

**INDUSTRY STUDIES ASSOCIATION
WORKING PAPER SERIES**

Industrial Relations Experiments in China:
Balancing Equity and Efficiency the Chinese Way

By

Michael H. Belzer
Wayne State University
Detroit, MI 48201
michael.h.belzer@wayne.edu

and

Pan Shih-Wei
Chinese Culture University
Taipei 111, Taiwan
panshihwei@gmail.com

and

Yu Nan
Jilin University of China
Changchun 130012, China
yunan72@gmail.com

2008

Industry Studies Association
Working Papers

WP-2008-07

<http://isapapers.pitt.edu/>

Industrial relations experiments in China: Balancing equity and efficiency the Chinese way

Alfred P. Sloan Foundation Industry Studies Meeting
Park Plaza Hotel
Boston, MA

May 2, 2008

Session: "Economic restructuring and industrial relations"

Michael H. Belzer Associate Professor, Wayne State University, Detroit, MI, USA
Pan Shih Wei Assistant Professor, Chinese Culture University, Taipei, Taiwan
Yu Nan Lecturer, Jilin University Business School, Changchun, PRC

The authors would like to acknowledge the research assistance of the students of Professor Belzer and Dr. Yu Nan at Jilin University Business School: Duxiaolin, WangWei, Qu Jiaojiao, Xie Rui, Yang Hailong, Lian Xin, Qilei, Xu Yang, Qu Jiaojiao, Qin Yi Yuan, Li Xiu Sheng, and Zhou HaiJuan; and the students of Professor Pan at Chinese Culture University: Hsu Meng Chueh, Yao Tzu Wei, and Chiung Ying Fu.

While the Chinese liberalized their economy and created a brand new labor market scarcely fifteen years ago, they have relied on their pre-existing institutions, including government-affiliated trade unions, to provide a structure for labor-management relations. As industrial conflict has risen along with privatization and increasingly competitive markets, the Chinese government seems to have come to recognize the importance of transforming their old industrial relations system to adapt to these market changes. This transformation requires abandoning the "transmission-belt" model that dates back to the days of the planned economy, which primarily advanced the Communist Party's program, but at the same time most of the evidence suggests that worker-interest representation remains a joint function of the Party and institutions cooperating with it. Recent changes in both law and practice provide evidence of their serious interest in creating an industrial relations system, while attempting to avoid the risk of social and political destabilization, but direct social and institutional change in China requires careful testing to determine both the efficacy of new approaches and to see whether it endangers the social and political stability that the government wants.

This paper looks at a number of experiments in Chinese industrial relations to determine the extent to which economic and organizational changes have occurred in recent years. We focus on community union developments in Changchun that are aimed at organizing employees of

small enterprises previously considered outside the boundaries for Chinese labor unions. We also discuss cases in other provinces in which local unions have taken the initiative to organize migrant workers in a way that foreshadows changes in the Chinese legal corpus that we think empowers unions to take hitherto unheard of if not impermissible actions on behalf of migrant and otherwise dispossessed workers. We give special attention to the extent to which contingent labor relationships have grown in importance in China and to the challenge these relationships present to unions responsible for maintaining harmonious workplace relationships. Certain changes in practice, including the new Labor Contract Law, may provide a vehicle with which to develop a Chinese industrial relations system better able to balance equity with efficiency and achieve the government's goal of "harmonious society" (和谐社会) (Xinhua News Agency 2005). We find that incremental industrial relations reform continues to occur in many areas of China, particularly where product and labor markets have transformed relationships between workers – especially migrant peasant workers (*nongmingong*, or "farmers-turned-workers") newly integrating into the industrial and market economy – and employers.

