

A NEW CHINA?

By Anita Chan

SOME HOPE FOR OPTIMISM FOR CHINESE LABOR

In the Western press, there have regularly been reports about the plight of Chinese workers toiling for long hours but paid a pittance to make products for export. The reports are not inaccurate; in a great many factories labor standards have continued to decline. Nevertheless, in the past two decades there have been new developments in the labor arena that can give us cause for quiet optimism.

Even a decade ago, there was some reason for optimism, as there had been areas of progress in the status of the union federation during the eighties. Three developments in the decade of the eighties that have had ongoing consequences were 1. the emergence within the official Chinese trade union organization, the All China Federation of Trade Unions (ACFTU), of groups of officials and labor journalists who genuinely supported the workers' cause; 2. the political elite's decision to incorporate the trade unions at different levels in a consultative status in any policy decisions that affect workers' welfare; and 3. the inclusion of the ACFTU in the drafting of legislation relating to labor issues.¹ Of these three developments, the ACFTU's ability to negotiate successfully to include prolabor clauses in several important labor-related laws has had the most significant impact.

THE SETTLEMENT OF WORKERS' GRIEVANCES THROUGH LEGAL CHANNELS

The three main labor-related laws—the Enterprise Law passed in 1988, the Trade Union Law of 1992, and the Labor Law of 1994—provided the legal framework for the development of industrial relations at a time of economic restructuring and the transition of many state enterprises to private ownership. They all contain clauses that are supposed to empower workers with a number of important protections, though without the freedom to organize independent trade unions. In the Trade Union Law, “work stoppages” and “slowdowns” are deemed to be legal, and one of the core international labor rights, the right to collectively bargain, is guaranteed by the Labor Law.² The new laws have stipulated a maximum number of work hours and a minimum age to enter the work force, have established industrial labor dispute procedures, and have included clauses on the right to a democratically elected workplace union—statutes that are on a par with international standards. In fact, at least one provision in Chinese law surpasses international labor standards: a stipulation that state owned and collectively owned enterprises are to contain a Staff and Workers Representative Congress (SWRC), which has been given the legal power (on paper, at least) to supervise management and to codetermine or to veto certain management decisions.³

¹ Anita Chan, “Revolution or Corporatism? Workers and Trade Unions in Post-Mao China,” *The Australian Journal of Chinese Affairs*, vol. 29 (January 1993), pp. 31–61.

² Bill Taylor, Chang Kai, & Li Qi, *Industrial Relations in China*, Cheltenham: Edward Elgar, 2003, pp. 176–78 and 182–206.

³ Enterprise Law, Chapter 5, Articles 49–54; 1992 Trade Union Law, Chapter 3, Article 16; 2001 Trade Union Law, Chapter 3, Article 19.

Notwithstanding this flurry of commendable legislative activity on behalf of employees' rights, it is obvious that there has been a relative lack of enforcement of the labor laws, and workers' rights are being violated on a large scale. Workers in both the state and nonstate sectors are laid off with impunity, without regard to the legal procedures for doing so. "Unfair dismissal" does not even enter the Chinese labor lexicon. Labor flexibility has become so prevalent that when there is no work, workers sometimes have no income; and during busy periods, a vast amount of overtime is often imposed in violation of national laws—up to 100 hours or more a week, especially at some of the private factories that produce for export. Migrant workers from the rural areas, who have flooded into industry in the tens of millions, are vulnerable to such labor abuses, inasmuch as they do not enjoy the same rights as urban residents and receive little protection from local governments. They consider themselves lucky if they are paid as much as the legal set minimum wage. Even worse, nonpayment of wages by employers has become so prevalent that it is regarded as "normal." Migrant workers in China's construction industry were owed as much as 336 billion yuan (U.S. \$80 billion) in unpaid wages in 2002.⁴

1. Reactive Protest Activities

As macroeconomic restructuring steamed ahead at a rapid pace in the 1990s, such labor violations became more and more serious and widespread, and by the middle of the 1990s workers' protests in all sectors of industry were increasing in scale and frequency. Much of this has been documented in the Chinese press and by the international media and Western scholars. But to a certain degree, the new labor laws did have an effect. Labor disputes that went to arbitration leaped from 19,000 cases in 1994 to 155,000 cases in 2001.⁵ In other words, the prolabor clauses that the ACFTU was able to insert into several of the key labor laws helped to channel some of the labor grievances into legal procedural behavior. The new situation reflects not only that the laws have provided a platform for litigation, but also that workers' awareness of their legal rights has been on the rise since the promulgation of the Labor Law.

