Suggested Readings on Union-Management Arbitration Outside the US/Canada

In conjunction with the Webcasts being offered by the International Studies Committee of the NAA, we have assembled the following list of readings on how "our" work is done in several other countries. We hope these readings are helpful in building knowledge of possible alternative approaches as we weigh the future of union-management arbitration in our two countries. The initial entry is a recent ILO volume of national case studies, as an overview. Thereafter there are two entries for each country, the first an overview of its labor dispute regime, and the second a more recent update article on the topic.

- Arnold Zack

ILO Overview of Individual Labour Dispute Resolution Systems in Australia, Canada, France, Germany, Japan, Spain, Sweden, UK and USA.

This 2016 ILO document, *Resolving Individual Labour Disputes, A Comparative Overview,* is a 346-page book (fully online) which covers the institutions and mechanisms used by individuals seeking resolution of workplace disputes in each of the listed countries. In most of the world, national governments provide the machinery for resolving these workplace disputes, through regular or specialized Labor Courts. In the Chapters on Canada and the United States, attention is paid to the role of private collective bargaining and "our" arbitration in supplementing that usually governmental function. Private workplace dispute resolution based on union-management contracts is rarely found in any other countries. Mediation and Conciliation are also discussed as tools in the covered countries. Each chapter provides a comprehensive view of policy and practice in the respective countries.

Resolving individual labour disputes: A comparative overview

AUSTRALIA

1. LEGISLATION AND AWARDS, FAIR WORK COMMISSION

The Fair Work Commission was created in 2009 to replace Australia's century-old system of federal and state arbitration of interest disputes as well as its more recent system of enterprise workplace agreements. This article describes the awards procedures used by the Commission for promptly resolving workplace disputes, and particularly the role of mediation and arbitration and ombudsmen in that process.

Resolving issues at the workplace | FWC Main Site

2. MEDIATION AND CONCILIATION IN COLLECTIVE LABOUR CONFLICTS IN AUSTRALIA

This 2019 article examines an increasing use of private mediation of collective disputes which the parties are turning to in preference to Australia's traditional reliance on government mediators. It notes a shift to the Anglo-American concept of mediation where assertion of government regulatory authority is avoided and suggests it might portend a similar move toward private arbitration. The piece also discusses the definitional differences between mediation and conciliation.

Mediation and Conciliation in Collective Labor Conflicts in Australia

CHINA

1. NEW RULES FOR EMPLOYMENT AND PERSONNEL DISPUTES ARBITRATION

In 2009, the PRC Labor Law was promulgated for mediation and arbitration of workplace disputes under their Individual Labor Contract Law. Under Chinese law everyone must have such an individual employment contract. There were no collective agreements nor worker-run trade unions. Any workplace dispute was to be processed through the government agency using mediation and arbitration to resolve any dispute between the individual employee and the employer. The official trade union, the All China Federation of Trade Unions (ACFTU) does not represent workers at any step. This article updates the law with 2017 Rules requiring mediation before arbitration and then appeal to the courts for workplace disputes. It expedites appeals to the courts from arbitral awards and adds procedures for handling collective disputes which came into being after 2009 as workers, enterprise by enterprise, asserted their demand for improved working conditions, despite the absence of any official worker created local trade union. The ACFTU is an arm of the party, and has a presence in each enterprise, its local leader often designated by the local manager or employer. It has seldom asserted any representational role on behalf of workers, but continued widespread worker protest over the denial of worker "voice" may bring changes in that role.

New Rules for Employment and Personnel Disputes Arbitration Becomes Effective in China

2. BEIJING ADDRESSES COVID-19 EMPLOYMENT DISPUTE CASES

This May 18, 2020, article explains how the government will undertake to comply with laws covering, hiring, probationary periods, layoff, resignations and terminations attributable to COVID-19. It deals with wage payments required of employers during work from home, the extended Chinese New Year Holiday and return to work procedures and other problems attributable to the virus.