This trend becomes particularly salient when considering the compensation packages offered to workers – especially *nongmingong* – who make up a large share of China's growing working class. While the problem exists throughout China, Guangdong and other southern provinces are replete with private entrepreneurs who have taken advantage of the development of the market to hire migrant workers and others who work without the benefit of union representation and often without the benefit even of the individual labor contract required by law. Here one finds some of the most exploited workers in China and one key locus for new union activity designed to put the brakes on these practices. The Labor Contract Law seems to be tailor-made to support many of the Chinese unions' new innovative organizing and representational activities.

Theoretical considerations

Many Chinese scholars and policy leaders believe industrial relations is China's most critical challenge, and their need to develop a research agenda in industrial relations is urgent. Industrial relations problems lie at the heart of current high-profile issues such as the generally growing inequality produced by the rapid shift to market governance, and the growing reliance on labor markets in particular to regulate China's economic development. Unregulated markets

tend to promote greater inequality as the consequences of liberalization, deregulation, and deinstitutionalization ripple out to labor markets (Belman and Belzer 1997). Markets may overwhelm institutions (Belzer 2000), and when the changing balance between markets and institutions destabilizes, markets may become the dominant institution governing social and economic relations until the imbalance provokes a socially and politically destabilizing backlash from workers (Taylor, Chang Kai, and Li Qi 2003), a phenomenon that appears to concern the Chinese government. Inequality in China has now reached the level of that in the United States, which is far greater than that of most industrialized countries.

Starting with the three objectives of the employment relationship – efficiency, equity, and voice (Budd 2004) – we assess the effectiveness of existing and developing Chinese labor institutions. We test the extent to which the industrial relations system is performing effectively by looking at the distribution of employment outcomes such as wages, benefits, and working conditions. We look across several sectors in the Chinese economy as well as several forms and structures of ownership, since outcomes appear to vary across these dimensions much the same as they vary by industry, market, and firm size elsewhere in market-driven economies. We also look at specific experiments in industrial relations that currently are underway in China, and which constitute concrete efforts – inside or outside the confines of the current law – to attempt to close the equity gap. These innovations represent strategic choices on the part of relatively local unions to address these problems as they emerge in their areas. We interpret Chinese industrial relations using the three-tier model proposed by Kochan, Katz, and McKersie (Kochan and Katz 1988; Kochan, Katz, and McKersie 1986; Kochan et al. 2008).

We have developed some skepticism, however, about whether the concept of voice as understood by the International Labor Organization (ILO) (Budd 2004) should have as much weight as equity and efficiency in assessing the balance essential for an effective east Asian labor-management relationship. The voice concept that westerners maintain is one steeped in the tradition of power conflicts and disputation (Nisbett 2003), something for which the tradition in China is controversial and perhaps even weak. The 2,500-year-old philosophy of Daoism (道教; transliterated also as “Taoism”), for example, considers disputation to be a waste of energy that promotes disharmony, while Confucian tradition, of similar age and perhaps even more pervasive reach, promotes the kind of respect for authority that discourages disputes (Mair 1998).

Although we do not shrink from embracing the ILO's pluralist notion of voice, we simply are not sure whether we should consider it as important in China as the very measurable outcome of equity. On that score, China is not doing well and being tied with the United States for inequality is not an enviable situation (Central Intelligence Agency 2007b, 2007a); the United States leads the industrial world on that dimension.

In addition, we think the State plays a stronger role, in Asia in general and China in particular, than the prevailing industrial relations models provide. In an Asian corporatist state such as China, the State is not just an honest broker but also an active agent with a substantial property interest. The Chinese State continues to act as a major investor, even as privatization of government-owned firms, privately owned firms, and the market development process proceeds unabated. Industrial relations models that work in China must therefore account for the government's equity interest as well as its regulatory functions. Although the State does not have a direct investment in the small private firms that are the focus of this study, one could argue that given the competitive implications inherent in the new product and labor markets generated by the marketization process, the actions of these private-sector employers will have equity implications for state-owned and state-invested firms at many levels.

