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Specil Procedure
Of
Labour Disputes Litigation

BY FANYUERU

劳动争议诉讼特别程序原理

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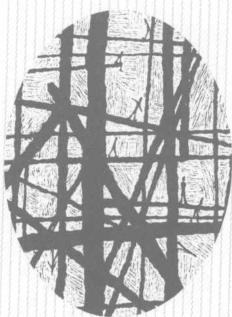

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范跃如 男，1972年7月生，河南虞城人。2006年6月毕业于中国人民大学法学院，获法学博士学位，并于同年8月进入中国社会科学院法学研究所做博士后研究。现为北京市高级人民法院研究室副主任、北京市法学会民商法学研究会理事。在《中国法学》、《法学家》、《法商研究》、《人民司法》、《法律适用》、《判解研究》、中国人民大学复印资料《诉讼法学、司法制度》、《审判前沿》等法学理论媒体发表论文30余篇。近年来先后有《试论我国行为保全制度及其构建与完善》、《中立抑或对立——对民事诉讼中鉴定人选任制度的思考》、《民事行政争议关联案件诉讼程序研究》、《刑民交叉案件处理机制研究》等文章在最高法院获奖，其中《现代司法理念视角下的民事程序选择权研究》获全国法院系统第16届学术讨论会一等奖。曾参与最高法院、司法部以及北京市的《民事诉讼法》（专家稿）等多项重点调研课题和重点科研项目的研究，其中执笔的《关于完善案例指导制度的调研》获2006年至2007年度北京市优秀调查研究成果二等奖。

内容摘要

构建和谐社会，实行民主法治，是我国社会发展的必然选择。能否"接近诉讼"，已经成为现代法治与文明的重要标尺。在劳动关系领域，当事人能够"接近诉讼"，对人权保障具有非常重要的意义。随着我国社会主义市场经济建设步伐的加快，我国劳动争议诉讼制度存在的缺陷也越来越为人们所诟病。因此，劳动争议诉讼制度的改革和完善显得十分必要。本书的写作动机即产生于此。研究劳动争议诉讼程序，构建科学的劳动争议诉讼程序制度，有助于劳动争议当事人诉权的保护与实现，有助于人民法院有效地行使审判权，有助于促进我国劳动争议诉讼立法，有助于完善我国劳动争议处理体制，进而维护社会稳定、促进社会主义劳动关系的和谐发展。

除序、导论、余论、参考文献和后记以外，本书正文部分共分为11章，其主要内容如下：

第1章分析了劳动争议与劳动争议诉讼的若干基本范畴。第一节界定了"劳动争议诉讼"的上位概念"劳动争议"；在此基础之上，第二节对劳动争议诉讼进行了界定。通过对"劳动争议诉讼"概念不同表述的比较分析，笔者认为："劳动争议诉讼"是指劳动争议双方当事人就其劳动权利争议事项，向法院提起诉讼，由法院依法审理和裁判的诉讼活动。对于此概念，笔者重点强调了劳动争议诉讼主管的是劳动权利争议事项，而不包括利益争议（具体论证在本书的第3章）。为了进一步澄清劳动争

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议诉讼的概念,笔者分析了劳动争议诉讼区别于其他诉讼的独特特点。劳动争议的性质特点直接决定了劳动争议诉讼至少应当具有以下特点:劳动争议诉讼程序应考虑用人单位与劳动者间实质上对等的要求;应当以迅速判决为必要;应当以自主性解决为宗旨;劳动争议诉讼需有专业化的法官。

第2章研究的是劳动争议诉讼的程序构造与价值蕴涵。这些基本理论属于劳动争议诉讼程序构建的基础性问题,直接攸关具体的劳动争议诉讼程序如何规定。第一节明确了劳动争议诉讼程序的程序构造:用人单位与劳动者实质上的不平等性决定了对劳动者进行倾斜性保护的必要性。第二节提出了劳动争议诉讼程序的价值取向:程序公正,程序效益,程序安定。针对劳动争议案件的特殊性,程序公正、程序效益和程序安定价值在劳动争议诉讼中尤其特殊的表现。