It must also be stressed that the majority of these cases involve serious labor abuses, such as owing workers wages in arrears (both in state and nonstate enterprises), state workers being laid off and losing their guaranteed entitlements, irregularity in pension payments, excessively long work hours, a lack of compensation for industrial injuries, and contraction of work-related diseases. These are reactive claims, employing spaces provided by the legal system to redress injustices.⁶ They are not proactive claims to rights that are collective in nature, such as laying legal claims against management for refusing to bargain collectively, or against trade union officials for not protecting their rights.⁷ The rising number of cases going to arbitration does not challenge the fundamental nature of the workers' problems. In fact, the legal channels may even serve to avert a crisis situation where workers might actively seek to set up alternative trade unions or engage in mass protests, which is precisely the reason behind the government's policy to regulate industrial relations through legal channels.

⁴ Zhao Cheng and Qi Zhongxi, "Quanguo qingqian gongjian zhan chujian chengxiao, qingli qianxin bushi 'guafeng'," (Cleaning up unpaid wages is beginning to see some results nationwide; cleaning up unpaid wages is not like "blowing a gust of wind"), <<http://www.sina.com.cn>> January 21, 2003, Xinhua (New China Net).

⁵ Mary Gallagher, "Use the Law as Your Weapon!" The Rule of Law and Labor Conflict in the PRC." Paper presented at the 55th Annual Meeting of the Association of Asian Studies, March 27–30, 2002.

⁶ Isabelle Thireau & Hua Linshan, "The Moral Universe of Aggrieved Chinese Workers: Workers' Appeals to Arbitration Committees and Letters and Visits Offices," *The China Journal*, no. 50 (July 2003): pp. 83–103.

⁷ The first lawsuit by an employee suing his trade union for not protecting his labor rights was described in *Southern Weekly* (in Chinese), September 4, 2003, p. A3.

The passage of the new laws has led to a substantial number of lawyers and paralegals offering services to workers who seek compensation through law suits for industrial injuries and occupational diseases. Some of the lawyers operate from within the legal aid centers of university law schools or the trade unions' legal work departments,⁸ while other lawyers have started their own private practices to handle litigation on behalf of workers. The suits seeking compensation are becoming increasingly aggressive, despite their reactive nature, and the government is willing to grant more space to such court actions. Nonetheless, the litigation is a long-drawn-out process, and most ordinary workers and migrant workers can ill afford the time or money to pursue this channel.

When the legal channels fail to resolve problems, protest activities escalate into collective street actions. In the state sector, workers continue to hark back to "collective memories of state socialism,"⁹ and are often motivated by a "subsistence crisis" caused by "managerial corruption."¹⁰ These tend to be workers who have been laid off or are in the midst of being laid off or forced into early retirement. Workers still in employment do not normally join in.¹¹

2. Participatory Rights at Enterprise Level

A second type of phenomenon that warrants attention is the Staff and Workers Representative Congresses (SWRC), which were revived a few years before the industrial reforms began in the mid-1980s, and which were used during the following years by at least some workplace unions to counteract the rising power of factory managers.¹² Although workers in state and collective enterprises are supposedly empowered to participate in this so-called "democratic management," the attempt has not met with much success.¹³ In many enterprises they are never convened, and in some others they are controlled entirely by management. Yet the Congresses have not been entirely useless. In a research project still in progress in which I am collaborating with several Chinese researchers, our studies of a number of SWRCs at state and collective enterprises show that, though weak, they sometimes serve to check total management domination. In the Chinese press, particularly in newspapers published by the Chinese trade union structure, there have been reports of cases where workers faced with unemployment and disentanglement of benefits or efforts to privatize the firm by corrupt managers and local officials have, against the odds, taken

⁸ Feng Chen, "Legal Mobilization by the Chinese Trade Unions: The Case of Shanghai," *The China Journal*, no.52 (July 2004), pp. 27–45.

