

The Research on Monitor & Law Enforcement Mechanism for Sound Labor Relation in Liaoning Province

LIU Ying^{[a],*}

^[a] Shenyang University, Shenyang, Liaoning, China.

* Corresponding author.

Received 29 March 2012; accepted 22 May 2012.

Abstract

According to the related data from the department of monitor & law enforcement in Liaoning Province and combining the current situation of enforcing law and the development of labor relation enforcement in China, this paper set forth the problems of rights linking and communicating within enforcement mechanism itself and between government and enterprises, made research and analysis on cause and put forward a serial resolutions in addressing these problems by using for reference from experiences of labor relation outside.

Key words: Labor relation; Monitor mechanism; The role of government; Enforcement mandatory; Labor union

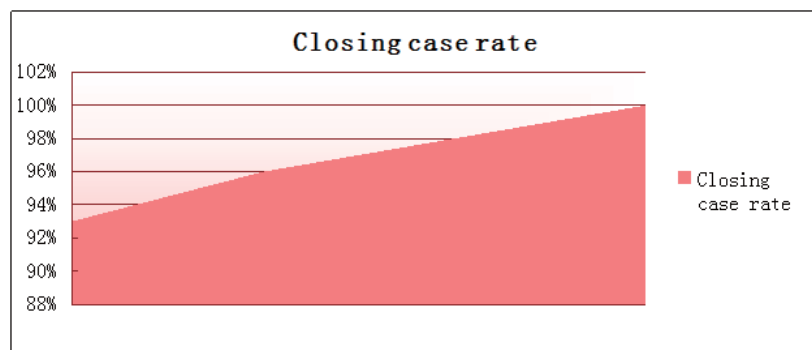
LIU Ying (2012). The Research on Monitor & Law Enforcement Mechanism for Sound Labor Relation in Liaoning Province. *Studies in Sociology of Science*, 3(2), 70-76. Available from: URL: <http://www.cscanada.net/index.php/sss/article/view/j.sss.1923018420120302.2966>
DOI: <http://dx.doi.org/10.3968/j.sss.1923018420120302.2966>

1. THE CURRENT SITUATION OF MONITOR & ENFORCING LAW ON LABOR RELATION

1.1 Certain Progress on Work of Monitor & Enforcing Law on Labor Relation

Government plays the role of guardian for labor's basic right. On the side of government and holding the working idea of "publicizing, service, monitoring and right protection", all labor protecting and monitoring bodies in Liaoning Province gave full play to monitoring function and made efforts to strength the publicity of labor safety law and regulation, labor monitoring and enforcement and the adjusting capability on labor disputes for both year of 2008 and 2009, and conducted the implementation to daily inspection, disposing complaint, right to salary by peasant-worker and "double net-covering" of labor safety & monitoring.

Based on related data from Northeast news net, rate of case closed of complaint by peasant-worker in Liaoning Province increased from 93% in 2007 up to 100% in 2010 (see Figure 1). This shows that monitor & enforcing law bodies in Liaoning Province has strengthened the administration of law and has shifted the manner to peasant-worker's issue, made every effort to guarantee the legal rights and interests for labors.



Graph 1
Rate of Case Closed to Peasant-Worker in Liaoning Province from 2008 to 2011

The security payments shall be launched to pay wage default to peasant-workers according to The Payment Approval Process to Peasant-worker in Construction Industry in Dalian City". The security payment was set aiming to prevent construction enterprises defaulting wages to peasant-workers, and was deposited in advance by construction enterprises to bank assigned by municipal

government. Conducting in October in 2008, the security payments had collected RMB 465 million accumulatively in 2009 and RMB 770 million in September in 2010 (see Figure 2). The implementation of this security payments institution provides guarantee to wage default to peasant-worker and is another innovate to monitoring & enforcing law system.