In addition, the lines that separate the government, the union, the company management, and the Chinese Communist Party (CCP) are blurred (Gallagher 2005). Party officials may represent the interests of the government, the union, or management, and the union itself is part of the government. In this very strong corporatist state environment, the question for industrial relations may be less a question of formal voice mechanisms and more whether the workers generally are better off because of the influence of the Union and, by inference, the State. In sum, the Chinese State is not merely the mediator between business and labor interests, but it is an active stakeholder as well as a property-holder.

For these reasons and for this analysis, we propose to modify the well-known "three-tier model" to include three parties, rather than the usual two, within the box that incorporates the strategic, functional, and workplace loci of activity (Kochan et al. 2008). In the western liberal pluralist tradition, the State plays a relatively weak and outsider role as a regulator and primarily acts as an external environmental influence. The Union in China is a paradoxical institution; it plays a complex role as a major functional activity of the CCP as well as a governmental

institution in a structure in which the State itself may have a property interest. In China, while the State operates in the industrial relations environment and plays an outsider role, it also acts as an active participant at all three levels and therefore must be included as an active participant.

Finally, we assess the value systems operating at the core of the Chinese industrial relations system. While Budd and others successfully introduce business ethics into industrial relations (Budd 2004; Bowie 2005; Wheeler 2005; Budd and Scoville 2005; Kaufman 2005), the ethical systems generally are western (Scoville, Lawler, and Xiang Yi 2005). We seek to understand Chinese industrial relations from a Chinese – and particularly Confucian and Mohist – philosophical and ethical perspective (Lin Mousheng 1942; de Bary and Tu Weiming 1997; Zhang Dainian 2002).

This perspective requires the society to behave and the government to rule according to “heaven’s will” (Mozi (墨子) 2006), acting in an ethical manner that rises above property stakeholding and rules on behalf of the common good. Individual welfare depends on the state (and the emperor) acting with righteousness and not merely on behalf of what we today might call “special interests.” While problems of corruption pervade Chinese society (Sun Yan 2004), it becomes exceptionally important for a strong state to “rule from heaven” because historically, that has been the source of the emperor’s legitimacy (Fairbank 1978). Further, not only did Mèngzǐ (a.k.a. Mèng Zǐ, Meng Tzu, and Mencius), a Confucian moral scholar, emphasize the importance of ruling from heaven, he argued that the “people were the litmus test for the ‘awesome mandate to rule from Heaven.’” (Junjie Huang 2001)¹. The active role of the State therefore is qualitatively different from the western standard, which requires the State merely to act as an honest broker between private interests. In China, the State fundamentally has a different relationship to its citizens.

Western political theory, at least, would suggest that a lack of worker voice would contribute to growing economic inequality in a pluralist, competitive market environment, and that growing inequality will contribute to social and political instability. Others, notably Taylor, Chang and Li (2003; last chapter), also point out that Chinese have revolted repeatedly and frequently throughout Chinese history against unrequited demands for equity (as implied by the

¹ “Heaven sees with the eyes of its people. Heaven hears with the ears of its people.”

perspective of Mèngzǐ above), so it seems fair to hypothesize that a lack of equity and voice in China today will eventually lead to instability. We therefore propose to test the effectiveness of the Chinese industrial relations system against this theory.

The shift from institutions to markets

Much has been said about the decline of the state-owned firm (Warner 2004; Yi Zhang and Xi Li 2006), but our research suggests that the state-owned firm is alive and well, and prospering greatly during the current and ongoing boom (Saxton 2005)², even as its relative share of the economy has declined. It generally is true that industrial relations structures and strategies mirror the structure and strategy of any nation's firms, and this is especially important in China because the state has a property-holding stake in a substantial number of firms. While in western countries – especially in corporatist political economies – the state has a stake in industrial relations outcomes, the web of government ownership throughout the firm and its subsidiaries is so overwhelming in China that industrial relations models built on the assumption that government plays a mediating role between employers and employees (and their unions) will fail to capture the important effects of state action. This has been especially true insofar as the All China Federation of Trade Unions (ACFTU), as well as its member unions at all levels, has acted as an arm of the State and the Party.

