



CIRD

CENTER FOR INDUSTRIAL RELATIONS
DEVELOPMENT

Bulletin

INDUSTRIAL RELATIONS

No.30 – QUARTER III/2019 TO PROMOTE SUBSTANTIAL AND EFFECTIVE DIALOGUE AND COLLECTIVE BARGAINING



ILO 100 years – Journey for social justice and decent work for all

On 27 August 2019, in Hanoi, MOLISA, VGCL, VCCI, VCA and the ILO jointly organized ILO’s centenary celebration with the theme “Shared ideals of Ho Chi Minh and ILO towards decent work for all”.

At the ceremony, the Deputy Prime Minister Vu Duc Dam highlighted: “ILO’s core Convention No. 98 on the application of the principles of the right to organize and collective bargaining is a critical international labour standard which will help Viet Nam move forward in modernising industrial relations and improving the Labour Code”.

Directive No. 37-CT/TW of the Party – To keep developing harmonious, stable and progressive industrial relations in the new context

On 3 September 2019, the Secretariat of the Party’s Central Committee promulgated Directive No. 37-CT/TW in order to strengthen the Party’s leadership and direction in building and developing industrial relations in a new situation.

The Secretariat instructed to reinforce and strengthen the state management in industrial relations and to arrange specialised staff in state labour management agencies (at central and local levels) to perform tasks related to managing workers’ representative organizations and managing and supporting the development of IR.

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Some issues regarding the supportive system for IR in the new context



1. The role of the state in managing and supporting IR

IR includes and only includes two groups of issues which are right and interest.

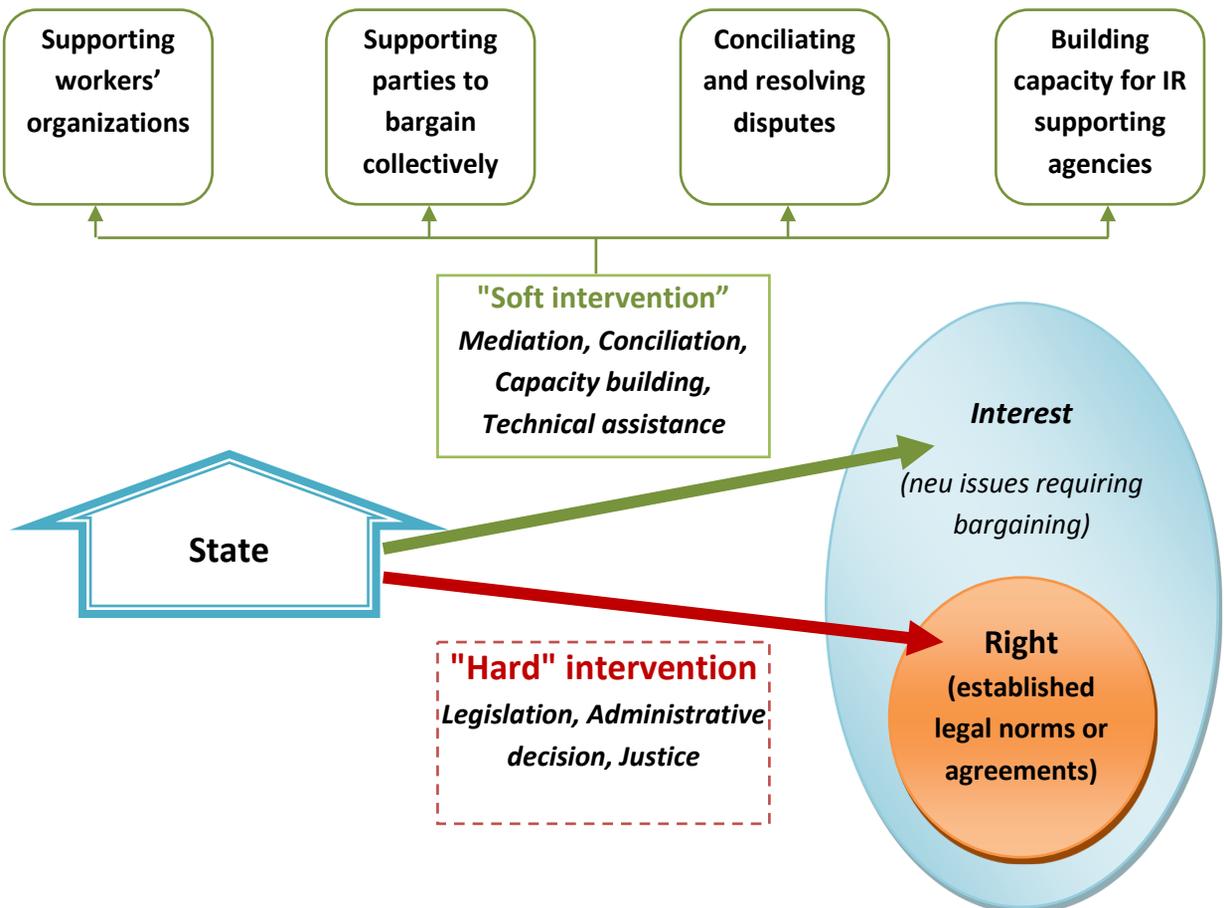
Rights are fundamental and popular contents standardised into specific legal norms or labour standards that are recognized by parties or protected by law. In IR, the right of

