

THE ROLE OF THE TRADE UNION IN THE PROTECTION OF LABOR RIGHTS IN VIETNAM'S INTERNATIONAL INTEGRATION

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Abstract: *The establishment of Vietnam Trade Union on July 28, 1929 was associated with the national liberation struggle movement led by President Ho Chi Minh and the Communist Party of Vietnam. Over nearly a century (90 years), Vietnam Trade Union has become an increasingly important position in the socialist-oriented market economy in Vietnam, especially in playing the role of protecting labor rights in Vietnam's international integration process.*

Keywords: *Union; Labor rights.*

1. Introduction:

The protection of workers' rights includes a process of preventing and combating threats to people and their lives. The activities are to prevent and combat any harm to the honor, dignity, life and rights of employees from the employers. Preventive activities are considered as participating in the construction of policies related to employees, the inspection and supervision of the policy implementation. Against any infringement of workers' rights is protective activities such as conducting dialogue, negotiating, going on strike, requesting the Court or competent authorities to resolve.

Labor rights are part of the general human rights system. Basically, labor rights are the rights to economy and mainly related to the working process. From this perspective, another right holder that directly deals with labor rights is the employer. The rights of the workers and the rights of the employers form the basic contents of the labor law. In the labor relation under different social regimes and different businesses, the implementation method of the workers' rights is also different. This has been proved in the history of human social development

The contents of the labor rights include: the rights to work, the rights to a

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fair wage, the right to work in safe conditions, to ensure health, the right to have a reasonable working time and rest time, the right to form, join and operate trade unions, the right to participate in management, the right to collective bargaining and strikes, the right to social security (health insurance, social insurance, etc.) etc.

Internationally, the workers' rights are the international declarations, and conventions. They are the labor legislation, labor agreements at the national level. At the sectoral level, they are the sector collective labor agreements. At the local level these are local labor agreements. At the enterprise level, these are individual employment contracts and corporate collective agreements, labor regulations and other legal agreements. Of all the above legal documents, the collective labor agreement in the enterprise is the most essential document in protecting the rights of employees. The reason is the content in the enterprise collective labor agreement is directly related to human rights such as the right to fair wages, to work in safe conditions, the right to establish, join trade union, etc. For other agreements out of business, the content only stipulates general conditions and standards at a minimum level.

Thus, the labor rights are established at different levels and from the process of building labor laws and from the process of negotiation to sign labor agreements and collective labor agreements.

Based on the differences in the content and implementation method of the

workers' rights, it can be divided into two categories: the rights of *individual employees* and the rights of *collective labor*. Personal labor rights represent the legal relationship between an individual employee and an employer. The expression of personal labor rights to work is an employment contract. An unorganized individual worker cannot protect his or her own rights and interests in the labor market because there is inequality between the boss having the right to hire, to arrange the work and the people who are employed. Collective labor rights are the rights of the employees' collective. Collective labor rights are exercised by the labor union representing the workers. Collective labor rights mainly refer to the collective workers through organized action to protect and ensure the rights of individual employees. For example, they have the right to collective bargaining, the right to collective labor disputes and the right to participate in management, etc. The collective labor right is the basic right of employees, only the unified combination can create new strength, balance the relationship with the employers, best protect the economic interests, limit inequality and discrimination from employers. These rights are affirmed in international conventions.¹ Article 5 of the 2012 Labor Code of Vietnam stipulates: "Employees establish, join in the trade union, participate in trade union activities, occupational associations and other organizations in accordance with the law; request and participate in dialogue with the employer, implement regulations on



Taking care of employees' benefits helps them have more enthusiasm with the trade union. Source: thoibaotaichinhvietnam.vn

democracy and consultation at workplace to protect their lawful rights and interests; participate in management according to the employer's regulations; go on strike". The existence and exercise of collective labor rights represented by the Trade Union is to ensure that the operation of labor relations has a relationship balance between employers and employees. On that basis, the employees' other rights are better guaranteed and expanded with the social development.

With the above conceptual framework of workers' rights, trade unions have a very important role in protecting workers' rights. If there is no Trade Union, the rights of workers can be limited to the content of the individual employment contract only and as such, the employees are usually only entitled to the minimum working conditions and maybe must work in unsafe threshold conditions etc.

2. The role of the union in protecting the rights of workers

In the context of Vietnam's increasingly deep integration into the international economy, although many benefits and opportunities are brought when Vietnam becomes a member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the participation and implementation of new generation free trade agreements like the CPTPP will also put more pressures on Vietnam. One of the pressures is to protect the workers' rights in this international economic integration process. This is the mission of the Vietnam Trade Union. The Vietnam Trade Union has the following basic levels: the Vietnam Confederation of Labor, the labor federation of provinces and cities, the central sector union, the district labor union and the trade union of

various agencies, organizations and enterprises (hereinafter referred to as Trade Union). The Trade Union role of protecting the labor rights can be classified into groups and levels:

- *Participate in establishing legal policies.*

The Vietnam General Confederation of Labor (VGCL), as the central agency of the Vietnam Trade Union, cooperates with state agencies in drafting workers-related regulations such as the laws and policies related to employees' rights and interests. As for the minimum wage policy, the VGCL actively participates in the National Wage Council, along with representatives from the Ministry of Labor, War Invalids and Social Affairs and the employers' organization in the central government to establish the regional minimum wage as a basis for advising the Prime Minister to consider and promulgate regulations on regional minimum wages.