Private-sector firms, however, present special challenges to the Chinese government. With legal and political institutions still premised on state-control of enterprises, and on a strong state, privately held firms tend to escape the normal institutional framework that provides legal oversight. In this environment, mechanisms that ensure that employers conform to legal requirements are absent, and individuals must seek enforcement or redress by filing individual arbitration cases and court cases. This process is intimidating and expensive, and the individual nature of the complaint creates an overwhelming strain on the institutions.

Furthermore, much of the theory that defines the role of the unions was based on public ownership of firms. Perhaps the clearest example is the earliest modern labor law, the law governing “Industrial Enterprises Owned by the Whole People”, which provided for the Workers’ Representative Assembly (Standing Committee of the National People’s Congress

² The Fortune Global 500 in 2006 listed nineteen of China's state-owned enterprises (<http://money.cnn.com/magazines/fortune/global500/2006/countries/C.html>).

1988). Although the law is applicable only to state-owned firms, it provides what theoretically would be the highest order of popular sovereignty over the workplace, similar conceptually to the works councils of Europe but more advisory in practice. It provides no guidance, unfortunately, for the effort to provide representation for individual workers who find themselves working under individual contracts that they may undercut national legal standards, or working under no legal contract at all.

The fundamental value governing the mixed-motive unionized relationship in China, the notion that the company and the union “have the same fate” and the union and the members have the “same heart”,³ becomes stretched to the breaking point when the firm is privately held and hires migrant workers under dubious circumstances, frequently not paying them at all for the work they perform for months at a time (2005). Although the union represents the interests of the workers, in China it also must incorporate the interests of the firm as well. In firms that abuse or fail to pay their workers, however, or that fail to sign legal employment contracts with them, the union and the company cannot be of the same heart. These kinds of firms are the target of this new labor contract law and some of the innovations in labor relations in China designed to take concrete steps to use the unions to gain greater equity for workers.

While China’s “market economy with socialist character” has resulted in China’s current status as a “global factory” (2002), China’s success has caught the attention of the world. Not only has China become a national “factory” that produces labor-intensive products, but it also has gradually entered quality production markets that rely on intensive skills and capital in the production process. Along with the development of the market economy, steady growth also has created an estimated 200 million consumers⁴. For almost two decades, China’s economic growth rate has averaged 9.8% annually (see Table 1) and this pace of growth continues. Market reforms have gained momentum and it appears that there is no way to return back to the old days, characterized by a strict, rigid, state-dominated planned economy. At the same time, rough spots still lie ahead.

This rapid development has brought with it new challenges. China must quickly create the

³ Interview with General Secretary of Big Auto on November 20, 2006.

⁴ A popular saying in China today is that market reform has cultivated a middle and rich class of 200 million people. Notwithstanding the growing middle class, 1,100 million people in China still live in poverty. This disparity in wealth suggests that China has two very distinguished consumer markets as well as two distinct labor markets.

kind of elaborate institutional framework that developed nations have built over hundreds of years. Developed nations know that their labor relations systems should balance efficiency, equity, and voice (Budd 2004), channeling the energies and activities of their entrepreneurial leaders while maintaining a balance between the countervailing rights and responsibilities of business leaders and employees. Developing nations like China need to pay special attention to these issues because the patterns of relationship between workers and managers are particularly new and fragile; class conflict can destabilize the country and damage the development process.

