

EMPLOYMENT, LABOR RELATIONS, AND THE UNION SITUATION IN CHINA

by

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Abstract

China's continuing evolution toward a market economy has generated ripple effects that are changing most of its economic institutions. One interesting institution cast adrift in this sea of change is the union. While formerly an instrument of the state, the certainty of this role is no more. Issues arise at to how the Chinese union will now evolve, and to what degree it will resemble the western model, or perhaps reflect a uniquely Chinese model. By describing the current status and articulating the issues, this article provides a framework for thought about this topic.

I. Introduction

In the third plenary session of the 11th Central Committee of the Communist Party of China held in December 1978, Deng Xiaoping brought out an innovative plan of Chinese economic reform. From then on, a country with one fifth of the world's population opened itself to the outside world, joined the world economic order and brought tremendous change both to herself and to the world. Since the inception of the economic reforms in 1979, China's economic performance has been nothing short of spectacular.

During the past 20 years, China has seen tremendous progress in a variety of fields. Agriculture has been de-collectivized and advanced technologically, the management of state-controlled firms has been decentralized and deregulated, and the further establishment of property rights has facilitated an explosion of businesses outside central government control. Goods and factor markets have been liberalized to a significant extent with market price allocations. State control of the labor market has been reduced, and capital markets have experienced rapid, if uneven, development (Noland, 1995).

The timing of Chinese economic reform is coincident with the recent era of economic globalization and China's active participation in the world economy has proven the best way to develop her domestic economy, raise living standards, and secure a key position in the world. Economically, an obvious change experienced by China since her open door policy is a trend towards increased foreign direct investment (FDI) and the establishment of foreign businesses in China. China now is the leading developing country designation for foreign direct investment (FDI) (Bassolino, 1998). In 1997, China received the largest influx of FDI in her economic history, \$45.177 billion, second only to the FDI in the U.S.

II. Changing Employment Context

Much of China's economic growth is derived from FDI, half of which is in the form of joint ventures (Cheung & Yiu, 1998). In the international joint ventures, the minority of the management staffs are western expatriates while the rest are local Chinese. By the end of 1996, there were more than 140,000 foreign-funded projects employing more than 116 million people (Bassolino, 1998). The employment of millions of Chinese by foreign corporations required more accommodating policies. China's previous unresponsive labor market and the inefficient labor-management relations policies put heavy constraints on her pace to integrate into the global economy. Facing the quickly increased number of people being employed by foreign corporations in China, the Chinese government has been adjusting policies to accommodate the tension brought by the shifting pattern of employment relations from a single and predictable model fitting the centrally planned economy to a more diverse and complex pattern fitting the market driven economy.

Before the economic reform, China's employment structure was quite rigid and simple. People were assigned to different work units and an employee had little or no choice of assignments. Entering into

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an employment arrangement meant that housing, children's education, healthcare and even food would be supplied in total by the employer. University graduates were required to accept positions that the state selected for them according to the needs of the state, not the employees (Gross & Dyson, 1997). The labor market lacked the dynamics of mobility and competitiveness. There were no formal labor laws governing labor practices because they served no purpose in a centrally planned economy compared to a market economy.

The employment environment has undergone a vast change since China opened to outside investment and development in the early 1980s. Labor allocation has moved from state control towards a combination of state agencies and independent recruitment by enterprises. Job candidates are now able to seek their own jobs and to negotiate their salary and benefits (Gross & Dyson, 1997).

Global competition conditions labor markets to produce competitive wage levels and labor practices, and regulation of industrial conflicts that are acceptable to employers, employees, investors and governments. Labor must be employed more efficiently through increasing flexibility. The previous inefficient "iron rice bowl" that characterized Chinese labor policy with a cradle-to-grave welfare system is no longer feasible in the era of globalization. The old employment and labor structures yielded low efficiency, and thus were unsuitable for a competitive environment.