⁹ Ching Kwan Lee, "The 'Revenge of History': Collective Memories and Labor Protests in Northeast China," *Ethnography*, vol.1, no.2 (2000), pp. 217–237; also Ching Kwan Lee, "Pathways of Labor Insurgency," in Elizabeth Perry and Mark Selden (eds), *Chinese Society: Change, Conflict and Resistance* (New York: Routledge, 2000), pp. 41–61.

¹⁰ Feng Chen, "Subsistence Crises, Managerial Corruption and Labor Protests in China," *The China Journal*, no. 44 (July 2000), pp. 41–63; Feng Chen, "Industrial Restructuring and Workers' Resistance in China," *Modern China*, vol. 29, no. 2 (April 2003), pp. 237–262.

¹¹ Personal communications with an independent Chinese researcher reveal that the massive workers' protest at Daqing and Liaoyang, Liaoning province, almost entirely involved laid off and retired workers. Western media reports and critics of China's suppression of the protests did not make this distinction.

¹² Information on the role played by the Staff and Workers Representative Congress in the first half of the 1980s was collected for a collaborative research project with Beijing academics that I am currently participating in regarding democratic workplace governance in China. Thanks are due to the Beijing office of the Ford Foundation for funding the research.

¹³ Anita Chan, "Labor in Waiting: the International Trade Union Movement and China," *New Labor Forum* (Fall/Winter 2002), pp. 55–60.

matters into their own hands and convened their enterprise Staff and Workers Congress to fight off the attempts, in some cases successfully sacking the managers.¹⁴

POST-2000: THE UNION FEDERATION SUBJECTED TO NEW PRESSURES

Although Chinese labor laws do not allow truly independent trade unions to exist, they contain provisions for internal democracy in the official enterprise-level trade union branches. In a one-party state that controls the appointment of union officials, to speak of exercising internal democracy may seem an oxymoron. But after a decade and a half of competitive elections for village leaders, there is a widespread awareness in China regarding elections. Nonetheless, despite the provisions in the labor laws, as yet there is no surge of suggestions in the Chinese press that, like farmers, the workers should be allowed to elect their own representatives. Over the past three years the biggest push for management-labor dialogue and even elections at the workplace has come from outside China.

1. The International Antisweatshop Movement and Corporate Social Responsibility

The antisweatshop movement, which originated in the developed countries, is serving as an external force pushing to raise labor standards in China. A large number of major Western brand-name corporations, if only as a public relations exercise, have drawn up corporate codes of conduct, and the firms in China that manufacture goods for them are supposed to comply with these. Starting in the mid-1990s, a number of the most well-known Western multinationals have instituted a flurry of internal and external monitoring, auditing, and verification activities at their suppliers' factories.¹⁵

The movement's impact on China became visible by the end of the 1990s. In the mid-1990s, when I visited Taiwanese and Hong Kong-owned supplier factories in Guangdong and Fujian provinces, owners and managers did not mention anything about pressures from the Western corporations. But beginning around 2000, some of them complained bitterly about mounting pressures on them to comply with minimum standards. As a consequence, working conditions and wage levels have risen at least modestly at some of the larger factories, though excessive overtime continues to be a serious unsolvable problem.

The Guangdong government and provincial trade union ignored the monitoring activities for some years, but more recently have felt a need to learn more about the impact of problematic labor standards and industrial relations on Guangdong's investment climate. They have invited experts to hold workshops on the antisweatshop movement, corporate social responsibility, and the efforts to monitor supplier firms. Aware that Asian countries such as Cambodia, Vietnam, and Thailand¹⁶ are willing to accept the corporate social responsibility movement in the hope of attracting additional foreign investment, the Guangdong government may well feel obliged to come up with a positive position on this.

