The Practice and Changes of Taiwan's Labor Dispute Regulations Act

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I. Changes to Taiwan's Labor Dispute Regulations Act

Taiwan's laws regarding the conduct of disputes were established in the trade union regulations of 1924, but as Taiwan was about to enter the rule of martial law for thirty years, any disputes were strictly forbidden during this period. After martial law was lifted in 1987, there were a number of large strikes in Taiwan; the 1990s saw the Far Eastern Company's textile workers' strike and Keelung Bus Company strike, but due to harsh strike restrictions at that time, launching a legitimate union strike was generally very difficult. During that time, the strikes of trade unions were restricted to "ceasing the provision of labor." There was no opportunity to obstruct public order, such as picketing factories or surrounding factories to preventing other workers from entering. Therefore, effectiveness of any strike was also greatly reduced.

However, along with the changes from the democratization of Taiwan's society, and the transformation of the industrial sector, the trade union law and the labor dispute settlement regulations did not meet the requirements of the twenty-first century work environment. The Government implemented three newly revised labor laws on the 2011 Labor Day holiday: the Labor Union Act, the Act for Settlement of Labor-Management Disputes, and the Collective Agreement Act. The aim of these labor laws was to reduce the dispute restrictions that could be applied by the state, to relax the restrictions on trade union actions, and within the Labor Union Act legislation, the employer was prohibited from punishing employees engaged in disputes through actions such as dismissal, demotion, reduction of salary, or other unfavorable treatment.

In 2011, soon after the implementation of these new laws, the Prince Motors Co. strike occurred in October, in which the labor union proposed salary adjustment, the payment of three bonuses, to restore the vehicle management and fuel subsidies, and to retroactively pay of untaken special leave days. The trade union association group agreed and signed twelve demands, which marked the first lawful strike after the implementation of the new labor laws. Since this action, in recent years Taiwan has experienced many large-scale strikes and industrial disputes, with the most recent being the China Airlines Flight Attendants strike in June 2016 and the collective refusal of overtime by the Taiwan railway staff in February 2017. Both actions highlighted the Taiwan's trade unions' ability to actively participate in economic democracy in order to seek improvements in working conditions.

II. Legal protection in disputes

The revision of the three labor laws in 2011 was the first step in the modernization of the dispute regulations in Taiwan. Before these amendments, there was no clear definition of how to conduct disputes or strikes in Taiwanese law, and so the Supreme Court used the definition of a strike as "ceasing the provision of labor" for the Keelung Bus Company strike case, which do not provide the opportunity

to impede public order, or harm others in terms of life, physically, freedom, or property; whether there was legal protection to the right to strike is doubtful. In Article 5(4) of the Act for Settlement of Labor-Management Disputes, the existing dispute resolution conduct is defined as "for a labor dispute party to reach its claims, implementation of strikes or other obstructions and confrontational actions of normal working business operations." Compared with the older laws, there is a clear guarantee of trade unions and labor unions protection in their right to conduct disputes.

Although within Taiwan's Constitution the protection of collective labor rights does not exist as it does in Article 28 of Japan's Constitution, a Justice of the Constitutional Court has explained that Article 14 of Taiwan's Constitution has provisions regarding the guarantee on freedom of association and rights of assembly in general. Scholars advocate that Article 22 of Taiwan's Constitution regarding people's freedom and rights can also be used as the constitutional basis of collective labor rights. In short, collective labor rights, regardless of the Constitution, are essentially constitutional rights, but in future the Taiwan's Constitution should be amended to give specific legal protection to collective labor rights.

III. Dispute restrictions in the new Settlement of Labor-Management Disputes Act

After the revision and implementation of the three labor laws in 2011, the protection and restrictions of the conduct of disputes have been transferred to the Settlement of Labor–Management Disputes Act. This updated law related to disputes has a total of four conditions, stipulating the legitimate conduct of a dispute in terms of organization, purpose, procedure, and method. This amendment also expresses the behavioral and cultural guidelines for the conduct of a dispute, as described below.

1. Restrictions on the purpose of the dispute

(1) Right disputes cannot be settled by strikes

The Settlement of Labor Disputes Law Article 53(1) regulated that "right disputes cannot be settled by strikes." According to these regulations, it can be understood that dispute regulations in Taiwan prohibit strikes as they should only be used with group agreement. If there is a labor dispute between employers and employees, there is a wide range of interpretation in this scope to even rationalize political or sympathy strikes, so long as the mediation meets with the necessary procedural requirements, and the purpose of the strike is not of too high importance, control of the strike restrictions will be relaxed.

However, Taiwan's labor disputes are mainly associated with disputes over rights matters, and the revision of these rights matters are rare. The reason behind restricting the purpose of striking is based on keeping the function of peace and the priority of the judicial process, and so it is concluded that right issues cannot be concluded through strikes. However, Taiwan has not yet set up a labor court or labor tribunal to resolve labor disputes. If there are restrictions on the self-reliance of labor unions, this deprives labor unions of their ability to dispute labor rights issues. In practice, when workers cannot strike, they will collectively leave and refuse to work, in order to achieve the same dispute effect, and so prohibiting strikes due to rights matters only has the effect making the ban of seeming more unreasonable, and any actions taken more prominent.

