Resource Centre
China’s labour dispute resolution system

China’s labour dispute resolution system was effectively established in 1993, when the government promulgated its Regulations on Handling Labour Disputes in Enterprises (企业劳动争议处理条例). The Regulations, together with the Labour Law (劳动法), enacted the following year, created a four-stage framework that begins with an informal “consultation” between the two parties. If the consultation stage fails to resolve the dispute or is simply ignored, the two parties can move on to mediation or more formal arbitration. And if a worker plaintiff is dissatisfied with the result of an arbitration hearing, they can bring the case to the civil courts for adjudication. In 2008, the Labour Dispute Mediation and Arbitration Law (劳动争议调解仲裁法) further refined the existing procedures and clearly defined the rights and duties of mediation and arbitration committees.

In theory, the labour dispute resolution system should be a linear process: consultation, mediation, arbitration, litigation in the court of first instance, appeal, etc. In reality, however, the process is much more fluid with the emphasis being placed by the authorities at all stages on mediation. Thus, even if a case does make it to a labour dispute arbitration committee (LDAC) or the civil courts, those institutions will still urge the parties to agree to a mediated settlement rather than issue a formal ruling. Of the 643,292 cases settled by LDACs in China in 2012, for example, nearly half (302,552 cases) were settled through mediation.

The current emphasis on mediation in labour disputes reflects a shift towards mediated settlements in China’s judicial system as a whole, but more specifically it is a response to the sudden upsurge in arbitration and labour rights legal cases that followed the implementation of the Labour Contract Law and Labour Dispute Mediation and Arbitration Law in 2008. Both laws gave workers additional ability and incentive to seek legal redress for labour rights violations. See graph below.

![Graph showing labour dispute resolution cases](http://www.clb.org.hk/en/view-resource-centre-content/100618)

All the statistics used for the graphs in this article are taken from the China Labour Statistical Yearbook 2013.

The total number of cases settled by LDACs levelled off after more than doubling in 2008, however, the number of cases resolved through mediation continued to climb steadily after 2008. The proportion of cases decided by a formal arbitration ruling meanwhile remained largely static. There were also a large number of cases that were not accepted by LDACs but were still resolved through mediation outside the system. In 2012 there were 212,937 additional cases that were mediated after not being formally accepted by the LDACs. Mediation, being a relatively simple and less time-consuming process, is seen by the authorities as a means of relieving the pressure on arbitrators and judges and getting rid of the back-log of cases that has built up since 2008. However, it has also meant that many workers are not getting as good a deal as they might if they had insisted on a formal ruling. See below for more details.

**Defining what is and what is not a labour dispute**

For a case to be accepted by a labour dispute arbitration committee, it has to meet certain criteria. The most fundamental criterion is that an employment relationship has been established. All labour disputes flow from this basic requirement, although LDACs will also adjudicate on the question of whether or not an employment relationship has actually been established. For example, workers can argue that even if they have not signed an employment contract, they do in fact have a de facto employment relationship with the employer.

Any dispute arising prior to the establishment of an employment relationship will not be classified as a labour dispute and will instead be handled directly by the civil courts. For example, claims of discrimination in the hiring process will not be accepted by LDACs because an employment relationship between the two parties has not yet been established. See section on Workplace discrimination in China for more details.

Other exclusions include disputes related to the restructuring of state-owned enterprises, disputes on the level of disability resulting from a work-related accident, and disputes between families and a domestic helper, a craftsman and apprentice etc.

There are also time limits for labour dispute arbitration. The Labour Dispute Mediation and Arbitration Law stipulates that plaintiffs have to apply for arbitration within one year of the dispute arising. The time limit for ordinary civil cases is two years. The one year limit is particularly disadvantageous to victims of occupational diseases such as pneumoconiosis, who very often do not realize they are ill until several years after they left their employment. See CLB’s research report The Hard Road: Seeking justice for victims of...
pneumoconiosis in China.

The majority of cases handled by LDACs in China can be divided into four major categories; remuneration, social insurance, work-related injury or illness, and termination of contract. In 2012, for example, around one third of all cases were related to remuneration; disputes over payment of wages, overtime, bonuses etc. See graph below.

The arbitration process

The rules governing arbitration procedures and the qualifications of arbitrators are laid out in the Labour Dispute Mediation and Arbitration Law. Article 20 states that arbitrators should be impartial and have a reasonable level of legal knowledge or experience, such as having served as an adjudicator, taught or practiced law for three years, or worked in human resources or as a union official for five years. However, it is not uncommon for unqualified arbitrators to be appointed, and some worker plaintiffs, particularly migrant workers, have expressed concern over the impartiality of some arbitrators.

