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Industrial Democracy in China

With additional studies on Germany, South-Korea and Vietnam

Rudolf Traub-Merz and Kinglun Ngok (eds.)

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Foreword

Industrial relations in China are undergoing profound changes. These changes were set in motion by reforms which ended centralised control of employment and wage fixing, reintroduced labour markets and made negotiations on labour contracts and wages extremely one-sided. Trade unions, which had no responsibility for collective bargaining under the socialist command economy, are now being challenged under the new dispensation to act as representatives of the workers under market conditions, while continuing to be under the tutelage of the party.

To obtain a better understanding of the direction these reforms are taking, Sun Yat-sen University and the FES co-hosted an international workshop on *Industrial Democracy—Building Harmonious Labour Relations* in April 2010 in Guangzhou. The workshop focussed on ways and means of interest representation of workers—through trade unions, workers' congresses or other means—and debated development trends in China within an international context by comparing them with interest representation in Germany, South-Korea and Vietnam.

Shortly after the workshop, a wave of wage strikes occurred in China. These events showed the limitations of an approach which focuses only on formalised structures of workers' interest representation. For a full picture of the development dynamics of industrial relations, informal workers' activism, such as irregular industrial action, must also be examined. The editors therefore decided to not restrict this reader to presentations held at the workshop but in addition invited other writers to capture more aspects of industrial relations, including recent industrial actions in China.

The Institute for Social Policy, Sun Yat-sen University and the Friedrich-Ebert-Stiftung would like to thank the authors involved in this

publication for their valuable contributions.

No bilingual book is possible without translators. Mrs. Wu Xiaozhen translated the Chinese contributions into English, while Professor Zheng Chunrong translated the English-language articles into Chinese. James Patterson copyedited all the English texts for publication. We owe them our thanks for their professional work.

We hope that this publication will be of interest.

Shanghai/Guangzhou, June 2011

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Introduction

Rudolf Traub-Merz

This book gathers together a number of contributions^① on the topic of industrial democracy.^②

The main focus of analysis is the representation of workers' interests, concentrating on industrial democracy in China. Since systems tend not to reveal their strengths and weaknesses of their own accord but also require international comparison, important dimensions of the representation of workers' interests in three other countries are also addressed. Vietnam is comparable to China in its transformation from a formerly socialist country into a market economic structure, while Germany and South Korea are two market economies with different approaches to labour relations.

The book addresses three fundamental questions: (i) How are trade unions representing workers' interests in enterprises? (ii) What other forms of institutionally supported enterprise-level interest representation are there and how do they work? (iii) In companies without either trade unions or other institutional provisions for workers' interest representation is corporate social responsibility (CSR) as a voluntary management strategy capable of taking workers' interests into account?

① Predominantly, they are lectures given at a conference organised by Sun-yat Sen University and the Friedrich-Ebert-Stiftung in April 2010 in Guanzhou, entitled *Industrial Democracy: Building Harmonious Labour Relations*. These are complemented by a number of specially commissioned contributions.

② The concept of industrial democracy goes back to the work of Sidney and Beatrice Webb (*Industrial Democracy* 1897).

The point of departure of any critical approach to the analysis of labour relations in capitalist market economies must be the systemic asymmetry of power between employers and employees. Wage workers who have nothing to bargain with other than their labour power can stand up to the power of the employers' side only by means of collective action. In these terms, trade unions are organisations for the formation of a counterforce whose aim is to limit the competition of workers for jobs.

The principal task of trade unions is clear-cut in these terms: they attempt to dissolve or limit competition between workers in order to prevent a 'race to the bottom' in the individual pursuit of employment. Trade unions can be regarded as successful, when they manage to establish a market cartel (for their members) to negotiate for better working/employment conditions and higher wages.

The ways in which trade unions encounter employers in collective negotiations differ considerably from country to country. Germany is the main representative of so-called branch agreements (see Däubler in this volume). Industry-wide trade unions with a representative monopoly for individual branches seek a uniform wage level with the widest possible coverage. The trade union has a clear motto: companies should not conduct (downward) wage competition but instead seek to improve their market edge with better management and technology. However, even in Germany branch coverage has long been incomplete and a growing number of companies do not (or no longer) belong to employers' organisations and thus are not bound by the branch collective agreement. If the trade unions are unable to get these companies (whether they have relinquished employer association membership or were never members in the first place) to fall in line with the branch wage level, wage competition can spread and the wage level will fall.

Enterprise trade unions are a less effective way of preventing wage competition. They are usually able to establish a uniform wage norm within a company, but they frequently stoke up wage competition between companies and may conclude an agreement with the management about wage cuts (concession bargaining) which gives their own company an advantage over its competition.

In South Korea, trade unions have been trying for a number of years to replace enterprise agreements with branch agreements, so far with only

partial success. Now the enterprise-oriented trade unions are facing a new form of competition. The principle “one enterprise—one union” is a thing of the past. Although the principle of only one collective agreement per company has been retained rival trade unions can now recruit members in the same company and have a say in wage negotiations in accordance with the size of their membership (see Lee). Whether trade union pluralism strengthens or weakens the workers’ negotiating position remains to be seen.

In socialist economies the antagonism between employers and employees is partly annulled or displaced. When employees are entitled to lifelong employment and employment is linked to basic social provision for children, illness and old age—as in urban China between around 1955 and 1995—labour markets are dissolved. However, distribution conflicts continue to exist in centrally managed economies concerning wage levels and can lead to collective action. Enterprise codetermination and flexible implementation of state wage guidelines are mechanisms for resolving such conflicts consensually.

China and Vietnam left behind a common past of centralised labour allocation when they introduced market economic reforms in the 1990s. Wage formation and also the tasks of the trade unions were also transformed. One of the key debates in the present volume concerns the ways and extent to which the trade unions have been able to resume their function, obsolete under socialism, as bargainers for higher wages and better working conditions and to be recognised by both employers and employees as a legitimate collective bargaining agent (see Chan; Chi; Hui and Chan; Kong; Traub-Merz). It should be noted that this functional reorientation of trade unions towards collective bargaining in both China and Vietnam is taking place without a substantive restructuring of the trade unions’ organisational apparatus and therefore without a redefinition of their linkage with the party-state. Both the ACFTU and the VGCL continue to be mass organisations of the governing Communist Party and act under their instructions.

Can unions organised on the principles of Lenin’s “democratic centralism” do both at the same time: serve the interests of the party-state and bargain for higher wages and better working conditions? The views of the contributors to this volume are divided. There is overwhelming acceptance that most Chinese—and Vietnamese—trade

unions at enterprise level have been captured by the management: they are mere paper unions and have no discernible record of improving working conditions or bargaining for higher wages. Opinions differ, however, concerning the way forward. Some see the closeness of unions to the party-state as beneficial as it provides a platform on which to build a grand alliance of societal interests to improve working conditions (see Jing on the well-known “Yiwu Model” in this volume), while others argue for reconnecting unions with workers through legitimate grassroots elections or by providing space for the organisational autonomy of unions at enterprise level as a precondition of real collective bargaining.

Trade unions are not only partners in collective bargaining, seeking better working and employment conditions in direct negotiations with the employers. They also try to impact on policies and come up against the state and thus also parliament as lobbyists and pressure groups seeking better laws on health and safety and employment protection. They also participate in industry-wide or national tripartite consultations in which employers, trade unions and the state (labour ministry) seek wide agreements on the formation of working and employment conditions. ACFTU notched up an important victory in the amendment of the Labour Code in 2008 (see Ngok). The fulfilment of these tasks depends equally on the trade unions’ organisational and political proximity to the state and the ruling party (see Qiao; Ngok).

In many countries, labour relations are characterised by dualism. Collective bargaining on working/employment conditions and wages is undertaken by trade unions, alongside which employees enjoy enterprise consultation rights or codetermination through different channels (see Bae; Chi; Däubler; Feng). This workplace rights are mainly enshrined in law and binding on all enterprises, or at least for enterprises of a certain size. While negotiating rights for trade unions are oriented primarily towards the distribution of enterprise profits and thus by their very nature exist in a conflictual framework, consultation and codetermination rights are directed towards the running of the company. The idea is to protect workers from unjustified management decision-making, such as lay-offs, encouraging a positive identification with the workplace (and the employer) and enabling workers to engage a wider range of their capabilities in the production process, both for their own and the company’s good. The articulation of rights in the workplace can

be very different, ranging from little more than the right to obtain information from the company management—for example, on upcoming investments—through consultation rights which compel the management to seek the opinion of the workforce before making decisions, to—in some cases—a kind of veto, in the sense that management decisions can be implemented only with the assent of the workers' side. The organisational implementation of such participatory rights, in turn, takes many forms. In some countries they are exercised by trade unions; in many others, they are assigned to a works council, usually elected by the workforce.

Institutional dualism is most pronounced in Germany (see Däubler on Works Councils), where trade unions have no formal role in enterprises. Although they conduct wage negotiations (works councils are not permitted to do this), they have no voice in enterprise codetermination,^① which is reserved for works councils elected by the whole workforce. Trade union influence must be exercised informally through trade union members standing for election in the company. In fact, most works council members are also trade union members, but (informal) trade union influence remains limited since works councils simply exercise the workforce's mandate.

In China, workers' congresses^② and trade unions are institutionally interwoven (see Feng). Enterprise unions serve as secretariats for the workers' congresses, dominate daily business and have a dominant voice in setting the agenda when workers' congresses meet (mostly annually). Where the union is dormant, the workers' congress is usually dormant as well and where the union is active, the workers' congress follows the union's policy. The opening up of the Chinese economy for privately-owned businesses has weakened workers' institutional representation. While workers' congresses continue to be mandatory institutions for state-owned companies, the private sector is free to opt for other forms of consultation.

Vietnam has experienced something similar. Official enterprise unions have largely failed to perform as channels to voice workers' concerns.

^① With the exception of a special provision for the supervisory boards of large companies, where unions are entitled to seats (see Däubler).

^② In larger companies, workers' congresses have an elected committee.

With legal mechanisms moribund and labour conflicts on the rise, employers are forced to initiate new forms of labour-management cooperation. The changes are taking place according to a typical pattern: conflict, consultations and negotiations, then institutionalisation of dialogue. There is now a need for a new legal framework of workplace consultation to entitle workers, with or without union representation, to information and consultation on workplace issues with the employers (see Chi on workplace consultation).

Delineating functional jurisdictions between unions and the various forms of bipartite consultation mechanism at the workplace is sometimes hard. Wage bargaining in non-organised enterprises is a case in point. In South Korea, employers without legal obligations open up space for wage bargaining in so-called labour-management councils (see Bae). Workers in these companies certainly welcome this development but unions see this as an employers' strategy to keep them out. Similar problems of overlapping functions exist in other countries. China allows elected workers' committees to bargain with management where unions do not exist. However, they are requested to accept a representative from higher trade union levels to avoid wage bargaining development outside the reach of unions. In Vietnam, the bargaining model in union-free enterprises is a key challenge of the new labour law reform (see Chi). Even in Germany, with its strict legal regulations, works councils may step out from their territory and adopt—some would say, beyond the law—a bargaining role. This may be the case when trade unions accept opening clauses in branch agreements which are then used by companies in dire economic straits to bargain with works councils for wage cuts (concession bargaining) at enterprise level.

Despite their importance for improving working/employment conditions and ensuring a decent wage level, in many countries trade unions and works councils reach barely more than half of employees, in many instances significantly less.^① Under such circumstances the state,

^① In Germany, only just under half of employees are represented by works councils and just over half are protected by collective agreements. Large companies almost always have collective agreements and works councils, while most small and medium-sized companies have neither. In South Korea, the coverage of labour-management councils is substantial (above 70 per cent of enterprises), while the trade union presence is fairly low (only 10 per cent of employees are union members).

with its regulatory instruments, becomes the most important actor protecting workers' interests. This takes place through legal regulations on working time, provisions on occupational health and safety, social insurance obligations for employers and minimum wages, which are intended to prevent the wage level from collapsing. The main difficulty lies in the establishment of appropriate standards and the supervision of compliance.

The practice of many multinational companies in southern host countries—in which weak trade unions and a low level of state regulation of labour protection are almost powerless to counteract it—of setting up production facilities operating on the basis of inhuman exploitation came in for public criticism in the home countries in the 1990s. In response, the concept of corporate social responsibility (CSR) was developed. The idea is that company managements voluntarily subject themselves to a code of conduct and promise to comply with minimum standards with regard to working conditions. The CSR debate has led to numerous controversies (see Zimmer): should obligations remain voluntary or take on a contractual character and thus be legally enforceable? Should the minimum standards that are to be complied with only reflect the legally established minimum level or be above it and be oriented towards international labour law as embodied in ILO standards? Should legal minimum wages serve as a measure even if they do not enable a decent existence, or should a minimum consumption level be taken as a basis? Do the voluntary obligations apply only to the parent company or to all company units, including even supplier firms? Is “outsourcing” forbidden when it leads to a reduction in working conditions? Must the supervision of compliance be carried out by independent institutions or trade unions? Should the workers be granted only material minimum standards or also have participation rights with regard to company issues?

CSR is de rigueur for many large international companies today and they brandish their CSR certification for their products and services for the benefit of Western consumers (see Liu). In fact, there are numerous instances that show that raising minimum standards and participation rights for employees can lead to a win-win outcome. Productivity gains are made and the costs involved in social investment do not entail losses in competitiveness: higher wages and higher profits go hand in hand (see Knolle). Supervisory auditing to ensure compliance with norms should

therefore be complemented by projects targeting labour productivity (see Jenny Chan). However, a great deal of CSR is mere rhetoric. Even global firms such as Foxconn, probably the largest private employer in China, which professes CSR and with international clients such as Apple is subject to particular public scrutiny, continues to ignore legal standards or exploits loopholes in the law to seek higher profits by cutting wages (see Pun and Lu). CSR may offer advantages in an unregulated labour environment. In contrast to legally enshrined labour standards compliance with which is monitored and trade unions which collectively represent workers' interests voluntary professions by enterprise managements should be taken with a pinch of salt and are of only secondary importance.

In South China, in April 2010 the walkout at Honda triggered a strike wave which engulfed several hundred firms. These were wage strikes which, in classical terms represent “disputes of interest” and gave rise to controversy within the community of scholars as to whether a turning point had been reached in China's industrial relations. These events (see Hui and Chan; Traub-Merz) are evidence that in the analysis of industrial relations it is not enough to present formalised structures of interest representation: informal workers' activities must also be included.

The wage strikes in China largely followed the pattern of walkouts in Vietnam. It was not trade unions which called for strike action in the context of collective bargaining, but spontaneous workforce action—and the negotiations for higher wages were predominantly conducted between strike committees and the relevant enterprise managements. Trade unions either kept away or tried to bring about a settlement as mediator between the two sides. Since then an important reform debate has been raging in China about the future role of the trade unions (see Kong; Hui and Chan; Anita Chan; Traub-Merz). Are they to be only go-betweens for capital and labour, mediating in emerging conflicts, or are they to throw in their lot with the workers and conduct wage negotiations on their behalf?

Labour relations cannot be extracted from the political economy and treated as isolable. They affect productivity and wage costs and influence income distribution, consumption and also foreign trade relations. China's new debate on a transformed growth model is also a debate on a new wage policy—and thus nolens volens a debate on reform of industrial relations and the redefinition of the role of the trade unions.

Part I

Representing Workers Interests through Trade Unions

All China Federation of Trade Unions: Structure, Functions and the Challenge of Collective Bargaining^①

Rudolf Traub-Merz

In China, the All China Federation of Trade Unions (ACFTU) is the sole legal trade union organisation. It was established in 1925 and over the years and decades has gone through many changes. After 1949 it was restructured according to the needs of a socialist command economy and became the “transmission belt” through which the Party controlled workers. The year 1978 was again a turning point, when China started its liberalisation and, fed by surplus labour from a peasant economy, gradually re-established labour markets. Since then, the system of industrial relations at all levels has been undergoing profound changes, in parallel with which the traditional functions of ACFTU are being challenged.

The process of adjusting industrial relations to the return of privately-owned companies is taking place in a situation in which the Communist Party of China (CPC) and ACFTU are maintaining their traditional bonds and ACFTU continues to function as an extension of the party-state. There are many questions about the future of this relationship. In view of intensifying labour protests and strikes for higher wages, ACFTU is facing a dilemma: should it side with the workers or act as a mediating force whenever labour conflicts arise?

^① This chapter was published under the same title in: ILO-GLU Working Paper No. 13, September 2011.

The relations between the CPC and ACFTU and the functional embedding of Chinese union organisations in industrial relations have a great bearing on the Chinese political economy. This chapter takes ACFTU as the focus of its analysis. After a brief look at its history before 1949 (Section 1) it looks at the transformation of industrial relations under the socialist command economy and analyses the organisational profile of unions and the ways they interact with the party-state (Section 2). Section 3 marks the adaptation of industrial relations to the labour markets which evolved after 1978 around migrant labour and through public sector reform, while Section 4 deals with ACFTU's strategies for organising the private sector. Mediation and lobbying are key functions of ACFTU (Section 5), but growing labour conflicts and, in particular, wage strikes are presenting unions in China with new challenges (Section 6). Finally, Section 7 assesses the extent to which ongoing interventions can serve as successful strategies for building collective bargaining around the official union organisations.

1. ACFTU before 1949

The origin of trade unions in China dates back to the early years of the 20th century when Sun Yat-sen led a struggle against the Qing dynasty for economic modernisation and political reforms.^① Following a century of imperialist domination, the emerging labour movement readily responded to nationalism and many unions became organisationally linked to Sun Yat-sen's Kuomintang (KMT) as the leading force of the nationalist movement.^② While it focused its economic struggle on better wages and working conditions it began to adopt rival affiliations to various political parties, although Kuomintang was the dominant force until the early 1920s. This changed radically with the establishment of the

① One of China's first modern labor unions was the Guangdong Mechanics' Association founded in 1906.

② The 1911 revolution ended the Qing dynasty. It was partly achieved by workers' strikes in Shanghai. However, the success was short-lived and in 1912 Sun Yat-sen was forced to hand over power. Successive warlord regimes tried to build a new imperial order, condemning China to warfare and fragmented military rule, during which the nascent trade union movement was faced with restrictive labor conditions.

Communist Party of China (CPC) in 1921 and the strong involvement of its cadres in trade union organising. From then on, much of the organising success was to the benefit of the CPC. It was the CPC which established the Chinese Labour Secretariat to lead the workers' movement in Shanghai on 11 August 1921. From this initiative onwards CPC-led unions moved organisationally closer together and the project to build an umbrella structure took off. In May 1925, the Second National Labour Congress convened in Guangzhou with 277 delegates representing 540,000 workers and adopted the *Constitution of the All China Federation of Trade Unions* (Lee 1986: 8). Thus ACFTU came into being.

Between 1922 and 1927, organising flourished,^① as did the CPC's control over the trade union movement. The labour movement had grown enormously, particularly in the three industrial and commercial centres of Guangzhou, Hong Kong and Shanghai, but it also had some organisational success in other cities, such as Wuhan (Lee 1986: Chapter 1).

The year 1927 was a turning point in China's political and labour history. Backed by a general strike of 800,000 workers, the CPC organised an armed insurrection on 21 March to install a United Front government. But Chiang Kai-shek, who had taken over the leadership of the KMT after Sun Yat-sen's death in 1925, broke up the United Front.^② Instead of taking joint control over the liberated city, the leader of the nationalist KMT betrayed his allies and ordered the execution of thousands of CPC cadres and trade unionists. All CPC-led unions were banned and replaced with yellow unions loyal to him.

The 12 April Shanghai massacre devastated the communist labour movement (Perry 1995: Chapter 5). Wherever Chiang Kai-shek moved from there he put an end to leftist trade unions. By one account, 13,000 unionists were executed in 1927 alone (Lee 1986: 15). Between 1927 and 1930 there were several labour uprisings in other cities but all failed and thus organised labour activities led by the CPC in the KMT areas came to an end (Lee 1986: Chapter 1). Many surviving labour cadres were forced into exile.

^① The fourth congress on 27 June 1927 already counted 420 delegates, representing 2,900,000 workers (Lee 1986: 12).

^② The CPC had accepted the United Front with the KMT under pressure from Stalin and the Comintern.

Having to withdraw to the countryside, the CPC was faced with a new situation. The industrial base in rural areas was rudimentary and trade union activities could not gain the same prominence for the CPC as previously. Organising in the political economy of an agrarian society, the CPC had to switch its power base to the peasantry (Lee 1986: 16–24).

The CPC's military conquest of Manchuria and North China in 1948 became another turning point in the history of the communist labour movement. With the CPC firmly in power and providing support, the Sixth Labour Congress was convened in 1948 in Harbin.^① ACFTU, which had been defunct for nearly two decades, was restored (Lee 1986: 28). When the CPC took political power in the whole of China, ACFTU became its union link to the whole of the urban working class and was mandated a legal monopoly.

2. ACFTU—Functions and Organisational Profile

2.1 Transforming to adapt itself to its socialist role

Between 1949 and 1957 the Chinese trade union movement was completely re-organised. The CPC scrapped all labour laws and policies implemented by the ousted Nationalist government. All union activities were concentrated under the All China Federation of Trade Unions (ACFTU) and the KMT unions were integrated into a unified structure (Lee 1986: 33). While the merger with KTM unions was implemented without further problems frictions developed with regard to the new role for unions. These frictions became manifest in the debate on the organisational model to be followed (industrial unions or territorial unions) and the degree of autonomy which unions should enjoy in their practical work. On two occasions, the party reoriented the policy of ACFTU by purging its leadership.^② These tensions were partly linked to the fact that, at the beginning, labour still faced an economy dominated by private enterprises and up to 1953 strikes were a widespread means of

^① A total of 518 delegates were invited, claiming to represent 2,830,000 workers (Lee 1986: 28).

^② Li Lisan in 1951 and Lai Ruoyu and others in 1957/58. The second event was linked to the “Hundred Flowers Blooming” and the “anti-rightist campaign” .

improving labour conditions. From 1955 on, all the “strategic heights” of the economy were nationalised and the relationship between the CPC and labour was restructured towards meeting the new tasks of industrialising^① the country and building a socialist command economy.^②

From then on, industrial relations underwent dramatic changes. New labour policies became the key to the move towards socialism. They centred on universal lifelong employment^③ and a comprehensive welfare package^④ for urban workers,^⑤ built around companies and provided through work units (*danwei*) and a more egalitarian remuneration system to reduce wage differentials to a minimum (Ngok 2008: 46). The transformation of labour relations in the direction of socialist employment principles affected ACFTU in both its organisational structure and its functions.

① China followed the industrialization strategy of the Sowjet Union which emphasized a shortcut for economic development by concentrating investment on heavy industries. Producing limited commodities for domestic consumption, this pattern of industrial development relied heavily on taxation of agrarian producers. The Great Leap Forward (1958—1960) however, turned out to be a great disaster when much agricultural labour was diverted to steel production and together with bad weather conditions and continued high taxation caused the great famine during which many millions of people died from starvation. In 1961, the Great Leap Forward was aborted, heavy industry development slowed down and agricultural taxation reduced again.

② The socialist command economy was built on a dichotomy between rural and urban areas. One of the instruments to keep the two apart and allow a centralized allocation of labour to industries was the household registration (*hukou*) introduced in 1951 to urban areas and 1955 to the countryside. It effectively banned migration without approval from the authorities and became the key to keep control on urban population growth.

③ Abolishing the urban labour market and introducing life-long employment in urban state companies had its complement in the physical ban on internal migration. Population growth built up labour pressure in rural areas and became a problem of rural communes and less of urban employment.

④ One could challenge the use of the notion *comprehensive welfare package* in this context, given the fact that economic insecurity must have been immense during crisis periods such as the Great Leap Forward or the Cultural Revolution. It nevertheless reflects two things: Urban workers in state companies were privileged due to the strategic character of their employment. By centrally allocating jobs the state had to add to the employment package all relevant social instruments needed to maintain a productive workforce such as education, health, pension etc. During the great famine, the urban areas certainly suffered through reduced food rations; however, mass starvation was largely confined to the countryside.

⑤ It's not possible to give here a differentiated picture on the various groups of urban workers. The share of urban workers in the total labor force may be reflected in the rate of urbanization, which stood at 14 percent in 1955.

Four overriding principles were applied in the transformation of ACFTU into its new role.

- (i) Democratic centralism and leadership of the Party
- (ii) Geographic unionism to dominate industrial unionism
- (iii) Focus on production growth instead of collective bargaining
- (iv) Workers' participation through democratic management

I limit myself here to a brief assessment of two principles; the other two are covered in the next sub-section.

• *Focus on production and welfare distribution instead of collective bargaining*

With nationalisation and the replacement of private enterprises by state-owned enterprises (SOE) the traditional functions of trade unions in influencing employment and wage levels became obsolete. Employees of state enterprises were granted lifetime tenure and wage setting became an administrative matter, centrally fixed throughout the economy with very little wage policy room left to enterprises.

Economic recovery and increases in production became the overriding concern of the party leadership and, with it, the role of trade unionism shifted away from collective bargaining. In 1953, the labour congress amended the ACFTU constitution with a preamble which emphasised the new focus of unions in socialist enterprises.^① While effectively ending collective bargaining, trade unions became central institutions to allocate a variety of fringe benefits. In working closely with enterprise administration, they were put in charge of administering housing, medical care, disability compensation, sick leave, maternity leave, retirement pensions, and other benefits.^②

• *Workers' and unions' participation through democratic management*

Now without a role in wage fixing unions were reconceptualised as partners to management. A dual system of participation was established to

^① "Thus the paramount goal of the Federation was now changed to that of improving and increasing production" (Lee 1986: 49).

^② In a limited manner, these benefits were enterprise-specific and this created a common interest on the part of management, trade unions and employees in negotiating with central authorities for more welfare subsidies.

link the actors at company level through factory management committees and worker and staff congresses (Feng 2011; Phillion 2009). The rights of management, workers, workers' congresses, trade unions and party secretaries and their interplay shifted over the years (Phillion 2009). Actors' relations depended heavily on the interpretation of collective ownership, the specific type of power delegation and the importance given to production gains and productivity increases. During times when workers were seen or saw themselves as "masters of the factory" the workers' congress and with it, the trade unions, claimed to control the appointment of the management; when factory ownership was treated as belonging to the people authority was transferred to the party-state, which could delegate its authority down the line to either the party secretaries or the management of a company.

Over the decades, various types of workplace organisation were practiced and often responsibilities between workers' congress, management and party committees overlapped. Until the 1990s, when public sector reform restored private capital investment and management autonomy on a large scale, one basic principle framed all cooperation schemes under socialism: decision-making at company level was limited; neither the management nor the workers' and staff congress had the power to make decisions binding on the state enterprise. Workers' and unions' participation was mostly consultative in nature. They had the right to be informed by the general manager on the economic situation of the enterprise, and could criticise management decisions and present demands. Perhaps the strongest weapon was the right to reject the person of the general manager and request a replacement but this right appears to have been exercised rather seldom and only in cases where an SOE was in trouble and in need of restructuring (see Feng in this volume).

2.2 ACFTU: Organisational features

Looking at the structure of ACFTU over the past six decades, it is surprising to note that most of the key organisational elements have remained unchanged, despite profound changes in the economy since

1978.^① It is certainly true that the organisational principles were originally designed to maintain the hegemony of the Party over the unions and of the unions over workers. But already during the period of the command economy, the unions encountered considerable difficulty balancing the interests of workers with the interests of the party-state. These challenges grew exponentially when private investors were allowed to re-enter the Chinese economy and when unions, still structured to satisfy the needs of a socialist economy, were called upon to organise in private enterprises. In order to understand these contradictions, we need to examine the organisational set-up of Chinese unions in some detail.

2. 2. 1 Principles

The organisational structure of the unions in China is based on five principles laid down in the Law on Trade Unions^② and ACFTU's statutes:

- (i) the system is to be homogenous and presided over by ACFTU;
- (ii) the CPC shall have supremacy over the unions and the latter shall accept the leadership of the Party;
- (iii) the organisational levels of trade unions shall be related to one another in terms of Lenin's concept of "democratic centralism"

^① The structure of the ACFTU had been clarified with the congress of 1957 and there was no fundamental change till the end of 1966, when a radical campaign was launched against the ACFTU. Revolutionary groups criticized the labor body for 'bureaucratism', 'officialism' and 'economism' and in January 1967, forces within the Cultural Revolution succeeded in closing down the national labor body. A large number of trade unions were disbanded and with them the factory management committees and the staff and workers congresses. Some of the functions of the ACFTU and the unions were carried on by "revolutionary" groups and committees which were set up in factories. The dismantling of the national labour body contributed to the break-down of labour discipline in many fields and had negative impact on production. Plans were made to restore a national labour body. The rebuilding of trade unions was announced in 1973 and by the end of 1973, all provincial-level trade unions had been put back in place (Lee 1986: 129). The rebuilding of the ACFTU was part of the plan of the 'Gang of Four' to get control on trade unions and to widen their power base. The death of Mao and the purge of the 'Gang of Four' affected the restoration of the national labor body. The supporters of the 'Gang of Four' in trade unions were dismissed. The ACFTU was reconstituted in 1978 when Deng Xiaoping started its reform programme. It is important to note that the trade unions were rebuilt along the same organizational principles which existed previously and the ACFTU returned to what it had been before 1966 without any major deviation. The same organisational features continued to dominate the practical work of trade unions even in the 1990ies and 2000ies when liberal economic reforms were already in full swing.

^② Trade Union law 1950; amended 1992 and 2001.

which makes lower-ranking unions subordinate to higher-ranking ones;

- (iv) the trade unions shall shadow the Party and the state administration at all levels;
- (v) grassroots (enterprise unions) shall have dual membership of industry (branch or sectoral) and territorial (area) unions, but territorial unions dominate industry unions.

ACFTU's monopoly was laid down in the trade union law of 1950 and was reconfirmed in 1992 and 2001.^① However, this monopoly cannot be exercised at the union's discretion but is subject to the rule of the Communist Party.^② ACFTU reconfirms CPC's leadership in its statutes.^③

As already mentioned, ACFTU declares to follow Lenin's concept of "democratic centralism" as its organisational principle. This entails that unions be arranged in a hierarchy, with the lower organisations being answerable to the higher ones (Law on Trade Unions 2001; Art. 9). The law addresses the meaning of this subordination only vaguely but ACFTU's statutes provide a clear operational definition: "Lower trade union organisations shall request instructions from and report on their work to the higher trade union organisations" (ACFTU 2008a; Art. 9.6).

ACFTU's legal monopoly also applies to newly established unions. The Law on Trade Unions allows the founding of a new plant or grassroots union in previously unorganised enterprises if 25 members of the workforce meet and decide to do so. While this clause could be seen as a gateway for establishing independent unionism, this is not the case since newly founded unions must apply for membership of the higher-level union.^④

① "The All China Federation of Trade Unions shall be established as the unified national organisation" (TUL 2001; Art 10)

② "Trade unions shall... uphold the socialist road, the people's democratic dictatorship, leadership by the Communist Party of China..." (TUL 2001; Art. 4).

③ "Chinese trade unions are mass organisations of the Chinese working class under the leadership of the Communist Party of China" (ACFTU 2008a; General Principles).

④ "The establishment of basic-level trade union organisations, local trade union federations and national or local industrial trade union organisations shall be submitted to the trade union organisation at the next level above for approval" (TUL 2001; Art. 11; similarly TUL 1992; Art. 12 and TUL 1950; Arts. 2 and 13).

• *Industry or territorial unions*

The relationship between industrial and territorial unions deserves some attention. In the 1920s, the CPC pushed for industry unions to consolidate the class struggle by building solidarity and support over whole branches. Industry unionism was re-confirmed in 1949 and again during the 1953 Congress and reiterated at an Executive Committee meeting^① in 1956.

In 1957, however, during ACFTU's Eighth Congress, the organisational structure was (partly) reversed. While the dualism involved in linking enterprise unions to industry unions, as well as to territorial unions was reconfirmed, the nature of the pattern of dominance was changed. Authority over enterprise unions was handed over to (territorial) district unions (Lee 1986: 46–53) and, indeed, industry unionism has remained subordinate to the present day.

The turnaround in 1957, which was accompanied by a purge of ACFTU's leadership, had a profound impact on future relations between the unions and the Party. Within the framework of effective industry unionism, the CPC would have exerted control over ACFTU only at the top, but otherwise the chain of authority would have been strictly an internal union affair. This would have allowed ACFTU to determine operational autonomy at the lower levels. Operational autonomy was exactly what was contested in 1957. The move to a territorial form allowed the CPC to put union organisations under horizontal control at every level.^② District unions came firmly under the influence of the CPC's district committees. Two potential rival approaches to monitoring were arranged in a new order. In dealing with local union affairs ACFTU came to play second fiddle to local party structures. Local party cadres' views were likely to gain the upper hand whenever they differed from those expressed by ACFTU. Industry unionism during pre-liberation times was seen as superior as the unions had to fight an "established order".

① "In an effort to strengthen industry unions, it was resolved at this meeting that local trade unions should not lead local branches of industry unions when these were already led by the relevant national committees of industry unions" (Lee 1986: 53).

② The horizontal mechanism of control contradicts the principle in Lenin's concept of democratic centralism that all decisions of higher bodies shall be absolutely binding on lower bodies.

However, it proved to be less beneficial and, consequently, was replaced when the “main function of the trade unions was to support the established order” (Lee 1986: 34).

2. 2. 2 Officials: Dual office-holding

Elections are a key component in relations between ACFTU and the CPC. The Law on Trade Unions is somewhat imprecise with regard to how elections should be organised, leaving the operational details to the unions. ACFTU’s statutes confirm that the leadership at all levels should be elected bottom-up and subject to secret ballots and that leaders should act on the basis of an “imperative mandate” .

This strong emphasis on accountability towards the electorate contradicts the vertical control by higher level unions. The contradiction is resolved in favour of vertical control by giving higher level unions a right of veto: “The results of the elections of trade union committees, standing committees, chairmen, vice chairmen and auditing committees shall be reported to the next higher trade union federations for approval” (ACFTU 2008a: Art. 27).

In addition to regulations and ideological hegemony, control over operational affairs is ensured by means of personnel policy. There is no level of trade union administration at which the majority of the leaders do not concurrently hold office at the same level in the Party, the Political Consultative Conference, the People’s Congress or the Government. The current ACFTU chairman is a member of the Politburo. Of 9,634 chairman or deputy chairman of higher ranking unions in 2006 nearly 80 per cent (7,687) also held a political office at the same time (Chinese Trade Unions Statistical Yearbook 2007: 95). In a special report to the Congress in 2008, ACFTU announced that the cadre policy had been intensified and that by July 2008, 34 out of 36 provincial federations had been able to bestow on their union president the status of deputy chairman at the same level of government and Party organisation (ACFTU 2008b: 1).

2. 2. 3 A six-tier model

The Chinese trade union hierarchy is made up of six tiers. The national body, ACFTU, is followed by four layers of local unions, from the provinces to the townships and sub-districts. At the bottom are the

primary or grassroots unions (see Table 1).

Table 1 Organisational structure of Chinese trade unions (2006)

Organisational level	Unions	Full-time union officials	Part-time union officials
National	1		
Provincial	31		
Prefecture	333	99,674	236,792
County (District)	2,860		
Township & Sub-Districts	22,000		
Grassroots unions	1,323,965	443,112	483,990

Source: Chinese Trade Unions Statistics Yearbook (2007: 67, 88, 90).

2. 2. 4 Financing unions from taxes and company profits

ACFTU is a membership-based organisation. Members' contributions amount to 0.5 percent of their gross wages. The most important revenue source by far, however, is a wage levy: companies with unions^① pay 2 percent of their total payroll as a union levy, regardless of the number of union members. In addition, higher ranking unions may have business investments and receive income in the form of rental or profits. Government subsidies to ACFTU are another source of income.

ACFTU does not publish a statement of accounts detailing revenue and expenditure. In 2007, its national income from the 2 per cent company levy was 226 billion RMB, just over double its revenue from the same source in 2002 (ACFTU 2008b). Figure 1 gives an overview of how the revenue from the levy is distributed between the various union tiers.

On the income side as well, ACFTU is what would be called in the West a "yellow union". The share of membership fees is certainly below 20 per cent, probably even below 10 per cent. What matters in this context are

^① In some provinces, such as Jiangsu, the tax is applied to all companies. Companies with no unions pay a so-called "preparatory union fee".

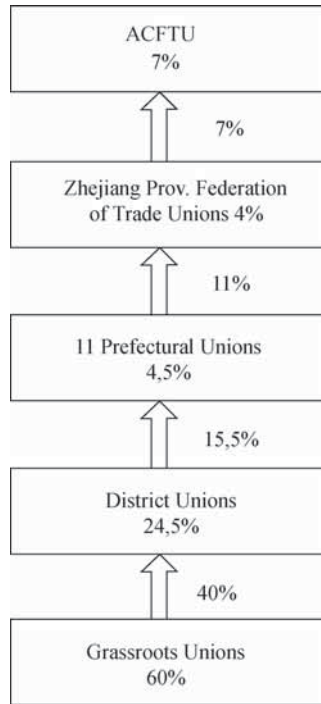


Figure 1: Distribution of the 2% company levy (Zhejiang Province)

recognition agreements with enterprises, from which the bulk of the union's financial resources (70-80 per cent) is derived. ACFTU is tax financed and maintained materially by administrative fiat.^①

2. 2. 5 Trade union officials as civil servants

A look at the employment status of trade union officials reveals a further dimension of the party-state's control over ACFTU. Trade union officials do not have individual labour contracts negotiated with their union as employer but are career civil servants. Even though they may not be state employees in the strict legal sense as they are not listed under the Law on the Civil Service,^② they are treated similarly on the basis of administrative

^① From a financial point of view, it would not make much difference if all its members were to be removed from the organisation.

^② Law on the Civil Service of the People's Republic of China, promulgated 27 April 2005. See http://www.gov.cn/flfg/2005-06/21/content_8249.htm.

rules applied to the organs and staff of mass organisations of the Party.^① ACFTU is part of the “administrative hierarchy”, with all the relevant implications, such as application of the disciplinary code for civil servants. The pay scales of unions follow those in ministries and the salary of union officials does not come from ACFTU funds but from the state treasury. Furthermore, trade union officials join other civil servant groups in administrative, political and technical training. Indeed, there is not much difference between how labour relations are dealt with inside unions and in ministerial bureaucracies. The unions have limited autonomy in administering their personnel affairs and restricted authority over their staff. Union employees, at the same time, are unlikely to develop an “esprit de corps” as trade union representatives and can easily be transferred to other offices of the party-state. Judging from various organisational features such as legal monopoly, funding from taxes, selection and control of leadership, payment of salaries and administration according to civil service regulations, it is quite clear that Chinese unions have nothing in common with trade unions in Western countries but are set up as a state agency under Party control.

3. End of Lifelong Employment: The Emergence of the Labour Market after 1978

3.1 From public to private employment

The year 1978 marks the beginning of a new age in China. Profound reforms were introduced which led to a radical transformation of the economy and society. These radical changes were largely the result of a series of state decisions to encourage fiscal and economic decentralisation and the marketisation and privatisation of economic activity. Furthermore, socialist employment policies fell by the wayside and a labour market was established.

^① The Organisation Department of the CPC: “Statement on the administration of organs of people’s and mass organisations such as trade unions, CPC Youth, Women’s Association and so on in accordance with the Law on the Civil Service of the People’s Republic of China”, promulgated 26. 08. 2006. See <http://www.yimendj.gov.cn/Article/ShowArticle.asp?ArticleID=4079>.

Figure 2 provides an overview of the development of employment with three types of employers: (i) urban-based state-owned enterprises (SOE), (ii) rural-based Township and Village Enterprises (TVE) owned by local government and (iii) private companies. The figure presents the evolution of labour markets and marks the extent to which socialist employment policies were substituted by contract-based employment.

Labour markets emerged first in rural areas. Taking over control from dissolved communes (1978 – 80), local government authorities invested huge sums in so-called Township and Village Enterprises (TVE) and drew heavily on surplus peasant labour from their areas. Within a few years 100 million peasants left their farms and became wage earners in rural enterprises.

The second labour market was linked to the development of export production zones. It evolved with the gradual removal of the ban on private investment and the lifting of physical restrictions on rural labour. China's spectacular industrialisation over recent decades has relied heavily on private sector export processing zones. They started in Shenzhen in 1980 from which they spread to other regions in the Pearl River Delta, the Yangtze Delta and other provinces along the east coast. The employment impact was insignificant in the 1980s and early 1990s but when private investment for export processing and other economic activities gained momentum, tens of millions of peasants became migrant workers in factories along the east coast. Today, private companies are the dominant employer in the urban economy.

The third labour market evolved from the shrinking of the urban state sector, which occurred in two stages. In 1986, the State Council introduced labour contracts, promulgating the Temporary Regulations on the Use of Labour Contracts in State-Run Enterprises. This established an urban labour market as state companies were now permitted to employ new staff for fixed periods. For contract workers in SOEs and for all those who joined private companies, the socialist "*iron rice bowl*" —another term for lifelong employment—was now a thing of the past.

The final push came with public sector reform in 1995–2002. More than 50,000 state-owned companies were privatised, merged or made

insolvent and 50 million workers laid off. ^①

3.2 Social insurance coverage: Migrant workers largely left out

The three employment categories do not differ only with regard to employer but also with regard to the application of social legislation. The introduction of labour contracts effectively stopped some public sector workers from accessing company-based social benefits. To compensate this group of workers, from the early 1990s the government gradually introduced a contribution-based social insurance scheme, administered by the state. The whole of the public sector, by and large, switched to the new model, with insurance coverage for unemployment, accident, health and retirement. These insurance schemes were also open to the private sector.

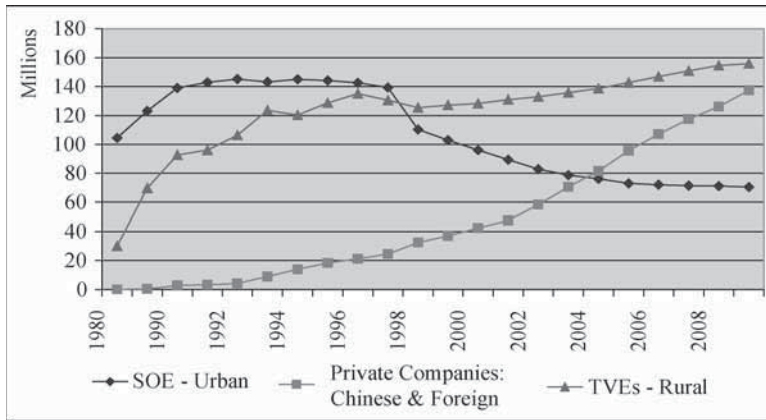


Figure 2: Employment in companies in China, 1980–2009

Note: SOE-Urban refers to state-owned companies and collectively owned companies.

Source: China Statistical Yearbook (2010; Table 4.2).

The social security schemes were not to be administered nationally, however, but followed fiscal decentralisation. Districts and cities were to administer the schemes and in this way migrant workers were badly let down. In many cases local government did not insist that local

^① Some of the workers who were laid off were able to obtain employment in the private sector, while many others were forced into early retirement or had to look for income from self-employment, thus giving rise to the urban informal sector.

employers—in particular, their own TVEs—pay any contributions at all. In cases where social contributions were paid, the right to claim benefits was subject to serious limitations. No transfer systems were erected to make social benefits portable between local government units. Whenever migrant workers left their employment and moved away, they lost all social entitlements. Some cities or even provinces later introduced schemes which allowed migrant workers to withdraw whatever they had paid in. Employers' contributions, however, remained with the local government (CLNT 2011) and effectively ended up as a local tax.

The administration of social benefits was linked to the household registration system (*hukou*) which restricted people's access to public goods and services to where they were born. In consequence, social security covered only employees with an urban registration; those who did not work at their place of registration or retire there—that means, in particular, employees of TVEs and rural-urban migrants—were de facto left out.^①

One could argue that a *hukou*-based social security system is not totally discriminatory as rural workers retain a lifelong right to return to their village and reclaim land to work. There was thus no need to establish for migrant workers a social safety network linked to wage employment. However, this peculiar arrangement was a major reason for the success of TVEs and private companies alike. A labour market in which social security benefits were not part of the wage package meant lower wage levels. This low wage policy based on a discriminatory social insurance policy is still in place.^②

① People's Daily reported in 2008 that only 15 per cent of China's migrant workers have a government pension (see CLNT 2011).

② Wages of migrant workers are 20 per cent to 50 per cent below those of workers with urban *hukou* (see, for example, OECD 2010: 167). "Even after two and a half decades of market-oriented reform, the continuing existence of the *hukou* system is responsible for a wage differential between migrant workers and local workers in urban China" (Cai Fang *et al.* 2005: 43). A new law on social security came into force on 1 July 2011. It aims to integrate the various social schemes under a common administration and promises to establish a national pooling system. This would make claims and benefits portable. However, the law is silent on how a national pooling should be established.

4. Organising the Private Sector: Campaigns , Strategies , Results

The end of socialist employment policies occurred in a fragmented manner. For the first 15 years ACFTU ignored what was happening in rural areas and woke up to the new reality only when the reforms finally struck the public sector. The end of lifetime employment and cradle-to-grave welfare policies terminated the union's functional embeddedness in the political economy and threw it into an identity crisis. The mass layoffs included union officials and had a dramatic impact on the organisation's membership and financial capacity. Within four years (1997–2000) 17 million members were struck off the registration list. During these years, ACFTU was threatened by marginalisation, both functionally and organisationally. A strategy was needed to reposition ACFTU in a political economy which was now being re-oriented towards the private sector. Unions built on socialist principles were now being called upon to organise workers in a capitalist economy. The strategy used led to a huge expansion of the union apparatus but a hollow, if not empty union presence inside private enterprises.

4.1 Skyrocketing membership

Figure 3 depicts an astonishing development. By the end of 2010, ACFTU had a membership of 229 million, up from 87 million in 1999: within only a decade, the unions had acquired 140 million new members, an incredible figure by any standards. As a result, ACFTU surpasses the global membership of ICFTU^①, which puts its strength at 169 million.

The membership drive was directed towards the private sector in general but two events deserve particular mention. Rural workers had been banned from unions in 1948 (Lee 1986: 29), when ACFTU began gearing up to operate as an urban organisation. The 14th ACFTU congress in 2003 corrected this, however, and opened up unions to migrant workers (Grassi 2008: 13). Within a few years, migrant worker

^① International Confederation of Free Trade Unions with headquarters in Brussels, renamed in 2006 to International Trade Union Confederation (ITUC).

membership swelled to 70 million (2007).

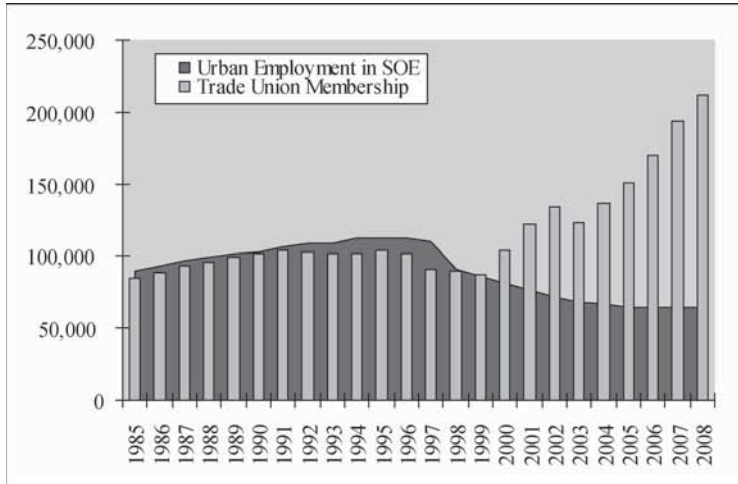


Figure 3: Urban employment in state-owned companies and ACFTU membership, (1985–2008)

Source: China Statistical Year Book (2010: 118, 885)

Foreign investors—in particular, from Asia and North America—have long been known for their anti-union attitudes and many were certainly opposed to the idea of having unions in their firms. In March 2006, the party leadership put pressure on companies and ACFTU when an explicit call was issued to “strengthen Party building and trade union building in foreign-invested companies” (Liu 2008: 7). “Two days after President Hu Jintao’s call ACFTU set the target of organising trade unions in more than 60% of FIEs by the end of 2006 and 80% by the end of 2007” (Liu 2008: footnote 10).

Fortune 500 companies received special attention. After Wal-Mart grudgingly gave in to pressure, other well-known union bashers such as Dell, Kodak and McDonalds followed suit. In 2008, the ACFTU announced that, of the 483 top 500 global companies which have invested in China, 82 per cent were unionised (ACFTU 2008b).

Table 2 summarises membership and union densities for various sectors. Some of the figures are certainly too high. A union density of 59 per cent for state-owned companies falls within the expected range. Full

union coverage should be equally appropriate for state institutions and government agencies. ACFTU figures showing union densities above 100 per cent may be ascribed to lower ranking officials' desire to report positive results.

Union densities for foreign invested companies (94 per cent) and those from Hong Kong, Macao and Taiwan (78.4 per cent) appear high, but not unreasonably so, given the organising efforts directed towards them. The figures for private companies from mainland China are totally unrealistic, however. Until 1999, unions had no presence at all in this category and while some progress has been made, claims of 65 million members in 2006 and 80 million in 2007—and thus coverage of 95 per cent and 107 per cent respectively—are out of the question.

Table 2 Urban employment and union membership, 2006

	Employment (urban)	Number of unions	Trade union members	Union density
Enterprises				
• State urban (SOE+COE)	71,940,000	166,519	42,576,126	59.2%
• Private Chinese	68,380,000	604,532	64,974,440	95.0%
• Self-employed business	30,125,000	44,770	5,053,613	9.8%
• Enterprises from Hong Kong, Macao, Taiwan	6,110,000	27,142	4,793,093	78.4%
• Foreign invested	7,960,000	34,131	7,004,311	88.0%
• Others	n.a.	7,020	980,538	n.a.
I. All enterprises	184,515,000	884,114	125,382,121	68.0%
II. Institutions	28,333,000	276,600	30,947,249	109.2%
III. Government agencies	11,118,000	159,172	13,142,372	118.2%
Undocumented	59,134,000	4,079	470,369	
Total (all urban)	283,100,000	1,323,965	169,942,111	60%

Sources: China Statistical Yearbook (2009: 112–13); Chinese Trade Unions Statistics Yearbook (2007: 23, 24, 36, 46, 47, 67–68; 75–76; 81–82); China Statistical Yearbook (2007: 132).

Part of the explanation may be due to how migrant workers are taken

into account in these statistics. Many migrant workers have no labour contract and leave their employer within a short period or when a project finishes. Constant job shifting makes workplace registration difficult, if not impossible and migrant workers are thus usually counted in their rural homes where ACFTU has built information and support centres for them. Most migrant workers do not pay membership fees. For them, unions offer information or other services, which otherwise should come from the Ministry of Labour. They should be registered as clients and not members: such service relations have no bearing on the strength of a union in the workplace.

If we discount the membership of migrant workers and take as reference a labour force of 450 million—including 150 million rural workers—we arrive at a more realistic union density of 30–35 per cent. Even so, the size of the membership remains impressive. However, this high membership is not meaningful when we look at the reality of trade union activities inside enterprises.

4.2 Organising top-down and management-led plant unions

There are two procedures available for establishing a plant union: (a) top-down: officials from a higher level union approach the plant management and conclude a recognition agreement to establish a union office; (b) bottom-up: a union is set up by employees from within the company. The minimum number of employees required is 25.

The two patterns of organisation differ fundamentally and have totally different consequences. A top-down approach is purely administrative and without the involvement of the workers, who may not even be informed that an agreement has been signed. Bottom-up, however, cannot work without the workforce. It usually takes the form of mobilisation and is built around demands for immediate improvement of working conditions. With the exception of Wal-Mart (Hui and Chan 2011) private sector plant unions appear to have been set up top-down. The bottom-up approach is almost non-existent in this sector.

Organising campaigns generally involve three stages. The CPC called on ACFTU to increase its presence in the private sector. The ACFTU leadership then laid down quotas—for example, annual membership growth rates of 10 percent or 20 per cent—and sent them to local unions.

Under pressure from the top and eager to report success stories, local officials hurriedly drew up logistic scenarios, moved from company by company and called for the signing of recognition agreements.

When bargaining with management for recognition, unions were usually the weaker side and forced to agree substantive concessions. The power of Chinese trade unions is administrative, deriving from their quasi-government status. ACFTU is not feared for its ability to call millions of workers into action but because it may activate support from the local government or the Party, in particular, as many trade union leaders double as Party secretaries or deputies in people's Congresses. Because a union leader's authority derives from the party-state which values social stability and not strong action against unwilling enterprises, and because company employees are not called into action to bargain for a better deal, employers usually find themselves in a comfortable position and able to give in selectively to union demands, while at the same time withholding substantial concessions. The whole top-down organisational process has become characterised by serious flaws which allow management to largely dominate and control trade unions.

No report has been published on modes of negotiation and it is not clear whether agreements have been concluded in writing, just verbally approved or there was no need for debate at all as both parties shared the same opinion. The result of the top-down approach, however, is significant: plant unions became—and still are—dominated by management:

- In many cases, trade union leaders were not elected but nominated from within the management. Where elections took place, candidates for the job of union president and his deputy were cleared by management or the higher ranking union.
- Employers demanded and received concessions that the newly established union would not engage in certain activities and, in particular, would not push up wage costs with collective bargaining.
- Employers often demanded and obtained approval of reduced or delayed payment of the 2 per cent wage tax.

Management dominance is most significant with regard to control of the

union leadership. A leading trade union official from Guangdong Province estimates, with regard to his jurisdiction, that “among the approximately 20,000 grassroots trade unions, nearly 50 per cent have leaders who are also employed as deputy general managers or the equivalent in the company” (Kong 2011). Qiao in a survey of 1,811 companies concludes with regard to union presidents:

90.3 per cent are CPC members... Before holding the position of trade union heads, most of them have acquired a certain professional status in relevant enterprises or institutions. Among them, 40.6 percent hold positions of middle-level managers. 17.9 per cent of union presidents serve concurrently as the director or deputy director of CPC committees. Another 13.3 per cent are retired factory heads or managers ... In addition, only 4.2 per cent of current chairpersons were ordinary employees before being elected. (Qiao 2010: 8)

Controlling elections is the key to controlling plant unions. While the Law on Trade Unions is clear that union leaders must be elected, voting in most cases does not take place or merely serves the purpose of confirming a decision made somewhere else. Qiao found that 23.3 per cent of union presidents were directly appointed by higher level unions or by CPC branches; about half (51.7 per cent) had been elected by workers and staff assemblies, but there was no choice as the Party or the higher level union had only picked one candidate. “Only 2.6 per cent are elected through the General Member Assembly or Representative Assembly following open competitive screening tests” (Qiao 2010: 9).

4.3 Collective bargaining

A legal framework for wage negotiations is provided by the Labour Code of 1994 and since then more legal instruments have been decreed. Originally, wage negotiation was limited to the plant level but in the mean time, its legal scope has been expanded and it has become possible to conclude area or branch agreements up to district level. There are still many loopholes and contradictory regulations, however. There is no clarification of which agreement shall stand in the case of overlapping jurisdictions. Also, provisions are not legally binding and the employer may (or may not) implement what has been agreed (Huang 2010).

ACFTU statistics on concluded collective contracts show that the number of workers covered by wage negotiation increased only modestly from 2002 (20.5 per cent) to 2007 (23.4 per cent), while the number of employment units covered by collective contracts shot up by 460 per cent (Table 3). These figures are confusing because they imply progress primarily in small companies. The low overall coverage demonstrates nevertheless that most unions do not engage in collective bargaining and that in 2007 nearly 80 per cent of union members were without a collective wage agreement.

Table 3 Wage negotiations: enterprises and trade union members, 2002 and 2007

	2002	2007
Employment units with trade unions	930,965	1,323,965
Employment units with "wage negotiation systems"	135,333	622,063
Share of units with wage negotiations	14.5%	47.0%
Trade union members	133,977,709	169,942,111
Staff and workers "covered by wage negotiation systems"	27,404,001	39,685,737
Share of trade union members covered	20.5%	23.4%

Source: Chinese Trade Unions Statistics Yearbook (2003: 112, Table 3.33; 2008: 108, Table 3.29).

What is the substance of the contracts that were concluded? ACFTU has not published a report on the results of these collective wage contracts and it is therefore not possible to calculate a union premium. There are, however, empirical surveys by independent researchers which compare wage levels in organised and non-organised companies. Lee and Liu have screened these reports and added the results of their own survey, concluding:

Our survey indicated that enterprise unions in China do not appear to produce union wage premiums.

... whether a union exists or not itself makes little difference with regard to most aspects of working conditions, such as higher wages, better benefits, employees' turnover and others, as enterprise unions are often under the strong influence of the employer in the workplace. There are numerous studies which support the above findings. (Lee and Liu 2010)

5. Mediating and Lobbying

5.1 Rights, interests and mediation

What do unions do that are not involved in collective bargaining for higher wages? The Law on Trade Unions and the ACFTU statutes are clear when it comes to the duties of unions: “The basic duties and functions of trade unions are to safeguard the legitimate rights and interests of workers and staff members” (TUL 2001; Art. 6). But what are workers’ “rights and interests”? In Western societies, the distinction between rights and interests is widely applied in industrial relations. Rights are seen as something granted by law or negotiated and laid down in legally binding agreements, while interests refer to things which go beyond, deal with still unsettled affairs and in industrial relations, usually call for improvements in working conditions and wages.

In the Chinese context, the call for unions to protect the *rights* and *interests of workers* remains ambiguous. The duty of safeguarding workers’ interests is already diluted by the fact that unions are also tasked with taking care of the interests of enterprises.^① On top of all that, unions are also mandated to “promote economic development and long-term social stability and to contribute to the all-round construction of a comparatively well-off and harmonious socialist society”. Politically, “the Chinese trade unions safeguard the socialist state power of the people’s democratic dictatorship” (ACFTU 2008a; General Principles).^②

The nature of ACFTU’s involvement in workplace industrial relations can be discerned by looking at conflict resolution. China follows the three-step model of mediation, arbitration and litigation and provides plant mediation for in-house resolution. Mediation is tripartite but the unions do

① “In enterprises and institutions, the Chinese trade unions...promote the development of enterprises and institutions” (ACFTU 2008a; General Principles).

② Such an all-encompassing mandate annuls the articulation of class interests and leaves plant unions in a dilemma: whatever the union does for the interests of one side is likely to contradict those of another side. A legally prescribed range of such duties paralyses workplace action. The best way of avoiding the legal uncertainty is to remain inactive and wait for instructions from above-or get involved only when a conflict of interests arises.

not side with the workers; they stand between workers and management and have the task of conciliation as a neutral party. ^①

A labour dispute mediation committee may be established inside the employing unit. The committee shall be composed of representatives of the staff and workers, representatives of the employing unit and representatives of the trade union. The chair of the committee shall be held by a representative of the trade union. (Labour Law 1994; Art. 80)

This legal construction is repeated when it comes to industrial action. Chinese labour law does not provide a right to strike—the right to strike was struck from the Constitution in 1982—but mentions work stoppages and go-slows.

In case of work stoppage or slow-down strike in an enterprise or institution, the trade union shall, on behalf of the workers and staff members, consult with the enterprise or institution or the parties concerned. . . The trade union shall assist the enterprise or institution in properly dealing with the matter so as to help restore the normal order of production and other work as soon as possible. (TUL 2001; Art. 27)

Being the only legal provision on industrial action the interpretation of Article 27 is of particular interest. The clause can be seen as an implicit recognition of a right to collective action on the part of workers. However, it is more plausible to see it as an explicit strike ban for trade unions. Chinese trade unions are legally not allowed to be actors in a conflict. They are considered to stand outside class relations and as representing neither employers nor employees. They are mediators in the event of conflict and their principal legal task with regard to private enterprises in that context remains what it was under the command economy: restore production.

^① There are scholars who call such a mediation structure “fake mediation” .

5.2 ACFTU as a lobbyist

Besides its role in conflict mediation ACFTU engages in other activities, such as lobbying for better labour protection. As an organisation with no active membership it does not rally workers for public demonstrations but exploits the fact that its leaders double as party officials and sit on party committees and state organs. Just as a labour ministry in a Western country would do, ACFTU collects data, writes proposals and promotes its views by drawing on ministerial and party connections. ^①

When labour disputes started to arise—in particular, in companies employing migrant workers (see next section)—and union efforts directed towards speedy and peaceful conflict resolution become less and less successful, ACFTU supported those in the Party who were pushing for better legal protection. This is certainly the case with regard to two groundbreaking legal acts promulgated in 2008: the labour contract law and the law on labour dispute mediation and arbitration. Both give employees much expanded legal protection against the abuses of employers.

The new labour legislation is important in at least three regards:

- (i) It clarifies workers' rights: the right to a written contract, the right of participation in social insurance schemes, restrictions on the use of fixed-term contracts and agency labour, as well as severance pay (Däubler and Wang 2008; Ngok 2011). It gives workers a better understanding of what their legal rights are.
- (ii) It provides substantial sanctions for use against employers who perpetrate abuses^② and makes it more costly for employers to engage in illegal practices.
- (iii) It simplifies the use of official channels of conflict resolution, does away with fees and documentation and increases the

^① See Ngok (2011) on the lobbying techniques used by ACFTU.

^② According to the Labour Contract Law (2008) workers are to be paid a double wage if they have not been given a written contract within one month; if no written contract is provided within 12 months, the contract becomes an open contract (Art. 82; Art. 14). If the employer fails to pay wages or other entitlements, compensation for workers must be at least 50 per cent (Art. 85).

likelihood that workers will use official routes and win their case.

One could argue that ACFTU's success in lobbying for new labour laws has weakened its role in conflict mediation. On the one hand, the Party did not take up the suggestion to make union-chaired enterprise mediation mandatory for all grievances but instead authorised the use of new organs, such as grassroots and community mediation. On the other hand, it made it easier for workers to avoid mediation and take their cases to courts for settlement. The new approach to conflict resolution is likely to lead to a situation in which mediation through unions will become obsolete.

6. Labour Conflicts: Towards Wage Bargaining

6.1 Struggling for the application of the law

Lee Kwan Ching is the author of one of the most interesting studies on labour conflicts in China, covering the period from around 1990 to 2005 (Lee 2007). Comparing laid-off and retired workers from China's state-owned heavy industry in the Liaoning Province in the north-east with workers migrating from rural areas, stricken with poverty, to private factories in the export zones of Guangdong Province, she captures two distinct working class groups and links their patterns of labour protest to differences in social reproduction: veteran state workers used to privileged lifelong employment and welfare acted with "protests of desperation" when the demise of socialist command economy through public sector reform robbed them of most of these privileges. They turned to public demonstrations "to demand government action to solve their livelihood problems" (Lee 2007: 123). These protests were not demands for the improvement of working conditions but calls for reinstatement in employment or adequate compensation with consumption goods. Her assessment of such conflict strategies as status-oriented would seem to be eminently reasonable.