第3章研究的是劳动争议诉讼的主管与管辖问题。其中,主管问题是本章研究的重点,因为劳动争议诉讼的受案范围是劳动争议诉讼程序的核心内容之一,直接决定着人民法院审理劳动争议案件的权限,决定着劳动争议当事人的合法权益能够受到司法救济的范围,确定劳动争议诉讼的受案范围,具有重要意义。本章第一节对劳动争议的主管范围进行了宏观分析,提出了劳动争议诉讼主管范围的宏观标准。在分析过程中,笔者首先对劳动争议诉讼进行了类型化分析,比较了各国及我国台湾地区劳动争议诉讼的类型。在此基础上,笔者通过对劳动争议诉讼受案范围与诉权、法院审判权的作用范围、案件类型的划分的关系分析,得出结论:"权利争议"就是劳动争议诉讼的受案标准。在本章第二节中,笔者对一些特殊类型的劳动争议是否能够纳入民事诉讼的主管范围进行了微观分析。笔者首先重点研究的是人事争议是否应纳入劳动争议诉讼受案范围的问题。通过对人事争议和人事争议处理制度本身的分析,发现人事争议与劳动争议既存在共同之处又存在差异,人事争议应当分化处理:国家机关内的人事争议,应当以内部行政管理争议列入行政法调整,由行政机关内部处理;企业单位内的人事争议和事业单位内的人事争议,应以劳动争议列入劳动法调整,适用劳动争议诉讼程序。此后,笔者还对因企业职工下岗、整体拖欠职工工资引发的争议、双重或多重劳动关系产生的争议、实习引发的争议、无效劳动合同引发的争议以及雇佣家庭保姆引发的争议等新型劳动争议的主管问题进行了研究。在本章的第三节中,笔者对我国现行劳动争议诉讼的管辖制度进行了反思,指出了其中的立法缺陷,提出了完善相关制度的基本思路,尤其强调应建立对劳动者的保护性管辖制度。

第4章考察了劳动争议诉讼的审判机构。第一节对国外劳动争议诉讼审判机构进行了比较研究,发现有两种模式:一是普通法院式,二是特别法院(庭)式。后者又具体分为三种形式:一是自成体系的劳动法院(庭);二是设在普通法院中的劳动法庭;三是具有准司法性的行政机构模式。第二节分析了我国现行劳动争议诉讼审判机构的设置,认为:我国目前由民事审判庭审理劳动争议案件,存在诸多弊端,已经不适应劳动争议审理的现实需要。在此基础上,第三节提出了完善我国劳动争议诉讼审判机构的设想:我国应当设立劳动争议审判庭,并且,在其人员配置上应当贯彻实行体现"三方原则"的特殊陪审制。

第5章探讨了劳动争议诉讼的当事人问题。一般情况下,劳动争议诉讼的正当当事人为劳动者和用人单位,因而第一节对劳动者和用人单位进行了详细的界定,认为:劳动法意义上的劳动者具有特殊意义,判断劳动者的核心标准是"从属性"标准,至于何为"从属性"需具体考察。我国现行立法限定了劳动者的范围,带来了许多问题,不利于劳动者合法权益的保护。此外,我国劳动法采用列举方式定义用人单位,也出现了遗漏的现象,应当对"用人单位"予以抽象的界定,以适应不断变化的社会实践需要。第二节考察了几种特殊类型案件中的当事人适格问题。第三节考察了在劳动争议诉讼中引入团体诉讼的必要性和可行性,建议应当赋予工会以团体诉权。

