

# **Labor Management Dispute Resolution in Foreign Countries: Can Our Model Help in the New Global Economy?**

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**In the era of globalization we have come to recognize that although laws, practices and traditions vary around the world, we must continue to look for common ground and standards which will tie us closer together and minimize conflict and disruption by expanding resort to mutually understood procedures of conflict resolution. The continual shift of fabrication and assembly to developing countries entices us to try to transfer the successful systems and procedures of one society to another. In the area of workplace disputes it seems a quick fix to apply our (i.e., U.S.) tried and true techniques of mediation and arbitration. This paper seeks to show the inappropriateness and risks of such wholesale transfer, and considers some less disruptive alternatives that might be tried to resolve serious problems of workplace inequity.**

## **The U.S. Labor Management Dispute Settlement System**

**Those of us who live and labor in the world of U.S. collective bargaining may grouse from time to time about case results after surviving the process, but I think it fair to say that the participants—unions, management, attorneys, mediators and arbitrators—all believe the system works and that it is a fair, just and effective means for resolving workplace disputes. The NLRA—which provides the procedures for union petition, designation of a union elected by a majority of voting employees , certification of the victorious union as the prerequisite to collective**

**bargaining—embraces the concept of majoritarianism or exclusive recognition of a single union representing all employees. If a majority is not achieved , union membership alone brings no rights or benefits, and for a minimum of one year the employees have no right to try again to secure that union representation.**

**The law thus empowers the union as the counterpart to, and negotiating partner with, the employer, and requires both to bargain in good faith toward a mutually agreed upon agreement covering wages, hours and working conditions. To facilitate that negotiating process the government provides a neutral agency, the Federal Mediation and Conciliation Service (FMCS), to assist the parties in moving toward agreement. The FMCS mediators are experienced full time neutrals, they are not paid by either or both of the parties and they are indeed honest brokers in their effort to bring agreement. The mediators accept the relative power of the parties as an element of reality in moving them toward settlement, and they have no personal agenda or government instructions to detract from their good faith effort to get the parties to agreement.**

**And when that agreement is reached the universal incorporation of a grievance and arbitration procedure introduces another neutral, the arbitrator to resolve questions that arise over the interpretation or application of the parties negotiated agreement. When employers initially went to court to challenge the authority of an arbitrator to impose a final and binding decision to resolve the dispute arising from a grievance filing, it was Mr. Justice William O. Douglas of the United States Supreme Court in the *Steelworkers Trilogy*<sup>1</sup> who reminded them that this form of arbitration, unlike commercial arbitration, was not a substitute for litigation to resolve a past dispute, but rather an integral component of the ongoing negotiating**

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<sup>1</sup> Elkouri and Elkouri, *How Arbitration Works*, 6th edition, Alan Miles Ruben, Editor, BNA, 2003, pp51–54. *Steelworkers v. American Mfg. Co*, 363 U.S. 564, *Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, *Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 1960

process itself where the parties turn to the decisionmaking arbitrator of their choice, with experience in labor management issues, to continually reform their governing document as an ongoing element of the collective bargaining process. The hallmark of the system—and what makes it so credible as an effective dispute resolution system—is that the parties themselves voluntarily agree to be bound by their arbitrators decision, to expeditiously dispose of festering and troublesome disputes and to avoid workplace stoppages, so that they can devote their energies to pursuing the mission of the enterprise. They jointly agreed upon the grievance and arbitration procedure as a form of private judicial machinery, the steps, the arbitrator or process for arbitrator selection, the equal sharing of the fees and expenses of the arbitrator to avoid allegations of bias, and above all the commitment that their arbitrator’s decision would be final and binding to avoid judicial review and appeal.