The case of migrant workers is very different. Employment in so-called sweatshops, for example, is characterised by terrible working conditions with long working hours and above all, rampant failure to

comply with labour legislation; wages may be paid below the legal minimum or subject to illegal deductions, and there are even forms of bonded labour, as unpaid wages are accumulated and identity papers kept by employers to prevent workers from leaving the factory in search of better employment somewhere else or to return to their rural homes. Other studies have confirmed that, until recently, the protests of migrant workers never included demands for higher wages. Instead, workers demanded the wages that had been agreed beforehand, payment for overtime work and a wage level which does not fall below the minimum wage set by law. Consequently, the protests of migrant workers were legalistic in approach, merely calling for the proper application of the law. In the traditional sense, they were “disputes of rights”. Resolution of such conflicts was not sought through private or collective forms of protest but usually by first trying to use the official channels for handling grievances through mediation, arbitration and litigation. When workers found these legal channels working against them, it added to their embitteredness and they engaged in public protests and demonstrations directed towards the city government as a last resort (Lee 2007: 176–91).

In comparing strike patterns in China and Vietnam, Anita Chan (in this volume) points to differences in the treatment of labour protests in countries with a similar political past. While the state authorities in Vietnam keep an eye on the implementation of labour laws and it is difficult for companies to resort to illegal practices, local governments in China are engaged in competition with one another to attract private investment and readily turn a blind eye when investors—both local and foreign—establish workplaces which ignore legal requirements. When protests erupt, they can easily turn violent as local governments send in the police to clamp down on protesters.

Despite differences between their analyses, both Lee and Chan agree on several points. Labour conflicts in China have not been interest-based. Workers struggle for the application of the law and not for higher wages. Labour disputes are isolated workplace-related incidents with, as yet, no interconnection. The idea of collective bargaining has not yet penetrated the consciousness of the vast majority of Chinese workers (Anita Chan 2011), the prevailing pattern is non-political and the majority of labour protests show no hint of demands for independent unionism or challenges to regime legitimacy (Lee 2007: 112).

Statistics on labour disputes do not provide a clear picture of the character of labour conflicts. They do not distinguish between disputes of rights and disputes of interest; the distinction between individual and collective disputes is blurred; and strikes—which happen frequently—are not documented at all. Table 4 lists the number of labour disputes registered by statistical offices. Over a period of 12 years (1996–2008) the number of disputes increased, on average, by 25 per cent a year.

It is certainly wrong to relate increases in labour disputes to a worsening of working conditions. It is more likely that they reflect increased knowledge of their rights on the part of workers and their capacity to use legal channels to secure them. The huge jump in the number of disputes from 2007 to 2008 supports this view. With a better law in place in 2008 and more aware of their rights, workers reacted enthusiastically by seeking legal redress for labour law violations.^①

Table 4 Registered labour conflicts, 1996–2009

Year	Number of cases	Increase(%) average annual	Number of workers involved
1996	48,121	n. a.	189,120
2000	135,206	29.8%	422,617
2005	313,773	18.4%	744,195
2006	317,162	1.8%	679,312
2007	350,182	10.4%	653,472
2008	693,465	98.0%	1,214,328
2009	684,379	-1.3%	1,016,922

Source: China Labour Statistical Yearbook (2009; Table 9-1); China Statistical Yearbook (2010; Table 22-5).

6.2 Wage strikes as a new form of labour conflict

In 2010, China witnessed a large number of wage strikes. There had been strikes previously, such as the industrial action taken by taxi drivers in 2008 which started in Chongqing and then spread to other cities. But the

^① The decline in registered labour disputes for 2009 can be explained by the effects of the global financial crisis which made some 20 million Chinese workers redundant. Safeguarding employment was prioritised over securing labour rights. In 2010, things returned to normal and we may expect much higher figures for labour disputes again.

strike wave in spring and summer of 2010 was something new. It originated in a supplier company of Honda and then spread to other automotive companies and beyond. At least 200 enterprises appear to have been affected. Since then, there has been an intensive debate on the character of the strikes and on whether a watershed had been reached in the development of industrial relations in China. The new strikes differ in several regards from earlier labour conflicts (Lüthje 2010; CLNT 2010; Hui and Chan 2011):

- The strikes are traditional disputes of interests. The workers did not demand payment of the legal minimum wage or wage arrears, as this was largely observed, but higher wages and in some cases the introduction of a wage grade system which reflects seniority and provides individual routes for careers within an enterprise. The demands were such that they could not be considered in official channels of conflict resolution and thus could not be legally addressed.

- The strikes spread beyond companies in the labour intensive export sector where stark competition dominates, with low wages, to better-off companies in the automotive and metal sector which produce for domestic markets, use more capital intensive technology, need more skilled workers and usually pay wages above the legal minimum.

- Many of the companies affected were foreign-owned—in particular, Japanese—which may be part of the reason why for two months there was widespread public reporting on labour protests before the media were suddenly silenced; possibly to avoid triggering further strikes through media stories on wage increases.

- The strikes were not called by trade unions. In several cases, striking workers not only ignored existing plant unions but demanded free and open elections of union representatives in the factory, thus calling for the replacement of the existing union.

- The strikes happened in branches where industrial agglomeration is building up and inter-company exchange and real-time supply are deepening. Strikes in supplier companies quickly lead to production breakdowns down the line. The multiplier effects of their actions strengthened the strikers' bargaining power.

- The strikes appear to have been successful wherever they happened. Companies were forced to agree to wage increases of between 20 per cent and 50 per cent. The pressure from industrial action spread beyond the directly affected enterprises and many employers offered

similar wage adjustments to prevent strikes from happening within their own company.

While no empirical survey of the overall impact is yet available, it is certainly true that the magnitude of strikes is unrivalled in China's labour history since 1978. One strike wave does not catapult Chinese industrial relations on to a new stage and one must wait and see whether wage strikes become a regular feature. However, deeper changes in society are under way which are pointing in the same direction and make it more likely that China is indeed entering a new phase of industrial relations. These concern in particular the social composition of the working class, as well as demographic trends.

The core group of strikers appears to come from the second generation of migrant workers, born after 1980. They differ from the older generation in that on average they have a higher level of formal education and a higher percentage of them is no longer inclined to return to a rural life, but instead wants to settle permanently in cities. Cutting their ties to the peasant economy and planning for an urban family life represents a radical change in the way they calculate their costs of social reproduction. As urban dwellers, they can no longer forgo social security, in particular retirement benefits and unemployment insurance. They must take into consideration the expense of bringing up children and need additional wages to cover decent family accommodation and food outside company canteens and dormitories, where rooms are shared with many colleagues. In separating their daily reproduction from the workplace they feel entitled to enjoy entertainment and other amenities, as their neighbours do who hold an urban *hukou*. All these factors and the money value linked to them form part of their aspiration to adequate wages, which are certainly beyond what the legal minimum provides. With their better education, their competence in using modern communications tools and their growing resistance to jumping from one factory to another and from one city to the next, this second generation of migrant workers is better positioned and more able to struggle for higher wages within the company.

Strong support for these new wage interests is provided by demographic trends. The introduction of the one-child policy in 1979 had two main effects: it slowed down overall growth of population, which

will peak around 2030 and thereafter start to decline; and it affected the age composition of the population: the age group 15-59 years of age—basically coterminous with the labour force—is declining significantly and faster (see Table 4).

Table 5 Increase in population, 2000–2050
(medium variant; millions)

Year	Population growth	Age Group 15-59 growth
2000-05	+45,3	+66,7
2005-10	+41,9	+36,9
2010-15	+41,9	+5,2
2015-20	+35,2	−0,007
2020-25	+22,0	−17,8
2025-30	+9,3	−32,1
2030-35	−0,1	−28,1
2035-40	−7,3	−12,9
2040-45	−14,8	−25,4
2045-50	−23,2	−47,0

Source: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: The 2008 Revision*, <http://esa.un.org/unpp>.

The change in the age composition of the population is a strong indicator of deep changes in China's labour markets. Population growth and age composition are only two of the determinants of labour supply and factors such as expansion of the education system, migration, changes in the retirement age, levels of income, legal requirements with regard to working hours and, above all, productivity development must also be considered. However, it is clear from demographic trends that the number of new entrants into the labour market has started to decline and thus that further increases in labour demand will certainly improve workers' bargaining position. Maintaining the balance in labour markets and maintaining adequate supply within a rapidly aging society will be one of China's main social challenges and will have a strong bearing on wages.

There are other arguments which point to mounting pressure for higher wages and industrial action to achieve it. There is much public

criticism of the deterioration of income distribution. Strikes by the poor receive sympathy from many groups in society and clampdowns on strikers by the authorities are becoming more unlikely. With less fear of retaliation, workers may find it easier to opt for industrial action.

Over the past two years, the macroeconomic environment has been changing, too. Since the global financial crisis hit export production and employment, the economic policy discourse has shifted away from pushing for current account surpluses. Macroeconomic policy is moving slowly towards reducing trade surpluses and a more inward-looking growth model based on domestic consumption. Today, wages are no longer regarded merely as production costs but also as a key factor in the demand for consumer goods. To play this role properly, however, they must grow. The debate around the 12th five-year development plan (2011 – 15) is clear on this. Reduction of inequality, increasing wages and building stronger social security schemes should become focal points for the new economic and social policy.

7. Which Way Forward for ACFTU?

The strike wave for higher wages has thrown unions into a legitimacy crisis. Media reports were openly critical of the role of the national labour body and challenged its usefulness with regard to maintaining social harmony. ACFTU appears to have accepted that wage bargaining has finally arrived in China. Its new thinking and the initiatives already launched centre around how to push collective bargaining in more companies and how to make ACFTU unions the exclusive bargaining agent. Beyond the rhetoric and declarations of goodwill, four strategies can be identified which reach, to some extent, to the structural heart of the problem:

(i) Separating Management and Trade Unions

ACFTU appears to accept that union leadership and company management should be separated and that union officials should not take a salary from a company. ACFTU has set up a union fund from which, in future, the leaders of plant unions are to be paid (Kong 2011). It is assumed that union leaders who do not depend on the company for their livelihood will be more eager to engage in conflict on the workers' side.

(ii) Linking Unions to Workers through Elections

Calls for popular votes to elect plant union leaders were made at ACFTU's 2003 congress but in most cases never materialised. The demand of strikers to elect their own leaders has brought the issue back onto the agenda, however. ACFTU is now promising popular elections in the hope that this will reconnect unions and workers (see Kong in this volume). A statement on how voting should be conducted is pending.

(iii) Legally Enforcing Collective Bargaining

There are initiatives under way to legally enforce collective bargaining. Guangdong province may become a pilot region. ACFTU is lobbying for a labour law which (a) makes it mandatory for employers to bargain, and (b) gives ACFTU sole right to bargain on the workers' side. In enterprises with no plant union, a committee elected from among the workers might engage in bargaining. However, ACFTU wants to retain a decisive influence to prevent an autonomous structure from emerging.^①

(iv) Limited Scope for Strikes

ACFTU's Guangdong union branch is lobbying for a limited right to strike. A right to strike shall exist when there is a "wilful infringement of workers' rights by the management that can be proven" and when there has been a "failure to agree after several rounds of negotiation". The strike should be confined to factory premises and machinery and equipment must be protected (Qiao 2011).^②

All four strategies for smoothing the way to collective bargaining for unions reflect contradictions in which ACFTU is caught and is trying to

^① The first draft of a new law on "democratic management in enterprises of Guangdong province" was issued in August 2008 and since then has become the target of heavy lobbying from employers, in particular the Hong Kong Chambers of Commerce and Industry. It is not clear when and in what form bargaining clauses will become part of the act.

^② The second draft of "democratic management in enterprises of Guangdong province" contained a clause concerning another form of industrial action. If employers do not show up for negotiations within 15 days after they have been invited, workers can go on strike, if supported by a vote of at least 20 per cent of the workforce. This provision would allow industrial action to enforce negotiations, but would not allow a strike for wage increases. If negotiations end in deadlock, employers and unions would have to call on a third party to arbitrate. However, intense lobbying by employers appears to have been successful in that this very limited form of industrial action was not retained in the third draft.

address.

- Separating management and unions by paying leaders' salaries from trade union funds is confronted by two problems: (i) there are more than 500,000 full-time cadres of grassroots trade unions (2007: 491, 731). Taking all of them onto the union's payroll would vastly increase the number of full-time officials whose salaries must be paid from the current 100,000 to about 600,000. Such a strategy could work only if the government agreed to treat all as civil servants and take over the wage bill; (ii) union leaders in larger companies earn annual salaries of several hundred thousand RMB and are likely to resist being moved to a union salary which is much lower. For officials in higher level unions the separation of management and union may appear to be a rational strategy; for those inside companies, they will fight it as it hurts their interests.

- Voting is key to winning trust and legitimacy, but only if candidacy is open to everybody and the practice of nominating from above ceases. For this purpose, plant unions need some autonomy, in particular from the district union. If upper unions continue to act as controlling organs, elections at the plant level are likely to remain meaningless and workers may continue to resort to spontaneous action to further their interests.

- Enforcing collective bargaining in all enterprises but without bestowing on workers and unions the means by which to apply pressure may become an empty right. Ensuring negotiations with employers should not be confused with pressure for a *reasonable offer*. It would be possible to write into the law a clear definition of *reasonable offer*, but then bargaining would not be needed at all and instead a calculator would suffice to work out the correct amount for wage adjustment. If such criteria remain vague, however—as they probably will—the employer can meet with workers and unions and still offer whatever he or she pleases. Building into the system a failsafe mechanism in the form of third-party arbitration may indeed be an improvement, but as long as arbitration remains the only means of emerging from deadlocked negotiations, they may not be taken seriously by either party and will be taken up only with the intention of moving on to arbitration. If, however, the outcome from arbitration is not satisfying to one party, what then?

- A right to strike may be the way out. However, such a right may not be acceptable to workers when it comes—as it usually does—with procedural restrictions. Allowing strikes only after mediation and

arbitration has failed or linking its use to a popular vote are likely to be ignored by workers who will resort to strike action anyway, whether it is procedurally within the law or not. Bureaucratic requisites such as voting, documentation, keeping to time schedules and so on can be followed only by unions which command an organisational apparatus. Requirements of this kind make any right to strike a union right—but ACFTU may not want to use it. If a right to strike is handed to unions which are disconnected from workers it will just lead to wildcat industrial action.^① Workers will act outside the law, perhaps commit criminal acts and may be threatened by penal sanctions, something industrial relations should avoid as much as possible.

ACFTU is caught in a dilemma: it wants to engage in collective bargaining without demanding the right for industrial action. As long as the central government continues to announce wage guidelines, ACFTU may feel safe in taking these recommendations as orders for implementation. But in doing so, ACFTU would just continue the former practice of writing into collective contracts whatever the government has announced or decreed beforehand. It will not apply any additional organisational weight of its own to the negotiation process. Workers may not see any advantage in having unions involved in bargaining for what has been officially announced. Whenever a conflict arises on wage adjustments, ACFTU is likely to be thrown back to a situation from which it wants to escape: workers will take industrial action without recourse to unions, and whenever that happens, ACFTU may be tempted to return to the scene as a mediator and to reconfirm the structural status quo.

The alternative for unions is clear: become accountable to workers via elections, engage members in deciding on bargaining requests and mobilise them to put pressure on employers. Unions can engage in wage conflicts only if they have been granted operational autonomy on bargaining issues. ACFTU's campaign for enterprise elections is the right approach but will work only if no control over elections is exercised from above and if company unions are free to decide on their strategy,

^① This is the case in Vietnam, where a union-bound right to strike has existed since 1995. The more than 6,000 strikes since then have all been illegal (see Chi [2011] on “informal labor activism”).

including industrial action. Separating management from unions is an absolute must but will not be enough if plant unions do not have operational autonomy to pursue the wishes of workers. If operational autonomy is not granted, unions are likely to be sidelined by workers, and spontaneous strikes—not bargaining by ACFTU unions—may become the defining factor in wage fixing. Government always has the means to interfere and reduce industrial conflicts by recommending higher wage increases. But in this variant, there is again no additional weight from the unions.

8. Conclusion

ACFTU has gone through a number of very different phases in its history. It was established in 1925 in the context of a capitalist society and became defunct shortly afterwards for two decades (1927-48). It was rebuilt after 1948 as the sole national labour body to serve the needs of a socialist command economy. Unions had to give up their autonomous role in workers' social reproduction and their traditional function as bargaining agent for wage earners was substituted by their new duty of managing welfare distribution at the workplace as an extension of the state bureaucracy. ACFTU became defunct again (1966-78) during the turmoil of the Cultural Revolution, a period which is not covered in this chapter. When China embarked on its liberalisation projects after 1978 ACFTU for two decades ignored the ongoing socio-economic transformation. The wake-up call for ACFTU came with the public sector reform programme (1995-2002), when the end of cradle-to-grave welfare policies and mass lay-offs hit the organisational base of unions and ACFTU was forced to leave the confines of state-owned companies in search of an organisational hold in the booming private sector.

From 1999/2000 onward ACFTU engaged in a national strategy to build its presence in the private sector. This may be called the most successful organising campaign in the history of trade unions worldwide—ACFTU claims to have added 140 million workers and more than one million unions to its membership base within one decade—but it has become largely an empty achievement: it helped ACFTU to balloon its apparatus but at enterprise level paper unions were created, dominated by management and not engaging in collective bargaining.

ACFTU has hitherto failed to live up to the new challenges from collective bargaining as this function is contradicted by its organisation. Unions today are still built upon the principles of socialist unionism to serve as a transmission belt from the Party to workplaces and to mediate conflicts between employers and employees. They function as a state agency, are administered as an arm of the civil service and do not get involved in industrial action on the side of workers.

This does not exclude ACFTU from playing a leading role in pushing for improvements in labour legislation. The labour contract law of 2008 and the law on labour dispute mediation and arbitration of the same year are two important steps forward in protecting individual labour rights. ACFTU threw its full organisational weight behind making these reforms happen. But the new labour legislation is still silent on collective rights and implicitly assumes the absence of class relations between employers and employees.

ACFTU's role as a mediating force was finally put to the test by the strike wave of 2010. It is a dialectical irony that this new challenge has evolved partly as a consequence of ACFTU's successful campaign to improve protection of individual workers' rights. Industrial action and public protest in the 1990s and the first half of the 2000s was largely a response to widespread illegal labour conditions. Today, many of these illegal practices are rectified via official conflict resolution channels. These "traditional" labour conflicts which call for the application of the law have now been complemented by wage strikes which differ in that they are disputes of interests for which no regulatory mechanism exists. Workers engage in industrial action, push for higher wages and leave unions sidelined.

Wage strikes pose an organisational dilemma for ACFTU. If it does not find a distinctive role in collective bargaining it may become a lost force in structuring industrial relations. Separating plant unions from management and linking them to workers through direct elections is certainly the right way for ACFTU to move forward. But unions must do away with their role as a mediating force and position themselves on the side of workers. It is doubtful that these changes can be affected without granting unions at the workplace operational autonomy. Current plans to legally enforce collective bargaining and hand the monopoly to ACFTU may regenerate functional contradictions and the likelihood that unions

will become idle and workers resort to spontaneous industrial action is great.

The socialist model of trade unionism cannot cope with labour markets built on competition and private ownership. The challenges to the party-state are less in that it can always respond to workers' protests by raising minimum wages and applying political pressure for higher wages. But this leaves no role for the unions. For ACFTU, there seems to be no way around it: either it functions as a collective bargaining agent and is allowed to grant its unions operational autonomy—or it remains a state agency under civil service administration, substituting for a labour department and ignored by workers in their struggle for higher wages.

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All China Federation of Trade Unions: A Key Labour Policy Lobby in China

Kinglun Ngok

In a market economy, labour organisations, although weaker than employers' organisations, are very important social entities. Individual employers have major decision-making power in their respective companies, whereas workers have to rely on a collective organisation—in other words, a trade union—to get their voices heard. Apart from bargaining with employers over wages and working conditions on behalf of workers, trade unions are also active in the political arena with a view to influencing government policies. In China, the All China Federation of Trade Unions (ACFTU) is the only trade union organisation.

Although the question of whether ACFTU is a real trade union continues to be debated by academics and observers, there is no doubt that it is an important labour policy actor in China. This chapter will illustrate ACFTU's role in labour law making in China with a focus on its role in formulating and implementing the Law on Employment Contracts.

ACFTU: An important Party-State Organ

Within the Chinese political system, there is only one national trade union organisation, the All China Federation of Trade Unions. All enterprise-level trade unions, industrial trade unions and local trade union federations are affiliated to ACFTU. The basic assumptions behind this unitary system are as follows:

- the working class share fundamental interests in a socialist country;

- there is no fundamental conflict of interests among workers;
- there is no reason for the working class to split into two adversarial camps or multiple factions;
- a unitary trade union system is conducive to workers' solidarity and the protection of workers' rights.

In this unitary system, power is highly concentrated. ACFTU's organisational structure is identical to that of the administrative system in China. To be more specific, under the leadership of ACFTU, there are two branches: local federations and industrial trade unions. ACFTU is the peak authority in the Chinese trade union system and represents Chinese trade unions in international forums. The ACFTU Executive Committee is elected by the National Congress of Chinese Trade Unions. It sees to the implementation of resolutions made at the National Congress, as well as the oversight of trade union work in the country when the National Congress of Chinese Trade Unions adjourns, in which case the Presidium exercises its functions and powers. There is a Secretariat under the Presidium to see to the daily work of ACFTU. The term for a member of the ACFTU Executive Committee, the Chair, any Deputy Chair, a member of the Presidium and secretaries working at the Secretariat is five years, or the interval between two National Congresses of Chinese Trade Unions.

Like the administrative system, local trade unions are organised into three levels: provincial federations, prefectural trade union offices and county-level federations. The local-level Congress of Trade Unions is the highest trade union authority in the area and is convened by the local-level trade union committee every five years. The local-level trade union committee implements resolutions adopted at both local- and upper-level Congresses of Trade Unions, leads trade union work in the area and makes regular work reports to the upper-level trade union, when the assembly itself adjourns. If needed, provincial federations can dispatch special representatives to a local-level federation.

In a market economy, trade unions are important social organisations that represent and protect workers' rights and interests. The role of trade unions in public policy is constrained by the structure of the country and that of the trade union itself. Under the leadership of the Communist Party of China (CPC), ACFTU heads all trade unions. The assumption

is that trade unions in China are mass organisations of the Chinese working class under the leadership of the CPC and formed by the workers of their own free will. They serve as a bridge and link between the Party and workers, are an important social pillar of state power and represent the interests of trade union members and workers.

While there is a centralised union organisation in China, there is no equally centralised employers' association that matches ACFTU in terms of organisational strength and political status.

The unitary trade union system and the multitude of employers' organisations is a distinctive feature of industrial relations in China. In structural terms, the trade union organisation is stronger than the employers; in reality, employers tend to prevail at the expense of workers.

ACFTU's structure reflects its labour policy concerns: its various departments include the Democratic Management Department, the Labour Protection Department, the Social Security Department, the Collective Contract Department, the Legal Work Department, the Grassroots Organisation and Capacity Building Department and the Women Workers' Affairs Department. There is also a Policy Research Office, which publishes journals on policy and theoretical research, such as *The Chinese Workers' Movement* and *Trade Union Research*. Furthermore, there are teams of scholars teaching and researching labour policies at the China Institute of Labour Relations, affiliated to ACFTU.

In the socialist political regime, ACFTU plays the role of a "transmission belt", representing the interests of the Party and the country top-down and workers' needs bottom-up. As representatives of the interests of the Party and the country, trade unions must educate workers and organise them to carry out Party and government policies. As transmitters of workers' needs, they are obliged to protect the rights and interests of workers and make their voice heard by the Party and the government. However, the transmission belt theory is based on the assumption that the interests of the Party, trade unions and the working class are aligned. Moreover, the theory is applied only on the macro level. Theoretical alignment of interests tends to fade in the face of real-world conflicts between plant managers and workers. Trade unions find themselves in an embarrassing position when the interests of the Party,

the trade union and the workers are clearly not aligned, especially when the Party appears to be in conflict with the workers.

On the macro level, the CPC, as the ruling party, has to balance the interests of all sides, which inevitably leads to conflicts with workers' interests. On the micro level, conflicts of interest among the enterprise, the grassroots party organisation, the management and workers are very common. How should trade unions react to conflicts of interest? History shows that trade unions usually do not react at all, thereby weakening their position as workers' representatives.

As a result, workers tend to regard grassroots trade unions merely as providers of welfare or networking opportunities. At the same time, the national-level trade union is *de facto* a government agency. In other words, the national-level trade union plays political and policy roles as a branch of the Party or government, not as a trade union. Some scholars try to explain ACFTU's role in terms of corporatism, claiming that it is more a functional representative than a workers' interest group (Chan and Anita 1993: 31–61; Feng 2002: 94–95). The essence of corporatism is that the state obtains policy consensus through consultation and bargaining with a few groups who monopolise power in this area.

ACFTU: A Key Labour Policy Activist

Legally, trade unions in China are responsible for labour protection, labour insurance, vocational training, cultural and entertainment activities in leisure hours and the protection of women workers' rights and interests. As their chief representative, ACFTU is dedicated to the above tasks nationwide while advocating workers' rights in the political arena. ACFTU is an important activist in labour policy-making and implementation. It takes an active part in not only the formulation, but also the implementation of labour policies and laws.

In accordance with the law, regulations and established practices, ACFTU influences labour policies in the following ways:

(1) Direct access to the CPC Central Committee and the State Council. Since the ACFTU Chair is usually a member of the Politburo, ACFTU can communicate its opinions on major legislative and reform policies and its own workers' movement guidelines directly.

(2) A presence in the leading teams drafting legislation and regulations. ACFTU can participate in the drafting of laws and regulations that have a direct impact on workers' interests.

(3) Suggestions on draft legislation and regulatory amendments, as well as policy input. Normally, the National People's Congress (China's legislature) and its Standing Committee plus the State Council send drafts to ACFTU for comments before their deliberations on draft laws and regulations.

(4) A presence in leading teams and teams responsible for the implementation of government reforms.

(5) Participation in the tripartite consultation mechanism. As the representative of trade unions in the tripartite mechanism, ACFTU can sit down with the government and employers' organisations to discuss key labour relations issues (Ngok 2007).

Although there are institutional possibilities for ACFTU to participate in labour policy formulation and legislation, its opinions may not necessarily be adopted by legislators or decision-makers. In fact, during the transition to a market economy, ACFTU's performance as regards workers' protection fell short of expectations; its proposals were not fully respected, especially in the restructuring of state-owned enterprises.

However, it must be noted that ACFTU's role in China's politics and policy process has not been consistent. As a matter of fact, its policy role was ignored for a long time after the founding of the People's Republic of China. In the 1950s, ACFTU leaders were accused of practising "economism" and "syndicalism" when they tried to pursue the representation of workers' interests. In the early 1960s, ACFTU was threatened with closure. When the Cultural Revolution broke out in 1966, ACFTU stopped functioning altogether and did not resume activities until after 1978. In other words, it regained its role as a policy actor only after reform and open-door policies had been adopted. Besides, although ACFTU plays an important role in institutionalisation and policy processes, its subsidiaries, especially the grassroots trade unions, do not participate in policy processes.

ACFTU and the Making of the Law on Labour Contracts

The Law on Labour Contracts, which complements the 1994 Labour

Code, was in the making for eleven years. Before it was enacted on 29 June 2007, the drafting process was accompanied by much manoeuvring between different stakeholders, including ACFTU (Ngok 2011).

On 10 January 2005, a draft Law on Labour Contracts, produced by the Ministry of Labour and Social Security (the predecessor of the Ministry of Human Resources and Social Security) was submitted to the Legal Affairs Office under the State Council, which in turn sent the draft out to local governments and relevant agencies for comments. ACFTU followed the consultation process within public institutions with close attention. In May 2005, its Key Action Points called for broad trade union involvement in the draft revision. On 18 May 2005, ACFTU convened a joint meeting with the Ministry of Labour and Social Security, indicating its determination to promote and participate in the drafting of the Law on Labour Contracts (ACFTU 2005). It established a team for this purpose and held informal discussions in six major regions of the country to gather input. Thanks to these initiatives ACFTU's voice was heard loud and clear when the State Council deliberated on the draft. Many of its suggestions were adopted and the revision clearly leaned more in favour of workers.

Following the legislative procedure, the State Council submitted the revised draft to the Legal Affairs Commission of the National People's Congress, which in turn made further revisions before submitting it to the Standing Committee of the National People's Congress. On 20 March 2006, the General Office of the Standing Committee of the National People's Congress held a press conference to solicit public comments on the draft Law on Labour Contracts of the People's Republic of China. Many industrial and commercial organisations sent strong protest memoranda. Dozens of foreign-invested companies, including Johnson and Johnson and Adidas, indicated that they would send official petitions to the Standing Committee of the National People's Congress. The American Chamber of Commerce in China submitted its detailed opinions on 19 April 2006, claiming that the draft legislation would increase the operational costs of foreign-invested companies drastically and make their operations unprofitable.

Since most feedback with regard to the draft Law on Labour Contracts came from enterprises, ACFTU mobilised trade unions at all levels. On 24 March 2006, it held an emergency meeting of directors of

the legal departments of provincial federations, demanding additional input to the draft law. On 29 March, it issued the *Note on Providing Feedback on the Draft Law on Labour Contracts*, *ACFTU's Outline for Trade Union Participation in Providing Feedback on the Draft Law on Labour Contracts*, the *Outline for Publicising the Importance of Providing Feedback on the Draft Law on Labour Contracts* and the *Opinions on the Revision of the Draft Law on Labour Contracts*. At the same time, ACFTU summarised the clauses of the draft law related to workers' rights and interests into five categories and 21 items, on each of which it clarified its position to local trade unions.

ACFTU's efforts were focused and effective, with a clear objective: strengthening its representation of workers' rights and interests and enhancing the power of grassroots trade unions. Although industrial and commercial organisations kept exerting pressure, with international public opinion pushing for it and mining accidents happening one after another, the draft Law on Labour Contracts did not tone down its insistence on the protection of workers' legitimate rights and interests. After four rounds of deliberation, it was adopted into law on 29 June 2007 by a majority vote. The final version of the Law on Labour Contracts quotes ACFTU extensively on trade unions as legal entities and as representatives of collective workers' rights. Out of the 98 articles in the eight chapters of the Law, 17 articles in five chapters mention the rights and functions of trade unions 21 times. There are also 28 instances when the Law identifies the trade unions as the formal subject and workers as the actual subject in collective contracts (Xu 2007).

ACFTU's strong engagement in the drafting of the Law on Labour Contracts has resulted in many protective clauses. Compared with the Labour Code of 1994, the Law on Labour Contracts offers a higher level of protection for employees. Temporary work is limited and after two fixed-term contracts or ten years have passed, workers become permanent (Article 14). Workers from dispatch agencies must be employed for a minimum of two years and no company can hire out workers to itself (Articles 58 and 67). Acknowledging that social security is still weak, severance pay is now payable in the amount of one month's pay for each year worked (Article 47). A novelty in Chinese labour legislation is the application of clearly spelled out sanction clauses. Workers who do not receive a written contract within 12 months are to receive double pay and

then a permanent contract (Articles 82 and 14). If the employer fails to pay salary or other entitlements, the labour department must order it to do so with extra compensation for the worker of at least 50 per cent (Article 85).

Throughout the legislative process, ACFTU advocated workers' rights and interests. It consolidated the resources at its disposal to influence the formulation and revision of the draft law. It took the initiative to strengthen its representation of workers' rights and interests and to strengthen the power of grassroots trade unions. As soon as the legislative process kicked off, ACFTU set up a task force to participate and lead. Since ACFTU has many formal and informal relations with the government and the People's Congress, it became a key player in the drafting of the Law on Labour Contracts. After the first round of deliberations, when pressure was being applied for revision, ACFTU rapidly mobilised its affiliates to provide feedback. It responded strongly to the suggestions made by overseas chambers of commerce to China's highest legislative body, calling them "thinly veiled threats", thereby garnering public support. Changes to the wording of the draft law reflect the huge influence which ACFTU exerted on the legislative process. ACFTU's contribution to the Law's emphasis on the protection of workers' legitimate rights and interests was enormous.

Conclusion

As a key labour policy lobby in China, there is no doubt that ACFTU engaged strongly in the drafting of the Law on Labour Contracts and other important legislative processes for protective clauses for workers in recent years. As the highest union body, ACFTU has many formal and informal relations with the government and the People's Congress. It is therefore able to exert strong pressure on labour-related legislation. However, ACFTU's engagement for better working conditions did not come out of the blue. The increasing number of labour conflicts and the many reports on scandalous working conditions in sweat shops in the export processing zones have challenged the relevance of ACFTU in maintaining social harmony and stability. In pushing for labour law reform and using its formal and informal contacts with government officials and party cadres, it could exert influence without relying on enterprise unions or members.

ACFTU never considered launching a mobilisation campaign for its members. With no solid base in companies, ACFTU responded to the Party's expectations that it would maintain social stability and exert pressure as a labour bureaucracy.

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Tripartite Coordination with Chinese Characteristics: A First Step Towards Tripartite Consultation and Social Dialogue?

Qiao Jian

Many countries at various times have tried to resolve industrial disputes through one form of tripartite consultation or another (Trebilcock 1994). “Tripartite consultation” is usually understood to be a process or mechanism that facilitates voluntary interaction and dialogue between workers, employers and the government with a view to improving labour standards and protecting workers’ rights (Simpson. 1994: 40-45). Such practices have consistently been supported by the International Labour Office (ILO) since its founding in 1919. The ILO champions tripartism as a means to promote social harmony, as well as fair and reasonable working conditions. The establishment of the National Tripartite Consultative Committee (NTCC) in 2001 marked the beginning of a tripartite coordination mechanism with Chinese characteristics. To put it in perspective, one must understand that China at that time wanted to use its recent accession to the World Trade Organisation (WTO) as an opportunity to deepen market economy reforms, embed the rule of law and the “people first” principle more securely and build a “harmonious society”. In particular, it wanted to establish a new industrial coordination mechanism that would be adaptable to labour relations that are increasingly being globalised, diversified, flexibilised and dominated by the market.

This chapter reviews the development, structure, function, distinctive practices and shortcomings of the tripartite coordination mechanism in China. Although the Chinese government and the All China

Federation of Trade Unions (ACFTU) call it a “tripartite coordination mechanism”, in the eyes of overseas scholars it is a far cry from tripartite consultation mechanisms in industrialised market economies (Shen 2007; Warner and Ng 1999: 295-314; Zhu, Warner and Rowley 2007: 745-68). Despite its importance and wide adoption in China, little research has been done on its characteristics and operations. Besides, the existing domestic literature seldom compares the Chinese tripartite coordination mechanism with the tripartism advocated by the ILO (Zhang & Wang 2005; Wang 2006; Chang & Li 1998; Zheng & Liu 2007). Moreover, overseas scholars do not usually draw a distinction between China’s tripartite coordination and other forms of collective bargaining, such as bilateral negotiations between employers and workers or trade unions (Clarke and Lee 2002; Clarke and Lee 2004). Therefore, it is high time to study and summarise the characteristics of the Chinese tripartite mechanism in the context of international comparative studies. This research coincides with the international financial crisis which broke out in late 2008. The tripartite mechanism should play a more significant role in addressing post-crisis industrial relations. Finally, this chapter is intended to contribute to future reforms and policy adjustments of China’s tripartite mechanism by articulating domestic experiences accumulated in recent years.

1. The ILO Model of Tripartism

Tripartism is the philosophy and institutional foundation of the ILO. Since its establishment in 1919, the ILO—which later became part of the UN—has advocated a tripartite structure consisting of government, workers and employers (Trebilcock 1994: 5). Meanwhile, the ILO advocates tripartism among its member countries as a way of giving each party representation and preventing labour disputes.

The ILO promotes the establishment of tripartite mechanisms among its member countries by formulating international labour conventions and recommendations. The *Recommendation concerning Consultation and Cooperation between Public Authorities and Employers’ and Workers’ Organisations at the Industrial and National Levels* (R113), adopted in 1960, recommends that member countries set up a tripartite consultation mechanism at the national and industrial levels between public authorities

and employers' and workers' organisations to promote effective consultation and cooperation. The ILO believes that such a mechanism should be provided for or facilitated by voluntary action on the part of the employers' and workers' organisations or by promotional action on the part of the public authorities or by laws or regulations. It also stresses that such consultation and cooperation should not derogate from the right of collective bargaining. In 1976, the ILO adopted the *Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards* (C144). In order to promote social democracy, facilitate cooperation among public authorities, workers and employers, better coordinate economic and social development in member countries and resolve conflicts between economic development and social justice against the background of economic globalisation, the ILO adopted, in 1996 and 2002, respectively, the *Tripartite Consultation at the National Level on Economic and Social Policy* and the *Resolution concerning Tripartism and Social Dialogue*. In addition, the ILO adopted the *Convention concerning Labour Administration: Role, Functions and Organization* (C150) and the *Recommendation concerning Labour Administration: Role, Functions and Organization* (R158) in 1978, which clarify the role of the government in social dialogue and tripartite mechanisms to be that of a third party which does not intervene in industrial relations directly (Trebilcock 1994: 3).

According to the above-mentioned conventions and recommendations, the topics of the tripartite mechanism range from the formulation and adjustment of laws and regulations that may impact the inherent interests of workers and employers, through the establishment or functions of a national organisation responsible for labour standards on employment, vocational training, labour protection, vocational safety and health, insurance and benefits and so on, to the planning of social and economic development plus implementation. Social dialogue is defined by the ILO as including all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.^① With such a loose definition, member countries may develop different practices. Therefore, within such a

^① The Taiwanese translation of the term "consultation" is more accurate. See Pan (2006).

framework, the ILO regards social dialogue as a sustainable concept.

Even so, the ILO still believes that there are certain prerequisites or social conditions for the establishment of social dialogue, and that they are conducive to the establishment and maintenance of the tripartite mechanism. These prerequisites are:

- strong, independent workers' and employers' organisations that are capable of obtaining the information needed in social dialogue;
- the political will and commitment to participate in social dialogue on the part of governments, workers and employers;
- respect for such basic rights as freedom of association and collective bargaining;
- the ability of the three parties to implement consultation outcomes;
- proper institutional support.

When it comes to industrial relations in its narrow sense, in the ILO model tripartite consultation is supposed to play three roles in industrial relations: the formulation and implementation of labour laws and regulations, collective bargaining and labour dispute resolution.^① The core lies in collective bargaining.

2. The Development of China's Tripartite Coordination Mechanism

Since the mid-1980s, when China adopted the reform and open-door policy, introduced foreign capital and carried out market-oriented employment reforms, there has been a drastic increase in both the number

^① In May 2001, the International Labour Office signed a Memorandum of Understanding (MOU) with China's Ministry of Labour and Social Security; in Item Four on Social Dialogue of Chapter Two on Shared Objectives and Priority Areas, the abovementioned content was stressed. Five relevant measures were also listed, such as helping to strengthen the national and provincial tripartite coordination mechanisms; promoting and improving the system of enterprise collective bargaining; helping to improve legislation with regard to labour contracts and the implementation of collective agreements; promoting and improving the system of labour dispute resolution; building up teams of labour dispute arbitrators; and supporting competence building among the social partners.

of cases of employers violating the rights of workers and individual or collective labour disputes. In 2001, the year the tripartite mechanism was launched, there were 155,000 labour disputes in China, involving 556,000 workers, representing year-on-year growth of 14.4 per cent. The number of cases in the private sector shot up. By the time the world financial crisis broke out in 2008, labour dispute arbitration bodies across the country had accepted a total of 693,000 cases of labour disputes, 237,000 of which were settled in the same year. There was a year-on-year increase of 98 per cent, involving 1.214 million workers. Of these, 22,000 cases were collective, involving 503,000 workers (Ministry of Human Resources and Social Security).

As a result of economic reforms, labour relations in China have become increasingly varied, complex and tense. The interests of workers and enterprise management have diverged. In particular, the massive layoff and re-employment efforts involving state-owned enterprises that started in 1997 exacerbated labour relations in such enterprises, leading to large-scale workers' protests and calls for intervention by the higher authorities. Meanwhile, the rights of workers in the private sector, the majority of whom are migrant workers, were basically ignored by the law, which added another element of instability to labour relations. A tripartite mechanism was called for.

The tripartite coordination mechanism in China has historical and cultural roots. Historically speaking, confrontations or disputes were resolved by consultation among highly-regarded authoritative figures in society. Later, such practices also helped to maintain social and political stability by preventing the penetration and participation of independent labour organisations that came into being after the emergence of civil society. The tripartite mechanism must toe the Party line as well, which is that workers and employers share the same fundamental interests, as supported by the "Three Represents" theory advanced by Party Secretary Jiang Zemin in his speech on 1 July 2001. According to the theory, enterprise investors and managers are "constructors" of socialism with Chinese characteristics.

The unique political clout of ACFTU and its leaders contributed significantly to the creation of the tripartite mechanism in China. Playing the dual role of coordinating industrial relations and consolidating the mass base of the Party, ACFTU and its leaders enjoy superior political

status to the labour administrative authorities, which is conducive to their participation at the top level and to the protection of workers' rights. An important distinction between China's tripartite mechanism and its Western counterpart is that trade unions in China participate in the deliberation and administration of state affairs because of the political power bestowed by the Party, not because of the labour movement they organise.

Pressure from such international organisations as the ILO, the WTO and the International Confederation of Free Trade Unions (ICFTU) is another factor which contributed to the creation of the tripartite mechanism in China. In the 1990s, the ILO promoted International Labour Standards and "corporatism" in employment relations vigorously in China. In the run-up negotiations to China's WTO accession in November 2001, China was consistently pressed by other national governments, trade unions and social groups to enhance labour standards, improve working conditions and expand social participation. Against such a background, tripartism within the existing political framework was viewed as an ideal option that could prevent the exacerbation of labour relations, while highlighting the democratic participation of social partners.

The tripartite mechanism emerged in the early 1990s. In November 1990, the National People's Congress ratified the ILO *Convention concerning Tripartite Consultation to Promote the Implementation of International Labour Standards* (C144). Attempts to establish the tripartite mechanism began after 1996 in Shandong, Shanxi and Liaoning Provinces.

In August 2001, the first meeting of the National Tripartite Consultative Committee (NTCC) took place, signalling the official creation of a national tripartite coordination mechanism.

The Law on Trade Unions amended in October 2001 provides legal grounds for the creation of the tripartite mechanism. Article 34, Section 2 states: "The administrative departments of labour of all levels of people's governments shall, in conjunction with the representatives of their equivalent level trade unions and enterprises, establish the trilateral negotiation system to jointly study and solve the major problems related to labour relations." The Law on Labour Contracts and the Law on Labour Dispute Mediation and Arbitration that were subsequently adopted in 2008

also include provisions on the tripartite mechanism.

By September 2008, 12,000 tripartite coordination mechanisms (including local and industrial ones) at all levels had been set up in China. All 31 provinces, municipalities under the direct jurisdiction of the Central Government and autonomous regions had set up such mechanisms; 309 (92.5 per cent) prefecture-level cities had also done so, as well as 2,412 (84.2 per cent) county-level cities (Labour Movement Research 2009: 5).

3. Structure of Tripartite Consultative Meetings

The 2007 Law on Labour Contracts renamed the tripartite consultation mechanism “a tripartite mechanism for coordinating labour relations”, which indicates that lawmakers had realised that the current tripartite mechanism was not yet consultative in nature. “The labour administrative department” in the law refers to the Ministry of Human Resources and Social Security, as well as its local branches. The “workers’ congresses” refer to ACFTU at the national level and ACFTU branches at local level. The “representatives of enterprises” refers to the China Enterprise Confederation (CEC). Since 2007, the All China Federation of Industry and Commerce (ACFIC) has been pushing for the participation of its local branches in the tripartite mechanism as representatives from the private sector, leading to “three parties, but more than three sides” in some localities. However, so far no provisions have been laid down for the selection, voting rights and decision-making processes of private sector representatives.

At the national level, the National Tripartite Consultative Committee (NTCC) was created in August 2001 by the Ministry of Labour and Social Security, ACFTU and CEC/ACFIC. In 2008, for the sake of fairness and respect for the seniority of representatives from ACFTU, the NTCC adopted a system by which the Executive Chair of the labour administrative department assumed responsibility for convening meetings. Since 2001, representations assigned by the three parties to the NTCC have managed to build stable structures. An office was set up at the Department of Industrial Relations, Ministry of Human Resources and Social Security, to take care of daily operations. In principle, there are

three NTCC meetings every year, with each party responsible for the organisation of one meeting. Costs are shared by the three parties.

By the end of 2009, 14 NTCC meetings and three tripartite working meetings had been held. Subsequently, there has been one NTCC meeting per year, each lasting for one day. However, in no single year have the planned three NTCC meetings been held. Besides, in March 2007, several expert committees were created under the NTCC, including the *Research Committee on Laws and Policies concerning Industrial Relations*, the *Research Committee on Enterprise Wage Distribution* and the *Research Committee on Collective Bargaining*. These committees consist of NTCC leaders, external experts, scholars and professionals in the employment of the three parties. However, so far they have not been very active.

There have been local innovations in the tripartite mechanisms in accordance with local conditions.

In Shanghai, the Deputy Mayor in charge of labour and social security affairs is the Chair of the *Municipal Tripartite Coordination Joint Meeting*, the Director of the *Municipal Labour and Social Security Bureau* serves as Executive Deputy Chair and a Deputy Chair of ACFTU's Shanghai branch acts as Deputy Chair. Such an arrangement is intended to raise the profile of the tripartite mechanism while ensuring that officials delegated by other parties match the rank of the ACFTU official.

In Liaoning Province, tripartite efforts are focused on building enterprises and industrial parks with a reputation for harmonious industrial relations. National-level Model Enterprises for Harmonious Industrial Relations are exempt from annual labour inspections. Enterprises and individuals with outstanding achievements in harmonising industrial relations are awarded May the First Labour Medals and Certificates. Provincial-level Model Enterprises for Harmonious Industrial Relations are given priority in the appraisals for Exemplary Entrepreneurs. Enterprises meeting these conditions also enjoy upgrading of their credit ratings. Considering the weak presence of CEC in the private sector below the county level, ACFIC as the representative of private employers and the Association of Enterprises with Foreign Investment have been invited to form a tripartite mechanism of "three parties and five sides" .

In Shanxi Province, instruments such as briefing papers, coordinating circulars, outcome assurance and joint investigation have been put in place. Under its tripartite committee, there are three subcommittees on laws and policies, enterprise wage distribution and collective bargaining. The three subcommittees receive help from the labour administrative department, local CEC branch and local ACFTU branch in their policy research and consulting service.

In Guangdong Province, meetings constitute the major vehicle of the tripartite mechanism, but there are also special campaigns. The provincial minimum wage must be approved by tripartite consultation before the provincial government implements it. Both Guangdong Province and Anhui Province have promulgated *Regulations on the Protection of the Rights of Enterprise Operators*, clarifying the legal status, responsibilities and functions of parties involved in the coordination of labour relations on the provincial level.

In Guangzhou, the tripartite consultation focuses on minimum wage standards. The usual practice is for the three parties to come up with a proposal, which is then implemented by the municipal government. There are heated debates during the consultation, attracting a great deal of media attention.

In Shenzhen, the Municipal Finance Bureau sets aside special funds for the tripartite mechanism.

In Shaanxi Province, there is a leading group which coordinates labour relations, headed by a deputy governor, with deputies from the Provincial Department of Labour and Social Security, the Provincial Economy and Trade Commission, the provincial branch of ACFTU and the provincial branch of CEC. ACFTU's Shaanxi branch makes the tripartite efforts part of the contest among union work, as well as part of the annual evaluation.

In summary, tripartite meetings in China have the following characteristics:

- The government plays a leading role in the tripartite mechanism. This is due in large part to tradition, the current political regime and the social administrative system.

- Both workers and employers depend on the Party and the government. Their respective organisations are not fully independent.

Politically, representative organisations from both sides are requested to follow the Party leadership and acknowledge that the fundamental interests of workers and employers are in alignment. Employers' representatives are required to protect the interests of both employers and workers, not those of the employers only. ACFTU and its substructures must keep to the line of "promoting enterprise growth while protecting workers' rights and interests".

- Since there is only one industrial union system in China, its role in the tripartite mechanism is being strengthened. The Chinese trade union system has several unique features. For one thing, it is not only the representative of workers in the coordination of labour relations, but also a bridge and a link between the Party and the masses. Furthermore, only one trade union system is allowed in China with a view to strengthening workers' solidarity and building a unified organisation. Besides, the organisation of the trade union system and the methods it adopts to protect workers' rights must be conducive to social and political stability. The trade union system assigns the most officials of all three parties to the tripartite mechanism. It has the organisational capability to conduct surveys, research, statistical analyses and awareness-raising campaigns related to specific labour issues. Furthermore, ACFTU leaders at all levels are usually senior in political status to leaders of their counterparts in the labour administrative department, which to a certain extent ensures the influence of the trade union in the tripartite mechanism.

- Representation of employers' organisations is lacking. Ownership diversity and the inability to initiate coordination of labour relations are two of the constraints.

The author found, in his investigation, various problems with the tripartite mechanism at local level. For example, there is unbalanced development of the tripartite mechanism at the provincial, prefecture and county levels. The county level is far from satisfactory, let alone the township level or the industrial level. A common problem with local tripartite meetings is weak representation. In some cities it is uncertain who should represent employers or there is no employers' organisation at all. In some places the local Economy and Trade Commission is asked to represent the employers in consultations, but it cannot represent private sector employers. Employers' organisations at the regional or industrial levels are lacking. The trade union system may not best represent the interests of workers, either. Some local trade union leaders behave like government officials, while workers seem to count on the government

more. There are calls in many quarters for better national legislation to set standards, rather than have voluntary standards proposed by workers and employers. All local tripartite mechanisms are in need of permanent offices, dedicated staff and funding. Some do not believe that the tripartite mechanism is high-profile and authoritative enough. Issues that can be coordinated by a certain department and a leader from each of the three parties are limited. Others complain about the ambiguity of the operational model, the functions of the mechanism and the roles of each party. Tripartite meetings are more like occasions for socialising instead of engaging in discussion. There seems to be more focus on setting up models than on coordination and supervision at the grassroots level. In many places, tripartite meetings are convened as a mere formality with no agenda, consultation, research or exploration of issues. Still other places attribute the lack of awareness and influence of the tripartite mechanism to its being foreign and to the lack of publicity.

4. Functions of the Tripartite Consultative Meeting

According to the August 2001 *Opinions on the Establishment of the National Tripartite Consultative Meeting*, the mandate of the tripartite meeting involves:

- offering policy input on labour relations;
- studying the status and trend of labour relations;
- making suggestions about the formulation or adjustment of laws and policies concerning labour relations;
- guiding the coordination of local industrial relations;
- investigating major collective labour disputes or collective events and proposing solutions.

According to the August 2002 *Guiding Opinions on Establishing and Improving a Tripartite Labour Relations Coordination Mechanism*, the mandate for tripartite mechanisms below the provincial level is expanded to include “conducting campaigns to raise the awareness of labour laws and regulations”. In February 2009, the mandate was again modified. The concept of “a working system of labour relations” was proposed. A

mechanism to communicate information on and address major issues related to labour relations was stressed. There was also a call for better communication, exchange and cooperation with international labour organisations and tripartite mechanisms in other countries.

4.1 Participation in the formulation and implementation of labour laws, policies and principal labour standards

There are clear indications in laws and policies—such as the 1994 Labour Law and the 2007 Labour Contract Law—that the three-party consultative meeting should study the impact of economic restructuring and socio-economic development on labour relations, and adjust and regulate such impacts. The NTCC participates in the formulation of national laws, policies and measures concerning labour and social security.

At the local level, regulations and policies have been introduced to promote the local tripartite mechanism, execute labour contracts and collective contracts, build up a team of part-time labour arbitrators and stabilise labour relations in crises, among other things. Quite a few places have taken advantage of the tripartite mechanism when formulating or adjusting important labour standards.

However, the role of the tripartite mechanism should not be overestimated. Because of the division of duties within the labour administrative department, laws and policies concerning employment and social security do not fall within the mandate of the tripartite mechanism, which is quite a constraint on the coordination of labour relations. As for legislative participation, the three parties, the workers and employers in particular, are limited to making suggestions only. They do not have the right of codetermination with regard to labour standards, procedures and norms. Furthermore, the duration of the annual tripartite consultative meeting is too short to allow formal consultation and negotiation over laws and policies. As a result, informal tripartite coordination efforts have to be utilised, which weakens the functioning of the tripartite mechanism greatly. Lastly, although government intervention makes circulars jointly signed by three parties more effective than circulars signed by one party only, there is limited legal efficacy, which weakens enforceability.

4.2 Promoting collective negotiation between workers and employers

By June 2008, just over million collective contracts had been concluded in China, involving 1.8 million enterprises and 140 million workers. It should be pointed out that there is no regulation or policy indicating the role of the tripartite mechanism in collective bargaining, the rights and obligations of representatives or how decisions are to be implemented; such stipulations are missing from the Interim Measures on Collective Wage Negotiation, the Regulations on Collective Contracts and the Law on Labour Contracts.

In the 1990s, the collective negotiation advocated by the Chinese government and ACFTU was mostly bilateral; that is, between employers and trade unions or workers. Collective negotiations on the enterprise level tended to be a formality because of the weakness and dependence of the trade union. A new trend in recent years is to have a relatively independent trade union in an industry to conduct collective negotiations with an employers' organisation in the same industry, to conclude an industry-wide collective agreement and to regulate labour relations within the industry. In 2009, ACFTU issued a special guideline on industry-wide collective wage bargaining in which it called for the strengthening of industry-wide trade unions, expanding the coverage of collective wage negotiations and enhancing the effectiveness of such negotiations. It is expected that such regional or industry-wide collective negotiations and collective agreements will give the tripartite mechanism more room to manoeuvre.

4.3 Participating in labour dispute resolution

The tripartite principle is embodied in China's labour dispute resolution system. Article 8 of the 2007 Law on Labour Dispute Mediation and Arbitration stipulates that, "The administrative departments of labour of people's governments at or above the county level shall, in conjunction with the trade unions and representatives of enterprises, establish a tripartite coordination mechanism for labour relations to jointly study and resolve the major issues of labour disputes".

There are no reliable data on the number of major collective labour disputes and collective events that have been resolved by tripartite

committees at all levels in China. Surveys show that no robust system exists to enable tripartite committees to study major collective labour disputes or collective events and to coordinate their resolution. Moreover, higher-level tripartite committees are less effective in this area than lower-level ones. The NTCC has yet to play a role commensurate with its status.

The ineffectiveness of tripartite committees in dispute resolution is attributable to the lack of legislation and procedural clarity. For example, the Law on Labour Dispute Mediation and Arbitration, which came into force in May 2008, fails to mention the resolution of collective disputes, which is quite a drawback.

In addition to the above functions, the tripartite mechanism in China has a distinctive role: namely, promoting the development of enterprises and industrial parks known for harmonious labour relations. Such efforts draw employers' attention to corporate social responsibility and are therefore conducive to the development and maintenance of harmonious industrial relations. Some provinces where much restructuring of state-owned enterprises has taken place take advantage of the tripartite mechanism to handle labour relations during restructuring, which is welcomed by the general public. The presence of the tripartite mechanism is also felt positively in the conclusion of labour contracts, joint enforcement inspections and in addressing challenges posed by the financial crisis.

Conclusion

The current tripartite mechanism for coordinating labour relations in China is a functional mechanism involving government agencies and parastatal agencies, both of which are part of the establishment. The ultimate goal is to maintain political and social stability and to prevent the emergence of independent alternative social interest groups. Consequently, on the one hand, employers' organisations demand that enterprises meet their social responsibility, protect workers' rights and interests; on the other hand, the trade union system also regards the prosperity of enterprises as crucial. What underlies this mechanism is not only traditional Chinese dialectics, but also—and more essentially—the

interests of the Party and the state. However, this functional coordination mechanism may well be up to the task of coordinating labour relations, despite the divergence in interests brought by the increasing market orientation. The author's research has shown the beginnings of a transition from functional organisations to interest-based organisations: as the coverage of both workers' and employers' organisations expands, elections and other democratic processes gradually become established; the topics addressed and functions of the consultation mechanism become more appropriate; and the awareness of workers and employers increases. Nevertheless, the transition may take longer and find embodiment in more diverse forms in China.

The current status of China's tripartite mechanism is related to China's history, cultural heritage and institutional environment. Meanwhile, it is constrained by the development of the three actors in the tripartite mechanism. It is also influenced by many other complicated factors, such as the fact that, in the course of China's continuing industrialisation, labour relations are growing more and more market-oriented, globalised, diversified and flexible.

First, the overcentralised political regime in China still exerts considerable influence on economic and social development. The concept of the tripartite mechanism emphasises the independence of actors, democracy and equality, cooperation and dialogue, but as a foreign concept it cannot function without regard to China's institutional environment. Therefore, compared to counterparts in other countries, the Chinese tripartite mechanism is more dominated by the government, while workers and employers are constrained to offering proposals. Consultation, negotiation and codetermination are missing.

Second, the actors in the tripartite mechanism, especially workers and employers, cannot mature overnight. Their immaturity, dependence and lack of representativeness put constraints on the roles they are to play. It is noteworthy that neither ACFTU nor CEC are independent social interest groups. Both must, to a certain extent, take the side of the Party and the government to rein in society, which limits their ability to represent the interests of either workers or employers.

Third, labour issues in China arise from China's industrialisation and economic transformation. The young tripartite mechanism is yet to face up

to the more market-oriented, globalised, diversified and flexible labour relations.

Furthermore, the current tripartite mechanism is organised on the basis of a “narrow” definition of labour relations and administrative structure. In reality, however, the issues of employment, labour relations and social security are intertwined. The tripartite framework must therefore be restructured.

Despite the shortcomings, the current tripartite coordination mechanism is the first step towards tripartite consultation and social dialogue. Civil society is emerging in China and the relationship between the state and society is evolving from state corporatism to social corporatism, for which the tripartite mechanism provides a vehicle. The nature of the tripartite mechanism in China will evolve from government-led functional coordination within the establishment to the autonomy and independence of the three parties. Its operations will be more in the form of consultation and negotiation than communication and coordination. Its offices, now sporadic and temporary, will assume higher status and become permanent. Its function will change from advocacy to decision implementation.

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Capacity-building and Reform of Chinese Trade Unions: Using Legal and Democratic Means to Resolve the Conflict of Roles of Trade Union Chairs

Kong Xianghong

1. The Variety of Trade Union Systems around the World and the Specific Features of Chinese Trade Unions

Industrial democracy and corporate development are known to be closely related to the building of harmonious relations in the workplace. Practices in various countries and regions have proved that trade unions play an indispensable role in this.

In recent decades, China has experienced massive and rapid industrialisation and urbanisation, which have led directly to the emergence of large numbers of enterprises and factory workers, and a sharp increase in labour disputes. Against this background, the role of trade unions is becoming prominent, as industrial democracy and corporate development need an effective trade union organisation that can truly represent the interests of the employees and achieve “win-win” terms in its collective bargaining with the employer or the management.

The role of Chinese trade unions has long been questioned and even denounced, both at home and abroad. Criticisms include the fact that trade unions in China are officially founded and dominated by the ruling

Communist Party. It is also questioned whether they can really represent the interests of the employees and arrive at mutually beneficial terms in bargaining with the employer.

However, there is already evidence to show that Chinese trade unions can, to some extent, represent the interests of their members in playing their expected role of promoting harmonious industrial relations. Objective analyses and international comparisons also suggest that doubts and criticisms of Chinese trade unions are out of touch with reality, and therefore mostly untenable.

The world is now highly pluralistic, whether in terms of political systems or economic and other kinds of system. An informed recognition and appreciation of such diverse systems and the reasons behind them constitutes a sound basis for mutual respect and peaceful coexistence among nations. Similarly, differences between trade union organisations under different political and economic systems, as objective realities, should be well understood and duly respected.

Those sharp criticisms of Chinese trade unions are mostly based on the relationship between the unions and the ruling party, or on the fact that Chinese trade unions remain firmly subordinate to the Chinese Communist Party. However, this should not be regarded as abnormal. Many trade unions around the world maintain close relations with political parties. Is not the American Federation of Labor and Congress of Industrial Organizations (AFL/CIO) a source of votes for the American Democratic Party? In the same manner, the British Labour Party, evolving from the country's labour movement, has conventionally drawn its strongest grassroots support from trade unions. In Germany, the Social Democratic Party (SPD) has traditionally been allied with most of the trade unions there, including the powerful IG Metall. In Northern Europe, in Japan and in underdeveloped areas, such as Africa (Egypt and South Africa, for example), the affiliation of trade unions to a particular political party or parties or a strong connection between trade unions and political parties can also be observed. Therefore, a close relationship or alliance between trade unions and the ruling party should not become a basis for criticising or even disparaging the Chinese trade union system.

The trade unions under the leadership of the Chinese Communist

Party, while working closely with government authorities and having a large network of associations and funding channels, share certain key features with trade unions in other countries. Above all, they must represent the interests of their members or they will be rejected, and no longer be in a position to play a key role. *The Trade Union Law of the People's Republic of China* (2001) and *The Charter of Chinese Trade Unions (as amended, 2008)* both stipulate that trade unions are the representatives and safeguards of the interests of Chinese workers. This legal requirement, as well as observable practice, testifies to the convergence with regard to basic mission between trade unions in China and elsewhere.

In short, to assess adequately the positive role of Chinese trade unions in facilitating industrial democracy and corporate development in China, there needs to be a proper understanding of Chinese trade unions, including their similarities and differences in comparison with their overseas counterparts.

2. Current Problems Facing Trade Unions

Of course, Chinese trade unions clearly face a number of problems in trying to represent the interests of their members. Trade unions in the Chinese political and economic context have similar, perhaps even greater difficulties than their counterparts elsewhere in winning the support and trust of members and representing their interests faithfully.

When it comes to the representation of workers' interest the following problems are particularly significant:

(1) About 20 per cent to 30 per cent of grassroots trade union organisations are so inactive that they fail to play their expected roles. This percentage is surprising, since the absolute number of unions involved can be very large. In Guangdong Province, for example, with its 180,000 grassroots organisations under the Guangdong Federation of Trade Unions, the figure of 20-30 per cent means that as many as 36,000 to 54,000 union organisations are not functioning properly. If the total number of unionised units in Guangdong is 550,000, this percentage means that between 110,000 and 160,000 companies and other kinds of organisation do not have properly-functioning trade unions. That such a

large number of grassroots trade unions and their organisations are not functioning well reflects poorly on the overall image of the Chinese trade union system and deserves serious attention.