第6章探讨了劳动争议诉讼的证明责任问题。第一节对我国劳动争议诉讼证明责任的现行规则进行了分析,指出现行规则存在严重不足。在此基础之上,第二节探讨了如何完善我国劳动争议诉讼证明责任分配规则的问题。对此,存在不同的学术观点,但都存在某种程度上的缺陷。实质上,劳动争议的法律要件是可以分级的,据此,证明责任应当进行分割,由用人单位和劳动者分别就不同的要件事实承担各自的证明责任。

第7章论述了劳动争议诉讼程序之一般原理,尤其是若干程序制度的设置,希望通过程序制度的完善来加强对劳动者诉权的保障。故此,从写作的角度上看,本章着重从保障劳动者权利的角度来分析问题。目前,我国劳动争议诉讼程序基本上依照《民事诉讼法》的相关规定进行,不符合劳动争议的特殊性要求。劳动争议案件应按照区别于一般民事纠纷案件的程序进行审理,这是劳动争议诉讼程序制度发展的必然选择。本章第一节分析了劳动争议程序基本原则。认为:劳动争议诉讼程序应当贯彻保护劳动者合法权益原则、及时处理原则、有利于社会稳定原则、注重调解原则和证明责任的分割原则。第二节分析了劳动合同、劳动调解协议、集体合同以及用人单

位规章制度能否作为劳动争议诉讼审理的实体法律依据问题。第三节分析了直接诉权制度。认为:引入民法上的直接诉权制度有利于劳动者合法权益的及时有效的保护。第四节专门研究了劳动争议诉讼时效制度。第五节分析了劳动争议诉讼费用问题。认为:现行的诉讼费用规则对劳动者而言虽然不再属于负担,但收费制度带来了不必要的资源浪费,建议取消劳动争议诉讼收费制度。

第 8 章研究了劳动争议诉讼程序中的临时性救济问题。第一节分析了劳动争议诉讼中的财产保全制度。认为:劳动争议诉讼的特殊性,决定了现行的财产保全规则不能完全适用于劳动争议诉讼,鉴于劳动者因经济比较困难而难以提供相应担保的情形,立法上应当作出劳动者申请财产保全不适用担保的特别规定。第二节分析了行为保全问题。认为:劳动争议诉讼中应当设立行为保全制度。第三节分析了先予执行制度。认为:现行的先予执行制度也不能照搬到劳动争议诉讼中。《民事诉讼法》关于先予执行担保的规定不能适用于劳动争议案件,并且,应当拓宽先予执行的适用范围,除了追索劳动报酬案件以外,只要具备先予执行的适用条件,其他劳动争议案件也应当允许适用先予执行制度。

第 9 章专门研究了劳动争议诉讼调解程序。第一节对劳动争议诉讼调解与庭审关系进行了比较研究。对各国劳动争议诉讼中调解程序的比较研究表明,调解在各国劳动争议诉讼中占据重要地位。第二节分析了我国劳动争议诉讼调解的现状及其成因。第三节详细论证了劳动争议诉讼调解前置的必要性,认为这是由劳动关系本身的特殊性质所决定的;并对诉讼调解取消论进行了批驳。第四节探讨了对劳动争议诉讼调解程序予以完善的有关建议,包括理念上重视诉讼调解、加强法官调解专业化培训、规范诉讼调解程序以及运用多元化调解方式等。

第 10 章探讨了在劳动争议诉讼中运用多元化的诉讼机制的必要性问题。目前,司法实践中的一般做法是劳动争议诉讼一律实行普通程序审理,这不符合劳动争议及时处理的需要,不符合有效维护劳动者合法权益的需要。笔者认为,劳动争议诉讼中应允许适用简易程序和小额诉讼程序,赋予当事人程序选择权。此外,本章第三节还探讨了在劳动争议诉讼中设立专门的督促程序问题。

第 11 章对劳动争议诉讼与劳动争议仲裁的关系展开了分析。劳动争议诉讼和劳动争议仲裁都属于劳动争议处理体制中的两个重要的解决争议的方式。我国劳动争议诉讼与劳动争议仲裁的关系存在制度性的缺陷,引起

