Issues of Taiwanese industrial disputes: the solution of the Kee-Long Transportation dispute case

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Preface

The field of the industrial relations (IR) has carried out for centuries in developed countries while the developing countries are still struggling with economical issues. Unfortunately, in Taiwanese enterprises, the relationships between labour and management are at their worst state for two decades. The reasons for this are probably because the IR system in Taiwan is both unreliable and ineffective. The culture and ideology in Taiwanese management is different from that in other countries. One obvious example in Taiwan is when a serious industrial dispute occurs, there is rarely a potential solution found. The legislation in IR is either out of date or useless. The arbitration system, for instance, which is under the government's control, makes the outcome even more difficult and chaotic than without the government being involved. A case example is the Kee-Long Transportation dispute is discussed below. This article explains a model of the solution to negotiation between labour and management in Taiwan.

Literature review

Despite the variety of ideologies that are available, Dunlop's theory of industrial relations is the most common. The system of industrial relations "is regarded as composed of certain actors, certain contexts, an ideology that binds the industrial relations system together, and a body of rules created to govern the actors at the work place and work community" (Dunlop, 1993, p. 47). Nevertheless, the systems in different countries also showed diversity because of the history, culture, regulations etc. For instance, the former Soviet Union and Eastern Europe of the communist Party was decisive in the designation of government ministers, plant managers, labour union leaders, judges, regional and local public officials, and leaders of Organs of the press. Kerr, Dunlop, Harbison, and Myers found that "in accordance with their rules the labour unions, like all other bodies in the Soviet Union, have to follow the leadership of the party in their policies and activities."(1975, p. 296).

Kochan and Mckersie (1990) stated "the U.S. industrial relations will continue to display considerable diversity across industries, firms unions, and occupations. Moreover, there is every reason to expect that the future will continue to be characterized not only by the historic dynamic interplay between union and non-union systems but also by an increasing variety of arrangements governing employment relationships." (p.250). Atleson (1992) also argued that "collective bargaining and arbitration also reinstitute and reinforce the status notions found in decisions of common law courts. Arbitrators and the Board, for instance, require that employees show respect, inactions and words, to supervisors." (pp. 177-178).

Concerning the negotiation between labour and management, Nash's (1950) bargaining theory specifies how negotiators should divide the pie, which involves "a determination of the amount of satisfaction each individual should expect to get from the situation, or, rather, a determination of how much it should be worth to each of these individuals to have this opportunity to bargain". Nash's theory makes a specific point prediction of the outcome of negotiation, the Nash solution, which specifies the outcome of a negotiation if negotiators behave rationally. Nash's solution will satisfy the following five axioms: uniqueness, pareto-optimality, symmetry, independence of equivalent utility representations, and independence of irrelevant alternatives (Thompson, 1988, pp. 74-77). In 1965 Walton and Mckersie proposed a model of the negotiation by behaviour prospective. In the mean

time, Chamberlain and Kuhn introduced the bargaining power theory by the cost approach (Wu, 1996, p. 626-630). Thompson (1998) discussed an integrative negotiation and craft integrative agreement when two parties were negotiating (pp. 44-46). A model of a dispute solution has developed by the author to refer to some of these theories.

The effects in negotiation between labour and management

Chamberlain and Kuhn (1965) introduced the bargaining power theory in which they believed both parties will think over concerning the costs of acceptance and not acceptance from the offer of the counter while the negotiating process.

"Loss-loss agreement" effect

There are four alternatives between union and management concerning cooperation or defection was found, then, we get four cells:

Cell A, Union chooses (+) and Management chooses (+);

Cell B, Union chooses (+) and Management chooses (-);

Cell C, Union chooses (-) and Management chooses (+);

Cell D, Union chooses (-) and Management chooses (-). The situations that the union and management can face are illustrated in Figure 1.

		MANAGEMENT'S ALTERNATIVES	
		Management chooses cooperation	Management chooses defection
UNION'S ALTER-NATIVES	Union chooses defection	A (+, +)	B (+, -)
	Union chooses cooperation	C (-, +)	D (-, -)

Figure 1. Consequences of union and management's situation

Figure 1 indicates that the union and management will either have a win or lose agreement, depending on their choices. Therefore, the loss-loss agreement can easily happen.

The mechanism and resolution of industrial dispute in Taiwan

There are many ways to demonstrate the strike by the labourers. In the developing countries, if a new agreement between labour and management does not occur, a strike may be the result after the date of an agreement has expired. Unless the new agreement has been approved and the dispute has ended, the work in the firms will not proceed as usual. Nevertheless, the state showed different interrupts while the strike is held. Voluntary mediation, composed mediation and composed arbitration were used to end the dispute. Experts of industrial relations argued controversially for the state to intervene. Basically, a composed arbitration is recognised to be a democratic resolution of the dispute by the arbitration committee decisions instead of continuing the strike, which causes both production and salary loss. Normally, the weaker the labour union is, the more interested that they are in the arbitration procedure. On the contrary, when the labour union is strong enough, they will be more opposed to the composed arbitration and the strike will not cease for the moment.

