

IMPROVING THE EFFECTIVENESS OF LABOUR MEDIATORS AND LABOUR ARBITRATION COUNCIL IN RESOLVING LABOUR DISPUTES IN HA NOI CITY

Dr. Nguyen Duy Phuc

Center for Industrial Relations Development

phuc.molisa@gmail.com

MA. Hoang Thi Thu Huyen

Center for Industrial Relations Development

hoanghuyen.cird@gmail.com

BA. Pham Van Phuc

Center for Industrial Relations Development

phamphuc.cird@gmail.com

Abstract: The comprehensive execution of the stipulations outlined in the 2019 Labour Code introduces a variety of new obligations for industrial relations, as well as for labour mediators and the Labour Arbitration Council in addressing labour disputes. Given that Hanoi serves as Vietnam's political nucleus and a significant economic center, the stability of industrial relations in the city directly affects not only its socio-economic development metrics but also has a considerable impact on surrounding regions and the country at large. This document provides a summary of the present situation regarding labour disputes and their resolution by labour mediators and the Labour Arbitration Council in Hanoi. Through this examination, the paper puts forth several insights and suggestions directed at both the authorities in Hanoi and the Ministry of Home Affairs, with an emphasis on enhancing the efficiency of labour dispute resolution. These suggestions encompass: reorganizing and fortifying organizational structures; guaranteeing operational conditions; improving capabilities through training; and offering technical assistance to labour mediators and the Labour Arbitration Council.

Keywords: *Labour disputes, labour dispute resolution institutions, labour mediators, labour arbitration councils, strikes.*

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1. Introduction

Throughout the process of socio-economic development especially in the framework of swift industrialization, modernization, and extensive international integration, industrial relations in Vietnam as a whole, and in Hanoi in particular, have grown increasingly varied and intricate. This intricacy has resulted in an increase in labour disputes, both on

an individual and collective basis, which directly affect the rights and interests of the parties involved. If these disputes are not resolved promptly and in accordance with legal standards, they may threaten the stability of the investment climate, political security, and social order and safety.

In the labour dispute resolution framework, labour mediators and labour arbitration councils are

essential in assisting parties to reach a consensus, thus averting the escalation of conflicts into strikes or extended litigation. These intermediary mechanisms alleviate the pressure on the court system and foster dispute resolution grounded in respect for the parties' autonomy, mutual agreement, and negotiation, thereby guaranteeing empathy, fairness, reasonableness, and efficiency regarding both time and cost.

Nonetheless, the actual implementation of labour mediation and arbitration efforts in Hanoi has uncovered various challenges and constraints. A significant number of labour mediators do not possess specialized training or hands-on experience, resulting in their activities often being more procedural than meaningful. While labour arbitration councils have been formed, their role has not been clearly demonstrated, as the volume of cases submitted for arbitration continues to be quite minimal. Additionally, ineffective coordination between these bodies and state management agencies, coupled with a lack of awareness among both workers and employers about these dispute resolution methods, presents considerable obstacles.

Considering the pressing demands of reality, enhancing the efficiency of labour mediators and labour arbitration councils is an essential task that has been highlighted in significant directives from both the Party and the State. Specifically, Directive No. 37-CT/TW, dated September 3, 2019, issued by the Party Secretariat, emphasizes the need to strengthen Party's leadership and direction in building harmonious, stable, and progressive industrial relations within the new context. This was subsequently followed by Decision No. 416/QĐ-TTg, dated March 25, 2020, issued by the Prime Minister, which delineates the action plan for implementing Directive No. 37-CT/TW. Therefore, it is essential not only to improve the legal framework but also to emphasize the enhancement of human resource quality, increase training in mediation and arbitration skills, strengthen organizational structures, and improve coordination mechanisms among all stakeholders.

This article aims to analyze the current operations of labour mediators and labour arbitration councils in Hanoi, identifying existing deficiencies and their underlying causes. It also suggests specific solutions to enhance the quality and effectiveness of these mechanisms in the present context. Through this analysis, the paper seeks to contribute to the promotion of harmonious and stable industrial relations, safeguarding the legitimate rights and interests of all parties involved, and furthering the objectives of

sustainable development and social welfare in the capital.

