

ADVANCES IN INDUSTRIAL
AND LABOR RELATIONS

ADVANCES IN INDUSTRIAL AND LABOR RELATIONS

Series Editors: David Lewin and Paul J. Gollan

Recent Volumes:

- Volumes 1–2: Advances in Industrial and Labor Relations – Series Editor: David B. Lipsky
- Volumes 3–4: Advances in Industrial and Labor Relations – Series Editors: David B. Lipsky and David Lewin
- Volumes 5–6: Advances in Industrial and Labor Relations – Series Editors: David B. Lipsky, David Lewin and Donna Sockell
- Volumes 7–16: Advances in Industrial and Labor Relations – Series Editors: David Lewin and Bruce E. Kaufman
- Volume 17: Advances in Industrial and Labor Relations – Series Editors: David Lewin, Bruce E. Kaufman and Paul J. Gollan
- Volume 18: Advances in Industrial and Labor Relations – Volume Editors: David Lewin, Bruce E. Kaufman and Paul J. Gollan
- Volume 19: Rethinking Misbehavior and Resistance in Organizations – Volume Editors: Alison Barnes and Lucy Taksa
- Volume 20: Advances in Industrial and Labor Relations – Volume Editors: David Lewin and Paul J. Gollan
- Volume 21: Advances in Industrial and Labor Relations – Volume Editors: David Lewin and Paul J. Gollan
- Volume 22: Managing and Resolving Workplace Conflict – Volume Editors: David B. Lipsky, Ariel C. Avgar and J. Ryan Lamare
- Volume 23: Employee Voice in Emerging Economies – Volume Editors: Amanda Pyman, Paul J. Gollan, Adrian Wilkinson, Senia Kalfa and Cathy Xu
- Volume 24: Advances in Industrial and Labor Relations, 2017: Shifts in Workplace Voice, Justice, Negotiation and Conflict Resolution in Contemporary Workplaces – Volume Editors: David Lewin and Paul J. Gollan

ADVANCES IN INDUSTRIAL AND LABOR RELATIONS
VOLUME 25

ADVANCES IN INDUSTRIAL AND LABOR RELATIONS

EDITED BY

DAVID LEWIN

University of California Los Angeles, USA

PAUL J. GOLLAN

University of Wollongong, Australia



United Kingdom – North America – Japan
India – Malaysia – China

Emerald Publishing Limited
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2020

Copyright © 2020 Emerald Publishing Limited

Reprints and permissions service

Contact: permissions@emeraldinsight.com

No part of this book may be reproduced, stored in a retrieval system, transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without either the prior written permission of the publisher or a licence permitting restricted copying issued in the UK by The Copyright Licensing Agency and in the USA by The Copyright Clearance Center. Any opinions expressed in the chapters are those of the authors. Whilst Emerald makes every effort to ensure the quality and accuracy of its content, Emerald makes no representation implied or otherwise, as to the chapters' suitability and application and disclaims any warranties, express or implied, to their use.

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

ISBN: 978-1-83909-192-6 (Print)

ISBN: 978-1-83909-191-9 (Online)

ISBN: 978-1-83909-193-3 (Epub)

ISSN: 0742-6186 (Series)



ISOQAR certified
Management System,
awarded to Emerald
for adherence to
Environmental
standard
ISO 14001:2004.

Certificate Number 1985
ISO 14001



INVESTOR IN PEOPLE

CONTENTS

<i>List of Contributors</i>	vii
Introduction <i>David Lewin and Paul J. Gollan</i>	1
Complaining to the Ombudsman: Alternative Dispute Resolution in Brazilian Organizations <i>Paulo Marzionna</i>	7
Labor Standards Violations and Employment Arbitration: An Empirical Assessment <i>Michael D. Maffie</i>	39
Irreconcilable Differences – Union Organizing in the Informal Sector in Ghana <i>Yvonne A. Lamptey and Yaw A. Debrah</i>	61
The Effects of Ownership on Labor Standards in China: A Comparison of Foreign Multinationals and Indigenous Firms <i>Weihao Li, Ying Chen and J. Ryan Lamare</i>	91
Occupational Safety in China’s Coal Mining Industry: The Roles of Regulations, Human Resources, and Labor Relations <i>Yujie Cai</i>	119
Work and Social Protection in the Platform Economy in Europe <i>Simon Joyce, Mark Stuart, Chris Forde and Danat Valizade</i>	153
Workforce Training for Older Workers: Toward a Better Understanding of Older Worker Needs after the Great Recession <i>Ting Zhang</i>	185

