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REGULATIONS ON PROMOTING COLLECTIVE BARGAINING AND IMPLEMENTATION PRACTICES IN VIETNAM

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Abstract
On July 5, 2019, Vietnam completed the application to join the Convention on the Right to Organize and Collective Bargaining, 1949 (Convention No. 98). Currently ratifying 6 out of 8 ILO Fundamental Conventions (ILO, 1949), this Convention takes effect from July 5, 2020, one year after completing the ratification dossier. Promoting collective bargaining is one of the contents that Vietnamese Labour law protects and is consistent with Convention 98. This study provides an overview of content related to measures to promote collective bargaining. ; Analyze current Vietnamese legal regulations on measures to promote collective bargaining and discuss the issue of improving legal regulations in this field.
Keywords: Employees, Employers, Employee Representative Organizations, Collective Bargaining, Vietnam.

I. Introduction

Regulations on promoting collective bargaining in Vietnam are stipulated in the Labour Code 2019. Collective bargaining is negotiation and agreement between one or more parties many organizations representing workers with one or more employers or organizations representing employers to establish working conditions and relations progressive, harmonious, and stable labour . This is to create opportunities for employees and employers to build harmonious labour relations and goodwill in terms of work and benefits. Normally, the process of implementing collective bargaining at an enterprise must follow specific procedures and established content prescribed in the Labour Code 2019 (Pham Thi Thanh Tam, 2023). Besides, the implementation of collective bargaining needs to comply with principles such as voluntariness, cooperation, goodwill, equality, openness and transparency. Learning about measures to promote collective bargaining requires systematizing the theoretical basis for promoting collective bargaining, assessing weaknesses and difficulties in promoting collective bargaining. Current situation of promoting collective bargaining and proposing solutions to promote collective bargaining.

II. Theoretical Basis

Convention No.98 establishes two basic principles of collective bargaining, including: i) responsibilities of the state and collective bargaining parties in promoting collective bargaining; ii) ensure the voluntary nature of collective bargaining.

Promoting collective bargaining is closely related to the responsibility of the state through mechanisms such as: labour dispute resolution mechanism (conciliation, arbitration); mechanism to extend the term or expand the scope of application of voluntary collective labour agreements; Develop and ensure the implementation of regulations on the obligation to negotiate in good faith.

Ensuring the voluntary nature of collective bargaining is mainly related to the parties' right to self-determine the content of negotiation; on whether an agreement can be reached through negotiation or not; about participants in negotiations; about the level of negotiation, etc.

Different from resolving other labour disputes such as individual labour disputes or collective labour disputes about rights, conciliation and arbitration procedures for disputes arising during the collective bargaining process (disputes collective labour agreement on interests) is intended to promote collective bargaining. However, according to ILO

standards, conciliation and arbitration procedures aimed at promoting collective bargaining must be voluntary procedures carried out by neutral and independent third parties. In the Compendium of the ILO Committee on Freedom of Association, 2006, paragraph 932: The body, organization or individual designated to resolve disputes between parties to collective bargaining must be independent and the. These people must be on a voluntary basis (Committee on freedom of association, 2006).

The concept of voluntary conciliation and arbitration is understood to include both the mandatory/voluntary nature of the procedure and the mandatory/voluntary nature of the conciliation plan or arbitration decision. For arbitration procedures, if the parties voluntarily submit the dispute to arbitration, the decision of that voluntary arbitration procedure may be binding on the parties. Applying mandatory conciliation and arbitration procedures when the collective bargaining parties fail to reach an agreement is contrary to the principle of voluntariness in collective bargaining. This is noted in the ILO Committee on Freedom of Association's Compendium, 2006, paragraphs 930, 992.

Legislation requiring compulsory conciliation is contrary to the specially protected principle of voluntary negotiation specifically in Convention No. 98. The requirement to follow the mandatory arbitration procedure when the parties cannot reach an agreement on a collective labour agreement leads to difficulties related to the application of Convention No. 98 (Committee on freedom of association, 2006).

However, for the purpose of promoting collective bargaining, mandatory conciliation or arbitration procedures may be applied in limited circumstances, including collective bargaining taking place in essential services areas where Workers do not have the right to strike. This content is recognized in the Compendium of the ILO Committee on Freedom of Association, 2006, paragraph 994: The application of compulsory arbitration when the parties cannot reach an agreement through collective bargaining can only be is allowed in cases where collective bargaining takes place in areas of essential services in the strict sense of the concept of essential services (e.g. services whose cessation would jeopardize the network, personal safety or health of a section or the entire population) or initial collective bargaining (Committee of Experts on the Application of ILO Conventions and Recommendations (CEACR).

