

LABOR DISPUTES, TRADE UNIONS AND COLLECTIVE BARGAINING: AN ANALYSIS FROM A DECISION THEORETIC PERSPECTIVE

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INTRODUCTION

The Philippine Constitution requires the State to ensure the speedy disposition of cases before judicial, quasi-judicial and administrative bodies and to promote the preferential use of voluntary modes in settling labor disputes, including conciliation. Use of voluntary modes in settling disputes is preferred because consent-based and cooperative approaches foster the speedy disposition of cases. Labor disputes, whether intra-party or inter-party, take place at the distributive, structural and/or human relations levels. They may involve issues about labor standards (rights issues) and/or labor relations (interests and rights issues). A typology of forms of labor disputes or conflict is depicted in Figure 1.¹

Figure 1
CONFLICT FORMS MATRIX

	INTRA – PARTY DISPUTES (Distributive/Structural/Human Relations Level)	INTER – PARTY DISPUTES (Distributive/Structural/Human Relations Level)
LABOR STANDARDS DISPUTES (Rights Issues/Disputes)		<ul style="list-style-type: none"> • Non- and/or underpayment of minimum wage/13th month pay • Commission of prohibited acts regarding wages • Non-compliance with rules on hours of work, service incentive leave • Non- and/or underpayment of additional pay for overtime/ rest day/holiday/special day/night work • Discrimination • Non-compliance with health, safety, welfare and other labor standards
LABOR RELATIONS DISPUTES (Interests and Rights Issues/Disputes)	<ul style="list-style-type: none"> • Intra-union disputes 	<ul style="list-style-type: none"> • Inter-union disputes • Related labor relations disputes • Grievances • Bargaining deadlock • Unfair labor practices (ULP) • Strike/Lock-out • Employment tenure/ termination disputes • Productivity Incentive Program (PIP) issues • Wage distortion issues

Methods or approaches for settling or handling disputes or conflicts are either voluntary (based on consent) or compulsory (based on legal requirement). They involve conflict management and conflict resolution processes. In conflict

¹ Sale, Jonathan P. (2005). Labor Dispute Settlement and Decision Making. Philippine Journal of Labor and Industrial Relations, XXV (1 & 2), pp. 13-43.

management the disputants themselves are the decision makers while in conflict resolution a third party is the decision maker. Multiple forums exist so that the locus of decision making would be spread out. Mechanisms or strategies for conflict handling are presented in Figure 2.²

Figure 2
CONFLICT HANDLING MECHANISMS/STRATEGIES MATRIX*

	CONFLICT MANAGEMENT (Settlement)	CONFLICT RESOLUTION (Adjudication/Enforcement)
VOLUNTARY	<ul style="list-style-type: none"> • Collective bargaining (multi-employer) • Voluntary union recognition • Grievance procedure without CBA • Labor – Management Committee/Council (PIP issues) • Trade union combination • Consent election • Compromise agreement • Preventive mediation • AIDA 	<ul style="list-style-type: none"> • Interpleader/Intervention • Voluntary arbitration (VA) of interest/rights issues
COMPULSORY	<ul style="list-style-type: none"> • Conciliation- Mediation • Collective bargaining (single enterprise) • Strike vote balloting • Improved offer balloting • Grievance procedure under CBA 	<ul style="list-style-type: none"> • VA of rights issues (grievances) under CBA • Compulsory arbitration (CA) by Labor Arbitrator • Adjudication by Regional Director (e.g., money claims < or = ₱5,000) • Compliance order • Med-arbitration by BLR/RO (e.g., inter/intra-union disputes like CBA deregistration) • Appeal (to BLR, Secretary, or NLRC) • Injunction/contempt • Assumption of jurisdiction • Certification to NLRC for CA • Judicial action/review

Therefore decision making is a proper unit of analysis. Simon (1997, 1947) points out that rationality in decision making is bounded or limited by a confluence of factors – limited time, attention and cognitive capacity, to name a few – and “good enough” decisions are made in a stimulus-response pattern.³ March (1994) suggests a dichotomy such that decision makers pursue a logic of consequence, making

² *Ibid.* CBA stands for collective bargaining agreement. AIDA means Administrative Intervention for Dispute Avoidance. Regional Director refers to the Regional Director of the Department of Labor. BLR stands for Bureau of Labor Relations and RO refers to Regional Office of the Department of Labor. Secretary refers to the Secretary of Labor and NLRC means National Labor Relations Commission.