New Evidence from the Stock Market on Right-to-work Laws <i>Steven E. Abraham and Paula B. Voos</i>	219
<i>Index</i>	247

LIST OF CONTRIBUTORS

<i>Steven E. Abraham</i>	State University of New York (SUNY) at Oswego, USA
<i>Yujie Cai</i>	Swansea University, UK
<i>Ying Chen</i>	University of Rhode Island, USA
<i>Yaw A. Debrah</i>	Swansea University, UK
<i>Chris Forde</i>	University of Leeds, UK
<i>Paul J. Gollan</i>	University of Wollongong, Australia
<i>Simon Joyce</i>	University of Leeds, UK
<i>J. Ryan Lamare</i>	University of Illinois at Urbana-Champaign, USA
<i>Yvonne A. Lamptey</i>	University of Ghana Business School, Ghana
<i>David Lewin</i>	University of California at Los Angeles (UCLA), USA
<i>Weihao Li</i>	University of Illinois at Urbana-Champaign, USA
<i>Michael D. Maffie</i>	Cornell University, USA
<i>Paulo Marzionna</i>	Fundação Getulio Vargas (FGV-EAESP), Brazil
<i>Mark Stuart</i>	University of Leeds, UK
<i>Danat Valizade</i>	University of Leeds, UK
<i>Paula B. Voos</i>	Rutgers University, USA
<i>Ting Zhang</i>	University of Baltimore, USA

This page intentionally left blank

INTRODUCTION

David Lewin and Paul J. Gollan

Volume 25 of *Advances in Industrial and Labor Relations (AILR)* contains eight papers featuring research on several key aspects of employment relations, including dispute resolution through ombud and arbitration arrangements, union organizing in an informal economy, domestic and foreign firm labor market competition, occupational safety in coal mining, work and social protections in a platform economy, workforce training for older workers, and right-to-work law effects on the stock market. The research settings and data sources for these studies are geographically diverse, ranging from Brazil, Ghana, and China to Europe and the United States (US). This global diversity is consistent with previous AILR volumes, as is the variety of quantitative and qualitative research methods used by the authors. This includes such primary research methods as case studies, survey, interviews and historiography, longitudinal and cross-sectional research designs, and theory building.

In the paper titled “Complaining to the Ombudsman: Alternative Dispute Resolution in Brazilian Organizations,” Paulo Marzionna uses three case studies to explain why the ombud method of employment dispute resolution is increasingly used in Brazil, in contrast to the mediation and arbitrations methods that predominate in the United States and certain other nations. After briefly reviewing the extant literature on alternative dispute resolution (ADR), Marzionna explains the particular characteristics of Brazil’s highly regulated industrial relations system that mitigate the use of mediation and arbitration. Chief among these characteristics is the use of Labor Courts, which have very high caseloads that leave most cases unresolved. Consequently, employers and employees in Brazil frequently complain about the slow, costly, ineffective resolution of employment disputes under the labor court arrangement. These complaints, in turn, have led various Brazilian companies to adopt an ombud method of employment dispute resolution or, in other words, an ADR method rarely used in other nations. Marzionna focuses on three of these companies, namely, IRCO, FINANCO, and COSMETICO, which are all Brazilian owned (i.e., they are not units of

multinational companies (MNCs)). IRCO established its Ombudsman Office in 2005, FINANCO established its Ombudsman Office in 2006, and COSMETICO established its Ombudsman Office in 2007. Marzionna's research, which was conducted in 2014, indicates that these ombud arrangements are in fact widely used by each company's employees, such usage has reduced the volume of employment disputes/grievances brought to the Labor Courts, and the ombud arrangement is not used by employers to ward off unionization or reduce the role of union representation – indeed to the contrary. Based on these findings, Marzionna argues for the development of more refined ADR theory while also cautioning against overgeneralization from these three case studies.