¹⁴ Zhu Xiaoyang & Anita Chan, "Zhili shidai zhigong liyi jizhong biaoda de zhiduhua qudao" (The Institutionalization of Channels for the Articulation of Workers' Interests), *Kaifang shidai* (Open Times, Guangzhou), February 2003, pp. 20–32.

¹⁵ Tan Shen & Liu Kaiming, *Corporate Social Responsibility and Chinese Society* (in Chinese), (Beijing: Social Science Documentation Press, 2003).

¹⁶ Anita Chan & Wang Hongzen, "Raising Labor Standards, Corporate Social Responsibility and Missing Links—Vietnam and China Compared." Presented at the conference "The Labor of Reform: Employment, Workers' Rights, and Labor Law in China," University of Michigan, March 21–22, 2003. This is published in Chinese. Wang Hongzen and Anita Chan, "States and the Anti-Sweatshop Movement: Evidence from China and Vietnam," *Hong Kong Journal of Social Sciences*, no. 26 (Autumn/Winter 2003), pp. 103–26.

Within the past year, the national media was also onto the issue. During 2004, for instance, there has been a flood of reports and discussions about the New York-based multistakeholder NGO Social Accountability International (SAI), which, issues SA8000 licences to manufacturing facilities that comply with the labor standards set by the organization. A heated debate in the Chinese news media over whether SA8000 is an instrument to protect the rights of Chinese workers¹⁷ or a stick wielded in behalf of Western “protectionism” suddenly brought the issue of corporate social responsibility into the open. Writers in China who want to see the labor conditions of migrant workers improve welcomed SAI’s efforts to oversee the SA8000 standard, while those who do not want to improve Chinese labor standards for fear of losing China’s “competitive edge” to other developing countries see SA8000 as an unwanted Western intervention.¹⁸ Some Chinese reporters, confused about the issue, wrongly reported that SA8000 is a U.S. government ploy, unable to believe that a Western-based NGO can be nongovernment-sponsored and genuinely concerned with improving workers’ welfare.

Also during the past year, for the first time the ACFTU has openly criticized a foreign firm in the mass media for refusing to set up an ACFTU trade-union branch. Wal-Mart, the world’s largest retailer, is the target of attacks for its insistence on rejecting official union representation at its Wal-Mart retail outlets in China. The ACFTU declared that legal action would be taken if Wal-Mart did not comply with the Chinese trade-union law on the establishment of workplace unions.¹⁹ Since the ACFTU made this public statement, a flood of reports has appeared in the Chinese press, some lambasting Wal-Mart for exploiting China’s workers.²⁰ The Chinese media also carried a report by an American NGO, the National Labor Committee, on labor exploitation at a Hong Kong-owned factory that supplies toys to Wal-Mart.²¹ Notably, these articles for the first time place the exploitation of Chinese workers in the context of the global chain of production. Prior to this, Chinese media reports on abuses of workers in China’s export industries always described the incidents as if they were isolated phenomena.

2. Enterprise-Level Trade Union Elections

One of the antisweatshop movement’s demands has been that workers in the supplier factories should have freedom of association, which is not an easy aim to achieve in China. Some of the Western corporations that are the most serious in addressing this have initiated occupational health and safety committees or other forms of workers’ representative committees. Reebok has gone further, and has successfully pressured three of its supplier factories that are owned by Taiwanese and Hong Kong firms to hold democratic trade union elections, respectively in 2001, 2002,²² and 2003. This has put pressure on other Western brand-name corporations to follow

¹⁷ Jian Chuanhai, “SA8000: Laodongzhe de ‘baohu san’” (SA8000: The Protective Umbrella of Laborers), *Nanfang Gongbao* (Southern Workers’ News), April 7, 2004.