(2) The leaders of a fairly large number of grassroots trade unions have a conflict of interest. Take Guangzhou, the capital city of Guangdong Province, for example. Among the approximately 20,000 grassroots trade unions, nearly 50 per cent have chairmen who are also employed as deputy general managers or the equivalent in the company. Such dual roles among trade union leaders mean that there are bound to be conflicts between representing the interests of the employer and representing those of the employees, particularly in a market economic context. It follows that certain trade union leaders are likely to stand with the employer and management in disputes or even law suits, as a result of which they are despised and dismissed by their members. Guangzhou has witnessed numerous such cases of union leaders standing with the management instead of with employees, most of them occurring in state-owned enterprises or their holding companies. In other cases, mid-level managers of an enterprise—for example, the human resource, accounting or finance manager, or the assistant to the general manager—serve as trade union chairmen. These people, being very close to the top management, and sometimes their relatives, can hardly be expected to fairly represent and effectively safeguard ordinary workers' interests in the case of disputes between the employer and employees. This happens fairly often in foreign-invested and private sector companies.

(3) Trade unions lack the necessary resources to influence the outcomes of collective bargaining. An important instrument in safeguarding the interests of workers and building harmonious labour relations, collective bargaining has made considerable headway since 1995 and now constitutes the main platform on which trade unions coordinate with their counterparts. However, given the sometimes uncertain legal environment in China, there are no clear legal sanctions on employers that do not respond to trade union demands for collective bargaining. This means that responding to union demands for collective bargaining is only a moral responsibility, not a legal obligation. Therefore, the desire for collective bargaining is generally one-sided, and the success of such processes depends on the personal commitment, legal awareness and sense of democracy of the management, or emerges as an arrangement

grudgingly made in the wake of a mass protest. Besides, as Chinese managers or entrepreneurs lack their own effective organisations, successful extension of collective bargaining outcomes across regions and industries is becoming rarer.

(4) Violation of the rights and interests of trade union leaders cannot be effectively handled at the company level. In Guangdong every year several trade union leaders are forced to leave their jobs simply because they have offended the management or the head of the company while defending the interests of employees, although they managed to gain the support of the authorities or even won a case in arbitration or legal proceedings. (I myself noted 10 such cases in 2007–2009, all ending in merely nominal victories for trade union leaders.) Such stories are highly detrimental to the morale of leaders of grassroots trade unions, as their wages and other benefits are mostly determined by the management; over 90 per cent of them are not full-time independent union chairs. Obviously, when a trade union leader serves as the union chair while being on the payroll of the employer, there is an inevitable conflict, as a result of which the representation of ordinary workers' interests is severely constrained.

3. Efforts Made by Chinese Trade Unions to Truly Represent their Members' Interests

Chinese trade union authorities have noted such role conflicts and have taken measures to address the problem. These measures boil down to two initiatives, legalisation and democratisation.

3.1 Resolving role conflicts: Separating management and trade union leadership

In terms of legalisation, the revised *Trade Union Law of the People's Republic of China* (2001) stressed that close relatives of enterprise management should not become trade union leaders. Subsequently, a host of provincial and local legislation was adopted in the same spirit. In Guangzhou, for example, partly also due to a legal case in 2005 involving role conflicts, the trade union authorities proposed that the municipal legislature promulgate *Methods for Enforcing the Trade Union Law of the People's Republic of China*, the main emphasis of which was on the

resolution of the role conflicts of union leaders. This bill, approved in 2007, ensures the autonomy of the chair and vice-chair of trade unions, specifying that (i) top managers, whatever their titles, cannot serve simultaneously as chairs or vice-chairs of the trade union in the company; (ii) mid-level managers, whether human resource or finance managers or their equivalents, cannot serve simultaneously as chair of the trade union in the company; (iii) other departmental heads, whatever their titles, cannot serve simultaneously as chair or vice-chair of the trade union in the company if there is likely to be a conflict of interests; and (iv) board secretaries, directors and assistants or secretaries to the general manager cannot serve simultaneously as chair of the trade union in the company. If such situations already exist, they must be phased out within three years, starting from 2009.

Judging from legislation nationwide, Chinese trade unions have made an effort to resolve role conflicts concerning trade union leaders by preventing four types of people from serving simultaneously as chair or vice-chair of the trade union in the company, namely: close relatives of the top managers, top managers themselves, mid-level managers of key departments likely to be involved in conflicts of interests and board chairmen, directors and assistants or secretaries to the general manager.

3.2 Protecting trade union leaders from unfair treatment by management

To further guarantee the rights and interests of trade union leaders, *the Trade Union Law of the People's Republic of China* also stipulates the establishment of a guarantee fund to support trade union leaders, so that due protection and assistance can be afforded to those trade union leaders who have been unfairly treated by the management. Guangzhou trade union authorities, for example, have in recent years reached out to those trade union leaders who lost their jobs as a result of defending the interests of their member workers, providing legal and economic help, as well as reemployment opportunities.

3.3 Applying pressure for collective bargaining

Chinese trade union authorities have also sought legal means to tackle the disadvantageous position of trade unions in collective bargaining. For example, Guangdong has moved ahead with provincial legislation, *Regulations on the Democratic Management of Enterprises in Guangdong*

Province. This bill, now in its second reading, specifies in its second chapter that, after a trade union calls for collective bargaining, the company management must respond within 15 working days; if there is no response from the management, the trade union can appeal to the labour supervisory authorities to impose sanctions, and also use the media to demand an open apology from the unresponsive company management.

This bill also stipulates that a trade union can appeal to its city- or county-level federation for collective bargaining, and both parties to the collective bargaining can hire external experts. These measures have already been put into practice in some parts of Guangdong. For example, in 2008 and 2009, Shenzhen Federation of Trade Unions issued demands for collective bargaining to the top 500 companies operating there, receiving timely responses and favourable results from most of them. In Guangzhou, Shenzhen, Zhuhai, Zhanjiang, Fushan and other cities, legal advisory teams for collective bargaining have been organised, so that pertinent legal advice can be offered.

3.4 Democratising the appointment of trade union chairs

Democratisation is considered to complement and facilitate the legalisation initiatives mentioned above. If legalisation is to solve the problem of “who should not serve as the trade union chair” by preventing role conflicts, democratisation is primarily concerned with “how the trade union chair is to be selected” by taking full account of public opinion. In fact, *the Trade Union Law of the People’s Republic of China* (2001) and *the Charter of Chinese Trade Unions (revised version)* (2008) both specify clearly how trade union chairs shall be democratically elected. The issue, therefore, is how to have such provisions enforced, so that bold experiments can be made to further democratise the selection of trade union leaders.

Further democratisation is ultimately oriented towards the selection of the trade union chair according to the wishes of union members, so that the leader will be held accountable. This is crucially important for the trade union to win approval and trust from its members and to really represent their interests. According to a survey by Guangdong Federation of Trade Unions, union members’ trust in the union chair is determined chiefly by the following three factors (in order of importance): (i) whether they were elected democratically; (ii) whether they are charismatic; and (iii) how adept they are in resolving conflicts between employer and employees. The support of the company

management ranked only sixth.

Over the past decade, Guangdong Federation of Trade Unions has encouraged democratic elections, chiefly the direct election of union chairs at grassroots level. Exceptions are allowed only for certain clearly specified cases, such as when a company or its trade union was organised so recently that its employees or members are not yet familiar with one another. But even for such cases, it is laid down, as a stop-gap measure, that candidates can be appointed by the upper-level trade union authority, although they must go through some process of selection. By the end of 2009, at all the foreign invested enterprises that had organised trade unions, over 80 per cent of the union chairs had been elected democratically by their members.

After a union chair emerges via a democratic election, the question arises of how their performance can be evaluated. In recent years, Chinese trade unions have implemented a system of democratic evaluation of the trade union and its chair by the members. In Guangdong, this system is now widely implemented following pilot projects in 2009. Towards the end of each year, when annual business performance is usually assessed, union members are invited to anonymously evaluate the work of the trade union and its chair. The chair is required to report on his or her work to the union members or to their representatives if the number is too large for a gathering. The audience then “grades” the work of the trade union and its chair. If the grade is below 60, a warning is issued, and if two such low scores are registered consecutively, a new election has to be held. Only trade unions scoring above 80 are eligible for the title of “Home of Employees” issued by the upper level trade union authorities. This system is believed to be a useful democratisation initiative, holding the union chair accountable to the members.

Meanwhile, the upper-level trade union independently examines the performance of the grassroots trade union chair, and the results are compared to those arising from the public assessment. All these evaluations constitute a basis for determining bonuses and subsidies, as is the practice in Guangzhou, for example.

3.5 Professionalising the work of trade union leaders and payment of salaries

Besides these initiatives related to legalisation and democratisation, there

are two other important issues that have to be resolved if trade unions are to truly represent the interests of their members.

The first issue concerns building a team of professional trade union activists. This not only means that grassroots trade unions should have “activists to do the work”; it is also an attempt to free union chairs and other activists from subordination to the management or the owner. It is after all unrealistic to expect a union chair or a labour activist to enter into confrontation with the employer in defending the interests of the employees when their income and other benefits derive from that same employer. Naturally, only when trade unionists are independent of an employer financially can they have full confidence and courage to challenge that employer in the interests of the employees. Over the past few years, Guangdong Federation of Trade Unions has taken a number of steps in this direction, building up a team of about 1,000 professional trade union activists. These full-time activists are hired through open competition, trained intensively, managed on a contract basis, assigned to specific duties, examined regularly, adequately paid from various sources and can be sanctioned in case of failure. In 2010, the All China Federation of Trade Unions allocated 10 million yuan to explore the multiple-channel financing of union leaders’ wages. This can be considered a strategic institutional arrangement for the professionalisation of trade union leaders, which may enhance their independence and reduce corporate constraints on trade unions.

3.6 Stepping-in to assist—Improving cooperation between grassroots unions and higher-level unions

The second issue is the practice of stepping in to assist grassroots trade unions. Two preconditions are involved. First, certain grassroots trade unions are recognised to be weak and inactive, and unable to carry out their duties. Second, the upper-level trade union must be in a strong enough position to step in to defend the interests of grassroots union members.

To ensure the smooth operation of the “step in to assist” approach, two measures seem necessary. The first is to establish an early warning system regarding industrial relations, so that the leaders and other activists of grassroots trade unions can duly report to higher union levels on such matters as the timeliness of wage payments, safety and health

risks in the workplace and the development of labour disputes, so that those higher up are in constant touch with the situation on the ground. The second measure is to ensure that the upper levels are adequately supplied with the funds, personnel and skills they need to deal with potential issues at grassroots level. This is closely related to efforts to professionalise trade union activists.

4. Summary

To sum up, the special features of the Chinese trade union system should be understood in light of the complexity of the situation and the diversity of trade union systems around the world. Numerous trade union functions, collective bargaining in particular, are not fully enforceable in China for the moment, primarily because the independence of Chinese trade unions is still not guaranteed institutionally or financially. It is appreciated that a lack of independence can easily lead to subservience to employers and administrative authorities, which can ultimately alienate union members and emasculate trade unions. However, it is believed that Chinese trade unions will continue to evolve in the direction of greater autonomy and truly represent the interests of their members, along with the overall reform of the political system in the country, as required by the trade unions' mission and in line with the wishes of the people and historical developments.

The “Yiwu Model” and the Protection of Labour Rights with Chinese Characteristics

Jing Yuejin

Can the trade unions in China, at their various levels, truly represent workers' interests and effectively protect workers' rights within the current framework? Or are these goals achievable only after major changes (for example, the establishment of independent trade unions) have been implemented? The importance of such questions is widely recognised both on the ground and in the literature, although no consensus has yet been reached on how to proceed.

Development has been the predominant pattern in China's socio-political life since the opening up of the economy commenced in 1979 (this predominance is still striking even today). As the transformation of the economic system unfolds, industrial relations in some places in China are becoming shockingly similar to those in the early period of Western industrialisation. By contrast, trade unions have generally lost their sway, as a consequence of which people are turning their attention to realising workers' interests and rights through freedom of association and independent expressions of interests.

However, since the beginning of the twenty-first century, a new trend has emerged. The central government has put asymmetry and conflicts of interest onto its policy agenda, within the framework of which industrial relations are particularly important. The scientific approach to development and a “harmonious society” proposed by the CPC Central Committee, legislative processes and rights protection measures taken by the government, rights protection practices in workplaces, media coverage and public discussion have formed a new public domain that differs markedly from the old development-dominated one. Chinese trade unions—

nicknamed “hired unions”, “petticoat unions” or “rubber stamp unions”^① in the past—have been undergoing a transformation within the existing framework.

In a sense, the two trends, appearing either before or after the turn of the century, represent two possible prospects for industrial relations in China. This chapter will focus on the latter: exploring the protection of workers’ rights within the existing framework. But first let us look at the “Yiwu Model” .

1. The “Yiwu Model” of Rights Protection^②

Yiwu is a small county in central Zhejiang Province whose economy used to be based on agriculture. The scarcity of arable land there, however, forced a large number of farmers to try to make a living as travelling peddlers until China started its reforms. After years of effort, Yiwu has now developed an economic growth model of “mutual reinforcement between the market and industry”. At present, Yiwu boasts the world’s largest small commodity market.^③

① These nicknames are used in official quarters, too. See the speech entitled “Implementing the Regulation on Trade Union Work in Enterprises, Striving to Improve Trade Union Work” by Xu Deming, Vice Chairman of the All China Federation of Trade Unions at a training programme on the Regulation on Trade Union Work in Enterprises on 10 May 2007, online at <http://www.acftu.org/template/10004/file.jsp?cid=318&aid=72556>.

② The “Yiwu Model” has several connotations. In this chapter it refers to the successful practice of protecting workers’ rights on the part of the Yiwu branch of the All China Federation of Trade Unions. The term was first used by Professor Guan Huai of the Law School of Renmin University, who is also a counsel to the ACFTU. On 2 December 2004, when an ACFTU team went to investigate and study protection of workers’ rights in Yiwu, Professor Guan summed up the practice there as “the Yiwu model of workers’ rights protection by trade unions”.

③ At present, the Yiwu Small Commodity Market has a floor space of over 4 million square meters, with 62,000 stores selling 16 categories of commodities with 4,202 sub-categories, amounting to more than 1.7 million commodities in all. Its turnover has been ranked first among all similar markets in China for 18 years. A total of 13,000 merchants from over 100 countries and regions come here to shop and 2,572 overseas companies from 86 countries have set up their representative offices here. Commodities from this market are exported to 215 countries and regions throughout the world. The Yiwu China Commodity Index, launched by the Ministry of Commerce together with Yiwu municipal government in 2006, has been widely cited as an indicator of small commodity price movements around the world. According to the latest statistics, the market’s 2009 annual turnover stood at a record-high of RMB 41,159 billion (sources: Jiang Lianrong and Deng Mingyu, “Strong momentum for Yiwu small commodity export”, *Hong Kong Commercial Daily*, 1/5/2010, online at <http://finance.stockstar.com/JL2010010500001990.shtml> (in Chinese); “The Yiwu China Commodity Index was launched to the world”, *Economic Daily*, 10/23/2006; “A record high annual turnover of RMB 41, 159 [billion] at Yiwu Small Commodity Market”, online at <http://news.jschina.com.cn/esj/201001/t287078.shtml>.)

In common with elsewhere in Zhejiang Province, the private sector dominates in Yiwu's economy. Most private businesses there manufacture small commodities labour-intensively or process products for export. Their need for workers has attracted a migrant worker population much larger than the local population. For a long time there were constant conflicts between workers and employers over wages, disability benefits and working conditions. Before the intervention of the Yiwu branch of the All China Federation of Trade Unions (ACFTU) in 1999, there were more than 10,000 labour disputes a year, 30 per cent of which were not resolved owing to lack of access to labour rights protection, high costs or some other reason.^① The unresolved conflicts are comparable to time bombs that might explode at any time. The forms such explosions can take, threatening the further growth of the local economy, include: kidnapping owners, setting factories on fire or collective appeals, but also the emergence of organised crime.^②

It is against this background that ACFTU's Yiwu branch launched its protection of workers' rights initiative. The challenges were enormous. Within the existing framework, trade unions are weak because they do not have governmental/administrative functions and thus lack the power

① The statistics are from an interview with ACFTU Yiwu Branch Chairman Chen Youde by this author on 14 September 2007. See also Chen Youde's contribution "The ACFTU Yiwu Branch model of workers' right protection has nationwide implications", *New Express*, 2/28/2008, online at <http://news.sina.com.cn/c/2008-02-28/013913486233s.shtml>. In "Divergence between institutional supply and behavioral choice—an empirical analysis of how migrant workers in the Pearl River Delta express their interests" (in *Open Times*, Issue 3, 2008), Wang Jinhong and Huang Zhenhui analysed the defects of the existing system, as well as why migrant workers tend to use non-institutional measures to protect their rights. This analysis also applies to migrant workers in Yiwu.

② When a reporter asked, "If the trade union fails to do its job, will workers find other ways to protect their rights?", Li Yonghai answered, "If the trade union under the Party leadership has failed to do its job for a long time, then a trade union not led by the Party, or 'a second trade union', will certainly emerge. This isn't something subjectively determined. Workers want their interests to be represented. If you can't represent them, they will find someone else. For example, ten workers who are townfolk will get together. One will become the team leader to appeal to upper level authorities or organise street demonstrations. If the trade union under the Party leadership performs its function, such things will not take place. Therefore, the trade union under the Party leadership must uphold workers' rights. Otherwise there will be 'a second trade union'. That is dialectics". See "The Trade Union Must Play A Stronger Role in Resolving Labor Disputes—a Dialogue with Li Yonghai, Former Member of The Party Secretariat and Current Counsel, All China Federation of Trade Unions", online at <http://www.sina.com.cn>, *Nan Feng Chuang*, 24 June 2010.

to impose sanctions. How could the union possibly protect workers' rights and become the “backbone” of migrant workers? Daunting as it was, the Yiwu branch, with support from the local CPC Committee and government, took the initiative to explore ways of protecting rights suitable under local conditions, starting from May 1999. By consolidating internal resources and leveraging external resources (advisors, professionals, funds, networks and approaches), it united all relevant forces under the banner of trade union protection of workers' rights. It adopted a series of practical measures that demonstrated a profound understanding of how politics works. For example: (i) with the approval of the Ministry of Civil Affairs, the Centre for Legal Protection of Workers' Rights at ACFTU's Yiwu branch was created in October 2000; (ii) local Party and government leaders were appointed as advisors to the Centre to gain their commitment; (iii) the Yiwu Municipal Centre for Legal Protection of Workers' Rights was tasked to perform such functions as collective wage bargaining, labour dispute settlement, legal dispute arbitration and legal assistance; (iv) dozens of volunteer legal professionals were recruited to make up for the inadequate staffing at the trade union; (v) a cross-regional, cross-industry social network of workers' rights protection was established to coordinate with hotlines operated by relevant government authorities, local radio and TV and government agencies, so that there was a rapid response to inquiries and complaints; (vi) cooperation with government agencies, media, institutions of higher education, law firms and other social actors was expanded.

Thanks to innovative experiments with resource integration, reorganisation and network formation, ACFTU's Yiwu branch no longer fights alone. Instead, many segments of society are engaged in effective protection of the rights of over 1.1 million migrant workers. Between October 2000 and the end of February 2009, ACFTU's Yiwu branch received 4,478 complaints, of which 4,173—or 93.2 per cent—were resolved through mediation. During this period, the Yiwu branch hotline answered 4,514 calls and provided pro bono legal assistance to workers in 519 arbitration cases and 175 litigation cases. Also during this period, ACFTU's Yiwu branch received 357 groups—involving a total of 7,197 workers—who came in person to file their complaints, prevented 33 group events that might have escalated into violence and successfully demanded

payment of RMB 20,337,690 in wages or damages on behalf of workers.^① Such practices are conducive not only to the development of harmonious labour relations, but also social stability. Since ACFTU's Yiwu branch started proactive intervention, the growth of significant criminal cases, safety-related accidents and violent group events has been consistently lower than the Zhejiang Province average: 94.3 per cent of local residents feel safe, which is a drastic improvement on the situation before 1999.^②

At present, protection of workers' rights is led by the local Party committee, supported by the local government, coordinated by the trade union, assisted by government agencies and participated in by workers. The Yiwu model of trade union protection of workers' rights within the confines of the current system has proven to be highly effective in the fight against violations. The model has three main characteristics: (i) it is led by the Party and the government; (ii) the transformation of traditional trade union organisation; and (iii) coordination by other forces in society. In the process, ACFTU's Yiwu branch has enhanced its status and expanded its function beyond anything previously thought possible.

The approach to protecting workers' rights taken by ACFTU's Yiwu branch has been approved by the Party and the government. The following events—arranged in chronological order—provide some illustrations:

- On 27 November 2004, Secretary Hu Jintao of the CPC Central Committee wrote that it was necessary to improve trade union rights protection and that trade unions at various levels should learn from experience, strengthen their functions and serve workers better. In the same year, Chairman Wang Zhaoguo of ACFTU also demanded that trade unions at various levels learn from the Yiwu experience, serve workers properly and facilitate communication between the Party and the masses. Consequently, the Yiwu practice was promoted around the country.

- On 2 December 2004, ACFTU dispatched a team to investigate,

① Source: ACFTU Yiwu branch, "The Yiwu Model of Society-wide Rights Protection", online at <http://zjnews.zjol.com.cn/05zjnews/system/2009/07/17/015678100.shtml>.

② Source: "ACFTU Yiwu Branch, Mobilizing Society to Protect Workers' Rights" (Winner's Prize), online at <http://www.chinainnovations.org/showNews.html?id=9d153da8ca5811dc807c2356be36404e>.

research and summarise the experience of workers’ rights protection at the Yiwu branch. The Yiwu model became “official” .

• On 5 August 2005, ACFTU’s Zhejiang Provincial Branch convened an on-site meeting in Yiwu on the protection of workers’ rights. In September 2005, ACFTU convened an on-site experience sharing session to promote the new model of trade union protection of workers’ rights.

It is equally important that the Yiwu model has been widely recognised by society and academia. On 19 January 2008, the results of the Fourth China Local Government Innovation Awards were announced in Beijing. The workers’ rights protection model of ACFTU’s Yiwu branch was awarded first place.

2. The Yiwu Model in Perspective

The local features of the Yiwu model are apparent from whichever angle of observation one chooses.^① Why was the practice of a county-level trade union able to attract the attention of state leaders, media and academia? The reason is simple: the Yiwu model touches upon a critical issue in contemporary Chinese politics: industrial disputes and social stability. Therefore, we need to put the Yiwu model into a larger context.

2.1 Economic transformation and the re-emergence of industrial relations

In the 1950s, the Chinese government socialised national capital through buyouts. As the state (government) replaced capitalists, industrial relations became a thing of the past. Under the planned economy, workers were regarded as the leading class and the masters in politics. Their work units provided all kinds of welfare benefits. At the same time, structures were rigid and economic efficiency was low. With reform and opening up, the planned economy gradually transitioned into a market

^① Labour politics in China has distinctive local characteristics. Perry (2001) discusses the impact of the geographical factor (North vs. South) and the technological factor (craftsmen vs. manual labour) in labour organisation and political leanings before China’s liberation. Sixty years after the liberation, the impact of such factors is still strongly present. The diversity and complexity of China’s industrial relations are expressed in different ways. For instance, the characteristics of industrial relations vary across sectors, enterprises and ownership structures, as do the problems and challenges being faced. It is hard to generalise (see Gallagher 2010).

economy, during which the workers' role was redefined.

The transformation of industrial relations in China happened first outside the confines of the planned economy. There were two major pathways. The first was to allow urban youth seeking employment to run individually-owned businesses. With the development of private enterprises, an increasing number of individually-owned businesses began to hire more than eight workers (ideologically speaking, when a business hires more than eight workers, there is exploitation). A good case in point is the controversy over Nian Guangjiu's private business "Fool's Sunflower Seeds".^① Another pathway could be found in Sino-foreign enterprises and wholly foreign-owned enterprises. The process started in the Special Economic Zones and coastal provinces. Overseas capital came into China in pursuit of cheap labour and high profits. Consequently, capital and labour encountered each other in accordance with market principles. Foreign-funded enterprises regard workers as an input factor whose price is determined by market demand. Their management practice brought about a new form of industrial relations and the working class was no longer the master (see Gallagher 2010; Huang 2008).

Both pathways—one generated by reform, the other introduced by opening up, where economic logic overcame the power of ideology—spread from the coastal areas to the hinterland, from outside the system to inside the system. Slowly but surely, they overturned the previously dominant socialist labour relations, and peaked during the restructuring of state-owned enterprises and collective enterprises.^②

The impact on industrial relations in China of globalisation (industrial transfer and entry of external capital) and the market economy

^① Nian Guangjiu is a symbolic figure in China's reform and opening up process. He was the founder of "Fool's Sunflower Seeds Co. Ltd." at Wuhu, Anhui Province. As soon as China launched its reform process, his company expanded from a little workshop to a big employer with a workforce of over 100. In the end of 1983, in response to a complaint against Nian Guangjiu's "capitalist exploitation of workers", the CPC's Anhui Provincial Committee dispatched investigators to Wuhu before presenting a report to the CPC Central Committee. Since the issue was crucial to the future direction of reform and opening up, Mr. Deng Xiaoping remarked in October 1984, "Let's wait two more years to see how Fool's Sunflower Seeds is doing then. What are we afraid of? Damage to socialism?"

^② For further information on new characteristics of labor relations in state-owned enterprises, see Tong (2008).

has been magnified many times by the existing rural-urban divide. In addition to unbalanced industrial relations, migrant workers have to endure two other kinds of inequality: urban-rural inequality, a vestige of the former planned economy that has followed them to the cities, and inequality between the migrant population and local residents (inhospitality to strangers is a basic characteristic of peasant society). The three overlapping unbalanced relations weaken the position of migrant workers.^① As GDP-obsessed local governments compete against each other to attract capital (especially foreign capital), they neglect the protection of weaker groups in society. Under such circumstances, it is understandable that trade unions fail to protect workers' rights (or even that they side with capital).

This has been the fate of the many Chinese workers (migrant workers in particular) during the state-led economic transformation dominated by the logics of development and capital. Managers of some foreign-funded enterprises (from the earlier joint ventures to the later wholly foreign-owned enterprises) are not known for human rights protection, although they may have state-of-the-art management expertise. “Sweatshops” pop up as overseas capital arrives. These anachronistic sweatshops echo descriptions by Charles Dickens, exhibiting all the evils condemned by Karl Marx.

2.2 Balancing between equity and efficiency: The changing role of the government

No society can survive unbalanced industrial relations for long. Labour disputes may be suppressed temporarily, but in the long run the volcano is likely to erupt.

China's GDP growth—along with its ability to attract overseas capital—may have taken place at the expense of workers' interests, but this mode of growth is drawing to an end. As its national strength and economy grow, China has to enter a new phase of development in which the government must make up for the human sacrifice in the name of development, build a harmonious society by striking a fair balance

^① Pan (no Year) analysed experiences specific to female migrant workers in China in the context of globalisation and market development. See also Ruan (2008).

between all interests and pursue a path of sustainable development.

The historical turning point occurred thanks to the fourth generation of Chinese leaders. What follows are a few milestones:

- In November 2002, when expounding the goal of developing a prosperous society in a balanced way, the 16th Party Congress urged that “society must be more harmonious”.

- In September 2004, the Fourth Plenary Session of the 16th CPC Central Committee adopted the *Decision of the Central Committee of the CPC on the Construction of the Ruling Power of the Party*, in which it stated that “to adapt to the profound changes in Chinese society, top priority should be given to the building of a harmonious society, focusing on stimulating dynamism, promoting social equity and justice, raising society’s awareness of law and integrity, and maintaining social stability and unity.”

- In October 2006, the Sixth Plenary Session of the 16th Party Congress the CPC Central Committee adopted the *Decision of the Central Committee of the CPC on Some Major Issues in Building a Harmonious Socialist Society*, establishing it as the consensus of the whole Party and the country.

This indicates a double shift in China: the shift of the centre of gravity towards equity and justice so as to achieve an effective dynamic balance between economic growth and social justice; and the shift of the role of the state (government) from increasing GDP to the building of a harmonious society.^①

The shift in the national development strategy is significant with regard to the protection of workers’ rights. First of all, it indicates that labour relations in China will enter a different stage. Although we still have to wait and see what new practices will emerge in the protection of workers’ rights, it is clear that any study of labour relations in China and

① The pursuit of a harmonious society and balanced interests doesn’t mean that development is no longer important. Rather, a dynamic balance must be struck between the two, which is quite a challenge to developing countries. From a logical point of view, distributive justice will come to the fore only when a certain level of development has been achieved. That is to say, production precedes distribution, and efficiency precedes justice. On this basis we can understand better why Mr. Deng Xiaoping and his generation of leaders advocated “allowing some of the people to become rich first”, while today we stress the importance of balanced interests. GDP underlies both discourses, the only difference being one of magnitude.

therefore any conclusion must not be confined to the first phase. Rather, we should conduct a dialectical investigation of the process as a whole, paying particular attention to the latest practices.^① Secondly, as a latecomer to modernisation, China’s central government plays a dual role: on the one hand, it is the initiator of restructuring and economic development, while on the other, it is society’s champion and protector. Such a dual role makes the state the key in terms of Karl Polanyi’s “double movement”. It is China’s most important institutional characteristic in transformation.^②

It is now clear why it is important to study the rights protection practice of the All China Federation of Trade Unions’s Yiwu branch. Yiwu’s practitioners rose to the occasion. They have carried forward their historical mission through reforms within the system. Their efforts and subsequent achievements symbolise the transformation of labour relations in China.

3. Lessons from the Yiwu Model

3.1 Workers’ rights protection practices in China

Before reform and opening up, China was a “totalistic”^③ society. The transformation from planned economy to market economy broke up the old social structure, giving rise to a diversification of interests. However, China has not become a pluralistic society in the Western sense. The “totalistic” features of Chinese politics have remained intact to a

① It must be noted that the shift from a GDP orientation towards the building of a harmonious society is also unbalanced across the country. This is a historical trend; different localities may catch up at different times and in different ways. One may infer that the shift of the role of local trade unions in the protection of workers’ rights is also unbalanced.

② It can be inferred that a party-state system does not remain fixed. Instead it develops different characteristics at different stages of modernisation. As a result, we must distinguish between the core structure and the adjustable structure of a party-state system, and then study its adaptability, as well as the potential room for adaptation.

③ According to the analysis of totalitarianism and totalism by the late Chinese American scholar Tang Tsou, there is a difference between the form of government (regime) and state-social relations. He used the term “totalism” to describe the relationship between the state and society in socialist countries, indicating the limitless state penetration into socioeconomic life. See Tang (1994; 2002).

considerable extent. In other words, the “totalistic” society of the planned economy is gone, but the totalistic logic of the party-state system is still going strong.

The best illustration of this totalistic logic in workers’ rights protection is the stress of the ruling party on “workers’ rights protection by the trade union under the leadership of the Party and the government”.^① By pledging the concept of the “Three Represents”, the ruling party assumes the leadership role in workers’ rights protection and tries to exclude the following: (i) informal networks and forces, if possible by absorbing them into the official trade union system so that they no longer pose a challenge; (ii) the independent trade union model of Western pluralism.

Because of totalistic logic, labour relations in China do not constitute a political domain with polarities. The balance of interests does not result from bargaining between two independent subjects. The government is not a third-party mediator or arbitrator. In the Chinese model, the trade union does not “naturally” represent workers’ interests; instead, it observes a larger or higher priority. Therefore, we may presume that when workers become aggressive, the trade union will be required to calm them down. The balance of interests at the enterprise level is considered within a larger context. Therefore, although labour relations belong to the socio-economic domain, they are highly political. The Party and the government play leading roles, while the trade union is a “side actor”.

The above observation applies generally to the Yiwu model. ACFTU’s Yiwu branch mobilises to protect workers’ rights. This constitutes adaptive evolution within the existing system. Yiwu branch has grown stronger not because of its own merits, but because the government has grown stronger.^②

① See ACFTU Chairman Wang Zhaoguo’s speech at the 15th National Congress of Chinese Trade Unions entitled “Hold High the Great Banner of Socialism with Chinese Characteristics, Rally and Mobilize Hundreds of Millions of Workers to Strive for New Victories in the Construction of a Comparatively Well-off Society in an All-round Way” (10/17/2008), online at <http://www.acftu.org/template/10004/file.jsp?cid=318&aid=80812>.

② In this connection, both media and academia have neglected—to various degrees—two important factors: the role of the Party and the government behind ACFTU’s Yiwu branch and the forces in society that have been absorbed and integrated by the Yiwu branch.

3.2 Trade unions in China

A party-state system has been in place in China since 1949. This special system of strategic development, adopted by a number of countries which started modernisation later, is known for its ability to mobilise the resources of the whole nation to achieve a certain objective. The trade union is only a link in the system, a means of communication between the Party, the government and workers. An auxiliary and subsidiary organisation, it receives direction from the overall objectives of the Party and the government.

However, does its subsidiary nature mean that the trade union system in China is unimportant? By no means. In the area of workers' rights protection, totalistic logic dictates that the trade union cannot act independently; that is, it must function in terms of the big picture. But this does not reduce the trade union's importance. Moreover, when the national strategic focus shifts, the totalistic logic ensures that the role of the trade union in protecting workers' rights will also be transformed. In a sense, the changing role of the trade union in China is a function of changes in national strategy.

It follows that, under the planned economy, the trade union busied itself with providing benefits to workers, including showing society's gratitude and appreciation in terms of holidays, arranging vacations and trips, organising entertainment or sports events, so that workers could better enjoy their spare time. For a long time after the reform and open-door policy was adopted, the trade union focused more on helping in economic restructuring (including that of enterprises) and the establishment of a market economy than on protecting workers' rights. Since the turn of the century, however, reflection on the obsession with development has drawn people's attention to the balance of interests, while the rapidly rising number of labour disputes puts the onus on the trade union to do more to represent workers' interests. As a result, the function of the trade union is undergoing another major change.^①

^① Since the turn of the century, the role of the trade union has changed significantly. For example, trade union officials have become professionals; grassroots trade unions have been strengthened; the democratic process has been expanded (direct elections); upper-level trade unions offer more help to lower-level ones; and a collective bargaining mechanism has been established. Besides, while the trade union cannot act independently of the Party and the government, it must be independent of enterprises (especially in the private sector). To a certain degree, such practices can be viewed as adaptive changes of the corporatist model.

The position, nature and role of the trade union in China must be understood as part of the party-state system. Consequently, academic research on the trade union must go beyond the trade union.

3.3 Prospects of workers' rights protection by the trade union in China

As already discussed, the role and function of the trade union in China must be understood in the two dimensions of "totalism" and "process". In research jargon; on the premise of maintaining the basic structure, the trade union in China can play new roles by means of functional adjustments and institutional innovations.

Is this feasible? Such doubts can be expressed in two ways: theoretically, within the existing system, is the trade union really up to the task of protecting workers' rights? Will adaptive changes on the part of the trade union lead to a form of socialist rights protection with Chinese characteristics? Furthermore, can the Yiwu model be applied nationally?

The above doubt arises because people think from different perspectives. For many Western scholars (or scholars who identify with pluralism), violation of workers' rights during China's economic development stems from the absence of independent trade unions. In labour disputes, the existing trade union does not represent the workers' interests; instead, it often depends on the employer. Such a system victimises Chinese workers. Therefore, they stress the importance of independent trade unions, believing only the latter can handle the increasing number of labour disputes. In other words, Chinese workers can no longer count on the official trade union to protect their rights and interests.^①

If we take a panoramic view of labour history throughout the world, we will find that the relationship between capital and labour is constantly evolving. The experiences of Western developed countries offer three

^① There are two alternatives for the Chinese trade union: an independent course based on pluralism and continuing under the leadership of the Party and the government. Here it is necessary to distinguish value propositions from analysis of experience. From the perspective of political science, it is one thing to consider pluralism as an alternative for reform, but another to use pluralism as a framework within which to analyse contemporary Chinese politics. This author believes that the pluralism framework is, if not inappropriate, at least defective for an understanding of current political processes in China.

lessons. First, the state plays an important role in resolving labour issues; second, independent trade unions and tripartite structures are important approaches to resolving labour issues; and third, the manner of dealing with labour relations is closely related to a country's stage of economic development, as well as its economic situation. For convenience, we may simplify this schema in terms of the government factor, the structural factor and the environment factor. Although there are major differences between China and the West concerning the government factor and the environment factor, the key lies in the structural factor; in other words, are the independence of the trade union from the government and the capital-labour confrontation necessary to enable the trade union to truly represent the workers' interests and to work towards a balance of interests?

There will certainly be different answers to this question. This author, while trying to keep an open mind, does not believe in rigorous adherence to Western experience. Workers' rights protection practices in China are unprecedented in the history of modernisation. Therefore, there should be dynamic sensitivity to current practices, finding answers by means of constant modification.

The Yiwu model has more than local value. It shows that the trade union within the existing system can protect society to a certain extent. By studying the Yiwu model, we are able not only to identify some key elements of workers' rights protection with Chinese characteristics, but also to understand better the reform and rights protection practice of the Chinese trade union system.

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The Prospect of Trade Union Reform in China: The Cases of Wal-Mart and Honda

Elaine Sio-ieng HUI and Chris King-chi CHAN

1. Introduction: Chinese Trade Unionism in Transition

Since economic reform started in 1978, the relationship between the state and capital, on the one hand, and labour, on the other, has changed fundamentally with the move to a market-dominated economy (Chiu and Frenkel 2000; Cooke 2005). Since China's accession to the World Trade Organization (WTO) in 2001, workers have been further exposed to the global capitalist system and its attendant labour exploitation. It is against this socio-economic background that an increasing number of labour disputes and workers' protests, which often bypass the official trade unions, have emerged in China in the past decade (Chan and Pun 2009). The number of labour disputes handled by the labour dispute arbitration committees at all levels in China has jumped dramatically, from 120,191 cases in 1999 to 693,465 cases in 2008 (China Labour Statistical Yearbooks, various years). In addition, the total number of mass incidents—an official term for popular protests—jumped from 10,000 in 1994 to 87,000 in 2005 (CLB 2009).

Much as in other state socialist countries, the All China Federation of Trade Unions (ACFTU) has a double institutional identity: as a state instrument under the leadership of the CCP and as a labour organisation nominally representing the interests of workers (Clarke and Pringle 2009). However, it has experienced difficulties serving the latter function in the reform era. On the one hand, owing to the privatisation of a large number of state-owned enterprises (SOEs), the share of SOE workers in

urban employment has dropped significantly (Andreas 2008); this has led to a steep membership loss for the ACFTU. On the other hand, workers generally do not trust trade unions on the grounds that many trade union officials at the enterprise level are generally not elected, but appointed. Furthermore, ACFTU officials and CCP cadres closely overlap (Taylor and Li, 2007). Workers believe that trade unions always side with the management and the government during labour disputes and thus cannot help them to solve their problems (see Taylor and Li 2007).

For these reasons, since 1998 ACFTU has started to actively establish union branches in the private sector, especially in foreign invested enterprises (FIEs). The unionisation campaign has been further strengthened since 2006 after a rising number of strikes in South China, some of them demanding the establishment or reform of workplace trade unions (C. Chan 2010). As a consequence, the number of ACFTU's enterprise affiliates has increased, from 1,324,000 in 2006 to 1,845,000 in 2009 (ACFTU 2007). Does this development provide a new opportunity for genuine workplace representation that can reduce labour conflict? Or are the newly formed trade unions simply "paper unions", as Taylor and Li suggest (Taylor and Li 2007: 710)? What are the dynamics underlying trade union reform in China? What are the dilemmas facing the trade unions in the course of reform and what are the possible solutions to these dilemmas?

Based on an intensive case study of the Chinese Honda workers' strike in May 2010 and the wage negotiations at Wal-Mart in 2008, this chapter explores the potential of and barriers to workplace trade union reform in a new socio-economic and policy context. It is based on interviews with Honda workers, supplemented by information obtained from a systematic review of Internet materials, media information, trade union documents, NGO reports and interviews with labour organisation personnel. We suggest that a new generation of relatively well-educated Chinese migrant workers has developed a higher level of consciousness of associational rights through their participation in collective struggles (see Pun and Lu 2010). This has put political pressure on ACFTU to promote effective trade unionism and create a vital foundation for exercising democratic union representation in the workplace. The main barrier to effective workplace unionism, by contrast, is the lack of external support for workers' unionisation efforts. On the one hand, the local trade unions

at the town and district/county level are supposed to provide organisational support to workers under the Trade Union Law,^① but fail to comply with their legal responsibility because of their bureaucratic nature and structural integration in the party state. On the other hand, support for workers from civil society is handicapped by the party state's opposition to independent labour organising. This dilemma has forced the provincial trade union federation to intervene directly in workplace trade union reform.

2. Union Building and Wage Negotiations at Wal-Mart

Since 2000, ACFTU has been trying to unionise foreign-invested enterprises (FIE), but without much success. In 2004, a government report found that labour laws were not well respected by FIEs in China. Following that, ACFTU blacklisted some FIEs to try to encourage them to establish trade unions. In March 2006, President Hu Jintao commented on a report entitled "*A Situational Analysis of the Factors of Instability in FIEs in China's Coastal Area, and Some Proposed Countermeasures*". He issued an order, "Do a better job of building Party organisations and trade unions in foreign-invested enterprises" (CLB 2006). Since then, ACFTU has dramatically increased its efforts to unionise FIEs, paying particular attention to Fortune 500 companies (A. Chan 2005; Garver 2008). By the end of 2008, most of the Fortune 500 companies in China had agreed to set up trade unions (Christian Science Monitor 2008).

A top-down approach has been used in the unionisation campaign in most instances. Usually, the local branch of ACFTU, with assistance from the party committee at the same level, puts direct pressure on the factory management to set up a trade union. Among the trade union branches established in FIEs by ACFTU, Wal-Mart's trade union is the only one initiated "bottom-up", as Anita Chan put it (2006). Wal-Mart commenced operations in China in 1996 and now employs more than 40,000 workers in over 140 stores all over the country. At the beginning,

^① Article 9 of the Trade Union Law amended in 2001 declares that "A trade union organization at a higher level shall exercise leadership over a trade union organization at a lower level".

Wal-Mart adhered to its anti-trade union policy, practised worldwide, and did not allow any trade unions in its Chinese branches.

In July 2006, the ACFTU local branch mobilised workers at the Jinjing store in Fujian province to establish Wal-Mart's first trade union in China (A. Chan 2006; CLB 2006); this is unprecedented not only for Wal-Mart, but also in the history of ACFTU. Workers from other Wal-Mart stores in China soon followed. On 9 August 2006, ACFTU made a public statement that the trade unions in Wal-Mart China are "led by the CCP and backed by the government, [they] will take measures to protect these workers (who initiated the Wal-Mart trade unions)" (CLB 2006).

Eventually, in August 2006, Wal-Mart China signed an agreement permitting the formation of trade unions in all of its China stores. And in July 2008, Wal-Mart China reached a collective wage agreement with ACFTU concerning workers in cities such as Shenyang, Shenzhen and Quanzhou. The agreement was to increase pay by 8 per cent in 2008 and 2009.^① Wal-Mart China intended to extend this wage contract to all its stores in China (see CLB 2008). However, union leader Gao Haitao at Nanchang Bayi Wal-Mart in Jiangxi province refused to sign the wage contract. He asked to enter into negotiations with the company and insisted on adding some clauses about overtime and employees' benefits to the agreement (see CLB 2008; Business Week 2008; Garver 2008). However, his store manager said it was not necessary to negotiate with him because the company had already done so with ACFTU. Wal-Mart China later bypassed the trade union and convened a "staff and workers' congress" in order to obtain the workers' agreement to the collective contract. In addition, it arranged for a union leader from another Wal-Mart store to sign the agreement in Gao Haitao's place. Gao Haitao later resigned to protest against the company's circumvention of the collective negotiation process (CLB, 2008).

The Wal-Mart unionisation campaign has been at the forefront of union reform in recent years. Its limitations, however, reflect some fundamental barriers to the implementation of effective workplace trade

^① The inflation rate for food items in 2007 and 2008 in China was 30 per cent, while the average increase in the national urban wage was 18 per cent (IUF 2008). On this basis, the proposed 8 per cent wage increase was comparatively low.

unionism. First, the top-down culture within ACFTU remains, despite the fact that Wal-Mart's first store union was formed on the basis of a bottom-up strategy by building direct contacts with workers, who later applied for the registration of the union. When it came to wage negotiation, it neither consulted nor mobilised its members to support the collective wage agreement; instead, it concluded the agreement on its own. Second, the higher level trade unions provide little or no support to workplace labour activists and trade union leaders such as Gao Haitao, who are supported by workers but unpopular with the management. The media have reported many cases of victimisation of pro-labour union leaders by the management (Clarke and Pringle 2009). The only support from the local trade union is to help them sue the employer; however, the relevant legal procedure usually takes years. Strikes or collective action to urge the reinstatement of dismissed trade union leaders are usually discouraged. These two factors have handicapped the establishment of democratically elected union committees (Howell 2008a; A. Chan 2009).

In short, there is no sign from the Wal-Mart case that ACFTU will take the initiative to mobilise its workplace members, confront management with collective negotiations backed by strikes or apply other forms of collective action, as their Western counterparts do. On the contrary, studies suggest that the emerging pattern of independent worker activism and its pressure on the party state, more than the legal and institutional framework, have significantly underpinned and determined the development of trade unionism (C. Chan 2010; Chen 2010; Clarke and Pringle 2009; Howell 2008a). We should therefore explore the possibility of self-mobilisation of rank-and-file workers to put into practice the collective negotiations and democratic framework guaranteed by the law. In Section 3, we analyse the new development of workplace trade union reform in FIEs by examining the Honda strike.

3. Trade Union Reform and Worker Activism: The Honda Case

The strike staged by workers at Honda Auto Parts Manufacturing Ltd. (CHAM) in Foshan in the Pearl River Delta from 17 May 2010 attracted

both nationwide and international attention.^① Honda has opened four branches in China since the 1990s (Bloomberg, 14 June 2010). CHAM is one such branch, producing transmissions. It is solely owned by Honda and was set up in 2007. Since its establishment, all workers in CHAM have been recruited from a small number of technical schools (*jixiao*) through an internship system. Normally, final-year students at the technical schools have to do a one-year internship in an industrial organisation. After the students finally graduate, CHAM offers the interns formal employment status. At the time of the strike, workers told us that about 80 per cent of CHAM's workers were interns and only 20 per cent were formal employees.

CHAM's workers have relatively more bargaining power compared to workers in other low-skilled export-oriented industries. First, the production of transmissions is of the utmost importance to car making and car companies usually consider politically stable and strike-free countries to be the most suitable places for this purpose (Martin 2010). Therefore, CHAM's workers could not easily be replaced by newcomers, at least not quickly. Second, like many Japanese automotive companies, Honda in China has adopted the just-in-time and zero inventory systems, which means they only keep a minimal amount of stock. CHAM's workers' strike definitely upset the supply of transmissions that is supposed to flow smoothly under normal circumstances. Third, CHAM mainly produces transmissions which are then sent to other branches for the making and assembly of cars. This means that the disruption of the supply of transmissions by CHAM had serious chain effects on car production in other Honda automotive factories in China. As a matter of fact, three other Honda factories were forced to halt production, leading to a daily loss of 240 million yuan (*Jingji guanca bao*, 28 May 2010).

The Development of the Strike

The strike involved about 1,800 workers and lasted for 17 days. It was initiated by workers from the transmission assembly division, but

^① Including the New York Times (11 June 2010), which wrongly interpreted it as a case of workers asking for an "independent trade union".

quickly spread to and was supported by workers from other departments. Workers listed 108 demands at the meeting convened by the management after the strike but two of them in particular were retained consistently: (i) a wage increase of 800 yuan for all workers and (ii) a democratic reform of trade unions (*minzhu gaixuan gonghui*), as the existing trade unions barely represent their interests. The enterprise at first was reluctant to hold any negotiations with workers. Instead, it resorted to intimidation, firing two activists (who in fact had already resigned before the strike), pushing student interns to sign a document undertaking that they would not lead, organise or participate in any strikes (Takungpao, 1 June 2010) and mobilising their teachers from the technical schools to persuade the workers to return to work. Despite the company's threats, however, the strike continued. The company did come up with two proposals concerning a wage increase, but the workers turned them down since they were still far below their wage demand of 800 yuan.

Workers told us that, throughout the strike, the enterprise trade union was not on their side, but instead backed the management. One worker noted that:

The chairman of the trade union tried to talk workers into resuming their work. And he maintained close communication with the CEO of the company during his first meeting with workers' representatives on 24 May. He is deputy head of the Business Management Department (shiye guanli bu).

In his own blog, a worker representative involved in the strike wrote that:

It is frustrating that many enterprise trade unions fail to represent workers; instead, they are on the side of companies. The enterprise's interest, rather than that of the workers, is their principal concern.

The failure of the workplace trade union to provide representation was further manifested by the physical confrontation between trade union members and strikers on 31 May. That morning, many workers resumed work after meeting with the CEO of CHAM, the local government representative, the CEO of Guangqi Honda Automobile (who is also a member of the national People's Congress) and the student interns' teachers. However, about 40 workers refused to work and gathered

together in the factory grounds. Workers told us that the company management and the riot police stationed outside the factory witnessed how the strikers were beaten up by about 200 people mobilised by both the town- and district-level trade union (*Shishan* town and *Nanghai* district), but they did nothing to intervene. A few of the strikers were hurt and sent to hospital. Official sources did not declare where the 200 “trade unionists” had come from, but one reliable source said that they were mobilised by the local government. They wore yellow caps and carried a “trade union membership card” (*gonghui huiyuan zheng*), according to workers.

This incident served as a turning point, after which the company and trade unions came under even greater pressure and sought to resolve the dispute by means of a stronger initiative. The factory-wide strike continued on 1 June and hundreds of workers gathered near the factory gate. Zeng Qing Hong, the CEO of Guangqi Honda Automobile, went to talk to the strikers, asked them to elect their own representatives and promised to negotiate with them three days later. In the presence of Zeng, some strikers elected about 16 representatives. Later, at 5 pm the same day, Nanghai District Federation of Trade Unions (NDFTU) and Shishan Town Federation of Trade Unions (STFTU) issued a letter of apology to all CHAM’s workers, but hinting at the faults of workers who continued to insist on striking. It said,

Yesterday, the trade unions took part in the conciliation meeting between workers and management at CHAM. Since some workers refused to perform their duties, the factory’s production has been seriously affected. During our communication with about 40 workers, verbal conflicts arose due to misunderstandings; some workers were emotionally unstable and had a physical confrontation with trade union members... having learnt about this incident, some workers think the trade unions are biased in favour of the company... we would like to express our apologies about a number of things that workers find hard to accept... the trade unions coming out to exhort those workers (who refuse to work) are in fact protecting the rights of the majority of workers; this is what trade

unions should do. (2 June 2010, Caixing net)^①

Endeavouring to gain wider public support and calling for stronger solidarity among workers, workers' representatives issued an open letter to all CHAM workers and the public on 3 June, reiterating their demands: (i) a wage increase of 800 yuan, (ii) a seniority premium, (iii) a better promotion system and (iv) democratic reform of the enterprise trade union. This letter manifested the workers' strong class consciousness. The open letter declares:

We urge the company to start serious negotiations with us and to accede to our reasonable requests. It earns over 1,000 million yuan every year and this is the fruit of our hard work... CHAM workers should remain united and be aware of the divisive tactics of the management... our struggle is not only for the sake of the 1,800 workers in CHAM; it is also for the wider interest of workers in our country. We want to be an exemplary case of workers safeguarding their rights.^②

At the request of worker representatives, Zeng held a pre-negotiation meeting with them in the afternoon of 3 June. The same evening, the company initiated a democratic election in all departments and altogether 30 representatives were elected. The same day, with outside help, workers' representatives were able to get in touch with a prominent labour law professor—Chang Kai—at Remin University, Beijing, who later agreed to be their advisor.

On 4 June, the newly elected workers' representatives, representatives of the company, the labour bureau, the local government, the workers' legal advisor, the chairman of the enterprise trade union and Zeng attended the negotiations. At the end, both parties reached an agreement raising workers' wages from 1,544 yuan to 2,044

^① Our translation. The apology letter issued by the trade unions were first published by the Caixing Net on 2 June 2010 at <http://policy.caing.com/2010-06-02/100149369.html>, with the title "An open letter from the Nanhai district trade unions and Sishan county trade unions to CHAM workers" (Caixing Net, 2 June 2010). However, this was later removed from the website, probably due to government censorship.

^② Worker representatives gave us a copy of their open letter.

yuan—a 32.4 per cent increase—and intern students' wages from about 900 yuan to around 1,500 yuan (an increase of 70 per cent). Regarding the workers' demand to democratically reform the enterprise trade union, the company refused to talk about that, making the excuse that it should not intervene in matters concerning workers' associations.

It is important to note that the CHAM workers' strike has had a significant ripple effect on labour activism nationally. Almost at the same time as this strike, it was reported that workers from a supplier to Hyundai in Beijing also launched a strike to demand higher wages. And shortly after the Honda strike in Foshan, workers from another Honda factory in Zhongshan, a nearby city, staged a strike requesting higher wages and reform of the enterprise trade union. In addition, workers from two Toyota factories in Tianjin—Atsumitec Co (a supplier to Honda) and Ormon (a supplier to Honda, Ford and BMW) followed the example of their counterparts and went on strike in June and July.

The Uniqueness of the Honda Case

The coordination and persistence of the workers in this strike, the nature of their demands and the impact of the strike go well beyond previous instances of strike action (Lee 2007; C. Chan 2010). This can be explained by two major factors. First, CHAM's workers have a stronger sense of injustice and are better organised. They belong to the “new generation of migrant workers” (*xin sheng nong ming gong*) (see ACFTU 2010a; Pun and Lu 2010), who are in their early twenties and some even teenagers.^① Comparing them with their parents' generation, they are less tolerant of unfairness and have made greater efforts to advance their rights. Although their wages were higher than the legal minimum wage, one thing they found extremely unfair was that the wage gap between the Japanese staff and student interns at the company was enormous. “The salary of the Japanese manager is as high as 50,000 yuan. It is 500 times bigger than ours!”, one student complained to us. This triggered their strike to demand higher wages. Also, they are

^① According to a report by ACFTU (2010a), to begin with, migrant workers started work in cities at an average age of 26.

relatively well educated. Almost all of them are graduates of technical school.^① This is in strong contrast to workers in other low-skilled industries who have usually completed only junior secondary school or have even lower qualifications. The fact that quite a lot of CHAM's workers are former students at technical school means they have a strong network; this definitely made it easier for them to mobilise each other to join the strike. Furthermore, familiarity with electronic communication technologies, such as mobile phone text messaging, instant messaging using the Internet and blogs, is an important attribute of these young and educated migrant workers (Qiu 2009). QQ, a commonly used instant messaging system in China, is a key instrument of communication and mobilisation among workers. They have set up a number of QQ groups in which workers discuss their strategies of struggle. Workers can access these groups even with their mobile phones; this makes it not only financially affordable, but can also speed up communication. This Internet activism laid an important foundation for effective mobilisation during the strike and coordination among workers.

The second factor contributing to the distinctiveness of the strike is the strong external support from local and international civil society. Recalling the negotiations on 4 June, one worker representative wrote in his blog that:

Being able to get in touch with and have Professor Chang Kai as our advisor is very encouraging; I am very thankful for his help... without his assistance, we would have played a more passive role in the negotiations, since we have limited abilities.

Also, apart from the support from Professor Chang, over 70 local and overseas scholars, such as Wang Hui, a prominent scholar at Tsing Hua University, signed a joint petition to support the workers' demands. It said:

Living on meagre wages and struggling to survive, workers are forced to strike so that they could live with dignity... let us unite

① Only the best junior secondary school or very good high school graduates can be admitted to study in a *jixiao* or technical school, but admission standards have declined due to the expansion of higher education in China since the mid-1990s.

and put pressure on the company. We should tell Honda to stop suppressing and dividing workers and to accede to the workers' reasonable demands.

This petition was issued a day before the negotiations and to some extent represented pressure from civil society on the company and the local government. More importantly, it strengthened workers' morale and confidence. One worker said: "it is hard to believe we have so much support from so many professors".

Alongside these, the Chinese Workers Research Network (*Zhongguo Gongren Yanjiu Wang*), a website that reports news on labour issues, launched by a few young mainland intellectuals and registered in Beijing, covered the CHAM workers' strike in detail. Furthermore, many Hong Kong labour NGOs and trade unions showed their support by protesting against Honda in Hong Kong. They kept updating the international community with news of the strike and a global signature campaign to solicit international support was initiated by Globalization Monitor, a Hong Kong NGO focusing on the negative impacts of globalisation on labour in China.

The Impact of the Strike on Wider Labour Relations

After the Honda workers' strike, the reform of trade unions on the basis of the existing legal framework and the establishment of a better collective consultation system in the workplace have seemingly come to the top of the agenda for ACFTU and the government. Commenting on the CHAM workers' strike, the Xinhua agency, the official press agency, emphasised that it is a matter of great urgency to push forward collective wage consultation in enterprises in order to further safeguard workers' legal rights and promote harmonious labour relations (*Takungpao*, 2 June 2010). On 5 June, ACFTU issued a document entitled "*Reinforcing the building of workplace trade unions and giving them full play*" (ACFTU 2010b), which advocates the election of workplace trade unions in accordance with the law and the role of workplace trade unions in ensuring effective implementation of the Labour Code, trade union law and the labour contract law in enterprises. It also emphasises workers' right to information, participation, expression and monitoring in

workplace trade unions.

The vice president of the Guangdong Provincial Federation of Trade Unions (GDFTU), Mr. Kong Xianghong, confirmed that it would speed up the democratisation of trade unions so that members could elect their own president. He also announced that a pilot scheme for the democratic election of the president of the workplace trade union would be conducted at CHAM (*Takungpao*, 14 June 2010). Also, Wangyang, CCP secretary of Guangdong province, emphasised that when handling workers' collective grievances, workplace trade unions should position themselves as workers' representatives and help to safeguard workers' rights in accordance with the law (*Yangchengwanbao*, 13 June 2010).

It should be noted that the Honda workers' strike was part of a wave of nationwide strikes in China in 2010 (*Asian Weekly*, Vol. 23, 2010). Our review of this strike wave found that workers' protests departed from their predecessors in at least three ways. First, while earlier migrant workers' strikes were concentrated in the electronic FIEs, the strikes in 2010 involved more industries, with the automobile sector taking a leading role, including cases at Honda, Toyota and Hyundai. Second, while previous strike waves were concentrated in a specific geographical area, the strikes from May 2010 took place all over the country, including Beijing, Tianjin, Jiangsu, Henan, Yunan and Chongqing (*Asian Weekly*, Vol. 23, 2010; *Economist*, 31 July-6 August 2010). Third, the demands for "real" workplace trade unions were more clearly and consistently articulated by workers and gained wider support from ACFTU, the government and civil society.

4. Conclusion: the Prospect of Trade Union Reform in China

Comparing the cases of Wal-Mart and CHAM, it is not difficult to discern how top-down and bottom-up approaches to promoting trade union democratisation have led to different results. In the Wal-Mart case, despite its bottom-up approach in forming the enterprise trade union initially (A. Chan, 2006), ACFTU monopolised wage negotiations with employers; rank-and-file workers had no chance to express their opinions nor were they mobilised in support of the negotiations. In the end, most

workers had to unwillingly accept what ACFTU had agreed to on their behalf. Even worse, when a progressive trade union leader stood up for workers' rights, he had not been supported by higher level trade union officials.

In sharp contrast to the top-down mobilisation strategy in the Wal-Mart case, the pressure imposed on the enterprise and the lower-level trade union organisation by CHAM's workers was bottom-up. Although the enterprise trade union and the trade unions at the town and district level were on the side of management, workers at CHAM stood up to them and took the lead throughout the strike and during their negotiations with employers. Their demands for a wage increase and democratic trade union reform were clearly articulated. The case of CHAM is a testimony to the fact that enterprise trade unions in China are under the enterprise's control; they are unable to represent the workers or to intervene successfully in labour disputes (Clarke et al. 2004). It also reveals that trade unions at the lower administrative level (town and district/county) are more aligned with capital and local government. Seen in this light, the top-down approach deployed by ACFTU and the higher levels of the trade unions cannot ensure the compliance of rank-and-file workers if what they advocate diverges from the latter's interests.

Another thing that makes the resistance of workers in Wal-Mart China and CHAM different is the extent of support from civil society (Howell 2008b). The union is supposed to be a platform for workers to foster collective power and an aid to bolster their collective action. In China, however, due to their incorporation in the government or ties with capital, trade unions seldom perform this role, at least not to the full (A. Chan 2009). The support from local and international civil society plays a critical role in filling up this vacuum. Although a Wal-Mart workers' leader did oppose the trade unions' and the company's domination, he alone could not make a difference without substantial external support. On the contrary, in the case of the CHAM workers' strike, the massive support from civil society not only boosted workers' morale, but also helped to pressure the company into serious negotiations. There was also a process of knowledge transfer: having a law professor to advise them gave workers the necessary legal knowledge and negotiation skills. However, it is not easy for workers in China to seek external support as the government is sensitive and worried that such

support might lead to the infiltration of workers and cause political instability.

In her study of trade union elections in China, Howell (2008a: 863) concluded that “[a]ny significant move forward with direct elections is only likely to happen when there is a shift in the political context, either because of regime crisis or because of political liberalization”. Echoing Howell (2008a), we took the view that without more significant political change it is hard to imagine the proliferation of independent and democratic trade unions in China.^① However, it may also be that a further extension of direct union elections could be possible due to pressure from workers’ unrest without the need for a political crisis (A. Chan 2010; Clarke and Pringle 2009). This is evident from the new policies announced by ACFTU central and the Guangdong provincial branch after the strikes at Honda and many other factories subsequently. In other words, in order to preempt radical workers’ protests which might challenge “social stability”, it is possible that the party state will extend direct union elections and further promote collective bargaining in the workplace.

This development can be understood if one distinguishes between ACFTU at its higher administrative levels and its affiliates in the workplaces. While the integration and subordination of ACFTU into the party state at the same level makes it difficult, if not impossible, to transform ACFTU into a “trade union” (Taylor and Li 2008), the main barrier to effective trade unionism in the workplace is manipulation by management rather than by the state (Clarke et al. 2004). Higher-level trade union intervention in workplace affairs usually happens after a major labour dispute has taken place (Chen, 2010). This role is in fact similar to that of the Labour Bureau in the local administration.

Therefore, it is possible that with the rising consciousness of the new generation of migrant workers in China (Pun and Lu 2010), some forms of “democratic” trade unionism may arise in China within the existing legal framework. The “democratic” trade union to which workers at this

^① In Taiwan, South Korea and Indonesia, previously authoritarian regimes with a similar trade union structure to China, democratic workplace trade unionism also failed to proliferate until political democratisation took place (Koo 1998; Ford 2006; Chiu 2010): 1987 in South Korea and Taiwan, and 1989 in Indonesia.

historical stage aspire is independent of and capable of negotiating with the management, with external support. The Honda case confirms the argument of Anita Chan (2009) that continual external support is essential to the success of workplace trade unions from the outset. External support is especially important for Chinese migrant workers, given that most of them—and in fact also their parents—do not have experience of collective association.