one party means obligation of the other. In order to ensure parties' rights/obligations, the State uses administrative tools as a "hard" intervention through law and law enforcement agencies. This is a mandate of an IR state management agency.

Interests are new issues without or without legal standards but arising

and directly affecting IR parties. In IR, interest-related matters constantly arise and account for the majority of the problems emerging at the workplace.

In order to solve interest-related matters, the state shall not intervene with administrative but only "soft" tools through mediation, conciliation and technical assistance.



2. Some issues for the IR support system in the new context

Fulfilling IR commitments raises a number of specific issues regarding the state’s supporting role for IR:

Firstly, whether workers’ organizations require support in establishing and operating? If yes, who will do it and how?

The permission for the formation, joining and operation of workers’ organizations is a completely new and sensitive issue. In the first phase, these organizations will certainly encounter procedural, legal and professional difficulties. Therefore, the need for external support will appear which is legitimate. Supporting these organizations is not attractive to private enterprises.

Secondly, how can mediation and arbitration mechanisms promote

their roles properly while no increase in regular staff and no new apparatus is permitted?

Mediation remains a mandatory and the first step in resolving labour disputes. Meanwhile, there is no specialized agency to manage, coordinate and support labour mediators. Labour arbitration is increasingly important. This poses the question of how these two institutions can work in practice.

Thirdly, for collective bargaining to be substantial, will a third party’s support be needed? If yes, who will be the supporters and what will be supported?

Collective bargaining’s characteristics is conflicts of interest whereas the interest is of the majority. Therefore, it will be very challenging for the parties to reach an agreement if the negotiation is genuine. To have a substantial collective bargaining

process, it is necessary to involve a third party as mediator and provide technical support. The private sector is not sufficiently impartial and get no income from this activity.

Fourthly, with the current staff, how can local state agencies well manage and support IR?

In the current context, does the dual function of state management agency official (administrative and supportive role in IR) reduce the effectiveness of state management? Does it violate the voluntary and impartial principle in supporting IR? Are there any negative issues in the support work?

The above issues require further research on the role of the state in supporting the development of IR.

NEW DOCUMENT

Resolution 50-NQ/TW dated August 20, 2019 by the Party Central Committee on the direction of perfecting institutions and policies, improving the quality and effectiveness of foreign investment

(excerpt)

Labour goal: in the foreign-invested sector, the proportion of trained workers in the employment structure from 56% in 2017 to 70% in 2025 and 80% in 2030.

Main tasks and solutions:

* **Completing institutions and policies to protect and enhance investors’ responsibilities:**

- Amending and supplementing laws on labour, employment and wages, ensuring the harmonisation of interests between employees and employers.
- Reasonable adjustment of the minimum wage gaps between regions.
- Specifying responsibilities of infrastructure investors, foreign-invested enterprises in construction of social houses, workers’ houses, kindergartens, health facilities, culture, sports, etc. to serve workers.

* **Promoting the role of the Vietnam Fatherland Front and socio-political organizations:**

- Promoting the role of trade union in representing and protecting legitimate and lawful rights and interests of union members, employees; building harmonious, stable and progressive IR.
- Enhancing dialogue between business owners and employees.
- Striving for 100% of enterprises with 25 or more employees to be unionized.

