



Analysis of the Actuality of Shanxi Provincial Coal Miners' Labor Rights and Interests from the View of the Labor Contract Law of PRC

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Abstract

Shanxi Provincial coal miners' labor rights and interests are damaged badly, which is worrying in recent years. Through the face to face interviews with principals of miners, labor unions, coal enterprises, labor and social security bureaus in Taiyuan City, Jinzhong City, Linfen City and Jincheng City in Shanxi Province, the first-hand materials were acquired. From the view of the Labor Contract Law of PRC, first the actuality of Shanxi Provincial coal miners' labor rights and interests was expounded in the article, then the reasons about the existing problems were analyzed, and finally the reasonable advices were proposed, which aim for perfecting laws and regulations, enhancing miners' consciousness of maintaining rights, regulating the behaviors of coal enterprises, and protecting miners' rights and interests from many aspects.

Keywords: Minors' rights and interests, Labor Contract Law, Advices

1. Introduction

The Shanxi provincial coal miners' labor rights and interests have caught the eye of the public for a long time. Frequent coal accidents, weak social security system and arrears of wages are appalling (Ren, 2008). According to spot checks, until the late of 2001, 70 state-owned key coal enterprises owed on-the-position workers' salaries 6.333 billion Yuan, and the phenomena are particularly bad in Shanxi Province. In 2006, the arrears of wages that the Liujialiang Mine in Xiang County of Shanxi Province owed about 200 peasant-workers from Sichuan, Hubei and Chongqing achieved about 1.8 million Yuan. In three years from 2005 to 2007, there were 1205 cases of arrears of wages to be investigated and processed, and 174 cases disobeying the minimum wage regulations to be checked, and 53.03 million Yuan involved in these cases, and 21.8 thousands present-workers (Shanxi News Network, 2008).

The Labor Contract Law of PRC brought goods news for the protection of the coal miners' rights and interests which were worrying by the public (Ye, 2008). The law further compulsorily provides labors' rights and interests, and was well received by labors. The coal miners occupies large proportion in the labor group, and Shanxi Province is one of largest coal producers in China, so the survey of miners' rights and interests in Shanxi Province can be used for references for the protection of the labor's rights and interests in various industries in China. This survey will follow the big trend that various subjects in the labor relation seriously carry out the Labor Contract Law, go deep into the coal industry in Shanxi Province, and study the actuality of coal miners' labor rights and interests from the view of the Labor Contract Law.

Based on field survey, combining with the legislation actuality of China, the first-hand materials of Shanxi provincial miners' rights and interests protection are acquired, the reasons of improper implements are analyzed, and the deficiencies and limitations of the legislation are pointed out, and relative legislation advices are proposed, and some opinions are proposed for many subjects in the legal relation such as the labor and social security bureaus, coal enterprises, labor unions and miners to seriously implement the law in the article. The survey is expected to offer active functions for the protection of the laborers' rights and interests in China.

2. The expatiation of the actuality of Shanxi Provincial coal miners' rights and interests from the view of the Labor Contract Law

The actuality of Shanxi Provincial coal miners' rights and interests is good in general, and the Labor Contract Law has been implemented to large extent and miners' legal rights and interests have been protected more, but many problems still exist.

2.1 *The signing of written labor contract is still not optimistic*

(1) The signing form of contract has no legal force.

Tens of workers sign one contract, and even if the labor contract is signed, but that is not the labor contract of labor and management according with the Labor Contract Law, and it is not the collective contract. The so-called collective contract means the written agreement that the labor union or the deputy elected by employees negotiates about labor salary, work condition, work time, vocation, labor security and sanitation, and social security welfare based on equal status according to laws and regulations and signs with the employer (Wang, 2008). The employment labor contract should confirm the right and obligation relationship between individual laborer and employer, and the collective contract is the same with all labors in the employing enterprise, i.e. one collective contract is applicable to each laborer in the employing enterprise. For the contracts without legal force, they should be defined by that the labor contracts are not be signed, and the employing enterprise should pay the salaries for workers according to the article 82 of the Labor Contract Law and the Regulations for the Implementation of the Labor Contract Law. However, at present, the principals of the coal enterprises have not performed the regulations and the supervision departments also wave aside.

(2) Most miners have not held the signed contract.

