我國與加拿大團體協商制度之比較

The Comparison of the Collective Bargaining System between Canada and Taiwan

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摘　要

本文主要討論中、加兩國團體協商制度、團體協約及工會在團體協商中之角色，因加拿大之團體協約及團體協商制度在其勞資關係中，發揮良好的功能，使得勞資關係得以促進，其制度有諸多優點。

加拿大團體協商制度之特點，在於恰當地運用由政府、勞、資三方組成的權利仲裁委員會，來解決因團體協約之適用產生的諸多問題，進而使團體協商制度穩定勞資關係。

我國團體協約之訂定比例仍偏低，如何發揮團體協商之優點，在工會之角色及相關制度之設計上，加拿大提供出良好的例證，足供我國借鑑。

I .*Introduction*

The population of Canada is 26,000,000 and that of Taiwan is 20,400,000. The labour force of Taiwan is 8.4 million, of whom 2.5 million workers, or 29% of the total labour force are union members. The labour force of Canada is 13,503,000, the rate of union membership is 36% of non agricultural employees. These crude measures show a degree of similarity between the two countries. In 1990 there were several thousands collective agreements in force in Canada cover-

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ing most of the workers. In the same period there were 300 collective agreements in force in Taiwan covering 2.8% to 4.2% of the work force. This is a significant disparity. Why does it exist?

In this paper we will try to answer this question by comparing the role of unions and collective bargaining and the position of collective agreements in the labour relations systems of the two countries.

The labour law of Taiwan consists of several statutes enacted in the 1920's and 1940's augmented by labour standards and health and safety legislation introduced in the 1970's and 1980's. Professor Hwang Yeuh-chin, the Director of the Institute for Labour Research at National Chengchi University in Taipei has commented on the state of Taiwan labour relations law as follows:

> In essence these laws basically require unions to be supervised under government control. Such controls include the right to dissolve unions or remove leaders who disturb peace and order, the right to direct union elections and the right to veto candidates for union elections. The lifting of Martial Law in 1987 has affected this situation only slightly. Unions are still under tight control, and although strikes have now been legalized, it remains technically difficult to hold a "legal" strike. It is not only because of no sufficient legal sanction on the wild cat strikes, and also because of the deficiency of legal institutions to support the above- mentioned legalization.[1]

The Council of Labour Affairs was established in 1987 under the authority of the Executive Yuan and charged with the responsibility improving labour- management relations. There is great interest in the labour relations models of other countries. In this context, a comparison of some of the essential elements of the Canadian and Taiwan systems of collective bargaining seems appropriate.

The Canadian labour relations system is based on the model of the American, 1935 Wagner Act. This model recognized the right of employees to join unions; the right of unions to bargain; forbade unfair practices used by employers to frustrate unionization; and imposed a duty on employers to bargain in good faith with the union selected by employees.

In Canada constitutional jurisdiction over labour law is split between the national and ten provincial governments. The federal structure has promoted diver-

sity in legislative approach and there have been significant refinements of the basic model of the Wagner Act. In summary it may be said that the Canadian labour relations system is highly regulated and every effort has been made to reduce the need for parties to resort to industrial action to back their demands. Various methods of dispute resolution are provided as essential elements of an overall regulatory system designed to channel and resolve, and thereby avoid, industrial disputes.

In this paper we shall examine some of the main characteristics of each country's system and conclude with some suggestions and recommendations for further study to improve Taiwan's labour relations system.

Ⅱ .*Bargaining Unit Determination in Canada*

One of the principal features of the Canadian labour relations system is the process for certifying a trade union as the exclusive bargaining agent for a group of employees. In order to be granted such power a trade union must demonstrate to the labour relations board [2] that it enjoys the support of a majority of the employees in a unit which has been determined to be appropriate for the purposes of collective bargaining.

The certification process was adopted as a means of eliminating the need for recognition strikes. By gaining a certificate a trade union can use lawful means to compel an employer to engage in collective bargaining.

We shall consider several features of the certification process.

1.Appropriate Bargaining Units

The unit of employees which the union wishes to represent must be appropriate for the purposes of collective bargaining. Section 1(1)(b) of the Ontario Labour Relations Act defines "bargaining unit" as:

> a unit of employees appropriate for collective bargaining, whether it is an employer unit or plant unit or a subdivision of either of them.