了理论界和实务界的激烈争议。本章第一节先对劳动争议诉讼与劳动争议仲裁关系进行了比较法考察,总结各国及台湾地区在劳动争议诉讼与劳动争议仲裁关系问题上相同的做法。第二节对我国劳动争议诉讼与劳动争议仲裁进行了历史考察和现状分析,指明"一裁两审"制存在的严重不足。在此基础之上,第三节探讨了改革我国劳动争议诉讼与劳动争议仲裁关系的有关设想问题。虽然存在关于我国劳动争议诉讼与劳动争议仲裁关系改革的多种观点,但总是存在这样或那样的不足,不能从根本上解决我国现行劳动争议处理制度中劳动争议诉讼与劳动争议仲裁的问题。笔者认为,根据劳动争议本身的特点、现代法治社会的发展趋势、劳动争议诉讼与劳动争议诉讼本身的特点,以及结合他国经验和我国国情,我国劳动争议诉讼与劳动争议仲裁关系的重构,可以选择以下模式:对于权利争议,实行"或裁或审",劳动争议仲裁以当事人的合意为基础;对于利益争议,实行"只裁不审",大多数情况下实行自愿仲裁,对于某些涉及公共利益、性质特殊的有关国计民生的利益争议,实行强制仲裁。

在余论部分,笔者分析了我国劳动争议诉讼程序的立法体例问题,认为我国目前比较可行的做法,是在民事诉讼中专章规定"劳动争议诉讼程序特别规定"。在此基础上,初拟了"劳动争议诉讼程序特别规定"的建议稿。

关键词:劳动争议;诉讼程序机制;立法完善

Abstract

It is an inevitable choice to construct harmonious society and implement democracy and rule of law in China. Whether people can "access to justice" or not has become an important criterion for rule of law and civilization of modern time. It is very important to protect human rights that parties could "access to justice" in labor relations field. With the steps of socialist market economy construction are quick, more and more attentions are paid to the shortcomings of present labor disputes litigation system in China. It is essential to reform and ameliorate present labor disputes litigation system. The motive of this article comes from this. Researching the labor disputes litigation procedure and establishing the scientific labor disputes litigation procedure system will contribute to protect and realize the litigation rights of the labor disputes parties, to effectively perform the trial power by the people's court, to promote the labor disputes litigation legislation in China, to ameliorate our disposal system of labor disputes, so as to maintain the social stabilization and promote the harmonious development of social labor relations.

Besides Introduction, Surplus Conclusion Reference and Postscript, this book includes eleven chapters as follows:

Chapter 1 analyzes some basic scopes of the labor

disputes and labor disputes litigation. The first section defines the concept "labor disputes" which is the upper concept of the "labor disputes litigation"; based on this, the second section defines the concept of labor disputes litigation. Upon the comparative analysis to different expressions of "labor disputes litigation", the author thinks that "labor disputes litigation" means the litigation among which parties in labor disputes bring such cases over labor rights disputes that should be tried and judged by a court according to law. To this concept, the author emphasizes the domain of the labor disputes litigation is the labor rights disputes and not including the interesting disputes (the specific demonstration is in Chapter 2). In order to clear the concept of the labor disputes litigation further, the author analyzes the distinct characteristic of the labor disputes litigation different from the other litigations. The characteristic of the labor disputes litigation, which is directly defined by the trait of the labor disputes, should include at least as follows: substantive equality between employers and employees should be considered; rapid verdict is necessary; self - determination is the tenet; professional judges are required.

Chapter 2 studies two basic theories of the labor disputes litigation procedure. These theories are the basic matters that construct the labor disputes litigation procedure and directly decide the specific regulations of the labor disputes litigation procedure. Procedural configuration of the labor disputes litigation procedure is definite in Section 1: slantwise protection for employee is necessary based on the inequality between the employer and employee. The virtue choices of the labor litigation procedure are advanced in Section 2: process justice, process benefit and process stability.