The contract should have two copies and the laborer and the employing enterprise hold one piece each. But in fact, only 7.79% miners in private enterprises hold contracts, and 98.41% miners in state-owned coal enterprises hold contracts.

(3) The signing of the open-ended contract is bad.

Article 14 of the Labor Contract Law provides the signing conditions of the open-ended contract. According to the interviews, most miners signing the open-ended contract belong to the situation of the first clause of the first item. In 203 miners in the interview, 80 miners have worked for above ten years continually, and 68 mines of them signed the open-ended contract.

The execution of the clause item of the first item is not good. Taking several private coal mines in Jincheng City of Shanxi Province as the example, about seventy percent miners signed the three-year employment contract or the five-year employment contract, and when the contract expired, the former fixed term contract continued. Though the miners required the enterprise to sign the open-ended contract, but the enterprise didn't sign it according to the laws.

(4) Various work types abandoned by the laws still exist, which invaded miners' rights and interests.

In the interview, some inexplicable and abandoned work types such as "casual laborer", "normal laborer", "contract laborer" and "fixed laborer" were found.

Chen is the employee of certain Coal Ltd. in Yangcheng County of Jincheng City of Shanxi Province. The "casual laborer" and "normal laborer" said by Chen are the contract laborers with different fixed terms, but the social insurance could not be shared by them equally, and same work can not obtain same salaries, which disobeys the principle of justice.

After the Labor Law of RPC was implemented, there are not the differences among "fixed laborer", "casual laborer" and "normal laborer" in enterprises. Only if the labor relationship is established according to the laws, miners and coal enterprise should sign the labor contract, and the labor relationship can be protected and adjusted by the Labor Law, and the insurance and welfare should be transacted according to the contract, the regulations of enterprise or the laws. Jincheng City of Shanxi Province is still distinguishing "casual laborer" and "normal laborer", which induces that same works can not obtain same salaries.

2.2 *Coal enterprises still take deposits from miners*

The ninth article of the Labor Contract Law provides that when hiring an employee, an employer may not retain the employee's resident ID card or other papers, nor may it require him to provide security or collect property from him under some other guise (Ma, 2008).

In the interview with Zhang, the section chief of labor and supervision section in Huozhou City of Shanxi Province, he said, some coal mines in Shanxi Province such as the Huozhou Municipal Coal Group Ltd., 60% miners were from other places, which indicated that the fluidity of miners was very high, so the enterprise employing outlanders would suffer certain risk. The enterprises should offer abodes, TV, bedding and other living things, and if they didn't take deposits, some miners would leave with the properties offered by the enterprises, which would induce the losses of enterprises. So in this industry, the guild regulations of deposit formed. Whether the deposit can be returned is decided by miners' coverage and ability to negotiate with the enterprise, and the coal enterprises will not actively return these deposits.

2.3 *The signed employment contract has not protected miners' rights and interests in fact.*

At present, the supply of the labor force exceeds demand in China, and the laborers' strength has a wide gap with the strength of the enterprise, especially in the labor intensive industry, the coal industry. The employing enterprises secure

in the knowledge that they have strong backing, and the contract can not ensure the implementation of laws and regulations (Wang, 2008).

(1) The phenomenon that the enterprise terminates contract at will still exists.

In 2008, by means of the three-exceeding regulations (exceeding ability, exceeding employee and exceeding intension), certain coal Ltd. in Yangcheng County in Jincheng City of Shanxi Province fired its employees at will because of some indispositions such as small disease of the body. According to the article 39, 40 and 41, and the article 18 of the implementation regulations, only in 13 kinds of situations, the employing enterprise can terminate the contract, but the above unemployment didn't accord with one of these 13 kinds of situations, it was obvious that the coal enterprise was arguing irrationally. And even if the employing enterprise terminated the contract, they should accord with the programs provides by the article 43 of the Labor Contract Law. So the contract termination between the coal enterprise and miners didn't accord with legal conditions and programs.

(2) The phenomenon of overtime was serious, and the call-back pay still lacked.