As the Supreme Court of Canada has ruled, there is a broad discretion in labour boards to decide what type of unit of employees is appropriate for collec-

tive bargaining. [3] Boards are expected to consider what sort of unit will be viable and sensible from the point of view of sound labour-management relations. Of course units may be large or small and heterogeneous or homogeneous. Labour boards try to assess the degree of "community of interest" in a proposed unit. There must be a common economic interest and an absence of any conflict of interest. Boards seek to promote harmonious labour relations and yet maximize the employee's freedom to choose a trade union. Boards have decided a proposed unit must be "an appropriate unit" but need not be the "most appropriate unit".

Several criteria are considered by Boards in determining whether there is a sufficient community of interest. These include the similarity in the scale and method for setting wages, benefits and terms and conditions of employment; the frequency of contact or interchange among employees and the geographic proximity of work places; whether unit work is performed at several places or a single location; the degree to which the production processes are integrated or separate; whether there is common supervision of employees and common determination of labour relations policy; the impact of the proposed unit on the administrative organization of the employer; the history of collective bargaining in the industry, region or among the employees of the particular employer.

Generally speaking, Boards are reluctant to sever small groups of employees from larger existing organizations. In the cases there may be found a "presumption" against fragmentation. Finally, labour boards consider the desires of the affected parties and employees.

Such opinions merit serious consideration but are not determinative.

2.Majority Support

Trade unions which wish a certificate must show they enjoy the support of a majority of the employees in the proposed unit.

For example, s. 32(3) of the Alberta Labour Relations Code provides:

> Before a certificate is granted the Board must be satisfied that...at least 40% of the employees in the unit are members in good standing of the union or, having applied for membership and having paid on their own behalf not less than $2.00 on or not longer than 90 days before the application for certifica-

tion, have selected in writing the union as their bargaining agent....[4]

The statutes provide a variety of methods by which unions may present evidence of majority support. A union may show signed applications for membership in the union supported by the payment of an initiation fee by each employee on their own behalf. Or, in some jurisdictions unions may present petitions signed by a majority of employees in the unit.

Usually, if there is uncontroverted evidence of majority support there is no need to hold a representation vote of the members in the bargaining unit. However, if questions arise about the means used to collect the evidence of majority support or if the evidence itself is questionable, Boards may conduct a supervised vote of the employees in the unit.

In deciding whether there is evidence of majority support Boards are alert to the importance of avoiding intimidation, by either the employer or union. The Boards must be satisfied the evidence shows the free and voluntary choice of the employees.

In cases where there is sufficient evidence of employee opposition to an application, usually shown through counter-petitions, the Boards may order a representation vote. Generally, employer involvement in the circulation or distribution of a counter-petition undermines the reliability of the petition. Great concern is shown by Boards to ensure any such evidence represents the true wishes of the employees, unaffected by the views of the employer.

3.When Can a Union Apply for a Certificate?

Applications for certification may be made only during specified "open periods". There are designed to protect already existing bargaining relationships from raids by competing unions. Where there is no collective agreement and no certificate, applications can be brought at any time. The precise rules governing "open periods" are quite technical and vary among jurisdictions. However, it may be generally stated that applications can be brought only in the final months of existing collective agreements. Unsuccessful applicants for certification are barred for 90 days in British Columbia and up to 10 months in Ontario from bringing another application. Generally, where a strike or lockout is in effect, certification applica-

tions cannot be brought without the consent of the labour board.

4.Employer Domination

Labour boards are directed by statute to avoid certifying unions which may be dominated or under the influence of an employer. There are many cases in which certificates have been denied because employers played too active a role in sponsoring or encouraging an application for certification by a "sweetheart" union.

The rationale for this policy was stated in an early, but still cited decision, of the Ontario Labour Relations Board. In Edwards v. Edwards[5] the Board said of the provision in the Ontario Labour Relations Act:

> The intent of the section is to prohibit the certification of any trade union which, because of the nature of its relationship with an employer is not qualified to act on behalf of employees in their relations with their employers.

The forgoing points describe in a general way the principle feature of the certification process.

It is now necessary to consider the effect of certification.

Ⅲ .*The Exclusive Bargaining Authority of the Certified Trade Union in Canada*

The most important result of the certification process is that unions are granted the exclusive right to represent all employees in an appropriate bargaining unit in the negotiation of a collective agreement. Section 38(1) of the Alberta Labour Relations Code is typical in providing that once a union is certified it has the exclusive authority to bargain on behalf of the employees and bind them to a collective agreement. It immediately replaces any other bargaining agent and the certification of any other union is revoked.

