

Regulating Labour Relations in China : The Challenge of Adapting to the Socialist Market Economy

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Résumé de l'article

Cet article analyse la nouvelle *Loi de la RPC* sur le travail, entrée en vigueur le 1^{er} janvier 1995, dans le contexte historique et actuel des relations de travail en Chine. Les auteurs accordent une attention particulière aux dispositions relatives au contrat de travail et au règlement des différends. Ils examinent également les difficultés soulevées par l'introduction des conventions collectives dans les entreprises chinoises, et par les relations entre les syndicats et le Parti communiste. Tout en reconnaissant, dans leur appréciation globale de la loi, qu'elle pourrait marquer une étape importante vers la protection juridique des droits des travailleurs, ils signalent que sa portée réelle pourrait être amoindrie par la prépondérance de la politique de croissance économique, par le souci de préserver le contrôle politique et par des difficultés pratiques de mise en oeuvre.

Regulating Labour Relations in China : The Challenge of Adapting to the Socialist Market Economy

Pitman B. POTTER*
LI Jianyong**

Cet article analyse la nouvelle Loi de la RPC sur le travail, entrée en vigueur le 1^{er} janvier 1995, dans le contexte historique et actuel des relations de travail en Chine. Les auteurs accordent une attention particulière aux dispositions relatives au contrat de travail et au règlement des différends. Ils examinent également les difficultés soulevées par l'introduction des conventions collectives dans les entreprises chinoises, et par les relations entre les syndicats et le Parti communiste. Tout en reconnaissant, dans leur appréciation globale de la loi, qu'elle pourrait marquer une étape importante vers la protection juridique des droits des travailleurs, ils signalent que sa portée réelle pourrait être amoindrie par la prépondérance de la politique de croissance économique, par le souci de préserver le contrôle politique et par des difficultés pratiques de mise en œuvre.

This paper examines the new Labour Law of the PRC, effective January 1, 1995, in the light of current and historical conditions of labour relations in China. Provisions regarding the labour contract system and dispute resolution are discussed in greater detail. Issues related to the introduction of collective bargaining and to the relationship between trade unions and the Communist Party are also examined. In their overall assessment, the authors recognize the potential significance of the Labour Law

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as a major step towards the legal protection of workers' rights, but point out that its effectiveness could be undermined by the preeminent policy of economic growth, by concerns about political control, and by obstacles to full implementation.

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Introduction

China's transition to a socialist market economy has brought on new challenges for labour relations. No longer is economic production the province of a comprehensive state bureaucratic administration. Rather the economy is increasingly dominated by an ever-expanding number of private and quasi-private actors, which pose new challenges for doctrines of labour control articulated by the Communist Party of China (CPC) and enforced through the state labour bureaucracy. On one hand the ideological justifications no longer exist for strict labour discipline, politically subservient labour unions, the absence of collective bargaining and denial of the right to strike. On the other hand, China's economic development (and continued political stability) require a tightly controlled labour force, even as the demands of efficiency restrict investment in working conditions and benefits. China's first comprehensive labour law went into effect on January 1, 1995, and represents the regime's most recent efforts to grapple with prob-

lems brought on by the transition to a socialist market economy¹. This paper will examine the new *Labour Law of the PRC* in light of current and historical conditions of labour relations in China.

1. Foundations for PRC Labour Policy

The *Labour Law of the PRC* reflects current policy priorities of the Chinese government, but these operate in the context of the Party's historical relations with urban workers. During the pre-Liberation period, the CPC's problematic attempts to mobilize urban workers into a revolutionary force contributed to labour policies that placed a premium on political control. During the Maoist period, the ideological conceit that China was a workers' state led to policies of material cooptation of workers, but accompanied by the price of continued discipline and control.

1.1 Revolutionary Relations Between Cadres and Urban Workers

During the revolutionary period prior to 1949, the CPC had a conflictive relationship with urban workers. Initial successes at labour organizing in the southern cities of Guangzhou and Shanghai in the 1920s were met with vigorous counter-measures by the Nationalist Party (KMT) leadership and local capitalists². In Guangzhou, despite sporadic strikes and labour unrest the Communist Party had difficulty consolidating its gains and mobilizing workers to accomplish its revolutionary goals. In Shanghai, the first United Front brought tentative successes, as the Party used strikes and labour organization efforts to strengthen its position, only to see these efforts wiped out by the Nationalist coup in 1927³. In the North, the CPC faced similar problems. Despite active labour organizing work in the northern

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1. For an authoritative review of the Labour Law of the PRC that reviews the law's efforts to re-order labour relations in light of changing conditions of China's socialist market economy, see GUO Xiang, «Laodong fa: Weihu zhigong hefa quanyi de jiben fa» (The Labour Law: A basic law for protecting the lawful rights of staff and workers), in *Gongren ribao* (Worker's Daily) Jan. 5, 1995, p. 5. Also see Commentator's article «Conscientiously safeguard labourer's legitimate rights and interests», *Renmin ribao* (People's Daily) Jul. 6, 1994, p. 1, in *FBIS Daily Report-China* Jul. 12, 1994, pp. 17-18 and WANG Yantian and FU Gang, «A channel begins to open up as the tide of reform surges forward — A commentary on the passage of the Labour Law of the PRC», Beijing *Xinhua* Domestic Service Jul. 28, 1994, in *FBIS Daily Report-China* Aug. 3, 1994, pp. 17-19.
 2. See generally, C.M. WILBUR, «The Nationalist Revolution: from Canton to Nanking, 1923-1928», in D. TWITCHETT and J. K. FAIRBANK eds., *The Cambridge History of China*, (Cambridge: Cambridge University Press, vol. 12, Part One, 1983) 527-720, at 541-549.
 3. See generally E.J. PERRY, *Shanghai on Strike: The Politics of Chinese Labor* (Stanford, Ca.: Stanford University Press, 1993).

cities and along the major railroad lines, the Party was generally unable to translate these efforts into successful political revolution⁴. These failures contributed to policies toward urban workers which, on the one hand saw labour organizing as a basis for revolution, and yet on the other remained circumspect about the practical potential of such efforts.

The regulatory frameworks erected by the CPC in its revolutionary base areas reflected this ambivalence. In the Jiangxi Soviet for example, the enactment of a labour law based on the Soviet Model gave vent to two policy aims: improving conditions and establishing trade unions as the focus of the CPC's Party-building efforts, to ensure that the workers' movement remained subservient to the Party's revolutionary programme⁵. In the northern base areas, labour regulations were used in a similar way to articulate policies of improving labour conditions while ensuring disciplined compliance by workers to CPC policy directives through the labour union system⁶. Party doubts about the reliability of workers as political allies were brought home during the campaign to retake Manchuria after 1945, where concerns about worker support contributed to the Party Centre's decision to build rural base areas and in effect abandon the cities⁷.