³ Simon, Herbert A. (1997). *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations*. U.S.A.: The Free Press, pp. 118-139.

choices among alternatives by assessing consequences based on preferences (choice-based), or a logic of appropriateness, fulfilling identities by recognizing situations and complying with rules that match appropriate behavior to situations (rule-based).⁴

In the Philippines, utilization by labor and employer of compulsory conflict resolution mechanisms, which are legalistic and non-cooperative (competitive), is increasing.⁵ This suggests that they tend to advance rational self-interest and make decisions using logic of consequence, rather than exhibit appropriate decision behavior founded on trust and reciprocity and decide based on logic of appropriateness. There is a felt need to improve the allocation of cases among the different conflict handling mechanisms. But decision precedes action as Simon argued. Thus the allocation of cases is influenced by the employee's and/or employer's decision to use specific conflict handling mechanisms after recognizing particular situations. Appropriate decision behavior as indicated by the use of mechanisms based on consent and cooperation in turn may be influenced by trade union membership and coverage under a collective bargaining agreement. To promote appropriate decision behavior and the use of conflict handling mechanisms based on consent and cooperation the State must intervene in the relations between labor and employer through laws that enhance trade unionism and collective bargaining.

In labor disputes, is decision making choice-based or rule-based? If so, what institutions, if any, foster decisions based on choices or rules? What institutions, if any, should be encouraged, or required, to enhance cooperative behavior and reduce conflict? Are the objectives of public policy, that is, the speedy disposition of cases and the preferential use of voluntary modes in settling disputes, being achieved? If decisions precede actions, what will make employers and employees decide to utilize consent-based and cooperative mechanisms? Would membership in a trade union and coverage under a collective bargaining agreement (CBA) influence decision making, that is, the decision to use conflict-handling mechanisms that are based on consent and cooperation? Is there a need for public policy reforms to encourage disputants to exhibit appropriate decision behavior and choose consent-based and cooperative approaches?

The paper explores labor disputes in the Philippines from the perspective of two approaches – choice-based and rule-based decision making – by describing, interpreting and analyzing, among others, aggregate data from the Bureau of Labor and Employment Statistics on trade union membership, CBA coverage and utilization of the different modes or mechanisms for handling labor disputes over a five-year period ending in 2008, and determining the relationship among them, if any.

BACKGROUND

Under Philippine law, labor disputes are questions or controversies regarding terms and conditions of employment, including the ways by which such terms and conditions are negotiated, fixed, arranged or modified over and above minimum standards⁶ Based on Figure 1, there are various types of labor disputes. To improve labor relations and foster industrial peace, as already noted, the Philippine Constitution mandates the promotion of the principle of shared responsibility between

⁴ March, James G. (1994). *A Primer on Decision Making: How Decisions Happen*. U.S.A.: The Free Press, Preface.

⁵ J.P. Sale, *op. cit. supra*, note 1.

⁶ LABOR CODE, art. 212.

workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and the enforcement of mutual compliance therewith.⁷ Figure 2 illustrates the numerous mechanisms for handling labor disputes or conflict. Decision making and action via trade unions and collective bargaining are among such mechanisms.

Through the exercise of the rights to self-organization and collective bargaining, terms and conditions of employment are negotiated, fixed, arranged or modified over and above minimum standards. They are companion rights since a union is organized in whole or in part for the purpose of collective bargaining and of dealing with the employer about terms and conditions of employment.⁸ Based on Figure 2, collective bargaining is a conflict management mechanism. As a process, it entails a series of steps.