2. Literature review and methodology

2.1. Literature review

In the realm of theoretical research, scholars like Michael Salamon (2000) and John W. Budd (2008) have established the essential theoretical issues in industrial relations, presenting several internationally recognized models that address various aspects of industrial relations systems. The Ministry of Labour, Invalids and Social Affairs (2014) examined Vietnam's industrial relations model from both legal and practical perspectives, suggesting solutions to develop and enhance a system that aligns with the country's specific conditions. Significantly, a ministerial-level scientific initiative by the Center for Industrial Relations Development (CIRD) (2020) elucidated the theoretical and practical underpinnings of Vietnam's dispute resolution system, particularly in the context of engaging in new-generation free trade agreements. Consequently, it recommended enhancements to the model for addressing collective labour disputes.

In the realm of empirical research, national reports and studies conducted by expert groups regarding the implementation of international labour standards such as the reports from the IMF expert group (2006) and the European Union (2015) have yielded valuable data concerning the evolution of various facets of industrial relations across different nations. A scientific project at the ministerial level, initiated by the CIRD (2014), assessed the current status of labour mediation performed by grassroots labour mediators, labour arbitration councils, and the judicial system, while also suggesting measures to enhance their efficacy. Hôi (2017), in the publication "Mediation in the Resolution of Labour Disputes under Current Vietnamese Law", emphasized both the significance and the limitations of legal regulations governing labour dispute mediation when implemented in practice. The article "Resolution of Individual Labour Disputes through Mediation – Some Issues and Solutions" authored by Nhung (2020) elucidated the legal provisions pertaining to the mediation of individual labour disputes and identified existing deficiencies and inconsistencies within the legal framework. Furthermore, it offered recommendations for legal reform and practical enhancements aimed at improving the effectiveness of mediation in the resolution of individual labour disputes.

Numerous studies have been undertaken to examine, enhance, and suggest improvements for the

effectiveness of the labour dispute resolution system, focusing on industrial relations broadly and the specific mechanisms and institutions involved in resolving labour disputes. Nevertheless, many of these studies have failed to thoroughly explore the complete array of mechanisms and institutions present in the labour dispute resolution system, particularly considering the new regulations established by the 2019 Labour Code, which are now in effect.

2.2. Research methodology

Concerning the theoretical framework, this paper predominantly utilizes the analytical–synthetic method. It specifically concentrates on examining various viewpoints regarding industrial relations (IR), labour disputes (LDs), and the resolution of LDs in accordance with international practices and the legal frameworks of various nations. The references employed encompass international labour standards, national labour legislation, and domestic academic perspectives as articulated in monographs, textbooks, and pertinent literature. Drawing from the gathered and analyzed perspectives, the paper integrates these findings to establish definitions of IR and LDs, while also investigating the mechanisms and institutional structures involved in the resolution of LDs.

In terms of practical considerations, the paper employs both qualitative and quantitative research methodologies. The qualitative approach involves the collection and analysis of data pertaining to labour disputes and resolutions through comprehensive interviews with tripartite industrial relations specialists, as well as through reports published by the Ministry of Labour, Invalids and Social Affairs. These reports include the “Report on the Implementation of Directive No. 37-CT/TW dated September 3, 2019 by the Party Secretariat,” the “Report on the Development and Implementation of the Industrial relations Development Project,” and the “Industrial relations Report,” among others.

In the quantitative research methodology, data were gathered from reports published by tripartite industrial relations agencies located in Hanoi, including reports concerning the execution of Directive No. 37-CT/TW and the advancement and implementation of the Industrial relations Development Project.

The data collection was facilitated through surveys and comprehensive interviews carried out by the CIRD. The survey targeted 100 labour mediators and labour arbitrators; 20 officials from state labour management

agencies; 280 employer representatives; and 600 employees from diverse sectors within Hanoi.

