

RESEARCH ON THE SYSTEM OF COLLECTIVE BARGAINING

Highlight: Reflection on Honda Model

- ☆Plight and Solution to China's Promotion of Collective Bargaining System
- ☆The Difficulties of and Reflection on the Collective Bargaining System in China
- ☆Collective Contract System: Three Problems and Suggestions
- ☆On China's "Party/Government-Dominance Mode of Trade Union"
- ☆Collective Bargaining: from Power Governance in Labor Relation to Interest Game between Labor Subjects



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Preface



Professor Fu Hualing
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Recently, domestic newspapers and periodicals have frequently mentioned how to enhance China's "soft strength". According to my observation, since the 20th century, especially after the World War II, the "soft strength" of developed countries has been fully manifested in the adoption of collective bargaining as a major means to solve labor disputes, and the relatively comprehensive systems of laws and regulations, other mechanisms and corporate cultures established in the process. Thanks to such "soft strength", the labor conflicts that frequently lead to violence from the beginning of industrialization to the early 20th century have been rapidly decreased in developed countries after the World War II.

All of these, I think, are significant for today's China. In China, the issues of income disparity, the absence of labor rights and interests, how to expand domestic demand, and how to change China's current economic model which heavily relies on international market and finance, have long been the concerns and worries of the government and people from all walks of life. To face and solve these issues, taking technical measures such as increasing government's investment and raising the minimum wage of workers are far from sufficient. What is more important and urgent is to establish a legal and systemic framework of collective bargaining through legislation, and to make the workers' strikes and collective bargaining that are taking place every day in our society topics for public discussion.

Since 2010, China's labor relations have entered a period of transformation. From "strike in CHAM" to "suicides in Foxconn", the new generation of migrant workers has exemplified the changes of labor relations and the intensification of labor conflicts with their collective actions and the scarification of their lives. These incidents actually serve as a "window" for labor issues to come to the vision of the decision makers, making the labor dispute a necessary concern for government officials at all levels in decision making. Through this "window", we also find the way to solve labor disputes and adjust labor relations, and that is through collective bargaining. However, what I want to say here is that to systemize collective bargaining and make it a mechanism to adjust China's labor relations, it would be better not to interpret it in terms of politics. Collective bargaining, in essence, is a technical operating process, a solution to intense conflicts in labor relations.

Undoubtedly, the establishment of China's collective bargaining system is an arduous project, which embodies both unprecedented opportunities and great challenges. No



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matter whether it is for the purpose of promoting the development of the collective bargaining mechanism or constructing the system of collective bargaining, *Research on the System of Collective Bargaining* is extremely needed as a window for social analysis, a reference offer policy research and a platform (of) for academic study.



Lawyer Duan Yi
Chairman of Guangdong
Laoweilaw Firm

In China, the concepts of collective bargaining and collective bargaining system are still not mature enough. This has something to do with the path to reform and opening up that China chose to adopt. After more than 30 years of practice, how to adjust the current unique labor relations in China that is brought about by economic transformation has become an unavoidable issue. 2010 is a year of dramatic changes in China's labor relations. It is in this year that collective bargaining, from government to trade union, from employers to workers, has become a means of solution to labor conflicts, and has also shed some on the adjustment of the increasingly intensified labor relations.

Strictly speaking, *Research on the System of Collective Bargaining* neither a periodical, nor a normal publication. Instead, it is a collection of some articles and reports on posted on the Collective Bargaining Forum Web (<http://www.jtpp.cn>). Some scholars express that if *Research on the System of Collective Bargaining* were an academic journal, it would exert tremendous influence on the establishment of the collective bargaining system. It is said that everything in the world comes from nothing and grows from small to big. It is hoped that *Research on the System of Collective Bargaining* would won the favor of its readers and become an outstanding publication in the near future. As "birds are singing, seeking for like-minded friends", this publication, from birth to maturity, would need the encouragement and support from friends and people from different sectors in the society. We look forward to the future development of *Research on the System of Collective Bargaining*.





Research on the System of Collective Bargaining

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Highlight:

Honda Workers in Growth

By Huang Yinglai

In May 2010, workers from Honda Auto Parts Manufacturing Co., Ltd. (CHAM) in Nanhai of Guangdong conducted a strike due to dissatisfactory remuneration, but it was appeased after multi-lateral negotiation. On March 1, 2011, both parties of the labor relations in CHAM held the third round of collective negotiation conference on the remuneration raise in 2011. After many rounds of fierce discussion and bargain, both parties made a compromise: the worker's remuneration would be raised by RMB 611 in 2011 on top of the RMB 500 increase in 2010. The RMB 611 raised here included RMB 561 increase in salary and RMB 50 increase in bonus.

“Great leap” or stable growth?

The reporter learnt that on February 25, both parties of the labor relations in CHAM held the second conference, where the workers' representatives put forward their request for another RMB 880 raise in their salary for 2011.

The conference on March 1 was to discuss the workers' request for salary-raise. The participants

included Japanese management personnel of CHAM, exterior trade union representatives, labor union representatives of the company and a few other employees, over 40 persons in total.

The proposal put forward by Ito, the chief of the Business Management Department of CHAM, on behalf of Japanese management was: The level-1 salary for ordinary workers was raised by RMB 531, with a 27.7% of growth rate, which was 6% higher than the company's initial proposal. And salaries for other levels would be adjusted accordingly, but the amount would still be much lower than the RMB 880 requested by the workers.

In response to this, Mr. Ru Huimao, the General Manager of CHAM, explained, “If the worker's salary is increased by RMB 880 at one time, with a 46.1% of growth rate, it would be a great-leap proposal which is far beyond the company's acceptable range. Besides, the salary was already raised by RMB 500 last year, so, to raise it further for over RMB 500 this year would be a heavy burden to the company”.

However, the workers' representatives attending the conference expressed their doubt about this explanation. "The company's performance last year was better than that in the year before last. Merely increasing the salary by RMB 500 for this year apparently reflects that the company does not have enough sincerity", one of the union representatives argued. Another worker attending the conference told the reporter, "Growth rate is not the only indicator. The proposed salary growth appears to be high because the original base number is too small".

Final agreement after times of negotiations

With regards to the remuneration-raise proposal proposed by the company's management, the company's union representatives immediately expressed their rejection. They requested a "closed door" consultation with workers' representatives. After some fierce discussion, both parties agreed to increase the salary for another RMB 200 on top of the company's proposal, that is RMB 731 in total, and the RMB 200 increase had to be entirely added into the worker's basic salary.

Later, Wang Chaoqun, the deputy chairman of the Labor Union of CHAM newly elected in the end of last year, replied to the Japanese management, "To accept the company's proposal may give rise to the following negative impacts: 1. The workers'

morale will be undermined, and the company's products quality may be adversely affected; 2. The skilled workers may resign from the company, which is not conducive to the company's long-term development; 3. The workers will be very disappointed with the Labor Union, which is not conducive to the Union's work."

However, Mr. Ru Huimao, the General Manger of CHAM, argued that though the Labor Union's new proposal reduced the amount requested by more than RMB 100, to satisfy the workers' request would have great adverse impact on other enterprises nearby, as well as the business operation of the related parts and components suppliers and logistics enterprises .

After discussion, the Japanese management put forward another proposal: to raise the overall salary by RMB 561, and bonus by RMB 33, that is adding RMB 63 on top of the initial proposal. They also firmly stated that, "This is the final solution! If the Labor Union does not agree to it, all the agreements reached in the earlier negotiations will be annulled, and we will submit the matter to the relevant government authorities for arbitration!"

Mr. Kong Xianghong, the deputy chairman of Guangdong Federation of Trade Unions who was at the scene, immediately opposed the reference

to "final solution", and requested mutual respect of both parties and reaching a final solution through mutual concession..

At last, with his mediation, the company agreed to increase RMB 50 in bonus, that is to raise RMB 611 in total. This is also a result to the satisfaction of the company's Labor Union. The proposal was approved by both parties



in applause. This proposal would be submitted to the company's Workers' Congress for final review.

90% of the workers' representatives votes for the proposal

In the afternoon of March 14, the Workers' Congress of CHAM was held at the company's premises.. Most of the workers' representatives coming for the Congress behaved calmly. In fact, they were already told about the proposal as the company's Labor Union had told them about this beforehand. In addition, Ito, the chief of the company's Business Management Department, had also explained the proposal to workers for many times.

After the person in charge of the company's Labor Union had made a brief statement, all workers' representatives attending the Congress began to vote by secret ballot. According to the voting result released at the scene, 98 of 111 voted for the solution, and another 13 abstained. "The salary adjustment proposal of CHAM is approved!" A burst of warm applause followed. Both parties celebrated such a success without clear distinction of employer and employees at that moment.

"I am basically satisfied with the outcome", one of the workers' representative (surnamed Shen)

who has worked in CHAM for 4 years told the reporter. Even though there was still a gap between the current outcome and the initial demand, he thought that the company had practically taken the workers' demand into consideration. He also found that many colleagues did not complain as much as before, and he himself would continue to work in CHAM, too.

After the Congress, the person in charge of the company was greatly relieved. He said happily, "This is one of the best things we have ever done since we moved into China. In the near future, we will create an amiable CHAM with our staff, turning it into a model enterprise in China". ■

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The achievement of such effect in this labor bargaining is attributed to the following facts: on the one hand, the employer begins to value the communication with workers; on the other hand, the provincial trade union starts to care about the workers' requests.

— From a worker in Honda

Without Honda workers' strike in last May, the second and third rounds of collective bargaining will never be possible to proceed.

— From a senior official of Guangdong Federation of Trade Unions

Comments from Academia



Shi Mexia

Professor from School of Economics and Management, Beijing Jiaotong University

The collective bargaining of CHAM is successful. Though the absolute amount raised is only RMB 611, connected with the last two negotiations, this growth rate means a lot for worker's income. In addition, the significance of this bargaining does not lie in the salary raise, but also bears greater importance. And that is the role played by the original value of collective bargaining in the harmonization of labor relations in Mainland, China. It indicates that the collective bargaining is shaping its positive effect, which is fairly welcome by academia.



Liu Cheng

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Scope of study: Labor law and comparative science of law

This is a truly collective bargaining, as well as a feasible collective bargaining that worthies being promoted in current China. First of all, bargaining means compromise, namely, the result would be a compromise of both parties' plans. We should not request both parties to put forward a so-called correct plan, or a final plan based on consensus. Secondly, due to the immaturity of enterprise union in current China, the appropriate intervention of local trade unions is of great significance, conducive to reaching a compromised plan and achieving a mutual cooperation between both parties in labor relations. Thirdly, the strike has promoted the formation and development of worker's collective awareness, and improved their right to speech as well.



Xie Yuhua

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Scope of study: Labor relation and collective bargaining

The CHAM collective bargaining has offered us a lot of instructions. It might become a landmark event in China's collective bargaining. Looking deep into details, we find that it provides many study topics for academia. Many technical problems still need to be solved, for example, how to determine the total amount of salary in enterprise and how to define the profit rate of salary. The collective bargaining in western countries has grown into maturity, and become more and more professional. Both parties in labor relation have their respective lawyers, or HR personnel involved.

Harmony under Opposition

—On CHAM Salary-raise Incident

By Hou Lingling

According to the relevant reports, on March 1, 2011, both parties in CHAM labor relation reached an agreement on the salary-raise plan for the year 2011 by means of collective bargaining. On March 2, this plan was passed through the Workers' Congress with majority of the vote. The salary of Honda workers was raised by RMB 611. There was no fierce confrontation between both parties in labor relation during this fight for salary raise. Instead, the negotiation was conducted peacefully, and the result was also to the satisfaction of both parties.

A harmonious labor relation is an essential factor for social stability and development. How to achieve harmony needs to be studied. While, workers want to maximize their salary; employers want to maximize their profit. When output remains unchanged, an increase in salary will certainly lead to a decrease in profit, especially for labor intensive enterprises. It is fair to say that labor and management are born to be opposing parties in terms of interests. Under the system of market economy, it is the economic power that determines the interest distributed. Generally speaking, labor supply is greater than capital supply, and the salary bargaining power of individual workers is definitely far weaker than the capital owners – the entrepreneurs. Only when individual workers get together to form a relative monopoly of labor supply, can they influence the supply-demand relation, and impose certain bargaining pressure on enterprise owners, forcing

them into making compromise on working conditions (e.g. salary), and raising the proportion of salary in interest

distribution. As a matter of fact, workers and enterprise owners are relying on each other. The employment of workers is realized by the enterprise owners, and the surplus value of the owners relies on workers. This is the basis for the workers and enterprise owners to reach a consensus through rational negotiation and mutual compromise.

It is observed that strike, as a means of resistance to refuse to offer labor collectively, is a painful and hard action. It may cause harm to the enterprise owner, as well as to the workers. The longer it lasts, the greater will be the losses to both parties. However, strike is the only way for workers to threaten the enterprise owner to bargain with them. It is because of the painful resistance in May 2010 that CHAM owner realizes the power of collective action by workers, and that CHAM workers learn that some necessary concessions is the precondition of getting salary increment. These are the fundamental reasons for CHAM's salary adjustment plan to pass through the Workers' Congress this year. ■



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Scope of study: Labor relation and social insurance



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Scope of study: Labor relation and labor movement

The 3rd Round of Collective Bargaining in CHAM

-- Comments from workers

By: Meng Quan

Not long ago, *Southern Metropolis Daily* reported the third round of collective bargaining over salary increment of CHAM since last May's strike. This report aroused great concern in the society. After three rounds of negotiation between CHAM labor and management, an agreement was reached that the worker's remuneration would be raised by RMB 611, of which RMB 561 for salary and RMB 50 for bonus. This collective salary negotiation between labor and management can be regarded as a collective bargain mainly because workers' opinions have been expressed in the process to a large extent, and there was a real bargain between workers and employer over salary increment in the process. Also, the contract finally formulated is different from the legal formality of "formulating sample collective contract by the Trade Union Federation to guide the Trade Union in the enterprise to conduct collective bargaining with employer".

Workers, Trade Union and Management: Changes in the Subject

Through interviewing CHAM workers, I have learnt about the process of the third round of the company's collective bargaining. We can see that there were progressive changes in workers, Trade Union and employer in various degrees. First of all, the strategy consciousness of workers has become more mature during this bargaining process. This is mainly reflected in the communication among workers, interaction with Trade Union and their placing importance on information collection. The successful communication among workers was achieved under the new system of workshop supervisors which began to be implemented after the Trade Union re-election. Those supervisors, on one hand, are relatively more authoritative among ordinary workers; on the other hand, they can serve

as a bridge between Trade Union and workers, or even between the employer and workers. Worker C said, "They quite trust me, and think highly of me. They love to talk to me on everything. Therefore, they believe I could do well if I participate in the bargaining process." Worker D also pointed out that the company has adopted a system of communication with department heads under which ordinary workers would be invited to express their opinions from time to time. When these workers do not know what to say, the workshop supervisors will discuss with them. In addition, the supervisors will represent the ordinary workers to directly communicate with Trade Union carders, expressing the voice of the workers, hence attempting to pose some impact on the Trade Union. Moreover, workers have attached greater importance to collecting and analyzing information related to the bargaining. For example, Worker A said, "There is a lot of experience for us to learn. For example, while learning about and analyzing the company's proposal, we should also learn about the proposal's shortcomings and predict the adverse impact of such shortcomings in future. Besides, the data to be used in bargaining with the company should be as comprehensive as possible, there should be reasons and evidence to support our arguments." Of course, this is not only the responsibility of workers, but also the responsibility of the Trade Union. Under the circumstances where workers only enjoy limited social resources, Trade Union should try its best to help the workers to collect and analyze critical information that may affect the outcome of bargaining.