The principle of good faith negotiation means that the parties should make every effort to reach an agreement, conduct negotiations in a substantive and constructive manner, avoid any delay without reasonable cause, respect the agreement reached and implement it in good faith, giving adequate time and attention to the discussion and resolution of disputes that arise. This content is recorded in the Compendium of the ILO Committee on Freedom of Association, 2006, paragraphs 935, 937: The fact that both the employer and the union bargain in good faith and endeavor to reach an agreement is very important; Furthermore, substantive and constructive negotiations are essential to establish and maintain a relationship of mutual trust between the parties. The principle that employers and unions must negotiate in good faith and endeavor to reach an agreement is understood to mean that any unwarranted delay in the negotiation process must be avoided (Committee on freedom of association, 2006).

The right to collective bargaining is available to all representative workers' organizations. In the Compendium of the ILO Committee on Freedom of Association, 2006, paragraph 884: The Committee on Freedom of Association pointed out the importance of incorporating the rights of representative organizations in negotiations, regardless of whether this organization is registered or not, but the law must not contain provisions allowing labour organizations at higher levels to conduct collective bargaining at lower levels, section 205: Intervention by higher-level organizations, according to The provisions of law, in the bargaining process of subordinates, are incompatible with the autonomy of the parties in the bargaining process. This is an issue that needs to be decided by the trade union itself.
The content and level of collective bargaining are decided by the negotiating parties. Compendium of the ILO Committee on Freedom of Association, 2006, paragraph 988:

According to the principle of free and voluntary collective bargaining in Article 4 of Convention No. 98, the determination of the bargaining level is a key issue. The core parties must be given autonomy to decide, therefore, the level of negotiation should not be regulated by law or by decisions of administrative agencies or by precedent decisions of labour management agencies.

III. Literature Review

Researches related to the topic include: ILO Convention No. 98 plays an important role in shaping policies and practices supporting the right to organize and collective bargaining, helping to create a fair and sustainable labour environment solid. Convention No. 98 on the application of the principles of the right to organize and collective bargaining. Convention No. 98 on the Application of the Principles of the Right to Organize and Collective Bargaining is a document of the International Labour Organization (ILO) of 1 July 1949. This Convention emphasizes the right to organize and bargain. Collective bargaining is a fundamental right of workers, and the application of these principles is extremely important to ensure fair rights and conditions for workers. In addition, this document also provides specific guidance and regulations on applying the principles of the right to organize and collective bargaining to labour practices in ILO member countries.

Natsu Nogami (2014). Report on reviewing Vietnamese laws with international labour standards, Technical documents of ILO Hanoi Office. The report "Review of Vietnamese law with international labour standards" is a technical document of the Office of the International Labour Organization (ILO) in Hanoi, compiled and published by Natsu Nogami in 2014. This document focuses on assessing Vietnam's labour legal system and the level of compliance with international labour standards set by the ILO. The report may address legal reforms, strengths and weaknesses of the current labour legal system, as well as recommend specific measures to improve compliance with international labour standards in this field. Thanks to this work, stakeholders can better understand how international labour standards are implemented and complied with in Vietnam, and thereby make appropriate policies and decisions to relax or improve the current labour law system.

Associate Professor, PhD. Le Thi Hoai Thu. (2018). Improve the law on collective bargaining. Retrieved 09 01, 2020, from Legislative Research: http://lappap.vn/Pages/tintuc/tinchitiet.aspx?tintuc_id=207631. This document may focus on completing and improving regulations and policies on collective bargaining rights and related issues at the enterprise level or higher. This can have a major impact on promoting consensus and resolving labour disputes in the workplace, while improving rights and working conditions for workers. The content in the document provides information and thorough analysis of current legal regulations, to help improve and enhance the quality of collective bargaining at the enterprise level and higher.

Pham Thi Thanh Tam. (2023). Practical implementation of the law on collective bargaining according to the provisions of the Labour Code 2019. Electronic State Management Magazine. This document can provide a deeper insight into the practical implementation of the new law on collective bargaining stipulated in the Labour Code 2019. Through this document, results can be presented, advantages and difficulties in the implementation process, and provide specific information on how to apply the provisions of the 2019 Labour Code in practice. This can help improve understanding and compliance with collective bargaining laws, thereby improving the quality of the collective bargaining process and labour relations at production and business establishments.