Over the past decades society has come to accept a negotiated labor management settlement, perhaps with a mediator’s assistance, as fair. Society has come to accept arbitrators’ decisions as likewise being fair, as evidenced by repeated use of the same mediators and arbitrators and by the refusal of the courts to entertain appeals challenging the rulings of the arbitrators. The fact that the parties continue to return to the same arbitrators on a case by case basis over the decades, with 10% of those on the AAA and FMCS rosters continuing to arbitrate 90% of the cases, endorses the conclusion that the disputants consider the outcomes to be fair. As a consequence, the terms “mediation” and “arbitration” have come to be acknowledged outside the collective bargaining arena as representing a system for fair, credible resolution of employee-management—and indeed even other—disputes.

It has also led us to assume that the terms of collective bargaining, mediation, and arbitration will provide the same degree of fairness when

**used in contexts that are far removed from the U.S. collective bargaining environment.**

**However, we must be careful in looking at those labels as used in other environments, both in the U.S. and abroad.**

**Even in the U.S., the assumption of universality of these effective procedures which protect employers from work stoppages during the life of the contract, and which provide a channel for diverting disputes which might destroy the harmony of the parties ongoing relationship, may be misplaced. Our vaunted system of exclusive representation makes access to the collective bargaining system hard for unions to attain and—given the flight of union jobs to other countries—hard to retain. It is often difficult for Americans to accept the fact that our system of collective bargaining is not universal. Indeed it is not even widespread here in the U.S. where it applies to only the 7.4% of workers in the private sector,<sup>2</sup> leaving more than 100,000,000 U.S. workers without any trade union or collective bargaining protection or access to the machinery for negotiated dispute resolution that makes up OUR vaunted universe.**

**So why is our system sparsely used in the U.S.? For those who have not opted for coverage by collective bargaining, or who have faced resistance to their efforts by objecting employers, the prevailing U.S. doctrine of employment-at-will prevails, our labor relations default setting. The only recourse for employees who believe they have been wrongly treated is to bring legal action to administrative agencies or the courts over allegations that the employer broke the law if their claim is based on discrimination based on age, sex, race, disability, union activity, whistle blowing and the like. Unless the employee can establish a violation of law, the employer is**

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<sup>2</sup> Bureau of Labor Statistics, January 25, 2007 Press Release <http://www.bls.gov/cps>, Union members in 2006. The total percent of employed wage and salary workers was 12%, down from 12.5% a year earlier.

free to discipline, or discharge without explanation or justification. That such action may be unfair or unjust is not the standard. Some employers, however, have opted to craft internal systems proclaiming their offering of mediation and arbitration as a substitute to employees attempting to invoke their right to go to court, but the employees of those employers have no say in drafting such procedures.

### Dispute Settlement in the non-unionized sector in the U.S.

Since the 1990 when the US Supreme Court decided the case of *Gilmer v. Interstate/Johnson Lane*,<sup>3</sup> endorsing mandatory application of such employer crafted schemes as a condition of hire or continued employment, there has been a widening use of ADR in non-unionized companies. Without assessing the merits or perils of such procedures, it is important to recognize the inapplicability of comparisons of such ADR systems to labor management mediation and arbitration. In the employer-created system there is no union, certified or otherwise. It is not a voluntarily negotiated procedure with either union or individual employee as partner, but rather one crafted unilaterally by the employer and subject to unilateral change by the employer, alone, at its discretion. It provides for mediation and arbitration by someone appointed from a roster maintained by a designating agency, funded by the employer. Rather than having a mediator employed and paid by the government, or an arbitrator jointly funded by the disputants to assure impartiality, such schemes provide for such “neutrals” to be paid solely by the employer, with understandable concerns over offending the deep pocket employer in one case for fear of the impact on future assignments.

