

# Swimming against the Tide A short history of labour conflict in China and the government's attempts to control it

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## Contents

- [Introduction](#)
- [From government-led to employee](#)
- [Clinging to an outmoded system](#)
- [The effectiveness of China's](#)
- [Conclusion](#)

*These regulations have been substantially revised based on discussions with all interested parties in the wake of the problems manifest at Foxconn and Honda.*

Ou Guangyuan, Chairman of the Standing Committee of the Guangdong People's Congress. [[1](#)]

## Introduction

In the first six months of 2010, ten young workers at electronics giant Foxconn jumped to their deaths from the roof of their dormitories in Shenzhen. At the same time, strikes at Honda automotive parts suppliers in Guangdong triggered a wave of worker protests across China. It was clear that the long-simmering and deep-seated discontent and anger felt by many workers in the "factory of the world" was beginning to boil over.

The Chinese government responded quickly and generally positively to the protests, calling on employers to improve pay and working conditions, and to treat young workers with respect and compassion. Nearly all local governments raised the minimum wage, on average by 20 percent. Most adopted a relatively lenient attitude towards strikers, only sending in the police when public order was deemed to be threatened. Although these measures were helpful up to a point, they still betrayed the government's determination to control or manage labour conflict from above rather than allow labour and management to resolve their differences themselves.

In Guangdong, however, the provincial government took a different path and drafted legislation that, if implemented, would allow labour conflicts to be resolved peacefully within enterprises, without the need for government intervention. The provincial *Regulations on the Democratic Management of Enterprises* (《企业民主管理条例》) would create a legally-binding mechanism in which workers can demand and negotiate for pay increases with management. Moreover, if one third of the workforce (one fifth of the workforce in early drafts) demand talks with management on wages and work conditions, the trade union at the enterprise is obliged to organize and conduct such negotiations.

This is not the first time such hands-off approach has been proposed. The Ministry of Labour floated

a similar idea back in 1993 in which the primary responsibility for dispute resolution lay with workers and management, with the government playing an auxiliary role as and when required. For a number of political and economic reasons, this model was never implemented and there is certainly no guarantee that Guangdong's new regulations will work either.

As this report shows, previous attempts by the government to find a legislative fix to labour conflicts have had limited success. Laws designed to protect workers' rights and interests have not been enforced and employers have been allowed to dominate and control the labour relationship by unilaterally determining pay and conditions, hiring and firing employees at will. At the same time, worker organizations that could stand up to the bosses have been suppressed by the government. And many small enterprises have been squeezed by taxation to such an extent that they have little profit left to share with their employees.

In order to assess the significance of Guangdong's draft regulations and place them in a historical context, this report looks back at the changing dynamics of labour relations in China during the reform era, discusses the government's strategies for managing labour conflicts, and analyzes in detail the effectiveness of the two most important labour laws implemented thus far; the 1994 *Labour Law* and the 2008 *Labour Contract Law*.

It concludes that the Guangdong regulations are, in part at least, a departure from traditional government thinking because rather than continuing to swim against the tide of economic reform and development, and assuming the government alone can resolve labour conflicts, the regulations actually encourage the workers themselves to get involved in the process.

## **From government-led to employer-led labour relations**

During the era of the planned economy in China, the state was the only "employer". The government was solely responsible for the recruitment of workers, setting wage levels, and providing social insurance and welfare benefits at state-owned enterprises (SOEs). Enterprise managers and workers were all employees of the state, and there was, in theory at least, no contradiction or conflict between the interests of the state and those of enterprise managers or the workers. The government characterized labour relations in SOEs at the time as an "administrative" relationship (行政关系) rather than as one between employer and employee. [2] The economic reforms instigated by Deng Xiaoping in 1979 changed all that. Over the next three decades, the interests of labour and management gradually became more distinct, and increasingly divergent, before eventually consolidating into fundamental opposition.

### **The transformation of labour relations (1979-1997)**

During this initial transformative period, China's state-owned enterprises gradually expanded their powers of self-determination. The "administrative" nature of labour relations faded to be replaced by a more market-oriented employment relationship. SOE managers gained more control over human resources; hiring and laying-off workers based on the requirements of production, linking wage levels with productivity and promoting a formal system of labour contracts. These changes were the genesis of the labour relationship between enterprise managers and workers we see today. [3]