Committee on freedom of association (2006). Compendium on freedom of association. This document can provide detailed and precise guidance to support the implementation of policies and actions aimed at ensuring the fundamental principles related to freedom of association. In addition, this document can provide information on the practical application of these principles, helping to improve understanding and proper implementation of regulations related to freedom of association in the labour environment. This can help improve industrial relations and achieve a fair and trustworthy working

environment, between employees and employers.

IV. Research Method and Results

This study mainly uses literature review and secondary data research methods. This method was used to study on thematic topic to enlighten theoretical aspects about the operation of employees' organizations; analyze the current status of legal regulations on the participation in employees' organizations in Vietnam and make recommendations to improve the laws.

Regulations of Vietnamese Law on Measures to Promote Collective Bargaining

It can be seen that Vietnamese law's basic regulations are consistent with the requirements of Convention 98 on promoting collective bargaining and ensuring the voluntary principle of collective bargaining.

Article 65 of the 2019 Labour Code: “Collective bargaining” is a process of negotiation between a party that consists of one or several representative organization of employees and another party that consists of one or several employers or employer representative in order to regulate working conditions, relationship between the parties and develop progressive, harmonious and stable labour relations.

Regarding the obligation to bargain in good faith: The 2019 Labour Code sets out the principle of good faith bargaining (Article 66) " Collective bargaining shall be carried out on the principles of voluntariness, good faith, equality, cooperativeness, openness to the public and transparency” (VNA, 2019). Unfortunately, the Code does not have regulations defining what the principle of good faith negotiation is, so it is unclear what the meaning of this principle is. A number of specific regulations scattered in different articles have content that is essentially specific requirements of this principle.

The 2019 Labour Code stipulates The right to request collective bargaining of the internal representative organization of employees in Article 68: The representative organization of employees has the right to request collective bargaining whenever it reaches the minimum number of members as prescribed by the Government ; In case an enterprise has more than one internal representative organization of employees that satisfies the requirements in Clause 1 of this Article, the one that has the most members will have the right to request the collective bargaining. Other representative organizations of employees may participate in the collective bargaining if agreed by the requesting organization; If none of the employees' representative organizations of an enterprise satisfies the requirements in Clause 1 of this Article, they may request collective bargaining if their total number of members reaches the minimum number specified in Clause 1 of this Article; The Government shall provide for settlement of disputes among the parties over the right to request collective bargaining.

Regarding the level of collective bargaining, the 2019 Labour Code regulates the level of collective bargaining at enterprises and industry collective bargaining, collective bargaining with many enterprises participating.

Regarding Representatives of the parties to the collective bargaining, Article 69 stipulates: The number of representatives of each party participating in the collective bargaining shall be agreed by the two parties; The participants of each party in the collective bargaining shall be decided by the party. In case more than one representative organization of employees participates in the collective bargaining as prescribed in Clause 2 Article 68 of this Labour Code, they may negotiate the number of representatives of each organization. In the case specified in Clause 3 Article 68 of this Labour Code, the number of representatives of each organization shall be negotiated by the organizations. If an agreement cannot be reached, each organization shall decide the number of its representatives based on the ratio of its members to the total number of members; Each party to the collective bargaining may invite representatives from its superior organization and this has to be accepted by the other parties. The representatives of each party to the collective bargaining must not exceed the agreed quantity mentioned in Clause 1 of this Article, unless otherwise agreed by the other

parties.

Regarding Sectoral collective bargaining, multi-enterprise collective bargaining in Article 72 stipulates: The principles and contents of sectoral collective bargaining and multi-enterprise collective bargaining shall comply with Article 66 and Article 67 of this Labour Code; The procedures for holding sectoral collective bargaining and multi-enterprise collective bargaining shall be negotiated by the parties, including collective bargaining via a collective bargaining council specified in Article 73 of this Labour Code; In the case of a sectoral collective bargaining, the representatives shall be the sectoral trade union and sectoral employer representative organizations. In the case of a multi-enterprise collective bargaining, the representatives shall be decided by the parties.

Regarding Multi-enterprise collective bargaining via a collective bargaining council in Article 73, it is stipulated: By consensus, the parties to a multi-enterprise collective bargaining may request the People's Committee of the province where they are headquartered (or a province they choose if they are headed in different provinces) to establish aquarter collective bargaining council; Upon receipt of the said request, the People's Committee of the province shall issue a decision to establish a collective bargaining council. A collective bargaining council consists of: A chairperson who is chosen by the parties and has the responsibility to operate the council and assist in the process of collective bargaining, Representatives appointed by each party. The number of representatives of each party who participate in the council shall be agreed upon by the parties; Representatives of the People's Committee of the province; The collective bargaining council shall hold the collective bargaining at the request of the parties and shall be dismissed when a multi-enterprise collective bargaining agreement is concluded or when the dismissal is agreed upon by the parties; The Minister of Labour, War Invalids and Social Affairs shall provide for the functions, duties and operations of collective bargaining councils.