### Foreign systems of labor dispute resolution

I have spent a half a century working in the collective bargaining dispute resolution system of the U.S., and endorse it as a legitimate system under

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<sup>3</sup> 500 U.S. 20 (1991).

the law, even with the paucity of representation for the vast majority of the workforce. Over the years, I have also devoted an increasing amount of my time trying to peddle its benefits elsewhere. We all know that the Canadian system works much like ours, but with a union density of close to 30%. But what about the rest of the world? Certainly workers in other countries must see the benefits of our collective bargaining system even if the majority of U.S. workers do not. However, systems effective in one national setting may not be as effective in other nations, even if the labels used are the same. While U.S.-style collective bargaining is unique to the U.S. and Canada, at least workers in most industrialized countries, as throughout Europe, do have worker protection through much more extensive protective legislation and through works councils and industry councils and government-provided labor courts to assure union voice and universal worker protection. But workers in those industrialized countries are losing jobs as well, as the work flees to the developing countries. The cost of such social safety nets is likewise often deemed to be too high for highly mobile European corporations, which move their operations to the developing world where there is less attention paid to fair working conditions. That is where the real problems arise—companies fleeing the protective legislation and practices of the industrialized nations in a potential race to the bottom.

With the outflow of jobs under globalization we should be concerned with whether the employees working in those outsourced factories producing products for the North American and European markets are being treated fairly, or are being exploited. The mere presence of a wide assortment of worker-friendly legislation on a nation's books and even the assertion of availability of mediation and arbitration does not mean that the laws are applied or that commensurate worker protection is assured.

**It is here that we must be alert to the transfer of labels. While we hear much out of China these days concerning the invocation of mediation and arbitration to resolve workplace disputes, and while it is appealing to embrace those procedures for achieving fairness from our U.S. perspective, caution is appropriate. Without the framework of statutory endorsement of collective bargaining, such procedures are quite different from collective bargaining arbitration. Workplace arbitration as practiced in China is likewise quite different from commercial arbitration between corporations of equal power voluntarily submitting to a final and binding decision by a mutually acceptable colleague selected and trusted by both. It is important to remember that the mediators and the arbitrators assigned in China for workplace disputes are not jointly selected from a pool of private industrial relations professionals, but rather from a pool of government employees with motivation to reduce workplace worker unrest, and that there is no independent trade union representing workers. The All Chinese Trade Union Federation is the agent of the government and party serving as a go between to end disputes between workers and employers, rather than the representative of workers as would be unions in the industrialized world during such strikes. (As someone noted, in a worker's paradise, who needs worker protection by unions?)**

**In China the two processes of arbitration and mediation in fact would appear more akin to the use of the terms in U.S. nonunion employment situations where the employer creates the system and the process for arbitrator assignment, and a far cry from the voluntary mutually developed and administered systems that we in the U.S. find in our collective bargaining environment. The current efforts of the Chinese National Peoples Congress to adopt a new labor law "which will strengthen the government's ability to mediate and arbitrate" suggests "a clear attempt to**

dampen the rising tide of worker unrest”<sup>4</sup> . China has seen a growth rate of 27.3% annually in labor disputes, involving more than 680,000 workers in 2006 and in tens of thousands of work stoppages every year. That figure might really be more, since “disputes not accepted for mediation or arbitration aren’t included in the official labor disputes statistics compiled by the Ministry of Labor and Social Security.”<sup>5</sup>

The gap in enforcement of worker protection is not unique to China; it is a pressing problem in most developing countries where local factories produce an increasing number of the products consumed by consumers in industrialized countries. When those jobs and products were produced in the U.S. and Canada with those countries’ collective bargaining protections and in European industrialized countries with their civil code protections, labor courts and works and industry councils, the recognition of robust independent unions assured a reasonable level of workplace protection for workers.

It is indeed the high cost of such protection and legal enforcement which has led many brands and global entrepreneurs to shun such costly regulation by moving to countries desperate for jobs for their citizens, with lax legal enforcement, with no effective union movement or voice, with more pliable government officials and therefore with enhanced prospect of being able to operate at much lower costs and scrutiny and with a resultant increase in profits. We all know the stories of factories springing up in developing countries with total disregard for legal protection of workers and with reliance on cozy deals with factory inspectors and government officials, with unchallenged exploitation of workers, bribes to monitors and judges, and total disregard of national law and international labor standards. Many of the countries where these factories open and flourish