However, workers also have some concerns about the action of Trade Union in collective bargaining. For example, Worker B stated, "The Trade Union is the communication bridge between labor and management. While bargaining, it has to take the company's capacity into consideration". This, in effect, poses a question to us: Should the Trade Union solely represent the workers or continue to

facilitate the bridging function? Worker D also said, “When a proposal is put forward, the Trade Union should convey such information to workers through various channels; it should not express its consent to or opposition to such proposal without before consulting the workers. Whether or not to accept the proposal should be decided by the majority of workers”. Here, at least we can see that workers hope their request and opinions to be valued by the Trade Union, and to be fully expressed through the Trade Union as their representative. Therefore, the Trade Union carders need to explore the proper relation between Trade Union and workers, and the appropriate mechanism or means to achieve such relationship.

Finally, the changes of the Japanese employer and management were also a very crucial factor. Ever since the last strike, as a friendly gesture in daily life, the Japanese management has started to encourage all Japanese employees to learn Chinese, and to greet workers in Chinese. Even in some meetings, they also commenced the meetings in Chinese. These flexible changes in management not only enabled workers to feel that they were

respected by the Japanese management, but also avoided strong confrontation between labor and management during bargaining. Furthermore, the acceptance and recognition of collective bargaining by the Japanese employer and management also played a role. Worker C explained, “What is the most important is the employer’s attitude. They may make use of various reasons to refuse negotiation and simply convince the Trade Union to agree to no salary increment. If it fails, they may resort to labor arbitration. So, the employer’s attitude really counts”. In addition, while raising worker’s salary, Honda’s Japanese management also intended to adopt new production management method—maximization of production capability so as to raise the worker’s production efficiency, hence enhance the company’s competitiveness. Such a plan was understood and accepted by the workers. ■



Alternative Reflection on the Collective Bargaining in CHAM

By: Liu Jian



Liu Jian

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Scope of study : Urban Politics, Labor Politics, Collective Bargaining, and Public Policy

The salary of CHAM workers was raised, after the third round of collective bargaining, at a relatively high growth rate. It was reported that the worker's remuneration was increased by RMB 611 in total, including salary and bonus. The members of the company's Trade Union said that the rate of salary increment is quite high, the current situation remains good, and workers are very satisfied with it.

Under such circumstance, however, I want to cast a damp into it. We all know that labor relation is ridden with a basic hypothesis that there is conflict of interests between the employer and employees. Though there are mutual interests between labor and management, conflict is the intrinsic feature in labor relation. Therefore, we should never be deceived by short-term interests, dazzled by current victory, and indulged ourselves in carelessness or even inertia.

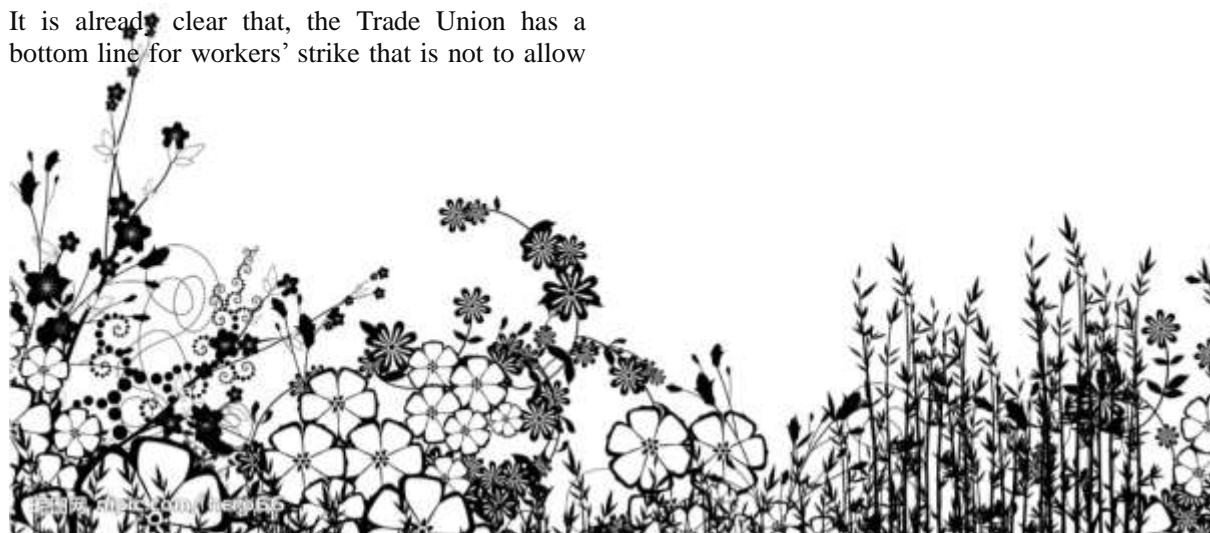
All rational people will agree that the victory of the third round of collective bargaining in CHAM was neither because of the intervention of the upper level Trade Union, nor the result of the media's attention or the strong supports from the society. Instead, it was achieved through CHAM worker's strike in May 2010. Had the strike in last May not caused great losses to Honda and made the company realize the collective power of workers, today's victory would not have been possible.

It is already clear that, the Trade Union has a bottom line for workers' strike that is not to allow

workers to "reorganize a trade union". All collective actions must fall within the framework under the Constitution and the laws. Workers understand this

requirement very well. What is more, they must realize that it is the collective power of workers that generates their collective interests. As there is no such a thing as free lunch, all benefits offered by the employer and the management may stupefy, divide or disintegrate workers so as to make them relax their vigilance and become inert, thus harming the collective interests of workers. Such things are not unlikely to happen. The history of the European Trade Union has told us about this.

For the workers, it is a great challenge to strike a balance between the bottom line of the upper level Trade Union and the unity among workers. No workers in any other countries in the world have ever experienced this, and similar historical experience is also hard to find. This is especially critical for the growing worker class in China. ■





Plight and Solution to China's Promotion of Collective Bargaining System

By: Lü Jianmin

Abstract: In this article, the author introduces the institutional barriers of promoting collective bargaining in China, and presents the positive and favorable conditions for developing such system in China.

I. Current situation of labor relation in China

The reform and opening-up in the 1980's has accomplished the economic system transformation, changing the planned economy with a single form of public ownership (state or collective ownership) into a market economy with mixed ownerships. Along with this historical transformation, the worker's status, nature and condition have also been changed. The relation between labor and capital, which is a typical social relation under a market economy, revives again, to the greatest width and scale ever.

The evolution of labor relation rising out of reform may be summarized in one sentence: workers have become "employed workers", namely, they are employed by other people, and salary is their major income to support their lives. Opposite to the employed workers are employers, consisting of

capital owners and business management, they are the so-called capitalists. The status and roles played by the employed workers and capitalists constitute a true labor relation in reality. Here, the interest structure of employed workers and capitals is bilateral and both sides are dependent upon each other. The relation between enterprise's profit and workers' salary is similar to a zero-sum game, where the capital share (namely profit) increases will lead to a reduction in the labor share (namely salary) will reduce, and vice versa.

Another apparent trend is that more and more individual workers are getting together to form a group which is growing in size.. Despite of the differences between enterprises and industries, urban workers and migrant workers, and differences in sexes and ages, the workers' request tends to be consistent in terms of salary, working conditions, occupational insurance and fringe benefits, etc. It is frequently observed that individual workers are always under pressure of more powerful employers, but the workers will have more confidence when they unite together. The achievements made through collective power encourage them to further work together. In response to the organized workers, employers will also form their own trade organizations in order to



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Scope of study: Labor issue and labor relation

enhance their status through internal compromises. In this way, the so-called collective labor relation has gradually occupied a dominant position under the combined effects of labor and management. Accordingly, there is a trend of drastic increase in collective labor

disputes.

Economic growth has led to rapid expansion of the labor market. From the perspective of setting growth as the priority, the government deliberately lowers the salary to attract foreign investment and improve the investment environment, and allow the spontaneity of market power in adjusting labor price, namely monetary salary, thus resulting in the imbalance between market supply-demand relation and labor-management power. The eastern, central and western regions of China are flooded with labor-intensive and low-added-valued enterprises. When brand names, technologies, innovation and market heavily rely on foreign investors, the growth of productive value has consumed a great deal of resources and paid a heavy environment cost at the same time. What is more shocking is that the extremely low labor cost nearly breaks the worker's physical limit. They are even hardly able to maintain a simple reproduction of labor force.

In China, most people only regard work as a means to make a living, a transfer and sacrifice of fun. Alienated labor is still a prevailing phenomenon. The labor factorization and rights as a human being are separated from each other, and the imbalanced labor market further makes the workers' jobs unstable. Except a few large state-owned monopoly enterprises, the average service duration of a worker in a company is very short. Being frequently fired and seeking for jobs again further increase the workers' sense of instability and frustration. As they are getting older, the workers' competitiveness and bargaining power in the market will be reduced. Besides, they also have to face the competition and exclusion from other workers. Those younger and more willing to sacrificing their labor at lower price will become their rivals.

In addition, the deterioration of working conditions

is threatening the physical and mental health of workers. China is a country with the most frequent occurrence of serious safety accidents. Every year, the number of people dying of safety accidents is greater than that in a modern war, let alone pneumoconiosis, occupational toxicosis, and physical disability that bring permanent disability to a even greater number of workers.

In the foreseeable future, China will face with shocks from industrialization and urbanization. Tens of millions of urban and rural labor will join the labor force. Employed labor will still be the major means for most workers to make a living. In other words, employed labor will continue to exist for a long term and in a large scale. It will not become a thing in our history. To name it as "employed labor" or anything else is not important. To point out its nature does not mean denying its reality and rationality. The accusation of employed labor in general moral sense should be abandoned. Instead, we should objectively appreciate its irreplaceable historical roles. It is often "badness" that moves the history forward. It suffices to state that the current labor relation in China is faced with confrontation between labor and capital.

II. The institutional barriers to promoting collective bargaining in China

What are the institutional barriers to the promotion of collective bargaining system in China? I think we can analyze this question from the following perspectives:

China's market economic system is far from being a balanced and genuine market economy.

The government controls the resources industries in the form of state-owned enterprises, including finance, telecommunication and energy. The access to these industries is strictly limited. Additionally, the government also intervenes through policy guidance, price control and mandatory industrial integration, and even the policy of "development of the country at the cost of the people". In the field of market competition, the government, especially local governments, deliberately lowers the salary standard and distorts the labor market in order to attract external investment and ensure employment. The roles and status of government in business operation decide that China's economy is featured with state capitalism, which means government is involved in resources allocation in market activity in a non-market manner to make sure the economic development goal is achieved. Under such circumstance, it is impossible to

establish a real labor market. Labor supply-demand relation fails to play a decisive role in labor pricing. Instead, it is the minimum salary standard set by the government that constrains the average salary level. In a market weakened by monopoly productive factors, only labor is in a disadvantageous position because of its lack of monopoly. This situation is not merely caused by the flooding of cheap labor force into the market, but, more importantly, the market's lack of a system that allows labor factor to be involved in bargaining. Therefore, for a country without a genuine market economy, though it is not impossible for it to develop a collective bargaining system, it certainly will face many obstacles.

Collective bargaining crosses over economic and political fields. People tend to consider collective bargaining as a production in the economic field. However, it in fact has crossed over the economic field and into the political field since it is related to the setting of workers' basic rights, as well as right to organize, right to bargain, and right to strike derived wherefrom. In other words, workers' right to organize has become a political power, and the right to strike is also a political power or basic civil right. Therefore, collective bargaining should be examined under the structure of the country's political system. Ever since the socialist transformation in 1956, China has established a classical socialist political structure, so to speak, which is featured with two parallel power institutions: the institutional framework of the governing party and that of the state. In fact, the governing party as the modern polity at the highest level is implementing its centralized political rule in the form of state and government. The powers of the state and the government are only the extension of the governing party's power. The governing party directly controls the state organs and governments with policy-making power and power of appointment and removal of government officials, directly interferes with policy-making, legislation and administrative management, hence finally establishes a unique party—the state system.

The monopoly of political power is also reflected in the monopoly of social organizations and the underdevelopment of self-governed society independent from party-state system. Social organizations including Trade Unions, Youth Leagues and Women's Federation all have a large organizational structure, and exclude other similar organizations in the same field. However, they are under full control of the party. Except with

different social functions, as with the state organ and the government, they are serving as a tool of the ruling party. Such organizations have already been politicalized and bureaucratized into a grassroots organizational network used by ruling party to control the society. Such institutional design apparently becomes a barrier to promoting collective bargaining.

The status and roles of Trade Union under the political structure decide that it is not competent to become the subject of collective bargaining. After the establishment of classical socialist system in 1949, the Trade union led by the Communist Party of China has gone through a transformation as the Party's status and roles changed. The Trade Union preserves its traditional status as the political extension of the Party. It actually is the Party's labor department. Meanwhile, the Trade Union has been quickly bureaucratized after being incorporated into the party-state system. Institutions of Trade Union is formed from top to bottom; the full-time carders of the Trade Unions at all levels and industrial Trade Unions enjoy the same political and economic treatment as the party and government officials at the corresponding level, and receive salary as if they were civil servants. The gap between their expenses and membership dues is subsidized by public finance.

Between the Party and labor, the Trade Union tends to perform its political function but forgets its role of representing labor's interests. When its two responsibilities are in conflict with each other, for example, the economic growth, competitiveness and investment environment suggest the lowering of the salary while workers request salary increment, in this circumstance, the Trade Union will abandon the working mass. Between employer and labor, the Trade Union will usually be constrained by economic power and the natural affinity between power and capital, and depart from the group it ought to be subject to. Trade Union like this will not be able to become the subject of collective bargaining, because it is neither the workers' own organization, nor will it represent labor's rights and interests. In fact, it is merely an organization formed and imposed on the workers externally. For labors, such Trade Union is a kind of alien force to control them, which not only unable to bring them any benefit; on the contrary, it becomes a burden to them.

In China's legal system, the setting of rights related to collective bargaining is abstract, ambiguous and incomprehensive. Worker's right

to bargain in production elements market is reflected in equality and voluntariness in the bargaining process. It also reflects the legality and legitimacy of workers as the subject of right. In reality, since workers are separate individuals, powerful employers can unilaterally define the employment conditions. When labor dispute becomes a subject matter to be governed by labor law and civil law, workers are always placed in a disadvantageous position. Collective bargaining is referred to as collective negotiation and collective contract officially. In addition to the absence of bargaining subject, there are no specific regulations on the procedural rules necessary for safeguarding the workers' right to bargain, nor are there any procedures and substantive laws to solve collective labor dispute.

It is unimaginable if strike, which is a means for the workers to impose pressure on their employers, is not included in collective bargaining. The right to strike was once incorporated into China's Constitution as a basic civil right. And, when signing the *International Covenant on Economic, Social and Cultural Rights* in 2001, China did not make a reservation on Section D, Article 8 which is about the right to strike. There is no doubt that Chinese citizens have the right to strike in legal principle. However, there is a lack of specific laws and regulations to regulate this abstract right.

III. The favorable conditions of promoting collective bargaining in China

Since there are so many institutional barriers, does it mean that it is impossible to promote collective bargaining in China? The answer is neither affirmative nor negative. It all depends on the objective conditions including China's economy, politics and culture, as well as its policy response, the development path it selected and institutional evolution during the process of social transformation. Here, we can see that there still exist positive and favorable conditions for promoting collective bargaining in China, which may be summarized as follows:

Firstly, China's political system, ruling party's core value, and governing concept are compatible with the core value of collective bargaining on the whole. The Communist Party of China (CPC) has always positioned itself as the representative for all workers and the defender of their rights and interests. Article 1 of the *Constitution* clearly states that the country is the people's country under the leadership of the

working classes and based on the alliance of workers and farmers. To seek for the benefits for the most extensive public mass, with the majority being workers and farmers, is the country's goal. Besides, China is a signatory party to the *United Nations Charter* and *International Covenant on Economic, Social and Cultural Rights*. Under China's political context, the universal human right is not excluded, and the rights and interests of workers are regarded as the principal part of human right. The core value of collective bargaining is to improve the market price of labor elements so as to enable labor to maximize their shares in social wealth distribution under the market economy. The right to organize, the right to bargain and the right to strike under collective bargaining are derived from workers' basic rights, and they share the same value pedigree with the party-state ideology which was formed during the long-term revolutionary struggle.