Key content of Convention No. 98 concerning the Right to Organize and Collective Bargaining



**SOCIAL JUSTICE
DECENT WORK**



Vietnam has recently ratified the ILO's Convention No. 98 concerning the the Right to Organize and Collective Bargaining by Resolution No. 80/2019/QH14 dated 14 June 2019 of the National Assembly.

The Convention has 16 Articles with core substance from Article 1 -6 and procedural requirements from Article 7-16.

According to the Convention, there are 3 elements crucial to genuine and effective collective bargaining including: (i) workers and trade union officials are protected against employers' discrimination in terms of employment; (ii) trade unions are free from employers' interference; and (iii) the State shall have legal and institutional measures to promote collective bargaining.

Those are 03 major matters of Convention No. 98:

1. Protection for workers and trade unions against acts of anti-union discrimination

Article 1 provides that workers shall

enjoy adequate protection against acts of anti-union discrimination in respect of their employment by reason of union membership or because of participation in union activities.

Such protection shall apply more particularly in respect of acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; or cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employers, within working hours.

2. Protection for trade unions against employers' interference

Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration (Article 2).

In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference.

3. Measures to promote voluntary collective bargaining

Convention 98 establishes the principle of voluntariness and good faith in collective bargaining while mentioning State's responsibility in encouraging and promoting the development of voluntary collective bargaining mechanism.

The State's responsibility in promoting collective bargaining is mainly done via mechanisms such as: explicit provision on collective bargaining request, resolution of labour disputes (mediation, arbitration); mechanism for extending the validity or expanding the coverage of a collective bargaining agreement voluntarily; drafting and enforcement of provisions on voluntary bargaining, etc.

Ensuring the voluntariness of collective bargaining mainly relating to matters over the discretion of parties on the bargaining content, whether an agreement is reached after bargaining or not, bargaining participants, bargaining levels, parties' obligations in collective bargaining, etc.

ILO's initiatives to promote substantial and effective dialogue and collective bargaining in Vietnam

"Viet Nam and ILO met each other in their willingness and actions to develop harmonious and advanced IR based on ILO fundamental principles".

Deputy Prime Minister Vu Duc Dam
at the ILO 100 Celebration



The New Industrial Relations Framework Project (NIRF) is formed to provide technical assistance for Vietnam to build a new IR system towards compatibility with the principles and rights to organize and bargain collectively as enshrined in ILO's Convention 98 and with the country's socio-economical condition.

With a multi-dimensional approach,

the objective to promote social dialogue and collective bargaining is integrated into the Project's implementation. This includes support for Vietnam in perfecting labour legislation and building IR governance system based on respect for IR parties' discretion through dialogue, collective bargaining and concluding collective bargaining agreements; in advancing practices for genuine and effective social

dialogue and collective bargaining in Vietnam; and especially in raising awareness for IR parties and other social partners regarding the Right to Organize and Collective Bargaining when Vietnam joins new-generation FTAs.

Until now, NIRF in particular and the ILO in general have been contributing actively in building progressive, harmonious and stable IR in Vietnam.

Commitments to promote collective bargaining and social dialogue in integration process

- ✦ Resolution 27 of the Party highlights the role of collective bargaining in determining wages and working conditions in the market economy.
- ✦ ILO's Convention 98 has been ratified.
- ✦ Vietnam commits to complying with and implementing effectively ILO's labour standards in new-generation FTAs (CPTPP and EVFTA).

Promotion of substantial and effective collective bargaining

- ✦ 02 multi-employer CBAs have been concluded (including multi-employer CBA of tourism sector in Da Nang with 10 enterprises and over 2,000 workers; and multi-employer CBA of electronics sector in Trang Due Industrial Zone with 20 enterprises and over 7,000 workers).
- ✦ 04 social dialogue sessions have been conducted (including Japanese enterprises in Nomura Industrial Zone in Hai Phong; 8 wood processing enterprises in Tan Uyen (Binh Duong); 16 wood processing enterprises in Tam Phuoc Industrial Zone (Dong Nai); and 5 garment and textile enterprises in Linh Trung Industrial Zones (HCMC)..

(Female workers account for the majority of the covered workforce by multi-employer CBAs and social dialogue).