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<sup>4</sup> New Strike Wave Hits China, Worldpress.org, Eva Cheng, Green Left Weekly New South Wales Australia, Sept 10, 2007, [http://www.worldpress.org/pring\\_article.cfm?article\\_id+3047&dont=yes](http://www.worldpress.org/pring_article.cfm?article_id+3047&dont=yes)

<sup>5</sup> Ibid.

have abundant protective laws on the books and indeed are usually signatory to most if not all of the core eight ILO Fundamental Human Rights Conventions<sup>6</sup> against child labor, forced labor and job discrimination and protecting the right of freedom of association and access to collective bargaining, but the companies' profits are enhanced by endemic disregard for those worker protections. Such countries, even if they had the legal trappings of a system of workplace protections from their colonial past, are now under pressure to provide work and jobs for their increasingly urbanized citizenry who have fled their vanishing rural agricultural backgrounds to grab their share of the new global world. Those countries never had the luxury of the kind of privatized dispute resolution system with which we are familiar, and they lack the laws and union strength to support our U.S. form of mediation and private voluntary arbitration.

The mere presence of protective legislation and even the national adoption of all eight of the ILO Core conventions can not assure workplace fairness. In many of the developing countries the government agencies entrusted with enforcement of such legislation lack the funds to assure the numbers and level of personnel to provide adequate scrutiny of wrongdoing. Furthermore in too many countries the level of corruption does indeed forestall clean adherence to the rule of law. In Cambodia, where Ministry labor officers are paid \$35 per month compared to \$55 for unionized garment workers, I was told by an official of the Labor Ministry that "Our mediators make so little, they have to accept gifts". In other countries the governments lack the resources to adequately staff the inspection and enforcement agencies. The situation in El Salvador provides a good example. In 2001 it exported \$1.6 billion worth of apparel to the U.S.,

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<sup>6</sup> ILO, ILOLEX, Database of International Labor Standards Conventions 138 and 182 prohibiting child labor, Conventions 29 and 105 prohibiting forced labor, Conventions 100 and 111 prohibiting job discrimination, Conventions 87 and 98 protecting the right of freedom of association and access to collective bargaining. <http://www.ilo.org/ilolex/english/docs/declworld.htm>, 21.9.2007

making it the eighth largest apparel exporter to this country. The Ministry of Labor had only 37 labor inspectors to keep tabs on 229 apparel factories providing 79,000 jobs, as well as coffee plantations, construction sites and other places of business in a country of 6.1 million people. None of the 229 factories had a union.<sup>7</sup>

Host governments, desperate for factories to bring jobs for their citizens and alert to the mobility of manufacturers which can readily move over the border to a more receptive country with less scrupulous law enforcement, are too often subject to payment of “gifts” by employers to assure the work and factories remain within their domain.

### **Codes of Conduct**

The global marketplace assures that the companies are in developing countries to stay and to expand in order to maximize their profits. Yet the global enterprises and the factories in which they manufacture the products should be sensitive to the concerns of their markets, the consumers in the industrial world. For some enterprises involved in industrial or raw material manufacture, their market is merely other enterprises. But for those enterprises producing for the consumers of the world, it is in their self interest to assure their consumers and purchasers and marketplace that they are indeed playing by the rules, that they are visibly complying with the applicable laws and that they are not increasing their profit on the backs of their workers. After the experience of college student boycotts of university logo sportswear made under exploitive conditions, many companies and brand sellers have become much more sensitive to the pressures of their consumers, and adopted Codes of Conduct in which they pledge that their supplying factories will conform to local laws, and even to the ILO Core Conventions.

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<sup>7</sup> New York Times, Labor Progress Clashes with Global Reality, April 24, 2001, p. 1A.