The legal consequences of this sort of provision have long been recognized by the courts. In Compagnie Paquet [6] Judson J. said on behalf of the Supreme Court of Canada:

The Union is by virtue of [certification] the representative of all the em-

ployees in the unit for the purpose of negotiating a collective agreement. There is no room left for private negotiation between the employer and employees. Certainly to the extent of matters covered by the collective agreement, freedom of contract between master and servant is abrogated. The collective agreement tells the employer on what terms he must in future conduct his master and servant relationship. When this collective agreement was made, it then became the duty of the employer to modify his contracts of employment in accordance with its terms so far as the inclusion of those terms is authorized by the governing statutes. The terms of employment are identical for all employees whether or not they are members of the union, they are identical for all.

Once a trade union has been certified it enjoys exclusive authority to bargain for all employees in the unit.

This means that no other union may try to bargain for the employees and that the individual employees no longer have a right to enter into individual bargains with the employer.

An important power gained by certified trade unions is the ability to compel the employer to engage in good faith bargaining to conclude a collective agreement.

The process begins with a notice to bargain. Section 57(1) of the Alberta Labour Relations Code is typical in providing that a certified bargaining agent may serve notice to the employer or an employer's organization, and vice versa, to commence collective bargaining. Once the notice has been served the parties are required to exchange the names and addresses of the members of their respective bargaining committees.

Section 58 (1) of the Code requires the parties or authorized representatives to meet within 30 days after the notice is given. They are obliged to bargain in good faith and to make every reasonable effort to enter into a collective agreement. Bargaining proposals are required to be exchanged within 15 days of the first meeting or within a longer time agreed to by the parties.

Once the notice to bargain has been served the employer is prohibited from changing the rates of pay or conditions of employment except: in accordance with an established custom or practice of the employer; with the consent of the bar-

gaining agent; or in accordance with the terms of the collective agreement. The statutory "freeze" lasts for 60 days from the date the notice to bargain is served where the union is newly certified. In a more mature bargaining relationship, where a notice to bargain has been served on expiry of a collective agreement, the "freeze" lasts until a lawful strike or lockout begins. The purpose of the freeze is to prevent the employer from unduly influencing the employees and undermining the bargaining authority of the union.

Once the notice to bargain is given, a duty to bargain in good faith arises. Under the terms of the Alberta statute the duty provides that no employer or union shall refuse to meet but shall begin to bargain in good faith and make every reasonable effort to enter into a collective agreement.

The labour relations board may issue a directive to the Parties to bargain in good faith and may prescribe the procedure or conditions under which collective bargaining is to take place. When this directive is filed with the court it becomes enforceable as an order of the court.

The purpose of the duty to bargain in good faith is to reduce need for recognition strikes. It forces employers to acknowledge the Union as the legal representative of the employees and requires "collective" rather than "individual" bargaining.

In their many decisions dealing with the duty, labour boards have determined it consists of two main requirements. First, it reinforces the employer's obligation to recognize and negotiate with the union. Second it fosters rational and informed discussion between the parties. In practice the duty to bargain is not a requirement to agree or a right to a particular bargain. Instead it requires the parties to negotiate and allows a labour board to monitor the process and remove impediments to sensible bargaining.

Ⅳ. *The Central Role of the Collective Agreement in Canada*

The whole point of the collective bargaining process is to arrive at a collective agreement. The collective agreement is a peace treaty between the employer and union and establishes the terms on which they will conduct future negotiations and resolve disputes. The collective agreement also contains the terms and conditions of employment of individual employees.

The labour relations statutes provide that collective agreements are legally binding on the union, employer and employees. The relationship between employers and individual employees is governed almost solely by the terms of the collective agreement. In a collective bargaining regime, individual contracts of employment are insignificant. The importance of the collective agreement was recognized by Chief Justice Laskin of the Supreme Court of Canada in McGavin Toastmaster v. Ainscough. [7] He said:

> The reality is, and has been for many years now throughout Canada, that individual relationships as between employer and employee have meaning only at the hiring stage and even then there are qualifications which arise by reason of union security clauses in collective agreements. The common law relevant to employer-employee relations governed by a collective agreement which, as the one involved here, deals with discharge, termination of employment, severance pay and a host of other matter that have been negotiated between union and company as the principal parties thereto.