Institutionally, external support should come from the local union centre, the only legitimate source of support under the current trade union regulations. But in practical terms, the bureaucratisation of local union centres and their traditional and institutional subordination to local government impede their possible leverage in implementing union policy from above and supporting efforts to exercise union power from below (Clarke and Pringle 2009; Chen 2010). From the Honda case, we can see from the “apology” from STFTU that they did not recognise that it is in principle wrong to persuade strikers to go back to work; they apologised only due to political pressure. The policy implications of this observation are twofold. First, it is of critical importance to promote awareness of real trade unions among the public and especially among trade union officials; second, there must be a professionalisation of local trade union officials, and unlawful behaviour against workers, such as beating up strikers in the case of Honda, must be prevented.

In practical terms, civil society groups are also able to provide support to workers striving for real trade unions, especially in South China where labour NGOs are prevalent (Howell 2008b). However, although support from civil society to workers is not illegal and in fact organising strategies have been accumulated by NGOs in the past 15 years or so and can be transferred to workers, the party state is sceptical about the promotion of independent trade unionism, which is not allowed politically. However, as we saw in the Honda case, external support is a central component in boosting workers’ morale and exerting a wider impact on society.

By suggesting the possibility of the extension of direct union elections and collective negotiations in FIEs, we hope for the relative “independence” of workplace trade unions from the management with the support of the party state, backed by ACFTU and/or civil society, but do not see any prospect of the transformation of ACFTU into a democratic

union which reflects the interests of its members from the bottom up. There is no sign that the trade union federation will loosen its ties with the party state. Reform of trade unions in China will continue to be a dynamic but paradoxical process for the foreseeable future.

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In the Absence of Industrial Democracy: Industrial Conflicts in China and Vietnam^①

Anita Chan

1. Introduction

The export industries in China and Vietnam are dominated by factories owned and managed by foreign corporations, particularly from Taiwan, Hong Kong and South Korea. This industrial sector, which is a substantial source of employment in both Vietnam and China, lacks all the building blocks of industrial democracy. There is no effective trade union representation or staff and workers' councils. One consequence of this is that the export industries in both countries experience frequent spontaneous work stoppages and strikes.

To obtain some perspective on these disturbances, and on what they reveal about the industrial relations systems in both countries, it is valuable to compare China with Vietnam. Even though the two countries have emerged from similar histories of Communist Party rule, their regulation of strikes is a study in contrasts. Chinese law does not even mention the word “strike”, and as a result they are neither legal nor illegal. Vietnam, in contrast, has complex provisions detailing when and how strikes can legally occur, and specifying the negotiations that must precede a strike. The intention is to regulate labour discontent by providing workers with a collective bargaining platform and strike

^① I am indebted to Professor Wang Hungzen of Zhongshan University, Taiwan, who has collaborated with me in a research project entitled “Taiwanese Businesses, the Global Production Chain and Corporate Social Responsibility”, funded by the Chiang Ching-Kuo Foundation.

procedures when bargaining breaks down, so as to reduce the outbreak of wildcat strikes. We might therefore expect fewer strikes in Vietnam, where legal sanctions exist to regulate them. But in fact the reverse is the case. China experiences strikes less frequently than Vietnam, which has experienced waves of wildcat strikes during the past five years. Also unexpected is the fact that, even though strikes in Vietnam are illegal, they are unimpeded by the authorities, who often even act in the interests of the strikers—whereas strikes in China, which cannot be categorised as illegal, have until recently normally been vigorously suppressed by the authorities.

To understand this striking contrast in labour laws and their implementation, this chapter will compare the course of strikes in China and Vietnam and examine the underlying factors: the relationship between the government and the official trade union, labour law and the tripartite dispute-resolution institutions.

It is appropriate to compare China and Vietnam, given that both countries had a planned socialist command economy in the past. In addition, within the past few decades, both countries have gone a long way towards dismantling that system, turning to the market and integrating with global capitalism. Unlike most other former socialist states, which have become multiparty political systems, the two Asian neighbours remain one-party regimes under their respective Communist Parties. As Leninist states, both countries prohibit autonomous trade unions and instead grant a monopoly to official trade unions that are under party-state control: the All China Federation of Trade Unions (ACFTU) and the Vietnam General Confederation of Labour (VGCL). One question that we must address, then, is why, despite these similarities, the two industrial relations systems diverge.

It is important, when comparing industrial relations and factory strikes in both countries, that the factories for comparison on both sides of the border share roughly similar characteristics. Accordingly, my field research focused largely on factories owned and managed by Taiwanese companies. This was to ensure that the factories are run by companies with a similar style of management. Likewise, the field research focused largely on footwear factories. Different industries are apt to possess somewhat dissimilar working conditions, hire somewhat different types of workers and give rise to somewhat different worker grievances and

different courses of industrial action. Focusing largely on one industry—shoe manufacturing—in both countries avoids the pitfalls of studying dissimilar work situations. In each country, I focused my research on a region in which Taiwanese-managed factories are heavily concentrated.

2. Comparing Strikes in China's Pearl River Delta and Vietnam's Ho Chi Minh City^①

In China, the cities of Dongguan and Shenzhen in the delta region of southern Guangdong province are crowded with Taiwanese factories. Labour-intensive industries relocated from Taiwan to Dongguan in abundance starting in the late 1980s, and as of 2008-2009 Dongguan contained some 6,000 Taiwanese factories. The number of strikes has been increasing and, according to a 2008 report, “sometimes reaches three or four a day”, but this figure included factories owned by other nationals, not just Taiwanese (*China Entrepreneur*, [in Chinese] 14 February 2008). Taiwanese investors who were interviewed who own factories in both Vietnam and China do not see strikes in China as a problem.

In contrast, strike waves began to erupt in Vietnam in 2006 and reached a crescendo in 2008, dropping in 2009 (*Laodong*, 5 January 2010), a year of global economic recession. But once the economy picked up starting in 2010 the strikes resumed (see Chi's chapter on trade unions in this volume). They have erupted most frequently in the export sector in Ho Chi Minh City and the surrounding provinces, where Taiwanese-invested firms are concentrated. Firms from Taiwan, the third largest investor nation in Vietnam, operate some 2,000 to 3,000 factories there. According to the Taiwanese newspaper *Zhongguo Shibao* (*China Times Daily*, 1 July 2006), Taiwanese firms have been particularly targeted by strikers, accounting for a disproportionate number of strikes. This has caused alarm among the Taiwanese business community. In Binh Duong province, home to more than 500 Taiwanese factories in 2006, a strike wave that year swept through more than 50 Taiwanese factories at the same time, all of which had to stop production (*Zhongguo Shibao*, 1 August 2006). In the years since, strikes have remained a regular

^① For further reasons why these two regions, and Vietnam and China as a whole, are worth comparing, see Turley and Womack, 1999: 44–73.

occurrence. Taiwanese factory owners reportedly greet each other nowadays with the anxious query, “has your factory been affected by a strike yet?”, and in 2010 a Taiwanese blogger wrote that only when a factory has not been targeted by strikers is it newsworthy.^①

This difference in the incidence of labour stoppages poses an interesting question, because it goes against a previous study that I participated in comparing Taiwanese businesses’ labour practices in Vietnam and China (Chan and Wang, 2004). Our findings went against the popular belief in cultural affinity: that people with the same cultural background interact better. Instead, we discovered that Taiwanese bosses treated Vietnamese workers better than they treated Chinese workers. Our article concluded that the attitude of the Vietnamese government and official trade union toward labour violations by foreign investors has been the most salient factor in influencing Taiwanese managers’ treatment of workers. Thus, when newly collected data show that Vietnamese workers are actually more prone to protest strikes than their Chinese counterparts, this came as a surprise.

The new information comes from diverse sources. In particular, a number of research visits were made to each of these two regions, and factory managers were interviewed in both.^② There was no attempt to conduct interviews with workers while inside factories; this was accomplished outside factory premises as workers left work. In both countries, extensive interview sessions were also held with locally based staff members of a well-known Western-owned footwear company that sources from supplier factories in both Vietnam and China. In addition, interviews were held with government and trade union officials, and, in China, with the staff of labour NGOs stationed in Shenzhen.

These field visits are complemented by a large amount of information gleaned from documentary research. These include Chinese-language materials from Taiwan and China, some detailed reports on Chinese strikes posted on the internet by international and Hong Kong-based NGOs and media reports regarding labour disturbances in Vietnam written

① See www.buycar.com.tw/20738.

② Most of these interviews with management were arranged by Professor Hongzen Wang of Sun Yatsen University, Taiwan, and conducted jointly by the two of us.

in Vietnamese and English.

Coverage of strikes in the Vietnamese press is plentiful, in particular in *Laodong* and *Nguoi Laodong*, sometimes followed up by investigative reports complete with strike photos and statistical data. The Chinese press refrained from reporting on strikes in Guangdong's Pearl River Delta in the 1990s, but over time the press was granted greater freedom to cover stories and more Chinese became active in internet blogging. As a result, news about strikes started surfacing. But reports are seldom illustrated by photos of mass protests, protest banners or police vans. Images of street actions are off limits. Hong Kong press photographers sometimes make up for this PRC blackout by rushing to the scene.

Vietnam keeps a record of the number of strikes, which is regularly reported in the press. For China, I have yet to come across similar official statistics, possibly because strikes are not officially considered legitimate collective actions. Although there are now descriptions of strikes, there has not yet been any public discussion at the policy- and law-making level. China only releases figures on "labour disputes" (*laodong zhengyi*) or "mass incidents" (*qunzhong shijian*). Although such figures normally include strikes, they are umbrella terms for all kinds of disagreements. The official statistics for "labour disputes" entail officially recorded cases of individual or collective disputes that have been accepted for arbitration and litigation. The term "mass incidents" refers to collective protests with the implication that violence has taken place, some of which could be strikes. The Chinese strike figures quoted earlier in this chapter are not official statistics.

In order to analyse the nature of strikes and industrial relations in the two countries, it is best first to describe a representative example of a strike in Vietnam and a strike in China to give readers a sense of what, typically, they are like: what instigates workers to take up collective protest action, what are the workers' grievances, what are their demands, what is their behaviour during the strike, what is the level of worker solidarity, what actions does management engage in, how do the trade union, local government and police handle the incidents and, finally, how do the strikes end, what are the terms of settlement and what roles are played by stakeholders, including labour advocates and the major corporations that purchase from the factory.

2.1 China: Confrontation at a footwear factory

This strike was widely reported inside and outside China on the internet, including web blogs. Several such reports tracked the development of the dispute over a period of several months.^①

Stella Footwear Company (real name) is Taiwanese owned. In 1991, like so many Taiwanese factories, it relocated from Taiwan to Dongguan city. A decade later it had expanded into five facilities in different parts of Guangdong province, two of which were in Dongguan. It employed about 60,000 workers and supplied shoes to some ten brand-name companies, including Nike, Reebok, Timberland and Clark. None of the five Stella factories contained trade union branches.

Working hours were long at these factories, up to 11 hours a day, six days a week. Workers were paid a so-called monthly basic wage for the first 40 hours of the workweek. Like all factories in Dongguan, as of 2004 this basic monthly wage was 450 yuan (US \$ 54.50), set exactly at the official minimum wage. (Similarly in Vietnam, factories pay a basic wage that is exactly the official minimum wage.) With overtime, that year workers at Stella on average made 700 yuan a month. Eighty percent of the workers lived in cramped company dormitories. After deducting money for rent and food, workers were left with only around 200 yuan (US \$ 24.20) per month in take-home pay. Without the overtime work of some 20 to 26 hours a week, the workers would have had no take-home pay at all.

In March 2004, Stella management suddenly reduced the amount of overtime work by giving workers two more days off a month, causing a reduction in income of about 100 yuan for each worker. The problem was that while working hours were reduced, the work quota remained unchanged—they would need to produce as many shoes as previously—which effectively meant an increase in labour intensity alongside a decrease in their monthly income. On pay day, when workers saw the pay cut in their wage package, they became angry. Some workers began calling in

^① See, for example, *Zhongguo xinwen zhouban* (China News Weekly), 26 November 2004; *Baoxun*, 2 November 2004; CSDN net, 18 January 2006; *China Labor Watch*, 28 August 2004; 1 January 2005.

unison, “Higher wages! Better food!”, and soon afterwards a crowd of more than a thousand workers started smashing machinery, rushed into staff offices, breaking windows, looting the factory grocery store and overturning vehicles. A corps of thirty security guards could not control the crowd. Police were called. “In the chaos the workers had no leaders, no representatives, no organization and no concrete demands. They dispersed as quickly as they rose up.” The news of the conflagration spread, and four out of five Stella factories became engulfed by violence. This on-site violence is not commonplace in Chinese industrial actions. A more normal situation is for workers to take to the streets, marching to the local authorities to seek redress. The police then arrive in large numbers to try to stop the march, which can end in violence and arrests.

In the end, more than 1,000 Stella workers were fired, 70 were arrested, and 10 were charged by the local government for destroying property and were quickly sentenced to three to three and half years in prison. The youngest was only 16 years old. Immediately, international and Hong Kong NGOs launched a protest campaign to release the 10 convicted workers. Six Chinese lawyers, including a well-known human rights lawyer, were hired and came to Dongguan to represent them. Campaign organisers urged the brand-name footwear companies to use their leverage with the Dongguan government to seek their release. On 1 January 2005, all 10 were released with suspended sentences. According to follow-up reports, working conditions reverted to what they had been in earlier months; the two days of monthly weekend overtime were restored and monthly wages remained at previous levels. The brand-name companies organised management-worker training sessions at the factories in the hope of establishing more stable labour relations.

I was able to talk to several Stella workers outside the factory in September 2007. They related that there was still a lot of overtime work and the pay was average. They also said that they were trying to organize other workers to agitate to set up a democratically elected union, which they hoped to register with the local union one level above. None of their hopes ultimately came to pass.

2.2 Vietnam: Negotiated conclusion of a spontaneous strike

As a typical example, I have chosen a strike that broke out in one of the several factory sites of ABC Footwear Company (a pseudonym) in March

2006. ABC employed 50,000 workers at this one site. This is one of the earliest Taiwanese footwear factories established in Vietnam and it supplies a single Western brand-name company. As required by Vietnamese law, it allowed a trade union branch to be set up in 1996. But the trade union has not been proactive in representing workers' interests. For example, during an interview the union chairperson described the relationship between the union, workers and the company as one of "partnership". His attitude was that the "the trade union will stand up for workers' interests if the company infringes the law. We will propose suggestions to the company, but if it does not accept them it is the company's responsibility, not the union's." (Thus, implicitly, if the workers stage a strike it is not his fault but management's.) From his vantage point, the trade union has to work in cooperation with various departments in the company and it is not his job to struggle for workers' interests.

In the months leading up to the ABC strike, the trade union had notified management that the workers had some serious grievances. They were unhappy that every time a new shoe model came on line, productivity initially dropped, causing a reduction in their monthly "production quantity bonus". Management's attitude was that, as long as the factory did not breach the law and the client's corporate code of conduct, this was good enough. It did not heed the trade union's advice. In a roundtable discussion that we held with trade union committee members inside the factory in 2006, they expressed their frustration but at the same time said they would not push management to the point that their relationship became confrontational. The result was that the workers did not trust the trade union and some of them even publicly challenged the trade union chair, calling upon him to step down.

In September 2005, at a time of high inflation, the Vietnamese government announced an increase of some 40 per cent in the legal minimum wage for FDI enterprises. Factory managements complained that the announcement gave them too little time to arrange for a wage increase. The government then delayed the increase, to be effective from 1 April 2006. However, workers were impatient with the six-month delay and started a wave of strikes after the announcement. To appease the workers, the government gave in and rescheduled the date to 1 February, causing great confusion.

Despite the minimum wage rise, after workers returned to ABC Factory from the *Tet* holidays, a wildcat strike broke out in early March 2006. On 10 March, a Friday, the company discovered leaflets calling for a strike posted on walls and placed on a number of production lines. Management had no idea who had organised this; nor did the workers whom we subsequently interviewed. Management immediately decided to give workers a day off on Monday in the hope of averting the strike, but not all workers were informed about the day off. On Monday, some workers turned up for work, but they were blocked by striking workers from entering the factory. A few angry workers started throwing stones at the office buildings. Some office staff managed to get to their offices, but anonymous phone calls using the internal phone line intimidated them into leaving. As each staff member emerged from the factory gate, crowds of strikers who had gathered outside the gate cheered and applauded.

That morning, local government officials, including officials from the labour bureau and the provincial trade union, arrived to mediate the dispute. They talked to the workers and noted their complaints. The police also showed up, but according to management, “the police did nothing”. When management tried to take photos of the most active and vocal strikers, the police stopped them on the grounds that “it might irritate the crowd, leading to unexpected consequences”. Management pointed out that the blockade was illegal, but the police did not take any action.

Management asked the trade union to present a list of the workers’ demands, but the trade union was unable to do so, and no strike leaders would step forth from among the workers. Under these circumstances, government officials and provincial trade union officials sat at the negotiating table, putting forth the workers’ demands to management representatives. The demands included (i) raising wages for senior workers, (ii) contributing to social security for workers and (iii) paying a seniority allowance. Senior workers demanded a wage increase because, when ABC increased the basic wage in accordance with the minimum wage rise as of 1 February, as required by law, the junior workers’ increase was higher in proportion to their wage than that of senior workers. The latter thought this unfair and agitated for a bigger increase. The company already had an annual incremental wage system policy based on seniority, but it was not formalised. In the negotiations, the workers demanded

that this seniority system be included in the collective agreement, although this was an annual increment of only VND 25,000 (about US\$ 1.80). Management accepted the three demands.

The negotiations lasted through Wednesday, and during that period the workers did not return to work. They were paid nevertheless. When the negotiations were wrapped up, management warned that strikers who did not turn up for work on Thursday would receive a demerit and no pay. But the company could not legally fire those who did not turn up on that day because, according to the Labour Code, a company can fire only workers who have been absent from work for three successive days.

An interviewee representing management at the negotiation table was convinced that “the Vietnamese government is behind the scenes. On the surface it appears to be taking a *laissez faire* attitude, but whenever there’s a strike, it becomes a mediator and presses businesses to accept workers’ demands.”

2.3 Comparing the two cases

I have chosen these two strikes in large part because they are representative of strikes in the two countries. One typical aspect is that in neither factory was an official workplace union involved. At ABC, there was a union, but it played no role in the process. Despite its legal status, it was not even present at the negotiation table. At Stella, as noted, there were no unions at the five production sites. This reflects a typical phenomenon in both regions—workplace unions often do not exist in the foreign—run export factories in China or exist only in name, while in Vietnam, where they do exist, they are extremely weak and distrusted by workers (Wang 2005). However, Vietnamese workplace unions, as exemplified in ABC, sometimes may still serve as a channel of communication between management and labour to diffuse extreme tensions. But when a union cannot quietly convince management to resolve grievances, bottled up frustration can turn into collective protest actions. In both countries, these strikes are “spontaneous” and no orderly representation had been made to management on behalf of the workers before strike action began, although some worker activists inside ABC were organising covertly. The Stella strike, by contrast, exploded into mass action without any covert planning. Herein lies one of the differences between strikes in the two countries. As strike waves spread across the

HCMC region, month after month and year upon year, Vietnamese workers learned from each other about how to engage successfully in a wildcat strike, and have become emboldened by the experience. In China, there often was no orderly way to resolve a strike through a negotiated compromise, in contrast to Vietnam. From newspaper and internet reports, I have been able to collect a sample of 105 Vietnamese strikes that were reported during 2007, and most of the strikes lasted one day, rarely more than five, indicating that issues were resolved fairly quickly.

Workers' demands in the two countries are not the same, as illustrated in the two case studies. At ABC, workers were asking for higher pay, better food, social security coverage, a graded wage structure, a seniority system and dignified treatment. These demands are representative of those made by most Vietnamese workers. Based on a breakdown of 70 strike cases in 2007, the most salient cause was low pay, followed by insufficient wage increases to offset galloping inflation. The next most numerous set of complaints was related to the *Tet* bonus. Workers claimed that the bonus was not commensurate with their work contribution. Some complaints had to do with employers withholding the *Tet* bonus until after the workers had returned after *Tet*. Too much overtime was also often an issue. Workers complained about being forced to work extra hours or shifts and not being awarded the legal overtime premium. Similarly, failure to pay health and social insurance contributions regularly surfaced as a grievance, but generally was not the catalyst in sparking collective protests. Finally, some workers also demanded a decrease in work quotas and an increase in piece rates. In short, demands tend to be interest-based.

In contrast, Chinese workers most often strike for different reasons and their demands are also different. The Stella case provides a good example. Wages here were a major issue, but the strike was not over an insufficient wage increase; on the contrary, it was over a wage decrease due to reduced work hours accompanied by a faster-pace of work. Often a wage decrease in the export industries of south China takes the form of higher deductions for meals, rent or utilities, a ploy used to obfuscate the wage decrease. This method can be used because a fairly sizeable proportion of the workers there live in dormitories. In Vietnam, workers usually live in private housing and so this method of wage deduction is not useful from a management perspective.

What would have confused Vietnamese workers was that Stella workers fought only to maintain their previous wage level, not for a wage rise. While Vietnamese workers fight for reduced work hours, Stella workers fought to have their reduced overtime restored! By law they are entitled to four days of rest a month, but they fought to go to work for two of those four days. Because they had not fought for higher pay rates they could not afford to lose two days of overtime—an amount of overtime, notably, that exceeded the legal maximum number of working hours. Also, instead of fighting for a reduction in their work quota, they were willing to maintain the previous quota. They did not take advantage of the strike to ask for shorter working hours and better pay. They have a confused understanding of the integral relationship between wages, working hours and work intensity.^①

The Stella workers' lack of understanding of the kind of demands that could improve their wages and working conditions was not unusual. In China's Pearl River Delta, workers' expectations generally are low. The majority of labour disputes are over seriously delayed payment of wages. When the delay drags on for too long, it is tantamount to not paying the wages at all. Workers' claims of unpaid wages almost always spike just before Chinese New Year (the same holiday as *Tet*), leading to a large amount of uncoordinated labour unrest. The unpaid wages issue became extremely serious in the 1990s in Guangdong province, involving 5.6 billion yuan (about US \$190 million) in unpaid wages in 1998. To appease angry workers, local governments in places such as Dongguan launched "chase back-wage campaigns". According to one survey, 72.6 per cent of Chinese migrant workers in the early 2000s suffered varying degrees of wage defaults (*Beijing Review*, 2003, 25 December, pp. 46-7). In an effort to restore "social harmony", local governments have tried to use administrative methods to reduce the problem, but even then, in 2005, cases of wage arrears still made up 41 per cent of labour dispute cases in the province (*Guangzhou Daily*, 14 August 2007). In Vietnam, delayed wage payments also exist, but they pale in insignificance by comparison. As Simon Clark points out, "Low wages, rather than unpaid wages, was an issue cited in one-third of reports on strikes in the period

^① For a discussion of Chinese workers' lack of comprehension of the relationship between working hours and wages, see Chan and Siu, 2010.

2002–04” (2006: 351–52). The irony of the protests before *Tet* and Chinese New Year is that, while Vietnamese workers were protesting a delayed bonus payment or demanding a higher bonus, in China workers were just trying to get paid.

There is one other type of serious workplace conflict in China that is often overlooked by observers: the instance of workers being denied permission to quit a job. This is a problem that does not seem to exist in Vietnamese Asian FDI factories. In China, a widespread management practice was to withhold a couple of months of workers' wages at the time of recruitment as a method of preventing workers from quitting when they want to. An inability to leave a factory with full pay and entitlements was a cause of great anxiety among Chinese migrant workers and was often a source of serious conflict on the shop floor, because supervisors usually have the power to decide whether to grant workers permission to resign. Workers desperate to leave without permission have had to forfeit the amount withheld at the time they started working.

The two strike cases also show up a big difference in how the two countries' local governments and trade unions handle strikes. Generally, strikes in the HCMC region can be characterised as peaceful, despite occasional skirmishes between a factory's private security guards and strikers. Vietnamese workers ordinarily display restraint with regard to violence. The local authorities, the district trade unions and the media will quickly learn about an incident either from the workers or from management and rush to the scene. Upon arrival, the authorities try to calm the crowd, look into the grievances, ask workers to choose representatives and then begin to negotiate with management on behalf of the workers for better conditions and wages. Important to note is that the local authorities and the trade union quickly take on the role of the workers' representatives in negotiations with management. Often, according to Vietnamese newspaper reports, they lambast the managers for mistreating workers. The length of the strike depends on the progress of the negotiations and on whether workers are willing to accept the terms that management offers. Since most strikes last only one or two days, this means that in the face of pro-labour local authorities, management normally quickly concedes to workers' demands. In a minority of cases, when both workers and management are adamant, as in a strike at Hue Phong, the strike can last for a few weeks.

What distresses and frustrates Taiwanese investors is their conviction that the authorities side with the workers. “They are supposed to come to mediate, but basically they are here to fight for the workers. It’s all one sided,” the Hue Phong director complained to me in 2007. “The workers here have better protection than workers in Taiwan!”

Taiwanese employers’ treatment of workers and their attitudes towards strikes are very different in China. In this, the attitude of the host governments is critical (Chan and Wang 2004). Thus a Taiwanese manager lamented, “We can’t use in Vietnam the methods we use in China. Definitely a no go.” Why does this difference exist between the two countries? “Because the mainland Chinese government supports us.” While the Vietnam government does not let the police or factory managers suppress strikers, Chinese local governments have no qualms in quelling strikes by sending in large numbers of riot police to intimidate workers. The Chinese and Hong Kong press repeatedly describe how workers move out onto the streets, the police arrive and the atmosphere grows tense. Only occasionally does a strike end peacefully.

During 2008–2009, in addition to unpaid wages and wage deductions for dormitory rents and food, workers’ protests in Guangdong’s Pearl River Delta had to do with plant closures, triggered by the rapid downturn of the global economy. When factory owners absconded, the workers often had not been paid for a few months and lost their entitlements as well (*Beijing Times*, 18 October 2008). Ironically, some of these factories shut down in order to relocate to Vietnam to take advantage of the lower wages there. In most cases, factory management has been breaching labour law and the workers feel they have the right to take collective action when all other channels are blocked. Normally, some of these workers would first have tried legal means, including formal complaints to the local authorities and the district trade union, but when they are unable to get a sympathetic hearing from local authorities they draw public attention to their grievances by escalating collective protest actions. Many of these take the form of workers rushing out of the factory gate, marching in formation to the offices of the local authorities, blocking traffic or

staging sit-ins inside or outside factory compounds. ^① A large number of police appear on the scene to cordon off the strikers and prevent them from marching, driving them back into the factory compound or dispersing the crowds. In the process, violence breaks out and workers are arrested, thrown into police vans and later charged with disturbing the peace. ^②

Therefore, unlike Vietnamese workers, Chinese workers do not expect the state to be on their side when they explode in fury. It is desperate behaviour carried out in full expectation of a violent reaction. They calculate that, since the factories are legally in the wrong, when the upheaval is over local government officials will use their authority to demand that management abide by the laws: raising wages to the legal minimum required, reducing excessive overtime or paying severance compensation. The outcome is unpredictable, but they anticipate the likelihood of violence and suppression. Arrests (or driving strike leaders to flee to their hometowns), and allowing management to retaliate against workers after the dust settles through mass layoffs and blacklisting, makes it difficult for activists to form organising cells. ^③

There have been some anomalous cases where Chinese labour protests resemble Vietnamese protests. The best documented was a series of strikes in 2005 that spread across 18 factories (16 Japanese and two Korean) within three months in the Dalian Development Zone in northeast China (Chen 2010). It engulfed quite a number of factories, indicating that there was some surreptitious organising and coordination. Like the Vietnamese workers, these strikers' demands were interest based: asking for higher wages, better benefits and a higher overtime premium. The city authorities and the development zone trade union, however, were hostile towards the strikers. The trade union acted as a government representative. When the strikes spread, the development zone union

^① This was exactly what happened in two cases of strikes described by Chris Chan and Pun Ngai (2009). Workers knew they would not get the support of the local government and had to take to the streets, blocking roads and triggering a large police presence, resulting in violence and arrests.

^② As the economic downturn deepened in the export sector in 2009, resulting in larger numbers of factory closures and labor disputes, the local governments temporarily became less suppressive to avoid aggravating tensions.

^③ My contacts at grassroots Chinese labor NGOs observed that this is the general situation. It is not easy to find strike activists after a strike has been suppressed.

became somewhat sympathetic to the workers' cause, but in the end, because the city government and the Communist Party committee were worried that the strikes might drive away FDI, the union only played the role of mediator. Vietnamese authorities appear to be less worried that strikes will deter foreign investors, perhaps in the belief that Vietnam has other advantages (*Los Angeles Times*, 11 April, 2009).

3. Underlying Factors

How do we account for the differences in the two countries' strike patterns? Several factors can be identified: (i) the relationship between the government and the official trade union, (ii) the labour laws and legal regulatory regime and (iii) the tripartite dispute-resolution institutions. Of these, the relationship between the government and trade unions constitutes the macro-political, institutional and legal parameters within which the other factors play out their differences.

3.1 Government-union relations

Both Vietnam and China are one-party states with corporatist structures. As described above, there are differences between the two in terms of how the state handles strikes. This difference has historical roots. A vibrant independent trade union movement existed in South Vietnam in the 1960s and 1970s. In China, a genuine trade union had existed in the more distant past, before 1949, but the passage of time means that there are no personal memories of this. By 1980, when China began to allow the emergence of capitalist activity, ACFTU contained only a few elderly officials who had experienced an independent trade union movement. In contrast, the legacy of a militant labour history in South Vietnam was of direct pertinence, especially in this region of Vietnam where a bureaucratic socialist system has never taken root. Some trade unionists' previous experiences probably influenced Vietnamese industrial relations policy under *doi moi* (the reform period).

At the Sixth Vietnamese Trade Union Congress in 1988 the party state was willing to give space to the VGCL to operate under the slogan of "renewal, openness and democracy" (Chan and Norlund 1998: 184). The trade union structure was decentralised and disagreements between the

VGCL and the government over policy issues were allowed to be reported in the press. This has not been possible in China. ACFTU has been striving for some independence from the Chinese party state, but any differences with the Party and other sectors of the government cannot be aired in public. The public can only construe that differences exist by reading between the lines in the media.

By the early 1990s, both countries had to enact a set of new labour laws to regulate a rapidly changing economic structure which was being challenged by expanding private and foreign-invested sectors. Strikes in the foreign-invested sector were of concern to the authorities in both countries. The Labour Code and the Trade Union Law that were passed in both countries at about the same time in the first half of the 1990s, after intense debates and several dozen drafts, with hindsight laid the foundations of divergence. As a whole, these bodies of laws guarantee the VGCL more independence than was given to ACFTU. The articles regulating collective bargaining in the Vietnam law are far more detailed. According to the Vietnamese Trade Union Law, the functions of the workplace union do not include carrying out work to assist management. (Chan and Norland 1998: 185). The Vietnamese laws have prohibitive articles against exploitation that are missing in the Chinese laws. The Vietnamese trade union is given the right to join international organisations and even to accept funding. The Chinese trade union law is silent on such matters. As a whole, the Vietnamese Labour Code is superior to the Chinese.

Comparing Vietnam and China, it does not seem coincidental that Taiwanese investors do not violate Vietnamese labour laws in the same way they flout Chinese laws. Prohibitive articles in Vietnamese law, accompanied by penalties impose consequences for violators. One result is that the serious problem of wage arrears in China is not prevalent in Vietnam.

There is also another factor. While in both the VGCL and ACFTU the top levels of union officials are more pro-labour than the lower levels, in Vietnam this reaches down to the district level. Not so in China. As we have already seen, in Vietnam the district-level local authorities and unions side with workers at times of strikes, but not their counterparts in Guangdong, China. There is a historical reason why district-level governments in the HCMC region are more pro-labour. First, as the two

countries' political systems loosened up and became more decentralised, the behaviour of grassroots local governments has had a decided impact on the region's industrial relations system. In the HCMC region, where land had not been widely collectivised, ownership remains in the private hands of villagers and is inheritable. Provincial and district-level governments, although they have an interest in attracting foreign investment, do not have a direct stake in renting out land and factory buildings to foreign companies. They are more ready to enforce the law and protect workers' rights than are local governments in China's Pearl River Delta. There, the land under Mao was owned by agricultural collectives. Today, in Guangdong province the agricultural collectives continue to own the land, and they are often coterminous with natural villages and the revenues are controlled by the village governments. Almost all agricultural land in the Pearl River Delta region has become industrial zones, and in most areas the land use rights still rest with the collectives, which today are active in constructing and renting out factory buildings to foreign investors. Villagers, as a *group*, have become a rentier class. The very direct personal gains that can be made from foreign investors using migrant workers from poorer provinces contribute to the village governments' disregard for the exploitation of the migrant workers by foreigners (Chan, Madsen and Unger 2009: Chapters 13–15). The proportion of local villagers to migrant workers can be up to 1 to 100, and no locals need to work on the production lines any longer. There is an unspoken alliance between the local village governments (and the levels of government immediately above them) and foreign-invested enterprises vis-à-vis keeping the migrant production-line workers in line.

In both countries, the workplace union branches are weak. This is the level of interface between management and labour. But there is a difference. For instance, at the ABC Factory in Vietnam the enterprise trade union branch saw itself as having a separate identity from management even though it did not aggressively represent workers' interests and was too weak to play a role later in negotiating with management, letting the higher district-level union do this. I also have come across a case in which the trade union of a shoe factory in Vietnam that supplies Nike and other brand-name sports shoe companies is powerful enough to negotiate with management. Because it was able to represent workers' interests, there has been no strike there except for small-scale work stoppages.

In China, the workplace union branches in the private factories in the Pearl River Delta are worse than weak; where they exist they are an integral part of factory management. Often a local villager is sent to the factory and given the title of deputy factory manager while simultaneously also holding the title of factory trade union chair. Workers often do not even know of the existence of this virtual union.

Vietnamese workers at the ABC factory have a basic understanding of the importance of a collective agreement. For instance, they insisted that certain demands be written into the contract, even though some of those demands were already implemented in practice. In China, when talking to workers and to labour NGOs, it became obvious that the concept of collective bargaining is practically unknown in the Pearl River Delta. Although collective bargaining has legal status, it was only in August 2008 that ACFTU, with party-state backing, launched a campaign of “collective consultation”, urging workplace unions to draw up collective agreements with management. The campaign fired its first shot by targeting China’s hundred-plus Wal-Mart stores. But close examination of the collective agreement at a Wal-Mart store that was held up as an exemplar reveals serious procedural irregularities and a collective contract in which the staff’s wages were unlikely to keep abreast of inflation. (*China Labour News Translations*, 22 September 2008).

3.2 Tripartite institutional framework

Countries with longstanding trade union movements often maintain industrial peace through a well-established tripartite system that involves the state, labour and employers. Urged by the ILO, in the early 2000s both Vietnam and China set up Tripartite Consultative Committees (TCCs) composed of the state, employers’ associations and the trade union federation. These were established at various levels as platforms for tripartite dialogue (Lee 2006). The Vietnamese TCC system is better developed than China’s (Lee 2006).

Vietnam and China both have strong states, weak workplace-level union representation and well-organised union federations that play a role at the national level. The VGCL in Vietnam, being more independent of

the state, can assert its opinions more openly than ACFTU can in China.^① In both countries, due to a socialist past, employers' associations are new and not well developed. The Vietnamese Chamber of Commerce and Industries (VCCI) appears to represent its members' interests better in the Tripartite Consultative Committee (see, for example, Radio Voice of Vietnam, 12 February 2009) than its Chinese counterpart. Perhaps this explains the softer approach taken by foreign investors in their handling of strikes. For instance, in interviews with a big foreign company in Vietnam, it was quite clear that an intensive tripartite dialogue took place in early 2006 when a strike wave broke out. The Chinese Enterprise Management Association, by contrast, has not been as well developed and its representation on China's Tripartite Consultative Committee is weak. A study of the Chinese TCC concludes that, several years after its establishment, its operations still fell far below the standards set by the ILO (Shen and Benson 2008). The fact that the VCCI has a role to play in Vietnam helps to explain why the ILO office there has successfully exerted some influence on the shaping of the industrial relations system. To take only one example, in April 2010 the ILO office in Vietnam and the Ministry of Labour jointly organised a tripartite conference to discuss draft revisions of the Labour Code and the Trade Union Law.

3.3 Legal procedures regulating strikes

After intense debate, the Vietnamese law granted workers the right to strike, laid out in a detailed set of procedures. The Chinese Labour Code does not mention strikes at all, effectively putting this right in limbo. Thus, strikes in China have not been legalised nor are they illegal. While Western critics take China to task for not having recognized the right to strike, it is not mentioned that there are also no provisions prohibiting strikes or defining what constitutes an illegal strike. As will be seen, the pros and cons of having or not having a legal regulatory procedure vis-à-vis strikes are complex.

^① For instance, some unionists in Vietnam argue that workplace trade union chairs' salaries should be covered by the union and not the employers, to solidify the workplace union's autonomy. See www.lookatvietnam.com/2009/03/vietnam-works-for-harmonious-labour-relations.html, March 18, 2008. In China, where workplace union chairs are also paid by employers, this is not a matter for debate.

China's and Vietnam's Labour Codes

The Labour Codes passed in 1994 in the two countries established institutions and procedures for channelling industrial disputes through a three-stage formal proceeding: an enterprise-level conciliation committee, an arbitration committee that is external to the enterprise and, finally, the court system. In practice, because the workplace unions serving as representatives of labour on the conciliation committees are weak and often are controlled by management, workers do not go to them to resolve grievances. Instead, they go directly to the arbitration committee. When dissatisfied with the decision of the committee, workers can appeal to the local court.

On 1 January 2008, a new Chinese law, the *Labour Dispute Conciliation and Arbitration Law*, came into effect. A new law was needed since disputes had skyrocketed from 19,000 in 1994 to 317,000 in 2006, of which 14,000 were collective disputes entailing demonstrations or strikes, sometimes involving violence (Brown 2008). But the new Chinese law, like its predecessor, fails to make a distinction between individual and collective disputes. Nor does it make a distinction between rights-based protests or interest-based protests, nor between legal and illegal industrial actions or strikes. In fact, the terms “collective bargaining”, “strike” or “work stoppages” are absent. The only reference to any form of collective dispute is contained in Article 7: “Where the party in a labour dispute consists of more than 10 labourers, and they have a joint request, they may recommend a representative to participate in mediation, arbitration or litigation activities.” But the procedure for these multi-disputant disputes is the same as for an individual. In practice, even when a group of workers with the same complaint applies for arbitration, they are often dealt with as individual cases.

This new law tries to rectify many of the problems that had placed workers at a disadvantage when they used legal proceedings to resolve their grievances. Due to the new changes that are favourable to workers, within six months of the law's promulgation there was an explosion of cases lodged at Shenzhen city's arbitration offices: 23,785 applications, 243 per cent more than for the same period in 2007, and of these, 22,122 cases were

accepted for processing. The arbitration staff was overwhelmed (Ye 2008).^①

An important difference between the Chinese and Vietnamese laws is that China's does not contain provisions for collective disputes, whereas the Vietnamese Labour Code makes a distinction between individual and "collective labour disputes" and has separate sections laying down the procedures for dispute resolution. For collective disputes, workers can take their case to an arbitration council at the district level composed of "full time and part-time members from the labour administration system, union, employers and lawyers' association, or experts in industrial relations in the locality" (Article 170). Similar to some other countries, such as Australia, collective strike action is not allowed while arbitration is in process.

At this point, in Vietnam a difference is made between rights-based and interest-based disputes. Rights-based disputes are those related to legal violations and are dealt with by the chair of the District People's Committee. The maximum time given to decide on a resolution is five working days (Article 170a). If the workers disagree with the resolution they can begin strike procedures. For interest-based disputes related to issues that go beyond the legal minimum, the maximum time for the arbitration body to arrive at a decision is seven days. The decision then has to be sent to the disputants within two days. The trade union then has to organise a secret ballot. A majority "yes" vote is needed from among the employees of a 300-worker enterprise, and the consent of over 75 per cent of "consulted workers" in enterprises of more than 300 workers is needed before the union executive branch can put forth workers' demands and notify the employer of the time and place of the impending strike (Article 174b). Short of those percentages, the workers cannot legally hold a strike. The notification has to be delivered to the employer, the Labour Ministry, and the provincial union federation five days prior to the strike date that had been decided by vote (Article 174b).

Despite these pre-strike procedures, none of the known strikes in Vietnam to date has been legal, in that they have not gone through these steps. As we have seen, the number of strikes has continued to rise; these

^① The great increase in cases may also have been caused by other factors, such as the Contract Law that came into effect at the same time.

were all wildcat strikes that bypassed the procedures. The law has been ignored.

A major reason for this is the complicated procedure for applying to hold a legal strike. This is simply impractical for strike organisers. Taiwanese factory managers with no tradition in engaging in collective bargaining in Taiwan cannot be trusted to await complicated and lengthy pre-strike procedures without taking the opportunity to identify the strike organisers and get rid of them. Workers perhaps understandably ask themselves why they should bother to take the cumbersome legal route when they can go on strike spontaneously, as has been the case for the past decade, with a high chance of winning and involving little personal risk? As a result, all strikes have been wildcat, and no worker representatives have emerged who have applied to stage a strike.

In short, the Vietnamese and Chinese governments have taken different approaches. Vietnam has always recognised the right to strike but also created a class of illegal strikes. What is interesting is that, while workers have refused to play by the rules, the authorities do not enforce the law. They are not arresting and prosecuting illegal strikers, but instead are bargaining on their behalf with management. By contrast, the Chinese government's method of trying to control the spread of strikes is simply not to recognise collective industrial actions, nor the right to strike, but at the same time China cautiously continues not to make strikes illegal, leaving it a grey area. It tries to channel all grievances through legal processes and has enacted a law to make this easier for the workers. The result has been a vast increase in individual litigation. At the same time, the state does not lay down any procedure for collective actions, and when strikes explode the authorities have reacted with attempts at suppression. The contrast between the two countries can be reduced to this: in Vietnam it is a situation of "harsh laws, soft implementation" while in China it is "soft laws, harsh implementation" .

4. The Trend Lines in Industrial Relations Patterns

Without effective union representation at the foreign-owned factories, both Vietnamese and Chinese workers rely on the state to help them. They make economic demands on their employers, but make no demands

regarding state policy (for instance, they do not demand that the officially set minimum wage be increased) nor political demands (for instance, they do not demand autonomous trade unionism). In both countries, strikes are aimed at appealing to local authorities for help. In Vietnam, the workers go on strike in order to get the local state to negotiate on their behalf. In China, collective actions either take the form of violence at the workplace or, more often, street actions, such as marching to local government offices to ask that pressure be applied to their employers. Vietnamese and Chinese workers remain at the stage of seeking protection from the government, unlike Indonesian workers, who hold mass rallies calling on the government to raise the minimum wage. This reflects a difference in the state-worker relationship in the formerly “socialist” states and the developing-nation capitalist states.

But state power in Vietnam and China is exercised differently. The Vietnamese government uses its administrative power to demand interest-based improvements in foreign-owned factories. For instance, during the ABC strikes government representatives pushed ABC management to set up a seniority-based year-end bonus system and an incremental salary system based on years of service. The Vietnamese government also tries to push brand-name clients to force their suppliers to set up these systems. ^①

The Chinese government does not normally resort to direct administrative intervention to get employers to provide a better deal for workers. It is up to the employers to abide by the law, and if they do not, it is up to an individual employee to use the law to fight for this legal right through arbitration. This ultimately means more litigation in China. Whereas the Chinese government has not used any law to regulate strike disputes, the state does resort to a different way of averting strikes: by individualising all labour disputes and channelling them through the arbitration and court systems, causing a proliferation of litigation cases in China over the past decade.

In turn, this has led to the emergence and proliferation of legal aid clinics, labour NGOs, labour lawyers and paralegals in the Pearl River

^① Information from a human resource manager of a large Taiwanese supplier (Interview conducted by Professor Wang Hongren in 2006 in Taiwan).

Delta. They help individual workers to take legal steps to secure wage arrears and compensation for industrial injuries. Currently, there are no fewer than five hundred people in the Pearl River Delta working professionally as labour-rights protectors, and among them more than twenty have had a significant influence in specific legal areas. There are many more non-professional legal practitioners who started originally as workers fighting their own personal cases and who, having learned the ropes through self-education, started helping others by becoming what in China today are called “citizens’ agents”. One such agent who became famous in the past 15 years has handled 6,000 cases. As these “citizens’ agents” become more knowledgeable and skilled in litigation, some workers have been awarded substantial amounts in back pay and in compensation for injuries. In one case, an employer in Shenzhen city was so infuriated that he hired thugs to smash up a legal-aid NGO office and subsequently arranged for the NGO head’s legs to be severed with a cleaver during a streetside attack. This incident raised great alarm among the labour NGO community in Shenzhen.

The rise of litigation and of citizens’ agents has catapulted China’s industrial relations into a new stage. In response, the Guangdong government has begun to grapple with the question of whether it should attempt to co-opt and incorporate the citizens’ agents and other labour-rights protectors by bringing them under its wing (*China Labour News Translations*, November 2007, December 2007, January 2008). This initiative potentially places these now-independent agents in a vulnerable position, constantly subject to the mercy of the authorities (*China Labour News Translations*, January 2010).

This narrow focus on legal rights has a delimiting effect on workers’ consciousness. Their interests beyond the legal minimum are not protected by law and do not come within the purview of legal aid personnel. Struggling for interests is a pro-active activity that can best be achieved by collective bargaining. But the idea of collective bargaining has not yet penetrated the consciousness of the vast majority of Chinese workers. The recent so-called “Honda strikes” of several auto-part supplier plants when workers demanded 50 to 80 per cent wage rises in May and June 2010 could be a flash in the pan. At least since then there have been no reports of a massive upsurge on such interest-based strikes in China. Due to institutional, legal, political and social constraints it will

be some time before China develops an industrial relations system in which workers' interests can be voiced and genuinely represented by ACFTU. Instead, for the time being China is headed in a direction that is becoming increasingly litigious, interrupted sporadically by industrial violence. There have been a few known cases of workers trying to demand participatory rights in the moribund workplace-level trade union branch or, where a union does not exist at a factory, trying to establish their own elected union branch under the ACFTU umbrella. But this is as yet unusual, and there are no signs of the local authorities taking the initiative to enable workers to have a say in their own union branches or in collective bargaining.

Looking back at the experience of the past one and a half decades in Vietnam and China, cynics have been proved wrong in their view that laws do not matter because they are not enforced. When comparing the two countries, it becomes apparent that the laws have helped to lay the foundations and frameworks for path-dependent evolution in the two countries' industrial relations patterns.

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Informal Labour Activism and the Prospects for Industrial Relations Reform in Vietnam

Do Quynh Chi

1. Introduction

The economic reform programme (Doi Moi) launched by the Sixth National Party Congress in 1986 was based on three key pillars. The first gave legal space to the emergence of the non-public sector, including the establishment of indigenous private companies and foreign-owned entities. Second, a sweeping restructuring process was initiated in state-owned companies, resulting in the privatisation of most and fundamental management reform in others. An economy based on three sectors subsequently emerged: the state-owned sector, consisting of corporations wholly or partially belonging to the state; the foreign-owned sector, which includes both companies wholly owned by international investors and joint ventures between international corporations and local partners; and the private sector, comprising firms owned by the Vietnamese individuals. Third, the government swiftly moved from an import-substituting to an export-oriented industrialisation strategy. Together with exports of crude oil, minerals and farm products, the export-oriented manufacturing industries, such as garments and textiles, electronics and footwear became the engine for economic growth over the past three decades. From 1991 to 2000, average export value tripled national GDP (Central Party Committee Report 2001: 1).

The country's transition "from a command to a market economy" has entailed the need to revise the legislative framework for employment relations. Prior to economic reform, the state played the central role in

defining employment conditions through a series of government decrees, ministerial circulars and directives. Management and labour were both employed by the state and hence were not supposed to have conflicting interests. The economic reforms in the early 1990s resulted in the formation of a new legislative framework, which includes the Labour Code and the Trade Union Act (for a review of labour regulations in Vietnam, see Qi, Taylor and Frost 2003). Apart from the provision of minimum labour standards, the Labour Code recognises the autonomy of employers and workers in regulating their employment relations through labour contracts and collective agreements, while the state confines itself to minimal intervention. If the enterprise union initiates a collective bargaining process, the employer is obliged to accept and participate in the negotiations in good faith. However, the Labour Code provides few supportive mechanisms for union-management negotiations at the workplace. Individual and collective labour disputes are supposed to be settled at the enterprise level through the conciliation council which is based on equal representation of management and union. There is no third-party representative in the council nor are independent mediation services available. The law grants the right to strike but links the right to a lengthy and complicated procedure; for example, only the official trade union can organise a strike; before going on strike all legal mediation and arbitration measures must be exhausted; and no strike can take place without a majority vote by the work force. These strike provisions make it extremely difficult for workers to exercise their right to strike in a lawful way (Chan and Wang 2004; Tran 2007b; Lee 2005).

Despite these legislative changes, the practical operation of industrial relations institutions remained largely unchanged for quite some time until the explosion of wildcat strikes after 2003. These wildcat strikes were not organised by the official unions; nor did they follow legal procedures. Instead, strikes were organised by rank-and-file workers who were poorly represented by the official unions in negotiations with the employers, but managed to fight for higher wages and better working conditions through informal activism.

The purpose of the analysis in this chapter is to discuss the representation of workers at enterprises in Vietnam, especially in the period 2004 to 2009, in which the phenomenal increase in labour activism took place. It first examines formal representation through the

Vietnamese General Confederation of Labour (VGCL) Unions at the workplace, and then explores other forms of representation to which workers have resorted in order to advance their interests in negotiations with the employers. It will be argued that, despite the dramatic change of labour-management relations at the workplace, the official unions have failed to transform themselves into genuine representative organisations of the workers. With poor protection from the official unions and harsh working conditions imposed by the employers, the rank-and-file workers organised informally on the basis of supportive workers' communities and under the leadership of team leaders to carry out industrial action to bargain with the employers for higher wages and better working conditions. The pressure of informal labour activism and the inertia of the official unions with regard to reform have urged the provincial and national governments of Vietnam to incorporate informal labour representation into the formal system. Nevertheless, the national union's opposition may pose a major obstacle to industrial relations reform.

The chapter was written on the basis of research conducted by the author between May 2008 and December 2009 in Hanoi, Dong Nai, Binh Duong, Da Nang and Ho Chi Minh City. The researcher visited 12 firms, including foreign-owned, state-owned and private domestic companies in garments, footwear and electronics. In each firm, semi-structured interviews were conducted with directors, human resource managers, union leaders and shop stewards, as well as team leaders and workers. However, as interviews with workers at the workplace were often influenced by the managers who arranged for the research, the author tried to talk to these workers again at their rented accommodation in the workers' villages. Using the 'snow-balling' technique, the author was finally trusted to be introduced to a few team leaders who were regarded as informal workers' leaders, some of whom had organized wildcat strikes in their own factories. In total, 124 interviews were conducted at the firm level. The research also involved 21 interviews with provincial and national labour officials, union officials at the district, industrial zone, provincial and national levels, as well as representatives of business associations and labour reporters.

2. Firm-level Representation through the Union

At the end of 2007, the Vietnamese General Confederation of Labour (VGCL) reported a total membership of six million, representing 13.3 per cent of the total labour force and 48 per cent of the employed population (VGCL Annual Report 2008). Union membership in the state-owned and civil service sectors is 90 per cent. However, recruitment and organisation with regard to new unions in private domestic and foreign-owned companies have been difficult. According to VGCL statistics, union membership proportions in the foreign-owned and local private sectors are 50 per cent and 30 per cent, respectively (Clarke et al. 2007).

According to Leninist principles, socialist trade unions have a dual role: to support the management of state enterprises and to protect members' interests at the same time. However, this dualism was diminished under the Stalinist approach which blurred the division between the interests of the state, management and workers, assuming that there could be no conflict of interest (Zhu and Fahey, 2000: 285). In Vietnam, protection of the members' interests has not necessarily been the most important function of the trade unions. In fact, before the launch of the economic reform programme in 1986, the main functions of the unions were to participate in firm management and mobilise workers to reach the company's production targets. If a trade union is defined in the usual Western terms as an independent representative organisation established by workers that protects and advances members' interests, the VGCL does not qualify as a union (Zhu and Fahey 2000; Clarke and Pringle 2009).

After the launch of Doi Moi, the 1995 Labour Code and the 1990 Trade Union Act provided a new regulatory framework for the unions, especially enterprise unions. By law, the enterprise union is responsible for representing workers interest at company level. They consult with the employers on recruitment and dismissal, development of internal work rules and wage tables, handling of grievances and imposition of disciplinary measures. Moreover, they negotiate collective bargaining agreements (CBAs) and organise industrial actions. However, the

research found that most, if not all, of the studied enterprise unions were dependent on the management and could hardly fulfil their legal duties and represent workers' interests.

2.1 Organisation of enterprise unions

In state-owned enterprises (SOE), the unions report to the enterprise Party committees which are normally headed by the company's directors. In terms of ranking, the union leader of an SOE is equal to a deputy director. Union membership in SOEs is extremely high; not because of union popularity but because joining the union is an unofficial obligation for all employees. A male worker who has been working for a state-owned garment company in Hanoi described how he became a union member:

At first I did not want to join the union because I thought the union did not do any good for the workers. But then, the union officer of my team wrote an application letter for me and asked me just to sign it. I did not want to but finally I signed because I thought I should not stand out from the majority. (Interview with the author, April 2009)

In the private sector, the unionisation rate is quite low. The Vietnamese General Confederation of Labour (VGCL) regards private employers' non-cooperation with upper-level (district and industrial zone) union officials as the main reason for low unionisation. In fact, it is the upper-level unions which have the legal mandate to establish enterprise unions and consider the employers as their key partners in organising efforts. According to local union organisers, they approach the employers first to secure their agreement to set up a new union. If the employer agrees, the union officials ask the management to nominate potential candidates for the provisional enterprise union executive board. Subsequently, the higher-level union issues a decision to set up a provisional union. After one year, an election is organised to choose the first official union executive board. Some empirical studies have revealed that union officials even rely on management to encourage workers to join the new union and nominate candidates for union elections (Wang 2002; Wang 2005: 49).

This organising approach might work in a command economy where

the labour-management relationship was supposedly conflict-free. But in the private sector where management and labour have ongoing conflicts of interest, this approach hands control to management, leaving workers without representation. According to a recent VGCL report, 60 per cent of primary union leaders were managers, many of them even human resource managers (Nguyen 2010). Upper-level union officials believe that a union leader who is simultaneously a manager is an advantage, rather than a potential conflict of interest, as it enables him/her to build up a harmonious relationship with the foreign management. The chairwoman of the Hanoi Industrial-Processing Zone union put it this way:

There is nothing wrong with a manager serving as a union official. They speak English and understand the foreign managers better than rank-and-file workers so they can build a good relationship with the boss. (Interview with the author, 21 April 2009)

The employers, in most cases, also had the final voice in the nomination of candidates for union posts, which some union leaders found acceptable:

There is an informal agreement between the union and the management that the union chairman and vice chairman are decided by the management. We are union officers but we are also employees in this company. Whether or not we should be union officers, I think it is necessary to agree with the management. (Interview with the union chairman of a Japanese electronics company in Hanoi, 12 December 2008)

In both state-owned and private enterprises in Vietnam, union officials retain the outlook characteristic of communist unions which sees no distinction between management and union. This approach the employers to manipulate the primary unions and use them more as a ‘transmission belt’ of the management than a partner in the employment relationship.

2.2 Collective bargaining

Collective bargaining was introduced in Vietnam in 1995 with the promulgation of the Labour Code. Either the enterprise union or the

employer can initiate the bargaining process (1995 Labour Code, Article 46). The law encourages employers and unions to negotiate benefits which are better than the minimum legal standards (1995 Labour Code, Article 44) but a collective bargaining agreement will still be eligible for registration at the local labour administration even if it does not improve upon the law.

At the workplace, collective bargaining agreements (CBAs) are largely regarded by employers as a formal requirement. In the 2009 labour survey by the Vietnamese Chamber of Commerce and Industry (VCCI), 34 per cent of the interviewed employers in the garment and textile industry admitted that they signed collective bargaining agreements only to comply with the requirement of the local labour administration (VCCI 2009). Most of the registered collective agreements were drafted by the management, with the provisions copied from the labour legislation. Higher-than-minimum standards, if any, included wedding and funeral benefits, as well as travel and accommodation allowances. The union leaders were consulted on the collective agreements but they rarely disagreed with the employers' proposals. A union leader of a foreign-owned company complained that the CBA drafted by the human resource department was too general and asked for more specific provisions on the workers' benefits. The human resource manager reported to the employer that the union chairman showed signs of opposition. The General Director immediately forced the union chairman to sign the collective agreement, intimating that otherwise his job would be in danger. The union chairman had to give in.

The collective bargaining process is usually kept confidential between the union leadership and management. Workers are notified about the agreement only when it has been finalised. Among the workers interviewed in Hanoi and Ho Chi Minh city, only two could tell the difference between a collective bargaining agreement and a labour contract but none of them knew anything about the existing agreements of their companies.

2.3 Settlement of labour disputes

The enterprise union is supposed to work with the management to address workers' grievances. The Labour Code provides that a conciliation committee must be set up in each organised company to deal with individual and collective disputes. The conciliation committee consists of

equal representation of the union and management. The union leader and the company director take turns to chair the committee. Conciliation of collective labour disputes is also one of the compulsory steps in the legal procedure for collective labour dispute settlement. However, the interviewed workers reported that they rarely resorted to the formal grievance-handling channels. Moreover, none of the over 3,000 strikes that occurred between 1995 and 2009 went through the conciliation committees. Quite a few workers bluntly stated that they would not rely on the enterprise unions to solve their disputes with management because the unions were on the employers' side. One worker said:

Do you know who the union chairman is? He is the marketing manager. And the union vice chairman? He is the human resource manager. If I filed a complaint to the union, the next day the union vice chairman would sign the decision to dismiss me.
(Interview with the author, 15 August 2008)

In short, the enterprise unions rarely fulfill their representation function. The employers dominate in almost all industrial relations institutions at the workplace, from the organisation of the unions to collective bargaining and dispute settlement. The union's dependence on management deprives workers of the representation they need to officially voice their petitions and negotiate for better working conditions. As argued in Section 3, when the official channels are stifled, the rank-and-file workers resort to informal means to advance their interests.

3. Informal Labour Activism

When the formal enterprise unions are largely dependent on management and the available mechanisms for consultation and labour dispute settlement are controlled by the employers, Vietnamese workers tend to resort to strikes to solve conflicts with employers. It should be noted that the Labour Code grants the right to strike but a strike must satisfy a number of legal conditions to be recognised as 'legal'. One condition is that the strike must be organised by the enterprise union and the right to strike is not given to workers but to unions. Also, the union can go on strike only after exhausting all the compulsory conciliation and arbitration measures. Since 1995, workers have ignored all these legal requirements

and instead opted to walk out spontaneously without involving the official unions. Between 1995 and 2004, there were around 100 strikes per year. But from 2005 to 2008, the incidence of strikes doubled every year, reaching 762 strikes in 2008 (see Figure 1).

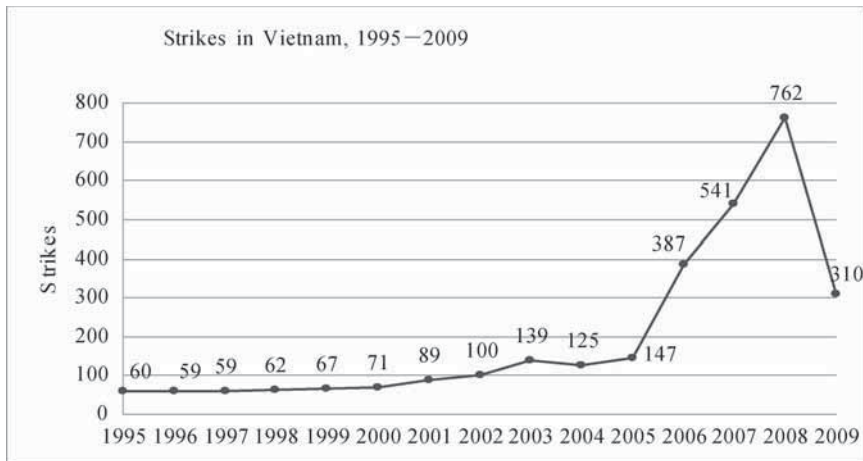


Figure 1: Incidence of strikes in Vietnam, from 1995 to 2009

Source: Unpublished strike statistics, Legal Affairs Department, VGCL.

Prior to 2005, wildcat strikes were limited to individual enterprises and there was no coordination among workers in different enterprises. However, in December 2005, the south of Vietnam was shaken by the first wave of labour unrest which spread across industrial zones in Ho Chi Minh City (HCMC), Binh Duong and Dong Nai. This was followed by more strike waves in almost all industrialised regions in the south and the north in 2007 and 2008, respectively.

Wildcat strikes have become the most effective way for workers to negotiate with the employers as the vast majority of strikes recorded by the press and the labour administration were settled with part or all the workers' demands being met (Clarke *et al.* 2007).

3.1 Organisation of workers

The literature on labour activism shows that, in general, two important factors determine the scale and frequency of strikes: a supportive

workers' community and the scale of organisation of workers at the workplace (Deyo 1989; Franzosi 1995). These are relevant factors for Vietnam as well. According to a World Bank study in 2005, over 70 per cent of workers in industrial zones came from other agricultural provinces (*Vietbao*, 10 December 2005). The majority of these migrant workers live in private accommodation provided by the local inhabitants who usually have no connection with the employers. In these villages, each landlord provides 5 to 15 rooms, measuring 10 to 12m² for three to four workers. Given the short distance between these villages and the factories and the shortage of alternative accommodation, the migrant workers live in high concentration in these areas and naturally form a community which mixes with the local inhabitants but is separated from the residential areas where the managers live. The Thang Long Industrial Park in Hanoi, for instance, employed 36,000 workers in 2008, almost 30,000 of whom lived in two villages nearby. In the south, the location of three major industrial zones—Linh Trung I, Dong Nai and Song Than—in one area resulted in one of the largest workers' communities in the country, with over 100,000 workers.

Rents rise or fall mainly in accordance with workers' wages. Whenever workers' wages are increased, the landlords raise the rent. From 2004 to 2008, the average rent in the two workers' villages of Thang Long Industrial Park in Hanoi almost doubled, from VND 300,000 to VND 600,000/month. To maximise their revenues, the landlords also arbitrarily set rates for electricity and running water. In the middle of 2008, for instance, workers had to pay twice the normal tariff for electricity and three or four times more for water. By increasing the pressure on workers due to rising living costs, the landlords indirectly encourage them to fight for higher wages.