Thus, during the pre-Liberation period, the CPC's experience with difficulties in developing the revolutionary consciousness of Chinese workers and bending them to the political needs of the Party had a significant influence on the Party's labour policies. As well, the gradual displacement of the urban leadership of the CPC and the emergence of Mao Zedong led to further disregard of urban issues generally and an ambivalence toward urban workers. By the time the CPC gained control of the entirety of China, a pattern of labour policy was well established that emphasized political control over worker organizations — control that was mandated in no small part by doubts about the political reliability of the urban proletariat.

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4. See generally, J. ISRAEL and D.W. KLEIN, *Rebels and Bureaucrats: China's December 9ers* (Berkeley, Los Angeles and London: University California Press, 1976).
 5. See W. E. BUTLER, *The Legal System of the Chinese Soviet Republic 1931-1934* (Dobbs Ferry, N.Y.: Transnational Publishers, 1983) at 107-117.
 6. See LAN Quanpu, *Jiefangqu fagui gaiyao* (Outline of laws and regulations in the liberated areas) (Beijing: Masses Publishers, 1982), pp. 118-121.
 7. See SHAN Siyi, *Zai jiefang zhanzheng zhong fengfu fazhan* (Rich development during the war of liberation) (Beijing: PLA Press, 1991), pp. 22-23; LI Ying, ed., *Wenhua da geming zhong de ming ren zhiyu* (Cases of famous personalities in the Cultural Revolution) (Beijing: Nationalities Institute Press, 1993), pp. 77ff; ZHENG Xiaofeng and SHU Ling, *Tao Zhu zhuan* (Biography of Tao Zhu) (Beijing: Youth Publishing, 1992), p. 188.

1.2 Labour Policy in Mao's China

Labour policies during the Maoist period entailed a combination of coaptation with material benefits and the imposition of political discipline and control. Following the general pattern of oscillation between formal and informal patterns of rule⁸, methods of labour regulation tended to shift between alternatives of enactment and enforcement of formal rules and reliance on informal Party policy directives.

During periods of more formal regulation (1954-1958, for example), reliance was placed on the «labour contract system». At that time, China's economy was characterized as undergoing the transition from the private to the public ownership, and the labour contract system was considered a useful mechanism for bringing labour relations in private ownership enterprises within the ambit of Party control. The Party-organized trade unions played a central role in setting the terms of collective labour contracts in particular, by which terms and conditions of employment were set for an entire enterprise. Thus, Section 32 of the Common Program of the Chinese People's Political Consultative Congress authorized the trade unions to represent staff and workers in signing collective contracts with private enterprises⁹. The *Provisional Methods for Mutual Signing of Collective Contracts Between Capitalists and Workers in Privately Operated Industrial and Commercial Enterprises* (1949) promulgated by All China Federation of Trade Union (ACFTU) prescribed detailed regulations concerning collective labour contracts on such issues as hours of work, sick leave, benefits and working conditions¹⁰. Sections 5 and 6 of the *Trade Union Law* (1950) authorized the trade unions to represent workers and staff in signing collective contracts¹¹. The labour contract system was also recognized in the *Directive Concerning Signing Collective Contracts in State-Owned Enterprises* (1953) and the *Directive Concerning Signing Collective*

8. See V.H. LI, «The Evolution and Development of the Chinese Legal System», in J. M. H. LINDBECK, *China: Management of a Revolutionary Society* (Seattle and London: University of Washington Press, 1971).

9. See: CHEN Hefu, *Zhongguo xianfa leibian* (Compilation of Chinese Constitutions) (Beijing: Chinese Academy of Social Sciences Press, 1980), p. 189. Also see LIN Jia, *Zhonghua renmin gongheguo laodongfa jianghua*, (Speaking of China's Labour Law) (Beijing: Chinese Procuracy Press, 1994), p. 66.

10. «Guanyu siying gongshang qiye lao zi shuang fang dingli jiti hetong de zaxing banfa» (Provisional methods for mutual signing of collective contracts between capitalists and workers in privately operated industrial and commercial enterprises), in *Renmin shouce* (People's handbook) 1950, p. A115.

11. See SONG Xianguan, ed., *Shiyong laodong fa daquan* (Encyclopedia on the use of labour law) (Changchun: Jilin Documentary History Press, 1989), p. 364.

Contracts in Productive Mines (1955)¹². This regulatory structure was aimed at ensuring improved conditions for labour, and also Party control of workers through the medium of trade unions.

With the completion of Socialist Transformation, and particularly during the period 1958-1962, labour policy was the province of flexible Party directives. Workers were viewed as members of a collectivist organism in which there was little need for formal regulations. Informal policy edicts and administrative directives were sufficient. During these periods, labour policy presumed that workers were the masters of the enterprises under the ideology of socialist public ownership and there were no longer any basic conflicts of interests between workers, enterprises and the state. The labour contract system was considered a vestige of capitalist private ownership, and so was abolished¹³. The importance of political control over workers remained, however, and during the Cultural Revolution competing factions issued conflicting rules on worker participation in the movement¹⁴.

Chinese labour policies were articulated in several constitutions enacted between 1954 and 1982. The 1954 Constitution articulated worker rights to employment, improved working conditions and wages, rest (*xiuxi*), sick and retirement pay and other benefits¹⁵. The so-called « Cultural Revolution » Constitution of 1975 enshrined a right to strike without making reference to labour discipline, while the 1978 Constitution reflected the post-Mao reversals of radical policies and added provisions on labour discipline¹⁶. The 1982 Constitution deleted the right to strike altogether¹⁷.

These varying approaches to labour relations reflected conclusions about class struggle held by contending elements of the CPC elite¹⁸. At one end of the spectrum were views associated with Liu Shaoqi and Peng Zhen, who had concluded as early as 1956 that class struggle was no longer a problem and the emphasis should shift to developing China's productive

12. See *Zhonghua renmin gongheguo fagui xuanbian* (Compilation of laws and regulations of the PRC), 1954, 1956.

13. See LEE Lai To, *Trade Unions In China* (Singapore: Singapore University Press, 1986), p. 111.

14. See generally, H.Y. LEE, *The Politics of the Chinese Cultural Revolution* (Berkeley: University of California Press, 1978) at 129-139.

15. See 1954 Constitution Articles 91-93, in CHEN Hefu, *op. cit.*, fn. 9, p. 233.

16. See J.A. COHEN, « China's Changing Constitution », in *76 China Quarterly*, 794-841 (1978).

17. See 1982 PRC Constitution (Beijing: Foreign Languages Press, 1983), art. 42-44.

18. See P. VAN NESS and S. RAICHUR, « Dilemmas of Socialist Development: An Analysis of Strategic Lines in China, 1949-1981 », in *BULLETIN OF CONCERNED ASIAN SCHOLARS*, ed., *China From Mao to Deng: The Politics and Economic of Socialist Development* (Armonk, N.Y.: M.E. Sharpe, 1983) at 77-89.

forces — entailing greater emphasis on labour discipline. Radical views associated with Mao Zedong on the other hand held that class struggle would continue for a long time and insisted that worker rights be given priority over obligations concerning labour discipline and productivity. Despite these differences however, the theme of political domination continued, and resulted in what has been termed a neo-Confucian relationship of patronage and control between workers and unit leaders¹⁹.