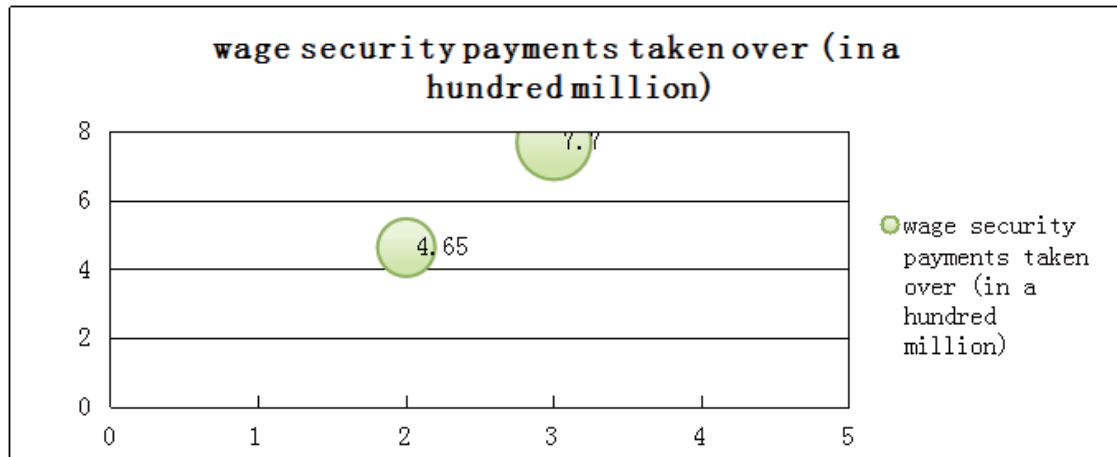


Figure 2
Related Data of Security Payments Collection on Peasant-Worker'S Wage in Dalian

1.2 Vulnerable Groups and Power Groups During Law Enforcement

Some monitor facilities in county level only staffed 2 or 3 inspectors and some of them are appointed multi-position, thus leads to the difficulties to focus on enforcing law working. The symposium hold by Ministry of Labor in 2008 shows that, among 3271 labor monitoring bodies, 771 are the combining bodies of labor arbitration, petition and legal system, which blocks the effective promotion on labor monitoring working.

1.3 Awkward Position and Compromise Compelled to Enforcing Law Body Due to Its Collision to Local Government

This phenomenon mainly resulted from some incorrect idea in society: first is the existence of local protectionism. At present, part of foreign investing enterprises refused to insure the security payments by taking the excuses of the policy of "improving investment environment, attracting investment and developing economy". Secondly, the fact that the minority business leaders view enforcing law as the aggravating business burden, which covers some unlawful acts objectively and leads to unnecessary approval procedure for normal enforcing law working and sets block to process; Thirdly, the minority takes money for service to enterprises rather than assisting norm regulating. They do not receive enforcing law, even with contradict morale. Thus causes the powerless in enforcing

law process within labor safety monitoring bodies due to the consideration of the effect on attracting investment.

1.4 Common Occurrence on Illegal Act by Enterprises

On the basis of related data from present-worker's right protection center and labor monitoring body in Shenyang, back payment to peasant-workers was RMB 41.17 million from December in 2006 to August in 2007, RMB 57 million from the end of 2008 to the end of 2009 and RMB 66.9 million in 2010 (see Figure 2). It follows that back payments are increasing year by year, on the one hand, it reflects the outstanding achievement gained by monitoring & enforcing law body and their focusing on protecting peasant-worker's rights and interests, on the other hand, it also exposes the escalation of illegal action from side-on. This includes: some intermediaries provide false info to labor illegally and cheat labors' job hunting fee; some non state-owned foreign enterprises, private enterprises do not sign labor contract with employees, fire labors with no proper reason, dock wages, default wages especially to overtime wages to peasant-workers. The acts against law of paying social insurance are in common, some cases are becoming grouping accidents through the evolution between labors and enterprises due to delayed correction. This indicates the existence of leak in monitoring & enforcing law mechanism which can not reduce the illegal activities in root cause.