The first step involves the labor organization's formation, registration and acquisition of majority status. After its formation, the labor organization becomes a legitimate labor organization (LLO) upon registration with the Department of Labor and Employment (DoLE). An LLO has certain rights arising from law like the right to become the exclusive bargaining representative (EBR) of employees in the bargaining unit. EBR or majority status is obtained through ways authorized by law, sometimes referred to as representation disputes.⁹

Before the second step commences, certain "jurisdictional preconditions" must exist. The LLO must not only possess EBR status, it must give proof of such status and send a valid demand to bargain to the employer.¹⁰ Once these preconditions are met, the second step is set in motion and the parties negotiate on proposals and counter-proposals as part of their duty to bargain collectively. This is signified by the reply of the employer to the demand to bargain of the EBR. The duty to bargain collectively means the duty to meet and convene promptly, expeditiously and in good faith for the purpose of negotiating an agreement on wages, hours of work and all other terms and conditions of employment, including proposals for adjusting grievances or questions arising under the agreement.¹¹ A majority of the employees in the bargaining unit must then ratify the CBA, after which the same shall be registered with DoLE. A deadlock in bargaining is a valid ground for a notice of strike or lockout. So is unfair labor practice. The duty to bargain collectively when the preconditions are met applies to single-enterprise bargaining. It does not apply to the new concept of multi-employer bargaining under the amendatory Implementing Rules which is purely voluntary.¹² In multi-employer bargaining, the CBA covers two or more certified or recognized bargaining units in two or more enterprises.¹³

The third step involves the administration or implementation of the CBA, during which grievance handling and voluntary arbitration are crucial.

Grievance handling procedure is the series of steps that parties to a CBA agreed to take for the adjustment of questions arising from the interpretation or implementation of the CBA or the interpretation or enforcement of company personnel policies, including voluntary arbitration as the terminal step. The parties, through arguments and evidence, persuade one another to give in to a position or

⁷ CONST., art. XIII, sec.3.

⁸ LABOR CODE, art. 212.

⁹ LABOR CODE, arts. 234, 242, 256, 257, 258; DoLE Dept. Order No. 40-03, Series of 2003.

¹⁰ Kiok Loy v. NLRC, G.R. No. 54334, January 22, 1986; LABOR CODE, art. 250.

¹¹ LABOR CODE, art. 252.

¹² DoLE Dept. Order No. 40-03, Series of 2003.

¹³ J.P. Sale, *op. cit. supra*, note 1.

agree to a compromise. If the grievance remains unresolved after seven days from submission to the last step in the grievance handling procedure, the same shall be automatically referred to voluntary arbitration. The period of arbitration begins when the act of persuasion has been exhaustively used and no settlement has been reached. The voluntary arbitrator chosen by the parties shall determine the dispute after hearing their evidence and arguments. Both mechanisms are required by law and must be included in every CBA as part of industrial self-governance. (Sale 2005, 2008)

During its lifetime, the CBA shall govern the relations of the parties who are bound to observe and comply with its provisions in good faith as part of their duty to bargain collectively.

Quite recently, a new law on labor relations came into effect – Republic Act 9481 – to strengthen the right to self-organization. Among the major features of the law are the relaxation of requirements on charter registration of union locals or chapters, the eligibility of the unions of rank and file and supervisors in an establishment to join the same national union or federation, and the applicability of the “employer bystander rule” during representation disputes.

The procedure outlined above applies to the private sector. In the public sector, the controlling law is different (Executive Order No. 180) but the process is somewhat similar. The scope of negotiations and the proscription of strikes and similar concerted actions are some of the major differences.