In the article 8 of the signed labor contract, party A (coal enterprise) should ensure party B (miner)'s right to rest according to the laws, and party B enjoys legal holidays and other vocation rights such as going home to visit his family, marrying and taking part in his family's funeral, procreating and annual paid vacation in accordance with the law. After the "Regulations about Employees' Work Time of State Council" was put in force at May 1 of 1995, "five-day workweek" was carried out universally, and enterprise employees can not work over 40 hours each weak, and they should rest for two days each weak (Drafting Group of Labor Contract Law of PRC, 2007). For the enterprises or posts which perform the comprehensive time, the employees should be ensured for one-day's rest time each weak in accordance with the article 38 of the Labor Law of PRC.

In the interviews, up to now, miners still have not enjoyed the two-day weekend, home leave and public holidays, and they had only three-day holiday in the Spring Festival. They were only paid in the day when they worked in the day. In 365 days in one year, if they had no illnesses, they should work for 365 days, and except for the first day, second day and third day in the Spring Festival, they could not be paid for overtime. Mr. Hang, one coal miner in the Huozhou Principal Coal Group, has been working for 23 years like that.

(3) The insurance and welfare are still deficient.

In the coal industry, the hourly wages is adopted, which wants to encourage working more and getting more. The young miners always get more than the miners who have worked in the mine for 30 or 40 years. But those old miners can not enjoy their social security and welfares what they should enjoy and their working enthusiasms are influenced seriously.

The work injury insurance adopts the unregistered insurance system, and the insurance proportion is 50%, for example, there are 100 miners, and only 50 of them are insured in the work injury insurance, and if the accident happens, the miner who is injured enjoys the insurance.

3. Analyzing the reasons of the problems existing in the actuality of Shanxi Provincial coal miners' labor rights and interests from the view of the Labor Contract Law

3.1 Reasons from miners

(1) Miners are in a devil of hole, and they have no power to strive for rights to the coal enterprise. At present, the supply of the labor force in China exceeds the demand, and the phenomena that strong capital invades weak laborers' rights and interests can be found everywhere, which specially pops out in the coal industry with intensive labors. For the group which is employed difficultly, it is not easy to find a job, and if they oppose the will of coal enterprise, they will lose their jobs, so they will not excessively run the legal justice, and the "empty promise" from the coal enterprise will occur repeatedly.

(2) Miners' quality is low. In the survey, 100% miners who work overtime could not obtain the call-back pay, but the data indicated that they didn't realize that their rights to obtain the call-back pay were invaded. Therefore, the laborers' quality largely influences their right-safeguarding.

3.2 Reasons from the labor union

The labor union existed in name only. According to the Labor Contract Law, the labor unions should supervise and urge the signing of the employment contract, the elimination of the contract and the settlement of the dissension. But in fact, they are isolated with miners. In miners' eyes, the labor unions were the logistic units, and they only provided quilts and safety handbooks, and organized some amusements, and miners didn't know clearly what the labor unions should do. Miners didn't contact with the labor union on the floor at all.

Mr. Cai, who was one miner of Shanxi Provincial Huozhou Municipal Coal Group, was transferred to the labor union because he was good at the act two years ago, and his work every day was to clean the floor and wipe the desk, and get on the internet in QQ. He said with self-mockery, "sleeping after eating, charging after waking", and "to work is to have

meeting, to mediate is to get drunk”.

3.3 Reasons from the coal enterprises

To escape the responsibility, the principal of the coal enterprise never returned the contracts to miners. If the dissension happens and miners' identity needs to be proved, though miners signed the contracts, but they could not hold them, so the validation of the identity may be the problem, and if the coal enterprise sticks to these miners without contracts are not the employees of the mine, miners can only do nothing. Though the article 14 in the Labor Contract Law provides that “If an employer fails to conclude a written employment contract with an employee within one year from the date on which it starts using the employee, the Employer and the employee shall be deemed to have concluded an open-ended employment contract,” but that is only based on that the labor administration departments have investigated the fact. In fact, if there are no departments to check, mine-owners always thought that they are too lucky to give miners their contracts.

In the late of 2008, the notorious “sealing-mouth charge” was exposed, which happened in the Huobao Mine of Huozhou Coal and Electric Group. Cai's mine also belonged to the Huozhou Coal and Electric Group. The “sealing-mouth charge” was not only one accident and it happen in Huobao Mine by no means. The exposing of the accident of “sealing-mouth charge” was not simple extortion, and it incisively and vividly embodied the infamy that the coal enterprises cozened the mine disaster.