3. Theoretical framework on industrial relations

Industrial relations (IR) are conventionally defined, in their most limited interpretation, as the relationship between employees and employers regarding wage-based employment. Nevertheless, in light of contemporary societal evolution, the notion of IR has broadened to include relationships that involve the representative organizations of both employees and employers, along with their interactions with governmental institutions. Despite this expanded definition, the essential and most critical element of IR continues to be the relationship between the employee and the employer. The state primarily assumes a supportive role, creating the legal framework, aiding in the establishment of mechanisms for dialogue and negotiation, and intervening in the processes of dispute resolution.

Economic interest acts as the main motivating factor that drives both employees and employers to participate in and sustain industrial relations. Within this dynamic, the employees’ interest is focused on securing income, whereas the employers’ interest centers on profit. In the short term, these interests frequently clash, as employees’ income tends to have an inverse relationship with employers’ profits. Consequently, inherent tensions often arise. When these tensions escalate beyond a certain point, they become evident as labour disputes. Thus, labour disputes are an unavoidable outcome in a market economy.

Labour disputes encompass both individual and collective labour disputes. Collective labour disputes not only adversely impact the production and business environment but also present potential threats to social order and stability. As a result, nations with market economies have developed systems of mechanisms and institutions to address such disputes. These systems generally include mediation (conducted by labour mediators), labour arbitration (by labour arbitration councils), adjudication (by the courts), and strikes. Among these:

Mediation: This process involves the assistance of a third party to aid the disputing parties in reaching a mutually acceptable resolution. The mediator does not issue a binding decision but instead facilitates the parties by offering information, negotiation strategies, situational assessments, and suggestions for possible solutions. In the labour sector, the entity responsible for mediation can be either an individual labour mediator

or a labour dispute mediation organization. Each country organizes and operates its labour mediation institution in a distinct manner.

Labour Arbitration: This process entails a third party rendering a binding decision regarding the dispute, based on legal principles and the reasonableness of the claims in accordance with prevailing labour market standards. For a case to be eligible for arbitration, both disputing parties must agree to submit it to the labour arbitration body. Once a decision is made, both parties are required to adhere to it. Labour arbitration is not classified as a judicial process. The institutional body that performs arbitration functions within the labour sector is typically the Labour Arbitration Council. In most nations, this council operates as an independent entity, separate from both employees and employers.

Adjudication: Legal proceedings conducted by a court. Any party involved in the conflict may initiate a case with the court for resolution. Once a decision is made by the court, both parties are legally required to adhere to it. Judgment enforcement agency ensures that the court’s ruling is executed appropriately.

Strike: A strike represents a collective action where

employees voluntarily stop working, in line with legal regulations, to apply pressure on the employer to meet their demands. Strikes are typically viewed as a last resort in resolving disputes, as they often have negative effects on business operations, employment, and the income of workers.

4. Research findings

4.1. Number of enterprises and labour scale by type of enterprise

According to the Hanoi People’s Committee (2024), there are approximately 2.5 million individuals employed in enterprises throughout the city. Out of this figure, 80.28% (which is roughly 2 million workers) are engaged in domestic private enterprises, while 13.8% (around 345,000 workers) are found in foreign direct investment (FDI) enterprises.

As of March 2024, Hanoi is home to about 209,000 registered and operational enterprises with recorded business activities. This total comprises 315 state-owned enterprises, 203,000 domestic private enterprises, and 5,685 FDI enterprises. Furthermore, 714 enterprises are functioning within industrial zones. It is noteworthy that enterprises with fewer than 10 employees represent 63% of the overall total.

Table 1. Number of enterprises and employees working in enterprises in Hanoi (2019 - Q1/2024)

Indicator	Unit	Year 2019	Year 2020	Year 2021	Year 2022	Year 2023	Year Q1/2024
Number of active enterprises	Enterprises	141,439	144,692	149,283	189,037	198,000	209,000
- State-owned Enterprises	Enterprises	418	395	399	354	320	315
- Private Enterprises	Enterprises	137,265	140,158	144,821	183,759	192,000	203,000
- Foreign Direct Investment (FDI) Enterprises	Enterprises	2,756	4,139	4,063	4,924	5,680	5,685
Number of employees working in enterprises	Thousand persons	2,409	2,178	2,182	2,345	2,400	2,500
- Employees in State-owned Enterprises	Thousand persons	187	162	164	152	150	148
- Employees in Domestic Private Enterprises	Thousand persons	1,900	1,690	1,674	1,851	1,908	2,007
- Employees in FDI Enterprises	Thousand persons	322	325	344	341	342	345