Figure 3
Data of Back Payment to Peasant-Worker from Monitoring & Enforcing Law Bodies in Shenyang and Peasant-Worker's Rights Protection Center

2. PROBLEMS WITHIN MONITORING & ENFORCING LAW MECHANISM OF LABOR RELATION

This paper holds the view that the government are playing the role both of the protector to labor's basic rights and the promoter to negotiation between enterprise and employees. Thus, government plays a major role among trilateral labor relation. The monitoring & enforcing law mechanism is effective tool of government to supervise enterprises' fulfillment on its obligations and the executor of government. However, they are all facing the problems of mismatching rights and liabilities with greater obligations. The following three aspects show:

2.1 Mismatching Rights and Liabilities with Greater Obligations in Monitoring & Enforcing Law Mechanism of Labor Relation

2.1.1 Lack of Mandatory in Enforcing Law

The issue of Labor Supervising Regulation in 1993, The Regulations of Labor Safeguard Supervising in 2004 and a series of other department rules witnessed the progress of labor supervising growing out of nothing and from weak to strong. But there are still no mandatory measures to seal up goods, freezing accounts, confiscating illegal gains and investigating legal liabilities etc.. In addition, ordering to make correction is mainly adapted to deal with illegal activities by enterprises rather than some mandatory measures.

2.1.2 Short-Staffed Law Enforcement Officials

Now, labor disputed cases are increasing with over 20% annual. The ratio of labor supervising staff number with employees is 1:20000, however, comparing with 1:8000 in developed countries. This data clearly shows we are

serious lacking enforcement staff in labor supervising. The increasing number of cases and the short-staffed personnel leads to delaying prompt correcting and investigating on cases, enforcing law mechanism can not give full play to their function.

2.1.3 Serious Lacking Funds in Law Enforcement

There is no sufficient financial inputs from government to labor supervising working, both through actual demand and comparing with international level. This is also can be exposed from personnel allocation. It is insufficient funds that block all supervising working in smooth.

2.2 Drawbacks in Rights Engagement Between Monitoring & Enforcing Law Mechanism and Local Government System

2.2.1 The Drawback of Dual Leadership System Itself

China has initially set up the labor monitoring organization on centre, province, municipality and county level. Local labor safeguard institutions are under the dual leadership of society security administrative department at same level and its superior body. It is under the leadership structure of governments at upper level. However, it is local governments that exercise dominant right due to territorial jurisdiction principal. Hence, undefined division of labor in functional departments between monitoring institution and government causes the appearance of prevarication, no supervising, cross enforcing law and overlapping enforcing law etc..

2.2.2 Local Protectionism Blocks the Law of Enforcement

It is common occurrence that put capital first followed by labor force in unbalanced labor and capital structure. Some monitoring institutions were blocked by government intercepting while dealing with labor-capital relation in

private enterprise. Undue focusing on the development of territorial economy and the ignorance to the protection on labor's rights and interests and the promoting GDP lead to being partial to enterprises with holding unscientific views on political achievements.

2.2.3 The Conflict Between Monitoring Working and Several Regulations of Attracting Investment

For the purpose of maximizing investment scale, some local governments even offered preferential terms by the condition of no social insurance payment and neglecting minimum wage to attract foreign investment. Some local governments are supportive to labor union just in appearance and take sides on employers in reality, even intervening the protecting rights and interesting activities by labor union.

2.3 Serious Backward Informatization of Mechanism and Lacking Understanding Enterprises

2.3.1 Unclear Labor Status

Hua Jianmin, vice chairman of National People's Congress Standing Committee, made a inspection report on labor contract enforcing law. The report indicated that part of labor-intensive medium-sized and small enterprises and non-state owned enterprises signed labor contracts with low rate, some contracts were signed with lack of standardization and poor performance. Several places are still unclear with the status of contracts signing and employment.