Whereas mediation can only be conducted on a voluntary basis, LDACs are much more formal and can issue rulings even in the absence of a respondent. LDACs conduct open hearings and their rulings are legally enforceable. Moreover, in most routine cases, the ruling of the committee is final. Article 47 of the Labour Dispute Mediation and Arbitration Law states:

For the following types of labour disputes, the award of the LDAC shall be final and become legally effective on the date the decision is made:
1. Claims related to labour remuneration, work-related injury, medical expenses, severance pay and compensation which do not exceed 12 months of the local minimum wage;
2. Claims for enforcement of labour standards relating to working hours, rest days, leave and social insurance.

In these cases, if the employee is dissatisfied with the arbitrator’s ruling they can appeal to the civil courts within 15 days. Employers, on the other hand, can apply to annul the decision of a LDAC on various technical and procedural grounds, such as the misconduct of an arbitrator or falsification of evidence.

The extensive use of mediation in arbitration cases means that, in most cases, there is no clear win for either party. In 2012, for example, there was no clear win in 54.5 percent of the 643,292 cases settled. Workers won in 33.2 percent of the cases and employers 12.3 percent. While the win percentage for employers has remained about the same since the introduction of the Labour Dispute Mediation and Arbitration Law, the clear win percentage for workers has fallen steadily from 44.5 percent in 2008 to 33.2 percent in 2012. See chart below. The declining win percentage is further evidence that more and more workers are being forced to settle for a mediated settlement in which they often get less than they are legally entitled to.

The court system

China does not have a specialist industrial relations or employment court. Labour disputes are dealt with by civil courts and in accordance with civil procedures. According to the Labour Dispute Mediation and Arbitration Law, all litigants should apply for arbitration before they can go to trial, but even if the LDAC rejects the application, the plaintiff can still file a lawsuit. Once the court
accepts the case, a judgment is usually made within six months, although a six month extension can be applied for. If either party is unhappy with the verdict, they can appeal within 15 days to the intermediate court, at the municipal level, or the higher court, which operates at the provincial level.

The advantage for workers in going to court is that there are clear rules of evidence and, in many cases, the burden of proof will lie with the employer. The Supreme People’s Court’s 2001 Labour Dispute Interpretation (最高人民法院关于审理劳动争议案件适用法律若干问题的解释), for example, states that the employer shall have the burden of proof in cases where the dispute arises from an employer’s decision to terminate an employee, reduce remuneration or re-calculate length of service.

The disadvantage for worker plaintiffs is the financial cost and time taken up by proceedings. Even in the most straightforward of labour dispute cases, workers will have to pay legal fees of at least 5,000 yuan. Moreover, since most labour dispute cases cannot be handled on a contingency basis, workers will have to pay their lawyer well before they see any court awarded compensation. Legal aid is available in some cases but the very low rates for legal aid work mean that many skilled and experienced lawyers are reluctant to take it on. If workers win the case, the amount awarded will often be less than the cost of bringing the case in the first place. While in cases where a substantial award is made in favour of the plaintiff, there is no guarantee that the judgment will actually be enforced.

Many cases can drag on for months, even years. Former jewellery worker, Xiong Gaolin, for example, spent nearly four years in the court system before finally winning reasonable compensation for his occupational disease. Many of Xiong’s co-workers, who were diagnosed with the same illness, silicosis, accepted the jewellery factory’s initial offer of about 100,000 yuan. But Xiong held out for more and eventually received around 100,000 yuan in work-related injury compensation, plus an additional 200,000 yuan in civil compensation, including damages for mental anguish and the cost of future medical treatment. The whole legal process, including arbitration hearings and two civil trials, however took 45 months.

Xiong was only able to do so because he obtained free legal assistance and kept faith in the legal system. Many other workers become quickly disenchanted with the legal process and either give up entirely, resort to extra-legal means to press their claims, or petition the higher authorities in Beijing, a traditional yet wholly ineffective and futile avenue of redress. Zhu Xianghong, a former teacher from Shaoxing, for example, petitioned the National People’s Congress in Beijing after the courts in her hometown rejected her claims in an employment contract dispute. She was detained in a black jail in Beijing and eventually sentenced to re-education through labour.

The labour and social security inspectorate

In addition to the mediation, arbitration and litigation process, another avenue for dispute resolution is the labour and social security inspectorate (劳动保障监察), an administrative office tasked with ensuring employers’ compliance with labour law and regulations. The labour inspectorate is empowered to issue fines and take other corrective measures in response to a wide range labour rights violations, including those related to hiring practices, the protection of women and juvenile workers, vocational training, job referrals, and the use of agency labour. However, most of the cases handled by the labour inspectorate are concerned with very basic issues such as the payment of wages, compliance with the minimum wage, social insurance, employment contracts and working hours. See chart below.

The majority of these cases were resolved through the issuance of an “order to correct” (责令限期改正) the specific rights violation within a certain period of time. Of the 411,822 cases settled by the labour inspectorate in 2012, for example, 263,829 cases were “resolved” through such correction orders. Administrative fines were issued in just 16,304 cases across the whole of China.