Secondly, the social transform initiated by reform and opening-up policy is, in nature, a social improvement led by the CPC's political authority. It discards the radicalist tradition which became stronger and stronger since the end of the 19th century, and abandons class struggle and continuous revolution as means of promoting social progress. Instead, it adopts the evolution mode based on the development of social productivity, which results in diversification of social classes and interest groups, hence the decline of the network and functions of the state organs in the society and the birth and growth of social organizations. Born under the context of western social democracy and democratic socialism, collective bargaining stands for class harmonization and social compromise, turning small-scale social improvement into a dramatic social progress.

Thirdly, the freedom of association associated with the workers' right to organize is definitely in conflict with the existing political structure. Therefore, it still remains impossible for China to establish a Trade Union similar to the *Solidarność* of Poland or the free trade unions in western countries. The CPC will never give up its leadership over official trade unions or its dominant power over workers' general affairs, and to let the emerging social forces and organization to substitute them. However, China's political structural reform is not static. The historical course since the adoption of reform and opening-up policy has already been extended to the political sphere, and gradually become institutionalized. On the whole, the political structural reform is a

restructuring of the party-state power. In this sense, the reform must have two apparent elements: the check and balance over public power and the supervision over people holding such public power; and the real realization of people's democratic rights and political participation. In fact, the CPC itself is in the need of transformation. In history, the CPC has achieved its first transformation from a revolutionary party in a period of turbulence and revolution to a ruling party with centralized power; it will accomplish the second transformation into a ruling party of a constitutional democracy in the new era of reform, opening-up and modernization. Such transformation may imply that the party will give up part of its and allow the self-governance organizations of the civil society to get in. Transformation is not merely a replacement of new means with old ones. It is more realistic to change the organization status by changing their functions. In other words, , to endow official trade unions with the subject of collective bargaining and the function of implementing collective bargaining will enable the trade unions to be de-politicalized without departing from the political leadership by the CPC. During the process of collective bargaining, the direct participation of workers requires selecting and dismissing their representatives in accordance with democratic procedures. The bargaining results must be approved and confirmed by the workers. To be the subject of collective bargaining, the trade unions must accomplish organizational transformation aiming at functional efficacy. "The separation of party and trade union" will certainly be the first step for the relaxation of the political structure. In this sense, promoting collective bargaining might serve as a lever for China's political institutional reform.

Lastly, in terms of reform methodology, the CPC has stuck to the principles of "being practical and realistic", "crossing the river by

feeling the stone" and "practice being the sole criteria for testing the truth", which actually is to make decisions on random selection to respond to the uncertainties in transformation. Such thinking applies to significant measures taken in both rural and urban reforms. Decision-making is often the response to pressure and stimulation, which features that it is not necessary to be absolutely sure that a decision is correct when it is made, or it will stay unchanged; instead, the decision made must be observed under the principle of "practice being the sole criteria for testing the truth", and must be continuously modified, perfected or changed. In face of increasingly acute labor disputes, decision-makers will follow the similar pattern of decision-making in determining whether to promote collective bargaining. Supposed the promotion of collective bargaining can strengthen but not weaken the authority and political leadership of the ruling party, bring about favorable and reasonable changes to the current political system, provide an effective mechanism to labor relation adjustment, and at the same time will not lead to social instability or turmoil, then the institutional innovation will be successfully accomplished. The process of such an effort will certainly be terminated or suspended, ending up with failure, if any event occurs in the process makes the decision makers to feel that they may lose control over the development of the matter, or the turmoil caused may lead to social tensions and instability, or even producing subversive effects to the current political structure. This is the so-called uncertainty in "transformation". It is determined by the integrated factors of all objective and subjective conditions, the gaming among different interest groups and social forces, and the balancing of the relevant forces. These uncertainties are unable to be predicted and planned beforehand. ■





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Scope of study: Labor relation and Human resources management

The Difficulties of and Reflection on the Collective Bargaining System in China

By: Cheng Yanyuan

Abstract: In this article, the author summarizes the problems and difficulties in promoting collective bargaining in China, and then suggests that, given those problems and difficulties, contractual autonomy should be adopted as a main mode for China's collective bargaining system.

Part I

Despite the Labor Law issued in July 1994 has clear stipulations on the implementation of collective negotiations and the conclusion of collective contract by enterprises, and the government has also adopted powerful measures to promote collective bargaining system since 1995, there are still many problems and difficulties due to various factors.

1. The representativeness and independence of trade unions

The precondition of an effective collective bargaining mechanism is the independence of labor and employer. The bargaining subject should be independent and representative, and have the legal right and organizational capacity of representing workers and employers in state-owned and non-state-owned enterprise from enterprise level to national level. The representativeness of a trade union mainly defines the relationship and status of the trade union and the workers in collective bargaining, while the independence of a trade union mainly refers to the relationship between the trade union and the management. The trade union is the "representative" of workers' rights and interests, and a "negotiator" negotiating with employers to protect workers' rights and interests. Its status is in opposition to the management. The right to bargain of the trade union is granted by workers, and the trade union should be responsible for the workers in terms of bargaining activity. The trade union has the obligation to report material issues arising in

the bargaining process to the workers, and the workers have the right to vote for resolution. Without the approval of workers, the agreement reached through trade union's bargaining should not come to effect and binding on all workers. China's laws have directly provided that the trade union has the right to collective bargaining, which confirms the legal qualification of trade union in collective bargaining. It is stipulated in Article 20 of Trade Union Law, revised in October 2001 that "the trade union negotiates on equal footing with enterprises and government-sponsored institutions that adopt enterprise management, and enters into collective contracts on behalf of workers". This provision enhances the central status of trade union in collective bargaining, laying a foundation for the development of collective bargaining and negotiating system.

However, according to the observation of collective bargaining system in China's enterprises, what constitutes an apparent contrast to the powerful trade union organizations at the central government level is the declining of those trade union organizations at the enterprise (first) level. Some grass-roots trade unions (in enterprises) are even removed or merged with others when the enterprises are restructured. The percentage of non-state-owned enterprises with their own trade unions is still very low. Though the superior trade union has emphasized the representative role of trade union in workplace for workers, the trade unions at enterprise (first) level still serves as trade union and management at the same time, and are closely involved in the enterprise management organizations. The number of senior management

of the enterprise accounts for a high proportion in Trade Union Committee, thus confusing the roles of worker's congress as democratic management and as the enterprise's trade union to a certain extent. These features of the trade unions at the enterprise level weaken their capacity to represent their members' rights and interests. Therefore, the Trade Union Committee is more likely to adopt internal coordination to solve rights and interests disputes between employees and management instead of representing its members to negotiate with the management. In addition, it has been common for a deputy secretary of the Party Committee to concurrently serving as the chairman of a trade union, the secretary of commission for disciplinary inspection to concurrently serving as the chairman of a trade union, the chairman of a trade union to concurrently serving as the standing committee member of a Party Committee, and a factory's deputy director to concurrently serving as the chairman of a trade union. If collective bargaining is promoted, the problem with the dual roles of the trade unions' senior personnel will become more apparent. Which side does the chairman of the trade union represent in bargaining? Should we let a Party standing committee member to negotiate with a Party secretary and deputy secretary, or to let the factory's deputy director to negotiate with the factory's director? Everybody knows very well what is the impact of such "roles displacement". The trade union organization is subjected to the enterprise institutionally. The "role confusion" and "unclear definition" caused by the trade union carders' taking up of Party and administrative positions make the trade union unable to maintain its representativeness and independence, and discharge its responsibility of protecting workers' lawful rights and interests. Worse still, situation where the chairman of a trade union bring a lawsuit against workers on behalf of the enterprise may also happen, which is a great departure from the trade union's objectives and goal and constitutes a violation of the relevant provisions in the *Trade Union Law*. Such a trade union does not support workers in accordance with the *Trade Union Law*; instead, it stands in opposition to the workers. Why? It is mainly because the trade union is subordinated to the enterprise in terms of management system and many personnel of the trade union have other posts at the same time. Trade union carders have to safeguard the enterprise's rights and interests, and to represent workers' rights and interests simultaneously. In practice, they are under a dilemma. Therefore, to ensure representativeness and independence of trade unions is not only

related to whether the trade union can represent and protect workers' rights and interests, but also the key factor in enabling us to promote the collective bargaining system.

2. Ambiguous role of the employers in collective bargaining at the enterprise level, as well as the absence of employers' organization in industrial and regional collective bargaining

The employers' organizations mainly conduct bargaining at the industrial or local level. In principle, as a bargaining subject, an employers' organization should be authorized by its employer-members to bargain with the trade union on behalf of the employers. The agreement reached during such negotiation should be binding on all the employer-members. China Enterprise Confederation is a representative organization for China's employers that are recognized by International Labor Organization and Chinese government. However, compared with the powerful trade union organization at the central government level, the employers' organization at the central government level is much weaker in terms of representativeness and number of members. Though the China Enterprise Confederation has made efforts in strengthening the organization's capability to represent various employers, enterprise managers still tend to regard it as an utilizable channel to coordinate with government, but not as the employers' representative in labor disputes. Such weak foundation of the China Enterprise Confederation in representing the employers' rights and interests, especially employers of non-state-owned enterprises, is a critical factor that restricts the development of a harmonious labor relation. Unlike the trade union's well-defined top-down organization system, the employers' representative, i.e. the China Enterprise Confederation does not have corresponding branches in many counties. Therefore, in current industrial and regional collective bargaining and negotiation system, the absence of corresponding subjects becomes a serious problem. To solve this problem, some places adopt the method of requiring the regional general trade union to enter into agreements with and different local enterprises respectively, or to enter into agreements with major local employers as representatives in regions where there is no enterprise confederation in the region. However, some places adopt transitional some interim measures, for example, for the regional collective agreement signed in Xingshou Town, Changping, Beijing, the parties are township trade union and township industrial office. As a matter of fact, the

township industrial office is a government agency, not an employers' organization. In Chengdu, since there is no employers' organization at the regional level, the regional collective agreement is entered into between the local trade union and the local administration for industry and commerce (which is responsible for corporate registration and supervision). In Sichuan Province, such regional collective agreements are considered as legally binding. The problem of this practice is that there is no employers' representative participates in the "bargaining" process. If employers do not participate in the bargaining via their association, the effectiveness of the bargaining needs to be further observed. In addition, how does the agreement bind the members of the employers' organization will be another problem, too.

Apart from the need to industrial or local negotiation clarify the relation between employers and employers' organizations in industrial or local negotiation, how to sort out the relation between enterprise trade union and the management in collective bargaining at enterprise level is also a difficult problem in bargaining practice. In China, the roles of employers of non-state-owned enterprises and foreign investment enterprises are clearly defined. But who are the employers of state-owned enterprises? This is a practical question frequently come up in collective bargaining. There are still confusions in theory and practice for us to work out. In state-owned enterprises, when the chairman of the trade union negotiates a collective agreement on behalf of all workers with the factory director, the latter will frequently ask the former questions such as "Who do I, as the factory director, represent?" or "Who has the final say on the asset ownership and the vital labor salary policy of state-owned enterprises?". Questioned by factory directors, many chairmen of trade unions are speechless. They might retreat or avoid essential problems, going through the formality of bargaining and contract conclusion to discharge their duties without answering any of these questions. As a result, the collective bargaining and negotiation system is greatly impaired and weakened. Do chairmen of trade unions need to negotiate with factory directors? Do they need to sign the collective contract on behalf of workers? Whose rights and interests are the factory directors and managers of state-owned enterprise representing? All of these questions point out the problems with the environment and conditions faced by China's state-owned enterprises in implementing collective bargaining and collective contract system. As for

how to (define) appraise the conditions for China's state-owned enterprises to implement this system, and how to give full play of collective bargaining and collective contract system, two problems have to be addressed:

Firstly, we must address the problem of who the employers of state-owned enterprises because only the employers or employers' confederation can be the subject to conduct collective bargaining with the trade unions. The concept of employer is not clearly defined in China's labor law. Internationally, employer is generally referred to a natural person or legal person who employs workers and incorporates such workers into labor organization. Employers may include owners employing workers, person in charge of operation or person authorized to handle labor-related affairs. The greatest significance of employer's status in labor law lies in the fact that an employer enjoys the "right to request labor" and the "right to give instructions and orders" over workers. Therefore, no matter what is the nature of the enterprise, and no matter whether the enterprise ownership belongs to the state or individuals, he who has the final say in the salary, profit distribution, and employment will be the employer under the context of labor law. The trade unions have to conduct bargaining with employers who are capable of making material decisions. Therefore, persons in charge of operation including factory directors and managers of enterprises are employers but not workers under the context of labor law. They are capital's personalized representatives. Senior managers are management accountable to the employers, but not the labor in labor relationship. According to international practice, most workers may be represented by the trade union to conduct bargaining, but management employees with certain power, or employees who have access to the employer's confidential information may not be represented by trade union in collective bargaining. They belong to the employer's side but not members represented by the trade union in collective bargaining and negotiation. The extent of business management power currently enjoyed by factory directors and managers in state-owned enterprises is another problem. With the in-depth reform of property rights and the establishment of the department representing the country to execute the operation and management of state-owned assets, factory directors, managers and senior management personnel will certainly become a group responsible for capital.

Secondly, the identity of the management

personnel in trade union must be addressed. It is stipulated in Article 12 of the *Trade Union Law*, revised in 2001 that “without prior consent, no organization and individual may cancel or merge any trade union organizations. In case where an enterprise is shut down or a government-sponsored institution and agency is cancelled, the trade union under which should be cancelled accordingly and reported to the trade union at the next higher level”. According to this provision, members of an enterprise, government-sponsored institution and agency, regardless of whether they are laborer, technicians or management personnel, and regardless of whether they are physical workers or brain workers, should be organized into the same trade union organization instead of forming different trade union organizations for different categories of workers.^[8] This means that the trade union system as stipulated under China’s law is a centralized trade union, namely, only one trade union will be approved for each enterprise. Thus, situation where the management representatives including factory directors and managers are under the same trade union organization with other workers in the same enterprise may occur. According to the *Trade Union Law*, the trade union also needs to protect the rights and interests of factory directors and managers. In this way, the trade union on the one



hand needs to bargain with the management, and on the other hand, it needs to represent the management’s rights and interests. The management personnel’s confusing role and unclear positioning not only makes the trade union difficult to perform its functions, but also constitutes a great harm to the management personnel in performing their functions. According to the International Labor Conventions, employers

also have the right to organize, but such right is only limited to the right to organize employers’ organizations distinguished from the trade union, and such organizations may not interfere with the trade union organizations. Besides, the employer’s interfering with and controlling of the trade union considered as an “act of interference” and thus be prohibited according to Convention No. 98 of International Labor Organization. Given the fact that there is only one trade union in current China, should we require the management personnel to join the trade union at the higher level or other trade unions so as to differentiate their status and roles as the management (as opposed to the trade union and workers) in a specific labor relation?