表一、中国实质GDP年均成长率 1960-2005
Table 1. China's Average Annual Real GDP Growth Rates, 1960-2005

期间	年均成长率
Period	Average Annual Growth Rate
1960-1978 (改革开放前 pre-reform)	5.3
1979-2004 (改革开放后 post-reform)	9.3
1990	3.8
1991	9.3
1992	14.2
1993	14.0
1994	13.1
1995	10.9
1996	10.0
1997	9.3
1998	7.8
1999	7.6
2000	8.4
2001	8.3
2002	9.1
2003	10.0
2004	10.1
2005	9.9
2006 (first quarter)	10.2
Average since 1990	9.8

Source: (Morrison 2006)

The rapid pace of economic, institutional, and technological change has its own destabilizing dynamic and may constitute its own threat. Labor disputes are increasing in frequency and intensity, and the existing labor dispute resolution mechanism, arbitration, cannot keep up with this growing unrest (Table 2).

表二、中国劳工参与劳资争议统计 1994-2003

Table 2: Workers Involved in Labor Disputes in China 1994—2003

年	参与集体争议劳工总数	年均成长率	参与争议劳工总数	年均成长率	参与集体争议劳工总数之比例
Year	Collective Disputes (workers) ⁵	Annual Growth Rate	All Disputes (workers)	Annual Growth Rate	Worker involvement in collective disputes (percent of all disputes)
1994	52,637		77,794		67.7%
1995	77,340	46.9%	122,512	57.5%	63.1%
1996	92,203	19.2%	189,120	54.4%	48.8%
1997	132,647	43.9%	221,115	16.9%	60.0%
1998	251,268	89.4%	358,531	62.1%	70.1%
1999	319,241	27.1%	473,957	32.2%	67.4%
2000	259,445	-18.7%	422,617	-10.8%	61.4%
2001	287,000	10.6%	467,000	10.5%	61.5%
2002	374,956	30.6%	608,396	30.3%	61.6%
2003	515,000	37.3%	800,000	31.5%	64.4%

资料来源Source:

- 劳动及社会保障年报 *Lau Dong Ji She Hui Bao Zhnag Nien Bao Labor and Social Security Annual Report* (2003)

The causes of labor disputes, however, are not terribly mysterious. In China, as in developed countries, most labor disputes revolve around wages and benefits, labor protection, and change or termination of the labor contract (discharges and other post-hoc alterations). These are rather ordinary but salient issues in a country in which inequality has increased dramatically as the middle and wealthy urban classes have benefited from development, while workers and peasants have fallen behind (Table 3).

⁵ Collective disputes are legal disputes involving three or more workers. They are filed formally with the local Ministry of Labor and Social Security. They are not strikes, which would be recorded elsewhere as “collective events.”

表三、劳动争议发生原因 1997-2003

Table 3: Causes for Labor Disputes 1997—2003

年度 Year	争议案件总数 Total Cases	劳动报酬 保险福利 (件) Wage, Insurance, Benefit	所占 比例 (%)	劳动保护 (件) Labor Protection	所占 比例 (%)	变更解除终 止劳动合同 (件) Change or termination of contract	所占 比例 (%)	其它案 件 (件) Other causes	所占 比例 (%)
1997	71,524	41,145	57.5	2,256	3.2	18,673	26.1	9,450	13.2
1998	93,649	51,602	55.1	6,931	7.4	20,661	22.1	14,455	15.4
1999	120,191	73,522	61.2	7,820	6.5	29,608	24.6	9,241	7.7
2000	135,206	73,021	54.0	13,008	9.6	35,794	26.5	13,383	9.9

资料来源 Source :

1998—2003年《中国劳动统计年鉴 *Zhong Guo Lau Dong Tong Ji Nien Jian, (China Labor Statistics Annual Bulletin)*》

《2003 劳动争议案件持续增长 “Labor Disputes Continue Growing.”》in 中国劳动及社会保障报 *Lau Dong Ji She Hui Bao Zhnag , China Labor and Social Security News*, March 9, 2004

《2004年3月9日》。(2004)

Finally, the industrial relations dispute resolution mechanism on which China has relied with some success in past years appears to be failing. A system created more than fifteen years ago as China was just beginning to develop a labor market as well as a focus on the foreign direct investment that would propel its growth (Gallagher 2002), labor arbitration was a kind of planning approach to market development and reflected an internal struggle within the Communist Party over the balance between market reforms and central planning (Johnston 2002). As Table 4 shows, disputes subjected to the existing mediation and arbitration systems have increased, but the system has become less, rather than more efficient. A rapidly growing number of disputes fail mediation and go to arbitration, burdening the system. While workers win a majority of these formal disputes, those who fail increasingly turn to the courts. The burden on both systems has increased while a system of efficient industrial dispute resolution has been elusive (Gallagher and Dong BaoHua 2008).

