Comment and Critical Analysis of Labor Relation Theories

Reflection of Labor Relations and Labor Legal Relations

WANG Xiongwen
City College of Dongguan University of Technology, Dongguan, China, 523106
herow309@163.com

Abstract: At present, many disputes on labor relations are centered around the labor contract enactment. The fundamental reason is the confusion and ambiguity of the understanding of the relation between labor relations and labor law. Labor relation is rooted in certain material conditions of production, and in essence, it is the relation of material interests. The primary establishment and maintenance is built on both parties' rational base of equality, voluntariness and consensus. However, to a large extent, the labor-law relations reflect the will of the state, and are a powerful corrective and balance of the original labor relations.

Keywords: Labor relations, labor-law relations, labor relation theories

At present, there are a lot of disputes around the labor contract, such as “Two Principal Parties of the Labor Relationship” and “Three Principal of Labor Relations”, “Single and Double Protection”, “State-based and Community-based Theories”, “Theory of the Conflict of Labor-Capital and Coordination of Labor-Capital”, and so on. The fundamental reason is the confusion and unclear understanding of the labor relations and the law on labor relations. On the basis of analysis of the labor relation theories, this paper will make reflection on the old and new issues and try to find the answer.

I. Analysis of the labor relation theories

At present, the primary controversies surrounding the Labor Relations are "Two Principal Parties of the Labor Relationship”, “Three Principal of Labor Relations”,” Single and Double Protection” “State-based and Community-based Theories”, “Theory of Conflicts” and “Coordination of the Labor”.

i. “Three Principal of labor relations”
This is a much popular view in the controversy of labor contract legislation recently. Its claim of " the main composition of social labor relations is not the composition of both employers and employees but the tripartite structure of employees, employers and government "[1] “Government as one of the main three parties, which is directly involved in the social and labor relations, and as one of the main legal relations, it plays a leading role. In this relationship, the public authority becomes more prominent. “[1]

ii. Theory of Single Protection
On the principles of the adjustment of labor relations, there are theories of Single and Double Protection. Single Protection said that the labor laws should protect the workers. The theory is based on the clear provisions of Labor Law "to protect the legitimate rights and interests of workers, instead of the employers." Moreover, according to the non-equilibrium of the relationship between employers and employees, “At a point of the legislative assumption, Labor Law built up construction the legal system by setting employers as the most directly subject which against the rights of workers, and cause labor dispute. Thus, for employers, the labor law provides more restriction rather than protection.”[2]

iii. Theory of the Dispute on Labor and Capital
Theory of the Dispute on Labor and Capital advocates labor relations as a conflict on labor and capital "Since employers and labors have a clear boundary, labor and capital relations includes confrontation,
and naturally the relationship carried out would be of consistency and conflicting."[3] The reason is that the economic rights and status of property class will increase sharply, while that of labors will decline.[4] Property owners as a whole and workers as another party, keep in the state of counter-balance and sharp confrontation: "Labor-management’s conflicts become increasingly intensified ... ... Labor and capital conflict has become the most prominent problem."[5]

iv. Theory of State-based Protection
On the basis of the understanding of labor dispute, the current controversy over China’s Labor Contract legislation emerges a kind of thought which towards a return to the state-based. This view advocates that, to enterprises, it is supposed to make a wide entry but stringent exit, while to the staff, give a wide easy out, to the labor management, integrates into the staff leading and to the labor relationship, implement administrative intervention. This demonstrates the tendencies of solidify, idealized, formal, administrative-oriented which attempts to give a imagine space to "system back".[6] Specifically, it is asking the Government to play a full part in the labor, “First, they use labor standards legislation to require employers to the obligations in individual labor relations, and at the same time, limit the employers’ abuse property rights, especially abuse the right of dismissal. Second, the Government implements the labor surveillance in order to check the employers’ comply with the "Labor Law" through the labor administration. Third, regards to the employers’ act against the unity of workers, it gives people the right of administrative relief and judicial relief through the establishment and implementation of improper labor practices system.”[7]