3. Lack of the details about the bargaining process, and failure to full implement the functions of the bargaining mechanism

Collective bargaining is the precondition and necessary process for signing collective agreement, it is also the “soul” of collective agreement system. Agreement is merely the result of the bargaining. As with other contracts, the collective contract is a written agreement between labor and management. A collective bargaining needs to undergo many rounds of negotiations. This process actually is a process of seeking common grounds while appreciating differences, and reaching consensus and solving conflicts and differences. Without a real bargaining process, the goal of solving disputes and conflicts will never be achieved through bargaining. The criteria for a successful collective bargaining are that the bargaining has resolved labor disputes and created a harmonious labor relation. However, during the promotion of collective contract system, situation where collective contract is signed before the collective contract mechanism is established does occur in some places. In this case, collective agreement is made a goal instead of a means. Giving weight to the signing of contracts but neglecting negotiations remains a prevailing phenomenon. Once the contract is signed, everything is done, and the bargaining mechanism will never be established. Some even treat the signing of collective contract as a task to fulfill a quota, and they only care about the number of contracts signed. Some contracts are concluded without any negotiation. They were simply jointly formulated

by the trade union and enterprise leaders subjectively, thus rendering negotiation a mere formality. The contract remains a mere piece of paper; its functions failed to be demonstrated. In fact, the core of collective agreement system is the establishment of a bargaining mechanism, a system for labor and management to communicate, understand each other and reach agreements. However, what we are lacking now is that such mechanism has not been established, or even though such mechanism has already been established, it is rarely used in solving disputes.

4. The contents of the agreements are similar contents are uniform, lacking pertinence and operativeness

At present, the quality of collective agreement of many enterprises is very low. Most of the clauses in the agreements are directly copying from current laws and regulations, and clauses reflecting issues of common concern of both the enterprises and workers that are not dealt with adequately in existing laws, such as workers' unemployment, renewal of labor contract, remuneration, annuity, housing, supplementary insurance, the enterprises' share of the medical costs of workers' family. There are even less clauses conducive to harmonizing labor relation. To speedily promote the collective agreement system and to meet the quota of signed agreements, some trade unions at higher level usually persuade enterprises and trade unions to sign on a model contract. As a result, the collective agreements of many enterprises are very similar in contents: the clauses are vague, only principles are provided, lack of flexibility and pertinence, failure to take the actual situation of the enterprises concerned into account. Due to these problems, the contract lacks operativeness. Collective contracts are commonly featured with "three manys and three fews" in content: many clauses only set out the principles but few specific provisions; many clauses are directly copies from laws and regulations but few clauses are drafted on the basis of the enterprise's actual situations; and many vague and general clauses but few practical ones.

5. Imbalanced development of collective agreement system, with some enterprises and regions severely lagging behind

In terms of the number of enterprises that have signed collective agreements, the percentages in the state-owned enterprises and collective enterprises are relatively high.; joint venture has a smaller percentage and the percentage in private enterprises is even much smaller. The investigation

of 100 enterprises in 6 provinces and cities nationwide in 2001 carried out by China Enterprise Confederation showed that 73% of the state-owned enterprises have signed collective agreements. The percentage in joint ventures was 38.1%; and merely 15.4% of the private enterprises have signed collective agreements. The investigation indicates that there are obvious differences among enterprises of different ownerships in respect of whether to establish a trade union and whether to elect a full-time chairman for the trade union. The proportion of private enterprises and joint ventures that have not established trade union were 33.3% and 50% respectively; the proportion of private enterprises and joint ventures that have established trade union and elected a full-time chairman for the trade union were 40% and 33.3% respectively, which were far lower than that of the state-owned enterprises (89.5%) and collective enterprises (69.2%).^[5] The percentage of non-public ownership enterprises that have established trade union was very low, the negotiation and bargaining mechanism between labor and management has not been established in general, the collective contract system develops very slow due to a various difficulties, (and what's worse,) and there is a lack of a comprehensive supervision mechanism. As a result, the promotion of collective agreement system is lagged behind.

Part II

In the current practice of collective bargaining, it seems that collective bargaining serves as a means to promote and supervise the execution of the existing laws and regulations. Under circumstances where the labor and management often ignore or violate the current laws and regulations, collective bargaining system can be regarded as a progress in the development of labor law. However, if the labor and management only limit collective bargaining to the minimum scope covered by laws and regulations, they may not be able to genuinely benefited from the basic functions of collective bargaining system. As a matter of principle, collective bargaining should be a means to ensure the enhancement and perfection of the existing legal rights, as well as a direct method to solve issues not fully covered by legislation. Only in this way can collective bargaining fully reflects its supplementary function in labor legislation, for many provisions about labor relation in labor laws are general and mere principles; they are the minimum standards, which may well be inadequate for the complicated labor relation in reality. By

means of collective agreement, certain arrangements can be made on the common problems with regard to workers' benefits and the coordination of labor relation, thus regulating the labor relation more specifically. Freedom of collective bargaining determines that the collective bargaining is more flexible than national legislation, making it easier to satisfy the specific requirements of a particular industry and an enterprise.

Collective agreement is not only a means to enforce legislation, but also a "corrective measure" to fill the gaps in the law. More importantly, in market economy countries collective bargaining satisfies the demands for legislation reform and lays the foundation for new legislation in an innovative manner. For example, the Italian government has been administering the new employment modes through collective bargaining between labor and management. Since the laws have not provided specific regulations for the new employment modes administration of such modes

tends to be based on experiments. Specific legislation is made after several negotiations, firstly collective bargaining at enterprise level, followed by collective bargaining at industry level. The experiences show that without the pressure from the organized workers in working place, the motivation for the management to raise production efficiency and to improve human resources management will become smaller. Workers' participation in enterprise management through collective bargaining is an important factor to promote the management system in modern enterprises, which is conducive to improving production efficiency and workers' morale. There will not be any successful and high-quality bargaining and cooperation unless the practice of collective bargaining in workplace gets mature, and the enterprise trade union becomes the real representative of its members' rights and interests and independent from the management. ■

Collective Bargaining: from Power Governance in Labor Relation to Interest Game between Labor Subjects

By: Li Qi

Abstract: In this article, the author states that Chinese government, based on the considerations of political stability and economic development, has been adopting the mode of "power governance" to adjust labor relation after the economic transformation. He further suggests collective bargaining system must be established to regulate the labor relations in a market economy.

In May 2010, workers from Honda Auto Parts Manufacturing Co., Ltd., Nanhai, Guangdong (CHAM) conducted a strike. After the strike, the labor and management of CHAM reached an agreement through bargaining to raise the workers'

salary by 35%. During the strike, the local government actively mediated between labor and management; at the later stage, experts in labor relation and senior management personnel from the automobile industry were involved in the coordination, turning the final resolution to this labor dispute into a so-called "CHAM mode" of collective bargaining and labor dispute handling.

This strike and the subsequent strikes in China's eastern coastal cities indicate that, under circumstances where an effective labor relation adjustment mechanism is lacking within an enterprise, the power relation between labor and management has been imbalanced, and the salary level and employment conditions unilaterally decided by the management have intensified the conflicts between labor and management. When an effective communication mechanism between

labor and management is absent, workers are unable to express their requests, and finally have to take various collective actions to externalize the internal labor conflicts, turning it into social conflicts so as to attract attention from the society and government. Therefore, it is predictable that labor relation in China, after many years of “relatively stability” period, comes to a turning point to tumult. The situation of powerful management and weak labor in labor relation may be changed in nature at enterprise level. How to respond to such a changing trend should be addressed by government.

In this article, the author states that, after the marketization transformation, labor relation in China has been featured with “employer-dominance” due to the power imbalance between labor and management. However, the government, based on the consideration of social stability and economic development, has been adopting the “power governance” mode to adjust labor relation. For the relatively isolated labor relation within the enterprises, this mode is losing its effects, thus resulting in the accumulation of conflicts between workers and employers, turning them into social conflicts and becoming the major categories of social conflicts in China today. It is suggested by the author that in face of the marketized labor relation, It is necessary to establish the collective bargaining system to achieve a stable labor relation through interest game between workers and employers. However, to establish such system, the operational foundation for collective bargaining system should be laid in addition to legislation.

I. Strike with consistent request – symbol of the market-oriented transform of labor relation in China

After more than thirty years of economic reform (and based on the reform of state-owned enterprises and development of private enterprises), labor relation in China has completed its market-oriented transformation in the context of the reform of state-owned enterprises and the development of private enterprises.

From the perspective of the subjects in labor relation, the statuses of employers and employees have been well defined. The ownership reform which primarily aimed at transforming state-owned enterprises exerts decisive influences on the final transformation of labor relation. What is the most important is that the reform of state-owned enterprises has provided the labor market with a great number of workers. Workers no longer occupy any production materials. Instead, they become employees by inputting their labor power into the production process and get income to make a living. From the perspective of interest structure between subjects in labor relation, on the one hand, the workers of the state have become the employees of enterprises who pursue a maximized salary and optimized working conditions; on the other hand, the business managers of enterprises set economic efficiency and enterprises’ profit as their core target and pursue a maximized profit. Soon after private enterprises



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came into being in the 1990’s, the labor relation in such enterprises has been having the typical characteristics of employment relation: The subjects of labor relation are clear; the employer is the controller and user of labor force, and occupies the residual value created by workers; and the workers are employees offering labor power. The economic interest relation between labor and management in labor relation is a pure “zero-sum” relation, in which the price of labor power is solely determined by the market, and the salary level is adjusted in accordance with the changes in the price in the labor market and on the basis of the economics principle of “salary rate not to be higher than marginal production rate”, and the salary also reflects the relative shortage of workers of various quality.

Regardless of whether the enterprises are original private enterprises or private enterprises reformed from state-owned enterprises, or state-controlled enterprises, , after the transformation, their labor relation is featured with employers’ dominance, namely, the workers are controlled by the employers . First of all, under circumstances where there is surplus in labor force, labor market is buyers’ market, namely, a market controlled by employers who can select job seekers in accordance with the enterprise’s demands for labor

force. Secondly, working conditions including working environment, working hours, and working intensity are basically determined by employers. Finally, the process of labor relation is controlled by employers: employment and dismissal, salary and fringe benefits, reward and punishment are all unilaterally decided by employers.

The strikes that took place in the eastern coastal cities in 2010 are mainly featured with “employer dominance”. These cases show that the salary level and fringe benefits of workers are decided unilaterally by employers. The division of interests in enterprises is very apparent. Because of the “zero-sum” interest relation, the workers’ salary varies inversely with the enterprises’ profit and business managers’ income, thus making the latter have the incentive to suppress the former’s income, hence creating the great disparity in the enterprises’ internal interest distribution.

II. The mode of power governance – the means adopted by the government to adjust the post-transformation labor relation

Since China’s adoption of market economy in 1990’s, the central government had conducted an insightful research on the trend of the development of labor relation. In a research report published by the Ministry of Labor’s research team in 1993, the basic principle of labor relation adjustment was summarized as below: starting with the goal of protecting the lawful rights and interests of labor and management, taking the speeding up of the legislative work on labor relation adjustment as its priority, determining the adjustment modes, establishing an operational mechanism, and combining various means in order to achieve the major targets of labor relation adjustment. This report summarized the mode of labor relation adjustment as “free negotiation by employment subjects and appropriate intervention by government”. Such principle and mode was confirmed in the *General Conception about Labor System Reform in the Course of Establishing the Socialist Market Economy*, issued by the Ministry of Labor on December 21, 1993. Eighteen years later, such principle and mode still have not been achieved. No matter it is during the labor relation transformation or after the transformation, the government has been resorting to the “power governance” mode to adjust labor relation. Of course, political system and economic development and some other factors had played a role in the creation of such arrangement.

Impact of the political stability requirement

The labor relation adjustment mode designed in early 1990s has not been put into use during the transformation and shaping process of labor relation. One of the reasons lies in the material impacts of China’s political environment on the arrangement of the adjustment mode. As state-owned enterprises reform deepens, the social conflicts caused by the reform have affected social stability. “Maintaining stability” has become one of the government’s goals, and the basis for “power governance” adjustment mode was also laid down.

The requirement of “maintaining stability” has exerted significant impacts on the establishment and development of China’s labor relation. This rigid requirement of stability has made administrators develop a kind of habitual pattern of thinking, which strictly confining the workers’ demand to organize their own trade unions, and had even suppressed collective actions taken by workers who were fighting for their rights and interests. As a result, the workers, after their rights awareness was raised, could not form a collective power against the management or to organize trade unions that truly represent and protect their own rights and interests. As it is put in *Toward the Path of Social Reconstruction*, a research report by Social Development Research Group of the Department of Sociology of Tsinghua University, “The interest relation has become seriously imbalanced in recent years and there are profound institutional reasons for it. The vital reason is that, we have entered an era of market economy, but there is no comprehensive mechanism to deal with interest relation under market economy, and such a mechanism is even suppressed from being established. Due to the absence of check and balance mechanism for labor relation within the enterprises, the power between labor and management has long been imbalanced, which makes the workers’ collective power unable to be formed. Thus, there is no basis for the originally designed labor relation adjustment mode to decide working conditions by way of “free negotiation by labor subjects”.

Impact of the consideration of economic development

The marketization reform has provided favorable conditions for the development of private economy,

which in turn creates opportunities for local Party and government officials, whose political prospects rely on their performance in enhancing economic development and maintaining social stability. Social stability is based on economic development. If economic performance is poor, social stability cannot be ensured. No regime can maintain long-term stability without economic development. This is a rigid constraint. It is because social and political stability relies on economic growth and the economic growth depends on capital. Therefore, it is natural for the government to use their power to support capital and to form an “alliance” with capital.

“Official-business alliance” has also exerted significant impacts on the adjustment mechanism for labor relation in China. First of all, private enterprises in China are not enterprises with well-defined ownership. In the capital of many private enterprises, there are funds actually invested by officials, as well as “shares” the officials in exchange of their powers. Given the government’s pursuit of macro economic growth, the officials’ will to realize their personal interests and the enterprises’ desire to maximize their profits highly match with each other, which enables officials and business sectors to reach a tacit agreement: to connive enterprise owners to infringe workers’ lawful rights and interests, or to condone enterprise owners to make their own rules of labor relation as they desire. Such tacit agreement directly constitutes a great barrier to the enforcement of labor law, further encourages the private enterprise owners to trample labor law, and turns the protection of investment environment into the best excuse for sacrificing laws and worker’s lawful rights and interests. As a result, workers are deprived of their entitled institutional and legal protection. Secondly, local government, as an “economic person”, has strong desire to attract investment, and thus will certainly try their best to retain capital. As a result, the powerful status of capital before the workers will be consolidated and expanded; it will also suppress the workers’ will to organize themselves together and their collective actions to fight for their rights and interests. Therefore, the labor and management are unable to establish a labor relation adjustment of “free negotiation by relevant subjects” on the basis of equality of power. Instead, the logic of “power governance” will be further strengthened.

Affected by the above two factors, the labor relation adjustment mode of “free negotiation

by subjects and appropriate intervention by government” that was originally designed by the central government in the early twentieth century has not been realized, and the adjustment mode based on the logic of “power governance” has become the only choice in China’s existing political and economic environment. Due to the power imbalance between labor and management at enterprise level, workers’ rights and interests as provided for in the labor law cannot be ensured. When workers’ rights and interests are infringed, all labor conflicts will be demonstrated through labor disputes and collective actions. However, in a society short of self-governance and under a market short of freedom, these conflicts are transferred into a call for stronger power. The government expects to respond to it with an all-embracing power which finally makes the means of “power governance” concentrated on the formulation of labor laws and policies, supervision of the protection of labor rights, labor dispute resolution and the use of letters and visits (*xinfang*).

However, the underlying logic of this adjustment mode contradicts the “employer dominance” characteristics of the post-transformation labor relation and causes serious consequences. After the labor relation has completed the marketization transformation, given the inability of the workers to counteract the employers, a situation of “employer dominance” has taken for me within the enterprises. Execution of labor law basically relies on enterprises’ self-discipline. When the illegal acts of employer are beyond the workers’ tolerance, labor conflicts will be intensified, and elevated to a macro level in the society. The strikes that took place in the eastern coastal cities in 2010 indicate that the mode of “power governance” is losing its effect.