表四、1997—2003年全国劳动争议案件处理方式情况
Table 4. Methods of Labor Dispute Resolution 1997-2003

年度 Year	结案总数 (件) Total No. of Cases Resolved	调解结案 Mediation		裁决结案 Arbitration		其它方式 Other Methods	
		数量 (件) Number of Cases	所占比 例 (%)	数量 (件) Number of Cases	所占比 例 (%)	数量 (件) Number of Cases	所占比 例 (%)
1997	70,792	32,793	46.3	15,060	21.3	22,939	32.4
1998	92,288	31,483	34.1	25,389	27.5	35,155	38.1
1999	121,289	39,550	32.6	34,712	28.6	47,027	38.8
2000	130,688	41,877	32.0	54,142	41.4	34,669	26.6
2001	150,279	42,933	28.6	72,250	48.1	35,096	23.4
2002	178,744	50,925	28.5	77,340	43.3	50,479	28.2
2003	224,000	68,000	30.3	96,000	42.9	60,000	26.8

资料来源 Source:

- 1998—2003年《中国劳动统计年鉴 *Zhong Guo Lau Dong Tong Ji Nien Jian*, (China Labor Statistics Annual Bulletin)》
- 2003'劳动争议案件持续增长“Labor Disputes Continue Growing.” In 中国劳动及社会保障报 *Lau Dong Ji She Hui Bao Zhnag Bao*, (China Labor and Social Security News) 2004年3月9日。

Because almost all enterprises had been owned by the workers' state, and since the government considers it inappropriate and illegal for workers to organize unions for representation independent of the Communist Party that leads the workers' state, China only recently has had a reason to create collective bargaining institutions. As the initial post-Mao reforms began, the Party leadership initially broke in into two factions, one pro-market and one pro-planning. While the original free-market group collapsed with the decline of Hu Yaobang in 1987 (particularly when Deng Xiaoping apparently switched sides, alarmed at the unrest stimulated by the process), the planners also failed to manage growth with state planning and by 1992-1993, the contest to set Chinese economic policy shifted back to "state marketeers," who wanted to use competition but keep most of the ownership in the hands of the State, and "pragmatic planners", who tended to retain more confidence in planning than in markets (Johnston 2002).

For half a decade, these two factions contested for power, with statist free-market forces and pragmatic planners often issuing conflicting regulations. "The major agencies allied with the free marketeer constellation were the State Commission for Restructuring the Economic Systems, the State Economic and Trade Commission.... The major bureaucratic allies of the central planners were the State Planning Commission and the Ministry of Finance. The major ally of the statist marketeers is the State Economic and Trade Commission, whereas the pragmatic planners are allied mainly with the Ministry of Labor" (Johnston 2002). The conflict between the statist marketeers and the pragmatic planners took shape in the bureaucratic arena as a conflict between the State Economic and Trade Commission and the Ministry of Labor (Johnston 2002; Taylor, Chang Kai, and Li Qi 2003)

The Labor Law of 1994 (Standing Committee of the National People's Congress 1994), which took the concept of individual labor contracts developed back in the 1980s, passed as part of the pragmatic planners effort' to regain power. The Ministry of Labor (now known as the Ministry of Labor and Social Security [MOLSS]⁶) was more closely tied to the planners, and tended to prefer centralized institutions like arbitration to decentralized institutions like unions might be. For these and other reasons, the 1994 Labor Law was aimed at regulating labor relations in market-driven but state-owned businesses (Gallagher and Dong BaoHua 2008). While the All China Federation of Trade Unions (ACFTU) was part of this coalition, it seems to us that the MOL had the stronger hand because the institutions they established favored the labor arbitration process that they led. The two factions, however, were growing closer together.