In the 1990s, the trend towards the divergence of interests of labour and management was most evident in the growing income disparity between SOE managers and ordinary workers. In the mid-1990s, in accordance with central government directives, SOEs began to implement an annual salary system, after which the income gap between managers and workers gradually widened. [4] According to a trade union survey of 25 SOEs in Hebei in 1994, income disparity in most SOEs was

still quite modest but in some enterprises the gap was already substantial. In 12 of the enterprises surveyed, the average annual income of the managers was less than two times that of the workers, and in eight SOEs, managers earned on average double the workers' wage. But in two enterprises, managers earned three to five times more than the workers, and in three SOEs managers earned eight to 12 times more than the workers. [5]

At the same time as the state was gradually relinquishing its direct control over SOEs and the economy, the government sought to maintain some measure of social control in other ways. While the government transferred more power to enterprise managers, gradually clarifying the limits of their autonomy and defining the relationship between the government and the enterprise, it also sought to forestall any social conflict that might arise from these reforms by implementing a series of "remedial measures" (补救措施), such as limiting the number of workers who could be laid off, and stipulating that those laid off retain their status as SOE workers. [6] These remedial measures were used by Communist Party ideologues to show that, despite all the economic reforms, SOE workers still played the "lead role" (领导作用) in labour relations. On 18 July 1994, for example, the front page of the *People's Daily* proclaimed in no uncertain terms that; "no matter what enterprise management system is implemented, (SOE) workers will always play the lead role in the state and in enterprises." [7]

### **The consolidation of labour relations (1998-present)**

In the late 1990s, however, the government massively intensified the restructuring of SOEs. This process disenfranchised and marginalized tens of millions of workers, while at the same time creating a new class of powerful capitalists with close and highly influential links to local government. Crucially, at this time, the central government seemed to abandon any thoughts of additional remedial measures and basically gave local government officials and SOE managers free rein to carve up the state's assets between them.

From 1995 to 2002, SOEs cumulatively laid off as many as 30 million workers. [8] These workers were given a one-off, usually inadequate, compensation payment, based on the number of years they had been employed at the enterprise. Subsequently, their relationship with the enterprise was severed; they were stripped of their much vaunted "lead role" in the state and enterprises, and were reduced to being wage labourers - assuming, of course, they could find another job. [9] Meanwhile, SOE managers used their power and connections with local governments to work behind the scenes to secure enterprise assets at ridiculously low prices, elevating themselves from being mere managers to actual owners of the enterprise. According to one survey, over 20 percent of the private enterprises created in the first half of 2006 emerged from the restructuring of state-owned and collective enterprises. [10]

It was during this process that the interests of labour and management moved from divergent to opposing. Those workers who retained their positions at restructured SOEs quickly found themselves in opposition to the new enterprise owners. And even in those enterprises where the state maintained a controlling interest, the gap between the interests of the workers and those of enterprise managers became increasingly clear. Workers were no longer employees of the state but employees of the enterprise, and as such, they sought to maximize their own interests through demands for better pay and conditions. The core objective of enterprise managers, on the other hand, was of course the maximization of productivity and profit. A survey of three restructured enterprises in Guangdong showed, for instance, that after restructuring, all the enterprises introduced strict new management systems based on economic incentives and deterrents. In one company, employees would be dismissed if they caused economic losses of more than 5,000 yuan. [11]

The income gap between workers and SOE managers, which had begun to widen in the 1990s became a chasm in the 2000s. A survey of 208 SOEs by the All-China Federation of Trade Unions (ACFTU) showed that the income of senior management was 6.7 times greater than that of front-line workers in 2006, and 17.9 times greater in 2008. [12] Meanwhile a 2005 survey by the Beijing Federation of Trade Unions revealed that, in 2002, the incomes of some SOE general managers and Party secretaries was 13 times higher than that of ordinary workers, 28 times higher in 2003, and 74 times higher in 2004. [13]

It was during this period that the employer established clear and unshakable control over the labour relationship. Labour was in a state of extreme over-supply, and employers could control the market, selecting the candidates they wanted and unilaterally determining pay, conditions, benefits and terms of employment. [14] In addition, employers could control the growth and development of workers organizations. Employers either suppressed enterprise unions or, if they allowed them, made sure they could control or pressure the unions into accepting management demands. [15]

The end result of these changes was that the “government-led” system of labour relations established during the planned economy had been almost completely replaced by an “employer-led” system that has marginalized and exploited workers, depriving them of any means of protecting or pursuing their own interests.

### **Clinging to an outmoded system**

Given the fact that the government-led model of labour relations has now been superseded in reality by an employer-led model, why does the Chinese government insist on trying to maintain a leadership role?