The role of the state and its issues

In Taiwan, the law gives the labour unions some power, but limits their ability to strike as well as other

options. Whether the controlling of the dispute is going well or not, it impacts upon the relations of labour and management. In general, the organisation of the union is loose and non-voluntary, and an upper union either in the area or in the occupation, is not supportive of the action for their associated union.

There is not only historical but also cultural reasons to consider as well. The unions are always influenced by both the government and the ruling political party (Leggett, 1999). The Taiwanese government executes the Labour Unions Law (LUL) to control the unions intentionally. The LUL explicitly stipulates that the government should provide regular stipends to unions (see article 22). The Federation of Unions, both on the regional and national levels are receiving stipends from the government for more than seventy per cent of the total spending average each year.

The Arbitration Disputes Act

Since existing labour-management disputes dealing act - The Arbitration dispute Act (ADA) has being revised and implemented, it has been a great improvement in tackling problems, which have occurred between the labour-management disputes dealing. However, the current ADA is still inadequate. Based upon the ADA, it can be divided into two dimensions: “the entity law of labour-management dispute’s dealing” and “the procedure law of labour-management dispute’s dealing”. In Taiwan, there is no any specific regulation to set the current “entity act of labour-management dispute’s dealing”, then to adopt it and to make it controllable. Thus, it is used when disputes occur and is in itself, becoming a thorny question that needs to be solved.

Generally, the real disadvantage is in the current ADA is no any real action to exercise labour-management disputes dealing under premise subject. As to the latter, the current ADA also failed to apply with the social used disputation resolution and there is no any further resolution on reconciliation and arbitrator’s qualification and its structures are still to be set in details. Hence, in dealing with labour-management disputes, how to set a job for the authority of labour administration in proceeding with the disputation process and method? And how is the difference between the so-called dispute client and the so-called accused client? As well as how is the role of arbitrator and its connection with the act executor in the case reconciliation? Then where do the act fees come from and what is its effectiveness of disputation & dealing in the said dispute justify its judgement and its procession speed? And what is the connection between the explicit of act procession steps and the effectiveness of the disputation resolutions? Yet, how is the basic theory upon with the resolution process? Thus viewed to the labour-management dispute’s dealing procedure and resolution having a closed implication, this context shall resort to the theory’s consideration on its effect to the existing dealing procedures then to make a very possible and positive recommendation.

ADA was introduced in Taiwan in 1988. At the present, seems to be incapable of handling the dispute effectively and properly. The basic problem is that the mediation or arbitration procedures, as they are stipulated in the ADA, are primarily designed to handle labour dispute problems with little power in some ways. The court is the only place that can settle disputes but that can take a very long time. On the other hand, the right to take an industrial action is limited under the legislation. The only period of the action should be taken within after the mediation has failed and before the arbitration has held. Normally, government will hold the arbitration while the action is going on. And in this circumstance, the action ceases immediately, or else, the actors will be punished for going against the statute. Even though the arbitration has interfered to the action, the outcome had not ever been a final result because normally the employers will not be willing to be bound by the decisions. As the result, the outcomes of disputes are just disappointing for both parties in the end.

Kee-Long Transportation Co. Dispute Case

Now, we head to the view of example of the dispute of Kee-Long Transportation Co (hereinafter ‘Co.’) dispute case in Taipei 1992. When ‘Co.’ was in financial trouble before the dispute occurred. Then, ‘Co.’ sold the stock of company to a person who owned the other two Transportation Co. The employees were afraid of being dismissed by their new employer, thus, turned to ask the Labour union of Kee-Long Transportation (hereinafter ‘Union’) to negotiate with management. The ‘Union’ proposed three conditions concerning wages and benefits to the management. After management

refused to negotiate, the ‘Union’, thus, filed a grievance to the local government. Then, the government tried to mediate in the dispute according to the ADA law. Nevertheless, the mediation failed because the ‘Union’ asked for eleven extra conditions.

On the 2nd of June, the ‘Union’ held a meeting and voted to go on strike. After two days of waiting for an answer from ‘Co.’, the strike began on the 4th of June and ‘Co.’ shut down the firm immediately. A non-official mediation held by the central government on the 12th of June and conciliation talks were still going on, they decided to hold another meeting negotiate further several days later. Suddenly, ‘Co.’ announced 146 employees were fired on the 18th of June by the reason of leave their jobs. “Never promising anything to the union but trying to scare them of,” ‘Co’ declared that: “The negotiation may re-start anytime only if the employees started working again.” the president of ‘Co.’ stated and implied the employees would be hired again if they came back to work. The separate strategy of 'Co.' to split up employees and the ‘Union’ was obvious.