Migrant workers choose to share accommodation on the basis of family relations, common geographical origin, common workplace and gender. The workers' community creates wide-ranging networks across enterprises in one industrial zone and even across industrial zones. The interviewed workers knew exactly the wages and benefits that other companies in the area were paying, even though these companies tried hard to keep this information confidential. Therefore, a slight increase in wages at one company tends to spread quickly in the community and have an immediate impact on workers. According to Nguyen Thi Dan, a senior

labour official of Ho Chi Minh City, the workers' community was often the basis for strikes spreading across factories:

The workers' community is the root of strike contagion. Today, a worker employed by a Korean company got home, only to be told by her room mate that they had staged a strike and won 50 thousand dong more. She talked to her co-workers or simply sent messages by mobile phone. The next day, workers swiped her identity cards then sat down in the yard and refused to work. (Interview with the author, 16 October 2008)

In factories, work organisation based on assembly lines helps to reinforce workers' solidarity. Workers in one assembly line studied in the research were organised into teams of 10 to 40 people, headed by the team leaders. These team leaders were promoted from rank-and-file workers and received similar treatment to ordinary workers. The wages of team leaders were the same as those of the workers, except for a small sum for additional responsibility. Their wages were adjusted when workers' pay was increased. However, team leaders had enormous authority over workers. They were in charge of job assignment, on-the-job training for new workers, performance evaluation and even wage calculation for team members. One worker put it this way:

A team leader, for workers, is more powerful than a manager because if a team leader dislikes a worker, s/he can assign him/her to a more difficult job or downgrade the performance evaluation of that worker. (Interview with the author, 24 April 2008)

Team leaders also establish contacts between their teams and other units and groups because they have been working there longer and tend to have built up wide social networks, as well as understanding the company better than ordinary workers. The team leaders transmit workers' grievances to supervisors and technicians and disseminate information from the management and the union to workers. Consequently, team leaders naturally emerge as the de facto leaders of workers, initiating and organising collective action. The research findings shows that some team leaders were only active in mobilising workers for particular industrial actions, such as strikes, but after the conflicts were settled, they did not maintain their leadership among the workers. In other cases, team leaders

set up a permanent informal network among key workers in the company. This network allowed them not only to organise industrial action, but also to negotiate with the employers when necessary.

This was the case at Carimax, a Korean bag producer in Ho Chi Minh city. The company had two strikes in 2004 and 2006 and the existence of a group of workers' leaders was known to both the Korean management and the union chairman. According to the latter, there was not one but three leaders (interview with the author, 5 March 2007). These team leaders managed to develop a network spanning different production lines and factories. When a problem emerged, these team leaders would gather the opinions of workers, then consult with each other. Their demands would be presented to the union chairman, who would then talk to the director or the human resource manager. The feedback from the management would be transmitted via the union chairman back to these team leaders. Sometimes the management rejected the workers' demands and a strike would be announced. However, as the union chairman noted, the management has learnt to adapt to this dual system of labour representation:

In the past, strikes happened mostly because the company turned down the workers' demands, but now they [the company] have learnt the lesson. They consider workers' demands carefully before replying and, most of the time, accept some of them to placate the workers. (Interview with the author, 5 March 2007)

In short, in the face of poor representation by the official unions, the rank-and-file managed to build on their communities and the solidarity between workers and team leaders as the basis of mobilisation. As shown below, apart from the workers' successful mobilisation strategy, the pro-labour response of the authorities to these unlawful strikes was a crucial factor in encouraging workers to resort to this weapon more often.

3.2 The authorities' response to strikes

The response of Vietnamese local governments to wildcat strikes has been lenient and even supportive. One typical "wildcat strike" was settled as follows:

Workers often downed tools and gathered outside the factory gate.

Either the employer or workers or both called the provincial labour department. A provincial labour official, usually accompanied by a provincial union official^① would rush to the enterprise to investigate the dispute. Labour reporters might also be present, as well as the local police who sought to ensure public order rather than clamping down on the strikers. Labour and union officials held a meeting with the workers to collect their grievances and put together a list of demands, which they took to the management. The negotiations often ended with the local authorities putting pressure on the employers to accept part or all of the workers' demands to settle the strike quickly. (Based on various interviews with members of strike taskforces in HCMC, Binh Duong, Dong Nai and Hanoi)

Various explanations have been offered by researchers concerning this unconventional, pro-labour approach of Vietnamese local administrators to 'wildcat' strikes. Wang (2005) states that strikes present local governments with a good opportunity to demonstrate their pro-labour policy by supporting workers. But it does not mean that they will intervene any further in labour-management relations at the workplace. Chan (2008) argues that the pro-labour attitude of local governments in Vietnam stems from the special connection between migrant workers, local people and the authorities. She found that local people in industrialised provinces of Vietnam still have to labour as ordinary workers. In fact, local labour makes up about a quarter of the workforce in factories. The local governments, despite their interest in attracting capital, take a "softer" approach in order to support the interests of local workers and protect their own legitimacy. Taking a historical approach, Kerkvliet (2009) compared the labour protests in contemporary Vietnam with those in the Republic of Vietnam (South Vietnam) during the 1954–75 period. He argued that the "soft" approach of the local authorities towards workplace conflicts is an attempt to show their responsiveness to workers' demands and to prevent workers' protests from escalating.

For provincial officials, the explanation is simple. One labour official who was a member of Ho Chi Minh City strike taskforce claimed that their top priority was to get the workers back to work to preserve public order and to prevent the strike from spreading to neighbouring enterprises. In a

① The employers' representative, VCCI, is never involved.

socialist state, suppressing workers, even if their strike action is unlawful, is not advisable for local governments seeking to restore order. However, local governments' soft and pro-labour approach tends to encourage workers to walk out more often because they know that the local authorities will be on their side. This has gradually encouraged local governments to seek a more sustainable solution to the crisis of workplace relations, as well as to integrate informal labour organisation into the formal system.

4. Engaging Informal Labour Organisation in the Formal System

4.1 Engaging informal workers' leaders: The experiments of the provincial unions

In their efforts to settle wildcat strikes, both provincial government officials and the employers recognised the role of informal workers' leaders in handling the conflicts. These workers' leaders had to be involved in the negotiations, otherwise the strikes would not be resolved. Nguyen Thi Dan, a senior labour official and a member of the HCMC strike taskforce, put it this way:

In any strike, there were usually group of [workers'] leaders. Unless these leaders were involved in the negotiations and agreed to the result, workers would not listen to us. Even in companies that had unions, we had to invite both the union chairperson and the workers' leaders to the negotiations with the management; otherwise, the strike could not be resolved. (Interview with the author, 15 October 2008)

Some employers even refused to negotiate with the official union leaders and insisted on the participation of workers' representatives. One Korean director explained:

There is no point in negotiating with a union leader who is not representative of the workers on strike because the outcome of the negotiations will not be recognised by the workers. (Interview with the author, 15 June 2009)

In settling wildcat strikes, provincial strike taskforces have engaged workers' leaders in negotiations with the employers, in parallel with the formal union officials. However, there was no regulatory framework for either the settlement of unlawful strikes or the engagement of informal workers' representatives in the settlement process. Therefore, while waiting for the labour legislation to be revised, Ho Chi Minh City pioneered a temporary legal basis for the engagement of workers' representatives. After the first strike wave in 2006, the People's Committee of Ho Chi Minh City issued Decision 35 to provide guidelines for resolving unconstitutional strikes in the city. To facilitate negotiations between workers and employers over the settlement of labour conflicts, Decision 35 required the strike taskforce to "work with the collective of workers or representatives nominated by workers in non-union enterprises... to identify the causes of the labour dispute and collect the workers' demands" .

The effectiveness of Decision 35 in steering employers and workers back to the negotiation table to solve their interest disputes had a tangible influence on national law-makers. During the debates at the National Assembly regarding the revision of Chapter 14 of the Labour Code on labour dispute settlement in 2006, congressmen from strike-prone provinces recommended that the law should allow worker representatives to lead strikes because the absence of enterprise unions in most cases automatically made strikes "illegal". A congressman from Kon Tum province stated:

Even in factories that have labour unions, but not strongones and often in alliance with management, they [union leaders] have a conflict of interest when asked to lead strikes. We should therefore allow workers to elect their own representatives to lead strikes. Attempting to allow only labour unions to conduct strike action is neither realistic nor feasible, and thus makes workers, who generally go on strike in pursuit of their rights, de facto violate the law. (Vietnam News Agency, 10 August 2006)

The revision of the Labour Code in 2006 finally allowed workers in non-union enterprises to elect their own representatives to organise and lead strikes. However, in the face of strong opposition from the VGCL against non-union representation in fear of the possible adverse impact on

the official unions in the workplace, the new law allows workers in non-union companies to elect their own representatives to organise strikes but the choice of workers' representatives must be approved by the district union (Article 172a of the 2006 Labour Code).

Beyond strike settlement, the labour federations of some strike-prone provinces have carried out bold experiments to engage informal workers' leaders and rank-and-file workers in the official union system. The old union-organizing approach which regarded employers, rather than workers, as the key partner of the upper echelons of the union created a gap between the union and rank-and-file workers, most of whom are migrants from rural areas. Engaging with migrant workers, therefore, is crucial if the union is to be able to perform its functions. The district union officials of Ho Chi Minh City cooperated with the local authorities to organise migrant workers living in the same house or area into small "self-management teams". Each team elected a leader who maintained regular contacts with the district union and authorities. The self-management team became the organisational basis for the district unions to disseminate information on labour law to workers and to engage them in union activities. Through self-management teams, union officials also became acquainted with migrant workers' concerns about accommodation, working conditions and wages, and also identified the early signs of labour conflicts (*Lao Dong*, 25 August 2009). By August 2009, 676 self-management teams had been established throughout the city, each with around 100 members. Although the agenda of the self-management team remained limited, it represented an effort by the unions in Ho Chi Minh City to reach out to their members and close the gap with the rank-and-file.

In a similar effort to close the gap between rank-and-file workers and the unions, Da Nang Labour Federation set up a group of "core workers" in each enterprise. This group consisted of the team leaders and experienced workers who were active in advancing workers' interests. Each of the union officials at the district level was assigned to supervise five enterprises. The phone numbers of these union officials were provided to the groups of core workers. The groups of core workers were encouraged to work with the enterprise unions to discuss their concerns. However, if the workers do not have confidence in the enterprise union, they can call higher level union officials, who can meet with the

employers to settle the dispute. According to the vice chairwoman of Da Nang Labour Federation, most employers cooperate with higher level union officials because they do not want to strike action. The establishment of groups of core workers in Da Nang showed the provincial union's recognition of the team leaders' role as de facto representatives of workers and its efforts to engage them in the formal trade union system.

4.2 National government and the policy debate on non-union representation

Since the promulgation of Chapter 14 of the 2006 revised Labour Code, no workers' representatives have been elected to lead strikes in non-unionised enterprises, as the law provides. According to union informants, this is attributable partially to district unions' reluctance to approve non-union representatives and partially to the latter's concerns about their own situation (interview with Nguyen Van Binh, Legal Affairs Department, VGCL, 25 December 2008).

In the meantime, the Vietnam General Confederation of Labour (VGCL) has not made much progress in strengthening primary unions, despite the—fragmented—efforts of some provincial unions. Since 2006, the growth of industrial conflicts has been exacerbated by increasing labour shortages in industrial zones. Low wages have been identified by the government as the key reason for such labour shortages (*VietnamNet Bridge*, 27 July 2009). But the enterprise unions failed to obtain increases in workers' wages in negotiations with the employers, while the government has been unwilling to raise the minimum wage to compensate for the absence of collective bargaining at the workplace. At the same time, the experiments in strike-prone provinces such as Da Nang and HCMC in engaging rank-and-file workers and their leaders have had some initial success. These factors encouraged the national government to come up with a bold proposal in revising the Labour Code.

In the first draft of the revised Labour Code issued in mid-2009, the Ministry of Labour, Invalids and Social Affairs (MOLISA), the agency assigned to draft the legislation, proposed that workers in non-unionised enterprises can elect a group of representatives with the right to represent workers in collective bargaining with employers (Labour Code Revision, first draft, Article 188). The 2009 proposal granted authority almost equal to that of enterprise unions—including negotiation of collective agreements, settlement of disputes and regulation of employment

relations—to workers’ representatives. Soon after MOLISA had introduced the first draft of the revised Labour Code, the National Assembly’s Committee for Social Affairs (CSA), which oversees revision of the Labour Code, voiced its support for the proposal of electing workers’ representatives in non-unionised enterprises. Dang Nhu Loi, vice chairman of the CSA, praised the new provision on workers’ representatives in the draft Amendment to the Labour Code as a necessary change:

I think this provision is necessary... The trade union organisation has not been genuinely representative of workers... The unions must prove their role in representing the rights and interests of workers. That is the best answer to the current problem. (Sai Gon Tiep Thi, 11 August 2009)

In line with the proposal of workers’ representatives in the draft law, the National Assembly developed a master plan for the formation of labour councils, ranging from national to enterprise level (*Sai Gon Tiep Thi*, 27 September 2009). Tripartite labour councils are to be set up at national and provincial level to provide guidelines on wages and working conditions for enterprises. At enterprise level, labour councils shall consist of management and unions or workers’ representatives in the case of non-unionised enterprises. The enterprise labour council shall be the place where negotiations take place and employment relations in the workplace are regulated. The architects of the master plan emphasised that “the labour council will exist in parallel with, but not replace enterprise unions” (*Sai Gon Tiep Thi*, 27 September 2009).

The proposal of workers’ representatives in non-unionised enterprises has aroused ferocious opposition from the VGCL which claims a monopoly of representation for the whole labour force. *Nguoi Lao Dong* and *Lao Dong* ran series of articles including “Unions—the reliable representative of workers” (13 August), “We need unions” (14 August), “Workers need unions to deal with every issue” (16 August), and “Establishing workers’ representatives is unnecessary” (19 August). As the titles clearly indicate, the union-controlled newspapers sharply rejected the proposal for workers’ representatives in non-unionised enterprises, quoting workers, union officials and labour lawyers in an effort to prove that the official union is irreplaceable. In a final assault on the non-union

representation proposal, VGCL chairman Dang Ngoc Tung claimed that non-union labour organisations threatened “to break the solidarity of the working class and the whole nation. Once the working class is divided, the social foundation of the Party will be destroyed and the leadership of the Party will be damaged” (*Lao Dong*, 14 September 2009). He even implied that those promoting the model of workers’ representatives implicitly supported “hostile forces” ranged against the Communist Party (*Lao Dong*, 14 September 2009).

In the face of the political attack by VGCL and the controversy surrounding non-union representation, MOLISA retreated. On 13 September 2009, MOLISA’s head withdrew the proposal on non-union representation and agreed to let the VGCL draft a new trade union chapter (Chapter 13) for the Labour Code Amendment. The second draft revision of Chapter 13, which was produced by the VGCL shortly after the meeting, eliminated all provisions on workers’ representatives and granted the right to represent workers in non-unionised enterprises exclusively to the upper echelons of the union. Workers’ consent or authorisation was not required (Article 205, Draft 2 of the Revised Labour Code, April 2010). Also, the draft did not specify how the union should carry out such representation and whether or not workers would have any voice in its decisions.

In principle, the bill must be approved by the Ministry of Justice and the National Assembly’s Committee for Social Affairs (CSA) before it is submitted for parliamentary debate. The feedback from the Ministry of Justice and its appraisal committee with regard to the draft Labour Code and in particular the provisions on non-union representation turned out to be critical. A majority of members of the appraisal committee called into question the feasibility and legitimacy of upper-level unions representing workers in non-unionised enterprises (Ministry of Justice, Appraisal of the draft revision of the Labour Code, 1 March 2010, pp. 4–5). The Ministry of Justice called on MOLISA and VGCL to revise the relevant points in the draft before submission to the National Assembly. The CSA also informally advised the leaders of MOLISA and VGCL to postpone submission, implying that the Committee would not approve the draft without major revisions. Although the revised Labour Code was supposed to be discussed by the National Assembly in May 2010, it has now been officially postponed for one more year.

The policy debate on the revision of the Labour Code, especially the political struggle over the issue of non-union representation, well illustrates the momentum of the industrial relations reform process in Vietnam. The fact that VGCL was able to replace MOLISA's proposal of workers' representatives by its own draft in late 2009 shows that the official union organisation still has a powerful position in the political structure, even though in the workplace it fails to represent its rank-and-file members. It also reveals the half-way position of the VGCL leaders who realise the need to reform the organisation if it is to retain its legitimacy but at the same time remain reluctant to relinquish the union's political dependence on the Communist Party. At the end of 2009, the VGCL still chose a conservative and bureaucratic approach to industrial relations in general and representation in particular despite various reform initiatives already launched by provincial unions. However, the surprising postponement of the revised Labour Code evinces the determination of the national government which, in this case, includes not only MOLISA but also the Ministry of Justice and the National Assembly to strive for reform of the industrial relations system. The disapproval of these reform-oriented agencies also implies that the VGCL would not be able to follow the same route in the future and will have to accept that changes must be made.

5. Conclusion

Despite the transformation of labour-management relations in both state-owned and private companies over the past two decades in Vietnam, the official unions have failed to reform themselves in such a way that they are able to perform their new role of representing workers in negotiations with the employers. The primary unions have been dependent on management not only in the establishment of unions, but also in collective bargaining and labour dispute settlement. The official unions' ineffectiveness and dependence on management have deprived workers of opportunities to voice their concerns and bargain to improve their circumstances. However, the rank-and-file have been active in seeking alternative ways to protect their rights and interests. On the basis of strong and supportive workers' communities and the leadership of team leaders, Vietnamese workers in industrialised regions have managed to organise wildcat strikes

to pressure the employers to raise wages and improve working conditions. With the soft and pro-labour response of the local authorities, informal labour activism has increasingly become the most effective way for workers to advance their interests. Some provincial governments have tried to engage informal labour organisation in the formal system through bold experiments, which inspired the revision of industrial relations institutions at the national level. The informal labour activism and the strike-prone provinces have been the strongest forces for industrial relations reform at the national level. The heat of strike action and the initial success of provincial experiments have encouraged the national government to gradually revise the regulatory framework to provide room for non-union representation as a solution to the vacuum of workers' representation at the workplace. The national union has strongly opposed the incorporation of non-union representation into the formal system but, as the recent policy debate over the revised Labour Code suggests, the national government has gained the support of the National Assembly. It is still too early to be sure about the future of non-union representation in Vietnam but unless the official union can transform itself into a genuine representative of the workers, the emergence of non-union labour organisation will become inevitable in order to ensure industrial peace and sustainable economic development.

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Transition in Union Representation and the Organisation of Worker Representation in Korea

Sung Hee Lee

1. Trade Union Membership and Unionisation Rate

Trade union membership in Korea has developed through various phases. Political democratisation brought rapid growth and membership increased from 1,004,000 in 1986 to 1,887,000 in 1990. This was followed by a period of decline until membership fell back to 1,402,000 in 1998 following the Asian financial crisis. Since then, membership has shown a slight upward trend again, although without returning to the peak of 1990: as of 2008, membership stood at 1,666,000 workers. The increase in numbers during the past decade was due to two sectors in particular: teachers had been joining trade unions since 1999 following the legalisation of teachers' unions and public workers received the right to join trade unions following the legalisation of public workers' unions in 2007.

The unionisation rate confirms this picture, showing a rapid increase since 1985, jumping from 12.4 per cent to a peak of 17.2 per cent in 1990. After that, the unionisation rate steadily declined until 1997 (11.1 per cent) and thereafter remained stagnant at between 10 and 11 per cent.

Table 1 Trade Union Membership and Unionisation: 1980–2008

Year	Trade union membership (unit: 1000)	Unionisation rate (%)	Year	Trade union membership (unit: 1000)	Unionisation rate (%)
1980	948	14.7	1999	1,481	11.7
1985	1,004	12.4	2000	1,527	11.4
1990	1,887	17.2	2001	1,569	11.5
1991	1,803	15.4	2002	1,538	10.8
1992	1,735	14.6	2003	1,550	10.8
1993	1,667	14.0	2004	1,537	10.3
1994	1,659	13.3	2005	1,506	9.9
1995	1,615	12.5	2006	1,559	10.0
1996	1,599	12.1	2007	1,688	10.6
1997	1,484	11.1	2008	1,666	10.3
1998	1,402	11.4	2009	—	—

Source: Ministry of Labour, Korea.

2. Legitimisation of Multiple Enterprise Unions

As of 2010, the establishment of multiple trade unions within the same enterprise is prohibited in Korea, while multiple non-enterprise level unions are allowed. However, in 2009 the government, in a move to recognise freedom of association, amended the Trade Union and Labour Relations Adjustment Act to allow multiple unions within the same enterprise from July 2011. This marks Korea's shift from a single enterprise union system to a multiple union system.

The establishment of multiple trade unions at the same organisational level was prohibited following a revision of the Labour Act in 1981. However, since the establishment of numerous new trade unions in the years following the political democratisation of Korea in 1987, trade unions have demanded that the government delete the clause prohibiting multiple trade unions and fully recognise the freedom to establish trade unions. This led to a revision of the law in 1997 in favour of multiple enterprise unions, but enforcement of the clause in question was deferred and trade union pluralism was permitted only above enterprise level.

However, as trade unions and international agencies such as the ILO

continued to argue that multiple enterprise union prohibition was an infringement of trade unions' freedom of association, discussions on whether to enforce the multiple enterprise union clause were resumed in 2008. A revision to permit multiple enterprise unions was passed by the National Assembly on 1 January 2010, following discussions in the Economic and Social Development Commission.

According to the revised Trade Union and Labour Relations Adjustment Act, multiple enterprise unions will be fully permitted from July 2011. This does not imply the beginning of multiple collective bargaining in enterprises, however. The amendment of the Act was made on condition that each enterprise will continue to have a single representative body for collective bargaining. For this, the bargaining unit will be the enterprise, with separation of bargaining units decidable by the Labour Relations Commission in the case of substantial differences in working conditions, employment type, bargaining customs and so on.

When there is more than one trade union within a single bargaining unit (enterprise), the unions will be required to establish a unified representative for collective bargaining before negotiating with the employer. If the unions fail to reach agreement on the formation of a unified representative body for collective bargaining, the union with the most members working in that enterprise will be the representative in collective bargaining. If there is no union whose membership includes a majority of the enterprise workers who belong to a union, the unions may apply for adjudication to the Labour Relations Commission. The Commission, upon receiving the application, may decide on a representative for collective bargaining, taking into consideration factors such as membership. Fourth, to prevent discrimination against members belonging to unions that do not qualify as representative in collective bargaining, the representative union and the employer are given the responsibility to maintain fairness, with remedies imposable by the Labour Relations Commission in case of a failure to do so.

It is expected that the legal permission of multiple enterprise unions will bring many changes to labour-management relations in general. In the short term, more enterprise unions will form and new standards regarding the unification of representatives for collective bargaining and the responsibility to maintain fairness will be established. After such standards have been set, in the long term a new labour-management balance is expected to be formed under a

system of multiple enterprise unions.

3. Trade Union Recognition

Korea recognises the freedom to establish trade unions. To establish a union, two or more workers must hold a general meeting on the formation of the trade union and submit a declaration of formation and the bylaws of the trade union to the Korean Ministry of Labour or local government office, which then issues a certificate verifying the declaration of formation after confirming that the necessary requirements have been met. Once the declaration of the union is complete, the union will receive protection as a lawful trade union, as specified in the Trade Union and Labour Relations Adjustment Act.

The declaration of formation must include the name of the trade union, the location of the main office, the number of union members and the names and addresses of union officers. When a declaration of formation is submitted, the Ministry of Labour or local government office acknowledge it after confirming that the necessary requirements have been met.

The statutes of a trade union must include the name of the trade union, purpose and activities; clauses on union members (clauses on constituent organisations in the case of a trade union formed as an associated union); clauses on the council of delegates and other meetings; clauses on membership fees and other treasury-related issues; clauses on disputes; and clauses on official and delegate election procedures.

After a declaration of formation has been submitted, the Korean Ministry of Labour or local government office confirms whether the organisation corresponds to the definition laid down in the Trade Union and Labour Relations Adjustment Act:

The term “trade union” means an organisation or associated organisation of workers, which is formed in a voluntary and collective manner on the workers’ initiative for the purpose of maintaining and improving their working conditions and enhancing their economic and social status.

There are five requirements—known as “passive requirements” —

that a trade union must meet in order for it to be recognised as a lawful trade union, in accordance with the above definition:

(1) A person representing the interest of the employer may not join as a member of the trade union. A “person representing the interest of the employer” is a person delegated direct or indirect responsibility and authority by the employer with regard to decisions on working conditions, such as human resources, compensation, welfare, labour affairs, work-related orders or supervision.

(2) The union must, as much as possible, refrain from receiving financial aid from the employer to cover expenditure.

(3) The union must not be operated for the sole purpose of mutual aid or welfare activities. An organisation whose sole purpose is conducting such activities, and not the original purpose of maintaining and improving the working conditions of members is not a trade union.

(4) The union must not accept a non-worker as a member. For example, an organisation consisting of students or the unemployed who are not waged workers is not recognised as a trade union.

(5) The main purpose of the union must not be political activities. While trade unions are permitted to engage in political activities, organisations whose main purpose that is are not recognised as trade unions.

After the declaration of formation is submitted, the Korean Ministry of Labour or local government generally issues a certificate of declaration within three days. However, if the declaration of formation fails to meet the aforementioned requirements, the union is requested to supplement the declaration of formation within 20 days. (When the union refuses the request or fails to supplement the declaration in the specified period, the administrative agencies must return the declaration of formation.) Once the procedures for declaration of formation have been completed, the trade union may exercise freedom of association, bargain collectively, act collectively as specified in the Trade Union and Labour Relations Adjustment Act and be protected from unfair labour practices.

4. Protection of Freedom of Association

In Korea, trade unions' freedom of association is protected as a constitutional right. To protect such freedom of association, the Trade

Union and Labour Relations Adjustment Act provides a system of remedies for unfair labour practices. This system protects freedom of association by having the Labour Relations Commission issue an administrative order for correction when freedom of association has been infringed by unfair labour practices on the part of the employer.

The Trade Union and Labour Relations Adjustment Act defines and prohibits five types of unfair labour practices by the employer:

(1) Employers are prohibited from dismissing or treating a worker unfavourably on the grounds that he or she has joined a trade union or has participated in a trade union's activities. The Trade Union and Labour Relations Adjustment Act defines "dismissal or unfavourable treatment of a worker on the grounds that he has joined or intends to join a trade union, or has performed any other lawful act for the operation of a trade union" as an unfair labour practice. Workers are guaranteed the freedom to join a trade union or participate in labour union activities by prohibiting employers from treating workers unfavourably for joining a trade union or participating in a trade union's activities.

(2) Employers are prohibited from signing "yellow dog" contracts with workers. The Trade Union and Labour Relations Adjustment Act prohibits the "employment of a worker on condition that he should not join or should withdraw from a trade union, or on condition that he should join a particular trade union". This way, the Trade Union and Labour Relations Adjustment Act prohibits unfair employment contracts aimed at suppressing trade union membership.

(3) Employers are prohibited from dominating or interfering in the operation of a trade union. The Trade Union and Labour Relations Adjustment Act prohibits the "domination of or interference in workers' organisations or the operation of a trade union and the payment of wages to trade union officers or financial support for the operation of a trade union". In this way, employers are prohibited from suppressing trade union activities or from interfering to try to get trade unions to act in their interest.

(4) Employers are prohibited from treating workers unfavourably for reporting unfair labour practices to the relevant administrative agencies in exercise of their rights. The Trade Union and Labour Relations Adjustment Act prohibits the "dismissal of workers or acts against their interests on the ground that they have participated in justifiable collective activities, or that they reported to or testified before the Labour Relations Commission that the employer has violated the provisions of this Article,

or that they have presented other evidence to the relevant administrative agencies” . This protects trade union members and allows them to apply for remedies to the relevant administrative agencies freely.

(5) The system dealing with unfair labour practices in order to protect workers’ freedom of association provides remedies in the form of administrative orders issued by the Labour Relations Commission. Upon receiving an application for remedy from a worker or trade union on the grounds that the employer has infringed the freedom of association, the Labour Relations Commission conducts an investigation and determines whether or not the employer’s action can be seen as an unfair labour practice within 60 days (the average amount of time for processing remedy applications in 2009 was 42 days). If the employer is found to have engaged in an unfair labour practice, the Labour Relations Commission orders the employer to discontinue or reverse the unfair labour practice within 30 days. In case the employer fails to comply with the Labour Relations Commission’s administrative order, an administrative fine is imposed; the employer may also be subject to legal punishment upon continued noncompliance.

5. Protection of Free Collective Bargaining

In Korea, free collective bargaining is protected as a constitutional right. The Trade Union and Labour Relations Adjustment Act prohibits employers from refusing to bargain with a trade union without good reason. If an employer rejects a trade union’s demand to bargain without justification, the employer’s action is regarded as an unfair labour practice and an administrative order is issued to correct the action. By stipulating free collective bargaining by law, collective decision-making on working conditions is legally protected.

In addition, payment of wages to trade union officers for the period they participated in collective bargaining during working hours is not viewed as unjust financial aid from the employer. The law ensures the smooth progression of collective bargaining by having employers pay salaries during that period.

The trade union may take industrial action if the employer and trade union fail to reach agreement through collective bargaining. In such cases, the trade union must follow the procedures for making just demands and

taking industrial action as stipulated in the Trade Union and Labour Relations Adjustment Act.

The scope of just demands by trade unions includes wages and working conditions, working hours, leave, dismissal, temporary retirement, job transfers, promotion, disciplinary action, safety and health care. Matters related to trade union activities include the provision of an office for the trade union, union shop systems, procedures for collective bargaining and industrial action. Wages and working conditions are “mandatory bargaining items” concerning which the employer must accept the trade union’s demand to bargain. Refusal to bargain is punishable by law as an unfair labour practice. However, management issues such as human resource systems, the conclusion of service contracts, corporate M&As, and temporary or permanent closure of the company are “discretionary bargaining items” on which the employer may refuse to bargain.

6. Conflict Resolution and Industrial Action

If the employer and the trade union fail to reach an agreement through collective bargaining, the trade union, before engaging in industrial action, must first undergo the Labour Relations Commission’s reconciliation procedures. The Labour Relations Commission’s reconciliation procedures last 10 days for general businesses and 15 days for public-service businesses, and the trade union must not engage in industrial action during that time. When a dispute is settled through a reconciliation procedure, the result has the same effect as the conclusion of a collective agreement; if no settlement is achieved via a reconciliation procedure the trade union may take industrial action.

After the Labour Relations Commission’s reconciliation procedure, trade unions can take industrial action if they obtain at least 50 per cent membership approval in a vote.

If the new multiple union clause for enterprises comes into force from July 2011 trade unions will have to obtain 50 per cent approval from the members of all trade unions in an enterprise.

When a trade union takes industrial action subsequent to the Labour Relations Commission’s reconciliation procedure the employer may not file

a civil suit against the trade union for losses of production due to such industrial action (civil immunity). In addition, with the exception of acts of violence and other illegal actions in the course of collective bargaining or industrial action, collective action carried out during the industrial action is not subject to criminal prosecution for blackmail or obstruction of business (criminal immunity).

7. Collective Agreement Coverage

In Korea, a collective agreement is viewed as an agreement concluded between the employer and a trade union and therefore it affects only the members of the trade union that is directly involved in the agreement and does not affect non-union members. Therefore, the coverage of a collective agreement is limited to the members of the trade union.

The Trade Union and Labour Relations Adjustment Act permits the extension of collective agreements in two cases. First, when a collective agreement has been concluded for a workplace and a majority of the workers in the same job category are trade union members and therefore subject to the collective agreement, the collective agreement applies automatically to the other workers in the same kind of job. Second, when two-thirds or more of the workers in the same job category employed in the city (region) are subject to a collective agreement the administrative agency concerned may decide to apply the collective agreement to all the workers in the same job category in the city, whether they are trade union members or not.

In many cases in Korea, the scope of implementation of a collective agreement is the enterprise level. Most trade unions were established as enterprise unions and in most cases collective agreements are concluded between the employer and the enterprise trade union. In recent years, however, there have been several examples of enterprise unions merging into industrial unions, such as in the metal, hospital, public service and financial industries. Nevertheless, collective bargaining is still carried out mainly at the enterprise level. Geographical extension of the scope of implementation of a collective agreement is limited to, for example, taxi drivers and bus workers.

Because enterprise-level collective agreements are the mainstay and the extension of collective agreements to all workers in an industry is not generally recognised, the implementation rate of collective agreements does not greatly exceed the unionisation rate. In 2008, collective agreement coverage was 10.3 per cent, while the unionisation rate was 12 per cent.

The collective agreement implementation rate is low in Korea not only because of the custom of enterprise-level collective bargaining, but also because trade unions are generally formed by regular workers only, and because unionisation is low in small and medium-sized businesses. Because most trade unions organise mainly regular workers, non-regular workers, who account for 35 per cent of the workforce, are usually not covered by collective agreements. Furthermore, employment in workplaces with fewer than 100 employees accounts for 85 per cent of the whole; such workplaces have a very low rate of unionisation and are not covered by collective agreements either.

8. Trade Unions and Labour-Management Consultative Boards

Organisations other than trade unions that represent workers in Korea include labour-management consultative boards and grievance committees. Labour-management consultative boards (LMCB) are mandatory for workplaces employing 30 or more workers pursuant to the Act on the Promotion of Workers' Participation and Cooperation. Grievance committee members are appointed from among labour-management consultative board members or, at workplaces employing fewer than 30 workers, appointed by the employer.

While worker-side members of the LMCB are normally elected by a general vote among the workers, where more than half the workforce are trade union members the trade union appoints all the worker-side members. As a result, in such instances the majority of the worker-side members tend to be trade union officials. Even when the number of trade union members is less than half the total number of employees, in most cases trade unions get to appoint worker-side members in proportion to the percentage of union members in the company.

In companies that have trade unions, in many cases union officials are appointed LMCB members or grievance committee members, and the union is involved in the LMCB or grievance committee activities.

Generally, in companies where trade unions exist, issues of collective bargaining—such as wages and working conditions—are agreed on through “agreements” made in the course of collective bargaining between trade union and company, while management issues—such as human resource related matters, mergers and acquisitions, and temporary or permanent shutdowns—are decided within the LMCB through “consultation” between worker-side members appointed from among the union officials and company-side members. (The scope of issues covered by the LMCB is very wide but “consultation” is required and a company’s refusal to negotiate is not regarded as an unfair labour practice.) The LMCB also carries out a consultation when a new issue arises during the effective term of the collective agreement and collective bargaining is not possible due to the obligation to maintain peace.

9. Trade Union Strengths and Weaknesses

In Korea, where they have a presence, trade unions have strong bargaining power in enterprises. Because wages and working conditions are generally decided at the enterprise level due to the custom of enterprise-level collective bargaining, trade union activities play a pivotal role in determining working conditions, and participation by union members is high. A company may suffer severe losses in production when an enterprise union engages in industrial action and is joined by all its members.

However, trade unions cannot exert influence in non-unionised areas. Because the unionisation rate is only 10 per cent and the implementation rate of collective agreements 12 per cent (as already mentioned), trade unions do not have a direct influence over 88 per cent of workers. There is some policy discussion in the Economic and Social Development Commission and among higher level government agencies, but the scope of issues discussed is limited, and in many cases the discussions simply end without any decision being taken. The

impact of such policy discussions on wages and working conditions is very limited.

With the new multiple union clause for enterprises in place from July 2011, the establishment of new trade unions may increase. According to research by the Korea Labour Institute, new unions may be established in about 10 per cent of the 4,700 companies where trade unions already exist. This development of multiple trade unions may happen in particular in large companies with more than 1,000 employees.

Representation of Workers by Trade Unions: The Case of Germany

Wolfgang Däubler

1. Introduction

The legal system governing workers' representation in Germany is shaped in accordance with a clear concept of social partnership. To put too much emphasis on the “codetermination” strand of the German industrial relations system is misleading, however. A full understanding is possible only if the other part of what is very much a dual system—the role of trade unions—is given equal attention.

Unlike the two channels of “codetermination” —works councils and workers' representatives on supervisory boards—trade union law has not been an object of intense legislation in Germany. Its rules are based on the constitutional right to form trade unions and on a large number of court decisions pronounced over six decades by the Federal Labour Court and the Constitutional Court. The only aspect which has been addressed by the legislator is the relationship between unions, on one side, and works councils and workers' representatives on the supervisory board, on the other.

2. Constitutional Basis

Art. 9 § 3 of the German Basic Law (Constitution) guarantees the right of all individuals to form a union or to join an existing one. The Federal Labour Court and especially the Constitutional Court have extended this right to unions as such: their existence is protected, as well as all their

activities in pursuit of the improvement of living and working conditions. They include, in particular:

- the right to conclude collective agreements;
- the right to strike or take other collective action in pursuit of a new (and better) collective agreement and (perhaps) other aims;
- the right to cooperate with works councils and workers' representatives on the supervisory board;
- the right to distribute leaflets and to send e-mails to workers; trade union representatives also have rights of access to workplaces;
- the right to represent workers' interests in relation to public authorities and political parties.

At the same time, the judge-made law conferring these rights has established limits. Trade union rights must be balanced against the fundamental rights of the employer. If, for example, the distribution of leaflets attracts the attention of the workers for a few minutes, the courts will probably accept it; if work is interrupted for half an hour or more, the right of the employer would prevail and the behaviour of the union would be considered illegal.

3. Existence and Structure of Unions

3.1 Organisational set-up

In Germany, the trade unions established after the Second World War still dominate. Individual workers who want to join a union become members at branch level, as in the metal industry, the chemical industry, the police and education. Today, eight branch unions exist, which are members of the German Confederation of Labour (Deutscher Gewerkschaftsbund-DGB). The largest organisations are the metalworkers' union (2.2 million members) and the service workers' union (Vereinigte Dienstleistungsgewerkschaft or "ver.di", with 2 million members). Besides the DGB, there is a small Christian Trade Union Confederation, with fewer than a quarter of a million members, which has the reputation of being fairly amenable to the demands of the employers. There are also six so-called professional trade unions which

organise certain groups, such as doctors in hospitals, air traffic controllers, pilots and engine drivers. They exercise their right to strike fairly frequently and tend to achieve better results than the large DGB unions. Many civil servants and some public service employees belong to the Federation of Civil Servants' Unions, with 1.3 million members.

Over the past 15 years, trade union membership has decreased to a considerable extent. This is particularly striking with regard to the DGB unions, which had 11.8 million members in 1991 (when East German workers joined West German unions in order to defend their workplaces), but only 6.26 million by the end of 2009. The Federation of Civil Servants' Unions increased its membership between 1990 and 2004, however, and its membership has remained relatively high. The professional unions have also expanded. Taking all organisations into consideration, union density has decreased over the past 25 years, from 34.7 per cent in 1986 to 19.3 per cent in 2009 (Dribbusch 2010: 28ff).

The still dominant DGB unions are organised at the branch or multi-branch level. The lowest organisational unit is the local level, not the plant. At the plant level, there are union structures only in large enterprises, where "union spokesmen" are elected as intermediaries between the workers and the works council. Between the local and the federal level, there is a regional level of organisation which often coincides with the frontiers of federal states. At each level, there is a board elected by the members (at local level) or by delegates. In many cases, the higher level proposes candidates who are subsequently elected.

The DGB unions as a whole employ about 4,000 full-time employees dealing with collective negotiations, helping works councils handle conflicts and giving legal advice to members. To finance these activities, all members have to pay 1 per cent of their monthly income as trade union dues. Other unions have far fewer full-time workers, which enables them to offer membership at a lower "price" .

The fact that a union has its own officials and employees who are not paid by any enterprise is an important factor in its independence from the employers' side. In a way, unions are located outside the plant but cannot achieve any of their aims if they are not supported by members and other

workers inside the plant.

3.2 Recognition and bargaining competence

Unions do not require “recognition” by employers (as in Great Britain) or by public authorities (as in a number of other countries). If there is a conflict with an employer or a competing union with regard to whether an organisation is a union or not, the labour court will decide, using a special procedure provided for in the Law on Labour Courts. To give an example: the air traffic controllers were organised in a professional organisation which did not negotiate collective agreements. They gave a kind of mandate to the competent DGB union to negotiate on their behalf. When they became dissatisfied (for good reasons), the relationship with the negotiating union was severed and the professional organisation changed its statutes, declaring itself to be a union. When it approached the main employer to negotiate, he refused; when it threatened to organise a strike the employer tried to get an injunction in order to forbid this “illegal action”. This was when the labour courts stepped in to decide whether the air traffic controllers’ organisation met the conditions of a union. The court laid out four criteria which a union must fulfil to be entitled to conclude collective agreements with employers:

- independence from employers and the state;
- free membership (right to join and to leave);
- sufficient power to be taken seriously by the employer side;
- the competence, in terms of membership and finances, to analyse the economic situation in its field of action and to monitor the implementation of collective agreements.

3.3 Relations between unions and works councils

How might one characterise the relationship between unions and works councils? The Law on Works Councils uses the word “cooperation” which, however, needs some specification (see Section 6).

In most plants, there is a division of labour between works councils and unions. Works councils represent workers’ everyday interests; their codetermination rights relate mainly to the way in which work is done (beginning and end of working hours, supervision of workers by technical

means like video cameras and administration of social institutions, such as canteens). If an employee is dissatisfied with his working conditions he approaches the works council and asks for assistance. This is permissible during working hours without loss of wages, whereas contacting the union is mainly possible only during breaks or after the end of the working day. The main trade union competence is the conclusion of collective agreements on wages and weekly working hours. This is a trade union prerogative. To date, legal strikes have been restricted to actions aimed at achieving a (better) collective agreement. Unions have a monopoly on strike action.

4. Collective Agreements

Trade unions have the right to conclude collective agreements with an individual employer or with an employers' association. Every year, about 7,000 collective agreements are concluded in Germany, but they apply to only about 50 per cent of the workforce. One union may conclude more than a thousand agreements, which refer to different branches or sub-branches, different regions of a branch and specific enterprises.

A collective agreement defines a bottom line, a minimum social standard, such as hourly wages or weekly working time. The labour contract must comply with these provisions; a clause implementing wages below the agreed minimum standard would be null and void. This is the essential function of a collective agreement. Its legal status is defined in the Law on Collective Agreements (*Tarifvertragsgesetz*), but judge-made law plays a very important role, too.

Collective agreements have binding force only for the members of the union and the employers' association. Employees who are not trade union members might be subject to worse conditions. In reality, this does not apply because employers voluntarily implement the conditions fixed in the collective agreement to all workers in the plant by referring to it in the standard labour contract. The reason is simple: the employer does not know who is a member of a union and does not want to create an incentive for non-members to join. In this way, collective agreements apply to all workers provided that the employer has signed the collective agreement or is a member of the signing employers' association.

In individual labour contracts, the stipulation of better wages and working conditions is possible. There is some controversy concerning what is “more favourable”. If the collective agreement provides for a working week of 35 hours, is it better to work 40 hours (of which 5 hours would be overtime) and thus to get more money? Or is it better—to quote a second example—to have lower wages in the labour contract in exchange for a prohibition of dismissal “for economic reasons”? Both questions have never been finally answered by the labour courts, but the prevailing opinion among lawyers refuses to recognise longer working hours (or lower payment in the second case) as a “more favorable” alternative.

Collective agreements are normally concluded in an administrative subregion of a branch and then endorsed through negotiation at the branch level. The field of application is the whole Federal Republic of Germany (for example, all plants printing newspapers, journals and books) or a part of it (the metal industry in the state of Baden-Württemberg). These branch-level agreements take wages and working conditions out of the competition between enterprises; no enterprise can obtain an advantage by paying lower wages or implementing worse working conditions. Agreements must, however, take into account that the conditions laid down in them must be acceptable even for economically weak enterprises. Companies with higher productivity often pay their workforce additional fringe benefits and other supplementary wages whose structure is discussed with the works council. In some large enterprises, branch negotiations are followed by a second round at the enterprise level, this time led by the works council, which does not have the right to strike and does not need it to obtain certain improvements.

This highly attractive model is based on a traditional national economy with a high level of exports, but a market position which is not really challenged by foreign competitors. With economic globalisation, however, this situation has changed in a number of branches: firms in foreign countries can produce comparable goods but at lower wage costs. German companies under pressure from foreign competitors react by establishing subsidiaries in these countries or by trying to bring down wage costs at home. The branch-level agreement has thus come under pressure. There are many cases in which companies have managed to undercut the “standard” collective wage level over two or three years by

concluding lower collective agreements (so-called “ concession bargaining”). By submitting to this pressure, the union’s bargaining role is reduced to limiting the movement downwards, a very unattractive role which to a certain extent explains declining trade union membership.

5. Collective Action

If bargaining fails and no agreement has been reached unions and employers’ associations normally try to find a solution by using a conciliation procedure. There is no legal obligation to take this route, but neither partner wants to be blamed in public for not having done everything it can to prevent a strike or other collective action.

The conciliation procedure is laid down in special collective agreements which differ from branch to branch. Normally, both parties send two or three representatives who continue to negotiate under the guidance of one or two neutral conciliators, such as politicians, retired managers or professors. In many cases, this conciliation results in an agreement. If the divergent views continue, the chair (s) of the conciliation panel can make a “recommendation”, together with the representatives of one party, but the other side remains free to accept or to reject it.

After the end of the conciliation procedure (or if it does not take place), the union can legally start a strike. It is permitted to call on its members in the branch to interrupt work for an indefinite period, but in reality a different procedure applies. The union starts with some protest strikes lasting one or two hours. If it is strong enough, it will organise these short strikes in rotation, targeting different plants and enterprises each day. For the employer, it is inconvenient to be hit by surprise work stoppages. If these protest strikes do not lead to a reasonable compromise, it may happen that in some enterprises work will be stopped until an agreement is reached.

Some 20 or 30 years ago, strikes took the form of aggregate confrontations over one or two weeks with the involvement of 200,000 participants. The employers reacted with lock-outs affecting a comparable or an even larger number of workers, a political reaction which was in

principle accepted by the courts. Nowadays, short-time strikes prevail and there are no lock-outs. The employer has the right to close down the plant for a certain time; this has the advantage that he does not have to pay wages, even to those who would prefer to continue working. In some branches, such as supermarkets, the employers call on temporary agency workers to substitute the strikers. In order not to lose the strike weapon completely, unions in this sector have started to use so-called “flashmobs” as a new form of collective action; some 40 or 50 persons enter a supermarket, fill a lot of trolleys and then just leave them standing or buy articles in bulk at very low prices and clog up the checkouts. Other “customers” fill their baskets, go to the cashier and—dear me!—discover that they have forgotten their purses or wallets. This creates disorder for a couple of hours, but the effect on the company is far less serious than a long strike. The Federal Labour Court has declared flashmobs to be legal, but the employer in the specific court case has asked the Constitutional Court to revise this decision, claiming that his property rights are being violated.

As already mentioned, over the past fifty years, strikes have been declared legal only if unions organised them in order to obtain a new (or better) collective agreement. All other forms—such as political protest strikes—were illegal. In recent times, the Federal Labour Court has become more open-minded towards other forms of strike. A solidarity strike is now legal if it is in support of collective negotiations in a “neighbouring” area to where the industrial action takes place. This may refer to another plant of the same enterprise or another enterprise in the same industrial sector. A clear legal definition is not yet available. Twice the Court has declared that it is doubtful whether strikes organised by a union can be restricted to seeking (!!) a new (or better) collective agreement. In another case, the Federal Republic of Germany was condemned by the Committee of Ministers of the Council of Europe for not respecting the European Social Charter, which guarantees the right to strike for all labour-related matters and even gives it to groups of workers, not only to unions (Arbeit und Recht 1998: 144ff). It is, however, improbable that the German courts will adopt that interpretation and give the right to strike to workers, thereby also accepting forms of protest which in Germany are called wildcat strikes.

Collective actions are increasingly accompanied by appeals to the

public; the idea is to get people to understand why there is a strike and to support it, at least in spirit. In particular, enterprises producing and selling consumer goods are very sensitive about their image, which can strongly influence their commercial success. Activities on the internet and items in the media are becoming very important for unions and other groups of workers.

6. Cooperation between Trade Unions and Works Councils

Theoretically, works councils and workers' representatives could be the only institutions by which workers' interests are represented. However, that contradicts the German Constitution, which guarantees the freedom to establish trade unions and various trade union rights. Historically, both institutions were the result of a political struggle, but trade unions were the first to be recognised by the state. The legislator has established numerous coordination mechanisms to protect unions and prevent their replacement by works councils:

- Unions have an important role in the creation of works councils: they can take the initiative to call for elections or install an election committee. However, the union's initiative is not essential and a works council can be established without any union support.
- The Union does not have a reserved seat on works councils and there is no formalised link between the two. Unions can participate in works council elections with a union list, made up of company employees and not trade union staff. However, if candidates on a trade union list are elected, they enjoy their mandate as individuals and not as union representatives.
- Collective agreements must be respected by the employer and the works council; both can act only within the framework defined by the mutual decisions of unions and employers. In particular, codetermination with regard to wages and working time applies only to matters left unregulated by the collective agreement.
- Individual works councillors are free in their union activities. They are not bound by the peace obligation which is addressed only to works council as such.
- Unions help works councils to perform their functions if the latter

accept it. Unions offer many courses to provide works councillors with the knowledge they need. The works council (even a minority of its members) can request that a union representative take part in all its meetings.

- Unions have the right to supervise the behaviour of works councils and to ask the labour court to end the office of a particular works council if it has neglected its duties to a considerable extent.

Normally, all these mechanisms lead to close cooperation between works councils and unions; in former times, works councils even had an important role in recruiting new trade union members, despite the fact that there is a legal obligation of neutrality towards unions for works councils as such.

7. Unions and Representation in Supervisory Boards

Supervisory boards, as an industrial relations channel, are not completely separated from the unions. In the first model of codetermination (see Däubler in this volume), unions can put up a candidate if the supervisory board has at least nine members and therefore three seats are reserved for workers' representatives. In the second model (companies with more than 2,000 employees) two seats are reserved for persons proposed by the union and elected by the employees. In very large companies (with more than 20,000 employees) three seats are open for candidates shortlisted by a union. In the third model (coal and steel industries), the union influence is even stronger.

8. Evaluation

Looking at the three channels for articulating workers' interests, the impression prevails that the unions are the dominant force, exerting a stronger influence than the other institutions of representation. The principles of social partnership do not apply to unions which are entitled to freely represent the interests of their members and to organise strikes and other collective action. The reality, however, is more complex.

Works councils often share the views of the employer and prioritise the interests of the enterprise (e. g. to get sufficient profits). This

constrains more radical trade union demands and the use of the right to strike. Works council members play an active role in defining trade union policy because a strike depends on their readiness to influence workers at plant level in an informal way. In nearly all unions, one will find a collective bargaining committee in which works councillors normally have a clear majority. The committee offers only a recommendation, not a binding opinion, but its position is of considerable importance. The legal principles of social partnership influence the behaviour of the union. The interaction between unions and works councils has certainly contributed to more modest wage demands over the past few years. It is, therefore, not surprising that the average income of workers protected by collective agreements grew by only 4 per cent between 2000 and 2008, whereas in comparable countries, such as France, Great Britain and Sweden, the percentage was much higher. If one takes the real wages of all workers, the development is still more striking: while in Germany wages have decreased by 0.8 per cent, they have increased by 4.6 per cent in Spain, 7.5 per cent in Italy, 12.4 per cent in the Netherlands, 17.9 per cent in Sweden and 26.1 per cent in Great Britain (Böckler *impuls* 2008). Will the “German model” survive for long under these circumstances? The answer is still unknown. It may depend on the capacities of unions to link a more aggressive wage bargaining strategy with a campaign to increase membership.

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Part II

Workplace Representation of Workers beyond Trade Unions

An Overview of the Workers' Congress System in China

Feng Tongqing

1. Introduction

Trade unions and workers' congresses are the two main institutions tasked with protecting the rights and interests of workers in Chinese enterprises. The effectiveness of the workers' congresses is closely related to the effectiveness of the trade unions.

In accordance with their statutes, trade unions coordinate labour relations and protect the rights and interests of workers through negotiations on an equal footing with the employer and the conclusion of collective agreements. In addition, the trade unions involve workers in the democratic process of decision-making, management and supervision of the enterprise through workers' congresses or other institutions. The workers' congress is an institution designed to enable workers to exercise their democratic administrative rights, while trade union committees function as executive bodies responsible for daily affairs. The rights of workers' congresses include approval and recommendation of important company decisions, codetermination (or veto power) on issues concerning the rights and interests of workers, approval of issues concerning the welfare of the workforce or of individual employees, evaluation and supervision of executives and nomination of candidates for executive positions.

The workers' congress is not a permanent institution; it convenes once a year, but sometimes more often. Both enterprise executives and workers take part. Usually, the entire workforce participates in workers'

congresses in smaller enterprises, while in larger organisations workers' representatives are involved. Workers' representatives may be elected directly or run for office after being nominated. The number of enterprise executives who are also workers' representatives is carefully controlled to ensure the representation of all employees. Executives and workers or workers' representatives discuss and decide on issues facing the enterprise.

At first, only state-owned enterprises had a workers' congress. Since the reforms in China, some private enterprises and joint-equity enterprises have also adopted the system, however. According to China's Company Law, Labour Law and Trade Union Law, enterprises may implement democratic worker management through a congress of all workers or workers' representatives, or in some other way. The "other approaches" here include: a worker sitting on the company board, a worker sitting on the company supervisory board, informal grassroots discussions and so on. Although there is no relevant statute, workers' representatives are either directly elected by workers or nominated by the trade union and the Party.

The law stipulates that the two institutions—workers' congresses and trade unions—shall function independently, but they can also cooperate, so as to ensure more efficient worker participation. Indeed, as already mentioned, the trade unions operate as secretariats for the day-to-day work of workers' congresses. Industrialisation in Europe and the US proves that if trade unions are able to represent and protect the rights and interests of workers, the interaction and cooperation between management and workers within enterprises will be much smoother.

Such interaction and cooperation is rights-oriented, driven by the need to observe the rights of both parties. The Chinese scenario, however, is quite different. The management and the trade union play their respective roles in the workers' congress against a rather lofty background, such as the revolutionary ideal or the dream of building a strong country in the past, and a vision of reform and development today. Meanwhile, the rights of the management and the trade unions, as well as their reciprocal rights, which form the micro-basis for efficient interaction and cooperation, have not been clearly defined. The micro-basis is constructed and promoted top-down; therefore changes are possible but hardly sustainable. The future of the workers' congress in

China depends on the establishment of administrative autonomy for enterprises, while at the same time reinforcing the power of the trade unions to represent and protect workers.

Trade unions have been widely known for their passive societal function. If they can transform themselves into social organisations that truly represent workers' interests effectively, the workers' congresses will grow healthier and more efficient. Moreover, as trade unions are almost entirely absent from a large number of enterprises in China, especially in small and medium-sized enterprises (SMEs), the workers' congress can serve as an arena for interaction and cooperation between workers and management. However, the effectiveness of workers' congresses is doubtful unless the trade unions support workers' aspirations. Therefore, the key to enabling the workers' congresses to play their role effectively is to define the primary rights of management and trade unions and, more importantly, to reinforce the representativeness and effectiveness of trade unions.

2. The History of the Workers' Congress in China

Workers' congresses in China date back to the 1920s. The revolutionary parties of the early twentieth century, such as the Nationalist Party and the Communist Party, believed that workers should participate in the management of enterprises. However, when it came to implementation the managements of domestic and foreign companies did not give in easily. *The Principles of Labour Legislation*, published in 1922 by the Communist Party of China (CPC), advocated the principle of workers' participation in management. During the period of the Land Revolution in the 1930s and the later war against Japan in the mid-1940s, the concept of the "Group of Three" (namely, the director of the factory, the secretary of the local party and the leader of the trade union) was implemented in state-owned enterprises, along with the system of workers' congresses. The "Group of Three" model had its origin in the system of "one-man management", which had been widely adopted in enterprises in the Soviet Union. The system of "one-man management", however, was based on a contradiction. In the initial years of the Soviet Union, it was essential that enterprises maintain executive authority. On the other hand, one declared objective of the Soviet Revolution was to involve workers in

management. The authority of the factory director was strongly emphasised during the years of instability following the success of the Bolshevik seizure of power, leading to the system of “one-man management”, under which the authority of managers was given more weight than the involvement of workers. In China, under the influence of the war, the “Group of Three” concept easily turned into a company director-dominated model and there were frequent conflicts between the director and the party or trade union. The role of the workers’ congresses was greatly restricted and the operations and growth of enterprises adversely affected.

The lessons of the “Group of Three” approach were duly learned, but similar problems arose soon after. To avoid similar conflicts, workers’ congresses and administrative committees were widely established in state-owned enterprises in the later Chinese Civil War Period at the end of 1940s and the early years of the New China in early 1950s. During the period of the first Five-year Plan (1953 – 57), however, the system of “one-man management” was resumed because of the need for rapid economic development as well as Soviet aid projects, which effectively put an end to the democratic management of enterprises.

The uprisings in Poland and Hungary in 1956 gave the leaders of the Central Committee of the CPC second thoughts about workers’ congresses and enterprise management committees. The Eighth Congress of the CPC that year decided to adopt a system under which the factory director would be in charge and the workers’ congress function under the leadership of the Party committee. However, this initiative soon fell into oblivion with the Great Leap Forward (starting from 1958) and later, the Cultural Revolution (starting from 1966). The Party leadership emphasised workers’ congresses to prevent possible social crisis resulting from abridging people’s basic democratic rights.

Documents detailing how Lai Ruoyu, then Chairman of the All China Federation of Trade Unions (ACFTU), attracted criticism because of his advocacy of democratic management by workers are not yet available to the public. Li Lisan, his predecessor, as well as a great number of other trade union leaders, were among those criticised and purged. The situation soon became radicalised. The Great Leap Forward of 1958, aiming to catch up with the United Kingdom and later to surpass the United States in development, made the system of workers’ congresses

dysfunctional. Soon afterwards, the Cultural Revolution against imperialism and reformist tendencies ripped apart the system of workers' congresses. It is important to note that these two movements (both the Great Leap Forward and the Cultural Revolution) hurt the democratic management of workers in a radical way. The leadership of the CPC and the government, notably Mao Zedong, wanted to establish an entirely new enterprise management system, led by the Revolutionary Committee and the Committee of Workers' Representatives. Mao Zedong attempted to accomplish his goal by the radical means of mobilising the masses, management by the masses and dictatorship by the masses. However, his mission to promote production and economic development by means of revolutionary mobilisation, as he had done during war time, failed.

In the past, the concept of the workers' congress followed the ideals of revolution and building a new China. The system attempted to strike a balance between democratic participation and top-down enterprise management. In retrospect, however, it achieved few sustainable results. As China followed the Soviet model lopsidedly in its efforts to revive the nation, catch up with the development of the UK and the US and fight against imperialism and revisionism, the construction of social rights fell victim to the grand political scenario. For interaction and cooperation between trade unions and management both must have autonomous rights, but this legal basis never evolved. The fact that Li Lisan, Lai Ruoyu and a great number of other trade union leaders were dismissed from office and criticised publicly by no means reflected only individual losses of power. Rather, it proved that the rights of trade unions were not protected.

3. The Current System Of Workers' Congresses in China

A new page in history was turned when the reform and opening-up policy was launched in China. China adopted this policy when the Cultural Revolution came to an end in the late 1970s. While importance was attached to the role of the workers' congresses due to the Solidarity movement in Poland, little progress was made. The system of workers' congresses under the supervision of the CPC Committee, nevertheless, was brought back into practice after the Third Session of the Eleventh Congress of the CPC in 1979. The Solidarity movement in Poland in 1980

again alerted the leadership of the CPC Central Committee, and once again, workers' congresses attracted due attention. Successive laws and regulations were adopted in an attempt to prevent the emergence of a Chinese version of Solidarity; the *Provisional Regulation on Workers' Congresses in State-owned Enterprises* (1981) and the *Constitution* (1982) stipulated democratic management through the system of workers' congresses in state-owned enterprises, and so did the 1986 *Regulation on Workers' Congresses in Enterprises Owned by the Whole People*. However, since factory directors regained their power at the end of the Cultural Revolution, and since reform policies endowed factory directors with greater authority, the role of workers' congresses was significantly weakened. A large number of factory directors, even some local officials, took the trade unions to task; by championing workers' congresses, do you mean to repeat the mistakes of Li Lisan and Lai Ruoyu?

After the reform policy was adopted, state-owned enterprises achieved evident profit gains in the mid-1980s, but then they started to make substantial losses for a number of years. For fear of intervention by workers' congresses, the management further marginalised them.

The *Law of the PRC on Industrial Enterprises Owned by the Whole People* adopted by the First Session of the Seventh National People's Congress in 1988, stipulates the nature of workers' congresses, as well as the relations between trade unions and workers' congresses. It states that the workers' congress is an institution through which workers exercise their right of democratic management, and that the enterprise trade union committee is its operational branch. The last provision was not in the first draft of the law. Thanks to a joint appeal by ACFTU, trade union advocates and experts, lawmakers eventually adopted it. However, although the legislation was drawn up, no operational provisions on the rights of workers' congresses were laid down due to concerns that it might hamper the strategy for reducing losses in state-owned enterprises. As a result, workers' congresses became less and less active.

The workers' congress was the subject of renewed attention in the 1990s when economic reform was deepened. However, it was apparent that the existing workers' congresses were ineffective, and that enterprises with no workers' congress were reluctant to facilitate the establishment of one. Therefore more legislative efforts were undertaken.

- *The Trade Union Law of the People's Republic of China*, adopted at the Fifth Session of the Seventh NPC in 1992 (amended in 2001), recapitulates the relation between workers' congresses and trade unions as defined by the previously adopted *Law of the PRC of Industrial Enterprises Owned by the Whole People*.
- *The Company Law of the People's Republic of China*, adopted at the Fifth Session of the Eighth NPC in 1993 (amended, respectively, in 1999, 2004 and 2005), went one significant step further by stipulating that enterprises, be they state-owned or private-owned, should exercise democratic management through workers' congresses or other means. There might be a variety of approaches to democratic management, but when it comes to major issues such as a change of ownership structure or company policymaking, opinions should be solicited from the company trade union, and a workers' congress should be convened to collect input from workers.
- *The Labour Law of the People's Republic of China*, adopted in 1994 by the Eighth Session of the Standing Committee of the Eighth National People's Congress, stipulates that the trade union, on behalf of the workers, shall coordinate labour relations through consultation on an equal footing with management and negotiate collective agreements, and that the draft collective agreement shall be submitted to the workers' congress or to all workers for deliberation and approval. With this law, the right of the trade union to engage in collective negotiations was legally mandated for the first time.
- *The Labour Contract Law of the People's Republic of China*, adopted by the Twenty-Eighth Session of the Standing Committee of the Tenth NPC in 2007, stipulates that employers shall discuss with the workers' congress or all workers before making any major decision on formulating or revising any company rule that directly affects the vital interests of workers, and that any major decision shall be made after consulting the trade union or workers' representatives on an equal footing.