2. Transition to a Market Economy

China's transition to a socialist market economy is ongoing and likely will continue to evolve significantly in the future. During the first fifteen or so years of reform, three distinct phases can be identified : (i) an initial phase of market liberalization, (ii) an acceleration phase during which price reforms were central, and (iii) a privatization phase during which the role of state enterprises has been transformed dramatically.

2.1 Initial Efforts at Reform

The economic reform programs initiated following the 3rd Plenum of the 11th Central Committee in 1978 were tentative at first, but soon moved beyond the confines of either the Maoist or Soviet models that had influenced China previously²⁰. Key to this was the political re-emergence of those who emphasized the decline of class struggle and the need to focus on productive forces²¹. For with the end of class struggle, the Party/state need no longer concern itself with resolving the problem of exploitation, and could recognize greater degrees of autonomy by individuals and groups in the economy. Thus contracts, business firms, and labour relations all could be directed not by the Party/state charged with eliminating and avoiding class exploitation, but rather by autonomous actors increasingly freed of state intrusion.

These ideological changes and their policy implications emerged slowly at first. In labour relations, for example, little attention was paid to reforming the state enterprise labour system initially. Instead, the emphasis was placed on reforming enterprise management. Reforms in state planning permitted enterprises managers to contract with a wider variety of business partners, while the two-track pricing system permitted managers greater

19. See A.G. WALDER, *Communist Neo-Traditionalism: Work and Authority in Chinese Industry* (Berkeley, Los Angeles and London : University of California Press, 1986).

20. See generally, H. HARDING, *China's Second Revolution: Reform After Mao* (Washington, D.C.: Brookings Institution, 1987).

21. See « Communiqué of the Third Plenum of the 11th Central Committee », in *Hongqi* (Red Flag) no. 1, 1979, p. 14.

flexibility in obtaining production inputs²². Regulations were enacted to strengthen the autonomy of factory managers from interference by Party secretaries²³. Thus the initial policy focus was on increasing the efficiency and productivity of state enterprises, with little attention paid to reforming relations between state enterprises and their workers. In labour relations, the neo-Confucian patrimonial relationship continued.

However, in an effort to address the employment problem for an increasing number of migrant workers — primarily young people seeking work outside their assigned residence (*hukou*) location (often these were Cultural Revolution youth who were returning to the cities after having been sent down to rural areas, or peasants seeking escape from the drudgery of village life), the government enacted rules on contract labour. The 1986 *Regulations on Administration of Labour Contracts by State Enterprises* permitted state enterprises to hire occasional workers without actually incorporating them into the enterprise work unit and providing the standard array of accompanying benefits²⁴. The labour contracts executed under these rules were generally not available to workers already formally assigned to the enterprise, and in view of the lower level of benefits available under them were not considered desirable.

Even though labour contracts formed pursuant to the 1986 Regulations were essentially «gap-fillers» for workers who were not already part of state enterprise system, the new measures did encourage the gradual emergence of a somewhat free labour market²⁵. Even as unskilled workers began to do contract labour in areas of construction and goods transport — to the extent of reducing the staff needs and costs of state enterprises, skilled workers began to find ways to secure their release from former employers to gain more remunerative employment. This was, despite the resistance of state enterprise employers who were often unwilling to freely release their skilled workers to seek higher paid employment. Employment agencies

22. For a review of Chinese economic policies and conditions in the 1980s, see JOINT ECONOMIC COMMITTEE OF U.S. CONGRESS, *China's Economy Looks Toward the Year 2000* (Washington, D.C.: U.S. Government Printing Office, 1986).

23. See «Zhongguo renmin gongheguo quanmin suo you zhi gongye qiye fa» (Law of the PRC on Enterprises Owned by the Whole People), in STATE COUNCIL LEGAL AFFAIRS BUREAU, ed., *Zhonghua renmin gongheguo xin fagui huibian* (Compilation of new PRC laws and regulations) 1988, n° 1 (Beijing: Xinhua, 1988), p. 27.

24. See «Guoying qiye shixing laodong hetong zanzing guiding» (Provisional regulations for implementation of labour contracts by state enterprises), in SONG Xiangguan, *op. cit.*, fn. 11, p. 58. Also see generally, H. K. JOSEPHS, *Labour Law in China: choice and responsibility* (Salem, N.H.: Butterworths, 1990).

25. See J. HOWELL, *China Opens its Doors: The Politics of Economic Transition* (Boulder, Colo.: Lynne Rienner, 1993) at 209-243.

began to spring up which would serve as « headhunters » for firms seeking to hire skilled workers and professionals and arrange payment of the release fee demanded by state enterprises as the price of releasing their staff members to other units. As well, the sidewalk labour markets became an increasingly important source of unskilled workers being hired for short-term projects. In sum, the initial reforms culminated in the emergence of a proto-market for labour.

2.2 Accelerated Reform

By the late 1980s, many of the initial reforms had run their course. Enterprise managers were increasingly independent, production inputs and outputs were gradually being freed of state regulatory constraints, and labour was becoming more widely available under the labour contract system. Taking the decision to push reforms one step further, the government embarked on a risky and controversial course of price reform — permitting commodity prices to respond to market forces instead of state planning mandates²⁶. This meant that while there was little adjustment in the output quotas demanded of state enterprises, production inputs were subject to ever-increasing prices. The dilemmas for enterprise brought on by the problem of price spiralling often resulted in reduced benefits to industrial workers. For those workers formally attached to state enterprises, this meant that bonuses were cut back or eliminated, forced purchasing of state bonds was enforced, upgrading of worker facilities was postponed or cancelled, and general working conditions declined²⁷. While much attention was focused on the role of unemployed itinerant workers in the demonstrations, factory workers formally attached to state enterprises were also extremely active.

For contract workers, the results of price reform were two-fold. In many cases labour contracts were cancelled or not renewed — thus rendering large numbers of workers unemployed. Yet these workers were often unable to return to the rural villages from whence they had come: these areas had adjusted to the migrant labourers' absence, there was no work for them to do and moreover their families remained dependent on their remissions of money from the cities. The result was increasing numbers of

26. For a general review of the late stages of reform and many of the attendant consequences, see JOINT ECONOMIC COMMITTEE OF U.S. CONGRESS, *China's Economic Dilemmas in the 1990s: The Problems of Reforms, Modernization, and Interdependence* (Washington, D.C.: U.S. Government Printing Office, 1991).