The composed arbitration started on the 19th of June by the local government according the law of ADA and urged the dispute ceased at once. The ‘Union’ stopped strike and went back to the workplace but ‘Co.’ insisted the fired workers could not work since they had been fired. Workers who could not work turned to the government asked for their jobs. On the 5th of July, the ‘Union’ protested on the streets and addressed ‘A letter for the public’. Then, they launched several actions for the rest of time while the strike went on. For a period at the end of June and the beginning of July, the ‘Government’ tried to conciliate both parties but they refused to change their positions and to compromise. “Co.’ insisted the workers should report to the company individually but the ‘Union’ insisted ‘Co.’ should collectively withdraw the orders of the fired employees.

The arbitrate committee held the meeting on the 22nd of July. The decisions were made by the committee as: “both parties should return to the peace as soon as possible”. But both parties would not listen to the committee and continued the struggle for the moment. As ‘Co.’ refused to end the lockout, the ‘Union’ decided to occupy the workplace by force. ‘Co.’ sued the 'Union' in the court as ‘rush in and rob. Finally, On the 28th of July, the committee decided upon three guidelines: (1) ‘Co.’ should stop the lockout within seven days; (2) the wages should be paid within the arbitration period; and (3) the three kinds of wage and benefit disputes will be arbitrated after the reasons for the dispute were reported to the committee by ‘Union’ and ‘Co.’ within three months.

‘Co.’ refused to obey the arbitration, and, ‘Union’ sued to the court and asked the court for the compulsory execution on the 7th of August. Nevertheless, the court refused to do so, the reasons why are as follows: “The first and second decision of the arbitration had no relationship with the dispute objectives and the last decision of the arbitration cannot even be executed.” Several years later, the court decided the “Union” should indemnify ‘Co.’ for occupying the workplace.

Discussion: the solution of the dispute

Refering to the above case, we clearly know that in the game of ‘Union’ and ‘Co.’ of Kee-Long dispute, it finished with a lose-lose outcome. The Arbitration Board failed to make the decisions since the court refused to execute the decisions several years after. The outcome was the dismissed employees left their jobs and the management found more disciplinary rules to manage employees by replacing them with new employees but with less money and reputation.

“Bound to limit” effect

At first, both parties tried to force the other to accept their own proposals by enacting upon many different actions. The ‘Union’ disregarding the situation and proposed unacceptable terms to ‘Co.’ and started the strike several days later. The perception of the ‘Union’ was not justified to ‘Co.’. On the other hand, ‘Co.’ not only refused to negotiate, but also shut down the firm when the strike had begun and fire employees in what could be considered as a serious attack to the ‘Union’. According to the effects of the model, the “Bound to limit” effect is occurred. In this situation, both did their utmost to revenge the others’ behaviour. The bargaining power of both parties went towards zero and without a solution in sight. In other words, this was an impasse which they could not solve by themselves. The “Bound to limit” effect, then, happened.

"Loss-loss agreement" effect

Refer to the dilemmas situation of game theory, in order to reduce the lose, both parties will use defection strategy. The dispute case showed 'Union' and 'Co.' both wanted revenge. Nevertheless, because the cost is to high to either accept or deny, both parties in the case chose a policy could not have a different outcome. Therefore, a revenged "tit- for- tat" effect could happen easily.

In the case, both parties were envious of each other. One of the characteristics of both parties is competitive behaviour which caused them to lie. The case showed 'Union' intrusted 'Co.' would not fire employee, and 'Co.' intrusted 'Union' would not ask for additional conditions. One of the reasons of the dispute was that they believed they could beat the opponent. Beside, both parties were not truthful and blamed each other when agreements broke down several times. 'Union' and 'Co.' were untruthful to each other. The "Loss-loss agreement" also occurred.

Conclusion

Nash's bargaining model is to illustrate the precision and quantification of negotiation theory. However, Nash's solution is built on the assumption that people have complete and perfect information. This article is proposing a characteristic of "Bound to limit" effect because both parties' believed either to accept or deny the counter's offer were unbearable. A revenged tit-for-tat situation can never win against any of the strategies it played against. If it cooperates on the first trial, it can never do better than its opponent.

Thompson and Hastie (1990) uncovered a particularly insidious and widespread effect in negotiation: loss-loss effect. They constructed a negotiation situation in which the parties involved had compatible interests on a subset of the negotiation issues. Thompson (1998) argued that most negotiations are of one of three kinds: pure conflict, pure coordination, or mixed-motive. In pure conflict negotiations, parties' interest are directly opposed; pure coordination exists when parties' interests are perfectly compatible, and, the integrative potential of negotiation is the increase in joint profit available to negotiators over and above the joint profit afforded by a fixed-sum solution. This article is also proposed by the author as another way of loss-loss effect.

This paper argues that there is: firstly, a trend towards a new coalition of unions due to the poor performances of the current unions system; secondly, the labour unions in Taiwan involved in disputes have frequently petitioned the government authorities to assist in solving disputes, and only a few disputes have led to strike or sabotage; and thirdly, even though most of the industrial actions originated in the employers' refusal to comply with labour laws. Lin (1998) found in his research the same facts.

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