II. Sources of the Controversies of Labor Relations
Why have these new and different understandings been brought out? There are three main reasons as follows:
First of all, labor relationship has its own characteristics. At first, the relationship between workers and employers takes place in specific areas, namely, production. It’s a particular relationship which has been formatted in the process of labor production, but not includes any other areas.
Second, although the relationship between workers and employers is equal, there is substantive inequality in strong capital and weak labor. Moreover, such relations are of subornation, not just the sense of equality.
Third, to some extent, labor relations tilt to the workers in legislation, and be intervened aggressively by the government from the beginning to the end.
It is precisely because of these features that make the people sufficient awareness of labor relations. And it is also the result of people’s reflection which has been led by a great imbalance in China’s current labor relations. At present, mining accidents, injury-prone, large-scale wages, labor discord appear at times in the field China’s labor relations as well as the non-equilibrium of Labor and capital, which raises the "right vacuum". And to solve this problem, many scholars have called for: "the intervention of public power is an important feature for achieving the formal equality to the substantive equality."[8]
"The intervention of public authority", to a large extent, means "government intervention." The "Labor Contract Law" promulgated recently indeed reflects the efforts of government’s intervention largely. After the government intervention in the private sector of labor relations, the penetration of public law, the originally simple labor relations suddenly become complicated, which make so many people puzzled.
The last and the most important reason is that the people apparently have ignored the relationship the difference between labor relations and labor law and this is also the most fundamental problem, which inevitably brings out a lot of misunderstandings.

III. Re-understanding of labor relations and the legal labor relations
It is certain that giving a definition of labor relations theoretically is not difficult. Commonly, the labor
relationship is referred in a narrow sense. That it refers to the social relationships formed in labors by workers and employers, and is the original form of labor-law relationships and the object to be adjusted by the labor law. Lifted the veil of labor relations, we find that:

Labor relations are relations of production, which is essentially a material interest of workers and the employers. Labor relations based on voluntary, equality, and consensus, are bound by labor contracts, and they are finally determined by certain material living conditions. Inequality and subornation of labor relations are relative. Subordinating to the employers will by no means make the workers lose their rights. In this sense, labor relations is a kind of contractual relationship, and to a large extent, reflects the party's autonomy. As for the strong inclination of legislation protection and the intervention of government in labor relations is a kind of power for shifting the imbalance. But this does not hide the original properties of the labor relations at all.

As the former Soviet scholar said: "Although the relationship between the economy and the ownership structure is adjusted by the laws and regulations, it doesn’t mean that this relationship will no longer be the basis of the ownership or nor become the superstructure." [9] "The legal relations and the social relationship which is adjusted by the legal relations should not be confused with. Although the social relations which have been adjusted to adapt to the legal norms have been imported within the scope of the legal relationship, it is not in itself a legal relationship." [10] Some scholars in China hold the same view: "A variety of material relationship will not lose its original character and turn into the ideological superstructure of social relations just because of the legal case ....." [11]

Labor-law relationship is formed after the adjustment of labor relations, and is the result of the adjustments. "Any kind of (a) legal relations are based on the existence of a corresponding legal premise." [12] Otherwise the appropriate legal relationship won’t have turned up. Any kind of (a) social relations prior to the legal regulation is "just a (a) ordinary social relationship", rather than a legal relationship. [12] After the adjustment of labor law, social relationship is clearly different from the original relations. The greatest feature is that it largely reflects the nation's consciousness and gains the properties of the relationship between ideologies. It specifically manifests in three aspects. First, through legislation, the state confirms and corrects the original labor relations and thus standardizes these new relations, and ensures the implementation through state's power. Second, the state intervenes in the labor relations by regulating the authority (responsibility) of government departments in charge. Third, by setting the right scope of the relevant organizations (e.g. trade unions), the state supervises the labor relations. There are mainly two ties included in the labor-law relationships. First, the relationship between workers and employers, because of which reflects the strong intervention of the state will, therefore holds the properties of both public law and private law. Second, the legal relationship between the competent government departments and both parties (workers and capitals), which is essentially a kind of administrative legal relations, is possess of the nature of a public law. Two pairs regulate and adjust labor relations from different levels which should not be confused with. In addition, although the law after the adjustment of the labor law relations differs greatly from the original labor relations, it can not be divorced from the reality of labor relations. Because any legal relationship is just a hard shell or manifestation of people's social relations, and based on people's social activities and practical links. Otherwise there can be no legal relationship existing, or even the established will not be maintained very well. This requires that it is necessary to take into account the actual labor relations, but also handle the balance of labor relations properly.