In labor disputes, choice based on preference is possible. But employers and employees “are not entirely free, of course, to consider alone their preferences.”¹⁴ Compliance with rules that match appropriate behavior to situations¹⁵ is also possible. And the institutions and processes cited above can affect outcomes, as indicated by March (1994) in the following figure on learning cycle –

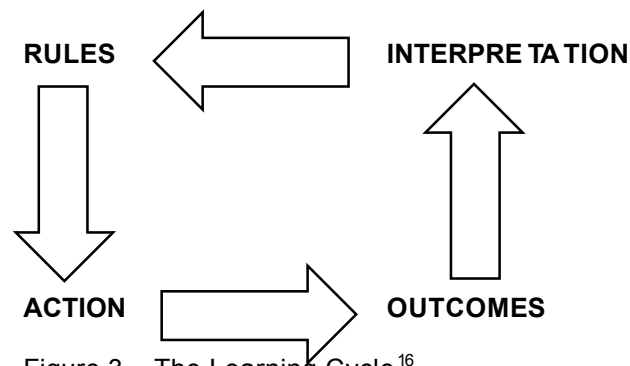


Figure 3 – The Learning Cycle¹⁶

Institutions are “the humanly devised constraints that structure human interaction...made up of formal constraints (rules, laws, constitutions), informal constraints (norms of behavior, conventions, and self imposed codes of conduct), and their enforcement characteristics.”¹⁷ In that sense, institutions (rules) are repositories of history and learning.

¹⁴ Dunlop, John T. (1984). *Dispute Resolution*. USA: Auburn House Publishing Company, p. 96.

¹⁵ J.G. March, *op. cit. supra*, note 4.

¹⁶ *Id.*, at 81-82.

¹⁷ North, Douglass C. (1993). *Economic Performance through Time*. Lecture to the memory of Alfred Nobel, December 9, 1993.html accessed March 29, 2008.

Choice-based and rule-based decision making can also be appreciated through the prisoners' dilemma – a construct involving two prisoners who are interviewed separately. In explaining the prisoners' dilemma, March¹⁸ uses the equation $A3 < A1 < A2 < A4$, where: A = prison term of a certain length; A1 = if both cooperate and remain silent; A2 = if both do not cooperate and both confess; A3 = if one does not cooperate by confessing; and A4 = if one cooperates and remains silent. If both prisoners decide to cooperate and remain silent, they will get a prison length A1, which is less than prison length A2 that would be the result should both decide not to cooperate and to confess instead. If one does not cooperate by confessing while the other cooperates and remains silent, the former would get the shortest prison term of length A3, while the latter would receive the longest at prison term A4. If these are the expectations, the parties are likely to opt for A2 if they decide on the basis of logic of consequence and attempt to minimize the maximum losses ("minimax rule") as in game theory.¹⁹ However, the other alternative is for the parties to opt for A1 and decide on the basis of logic of appropriateness, fulfilling identities by recognizing situations and complying with rules that match appropriate behavior to situations.²⁰ Here, the parties act based on rules (e.g., as a friend, relative, or collaborator) instead of choices, as when one party acts in the same way as the other because of considerations of reputation, trust, retaliation, and learning ("tit-for-tat rule").²¹ (Sale 2008)

But data from DoLE's Bureau of Labor and Employment Statistics are disturbing. In 1994, total existing labor organizations as a percentage of total wage and salary workers in the private sector reached 31%. By 2007, the figure went down to 11%. Moreover, only 12.1% and 11.7% of establishments employing 20 or more workers were with unions and CBAs, respectively, as of June 2006. Thus, the relationship, if any, among labor disputes, trade unions and collective bargaining must be studied, since increasingly parties resort to compulsory conflict resolution mechanisms while trade union density and coverage of collective bargaining agreements continue to decline.

METHODS

Decision making is choice-based if compulsory conflict resolution mechanisms identified in Figure 2, like CA by Labor Arbiter, Appeal to NLRC, VA of rights issues (grievances) under CBA, Assumption of jurisdiction, and Certification to NLRC for CA, are resorted to. Applying the prisoners' dilemma, this means that labor and employer do not cooperate with each other and end up in a suboptimal situation (A2), each choosing that action for which the worst possible payoff was best (minimax, minimize the maximum loss).²² Decision making is rule-based if voluntary and compulsory conflict management modes and voluntary conflict resolution mechanisms in Figure 2, such as Preventive mediation, Conciliation-Mediation, Grievance procedure under CBA, and VA of interests/rights issues (other than grievances), are availed of. This means that labor and employer opt to cooperate (A1), each deciding on the basis of logic of appropriateness – fulfilling identities by recognizing situations and complying with rules that match appropriate behavior to situations.²³ As already stated, A1 and A2 situations would be ascertained by describing, interpreting and analyzing aggregate data on trade union membership,

¹⁸ J.G. March, *op. cit. supra*, note 4 at 121-124.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, at Preface.