Chapter 3 studies the domain and jurisdiction of the labor disputes litigation. The domain is the emphasis of this chapter because the scope of the labor disputes litigation is one core contents in the litigation system, which directly decides the power of courts to try labor disputes and defines the range what legal rights of parties could be protected by judicial relief. The first section macro - analyzes the domain of the labor disputes and puts forward the macro - standard of the domain of the labor disputes litigation. The author firstly analyzes the labor disputes litigation in light on types, comparing different kinds of labor disputes litigation systems in foreign and Taiwan. Based on this, after analyzing the relations

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between the scope of the labor disputes litigation and the litigation rights, the scope of the labor disputes litigation and the effect range of the trial power, the scope of the labor disputes litigation and the division of cases, the author comes to the conclusion: "disputes over rights" is the criterion of the scope of the labor disputes litigation. Section 2 has discussed the question that whether some special kinds of labor disputes should or not be included in the scope of the labor disputes litigation. The author firstly discussed whether personnel disputes should be included in the scope. After analyzing personnel disputes and relevant disposal system, the author discovers that personnel disputes and labor disputes have some in common together with some differences. Personnel disputes should be disposed in differentiation: personnel disputes in executive organizations should be regulated by the administrative law as the internal administrative disputes and be disposed by executive organizations; personnel disputes in enterprises and institutions should be regulated by the labor law and be treated as labor disputes. Additionally, the author also studies the domain questions about some new kind labor disputes incurred by unemployment, payments in arrears, double labor relations, practice study, void labor contract, and so on. Section 3 has analyzed our legislation about the jurisdiction of labor disputes litigation and pointed some shortcomings exist in legislation and at the same time put forward the basic thoughts to ameliorate, especially protective jurisdiction shall be set up.

Chapter 4 has discussed the trial organization in labor disputes litigation. Comparative study has been made in Section 1. There are two patterns of trial organization: one is common court, the other is special court or tribunal. The latter may be divided into three forms: the first is labor court or tribunal which has its own complete systems, the second is labor tribunal in common court, and the third is executive organization with quasi - judicial character. Section 2 has analyzed the present trial organization in labor disputes litigation in China. Presently, labor disputes cases have been tried by civil tribunal in China, which brings many shortcomings and are not fit in the trial requirement in reality. Based on this, reform suggestions are put forward in Section 3: labor tribunal should be set up in China and special jury trial with "tri - parties" should be put into practice.

Chapter 5 has probed into the question of proper parties in labor disputes

litigation. Generally, employees and employers are proper parties in labor disputes litigation, so detailed definitions of employees and employers are made in Section 1. Employees in labor law have special meaning, and the essential criterion to judge employees is " subjected to employers ". What situations constitute "subjected to employers" depends on special situations. The limited scope of employees in our present legislation brings many questions and goes against the protection of the lawful rights of the employees. The same leave - out question exists in employers which are defined in enumeration in our labor law. Abstract definition should be made to " employers" to adapt to the continuously changing social requirements in reality. Section 2 pays attention to proper partied in some special cases. In Section 3, party litigation has been discussed. Party litigation shall be introduced into labor disputes litigation, which is not only necessary but also feasible. In our country, labor union shall be endowed with this party right to sue.

The question of burden of proof in labor disputes litigation has been studied in Chapter 6. The analysis of present rules in Section 1 shows that there is severe deficiency in present rules. Subsequently, how to promote the rules of burden of proof in labor disputes litigation has been discussed in Section 2. Although many different suggestions have been put forward, deficiency like this or that exists in each of them. Materially legal essential factors could be divided, so the burden of proof should also be divided, employers and employees assuming each burden of proof on different essential factors.