In the Canadian labour relations system the collective agreement is the ultimate achievement of the negotiating process.

V .*Enforcing the Collective Agreement through Rights Arbitration in Canada*

At common law the collective agreement could not be enforced through the courts. In Young v. Canadian Northern Railway [8] Lord Russell said a collective agreement was not "adapted for conversion" into an individual contract of employment and by itself was not a contract between the employee and his employer. He said:

> If an employer refused to observe the rules, the effective sequel would be, not an action by an employee, not even an action by the union, but the calling of a strike until the grievance was remedied.

Thus, at common law, the remedy for breach of the collective agreement was strike action--not adjudication.

This position was changed by the regulatory model adopted in Canada after

World War Ⅱ . The collective agreement became a legally enforceable bargain through the process of rights arbitration. Every collective agreement must contain a method for the final and binding resolution of disputes concerning the interpretation, operation or alleged violation of its provisions. In several jurisdictions the labour statute contains a model arbitration clause which is deemed to apply if the collective agreement is silent. Through this mechanism arbitration has become the exclusive method of adjudicating disputes during the life of a collective agreement.

The common law position has been reversed by legislation. While collective agreements are in force strikes are prohibited. Instead, any differences must be resolved through the arbitration process. The courts have decided that the arbitration board is the exclusive forum for resolving disputes concerning the interpretation of the collective agreement. The effect of this judicial policy has been to enhance the authority of the bargaining agent. A brief review of several decisions will highlight the growth of the union's control as gatekeeper to the arbitration process.

The exclusivity of the remedy of arbitration and the role of the union in administering this machinery was acknowledged by Laskin C.J.C. in his dissenting judgement in Winnipeg Teacher's Ass'n. No.1 of Manitoba Teacher's Society v. Winnipeg School Division No. 1. [9] He held that the arbitration machinery established under the collective agreement was "better suited than resort to the court" for resolving differences about interpretation of the collective agreement.[10]

The union's position as gatekeeper to the remedial process was affirmed by the Supreme Court of Canada in General Motors of Canada Ltd. v. Brunet [11] when it held that arbitration under the collective agreement and not litigation in the courts was the proper method of dealing with grievances concerning the operation of the collective agreement.

Pigeon J. observed that allowing recourse to the courts rather than insisting that the arbitration mechanism be followed would violate s.88 of the Quebec Labour Code which, like labour relations legislation in other jurisdictions, required that "every grievance shall be submitted to arbitration in the manner provided in the collective agreement...." He observed:

It would be absolutely contrary to these provisions to allow the discharged

> employee to ask the courts to assume the function of the arbitrator appointed by the agreement if the Union drops the grievance rather than carrying it to arbitration. The situation might be different if the Union acted in bad faith, but good faith is to be presumed and there is no allegation of bad faith.[12]

The view that the collective agreement provides an exclusive remedial mechanism in the arbitration process was recently reaffirmed by the court in Ste. Anne-Nackawic Pulp and Paper v. C.P.W.U., Local 219 [13] where Estey J. said after reviewing various authorities:

> The courts have no jurisdiction to consider claims arising out of rights created by a collective agreement. Nor can the courts properly decide questions which might have arisen under the common law of master and servant in the absence of a collective bargaining regime if the collective agreement by which the parties to the action are bound makes provision for the matters in issue....
>
> ...the law has so evolved that it is appropriate to hold that the grievance and arbitration procedures provided for by the collective agreement provide the exclusive recourse open to parties to the collective agreement for its enforcement.[14]

The primacy of the arbitration process and the commanding role which unions play in controlling access to the system led to the development of the union's duty to fairly represent all the employees in the bargaining unit. Indeed, the duty of fair representation may be viewed as the quid pro quo to the exclusivity of union bargaining authority.

This rationale was advanced by Mr. Justice White of the United States Supreme Court in his well-known decision in Vaca v. Sipes[15]. He explained that:

> ...the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct.