In the early 1990s, the government actually seemed prepared to relax its grip and adopt a more pragmatic and realistic approach to managing labour relations. In 1993, the Ministry of Labour proposed a model in which labour and management “engage in negotiations on their own initiative, and the government makes adjustments when appropriate.” The ministry stipulated that:

*“Enterprises and workers are the two entities that comprise the labour relationship, and they enjoy equal rights to freely negotiate and bargain collectively on matters related to the labour relationship. These rights will be protected by law. In most situations, the government will not need to intervene in freely negotiated labour-related settlements between an enterprise administration and workers or a trade union organization, or between a management organization and a trade union organization.”* [16]

This management model was restated in the Ministry of Labour’s *Overall Considerations related to Reform of the Labour System during the Establishment of the Socialist Market Economy*, issued on 21 December 1993.

The intent in these two documents was clear; to create a three-level system consisting of a macro level of labour laws, government supervision and monitoring, and labour dispute resolution; an intermediate level based on collective bargaining and trade union activity within enterprises; and a micro-level based on individual workers’ labour contracts. At these three levels, labour and management would, under the constraints of state labour laws, manage labour relations independently using collective bargaining and labour contracts. Only when problems occurred in the process would the government intervene to mediate in the dispute. The government’s role under this model would be that of legislator and arbitrator.

This model was not implemented, however, because it was seen to conflict with needs of the Communist Party and government to maintain social and political stability and ensure economic growth. Moreover, the imbalance of power in the labour market created by the government's economic reforms meant that workers lacked the resources and ability to negotiate as equals with management.

### **Investing in social stability**

Ever since the suppression of the democracy movement in Beijing in 1989, the collapse of the Soviet Union and the democratization of Eastern Europe, the Chinese Communist Party has become more and more concerned with maintaining its own grip on power. [17] The government's concern to balance economic growth with social justice, as exemplified by the 1993 Ministry of Labour proposals, has been superseded by the need to maintain social and political stability. As such, rather than relax its control over labour relations, the government, in a bid to "maintain stability", sought to tighten its control.

Since the turn of the century, maintaining stability has been a key performance indicator for Party and government officials across the country. In the manufacturing heartland of Dongguan, for example, district heads will have 100 points deducted from their performance score for every "mass incident" (群殴事件) that occurs in their district. [18] In Yunnan, the provincial government announced at the end of 2009 that it would double its law and order budget in 2010, while in Liaoning, the government pledged to increase its expenditure on maintaining social stability in 2010 to 22.32 billion yuan, or about 500 yuan for everyone in this province of 45 million people. [19]

The eminent social scientist Yu Jianrong has characterized such policies as the pursuit of "iron stability" (铁稳定). A key characteristic of "iron stability", Yu says, is the control of social organizations. The government has implemented a strict registration and approval system for the establishment of any kind of social organization, severely restricting those organizations' freedom of expression and ability to operate effectively. [20] In the workplace, "iron stability" has played a decisive role by suppressing worker demands for more independent and representative trade unions and in restricting the ability of workers to organize.

Even if workers are aware of violations of their legal rights or are determined to pursue their economic interests, they have little or no ability to form a united force or organize a union that truly represents them. The only option left for workers in this situation is to stage strikes, road blocks and other forms of protest in a bid to force the local government to intervene. Although the government has generally adopted a more tolerant approach to worker protests in recent years, seeing them as merely economic disputes between employer and employees, it will still suppress any mass incident deemed to be adversely affecting social and political stability. [21]

### **Supply and demand**

Another major issue limiting workers' ability to organize has been the country's oversupply of labour. In the early stages of economic reform, the government was faced with the problem of employing 37 million "educated youth" returning to the cities after being sent to the countryside during the Cultural Revolution. In the late 1990s, there was the pressure to employ over 30 million laid-off workers resulting from the restructuring of SOEs, along with over 100 million rural migrant labourers. And in the 2000s, more and more college graduates joined the labour market, with upwards of six million graduating in 2009. In order to solve China's employment problems, the government adopted a labour-intensive, export-oriented model that stimulated economic growth and, to some extent relieved employment pressures. [22]



Abundant labour meant employers faced no pressure to increase wages or improve working conditions. Workers were highly mobile, competed against each other for jobs, and lacked the knowledge, ability and strength to join forces to bargain collectively with their employers. [23] Consequently, wages for factory workers and many others hovered at a level barely sufficient for even the most basic living standard.

In the last two years, however, with the development of China's inland provinces and demographic shifts slowing down the number of young people entering the workforce each year, there are signs that the supply and demand for labour are gradually being rebalanced. That said, there is still an absolute oversupply of labour in China, and it is clear from the recent pay raises in the Pearl River Delta that once enterprises start to offer decent pay and conditions, they have no problem recruiting new workers.