(2) Rights issues disputes on the nature of improper labor conduct

One characteristic of the law amendment in 2011 was that the nature of improper labor conduct disputes, although is still a rights dispute matter, but it involves the issue of collective labor rights infringement, and so the new law uses dispute conduct to protect union unity. The Settlement of Labor Disputes Law Article 53(2) stipulates, "If the central competent authority decides that the employer or employer organization violates Article 35 of the Labor Union Act or Paragraph 1 to Article 6 of the Collective Agreement Act, the labor union may conduct protesting activities pursuant to the Act." An example would be the dismissal of trade union members, as only after an improper labor conduct ruling by an adjudication committee, the union can focus on the dismissal rights dispute.

2. Only labor unions can strike

Taiwan's dispute laws have always limited the ability to strike to labor unions only, and so recognize the labor union's exclusive right to strike, but after the 2011 amendment, the organization of trade unions has changed in terms of autonomy and diversity from that of past factory trade unions; there has been development of more independent unions. Factory trade unions have been upgrading themselves into enterprise unions, and there has been a gradually increase in both cross-factory and cross-industry trade union organizations. In addition to industrial unions and enterprise unions, craft unions have begun to occupy a position within the three labor laws.

However, as the ability to strike is limited to trade unions, in Taiwan the percentage of enterprise unions and industrial labor unions organizations is low — the trade union organization rate was only 7% in 2011, and only 7.3% in 2016, and only when a majority of the workers are in agreement, do they go on strike. In recent years, non-traditional labor union has not increased, and as it is currently extremely difficult to join or organize trade unions, non-union strikes or non-officially recognized strikes are worth studying. And in view that the existing labor dispute settlement law has recognized that a certain number of non-official trade unions have "labor dispute parties," it understood that these of non-official trade unions may not strike, but may have legitimate organization to conduct a legal dispute.

On the issue of whether or not a craft unions have the ability to strike, the Taoyuan Flight Attendants Union strike against China Airlines in June 2016 has led to further discussion. The China Airlines Flight Attendants strike was the first strike by a trade union, and Taiwan's cross-enterprise trade union organizations' first time using the new legal policy related to strikes. Craft unions have been the main principle of unions for a long time in Taiwan, but their functions were confined to the contracts of labor insurance protection. Unions contain many non-employed members, so whether craft unions have the right to strike is questioned. The legality of craft union organization's right to strike has been an important issue in Taiwan's dispute laws over the past few years.

3. Specific restrictions on industrial union and craft union employees

Article 54(2) of the Act for Settlement of Labor Disputes stipulates that teachers and workers of the Ministry of Defense and its organizations (institutions), and schools shall not strike, but some scholars in Taiwan have pointed out that other countries rarely legally prohibit teachers from striking. When considering the status of Taiwanese society, teachers could be requested to give makeup classes after a strike, or only limiting teachers of national compulsory education from striking, while at the same time providing relevant laws and regulations as other methods to resolve disputes, such as application for party labor arbitration.

As for the right to strike for workers within the public sector, the focus of the discussion is as follows. First, according to law, trade unions cannot be organized within the public sector, and public sector workers must not exercise the right to strike. Second, according to the law related to organized trade unions, while exercising the right to strike, civil servants are identified both as labor workers, and according to the relevant regulations, as workers within the public sector, and so are still unable to strike. Third, according to the law related to organized trade unions, only workers entirely removed from the public sector, such as being legally identified as private labor workers, have the right to go on strike. Is it right that those employed as civil servants, especially civil servants who are also identified as labor workers, to be deprived of the right to strike? This is controversial, as is whether firefighters and police should be included in the Labor Union Act. Taiwan is currently highly concerned about the issue of collective labor rights.

4. Procedural restrictions imposed by dispute conduct

If a trade union needs to initiate a dispute to resolve a labor issue, this should be under the autonomy of the trade union. However, the Act for Settlement of Labor-Management Disputes has three procedural

restrictions for initiating a dispute, limiting when the trade union can choose the opportunity to exercise a strike. First, before the dispute, the issue should be preceded by mediation, and this mediation procedure should be unsuccessful (Article 53(1) of the Act for Settlement of Labor Disputes). Second, before the strike, the issue should first be approved by over half of the members by a vote (Article 54(1) of the Act for Settlement of Labor Disputes). Third, the water industry, the electricity industry, the gas supply industry, hospitals, as well as banking and financial transactions for financial service, securities and futures transactions, accounts settlement, securities depository, and other payment business operations, should agree on necessary terms of service before a strike (Article 54(3) of the Act for Settlement of Labor Disputes).

IV. Conclusion

From the above dispute regulations, we can see the legitimacy of the disputes conduct has been recognized by the legal system and by the general community. Taiwanese society is undergoing industrial structural changes, while relaxing the constraints of labor union participation in its economic democracy. These reforms are also in response to national labor conditions due to industrial changes, and a need to reduce the control of trade unions and disputes. Taiwanese employees' working conditions over the long-term have been long hours and low wages. However, under the negotiation situation of individual worker and employers, Taiwanese can only rely on trade union consultation and labor disputes to improve the distribution of wealth. Taiwan's trade unions method of using collective bargaining supplemented by a disputes support model is still in its infancy, and worthy of continued observation.