This reasoning was first employed in Canada in Fisher v. Pemberton et al.[16] where MacDonald J. held a union liable for arbitrary manner in which it had considered the merits of the plaintiff's grievance and refused to process his claim to arbitration. Recently, the rationale was accepted by the Supreme Court of Canada in Canadian Merchant Service Guild v. Gagnon et al.[17] Speaking for the unanimous court, Chouinard J. observed that:

The duty of fair representation arises out of the exclusive power given to a union to act as spokesman for the employee in a bargaining unit.[18]

He went on to set out five principles concerning the duty of fair representation which he had gleaned from the case law and academic commentary.[19]

1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.
4. The union's decision must not be arbitrary, capricious discriminatory of wrongful.
5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.

The duty of fair representation is a check on the power of the trade union. It is designed to ensure that employees in a bargaining unit even if not members of the union will be fairly treated in the administration of the collective agreement.

It is now time to consider several features of the industrial relations system in

Taiwan.

VI. *Single Plant Units in Taiwan*

In Taiwan unions may only be organized under conditions specified in Article 6 of the Labour Union Law.[20] That section provides:

> An industrial union or a craft union shall be organized in accordance with the law, when workers of full 20 years of age, of the same industry in the same area or in the same factory or workshop, or in the same area and in the same craft, exceed the number of thirty.

Article 8 of the Labour Union Law qualifies the requirement that there be at least thirty employees in a union. It provides:

> ...incase the number of workers of one and the same industry in one and the same area is smaller than the number as prescribed in Article 6, they may organize a labour union in combination with workers of one and the same industry in other areas or factories or workshops.

Two thirds of the enterprises in Taiwan are small or of medium size, and have fewer than thirty workers. Thus, the employees in all these undertakings are denied the right to form trade unions on their own. The exemption provided in Article 8, which would allow such employees to combine with others in different factories or workshops has proven to be practically unworkable. This is the chief reason why collective bargaining is of limited importance in Taiwan. Only the workers employed in large state-owned enterprises are permitted an effective opportunity to form trade unions. As Professor Hwang Yueh-chin has observed it has been estimated that unions exist in less than 10% of all manufacturing enterprises.[21]

A further limitation on the usefulness of trade union organization is that many craft unions do not engage in collective bargaining. They are formed for the purpose of allowing their members to register for labour insurance, a form of medical insurance benefit. For example, while many taxi drivers belong to the Taxi Drivers Craft Union, this union does not bargain with the Taxi Employers' Organization. Instead the union is a device which allows the drivers to register for

insurance protection.

A related problem for members of craft unions is that they often cannot affix themselves to a particular employer. Thus there is no one with whom to bargain.

A further reason for the limited coverage of collective agreements in Taiwan is that government employees are not permitted to form unions or engage in collective agreements.

This is in striking contrast to Canada where the growth of public sector unions accounts for the increase in the rate of unionization over the last twenty years.

In Taiwan there is no system for dealing with unfair labour practices. This leaves unions vulnerable to employer actions aimed at discouraging union organization. In his paper [22] Professor Hwang gives several examples of recent cases where employers took action against union leaders to thwart organizational campaigns. Professor hwang concludes:

> Many companies have openly fought these unionisation inititatives by depriving union leaders of promotion opportunities, by transferring them to other plants or by sacking them.[23]

For these reasons there are only three hundred collective agreements in force in Taiwan. Professor Hwang Yueh-chin estimates that only 2.8% to 4.2% of the work force is covered by collective agreements. In rethinking the labour relations system it may be necessary to develop a method by which employees of small enterprises and members of such craft unions can engage in meaningful collective bargaining with their employers.

Ⅶ. *Recognition and Bargaining Authority of the Trade Union in Taiwan*

Only a trade union may represent employees in collective bargaining. This limitation stems from several provisions in various statutes. Article 1 of the Collective Agreement Law [24] defines "collective agreement" as:

> ...a written contract, concluded between an employer or an incorporated organization of employers on the one hand and an incorporated organization of workers on the other hand for the purpose of specifying labor relations.

Only "incorporated" organizations of workers may enter into a collective agreement. Such "incorporated" organizations should be understood to be those unions formed under the authority of Article 6 of the Labour Union Law which is set out above. Article 2 of the Labor Union Law [25]provides that a labor union "shall be a juristic person."

Several statutory provisions regulate the bargaining process and the contents of collective agreements.

Collective agreements cannot be concluded in the name of a union unless certain conditions are met. The constitution of the union must permit its name to be so used; or there must be an authorizing vote at a general meeting of the union's representatives; or there must be "special authorization in writing from each and every member of the organization." [26] Collective agreements concluded in violation of these requirements are invalid unless ratified by a general meeting of the members of the organization.[27]

The collective agreement is not a private contract between the parties. Every collective agreement must be submitted to a competent government administrative authority for approval.