Chapter 7 has discussed common theories in labor disputes litigation, hoping to enhance the protection of the litigation rights of the employees through ameliorating the procedure systems. So, this chapter analyses mainly through the protection of the labors. Currently, labor disputes litigation in China mainly progresses pursuant to the civil procedural law, not fitting the special requirements of labor disputes. It is an inevitable choice that labor cases should be tried in the procedure different from other civil cases. Section 1 has analyzed the basic principles in labor disputes litigation. Section 2 has discussed the validity of labor contract, labor conciliation, collective contract and bylaw of employer. The right to sue directly has been studied in Section 3. Section 4 studied the action pmitation of labor disputes litigation. Section 5 has discussed the legal costs in labor

disputes litigation, proposing to cancel the legal cost system though present rule of legal costs is not a heavy burden on employees.

Chapter 8 studies the temporary relief systems in labor disputes litigation. Section 1 has analyzed property preservation system in labor disputes litigation, concluding that present property preservation system couldn't be fully applied to labor disputes litigation, special provisions of non guarantee should be made to employees. Section 2 has probed into behavior preservation system which should be set up in labor disputes litigation. Preliminary execution system in labor disputes litigation has been discussed in Section 3. Present preliminary execution stipulated in the civil procedure law couldn't be copied completely in labor disputes litigation, the applicable scope should be broadened and besides the payment cases, other labor disputes cases should be allowed to use preliminary execution so long as the conditions are satisfied.

Chapte 9 has specialised role of conciliation in labor disputes litigation. Comparative study on conciliation in labor disputes litigation in different countries in Section 1 shows that conciliation plays an important role in labor disputes litigation which is defined by labor relations. Section 2 has analyzed the present practice of conciliation in labor disputes litigation and the cause of its formation. Section 3 particularly demonstrates the necessity to place conciliation before trial. Finally some suggestions are made to perfect the conciliation system in labor disputes litigation.

Chapter 10 has discussed the necessity to apply multi – machnism in labor disputes litigation. At present, it is common practice to apply ordinary proceedings in the trial of labor disputes litigation, which doesn't make for quick settlement of labor disputes and effective protection of employees' rights and interests. The author thinks summary proceedings and small claims proceedings in labor disputes litigation should be permitted because they may help to solve small labor disputes quickly and conveniently and to protect employees efficiently. At the same time, the right of choice among proceedings should be endowed to parties. Besides, urgent proceeding is also necessary which has been analyzed in Section 3.

Chapter 11 has analyzed the relation between labor disputes litigation and labor disputes arbitration in particular. Labor disputes litigation and labor disputes

arbitration are two important ways in labor disputes disposal system. There is systematic deficiency in the relation between present labor disputes litigation and labor disputes arbitration, resulting in heated disputes. Comparative study of the relation between labor disputes litigation and labor disputes arbitration has been made in Section 1, finding something in common in foreign countries and Taiwan. Section 2 analyzed the history and actuality of labor disputes litigation and labor disputes arbitration in China, showing serious deficiency exists in "one arbitration two trial". Based on this, Section 3 has discussed how to reform the relation between labor disputes litigation and labor disputes arbitration in our country. Although many views appeared, they couldn't solve existing deficiency in present system radically. Considering the characteristics of labor disputes, the direction in modern rule - of - law society, the characteristics of labor disputes litigation and the characteristics of labor disputes arbitration, the experience in foreign countries and the situation of our country, the author thinks, we may choose the model to reconstruct the relation between labor disputes litigation and labor disputes arbitration as follows: "arbitration or trial" should be applied to disputes over rights, and arbitration should be based on acceptability of parties; "arbitration only" should be applied to disputes over interests, arbitration mostly with will, and compulsory arbitration in certain disputes over interests which refer to public interest, essential national interest.

In Surplus Conclusion, the pattern of labor disputes litigation legislation in our country has been analyzed. A feasible choice, the author thinks, is to put "special provisions about labor disputes procedure" into civil procedure as a special chapter. Furthermore, the author drafts the suggestive sketch of "special provisions about labor disputes procedure".