III. Evolving Law Context

To begin the reformation of the Chinese labor market to a more economically competitive environment, in July 1980, the Chinese government promulgated Provisions of the People's Republic of China for Labor Management in Chinese-Foreign Joint Ventures (China Business Relations). For the first time China introduced laws governing the practices of foreign investment in China. The sixteen articles in this law stipulated the basic rights of both employers and employees with regards to employment, dismissal, wages and awards, work schedules, paid leave of absence, labor insurance and welfare benefits, labor protection, labor discipline and the signing of the contracts and trade union formation. Though these stipulations are somewhat general and embryonic when viewed in retrospect, they did provide legal reference for early investors and laid the groundwork for further modification. A chronology of Chinese Labor Laws can be found in Table 1.

With China's opening-up policy furthered in practice, the ripening of the business environment for investment, the establishment of more favorable terms of trade, and the incentives by the Chinese government, more diversified forms of investment emerged in addition to joint ventures. These included wholly owned foreign enterprises and contractual joint ventures. The Chinese government subsequently laid out the Wholly Foreign Owned Enterprise Law of the People's Republic of China in April 1986 and Sino-Foreign Contractual Joint Venture Law of the People's Republic of China in April 1988 (ChinaWeb). Though these two sets of laws were not intended for labor practice, they did reiterate that terms concerning employment, dismissal, remuneration, welfare, labor protection and labor insurance shall be clearly prescribed in the contracts. Workers and staff of enterprises with foreign capital may organize trade unions in accordance with the law and the enterprises shall provide the necessary conditions for the activities of the trade union in their respective enterprises.

The year 1994 was a prolific year in China's history of lawmaking. The Chinese government formulated and promulgated three laws to accommodate the dynamic changes in the field of employment relations. In January 1994, the Chinese government for the first time introduced Regulations Concerning Minimum Wages in Enterprises (ILO). This law set up minimum wage level, established supervision system and created legal procedures for punishment with an aim to ensure the basic needs of workers and their families in Chinese economic transition.

In July 1994, China announced its first labor law (China Labor Law, effective January 1, 1995), that applies to all enterprises and individual economic organizations within the boundary of the People's Republic of China, and laborers who form a labor relationship therewith (ILO). This is a very comprehensive and complete set of regulations containing thirteen chapters and covering issues regarding promotion, contract and collective agreements, working hours, rest and vacations, wages, occupational safety and health, protection for females and juveniles, training, insurance and welfare, labor disputes, supervision and inspection, and legal responsibilities. This is the first comprehensive legal document governing employment and labor relations fitting the quickening pace of Chinese political and economic reform.

Subsequently the Chinese government promulgated an exclusive set of stipulations governing labor issues in foreign investment in China: Regulations on Labor Management in Foreign Funded Enterprises (ILO). Compared with the Provisions of the People's Republic of China for Labor Management in Chinese-Foreign Joint Ventures announced in 1980, this is a more extensive, more sophisticated and more complete set of laws having a broader coverage and applying to Sino-Foreign Equity Joint Ventures, Sino-Contractual Joint Ventures, Foreign-Funded enterprises, and Sino-Foreign joint-stock limited companies set up in the People's Republic of China.

These regulations came after the accumulation of past lessons and experiences gained from the initial stage of reform, and amendments and revisions followed from regulatory prototype. For example, rules of pay raises, terms of payment for workers and the forms of punishment of malpractice were added. Enterprise obligations for fringe benefits, amounts for overtime pay, procedures of dismissal and rights and obligations incurred were being specified, and vocational training of workers was adjusted from an option to an obligation.

The foreign enterprise law better protected the rights of foreign enterprise employees, promoted the establishment of sound legal environment for foreign investment in China, provided legal references to guard the interests of investors in China, and prohibited the occurrence of malpractice and human rights abuse. This set of laws also helped foreign investors understand their liabilities and responsibilities in their business dealings in China.