III. Re-consideration of the power governance mode

With regards to labor relation adjustment, the central government has been adopting the “power governance” mode. Though “employer dominance” has become the main feature of labor relation in enterprises, given taking into account its political and economic consideration and the power imbalance between labor and management within the enterprises, the government still hopes the “power governance” mode could demonstrate its functions. . Even the collective bargaining system, which serves as an interest game between labor subjects, has been promoted by the administrative power since early 1990s. This system may be regarded as an extension of the government’s “power governance” function, which lent help from the characteristic of China’s trade unions as state corporations and the status of All-China Federation of Trade Unions in the institutional structure of the state. However, trade unions in enterprise are not a government agency, though they are subordinated to trade unions at higher level in formality. These trade unions are actually subordinated to the management of the enterprises in terms of organizational structure. This constitutes a great obstacle for them in demonstrating their representative function and their role as bargaining subjects.

More importantly, the adjustment mode of “power governing” contradicts with the connotation of “employer dominance” in labor relation. Since the labor relation in China completed its marketization transformation, the labor relation in enterprises has been under a framework of power imbalance between labor and management, the central government no longer has control over private enterprises, and the local governments are unable to get rid of their reliance on capital. Under the circumstances where the government’s resources are limited and its favor toward capital coexists, it is difficult for the adjustment mode of “power governance” to demonstrate its functions. Since strong intervention must be conducted by the local governments, but the local governments are not willing to intervene too much in labor relation, given their concern over economy development and alleviation of employment pressure. Therefore, they lack the motivation to intervene in labor

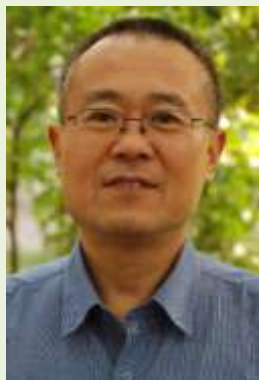
relation. Their reliance on investors further reduces the local governments’ motivation to intervene; and the inadequate supervision over labor relation also indicates that the local governments are incompetent to intervene. It is fair to say that it is the labor relation adjustment mode of “power governance” that intensifies labor conflicts and bring them to the society.

Epilogue: The strike wave in the eastern coastal cities in 2010 has forced local legislatures to formulate new regulations through local legislation on collective bargaining system, a system which was established over 20 years ago but has never had achieved any actual effect . This action may generate positive influences on the establishment of a labor-management interest balance mechanism under the market economy, and open the door to the interest game between labor subjects. However, I am not totally optimistic about the future development, and it is also difficult for me to forecast one clear trend of collective bargaining system in China. I think, in the future, there may still be two ways to initiate a collective bargaining: one is that the All China Trade Union Confederation would follow its previous method, that is to initiate a collective bargaining by giving orders. In this case, the collective bargaining system will still be a product of “power governance” under the defective “three labor rights” The other way is that the labor would continue to adopt CHAM collective bargaining mode, namely, industrial strikes followed by real collective bargaining in the nature of interest game between labor and management. However, with the combined effect of legal rights (i.e. the right collective bargaining) and the natural rights (i.e. the right to organization and spontaneous strikes), the three labor rights will continue to a necessary course in China’s future labor relation development. ■

Collective Contract System:

Three Problems and Suggestions

By: Xu Xiaohong



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Abstract: The author puts forward three problems that need to be addressed in improving the collective contract system under current institution based on the provisions of state and local labor law.

Ten years have passed since the establishment of collective negotiation and collective

contract system after the reform and opening-up, but the system's framework, operation and effect are often questioned by academia and practitioners. In this article, the author deals with three major problems in the process of legislating on collective contract system.

I. Problem of application

With regards to the design of current system, there are mainly two problems in the scope of application: the collective negotiation between dispatched workers and employing unit is excluded; and the collective negotiation between workers and employers in government-sponsored institutions whose relationship are governed by labor contract law is excluded. For example, Article 51 of the *Labor Contract Law* provides that "employers" and "employees" may conclude collective contract. However, Articles 58 and 59 define "employers" and "labor using unit" of the dispatched workers, namely, "the labor dispatching unit is what is referred to as the employing unit in this law"; and "the labor dispatching unit that dispatches workers shall enter into labor dispatch agreement with the unit that accepts to employ labor through labor dispatch".

In the provisions mentioned above, the "dispatched workers" and "workers in government-sponsored

institutions who can be governed by the Labor Contract Law" are both excluded in collective negotiation and collective contract system. However, in reality, the rights and interests of these two categories of workers are the most likely to be infringed. It is totally unreasonable for such workers to be excluded in collective negotiation and collective contract system. In certain sense, the current collective contract system has not provided necessary protection for the group of people who most in need of protection.

As more and more enterprises are using dispatched workers to satisfy labor demand and the reform of labor system in government-sponsored institutions, the application scope of *Labor Contract Law* will become bigger and bigger, and the absence of such lawful rights will be striking. In state-owned enterprises, especially those in monopoly industries, "regular" employees enjoy comprehensive protection, and the total amount of their salary is controlled by the State-owned Assets Supervision and Administration Commission of the State Council, thus the collective negotiation on salary does not have much use. However, in these enterprises, there are also a great number of "dispatched workers" who are deprived of their right to collective negotiation. Similarly, in private enterprises and foreign investment enterprises, there are also many dispatched workers. This author has noted that the proportions of dispatched workers used in five companies under a foreign investment corporation are: 96.2%, 75%, 60.1%, 59.2% and 43.6%. Imagine that if dispatched workers are not covered by the collective contract of these labor using units, then what is the point of setting these "irregular" collective contract system in these enterprises?

For dispatched workers, there exist two kinds of labor relations: one with the labor dispatching unit (employing unit) and the other with labor using unit. However, in reality, the dispatched workers are controlled and used by labor using unit. This labor relation involves many issues including labor remuneration, working hours, rest days, labor safety and health, insurance and fringe benefits as well. But according to the current laws and regulations, the dispatched workers in this labor relation do not have the right to participate in collective negotiation in the labor using unit; their right to collective negotiation can only be exercised in relations to the labor dispatching company (employing unit). This requires the trade union of the labor dispatching company to conduct a collective negotiation with the labor dispatching company regarding the dispatched workers' remuneration, working hours, rest days, labor safety and health, insurance and fringe benefits as well. However, since the labor using unit as a labor using subject does not participate in such consultation as a collective negotiation subject, the problem of absence of subject in similar collective consultations will definitely arise.

II. Problem of the relation between “represented party” (workers) and “representative” (trade union)

It is clearly stipulated in the *Labor Contract Law* and *Collective Contract Regulations*, both issued by the Ministry of Labor and Social Security, that workers constitute the “represented party” to collective consultation, and trade union is the “representative”, representing the workers. Article 51 of the *Labor Contract Law* and Articles 3, 4, and 20 of the *Collective Contract Regulations* define at the outset that the parties to collective negotiation and collective contract are the “employing unit and the workers of such unit”, and then clearly provide that “trade union shall represent the workers”. In other words, the workers are the “represented party while the trade union is the “representative” of the workers. This also means that the law empowers the trade union to be the worker’s representative. In the process of collective negotiation and signing collective contract, the trade union will act as party concerned. But in the final stage, the confirmation and discussion of workers’ congress is required before the adoption of the contract. The same requirement is also stipulated in Article 20 of the *Trade Union Law*.

There are serious defects in the provisions in the laws and administrative regulations mentioned above: absence of rules and regulations concerning trade union’s failure in performing its representative function to conduct collective consultation; and absence of regulations concerning the structure of workers’ representative. In other words, while the laws and administrative regulations empower the trade union to become the workers’ representative, they fail to stipulate the liability of the trade union when it fails to perform its representative function.

In addition, in the actual situation in China, there are four institutional defects with the enterprise’s trade union which is confirmed by law to represent workers: Firstly, it is an organ set up by the enterprise but not an association; grassroots trade unions are set up by the enterprises; secondly, the expenditure of the enterprise’s trade union is allocated by the government, and the government’s allocation, which is equivalent to 2% of the total amount of the enterprise’s salary, is either directly paid out of the administrative budget or taxes collected by the government; thirdly, the carders of a trade union are the enterprise’s employees, and it is for the enterprise to decide who is to be a carder of the trade union. All carders of the trade union are the enterprise’s employees whose treatment is all controlled by the enterprise; fourthly, the chairman of the trade union is often concurrently served by the deputy head of the Party committee, a deputy executive personnel, or a middle-ranking management personnel. His/her interests are not always compatible with those of the workers, and sometimes even contradictory to each other, especially in interest distribution. These four institutional defects, on the one hand, determine that the enterprise’s trade union keeps a relatively distant relation with workers and its members, making it hardly able to genuinely conduct collective negotiation with the enterprise to protect the workers’ rights and interests; and, on the other hand, they determine that both parties to collective negotiation are not equal in terms of status and identity, and the enterprise’s trade union and its chairman are difficult to or “do not dare to” conduct a genuine collective negotiation with the enterprise on equal footing.

The defects in the system design and actual structure of enterprise’s trade union give rise to the phenomena where the “representative” is not representing or not fully representing the “represented party”. Worse still, the “represented

party” has no rights and no way to prevent this from happening. The representative capacity of the “representative” cannot be cancelled since it is granted by the law. In fact, the representative’s capacity to represent is not granted by the workers; it is an innate and given capacity. The workers and the “represented party” are forced to be “represented”. As a result, the collective contract system remains merely a formality, for example, the “representative” may sign collective contract without conducting any collective negotiation; the contents of the collective contract are vague and general; and the “represented party” knows nothing about the collective contract, etc.

III. Problem of the liability of the employing unit

Stipulating the legal liability of the employing unit in collective negotiation is not only the essential part of the law and regulation; more importantly, it is the precondition for implementing the collective negotiation as a labor relation adjustment system.

In some developed countries, the trade union’s right to strike is corresponding to the collective bargaining right. If the management refuses to conduct collective bargaining, the trade union may force the management into collective bargaining through industrial strike. In other words, collective bargaining and strike actually are the exchange for rights. However, in China, the laws do not grant the workers and trade unions the right to strike. Therefore, when the management refuses to conduct collective bargaining with the trade union, the trade union will lack the means to pressurize the management into conducting a collective negotiation. So, the laws must provide regulations to deal with the employing units’ violation of provisions in various laws and regulations regarding collective negotiation and collective contract, and to make the violators bear the relevant legal liability.

The legal liability of an employing unit mainly includes: the establishment of collective negotiation and collection contract system, and the protection of the negotiation representatives. In my opinion, there are two problems in determining legal liability in the establishment of collective negotiation and collective contract system. First of all, there are no mandatory regulations about the establishment of collective negotiation and

collective contract system. For example, it is provided in the *Labor Law* that “the enterprise’s workers as a party may sign collective contract concerning remuneration, working hours, rest days, labor safety and health, insurance and fringe benefits with the enterprise”; similar wordings are also used in Article 51 of the *Labor Contract Law*: “the enterprise’s workers as a party may, through negotiation on the basis of equality, enter into collective contract concerning remuneration, working hours, rest days, labor safety and health, insurance and fringe benefits with the enterprise”. These provisions provide that, the collective contract “may” (instead of “must”) be signed by labor and management, thus allowing the labor and management to decide whether to adopt the collective contract system.

Secondly, though the current laws and regulations state that the employing unit “may not refuse to conduct collective negotiation” “without proper reason”, there is no clear definition of “proper reason” in those laws and regulations. Now, some local regulations have made certain improvement. For example, Article 65 of the *Regulations for Promoting Harmonious Labor Relation in Shenzhen Special Economic Zone* stipulates that if employing unit refuses to the trade union’s request for conducting collective negotiation, it shall be liable to bear economic responsibility. The *Regulations for Collective Contract of Shanghai* directly provides that when either party to collective negotiation requires the other party to conduct collective negotiation, the latter may not refuse or delay to do so. However, these local regulations have not solved the above problems.

I suggest that, as for the first problem, there should be compelling provisions in the law, and words which suggest selectivity such as “should” and “may” should not be used. As for the second problem, the term “good reason” should be clearly defined in laws and regulations, and circumstances which amount to good reasons should be listed out. Besides, with regards to the current phenomenon of bargaining after strike, clauses like “where cessation of work or a go-slow occurs as a result of the employing unit’s refusal to conduct collective negotiation, the employing unit shall immediately conduct collective negotiation with the workers’ party” should be stipulated in the law. ■



China's "Party Dominance Mode of Trade Union"

By: Qiao Jian

I. China's trade union stresses its goal of right-safeguarding

Due to their special political structure and ideology, the mode of trade union in socialist countries is totally different from that in countries with industrialized market economy. The theoretical basis of the trade union system in socialist countries is Lenin's "classic dualism theory", which considers that trade union is playing a dual role under the socialist system, namely, it represents the overall interests of the Party and the state, as well as the specific interests of workers.

Over the past 30 years of reform and opening-up, China's trade union has continuously explored and enhanced its identity and mechanism as a representative and defender of workers' rights and interests. Since the 9th National Congress of the Chinese Trade Unions in 1978, Deng Xiaoping stressed that the main feature, the essential function and the basis for existence of trade unions are the maintenance of close ties with the mass, speaking for the workers and winning the trust from the workers. The Eleventh Trade Union Conference in 1988 affirmed for the first time that the trade union should have four social functions including safeguarding (of rights), construction (of, enterprise), participation (in management) and education (of workers). This was also the first time that right-safeguarding was expressly stipulated as the function of trade union, hence changing the working policy adopted during the planned economy period which made the trade union a "trinity". In 1990's, faced with the marketization of labor relation, especially the state-owned enterprise reform and the large-scale of layoff and unemployment of workers Wei Jianxing put forward the "general guideline for trade union work", requesting the trade union to set the implementation of the *Labor Law* as the starting point to transform into a market economy to regard the protection of workers' lawful rights and interests as its basic responsibility, and to highlight the (conclusion of) collective contract as the focal point of the trade union's work. In 2001 when the *Trade Union Law* was revised, the fundamental function of China's trade union is further clarified in legislation as "the safeguarding of the workers'

lawful rights and interests". Ever since 2003, chairman Wang Zhaoguo of the National Trade Union confederation has put forward "organizing workers together, and duly safeguarding the workers' rights" as the

trade union's working policy and "taking workers' interests as the basis, actively safeguarding rights scientifically according to law" as the new concept of rights safeguarding of the socialist trade unions with Chinese characteristic. Such policy and concept are the important contents of the development of socialist trade union with Chinese characteristics, helping in achieving a win-win situation between labor and management, and to create a harmonious labor relation.

It should be emphasized that, since 2003 the trade union's right safeguarding concept has been strongly supported by the Party's guiding ideology including scientific outlook of development, people-orientation, and the construction of a harmonious society. Ever since the adoption of reform and opening-up policy, China's labor relation has undergone a development course of "bidirectional movement". Prior to 2003, the labor relation was very simple and imbalanced. Its main goal was to prioritize the government's efficiency, to modernize the country's economy and to raise the enterprise's profits. These characteristics were clearly demonstrated in the period from 1997 to 2003 where, state-owned enterprises cut their number of workers in order to raise their efficiency, the laid-off workers were re-employed, and non-public ownership enterprises imposed extra-economic control over rural migrant workers. On the other hand, however, the trade unions, especially the local trade unions, often felt that



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they were powerless. Ever since then, with the promotion of scientific outlook of development, the Party and the government have realized the inharmonious in economic and social developments, and the grassroots workers' failure to have a share in the economic development, therefore the national leaders started to choose labor issues as a breakthrough for implementing scientific outlook of development and creating a harmonious society. For example, the opinions on several issues concerning rural migrant workers were issued in 2006; three laws about labor issues were implemented in 2008; China began to depart from its previous guiding principle which purely putting GDP as the priority and simple and imbalanced labor relation, and moving towards the construction of a new mode of socialist labor relation. China attaches greater importance in establishing a labor relation that can better enhance the coordinated development of economy and society, and better implement the human rights of the workers.