Internalising the content of Convention 98 into the draft revised Labour Code

- ✦ The *collective bargaining* is amended in the context of multi-representative organizations in an enterprise.
- ✦ Duty to bargain in good faith is mentioned in the draft revised Labour Code.
- ✦ The State's responsibility in collective bargaining, including the Collective Bargaining Council to support multi-enterprise collective bargaining, is detailed in the draft.
- ✦ etc.

NIRF is contributing to harmonious IR development based on genuine and effective collective bargaining and social dialogue

Raising awareness on social dialogue, the right to organize and the right to bargain collectively

- ✦ Publishing Trade Union Bulletin and IR Bulletin (Quarterly).
- ✦ Publishing Q&A regarding the ILO's Convention 98 concerning the Right to Organize and Bargain Collectively, 1949.
- ✦ Publishing the (translated) ILO's guideline on collective bargaining.

Multi-employer collective bargaining agreement – Promoting substantial and effective collective bargaining in Hai Phong

Practice in Hai Phong

The first multi-employer CBA

In 2014, Hai Phong Federation of Labour conducted a pilot to negotiate and conclude the first multi-employer CBA. The Hai Phong Economic Zone Trade Union - EZTU (with ILO’s technical assistance) selected 7 Korean electronics enterprises (in Trang Due Industrial Zone, An Duong District) to conduct negotiation.

second negotiation took place. Trang Due Industrial Zone was selected again with 20 Korean electronic companies. After over one year of negotiation, the second multi-employer CBA was signed on June 8 between the Hai Phong EZTU and 20 firms (13 of them was unionized, non-concluded enterprise CBA).

Expectation to continue replicating

The conclusion and implementation

It helps businesses reduce negotiating costs, help grassroots trade unions surmount bargaining weaknesses as upper-level trade unions negotiate directly with employers. Moreover, the multi-employer CBA can cover a larger number of workers, especially female workers.

Secondly, implementing the CBA contributes to improving labour law compliance, thereby contributing to reducing unrest and labour disputes in enterprises.

Thirdly, improving the current tokenism in negotiation and CBAs. CBAs, which lay out commitments more favourable than legal provisions for workers, ensure trade union’s right to operate, and propose the method of resolving disputes between the parties, have gradually reflected the substantial negotiation process.

Finally, negotiation and multi-employer CBA are an effective tool to build stable and progressive IR locally. The signing of a multi-employer CBA helps businesses with common characteristics to improve working conditions for workers together. This in turn helps workers feel secure at work and contribute more to businesses, which increase productivity.

Experience in multi-employer collective bargaining in Hai Phong



On 19 June 2016, after 3 years, the first multi-employer CBA was concluded between Hai Phong EZTU and five Korean enterprises in the Trang Due Industrial Zone. Main content of the CBA included commitments over working conditions, wages, bonus and other collective benefits for workers. The CBA was in effect 2 years after the signing date. The parties also committed to complying with the CBA and Vietnam’s labour law.

Expanding the multi-employer CBA

In 2018, based on the first CBA, the

of the multi-employer CBAs have encouraged the parties to effectively implement labour law, contributing to reducing labour disputes in the area. Therefore, Hai Phong FOL will consider replicating the multi-employer CBA model, especially with enterprises from Taiwan, China, Japan, etc. to contribute to building harmonious and stable IR in the city.

Practical significance of negotiation and conclusion of multi-employer CBA in Hai Phong

First, multi-employer CBA benefits businesses, trade unions and workers.

The multi-employer CBAs need to be popularized and replicated

Collective bargaining and multi-employer CBAs are an appropriate solution to promote collective bargaining in localities with many industrial parks, concentration of businesses and workers in the same industry and occupation.

Therefore, collective bargaining and multi-employer CBAs need to be disseminated as a key tool to build harmonious, stable and progressive IR in localities.

Directive No. 37-CT/TW of the the Party's Central Committee on developing industrial relations in the new context

On 3 September 2019, the Secretariat of the Party's Central Committee promulgated Directive No. 37-CT/TW in order to continue the development of harmonious, stable and progressive IR in the new situation, promote production and business development and maintain political security, social order and safety. The Directive consists of 5 main groups of tasks and solutions as follows:

1. STRENGTHEN the leadership of the Party and government at all levels



- ⇒ Party committees, party organizations and the government must pay attention to leading and directing the development of harmonious, stable and progressive IR.
- ⇒ Taking IR development as an urgent and long-term task.
- ⇒ Promoting communication and dissemination to create consensus in awareness and implementation.