Source: Report on the implementation of Directive No. 37-CT/TW by the City of Hanoi

4.2. Labour dispute situation

Regarding the overall labour force engaged in enterprises, the quantity of documented individual labour disputes (ILDs) in Hanoi is notably low. Official

statistics indicate that the number of ILDs reported in 2019, 2020, 2021, 2022, 2023, and the first quarter of 2024 were 50, 82, 56, 79, 86, and 28 cases, respectively. Nevertheless, in numerous situations, workers facing

disputes with their employers chose not to seek dispute resolution through labour mediators. Instead, they directed their complaints to state authorities or decided

to resign from their positions as an alternative means of resolution.

Table 2. Comparison of individual labour disputes in Hanoi and selected provinces (2019–2023)

Unit: case

Province/City	Year 2019	Year 2020	Year 2021	Year 2022	Year 2023
Hanoi	50	82	56	79	86
Dong Nai	118	98	76	153	59
Bac Ninh	30	31	46	44	16
Binh Duong	323	404	207	215	286

Source: Reports on the implementation of Directive No. 37-CT/TW from localities

Concerning collective labour disputes, the report indicates that there were no illegal strikes documented in Hanoi from September 2019 through the first quarter of 2024. Nevertheless, there were 38 instances of collective work stoppages and mass gatherings (13 of which were classified as collective work stoppages and 25 as mass gatherings. These occurrences were primarily concentrated in 2020, coinciding with the COVID-19 pandemic, which included 5 collective work stoppages and 12 mass gatherings). In practice, the statistical categorization of collective labour disputes frequently varies due to differing interpretations of terms such as “strikes not adhering to lawful procedures” and “collective work stoppages.” Many contend that a “procedurally unlawful strike” must first be acknowledged as a “strike.” Consequently,

if a group of employees collectively halts work without the organization and leadership of their official representative body, such an action does not legally constitute a strike. In reality, there have been no collective work stoppages in Hanoi that were organized and led by employees’ representative organizations.

The reported number of collective labour disputes (CLDs) for the years 2019, 2020, 2021, 2022, and 2023 were 20, 11, 12, 19, and 23, respectively. In the initial five months of 2024, 5 such cases were recorded. The majority of these disputes pertained to interests rather than rights. The primary issues of contention included wage arrears, requests for increased wages, Tet bonuses, social insurance benefits, and other welfare matters such as fuel allowances and the quality of meals provided during work shifts.

Table 3. Number of collective labour disputes in Hanoi compared to selected provinces (2019–2023)

Unit: case

Province/City	Year 2019	Year 2020	Year 2021	Year 2022	Year 2023
Hanoi	20	11	12	19	23
In which					
Interest disputes	12	6	8	11	14
Rights disputes	8	5	4	8	9
Hochiminh	15	11	8	13	7
Quang Nam	2	1	1	2	0
Thanh Hoa	7	2	0	3	3
Hai Phong	5	6	2	2	2

Source: Reports on the implementation of Directive No. 37-CT/TW from localities

4.3. Institutions for labour dispute resolution in Hanoi

Concerning the institutions responsible for mediating labour disputes, the report reveals that

there are presently 98 labour mediators in Hanoi whose appointments are still valid. The majority of these mediators work part-time, primarily employed by the Department of Labour, Invalids and Social

Affairs (DOLISA); district-level DOLISA offices; the Department of Justice; the Labour Federation; and various other organizations. Each year, DOLISA conducts one to two training sessions focused on legal knowledge and professional skills for mediators. Nevertheless, most mediators have not undergone systematic or comprehensive training. Although the city has established regulations governing the management of mediators, in practice, this workforce remains fragmented and lacks continuity. From 2019 to 2023, the success rate for individual labour dispute mediations was around 50%. In practice, disputes arising within labour relations between employees and employers occur frequently and are predominantly addressed by labour inspectors. When confronted with individual disputes, employees typically opt to

file complaints directly with state agencies instead of submitting formal mediation requests. As per Hanoi’s report on the execution of the Industrial relations Development Project, in 2020 alone, the City’s Labour Inspectorate received and resolved 548 petitions and complaints from employees. The number of complaints received by the city’s labour inspection agency in 2022, 2023, and the first half of 2024 were 202, 315, and 187, respectively.