- *Examine, inspect and supervise.*

Trade unions coordinate with relevant agencies in examining, inspecting and supervising the state management of labor; the enforcement of the labor law; the implementation of the collective labor agreement; the resolution of labor disputes etc.

- *Represent workers to have dialogues and negotiate to sign the collective labor agreement and to bring legal action to court when the employees' rights are violated*

This is one of the important tasks of trade union activities in the market economy.

On behalf of employees, the Trade Unions represent to protect legal and legitimate rights and interests of employees in the grassroots unit through: guiding employees to conclude labor contracts with employers; bargaining and signing collective labor agreement. The Trade Unions supervise and inspect the implementation of the collective labor agreement and policies relating to the employees; effectively participate in the grassroots labor conciliation council and other organizations of the enterprises in accordance with the law. Through the above forms of activities, the Trade Unions conduct activities to protect the workers' rights.

However, in the context of Vietnam joining the CPTPP, it is required that the trade union's activities in protecting workers' rights must be changed to meet the conditions in the new situation. Workers and trade union officers must be protected from the discriminatory acts of employers; Trade Union organizations can be interfered and manipulated to be weakened, and the rights of workers are also compromised. This protection must be applied to avoid the following acts: depending on the employment of the worker on the condition that he or she cannot join the Union or must renounce the union membership; firing or causing damage to workers on the grounds of union membership, or participating in union activities after working hours or with the employer's consent during working hours. It is also important to protect the Trade Union from interference and manipulation by employers. Considered

interventions acts are those which promote the establishment of an employer-dominated Trade Union (known as a gold union), or to support a trade union financially or by other means, with the intention of placing the Trade Union under the control of employers.

3. Practical operation

- Trade union represents, protects the interests of employees through the participation in formulating policies and laws related to employees.

From 2008 up to now, the VGCL has participated in formulating more than 100 legal documents of the National Assembly and hundreds of the documents of the Government, ministries, branches. Among those legal documents, there are many particularly important documents directly relating to employees and trade union organizations such as: Constitution 2013, Trade Union Law 2012, Labor Code 2012, Law on Social Insurance, Law on Health Insurance, Law on Vietnamese employees working abroad under contracts, Law on Officials and Civil Servants 2008, Law on Public Employees 2010, Enterprise Law, etc. In addition, Trade Unions have actively participated in tripartite industrial relations institutions such as: Labor Relations Committee and National Wage Council. After 7 years of establishment, the National Wage Council has worked through consultations with the Prime Minister on adjusting the regional minimum wage to ensure compliance with the interests of all parties and in accordance with the wage level on the labor market.

The labor unions of provinces, cities, central sector unions, corporations under the VGCL, etc. have participated in formulating many internal normative documents of localities, branches related to the rights and obligations of employees. Currently, there are 100% labor unions at provincial and city levels, central sector unions, 90% of district labor unions, 70% of grassroots unions under administrative and non-business agencies and about 20% of trade unions of non-state businesses have developed and signed a working coordination regulation with relevant agencies.²

- Trade unions represent, protect the interests of employees through guiding them to sign individual employment contracts, conduct corporate dialogue, negotiate and sign collective labor agreements.

The function of representing, protecting the legitimate rights and interests of workers is the central task of the trade union, especially the grassroots trade union, such as guiding employees to sign employment contracts, implementing the grassroots democracy regulations, and propose the collective bargaining; supervise the implementation of the policy regime with employees, organize dialogues and conciliation of disputes arising in labor relations.

According to the General Statistics Office, at the end of 2016, the country had 26.7 million people working as salaried workers, of which 22.9 million people were working under the labor contract regime.

Up to now, the rate of enterprises

signing collective labor agreements has reached 67%. In which, the state-owned enterprise sector has made up 97%, the foreign-invested sector is 63% and the private sector is 59% compared with enterprises with trade unions. The number of collective labor agreements has also been raised, from 40% in 2008 to 60% now.³

- *Trade Union represents, protects the interests of employees before the Court.*

The number of labor disputes brought to the Court tends to increase, the majority of the labor disputes that the Court has accepted and resolved from 1995 up to now are individual labor disputes, there is only 01 collective labor dispute. In 2012: Court of first instance accepted 3,117 individual labor disputes; 2013: Court of first instance accepted: 4,470 individual labor disputes; 2014: The first instance Court accepted 4,682 individual labor disputes.⁴