2.3.2 Delaying Informed Evasive Action

It is quite common to see that enterprises take evasive action by changing right as principal and business pattern in reality. The loophole of current law and provision to deal with this kind of evasive action leads to no rule to comply with. The serious lacking of informationize and delaying informed evasive action provide the chance for enterprises to avoiding their duty.

2.3.3 Short of Platform for Information Inspected

The short of platform for information inspected go against taking over enterprise's info completely, timely and accurately, and block to work out scientific policy guidance. Insufficient and incomplete inspection on administration cannot provide the basis to macro-decision making timely.

3. CAUSE FOR PROBLEMS WITHIN MONITORING & ENFORCING LAW MECHANISM IN LABOR RELATION

3.1 Late Starting on Development of Labor Monitoring System in Domestic and Lacking Attention from Leadership at All Level

3.1.1 Lacking of Correct Understanding for Labor Monitoring Working from Both Enterprise and Government

Labor monitoring is the product of industrialization. Laboring shall be accompanied by labor monitoring in market economy. Since the establishment of New China, we have gradually set up labor monitoring system on the main role of labor security and hygiene inspection. The late starting of labor monitoring system establishment lead to poor awareness of enforcement and insufficient understanding and correct acquaintance to monitoring working.

3.1.2 Slow Development of Labor Monitoring Mechanism in China

With the rapid economic structure adjustment during opening-up and reform, the process of labor monitoring in China has entered another new stage. While reforming in state council in 2008, the establishment of labor supervisory bureau by HR and Ministry of Labor strengthened the government's function to supervising HR market, adjusting labor relation and developing social insurance. The development of labor monitoring system is growing at low stage and poor strength during this long period, inspectors do not have real power and compulsory executive enforcement to deal with back wage cases.

3.1.3 Lack of Supportive from Government

Service-oriented government shall adjust the number of department according the demand of social governing, the department of labor monitoring shall be expanded, which all shall be paid attention to by leaders at all level. It is a common difficulty that monitoring working is hard to carry on, which is mainly caused by the misunderstanding by part leaders and the ignorance to monitoring, thus impose negative effect on labor monitoring.

3.2 Crosswise Legal Enforcement Power and Unclear Functions Among Departments

3.2.1 Crosswise Legal Enforcement Power

The phenomenon of crosswise legal enforcement power can be indicated as the saying goes: do not govern with power, should govern without power. There are causes of unclear legislation and unreasonable department setting. The excessive scattering crosswise legal enforcement power and lack of cooperation leads to each doing things in its own way, insuperable contradictions and ineffective enforcing the law.

3.2.2 Unreasonable Department Setting

The corresponding enforcement institutions have emerged with the issue of laws and regulations. Although making significant progress through a number of governmental structures reforming, we still face the problems of scattering governing function and unreasonable department setting, which brought out inconvenience, duplicate law enforcement and disturbing residents while enforcing.

3.2.3 Unclear Distributing of Responsibilities and Interests Among Departments

Unclear responsibility among departments leads to

avoiding duties and fighting for interests. This ambiguity of obligation and power dividing causes departments to participate actively to the projects with profitable results, even through acting beyond authority on purpose.

3.3 Lack of Cooperation and Trust Among Government, Labor Union and Entrepreneur Association

3.3.1 Enterprises are Lacking Trust to Government

In recent years, due to shortening of labor monitoring, many labor disputes cases without prompt handling have became grouping incidents, which imposed enormous pressure on government daily working and grievous damaged the government image. It is mainly because there is no sufficient communication between enterprises and labor monitoring department and no labor relation standardized.

3.3.2 No Mutual Cooperating Mechanism Formed Between Enterprises and Labor Union

There is not sufficient cooperating on division of duty. Some enterprises, on the purpose of production and profit maximizing, violated labors' legal rights and interests through no signing contracts. Union right protecting shall be with labors wherever they are. Part of labors' rights and interests can not be ensured due to lacking of cooperating of enterprises and labor union.