At the same time, to restrain miners to learn the Labor Contract Law, some mine owners put the banners and pictures about the Labor Contract Law on the devious corners, and miners would not saw about them, which induced that the drumbeating of the Labor Contract Law performed practically no function.

3.4 Reasons from the labor and social security bureau

First, the drumbeating of the Labor Contract Law became a mere formality.

(1) The drumbeating form is too high to be popular, and it doesn't accord with miners' cultural degrees. Most miners are farmers with learning experiences in elementary school and junior high school. And in the course of lectures about the Labor Contract Law, they always slept when they could not understand, which induces the learning effects are not obvious.

(2) The drumbeating only emphasizes catchwords and neglects contents. Some courses and banners can not make miners grasp the essential regulations in the Labor Contract Law, so miners' understanding to the Labor Contract Law is only limited in the surface and the concept of the article. The coal miners' cognitions to the Labor Contract Law are seen in Figure 2.

Second, the supervision to the coal enterprises is weak, and the supervision of the labor bureau becomes a mere formality. When the labor bureau checks the signed contract in the mines, it only checks the holding contract in the office not in miners' hands. The un-strict execution of the laws induces miners can not hold the contracts and the supervision can not be implemented really.

4. Advices to protect Shanxi Provincial coal miners' labor rights and interests

4.1 Advices for the legislation

(1) Advice to the 5th items of the 46th article of the Labor Contract Law

The item (5) sub-article 1, article 46 of the Labor Contract Law provides that “The employment contract is a fixed-term contract that ends pursuant to item (1) of Article 44 hereof, unless the Employee does not agree to renew the contract even though the conditions offered by the Employer are the same as or better than those stipulated in the current contract; the Employer shall pay the Employee severance pay”. That means that when the employing enterprise maintains or enhances the appointed conditions in the labor contract to renew the labor contract and the laborers disagree to renew, the employing enterprise doesn't pay severance pay to the laborers. Except for that, when the term of the labor contract terminates, the employing enterprise should pay severance pay to laborers. In actual practice, because the work environment is cold, many well miners easily fall ill such as rheumatism and waist and leg pains, and they always turn to other works after tens years. Their body conditions can not be changed, so they must leave this industry when they have worked for tens years, which is clearly known by mine owners. If mine owners clearly know that miners want to leave, and to avoid the severance pay, they intentionally enhance same or higher contract conditions to detain miners, and miners only disagree to renew the contract because of the body conditions, so mine owners' one word can save their thousands Yuan of severance pay, which is so unfair to miners.

At the same time, for the instance in the first item of the 40th article, the employing enterprise should extra pay one-month salary to laborers, but for above situation, miners don't engage in original works, and the employing enterprise needs not to arrange other works, which reduce the burden of the mine in fact, but the fact is that miners can not obtain any severance pay.

If the regulation in the Labor Contract Law is followed, mine owners' asking while knowing the answer will make miners lose their works and corresponding severance pays. Therefore, the regulation should be modified by "when the labor contract expires, the contract terminates".

(2) Advice to establish concrete annual paid vacation system

The 45th article of the Labor Law issued in 1995 provides that "The State institutes the system of annual paid vacation. A worker who has worked for more than one year shall enjoy the annual paid vacation. The specific regulations in this regard shall be worked out by the State Council". But up to now, the State Council has not enacted relative regulations and laws.

In Guangdong, the worker who has worked in one unit above one year can enjoy the paid annual vacation system, and the vacation time is computed according to the length of service in the enterprise, and the vacation time is 5 days when the working time exceeds one year but doesn't exceed five years, and the vacation time is 7 days when the working time exceeds five years but doesn't exceed ten years, and the vacation time is 10 days when the working time exceeds ten years but doesn't exceed twenty years, and the vacation time is 14 days when the working time exceeds twenty years.

Up to now, the regulations about the vacation time in the Labor Contract Law and its implantation rules are still blank. The execution measures in Guangdong Province should be extended to the whole nation.