IV. Sensitive Issues

Failure of Labor Law Observance

Though China is making tremendous progress with regards to employment and labor relations and labor protection, there have been frequent reports of human rights abuses occurring in foreign owned companies and joint ventures. As market liberalization proceeds, sweatshop operations are apparently increasing. Multinational corporations in China, such as Nike, Disney and Reebok are being closely monitored for workplace conditions and treatment of workers. Most of these large foreign corporations organized their production in China by contracting and subcontracting and employed local low wage labor.

Research by two Hong Kong based human rights groups, the Asia Monitor Resource Center and the Hong Kong Christian Industrial Committee, exposed the sweatshop conditions of Nike and Reebok subcontractors and the malpractice of the subcontractors toward local laborers. Four factories producing footwear for Nike and Reebok were examined and research showed that none of them observed either the mother company's code of conduct or relevant stipulations in Chinese labor law. It was reported that workers were being forced to pay deposit before their commencement of work and they were forced to work eleven hours a day and received wages below minimum wage level stipulated by law. They were not aware of the dangerous chemicals in their working environment and were not even provided with protective clothing. They could be dismissed without any cause, and children between 13-15 were being employed (Asia Monitor Resource Center & Hong Kong Industrial Committee, 1997).

Another research report, entitled "Mulan's Sisters," shows that subcontractors of Walt Disney Company are failing many of their workers. The report revealed that Disney's Code of Conduct is not seriously respected by many of Disney's suppliers in China. Most of the suppliers covered in the study are violating workers' basic rights and the Chinese Labor Law. Some workers are forced to work more than fourteen hours a day, seven days a week. Some are paid less than the minimum wages. Their wages are often paid as much as three months in arrears and they have no insurance coverage. Very few are even aware that a Code of Conduct exists (Hong Kong Christian Industrial Committee, 1999). The above examples of the failure of the observance of the Chinese Labor Law by foreign investment merits further investigation of why they are not being respected and even being violated constantly.

Role of the Union

In China, the All China Federation Trade Union (ACFTU) is the only recognized and legitimate trade union and its subordinate branches are deemed as a mass organization of the working class. The ACFTU was first set up in 1925 in Canton and was not legitimized and consolidated until the Chinese Communist Party (CCP) came to power in 1949. The role of ACFTU was defined after Soviet model as "transmission belt" for the ruling party according to the top-down principle of "democratic centralism". The

ACFTU was regarded as "pillar of the Party", which in practice denoted the subordinate position of the union to the Party. On the one hand, the ACFTU's responsibility was to transmit the Party's ideological line and policies to the working class and to secure their support and compliance. On the other hand, the ACFTU's goals were to unite all workers and protect their interests and promote the welfare of workers. The dual tasks of the union preclude accomplishing the latter goal effectively without bringing conflict with the former one.

The ACFTU has been engaging in the promotion of workers' interests, such as the negotiation of collective contracts with employers to supplement the individual contracts. At the national level there is tripartite consultation of top federation officials with counterparts in government and management. However, the ACFTU has not subsequently improved the labor rights and labor conditions. The explanation lies in the inherent affiliated status with the state. Since the union is established and supported by the government, the goal is always in conformity with that of the state. Hence, there has not been an intense confrontation between the union and management, since, in theory, the ultimate interests of both have been determined by the state.

According to China's Trade Union Law, the Chinese employees in overseas-funded enterprises are entitled to establish trade union organizations (Hong and Warner, 1998). The requirement to set up trade unions in all overseas-funded enterprises in the coastal provinces has been set high on ACFTU's agenda. In May 1994, the ACFTU announced a new campaign to establish unions in all those enterprises, in economic development zones and coastal cities, and to strengthen the power of workers for collective bargaining and rights protection (Chan & Senser, 1997). However, the scope of unionization in the foreign-funded enterprises has remained low. By the end of 1995, just over two million employees in such enterprises were unionized (White, 1996). The reasons are as follows.

First, most foreign investors are reluctant to establish trade unions in their enterprises because of the fear that unionization will challenge their managerial authority. Second, the ambassadorial role of unions in foreign enterprises serves the Party, and is cooperative rather than conflictual. This poses difficulty for the union in asserting bargaining power for the employees. The position of mutual understanding set by unions lent foreign investors more bargaining power over labor issues such as wages, insurance, and fringe benefits. (Hong and Warner, 1998).