Key Words: Labor Disputes; Mechanism of Litigation Procedure;
Perfection of the Legislation

序

孙宪忠[1]

几年前曾经看到一篇很有意思的报道,有关部门在一次普法活动中对普通老百姓进行问卷调查,其中有一项是:你所知道的法律法规有哪些?出乎很多人的意料,《劳动法》远超《宪法》、《刑法》、《民法通则》、《合同法》等"显法"而居于榜首。很多人都知道的一个关于《劳动合同法》的故事是,《劳动合同法(草案)》向社会公开征求意见后,全国人大常委会在短短的一个月的时间里收到了19万多条意见。而另一部备受瞩目、历经波折,炒得沸沸扬扬的《物权法》总共才收到一万多条意见。《劳动合同法》因此也成为立法向社会征求意见参与人数最多的一次,其出台后被公共舆论称为"推进立法民主化的又一标志性事件"。社会公众为什么对《劳动法》、《劳动合同法》如此关注?这是非常值得我们思考的。我想,道理其实非常简单,那就是:我们都是劳动者,我们当然最重视我们安身立命的劳动权以及劳动权的保护。

我们人类社会的存在,以劳动作为基础。但是现代社会,因为生产的高度社会化,劳动主要以社会就业的方式进行。这样,在我们大家进行劳动的时候,就无法避免地要发生劳动就业的法律关系,在这个法律关系中,一方是劳动者,另一方是用人单位。这两个方面的

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关系并不是自然融洽和谐的,事实上从古到今,劳动关系中一直存在着矛盾甚至是斗争,我们把这些矛盾甚至斗争现在称为劳动争议。工业革命后,劳动争议无论是数量还是类型都发展到了无与伦比的情形。虽然工业革命促进了社会生产力极大的发展,但是它也促生出更为激烈的劳动争议问题。而市场经济体制的全球化发展,更使得劳动争议具有了国际性的色彩。纵观人类历史,正如一个母亲想要享受孩子带给自己的快乐就必须得承受分娩的痛苦一般,劳动争议也是生产力发展、社会进步如影相随的“痛苦附着物”。

改革开放以来,市场经济体制作为宪法规定的基本经济体制已经在我国稳定地建立起来;同时中国各个领域的现代尤其是生产领域里的现代化,在很多方面也已经达到了世界先进的水平。这样,中国社会大众的劳动权利保护问题,出现了许多新的矛盾。另外,我国的体制改革中,还包括着改革用人制度、就业制度等方面,随着社会转型、原来的劳动关系变更,劳动争议“陈年老账”也需要认真的清理。这些问题一直困扰着我国社会。近年来,国家和立法者已经将劳动者权利保护问题提到了很高的程度,全国人大常委会颁布了一系列相关的法律,其中包括著名的“劳动合同法”等重要法律。这些法律体现了“以人为本、以民为本的可持续发展战略”和“和谐社会建设“精神,它们肯定要在我国社会发展长期而积极的作用。

但是毋庸讳言,现实生活中的很多劳动争议并没有公正、快速的解决。其中当然有一些地方对于劳动者权利保护的重要意义认识不足的问题,但是也有人们对于解决劳动争议的法律程序不甚熟悉的问题。劳动争议虽然属于民事案件,但是它有独特性,劳动争议显著区别于其他的民事纠纷。因此处理劳动争议的程序和方法自然也有别于其他的民事纠纷。现在劳动争议案件如此之多,保护劳动者合法权益的社会压力如此之大,因此我们大家都应该认真学习和掌握劳动争议案件解决的特殊程序和方法的法律规则。

我所指导的博士后范跃如,毕业于中国人民大学法学院,在中国社会科学院法学所博士后流动站研究期间,继续开展了对于“劳动争议的诉讼程序”这一课题的深入研究。经过两年努力,他终于完成了自己的设想,并将其成果付梓出版。本书立足于劳动争议的自身特点,结合民事诉讼法学、劳动法学等多个学科,从多角度对劳动争议诉讼程序中的诸多重要问题作了比较深入的研究,其中不乏真知灼见。作者当前从事司法实务工

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