(3) Persisting in the principle that the enterprise should first help the employees in the production line to hand in their social insurances

When Shanxi Province institutes relative regulations about the social insurances of coal industry, it is advised to persist in the principle that the enterprise should first help the employees in the production line to hand in their social insurances. The employees in the production line are defined by the industrial regulations. According to the interview with local labor and security departments, the reason that many enterprises didn't hand in the insurances was that their capitals were deficient. To encourage and guarantee more miners to obtain insurances, the principle inclining to the employees in the production line should be advocated, and under the situation that the enterprise lacks in enough capitals, it should first hand in social insurances for the employees in the production line.

NPC & CPPCC convened in March of 2008 turned on the establishment and perfection of social insurance again, and the networking system of the "all-purpose card" of social insurance in off-site would be established. However, that can not ensure the social insurance rights of the laborers in the production line, so the principle that the social insurance should incline to the employees in the production line should be still advocated.

4.2 Advices for the labor and social security bureau

(1) The labor bureau should develop the home-visiting working mode.

Various principals in the labor bureau are hoped to go deep into miners, establish miner family basic information records including address and contact numbers, and find out real information in miners' homes at the rest days, which could suit the remedy to the case and get twice the result with half the effort.

(2) The legal drumbeating should adopt the mode of cases.

Various labor and social security bureaus and various coal enterprises are advised to use the real case to explain the laws when they preach regulations and laws, utilize vivid examples to explain how to use the laws to solve problems, and the legal program "China Court" suiting both refined and popular tastes is commended to be the video drumbeating material.

(3) The legal training to the mine owners should be strengthened.

Many mine owners exclude the Labor Contract Law because they have not understood the law deeply and they thought that the law seriously accepted the face of miners. The labor bureau should take not only miners but mine owners as the drumbeating objects, and especially strengthen the training to the coal mine principals.

To implement the Labor Contract Law, it is very important to establish coal mine principals' correct cognitions about the law.

4.3 Advices for miners

Many miners more know well the safety regulations and laws, but the pamphlets of the Labor Contract Law are put on the shelf. Aiming at this problem, following advices are proposed for miners.

(1) Miners should take out more time to learn laws, and be good at communicating what they have learned with others, and really grasp the rights what they should enjoy and the obligations what they should perform as the laborers.

(2) Miners should supervise and urge the work of the labor union to strengthen its function.

Many miners thought that "we are working under the well, but the labor union works on the floor, both of us can not

contact”, which could reflect the incapacity of the labor union and the mockery to the labor union. However, miners should abandon this kind of idea, actively contact with the labor union, reflect the working situation, take the labor union as the platform to present the opinions and claim rights with other miners. And miners should supervise and urge the labor union to perform its obligations.

(3) Miners should grasp multiple relief approaches.

Multiple relief approaches can help miners to maintain their own rights. The proportion (seen in Figure 3) indicates that most miners are more inclined to debate with the mine owners, and there are one fifth miners who don't know how to do, which make the relief approaches become very narrow, and the opportunity to strive for rights is limited. So miners should grasp multiple relief approaches.

(4) Miners should join up to establish the industrial alliance.

Miners should establish an alliance or organization which can really represent their rights and benefits and belong to themselves. The alliance should really maintain miners' vital interests, come from miners and go to miners, popularize laws, follow laws and maintain the rights by laws.

5. Conclusions

The final approach to protect miners' labor rights and interests is to make the approach gradually go to the system governed by law. Though the protection to the laborers' rights and benefits on the legislation layer have been perfect to some extent, but the implementation of the Labor Contract Law are suffocated frequently, and the damages of laborers' labor rights and interests in Shanxi are still very serious. To solve these problems, the Labor Contract Law and its implementation regulations should be further modified, and various levels labor and social security departments should strictly execute the laws and enhance their execution power and efficiency, and establish the confidence in miners' hearts, and the labor unions should renew their essential and carefully serve for miners, and obtain miners' identity, and coal enterprises should employ miners by the law and win miners trusts again, and laborers should try to enhance their own qualities, renew their ideas in time, and have the courage to maintain their legal rights and interests by the legal access.

The problems existing in the actuality of Shanxi Provincial miners' rights and interests still generally exist in various industries, especially in other labor intensive industries. The research about the actuality of Shanxi Provincial miners' rights and interests can offer some necessary data and research methods for other researches about laborers' rights and interests in various industries, and many advices proposed in the article are good for being further promoted and practiced. The in-depth survey is hoped to promote the protection to Shanxi Provincial miners' rights and interests to some extent, and further improve the protection to laborers' rights and interests in the whole nation.