IV. Analysis of various Labor Relation Theories

On the basis of the understandings of the labor relations and labor law, after reviewing the doctrines of labor relations on the other side, we will find that although they have provided different perspectives for understanding the labor relationship, their views are untenable in both theory and practice. People who hold “three principal” are obviously confused the differences of the subjects of labor relations and the principles of labor legal relations. Through the above analysis, we know that the state regulates the
government's authority (responsibility) through national labor legislation, thus the government has become the subject of legal labor relations, rather than the main body of labor relations. The real decision belongs to both parties of labor relations, while the government intervention is one kind of external force and supervision, rather than an arranged replacement. Regards the government as the main body of labor relations is apparently to open up a new world for the government’s returning to conduct selective enforcement in labor relations, so as to "enable the government to free themselves from the modern administrative law". The hazard of this kind of view is obvious.

"Single-Protection" is obviously a misunderstanding, but also an out of context approach. First, as the norm and adjustment of the overall labor relationship, labor law can not only protect workers but not to protect the employing units. Otherwise it is impossible to form healthy, harmonious labor relations, which would also cause the destruction of the normal production. Moreover, there is no fundamental conflict on the protection of workers interests and the interests of the employing unit. But, to some extent, it is also protection and promotion for the interests of the employing unit. Second, in an explicit way, the labor law advocates to protect the workers which is “focused on labor, the worker-based thinking.”[13] However it does not mean that the interest of the employing unit is not in protection and in fact, on the other hand, the labor law adopts a kind of implicit protection for the employing units. "The Labor Law of People's Republic of China " and "The Labor Contract Law of People's Republic of China "Article 1, The purpose of labor law is "to adjust the labor relations", "to establish a labor system adapted to socialist market economy ", "to improve the labor system and clear labor contract rights and obligations of both parties," , "to build and develop harmonious and stable labor relations". Only because of the relatively weak position of workers, "such a tilting legislation" has been made.

"Labor-capital Conflict" obviously exaggerated the interest conflict of both parties at the expense of consistency under the conditions of socialism. From the abstract perspective, the interests of workers at all levels are consistent with no differences, and observe the relations between the employers and the workers in shift ways of thinking. In fact, not only there is differences among the interests of workers at all levels, but also the interests between employers and workers are interdependent and mutually reinforcing. Emphasizing the conflict between employers and employees blindly would possibly lead a returning to the old system, and it also seems to open the door for excessive expansion for the public authority.

"State-based" provides the legal basis for the government's control over the macro boundaries in theory and attempts to include all levels of labor relations into "public law relationship". [6] This is an unrealistic and dangerous practice. If putting the State's limited public resources into a large number of administrative interventions, the costs of law enforcement would exceed the acceptable range, while the effect is hard to say. When the executive authorities undertake a task of law enforcement which simply can not be completed will certainly carry out "a kind of selective enforcement." [6] And the consequences will inevitably lead to the abuse of executive power.

V. Conclusion

The law regulates the interests of the parties concerned. One of its main role is to adjust and reconcile various conflicting interests. To some extent, in order to achieve this, the government must enact some general rules which evaluate the importance of various interests and provide adjustment for the standards of interests conflict, otherwise errors will be made due to the inaccurate grasp. We should take deep thought to Bodenheim’s view: “What kind of interest should be regarded as worth protecting? What kind of scope and limits should provide protects for the interests and what kind of appropriate grades and ranks should be taken out for a variety of opinions and requests. Without this measure, the adjustment will depend on such a contingent or incidental (Which will bring out devastating consequences to social cohesion and harmony), or depend on a group which has the right to enforce its own arbitrary decisions.”[14]
About the author:
Wang Xiongwen (1972—), male, native of Xishui city of Hubei province, lecturer with Social Science Department, City College of Dongguan University of Technology.
Research Orientation: jurisprudence; market-oriented economy and rules of the law
Contact: 13543766092

References

[8]. Wang Wei, Chang Kai. Labor Immature, the Public Right should be Involved in [J]. "Xinmin Weekly", 2006, (21).