There is another reason worth mentioning as well. Though the Trade Union Law stipulated the necessity for unions to set up a consultative and negotiating system with the administration, participate in the democratic management, represent and defend the rights and interests of employees according to law, there is no supervising organism in place for implementation.

In the cases of labor rights and labor law violations previously cited, none of the factories had a workers' trade union in place and none of the workers demanded the establishment of unions to protect their interests. This has put workers in a most vulnerable situation where they are almost always deprived of any bargaining power and subject to the conflicting interests of employers and unions. People regard unions as part of the government or the state mechanism. They never see the union as an important means to bargain for their rights and guard their interests. This is even happening in state owned enterprises whose population accounts for the primary representation of the union.

For example, Gordon White's (1996) study of Chinese trade unions presented survey results from workers in Shenyang and Naotong. Those results suggest that the primary method of resolving differences with superiors was to raise the matter with enterprise management rather than trade unions (23% relative to 10.6%). The trade union was seen as relatively ineffectual. When workers were asked to assess the union activities in the enterprises, 46.2% did not offer opinion, indicating a high degree of indifference. Among those who identified a task, 22.1% regarded union's task as making workers obey and work rather than taking care of welfare of workers (12.7%) and representing workers' views and interests (6.9%). In the survey of the method of selection of trade union chairperson, 60% of the workers responded that union chairpersons were appointed by other agencies whether they are higher-level trade unions or the Party branch/management of the unit.

The above survey indicates the union's goal failed to be recognized by the mass working class, and this discrepancy is increasing in the face of the challenges posed by the current economic reforms. Dramatic structural changes in the overall industrial economy brought diversified forms of economic activity. Private and new collective and foreign invested sectors expanded dramatically, creating new forms of ownership and new forms of employment. Unions have been slow to evolve in the context of these newly emerging enterprises.

In state owned enterprises, unions are in an awkward situation given the fact that Party reformers expect unions to help them to implement the very enterprise reforms that are causing unemployment and threatening pensions (White, 1996). Facing the faster pace of economic reform and the more and more problems posed by the industrial structural adjustment, a new Trade Union Law was promulgated in 1992 in order to meet the demands of economic and social development. This is a set of more comprehensive stipulations specifying union's goals and the role in China's socialist development, thus, consolidating the union's position and expanding the union's membership scope. Yet the most fundamental issue, the union's continued lack of institutional autonomy and dependent relationship with the Party, was not addressed.

The most obvious problem generated by a government controlled union is the abuse of the law and vagueness of representation. Though unionization in industrial sectors is compulsory, the union role and management role are not commonly separated. Workplace union officials could have a role in workplace management, but more commonly, they hold positions in the Party. A more common practice is to have the enterprise managers double as Party secretary, thereby acquiring the authority of the Party in the trade union.

V. Union Structure

A schematic of the union structure as entwined with the government, the Party, and the enterprise is given in Figure 1. At the national level, ACFTU is accountable to the Ministry of Labor, which is one of the nine functioning core ministries under National Council. At the local level, there is no separate treasury or account system in the enterprise unions. Union expenditures are under the supervision of enterprise management. The main reason is that a large portion of union activity fee is appropriated by the enterprise or appropriated by higher level union institutions within the enterprise.

A central conflict originating in the above context is the nature of Chinese unions' relationship with the Party. The autonomy of unions and independence from the state politics are crucial to fulfill the role of representing workers. The current close relationship makes it difficult for the union to develop a distinctive identity. In cases of conflict between the interests of employees and the interests of the state, union leaders are not in a position to vigorously defend the interests of the union members. Without autonomy and separation from the Party, management, and the state, there can be no effective representation of workers by unions and no meaningful collective bargaining.

