

## Labour disputes under martial law

Published: 6/03/2015 at 06:00 AM

Newspaper section: [Business](#)

Martial law has been in force in Thailand since last May 20, when it was invoked by the military, which staged a full-scale coup two days later to bring an end to months of street demonstrations and political turmoil. While it certainly has had an effect on political protests, martial law also has ramifications for another form of social protest — labour disputes.

Under Thai labour law, workers are legally entitled to strike and employers allowed to "lock out" employees. Martial law provides the labour minister with the added power to intercede in disputes between workers and management. The minister is authorised to prohibit workers from striking and restrict employers from locking out employees. The minister is also authorised to appoint a third party to resolve disputes.

The minister is permitted to step in when a conflict between workers and management is designated an "unsettled labour dispute" under the Labour Relations Act. For a dispute to reach this stage, the parties must first comply with a series of procedures stated in the Act that encourage a peaceful resolution.

In accordance with the Act, for labour-side complaints, either individual employees or a union must submit a demand to the employer. For employer-side issues, an employer must submit its demand to employees or the labour union. In either case, the parties must begin negotiations within three days of submitting notice of a dispute.

If the parties are able to settle, they must enter into a written agreement signed by their representatives. Within three days of signing the agreement, an employer must display the agreement at the workplace for a period of at least 30 days. The employer must also register the agreement with the Labour Ministry within 15 days from the date of signing.

If the parties do not settle after negotiations or fail to negotiate at all, the labour demand is formally designated a "labour dispute". In this situation, the party that submitted the labour demand must give written notice to a mediator within 24 hours after the lapse of the three-day period or from the time the negotiations failed.

The mediator is then obliged to resolve the dispute within five days. If a settlement is reached, the employer must proceed with the same notice requirements as previously mentioned. If not, the dispute becomes an "unsettled labour dispute".

When the dispute reaches the unsettled phase, the party initiating the labour action must submit a written notice to the opposing party and the mediator at least 24 hours prior to taking action — that is, a strike or lockout.

The parties then have the legal right to either appoint a labour arbitrator to resolve the dispute by binding arbitration (if agreed by both parties), go on strike (in the case of worker-side disputes) or initiate a lockout (for employer-side disputes).

Under martial law, at this stage of the dispute the labour minister has the authority to become involved by either appointing a person to decide the dispute's outcome or simply prohibiting the strike or lockout from occurring. The decision to intervene is solely at the discretion of the minister. Importantly, the minister is not required to give a reason for the interdiction.

Failure to follow the minister's order or a decision made by the minister's appointee is a crime. If a party engages in a strike or lockout in violation of the minister's prohibition, that party can be imprisoned for up to two years and/or fined up to 40,000 baht. Violating an order made by the minister's appointee carries a prison term of up to a year and/or a maximum fine of 20,000 baht.

Pursuant to a Supreme Court precedent case, an appointee's order can be challenged in court. But the challenger faces a high burden to overturn the order. The challenging party must prove the order is in clear violation of the law or in contradiction of the facts and evidence. Failure to prove this will result in a dismissal of the challenge, and the order will stand.

This is not the first time labour disputes have been affected by martial law. When martial law was invoked in the past, the labour minister addressed strikes and lockouts by simultaneously prohibiting them and appointing a party to decide the dispute.

Since martial law took effect last May, the labour minister has not issued any order prohibiting a strike or lockout. This seems to indicate that strikes and lockouts are being allowed to continue as normal. However, the government's approach could change, depending on the individual circumstances of the strike or lockout.