References

- Drafting Group of Labor Contract Law of PRC. (2007). *Explanations of Labor Contract Law of PRC*. Beijing: China Market Publishing House.
- Ma, Wenbin. (2008). Highlights of the Labor Contract Law. [Online] Available: <http://hrclub.51job.com/blog/49/48172/archives/2007/2715.html>. Aug 1, 2008.
- Ren, Da. (2008). Promote the implementation of the Labor Contract Law. *Wen Hui Daily*. June 10, 2008.
- Shanxi News Network. (2008). There Are 1205 Cases about the Arrears of Wages to Be Investigated and Processed in Three Years in Lvliang. [Online] Available: <http://news.qq.com/a/20070514/000584.htm>. May 14, 2008.
- Wang, Quanxing. (2008). *Detailed Article Explanation of the Labor Contract Law*. Beijing: China Legal Publishing House.
- Wang, Quanxing. (2008). *Theory of Labor Law (2nd edition)*. Beijing: Higher Education Press.
- Ye, Jiangqi. (2008). *12 Lessons about the Labor Contract Law*. Beijing: China Legal Publishing House.

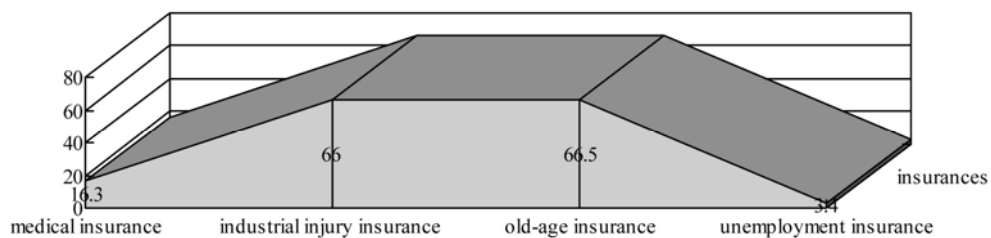


Figure 1. Coal Miners' Proportions of Various Insurances in the Survey

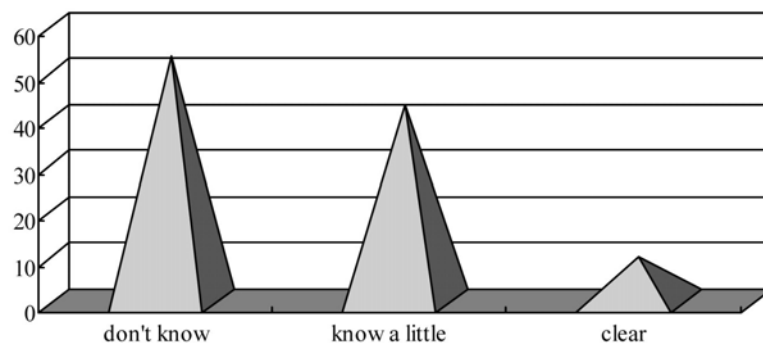


Figure 2. Coal Miners' Cognitions to the Labor Contract Law (%)

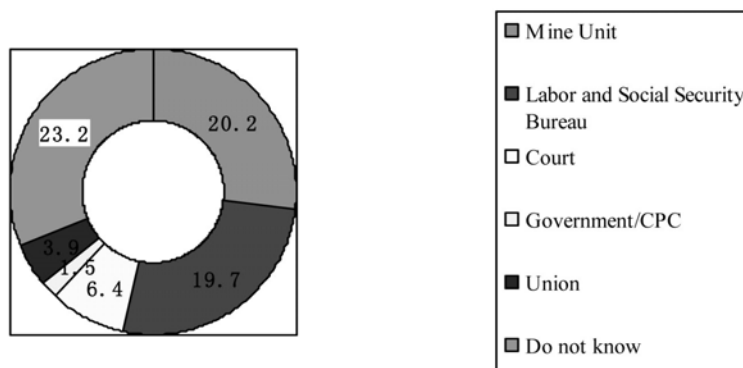


Figure 3. The Proportions of Various Solutions for the Dissension Solution in Coal Miners