Different Union Models for China

China is in urgent need for true autonomous trade unions to protect labor rights in the context of present day reforms toward a market economy. Labor is most vulnerable in a market place driven primarily by profits. As noted earlier, globalization encourages management rationalization in order to compete more effectively. In China, this means privatizing the state sectors gradually and selectively, placing more emphasis on costs and quality, and removing "iron-rice-bowl" work permanence. These tendencies have increased management control. To prevent abuse of power and the abuse of labor rights, the state is trying to promote collective bargaining across industries. In general, there are four systems of national labor market governance of employment and labor relations (Frenkel & Peetz, 1998).

- State Unilateralism: The government is responsible for creating and maintaining the framework for relationships between management and workers.
- State-Employer Bipartism: The state and employers form a coalition that determines this framework.
- State-Union Bipartism: A coalition is formed between the state and union to regulate employment
- National Tripartism: Governments, employers, and unions are the responsible institutions.

Labor governance relationships in China are moving from State Unilateralism at the national level towards State-Union Bipartism (Frenkel & Peetz, 1998). Yet the primary difficulty is that the union in China is comparatively weak and does not assert much influence on the state's legitimacy in speaking on behalf of labor.

Compliance with International Standards

The separation of rights of workers' association from the public authority is clearly stipulated in the international labor standard under Freedom of Association and Protection of the Rights to Organize Convention, 1948, No. 87, (ILO). Article four stipulates that organizations shall be free from interference

by the public authorities when drawing up their constitutions and rules, electing their representatives, organizing their administration and activities, and formulating their programs. Though China requires the establishment of a union and conforms with the international labor standards in this regard, there is still a lack of independence that is essential for viable and credible unions.

VI. Conclusion

History demonstrates that simply following the Soviet Union model won't fit China's current market oriented economic reforms. The dual role of China's ACFTU as a "pillar of the Party" and "speaker for the workers" limits autonomy and makes the union representation of neither the workers nor the Party complete and effectual. Market economies require strong and independent unions to represent the interests of workers and only with a strong trade union can the conflicting interests of employers be counteracted.

However, socialism requires the existence of Communist Party to provide macro- guidance for development. The only flexible variable is the role of Party and whether the Party will give up more administrative power and consequently yield more independence and autonomy to unions. Alternatively, the Party could follow the current trend and work out a new form of corporatism with ACFTU, which bears unique Chinese characteristics.

Though the lack of autonomy in ACFTU is a major issue contributing to the malpractice and labor abuse by foreign corporations, it is not the only factor. Lack of legal institutions regulating China's labor-management relations has created a very favorable environment for foreign investors to conduct business without the countervailing power of organized labor. The large supply of inexpensive labor also inhibits union economic power. Some foreign investors do take advantage of the loopholes in Chinese legal system during China's economic transitional period when rules governing employment and labor relations are not yet fully in place. When we examine Nike's, Reebok's and Disney's offshore factories in light of international labor standards for multinational enterprises, none of them are living up to the international standards with regards to the use of forced labor, wages, benefits, conditions of work, safety and health, and collective bargaining.

In order for China's economy to be smoothly integrated into the globalization process, the internationalization of her current laws and regulations and the functioning of social and legal mechanisms, such as the establishment of independent trade unions, must be forthcoming. Finally, the Chinese economy cannot be smoothly integrated into the globalization process without cooperating with and inspection authorities from the international community.