### **Government collusion and corruption**

China's economic reform and development has created an almost unbreakable alliance between business and government. This has had a severely debilitating effect on the development of healthy labour relations. Not only do local officials stand to benefit economically and politically from sustained growth and development in their jurisdiction, many have a direct interest in the economic success of local enterprises through the ownership of shares or other less formal arrangements. This has resulted in a tacit agreement between officialdom and business to allow enterprise owners to violate workers' legal rights and economic interests, or to allow enterprise owners to unilaterally determine workers' terms and conditions of employment. Moreover, as more and more local governments compete with each other to attract investment, the power of capital has steadily increased and consolidated while the already weakened power of labour has diminished further.

In return for their freedom to disregard the law and exploit the workforce, however, enterprises are routinely squeezed by local governments, not only in terms of taxation but also in the collection of the "three expenses" (三费) arbitrary fees, "donations" and demands for gifts and entertainment services. According to a national survey of private enterprises completed in the first half of 2006, these "three expenses" accounted for around one third of enterprises' total tax burden, or 30 percent of their net profits. [24] Government greed has squeezed profit margins in some small and medium-sized enterprises and in labour-intensive manufacturing and processing industries such as shoes, clothing, and household appliances, down to two or three percent." [25] Meanwhile, government revenue has steadily increased. Between 1997 and 2007, government revenues, as a proportion of GDP, increased from 10.95 percent to 20.57 percent, while at the same time worker compensation declined dramatically from 53.4 percent to 39.74 percent of GDP.

### **An inherently flawed system**

Under these circumstances, the model envisioned by the Ministry of Labour in 1993 in which labour and management would "engage in negotiations on their own initiative," with the government getting involved only when necessary clearly could not be realized. The government decided it had no option but to retain its own leadership role in the management of labour relations, even though the transformation of the economy, and labour market in particular, meant the government's "leadership role" was already inherently flawed.

The collective contract system, propagated since the early 1990s, is a classic example of the government's failure of leadership. The 1992 *Trade Union Law* and the 1994 *Labour Law* both propose the use of collective contracts as a means of managing labour relations. And, according to the ACFTU, progress has been "encouraging". For example, the union announced that, as of June 2008, 10.9 million collective agreements had been signed, covering 18.34 million enterprises and

140 million workers across China. [26] But government research, observations by non-government organizations (NGOs) and information from the ACFTU itself all show that despite the abundance of collective contracts, China is far from establishing a true collective bargaining system. The workers themselves are nearly always excluded from the collective contracts negotiation process. The contracts that are signed are essentially *pro forma* agreements imposed on the workforce by management and higher-level union officials concerned only with meeting their quota for collective contract completion. [27] The provisions of the contracts hardly ever reflect the specific conditions and interests of workers at individual enterprises. Moreover, the collective contract system lacks a basic set of procedures for information disclosure, the rights, obligations and responsibilities of the bargaining team, or workers' review and approval of the proposed contract.

Another problem with the "government leadership" model is the authorities' inability to monitor and remedy labour rights violations. [28] In China's labour market, characterized by strong capital and weak labour, government labour departments bear the brunt of the work in attempting to rebalance the forces of labour and management. The labour authorities, however, are severely handicapped by a lack of money and manpower. In the economic powerhouse of Guangdong, for example, the ratio of specialized labour personnel to workers is one to 20,000, far lower than the one to 8,000 stipulated by Ministry of Labour regulations. And in the provincial capital Guangzhou, there are just 130 specialized labour supervisors for 160,000 companies. [29] The situation is even more severe in Beijing, where, according to a recent survey, the ratio of specialized labour monitors to workers in one district was one to 45,000. [30] And even if the authorities do have the time and resources to get involved in labour disputes, there is no guarantee they will be able to resolve them. The highly respected Beijing Zhicheng Migrant Labour Legal Aid and Research Centre noted that 21 percent of the cases it handled between 2008 and 2009 had first been handled by the labour authorities but that none of these cases had been satisfactorily resolved. [31]

Moreover, rapid changes in the legislative and economic environment can lead to an equally rapid surge in the number of disputes, as was the case in 2008 after the implementation of the Labour Contract Law and the onset of the global economic crisis in the latter half of the year. The number of cases handled by the country's labour dispute arbitration committees in 2008 almost doubled to 693,000. A similarly dramatic increase was seen in the number of labour disputes accepted by the civil courts. Both the courts and the arbitration committees have been unable to cope with the sudden influx of cases. For example, the number of cases accepted by labour dispute arbitration committees in Shanghai in 2008 was 25 times higher than in 1995, when the Labour Law was first implemented. Arbitrators took on an average of 400 labour dispute cases each, and completed 173 percent more cases in 2008 than they did in 2007. [32]