2. ENHANCE the efficiency and effectiveness of state management



Improving the legislation regarding

- ⇒ Labour and trade union.
- ⇒ Mechanism for dialogue and bargaining; minimum wages to meet the minimum living standard for workers and their families.
- ⇒ Rights and obligations of workers' and employers' representative organizations.
- ⇒ Mechanism and institution for resolving labour disputes.



Strengthening state management

- ⇒ Arranging specialized officials to perform the management of workers' representative organisation and support the IR development.
- ⇒ Reinforcing inspection and examination.
- ⇒ Improving the effectiveness of the National Minimum Wage Council and the National Industrial Relations Committee.
- ⇒ Strictly managing the establishment and operation of workers' representative organisation with right function and purpose.
- ⇒ Building a database system and criteria to evaluate IR.
- ⇒ Developing mechanisms and policies to support housing, welfare facilities and trade unions for workers.



3. ENHANCE the effectiveness of trade union in IR

- ⇒ Innovating union activities at all levels; well perform the representative function in IR.
- ⇒ Attaching importance to disseminate, advocacy and recruitment of union members at the enterprise; attracting workers and workers' representative organizations to participate in the VGCL system.
- ⇒ Innovating the activities of the grassroots trade union.
- ⇒ Reviewing and revising financial management mechanism for trade union funds.
- ⇒ Effectively implementing measures to support and protect union members, officials and grassroots trade unions in enterprises.

4. PROMOTE dialogue and collective bargaining



- ⇒ Paying attention to guiding, supporting substantial dialogue, negotiation and conclusion of CBAs.
- ⇒ Promoting negotiation on wages, bonuses, etc. in CBAs or enterprises' regulations.
- ⇒ Expanding dialogue, negotiation and conclusion of sectoral and multi-employer CBAs.

5. EFFECTIVE SETTLEMENT of labour disputes and strikes



- ⇒ Reviewing, consolidating and improving the performance of institutions for resolving labour disputes; promoting the role of labour conciliation and arbitration in preventing, minimising labour disputes and supporting IR development.
- ⇒ Studying for a mechanism for resolving labour disputes to ensure the harmonisation of interests of IR parties.
- ⇒ Piloting a labour dispute resolution model with the arrangement of full-time mediators and labour arbitrators.
- ⇒ Ensuring security and social order, etc.

HIGHLIGHT



Some industrial relation indicators

25.16 million
paid workers
(female: **~47,75%**)

22.30%
trained workers with
certificates

2.94%
unemployment rate
in urban area

~795 thousand
active enterprises

~ 10%
enterprises are
unionized

~95% SOE
~45-50% FDI
unionized enterprises
have concluded CBAs

~ 72%
unionized enterprises
are covered by CBAs

Over 90% SOE
Over 50% FDI
have grassroots
democratic regulations

~ 6.71 million VND
average monthly wage of
paid workers
(female workers:
6.2 million VND)

6%
the growth rate of labour
productivity in the whole
economy (2018 vs 2017)

46.3 hours/week
Workers' average weekly
working time
(female workers:
44.5 hours)

Up to September 2019

PUBLICATION

The 2012 Labour Code, together with its guiding documents, has created a fairly complete legal framework for businesses, employees and stakeholders. However, in its implementation, enterprises and workers encounter difficulties requiring guidance and answers from state management agencies.

The Center for Industrial Relations Development (Department of Industrial Relations and Wages, Ministry of Labour, Invalids and Social Affairs) summarised and selected some issues. Those are matters in questions of enterprises, workers and stakeholders when implementing the 2012 Labour Code and its implementing documents. We would like to introduce to readers: **"50 frequently asked questions concerning labour, industrial relations and wages"**.

Best regards!



"This is a product of the New Industrial Relations Framework project. Funding for the New Industrial Relations Framework project is provided by the United States Department of Labor under cooperative agreement number IL- 29690-16-75-K-11. This material does not necessarily reflect the views or policies of the United States Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the United States Government. One hundred percentage of the total costs of the project or program is financed with Federal funds, for a total of 4 million dollars."

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