With respect to arbitration, the Hanoi Labour Arbitration Council has been restructured in line with the new provisions of the Labour Code and now comprises 21 members. However, as of now, no labour dispute cases have been resolved through this council.

4.4. Labour dispute resolution

Table 4. Labour dispute resolution in Hanoi (2019 – Q1/2024)

Indicator	Unit	2019	2020	2021	2022	2023	Q1/2024
Number of labour mediators	Persons	89	99	110	121	121	98
Number of individual labour disputes (ILDs)	Cases	50	82	56	79	86	28
Number of ILDs successfully mediated	Cases	26	44	27	24	41	15
Number of collective labour disputes (CLDs)	Cases	20	11	12	19	23	5
Number of CLDS mediated by labour mediators	Cases	0	0	0	0	0	0
Number of CLDS resolved by labour arbitration council	Cases	0	0	0	0	0	0

Source: Report on the implementation of Directive No. 37-CT/TW by the City of Hanoi

Concerning individual labour disputes: In numerous instances where conflicts arise between individual employees and their employers, workers frequently lodge complaints with local state management agencies, seeking intervention to ensure that enterprises adhere to legal regulations and safeguard their legitimate rights and interests. Upon receipt of such complaints, government officials utilize legal provisions, enterprise regulations, labour contracts, and previously established agreements to directly counsel the employee or mandate the employer to fulfill their legal obligations. Individual labour disputes presented in court generally pertain to the unilateral termination of labour contracts or disciplinary dismissals involving managerial personnel or highly skilled technical specialists within enterprises.

Concerning collective labour disputes: The majority of collective labour disputes manifest as collective work stoppages and are not resolved

through labour mediators or the Labour Arbitration Council. The resolution of these matters largely hinges on the response of inter-agency task forces and the swift engagement of pertinent authorities and organizations. When a collective workstoppage occurs, members of the task force are promptly dispatched to the location to engage with both employees and employers, collaborate with the grassroots trade union to understand workers’ demands, evaluate the actual conditions of the enterprise, and encourage employers to heed and implement necessary policy changes. Concurrently, they strive to persuade workers to return to their jobs to uphold social order. As a result of these initiatives, workers frequently resume their duties shortly after employers make certain concessions. In situations where the employer makes decisions or enacts policies that do not align with legal regulations, such decisions or policies must be revised accordingly and are liable to legal penalties as stipulated by law.

4.5. Accessibility of labour dispute resolution mechanisms

Survey findings reveal that both employees and employers face restricted access to mediation and arbitration institutions. Numerous workers do not possess thorough information and comprehension

of labour mediation and arbitration processes. This deficiency in awareness is a significant factor contributing to the reluctance of many employees to seek mediation for disputes, opting instead to submit petitions to state authorities for resolution.

Table 5. Workers' choices when facing labour disputes

Content	Workers' Choice	Percentage (%)
Workers' preferred approach to resolving labour disputes:	(1) Labour mediator or Labour Arbitration Council	19.33
	(2) City or district-level labour management authority	55.67
	(3) Litigation in court	16.67
	(4) Other	8.33

Source: Survey conducted by the CIRD

4.6. Working conditions and factors affecting the effectiveness of labour mediators

Survey findings from labour mediators reveal that the primary obstacles affecting their efficiency consist of: An overwhelming workload at their main place of

employment (82%); mediation being an extremely challenging and time-intensive endeavor (59%); insufficient collaboration or goodwill from both employees and employers (53%); and unsatisfactory compensation and benefits for mediators (46%).