In addition, the Vietnam General Confederation of Labor cooperates with the Vietnam Social Insurance Agency to sue enterprises and units of outstanding debts and evading insurance premiums for employees. According to the report of the local social insurance agency, in the period of 2010 - 2014, they have sued 5,376 employers and enterprises owed the social insurance; of which 1,759 units were put on trial. However, among 1240 cases which the Court's judgments and rulings have been transferred to enforcement agencies, up to 375 cases have not been executed (accounting for 30.2%). Only in 2014, the social insurance agency sued 1,496 units

with a total amount of 664.7 billion VND, but the recovered amount was only 105 billion VND.⁵

- *Trade Union represents, protects the interests of employees through the resolution of complaints and denunciations.*

In fact, from 2008 to 2013, the trade union at all levels received 40,183 people and 30,774 complaints and denunciations.⁶ The content of the complaint focused on a number of issues such as the employer's violation of the labor law regarding employment contracts, wages, bonuses, working conditions, and the transfer of employees doing other illegal things, the violation of social insurance regime, violation of collective labor agreement, etc. As a result, Trade Union worked with state agencies to resolve 19,397 complaints, denunciations, 7,252 people returning to work, 1,189 people being reduced the disciplinary level, 76,937 people being entitled to other benefits.⁷

4. Some limitations and reasons

- The establishment of the grassroots trade union has not been fully implemented. The law states that businesses must form trade unions after being established. For example, although there are over 1600 enterprises and cooperatives in Yen Bai province, the number of enterprises with newly established trade unions is very small, accounting for 7.8%.⁸ Many business owners avoid forming trade unions, even though workers desire it. These are difficulties and obstacles in representing the rights and interests of employees.

- The quality of formulating and completing a number of legal policies related to employees is not high. The capacity and bravery of some trade union officials have not met the practical requirements. The labor law system is not synchronous, especially since the establishment of specialized laws. Some issues related to industrial relations are slow to be institutionalized such as employers' representative organizations, tripartite coordination mechanisms, etc.

- The mechanism of dialogue and collective bargaining in many enterprises has not been given appropriate attention; the awareness of the importance of collective bargaining to sign a collective agreement is not deeply understood; The implementation is still formalistic. One of the reasons about the impractical collective bargaining in Vietnam is that the grassroots trade union officers, who are paid by enterprises, cannot negotiate. Reality in the world shows that most of the local trade union officers are also paid by businesses. The profound nature of the failure to carry out collective bargaining is that grassroots trade union officers are in danger of being discriminated, which prevents them from speaking up, and negotiating or organizing negotiating activities. They dare not to fight for the fear of affecting their jobs and job positions. This issue is also related to the interference and manipulation of the Trade Union organizations so that they cannot fulfil their protective role, even turning the Trade Union into the "arm" of employers is quite popular. "According to survey results of the Ministry of Labor, War

Invalids and Social Affairs, at the trade union of industrial zones in Binh Duong province, among 1.533 executive committee members in enterprises in the industrial zone, there are only 230 people are workers, accounting for 15% of the total number of the Executive Committee members of the Trade Union. The remaining 85% of the Executive Committee of the Trade Union are the people who are usually managers, the group leaders and the line leaders. The compensation of these people is usually based on the turnover of their unit".⁹

- According to the report of the Court, in 5 years (2012-2016), the Courts at all levels tried at first instance 24,854 labor disputes (on average 4970 cases per year), an average annual increased more than 1,000 cases. Meanwhile, disputes over the implementation of collective labor agreements and disputes over the right to form and join trade union activities were very few. This proves that the employees' awareness of the right to collective bargaining and signing collective agreements is still limited.

5. Solution for Trade Union organizations in protecting labor rights

Firstly, trade unions must be established in all enterprises to represent employees to negotiate, resolve disputes right at the enterprises.

Secondly, Trade Unions participate actively in formulating the legal system to regulate acts, especially manipulation and discrimination against trade union officers and organizations.

Thirdly, Trade Unions actively participate in promoting the completion of the tripartite and bilateral mechanism

This is an effective form of operation applied by the International Labor Organization (ILO) and many countries with developed market economies, which is effective in adjusting labor relations to ensure the balance of the benefits of employees, employers and the State.

For the central level, the activities of the National Labor Relations Committee and the National Wage Council need to be improved to pilot the signing of the sector collective labor agreement. For the grassroots level, the collective bargaining and the signing of the collective labor agreement need to be promoted and implemented. This document should be of great importance in protecting workers' rights.

Fourthly, forming the organization, consolidating the contingent of trade union officials, renewing the mode and content of trade union activities in line with new requirements need to be promoted; the Trade Union organization needs to be improved so as to constantly develop, gather a large number of workers to join. Because officers are the root of all jobs, staff enough in quantity and meeting the quality of job requirements will determine the performance of all organizations. Therefore, it is necessary to improve the capacity of union officers to meet the requirements and duties in new conditions.

Fifthly, it is necessary to promote

theoretical research and practical summation of working class and union activities through scientific seminars, reports on good working experiences and creative labor, the summary of the trade union practices in enterprises. ■

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