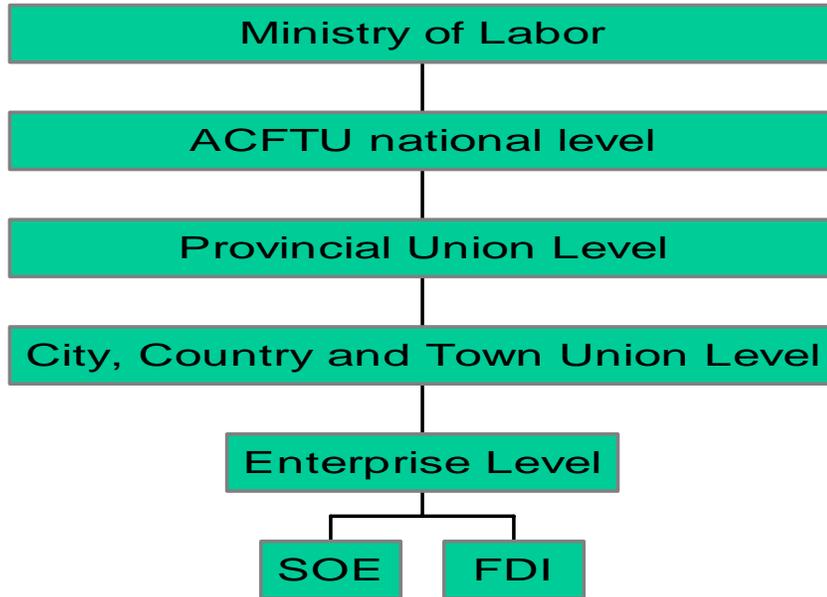
TABLE 1 Chronology of Labor Laws and Regulations of the PRC

1980	Provisions on Labor Management in Sino-Foreign Equity Joint Ventures
1992	Trade Union Law
1993	Regulations on the Placement of Surplus Staff and Workers of State-owned Enterprises
1993	Regulations Concerning Minimum Wages in Enterprises
1993	Regulations on Unemployment Insurance for Staff and Workers of State-owned Enterprises
1994	Labor Law
1994	Regulations on the Administration of Labor in Foreign Invested Enterprises
1996	Rules for the Administration of Employment of Foreigners
1997	Notice Regarding Further Improvement of the Work of Poverty Relief and the Re-employment of Workers
1997	Notice on Establishing Re-employment Service Centers at Experimental Cities with Enterprises of "Optimized Capital Structure"
1997	Notice Regarding the Printing and Distribution of the "Investigative Report Shanghai's Experiences in Carrying Out Re-Employment Projects and Establishing Re-Employment Service Centers for Staff and Workers"

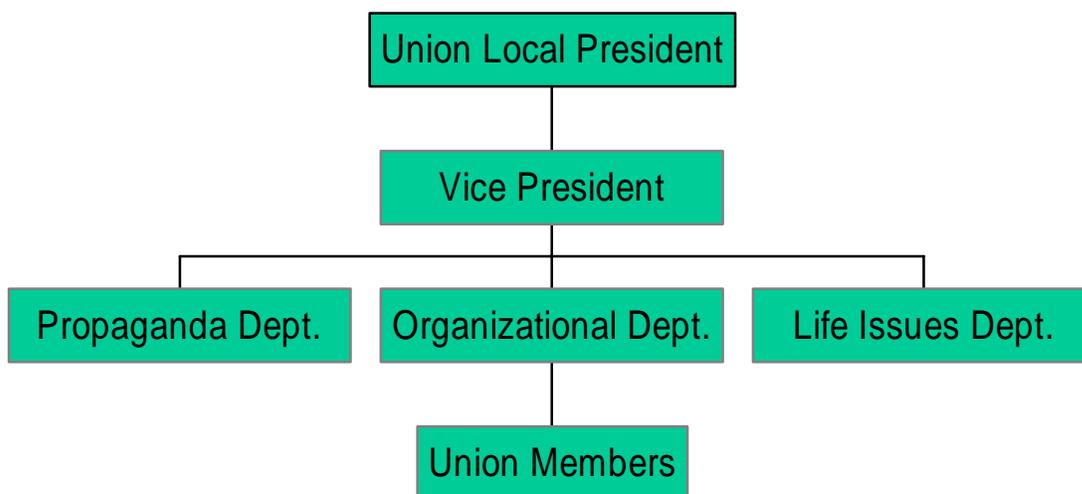
Sources: Quantum Internet Services [Http://www.qis.net/chinalaw](http://www.qis.net/chinalaw) & International Labor Organization [Http://natlex.ilo.org](http://natlex.ilo.org).

Figure 1

National Level



Local Level



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