**But their diligence in meeting their proclaimed goals is difficult to determine. Their efforts run from merely posting their codes on factory walls, and nothing more, to enlisting the help of monitoring organizations such as SA8000 and Fair Labor Association to monitor on their behalf or to undertake their own monitoring efforts. Some have even explored the development of a complaint procedure invoking mediation over unresolved disputes concerning adherence to their company codes. Brands like GAP, NIKE and Walt Disney have taken a leadership role in this effort, employing people directly or through private monitoring subcontracts to visit factories and verify compliance. But when one considers that Walt Disney purchases its logo products from 13,500 factories located in 52 countries, it is difficult to see how it can make regular or frequent visits to all its widespread suppliers.**

**A preferable monitoring approach has been that undertaken by the ILO in its Better Factories Cambodia Project, where the ILO administers the routine national monitoring program of its garment factories pursuant to a program developed under the 1994 Multi Fibre Agreement. This ILO monitoring is welcomed by the brands to assure that their supplying factories are conforming to law and code, and is welcomed by the factories that are freed of continual disruption by repeated inspections for their multiple customers. Above all, the program provides inspection by monitors beyond the influence of the brands by truly independent externally funded monitoring personnel rather than by brand-paid monitors whose continued employment may be best assured by minimizing challenges to their funders' adherence to law and code. The workers of the developing world, and the consumers in the industrialized world, would be much better served if the ILO Cambodian effort could be replicated—or better still if the ILO would undertake a global program to monitor factories for compliance with its Conventions and national law.**

Such an enormous undertaking would open the opportunity for monitoring factories beyond those producing for the politically sensitive consumer market, expanding into areas of production where worker exploitation is beyond public scrutiny or awareness. The extent of worker exploitation certainly justifies an expansion of monitoring beyond the relatively narrow range of garments, sports equipment and sportswear, which represent a mere 5% of international trade. The world is lacking a constituency of consumers protesting conditions under which furniture, air conditioners, refrigerators or shipping freight containers are produced, but the workers involved in the manufacture of all these products are likewise entitled to outside support in their quest to avoid exploitation. For a start it would be helpful if consumers of other commodities besides clothing were inspired to condition their purchases on assurance of fair working conditions, as in computers, toys and even auto production, all items which are increasingly produced in China. Those interested in achieving workplace fairness would certainly welcome a broader base of consumer insistence on factories conforming to local labor laws and ILO conventions.

Codes of Conduct coupled with frequent, consistent and truly independent monitoring, such as by the ILO, could provide some assurance that factories in developing countries, even in the absence of local law enforcement, are providing reasonable and fair working conditions for their employees. There is no illusion that such increased watchfulness would overnight bring working conditions to a par with those in the U.S. A proper understanding of the phenomenon of Globalization accepts the fact that producers will move to the locations where they can most effectively, efficiently and profitably make their products. That can not and should not be stopped, as long as done within the rule of law. Such flight to overseas locations should be scrutinized to assure adherence to local laws, to assure that the workers in those factories are not being made to work in violation of their own national protective labor legislation. It is obviously

**crucial for those workers—just as it is important for those workers in industrialized nations who have lost those jobs—to be reassured that the workers now doing those jobs are not being exploited by factories unfairly and illegally enhancing their profits through illegal treatment of their new employees. It is time that the world became more energized to seek a more level playing field by assuring compliance with protective workplace legislation in countries that are recipients of the migration of manufacturing.**

**Will there be a groundswell in all aspects of production and services to assure such fair treatment in conformity to national laws and with adherence to ILO Core Conventions? Probably not, although louder consumer calls for equitable treatment of workers in developing countries are long overdue. Enhanced consumer pressure in new areas, such as toys painted with dangerous lead paint, is a good start, even if the seller, Mattel, seeks to calm the producing country by assuming much of the blame for the design and instructions to the producing factories in China. The increasing sensitivity of international organizations such as the International Finance Corporation and the World Bank to fair labor standards, and the “social clause” is helpful, and might someday extend to denying national or corporate loans to countries or enterprises with a bad record in local labor legislation compliance. Perhaps too there might soon be regional free trade agreements with participating countries requiring robust adherence to fair labor standards. To date, only the U.S.-Jordan Free Trade Agreement contains such a condition. Perhaps one day there will be sufficient international clamor to pressure for the creation of an international monitoring group, under the ILO or Permanent Court of Arbitration, to make sure on a global basis that factories are meeting their legal and code responsibilities, by a cadre of monitors funded and directed by the international agencies,**