The authority may cancel or amend the agreement if it finds:

the collective agreement is contrary to law or regulations or incompatible with the progress of the employer's business or is not suited to ensure

the maintenance of the workers' normal standard of living.[28]

Following administrative approval or amendment, and if the parties agree, the collective agreement becomes effective.[29]

Even though unions have authority to engage in collective bargaining, the process is controlled and limited by the above requirements for administrative oversight and approval. This administrative involvement takes the collective agreement out of the realm of private law by allowing direct government participation in determining the substance of the rights which will be enjoyed by the parties to the agreement. This is a significant limitation of "free" collective bargaining.

Rather than requiring administrative approval of collective agreements it would be possible to design a more liberal system. For example, it could be ex-

pressly declared that no collective agreement could breach the law or any regulation. This would leave to the parties the job of monitoring the collective agreement and taking action to set aside any agreement which violated this declaration. Indeed, such a provision appears to exist already in Article 4 of the Settlement of Labour Disputes Law which includes in the definition of "rights disputes" as those disputes:

> between workers and employers on their rights and obligations arising out of laws or regulations, collective agreements, or labor contracts.

The need for administrative paternalism to ensure that collective agreements are not "incompatible with the employer's business" or are not "suited to ensure the maintenance of the workers' normal standard of living" is doubtful. In a system of free collective bargaining the parties should look out for their own interests. Collective agreements would be monitored by the parties, not the government.

Such a model would require a forum in which either party could complain that the collective agreement failed to comply with or violated a law or regulation. In the Canadian model this function is performed by labour relations boards or rights arbitration boards. In the current Taiwan model such complaints could be taken to the civil courts. It may be that a specialized labour court would be more effective. Further study is necessary to determine whether the civil court is an adequate or effective forum.

Ⅵ. *The Role of the Collective Agreement in Taiwan*

For the reasons we have described above there are a limited number of collective agreements in force in Taiwan. Further reasons must be considered. There are no provisions requiring the employer to engage in collective bargaining with a trade union. Also there is not duty to bargain in good faith. The absence of such requirements means the employer is free to ignore the union. Such employer conduct is an incentive for unions to engage in industrial action to force recognition of their claims. A balanced regulatory system which required employers to engage in collective bargaining would remove the need for such recognition strikes.

One of the fundamental problems highlighted by recognition strikes is the fact

the two sides in collective bargaining do not have confidence in the system. Unions have difficulty receiving recognition of their legitimate role in representing the interests of employees. And employers are reluctant to engage in collective bargaining because they are concerned that collective agreements will not be respected by unions or obeyed by individual employees.

In 1989, 1897 out of 1943 labour-management disputes were resolved by mediation or conciliation, 2 were resolved by arbitration, and 85 remained unresolved. [30] The statistics combine adjustment and rights disputes and so it is not possible to say whether the unresolved disputes were of one type or the other. What does seem clear is that arbitration is not used very often, while administrative mediation or conciliation is used a great deal. There also seem to be a rather large number of unresolved disputes.

Ⅸ. *Enforcing the Collective Agreement in Taiwan*

Article 14 of the collective Agreement Law provides that employers and workers are "bound to conform to the conditions of labour laid down by a collective agreement." The article also provides that the collective agreement applies to all persons who later become "Concerned parties to the agreement."

Any labor contract which is inconsistent with the conditions of labour in a collective agreement are invalid according to Article 16 of the collective Agreement Law.

The mechanism for enforcing such claims is found in the Settlement of Labor Disputes Law.[31] Article 4 defines "rights disputes" as those disputes

> between workers and employers on their rights and obligations arising out of laws or regulations, collective agreements, or labor contracts.

Article 5 of the same law provides that rights disputes are to be settled by conciliation procedures or adjudicated by the law court which, when necessary, is required to "set up a labor-court."