27. See K. HARTFORD, « The Political Economy Behind Beijing Spring », in T. SAICH, ed., *The Chinese People's Movement: Perspectives on Spring 1989* (Armonk, N.Y.: M.E. Sharpe, 1990) at 50-82.

unemployed labourers wandering the streets of major cities in search of work. A second consequence was that when short term labour contracts were available, the terms were even more unfavourable than had been the case previously. In the employers' market that dominated at the time, itinerant labourers had little bargaining power and the inflation resulting from price reform was reducing the ability of employers to offer generous compensation and benefits under these labour contracts. The participation of urban workers in the democracy demonstrations of Spring 1989 provided ample testimony to the extent of dissatisfaction.

The Chinese government's response was indicative of its concern over worker unrest. A vigorous campaign was launched of discipline and control over urban workers that saw public executions of workers accused of participating in the democracy demonstrations dominate the Chinese public media throughout much of 1989. Indeed, the harshest punishments were reserved for worker demonstrators, particularly in comparison to the relatively lenient treatment of intellectuals and students. Repression was also directed at attempts to form independent labour unions, as labour organizers such as Han Dongfang were arrested and harassed²⁸.

2.3 Privatization and the Socialist Market Economy

A third stage of reform has emerged following Deng Xiaoping's Southern Tour (*Nanxun*) in 1992. Responding to Deng's call for accelerated and expanded economic reform, increased attention has been paid to privatization of Chinese enterprises. While debate continues over the extent of true privatization in the Chinese economy — particularly in light of the evidence that many so-called private enterprises are in fact owned and operated by local government agencies —, it is clear that the structure of enterprise control has changed²⁹. Transformation of state enterprises through securitization has been accompanied by policies approving expansion of the village and township enterprise sector and the development of private enterprises limited by shares in urban areas³⁰. Enterprises now respond to the local interests of corporatist elites who embody both the economic determinism of business managers with the political power of Party cadres. Along with local corporatism has come greater attention to efficiency and reduced production costs, which in turn has contributed to continued declines in

28. See «China: New Arrests Linked to Worker Rights», in *Human Rights Watch/Asia*, Mar. 11, 1994.

29. See A.G. WALDER, «China's Transitional Economy: Interpreting Its Significance», 144 *China Quarterly*, 963-979 (1995).

30. For a collection of insightful articles on the latest stages of the reform process, see the special issue of the *China Quarterly* on China's transitional economy, December 1995.

labour conditions for industrial workers³¹. In response to these concerns, the Chinese government has re-emphasized long-standing regulations on worker health and safety, and in some instances issued new regulations³². In addition, new rules have been enacted governing reporting on worker accidents and injuries, in the hope that increased reporting requirements would induce greater compliance with health and safety regulations³³.

Unfortunately, enforcement of these regulations has been problematic and as a result increased worker unrest has become a major challenge for Chinese labour policy. Between 1986 and 1994, 60,000 labour disputes were recorded (probably matched by a sizeable number of unreported disputes), and 3,000 labour disputes were noted during first three months of 1994 alone³⁴. The upsurge of labour disputes has been accompanied by renewed attempts to establish autonomous workers federations: e.g. the Beijing Workers Autonomous Federation and the China Workers Autonomous Federation³⁵. While these events have been dismissed by the PRC Labour Ministry as an «inevitable» component of economic modernization, the matter is clearly a source of concern — particularly in light of the Tiananmen experience³⁶.

The Chinese government's labour policies are caught in a dilemma of conflicting imperatives. Economic reform and the privatization (or at least corporatization) of production enterprises would appear to justify granting greater rights to workers in the areas of collective bargaining, work stoppages, and so on. Yet the regime also faces the need for continued economic growth, which mandates greater control over worker discipline even as it permits declining conditions of employment. The PRC *Labour Law* represents the regime's effort to address these issues.

31. See Generally, M. C.F. GAO, «On the sharp end of China's economic boom — migrant workers», in *China Rights Forum*, Spring 1994, pp. 12-13, 27; LIU Ping, «Dying for Development», in *China Rights Forum*, Fall, 1994, pp. 14-15, 27.

32. For a review, see SONG Xiangguan, *op. cit.*, fn. 11, pp. 128-205.

33. See e.g. «Qiye zhi gong shangwang shigu baogao he chuli guiding» (Regulations on the reporting and resolution of injuries and accidents involving enterprise workers and staff), in XIN Shanyin and YE Xiaoli, ed., *Xinbian changzhang jingli shiyong jinji falu quanshu* (Newly compiled compendium of practical economic laws for factory directors and managers) (Beijing: Procuracy Press, 1993), p. 1787.

34. See «Labour Minister: Strikes «inevitable» with reform» (Hong Kong, AFP, Jul 15, 1994), in *FBIS Daily Report-China* July 15, 1994, pp. 12-13.

35. See B. GILLEY, «Shen Yuan Escapes 27 Jul», in *Eastern Express* (HK) Aug. 9, 1994, in *FBIS Daily Report-China* Aug. 9, 1994, pp. 18-19; B. GILLEY, «Further on Labor Activist», in *Eastern Express* (HK) Aug. 9, 1994, in *FBI Daily Report-China* Aug. 9, 1994, p. 19.

36. *Supra*, fn. 34.

3. An Overview of China's New Labour Law

The *Labour Law of the PRC* was enacted at the 8th session of the Standing Committee of the 8th National People's Congress July 5, 1994, and went into effect January 1, 1995³⁷. The law went through a tortuous drafting process, involving thirty drafts since Deng Xiaoping first proposed drafting such a law during a 1978 central work conference³⁸. While the delay revealed the extent to which managing labour relations is an essential basis for the distribution of patronage within China's hierarchical and vertically integrated administrative systems, the enactment of the legislation revealed the extent of consensus that workers presented a fundamental source of tension in the course of the transition from the planned to the market economy. The final draft was pushed through in response to obvious challenges resulting from changing ownership conditions of enterprises³⁹. While private enterprises and foreign invested enterprises were the primary source of concern initially⁴⁰, state-owned and cooperative enterprises are also targeted⁴¹.

3.1 Basic Principles

The PRC *Labour Law* extends a number of specific benefits to workers. These include « guarantees » respecting equal opportunity in employment, job selection, compensation, rest, leave, safety and health care, vocational training, social security and welfare, and the right to submit disputes to arbitration. Hiring units are required to fulfill various labour requirements in the areas of hours of employment, rest, leave, worker safety, health care and protection for female and juvenile workers. Juxtaposed to these benefits are a number of obligations that workers must honour, including the duties to fulfill work requirements, improve vocational skills, carry out work safety and health regulations, observe labour discipline and vocational ethics. The law also contains various enforcement provisions, by which

37. All references to the Labour Law of the PRC are to the text in *China Law and Practice*, August 29, 1994, pp. 21-36.

38. See WANG Yantian and FU Gang, *loc. cit.*, fn. 1, 17-18.

39. See « Labour Law should be adopted soon », *Xinhua* Domestic Service Jun 30, 1994, in *FBIS Daily Report-China*, July 1, 1994, p. 21.