Both the *Labour Law* and the *Labour Contract Law* approve of consultation on an equal footing and the conclusion of collective agreements. Moreover, they complement other approaches to democratic management, such as the workers' congress. All three help to improve the effectiveness of democratic management and better protect workers' legitimate rights and interests.

The laws are fairly comprehensive, but enforcement is far from satisfactory. For example, there are debates on whether priority in decision-making should be given to the shareholders' meeting, the board of directors or the supervisory board over meetings of the Party committee, the workers' congress and trade unions. Enterprises and the authorities responsible for the economy favour the former over the latter; whereas administrative agencies with responsibility for labour and the trade unions demand that the two exist side by side. A resolution of the Fourth Plenary Session of the Fifteenth Central Committee in 1999 declared that neither should be compromised, and that potential conflicts should be reduced by means of interaction and personnel rotation. In reality, the influence of workers' congresses in state-owned enterprises has weakened and only a few newly-created private enterprises, enterprises with foreign investment, enterprises owned by people from Hong Kong, Macao and Taiwan, or joint-equity enterprises have established workers' congresses. To counter their declining influence in state-owned enterprises the practice of open management has been applied since 1998 to promote the rights of workers' congresses. That is to say, enterprises are required to disclose at workers' congresses all major issues concerning the development of the enterprise and issues that closely affect workers' interests, unless those issues are subject to confidentiality, such as trade secrets or classified technology. To counter the sluggish progress being made in establishing workers' congresses at newly-created companies, there have been various experiments with new forms of democratic management, such as workers serving as members of the company board and the company supervisory committee, and also informal discussions. However, neither countermeasure has been particularly successful.

Evidently, while the vision of reform and development has driven the continuous improvement of statutes and policies on workers' congresses, the foundations for enforcement—the clarification of social rights—have not been consolidated, but rather eroded. It is common to see enterprise managers assume greater and greater authority without showing any respect for democratic management. Trade unions and workers do have the right to participate in enterprise management, but whether the right is respected or not depends upon the whim of the executives. Furthermore, the fundamental social rights of interaction and cooperation, indispensable to democratic management, have never really

come into being. There is a lack of both momentum and protective mechanisms for the rights of workers, as well as the representativeness of trade unions.

In short, after China's adoption of the reform and open-door policy, a large number of laws and policies were created to boost the system of workers' congresses. However, contrary to expectations, workers' congresses have been weakened. To attain democratic management, a higher level of interaction and cooperation is needed between management and workers.

4. The Growth of Workers' Congresses in China

As discussed in Section 3, a prerequisite for the strengthening of workers' congresses is a higher level of interaction and cooperation between management and workers.

A good case in point is that workers now use workers' congresses, in which they showed little interest in the past, to participate in enterprise restructuring when they find out that they might be laid off, unemployed and impoverished. Also interesting is the fact that workers' congresses established top-down are prone to becoming mere rubber stamp organizations, while workers' congresses established bottom-up are often highly energetic.

Moreover, the workers' congress has become an established part of the industrial relations scene. There are two distinct periods in the formation of workers' congresses: between 1984 and 2005 the number of workers' congresses did not fluctuate much, despite the market-oriented reforms; since then, the number has shot up, even more rapidly than the number of trade unions. However, a breakthrough in quantity is not the same as a breakthrough in quality and a workers' congress which exists largely on paper is not the same as a workers' congress through which workers can really articulate their interests.

Table 1
**Workers' congresses in organisations with
trade unions in China, 1984–2009**

Year	1984	1985	1986	1987	1988	1989
Workers' congresses	275,000	310,000	338,000	364,000	383,000	372,000
Trade unions	497,000	473,000	524,000	539,000	571,000	596,000
Percentage	55.3%	65.6%	64.5%	67.5%	67.1%	62.4%
Year	1990	1991	1992	1993	1994	1995
Workers' congresses	374,000	373,000	370,000	359,000	318,000	297,000
Trade unions	615,000	620,000	617,000	627,000	583,000	593,000
Percentage	60.8%	60.2%	60.0%	57.3%	54.5%	50.1%
Year	1996	1997	1998	1999	2000	2002
Workers' congresses	319,000	286,000	342,000	314,000	288,000	331,000
Trade unions	587,000	510,000	504,000	509,000	889,000	930,965
Percentage	54.3%	56.1%	67.8%	61.7%	32.4%	35.6%
Year	2004	2005	2006	2007	2008	
Workers' congresses	369,000	432,000	901,000	1,086,000	1,568,000	
Trade unions	1,020,000	1,174,000	1,324,000	1,508,376	1,725,492	
Percentage	36.2%	36.8%	68.1%	72.0%	90.9%	

Note: Data are taken from statistics published annually by ACFTU. Data for 2001 and 2003 are missing. Numbers of grassroots trade unions since 2003 have been adjusted due to changes in coverage (see China Social Statistical Yearbook 2010: Table 10–40).

5. The Representativeness of Trade Unions

We are now witnessing a favourable turn in the development of the workers' congress. In order to seize the opportunity, trade unions must show that they are the authentic representatives of workers' legitimate rights and interests. The traditional top-down managed democracy, in which the leaders decide while the masses look on, is not particularly effective. We need bottom-up contractual democracy, which relies on consultation on an equal footing and collective agreements, complementing managed democracy. For this purpose the trade unions must become truly representative.

In other words, the enterprise workers' congress should not be content with managed democracy; instead, it should introduce

contractual democracy, or capitalise on its relations with the trade union. Then it can be really effective. Often, the democratic management mindset does not arise naturally or spontaneously among enterprise managers. In order to promote democracy, the roles of workers and trade unions in the conclusion of agreements, consultation and profit-sharing should be strengthened. Such institutions as consultation on an equal footing and collective agreements should be introduced in addition to the workers' congress. For example, by reforming the election process of trade unions, transforming the functions of enterprise trade unions, the intervention of industry-wide or regional trade unions, consultation on an equal footing as well as collective agreements could be implemented effectively, thereby complementing workers' congresses.

Representativeness is essential for industry-wide trade unions. The Chinese trade union system is based on enterprise-level trade unions, but they find it hard to truly represent the workers because of the constraints imposed by enterprise managers. The intervention of industry-wide trade unions could improve the situation. The *Labour Contract Law*, which came into force in 2008, stipulates that at county level or below, trade unions may conclude industrial or regional collective agreements with the representatives of enterprises in such industries as construction, mining, catering and so on. This could serve as a reference for the establishment of industry-wide workers' congresses.

6. The Prospects of Workers' Congresses in China^①

If there is adequate reflection on existing problems and due regard for the future, we believe that workers' congresses in China can have a bright future.

As already discussed, workers may sometimes find workers' congresses—formerly, not very highly regarded—to be a powerful weapon in their participation in reform. It is widely believed that the

^① The theoretical analysis and empirical evidence in this section are based on the research project “Corporate Governance and Workers’ Democratic Participation in China’s Transition”. The team members were Feng Tongqing, Zhu Xiaoyang, Tong Xin, Anita Chan, Chen Meixia, and Dai Jianzhong. See Feng (2005).

function of workers' congresses in enterprise restructuring has been weakened since the mid-1990s. In fact, there are marked regional differences. In some regions, the power of workers' congresses has expanded considerably, and has even gone beyond the provisions of the *Company Law of the People's Republic of China*. A case in point is Henan Province, where local policies gave workers' congresses decision-making power in enterprise restructuring. Furthermore, workers' congresses have expanded in some non-state-owned enterprises in Shanghai, Heilongjiang, Jiangsu and Zhejiang. This is due to workers' recognition of the potential value of the workers' congress in protecting their rights. With the rise of labour-related problems in enterprises, especially those related to the life and death of the enterprise, the interests of enterprises and those of workers are increasingly at odds. Workers' congresses have the potential to become an arena in which workers articulate their interests and assert their rights. Regions without workers' congresses, without workers asserting their interest in enterprise restructuring and without positive responses on the part of local government risk falling into chaos.

The case study of Factory Z in Henan offers lessons here. Workers at Factory Z have been using the workers' congress to fight against a private enterprise's attempts at swindling state-owned assets out of the factory and violating workers' interests and rights since 1997. They equated the protection of state-owned assets at the factory with the protection of their own homes. They wrote to the local government: "19 out of the more than 1,000 workers at this factory have given their life to the factory. The assets may not amount to much, but they come at the cost of our lives, sweat and blood. The factory is in our blood."^①

We have already remarked that a top-down approach to the workers' congress can lead to problems, while a bottom-up approach can often be full of vitality. Therefore, workers' congresses, which originated in state-owned enterprises, have been extended spontaneously to enterprises across a great variety of industries and regions since reform and opening-up commenced in China. These new types of workers' congress take something from the old model characteristics of state-owned enterprises,

^① Zhu, Xiaoyang, " 'Misinterpreting' the Law and the Establishment of Order: Case Studies of SOE Restructuring", see Feng (2005).

while developing a number of new features. Beijing-based BR Group kept the tradition of the workers' congress intact. Zhejiang-based CH Group transplanted the old model to a new enterprise. B Ltd in Beijing reconstructed the system. The workers' congress at SD Company in Fujian has developed unique features while borrowing from the tradition (and also being restrained by the tradition to a certain degree). Factory Z from Henan took full advantage of the traditional workers' congress. The development of the workers' congress in Factory J in Sichuan is unexpected but certainly built upon the tradition.

The above cases illustrate the path dependence asserted by some researchers. The most significant actors in a bottom-up process are the participating workers. Their assessments of enterprise democracy are much more positive than those of researchers and the general public. There were certainly plenty of cases of negative assessments in our research. The majority of workers, however, hold a more objective and fairer opinion of social stratification and the re-emergence of social classes in enterprises. In fact, they demonstrate their abilities as well as intelligence in understanding and participating in the democratic management of enterprises. This is a key driver and condition for the acknowledgement and acceptance of workers' congresses by society.

In conclusion, when workers' congresses work hand in hand with the trade union, both enterprise managers and workers will play a better game. Such a model not only establishes such a game, but also extends it. When the game is extended, players are more likely to cooperate. When enough "rounds" are played, even enemies can cooperate. It is therefore possible to diversify the developmental modes of workers' congresses and achieve breakthroughs in terms of both quantity and quality. The key is not to pursue exclusively the quantitative growth of workers' congresses.

Conclusion

The key to the development of workers' congresses in terms of both quantity and quality lies in the coordination and balancing of traditional top-down managed democracy and bottom-up contractual democracy. In the past 20-odd years, the declining effectiveness of workers' congresses

has been most evident in policy reforms in enterprises. Traditional approaches have often been adopted, with the power of decision-making, execution, interpretation and supervision all going to administrators. As a result, the workers' right to participation is easily violated. Justice is hardly assured when there is no remedy beyond the administrative system. Therefore, it is essential to shift from policy reform to legislative reform. The coordination and balancing of policies and statutes are, to some extent, a matter of coordination and balancing managed democracy and contractual democracy. The former is a type of administrative cooperation, in which administrators tend to get the lion's share of benefits, while the latter distributes benefits fairly. The former tends to put the rights of workers and trade unions at risk, whereas the latter is conducive to the legal protection and legal relief of the rights of workers and trade unions, including the representativeness of trade unions.

Legislative reforms on workers' congresses need to go into greater detail. With enterprises performing more in line with the principles of a market economy, enterprises of different ownership structures converge in terms of workers' democratic participation. More attention should be paid to the industrial or sector-specific characteristics of enterprises. In a market economy, factors relevant to enterprises are increasingly grouped and regrouped on the basis of industries. A case in point is the distinction between competitive and non-competitive and monopolistic and non-monopolistic industries. Laws implemented effectively are those in line with widespread practices and routines, which are regional or local in many cases. Take Factory Z. The local laws acknowledge the rights of workers' congresses beyond the provisions of the *Enterprise Law*, which provides workers at Factory Z with a favourable local environment in which to express their wills. It is both appropriate and wise to make laws in this way.

As a member country of the International Labour Organization (ILO), it is urgent that China's labour laws be coordinated with international labour laws. As far as the institutional development of workers' congresses is concerned, the ILO's *Basic Measures and Supplementary Measures* can certainly be used for reference. Among the Basic Measures, the systematisation of workers' rights is of particular importance; for example, workers' rights to democratic participation in the event of enterprise bankruptcy. Relevant international laws bestow on

workers the right to learn the facts about their company's situation, rights of negotiation, rights of litigation and rights to security. The *Bankruptcy Law of PRC*, effective since 2007, reinforces workers' rights to learn the facts and their rights of negotiation, plus rights of litigation. Security rights, however, are not included. This affects workers' rights as creditors in case of enterprise bankruptcy. As for the Supplementary Measures, procedural effectiveness in ensuring the rights of workers is of significant reference value. For example, in mining accident prevention in China, administrators often arrange for expert consultations. However, expert consultations sometimes fail to identify major problems, and there is no accountability. By contrast, international laws have specific provisions under which, in addition to legislative and policy intervention on the part of the state, employers' organisations and workers' organisations, workers and their representatives can, upon agreement with the enterprise, bring in their own external technical experts and enjoy free access to labour inspectors. Experts brought in by workers and their representatives play a more effective role than experts invited by company administrators.

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Workplace Consultation in Vietnam

Do Quynh Chi

1. Introduction

Many countries have introduced bipartite consultation mechanisms at the workplace to promote labour-management cooperation. Such mechanisms have different titles, mandates, compositions and relations with the collective bargaining process: they are called, for example, Labor-Management Committees (in the United States), Labour-Management Councils (in South Korea) and Works Councils (in Germany). Labour-Management Joint Consultation Committees in Japan are in principle bodies for information and consultation, while German Works Councils have the right to codetermination on a number of issues. Some countries (for example, Korea and most European countries, including Germany and France) introduced such bodies through legislation, while other countries have introduced them through voluntary agreements between labour and management without legislative foundations (for example, Japan and the United States).

Workplace consultation systems have many purposes, including promoting labour-management communication, functioning as an organisational vehicle for employee involvement and participation and also raising and resolving labour disputes. As most workplace consultation systems in the world exist separate from trade unions, they have been used, particularly in North America, to blunt the threat of unionisation (Kaufman and Taras 2000). In countries where the official unions fail to represent their workers in communication and negotiation with the employers, workplace consultation may represent an alternative, facilitating labour-management cooperation and promoting industrial harmony.

In Vietnam, the consultation mechanism at the company level is called the workers' congress. Workers' congresses are organised by the enterprise union and were provided for under the law even before the launch of the economic reform programme (*Doi Moi*^①) in 1986. However, the structure remains more of a formality than a meaningful vehicle for labour-management cooperation. The purpose of this chapter is to discuss various forms of union-based and non-union forms of workplace consultation in Vietnam. We shall argue that the ineffectiveness of the unions in representing workers in consultation with management, especially in non-public enterprises, has contributed to the explosion of wildcat strikes. The weakness of the unions has, consequently, urged both employers and the government to seek non-union workplace consultation to improve labour-management communication and reduce labour disputes.

This chapter was written on the basis of research carried out by the author between 2004 and 2009 in Hanoi, Ho Chi Minh City, Da Nang, Binh Duong and Dong Nai. Over 120 interviews were carried out with employers, supervisors, workers and union officials in 12 state-owned and private manufacturing companies to investigate the organisation and impact of various forms of workplace consultation on labour relations. For the purpose of this chapter, a distinction is made between workplace consultation facilitated by the enterprise unions and that carried out without union involvement.

2. Workplace Consultation through the Enterprise Union

During the period of the command economy, all state-owned enterprises (SOE) were unionised and workplace consultation was carried out with the enterprise unions as coordinator and organiser. During this period, the most common form of workplace consultation was the annual workers' congress, of which the union was the standing body. Organising the annual workers' congresses was a legal obligation of the SOE unions. Because the workers collectively were regarded as the 'owners' of the enterprise, the purpose of the workers' congress was to report once a year to workers on the situation of the business. In practice, however, the

^① *Doi Moi* is the economic reform programme launched by the Vietnam Communist Party in 1986 to initiate the transition from a centrally-planned economic system to a market-oriented one.

workers' congress was not necessarily open to all staff of an enterprise. The rank-and-file workers, especially those in large-sized enterprises, could attend these congresses only with difficulty. Each production unit would elect a few delegates (the number of delegates was fixed by the enterprise union) to attend workers' congresses and normally the supervisors would be delegated. A typical workers' congress would start with the management's presentation of the company's business situation and financial report. A discussion would follow, but because employment conditions were regulated by the state and most participants were managers, the workers' congress was regarded more as a formality than as a genuine forum for bipartite dialogue.

Apart from setting up the annual workers' congress, the union was also in charge of daily communication between labour and management in SOEs. In principle, workers' petitions and complaints would be submitted to the unions' shop stewards, who would discuss the matter with the supervisor to seek a solution. If the worker was not satisfied with the solution, he or she could ask the shop steward to forward the grievance to a higher level. The highest level for grievance-handling was the Discipline Committee (*Hội đồng kỷ luật*) comprising the Director General of the enterprise, the Party Chief, the union chairman and the head of the personnel department. In practice, complaints were rare. A union chairwoman of a state-owned garment company proudly said:

I opened the suggestion box every week but I hardly found any complaints from workers. The company has taken good care of the workers and so they had nothing to complain about. (Interview with the author, December 2008)

However, according to the workers interviewed, grievances were rare because the workers dared not raise complaints for fear of losing their jobs. During the command economy, jobs were allocated by the state and a worker was supposed to work for a company his or her whole life. One worker recalled:

In the past, we were so afraid of the managers that no one dared to make any complaint. They [the managers] were harsh. If they found that some one was opposing them, that person would be kicked out. We were all scared of losing our jobs because it was so difficult to get a job here. (Interview with the author, April 2009)

Nearly a decade after the launch of Doi Moi in 1986, a new foundation for workplace consultation was laid by the 1995 Labour Code. The Labour Code states that employers have to consult and acquire the approval of the enterprise union in more than ten circumstances, including recruitment and dismissal, imposition of labour discipline, negotiation of collective bargaining agreements, job arrangement, development of work rules and the adjustment of wages and working conditions in the enterprise. Apart from these provisions, the law requires that labour-management consultation should be carried on regularly to ensure that workers understand and comply with the employer's decisions and prevent misunderstandings which may result in labour disputes.

Until 2007, the workers' congress existed only in state-owned enterprises and government agencies. The 1995 Labour Code did not define any particular mechanism for workplace consultation, leaving it to the employers and enterprise unions to choose their own way of meeting for bipartite cooperation. A legal entitlement to labour-management consultation in non-unionised enterprises did not exist. However, even in enterprises where unions existed, generally the unions made little effort to facilitate labour-management consultation. A Japanese electronics company had monthly union-management meetings, through which the management informed the union of the business situation while the union transferred workers' petitions to the company. However, the union did not establish any formal channel to obtain feedback from their members. The gathering of workers' opinions was carried out informally by the members of the union executive board. A shop steward explained how he collected workers' feedback:

The only time we could discuss [issues] was during the shift meetings. The workers and team leaders would talk with one another about the new wage rate, for instance, and from them I got to know what the workers think. Sometimes a few workers would talk to me after work and ask me to tell the management to raise wages. I would bring workers' biggest concerns to the union's monthly meeting. (Interview with the author, June 2008)

The union executive board of the Japanese company convened once a month with a view to gathering the union officials' reports from the shopfloor.

These workers' issues then were selected by the union chairman in preparation for the monthly meeting with the Japanese management. But not all union officers adequately performed their union tasks. An HR officer who acted as the secretary for monthly union-management meetings recalled that, in 2007, Japanese managers accused some union officers of manipulating workers' demands in order to advance their own interests:

The questions raised by the union during the monthly union-management meetings are supposed to emerge from workers but in fact questions are put forward by the union officials themselves and in their own interests. When we asked them [union officials] in detail about how they collected workers' opinions and what the workers said, they could not reply. The Japanese managers were very angry and disappointed with the union. (Interview with the author, June 2008)

In many other cases, the unions were supposed to acquire workers' feedback before consulting with the employers. In practice, however, the research found that many union leaders tried to conceal the consultation process from rank-and-file workers. One union chairman admitted:

We have to keep the consultation process secret because if we announce the new wage rates, workers may have an unexpected reaction, such as strikes. (Interview with the author, April 2008)

The consultation process, therefore, was confined to managers and union officials until the final decision was made. Against the expectation of the union leader, the fact that workers were excluded from the consultation process made it difficult for workers to accept the outcome of the union-management decision. A team leader was outspoken in his criticisms of this consultation policy:

The company and the union said that they consulted workers about the new wages but in fact, they hid everything from us till the end. We only got to know about the new rates when everything had been decided. The new wage tables had been stamped and posted on the notice board. We disagreed because the wage increase was too low but there was no chance for us to change anything. (Interview with the author, May 2008)

Since the promulgation of the Labour Code (1995), union-based workplace consultation has been largely ineffective. The consequence has been an enormous information gap and a lack of transparency and democracy at the workplace, which was one of the reasons for workers to resort to informal labour activism. Since 1995, there have been over 3,000 wildcat strikes in Vietnam (see Chi on Informal Labour Activism in this volume). The incidence of strikes suddenly increased in 2006 and reached a peak of 762 in 2008. The ILO estimated that 90 per cent of strikes between 2004 and 2009 could have been avoided if there had been frequent workplace consultation (Sunoo 2007). The lack of workplace consultation, especially the absence of regular communication in the factories, has been identified by the government as one of the most important causes of wildcat strikes. Particularly, the government blamed the enterprise unions for not communicating workers' petitions to the management and vice versa. In the report to the People's Committee of Ho Chi Minh City, its labour department stated:

One of the main reasons for the explosion of strikes... was the enterprise unions' failure to understand the concerns and petitions of workers, which they would have been able to put across in dialogue with the management and so settle potential labour conflicts.
(HCMC DOLISA, 23 February 2006, p. 4)

The failure of most enterprise unions in pushing for effective labour-management consultation as prescribed by the law showed that dependence on the official unions alone to facilitate workplace dialogue and democracy is not effective. It was time to figure out other ways of ensuring labour-management communication and cooperation to prevent wildcat strikes. As shown in Section 3, the heat of informal labour activism has urged the employers and the government to initiate non-union measures to encourage workplace consultation.

3. Non-Union Workplace Consultation

During the period of the command economy, labour-management relations were supposed to be free of conflict. However, when the nature of such relations changed in the market economy after 1986, there was a need for management in both state and private companies to address workers'

grievances, more as a way of preventing labour conflicts than of promoting labour-management cooperation. But many employers have resorted to informal initiatives to deal with workers' complaints and petitions rather than reforming the formal grievance-handling procedures or the workplace consultation system, resulting in an explosion of wildcat strikes. Since then, and to prevent further strikes, some employers have developed internal labour-management consultation systems.

3.1 From employers' initiatives. . .

The 2009 survey by the Vietnam Chamber of Commerce and Industry (VCCI) of companies in the textile-garment industry shows that informal communication channels between supervisors and workers at workshop, factory and enterprise level are the most popular workplace consultation measure among the studied companies (VCCI 2009). These informal channels include text messaging, anonymous posting of complaints and informal meetings between workers and their supervisors. Informal labour-management interactions are popular among domestic companies. Although the management is reluctant to reform the formal workplace consultation system to improve workplace democracy, they are receptive and often make concessions to workers' complaints posed through informal channels. One worker at a state-owned garment company, for instance, solved his dispute with the team leader by texting a message to the factory director:

The first time I texted the factory director was when I was insulted by my [team] leader. I was new so I was a bit slow. He scolded me severely and I got angry. I asked a friend the cell phone number of the factory director and texted her. I cannot remember exactly what I said, but basically I told her that 'this team leader insulted me when he is supposed to coach me. I am very upset and I do not know if I should go to work tomorrow.' I sent the message without much hope of getting feedback, but she did text back, saying that she would deal with the problem. Then, the shift leader gave warnings to all team leaders not to insult workers any more. (Interview with the author, December 2008)

The managements of the domestic companies in the study consistently followed the principle of addressing workers' individual

grievances as soon as they emerged. They understood that if these grievances were not handled promptly, they could escalate into major disputes. Therefore, the management of these companies actively responded to workers' informal complaints. Some managers publicised their mobile phone numbers to workers and encouraged them to call or text them when they needed support. Most complaints voiced through these channels were accommodated or at least actively responded to by the managers.

For example, one worker at a state-owned company in Hanoi recalled that, at the end of 2007, she complained to her team leader that a reduction of overtime hours was needed, otherwise workers would be exhausted. The team leader had no authority over overtime hours but she refused to transfer the worker's complaint to higher managers. The worker texted the company director general and asked for help. The director called the manager of the factory to investigate and then required the factory to find other ways to deliver orders on time without increasing overtime excessively.

Despite this informal accommodation of individual worker demands, the management of these state-owned companies made no further attempt to revise the formal labour-management communication system nor to integrate these informal channels into the system. The management responded to individual complaints from a few workers who had the courage to raise their voices, whereas others still consider it too risky to bring up their problems before the management.

These company specific approaches to workplace consultation did not prevent strikes in many cases. After suffering from wildcat strikes, employers started to realise the importance of labour-management communication. A number of attempts have been made to inform and consult workers in a more systematic and formalised manner. The most common methods of labour-management consultation, mostly initiated by the employer, include:

- *Investigation of workers' feedback*: The management assigns the production supervisors to report workers' feedback on wages, working conditions or any changes to company policy. This method allows employers to make timely adjustments to prevent strikes; however, it fails to provide opportunities for direct interaction between workers and employers.

- *HR surveys*: these surveys are carried out by the human resources department and cover part of or the whole work force. Through these surveys, the employer receives workers' feedback on company policies, wages, allowances and the causes of high labour turnover, among other things. Again, this method does not accommodate direct interaction between the two parties.
- *Regular labour-management meetings*: the top executives meet with workers (or a group of worker representatives) weekly or monthly to inform them about the enterprise's current business situation and to address workers' concerns. (see Box 1)^①

***Box 1: Labour-management consultation—three companies,
three different ways***

Sai Gon Garment 3 has a tradition of a Monday flag-raising ceremony. This provides management and workers with an opportunity to gather before the start of the new working week. After the ceremony, the CEO summarises the enterprise's activities during the previous week and informs the workforce about the new week's plan. Then, workers address questions to the director. Most questions are answered on the spot; if not, the answers are posted on the noticeboard or broadcast through loudspeakers.

Pung Kook had already had a few strikes. The Korean management found that frequent communication with workers is necessary to address workers' concerns in a timely way. Every week, the managing director visits a factory to talk to a group of worker representatives. Workers are selected at random but in rotation to ensure that all workers have the chance to meet the director.

... (cont'd)

^① For further examples of workplace consultation models initiated by employers, see Nguyen (2010: 38–40)

Box 1 : cont'd

At Sumitomo Bakerlite, meetings between the Japanese executives and the enterprise union are organised monthly. One week before the meeting, the union executive board gathers workers' opinions and put them into a proposal to the management. At the meeting, the directors reply to workers' petitions and share with the union leaders the business situation. If the parties cannot reach agreement on a certain issue, they meet again one week later to solve the remaining problems.

The primary purpose of these workplace consultation initiatives is to prevent labour conflicts by addressing workers' concerns in a timely manner. According to the employers, these initiatives are also effective in building workplace harmony and mutual trust between labour and management. However, as enterprise unions remain weak, workers lack proper organisation and coordination to participate more actively in workplace consultation.

3.2 Institutional change

The phenomenal rise in the number of strikes after 2005 alarmed the national government with regard to the lack of workplace democracy.^① The initiatives of many companies in promoting informal workplace consultation so as to reduce labour conflicts encouraged the national government to formalise workplace democracy in the private sector. In 2007, the government issued Decree 87 on the practice of democracy in non-public enterprises. The government decree required employers to inform workers of (i) annual work plans, (ii) internal regulations, including wage payment, bonuses and work norms and (iii) social insurance, union contributions and the welfare fund (Decree 87, Article 6). The Decree also extended the forms of labour-management communication to include not only the annual workers' congress, which is organised by the enterprise unions, but also communication through regular labour-management meetings, the union executive committee,

^① For a detailed discussion of strikes in Vietnam, see Chi (Informal Labour Activism) and Anita Chan in this volume.

team leaders and supervisors, and internal information systems (Decree 87, Article 7). Importantly, the participation of the union was not prescribed as a precondition for labour-management communication, but only as one of the ways employers and workers could choose to inform or provide feedback to each other. The Decree also encouraged workers and employers to apply other ways of ensuring democracy in the workplace (Decree 87, Article 7.6).

Decree 87 defined three levels of workers' participation: consultation, codetermination and monitoring. Workers must be consulted about internal work rules, collective bargaining agreements, labour allocation and productivity initiatives. The consultation can be carried out through the union executive committee or directly between workers and management via labour-management meetings, suggestion boxes or workers' congresses. The company workers must approve collective bargaining agreements by secret ballot. Workers' approval is the primary condition enabling a collective agreement to be eligible for registration at the labour authority. Workers also have the right to monitor employers' implementation of internal work rules, collective bargaining agreements and labour standards.

Reading between the lines, the intention of Decree 87 was not only to promote workplace democracy but also to overcome the weakness of enterprise unions by creating alternative measures for workers and employers to establish effective workplace consultation systems. In so doing, Decree 87 formalised employers' initiatives to circumvent enterprise unions to communicate directly with workers and address their complaints. However, Decree 87 did not provide for any formal workplace consultation institution other than the workers' congresses, which can be organised only in unionised enterprises. Upon consideration of the weakness of enterprise unions, especially outside the public sector, workers' congresses can hardly become an effective mechanism for labour-management cooperation. In 2009, the Vietnamese General Confederation of Labour (VGCL) reported that 60.27 per cent of unionised private enterprises organised annual workers' congresses but the unions of industrialised provinces claimed a much lower rate (*Dan Tri*, 8 July 2009). Hanoi, for example, recorded that only 20.5 per cent of unionised companies had annual workers' congresses in 2009, and in Da Nang and HCMC the figure was below 20 per cent (*Lao Dong*, 8 March

2009). Also, the Decree did not specify whether or not workers in non-union enterprises could resort to any measures to choose representatives to organise workplace consultation on the labour side. Without effective representation of workers and a formalised labour-management cooperation institution, workplace consultation systems continue to rely on employers' initiatives and control.

4. Conclusion

As the only recognised representative organisation of the Vietnamese labour force, the Vietnamese General Confederation of Labour (VGCL) continues to play the official role of 'bridging communication' to facilitate labour-management cooperation in both state-owned and private companies in the wake of economic reform. The facilitation of labour-management communication, however, primarily takes the form of workers' congresses in state-owned enterprises and the individual settlement of workers' grievances. However, our research found that the unions are performing these functions poorly and consequently official channels have become inadequate for workers wishing to voice their concerns. With the legal mechanisms becoming largely moribund, it is informal labour activism that forces employers to create alternative forms of workplace consultation. Initially, the employers accepted only informal complaints and petitions from workers, blocking formal grievance-handling channels. These company specific and informal measures, however, proved to be only a half-way solution to labour disputes, as labour activism continued. Subsequently, strike-affected employers started to formalise workplace consultation systems so as to provide more regular and formal ways for workers to voice their concerns. Although the primary purpose of these employers' initiatives was to prevent labour conflicts, they have, to some extent, promoted labour-management cooperation, paving the way for more workplace democracy and harmony. The number of wildcat strikes and the acknowledgement of employers that there is a need for regular communication on labour problems have encouraged the national government to adjust the institutional framework by allowing for both union-based and non-union workplace consultation. Where the unions remain ineffective and poorly representative of their members' interests, non-union workplace consultation presents a plausible alternative measure

to improve workplace democracy, promote labour-management cooperation and maintain industrial peace. Still, the experience of other countries shows that the law should provide for a legal framework of workplace consultation, rather than leaving it to the mercy of employers, so as to entitle workers, with or without union representation, to information and consultation with the employers.

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Industrial Democracy through the Labour- Management Council in Non-union Firms in South-Korea

Kiu-Sik Bae

1. Introduction

Industrial democracy in Korea has gone through a number of development stages. Under pressure from industrialisation and political democratisation over recent decades, it has matured into a new employment relations governance system. One important component of industrial democracy in Korea is the labour-management council, particularly in non-unionised companies.

Trade unions in many Asian countries are company unions, in contrast to trade unions in some Western European countries which are organised by industry or profession, or to unions in other regions, where affiliation along religious or political lines is dominant. Workers in Korea, Japan and many other Asian countries are affiliated to industrial federations of trade unions and then to the national confederation of trade unions, but major industrial relations issues are handled at the company level. It is the plant level at which unions in Korea basically operate and have their interests articulated. There is a clear separation, and there are major gaps between organised (mostly medium-sized or large) enterprises and unorganised (mainly small) ones in terms of industrial relations practices and benefits. Enterprise unions in Korea play a dual role, both negotiating collective agreements with employers and being involved in consultation, information and grievance handling by sitting on the labour-

management council. Workers in non-unionised firms have their interests represented by employee representatives in the labour-management council. The council is not an employees' representative body but is composed of representatives of both employees and the employer. The labour-management council is a legal body in both non-unionised and unionised firms.

However, the origin of the labour-management council was not linked to representation of employees' interests in non-unionised firms. The main political objective behind the creation of the labour-management council as a compulsory arrangement in 1980 was an anti-union stance. The then military government tried to marginalise the influence of trade unions in companies and foster cooperative labour-management relations similar to Japan. The unions' role was to be moved from bargaining to consultation. What the military government in 1980 had in mind was to substitute trade unions with labour-management councils. However, when the social context fundamentally altered and political democratisation and the trade union movement experienced rapid growth in the late 1980s-early 1990s, the labour-management council ceased to be a strategic vehicle for replacing trade unions. Instead, it became a channel for representing employees' demands and interests in non-unionised firms. In this way the labour-management council has been repositioned in the changing landscape of Korean industrial relations.

This chapter focuses on the labour-management council as the main mechanism of employee representation at the enterprise level in non-unionised firms. It will look at its functioning, especially the role of employee representatives in the council. How is the labour-management council run and to what extent are employees' interests represented? The study will also investigate how employee representatives are elected, what kinds of rights they have been guaranteed, the focus of their activities and how they are protected from possible abuse by employers. These questions will be answered by comparing the functioning of the labour-management councils in non-unionised companies with those in unionised enterprises. The chapter will further present a typology which differentiates between labour-management councils according to management strategies, pressure from trade unions to unionise the enterprise and workers' unity. It will conclude with some reconsiderations on the role and limitations of the labour-management council and then suggest some theoretical and policy implications.

The data used here are mostly based on the Workplace Panel Survey 2008 conducted on establishment-level industrial relations issues at the end of 2007 by the Korean Labour Institute. The survey was conducted systematically by a professional survey firm whose staff visited each establishment and conducted face-to-face interviews in order to complete the structured questions based on a computer program called CAPI. The results of the Workplace Panel Survey 2008 contain comprehensive information on the surveyed establishments, such as basic features, compensation and evaluation, human resource management, trade unions, collective bargaining, the labour-management council, work organisation and human resource development. The sample size was 1,744 establishments. The figures in the following tables are all weighted by their relative proportion in terms of size and industry.

2. Labour-Management Councils in Non-unionised Firms in Korea—Legal Requirements

Korean labour-management councils are composed of an equal number of employer and employee representatives in each firm or establishment. They differ in this regard from institutions such as works councils in Germany and other Western European countries, which are representative organs of employees alone. Like works councils in Western Europe, however, and different from voluntary staff councils or labour-management councils in Japan or the USA, the establishment of councils in Korea is legally mandated.

Legally Required Roles of the Labour-Management Council

The Employee Participation and Cooperation Promotion Act (legislated in 1997 and then revised five times until 2007)^① requires that employers and employees set up such councils and guarantees extensive activities for employee representatives. Labour-management councils should be set up in establishments with at least 30 employees and be composed of the same number (3-10) of both employee and employer representatives on three-

① The Employee Participation and Cooperation Promotion Act incorporates the former The Labor-management Council Act. It emphasizes cooperation between employees and employers but also participation from employees.

year mandates. Employee representatives should be directly elected by the employees but can also be elected indirectly, by an employees' electoral college. The council is supposed to meet on a quarterly basis. It has the right of consultation, agreement and reporting on a wide range of employment-related issues.

Under the Act, a large number of issues—such as productivity improvement or work organisation—are subject to consultation in the labour-management council. Other important rights are also linked to the labour-management council. Employers have to obtain its agreement on certain issues. On such occasions, an agreement is passed only if it receives the “yes” votes of at least two-thirds of the council members present (Art. 21). The agreement requirement at the council is different from codetermination in Germany in that agreement in the labour-management council does not need a collective “yes” vote from the employee representatives but needs at least one-third of their votes. There are also some issues which have to be reported to the labour-management council (Art. 22).

Grievance handling is also a task of the labour-management council. Employers are required to put in place grievance handling mechanisms at all establishments with at least 30 employees. There are other obligations, such as the requirement that employers and employee representatives inform employees concerning the issues agreed at the labour-management council (Art. 23) and also to implement agreements.

Other Legal Requirements and Guarantees for the Council

Every labour-management council must put in place its own working rules (called Labour-Management Council Provisions). Furthermore, the Act guarantees employee representatives their rights inside the council and protects them from receiving unfair treatment for their council activities by employers. Employers are also banned from intervention in, or disturbance of, the election of employee representatives. Employers should provide time off for employee representatives so they can attend council meetings. Employers should also provide employee representatives with the information they need for the next council meeting at the request of the latter. Decision-making or agreements in the council can be achieved with a “yes” vote of at least two-thirds of the members present, on condition that more than half of each party's representatives are present.

The council must keep records on and report the outcomes of each council meeting to the Ministry of Labour. The Act lays down a number of sanctions for violating the act, including fines or penalty fees for employers.

Table 1 **The role of the labour-management council**

	Consultation	Agreement (by voting)	Reporting
Categories	<ul style="list-style-type: none"> • Productivity improvement • Work/personnel arrangements • Grievance handling and welfare promotion 	<ul style="list-style-type: none"> • Education, training and capacity development • Welfare • Labour-management committees 	<ul style="list-style-type: none"> • Management information • Employees' demands
Implementation obligation	<ul style="list-style-type: none"> • Obligation to consult in good faith 	<ul style="list-style-type: none"> • Obligation to reach agreement in the council • Option to agree on certain issues depending on agreement or consultation provisions of the council 	<ul style="list-style-type: none"> • Obligation of employer representatives to report • Employee representatives' right to information
Main issues	<ul style="list-style-type: none"> • Working conditions; health, safety, working hours, work-family balance • Personnel arrangements; recruitment, education and training; • labour management; general principles of restructuring • Payment • Work organisation • Corporate welfare 	<ul style="list-style-type: none"> • Basic planning of education, training and capacity development • Setting up and management of welfare facilities • Setting up of corporate employee welfare fund • Issues not decided in grievance handling procedure • Setting up of other labour-management committees 	<ul style="list-style-type: none"> • Management plan and outcomes • Production plan and outcomes • Manpower plan • Economic/financial situations • Employees' demands
Punishing violations	<ul style="list-style-type: none"> • Fines for not implementing agreements, if any 	<ul style="list-style-type: none"> • Fines for not implementing agreements 	<ul style="list-style-type: none"> • Fines if employee representatives' demands for documents are refused

3. The Establishment of the Labour-management Council in Non-unionised Firms

3.1 Labour-management council and atypical workers

The labour-management council is mainly geared towards permanent workers with open-ended contracts. Atypical workers such as workers on

fixed-term contracts or agency workers are not legally excluded from being elected as employee representatives, but in practice this is unlikely because atypical workers are not deemed to be proper employees. However, according to the Workplace Panel Survey 2008, a minority of labour-management councils at non-unionised companies (18.1 per cent) deal with atypical (temporary, part-time, agency or other categories) workers and cover issues such as wages. There is no difference here between labour-management councils in unionised and those in non-unionised companies. Only a minority of trade unions and labour-management councils at unionised companies represent atypical workers in terms of setting wages for them. Here the determining factor does not seem to be the labour-management council itself but the management. Employee representatives in the labour-management council have little power or discretion to take up atypical workers' issues and to include them in the council's dealings.

3.2 Labour-management council coverage

All establishments with at least 30 employees are legally required to set up a labour-management council. The figures in Table 2 show clearly that management-labour councils are indeed widespread, covering 92 per cent of unionised companies. It appears that the mere presence of trade unions is an additional reason for setting up councils as trade unions hold an institutional seat. For non-unionised firms, the coverage is 72 per cent. Even in small firms with fewer than 30 employees, the presence of councils is substantial (43.6 per cent) and in companies with above 100 employees, its existence is the rule.

Apart from the legal obligation there are other reasons why employers agree to set up labour-management councils. There is the constant threat of union organisation: it may be more favourable to employers to channel employees' demands through a council. According to the findings of the Workplace Employment Panel Survey 2008, employees of 23.5 per cent of companies with councils indicated a strong interest in establishing a trade union. This reflects the possibility that employers use the council as a substitute for trade unions, an important motivation as many Korean firms have a strong antagonism towards unions.

Table 2 **Labour-management council coverage
at non-unionised companies (2007)**

Categories		Coverage (%)
Size of firm	Fewer than 30 employees	43.6
	30—99	70.3
	100—299	89.3
	300—499	94.5
	500 or more	95.1
Sector	Manufacturing	78.0
	Construction	49.2
	Services as a whole	68.4
Coverage: all non-unionised establishments		72.0
Coverage: unionised establishments		92.4

3.3 Election of employee representatives

Employee representatives in non-unionised establishments are elected by employees through direct (45.0 per cent) or indirect elections (15.7 per cent). However, there are ways in which employers can interfere in elections by either recommending or nominating candidates or by appointing them to the council outright. Cases where employers intervene by appointing employee representatives or by recommending or nominating candidates make up 38.9 per cent of all cases. The influence that employers exercise in electing employee representatives is substantial despite the fact that there is a clause in the Act that employers should not intervene in or hinder the elections of employee representatives. By electoral malpractice, a large number of employers tilt the outcome in their favour.

Table 3 Elections/nominations of employee representatives to the labour-management council at non-unionised firms (%)

Size	Direct election	Indirect election	Restricted elections *	Appointment by management	Other
Fewer than 30 employees	45.0	0.0	28.2	26.9	0.0
30–99	43.5	15.0	26.0	15.0	0.5
100–299	48.7	21.4	22.2	7.7	0.0
300–499	42.7	18.6	14.5	24.2	0.0
At least 500	65.1	18.2	9.8	6.9	0.0
All sizes	45.0	15.7	24.8	14.1	0.4

Note: * elected from candidates nominated or recommended by the firm.

4. The Running of the Labour-Management Council in Non-union firms

According to the Act, the labour-management council is supposed to have quarterly meetings. However, the frequency with which councils sit differs widely between unionised and non-unionised firms. A majority of the labour-management councils in unionised sites meet at least five times a year (see Table 5). Obviously, trade unions keep on knocking at the doors of the management to ensure that the council performs its tasks.

Table 4 Frequency of council meetings

Council meetings	Non-unionised firms					Unionised firms		
	0	1–2	3–4	5–6	6 or more	4 or less	5	6 or more
Sites (%)	2.2	4.2	82.5	4.9	6.2	28.7	52.2	19.2

In non-unionised companies, the majority of councils meet only the minimum number of times stipulated by law. This may indicate that the council arrangement is determined more by legal requirements than pressure from employee representatives.

Table 5 looks at three ways in which employee representatives carry out their duties. Only a third of employee council representatives at non-unionised establishments declared that they always prepare before attending a meeting. This is a fairly low percentage since employee

representatives are likely to have an information deficit compared to the management side.

Table 5 **Extent to which employee representatives actively perform their tasks** (%)

	Always	Sometimes	Never
Prepare detailed materials before meetings of the labour-management council	35.9	59.1	4.9
Listen to employees' demands or opinions before meetings of the labour-management council	49.8	44.8	5.5
Provide information on the outcome of meetings of the labour-management council	64.9	29.7	5.5

Listening to employee's demands ahead of meetings and briefing them afterwards on the outcome of council discussions should be a standard procedure for communication between elected representatives and their electorate. However, only 50 per cent seek the opinions of their electorate and only 65 per cent brief them about results. This falls short of expectations, and many councils do not function properly as a body representing employee interests.

There are good reasons why preparing for meetings and communication with employees show limitations. Most employees' representatives have not been trained for this task. This contrasts with councils at unionised sites where trade union officials, who generally perform council duties, receive training to improve their performance.

In many cases, there may be constraints concerning time-off to prepare for labour-management council meetings. The practical rights and facilities for employee representatives are not backed by the power of a trade union and depend to some degree on the willingness and understanding of the employer.

5. The Role of Councils in Increasing Wages

In unionised companies, the council does not play a role in wage bargaining, which is entirely the task of the enterprise union. If the bargaining does not go smoothly or encounters intransigence on the part of the employer, the unions can initiate the procedure for industrial action.

However, if councils at non-unionised firms engage in wage consultation, employee representatives cannot call for industrial action, even if there is deadlock between the parties.

In non-unionised companies a significant number of councils deal with issues of wage adjustment. The management may want to legitimise its decision to change wages by going through the council. Over the years, one of the most important functions that councils have exercised has been involvement in various kinds of wage talks, wage consultations and wage bargaining, including listening to employees' wage demands or explaining to them the new wage adjustment.

As can be seen from Table 6, there are numerous consultations on wage adjustments through the labour-management council in non-unionised establishments. In 44.5 per cent of the sites surveyed, councils were involved with consultations on wages. More striking is the fact that employee representatives in 11 per cent of the sites have obtained the right to wage bargaining by agreement with the employers. The likelihood of wage consultations or wage bargaining rights being granted to employee representatives increases with size of establishment. In large non-unionised companies with 500 employees or more, 20 per cent of councils have wage bargaining as one of their (main) duties. Not surprisingly, the right of employees' representatives to bargain on wages is more developed in manufacturing companies than in construction firms.

Table 6 Wage consultation and wage bargaining through the council in non-unionised companies (%)

		Consultation on wage increase	Wage bargaining right derived from consultation	No consultation on wage increase
All		44.5	11.1	55.5
Size	Fewer than 30 employees	30.1	6.3	69.9
	30—99	44.1	10.6	55.9
	100—299	45.9	13.1	54.1
	300—499	59.3	9.6	40.7
	500 or more	55.5	20.6	44.5
Sector	Manufacturing	51.3	12.2	48.7
	Construction	28.4	7.3	71.6
	Services as a whole	37.8	10.1	62.2

Bargaining rights in the council do not automatically lead to the conclusion of wage agreements, however. Only about half (51.6 per cent) of the sites where employee representatives in councils possess this right have concluded a wage agreement. This points to a dilemma. With no right to industrial action, after several rounds of fruitless negotiation employee representatives may simply have to leave the final decision to the management.

Even if consultations on wage increases take place in a relatively high proportion of non-unionised establishments, the number of council meetings for wage consultation purposes is very limited. The average number of meetings for wage consultations at non-union sites was two. In contrast, the average number of meetings for wage bargaining in unionised settings was 12.3. Taking into account the number of council meetings on wage increases at non-unionised sites, compared with the number of those at unionised sites, the former are *not so much substantive* as *procedural*, legitimising among employees management decisions on wage increases. Wage increases through the council at non-unionised sites are decided mostly by management without much consultation with employee representatives. Wage increases at 41.1 per cent of those non-unionised sites are decided unilaterally by management. Wage increases at another 46.2 per cent of non-unionised sites are decided by management after at least listening to the views of employee representatives.

Apart from wage increases, a number of other issues are also subject to discussion, consultation or grievance handling in non-unionised firms. Employee representatives in the council can bring important managerial issues onto the agenda and present employees' concerns to management on controversial issues such as management and investment strategies, the introduction of new technology or machinery, redeployment of staff, recruitment of atypical workers, voluntary retirement or personnel evaluations. The other issues which are most often subject to consultations or talks in councils at non-union sites are pay systems or methods and welfare facilities for employees. Health and safety issues and work environment can become important issues, especially in the construction industry.

Taken together, various issues such as wages, working conditions, welfare and grievances are dealt with or channelled through the labour-management council or grievance handling procedures. Employee

representation through the labour-management council on those issues is, however, not insignificant. Although there are some systematic gaps between unionised and non-unionised sites, the role of employee representatives in the labour-management council can be fairly substantial at non-unionised sites. There are some variations in the role of employee representatives in the labour-management councils among the non-unionised sites, depending on management attitude or strategy towards the labour-management council, the extent of trade union organisation and employee representatives' activities, often based on the support of rank-and-file workers.

6. Typologies of Labour-Management Councils

There are only a few case studies that look at how the labour-management council works in non-unionised firms. According to Lee et al. (2007), some councils in non-unionised firms are run quite effectively as regards representing employees' demands and interests. They function as substitutes for trade unions in many ways. But even where the councils are functioning well, employees' representatives express some reservations about the councils in the sense that council talks remain consultative, conclusions—if any—have no binding effect and there are few opportunities for employee representatives to take time off work. Other labour-management councils have serious shortcomings. Some do not have quarterly meetings, while others do not deal with important issues arising from the workplace but try to restrict their activities to the legal minimum.

According to Bae et al. (2006) many non-unionised firms barely meet the legal requirements when it comes to council affairs such as quarterly meetings, direct elections of employee representatives and reporting of the outcomes of council meetings to the Ministry of Labour. In generalising their empirical findings, Bae et al. came up with a typology which identified five types of employment relations for non-unionised firms. The types took into consideration differences in the degree of employee representativeness; whether a council was actually established; and the extent to which labour-management councils substituted trade unions, in particular by taking up wage bargaining functions. The five types (see Figure 1) were as follows: Union-

replacing labour-management council; formalistic council; In-between council; Councils with alternative representation; and “Bleak House” (no council).

Figure 1 Five types of employee representation in non-union sites

Active Representation		Weak Representation	
Labor-management council replacing union <ul style="list-style-type: none"> • Wage bargaining or consultation • Frequent council meetings/ consultations • Employee voice heard and spoken • Facilities guaranteed 	Labor-management council in-between <ul style="list-style-type: none"> • Wage consultations / listening / explanation • Quarterly meetings of the councils • Employee voice heard 	Labor-management council formalistic type <ul style="list-style-type: none"> • Few consultations / meetings a year • Unilateral decisions and notices • Lack of employee voice 	
Alternative Representation <ul style="list-style-type: none"> • Non-institutionalized channels 		No labor-management councils <ul style="list-style-type: none"> • Poor communication • No employee voice 	

Lee et al. provided a different council typology, based on the degree of consultation. They clustered councils as follows: the participation and cooperation type; the collective bargaining type; the initial consultation type; the formalistic (potential) type; and the no interest type. They argued that the formalistic type makes up the largest proportion among the five, and is by far the dominant model when it comes to non-unionised companies.

The determining factor in characterising the quality of councils is management strategies toward them and the employees. Management responses to the council depend on how it perceives the need for employees to have a voice and to participate in company affairs. This perception is linked to whether management feels pressured to prevent the unionisation of their employees or to reduce staff turnover. The rise of the trade union movement in the late 1980s and 1990s and the government pressure on management to set up councils and to have regular quarterly meetings have helped managements to change their traditional ‘command and control’ style and to accommodate employees’ demands, grievances and complaints through the council. However, there is still a significant number of managements which resist listening to employee voices and do not want to allow any participation in wage fixing or other management decision-making. Industrial democracy is still a distant prospect for such managements.

7. Summary and Conclusions

The labour-management council was originally designed as a body for fostering cooperation between employees and management rather than a mechanism for employee representation, particularly in non-union firms. The military government in 1980 wanted to weaken trade unions and to replace them with labour-management councils. However, the council changed its role when companies were forced to accept stronger employee representation under pressure from the rising labour movement and increasing employee expectations in the late 1980s and early 1990s. Wage bargaining, consultations and talks on workplace related issues developed as functions of labour-management councils under these circumstances.

In representing employee interests in the workplace today, the labour-management council makes a significant contribution, while at the same time showing definite limitations. The general picture of industrial democracy in the Korean industrial landscape is composed of bright spots, yellow spots, grey spots and dark spots, depending on the extent to which the council plays a substantive role and whether trade unions are organised at a particular firm. At one end of the scale, the council helps employee representatives by playing a trade-union-substituting role in companies which are not (yet) unionised; at the other, dark end, councils do not even exist, although it is mandatory for employers to set them up. In the grey spots in between, the labour-management council exists as a formalistic institution with little say.

Overall, the labour-management council is still very much management-driven. To strengthen the role of employee representatives in the council, reform is urgently needed. All representatives should be elected and interference from management prohibited. Meetings of councils should be regularised, with sufficient time-off given to employee representatives to prepare consultations and other meetings in the councils. Management should support training and education for their counterparts in the council to raise the quality of discussions. There is also a need for intensive communication between employees and their representatives to avoid dissociation of the elected and the electorate.

The compulsory establishment of labour-management councils in non-

unionised firms is very important for the future of industrial relations in Korea. It may open up a new, wider horizon for employee representation in non-unionised firms than representation on a voluntary basis, as in Japan and the USA. But the councils in non-unionised firms must also establish close links to trade unions, whether at the enterprise level or at industry or regional level, not only in order to exercise their own rights and to obtain necessary information, but also to learn how to respond to the challenges facing employees and management in other companies and sectors. This will also provide trade unions with the opportunity to broaden their influence to non-unionised firms, even though they remain too weak to organise many such firms. The limitations on the role of councils in representing employees' demands and interests arise from the way in which they are set up. They are not structured as works councils, consisting only of employee representatives, but are composed of representatives of both sides. Unless the law is changed and works councils are provided for, the ambiguities and limitations characterising the labour-management council in Korea will continue.

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Representation of Workers at Plant and Company Level in Germany—Elected Representatives and Their Legal Position

Wolfgang Däubler

1. Introduction

In Germany, workers' interests can be represented via three channels:

- (i) works councils elected by all employees in a plant;
- (ii) workers' representatives on the supervisory board of large companies;
- (iii) trade unions, whose main function is to conclude collective agreements.

The three channels are closely interrelated, and various sets of formal and informal rules are applied to try to ensure that representatives' activities are all moving more or less in the same direction. In order to facilitate the comprehension of fairly complicated legal rules this chapter focuses on works councils and the representation of workers' interests in supervisory boards, while another chapter deals with trade union rights (see Däubler on trade union rights in this volume).

Besides the legally constituted channels, there are also informal ways of representing workers' interests. To give an example: a worker well respected by colleagues cannot easily be dismissed because it may provoke widespread resistance among the other employees,^① perhaps even leading

^① The words "worker" and "employee" are used synonymously.

to a “work to rule” or an interruption of work. Informal mechanisms of mutual support provide protection against unfair treatment which are at least as important as legal ones. Due to the lack of empirical studies this aspect of industrial relations cannot be further described here but it is useful to bear it in mind.

Another restriction should be mentioned. The legal structure which will be described below is the same in all German enterprises (and only slightly modified in the public sector), but the real representation of interests can be quite different, according to the branch and size of an enterprise. In large entities in the metal and chemical industries there are complete and well-functioning systems of workers’ representation. In smaller companies, particularly in the service sector, works councils are rare and the power of the few which have been established is very limited.^①

2. Works Councils

2.1 Elections

In all plants employing at least five employees a works council must be elected. At least, this is what the law on works councils provides, but the reality can be very different; indeed, this rule is observed in only about 10 per cent of plants. However, since these are generally the larger ones, nevertheless, about 50 per cent of all employees are represented by a works council. One of the most important reasons why we are far from complete implementation of the legal rule is the lack of sanctions; if no election takes place, the law on works councils simply does not apply. The law only prohibits restrictions of any kind on the organisation of elections; employers threatening those who seek to organise an election with the imposition of worse working conditions or by dismissal are even committing a criminal offence. But such cases are fairly rare (and can hardly be proved); as a rule, workers do not dare to take the initiative.

What rules apply if employees, despite every difficulty in the plant, want to elect a works council? If such an institution already exists, it is

^① For further details, see Däubler 2009.

its task to set up an election committee, normally comprising three persons, to organise the election. Nominations must be made at least eight weeks before the mandate of the current works council expires. In plants in which no works council exists, things are more complicated. Three workers or a union with at least one member in the plant invite the workers to a general assembly which can be held near the workplace during working time, but which often takes place at the union's office outside working hours. The general assembly elects the electoral committee. If nobody comes to the assembly or if there are no candidates for the electoral committee, three persons or the union can ask the local labour court to set up an electoral committee. In plants employing more than 20 people the court may choose persons from outside the plant, such as union officials.

Once an electoral committee is set up, it organises the election. The first step is to issue a list of all employees aged 18 years or over. Afterwards, workers may present themselves as candidates on a list if supported by 5 per cent of the workforce in the plant. The union may also present a list, which needs no support from workers in the enterprise, an important rule for those who are afraid that the employer might impose direct or indirect sanctions. All candidates are protected against discrimination and especially against dismissal: for six months after the end of the election they can be dismissed only for grave misconduct and with the consent of the works council or of the labour court if a council has not yet been elected.

The right to vote is given to all workers aged at least 18 years. There is no minimum service period, but candidates must have worked at least six months at the plant or in the group. Since 2001, special rules exist for posted workers. They can participate in the elections if they are to work for at least three months in the plant; if this is the case they can vote from the outset.

Candidates normally introduce themselves at the general assembly of the workers which takes place every three months in all plants in which works councils have been elected. This may lead to a discussion about the qualities of candidates and the aims they want to pursue. Candidates are entitled to conduct an election campaign, for example, by distributing leaflets or using the firm's intranet. All candidates must have an equal chance, but in many cases it is clear from the beginning who is the

favourite candidate. The employer must remain neutral and must not interfere in the election campaign. Threats such as “the plant will be closed if a works council is elected” are illegal, but this cannot exclude the spreading of rumours that the election of a council may have disastrous consequences for the workers. This is one of the reasons why, despite the detailed legal provisions, one can find works councils in only 10 per cent of plants.

Top managers, such as department directors or heads of research units, remain outside the works council system and have no right to vote. The main criterion for their exclusion is that they participate in taking business decisions. This management group normally does not comprise more than 2 per cent of the workforce. They are entitled to elect a “speakers’ committee” which is supposed to reflect their special interests and must be consulted on various occasions.

2.2 Resources made available to the works council

A works council is normally elected for four years and has a relatively secure legal position.

- Works councillors are entitled to exercise their functions during working time, paid by the company. This is especially important for their weekly meetings and for contacting workers. The latter are subject to similar conditions when attending the consulting hours of the works council or contacting one of its members: they are entitled to bring forward grievances or ideas to works council members during working time without losing pay.
- In plants with at least 200 employees, one member of the works council has the right to function on a full-time basis; in other words, they are relieved of their usual work responsibilities.
- the employer, as are the costs of participating in the seminar. The frequency with which works councillors may participate in such educational activities differs. There are those who never have this opportunity (because the employer did not agree to cover the costs despite of his legal obligation), while other councillors go to such seminars for two weeks a year.
- The employer must also provide the works council with the necessary equipment, such as meeting room, office, phone, computer and internet access.

2.3 Employment protection

Works council members can be dismissed only for grave misconduct. Even in that case, a second condition applies: an employer's dismissal request must be approved by the works council. If the works council does not agree (because it does not accept that there has been grave misconduct or for other reasons) the employer may ask the local labour court to decide. In the course of the lawsuit (which may take between 6 and 12 months) the works councillor continues to exercise his or her functions and to work at the plant; the power of the employer thus has clear limits. Comparable rules apply if the works councillor is transferred to another plant of the firm. The general prohibition on discrimination because someone is a works councillor has already been mentioned, but is of less importance because proof is difficult.

2.4 Rights and obligations of the works council

Right to information: Works councils have a comprehensive right to be informed by the employer about everything related to the plant. This right includes both social and economic matters, including the employer's plans. Under the law, the employer is obliged to present all relevant information to the council, but normally the council takes the initiative. Without special legal permission, the council may also obtain information from other sources, such as newspapers, websites or the workforce. This second way often enables the council to ask precise questions about important matters; it is better not to rely exclusively on what the employer communicates. The employer may not refuse to give information on the grounds that it constitutes a business secret; he can only oblige the council not to pass on the information to third parties if it really is confidential (for example, a new method of production or an invention).

Right to consultation: Having sufficient information is an elementary condition for the council to exercise its rights of consultation and codetermination. Consultation implies that the works council is asked to comment and advise on certain company issues before the management takes a decision. It is no longer consultation if the company asks for the opinion of the works council after having taken a decision. Consultation is obviously based on giving convincing arguments which require

comprehensive information and knowledge.

The rights to consultation and codetermination are laid down in the law, but can be extended by collective agreement (and sometimes are). With regard to consultation, there is a general rule that planned changes in working conditions (in a broad sense) must be communicated to the works council and discussed with its members. If the procedure is not followed correctly, there are practically no sanctions except in extreme cases in which the employer declares that the works council must not interfere in business matters. But there is one important exception; if an “essential” change that could lead to collective dismissals is not properly discussed the employer must pay a sum of money to the dismissed workers. In addition, according to the decisions of some regional labour courts the works council can ask for an injunction forbidding the employer to execute the planned measure before the consultation procedure is correctly carried out and completely finished.

Right to codetermination: much more important than the right to information is the right to codetermination. Codetermination means joint responsibility for certain decisions taken together with the employer. This requires an even higher standard of information. In fields in which codetermination applies, council and employer must take a joint decision. In practice, the decision is taken by the employer with the consent of the council. A unilateral decision would have no legal effect; no employee would be obliged to follow it. In addition, the works council could go to the labour court asking for an injunction. Within a few days, a court decision would oblige the employer to withdraw the measure until an agreement with the works council has been reached.

If negotiations between employer and works council fail and no agreement has been reached, either side may ask a conciliation board to decide. Normally, the board consists of two or three members from each side and an impartial chair from outside the plant. If employer and works council do not agree on the person of the chair, he or she will be designated by the local labour court. The board normally reaches a compromise; in exceptional cases it takes a majority decision. Its legality can be supervised by the labour court, if one side requests it. The board procedure is fairly costly (normally between 5,000 and 30,000 euros for a single case) and must be paid by the employer. This provides an incentive

to reach a compromise before the procedure takes place.