3.3.3 Lack of Communication Between Government and Labor Union

As a mass organization voluntarily jointed by labors, labor union's work includes the social policies of labors social environment, social composing, social demanding and other labor-related policies. The lack of communicating between government and labor union, however, leads to distrust with each other and unable to listen to labors' ideas. The common hot spots, difficult points can not be solved with unfulfilling obligations to protect basic labors' rights.

4. MEASURES TAKEN TO SOLVE THE PROBLEMS WITHIN LABOR MONITORING & ENFORCING LAW MECHANISM

4.1 Strengthen Enforcing Power and Continue to Improve Monitoring Mechanism

4.1.1 Strengthen Enforcing Power and Improve Enforcing Procedure

Formal polyphyletic governing theory mainly focuses on

policies and actions taken. In this theory, the government shall properly intervene with economic activities and balance conflict of interest for the labor and the capital without harming the third party's (such as consume) interests. Thus, the government plays the role of making policy and carrying forward practices.

This paper shows the following power that labor safeguard shall have: asking and assisting, inspectors have the right to ask public security and industry and commerce department to assist their work where necessary; sealing up and assisting, labor safeguard department has the right to seal up and detain enterprise's property or apply to the court to preserve to employing unit who fail to operate business or default wages or escape. For the cases related to bankrupt, pay wage, insurance to protect their rights and interest before assets cleared. Executive power, impose fine to punish employing unit in the case of serious threatening beneficiary's normal life. Change the situation of sole enforcing power means and poor rigidity by strengthening labor monitoring & enforcing power.

4.1.2 Valuing Personnel Building and Increasing Staff Allocation

Personnel building are the foundation to labor monitoring & enforcing law working. As for lacking of staff and backward of personnel building, all local governments shall pay high attention to increasing personnel formation, funds, and material organization to fully secure the capacity of labor monitoring group. Thus the monitoring work can be implemented with more professional, reutilizations and better in expanding scale and clearing blind sides.

4.1.3 Sound Laws and Regulations and Complete Supporting Policies

As for the reality of lagging labor safeguard laws and regulations and uncompleted supporting policies, related departments shall strengthen legislation research, listen to suggests from inspectors on the ground, make labor safeguard laws and regulations adaptable to social development, easy operating and with foresight. At the same time, the related interpretation and supporting policy shall be came out timely according to social situation to provide legal base to prevent and combat illegal activities.

4.2 Borrow Ideas from Centralization Labor Monitoring Organizing Form in Japan

As to centralization labor organizing, is monitoring form directed to superior institution and belonged to central department. It is centralized model that lead by one branch in central government (See Figure 4).

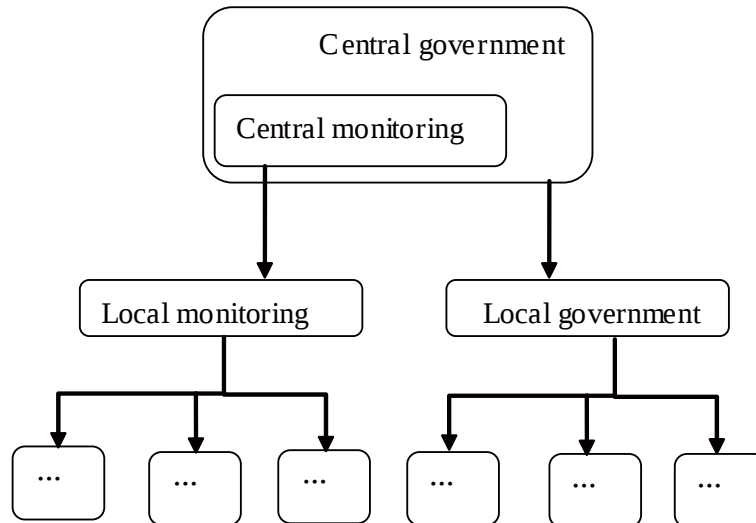


Figure 4
Organization Charts for Centralization Labor Monitoring Organization

4.2.1 Strengthening Independence of Case Handling

Centralization labor monitoring department has the power independent to local government and do not have to asking for local government while dealing with monitoring work according to specific laws and regulations. In this independent manner to strengthen case handling, the labor monitoring department can focus on monitoring operation and carrying its function in professions.