40. See ZHANG Xia, « Foreign-funded ventures in China told to unionize », in *China Daily* Jul. 15, 1994, p. 4, in *FBIC Daily Report-China* Jul 15, 1994, pp. 20-21, wherein labour abuses by foreign investment enterprises (usually Hong Kong owned or managed) are cited as the reason for increased attention to labour conditions. See also *supra*, fn. 39, and GUO Xiang, *loc. cit.*, fn. 1.

41. See « Offenders of labour regulations exposed », *Xinhua* English service July 28, 1994, in *FBIS Daily Report-China*, July 28, 1994, p. 34.

local Labour Administration Departments are charged with supervision and inspection of labour relations.

Subject to these broad principles, the new *Labour Law* contains a multitude of specific provisions as summarized below. A range of implementing regulations are currently being drafted to address these matters in greater detail.

1. *Labour Contract System*: Following the 1978 economic reforms, the labour contract system has undergone a rebirth. The *Labour Law* provides rules for contract provisions on term and description of employment, labour protection, remuneration, discipline, termination, liability for breach and limits to the use of probationary work periods during which benefits may be limited.

2. *Limits to Working Hours and Overtime*: Overtime pay is required for work in excess of eight hours per day and 44 hours per week. One day per week is guaranteed for rest. Approval may be obtained for alternative arrangements.

3. *Wages*: The *Labour Law* establishes a principle of equal pay for equal work. This is intended to bring about greater gender equality in employment⁴². The state-mandated minimum wage must be taken as base pay. Factors to be considered in setting the state-mandated minimum wage include cost of living, the average wages being paid in the locality, productivity levels, and regional variations.

4. *Social Insurance System*: Employers must provide for benefit payments in cases of retirement, illness or injury, incapacity, unemployment, child birth, and so on.

5. *Labour Disputes*: The *Labour Law* provides institutional rules for resolving conflicts arising during the course of (a) contract drafting (administrative resolution of the dispute by the local Labour Administration Department); (b) contract enforcement (resolution by an arbitration commission comprised of representatives from the local Labour Administration Department, the trade union, and the employer); and (c) disputes between employers and employees generally (resolution through a mediation by a commission comprised of representatives of staff and workers, the employer, and the local trade union, or arbitration by a commission comprised of representatives of the local Labour Administration Department, the trade union and the employer). Arbitral decisions may be appealed to the courts.

42. There are doubts about the likelihood of reaching this goal, however. See M. Woo, «Biology and Equality: Challenge for Feminism in the Socialist and Liberal State», (1993) 42 *Emory Law Journal* 143 at 143-146.

6. *Supervision and Enforcement*: The relevant institutions for dispute resolution include the local Labour Administration Departments, Local People's Governments, and Trade Unions.

7. *Legal Liability*: Employers who violate provisions of the *Labour Law* are potentially liable for compensation for harm, administrative penalties and criminal sanctions.

8. *Foreign Enterprise Labour Rules*: The *Labour Law* contains provisions for foreign investment enterprises that augment regulations already in place.

Of the basic issues discussed above, the labour contract system and the dispute resolution provisions are of particular importance and will be discussed in greater detail below.

3.2 The Return to the Labour Contract System

With the post-Mao economic reform policies beginning in 1978, the labour contract system that had been used during the 1950s was revitalized. After the All China Federation of Trade Unions (ACFTU) approved the use of the labour contract system in State-owned enterprises in April 1979, the labour contract system was increasingly seen as a positive mechanism for improving labour conditions and enterprise efficiency⁴³. Initially, the emphasis of regulations was on the foreign business sector. Thus, in July, 1980, the *Regulations on Labour Management in Joint Venture Enterprises* were promulgated by the State Council, and provided for individual and collective labour contracts in joint ventures⁴⁴. These measures were augmented by the *Procedures for Implementation of the Regulations on Labour Management in Joint Venture Enterprises* (1984)⁴⁵.

The labour contract system was also gradually being extended to the domestic economy as well. At the First Session of the 6th NPC in June 1983, Premier Zhao Ziyang alluded to the need for greater flexibility in arrangements for workers in the economy⁴⁶, and the following year's CPC Central Committee «Decision on Reform of the Economic System» asserted the

43. See e.g., «Jiji anpai chengshi daiye qingnian» (Positively arrange urban employment for youth), in *Renmin ribao* (People's Daily), June 7, 1979, p. 3, «Ben shi quanmin qiye shou ci zhijie zhao shou hetong gong» (This city's public enterprises accept recruitment through the contract labour for the first time), in *Jiefang ribao* (Liberation Daily) (Shanghai), Aug. 16, 1980, p. 1.

44. See MINISTRY OF LABOUR *et al.*, *Laodong fa shouce* (Labour law handbook) (Beijing: Economic Management Press, 1988), p. 288.

45. *Id.*, p. 290.

46. See ZHAO Lukuan, «Lun laodong hetong zhi» (On the labour contract system), in *Renmin ribao* (People's Daily), Sept. 7, 1983, p. 5.

need to expand the labour contract system⁴⁷. The labour contract system was formally extended to state enterprises in July, 1986, with the *Interim Provisions on the Implementation of the Labour Contract System for State Owned Enterprises*⁴⁸. Private enterprises were included as well under the *Provisional Regulations on Private Enterprises* (1988)⁴⁹ and the *Provisional Regulations on Labour Management in Private Enterprises* (1989)⁵⁰, which required private enterprises to sign labour contract with workers based on the principles of equality, voluntariness and agreement through consultation, and which authorized the trade unions to represent staff and workers in concluding collective contracts. Since Deng's « Southern Tour » in early 1992, the labour contracts system received even greater attention. The 1992 *Regulations for Transferring the Management Mechanism in the State-Owned Industrial Sectors* granted enterprises broader rights to determine the terms of employment through the use of labour contracts with individual workers⁵¹.