Table 6. Factors affecting the Q1/2024 effectiveness of labour dispute mediation by labour mediators

Content	Labour Mediators' Choices	Percentage (%)
What are the most critical negative factors impacting the mediation of labour disputes by labour mediators?	(1) An excessive workload at their primary place of employment	82
	(2) Mediation is a challenging and time-intensive endeavor	59
	(3) Absence of clear management and performance assessment for labour mediators	27
	(4) Lack of coordination and professional support systems for labour mediators	36
	(5) Overly cumbersome procedures for mediation, documentation, and recordkeeping	21
	(6) Insufficient compensation and benefits for labour mediators	46
	(7) The process of paying for labour mediators is excessively complex	18
	(8) Inadequate facilities (e.g., filing cabinets, computers, transportation)	32
	(9) Insufficient goodwill and collaboration from employees or employers	53

Source: Survey conducted by the Center for Industrial Relations Development

During in-depth interviews, numerous labour mediators indicated that the primary obstacles in executing their duties consist of insufficient financial allowance, a deficiency in technical assistance, and

most importantly the lack of goodwill from employers. The current pay for mediators is remarkably low, and the majority refrain from utilizing the reimbursement process due to its intricacy and ambiguity.

In organizations where labour conflicts arise, mediators frequently are not given responsibilities pertaining to the support of industrial relations, which results in their lack of access to information regarding industrial relations within the organization. Consequently, they are unable to foster trust or develop collaborative relationships with employers. This disengagement significantly undermines their capacity to mediate effectively when disputes occur.

5. Insights and recommendations

5.1. Key insights

According to the results of this study, several significant insights can be derived concerning labour disputes and their resolution methods in Hanoi:

Although the officially documented individual LDs are relatively few, a considerable number of disputes are actually resolved through complaints and prompt intervention by local labour management officials, rather than through formal dispute resolution processes.

Collective labour disputes are primarily focused on interests rather than legal entitlements. In recent years, there has been an increase in the occurrence of collective LDs. Nevertheless, none of these disputes have been settled through labour mediators or the Labour Arbitration Council.

Both employees and employers demonstrate a lack of awareness and access to labour mediation and arbitration services.

The current compensation for labour mediators and arbitrators is insufficient, and the reimbursement process is ambiguous and excessively complicated, despite the challenging and time-intensive nature of their responsibilities.

The lack of a system that allows labour mediators and the Labour Arbitration Council to fulfill their role in supporting industrial relations within companies could lead to diminished trust and goodwill from employers towards these entities, consequently complicating the mediation process considerably when labour disputes occur.

5.2. Recommendations

- For Hanoi City

(1) Swiftly enhance and finalize the organizational framework of the focal unit tasked with handling labour dispute resolution requests, as mandated by the Labour Code. Special emphasis should be placed on establishing operational guidelines and the coordination framework between the focal unit and labour mediators as well as labour arbitrators to facilitate dispute resolution and bolster industrial relations within enterprises.

(2) Transform communication methods and openly share the contact details of the focal unit, labour mediators, and the Labour Arbitration Council to improve accessibility and public understanding of labour dispute resolution services.

(3) Raise the compensation levels in line with the time investment and intricacy of labour dispute mediation and industrial relations support activities. Concurrently, clearly outline and streamline reimbursement processes to ensure that mediators and arbitrators can receive their allowances fully in accordance with established regulations.

(4) Designate each labour mediator and arbitrator to oversee and assist industrial relations in enterprises with a significant workforce within the city. Create enterprise industrial relations support documentation for archiving, management, and shared utilization by the focal unit responsible for receiving labour dispute resolution requests.

- For the Ministry of Home Affairs

(1) Organize training sessions aimed at enhancing the professional skills and knowledge of labour mediators and labour arbitrators in line with the stipulations of the Labour Code, while also addressing the changing needs of industrial relations in the present environment.

(2) Assist in the execution of responsibilities pertaining to industrial relations development that are assigned to labour mediators and the Labour Arbitration Council, as mandated by the Labour Code, to improve state management and effectively resolve collective labour disputes in the contemporary context.

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