4.2.2 Self-Directed to Finance and Labor Power

Same as the most bodies directly under the central leadership, wage and operation funds of centralization labor monitoring organization are allocated from central finance with relatively independent right of use. Also, personnel application features independence as well. Thus, the local government's disturb can be effective avoided and secure "order to transmit to lower levels smoothly, order unobstructed".

4.2.3 Improve Specialty to Monitor

Central and selection organization is the functional department to perform monitoring function. Carrying monitoring work is its sole operation. Thus, there needs more professional pattern in this resource allocation, personnel and other organizing form.

4.3 Setting up Actively Monitoring Mechanism and Opening Information Channel

The first role of government is a protector or governor. First, the basic rights covered by government includes: labor contract, labor standards, labor insurance, labor welfare, labor educating and labor safety etc. second, monitoring includes: monitoring beforehand, processing and results. Hence, labor monitoring is the critical vital task for government.

4.3.1 Combine Daily Monitoring and Specific Monitoring

Organize labor monitoring and back wage cases punishing at regular intervals. Carry out flexibility enforcement of leniency and strictness, set up defaulting wage warning system, start using labor monitoring info system and improve enforcing process to enhance monitoring efficiency.

4.3.2 Open Petition Channel to Accuse Illegal Activities

Set up the mechanism for leader reception, handing cases and supervising, set up return visit working system and put the problems reflected in to practice. Build up petition system on net and hot wire telephone, issue hot wire line through media and internet for unblocked petition channel.

4.3.3 Communicate and Exchange Between Enterprises and Government

The communication and exchange between enterprises and government can improve mutual trust and cooperation. Governments can express the idea of concern and supports through meeting high level leaders in enterprises, and enterprises can obtain trust from the government by bearing more social responsibilities and charitable work.

In brief, government plays a significant role of both protector to labor rights and interests and promoter to negotiation between unit and labors. Labor monitoring is the product of government functions and establishing sound labor relation monitoring mechanism is responsible not to be neglected. Completing enforcing law mechanism is the guarantee to realize labors' rights and their enthusiasm, thus achieve the optimizing allocation in human resources.

REFERENCES

- CHENG Yanyuan (2011). *Labor Relation* (third version) (pp. 116-124). Beijing: Renmin University of China Press.
- GU Cheng (2010). *I and <<Labor Contract Law>>: Enforcing Law Environment is Getting Better*. Zhong Gong Net -- <<Workers Daily>>, 2.
- NIU Xin (2007). *Peasant-Worker Monitoring Group and Managing Practice in Shenyang*. Northeast Newsnet, 8.
- SHU Houning (2010). *<<Labor Contract Law>> Implementation and Interruption of Service*. Master Degree Paper at Beijing University of Chemical Technology, 6.
- TANG Hongwei (2009). *Governments Function Research with Stable Labor Relation in State-Owned Enterprise*. Master Degree Paper at Central South University, 10.
- WANG Bixue (2008). *Renmin Comment: Where on Earth the Labor Monitoring Department is*. People.com.cn, 5.
- WU Yue (2011). *Peasant-Worker Advanced Unit and Stories in Labor Monitoring Bureau in Shenyang*. Peasant-Worker Office, 7.
- YIN Huirong (2008). *Government's Responsibility Research on Labor Relation Adjustment*. Master Degree Paper at ECUN, 5.
- ZHUANG Lincong (2007). *Labor Monitoring: Functional Orientation and Legal Norm*. Master Degree Paper at NJNU, 5.
- ZHENG Yong (2011). *Greater Challenge Faced Labor Monitoring and Rights Protection in China*. Workers Daily, 3.