China's new *Labour Law* requires in Article 106 that every province, autonomous region and centrally governed municipality should stipulate the steps for implementation of the labour contract system in accordance with the *Labour Law* and with the existing conditions. By the end of 1994, a total of thirteen provinces and municipalities had implemented the labour contract system for staff and workers covering in all some 40 million contract workers — about 25 % of the total work force⁵². Provincial and municipal regulations are gradually coming into force, such as the Shanghai Municipal Government's *Regulations on Labour Contracts of Shanghai Municipality* (1995), which call for popularization of the labour contract

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47. See CHEN Wenyuan, « Guanyu laodong hetong de jige jiben wenti » (Some basic issues concerning labour contracts), in *Zhongguo fazhi bao* (Chinese legal system gazette), Aug. 25, 1986, p. 3.
 48. « Guoying qiye shixing laodong hetong zhi zanxing guiding », in *Zhongguo fazhi bao* (China legal system gazette) Sept. 10, 1986, p. 2.
 49. « Zhonghua renmin gongheguo siying qiye zanxing tiaoli », in *Siyang qiye changyong falu shouce* (Handbook of commonly used laws for private enterprises) (Beijing : Law Publishers, 1988), p. 1.
 50. « Siying qiye laodong guanli zanxing guiding », in *Laodong fa yu laodong zhengyi shiyong shouce* (Practical handbook on labour law and labour disputes) (Beijing : Chian Economy Press, 1994), p. 672.
 51. « Quanmin suoyouzhi gongye qiye zhuanhuan jingying ji zhi tiaoli », in XIN Shanyin and YE Xiaoli, *op. cit.*, fn. 33, p. 122.
 52. See LI Boyong, « Speech at the National Meeting on Labour Work : Implementation of the Labour Code » in *People's Daily* (overseas edition) Dec. 14, 1994. LI Boyong is PRC Minister of Labour.

system in Shanghai Municipality beginning in 1996⁵³. While the contract system is intended to bring greater discipline and control to enterprises in managing labour relations, to a certain extent, the new Labour Law maintains the systems of patronage and coaptation that characterized the Maoist system. Thus, where a Shanghai worker voluntarily sought cancellation of a labour contract in order to take a job at another factory, the original employer was expected still to provide severance pay⁵⁴.

3.3 Continued Importance of Party-Dominated Trade Unions

A critical element of the new labour contract system is the continued role of the CPC-led labour unions under the ACFTU. Article 26 of the 1983 *Charter of China's Trade Unions* passed by the Tenth National Congress of China's Trade Unions authorized basic level trade union committees to represent staff and workers to sign collective labour contracts⁵⁵. This authorization was repeated in the various regulations on foreign investment enterprises and on Chinese state and privately owned enterprises. Under the 1992 *Trade Union Law* trade unions receive once again the authority to represent staff and workers in concluding collective contracts with enterprises and institutions⁵⁶.

While labour unions can of course play a positive role in achieving better working conditions and other benefits, the record of the ACFTU system is somewhat problematic. The ACFTU's primary role as a guarantor of Party power and a « transmission belt » for Party policies undermines its capacity for independent action. And since all local trade unions are subject under law to the overall authority of the ACFTU, there is no legal sanction for the creation of independent labour unions that might challenge the Communist Party's official policies⁵⁷. In addition, recent case reports suggest that the temptation to draw on worker dues for improper purposes may be overwhelming — raising again concerns that workers' interests are not particularly high matters of concern for union officials⁵⁸.

53. See Shanghai Municipality: « Stipulations on Labour Contracts for Shanghai Municipality », in *Shanghai Legal System*, Dec. 18, 1995.

54. See « Jiechu laodong hetong, gai bu gai fa jingji buchanganjin ? » (In case of cancellation of a labour contract, must the compensation fee still be paid?), in *Gongren ribao* (Workers Daily), Jan. 5, 1995.

55. « Zhongguo gonghui zhangcheng », in *Gonghui fa shouce* (Handbook of trade union law) (Beijing: Democracy and Legal System Press, 1994), p. 380.

56. « Zhonghua renmin gongheguo gonghui fa », *op. cit.*, fn. 55, p. 63.

57. See generally, S. BIDDULPH and S. COONEY, « Regulation of Trade Unions in the People's Republic of China », (1993) 19 *Melbourne University Law Review*, 255-292.

58. See e.g., « Fayuan cuo jiang huifei di zizuo susong fei » (The court improperly takes union dues to pay litigation fee), in *Laodong ribao* (Workers's Daily) Oct. 10, 1995, p. 5.

3.4 Dispute Resolution

The *Labour Law*'s provisions on dispute resolution may offer workers a basis for appealing or perhaps avoiding altogether arbitrary decisions by management. In one case, for example, workers were accused of stealing electrical equipment and arbitrarily docked in pay—the public security officials being only too willing to enforce management orders with little if any investigation⁵⁹. In another case, a worker was summarily suspended for three days without pay after getting into an argument with a supervisor⁶⁰. The supervisor's superiors backed the suspension and the (reportedly innocent) worker was left without a remedy. Similar incidents have been reported at other enterprises⁶¹. The hope is that implementation of the *Labour Law* will impose more formalized processes for investigation and dispute resolution.

The dispute resolution provisions of the *Labour Law* build on experiments developed earlier⁶². Of particular importance were the 1987 State Council *Regulations on Resolution of Labour Disputes in State Enterprises*⁶³, which provided for mediation and arbitration of labour disputes. Summarizing previous experiences, the State Council's 1993 *Regulations for Handling Labour Disputes* provided a framework for the labour disputes that would later be incorporated into the PRC *Labour Law*⁶⁴. The Ministry of Labour articulated the reasons for the labour dispute system by reference mainly to the increased numbers of labour disputes that accompanied enterprise reforms⁶⁵.

The primary methods for resolving disputes included mediation, which is to be used through the whole process of handling labour disputes. According to the *Labour Law*, mediation should be based on the voluntariness of both parties. Both the process and content of dispute resolution should be in accordance with the law and follow the principle of fairness. The *Labour*

59. See « Qiye yao zijue wei hu laodong zhe hefa quanyi » (The enterprise should take the initiative to safeguard the legitimate rights and interests of workers), in *Gongren ribao* (Workers Daily) Feb. 28, 1995.

60. See « Zheyang jiechu hetong dui ma ? » (Is this kind of cancellation of contract proper ?), in *Gongren ribao* (Workers Daily) Jan. 9, 1995, p. 6.

61. See e.g. « Laodong fa shi jingying zhe you fa ke yi » (The « Labour Law » will cause managers to have a law to follow), in *Gongren ribao* (Workers Daily) Jan. 5, 1995.

62. See D. HUNTER, « Chinese Labour Dispute Arbitration Procedures: An Early Review in Zhejiang Province », (1990) 11 *Comparative Labor Law Journal* 340.

63. « Guoying qiye laodong zhengyi chuli zanxing guiding », *op. cit.*, fn. 49, p. 10.

64. See *FBIS Daily Report-China* Aug. 2, 1993, p. 27.

65. See « Answers to Questions About the Policy of Handling Labour Disputes », MINISTRY OF LABOUR, *Zhongguo laodong fa zhengce fagui quanshu* (Encyclopedia of China's labour laws and policies) (Jilin : Science and Technology Press, 1994), p. 648.

Law requires that equality be accorded to the parties in matters of legal status, rights to apply for a mediation, arbitration or court judgment, and the various rights to present and explain pertinent facts in labour disputes. The new law requires that mediators, arbitrators and judges should be impartial to the parties involved and, in order to protect both parties' rights and interests and especially those of workers, the labour mediation committee, the labour arbitration committee and the people's court should handle labour disputes in a prompt and timely fashion. These broad principles are taken as the foundation upon which the various procedures for dispute resolution are based.