Beijing Addresses COVID-19 Employment Dispute Cases

EUROPEAN UNION

1. RIGHTS AT WORK|EMPLOYMENT SOCIAL AFFAIRS AND INCLUSION

This European Commission document provides a clear explanation of workplace statutory rights in effect in all EU countries and enforced through general or labour courts in each member country. Exploring the site will give you an idea of the range of benefits, protections, leaves etc. provided by statute to all employees regardless of union membership. Collective bargaining, statutory protections such as pregnancy, maternity and parental leave, provision of health and safety protections (by industry), severance pay are also addressed. The scope of worker statutory protection is far greater than found in our CBAs with universal coverage not only for those in a negotiating union. Thus, all EU workers have a statutory right to litigate alleged violation of those benefits before national labour courts.

Rights at work - Employment, Social Affairs & Inclusion - European Commission

2. INDIVIDUAL DISPUTES AT THE WORKPLACE: ALTERNATIVE DISPUTES

This Report, prepared in 2010, describes the use of ADR (conciliation, mediation and arbitration) as alternatives to be invoked in various EU member countries before disputes over working conditions or claims of violation of EU directives take their usual route to labour court hearings. It sets forth the increasing moves among social partners to resolve their disputes in a speedier and more cost-effective alternative to court proceedings. The varying national approaches to this more private structure suggest that that this approach is gaining much greater union management support in the several countries described in this report.

Individual disputes at the workplace: Alternative disputes resolution

ISRAEL

1. *NATIONAL LABOUR LAW PROFILE: THE STATE OF ISRAEL*

This overview, prepared by Steve Adler, for the ILO, explains the structure and history of labour dispute resolution in Israel, the "first country which had labour unions prior to industry." It traces the development of protective labour legislation, labour courts, recent legislative and case law reforms, various contracts of employment, dismissals, remedies for improper terminations, employer and trade union organizations, collective bargaining, and settlement of labor disputes.

National Labour Law Profile: The State of Israel

2. *ENHANCED ENFORCEMENT OF LABOR LAW*

I couldn't resist inserting this, a law passed by the Knesset in 5772 (2011 for you following the BCE/CE regimen). It imposes financial penalties on firms and personal liability on managers who fail to fully follow the law in such matters of prompt wage payments, overtime compensation, conformity to work requirements re women, youth or failing to provide written rules on signing onto computers and email accounts.

Israel - Enhanced Enforcement of the Labor Law 2011

JAPAN

1. *LABOUR DISPUTE RESOLUTION SYSTEM IN JAPAN*

This 15-page ILO paper, published in 2005, complete with flow charts, explains the Japanese labor dispute resolution system for resolving individual and collective disputes.

The Labour Dispute Resolution System in Japan: Recent Developments, Their Background and Future Prospects

2. *JAPAN'S LABOUR ISSUES*

This March 2020 paper deals with new statutory rules. In June 2018, the Diet amended its employment regulations with new classifications of covered employees, new standards for employment contracts and the relationship between labor laws and collective bargaining agreements, and trade union rights. This article covers new rules on discrimination, sexual harassment, whistleblowing, maternity and family leave rights, as well as procedures governing individual and mass termination.

Employment & Labour Law 2020 | Japan

MEXICO

1. *AN OVERVIEW OF THE RECENT LABOR LAW REFORM IN MEXICO*

For years Mexican labor relations was known for the cozy, if not corrupt relationship between employers and unions enshrined in "Protection Agreements" which left workers without any practical recourse to legal protections. In 2019, the government substantially overhauled the labor law to provide exclusive bargaining representation with a required majority of workers voting to ratify a CBA, foreclosing Protection Agreements, and assuring workers are informed of the CBA and their rights thereunder. Under the new law, labor disputes are placed under the jurisdiction of new labor courts within the judiciary. An increase in unionization is anticipated under the new system. The Federal Conciliation and Arbitration Board is responsible for resolving alleged violation of health and safety laws. The Board arbitrates discrimination cases. There is no private CBA-based conciliation or arbitration.