Regarding resolving collective disputes about collective interests and promoting collective bargaining: According to Article 195 of the 2019 Labour Code, procedures for resolving collective disputes about collective interests include mandatory conciliation and arbitration and have the right to strike. According to Article 196 of the 2019 Labour Code, In case the mediation is unsuccessful, the labour mediator fails to initiate the mediation by the deadline specified in Clause 2 Article 188 of this Labour Code, or a party fails to adhere to the agreements in the successful mediation record: The disputing parties are entitled to, by consensus, request the Labour Arbitration Council to settle the dispute in accordance with Article 197 of this Labour Code; or The representative organization of employees is entitled to organize a strike following the procedures specified in Articles 200, 201 and 202 of this Labour Code.

However, it is worth noting that although it is named "Labour Arbitration Council", the function of this council is actually to "mediate" collective labour disputes. Meanwhile, the nature of arbitration is a process in which a final and binding decision is made on behalf of the disputing parties. In the 2019 Labour Code, collective disputes about interests are divided into two types and two conciliation steps: one is carried out by a labour conciliator, the other is carried out by the Labour Arbitration Council. There is no difference in the effectiveness of the conciliation results carried out by the two above-mentioned institutions. There are opinions that these regulations do not actually promote but hinder actual dispute resolution, are not consistent with international standards and need to be amended and supplemented (Natsu Nogami, 2014).

Discuss the Issue of Improving Legal Regulations on Measures to Promote Collective Bargaining

Completing legal regulations related to measures to promote collective bargaining is necessary to ensure fairness and transparency in the negotiation process. This helps build a stable and sustainable labour relationship, providing a solid basis for negotiating parties. The content of promoting collective bargaining needs to be fully and specifically regulated in the law to support the parties to conduct negotiations effectively. At the same time, the

synchronous completion of these regulations is also proposed to be based on theoretical and practical foundations, ensuring uniformity and consistency in the legal system. Completing regulations on collective bargaining rights should be placed in the context of trade union freedom in labour relations. Specifically, the following issues should be noted.

Review and supplement regulations on collective bargaining in areas other than the scope of enterprises and industries (collective bargaining of groups of enterprises, industrial parks, export processing zones, regions...).

Review and amend specific regulations to ensure and strengthen the principle of good faith collective bargaining; Ensure voluntariness in collective bargaining, including voluntariness in terms of content and level of collective bargaining.

Review and amend the scope of the right to strike, not only limiting the right to strike of workers within the enterprise for collective labour disputes over interests but also for some labour disputes collective rights and levels of collective bargaining. Need to amend and supplement some of the following regulations.

Amend the regulations on the purpose of collective bargaining towards a more complete regulation of the purpose of collective bargaining (collective bargaining is the right of the parties to resolve any issue that arises in labour relations, including signing, amending and supplementing collective labour agreements, resolving labour disputes, resolving strikes...). On that basis, amend and supplement other relevant regulations.

Amend regulations on the responsibilities of trade unions, employer representative organizations and state labour management agencies in collective bargaining (Le Thi Hoai Thu, 2018).

Proposals to improve the effectiveness of measures to promote collective bargaining may include activities to increase fairness and transparency in the negotiation process while providing a solid legal foundation to support participating parties. It is also necessary to ensure that the content promoting collective bargaining is fully and specifically regulated in the law to ensure effectiveness and efficiency. More importantly, this proposal to improve efficiency needs to be based on theoretical and practical foundations, to ensure unity and uniformity in the legal system and in accordance with international law in the trend of international economic integration.

V. Conclusion

Promoting collective bargaining plays an important role in creating a fair and sustainable labour environment. The regulations and practices implemented in Vietnam have been plays an important role in ensuring rights and fair conditions for workers, while also creating conditions for businesses to develop sustainably.

Understanding the principles and regulations of collective bargaining, as well as applying them in practice, plays an important role in building a positive and productive working environment. Support the creation of close labour relations between employees and businesses. Promoting collective bargaining also contributes to ensuring fairness and protecting the rights of both employees and business partners.

There are still many challenges and things to improve, the application of management techniques and strict implementation of regulations on collective bargaining have been and are making an important contribution to the development of the labour and business environment in Vietnam. Researching and applying these regulations effectively will reflect Vietnam's efforts and commitment to ensuring rights and social security for workers, while also creating comprehensive economic and social benefits for the country.

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