Collective labour disputes

The majority of labour disputes in China (in terms of the number of workers involved) are collective in nature; grievances or claims by a group of employees against the same employer. However, both the labour dispute arbitration committees and the courts are reluctant to take on such collective cases: The system is really designed for individual labour disputes and as such, if they do accept collective cases, the authorities will often try to break them down into complaints by individual plaintiffs. This practice inevitably increases the cost in terms of time and money for the worker plaintiffs concerned. Of the 641,202 cases accepted by LDACs in 2012, only 7,252 were collective cases, which featured 231,894 workers in total, an average of 32 workers per collective case.

Most collective labour disputes in China involve a lot more than 32 workers. Typically, the number of workers involved in strikes and collective protests range from around one hundred to a few thousand, although numbers sometimes exceed ten thousand. These disputes are hardly ever resolved within the official dispute resolution system. Moreover, because there is no formal system for collective bargaining in China and little or no effective trade union representation at the vast majority of enterprises where strikes occur, workers generally have to take matters into their own hands.

Staging strikes and protests is just about the only way workers can bring their collective grievances to the attention of management, as well as local government and trade union officials. As can be seen from CLB’s strike map, strikes are a regular occurrence across the whole of China and across a broad range of industries; manufacturing, transport, construction, retail, education and public services. Workers’ collective demands also focus mainly on low pay, wage arrears, overtime, bonuses, social insurance and severance pay. The tactics used by workers vary enormously, from simply withdrawing their labour to large-scale protests on the streets and, increasingly, social media activism. See CLB’s research report on the workers’ movement from 2011 to 2013 for more details.

The success or otherwise of workers’ collective action depends on several factors:

- **The nature of the complaint or grievance:** Workers complaining about clear cut violations of their labour rights are more likely to get support from the local government in resolving the dispute. During the massive strike at the Yue Yuen shoe factory, for example, the local government forced the company to address and rectify the under-payment of social insurance contributions but generally ignored workers’ long-standing discontent over low pay.

- **The attitude of management:** Some employers are willing to discuss workers’ demands and reach an accommodation, while others absolutely refuse to meet with strikers and focus instead on threatening and intimidating workers in a bid to break the strike.

- **The willingness and ability of local government and trade union officials to intervene and resolve the dispute:** In many cases, local government officials will intervene and put pressure on both sides to resolve the dispute. But this approach only provides a band aid solution, and usually fails to address the underlying problems which gave rise to the dispute in the first place.

- **Support from labour rights groups:** There are more than 80 labour rights groups in mainland China that have extensive experience in dealing with collective labour disputes. These organizations can provide workers with tactical support and advice on how to bring the employer to the negotiating table, get support from the public and local officials, and help develop a clear bargaining strategy.

- **Workers solidarity:** By far the most important element in any collective action is the solidarity of the workers. Strikes can dissolve very quickly if the workers have not developed sufficient solidarity to withstand management pressure. However, if the workers are united and determined to pursue their demands, they can achieve notable success. A group of more than 200 sanitation workers in Guangzhou, for example, took on not one but two employers in a determined campaign to protect their livelihoods in August and September 2014.

### The need for an effective and stable mechanism to resolve collective labour disputes

The current situation in which workers have to resort to strike action just to get anything done is clearly not ideal for the workers, the employer or the local government. China needs to develop a more sustainable and equitable system of labour relations in order to resolve conflicts, but for this to happen, three fundamental changes need to occur:

- **Legislation on collective bargaining:** The Chinese authorities need to draft and enact clear cut policies and legislation that enable workers to engage in face-to-face collective bargaining with management rather than perpetuate the current system of “collective consultations” (集体协商) that largely excludes workers from the process. So far the only legislation that comes close is the Guangdong Provincial Regulations on Collective Contracts for Enterprises (广东省企业集体合同条例), which are due to go into effect on 1 January 2015. The Regulations do provide a framework whereby workers can bring the boss to the bargaining table but in many respects the legislation is still weighted in favour of the employer. For labour relations to improve, additional and more balanced legislation will have to be enacted in other provinces and eventually nationally.

- **Effective trade union representation at the workplace:** Currently the vast majority of enterprise trade unions are empty shells, with union officials installed and controlled by management. For collective bargaining to work, and for meaningful collective contracts to be negotiated, the enterprise trade union needs to be democratically-elected and take a strong stand on behalf of the workers during negotiations. In order to push this process forward, the local trade union federations will need to take a much more proactive role in ensuring that enterprise trade unions become workers’ organizations and not simply a puppet of management.

- **Worker participation in the process:** The vast majority of ordinary workers have little faith in the trade union or in its ability to represent them in bargaining with management. However, some workers, particularly in Guangdong, are beginning to demand that their enterprise union do a much better job of representing their interests. If this trend continues and more workers start to see the union as an ally in their struggle, the union will be bolstered and empowered and have a much greater chance of getting a better deal for the workers through collective bargaining with management.