The most important areas of codetermination laid down in the law are as follows:

- Rules applying to employees which are not directly linked to work. This includes, for example, the obligation to wear a uniform or to discuss the medical or social reasons for an illness exceeding three weeks, if the worker agrees.
- Overtime, even in the case of individual workers, if it is based on business necessities. The right of codetermination continues to exist even if the individual worker is in favour of overtime.
- Short-time work, which concerned more than 1.5 million workers during the economic crisis of 2008/2009. The works council will normally agree if the short-time benefit is paid by the labour administration and if the employer pays a complementary sum.
- Beginning and end of working time. This is an important limitation on moving from fixed to flexible working hours. It also covers, like other codetermination rights, the working hours of part-time workers, in respect of which it is of the highest importance.
- Monitoring workers by means of technical equipment, such as video cameras or listening into phone calls. With rapid technological development this codetermination right is becoming more and more important. In accordance with the judgments of the Federal Labour Court, it is sufficient that the technology offers the possibility of monitoring the worker; a specific intention to do so on the part of the employer is not required. The possibility exists, for example, with nearly every computer (except a standalone device to which only one worker has access). Electronic files in the human resources department are also covered. Nearly all the modern equipment of firms is the object of codetermination in the sense that it can be introduced only with the consent of the works council. However, this strong position is almost never fully exercised. The employer has many ways at his disposal of putting the works council in a difficult position; reducing the number of workers or closing down the plant are the most important ones which are not subject to codetermination. It would therefore be quite wrong to seek to exercise codetermination rights without taking into consideration the legally uncontested power of the employer in other areas, for example, with regard to plant closure.
- While the introduction or abolition of social institutions, such as

an additional pension scheme or a football field remain a prerogative of the employer, once introduced, their administration is subject to codetermination.

- Distribution criteria for fringe benefits among employees, but not the granting and quantity of fringe benefits.
- Directives on the selection criteria for employees being hired, transferred or dismissed. Codetermination also covers the questions candidates or employees are asked by the employer.
- Social plan. In the case of “fundamental changes”, such as partial or total closure of the plant or mass dismissals the works council has not only to be consulted, but it also has the right of codetermination concerning the so-called social plan which provides for compensation for workers who suffer from economic disadvantages because of the planned measures. Social plans normally contain severance payments which are important because German labour contract law does not provide for compensation at the end of the labour relationship.

Besides these codetermination rights, there are also rights which lie between codetermination and consultation. Hiring and transferring a worker requires the agreement of the council, but the latter can reject such a measure only on certain grounds, which rarely apply. The same applies to ordinary dismissals; the works council may object to a case only for very specific reasons, for instance because it is not in conformity with the principles of selection according to social criteria, such as length of service or age.

Codetermination rights are applicable only if there is no specific law or collective agreement provisions dealing with the same matter. If the collective agreement fixes exhaustively which employee is to receive a certain fringe benefit, there is nothing left to codetermination. The reason for this limitation is fairly obvious; if the employer is bound by law or by collective agreement, no decision-making is involved and therefore no co-decision-making either.

This impressive list of codetermination rights should not be taken to mean that German workplaces are characterised by co-management between works councils and employers. The fundamental decisions about investment and disinvestment remain with the employer, as well as the hiring and firing of workers. Equality in certain fields does not lead to a

kind of “parity” between employer and works council. That would even be the case if there were no specific obligations on the part of the works council which in the law as in the real world are very important:

- Works councils must cooperate with the employer in good faith.
- Works council must meet with the employer once a month and try to solve emerging problems in a “spirit of honesty” .
- Works councils may not support the position of a particular political party.
- Works councils are not allowed to organise strikes or other forms of collective action.
- Works councils must not engage in activities that could disturb social peace in the plant.

3. Representation of Employees in the Supervisory Board

Employees of certain large companies have the right to send representatives to the supervisory board. This is an organ of the company which elects the board of directors and supervises its activities. There are three main kinds in Germany:

- Companies employing between 500 and 2,000 workers (including management employees): one-third of the members of the supervisory board are elected by the workers, two-thirds by the owners.
- Companies employing more than 2,000 workers: one-half of the members of the supervisory board are elected by the workers, the other half by the owners. However, one of the workers’ representatives must belong to the management (normally influenced by the board of directors). If voting in the supervisory board leads to deadlock, a second round will take place in which the chair has two votes. The chair is the representative of the owners. About 750 companies are covered by these rules.
- Companies belonging to the steel and coal industry: the supervisory council comprises five representatives of the workers and five of the owners. Both must agree on the “eleventh member” who would have the decisive vote on controversial issues. There must be a “workers’

director” on the board of directors, who can be elected only if the majority of workers’ representatives in the supervisory board (three out of five) vote for him or her. In practice, the workers’ side designates this person, while the owners’ side proposes and selects the other members of the board of directors.

These three models apply only to joint stock companies and to limited companies, excluding other legal forms, such as private companies and foundations. Cooperatives are only included in the first model.

The special rules for the coal and steel industry have a historical origin; trade union demands to extend this model to other large companies were unsuccessful during the 1970s and since then have not been seriously renewed.

In Germany, the representation of workers in the supervisory board is known as “*Mitbestimmung*” (codetermination), which is clearly a euphemism. Workers’ representatives have a right to complete information about all matters related to the company, including trade secrets. This can be very useful in helping the works council and the union to take adequate measures in due time if, for instance, restructuring of the enterprise is planned by the board of directors. But the workers’ representatives have no power to influence the contents of decisions; if they tried to do so, the majority rule described above would apply. Normally, there are no initiatives of this kind because neither unions nor other organisations have developed alternative approaches to the management of enterprises.

4. Evaluation

Law and reality often diverge with regard to works councils and representation in supervisory boards. As already mentioned, only 50 per cent of workers are represented by a works council, the other half remaining outside the system. Those who are inside are very lucky if the works council exercises its rights fully. In the same way, workers’ representatives in the supervisory board are not able to supervise the board of directors in any meaningful sense. On both levels, lack of information plays an important role, because it is obviously difficult to ask questions when one is in the dark. More important is the fact that the

board of directors is usually composed of persons with long-standing business experience and, in addition, has access to a long list of professional experts and technically qualified collaborators. A new technical or organisational approach is normally worked out over months; how can a works council or a workers' representative identify weak points spontaneously and develop and propose alternative ideas? Codetermination needs qualified representatives, who are involved in decision-making from the very beginning. They must be able to consult specialists whom they trust for advice, especially in order to develop alternative concepts. Only such "parity" in terms of intellectual and human resources would create real "codetermination". German reality is still very far from this.

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Part III

Corporate Social Responsibility and Workers Interests

Will Corporate Social Responsibility Help to Improve Working Conditions?

Reingart Zimmer

1. Concept of Corporate Social Responsibility

Corporate social responsibility (CSR) is generally understood to mean the assumption of social or societal responsibilities by companies. CSR has received considerable attention in the socio-political debate in recent years. Companies which regard themselves as “global players” now profess a CSR policy as a matter of course, and the topic may be found, alongside that of sustainability, on the websites of most large companies.

The concept was developed by companies in the mid-1990s in response to criticisms arising from the negative effects of globalisation. The origins of the present discussion lie in the 1950s in the Anglo-Saxon countries, where attempts were made, due to the low level of state regulation of labour relations, to encourage companies to adopt voluntary arrangements (Zimmer 2006: 1–3).

CSR is an open concept whose content differs in accordance with the prevailing interests in given circumstances. There are countless publications on the subject by the most diverse actors. There are also various definitions, the one found most commonly in Europe being that of the European Commission, according to which CSR is

a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with

their stakeholders^① on a voluntary basis. (European Commission, 2001: 8)

The systematic assumption of responsibility with regard to society takes place, according to the concept of CSR, within the framework of a company's business activities along the whole value chain (production, procurement, transport, consumption, waste disposal and so on). CSR is not supposed to be merely an instrument of a particular company department (or, for example, a public relations exercise) but apply rather to the management of the company in general.

The concept concerns a company's activities beyond what it is obliged to do either under the law or in accordance with a collective agreement—a key criterion of CSR is voluntariness. The voluntary and thereby non-binding framework for the performance of social responsibilities is regarded as essential by the employers' side in particular (IOE 2005: 6ff). For companies, flexibility constitutes an indispensable criterion in corporate practice (BDA 2008: 4). Although it is emphasised that CSR is not supposed to take the place of legal regulation, most companies advocate the privatisation of state tasks, according to a company survey by the Bertelsmann Stiftung (Bertelsmann Stiftung 2005: 3, 9).

Closely related to CSR is Corporate Citizenship (CC), conceived as a company's engagement with society outside its own business activities. This includes donations and sponsoring to promote general-interest facilities, cultural events and science.

2. The Stakeholder Approach to Corporate Social Responsibility

The activities of companies affect not only their employees, but many other actors. Groups and individuals who are affected by corporate activities or themselves can exert influence on the company are known as stakeholders.^② According to the stakeholder approach management decision-making should not be oriented solely towards shareholder value,

① See the next section on CSR's concept of "stakeholder" .

② The term "stakeholder" is obviously a pun on "shareholder" .

but also take into account the interests of other groups in society.

Stakeholders include equity holders, shareholders, investors and banks, as well as employees and their representatives, works councils and trade unions, and also customers, suppliers and competitors. Even local residents, consumers and NGOs count as interest groups in terms of the stakeholder approach. The various stakeholders have different expectations of the company. Workers demand job security and a decent wage, as well as compliance with health and safety regulations; customers, on the other hand, expect high quality services at a fair price. Shareholders lay claim to a high yield on their capital investment, while local residents and environmental protection organisations demand the reduction of the adverse effects of the company’s activities on the environment (Zimmer 2006: 4).

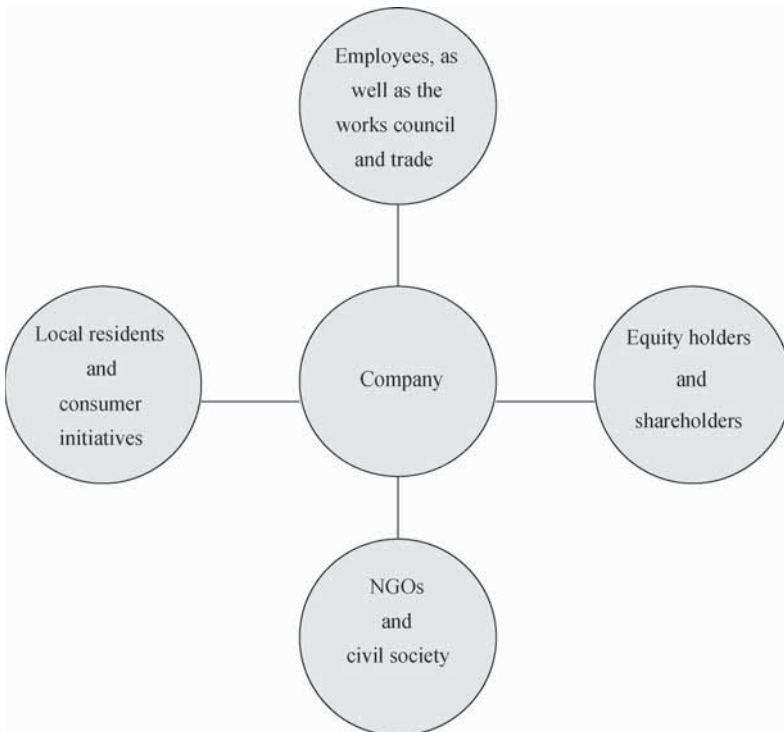


Figure 1: The Company and Its Stakeholders

Source: Zimmer 2008: 299.

The example of the Brent Spar oil storage facility illustrates the power of stakeholders, in particular, consumers. When Shell opted to sink the decommissioned oil platform in the North Sea, the actions of Greenpeace led to a widespread consumer boycott, which caused Shell to relent. Such a strong stakeholder role can be assumed only by organisations which, as advocacy networks, are able to reach the general public via the media, thereby putting significant pressure on the company in question. If that is not the case, stakeholder influence depends on whether the company itself has an interest in cooperation.

One problem is that the stakeholder model treats the interests and influence of the different actors as equivalent and of equal weight. The influence of employees or local residents, however, is weaker than the economic influence of shareholders or banks.

3. Areas of CSR Activity

According to the concept of CSR, corporate activities should be measured in terms of economic, environmental and social criteria (the so-called “triple bottom-line concept” or 3BL), emphasising the sustainable, long-term development of the enterprise (Norman and MacDonald 2004: 243 ff). The European Commission differentiates in its Green Book between the internal and external dimensions of CSR (European Commission 2001: 13ff).

The *internal dimension of CSR* refers first and foremost to dealings with the company’s own employees, which takes in the following areas of activity: human resource management (HRM), health and safety, compliance with labour and social standards, as well as human rights, socially responsible restructuring, green production, provision of services and environmental management in the company, and also compliance and measures to combat corruption.^①

The *external dimension of CSR* includes responsibility with regard to local communities, dealings with business partners, clients and suppliers, compliance with labour and social standards and human rights,

① Norm compliance.

as well as global environmental protection (Feuchte 2010: 6). Responsibility towards shareholders and rating agencies is also sometimes subsumed under the external dimension of CSR (European Commission 2001: 12).

When the CSR debate began there were no clear labour standards. Nowadays, most companies refer to the standards of the International Labour Organisation (ILO), especially the core labour standards of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which are:

- freedom of association and the effective recognition of the right to collective bargaining (Conventions No. 87 and No. 98);
- elimination of all forms of forced or compulsory labour (Conventions No. 29 and No. 105);
- effective abolition of child labour (Conventions No. 138 and No. 182);
- elimination of discrimination in respect of employment and occupation (Conventions No. 100 and No. 111).

Since the ILO's core labour standards address only the most egregious forms of labour exploitation, reference is sometimes made to other ILO standards. The following sets of issues, accordingly, are of fundamental importance: protection and facilities to be afforded to workers' representatives (Convention No. 135), minimum wages (Conventions Nos 26, 99 and 131), protection of wages (Convention No. 95), maximum working hours (Conventions No. 1, No. 30 and No. 47) and health and safety (in particular Convention No. 155).

4. The Variety of CSR Initiatives

There are numerous political campaigns which relate to CSR, perhaps the best known of which is the UN Global Compact (GC), a campaign based upon a best-practice approach (United Nations 2008: 1 – 6). Governments, too, have come up with recommendations on how companies should behave: for example, the industrialised countries have adopted the OECD Guidelines for Multinational Enterprises, which were last revised in 2000. Both the Global Compact and the OECD Guidelines are based substantially on the ILO's core labour standards, as well as

referring to general human rights and also to combating corruption and environmental protection (OECD 2008: 12ff). Controls on whether company rules are adhered to or sanctions for non-compliance with standards are not envisaged in either instance. In any case, as a political campaign the Global Compact is non-binding, and even the OECD Guidelines are merely recommendations by OECD member states to multinationals. With this document the OECD member states have committed themselves merely to establishing “national contact points” which are to be responsible for disseminating the Guidelines and to which complaints may be made concerning corporate ethical violations.

CSR initiatives generally come from business, as is immediately apparent from even a cursory review of the relevant websites. And while the first initiatives came from the USA, they are now emerging all over the world.

Many countries have drawn up “CSR action plans” or organise round tables with a wide variety of stakeholders in order to promote the dissemination of CSR.^① Given that CSR is above all voluntary in nature, it is scarcely surprising that a country like the UK, in which labour relations are subject to comparatively little legal regulation, is in the CSR vanguard in Europe. A CSR ministry has even been established there tasked with creating a uniform framework for social and environmental reporting and labelling.

5. CSR Instruments of Individual Companies

Companies which develop a CSR policy as a rule also issue a code of conduct. This contains ethical guidelines, in other words commitments by the company to respect fundamental employee rights. Codes of conduct are most in evidence in labour-intensive sectors whose sales markets are consumer dependent—the clothing industry and the retail trade come immediately to mind. The scope of most codes of conduct take in not only individual companies but also the entire group. Sometimes, the commitments on standards also apply to trade partners, as well as their

^① In Germany, the adoption of an action plan “CSR in Germany” was envisaged for 2010. See www.csr-in-deutschland.de.

suppliers and subcontractors, which can be ensured by including minimum standards in procurement contracts. The written guidelines serve as a basis for the behaviour of transnational companies both in the country of production and domestically with regard to the authorities, the workforce, subcontractors, suppliers and consumers (Zimmer 2008: 139). Companies promulgate codes of conduct unilaterally; no other party is involved.

Codes of conduct are part and parcel of a company's public face and are a public relations tool; often, codes of conduct arise in response to public scandals, for example, due to degrading working conditions (Mamic 2004: 36). The company Levi's, for instance, adopted a code of conduct after inhumane labour practices at the company's suppliers on the island of Saipan were publicised in 1991.

Since "transparency" is a buzzword in the CSR debate companies whose shares are actively traded, in particular, now publish sustainability or CSR reports.

6. Implementation and Monitoring

Ideally, codes of conduct serve to underpin how companies see themselves, providing fixed rules in accordance with which they can do business. The adoption of a code of conduct, then, following a quality or environmental management system, represents the first step in the development of a social management system. However, this is conditional on the approval of this voluntary commitment by a central authority within the company or group which is empowered to guarantee the implementation of the code of conduct. Large groups such as Adidas, Nike and H&M have had social departments for years, tasked with setting up such social management systems. These departments usually operate independently of the business side (especially of the procurement division) of the company and come under the public relations department or are directly subordinate to the board.

Effective implementation of codes of conduct requires considerable expenditure and resources, in particular when suppliers, subcontractors and other business partners are included. Implementation of codes of conduct is made easier by "implementing guidelines", customary in most

sectors of industry in the form of “standard operating procedures” (SOPs) with regard to financial reporting, archiving files and documents and, in manufacturing, waste disposal. Implementing guidelines are aimed at standardising the steps necessary for implementation of the code, thereby making it easier (Mamic 2004: 54; Zimmer 2008: 152).

Not every company which adopts CSR has at its disposal such a system for the implementation of its CSR policy. Even if they do, there is no guarantee that the minimum standards laid down in the code of conduct will be adhered to; compliance is rarely controlled by an independent and trustworthy body.

Monitoring includes, besides works inspections, audits, in the course of which not only conditions of production but also accounting is assessed, as well as correction mechanisms in relation to emerging problems. Monitoring in the form of audits is carried out either by the company’s own inspection personnel or by commercial agencies. Social audits are conducted by both financial auditors and quality control firms. In recent years, specialised social-audit and consulting agencies have come into being. However, the employees of these global service providers often have little training in social standards and, in particular, little experience in cooperating with local trade unions and NGOs. Research indicates that this sort of inspection suffers from grave defects and is often slapdash, even in the case of specialised social-audit companies (O’Rourke 2000; O’Rourke 2002: 196ff; Maitland 2005; CCC/INKOTA 2006: 57ff). Not only are such audits announced in advance, thereby enabling producers temporarily to conceal their shortcomings and to pull the wool over the inspectors’ eyes, but they are too short and superficial. Not only are blindingly obvious problems overlooked, for example, in relation to safety at work, but also violation of trade union rights, discrimination, sexual harassment and so on. Furthermore, the questioning of employees takes place in the workplace and often in the presence of management, which sometimes coaches them in advance.

All in all, there is a credibility problem, since commercial auditing agencies are directly commissioned and paid by the companies they inspect, which means that so-called third-party auditing cannot be described as entirely independent.

7. A Unilateral versus a Multilateral Approach

In the face of various criticisms, in particular of exclusively internal company monitoring, multi-stakeholder initiatives (MSI) have been set up in a number of sectors to undertake the monitoring of codes of conduct. Multi-stakeholder groups are distinguished by the fact that the relevant interest groups are properly represented throughout the organisation, in particular in the highest decision-making body.^① Monitoring is organised differently from place to place, and sometimes even MSIs resort to commercial auditing companies, as a result of which problems of the kind already described regarding audits which are inadequate for the discovery of practical problems exist here too. To be sure, audit firms are more independent since the MSIs commission the audit and not the company. In addition, MSIs conduct further training for auditors and also for workers, sometimes in the form of pilot projects.

In 2003, the Joint Initiative on Corporate Accountability and Workers' Rights was founded with a view to harmonising the operations of individual organisations. Its members are: the Clean Clothes Campaign, the Ethical Trading Initiative, the Fair Labor Association, the Fair Wear Foundation, Social Accountability International and the Worker Rights Consortium.^②

8. Trade Union Positions on CSR

8.1 Conclusion of International Framework Agreements

In recent years, a considerable number of agreements have been concluded on minimum social standards between trade unions and transnational groups of companies. In contrast to unilateral codes of conduct these agreements are bi- or multilateral. These agreements are negotiated and signed by global union federations (GUFs), often with the participation

^① The main criterion is whether trade unions have board-level representation, with voting rights.

^② For further information, see www.jo-in.org.

of national trade unions, from the country in which the company has its headquarters, or of works councils. The majority of these companies and concerns previously had no code of conduct, in some instances the entire unilateral code was adopted,^① sometimes only those points dealing with labour relations.

As distinct from unilaterally adopted codes of conduct, agreements between GUFs and transnational companies (often also concerns) are called “international framework agreements” (IFAs). The conclusion of an IFA at the global level establishes-or deepens-a long-term relationship between a trade union and a company (or concern) (Telljohann *et al.* 2009: 6; Miller 2005: 216). According to the trade union side, the most significant difference is that IFAs constitute formal recognition of the trade union as social partner at the global level (Hellmann 2007: 24; Steiert 2006: 44), classifying them as a medium of industrial relations. Another difference from unilateral codes is that, in particular, in more recent framework agreements—since 2000—there is not only reference to the ILO’s core labour standards, but sometimes (subjective) rights for trade unions or trade union members are also agreed on. In some IFAs the company commits itself to neutrality with regard to trade union organisation campaigns and grants access to company premises; sometimes the setting up of complaints mechanisms is also agreed on or the possibility of global trade union meetings.

8.2 General trade union positions on CSR

From a trade union perspective, the very “voluntariness” of company responsibility is a decisive defect of the CSR concept. Instead, the trade unions are calling for concrete obligations on the company side in relation to its stakeholders, in particular, the employees. Non-compliance should be subject to proper sanctions—not just a tarnished reputation (Feuchte, Hans-Böckler-Stiftung 2009: 2; Deutscher Gewerkschaftsbund 2009: 2).

On the other hand, they take a positive view of the fact that CSR offers the possibility of shifting the focus of voluntary commitments to such trade union issues as “decent work” or employee participation, as well as opening up new scope for employee representatives. Trade unions

① For example, in the cases of H&M, IKEA, ISS and Securitas.

are demanding that companies involve (elected) employee representatives in the working out of their CSR strategies. Since “the German model of *Mitbestimmung* [codetermination] already involves workforce and trade union decision-makers in the formulation of corporate strategy without the aid of CSR” (DGB 2009: 2), the introduction of CSR as a framework for trade union action is of particular importance in countries in which labour rights are considerably weaker than in countries such as Germany.

The European Trade Union Confederation (ETUC) also sees both opportunities and risks in the concept of CSR. The ETUC’s objective is the co-development of CSR policies by European works councils (EWCs) and by employee representatives on the supervisory boards of European companies (SEs). Social dialogue is considered to be a key element of CSR (ETUC 2007). The International Trade Union Confederation (ITUC) holds a similar position and would like CSR to encompass the issue of “decent work” besides social dialogue (ITUC 2008: 2).

9. How Does CSR Work?

Voluntariness is the key criterion of any CSR policy, not only with regard to standard-setting, but also, in the view of the company side, in relation to the implementation and monitoring of codes of conduct. Mechanisms of compulsion, like those used in the implementation of national legislation, do not exist. Hence “compliance-pull” with regard to CSR standards is predominantly political and economic in nature. The exigencies of competition and the financial markets, as well as pressure from society are the driving factors (Kocher 2010: 34). The active mechanism amounts to no more than public pressure in the sense of “naming and shaming”. If no strong actors such as trade unions, works councils or NGOs are at hand to apply the necessary pressure through the media, CSR is merely public relations in another guise, leading to no improvement in working conditions.

Conclusion

The key question is whether CSR in practice leads—or at least contributes—to noteworthy improvements in working conditions. This is

difficult to answer since independent controls are few and far between and companies organise their own monitoring or at least directly commission the auditing firm. In this way, the results of CSR policies can barely be measured at all; in particular, the results of audits are rarely made publicly accessible and research even points to systematic “audit fraud” (Ethical Trading Initiative 2009). In other words, CSR can be used unscrupulously to cover up exploitation and power imbalances and to divert attention from existing problems; in particular, the “best practice approach” suggests that good examples are the norm. All too frequently CSR amounts to no more than the repackaging of what the company has always done. Also problematic is the fact that there is no legal come-back with regard to voluntary CSR commitments; particularly in times of crisis companies can roll back CSR with being in any way obliged to enter into negotiations with employee representatives about it.

Nevertheless, CSR does give trade unions and employee representatives the opportunity to put labour rights on the agenda. The ambivalence of CSR is also revealed by the fact that, on the one hand, it is regarded as a stepping stone to binding regulations, but on the other hand, it can be used to curtail binding regulations.

CSR, then, is an instrument which the workers’ side can sometimes turn to its advantage—but it is also a double-edged sword.

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CSR websites

www.fairlabor.org
www.sa-intl.org
www.ethicaltrade.org
www.fairwear.org
www.workersrights.org
www.wbcsd.org
www.csr-asia.com
www.csrchina.net
www.csrindia.org
www.csr.vn
www.bscei-eu.org
www.csreurope.org
www.csrwire.com

The Current Situation and Trend of Corporate Social Responsibility in China

Liu Kaiming

1. China as “Factory of the World”

Despite the severe global financial crisis and a drop in exports of 16 per cent, China overtook Germany in 2009 as the world’s largest exporting country. In 2010, China was the world’s largest producer and exporter of many goods, including textile products, shoes, toys, colour TVs, DVD players, mobile phones, monitors, program-controlled switchboards, air conditioning units, containers, optical components, power tools and microwave ovens. Chinese companies are present in some sectors along the entire value chain in the global consumer market. Four industry clusters in China can be grouped as the most competitive in the world.

(1) *Electronics and ICT equipment*: companies in this cluster are found in the Pearl River Delta, the Yangtze River Delta, Qingdao, Beijing and Tianjin. The better known players are: Foxconn, Quanta, Acer, BenQ and Compal from Taiwan; Motorola, Flextronics, Geppark, Seagate and Dell from the US; Samsung and LG from South Korea; Nokia, Ericsson, Siemens and Philips from Europe; Toshiba, Hitachi, Sony and Panasonic from Japan; and Haier, Lenovo, TCL, Huawei, ZTE and Changhong from China. These companies together have about 10 million workers in direct employment. The value of their exports in 2009 stood at US\$ 204.5 billion, or 17.02 per cent of China’s total exports that year.

(2) *Textiles and garments*: companies in this cluster are found in

the Pearl River Delta, the Yangtze River Delta, the Min River Delta, Jiaodong Peninsula and Liaodong Peninsula. Most are small and medium enterprises (SMEs) with either Hong Kong or mainland Chinese owners. Big players include: Esquel, Fook On and Luentai from Hong Kong; Youngor and Shenzhou from Zhejiang Province; and Weiqiao and Luthai from Shandong Province. China has long been a powerhouse in textile and garment manufacturing, while trading companies in Hong Kong control about 50 per cent of orders in the world apparel market. This cluster has 18 million workers in direct employment. Its export value in 2009 stood at US\$ 167.1 billion, or 13.71 per cent of China's total exports that year.

(3) *Shoe manufacture*: companies in this cluster are found in Guangdong, Fujian, Zhejiang, Jiangsu and Shandong Province. In 2009, China exported 8.17 billion pairs of shoes, with a monetary value of US \$26.57 billion, to 208 countries and regions around the world. Major players include: Pouchen, Taifong and Stella from Taiwan; shoe manufacturers from Wenzhou, Zhejiang Province, Yancheng, Jiangsu Province and Qingdao, Shandong Province. They have about 3 million workers in direct employment, exporting US\$ 28 billion dollars' worth of shoes in 2009.

(4) *Toy manufacturing*: there are over 20,000 SMEs in this cluster, scattered around the Pearl River Delta and the Yangtze River Delta. Big players include: Mattel and Hasbro from the US; and Jetta and Glorison from Hong Kong. They have 2 million workers in direct employment. Their export value in 2009 stood at US\$ 7.38 billion.

The formation of industrial clusters is essential to increase the local share in the value chain and economic growth. In the Pearl River Delta, a company with some 10,000 employees may attract about 300 suppliers to set up production nearby, while a company with 50,000 employees or more may have over 1,000 suppliers. In some cases, an entire town is involved in the raw materials supply, processing, marketing and sales, logistics and retail of a single product. With low labour costs, a strong entrepreneurial spirit among the people and weak government regulation in China, industrial chains based on low cost competition have grown rapidly and strongly over the past two decades.

2. The “Factory of the World ” and CSR

2.1 CSR development in China

Chinese factories engaged in price competition have been challenged both at home and abroad. Since the 1980s, the anti-sweatshop movement has spread from the West to developing countries, seeking to impose systematic and effective supervision on companies from Western countries that invest, produce and purchase in developing countries. Ruthless exploitation in Chinese factories has been repeatedly exposed by the international media, putting strong pressure on Chinese factories supplying brand-name companies in the US, as well as the entire export sector in China. Youth-oriented brands such as Levi, Nike, Adidas, Reebok and Gap from the US, having become the targets of consumer boycott campaigns, were the first to act. Within the framework of a new commitment, known as Corporate Social Responsibility (CSR), the brands developed Codes of Conduct for their global supply chains which followed principles drawn from the *Universal Declaration of Human Rights*, the *UN Convention on the Rights of Women*, the *UN Convention on the Rights of the Child* and the eight ILO core standards. The impact of CSR on Chinese factories has increased with their participation in global competition. There have been four phases of development.

(i) *Awareness and experimentation* (1992-95). To begin with, only a few brand-name companies in the US and Europe made human rights and environmental demands on their first-tier suppliers in China, asking them to comply with their Codes of Conduct whenever new orders were signed. A few suppliers were removed from vendor networks for having violated local labour laws or the Code of Conduct. However, most brand-name companies simply informed their suppliers about CSR or carried out some trials. The Codes of Conduct or local labour laws were not strictly enforced. There were three justifications for this. First, CSR was a new concept, even to the brand-name companies. There was no clear understanding concerning what suppliers' roles should be nor an action plan. Secondly, there weren't enough qualified people to carry out CSR policies or action plans. Third, since only a limited number of manufacturers had good quality products and a

reasonably large output, suppliers had considerable bargaining power, and brand-name companies had to make concessions alongside their insistence on labour standards.

(ii) *Action by brand-name companies* (1996 – 2000). After 1996, many Taiwanese and Hong Kong companies moved their labour-intensive production of garments, shoes, sports goods, luggage and toys from Latin America, Southeast Asia and South Asia to China. Moreover, local manufacturing in Taiwan and Hong Kong also moved to mainland China. China became known as the “Factory of the World”. Famous brand-name companies in the US and Europe in the garment, shoes, sports goods and toy industries set up CSR departments in their China operations. They started to supervise and to audit the production and human rights performance of major suppliers, while providing factory management with training. Their internal auditors were dispatched to factories to facilitate improvements in working conditions and human rights protection. Meanwhile, organisations specialising in CSR auditing started to provide second-party^① or third-party^② external auditing services in China. Chinese factories came under growing pressure to abide by local laws and international labour standards.

(iii) *Expansion and development* (2001 – 2004). After 2001, brand-name companies in the US and Europe were joined by other Western companies in their CSR efforts. Major Western retailers, electronic appliance manufacturers, chemical manufacturers, car makers and so on launched their own Codes of Conduct for producers and procurement. Momentum picked up in many developed countries. In addition, the UN, the OECD, the World Bank, the ILO, the Asia Development Bank and the national governments of the US, the UK, Germany, Sweden and the Netherlands started to advocate CSR for multinational companies in overseas economic activities. As a result, there is strong pressure with

① A “second-party audit” of a manufacturing facility is carried out by an independent organisation hired by multinational companies, Western buyers or manufacturers. The auditing organisation is an interested party in this.

② In a “third-party audit”, multinational companies, international buyers or manufacturers entrust an independent organisation with supervision of their own CSR performance, as well as that of their supply chains. This independent organisation then appoints another independent auditing organisation, a disinterested party, to perform the external audit. Third-party audits are generally believed to be more independent and fairer.

regard to CSR around the world, which is felt most acutely by Chinese manufacturers which produce the bulk of consumer products for the world. In the single year of 2004, about 100,000 factories receiving orders from the West underwent CSR audits, although most of them may not have done so on their own initiative.^①

(iv) *Beyond auditing* (2005–2010). Since 2004, more and more Western companies have come to realise that external audits alone are not enough to address labour, human rights and OHSE issues at their suppliers effectively. In response, they have begun to foster worker empowerment and capacity building at factory sites. They encourage workers as well as factory owners to participate in CSR initiatives. For example, they train workers on how to monitor violations by factory management and to protect themselves. At the same time, they strengthen training for factory managers so that the latter have sufficient competencies and willingness to handle social and moral issues that may arise in their factories, ensuring sustainable development.

Since a growing number of international consumers are concerned about whether what they buy is produced in sweatshops, Western pressure groups as well as multinationals focus on such CSR issues as child labour, forced labour, fair wages, working hours, employment discrimination, inhumane treatment, occupational safety and health in Chinese companies. Risk control is still the first priority in supply chain CSR, and the simplest method of controlling risks is to audit factories to see whether they are in compliance with local laws and regulations, as well as ILO core standards.

2.2 New approaches to social risk and legal violations

Labour legislation in China has been undergoing reform. Building on the 1994 Labour Law, the *Labour Contract Law* (2008) and the *Law on*

^① In 2004, over 50,000 Chinese factories underwent CSR audits by specialised auditing organisations. The figure was calculated by the ICO based on the audit statistics of the main verification companies, such as CSCC, SGS, BV, ITS and TUV, and the companies' CSR reports. If repeat audits are excluded, the total number of factories audited by them was around 30,000. Assuming that Western buyers and multinationals assign 30 per cent of CSR audits to external auditors, about 70,000 more factories went through internal audits during the same year. Altogether about 100,000 factories received CSR audits.

Labour Dispute Mediation and Arbitration (2008) have contributed to the development of a more comprehensive legal framework for labour, occupational health and environmental protection. However, these laws and regulations have not been implemented rigorously and government officials in particular at local level usually give priority to business interests. Many factories have a long record of violating laws and workers' rights. With a high probability that legal rights are being ignored, Western buyers and campaign groups try to contain and eliminate social risks due to and legal violations on the part of Chinese suppliers by means of four approaches: social risk assessment, social accountability certification, legal assistance for workers and factory capacity-building.

(a) *Social Risk Assessment*

Social risk assessment, also known as social compliance auditing or ethical standards auditing, is the main approach adopted by most Western buyers to identify and control socio-legal risks due to bad working conditions in Chinese supplier factories. It can be either internal or external. As of 2010, most large multinationals from North America, Western Europe, Northern Europe, Australia and Japan have developed Codes of Conduct for their suppliers, as well as including compliance clauses in contracts with suppliers.^① Moreover, they have set up independent social risk control mechanisms to supervise supplier behaviour, conducting internal audits to evaluate the social and legal risks at suppliers' facilities in order to control and mitigate potential business risks. Based on the results of internal social compliance audits, Western buyers make recommendations directly to supplier managements concerning possible improvements to factories through their production, quality control and sales departments. If there is evidence of serious non-compliance and rapid improvement is not evident, Western buyers are likely to cancel orders or cease doing business with the supplier. For example, according to its CSR report, Nike ceased cooperation with a particular Chinese vendor in 2003 because of repeated violations of overtime standards and falsification of records.^②

^① Information is taken from the ICO's internal database for monitoring the ethical performance of the Top 1000 companies in the world.

^② NikeFy04, Corporate Responsibility Report. Available at: http://www.nikebiz.com/responsibility/documents/Nike_FY04_CR_report.pdf.

In order to ensure the quality of social compliance audits and improve the transparency and credibility of supply chain social compliance management, many companies invite independent accreditation agencies, social compliance consultancies, NGOs and even trade unions to conduct external audits. From my observation, Western buyers usually outsource 30–50 per cent of supply chain audits. External auditors are more likely to conduct unbiased audits to help buyers identify social and legal risks among their suppliers.

A social risk assessment could be part of due diligence before issuing an order or concluding a contract, or continuous monitoring after the establishment of business relations. An audit could be scheduled or unannounced. It is aimed at uncovering real conditions at the factory, identifying existing or potential risks and taking preventive measures.

According to ICO field research, so far, most tier-one suppliers in China for Western manufacturers and buyers have undergone social compliance audits.^① After an audit, Western buyers usually make recommendations to their suppliers concerning improvements, even offering coaching and training to tackle any problems found. Some factories take corrective measures immediately, but many others do not, and may try to hide what they are doing from Western buyers, for example, by issuing fake pay slips to workers or doctoring worksheets. To make matters worse, there are consultants and software companies willing to help train factory managers in ways of getting away with such wrongdoing.^② Furthermore, since social compliance auditing has been developing for only a decade, there aren't enough qualified professionals to meet the demand. Many auditors are not experienced enough to identify social risks in factories, which negatively affects the quality and

① Since 2001, an ICO team has developed an internal database to monitor the impact of ethical audits on Chinese factories. The ICO has carried out 1,265 ethical audits and social impact assessments in China, covering the manufacture of textiles, garments, shoes, toys, electronics, cosmetics, ceramics and jewellery. The ICO team has broad contacts with various global verification companies.

② On 15 December 2005, Lei Jian wrote a report for *South Weekend* entitled "Catch Me If You Can: A Seminar on How to Cheat on Social Compliance Audits", which gives a detailed account of how a consulting firm give tips to factory managers on how to deceive auditors and Western buyers, as well as on how to forge documents. On 27 November 2006, *Business Week* in the US published a cover story entitled "Secrets, Lies and Sweatshops", an exposé of how factories and consulting firms are getting better at concealing abuses. Available at: http://www.businessweek.com/magazine/content/06_48/b4011001.htm?chan=search.

credibility of social compliance audits. Nevertheless, social risk assessments or ethical standards audits have become an important means of establishing and maintaining business partnerships between buyers and suppliers. In an environment in which labour law enforcement is weak, factories are reluctant to comply and workers find it hard to protect their rights, external monitoring or internal social compliance audits may help to improve working conditions.

(b) Social Accountability Certification

In the social accountability certification process, an unbiased certification agency is invited by a factory to conduct an independent check according to a standard procedure of the factory environment and social accountability. It issues certification to the factory if all standards are met. Social accountability certification resulted from a combination of pressure from Western consumers and market demand. An increasing number of Western buyers have clear requirements for their suppliers on social accountability, but they are unwilling to establish their own social risk assessments or on-site social accountability certification. The same may apply to suppliers who want to stand out from the crowd amidst fierce competition, believing that independent third-party social accountability is an important way of demonstrating to Western buyers that they are accountable to society.

At present, certification standards recognised by Western buyers include SA8000, WRAP and the ICTI Code. They were developed either by international NGOs or by industry associations.^① Actual certification is carried out by trustworthy third-party agencies. The standards help companies to improve social accountability management and thereby to obtain support from companies and in the market. For example, WRAP and the ICTI Code are semi-compulsory when applied as standards in an industry. If a factory fails to be certified within a given time, it will no longer be able to supply to companies who are members of the respective industry associations. SA8000 is an open standard. Members of SAI are

^① SA8000 is developed by Social Accountability International, an NGO based in New York, USA (see: <http://www.sa-intl.org/>); WRAP certification is carried out by Worldwide Responsible Accredited Production, an independent, non-profit organisation dedicated to the certification of lawful, humane and ethical manufacturing throughout the world (see: <http://www.wrapcompliance.org/>); and the ICTI Code is administered by the International Council of the Toy Industry, the industry association for the worldwide toy industry, whose membership includes national toy associations from twenty countries (see <http://www.toy-icti.org/about/whatis.html>).

obliged only to encourage their suppliers to manage their factories in accordance with SA8000, but they leave it to the discretion of the suppliers whether to apply for independent certification or not. When the European Foreign Trade Association (FTA) launched its Business Social Compliance Initiative (BSCI), it referred to SA8000 when developing its own code. SA8000 is BSCI's most advanced level of certification and it requires that suppliers to members of the FTA around the world obtain the independent BSCI Code certification within three years.

According to my estimates, in China only about 10 per cent of Western buyers request social accountability certification at present. However, the pressure from Western consumers is likely to increase and cannot be ignored by buyers or suppliers. In future, more companies may be expected to demand that their suppliers, especially new suppliers, provide social accountability certification. The International Standard Organization (ISO) has reacted to this situation and is going to launch ISO26000, another social accountability standard. The problem is that many Chinese companies are focusing more on certification than on the management philosophy behind it. They will not apply for certification unless under strong pressure. Consequently, although SA8000 is the most influential and best recognised standard by Western buyers, there are still fewer Chinese factories with SA8000 certification, which is voluntary, than with WRAP and ICTI Code certification, which is a prerequisite for receiving orders. In 2006, China's National Textile and Apparel Council launched CSC9000T, which is being tried out.

(c) Legal Assistance for Workers

Quite a few Western buyers and multinationals have realised that audits alone are not sufficient to control social risks and moral hazard along their supply chains. After a few rounds of "Catch me if you can" games, factories have become much better at cheating. Bribes may have corrupted some auditors. Many companies have reduced ethical audits to a cheating game they play in collusion with the so-called third parties. Therefore, some buyers give workers' empowerment a higher priority than audits and certification. A useful method of resolving labour issues along the supply chain is to offer legal assistance to workers so that they can get involved more easily.

While buyers or multinationals push for ethical audits or factories

apply for social accountability certification, legal assistance for workers focuses directly on workers, their rights, interests and aspirations. Consequently, legal assistance projects are usually implemented by local NGOs in collaboration with multinationals or by multinationals alone. For example, the Institute of Contemporary Observation (ICO) in Shenzhen works with Nike, Adidas, Reebok, Sears and Li & Fung to make it easier for workers to file complaints with local governmental agencies.^① Burberry from the UK operates a hotline for workers to provide a communication channel to the management, NGO and the buyer, and to help resolve problems raised by workers.^② The Asian Foundation, the Levi's Foundation, the All China Women's Federation Guangdong Province Branch and Guangdong Province Legal Assistance Centre regard legal assistance for workers as an important part of their cooperation. However, such projects are still insignificant in CSR efforts in China.

(d) Factory Capacity-Building

Nevertheless, more and more buyers and multinational companies have noticed that it takes capacity-building as well as accountability to improve supply chain social accountability. When more and more factories find that their problems are so serious that they can no longer cover them up and that a sustainable business model is the only way forward, they may be willing to collaborate with buyers and multinationals in capacity-building, too. Since 2003, almost all major buyers from the US and Europe, and all multinational companies have been offering various training courses to suppliers on procurement policy, ethical trade and ways of improving working conditions.

In response to diverse factory needs and complex factory realities, capacity-building projects differ from one another. There are multilateral

^① In 2001, together with Business for Social Responsibility, a not-for-profit organisation based in San Francisco, the ICO in Shenzhen carried out a field survey of legal protection for migrant workers in Guangdong Province, resulting in *Manual on Legal Protection for Migrant Workers* and *Poster on Labor Protection in Guangdong*. In January 2003, over 500 suppliers to Nike, Adidas, Reebok, Sears and Li & Fung located in Guangdong Province set up an internal mechanism for workers to file their complaints and improve their CSR supervisory capability.

^② In November 2007, the ICO and Burberry launched a workers' hotline among Burberry suppliers to offer assistance to workers in legal affairs, daily life and psychological health. The hotline is accessible to over 15,000 workers in 15 factories in Guangdong, Fujian, Jiangsu, Shanghai and Hebei.

projects such as the Global Alliance for Workers and Communities co-founded by Nike, Gap, the World Bank and the International Youth Foundation;^① a training programme for female migrant workers in the Pearl River Delta organised by Levi's and the Asian Foundation;^② a training programme on factory occupational safety, health and environmental (OSHE) committees co-organised by the MacArthur Foundation, the North American Border Processing Zone Occupational Safety and Health Network, Nike, Adidas, Reebok, the Hong Kong Christian Industrial Committee, Asia Monitor Resource Centre Limited, the Chinese Working Women Network and the Hong Kong Workers' Education Network;^③ the Chinese small and medium-sized enterprise ILO labour standards and CSR training programme run by a US China-task force and the ICO;^④ a co-training programme for both managers and workers organised by SAI, ITGLFTU, the ICO and the China Working Women Network (CWWN);^⑤ and Project Kaleidoscope run by Disney,

① This project started in 2001 with workers and supervisors at Nike's manufacturers in Guangdong and Fujian Province. It covered courses on occupational safety and health, physiological and reproductive health for women, HIV/AIDS prevention and so on. It ended in December 2004.

② This project has been running since 1999. The Centre for the Study of Contemporary China at Tsinghua University, the Guangdong Provincial School for Female Cadres, the All China Women's Federation Guangdong Branch and the Women's Department at the All China Federation of Trade Unions Guangdong Branch co-organised training for female migrant workers, as well as legal assistance in the Pearl River Delta.

③ This project was carried out between 2000 and 2002 at three shoe manufacturers in Guangdong Province supplying Nike, Adidas and Reebok. Its aim was to build the capacity of OSH committees and to strengthen workers' ability bring about factory improvements.

④ Between October 2003 and December 2004, the ICO in Shenzhen offered 12 training courses on ILO labour standards and CSR in ten cities in Guangdong, Zhejiang, Shanghai and Shandong. Most of the 1,200 people in the audience were SMZ managers or local trade union officials. The training sessions tried to deepen their understanding of the relationship between CSR, competition and business growth, and to add to their global competitiveness. Those training courses were given in collaboration with local trade unions, chambers of commerce or businesses.

⑤ This joint project between SAI, ITGLFTU, the ICO and CWWN lasted between 2003 and 2005. Workers and managers at five factories in the Pearl River Delta received training together. Employee Committees were set up to strengthen communication between workers and management.

McDonald's and some US NGOs.^① However, a far greater number of training programmes are targeted at factories or factory workers organised by a single multinational company or buyer.^②

As varied as they are, those projects attempt to train factory workers as well as managers with a view to enhancing their participation in improving CSR. Since all these projects stress the participation of key actors in factories, they are able to motivate the managements of suppliers to improve working standards. These capacity-building programmes represent an important trend for multinational companies and international buyers who want to see better CSR among their Chinese suppliers.

3. The CSR Agenda in China

Although CSR initiatives which originated in the West in the 1990s have influenced the working and living conditions of workers in China's export manufacturing sector, all changes have taken place quietly within factory walls, with Chinese society and government watching silently from the sidelines. Only a few NGOs and academic institutions have attempted to intervene and to lend momentum to local CSR.

In early 2004, however, major controversies arose over media revelations of the CSR challenges confronting Chinese factories.^③ Were Western companies here to "eliminate sweatshops" and "save Chinese workers", or to "create sweatshops" and "exploit Chinese workers"? Was CSR a "trade barrier" erected by Western countries or a "carrot" to protect Chinese workers and the environment? The debate became heated.

① This project was implemented between 2002 and 2005 among Chinese suppliers for Disney and McDonald's. It attempted to help factories resolve issues concerning workers' rights, human rights, environmental protection, OSH and management by improving auditing, encouraging workers' participation and so on.

② Nike, Adidas, Reebok, Gap, Timberland, HP, Fuji Xerox, Bestsellers, Pentland, Burberry, Primark and Stella have offered training programmes to managers and workers at their Chinese suppliers', either on their own or by hiring a professional agency.

③ In February 2004, a piece of news was well broadcast by all major media players in China: after May 1, 2004, companies can't export to the US without an SA 8000 certificate. This turned out to be a rumor. However, it did shock many export-oriented processing companies, government officials and scholars into better understanding of SA8000 and CSR.

The Chinese government, the general public and Chinese companies had mixed feelings. Had Western companies interfered with China's domestic affairs, threatening China's economic and political security? Was infiltration being attempted by hostile forces in the world lurking in the shadows behind Western companies? Were they here to bring about "peaceful evolution"? Were they trying to use social accountability standards to block exports from China?

In fact, as early as 2001, an industry association which had formerly been a government agency issued a circular to urge local governments and companies to resist CSR supervision by Western companies, claiming that it was a way of gathering economic intelligence and that it interfered with the internal affairs of Chinese factories (personal communication to the author).

However, after more heated debates and with Chinese companies increasingly facing up to external realities, the Chinese government, academia, the general public and members of the business community started to comment more favourably on CSR in 2005. That year also saw the formulation of CSC9000T by the China National Textile and Apparel Council. The Chinese Federation for Corporate Social Responsibility was established by academics and the business community, and CSR was included in the *Company Law* amended in 2009. In 2006, the Shenzhen Stock Exchange issued *Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies*. In 2009, the Shanghai Stock Exchange and the China Securities Index Co. Ltd. jointly issued the *Announcement on the Launching of a SSE Social Responsibility Index*. In January 2009, Shanghai implemented the country's first local CSR standard. In October 2009, Hangzhou Municipal Government issued its *Opinions on Strengthening CSR*, setting clear requirements and standards for corporate social responsibility development. On 28 December 2009, Nanjing started to implement its own local CSR standard. Zhejiang Province, Hebei Province, Shanxi Province and Shenzhen have also issued policies on CSR. On 22 November 2008, President Hu Jintao stated at the Sixteenth APEC Economic Leaders' meeting that businesses should take global responsibility. They should take the initiative to include social responsibility in their business strategy, abide by local laws and international business practices, improve their operational model and strike a balance between economic returns and social consequences. On 2

February 2009, Premier Wen Jiabao stated in his speech at Cambridge University that all enterprises should take up their social responsibilities and that within the body of every businessman should flow the blood of morality.

It can be concluded from the above that the attitude of the Chinese government has strongly influenced the general perception of CSR in China, ranging from rejection to acceptance and praise. Thanks to the Chinese authorities and government officials, Chinese businesses, NGOs, chambers of commerce, trade unions and academia have all been enthusiastic about CSR since 2005. As of 2010, 188 Chinese organisations have signed the UN Global Compact, of which 56 have been disqualified for reporting failures. In 2009, 533 CSR reports were issued by Chinese companies, more than four times the number in 2008. A total of 78 per cent of the companies that published CSR reports were listed either onshore or offshore, including state-owned monopolistic companies that have been widely criticised by the public in China for social discrimination, poor services and corruption. They included companies such as CNPC, Sinopec, State Grid, China Mobile and China Telecom.

4. CSR: Merely for Show or a Firm Commitment?

After considerable efforts over a number of years and thanks to multiple driving forces both at home and abroad CSR now has general recognition and support from the Chinese public, government and society. However, this does not necessarily mean that CSR has become an integral part of Chinese business practice. Many people are still sceptical, since in reality many Chinese companies apply CSR as a kind of cosmetic. Their behaviour or logic has not changed much. Moral elements are rarely evident in government enforcement, business practice or consumer behaviour.

As for the government, although there have been measures and speeches to encourage businesses to take up more social responsibilities, and laws and regulations are there to protect workers and the environment, enforcement is far from effective owing to the lack of respect for the rule of law on the part of many government officials. Economic growth is still given precedence over environmental protection.

Without independent trade unions, with limited freedom of association and limited collective bargaining power, workers' social status has been on the decline, resulting in even less pressure on government officials. Under such circumstances, voluntary or preferred CSR standards and policies remain only on paper.

As for enterprises, although close to 200 Chinese companies have signed the UN Global Compact, their pledges amount to little more than decorations on the walls of the offices of senior executives. State-owned monopolistic companies, such as CNPC, Sinopec, State Grid, China Mobile and China Telecom have committed serious violations of consumers' rights and have damaged the environment both at home and abroad, while extolling their own CSR achievements. While most suppliers still seek to benefit from violations of labour and environmental laws and regard low wages, low benefits and long working hours as crucial means of making a profit, CSR will play no real role in their operations.

As far as consumers are concerned, government officials and business people in China have the greatest purchasing power. There is basically no awareness of workers' protection or the operation of the law among them, and thereby no incentive to use their consumer power to pressure companies into better CSR performance. The remainder of the Chinese people, who are mainly poor or only moderately well-off, have a very limited choice of products in an environment in which food safety scares and business frauds are common. As a result, they give much more thought to the safety, quality and price of the products they buy than the environment in which those products are made.

It is because of these three factors that there is still insufficient pressure or motivation in China to really promote CSR. The jury is still out as to whether the buzz term "CSR" will actually develop into a driving force in China's sustainable socio-economic development.

The Foxconn Production Model and the New Era of Student Workers

Pun Ngai and Lu Huilin

1. Introduction

As the largest contract electronics firm in the world, Taiwanese-owned Foxconn Technology Group (hereafter: Foxconn) declares itself to be “the most trusted and preferred partner in all aspects of global electronics outsourcing to help customers de-risk their business” (Hon Hai Precision Industry 2010). In 2010, Foxconn recorded all-time high annual revenues of US \$79.1 billion—even higher than some of its corporate customers, such as Microsoft, Nokia, or Dell.^① The company has expanded its “3C” product range—computers (iPads, laptops, netbooks, desk-top PCs), communications equipment (iPhones and mobile phones) and consumer electronics (iPods, music players, cameras, game consoles and LCD TVs)—to include three more “Cs”: cars (automotive electronics), content (e-book readers) and health care (medical technology). It currently has 30 production facilities in mainland China and dozens of manufacturing and R&D centres in India, Mexico, Brazil, Czech Republic, Russia, Australia, Japan, the UK and the US. By mid-2011, the technology giant is projected to capture 50 per cent of the world market in electronics manufacturing and services.^②

Foxconn’s management commands an enormous and ever growing

① “Foxconn sees on-month revenue growth in December”, *Digitimes*, 11 January 2011.

② “Foxconn rides partnership with Apple to take 50 per cent of EMS market in 2011”, *iSuppli*, 27 July 2010.

workforce of close to one million in China alone, most of whom are young rural migrants born in the 1980s and 1990s. A subset of this working group is full-time student interns from middle- and higher-level vocational and technical schools all over the country; some of them as young as 16 years of age. This combination of nimble-fingered, cost-competitive migrant workers and intern labour is at the heart of Foxconn manufacturing motor, running non-stop, 24 hours a day. While the use of young student interns as flexible labour has appeared in other booming industries such as automobiles, the reliance on students has been far more important to Foxconn, “the king of global electronics outsourcing”, subject as it is to seasonality and high speed-to-market.

In response to buyers’ demands and public pressure, Foxconn put in place a Global Social and Environmental Responsibility Committee in 2007 (Foxconn Technology Group, 2010a: 6), following the media exposure of the “iPod City” scandal in June 2006 (Joseph 2006), within the framework of which excessive and forced overtime work at low wages and inhumane treatment were reported at flagship Foxconn Shenzhen and Kunshan plants along the southern and eastern coasts. As a member of the global Electronic Industry Citizenship Coalition (EICC), Foxconn has committed itself to the common standards set forth in the EICC Code, as well as in its own Foxconn Code of Conduct, covering five key areas: labour and human rights, health and safety, environment, management system and ethics (Foxconn Technology Group 2010a: 11–12). But the suicide tragedy at Foxconn in 2010, once again, delivered a wake-up call not only to Foxconn but to the entire electronics industry (Electronic Industry Citizenship Coalition 2010).

This chapter aims to go behind the façade of modern high-tech production to document working conditions at Foxconn through a large-scale survey. Under its global just-in-time manufacturing and delivery regime, Foxconn workers on the factory floor accelerate their work pace to achieve output targets measured in seconds. Are student interns disciplined in the same way as other full-time workers on the production line? Do interns acquire knowledge and skills on the job? What effects do the Foxconn corporate responsibility programmes have on these young students, if any?

Survey Background

Between January and August 2010, there were 17 employee suicides or attempted suicides at Foxconn, the world's largest OEM (Original Equipment Manufacturer). The 13 deaths and four casualties, known as "chain suicides" across the media, attracted considerable public attention. Between June and August 2010, over 60 college scholars and students from mainland China, Hong Kong and Taiwan conducted field studies at Foxconn's factories on the Chinese mainland to find out the truth and to get a better understanding of the management model of OEMs.

The field studies covered 12 Foxconn factories in the nine cities of Shenzhen, Nanjing, Kunshan, Hangzhou, Tianjin, Langfang, Taiyuan, Shanghai and Wuhan, located in Northern, Central, Eastern and Southern China. There were both questionnaires and interviews. Altogether, 1,736 valid questionnaires were returned, including 1,500 from the Shenzhen factory and the Kunshan factory, the two oldest factories with the largest worker population. In-depth interviews in other factories generated about 300 cases. Besides, 14 investigators were able to collect a massive amount of first-hand information by working on Foxconn assembly lines for several weeks.

The New Era of Student Workers

It was Foxconn that introduced student workers in China, the country sometimes referred to as "the Factory of the World". Student workers have replaced regular workers, male and female alike, at Foxconn factories to a considerable extent. Why does such an industry giant use so many student workers? How are student workers treated? Is there any difference in terms of compensation, working hours and intensity of work between them and full-time workers? What do they think of internship, their school and the company?

2. Student Workers at Foxconn

Size of Student Worker Population

Foxconn's factories in Shenzhen, Kunshan, Taiyuan and Wuhan use a large number of student workers. In some workshops, student workers

account for as much as 50 per cent of total headcount. For example, according to a student worker testing cell phone functionalities on an assembly line in the Guanlan, Shenzhen factory, about half of the over 1,000 workers in her workshop were students. Among the 2,600 workers in a workshop under the CMMSG Business Group in Longhua, Shenzhen, about 700-1,000 were summer interns. Questionnaires returned from the Wuhan factory revealed that 17 per cent of the workers there were students. According to hiring agencies near the Foxconn Kunshan factory, there were 10,000 summer interns there, out of a total headcount of 60,000.

Table 1 provides information on some of the schools that sent student interns to Foxconn, confirming the large number of summer interns at the company.

Since strict random sampling was impossible, the questionnaires used in this survey cannot give the exact number of student workers at Foxconn. However, it is an indisputable fact that there are a lot of student workers at this company. Foxconn management, in an attempt to refute the survey findings, declared that “at no time” did interns ever make up more than 15 per cent of the 937,000 employees in China, even during summer time (Foxconn Technology Group 2010b).

Table 1 Schools sending student interns to Foxconn

Name of school	Number of interns	Site
Puyang Entrepreneurial Training Centre	over 1,000	Foxconn Shenzhen (in three batches)
Hekou Lianying Vocational School	over 1,000	Foxconn Shenzhen (in two batches)
Chongqing Qianjiang District Ethnic Vocational Education Centre	about 800	Foxconn Shenzhen
Chongqing Fuling Chuangxin School	over 400	Foxconn Kunshan
Taohe M&E Engineering School	over 100	Foxconn Kunshan
Henan Business Electronics School	over 100	Foxconn Shenzhen
Shandong Liaocheng Technical School	72	Foxconn Kunshan

Schools and Majors

According to our interviews and briefings by Foxconn's HR department, most student workers come from vocational technical schools at either secondary or tertiary level. Most student workers we encountered were second or third year students at those schools. Aged between 16 and 18, they are still minors by legal definition. Most of them are sent to work at Foxconn by their schools. The internship usually lasts from two to three months in summer. Some work six to seven months, or even a year. Summer interns are usually from secondary-level vocational schools from Henan province, Anhui province, Hubei province and Sichuan province. According to Foxconn's HR department, there are also a small number of students from junior colleges and colleges. There are also agreements between Foxconn factories and some schools that allow students who are graduating or at the internship stage of their programme to stay beyond the summer.

Most student workers major in digital control, lasers and teaching, whose linkage with assembly work is not clear. In that sense, Foxconn abuses the internship system.

Labour Contracts and Wages

Almost no students in our study had labor contracts with Foxconn. Some mistook the agreement between Foxconn and their school as the labour contract. Some said there would be a labour contract only when they become full-time employees after completing the half-year internship. Others simply said there was no such thing.

Although performing the same jobs as full-time employees, student workers are only paid at or slightly above the local minimum wage. For example, the base wage for student interns at Foxconn Shenzhen is 1,200 yuan. Compared to full-time employees enrolled in government-run social security schemes, student interns-whose status remains that of full-time students-are deprived of legal protection with regard to medical care, work injury insurance and old-age pensions. Worse still, while full-time employees are eligible to take part in job performance evaluations after a six-month probationary period, interns do not enjoy the right to appraisal, despite the fact some of them are committed to a one-year internship programme. Full-time employees had their wages increased

from 1,200 yuan to 2,000 yuan in Shenzhen, effective 1 October 2010. The wage and benefit gap between employees and intern workers is wide.

Overtime work and overtime pay vary from factory to factory, from business group to business group. Most respondents said that the usual overtime was two hours per day, that they could have one day off per week and that their overtime pay was the same as that of full-time employees. A few said there was no overtime pay although they did work overtime together with full-time employees, because they were less efficient (to cite their supervisors, “you can’t get overtime pay because you haven’t contributed to profitability”). A few said they didn’t work overtime because they were still minors. Most said that they had to work night shifts every three weeks or every month.

The Ministry of Education stipulates that students can only work eight hours per day. However, the majority of student workers at Foxconn work ten hours each working day plus a Saturday or a Sunday, or 20 hours overtime per week. In addition, there is so-called “voluntary” overtime if workers fail to reach their quota for the day. According to Xiaocui, an Anhui student who had just turned 16, workers at her assembly line were generally slower, so much so that they knocked off much later than others. But they didn’t get paid more, because working time beyond ten hours per day was not taken into account. Moreover, student workers were required to work night shifts, which is quite inhumane considering that most student interns are still minors. According to Xiaocui, they worked night shifts every three weeks. She felt bad after each round of night shifts, finding it hard to sleep at night.^①

In short, student workers at Foxconn are treated exactly the same as full-time workers in terms of long working hours, wages, no overtime pay, positions held and working conditions, although they have a student ID and there is no employment contract or social insurance.

3. Flexible, Cheap and Docile Labor

In literal terms, student workers are students working for employers.

^① Interviews at Foxconn’s Guanlan factory in Shenzhen.

The law may address them as “interns”, but are they students or workers? Are they entitled to the same rights and benefits as workers in the legal sense? According to the 1995 *Opinions on Several Issues in the Implementation of Labour Law* issued by the Ministry of Labour (Circular No. 309), “Students who work in their spare time shall not be regarded as being in formal employment, and labour contracts are optional.”

First of all, there is no formal employment relationship between student workers and the organisations they work for. Issues such as wage arrears, work-related injuries or vocational diseases are not covered by laws such as the Labour Code. The law defines internship as working with a student ID. Working for an entity as a student, including working during vacations, is internship, not employment. The internship is not protected by the Labour Code. Generally speaking, if full-time students are sent by their school to work, or if they work in their spare time on their own initiative, they are not protected by the *Labour Code*, neither are they deemed to be in a formal employment relationship. Disputes between them and the organisations they work for are not labor disputes. Work-related injuries and other disputes can only be addressed as civil disputes.^①

Secondly, labour costs are much lower when enterprises use workers not protected by labour laws and regulations (domestic enterprises have to pay around 30–40 per cent of workers’ basic wage in various forms of employee insurance and benefits). In peak season, when there are a lot of rush orders (from May to November every year), companies are desperate for cheap labor, with certain skills but easy to manage. Chinese student workers, as the cheapest, most flexible and most docile work force in the “Factory of the World”, have become a magic weapon for an OEM giant such as Foxconn. In peak seasons when there are labour shortages, Foxconn is able to obtain a steady supply of cheap, young but highly qualified workers by reaching agreements with vocational or technical schools at secondary level, as well as with colleges. In slack periods it can dispose of those workers without additional costs—such as severance pay and social insurance—by asking the schools to take them back.