However, with the increasing polarization of income and class, conflicts between employers and employees have become intensified, and the labor disputes and mass incidents have increased, posing greater pressure to social stability and political stability, and becoming a mechanism that restricts the trade union's institutional reform and their method of rights-defending. These problems are reflected in:

First of all, despite the fact that there are some evidence) and practices to promote the democracy within the enterprises' trade unions, (in order to ensure the leadership of the Party and a centralized trade union system,) the trade unions are mainly established according to the "top=down" model and the chairmen are often designated, in order to ensure the leadership of the Party and a centralized trade union system; even the direct election of grassroots trade union's chairman has to be conducted "under control", thus making the trade union organizations more like state-run organizations with strong administrative color.

Secondly, in a market economy, the most effective trade union organizational system to raise workers' awareness, to unify workers' power, to provide higher degree of independence (from the employer) for workers and to better help safeguard rights is the development of craft union and industrial union. Though such institutional reform task has already been put on agenda, it is still yet to be implemented because of the

consideration of ensuring political stability.¹ Therefore, it becomes difficult for the enterprises' trade union system, which is subordinated to employers, to safeguard rights effectively, hence turning the rights safeguarding mechanism including collective negotiation and workers' participation into a mere formality to a certain extent.

Lastly, to emphasize on the safeguarding of rights without resistance and to give up the right to strike is also for the purpose of safeguarding political stability. In late 2006, the All-China Federation of Labor Union put forward a new concept of rights safeguarding by the socialist trade unions with Chinese characteristic, that is "taking workers' interests as the basis, actively safeguarding rights scientifically according to law" The rationale is that the "harmonious labor relation" to be developed in China should be featured with consistency and cooperation in the interest relation between subjects, which is mainly reflected in subjects of labor relation's respect and acknowledgement of the interest difference between themselves on the basis of their consistent fundamental interests, and the pursuit of a win-win cooperation.² This means that China, in the near future, will neither legislate on the right to strike, nor will the trade unions protect workers' rights and interests through resistance. Under such circumstance, to stress the safeguarding of rights is mainly to strengthen the state's active interference in labor relation, and to regulate the rights and obligations for labor and management and to achieve fairness and justice through legislation at macro-level. This approach will also become a major means to adjust labor relation in China. But the labor relation harmonization at enterprise level can only serve as a supplementary means due to the weakness of the enterprises' trade union.

Therefore, from the perspectives of the choices of rights safeguarding means and organizational structural, the trade union's emphasis on rights safeguarding is to protect the governing status of the ruling party and political stability, and to demonstrate the trade union's function of being the Party's mass work section, as well as the

¹ The Opinions Concerning Enhancing and Improving the Industrial Trade Union Work under New Situation, approved by the All-China Federation of Trade Union in June 2008, decided not to change the subordinate role cadre management and expenditure management system of grassroots trade unions for the purpose of stability.

² Research Office of the All-China Federation of Trade Unions: *On the New Socialism Labor Relations*, published on *Labor Movement Studies*, Page 15, Edition 5, 2006.

bridge between the Party and the workers. The extent to which the trade union can safeguard rights on behalf of workers is determined by its positioning in the Party's work as a whole or the manner it adopts to safeguard the Party's ruling status.

II. The meaning of the "Party/government dominance" mode of trade union

China's current mode of trade union may be summarized as a trade union "dominated by the Party and government". This is not only because similar expression has been used in the report for the Fifteenth Trade Union Conference and in its the daily work of the trade union, but also because it is in consistence with the guiding ideology adopted by the current trade unions. In my opinion, this mode of trade union mainly has the following meanings:

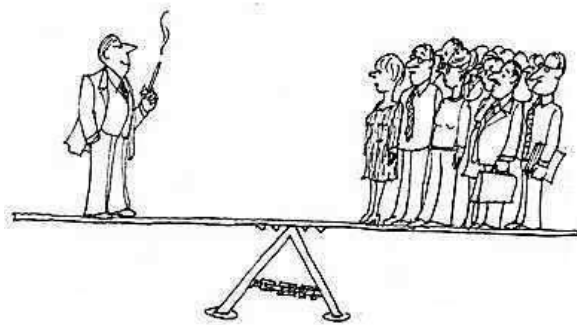
(1) The trade union should be under the leadership of the ruling party. This kind of leadership is reflected in various aspects of the trade union, including its political path, policies and principles and personal arrangement, etc. The trade union's role as the bridge, connection, foundation and pillar for the Party and the state has never been changed. Besides, compared with its role in government-labor-management system, the trade union undertakes a more important and implicit function in the Party system. With regard to the trade union's nature and functions, speeches or instructions of the Party's senior personnel are often more influential than law in a particular period.

(2) There can only be one trade union to ensure the solidarity of the working class and the unity of the trade union organization. This makes China's trade union laws incompatible with the major international labor conventions and fails to fully recognize and protect collective labor rights that are represented by the right to organize, the right to collectively bargaining and the right to collective dispute. Besides, this principle is fermenting to a different course, as the civil society and various labor NGOs have made huge progress. For example, the Beijing trade union was recently defined as a "pivotal" social organization, responsible for approving and guiding social organizations that belong to the "employees" category in the Municipality. This means that all labor NGOs, while no longer subordinated to the relevant government agency, have to be uniformly

administered by the trade union.³

(3) The trade union's method of organization and means of rights safeguarding must be in compliance with the requirements for protecting social stability and political stability. For example, the promoting of and participating in the state's legislative work on labor issues, which best meets the requirement of the "party/government dominance" mode of trade union, is the most effective means to safeguard rights so far; industrial unions and craft unions are the most common form of trade unions and subjects of collective bargaining in countries with a market economy. . Despite the local Party and government leaders in Chongqing have announced that taxi drivers may organize their trade association in the taxi strikes that took place in Chongqing in late 2008, the trade union nevertheless denies such motion on the ground of safeguarding social stability.

(4) The method of "party/government dominance" is adopted by the trade unions in many of their rights-defending work. For example, some places implement the collective negotiation and collective contract system under the guidance of the Party and government: The instructions are issued by the Party and government agency at higher level to enhance the authority of the leader institution in order to supervise and urge the enterprises to take the matter seriously and participate in this work. The instructions from President Hu Jintao in 2008 concerning "empowering trade unions with more resources and means" have further promoted such process. The Ministry of Human Resources and Social Security is discussing, by combining these instructions with the coordination and handling of labor relation in economic crisis, the possibility of



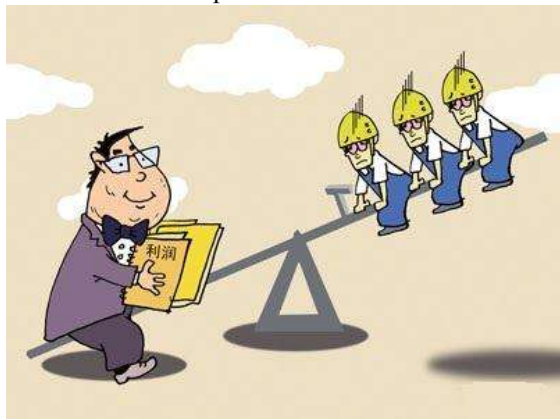
³ Beijing's first 100 "pivotal" social organizations at the city level were recognized, *Beijing Daily* on April 13, 2009.

materializing and functionalizing the tripartite system at the national level.

Since China turned to the working mode of “Party and government dominance”, the administrative color of China’s trade union became much stronger. It has brought both positive and adverse influences on the trade union’s work. The positive influence, , the trade union’s high-level political participation enables itself to maximize its use of public power to better safeguard workers’ rights through promoting labor legislation and enhancement of enforcement. The negative influence is that, , such mode may make the nature of the trade union organizations ambiguous and affect the accurate positioning and function classification of the trade union in the structure of state-society. In recent years, China has made great progress in establishing trade unions. Up to now, China’s trade unions have already had more than 209 million members nationwide, and they form the biggest trade union system in the world. However, majority of the grassroots trade unions are established according to the “top-down” model; the numbers of trade unions established and activities launched by the grassroots workers on their own initiatives are low. Since most of the trade unions are established and rights safeguarding actions are conducted in the grassroots enterprises and government-sponsored institutions where the trade unions are highly subordinated to the employers, those trade unions can hardly able to safeguard their rights independently. Worse still, there may even be a great number of “bosses’ trade unions”. Therefore, how to solve the deep-rooted problem of the failure of the trade unions in non-public ownership enterprise to function after their establishment is still a great difficulty in China.

III. Conclusion

In the “Work Report” of the chairman of the



All-China Federation of Trade Unions, presented at the 15th National Congress of Chinese Trade Union in October 2008, it summarized the achievements made by China’s trade unions. These achievements (mainly came) could be appraised from two perspectives or dimensions. The first perspective is that trade unions’ work has become more administrative and their administrative function has been greatly enhanced since the 14th National Congress of Chinese Trade Unions. For example, the trade unions are in a position to participate in legislating the three labor laws; local trade union carders can enjoy the same status and treatment as civil servants; chairmen of some local trade unions are assigned with a status equivalent to a deputy position at the corresponding government level, and may also concurrently holding the positions of standing committee members of the Party committee and becoming the chairman of the People’s Congress, etc.; the increase in trade unions’ funding in recent years has been benefited from the public power’s interference to collect a trade union fee as part of tax; and the changes of the trade unions; rights-defending mechanism into a mechanism dominated by the Party and government but operated by the trade unions increases the administrative characteristics of the trade unions objectively. The underlying guiding ideology of these phenomenon which has been repeatedly stressed by the leaders from central government is that, the trade unions are the bridge, connection, foundation and pillar of the Party and the state. The second perspective comes from the defining of the nature of the trade unions as mass organization for the working class established by the workers of their own accord in the Trade Union Law. Many achievements made by the trade unions in recent years were outcome of their work from this perspective, including the “down-top” mode of trade union establishment adopted in the formation of the first trade union in Wal-Mart; the professionalization and socialization of trade union



carders; the pilot projects on holding direct democratic (direct) election or mass election of grassroots trade union chairmen in selected areas; the demonstration of the role of craft union and industrial union in collective negotiation and signing of collective contract; and the enhancement of the grassroots trade unions' independence from their employers, etc. In other words, they are the result of democratization and popularization of the trade union organizations.

As far as I am concerned, in a rights-defending country that is undergoing social transformation, it is inevitable, to a certain extent, for its trade unions to assume more administrative function. This is also a favorable condition for the safeguarding of workers' and the characteristic of trade unions in China today. But on the other hand, the institutional reform of trade unions at various levels, such as the democratization and popularization of trade union organizations, has become static in recent years. Even the report of the 15th National Congress of Chinese Trade Union only called for "maintaining close links with the masses". The neglect of their members' roles and

rights in trade union organizations makes the trade unions and their members detached from each other to a certain extent. This is especially true that the grassroots trade union organizations cannot fully represent and protect workers' rights and interests. Therefore, the major method to change this situation of weak grassroots trade unions is to carry out democratic, popular and social reforms, to enhance the relation between trade unions and their members, and to search for "resources and means" from the trade unions' members and workers at large. ■



Feng Tongqing

Professor from China Institute of Industrial Relations

Scope of study: Labor movement and labor relation

To Reach Collective Rationality and Implement Salary Consultation

—Interview with Professor Feng Tongqing from China Institute of Industrial Relations

By: Zhou Jianjun

Recently, with a series of labor disputes, the discussion about and calls for the establishment of the salary consultation system have been on the rise in the society. The All-China Federation of Trade Unions has also recently made a statement, calling for "the implementation of collective salary

(collective) consultation in full-scaled". We conducted an exclusive interview with Mr. Feng Tongqing, president of Chinese Association of Work and Labor Studies and professor from China Institute of Industrial Relations on the basic conditions for China to establish the salary consultation system.

Business Weekly: Could you please talk about the basic conditions to establish the salary

collective negotiation based on China's reality, namely, how to carry out the salary consultation in practice?

Feng (Feng Tongqing): In order to adjust the system which is in the mode of government regulation through collective negotiation in Chinese Mainland, the following work shall be essential:

In terms of legislation, equality in consultation and collective contract system has already been provided in *Labor Law* since 1994, but there have been different interpretations of these mechanisms and barriers to implement them. However, the series of labor and social incidents that took place in 2010 indicate that we should build consensus and reach collective rationality on these issues so as to overcome the institutional barriers. In other words, to reach collective rationality and to overcome institutional barriers are the most basic conditions to establish the salary consultation system.

In terms of the government, it may be too much precautionary against the potential risks in salary consultation. As early as in 1985, the All-China Federation of Trade Unions put forward the questions of harmonizing and stabilizing labor relation. The Federation believed that the previous labor law, which was a labor administration law, should now become coordination law and labor relation law. Later on, Wei Jianxing, the then chairman of All-China Federation of Trade Unions had also clearly stated that the implementation of the collective contract system should be the most important work of the trade unions. The Ministry of Labor had also has advocated the "Qingdao Mode", a mode of consultation which benefited both the labor and the management through the establishment of a Labor Relation Committee within enterprises, and the mode of "1+3 Labor Consultation Mechanism" of Shenzhen's Xin'an Sub-district, to implement the salary consultation step-by-step. The All-China Federation of Trade Unions thinks highly of the trade collective negotiation mode of Liaoning's Yingkou, which was built on the basis of the "Huzhuang Experience", therefore it emphasizes on the nurturing of consultation subjects, hence giving the trade union more consultation resources. At the same time, it also recognizes the mode of industrial collective consultation on salary of Zhejiang's Wenling. In a word, it is understandable that different mode of salary consultation has different focus. But the government needs to invest greater effort in

implementing such system.

More importantly, the government, enterprises or trade unions need to reach consensus with workers and achieve collective rationality. Take the recent labor social incidents as examples, Though CHAM accepted the workers' request for salary raise and reached an agreement through consultation with the workers, the management did not give clearly response to the workers' request for re-electing the trade union. Such a non-response poses a hidden trouble for future consultation. Foxconn's unilateral decision to raise salary may appease its workers temporarily, but the pay rise did not lead to the activation of the consultation procedure, therefore the workers still do not enjoy the right to know, the right to negotiate and the right to decide jointly as provided for in the law, and the conflicts have not been brought into an institutionalized and normalized resolution channel.

Since China's adoption of reform and opening-up policy, practice has already proved that workers' support is important to the effective establishment of the salary consultation system. For example, self-protective measures adopted by workers in state-owned enterprises have, to a certain extent, brought about reasonable adjustments to the relevant policies, including the adjustments of trade union policy, policy of workers' congress and enterprises' reform policy, etc. Similarly, workers of new generation not only have higher rights consciousness than their seniors but also contributed to the genuine democratic election in some trade unions, the socialization and popularization of some trade unions, and the growth and recognition of workers' or labor NGOs, and the establishment of institutionalized mechanism to solve emergent incidents, etc.

***Business Weekly*: You have attached special importance to the consensus and collective rationality between different subjects of salary consultation. Why?**

Feng: It is because I'm concerned about this wave of promotion of salary consultation. There exists a phenomenon of simplification during the promotion of salary consultation. For example, it is stressed that an enterprise should be punished if it rejects a proposal and it is considered that workers' strike and enterprises' shutdown are fundamental means, etc. In fact, the most basic factor is the consensus and collective rationality between relevant social subjects. Only with this consensus and rationality can the previous institutional

barriers be overcome, and the opposition between parties be reconciled, and thus harmony realized.

