often have relevant qualifications, as well as extensive experience in collective dispute resolution. Mediation-arbitration is mandatory in arbitration, and mediation must be conducted by an arbitrator prior to arbitration. To form a formal and integrating collective labor disputes mediation system, China still has a long way to go.

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