In addition, the number of "mass incidents" (unauthorized gatherings of more than 20 people, which include collective worker protests) increased from around 10,000 in 1994 to 74,000 in 2004. The government stopped releasing official statistics on mass incidents in 2005 but unofficial reports suggest the numbers have remained at a consistently high level ever since. The Hong Kong-based political magazine *Cheng Ming* (Cheng Ming) quoted senior Party sources as saying the number of mass incidents in 2008 was 127,467, [33] about 70 percent higher than the 2004 figure. The number seems to have declined in 2009 but is still well above the 2004 level. Yu Jianrong estimated that, based on information released by different government bureaus, the total number of mass incidents in 2009 was about 90,000. [34] In the vast majority of mass incidents, the underlying causes have been serious violations of ordinary citizens' lawful rights and interests by local government officials, typically in connection with resource development, relocation for construction projects and land expropriation. It is impossible to say with any degree of certainty what proportion of these mass incidents are labour-related but Yu Jianrong estimated, in a 2008 presentation for the Chinese Academy of Social Sciences, that the proportion was around one third. [35]

## **The effectiveness of China's labour laws**

Given that the government lacks the ability and resources to effectively intervene in labour relations collectively at the factory level, or on behalf of individual workers when their rights have been violated, its sole remaining “weapon” has been at the macro-level, specifically legislation. However, as we have seen from preceding analysis, the effect of introducing new laws to protect the rights and interests of workers is severely limited if the authorities do not enforce them.

In this section we focus on China's two most important labour laws, the 1994 Labour Law and the 2008 Labour Contract Law, in a bid to examine just how effective legislation has been in enhancing and protecting workers' rights.

### **The Labour Law (1994-2007)**

*“Since reform and opening, China's non-state-owned economic sector has seen great development. State-owned enterprises have also rapidly transformed their operating mechanisms, bringing increased complexity and diversity to labour relations. During this process of change, how do we correctly manage and protect the legal interests of both parties in the labour relationship and resolve conflicts between employers and workers? From an objective standpoint, we need to establish a more robust and improved system of labour laws, using legislation to guarantee that workers' legal rights and interests are not violated; this is extremely urgent.”*

Minister of Labour Li Boyong's introduction to the draft Labour Law at the National People's Congress [36]

In the early 1990s, workers routinely suffered from excessively long working hours, non-payment or embezzlement of wages, dangerous working conditions, frequent work-related accidents, crude and unhealthy living conditions, harsh management regimes and frequent violations of personal rights. [37] However, it took one particularly shocking and highly publicized incident to galvanize public and government opinion and accelerate the passage of the country's first major piece of labour legislation. On 19 November 1993, a fire erupted at the Zhili Toy Factory in the Longgang district of Shenzhen, resulting in 84 deaths and 40 serious injuries. The vast majority of the victims were young migrant women workers from rural areas.

The resulting *Labour Law*, approved by the NPC on 5 July 1994, was hailed by many as a “protective amulet” [38] that could prevent a reoccurrence of the Zhili incident and ensure that workers' rights and interests were protected. Unfortunately, soon after the promulgation of the *Labour Law*, doubts began to arise over the effectiveness of its implementation. The inefficiency and poor economic performance of many SOEs meant they were unable to pay the wages stipulated in the law. With large numbers of surplus personnel, managers were unable to sign contracts with workers, let alone pay their pension and medical insurance expenses. [39] And in private and foreign-invested enterprises, there was no sign of any improvement in working conditions. In September 1996, the NPC's law enforcement inspection team identified several serious problems with the implementation of the law, including: [40]

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In many SOEs and collective enterprises, the signing of labour contracts was a mere formality, while in foreign-invested, township and private enterprises progress in contract signing was very slow. The clauses in some labour contracts signed by employers and employees violated state regulations.

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Wage arrears continued to be a widespread and serious problem, not only in less economically-developed areas, but in relatively well developed regions as well.



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Excessively long working hours and compulsory overtime were common in foreign-invested, township, and private enterprises. In Guangdong, for example, workers averaged 70 to 80 hours of overtime each month in foreign-invested and private enterprises, with some even exceeding 130 hours overtime a month.