¹⁸ For example, see Li Ying, “SA8000, xin de maoyi bilei?” (“SA8000, a New Trade Barrier?”), *Nanfang Dushi bao* (Southern City News), November 20, 2003.

¹⁹ Guo Li, “Wal-Mart Zhongguo ‘gonghui weiji’” (“Wal-Mart in China: Trade Union’s Crisis”), *Ershiyi shiji jingji baodao* (Twenty-first Century Economic News), September 24, 2003.

²⁰ For example, “Wal-Mart chengdan buliao suoyou de zeren,” (“Wal-Mart cannot shoulder all the responsibilities”), *Nanfang Zhoumo* (Southern Weekly), April 1, 2004.

²¹ For a series of articles on this case visit China Labor Watch’s web site: <www.chinalaborwatch.org>.

²² I was able to spend two weeks as an independent researcher at the factory that held trade union elections in 2002, observing all of the speeches of the hundred-plus workers who vied to be elected to the trade union committee. On this election, see Alison Maitland, “Sewing a Seam of Worker Democracy in China,” *Financial Times*, December

suit, or at least to establish some form of democratically elected workers' committees through which workers can channel their grievances.²³ For several years, the Chinese authorities and the ACFTU chose to remain neutral not just regarding the monitoring initiatives, but even the enterprise-level elections. But in August 2003, one of the vice presidents of the ACFTU made references in a speech that was carried by the Chinese media to the effect that foreigners should not intervene in Chinese trade union affairs.²⁴ Nonetheless, the elected union committees at the three Reebok suppliers remain in place.

Elsewhere, direct elections of workplace trade union chairs have occurred at several private enterprises in Guangdong and Zhejiang provinces, apparently as a result of regional union initiatives.²⁵ In Hangzhou, the capital city of Zhejiang, 310 factories reportedly held direct elections four years ago, though this was kept out of the Chinese news media until 2003.²⁶ In September 2003 the ACFTU announced that it would promote such elections elsewhere in China within the next few years.²⁷ The timing of this announcement coincided with the ACFTU's public reaction to the corporate social responsibility movement and the Reebok-inspired elections. Some internal ACFTU reports noted that some supplier factories held direct elections after being pressed to comply with the Western corporate codes of conduct. Thus, popularizing direct elections could be the union federation's strategy to forestall foreigners coming in to set up workers' committees. Whether such elections are truly democratic remains to be studied, as "direct" is not synonymous with "democratic." As shown by a number of studies of village elections, the format, nature and results of elections vary widely across China, yet whatever the shortcomings, the researchers' overall consensus is that the elections have had a positive impact, often giving farmers some say in the running of their local communities.²⁸ It is possible, similarly, that the initiation of factory-level union elections in China, whether fully democratic or not, will gradually have the effect of giving workers more direct representation and a potential means to check the power of management in protection of their own rights.

3. The ILO Tripartite Structure

Another avenue that may instigate change in China's industrial relations involves the International Labor Organization (ILO). As a member state, China needs to establish a tripartite peak organization comprised of representatives from a national labor union federation, a peak employers' association, and a government organ, in order to send delegates from the three groups to the ILO's annual meetings in Geneva. Whereas the ACFTU serves as China's peak union

12, 2002. Also see Doug Cahn & Jill Tucker, "Worker Input Means Better Conditions in Factories," *South China Morning Post*, April 4, 2003.

²³ A multistakeholder NGO, Social Accountability International (SAI), is currently starting a pilot project to set up some forms of workplace workers' committees in three supplier factories.

²⁴ Wang Jiaoping, "Direct Elections—Pushing Ahead in a Regularized Manner: ACFTU Deputy Chairman Su Liqing's Response to Reports' Queries" (in Chinese), July 25, 2003.

²⁵ This information comes from a private communication with a researcher within the trade union structure.

²⁶ Xie Chuanlei, Fu Jianfeng & Wang Jiajia, "Direct Trade Union Elections as a Form of New Labor-Capital Relation, to Compete in the New Rules of the Game," *Southern Weekly* (in Chinese), July 3, 2003; Zhong Guodong, "Pushing Ahead with Direct Elections of Trade Union Chairs in Non-Publicly Owned Enterprises," *Chinese Management News* (in Chinese), March 17, 2003.