CBA coverage and utilization of different modes or mechanisms for handling labor disputes over a five-year period ending in 2008, and determining the relationship among them, if any, which while not necessarily causal may be correlational.²⁴

RESULTS AND DISCUSSION

Arbitration is compulsory if required by law. In Philippine law, compulsory arbitration (CA) is handled by Labor Arbiters of the NLRC. Their decisions are appealable to the NLRC Divisions, that is, the Commission itself. On average, Labor Arbiters receive more than 30,000 cases while the NLRC Divisions receive more than 9,000 appeals, a year. Resort to these compulsory conflict resolution mechanisms has been high. This means that, often, labor and employer decide not to cooperate with each other, ending up in a suboptimal situation (A2). (Table 1)

Table 1 - Compulsory Arbitration²⁵

	2002	2003	2004	2005	2006	2007
Cases received by labor arbiters	32,247	33,474	31,162	29,729	30,543	31,644
Cases received by NLRC Divisions	8,946	9,204	9,385	10,472	10,110	9,069

In stark contrast, voluntary arbitration (VA) cases handled average less than 300 a year. (Table 2)

Table 2 - Voluntary Arbitration²⁶

	2005	2006	2007	June 2008
Total cases handled	240	257	259	187

But from 1988 to June 2008, 92% of VA cases were unresolved grievances arising from the CBA, company personnel policies and wage distortion, suggesting once more that labor and employer rarely cooperate and often end up in a suboptimal situation (A2). CBA deadlocks, unfair labor practices and others (8%) are hardly submitted by agreement to voluntary arbitration. (Table 3)

Table 3 - VA cases by major issues²⁷

²⁴ A correlational relationship means that two things or variables perform in a synchronized manner. For example, when inflation is high, unemployment also tends to be high and when inflation is low, unemployment also tends to be low. The two variables are correlated; but that does not mean that one causes the other. In a positive relationship, high values on one variable are associated with high values on the other and low values on one are associated with low values on the other. A negative or inverse relationship implies that high values on one variable are associated with low values on the other. (Trochim, William. The Research Methods Knowledge Base 2e. <http://www.atomicpublishing.com>.) See also Sale, Jonathan P. (2008). Labor Market Institutions and Political Development in the Philippines: Trends, Patterns and Directions. TUCP Professorial Chair Lecture. July 2008. UP SOLAIR Auditorium.

²⁵ Velasco, Perlita. (2008). Labor Arbitration: Current Constraints, Issues and Opportunities. Presentation at Symposium on Current Trends and Developments in Dispute Prevention, Settlement and Resolution in the Philippines, 20 September 2008, UP SOLAIR Auditorium.

²⁶ Ubaldo, Reynaldo. (2008). Voluntary Modes of Dispute Prevention and Settlement. Presentation at Symposium on Current Trends and Developments in Dispute Prevention, Settlement and Resolution in the Philippines, 20 September 2008, UP SOLAIR Auditorium.

²⁷ Ibid.

Issues	1988 – June 2008	Percentage
CBA interpretation or implementation	1,374	34%
Company personnel policy interpretation or implementation	1,935	48%
Wage distortion issues	413	10%
CBA deadlock issues	102	3%
Unfair labor practices	95	2%
Others	111	3%
TOTAL	4,030	100%

Conciliation and mediation are undertaken whenever notices of strike or lockout or requests for preventive mediation are filed with the National Conciliation and Mediation Board (NCMB). The conciliator, by cooling tempers, aids the parties in reaching an agreement. On the other hand, the mediator studies the position of each side and makes a proposal but does not render an award or decision. (Sale 2005, 2008) Actual strikes or lockouts usually occur when parties fail to reach an agreement on disputes not affecting national interest. These mechanisms are availed of by unions and/or unionized establishments. Notices of strikes/lockouts, preventive mediation cases and actual strikes/lockouts are not only small (compared to compulsory arbitration). They are diminishing as well. (Table 4)