MEXICO - An Overview of the Recent Labor Law Reform in Mexico

2. *THE NEW NAFTA: SCALED-BACK ARBITRATION IN THE USMCA*

Since the US is Mexico's biggest trading partner, this is a good place to explore the changes from NAFTA to the USMCA. Under NAFTA, enforcement of labor rights consisted of a country (say USA) invoking NAFTA to get another country (say Mexico) to enforce its own labor laws. Labor groups protested these weak "social clause" provisions and pushed the US to secure a much stronger procedure for USMCA. The new provisions go beyond merely pushing for enforcement of the laws of the delinquent country, they now require adoption and enforcement of core worker rights as called for in the ILO's 1998 Declaration of Fundamental Principles and Rights at Work (abolition of forced labor, abolition of child labor, freedom of association and the right to organize, and the right to collective bargaining). It also prohibits import of goods made by forced labor, providing for migrant worker and discrimination protections, etc. Its new Rapid Response Mechanism would allow the US to take enforcement actions (block importation or suspend preferential tariff treatment) against individual Mexican factories if they failed to comply with its nation's freedom of association and collective bargaining laws.

"The New NAFTA: Scaled-Back Arbitration in the USMCA," Journal of International Arbitration, Wolters Kluwer, 2019. | News & Insights

SOUTH AFRICA

1. EMPLOYMENT AND EMPLOYEE BENEFITS IN SOUTH AFRICA

The 1996 Constitution guarantees everyone the right to fair labour practices and protection of South African labor legislation, including written employment contracts specifying job description, wage or salary, and working hours. Collective bargaining agreements are automatically binding upon parties to an employment contract. The Labour Relations Act of 1995 (LRA) permits employees to challenge unfair dismissals and other unfair practices at private (such as Tokiso) or statutory (CCMA or the labor court) dispute resolution fora. This article details the procedure for processing cases through the Commission for Conciliation Mediation and Arbitration (CCMA) including final and binding arbitration of individual terminations. Dismissals are justified for serious misconduct and operational requirements (redundancy). All employees are covered by the CCMA and there are no exemptions. Multiple retrenchments and strike dismissals are to be processed through the Labour Court. The NAA provided two, eight-person teams to train CCMA personnel soon after its creation.

Employment and employee benefits in South Africa: overview

2. CCMA CASES STUNTED BY LOCKDOWN

This April 28, 2020, update provides some insight as to the recent volume of CCMA cases and its handling of the Covid-19 pandemic issues.

CCMA cases stunted by lockdown - The Mail & Guardian

UNITED KINGDOM

1. UNITED KINGDOM LABOUR LAW

This Wikipedia overview of UK labor law is quite broad but it does describe the (long) history of expanding labor rights that have been, as it claims, "dismantled" since the 1979 advent of the Conservative government, barring the union shop and dismantling wage councils, etc. Many of those incursions on worker union power were corrected by the UK's entrance into the EU in 1997. The advent of Brexit portends a loss of many worker rights and benefits attained through EU membership. This Wikipedia entry is included because it explains the role of collective bargaining and collective action as well as the procedures for handling wrongful dismissals (in violation of an employment contract) as distinguished from unfair dismissals (in violation of the Employment Rights Act of 1996). There is also a section on the enforcement of labour law through the Employment Tribunal with potential appeals on matters of law to the Employment Appeals Tribunal.

United Kingdom labour law

2. ACAS|MAKING WORKING LIFE BETTER FOR EVERYONE IN BRITAIN

This article describes the role and workings of ACAS (Advisory Conciliation and Arbitration System) when selected for resolving disputes between an employer and one or more employees. This voluntary, free, and confidential government funded service provides individual and collective conciliation and final and binding arbitration, all using ACAS staff. Since ACAS availability is domestic, its role and function will not be diminished by Brexit.

ACAS | Making working life better for everyone in Britain