For example, US's National Labor Relation Acts demands bona fide negotiation between labor and management, i.e. frank and sincere negotiation, but it does not force them to reach any agreement. The government labor committee is established to promote collective bargaining, and its task is to ensure negotiation but not to force the bargaining parties to reach a certain agreement. Even though the employers offer to increase the workers' salary, they should still negotiate with the workers before confirming its decision. Raising or reducing salary unilaterally may be illegal. This also applies to employees. If their request for salary raise would result in the employers' loss of business, and therefore leading to their loss of job, they usually will not insist on their request.

Take another example, in Japan, salary consultation is very important, and there is even the "request for salary raise in every spring" to show the power of workers and trade unions before salary consultation is carried out. However, they do not rigidify such system. They believe that workers' enthusiasm and creativity in daily work will be affected if their salary is determined through bargaining which is only conducted once a year. . Therefore, there are many evaluations and simulative arrangements between labor and management throughout the course of employment to link up salary and the worker's everyday work.



This arrangement is based on the cooperation between workers and employers under "entrepreneurialism".

In addition, I think it is more important for the trade union to conduct genuine democratic election than to have the right to strike. In Europe and America, if a trade union is democratically elected, the employers will have to recognize its exclusive right to represent workers for bargaining. According to some studies, in American labor law, what is more important than the right for the workers to strike is the trade unions' obtaining the qualification to conduct bargaining. What the law cares about is that workers constitute a genuine collective body rather than an opposing party. Since the election of trade union has fully reflected the employees' will and their authorization of the trade union to bargain on their behalfs, the trade union is free from any possibility of losing its status as the only bargaining agency. The workers can only start a strike when the employer refuses to accept the authorized trade union's offer to negotiate. The rights accredited to workers or trade unions by this democratic procedure are the preconditions of the right to request for bargain, as well as the buffer to avoid strikes. In this sense, the power generated from democratic election of trade union is more effective than industrial strike, for organized power is more conducive and feasible than the structural power. It may also be fair to say that, in this sense, if there is no offer to negotiate, there should not be a strike, and if there is no authorization of a trade union that is elected through genuine democratic election, an offer to negotiate should not be made.

There are still many doubts or worries about democratic election of grassroots trade unions in China. The empirical studies and theoretical studies that we have conducted on democratic election of trade union show that there is already a general call for rights and interests among Chinese workers, but and at the same time the workers attach greater importance to rationality. If the state's laws and regulations can accept the social rights of workers and trade unions in this manner, there would be a good prospect for the current movement of promoting salary consultation

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Labor News

Central Government

● Premier Wen Jiabao stated in the Government Work Report that improvement should be made to workers' salary raise mechanism. At the Press Conference of the 4th Session of the 11th National People's Congress (NPC), Minister Yi Weimin of the Ministry of Human Resources and Social Security announced that the core of the establishment of salary raise mechanism is the establishment of the collective negotiation system.

● To raise the workers' income has been one of the focuses of the "two conferences" (i.e., the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC)). As for how to achieve the growth of people's income and economic development simultaneously, and the growth of labors' remuneration and the improvement of labors' productivity simultaneously, NPC/ CPPCC members from different sectors held the same opinions: to further promote salary collective negotiation is the best way to achieve these two simultaneous developments.

● Zhang Mingqi, deputy chairman of the All-China Federation of Trade Unions stated that the Federation planned to spend three years, starting from 2011, to implement enterprises' collective negotiation system with a focus on salary negotiation in the enterprises that have already established their own trade unions in accordance with laws and regulations.

Local

● The Shenzhen Federation of Trade Unions is preparing *The "12th Five Year" Plan for Shenzhen Labor Movement Development*. In the following five years, the Federation will actively coordinate with the people's congress to further promote the

legislation of *Regulations for Collective Negotiation in Shenzhen Special Economic Zone*.

● Xinxiang of Henan Province has issued the *Opinion on Further Strengthening the Implementation of the Salary Collective Negotiation System*, setting the salary collective negotiation work as one factor of the government's performance appraisal. It is the first time to expressly state that a fund will be established through social fund raising and government financial contribution to support enterprises in financial difficulties.

● Foshan is going to launch a pilot project on direct election of trade union chairman in 100 enterprises with favorable conditions.

● Yinchuan has publicly recruited the fourth batch of 115 professionalized trade union chairmen.

● Currently, there are 400 "salary bargaining experts" in Luoyang, but the number is intended to grow into 1,000 as soon as possible.

Enterprises

● The trade union preparatory group in the Technological Industrial Park of Foxconn Group (Chengdu) held the first conference of the preparatory group on February 25, and decided to convene the first trade union members' congress in the end of this month.

● On March 9, the workers' representatives from the mining industry in Dengfeng City conducted a salary bargaining with their employers, and the workers' average salary was raised by RMB 1,000 after the bargaining.

● On March 23, Shanghai Carrefour and Shanghai Lianjia Supermarket signed the first collective contract through the trade union's bargaining. 70%

of the workers are benefited from it, with their monthly salary to be increased by RMB 224.



**A staff introducing how to fill in with the voting ballot*

●On December 28, Chengdu Jinshuai Electrical Appliances Co., Ltd. convened the workers' congress to publicly recommend and directly elect trade union chairman and committee members. 87 workers' representatives participated in the meeting.

Workers

●In the morning of February 24, many teachers from Shenzhen Shawan Experiment School suspended classes for their dissatisfaction with remuneration.

●On March 4, the teachers from Xilihu Century Star School in Nanshan District, Shenzhen suspended classes over their dissatisfaction with remuneration.

●On March 14, the teachers from Zhejiang Geely Automobile Industry School conducted a strike



over their dissatisfaction with salary.

●The taxi drivers in Xianning, Hubei Province conducted a strike due to taxi licensing regulations. Dozens of drivers were detained successively. This was China's longest strike with the relatively intensified opposition between officials and citizens in recent years.

●In the morning on January 27, more than 120 staff from Dongguan Changcheng Passenger Transport Co., Ltd. conducted a collective strike over their concerns that their lawful rights and interests would not be guaranteed after Route 101 bus service was transferred to another company.

●On January 19, the staff from Bus Route 902 in Taizhou held a strike over their dissatisfaction with the harsh "incentive system".

●Since January 10, the whole taxi industry in Zhengzhou, Henan Province has conducted a strike over their dissatisfaction with the government's cancellation of the rule of "One day off per week" after the New Year's Day.

●In the morning on March 10, due to increasing living pressure, more than one hundred taxi drivers in Honggu District, Lanzhou went on a strike.



●In the morning on January 18, the workers in Lianchuang Technology Park in Guanlan, Shenzhen went on a strike, protesting the investor's infringement of the workers' rights and interests. More than one thousand workers participated in the protest.

●In the morning on March 21, the contractual workers of China Unicom (Xinzhou) went on a collective strike over different payment unequal pay for equal work.

●In the afternoon on March 28, more than 80

sanitary workers from Zhuhai District, Guangzhou went on a strike, to demand for the return of the salary that had been deducted by the company without good reason in the past three years. ■



**Taxi drivers are on strike*

World of Workers



There Is Such a Chairman of Trade Union

By: Xu Xiaobing

When workers' rights and interests are infringed, what should the chairman of a trade union do? Wang Jianqiang, the chairman of grassroots trade union in Luohu District, Shenzhen, has provided the answer through his actions in the past three years.

Shenzhen Liantang Water Supply Service Co., Ltd. ("Liantang Water Supply Plant") is a state-owned enterprise subordinated to Luohu District. In the

period of 1999 to 2000, the plant underwent reform of the company's structure of shares according to the restructuring policy of the Shenzhen Government. However, the then persons in charge of the Plant did not carry out the reform in the way as stipulated in the Government's documents. They did not convene the workers' congress to release the details about the reform and solicit the workers' opinions about the reform as required. Instead, they privately conducted the so-called "reform" to allocate all the shares among themselves by deception and concealment, thus depriving the workers' shareholding right.

The workers of Liantang Water Supply Plant did not learn about the problems with the Plant's reform and share allocation until eight years later in 2008. . Later on, Wang Jianqiang, as a "state officially employed worker" of the Plant at that time, contacted most of the workers and have them organized, acquired detailed information about the reform through many channels, and collected the relevant evidence. After that, he and some other workers jointly reported the case to their superior company, and filed a complaint to the State-owned Assets Supervision and Administration Commission of the State Council and other relevant government authorities. In addition, they had complained about this incident and the loss of state-owned assets to the relevant procuratorates and sought help from public media for many times during the period of three years. However, their problems still remain unaddressed.

In 2009, Wang Jianqiang was retaliated for his activate participation in "safeguarding of rights", and was suspended from work without pay for three months with no reason. Later on, he came back to work under the support of many workers, and was elected as the chairman of the factory's trade union at the end of that year. It is the support from workers that makes Wang Jianqiang determined to continue fighting for their rights.

At the end of 2010, having learnt about similar cases and under the suggestion of the relevant

departments, Wang Jianqiang, and 25 other workers decided to entrust lawyers to seek settlement of the case through legal procedures. Given the breakthrough in this case will exert a dramatic influence on the future implementation of the relevant policies, Wang Jianqiang stated that, being a chairman of trade union elected by workers, he certainly will do his best in this case. (During) When preparing for the case, chairman Wang regularly conducted effective communications with workers and led 25 workers to meet their lawyer for comprehensive legal consultation in order to ensure all workers can participate in safeguarding their rights and interests. And under the suggestion of the lawyer, they selected two litigants' representatives to participate in the action. In order to keep all workers in unity, Wang Jianqiang had individual heart-to-heart talks with many workers, and informed them of the latest development of their case. As for the difficulties of and barriers they encountered in handling the case, Wang Jianqiang was already psychologically prepared for them. He said that, no matter how difficult it is, even the case cannot be solved through legal channel, he will never give up. On the contrary, he will work with other workers to protect their rights and interests throughout to the end, by means of diverse lawful channels.

I called many workers from the Plant. Here are three of the workers' comments on Chairman Wang Jianqiang:

Worker surnamed Chen: "...Chairman Wang was elected chairman of trade union in 2009. We chose him because he is active in safeguarding workers' rights and interests. He had been active in doing this even before being elected. The top five workers elected as Trade Union Committee members were all actively involved in safeguarding rights. Wang ranked the first among the five. This

indicates that he has been recognized for his rights safeguarding activities. The members of the Trade Union Committee are our colleagues who persist in safeguarding rights. So, we are united. In these few years, chairman Wang has been leading the workers to engage in the case of system reform. Difficult as it is, he has persisted in it."

Worker surnamed Feng: "Chairman Wang is bold and active. He has been busy with safeguarding workers' rights and interests in recent years. At ordinary times, he has also done a lot for the workers, including applying for benefits on behalf of workers in financial

difficulties, resolving problems with over-time work payment and so on. He is willing to speak for workers and conduct bargaining with the Plant."

Worker surnamed Liu: "I have known chairman Wang for many years. He has made a lot of efforts in safeguarding workers' lawful rights and interests in recent years, and has also undertaken great pressure. But he has been persistent, never giving up. This is not easy. I think he is doing a great job and I am satisfied with it. I believe other people will totally agree with me. I will continue to support him."

■ Related press report

At 9:00a.m. on February 16, 2009, tens of workers from Liantang Water Supply Company distributed and posted thousands of leaflets stating "*Notice to Water Users in Liantang*" in all communities and industrial zones in Luohu District. In the Notice, the workers claimed that they would have to intensify their resistance by cutting off water supply when there was no other ways for them to safeguard their lawful rights and interests.

According to the introduction by Wang Jianqiang, a senior worker from Liantang Water Supply Company, Shenzhen, Liantang Water Supply Plant is the predecessor of Liantang Water Supply Company. Before system reform, there were about 60 workers in the Plant, generating an annual profit exceeding RMB 5 million. In 2000, the Company's leaders carried out a shareholding system reform in the Plant on the ground that the Plant has been in constant debt and unable to upgrade its equipment. However, the persons in charge of the Plant did not convene a workers' congress to discuss this matter, and workers were kept in the dark. It was until February 2008 when a letter was sent to the workers that such

secret was unveiled. Now the situation is no better. The Company is supplying water to a population of nearly 200,000 in Liantang Sub-district, its production cost has been reduced substantially, and the workers' workload has been increased, but their remuneration drops instead of rising.

All participants in this action are senior workers who joined the company before the reform. They were officially recruited state workers, with over 20 years' working experience, but their salary is under RMB 3,000. "There are more than 30 workers participating in this action and more than 3,000 notices were distributed and posted in total."

Liantang Sub-district Office indicated that, some senior workers from Liantang Water Supply Company threatened to cut off water supply and this violated the Public Order Administration Punishment Law, and the Liantang police station has warned these right-safeguarding workers. Although these workers realized that they have acted inappropriately, they insisted that the system reform of Liantang Water Supply Plant

has seriously infringed their rights and interests. They requested the State-owned Assets Supervision and Administration Commission of Luohu District to redistribute the shares of Liantang Water Supply Company.

Lin Jinghuan and Wang Weichuan, both Deputy General Manager of Liantang Water Supply Company, admitted that some workers were not informed of the system reform decision, (some workers were not informed of) but they emphasized that the reform process was assessed and approved by the State-owned Assets Supervision and Administration Commission of Luohu District.

The State-owned Assets Supervision and Administration Commission of Luohu District acknowledged that the reform was reviewed and approved by it; if the workers do think the reform has seriously infringed their lawful rights and interests, they may file an action to court, demanding the declaration of the reform agreement invalid. ■

Extracted from reports on February 17 and 18, 2009, Southern Metropolis Daily

My Dream of Trade Union

– My Recollection about the Establishment of the Trade Union

By: Zhang Zhiru

In early 1993, I was hired by a shoe-making factor in Dongguan through my personal network, and



assigned to a technical position. The factory was called “Zhuhe Shoe-making Factory”. The Factory had more than three thousand workers and with two branch factories next to it. At that time, this Factory was one of largest enterprises in Dongguan. The Factory received many orders and accordingly a heavy workload for its workers. We finished our work at 12:00 at mid-night almost every day, and only had half day’s off on the day when the salary was paid. Working like this, we got more than RMB 300 every month, and without any cost on meals and accommodation, our monthly living cost did not exceed RMB 30, and all the rest of the salary was sent back home.

Two events I experienced in the first year in the factory helped me to determine my direction in life, inspiring me to take the road of safeguarding workers’ rights and regard it as

my life-long career.

On October 18, 1993, it was a pay day, and we were given a half a day off as usual. Since a factory nearby was on a fire, and burnt to the ground in the other day, therefore our factory planned to carry out a fire drill in the morning on that day, and the boss (Surnamed Wu from Taiwan) would be in charge of this fire drill. He was a veteran, not very tall but very cruel. We used to call him “Tiger”.

The fire drill started at 7:30a.m., but some workers did not know it for they thought there should be a half day off in the morning. Many workers hurried to the factory after getting informed, but some were still in sleep. When the workers passed by “Tiger”, they were beaten by him. Girls were slapped in their faces and boys kicked. And when he found that some workers were still in dormitories, he arranged more than 20 security guards to search the dormitories. Workers were taken down to the lawn to line up. They were then sprayed by high pressure fire hydrants for more than one hour. These workers were treated as the target of this fire drill, they had to stand up immediately and continue their punishment after they fell down. It was quite cool in October mornings in Dongguan. Additionally, the workers were fiercely sprayed for more than one hour. Who would be able to withstand this? However, the other 3,000-odd workers were right there, watching them. Most of these workers were laughing at those standing up and falling down again. I could hardly see any expression of anger, which made me feel bad.