**The most hopeful solution to this problem is increasing awareness of the wrongdoing, and pressure on the brands and the factories, by consumers, brands, international agencies and governments to send a message concerning the importance of compliance with the rule of law in the employment field.**

**The effort is worth it, not merely to provide workplace protection for the millions of workers in developing countries who have their first access to jobs which bring them the opportunity to enter the world economy, and not merely to assuage the consciences of those who have lost these jobs or even the consumers of the industrialized world who are increasingly hard-put to buy anything not made in developing countries. The effort is even more important to show that the rule of law and the international standards of workplace fairness can prevail despite the greed of exploitive entrepreneurs.**

**I offer three modest suggestions which might help to resolve some of the concerns raised above.**

**The first, as suggested above, is exploration of an international monitoring program where the ILO or some affiliated free standing institution such as the Permanent Court of Arbitration would provide neutral monitoring of corporation commitments to adhere to international labor standards. Monitoring has been a voluntary undertaking of the Code sponsors in some cases, with varying degrees of dedication. Certainly the ILO has set the standards with its promulgation of the Conventions. Wouldn't it be exhilarating for the ILO to have the tools and wherewithal to call to task corporations which proclaim their adherence to the Conventions, but fail to live up to that commitment. Imagine a team of experts in various aspects of factory work, knowledgeable in conventions and national statutes, conversant in local languages, who would be on tap to provide regular**

**monitoring of supplying factories throughout the world. Imagine the prestige and worldwide support it would engender among consumers of all types of products and services to be assured that the goods and services they consume were made under fair labor standards and that there was indeed a level playing field in international trade and commerce?**

**That may be a tall, and perhaps unattainable order but, as noted, the ILO is in fact doing it in Cambodia with the endorsement of the Brands, with the endorsement of the national government and, apparently to the relief of the factories and industry that is being monitored by it.**

**While a worldwide monitoring role for the ILO may be currently beyond reach, the success of the Cambodian project provides encouragement for the ILO, to research the prospects of it being done in other countries, following the Cambodian model. One central American country convened a conference of all manufacturing sectors to examine the prospects of a national Code of Conduct for all its output including therein exploration of a national monitoring program. Perhaps by utilizing the establishment of an independent institution, administered perhaps by the Permanent Court of Arbitration, the implementation of such a monitoring program might be undertaken for other countries, for code promulgators such as SA8000 or through agencies such as CAFTA for regional conglomerates of countries and corporations. The Corporations seeking such endorsement of their bona fides would hopefully be willing to fund such undertakings, individually or through payment into a fund because of the higher profile the affiliation would provide and the new markets it would open. International institutions such as the regional or World Bank would also be encouraged to endorse and lend support to their contracting entities because of the benefits of social responsibility it would lend to their investment ventures**

**Those companies or countries partaking in such ILO encouraged monitoring programs could then proclaim with credibility their adherence to and compliance with ILO Conventions. Having the ILO as an active participant in such a project would encourage corporate participation because of the enhanced image of corporate responsibility that would flow from its involvement to its marketing and sales efforts throughout the world.**

**The second suggestion is for the development of an international roster of mediators working in cooperation with the ILO, NGOs and the Permanent Court of Arbitration to be available as a resource to help resolve conflicts in the areas of ILO concern particularly in implementation of the Core 8 Standards, if the sponsors of Corporate Codes of Social Responsibility were to establish grievance procedures within their Corporate Codes to permit individuals and groups to challenge whether a Corporation is indeed living up to its proclaimed standards of compliance with national laws and ILO Conventions. With such internal complaint procedures offering assistance of outside independent mediators to resolve persisting complaints of corporate violation of law and convention, it might be possible to peacefully and voluntarily secure compliance with both the standards of the Codes and national law. Such a mediation roster with mediators qualified in local languages, recruited, trained and administered by the Permanent Court, or through some independent entity developed by research conducted by the Institute, might become a valued ally in minimizing or resolving issues of factory compliance with corporate or “brand” proclamations of law and Convention compliance. The development of such a body would permit rapid response to complaints of workplace inequity and statutory violation. It would clearly help to level the playing field among corporations selling to the world market.**