The paper titled “Labor Standards Violations and Employment Arbitration: An Empirical Assessment,” by Michael D. Maffie, contrasts markedly with the Marzionna paper in that Maffie focuses on the use of mandatory arbitration to settle employment disputes among the US employers and employees and does so using a large-scale empirical methodology. Nonetheless, this paper also deals with ADR. By way of background, Maffie briefly reviews recent decisions of the US Supreme Court favoring arbitration over the litigation of employee class action wage claims under the Fair Labor Standards Act (FLSA). These decisions have led to much scholarly speculation and opinion that under arbitration such wage claims may be economically unrecoverable, in part because employees will abandon their wage claims knowing that they will be decided in a (one-sided) arbitration process. Empirically, Maffie's quantitative analysis of the arbitration policies of 368 Fortune 1000 companies indicates that these companies have fewer wage violation claims and that those violations merit lower back pay (i.e., wages) compared to companies without such policies – that is, companies that do not use arbitration to resolve employee wage claims under the FLSA. Based on these findings, Maffie also draws important conclusions about employment relations conflict theory, namely, that the systems view of such conflict advanced by several scholars predominates over the cost containment view posited by other scholars. In other words, Maffie's study provides evidence that arbitration may be able to increase labor standard compliance, perhaps even more so than waiting for a plaintiff to initiate a claim via litigation.

In the paper titled “Irreconcilable Differences – Union Organizing in the Informal Sector in Ghana,” Yvonne A. Lamptey and Yaw A. Debrah explore declining trade union membership in the public sector of a country that has received little attention in the industrial relations literature. As with other sub-Saharan African nations, Ghana has experienced both a secular and contemporary decline in public sector employment due to mass redundancies and hiring freezes. In Ghana, the Structural Adjustment Programs first adopted during the 1980s pushed millions of people out of formal employment into the informal economy, and this trend continues such that, today, about 90% of Ghanaian workers are employed in the informal economy. As a result, the Ghana Trades Union Congress (GTUC) appears to have lost more than half of its membership. Consequently, the GTUC has been engaged in various efforts to organize informal economy workers; it is these efforts that are the focus of Lamptey's and

Debrah's analysis. In doing so, they address several key questions, such as "how do trade unions organize informal sector workers?," "are these efforts strategically well-suited to organizing informal sector workers?," and "to what extent have these efforts been successful?" Methodologically, Lamptley and Debrah interviewed purposive samples of informal sector workers as well as union and association officials ($n = 91$), stratified by specific region within Accra, the Capital city. They conclude that although the GTUC revised its constitution to embrace informal economy workers, it has actually organized very few such workers due to its failure to adjust its organizational structure, its reliance on organizing methods traditionally aimed at formal sector workers, and the limited resources, such as for paying union dues, of informal sector workers.

In the paper titled "The Effects of Ownership on Labor Standards in China: A Comparison of Foreign Multinationals and Indigenous Firms" Weihao Li, Ying Chen and J. Ryan Lamare seek to advance our understanding of the effects of firm ownership on labor standards, specifically in China. In doing so, they invoke neo-institutional theory and imprinting theory to develop hypotheses about the effects of ownership type on three specific labor standards indicators, namely, salaries, pension coverage, and working hours. The ownership types featured in the Li and Chen study are foreign MNCs, state-owned enterprises (SOEs), affiliate businesses of Hong Kong, Macau, and Taiwan (HMTs), and domestic private enterprises (DPEs). Empirically, the authors test their hypotheses using data obtained from a national survey of 1,268 firms located in China. The findings from their regression analyses indicate that the MNCs provide relatively higher wages than the other ownership types. However, the findings also indicate that MNCs "underperform" compared to SOEs with respect to social insurance, and that DPEs underperform compared to MNCs on these labor standards. Furthermore, the findings indicate that HMTs' performance with respect to the three labor standards are mid-way between those of the MNCs and the DPEs. Consequently, the authors conclude that the main effect of MNCs on labor standards is not always favorable to employees, and that a more nuanced theoretical and empirical treatment of these effects is warranted.