① Source: <http://www.cn12333.com/>

As one worker at Foxconn's Guanlan factory in Shenzhen comments:

Foxconn did this last year and the year before last. It hires short-term student interns in summer. Because around the Chinese New Year, there isn't much work and no need for so many workers. By that time they (student workers) have finished their internship and are already gone. Without those students Foxconn might hire temporary workers.

Students or Workers?

The so-called "interns" at Foxconn are randomly assigned by a computer to assembly line positions unrelated to their major. This is not internship in its true sense.

The Ministry of Education stipulates that "students can only work eight hours a day. There should not be any overtime." In reality, most students work two extra hours per day, plus overtime, which indicates that factories treat them as regular workers instead of interns. According to the *Notice of the Office of the Ministry of Education on Aligning Secondary Vocational School Internship with Technician Shortages at Enterprises* (2010) "students shall not work in positions that are risky, not in line with their major and otherwise unsuitable for them, such as high-altitude operations, downhole operations, handling toxic, inflammable or combustible substances, Class 4 Intensity Work as regulated by the State, and entertainment outlets such as bars, night clubs, karaoke bars, and public baths."

However, neither Foxconn nor the school authorities take care to keep students away from environments where there is radioactivity or a lack of safety measures (see below for details). Examples abound of students working at positions not in line with their major. Xiaoling, a business major, became an assembly line operator; Xiaohui, a digital control major, processes cell phone casings for Apple; Xiao Wang, a car repair major, labelled computer fans; Xiaotang, who loves his machine tool major dearly, made the "Start" button for Apple computers. Here are some complaints from students:

The school deceived us.

All my studying, to no avail.

Whatever your major is, you can work here. The work here has nothing to do with what you study at school...

You can't learn much skill at Foxconn, because you simply repeat one or two motions every day, just like a robot...^①

Those comments are adequate proof that Foxconn used them as regular workers in the guise of “internship”. Student workers are handy when there is a labor shortage. In peak seasons they help increase output and profits for Foxconn, while in slack seasons they do not add to costs. Foxconn takes advantage of loopholes in the law—for example, no need for a formal contract or social insurance—to use a large number of cheap student workers.

Work-related Injuries

We met Xiaoling, an Apple assembly line operator, during our field study at Foxconn's Kunshan factory. Having just left work, the young girl looked tired as she sat at a roadside food stall waiting for her supper. What follows is a transcript of our conversation.

Xiaoling: *I came here from school only a month or so ago. My job every day is to pare the rough edges off products under a microscope. My eyes get irritated from staring into the microscope, my stomach aches and I feel sick. Moreover, I have to take this knife with me on and off duty. [A wry smile.] Look at my hands.*

Interviewer: *All these scratches!*

Xiaoling: *Yes, thanks to the knife.*

Interviewer: *Isn't there any protective gear?*

Xiaoling: *No use at all. My hands are still like this. Anyway, gloves slow us down. There's an awful lot of work for us every day. Sometimes I'm too busy to use the bathroom or eat.*

Interviewer: *If it's such hard work and you're hurt so much, why don't you quit?*

Xiaoling: *The school brought us here. I don't want to work anymore, but I can't quit. There are so many troublesome formalities to go through if we want to quit!*

^① From interviews at Foxconn's Kunshan factory and Wuhan factory.

Xiaohong, a student worker at Foxconn's Wuhan factory, told us,

“The wax nail gun overwhelms us girls. It weighs several kilos. After a day's work our shoulders and arms hurt, and our hands can't stop shaking. Just yesterday, a girl's shoulders hurt so much that she couldn't move...”

Xiaoli, a student worker at Foxconn's Guanlan factory in Shenzhen, complained:

“I arrived in Shenzhen weighing 70 kilos. In two months I lost nearly 10 kilos ... Mainly because of fatigue. My shoulders and legs feel sore all the time since I work standing up.”

The working conditions for student workers vary depending on the type of work and position they are assigned to. Interviews reveal that Foxconn works students very hard, harder than the human body can tolerate, which can be detrimental to their health.

This is how Xiaochen, another student worker, remembers the three-party internship agreement between the school, Foxconn and the individual student:

There was a column asking whether there would be anything harmful to health at work, such as noise and radiation. The column was simply crossed off, as if indicating there would be no such thing. But there is in reality. My workshop is so noisy that my ears hurt. Some types of work are toxic or hazardous, such as tin soldering. But we weren't given any choice before signing the agreement.^①

In some cases, students didn't have any say at all in the three-party agreement. They were simply told to go to work at a certain Foxconn workshop.

According to student workers, Foxconn did not arrange social insurance schemes for them. However, Foxconn's HR department claims, “Instead of social insurance we have employer's liability insurance that covers student workers. The company medical reimbursement policy

^① Interviews at Foxconn's Nanjing factory and Kunshan factory.

applies to them as well as full-time workers.” That is to say, if any student worker gets sick or is operated on, he/she pays out of pocket first and then gets reimbursed by the company. However, interviewers found that some student workers had to pay for medical expenses out of their own pocket when they came down with flu or other diseases since they did not have a social insurance card,^① without being informed by Foxconn that those expenses could be reimbursed. Since there is neither medical insurance nor insurance against work-related injuries for student workers, students injured at work have to claim compensation from the employer via civil litigation. However, generally speaking, the protection offered to employees by the Civil Code is far weaker than that offered by the Labour Code, while the procedures are more complex and lengthy. Being minors, students should be better protected. However, as interns these students are not even entitled to the most basic protection. This is one of the most serious issues found by the investigators.

4. From School to Enterprise: A Chain of Exploitation

In 2006, the Ministry of Education issued *Several Opinions on Comprehensively Improving the Quality of Tertiary Vocational Education* (Circular No. 16), calling for cooperation between schools and enterprises, highlighting the importance of practical training and reforming the talent development model. The core of this circular is cooperation between schools and enterprises, and the integration of work and study.

This circular was intended to enhance corporate social responsibility, but in reality it caters to the corporate drive for profitability. Thanks to it enterprises have access to a steady supply of student workers “approved by the State”, who are handy during peak periods but do not add much to costs during slack seasons, and who make up in part for the shortage of migrant workers in recent years.

For the majority of tertiary and secondary vocational schools, this circular has released a new source of funding. “Integration of work and study” and “training of all-round personnel” read well on enrolment

^① Interviews at Foxconn’s factories in Longhua and Guanlan, Shenzhen.

advertisements, justify the higher tuition fees and bring additional income for the school.

Enterprises and schools are ideal partners for one another.

Foxconn makes student interns work 10 hours per day and minimises labor costs by being liable only for employer's liability insurance. Schools seek out internship opportunities at highly profitable enterprises without heeding whether the jobs offered there are in line with what students are studying. It seems that Foxconn and schools are complicit in neglecting the internship management methods stipulated in Article 6 of the 2007 joint Ministry of Education and Ministry of Finance document, whereby teachers are supposed to supervise the internship programmes, establish logbooks for interns' progress and provide guidance to interns throughout the training and learning process. Junior students are sent to work as well as senior students. Schools turn a blind eye to overtime, wilfully violating the rule made by the Ministry of Education that "vocational schools and enterprises shall abide by laws, regulations and relevant policies on educational training, employment, workplace safety, and the protection of the rights and interests of minors. They shall make proper arrangements to protect the rights and interests of students who hold internship or production and service delivery positions."

Moreover, schools and enterprises also use hiring agencies despite the stipulation by the Ministry of Education that "no hiring agencies shall be involved in the organisation and administration of internships" .

According to a hiring agent based nearby Foxconn's Kunshan factory:

A friend of mine teaches at a technical school in Shandong Province, so I work with that school. In the past I didn't charge students anything for introducing them to Foxconn, but teachers did. Foxconn paid me 30 yuan per student. But now it is different. I charge students directly, as well as taking a cut from schools. All the money comes from students anyway.

Hiring agencies collude with managers at different business groups inside Foxconn. One agent was very frank:

Owners of hiring agencies have connections with company managers.

Company managers tell agencies the number of students needed, and agencies find the right number of students for them. The profits are divided fifty-fifty. If an agency wants more business, it has to bribe company managers. The bribery ranges from tens of thousands of yuan to hundreds of thousands of yuan. But it pays off.

Along this chain of exploitation, schools, enterprises and hiring agencies go all out to get the most out of “student workers”. Some approaches are illegal. Some are absurd.

Absurdity No. 1: Teacher Supervisor?

Students sent to work at Foxconn by schools often arrive with a designated teacher. Normally, a teacher is a person who passes on knowledge and skills to students at school, and who helps solve problems encountered by student interns. But at Foxconn the role of the teacher has changed.

According to a staff member at the HR department of Foxconn’s Shenzhen factory, they stopped hiring from the open market after June 2010 (after the twelfth chain suicide). Instead, they hire directly from schools. Schools assign a teacher to the factory site. The “teacher”, however, might be merely a class president at school, or a student close to the school authorities. The teacher is supposed to provide students with general services and counselling, such as asking students to check in with him or her every day and handling student complaints. However, students interviewed by us described their “teachers” as follows:

The teachers are here to prevent students from leaving the company without permission. They persuade complaining students to stay on.

Some student workers at Foxconn’s Longhua factory in Shenzhen:

The teacher is here to stop us from leaving before the internship is over. When you need him, he is nowhere to be found...

Some students at Foxconn’s Guanlan factory in Shenzhen:

I don’t know much about the content [of the internship agreement].

The school teacher told us to sign it whether we read it or not. Since my classmates had all signed, I didn't bother to read it. The [duplicated] agreement is kept by the teacher, not by us.

A student worker at Foxconn's Wuhan factory:

Instead of guiding students in their subjects, teachers assigned to factories focus on smooth production, quietening down grumbles and disturbances, preventing students from leaving the factory without permission. They are "supervisors" serving the owners, and they get paid based on the number of students under their charge.

Turning out obedient student workers is the top priority of those teachers, because any "troublemaker" among students risks termination of Foxconn's "cooperation" with the school.

In a few cases students had no access to the school or the assigned teacher throughout their internship. According to Xiaochao, a student from Chongqing at Foxconn's Kunshan factory, there was an assigned teacher who never contacted them and whom students could hardly locate. Less than half a year into his internship at Foxconn, Xiaochao was hospitalised after being involved in a fight. The next day his supervisor announced to the entire workshop that he had been fired. The school remained silent the entire time.

Monotonous assembly line work, a hierarchical structure on the shop floor, as well as a lack of social support from families and friends have severely damaged student workers' psychological health. However, teachers assigned by schools are playing the role of factory supervisors. They fail to provide guidance to students in their study subjects, in their daily lives and with regard to mental health issues. They also fail to make representations to the company about the legitimate rights and interests of student workers. Something is very wrong with China's vocational education system today.

Absurdity No. 2: Paying Interns?

The majority of respondents in our survey said that, in addition to the substantial tuition fees they had to pay their school, they had to pay extra to work at Foxconn. Xiaoliang, a Chongqing student working at

Foxconn's Kunshan factory, said they had given 800 yuan to the school before coming to Foxconn as travel expenses. However, an economy train ticket from Chongqing to Shanghai only cost about 200 yuan; the school pocketed the rest. Xiaohui, another student worker at the same factory, said he had paid 3,000 yuan in tuition fees to his school. After a year and a half's study, he was sent to work for Foxconn with 300-400 others. Before leaving for Foxconn, they had paid another 5,600 yuan to the school, including 4,000 yuan tuition and 1,600 yuan as a so-called "placement allowance". They had paid for the one-way fare to Foxconn and the school would cover the return trip.

Such exorbitant "internship fees" make one wonder whether schools benefit even more from students than Foxconn does. Are they institutions of learning or commercial hiring agencies?

Absurdity No. 3: Tests at the Factory

Even more absurd are examinations held by schools in factories where their students are to work for a long period of time, ostensibly so that teaching and learning could "proceed smoothly to a successful end".

Student worker Ayuan: *We had an exam the other day.*

Interviewer: *But how?*

Student worker Ayuan: *A teacher brought the exams to us. The funny thing was we didn't even have a textbook. The teacher brought one. We copied from the textbook onto the exam paper. That was all.*

Should schools be oriented towards academic work or production? In an environment in which schools are symbiotically linked to enterprises, everything else has to make way for economic gains.

As an OEM giant in the electronics industry, Foxconn never runs short of orders from major international brands. During peak seasons when there is a large number of rush orders, student workers are the best answer because they are flexible but do not add much to the overall cost. Foxconn does not train them properly. Instead, it assigns them randomly to monotonous work on assembly lines. Moreover, it places them at great risk by not providing social insurance. It abuses student workers in the name of work-study programs or corporate social responsibility.

5. Norms to be Established for Work-study Programmes at Enterprises

In vocational education students need to experience front-line operations at factories and reinforce what they have learned in the classroom. However, some enterprises and schools abuse work-study programs by substituting students for regular workers, even taking commissions for it. This sickness in current vocational education and the impunity with which capital appears to be able to operate in China will lead to even greater social problems. It is high time for the relevant authorities to take corrective measures.

The competent authorities should strengthen the supervision of enterprises that use student workers:

- ferreting out and censuring enterprises that abuse student workers for greater profits;
- supervising the implementation at enterprise level of the relevant laws and regulations: for example, “student interns shall not work more than eight hours a day, work overtime or work night shifts”;
- supervising the implementation at enterprise level of the *Regulation on Internship and Probation*, including the provision of jobs that fit students’ majors and proper guidance;
- supervising enterprises’ efforts to provide student workers with safe working conditions and basic security.

Competent authorities should also strengthen the supervision of work-study programmes at vocational schools:

- penalising without exception those schools that charge intermediary fees, transportation expenses and sign-up fees;
- ensuring that schools purchase internship liability insurance for students;
- ensuring that teachers leading student interns fulfil their responsibility of protecting, guiding and educating the latter;
- raising students’ awareness of applicable laws and self-protection;
- specifying the length of internship to prevent unscrupulous enterprises or schools from exploiting students.

This case study demonstrates the depth of casualisation of employment in China's capitalist transition, led by powerful technology corporations such as Foxconn, with the coordination of local government-subsidised and privately-run vocational schools. The transformation of students into intern workers fuels the growth of Foxconn production across all parts of China and hence generates local economic development, but this model of flexible accumulation is built on the deprivation of the basic human and labour rights of young student interns. There are no available statistics on industrial accidents involving intern labour as such cases are not recognised as "work-related injuries". Aggrieved interns are also invisible to labour dispute arbitration committees as they are not defined as "workers". Adequate legal and social protection for this sub-tier segment of the workforce is long overdue. Worse still, student interns are hidden from the purview of labour auditors. Corporate social responsibility movement leaders have not paid due attention to the interests of intern workers in their global supply chains, including equality of treatment, respect at work and the right to join associations or trade unions of their own choice. Against the background of a lack of action on the part of the Chinese state and international civil society, Foxconn and other enterprise owners feel free to take advantage of this massive pool of low-cost student labour without real rights.

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Corporate Social Responsibility in Supply Chains: Improving Working Conditions through Dialogue and Cooperation

Maren Knolle

1. Introduction

Globalisation puts multinational enterprises (MNEs) in an area of potential conflict; as the main drivers of globalised markets, MNEs are accused of taking advantage of weak social and environmental regulations in developing countries. The production of textiles and clothing is one example of a highly globalised sector. In particular, labour-intensive production stages, such as the manufacturing of apparel, have been shifted to low-wage countries where the enforcement and implementation of environmental and social standards is often weak. For almost two decades, retailers in the industrialised countries have been attacked by non-governmental organisations (NGOs), such as the Clean Clothes Campaign (CCC), for their failure to ensure better working conditions in the worldwide production of their goods. In response to the growing stakeholder pressure regarding the environmental and social performance of companies, the concept of Corporate Social Responsibility (CSR) emerged as a framework within which companies can commit themselves, on a voluntary basis, to sustainable management by integrating social and environmental aspects in their business operations and in their interaction with their stakeholders (European Communities, 2001: 8). This chapter provides a brief overview of the CSR activities of brands in their supply chains, focusing on the social dimension. One current trend of CSR activities is the commissioning and running of training programmes for suppliers, with a strong focus on in-house dialogue and workplace

cooperation. Practical experience of this approach is provided by a closer look at the outcomes of the project “Worldwide Enhancement of Social Quality” (WE Project), a public-private partnership project between Tchibo, a German retailer, and the Deutsche Gesellschaft für technische Zusammenarbeit (GTZ). The author accompanied project activities within the framework of her doctoral research work. The opportunities and challenges presented by the dialogue approach are summarised at the end of the chapter.

2. Current Approaches to Ensure Compliance with Social Standards

In order to ensure social standards in the production of textiles and clothing, most retailers have set up codes of conduct for their suppliers, which often contain the International Labour Organisation’s (ILO) core labour standards (CLS)^① and further ILO Conventions concerning compensation, working time and occupational health and safety. Codes of conduct are not mandated by law nor negotiated as mutually binding collective agreements by social partners but rather are voluntary initiatives on the part of management to promote social standards. They may be developed by the management of the client company itself or, in best practice cases, in collaboration with multi-stakeholder organisations, NGOs or trade unions (Mamic 2004: 38).

So-called “social auditing” was introduced by brands to monitor compliance with the client’s code of conduct at the manufacturing site. Audits can be carried out by the factory itself as a self-assessment (first party audit), by the CSR team of the purchasing brand (second party audit) or by NGOs or external private audit organisations (third party audit) (Locke and Romis 2006: 5). Where non-compliance is identified in any area of the audit, the supplier is informed about the improvements needed in a Corrective Action Plan (CAP). After a fixed period of time, the site will be audited again in order to check the implementation of the CAP (Mamic 2004: 209). The CCC (2005: 59) estimates that around

^① The CLS include freedom of association and protection of the right to organize and bargain collectively (Conventions 87 and 98), equal remuneration and non-discrimination at work (Conventions 100 and 111), abolition of forced labour (Conventions 29 and 105) and elimination of child labour (Conventions 138 and 182).

10 per cent of all clothing workplaces are audited every year.

2.1 Broad improvement still lacking

Codes of conduct and their monitoring are the most widespread tools for promoting social standards in supply chains. However, ongoing reports on major violations of social standards at factory sites which have, nevertheless, passed audits several times show that monitoring has not had the expected positive effects. This provoked the CCC (2005: 74) to claim that the lack of progress is “scandalous”. Why are audits unable to address the problem? There are several reasons, mainly to do with how audits are conducted. Critics argue that social audits are too short and superficial to identify violations, especially in the areas of freedom of association and collective bargaining, discrimination and harassment (Clean Clothes Campaign 2005). In the case of scheduled audits, it is easy for managers at the production site to prepare in advance by improving labour conditions especially for the day of the audit or manipulating documentation of working conditions; for example, they may withdraw children from the premises (DeRuisseau 2002: 225). But even where audits are not announced, many factories will already be practising double book-keeping, falsifying payrolls and time cards. Furthermore, worker interviews during audits are often too short for the purpose of double-checking working conditions. Moreover, workers are often too scared to talk about problems in the factory or are coached by management on how to answer questions in audit interviews (Clean Clothes Campaign 2005: 27). Social auditing is a top-down process in which compliance with standards is demanded from external parties, but which at the same time leaves the factory to tackle the problems. Whether social audits have much of an impact on improving social standards is difficult to assess, given the outlined pitfalls (Witte 2008). Several researchers have come to the conclusion that auditing practice itself must be improved (DeRuisseau 2002; O’Rourke 2003), while some propose abandoning auditing completely and instead increasing the capacity of suppliers to work on the causes of violations (Locke *et al.* 2006).

2.2 Trend towards capacity-building and workplace cooperation

Aware of the fact that auditing is a control mechanism in which the putative beneficiaries—the workers—are hardly involved, an increasing number of brands are setting up additional training programmes for their

suppliers in which the promotion of workplace cooperation and dialogue between managers and employees are used to enhance working conditions. The ILO (not dated; 12) describes workplace cooperation as “a general term that refers to the arrangements for establishing and improving relations between management and workers within the enterprise. It involves interaction between workers and managers at all levels within an enterprise.” Moreover, workplace cooperation aims at preventing disputes by resolving complaints before escalation and improving enterprise performance with regard to working conditions, as well as productivity and product quality (ILO, not dated; 14).

One of the first programmes on improving dialogue and workplace cooperation between managers and workers in the textile and automotive industries in developing countries was designed and implemented by the ILO. After running the Factory Improvement Programme (FIP) in Sri Lanka (since 2002) and Vietnam (since 2004) successfully, more countries have been covered by the programme, recently renamed “SCORE” (Sustaining Competitive and Responsible Enterprises) (ILO 2010). Increasing numbers of projects are designed and implemented with a focus on cooperation, in-house dialogue and workers’ participation in improving social standards.

3. Worldwide Enhancement of Social Quality (WE Project)

A current project promoting dialogue and participation with a view to improving working conditions in factories in Thailand, Bangladesh and China is the “Worldwide Enhancement of Social Quality” or WE Project,^① initiated by Tchibo GmbH, a German consumer goods and retail company, and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), a federal organisation in Germany for international cooperation in the field of sustainable development. The public-private partnership project was launched in September 2007 and completed in August 2010. A second phase of the WE Project has now been initiated. In total, 40 suppliers producing textiles, jewellery, furniture or metal and leather goods for Tchibo were selected. In each of the four project regions (two

^① Project homepage: <http://www.we-socialquality.com>.

in China, one in Bangladesh and one in Thailand) ten suppliers took part in training activities which emphasised in-house dialogue and participatory structures to overcome internal barriers at the factory level regarding the implementation of social standards. Seven cross-hierarchical supplier workshops were conducted in each project region and six individual training sessions took place at the factory between March 2008 and January 2010. The training activities covered technical topics, such as child labour, forced labour, discrimination, freedom of association and the right to collective bargaining, compensation and working hours, as well as tools for enhancing dialogue between workers and managers. The training was delivered by 18 local trainers, who were accompanied and coached by the consultancies Sustainability Agents (Germany) and Neosys AG (Switzerland) for the whole course of the project.

3.1 Methodology of the WE project

Dialogue projects are focused on establishing and improving in-house dialogue structures within the factory. In-house dialogue is related to the concept of “social dialogue” developed by the ILO. Social dialogue is a broad term for the communication processes of social partners in a tripartite (trade unions, employers’ organisations and governments) or bipartite (trade unions and employers’ organisations) setting (ILO 2004). However, in-house dialogue focuses especially on participatory processes inside the factory and the establishment of effective structures for dialogue. Training is provided in the tools and methods which support participants in this regard. In the WE Project, managers and workers follow a defined six-step process through which they identify problems, analyse their causes, define goals and search for solutions (steps 1–4). In step 5, the participants agree on possible ways to solve the issue and then (step 6) develop action plans to implement corresponding measures (see Figure 1). Each step is linked to certain tools; for example, statement rounds, metaplan method, fishbone diagram, negotiation and so on. To make effective use of this solution-finding process, participatory structures are needed to create a framework for frequent exchange on the topics and to generate trusting relationships between managers and workers. In the project, dialogue and communication structures, such as round-tables, committees or grievance channels, are introduced. However, decisions about which structures best serve the purpose of enhancing working conditions must be taken by the participants themselves.

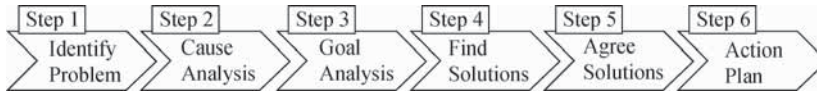


Figure 1: Six steps of the solution-finding process

Source: Sustainability Agents

The overall aim of the project is to enable workers and managers to solve their problems in a cooperative manner and in a rationalised process, which in turn is regarded as a way of strengthening ownership, increasing motivation and creating self-sustaining structures for long-term change towards compliance with social standards, as well as enhancing business performance (Tchibo GmbH et al. 2010). Stakeholder conferences were held in Bangladesh, China, Thailand and Germany to ensure the involvement of stakeholders in the project.

3.2 Managers and workers at the centre of training activities

One key training principle of the pilot project was to put managers and workers at the centre of all activities. Therefore, both parties were invited to the workshops and training sessions during factory visits. Participating workers were either recommended by trainers or selected by management. WE Project worker representatives (WRs), who in most factories were elected by the workers, also took part in training. Trainers gave guidance on election procedures but elections were conducted without external observation.

At the end of each workshop, managers and workers were asked to develop an action plan for their factory that covers the topics of the workshop (see Section 3). Here, the role of the trainers was to make suggestions and comments on their decision-making processes. However, trainers were coached not to interfere at any time in the final decision-making of managers and workers in order to strengthen their sense of “ownership”. Therefore, the development process was not regulated by strict targets laid down by Tchibo and GTZ; instead, workers and managers were encouraged to develop common goals and strategies jointly regarding the implementation of social standards.

4. Practical Insight into the Achievements of the WE Project

The data presented in this chapter were gathered by means of a survey conducted in October–November 2009 in seven textile factories in China within the framework of the author’s doctoral thesis. At that time, all factory visits and workshops of the pilot phase of the WE Project had been completed. Besides carrying out interviews with management and project team members, quantitative questionnaires were distributed to workers and worker representatives. In total, 15 interviews were conducted in the selected factories and 390 workers and 70 worker representatives took part in the survey. In what follows, key findings about the activities of all seven suppliers are presented. In addition, change processes at one factory are analysed in more depth.

4.1 Overview of achievements at seven factories

Figure 2 provides an overview of structures that were set up or enhanced during the course of the project. These structures enable the participation of all employees—for example, through suggestion boxes, employee assemblies and surveys—or the involvement of worker representatives in decision-making processes (for example, occupational health and safety committees and project worker representative [WR] committees). The most common structures by the end of the project in the seven textile suppliers were suggestion boxes, employee surveys, project WR committees, meetings between project WRs and management, trade union committees, employee assemblies and OHS committees. However, trade union committees were not closely involved in the project. Due to the current situation in China, with managers frequently playing the role of worker representatives (Taylor *et al.* 2003; Heuer 2005: 12), one goal of the project was, first of all, to strengthen trust between managers and workers in representational structures. Therefore, at the beginning of the project managers and workers decided to elect additional project worker representatives to represent workers’ interests.

Figure 3 provides an overview of the achievements attained by the factories throughout the duration of the project. Five out of seven factories

were able to reduce overtime and to increase productivity. Four factories raised wages, implemented one day off in seven, reduced accidents, published anti-discrimination statements and were able to increase product quality. Two factories enhanced the checking of employees' ID cards in order to identify child labour and one factory abolished wage deductions.

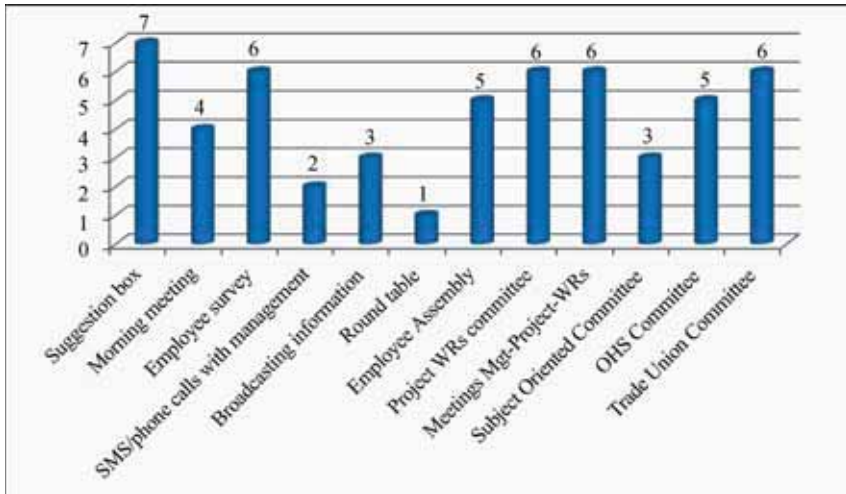


Figure 2: Participatory structures at seven textile factories

4.2 A closer look: Activities of one participating factory

The textile factory chosen for more detailed analysis is located in the greater Shanghai region and employs around 1,300 employees, with annual production worth USD 29 million. It should be made clear at this point that the factory has a committed management team that supported the dialogue approach right from the beginning. This factory was selected to show the potential of such training projects. Of course, positive developments at factory level also depend on various external and internal factors that can be changed only to a limited degree by training programmes.

4.2.1 Achievements within the Project at Factory Level

At the beginning of the project, managers and workers reported excessive overtime and high turnover rates; workers were also demanding higher wages. These topics took priority for workers and managers. Table 1 provides an overview of the key achievements during the improvement

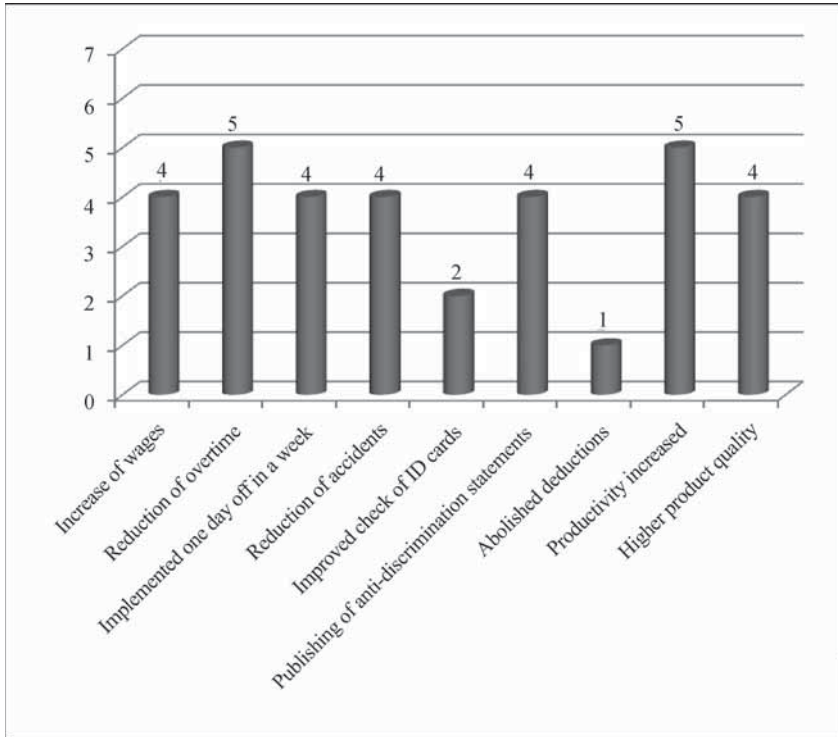


Figure 3: Examples of activities implemented in seven textile factories

process at the factory. These achievements were described in factory visit reports written by trainers, in a presentation at a stakeholder conference about the WE Project (prepared by the factory) and/or in the interviews with management.

In the implementation phase of the project (March 2008 to October 2009), direct and indirect participatory structures were established in the factory. The use of the suggestion box and morning meetings with workers are examples of direct participatory structures; indirect structures included the election of worker representatives (WRs) for the WE Project. WRs met with management once or twice a month, on average, and participated in the OHS committee. Moreover, WE Project WRs cooperated with the trade union committee in the factory, in which the top management also participated because some managers were also trade union representatives.

A glimpse of the development of the WRs and how they perceive their role can be obtained from the views of one of the managers interviewed:

They [the WRs] had doubts, I think, at the beginning. And then they might have thought that perhaps this is just for show. They were not quite sure what exactly the management wanted them to do. (Manager)

This began more than one year ago and you can see obvious changes. [...] You can see that the motivation has really changed. In the past, it seemed that we were always chasing after them, demanding that they do certain things. But now they are really more active and they ask us to do things. Things are very different now. (Manager)

Table 1 Overview of achievements—The case of the Shanghai textile company

Area	Key results
Participatory communication structures	<ul style="list-style-type: none"> • 20 project worker representatives (WRs) elected • WRs committee established, monthly meetings between WRs and management, daily morning meetings of workers and management, workers consulted by WRs (at least once a month, some WRs reported also weekly exchanges), surveys on wages, OHS and overtime, OHS committee established
Wages	<ul style="list-style-type: none"> • Wages increased by USD 44-USD 75 on average (increase of around 27% from March 2008 to October 2009) • Some piece rates increased by 20% (March 2008-October 2009) • Increase of performance bonus and production bonus
Working time	<ul style="list-style-type: none"> • One day off in seven • Overtime in line with SA8000 requirements
OHS	<ul style="list-style-type: none"> • Monthly training session for workers • Health check for workers • Reduction of accidents (from January 2009 to April 2009: 5 accidents; May 2009 to October 2009: 1 accident)
Discrimination	<ul style="list-style-type: none"> • Publishing anti-discrimination statements • Regular review of recruitment policies
Workforce	<ul style="list-style-type: none"> • Turnover rate decreased from 10% to 6% (March 2008 to October 2009)
Productivity	<ul style="list-style-type: none"> • Production volume increased by 30% • 6S management system launched • USD 150,000 invested in new equipment, such as new machinery and drinking water supply
Quality	<ul style="list-style-type: none"> • 96% of the products meet quality standards according to clients' requirements without any rework • Skills training for newcomers and supervisors
Certification	<ul style="list-style-type: none"> • SA8000 certification gained in the course of the project

The topics on which managers and employees worked were mainly related to the areas presented in Table 1. The process of change undergone by the issues of wages, overtime and productivity will be analysed in the following section.

4.2.2 Link between Productivity, Wage Increases and Reduction of Working Time

With regard to wages, project worker representatives (WRs) and managers at the factory in the greater Shanghai region decided to distribute a questionnaire to all workers in order to be able to analyse their expectations and learn how they thought their wages might be raised. In a first step, the questionnaire was designed by the WRs at their internal WR meetings. After distributing the questionnaires in various workshops, the WRs analysed the data collected (600 questionnaires) and reported the survey results to the management. The main causes of low wages were identified as: low production efficiency (42.3 per cent), poor production planning (38 per cent), poor production skills (34 per cent) and unqualified group/line leaders (12.8 per cent). Regarding wage levels, production-line workers expected their monthly wages to increase, on average, by at least USD 44. Management and WRs realised that in order to increase wages, productivity had to be increased and production costs had to be reduced. As a first measure, it was jointly decided to enhance the transparency of piece rates by displaying explanations of the wage system on notice boards for all workers. Because high rework rates and machine breakdowns were identified as causes of high production costs, two new quality control members were hired for each production line and 26 old sewing machines were replaced. In total, a sum of USD 150,000 was invested in new equipment: for example, an automatic cutting machine was installed to enhance productivity. A 6S management system^① was introduced to improve capacity planning, work efficiency and safety. Equipment maintenance and quality training was provided for supervisors. Workers' quality awareness was raised through enhanced internal employee training and orientation for new workers. By the end of the

^① 6S is a Japanese workplace organisation methodology. The term "6S" refers to six Japanese words of which the English translations are Sorting, Setting in Order, Sweeping (cleanliness), Standardising, Sustaining Discipline and Safety.

project at least 96 per cent of the products met the quality standards without any rework. On average, productivity increased as a result of the described measures by approximately 30 per cent. After reaching higher productivity levels the company was able to increase production-line workers' monthly wages by USD 44–75^① and higher performance bonuses were paid. The turnover rate went down from 10 per cent to 6 per cent.

Regarding overtime, the causes analysed by worker representatives and managers referred mainly to a lack of efficiency in the production flow. The measures taken to increase productivity—setting production targets as well as increasing bonuses and investing in better facilities—served the purpose of increasing wages, but also of reducing working time:

Previously, workers just received instructions from management that they should produce more and more, but their performance was limited. Now, after defining the goals, it's really the workers who are telling us what to do: if you prepare all the materials, put these conditions in place, we can produce more in the same time. In order to reduce overtime but give workers the same or even higher wages, workers came up with their own targets. They motivate themselves in order to reach this goal. (Manager)

For managers and workers, an increase in productivity and a resulting increase in wages or a reduction in working time is perceived as a win-win situation which motivates both parties.

For example, this SA8000 system and all the standards... in the past I made no effort to provide information, but now I post everything in the factory and all the standards are displayed on the shopfloor. All the workers understand their obligations and their rights. ... Because I also know that they have a valid concern that if the factory cannot produce efficiently the enterprise cannot survive in this harsh market. So what I do is to make clear that it is our common goal to achieve a win-win situation. (Top manager)

By the end of the project, workers received Sundays off and overtime

^① Data on the overall wage level at the factory are not available. The legal minimum wage for this region was USD 143 until March 2010. It was increased to USD 164 from April 2010.

hours were in line with SA8000 requirements (Social Accountability International 2008).

The sharing of knowledge, especially regarding problems which have been identified in the area of social standards and productivity, supports the creation of transparency, which in turn contributes to develop effectiveness and creative solution-finding.

The first thing is that we can get good information, good suggestions, opinions from workers. (Top manager)

Workers in the factory clearly believe that they can provide valuable input for decision-making. In the standardised questionnaire, workers agreed to a considerable extent with the statement that they have the relevant knowledge to solve problems related to working conditions (see Table 2). Moreover, more than 78 per cent of them definitely or largely agree that they have many ideas about how to improve working conditions.

Table 2 Workers' perceptions of their cognitive contribution to decision-making (%)

	Definitely agree	Mostly agree	Hardly agree	Do not agree	Invalid/ No answer
Workers have the knowledge to help solve the relevant problems so that working conditions at the factory can be improved	57.4	28.7	5.0	4.0	5.0
I have many ideas on improving working conditions	37.6	41.6	12.9	0	7.9

Note: Question for workers: Do you agree with the following statements? (N=101)

4.2.3 Worker Representatives' Satisfaction with Results

Table 3 presents the answers given by the factory's WRs to the questions about the topics they discussed with management, as well as their satisfaction level. Issues concerning health and safety, wages, overtime, production, welfare and worker participation were discussed with management by a large majority of WRs. In contrast, discrimination, child labour and forced labour were topics that seem to have had less

priority for managers or workers, or both, since we do not know why these topics were not discussed intensively. At least in the interview, managers stated that the topics of child labour and forced labour were not sensitive issues and therefore no corrective actions had to be implemented. The topics dealt with to the greatest satisfaction were health and safety and wages.

Table 3 Satisfaction of worker representatives with the outcomes of discussions with management (%)

	Not discussed	Very satisfactory	Fairly satisfactory	Somewhat dissatisfactory	Very dissatisfactory	I don't know	Invalid/No answer
Health and safety	0	52.9	35.3	5.9	0	0	5.9
Wages	5.9	41.2	35.3	11.8	0	0	9
Discrimination	70.6	5.9	0	0	0	5.9	17.6
Overtime	11.8	29.4	23.5	11.8	0	0	23.5
Child labour	88.2	0	0	5.9	0	0	5.9
Forced labour	82.4	0	11.8	0	0	0	5.9
Production	29.4	11.8	35.3	5.9	0	0	17.6
Welfare	5.9	29.4	35.3	11.8	0	0	17.6
Worker participation	5.9	11.8	41.2	5.9	5.9	0	29.4

Note: Question for WRs: What topics have you discussed with management? Were you satisfied with the result? (N=17)

5. Conclusion: Opportunities and Challenges

The newly created dialogue structures were used in all seven factories to work on topics related to social standards and production. Certain topics had more priority and the activities of managers and workers therefore focused on them (for example, working time, wages). The participation of workers is seen as an advantage by the management since their knowledge and their creative ideas provide valuable input for improving working conditions and increasing productivity. In this regard, in-house dialogue projects offer an effective method of achieving win-win situations for the management and the workforce, if the economic benefits are then invested in improving working conditions.

Taking part in the decision-making process allows participants to some extent to take ownership of factory development. They no longer simply react to external pressure but start to address internal requests in a more sustainable way.

Of course, the establishment of in-house dialogue structures in such projects is highly dependent on the openness of management. Patriarchal structures and narrow opinions must be overcome, for example with regard to the abilities of employees; often, workers are seen only as a resource for production and their cognitive abilities are underestimated; their empowerment is perceived as a potential source of conflict and a threat to the stability of the factory. The degree of participation is therefore dependent on power relations inside the factory. Without the involvement of independent trade unions and a supportive legal background for worker participation, participatory structures depend strongly on the support of the management and their level of cooperation. Where employees' expectations are not compatible with targeted economic development or just not in line with the management's views it is likely that they will be refused. However, if the management fails to meet the workers' expectations repeatedly, the workers will become frustrated and the motivation to participate will decline. The possibility that social standards may be enhanced through dialogue and cooperation is obviously limited under conditions in which the management's mindset cannot be changed. The importance of trade unions with the capacity to bargain for workers' interests, backed by legal rights, is considerable. However, it should not be overlooked that brands initiating such dialogue projects have limited scope for action with regard to trade union support since ILO Convention 98 on the Right to Organise and Collective Bargaining prohibits interference in the establishment, functioning or administration of workers' organisations (Art. 2). Especially in political and legal environments in which trade union structures do not exist or where they are not independent, in-house dialogue projects create an opportunity to empower workers to some degree by giving them access to decision-making processes, increasing their communication and negotiation capacities and making them more aware of their legal rights.

Dialogue projects and workplace cooperation have enormous potential with regard to achieving win-win situations between economic benefits and improving social standards. The commitment and awareness of top

management is a prerequisite for establishing corresponding structures in factories to enable dialogue and worker participation. Trustful and stable relationships with buyers are of considerable importance in this regard since they motivate managers to take an active part in training programmes. With regard to power relations inside the factory, the long-term goal must be to strengthen trade unions by raising the awareness of managers, workers and political decision-makers of the benefits of worker participation, trust-building activities among the parties concerned and training workers with regard to their labour rights.

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Labour Rights Training at HP Supplier Factories in China

Jenny Chan

1. Introduction

On 7 May 2009, John Gabriel, Board Chair of the Electronic Industry Citizenship Coalition (EICC) —a global electronics industry association that represents the 45 leading companies, including Hewlett-Packard (HP), Apple and IBM—spoke in support of prioritising *worker training* as an EICC common development goal at the meeting in Amsterdam (MakeITfair and GoodElectronics 2009). Listening to the participants in the meeting, it would appear that multinational companies generally agree that supplier auditing is an essential part of corporate social responsibility (CSR), but its shortcomings at the worker level mean that additional measures are required to ensure full worker participation.

This chapter argues that *participatory training in labour rights* is a complementary strategy in relation to supplier auditing in advancing CSR. Its focus is an innovative multi-stakeholder project jointly being carried out by HP, the world's largest technology company (by revenues), and three Hong Kong non-governmental organisations (NGOs): Students and Scholars against Corporate Misbehaviour (SACOM), the Labour Education and Service Network (LESN) and the Chinese Working Women Network (CWWN).^① The steering committee collaborated on a

^① Between 2007 and 2009, SACOM obtained a grant from Swiss charity Bread for All to independently monitor the HP Labour Rights Training Programme. HP reimbursed programme expenses incurred by LESN and CWWN, while the NGOs' primary funding sources are not-for-profit foundations.

training programme at two HP suppliers in Dongguan City in Guangdong Province: Delta Group and Chicony Electronics. Between September 2008 and June 2009, a total of 4,500 frontline workers and managers at different levels actively participated in training sessions. While this HP China Programme has been recognised by John Ruggie, UN Special Representative of the Secretary General on Business and Human Rights, as a good example of a company providing non-judicial grievance mechanisms (UN 2010), expansion of the concept of citizenship at work will require much a deeper commitment from national and local states and global civil society (Seidman 2007).

2. Strategic Collaboration

Business ethicists at HP headquarters strive to ensure that HP operates as a good corporate citizen by driving the development of the Supply Chain Social and Environmental Responsibility Policy. HP was the first company in the electronics sector to disclose a list of suppliers in 2008 but it did not provide information on manufacturing locations and workforce profiles. Behind the façade of “clean and green” technology production, the mass media has paid attention to the use of child labour (and other precarious employees, such as student interns and agency workers), chemical poisoning, forced overtime and suppression of union rights at subcontractors worldwide (see, for example, Adams and McLaughlin 2009).

SACOM raised public awareness by encouraging consumers to send postcards bearing the words “High-Tech, No Rights?” to multinationals such as HP (SACOM and Bread for All 2008). On 11 January 2007, HP opened a dialogue with SACOM in a teleconference coordinated by CSR Asia, a member of HP’s Stakeholder Advisory Council. SACOM made suggestions to HP to strengthen its relations with Chinese suppliers. These included using credible local trainers, training workers as well as frontline managers and engaging in dialogue with stakeholders at all levels. HP expressed interest in using local labour groups’ worker communication skills to improve the CSR management of its suppliers. Right from the start, HP’s direct contractual relationship with Delta and Chicony Electronics put it in a strong position to introduce the draft NGO proposal. Nevertheless, a “leap of faith” by factory management was needed before they accepted the external training team on the ground.

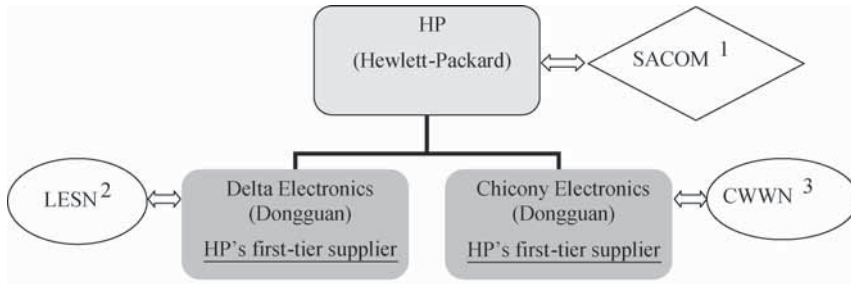


Figure 1: Training Programme Steering Committee—One brand, two suppliers and three NGOs

Name of Hong Kong NGOs	Nature and relationship	Capacity
1. SACOM (Students and Scholars against Corporate Misbehaviour)	Labour-rights campaigning group and programme partner of HP	Training programme coordinator
2. LESN (Labour Education and Service Network)	Labour service group and programme partner of SACOM	Training provider at Delta factory
3. CWWN (Chinese Working Women Network)	Labour service group and programme partner of SACOM	Training provider at Chicony factory

Taiwanese Delta Electronics began investing in Shijie Town in Dongguan in 1992. In the past 20 years, it has expanded to Shanghai, Wujiang (Jiangsu), Tianjin, Wuhu (Anhui) and Chenzhou (Hunan), providing power supplies, telecom components, LED bulbs, digital projectors, networking devices, industrial automation systems and renewable energy solutions. From January to October in 2010, the Group's sales revenues totalled NT \$ 140.7 billion (US\$ 4.6 billion), a 39 per cent increase for the same period one year previously.

Chicony Electronics is also a Taiwanese-invested enterprise, beginning production in Qingxi Town in Dongguan in 1998. Attracted by local economic incentives, it built a multi-storey factory in Wujiang (Jiangsu) in 2001 and relocated to Chongqing municipality in the west in 2011. The company manufactures keyboards, power adaptors and video cameras. Compared to Delta, the capacity of Chicony is smaller but it is fast growing. As of 31 December 2010, Chicony had generated consolidated revenues totalling NT \$ 60 billion (US\$ 1.8 billion).

Directors of Delta and Chicony, facilitated by HP, met with NGO representatives to discuss the detailed objectives and content of the proposed in-factory training programme.

Supplier Involvement

The management approach differed between Delta and Chicony Electronics with regard to accepting training offers. Delta tended to be pleased with its track record of business success and had a longer history of CSR, so its management felt little need to learn from small labour groups about corporate responsibility. In contrast, Chicony sought every opportunity to improve itself as a means to expand its market reach. Cooperation between NGOs and Chicony was therefore initially smoother than with Delta.

Delta executives have been working for some time with professional consultants to strengthen the company's administrative structure. They generally see the proposed training course as little more than a "repeat programme" of Delta's own training. It took tremendous diplomatic skill on the part of SACOM to get the top-level managers to understand the value of cooperating with grassroots labour groups. In the end, Vice President Dick Hsieh was convinced that the CSR investment-in working closely with HP-was necessary to improve its global competitiveness.

At Chicony, the senior management was motivated to transform itself into a leading CSR player by 2010. Among other things, Chicony was preparing to apply for EICC membership.^① The company benchmarked its achievements in related areas, encompassing labour and ethics, as well as environmental standards. Vice President Chris Huang repeatedly stressed that Chicony was integrating HP's supply-chain social responsibility standards into its core business operations. The training programme was taken as a step which would enable Chicony to set off on its journey to join "the EICC family" .

NGO Engagement

Through discussions with HP and suppliers, SACOM defined two main

^① A full up-to-date members list of the Electronic Industry Citizenship Coalition is available at <http://www.eicc.info/MEMBERSHIP.htm>.

objectives of the training programme: first, to raise workers' and managers' awareness of the specific rights that are protected under Chinese labour law; and second, to improve communication and grievance mechanisms to ensure protection of workers, thereby strengthening the implementation of corporate codes of conduct at the workplace level.

In China, recent legal reforms have opened up new opportunities for worker education and rights activism. In 2007, the government enacted the Labour Contract Law (effective 1 January 2008), the Employment Promotion Law (effective 1 January 2008) and the Labour Mediation and Arbitration Law (effective 1 May 2008), in an attempt to contain protests within administrative and judicial channels (Wang, Appelbaum, Degiuli and Lichtenstein 2009; Chan 2009). These national laws define workers' rights, including labour contracts, working hours, wage rates, social insurance, compensation and equal opportunities. In addition, Article 4 of the Labour Contract Law requires all employers to consult with either a union or other elected worker representatives before approving enterprise-wide rules on work or employment conditions. Moreover, as provided by the law, employees who become worker representatives are protected from discrimination and allowed access to management and co-workers in order to carry out their representative functions. In the event of employment disputes, the length of time during which workers can file a case for arbitration has been lengthened from 60 days to 1 year, as stipulated in the Labour Dispute Mediation and Arbitration Law. Article 53 further waives arbitration fees. All these legal empowerment tools have been made available to Chinese worker-citizens.

In light of progressive legal and social changes, the role of SACOM is to promote the sharing of best labour practices between Delta and Chicony factories. During the training, SACOM updated managers-in-charge with regard to the ongoing development of worker activities in the other factory. A positive effect of this comparison was that the schedule of the training was well adhered to. More importantly, the spirit of disseminating good practices was upheld, such as swift management response to workers' enquiries. In addition, SACOM built up a partnership with the two NGOs to establish mechanisms for worker communication.

LESN and CWWN are responsible for developing training curriculums tailored for Delta and Chicony, respectively. In deciding to take part in the HP Labour Rights Training Programme, both service-oriented NGOs aim to refine their training skills to promote better understanding of labour rights among the workforce.

In February 2008, SACOM presented the finalised proposal to the management team at HP headquarters in Palo Alto.^① The approval by HP's American, Hong Kong and mainland China offices was a promising start. In July, HP provided further support by recruiting an experienced Chinese manager to oversee the implementation of the programme.

3. Participatory Training Methodology

With the managers' assistance in sampling, the NGO team conducted a survey to learn about workers' knowledge of corporate codes of conduct and their expectations with regard to the training workshop.^② On 20 February 2008, CWWN collected 242 completed questionnaires from Chicony Electronics. On 12 March 2008, LESN gathered 512 completed questionnaires from Delta Electronics. Based on the survey results, trainers were able to expand certain parts of the labour rights curriculum to meet the needs of a majority of the workers; for example, adding the newly revised Chinese regulations on minimum wages, safety protection and social insurance schemes. In this interactive process of needs assessment, workers were grouped together in training designed for them. Separately, NGO staffers conducted in-depth interviews with managers to exchange ideas about participatory training methodology.

Delta: Seminars for Managers and Booklets for Workers

Delta committed itself to a two-session seminar for 40 supervisors and middle-level managers, a single class for 1,549 workers organised in 10

^① Meeting between HP Team led by Judy Glazer and Bonnie Nixon, Global Social and Environmental Responsibility Operations, and Jenny Chan (SACOM) on 4 February 2008, California.

^② The questionnaire survey report's quantitative data (frequency distributions and cross-tabs) and qualitative analysis (workers' responses to open-ended questions) are on file with SACOM.

separate sessions and free dissemination of the EICC and Labour Law Booklets to all participants.

In principle, Delta employees could express concerns about labour issues to supervisors through meetings, phone calls and e-mail. The suggested worker hotline operated independently by LESN was therefore not approved as part of the training work plan. Both LESN and SACOM were sensitive to Delta management's overt concern about the substitution of an external hotline service for an internal management system. The NGOs scaled down the scope of the training module to try to build a cooperative relationship with the top-level management. In November 2008, a Delta inter-departmental task force was set up to coordinate the programme.

On 8 January and 9 March 2009 (the Chinese New Year festival fell in between), LESN conducted workshops for managers. The content included counselling and communication skills, techniques for small group activity organisation and analysis of standards laid down in Chinese labour laws versus Delta company rules and regulations. The participants declared that they had greater confidence in dealing with questions raised by workers. One female manager said:

I'll be able to explain clearly the company's CSR policies to the workers, and highlight the progress we've made. Through direct communication, I want workers to feel like "we're part of our Delta community" .

In addition to management training, starting from mid-March 2009, LESN educated workers on new labour laws and the EICC Code. Approximately one-third of Delta Plant 2's workforce had attended the training. All were day-shift workers who took part in the training in the evenings (6:30 – 9:00 p. m.), except for 41 night-shift workers who extended their shift to attend a morning meeting. Delta paid employees for time spent in the training sessions.

In a large classroom, LESN used audio-visual aids to graphically display the labour regulations to the worker audience. A quiz on "What is wrong with worker X's wage statement?" drew most attention from the participants. LESN set a hypothetical example and asked questions about the correct calculation of monthly basic and overtime wages. Many

workers raised their hands, while others quickly shouted out the answers. In later training sessions in May and June, dozens of workers from a number of production departments anxiously approached LESN with their wage slips to inquire about their overtime pay. The seeds of rights awareness sown in the workers' minds were taking root.

In dealing with the perceived “wage underpayment” issue, LESN called a meeting with senior Delta managers, HP and SACOM on 27 May 2009. The LESN team declared that the wage calculation mechanism and payment system at Delta was unclear, creating misunderstandings. After a thorough investigation, the administrative department settled the dispute by providing a clear explanation of the wage statement, breaking down basic pay, overtime and deductions for accommodation and social insurance. Delta's remedial action was positive in rebuilding workers' confidence in the company.

In moving in a more proactive direction with regard to worker communication, Delta managers began using the last 30 minutes of each of the 2.5-hour training sessions to listen to workers. Following the presentation, LESN trainers provided each participating worker with a pen and paper to write down questions. The atmosphere of worker empowerment created by the LESN training enabled Delta managers to get more candid feedback from employees. Managers benefited from insights about workers' priority issues. When discussions about labour discipline, rewards and punishment became heated, managers promised to get back to workers by posting company notices and arranging meetings.

LESN also supplemented the lectures by providing every worker with a 37-page pocket-sized booklet that covers four main sets of issues: the labour section of the EICC Code, legal labour rights in China, health and safety regulations and up-to-date provisions on industrial injury and occupational disease. Both Delta workers and managers welcomed the idea of disseminating the booklets to the training participants. A human resources manager commented:

The booklet includes key aspects of workers' rights and responsibilities. I trust that workers would find the booklet useful. You know, as time passes, workers may forget what they have learned in today's training.

The participatory training programme for workers and managers is crucial, especially since Delta has not yet recognised a trade union. Upon completion of the programme in June 2009, Delta leaders agreed to listen to workers' feedback and LESN's comments and "look into the possibility" of setting up a worker representative system.

Chicony: Independent Worker Hotline and Upgraded Worker Committee

Concurrently, Chicony agreed to a programme that contained a single lecture for 2,714 workers organised in 18 separate sessions, installation of an independent worker hotline for filing complaints and a four-session workshop for 30 worker committee representatives.

Workers will use a communication channel only if it earns their trust. CWWN aimed to create a useful tool for workers to report problems confidentially; for managers to gain knowledge of workers' everyday concerns without revealing individual workers' identities; and to assist brands in monitoring the progress of code implementation at the workplace. CWWN answered Chicony employees' calls to an external telephone line. Upon receiving a call, CWWN carefully records the details of grievances in an electronic log-book, which is kept strictly confidential. There is no cost to workers for contacting the 24-hour hotline service.

Approximately 50 per cent of the entire workforce attended the training. CWWN received a total of 126 phone calls between September 2008 and May 2009. Workers expressed a broad range of concerns about dormitory conditions, provision of social security, wages and working hours, health and safety and company employment rules.

In response to the workers' feeling that the factory made it too difficult for them to resign, for example, Chicony publicised the relevant rule; whoever gives 30-days' notice in writing is free to go and all outstanding wages will be paid. In a review, Administrative Director Vic Lee expressed the belief that the misunderstanding could have arisen when workers gave only verbal notice and failed to go through the proper application procedure. Accordingly, he provided workers with clearer guidelines. At the same time, Chicony promoted its paid leave policy so that workers would be aware of alternatives when deciding whether to

resign. In a matter of days, Chicony was successful in clarifying that employees are free to take leave or resign without penalties.

In another example, Chicony improved workers' living conditions. In late September 2008, right after the first training session, some workers reported that they did not have access to hot bathing water in their dormitories. CWWN representatives brought up the issue in a meeting with Chicony managers, who explained that in fact the lack of hot water was caused by the broader problem of inadequate utility supply in the entire town. To cope with workers' immediate needs, Chicony installed a heating device in the dormitory. Workers welcomed the new facilities with applause. In this transparent process, more workers were motivated to believe that problems could be solved and to use the CWWN hotline service for that purpose.

Between April and June 2009, CWWN trainers initiated discussions with the 30 worker committee members about the representative role of a worker organisation. The trainees set forth six major goals with regard to their work; to improve employees' welfare; to improve wages and benefits; to arrange cultural and entertainment activities; to express workers' opinions; to add value to the factory; and to enhance their own abilities as committee members. CWWN encouraged the participating worker representatives to share their work plans with the general workforce and managers in order to obtain wider support and solicit suggestions. The representatives also acquired valuable skills in collecting inputs from their co-workers through semi-structured interviews. Through role play and short speech exercises, they learned how to present their ideas confidently to senior managers.

Chicony Administrative Manager Chen Jianqiao vividly commented:

The training programme has created a win-win situation for both management and workers. Workers are more efficient because they feel their voices are heard and respected; management wins CSR scores and new business with customers and has fewer conflicts with employees.

For factory management, improving CSR is often linked to enhancing labour productivity and profitability. A cost-benefit analysis is emphasised

(FIAS and BSR 2007).^① In March 2010, Chicony succeeded in becoming an EICC member.

4. Effectiveness of the Training Programme

The multi-stakeholder programme enhanced communications and understandings between HP, suppliers and NGOs about factory labour policies. The rights-oriented training also inspired changes and refinements to existing corporate governance and grievance management practices. Notwithstanding the successes, the programme faced a number of major challenges.

Achievements

The most important result of the programme was to give *workers* the sense that they have the power to influence their working conditions. Hundreds of workers brought up previously unspoken issues to NGO trainers and managers, including overtime wage payment, excessive working hours, health and safety problems, dormitory hot water supplies and applications to leave their jobs. Many workers offered constructive suggestions to management for continuous improvement.

In answering workers' concerns, managers learned the importance of making labour policies comprehensible to all. They accepted NGOs' invitation to speak directly to workers in training sessions and morning assemblies, and to circulate remedial action plans via newsletters and display boards. Chicony spelled out the simple requirements for resignation. Upgraded dormitory facilities won workers' support. Similarly, Delta explained the calculation of wages and listed specific items in wage slips. These management efforts increased corporate transparency and accountability.

^① In a large-scale ICT (information and communications technology) Supplier Forum in Shenzhen City, 21 Chinese suppliers summarised cost and benefit data meticulously in five major areas: tangible external benefits (for example, increase in orders), tangible internal benefits (for example, less workforce turnover), intangible benefits (for example, improved collaboration with buyers), compliance costs (for example, recurrent costs of compliance monitoring and documenting) and non-compliance costs (for example, loss of sales and cost of increased injuries). Ultimately, business tends to respect workers' rights when the CSR "benefits" outweigh the "costs" .

Challenges

Global competition with regard to just-in-time production has undermined suppliers' ability to meet minimum labour standards. Under pressure, Delta and Chicony extended workers' shifts during peak season. Managers confided to NGO trainers that the local government had granted factories "special permission" to work 80-130 hours overtime a month, about two to three and a half times the maximum 36-hour legal limit!

Workers face very long working hours. A recent EICC (2010: 20) industry survey found that 74 per cent of the 42 member companies reported excessive working hours as "one of the top three areas for improvement" in their supply chains. While the EICC researchers have revealed neither the total hours of overtime nor the specific locations of the surveyed facilities, it is generally observed that the problem is severe in China, especially in the electronics and other labor-intensive sectors.^①

Many workers "choose" to do overtime work because their normal wages are very low. In the 2008-2009 global financial crisis, when Chinese exports contracted drastically, the Dongguan government froze the minimum wage standard and both Delta and Chicony-like their peers-paid production workers a basic monthly wage of only 770 yuan (US \$118) for a 40-hour week. The unit price of HP and other customers' orders was not disclosed. In effect, workers and third-party inspectors could not assess whether the current purchasing practices have undermined ethical standards.

The deeper problem behind the pressure of high-stress, low-income jobs is restrictions on workers' right to associate, find a voice and defend their collective interests (Chan 2010). When the Chinese government does not enforce the law, employers like Delta and Chicony feel free to ignore restrictions on overtime. HP's corporate code requires suppliers to respect workers' right to freely form and join organisations of their own choosing in accordance with applicable laws. From worker training to the democratic election of worker representatives, however, there is still a long way to go.

^① On working-hours violations in the nine surveyed toy and garment suppliers to Wal-Mart in South China, see Chan and Siu (2010).

5. Conclusion

The electronics supply chain is highly interconnected and no individual company is in a position to swim against the tide of declining global labour conditions and environmental degradation. This chapter advocates a factory-level CSR model that builds on the joint efforts of multiple stakeholders—in particular, workers—to attain a fair and sustainable IT supply chain. To enable more worker participation in the improvement of working conditions, rights training is needed at senior, middle-management and worker levels.

Drawing on insights from the HP Programme, three key elements were outlined in the design of good training. First, support from *multinational corporations*, such as expertise and financial resource sharing, is important for programme success. It gives suppliers and local trainers an incentive to become actively involved. It is also the responsibility of multinationals *not* to cancel out the effectiveness of progressive corporate responsibility policies by pressuring their suppliers with reduced delivery times, systematically low prices or other practices that cause tensions between suppliers. Second, commitment from *managers*—from the top to the frontline—is crucial. Prompt responses from senior management on labour issues can greatly enhance workers' and frontline managers' confidence in the CSR system. Third, the involvement of *independent trainers* is vital. Grassroots labour NGO trainers—unlike industry consultants—must have autonomy if they are to be credible.

To summarise, the inclusion of workers in the monitoring of conditions and mediation of disputes holds the greatest promise for lasting change. Hundreds of millions of the new generation of Chinese workers are redefining the concepts of decent work and better employment. Governments should strengthen law enforcement and labour protection. Improvement of labour standards in China is important to the development of a more humane version of economic globalisation.

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