The first step in dispute resolution is mediation through the mediation committee. If this fails, the dispute will go to arbitration through an arbitration committee, and possibly to the third step of litigation before the People's Court. Under Article 80 of the *Labour Law*, the labour dispute mediation committee is established inside the employing unit and is composed of representatives of the staff and workers, representatives of the employer, and representatives of the trade union. The committee Chair is to be held by a representative of the trade union. Under Article 81, the labour dispute arbitration committee is composed of representatives of the local Labour Administrative Department (who also chairs the committee), representatives from the trade union at the corresponding level, and representatives of the employer. Arbitration is the first level of binding dispute resolution, and the prominent role of the trade union in reviewing its own mediation decision, as well as the absence of direct representation of staff and workers are particularly noteworthy. While litigation before the People's Courts is possible, both as a matter of first instance and to appeal an arbitral decision, the practical significance is minimal in light of the institutional and political weaknesses of the court system in China⁶⁶. The continued inability of the courts to enforce judgments against powerful economic enterprises may render irrelevant the *Labour Law's* provisions for judicial enforcement⁶⁷. Moreover, courts have been seen to lack sufficient expertise to permit them to coordinate dispute resolution proceedings without compromising other aspects of enforcement of the *Labour Law*⁶⁸.

66. See generally, D. C. CLARKE, « Dispute Resolution in China », (1992) 5 *Journal of Chinese Law*, 246.

67. GUO Xiang, *loc. cit.*, fn. 1.

68. See « Fayuan cuo jiang huifei di zuo susong fei » (The court erroneously reduces union fees to pay litigation fees), in *Gongren ribao* (Workers Daily) Oct. 10, 1995, p. 5, in which the court handling a dispute over investment funds improperly deducted litigation fees from the union membership fund.

4. Continuing Challenges

While the PRC *Labour Law* represents an important step toward building an effective legal framework for protecting workers' rights in China, there are a number of issues remaining to be resolved. Coinciding with the law's promulgation were official accounts bemoaning the general lack of awareness and basic knowledge of the law⁶⁹, and cautioning against lax implementation by administrative departments concerned⁷⁰. In addition, as with other aspects of China's legal regime, the law represents a formalistic expression of specific rights and obligations, but does little to serve as a foundation for meaningful enforcement of fundamental rights for workers. Official reviews of the PRC *Labour Law* describe it as the complete articulation of the rights of workers⁷¹. In other words workers' rights are only those articulated in the law, and do not extend beyond the text of the legislation. Of particular interest are statements that the rights of workers in China must be based on China's unique situation, and cannot be addressed by reference to foreign labour law criteria⁷². Such an approach to workers' rights leaves little room for articulating and enforcing generalized norms for employer behaviour, or for making workers rights unconditional and independent of various contractual duties.

Although China's labour conditions are of course unique, two matters discussed by labour specialists in the PRC are of particular importance concerning the *Labour Law*, namely collective bargaining and dispute resolution. The *Labour Law* makes reference to collective labour contracts, but it fails to provide meaningful protection for collective bargaining. The obvious unequal bargaining power between individual workers and employers has caused many to view collective bargaining as an essential element of modern labour law. Unfortunately, the *Labour Law* leaves direct

69. Guo Xiang, *loc. cit.*, fn. 1.

70. «Laodong fa zhi jianshe de lichengbei» (The milestone established by the Labour Law system), in *Gongren ribao* (Workers Daily) Jan. 9, 1995, p. 1; «Qixin xieli tuijin laodong fa zhi jianshe» (Make consolidated efforts to promote the establishment of the labour law system), in *Gongren ribao* (Workers Daily), Jan. 27, 1995, p. 1; CAO Min, «State vows to protect interests of labourers», *China Daily* Jul 8, 1994, p. 1, in *FBIS Daily Report-China*, July 8, 1994, pp. 17-18.

71. See e.g., Ji Yanxiang, «Wei hu laodongzhe hefa quanyi de jiben falu» (A basic law for safeguarding the legitimate rights and interests of workers), in *Jingji jingwei* (Economic transit) (Zhengzhou) June 1994, pp. 30-32, 69; Guo Xiang, *loc. cit.*, fn. 1.

72. *Id.* While China claims adherence to international treaties on the rights of workers, it claims as a developing country that some international labour standards are inapplicable to China. See ZHANG Zuoyi, «Zhongguo laodong lifa» (China's labour legislation), in *Zhengfa luntan* (Theory and discussion on politics and law) 1994 no. 6, pp. 1-4 at pp. 1 and 4.

representatives of staff and workers out of the contract bargaining process, and omits specific reference to the importance of collective bargaining.

The power disparity between employers and employees is entrenched further through provisions concerning termination of labour contracts. According to section 25 of the Law, the employing unit may revoke a labour contract if the worker is « proved not up to the requirements for recruitment during the probation period ». Unfortunately, the case record suggests that some staff and workers have been terminated improperly during the probation period⁷³. Furthermore, Article 26 (3) permits the employer to demand and ultimately to impose revocation of a labour contract with written notification in cases of changed circumstances. This section has been seen as a source of potential abuse, because it lacks provisions concerning the employer's burden of proof, and thus leaves room for employers to use changed circumstances improperly as an excuse to summarily dismiss employees. In contrast, while employees have the right to revoke labour contracts « where the employer resorts to violence, intimidation or illegal restriction of the personal freedom » or « fails to provide working conditions as agreed upon in the labour contract », it is difficult for the worker to meet the burden of proof in these cases.

The general inattention to collective bargaining to redress power imbalances in the new *Labour Law* is puzzling in light of the fact that the concept has been well accepted in the PRC for some time⁷⁴. Shortly after Liberation, collective bargaining rights were reserved for the employees of private enterprises⁷⁵. During the economic reform period of the 1990s, several administrative units noted the importance of collective bargaining in labour relations in foreign investment enterprises. For example, the « Announcement » co-issued by the Labour Department, the Public Security Bureau and the ACFTU March 4, 1994 requires that foreigners' invested and private enterprises should establish systems for negotiation and collective bargaining⁷⁶. Apparently, despite a willingness to impose collective bargaining on foreign capitalist enterprises, the Chinese government is not yet ready to accept that the socialist market economy entails potential exploitation of workers by domestic enterprises to the same degree.

73. See ZHANG Shuqing, «The employees in the joint-venture, cooperative, and foreigners' invested enterprises ask for the protection for their rights and interests», in *Minzhu yu fazhi fazhi* (Democracy and Legal System), no. 20, 1995, p. 24-25.

74. See CHEN Wenyuan, «Guanyu laodong fa de jige jiben wenti chusuo» (Preliminary inquiry on several basic issues of the Labour Law), in *Zhengfa luntan* (Theory and discussion on politics and law) June 1994, pp. 55-59, 62.