At the night of December 29, 1993, that is two months after the fire drill, two construction workers from Sichuan went to have a celebration, and had drunk too much. When they passed by the gate to the shoe-making factory, they discharged their urine at the wall near the factory’s gate, which was found by the entrance’s guard.

Dispute occurred between the construction workers and the guard who later called the leader of security guards to come to the scene, and reported the matter to “Tiger”. Upon the order from “Tiger”, more than 30 security guards in the factory (all were veterans) with different tools in their hands beat the two construction workers to the ground. As a result, one of them died in hospital after unsuccessful emergency rescue; and the other was said to having suffered from severe cerebral concussion and serious injuries. Having heard about such news, “Tiger” escaped to Taiwan immediately. It was said that the Factory spent more than RMB 200,000 in settling this case, but the family of the deceased, except medical costs, only got RMB 50,000 as compensation. “Tiger” came back to the Factory within one month, and the case was concluded in such way with no one assuming any criminal punishment.

From the above two events, I gradually realized that we workers did not have any value and dignity in the eyes of both the factories and the local government. We were merely a tool for the factories to make money, and a pawn for local government’s economic growth. I learnt that



workers, especially laborers like us, did need someone to say “No” to the government and factories, to fight on behalf of the workers for our legal rights and safeguard our dignity.

In April 1994, I left this factory to work in another shoe-making factory entitled “Weifeng”, which was also a Taiwan investment enterprise with more than 3,000 workers. The most prominent problem of this factory was delayed in wage payment, poor life quality and limited freedom for workers. At that time, it was very normal for factories to delay in paying their workers’ wages for two to three months, but in Weifeng, the delay was as long as four months. Every week, you could go out of the gate on Sunday only, except which going out of the factory was not allowed. In case of special circumstances, you had to ask the management personnel for leave, obtained their approval, as well as getting a written document from them before you could step out of the factory. Worse still, there were only three barrels of rice for 3,000 workers to get their food. It therefore took tens of minutes to get food ready every time. Besides, since the canteen was subcontracted to individuals, in order to reduce cost, the quantity of rice provided was under strict control. As a result, the last workers in the queue often could not get any rice. In this case, the kitchen would make some noodles for them instead. Most of the 1.5 rest hours were spent in having lunch. There was no time left for rest. Besides, due to the nature of subcontracting, the food quality was extremely poor. Every day, we only had ate white gourd, turnip radish, tofu and green vegetables. We rarely had meat oil. Therefore, workers always complained about the food. According to the office workers, the amount the factory spent on workers’ meals was not low. It was the canteen owner who wanted to save money. As a result, many people reported the matter to the factory but no improvement has been made. It was said the canteen owner was from Jiangxi with gangster

background and he has got the contacts from many canteens in Dongguan. So, no one dared to argue with him. But I did not think in the same way. Though we were very weak as individuals, we would become very strong if we got together. We absolutely had the power to negotiate and bargain with the enterprise or a third party to safeguard our lawful rights and interests under the law. Some workers agreed with me and thought we could have a try. Therefore, I began to think about how to carry out this task.

In October 1995, I sent a registered letter to Li Jinwei, the then Secretary of Dongguan Municipal Party Committee and mayor. In the letter, I requested to establish a labor organization, entitled the “Association of Migrant Workers in Dongguan”, to provide service and help for migrant workers, and to help them participate in the enterprises’ democratic management and promote the enterprises’ production and development. No news was heard after the letter was delivered for about one week. So, I called the mayor’s hotline to inquire about it. After many calls, the Dongguan Letters & Visits Office asked me to visit their office. Therefore, I took a half day leave and went there. The office director received me, and talked much to me, mainly persuading me to give up the idea of establishing the labor organization as I proposed because that was not viable in law. But in the end, he advised me to establish a trade union in our factory. He also calls a director of Fucheng District’s Federation of Trade Unions about this, and then asked me to go and see the director. After leaving the Dongguan Letters & Visits Office, I went straightly to the Fucheng Federation of Trade Unions and met that director. The director was very kind. He sent me some books about trade union law and trade union charters. He then passed on to me some forms and advised me to encourage workers to join it. If there were 25 members, they would help us apply for the establishment of a trade union. In addition, I was

told by the director that the Dongguan trade union system was appraising advanced units at that time, and the establishment rate of trade union in factories was an important indicator. Therefore, he said he would try his best to help me establishing a trade union. He even immediately called the



township head of the place where the shoe-making factory was located, telling him my name, and then asked me to go to see the township head in order to invite him to help in persuading the factory owner.

After obtaining the information, I went to the township government, and met the township head, who was not as kind as that director. The township head said there was not yet any trade union established in his town, but he would help to persuade the boss to accept such idea. He also told me to firstly recruit trade union members but reminded me not to take too prominent acts in doing this. I was so excited after returning to the Factory. At that night, I told such good news to my friends who have been discussing the establishment of a trade union in the factory with me. They were excited too, and then we decided to discuss the next move in detail at the next meeting. In that gathering, I firstly determined some key members: Zhang Fugong from Henan, Ding Yueqin from Yunnan, Chen Zhili from Guizhou, Jiang Junwen and me. We decided to recruit future trade union members among our townsmen and friends respectively, and when the required minimum number of members was satisfied, we

would formally convene a foundation meeting. Two weeks later, namely, in an afternoon in the end of October 1995, the First Preparatory Meeting of Weifeng Trade Union was held, with more than 30 workers participated in this meeting. I can still remember that there was no room for us to hold the meeting and we were also afraid of being interfered by the Factory, therefore we all gathered on the rooftop of the dormitories. First of all, I made a brief introduction to the establishment of the trade union. What was the most important was to state that our establishment of the trade union was approved by Fucheng Federation of Trade Unions and supported by the township government. This was necessary to relieve the participants' political concerns. Then I talked about the roles of the trade union and the help it might offer us. I also promised them that, after the trade union was established, three problems would be addressed first: 1) To negotiate with the Factory to solve the problem of delay in wage payment, requesting the Factory to pay our wages on time in accordance with laws (the wage payment was generally delayed for three months at that time). 2) To request the Factory to stop subcontracting the canteen to any person outside the Factory; instead, the canteen should be put managed by the Factory with the assistance of the trade union in order to improve the workers' meals. 3) To request the Factory to cancel its rules on restricting workers entry and exit of the factory, and to ensure at least one day's off every month for each worker. Nowadays these are very simple requests, but they were not enjoyed by most of workers at that time. All participants were very happy and willing to join us and support our establishment of the trade union when they were told that we could get the support from the government trade union and the township government and could solve the three problems mentioned above. In this meeting, I was elected the preparatory chairman of the trade union of Weifeng shoe-making factory, Zhang Fugong

and Ding Yueqin as deputy chairmen, and Chen Zhili and Jiang Junwen as committee members. After this meeting, I printed Weifeng trade union's membership cards and bought papers to copy a letter entitled "To All Workers of Weifeng Shoe Making Factory", telling all the workers in the Factory that the trade union of Weifeng Factory was established. In the letter, I mainly stated clearly the purpose of establishing such a trade union, and the roles it might play. We also listed out in the letter the room numbers of persons in charge of the trade union for contact purpose. Dozens of copies of this letter were made and posted mainly in the passageways and corridors in every dormitory building.

This news quickly became a hot issue within the factory. In the following few days, people were all talking about it, and it also attracted the Factory's attention, too. In the next day, I was called to the Factory's office. First of all, the General Manager conducted a conversation with me. He revealed that the leaders of the township government had already talked about the establishment of the trade union with him, but he still had not reported the matter to the boss in Taiwan. The General Manager did not show any repulsion about the matter. He only said that he had not reported it to the boss yet, and therefore he did not know the actual situation, and just hoped that I would not act recklessly. I explained to him too, saying that without the approval of Fucheng Federation of Trade Unions, we would not undertake any activity or do anything to affect the normal operation of the Factory. Besides, our goal of establishing of the trade union was to do something beneficial for the Factory and its workers. Then the General Manager said that if there were any inadequacies on the part of the Factory, I could advise them on how to make some adjustments or improvement. Earnest as the General Manager seemed at that time, I said that the most serious problem was the worker's meals arrangement: the food was very

poor in quality; workers had to spend too much time to queue up for food, thus affected workers' rest time. My suggestion was to improve the food quality, to arrange more service points to serve food to the workers, or to vary the working hours for different departments within the Factory so as to save the time of queuing up. Of course, the most important problem was delay in wage payment and limitation on workers' personal liberty. But I did not think it appropriate to talk about this with him at that time. So, I only discussed the meals arrangement with him to see how the Factory would respond. Because the problems with the meals arrangement were mainly caused by the canteen subcontractor, it would be easily acceptable for the Factory to supervise and improve it. If at the very beginning, I talked about the core problems, the Factory might become hostility toward the trade union. The General Manager promised that he would take an investigation into the meals arrangement problem. If there was still profit margin for the subcontractor, he would urge the subcontractor to improve the meals provided. Unexpectedly, two days later, the quality of the meals was improved. There were much more oil and meat in the meals. The canteen also provided breakfast for free, and the number of serving points for getting food was increased by three rows, which saved nearly half an hour in getting food. Another week later, the cutting department and stitching department started to work 15 minutes earlier and come off work 15 minutes earlier, too, while the forming department's working hour remained unchanged. As a result, the difficulty in getting food and the problem of long queuing up time were basically resolved. The Factory's improvement of meals arrangement and adjustment of working hours made workers in the Factory very happy. They said our trade union did play some role(s). However, when the canteen boss learnt about the details, that man from Jiangxi found Zhang Fugong and me for

a talk. One night, he said to us in a threatening way that the cost of his canteen would be increased by more than RMB 1,000 every day in order to meet those changes, and he then could not make any profit. He also told us that the Factory boss was not pleased to see the trade union established. He said this would also be disadvantageous to our future work, and we might even run the risk of being fired. In a word, he advised us not to proceed with the trade union, saying there would not be good result.

About one month later, the Factory's security guard came for me one day, asking me to go with him to the office. When I got to the office, I learnt that at the previous night, many leaflets were posted on the walls both inside and outside the canteen under the name of our trade union, requesting the Factory to pay the wages in arrear and reduce the over-time work, or the trade union would organize strike and set the factory's warehouse on fire. The General Manager and the township head had been waiting in office for me. There were also several officials from the Public Security Bureau. After reading the leaflets, I firmly said that the leaflets were not posted by the trade union members, for they were all hand-written and I could tell they were the trade union members' handwriting. Besides, I wanted to establish the trade union simply for the purpose of improving the workers' working conditions and living standard by establishing a sound relation with the Factory's management, as well as offering help to the Factory. We would never do such silly things. But they refused to listen to my explanation, and simply requiring me to find other trade union members to go to the township government to receive further investigation because the Factory was not clear about who joined and participated in the establishment of the trade union. So, I told them who were involved and those people were then called to the office. Subsequently they went to the township government with me. When we

arrived at the township government, each of us was given a piece of white paper. We were asked to write down our personal information on the paper. In fact, the township government asked us to do so simply for the purpose of comparing our handwritings with the handwritings on the leaflets. After that, we talked with the township head about the establishment of trade union, and our opinions about the leaflets. We were told to return to the Factory after a quick talk.

I thought this incident was over because after comparing our handwriting, we were proved that we had nothing to do with the leaflets. But two days later, I was called to the office again. The township head was waiting for me there. Then the president of the board of directors, who seldomly came to the Factory, appeared as soon as I got in. The first thing the president said to me was that "Is it true that you are establishing the trade union? I tell you my Factory does not need trade union. If you want to establish a trade union, do it in your own factory!" He left the office soon after saying this. The township head then told me that he had talked to the boss many times but all failed. Besides, Weifeng Shoe-making Factory was a Taiwan-investment enterprise and the largest factory in the town, so there was nothing further he could do to help me. He also told me the Factory boss had decided to fire me, which he could not help neither. But the township head assured me that all my wages would be paid, including the wage for that afternoon ((at that time, if a worker was fired by the Factory, at least one month of the worker's wages would be deducted) The practice of the day was that one month of salary of a worker should be deducted if he is sacked by a factory. I told the township head that I accepted this outcome. When I was about to leave the office, the township head told me the Township Government's Trade Union had just been set up on the previous day, and he was the chairman of that trade union. He also told me that when I need

his help in future, I could go to see him.

Within half a year after I left Weifeng Shoe-Making Factory, namely on April 20, 1996, under the organization of Ding Yueqin and Jiang Junwen, all the 3,000 plus workers of Weifeng conducted a collective strike, forcing the Factory to pay the workers' three months arrear wage in

one time. After that, many workers left the Factory, and many orders of the Factory could not be finished on time, causing great loss to Weifeng. In the following few years, Weifeng was unable to recover from the setback and ended up with closedown. ■

Our Hope

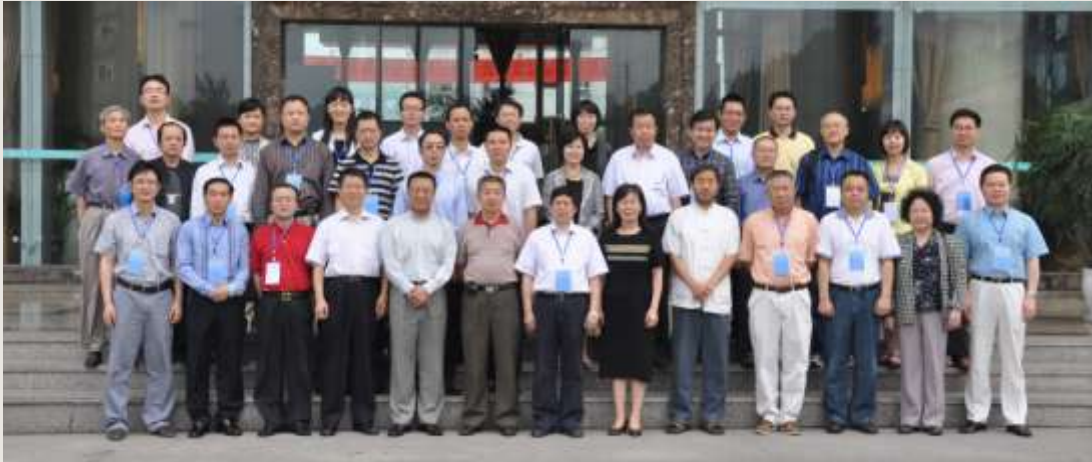
We hope that our publication of the *Research on the System of Collective Bargaining* could help in attracting greater public attention to the interest balancing for labor relation. Apart from scholars, we hope that more trade union personnel and government officials would also put in their efforts. We especially hope that the front-line workers could participate in the discussion, so as to contribute to the construction of workers' organizations, the improvement of future labor relation and the establishment of collective bargaining system.

Editorial Department of *Research on the System of Collective Bargaining*



Retrospect of Collective Bargaining Forum (Chongqing 2010)

From May 29 to 30, 2010, the Collective Bargaining Forum (Chongqing 2010) organized by Peking University and Southwest University of Political Science & Law was held in Chongqing. Participants include scholars and government officials from the organizing units, Renmin University of China, Capital University of Economics and Business, Beijing Jiaotong University, Chinese Academy of Sciences, China Institute of Industrial Relations, Shanghai University of Finance and Economics, Zhejiang Federation of Trade Unions Cadre School, and Chongqing NPC Standing Committee. After heated discussions, the participants have reached a consensus that now that the labor relation market has basically completed its market-oriented transform and the labor conflict has become one of the basic social conflicts, collective bargaining system with Chinese characteristics shall be established to ensure the sustainable and harmonious development of labor relation.



Experts Attending the Collective Bargaining Forum



Opening Ceremony



Experts Delivering Speeches



Discussion among Experts



Experts Lecture



Daybreak

Promote the collective bargaining system

Accelerate the social fairness & justice

Research on the System of Collective Bargaining System

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