**The third proposal is in the development of a national labor arbitration structure, a move already contemplated for incorporation in the proposed revision of Chinese labor laws. The exciting undertaking of the Peoples Congress to improve its legislation assuring workplace fairness makes such an undertaking not only timely but promising. The evidence shows a commitment by the government and party to stronger enforcement of existing labor law protections. Arbitration, particularly if coupled with preliminary mediation, is an enticing and hopeful procedure for overcoming the current exploitation of Chinese workers. The ILO would be a logical resource for helping to develop such a program. The current profile of corporate evasion of national protective workplace laws by declining or challenging worker protest and complaints has led to a rampant series of worker protests over law evasion by employers. Workers lack the resources to match those of the factories in using the existing legal processes with corporate lawyers outmaneuvering employees in the courts and through extended legal appeals. The development of an independent roster of arbitrators with the power to conduct informal and less legalistic hearings before a single, jointly selected, arbitrator, and with the authority to issue binding and enforceable judgments in cases involving violation of workplace laws would quell much of worker unrest and protest over statutory violations. Indeed recognition that complaints could be readily and inexpensively resolved in a single hearing and with an expeditious and enforceable judgment could well eliminate much of the cause of the increasing number of workplace protests that many assert are plaguing China's economic and industrial advance, while certainly enhancing China's image as a protector of the legal rights of its factory workers. China's labor code has the requisite protections on the books. The failing appears to be in the availability of a process for achieving rapid and fair resolution of those complaints. The ACFTU could exercise a valuable and image enhancing role in representing workers in receiving complaints of statute violation and in providing representation at**

arbitration hearings. This is not a matter of enforcing collective bargaining or endorsing workplace agreements. Rather it is a simple matter of providing a more expeditious process for law enforcement, which is recognized and embraced as fair to the workers who currently see no alternative but to take to the streets, to their effort to have employers live up to legal responsibility. A quasi governmental or even private system outside the government, based in a university or NGO setting, or perhaps even administered through the facilities of the Permanent Court of Arbitration could structure a neutral system with prospects of widespread acceptability. Such a free standing institution endorsed and perhaps jointly developed by government, management, party and ACFTU could recruit, and train a body of mediators and arbitrators, attracting leading citizens, professors of law, economics and social affairs, and perhaps legal practitioners to undergo training in labor statutes and the processes of mediation, arbitration and hearing conduct, and then provide the disputant workers and factories with panels of three or five potential neutrals from which those disputants would be able to select their mutual choice of decision maker. The institution could also provide training in the law and arbitration process to representatives of management and of the ACFTU. Hearings would follow an effort at mediation, and be less formal than at courts, could be held at the workplace or other nearby facilities, could be arranged expeditiously within days of a complaint and the decision rendered by the arbitrator at the end of the hearing or within days thereof would be final, binding and enforceable in court. This would preclude lengthy and costly judicial appeals and would permit any worker to have the ACFTU or lawyer go to court to enforce such judgments. Such a program of ACFTU encouraged and managed complaint handling would do much to enhance the role of the union among workers in the growing private sector, would help to quell the unrest and rash of strikes focusing on failure to implement statutory protections, would encourage private sector employers to deal constructively with the ACFTU, and would open

**the door to future enhanced negotiating relationships on issues beyond statutory enforcement.**

**And if the tools of mediation and arbitration, which have proven so effective in resolving workplace disputes and even commercial disputes in the industrialized world can be appropriately adapted to these efforts, then they may also play a role in helping gain an edge in expanding such voluntary ADR and rule of law issues to other troublesome areas such as environmental and other disputes currently beyond rational procedures for resolution. It's never too late to commence a race to the top.**