During the mass lay-offs of SOE workers in the late 1990s and early 2000s, the vast majority of enterprises failed to adhere to Article 27 of the *Labour Law* which stipulates that before laying-off staff, SOEs must explain the redundancy plan to the union, or to all employees, 30 days in advance and solicit the opinions of the union or the employees. And only after making a detailed report to the labour authorities can management reduce personnel. Moreover, after being laid-off, workers, most of whom were middle-aged or elderly, had great difficulty finding stable employment or jobs with decent wages. According to a 66-city survey conducted by the then Ministry of Labour and Social Security, 85.4 percent of those re-employed in 2002 could only find temporary work, and only 9.4 percent secured full-time employment. [41] Data from the ACFTU's 2002 survey of six neighborhoods in six separate cities found that 76.8 percent of mainly middle-aged and elderly re-employed workers had a monthly income of 600 yuan or less and 36.5 percent of that group received 400 yuan or less. [42]

In foreign-invested and private enterprises too, there was no sign of improvement in the 2000s. A survey of 83 enterprises in the city of Shengzhou in Zhejiang in 2002 found that only 13 enterprises (16 percent) had signed labour contracts with all their workers and 12 (14 percent) had signed contracts with some of their workers. Well over half the enterprises (70 percent) had not signed contracts with any of their employees. Of those enterprises that did sign contracts, some inserted illegal clauses seeking to avoid liability for work-related injuries, etc. Only 27 of the enterprises (32 percent) paid their employees' wages on time each month; 47 (57 percent) only paid every other month; and nine (11 percent) paid wages only every three months or worse. All 83 enterprises forced employees to work overtime and failed to pay state-mandated overtime rates. To complete their orders, some enterprises forced employees to work continuous overtime shifts or night shifts, and deductions were made from workers' wages if overtime shift duties were not completed satisfactorily. [43]

In 2005, a survey of 1,760 migrant workers in Guangdong found that 43.3 percent had a monthly income of less than 800 yuan, with 31.2 percent earning between 800 and 1,000 yuan. The average wage for urban workers in the province in 2004 by comparison was 1,750 yuan. Three quarters of those surveyed (76.1 percent) worked overtime, with most working more than 10 hours overtime each week and six percent more than 30 hours overtime per week. More than half the workers (52.7 percent) had not heard of the minimum wage system, introduced nationally in 2004, and 69.1 percent were unaware of the minimum wage level in their area. [44]

In October 2005, the NPC conducted another investigation into the implementation of the *Labour Law*. The results were depressingly similar to the findings of the initial report nine years earlier: [45]

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The labour contract signing rate for small and medium-sized non-state-owned enterprises was less than 20 percent. The contracts that had been signed were usually short-term and riddled with irregularities.

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Some enterprises paid less than the legal minimum wage and wage arrears continued to be commonplace. In some areas, there was a serious problem of bosses embezzling workers' wages before bankrupting the enterprise and fleeing.

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Many enterprises forced employees to work overtime without proper compensation. In enterprises reliant on seasonal production or rush jobs, workers' daily work shifts could exceed 12 hours. Some enterprises used antiquated and dangerous equipment. Workers often had to endure high concentrations of dust, deafening noise, high temperatures and even toxic substances. Work-related accidents were common and occupational illness was an increasingly serious concern.

### **The Labour Contract Law (2008 to present)**

The problems with enforcement of the Labour Law revealed in the 2005 NPC report spurred demands for a new improved labour law that could more adequately and more comprehensively protect workers' rights and interests. The *Labour Contract Law* went through several drafts, with determined resistance coming from domestic and foreign business associations. But, just as with the *Labour Law* 14 years earlier, it took a shocking and highly publicized incident to really push the bill through the legislature. [46]

In May 2007, a local television station reported that hundreds of children, some as young as eight-years-old, had been kidnapped and sold for 500 yuan a head to illegal brickyard operators in the provinces of Shanxi and Henan. The television exposure caused a national scandal and the central government reacted swiftly in an attempt to calm public anger. A massive investigation uncovered 3,186 unlicensed brick factories employing 81,000 workers but claimed only a few hundred had been held against their will, including about a dozen children. [47]

Many legislators and commentators expressed the hope that the new labour law could prevent such tragedies from reoccurring. One NPC Standing Committee member stated: "After the illegal brick kiln incident in Shanxi, I reviewed the drafts, and found that the Labour Contract Law can regulate illegal employment practices." [48] Once again, the official media hailed the new legislation as a "protective amulet" for China's workers. [49]

