

職業工會適用 我國罷工投票規範之研究^{*} ——德國法制之啟示

邱羽凡^{**}

摘 要

我國職業工會自 2011 年新勞動三法實施後，逐步朝向自主化與多元化的發展，並發展出不同於以往勞健保職業工會模式的工運路線，亦有進行罷工之事例出現，此均讓職業工會適用罷工規範的相關問題開始受到矚目。勞資爭議處理法第 54 條第一項規定：「工會非經會員以直接、無記名投票且經全體過半數同意，不得宣告罷工及設置糾察線。」此一規範限制工會於宣告罷工前，應先經過罷工投票且取得全體工會會員過半數同意。由於職業工會具有「跨廠場、跨企業」以及「結合相關職業技能之勞工」二大特點，職業

DOI：10.3966/252302982019030004004

^{*} 本文為科技部研究計畫「職業工會罷工權之行使與限制——比較法之觀點」（計畫編號：105-2410-H-009-063）之研究成果之一，本文之初稿曾發表於勞動視野協會與新竹縣產業總工會於 2018 年 2 月 3 日主辦之「從近期重大勞資爭議事件檢討我國罷工法制研討會」，感謝與談人劉冠廷律師、張詠善律師與黃慧甄理事提供之與談意見，作者同時衷心感謝二位匿名審稿人之寶貴修改意見，使本文更加完整，惟一切文責仍由作者自負。另感謝吳典融、陳婕瑜、陳奕安、林帝辰與宋庭語之研究協助。

^{**} 國立交通大學科技法律學院助理教授；德國哥廷根大學法學博士。

投稿日：2018 年 5 月 23 日；採用日：2018 年 9 月 13 日

工會應如何在罷工投票中適用「全體過半數」之規範，迭生爭論。本文分析德國法上相關討論，釐清罷工投票程序的目的在於實現工會民主，故「全體會員過半數」應以爭議範圍中的工會會員為全體會員的範圍，而違反罷工投票規範應屬工會違反對於會員的義務，不應導出罷工違法以及讓雇主取得對於工會或勞工請求損害賠償之權利。現行勞資爭議處理法第54條第一項將罷工投票規範置於勞資爭議處理法的爭議行為章之中，實有導引讓人誤解罷工投票之組織（工會）內部效力要件為外部效力之問題，故立法上應將罷工投票事項回歸為工會依章程自主所保障的權限，以落實工會內部的直接民主，而不宜再將規範工會與其會員間的事項與勞資爭議處理法中的罷工合法要件併列，造成不當限制工會與勞工之罷工權的結果。

關鍵詞：職業工會、爭議權、罷工、罷工投票、勞資爭議處理法
第54條第一項

Cite as: 4 NCTU L. REV., March 2019, at 119.

The Study on the Application of the Regulation of Strike Ballot in Craft Unions and the Implication of German Labor Law

Yu-Fan Chiu *

Abstract

Since the latest collective labor laws came into effect in 2011, craft unions which used to take care of the labor insurance and health insurance in the past, now become more independent and diverse, and even lead strikes. As a result, this phenomenon raises issues about how the procedural requirement for a strike to be applied on craft unions. Article 54, section 1 of the Act for Settlement of Labor-Management Disputes provides “A craft union shall not call a strike and set up a picketing line unless a strike has been approved by more than half of the members in total via direct and secret balloting,” which means a craft union should hold a poll, and get more than half of members’ approval before calling for a strike. However, professional unions are consist of members whose occupations are same, but from different enterprises. Therefore, how should “half of members’ approval” from a professional union be counted? Through analyzing German laws, this paper

* Assistant Professor, School of Law, National Chiao Tung University; Dr. jur., Göttingen University, Germany.

clarifies that the purpose of voting procedures is fulfilling “democracy in craft unions.” Therefore, the base number of “over half of members’ approval” should only include the number of members concerning the instant dispute. In addition, defying such procedure only resulted when a union violates its obligation toward members. Employers cannot claim for any compensation resulting violation of the procedural requirement of a strike. Due to placing Article 54, section 1 of the Act for Settlement of Labor-Management Disputes in the chapter of the Industrial Action, people often misunderstand the voting procedure as an issue of external rather than internal effect. Hence, the Act for Settlement of Labor-Management Disputes should not regulate the relationship of a craft union and its members, as it will unreasonably limit the right to strike of a craft union and its members. Article of the craft union should have the full autonomy in regulating the procedure of vote to strike in order to achieve the goal of direct democracy in a craft union.

Keywords: Craft Unions, Right to Dispute, Strike, Strike Ballot, Article 54, Section 1 of the Act for Settlement of Labor-Management Disputes