²⁷ "China Trade Union to Allow Direct Election of Shop Leaders," Associated Press, September 26, 2003.

²⁸ Liu Yawei, "Consequences of Village Committee Elections in China: Better Local Governance or More Consolidation of State Power," *China Perspectives*, no. 31 (September–October 2000), pp. 19–35; Gunter Schuter, "Democracy Under One-Party Rule? A Fresh Look at Direct Village and Township Elections in the PRC," *China Perspectives*, no. 46 (March–April 2003), pp. 15–25.

organization, there was no peak employers' association, and so in 1999 the China Enterprise Confederation (CEC) was set up to serve this function. Its membership largely consists of state-enterprise management. In the ILO tripartite model the three parties are supposed to be independent and strong enough to carry out a meaningful "social dialogue." To the extent that such a peak system evolves, this potentially works to diffuse the statist nature of China's corporatist arrangements. Today, the system is still embryonic: the ACFTU remains under the control of the party-state, after all, and the CEC is in its infancy.²⁹ The National Tripartite Consultative Committee was set up in 2001, with similar committees at all administrative levels down to the rural townships. An ILO fact-finding commission found half a year after the tripartite committee's establishment that:

*The tripartite system as presently constituted is unlikely to live up to the hopes placed in it both now and in the future ... However, in all our interviews with trade union and employer representatives at municipal and national levels we found a clear commitment to developing the capacity of their respective organizations as independent representatives, able to articulate the interests, aspirations and grievances of their members within the system of social dialogue.*³⁰

The fact-finding commission also noted that the "ACFTU has been the most active proponent of tripartite consultation as a means of protecting its members and maintaining social peace." As an independent observer who accompanied the two-member ILO commission in its investigations across China, I was impressed that officials from China's Ministry of Labor, which often sides with corporations in line with the government's pursuit of economic development, on two separate occasions remarked that the ACFTU is "powerful," as if the Ministry has difficulty cowing the ACFTU into accepting its decisions. This characterization is in line with the assertive role the ACFTU has played in the national legislative process.

CONCLUSION

At the very top, in short, the ACFTU is beginning to make an effort to break away from the tight grip of state corporatism. The union federation's survival instincts tell it that unless it can represent the interests of the workers it will become irrelevant. Thus, while worried about losing its corporatist status in the state structure, at the peak level there are quiet maneuvers to attain greater bargaining power and at least a modicum of independence.

At lower levels, particularly at the district and workplace levels, the union officialdom has been overwhelmed by the power of local governments, capital, and management. But pressures have been building for the lower-level union officers to be more responsive to the needs of workers. In the state-enterprise sector the biggest pressure has come from workers laid off due to enterprise bankruptcy and changes in ownership. And the open exploitation of migrant workers confronts the unions with the embarrassing realization that something needs to be done to remedy the abuses. The peak-level union federation has been able to get clauses inserted into China's labor laws that provide workers with at least some legal leverage. Migrant workers have been able to use this to secure unpaid wages. The labor laws have spawned an active, growing group of lawyers and paralegals who specialize in representing aggrieved workers. There are embryonic, hopeful signs that enterprise-level union elections may become more frequent in future. The antisweatshop movement that originated in the wealthy developed countries has

²⁹ Simon Clarke & Chang-hee Lee, "The Significance of Tripartite Consultation in China," *Asia Pacific Business Review*, vol. 9, no. 2 (2002), pp. 61-80.

³⁰ *Ibid.*, pp. 77-78.

finally succeeded in prompting the Chinese trade union federation to begin to address the issue of corporate social responsibility, after avoiding the issue for some years. And in the state and collective sectors, the system of Staff and Workers Representative Congresses can sometimes be turned to. In what are often difficult times for blue-collar workers in China, there exist these various rays of hope in the labor relations arena.

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