One year after the implementation of the *Labour Contract Law*, the NPC Standing Committee conducted an investigation into its enforcement. The results sounded encouraging, with the new Ministry of Human Resources and Social Security reporting a labour contract signing rate of 93 percent. [50] This figure was questioned, however, by Beijing's Zhicheng Migrant Labour Legal Aid and Research Centre, which pointed out that the ministry's data was based on "enterprises larger than a certain scale." [51] Small and medium-sized enterprises and those in the informal economy, where the majority of migrant workers are employed, were "disaster areas" lacking labour contracts, the centre said. A report issued by the centre in January 2010 indicated that only 27.5 percent of migrant workers had signed contracts with their employers. Among those who had signed contracts, 13 percent had signed blank ones in which the employee's wages, work hours, and position would be filled in later by the employer. [52]

The *2009 Migrant Labour Monitoring Survey*, issued by the National Bureau of Statistics, likewise confirmed that there was still a low contract signing rate in the private and small-scale enterprises where migrant workers were concentrated. Only 42.8 percent of the migrant workers interviewed had signed a labour contract. The average monthly wage for the migrant workers surveyed was only 1,417 yuan, with 31.5 percent having a monthly wage of between 800 and 1,200 yuan, and 33.9 percent receiving an income of between 1,200 and 1,600 yuan a month. The national average monthly wage for urban workers in the first half of 2009 by contrast was 2,439 yuan per month, or 1,022 yuan higher than the monthly average for migrant workers. Moreover, migrant workers still had to work excessively long hours just to get 1,417 yuan a month. On average, they worked 26 days per month, or 58.4 hours per week. Nearly 90 percent worked more than the 40 hours per week maximum stipulated in the *Labour Law*. Migrant workers in the hospitality industry worked over 60 hours per week on average. [53]

An ACFTU survey in 2009 found that 14.4 percent of workers were owed back pay, 10.3 percent higher than in 2007 and that 60.2 percent of workers worked overtime. Among them, those in labour-intensive and private enterprises worked an average of 51.8 and 53.16 hours per week respectively, but 37.6 percent of the workers had not received overtime pay in full. [54]

Investigations by labour rights NGOs show moreover that the problems are not just confined to small and medium-sized, private enterprises. A 2008 report by China Labour Watch on the Surpassing Shoe Company, a supplier to Puma, and an employer of around 8,000 workers in Dongguan, Guangdong, found that employees worked 12 hours per day on average, and sometimes even worked night shifts on Saturdays. If a worker arrived late or left early, this was counted as a “minor infraction,” and three minor infractions added up to a “major infraction,” which would result in a fine of 300 yuan and dismissal. Workers did have contracts, but employees were only required to fill in the contract’s duration and probation period – all other provisions related to working conditions were filled out by a company representative. [55]

Another report in 2009 by Hong Kong activist group Students and Scholars Against Corporate Misbehaviour (SACOM) showed that the 6,000 employees of the Tianyu Toy Company in Dongguan typically worked three hours overtime each day. During peak production times they worked four hours overtime a day and some workers complained they sometimes had to work through the night, with the longest continuous shift lasting 28 hours. Worse still, if the shift went past 9:30 pm, the company refused to pay overtime. And if employees refused to do overtime, they were fined 50 yuan. To prevent workers from walking out, the company held back a month and a half’s wages and, if workers resigned without their manager’s approval, they would lose one month’s wages. [56]

Two and a half years after its implementation, it is clear that the *Labour Contract Law* has failed to significantly improve pay and working conditions for those at the lowest end of the pay scale. Despite assurances from legislators, it has also failed to prevent a recurrence of forced labour in illegal brick kilns. At the end of May 2009, the media reported another illegal brick kiln incident in which 32 mentally disabled employees worked at a brick factory in Anhui. They were forced to work as many as 15 or 16 hours each day under the rod and whip of the factory owner. Other than three simple meals per day, they had no personal freedom and were paid no compensation whatsoever. [57] In another case reported this year, mentally handicapped people were forced to work in illegal brick factories in Hubei every day, morning to night, for just 208 yuan a year. [58]

Throughout the era of economic reform, the central government has continued to adopt a government-led approach in an attempt to control and manage labour relations, despite all the evidence pointing to the fact that in reality the system of labour relations in China is dominated by the employer. The government’s leadership role is effectively limited to the drafting and promulgation of national labour legislation. However, as the above analysis shows, the ability of these laws to protect workers’ rights and interests is severely constrained by the continual push for economic growth, the over-supply of labour, the overwhelming power of capital and the widespread collusion between business and government. As such the effectiveness of China’s labour laws at present is limited merely to being a basis for labour dispute arbitration decisions and lawsuit judgments, both of which require the worker whose rights have been abused, rather than the government, to imitate action and bear the cost of defending their own rights.