Article 19 of the Collective Agreement Law provides that a party to a collective agreement who violates "any provision of the agreement which does not relate to conditions of labor" may be fined by the court. The fines are very small--500 yuan for employers and 50 yuan for employees [32]--and do not provide an incen-

X. *Conclusion and Recommendations*

a.conclusion

The regulatory limitations of workers' rights to organize and the small scale of most labor unions has limited unions' effectiveness in Taiwan. Thus the total number of effective collective bargaining agreements negotiated by industrial unions was only 339 in the 12 months from July 1989 to June 1990. There is no employer organization at the county, provincial or national level with substantial executive powers capable of negotiating with labor organizations. In addition, employers are reluctant to negotiate at higher levels of bargaining and labor organizations remain highly decentralized as well. Therefore, labor-management collective bargaining almost always takes place at the firm level in Taiwan. And the collective bargaining or the collective agreements do no really play an effectively role to solve labor-management disputes.

The major fault of the legal framework constructed by the law is the absence of provisions relating to collective bargaining procedures. For example, the law does not impose a legal obligation to bargain, nor is there an obligation to bargain in good faith.

The limitations on the right of union organization in Taiwan appear to be quite restrictive. In our view the requirement for a minimum number of persons to form a trade union is unduly restrictive. We suggest further study of the rationale for this policy.

b.recommendation

The method of resolving rights disputes appears to be ineffective for reasons of cost and delay. Further study should be undertaken to determine if more efficient methods of dispute resolution could be implemented. In particular the possibility of using rights arbitration or reference to a specialized labour court or administration tribunal should be considered. The Canadian experience with rights arbitration may provide a useful model.

The Canadian model uses rights arbitration boards to solve the rights disputes. Rights arbitration boards are created as needed but are sometimes standing boards established under collective agreements or by statute. Rights arbitration boards constitute by the appointed nominees from unions and employers and the

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The Canadian model uses rights arbitration boards to solve the rights disputes. Rights arbitration boards are created as needed but are sometimes standing boards established under collective agreements or by statute.

Rights arbitration boards constitute by the appointed nominees from unions and employers and the representives from government. Those boards play the role of scapegoat in the rights disputes process. Thus the government can solve the rights disputes problems more effectively and avoid the paternalism. So to set up the system similar to the rights arbitration boards in Taiwan is useful.

Foot Note

註　一：Hwang Yueh-chin, "Taiwan R.O.C., Contextual and Historical

註　二：In each of Canada's provinces and at the federal level there are labour relations boards. These are standing administrative tribunals granted authority to determine applications for bargaining rights, enforce compliance with the substantive rights of employees, employers and unions, and monitor the labour relations system. The boards are the backbone of the regulatory process. They are designed to make recognition strikes and other types of industrial action unnecessary. The administrative remedies they may order are a substitute for the self-help of economic sanctions.

註　三：Canada Labour Relations Board and Transair et al., (1976), 67 D.L.R. (3rd) 421 (S.C.C.)

註　四：In Alberta a vote of the employees in the unit is then required.

註　五：52 CLLC 17,027 (Ont. LRB).

註　六：(1959) 18 D.L.R. (2d) 349 (S.C.C.).

註　七：[1975] 5 W.W.R 444 (S.C.C.).

註　八：[1931] 1 D.L.R. 645 (P.C.).

註　九：, 59 D.L.R. (3d) 228.

註　十：id. at p. 236.

註十一：[1977] 2 S.C.R. 537.

註十二：id. at 548.

註十三：(1987) 28 D.L.R. (4th) 1.
註十四：id at pp. 13-14.
註十五：(1967) 55 L.C. 11,731.
註十六：(1969) 8 D.L.R. (3rd) 521.
註十七：84 C.L.L.C. 14,043.
註十八：id at 12,188.
註十九：id. at p. 12,188.
註二十：Promulgated on October 21, 1929 and amended on January, 1949 and May 21, 1975.
註二一：op. cit. p.22.
註二二：op. cit. p.34.
註二三：op. cit. p.34.
註二四：Promulgated on October 28, 1930 and effective on November 1, 1982.
註二五：Promulgated on October 21, 1929; effective from November 1, 1929; as amended on January 7, 1949 and on May 21, 1975.
註二六：Article 3, collective Agreement Law.
註二七：id.
註二八：Article 4, Collective Agreement Law.
註二九：Article 4, Collective Agreement Law.
註三十：The Department of Labour-Management Relations, CLA.
註卅一：Promulgated and enforced on June 9, 1928; Amended on March 17, 1930; September 27, 1932; May 31, 1943; June 26, 1988.
註卅二：In Canadian dollars the fine for employers is approximately $65.00 and the fine for employees is approximately $6.50.