Table 4 - Conciliation-Mediation²⁸

	2004	2005	2006	2007	August 2008
Notices of Strikes/Lockouts	558	465	353	340	260
Preventive Mediation	671	699	569	507	365
Actual Strikes/Lockouts	25	26	12	6	5

Philippine law requires the State to intervene in labor disputes whenever the national interest is affected. Such intervention takes the form of either assumption of jurisdiction (AJ) by the Secretary, which means the Secretary shall hear and decide the case, or certification of the dispute to the NLRC for compulsory arbitration (CCA), which means referral of the case to the Commission for hearing and decision by a Division. In either case, actual strikes and/or lockouts and acts of exacerbation are restrained and prohibited. AJ and CCA cases are also few and decreasing. (Table 5)

Table 5 - Assumption of jurisdiction/Certification for compulsory arbitration²⁹

	2003	2004	2005	2006	2007
AJ	45	42	26	17	26
CCA	28	28	27	29	17

The numbers and figures discussed above are influenced by the data that follow. Unions registered, members of newly registered unions, CBAs registered, and workers covered by new CBAs are dwindling. (Tables 6 and 7)

²⁸ Ibid.

²⁹ Lagman, Romeo. (2008). State Intervention in Labor Relations: Focus on National Interest Cases and Enforcement. Presentation at Symposium on Current Trends and Developments in Dispute Prevention, Settlement and Resolution in the Philippines, 20 September 2008, UP SOLAIR Auditorium.

Table 6 - Labor organizations/Unions³⁰

	2004	2005	2006	2007	2008
Unions registered	777	492	371	260	279
Membership of newly registered Unions	53,857	45,032	31,777	24,079	22,248

Table 7 - Collective bargaining agreements³¹

	2004	2005	2006	2007	2008
CBAs registered	399	459	536	318	307
Workers covered by new CBAs	63,529	82,925	60,790	44,375	55,290

Based on scatter plots of data in Tables 6 and 7, the reduction rates of unions registered and membership of newly registered unions are more rapid and steep than those of CBAs registered and workers covered by new CBAs. But the number of unions registered tends to meet that of CBAs registered at certain times. On the other hand, the number of workers covered by new CBAs tends to be higher than membership in newly registered unions, implying that CBAs cover non-members of unions. But overall, unions and CBAs are decreasing, which indicate that conflict management modes and A1 situations are becoming fewer. (Figures 4 and 5)

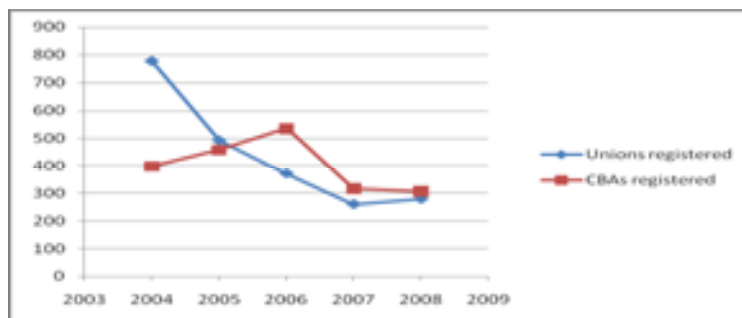


Figure 4 – Unions and CBAs registered

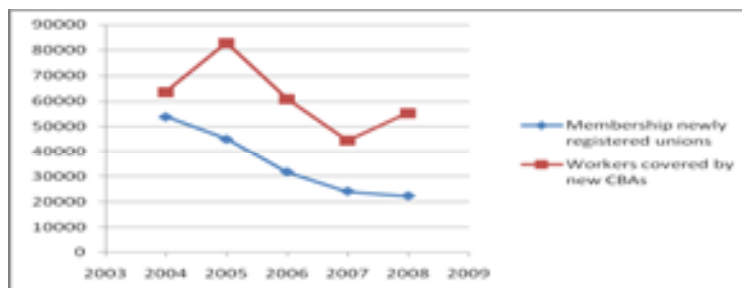


Figure 5 – Union membership and CBA coverage

On the other hand, scatter plots of data in Tables 1 to 5 disclose the (i) negative or inverse relationship between utilization of compulsory conflict resolution mechanisms and number of unions and CBAs, and (ii) positive relationship between use of

³⁰ Current Labor Statistics. (April 2009 Issue). www.bles.dole.gov.ph accessed April 27, 2009.