## **Conclusion**

When the then Ministry of Labour published its *Basic Thoughts on the Regulation of Labour Relations at the Current Time in China* in 1993, it envisioned a system in which labour and

management would, on their own initiative, engage in negotiations concerning pay and conditions, with the government taking a back seat and only getting involved when necessary. As this report shows, this system failed to materialize primarily because of the political need of the Chinese Communist Party to maintain social stability and the economic need of capital to control the labour relationship. The government sought to retain its control over labour relations but, in the end, effectively ceded control to the employers, who could afford to ignore or at best pay lip service to the laws introduced by the government to protect workers. Employees, whose interests were diametrically opposed to those of the employers, were left marginalized and powerless.

As the recent strikes and protests in China have clearly demonstrated, this situation is no longer tenable. There is an increasingly urgent need to revisit the ideas proposed by the Ministry of Labour in 1993 and create a system in which employers and employees can resolve conflicts internally through peaceful and constructive dialogue, without the need for costly and time-consuming government intervention. However, for such a system to be realized in today's work environment, the Party and government need to make some significant changes in their thinking and in policy making.

Before anything else can happen, it is absolutely essential that the Party and government acknowledge and accept the reality of labour relations in China today; namely that the interests of labour and management have not only diverged but have coalesced into opposition and conflict. Although some government officials do now have a more pragmatic view of labour relations, many Party theorists and commentators still cling to the idea that the interests of enterprise bosses and workers are still somehow aligned as part of a greater unified whole. [59] The only real purpose of such archaic thinking is, of course, to prop up the Party's ideological cornerstone of the "harmonious society". In reality, the common interests of labour and management are built squarely on their oppositional nature; they are restricted only to mutual survival and the continued existence of the enterprise.

What then is the best way to ensure the mutual survival of both parties and to mitigate the conflicts that will inevitably arise between them? Firstly, local governments need to remove the economic shackles from enterprises created by excessive taxation, arbitrary fees and bribes. Employers with very low profit margins are currently more likely to respond to workers' wage demands by simply closing down and relocating to a lower cost area, than actually bothering to negotiate with their workers. But if enterprises are allowed to retain a greater proportion of their profit, they will be in a much better position to meet employees' demands for better pay and conditions. Of course, there is no guarantee they will agree to negotiations, but it will at least be easier for them to do so.

Secondly, and more importantly, the government needs to entitle and empower the workforce to engage in collective bargaining. Encouragingly, this is something Guangdong's revised *Regulations on the Democratic Management of Enterprises* might just achieve. By stipulating that if one third of workforce demands collective wage negotiations with management, the enterprise union must arrange for those negotiations to take place, the regulations open the door to collective bargaining. However, under pressure from the Hong Kong and domestic business lobby, a clause which would have allowed for the democratic election of workers' bargaining representatives has now been deleted and responsibility for negotiations given over to the trade union.

But the fact that all of the major Hong Kong business associations, whose members' factories are predominately based in Guangdong, have taken such a strong and very public stand against the proposed regulations clearly indicates they think it threatens their interests. After dictating the rules of the game for so long, the Hong Kong manufacturers and domestically owned companies are feeling the heat from an increasingly militant and sophisticated workforce as well as a government that is finally beginning to push for better worker protection.

After predicting a catastrophe for the Pearl River Delta and a mass-exodus of factories from the region, the Hong Kong business lobby succeeded in taking the bill off the agenda for the 21<sup>st</sup> meeting of the Guangdong Provincial People's Congress at the end of September. However, senior provincial government officials have indicated they are determined to have the regulations on the statute book sooner rather than later.

But if and when the regulations are implemented, the government will still have to be scrupulous in its enforcement of the law. Perhaps more importantly, given that trade unions will have the responsibility to arrange and conduct collective negotiations with managements, the government should ensure that when workers do demand pay increases, the union branch forcefully and wholeheartedly supports those demands. However, given the official union's top-down management style and continued reluctance to embrace grassroots worker activism, there is a real danger that workers will continue to be excluded from the negotiation process and that collective wage agreements reached between the union and management could fall well short of employees' demands and expectations.

If this does happen, workers will quickly become disillusioned and almost certainly revert to the now tried and tested pattern of wildcat strikes and demonstrations in a bid to get what they want. And the government, employers and workers will all be back to square one yet again.

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## P.S.

\* Research Notes, October 2010.

\* This paper is based on a longer Chinese language research report published by China Labour Bulletin in May 2010. “[如何从劳资冲突看中国劳动关系的发展与劳资关系的系统管理](#)” (How Labour-Management Conflicts Have Become a Social Misery: A Look Back on Developments in Labour Relations and the System for Managing Them).

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