75. See Article 6 of the Trade Union Law promulgated by ACFTU, June, 1950.

76. See PRC Supreme People's Court, *Laodong zhengyi shenpan shouce* (Judicial handbook on labour disputes) (Beijing: Law Publishers, 1994), p. 216.

A second major issue concerns the independence of trade unions. The new *Labour Law* entrenches the Party-dominated labour union system as the basic mechanism for enforcing workers' rights⁷⁷. The *Labour Law* places significant reliance on the trade union in representing and safeguarding the legitimate rights and interests of labourers (Article 7) in requesting reconsideration of termination of a contract by the employer unit and in supporting workers' application for arbitration or litigation (Article 30); in representing workers in concluding collective labour contracts (Article 33); in representing workers on the labour dispute mediation committee (Article 80) and arbitration committee (Article 81); and in representing workers in supervising implementation of laws and regulations by the employer (Article 88). However, the law contains no provisions concerning the formation and the structure of a trade union. The PRC *Trade Union Law* (1992) does include such provisions, but contains nothing to suggest that trade unions under the ACFTU will be independent. According to Article 3, all salaried workers are eligible for the membership of a trade union. This would extend to enterprise directors and managers, thus permitting those in charge of the employing unit to join or even to dominate the trade union in their unit. Moreover, the *Trade Union Law* also grants CPC cadres close access to trade union leadership. And in fact, CPC cadres have dominated the ACFTU since 1948, as appears from the data presented in Table 1.

Table 1: CPC cadres in the leadership of the ACFTU 1948-1965⁷⁸.

	<i>Number of Presidium Chairs and Vice Chairs</i>	<i>Number of CPC cadres serving as Chair and Vice Chair</i>
1948	4	3
1953	4	2
1956	5	3
1957	5	3
1958	6	4
1962	7	4
1965	6	4

The pattern continued following the Cultural Revolution with the renewal of the ACFTU. The leader of ACFTU when it resumed its activities after the Cultural Revolution was Mr. Ni Zhifu, a Politburo member of the

77. See «Laodong fa jiaqiangle gonghui de weihu zhineng» (The Labour Law has strengthened the safeguarding capacity of the unions), in *Gongren ribao* (Workers Daily) Jan. 5, 1995, p. 4; «Jiaqiang gonghui gaige he jianshe de qiaoji» (A useful scheme for strengthening reform and construction of the unions), in *Gongren ribao* (Workers Daily), Jan. 23, 1995, p. 1; Guo Xiang, *loc. cit.*, fn. 1.

78. See LEE Lai To, *op. cit.*, fn. 13, p. 71.

CPC⁷⁹, and the current Chair of the ACFTU, Mr. Wei Jianxing, is a member of the CPC Politburo⁸⁰. In state enterprises, almost 80 % of leadership positions in trade unions are occupied by the Party Secretaries of the respective units⁸¹. Similarly, in foreign enterprises, almost all leaders of trade unions are concurrently Party directors of the Personnel Department of those units⁸². The close linkage between the unions and the local Party leadership means that aggressive union action to protect workers rights over the interests of the Party is unlikely⁸³.

Aside from issues inherent in the text of the *Labour Law*, a variety of other questions arise concerning effective implementation. Technical issues arise for example concerning the standards for workplace safety, environmental conditions, workers' health, and similar matters. These matters likely will be left to individual ministries and commissions, such as the Ministry of Health, National Environmental Protection Agency, and of course the Labour Ministry. However, detailed regulations will be needed and trained implementation staff will be essential.

Socio-economic problems will also complicate the problem of enforcement. Of particular importance is the crisis of so-called « migrant workers ». Current figures of migrant workers approach fifty million, with official estimates of 120 million « surplus labourers » and the expectation that by the year 2000 China will have 200 million surplus agricultural workers on the non-agricultural employment market⁸⁴. These conditions have already outstripped the capacity of the government to respond. Many of these migrants are only too happy to take factory jobs -whether in the relatively more secure state sector or the higher paying village and township enterprise sector — without regard to working conditions and legal rights.

In the context of problems of technical complexity and the swelling numbers of surplus and migrant workers, enforcement of the *Labour Law's* provisions on workers' rights is hampered further by local corporatist

79. *Id.*, p. 146.

80. See WEI Jianxing: « The Implementation of the Labour Law Should Highlight the Function of Protection », in *Legal System Daily*, July 23, 1995.

81. See SHI Tanjing, *Laodong fa* (Labour Law) (Beijing: Economic Science Press, 1990) p. 257.

82. See CHANG Kai, « Legal issues concerning the collective bargaining and collective contract system in foreigners' invested enterprises », in *Zhongguo Faxue* (Chinese Jurisprudence) Beijing, Jan. 1995, p. 56.

83. For an indication of the closeness of the links between Party organs and labour unions, see « Sheng shi dang lingdao tan gonghui » (Provincial and municipal Party leaders discuss labour unions), in *Gongren ribao* (Workers Daily), Jan. 27, 1995, p. 3.

84. See LI Tian, « Population flow into big cities », *Beijing Review*, July 18-24, 1994, pp. 15-19, in *FBIS Daily Report-China* July 20, 1994, pp. 20-21.

alliances between administrative officials and business enterprises⁸⁵. The economic incentives underlying local corporatist relations have even subverted the financial integrity of the labour unions themselves, as cases have arisen where labour union funds were improperly invested thus putting worker pensions at risk⁸⁶. Furthermore, the local CPC cadre evaluation system places premium on stability, production, and full employment, while giving little attention to strict enforcement of workers rights⁸⁷.

Conclusion

The People's Republic of China has seen many changes in the structure of its economy and in the treatment of workers employed by economic enterprises. While the *Labour Law* of the PRC represents a major step toward articulating legal norms on the protection of workers rights, it still reflects the imperatives of Chinese government policies of economic growth and the Chinese Communist Party's concerns with political control. Thus provisions on contract labour and the role of trade unions appear to serve the interests of the Party/state to a greater extent than they do the interests of Chinese workers. The new law also faces significant impediments to full implementation. Nonetheless, in the context of the transition to a socialist market economy the new labour code does represent significant progress in the ongoing challenge of managing labour relations in China.

85. For a discussion of corporatism in Chinese reforms, see K. PARRIS, «Local Initiative and National Reform: The Wenzhou Model of Development», 134 *China Quarterly* 242 (1993).

86. See e.g., «Wei han bu zhixing Gonghui fa, (Nonsensically failing to enforce the Trade Union Law), in *Gongren ribao* (Workers Daily), Oct. 10, 1995, p. 5.

87. See generally, J.P. BURNS and J.P. CABESTAN, «Provisional Chinese Civil Service Regulations», in *Chinese Law and Government*, Winter 1990-1991.