In the paper titled "Occupational Safety in China's Coal Mining Industry: The Roles of Regulations, Human Resources and Labor Relations," Yujie Cai presents one of the first empirical studies of safety in Chinese coal mines, using a paired-comparison case study approach. His research is especially notable in light of the safety record of Chinese coal mines, which is one of the worst in the world. Cai begins his analysis by positing a slightly modified version of industrial relations system theory in which management organizations, workers, union organizations, and government agencies are the key actors. However, he goes on to incorporate contemporary human resource management theory into this framework, and distinguishes a cost control-oriented HR system from a safety-oriented HR system. Cai then proceeds to test this framework using data obtained from two Chinese coal mines, labeled Mine Z and Mine L, both of which are SOEs. Methodologically, he used fieldwork, semi-structured interviews, and archival analysis to generate the data for this study in which safety performance served as the dependent variable. The findings from this study

indicate that the safety-oriented HR system in Mine Z, which permeated its recruitment and selection, training and development, worker compensation and labor relations practices, outperformed the cost containment-oriented HR system of Mine L in terms of comparative safety records. Furthermore, Mine L's cost-containment practices, in particular its used of contracted (i.e., outsourced) employment, had a negative effect of mine safety. Cai uses these findings to offer recommendations to management, trade unions, and government agencies for improving mine safety.

In the paper titled "Work and Social Protection in the Platform Economy in Europe," Simon Joyce, Mark Stuart, Chris Forde, and Danat Valizade systematically explore several aspects of platform work, which they define as paid work mediated by online platforms. Extant scholarly research on platform work emphasizes the deleterious working conditions of platform workers compared to workers in standard employment relationships, and focuses on the question of how to regulate platform work. Because that research is largely speculative and in its infancy, Joyce and his colleagues seek to locate the dynamics of platform work within the broader context of labor market restructuring and the actual experiences of platform workers. They do so with specific reference to the European Union (EU). The authors' empirical work proceeds at two levels. First, they analyze various secondary sources and find that non-standard forms of employment, such as part-time and temporary employment, precarious employment (i.e., employment in jobs for less than three months duration), and self-employment now account for a larger share of total employment in the EU than the standard employment relationship. Second, the authors analyze primary data obtained from a unique survey of platform workers that was conducted across four "clickwork" type platforms, namely, Amazon Medical Turk, Clickworker, CrowdFlower, and Microworkers, and that yielded a usable sample of 1,232 respondents. Main findings from multivariate analyses of these survey data indicate that workers engaged only in platform work were motivated to do so not by the quality of the work or by social protections obtained from such work but, rather, because they had no other viable alternative or could work only from home or had experienced long-term unemployment. The authors report additional findings for platform workers who also hold other full-time or part-time jobs. Hence, Joyce, Stuart, Forde, and Valizade show that platform work is not simply of one type and that workers engaged in platform work are differentially motivated to do so by their personal and labor market circumstances.

In the paper titled "Workforce Training for Older Workers: Toward a Better Understanding of Older Worker Needs after the Great Recession," Ting Zhang analyzes Workforce Investment Act Standardized Record Data for the 2013–2015 period as well as the US Bureau of Labor Statistics unemployment data to empirically examine the effects of unemployment and training and related services provided under the Workforce Investment Act on older workers' employment following a period of unemployment or retirement from a previous job. In conceptually framing her research on this topic, Zhang carefully reviews the extant literature on the difficulties faced by older workers as they age –

difficulties that include the tendency of employers to push out/shed relatively expensive older workers, especially during economic downturns, but that also include skill obsolescence, slowness to respond to technological change, and unfamiliarity with job hunting techniques, especially in relation to younger workers. Among the main findings from the author's multivariate analyses is that participation in on-the-job training and occupational licensure are significantly positively associated with the subsequent employment of older workers. Participation in mechanical, transportation, and military skills training in particular was also significantly positively associated with older workers' subsequent employment. On a disaggregated basis, these statistical relationships are less positive and more often insignificant for older workers with disabilities or who receive public assistance payments or who are homeless. Zhang concludes her paper by offering several policy prescriptions for enhancing the positive effects of training on older workers, and also offers recommendation for enhancing the relevance of training methods for older workers.