³¹ Ibid.

voluntary and compulsory conflict management modes and number of unions and CBAs (Figures 6 and 7)

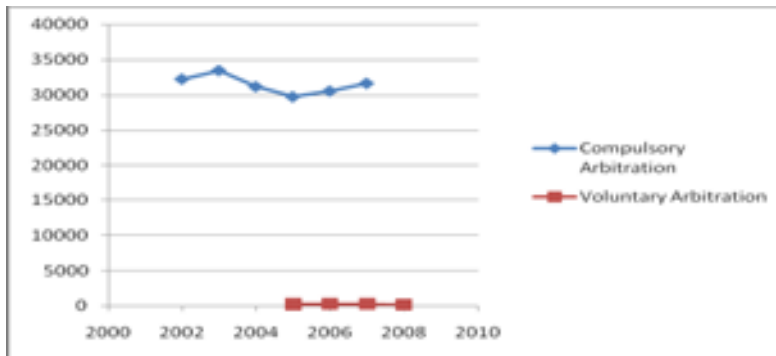


Figure 6 – Compulsory and voluntary arbitration

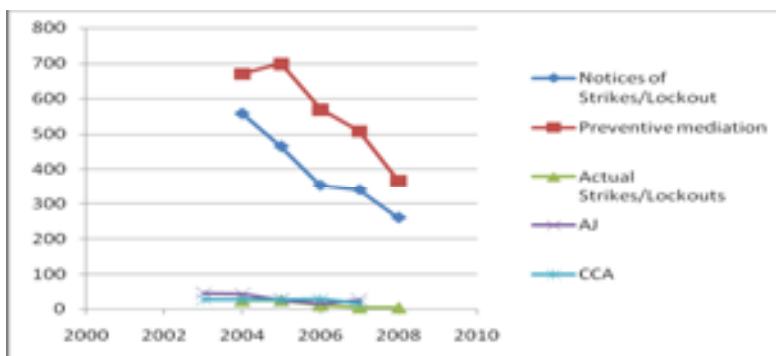


Figure 7 – Conciliation-mediation, AJ and CCA

CONCLUSIONS

In labor disputes, decision making is more choice-based (A2) than rule-based (A1). Disputants try to minimize maximum losses via competitive tactics (A2). It is doubtful if the objectives of public policy – speedy disposition of cases and preferential use of voluntary modes in settling disputes – are being achieved. This trend is influenced by the decrease in trade union density and coverage of CBAs. There is a negative or inverse relationship between use of compulsory conflict resolution mechanisms (high) and number of unions and CBAs (low). To enhance cooperative behavior and reduce conflict, unions and CBAs as institutions must be encouraged or required as there is a positive relationship between use of voluntary and compulsory conflict management modes (low) and number of unions and CBAs (low). Institutions (rules) that encourage or require formation of unions and negotiation of CBAs would enhance rule-based decision making (A1). Such rules would help labor and employer decide to use consent-based and cooperative mechanisms like preventive mediation, conciliation-mediation and grievance machinery, which are accessible in establishments with unions and CBAs. Membership in a trade union and coverage under a CBA would influence decision making, i.e., decision to use conflict-handling mechanisms based on consent and cooperation (A1). For instance, public policy reform that requires negotiation of CBAs in multi-employer situations, where direct hires (regular/non-regular staff) work side by side with indirect hires (contractor/agency-hired workers) and the “jurisdictional preconditions” are met, would widen opportunities for appropriate decision behavior.

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