In the final paper in this volume, titled "New Evidence from the Stock Market on Right-to-work Laws," Steven Abraham and Paula B. Voos present their findings from an event study of the effects of right-to-work (RTW) laws on shareholder wealth of firms likely to have been affected by those laws. In particular, actual shareholder returns with the presence of an RTW law relative to the expected shareholder returns absent such a law given the companies' risk profiles were quantitatively estimated on critical dates associated with passage of each law and court cases upholding those laws. For this purpose, the authors concentrate on the enactment of RTW laws in four US states for which the data were available, namely, Oklahoma, Indiana, Michigan, and Wisconsin. These states' RTW laws were enacted in 2001, 2012, 2012, and 2015, respectively. In developing the conceptual framework for this study, the authors provide a succinct comprehensive review of the literature on various effects of RTW laws, such as on unionization, employee wages, and employment, and of the literature dealing with the advantages and limitations of event studies. Abraham and Voos then specify and test the basic equation used for their multivariate analysis in which cumulative abnormal return (CAR) during three-day, five-day, and seven-day time periods serve as the dependent variables, RTW law enactment serves as the main independent variable, and several other factors serve as control variables. Empirically, the authors overall conclusion is that the enactment of RTW laws statistically significantly increases shareholder wealth as measured by CAR. On a state-by-state basis, this finding holds for Oklahoma, Indiana, and Wisconsin, but not for Michigan. Abraham and Voos use several other versions of their basic estimating equation in an attempt to more fully understand the main finding for Michigan, and conclude that other factors may be at work in this regard that are not captured by their analysis. Nonetheless, on the whole, this intriguing paper clearly supports the conclusion that RTW laws enhance shareholder wealth.

This page intentionally left blank

COMPLAINING TO THE OMBUDSMAN: ALTERNATIVE DISPUTE RESOLUTION IN BRAZILIAN ORGANIZATIONS

Paulo Marzionna

ABSTRACT

This chapter discusses the adoption by Brazilian companies of alternative dispute resolution (ADR) methods for individual workplace conflicts. Brazil is an interesting case to study ADR due to its high level of institutionalized individual workplace conflicts and its extensive workplace statutory regulation. Investigating the case of three Brazilian private companies of different sectors and sizes, I found that Brazilian companies are developing their own ADR practices, focusing on ombudsman offices (OOs), instead of using the mediation and arbitration methods that are predominant in the United States. I argue that the adoption of the ombudsman can be explained by institutional and workplace level factors, which include the characteristics of Brazilian industrial relations system, each company's human resources (HRs) strategy, and the relationship between companies and unions. Furthermore, I discuss how the usage rate of the OOs might vary according to the OO's internal structure and its functioning rules. The cases provide important insights for scholars interested in ADR in general and in Brazilian industrial relations system, as well as union leaders, HR managers, and other practitioners dealing with workplace conflicts globally.

Keywords: Alternative dispute resolution; ombudsman; workplace conflicts; ADR; conflict management; Brazilian industrial relations

INTRODUCTION

Although the topic of alternative dispute resolution (ADR) methods for workplace conflicts has considerably gained importance in the past decades, the debate among both researchers and policy makers tends to focus on methods such as arbitration and mediation. However, in environments where there are institutional barriers to those methods, organizations are also seeking alternatives to traditional dispute resolution methods for workplace conflicts. In this scenario, methods such as the ombudsman office (OO) become an important alternative. Therefore, understanding how OOs operate and the factors that lead to their successful adoption by organizations becomes of utmost importance to ADR research.

This multiple-case study chapter has several goals. First and foremost, it has an exploratory element as it identifies how Brazilian companies are using ADR to solve individual workplace conflicts outside courts. In doing so, I analyze how ADR theories developed under the US environment hold up in a different national context, exploring the roles of institutions in the development of ADR. But this chapter goes beyond simply describing the ADR channels developed in each case studied. In analyzing each case, I try to start answering why Ombudsman prevailed over other forms of dispute resolution in those organizations, and how characteristics of each OO might impact their usage level and the success of the channel implementation. The goal is not to give definitive answers to those last questions, but to set the basis for future research on the field and region.

The research was conducted in 2014 in three Brazilian organizations which were adopting OOs to deal with their workplace conflicts under an institutional context that challenged the adoption of other ADR methods. Unless stated otherwise, all information described about each case corresponds to the scenario in 2014.

The analysis of these cases provides interesting insights for ADR research in other countries and settings and reinforces the importance of institutions in shaping the development of ADR. In doing so, it provides important information about the possibilities of the usage of ombudsman in the workplace, even for countries where arbitration and mediation might be more easily adopted.

ADR

Research in the United States has identified that ADR adoption for workplace conflicts by American companies is motivated by three factors: (1) litigation avoidance, (2) union avoidance, and (3) alignment with human resource practices, especially those identified with high involvement work systems (HIWS)¹ (Colvin, 2003a, 2003b, 2013; Lipsky, Seeber, & Fincher, 2003). The existing research suggests that the transformation of dispute resolution methods in the workplace is not a phenomenon exclusive to the United States, and that local context plays an important role in determining the development of dispute resolution systems