In the late 1990s, a strong effort by the statist free-marketers to regain power over the planners ultimately led to a conversion of forces and a conversion of perspectives. As China's growth picked up steam and market pressure became more pervasive, the need to restructure state-owned firms became salient. Market forces now were becoming fully engaged and the growth in the privately owned sector began to put sufficient pressure on state-owned firms that they were forced to restructure. This restructuring, combined with the growing private sector for which neither the law creating workers' congresses for the state-owned sector (Standing Committee of the National People's Congress 1988) nor the Labor Law of 1994 (Standing

⁶ The MoLSS recently merged with the Ministry of Personnel, and a new Ministry of Human Resource and Social Security (MHRSS) was created in March 2008.

Committee of the National People's Congress 2004) were well suited, prompted both increasing worker unrest and the dramatic increase in arbitration cases documented in Table 2.

This introduction of market reforms, as well as entry into the World Trade Organization (WTO), has made it necessary for China to reconsider this issue. With WTO pressures to deregulate its industries and remove State protections, Chinese labor relations have experienced new stresses. As State-owned industries have given way to new domestic entrepreneurialism as well as to substantial investment by foreign nationals – including those representing trans-national corporations as well as overseas Chinese business interests as well as Taiwanese business investors – many Chinese workers have become more restive and have begun to exercise newly found freedom to associate with each other to advance their specific interests. The social contract between management, the government, and labor has become less stable, and new relationships must be created.

New Institutions to Deal with Markets?

Concern has been growing that the existing body of law has not been adequate to balance efficiency and equity in the industrial relations system. Inequality is growing in China and the growth of the market model has outstripped the ability of the existing institutions to enforce current law and maintain the balance necessary for a “harmonious society.” Before the 2007 passage of the Labor Contract Law (Barboza 2006; Jiang Junlu 2007), many companies had exploited a loophole in the labor law provisions for individual contracts that allowed them to hire workers as individual contractors with or without any employment relationship to them. Under this construct, employers have begun using recruiting or “dispatching” firms that act as labor contractors, “selling” these workers to employers who sign individual commercial contracts rather than labor contracts; these workers, called “dispatching workers,” have neither an employment relationship with the firm that dispatched them nor an employment relationship with the firm that employed their labor. The use of dispatched workers has increased substantially in recent years; indeed, in one major city, the use of dispatching workers rose from 20% to 40% in just the years from 2002-2004.⁷

The Labor Contract Law that passed the National Peoples Congress in June 2007 became

⁷ Confidential interview with top-ranking legal expert and labor union official in this city, September 2, 2006.

effective January 1, 2008. While it does not actually provide for true collective bargaining – and the existing Collective Agreement Regulation (implemented in 2004) does not provide for western-style collective bargaining – it does provide a framework on which the Ministry of Labor and Social Security (MoLSS) could base an opinion issued on August 17th 2006, in a joint statement with the ACFTU and China Enterprise Confederation/China Enterprise Directors Association (CEC/CEDA, the employers’ organization), that promoted regional collective contract negotiation. In areas such as economic development zones, communities, streets, or neighborhoods around which gather small and medium sized private firms, the MoLSS encouraged unions and employers to negotiate regional collective agreements. This is neither a modification of the Labor Union Law nor an invitation for adversarial labor-management bargaining, but it did expand the collective agreement regulation (Brown 2006).

While “collective bargaining” clearly is different in China than it is in the west, by the end of 2003 there were 672,900 collective agreements in total, covering 1,214,000 firms and 103,500,000 employees. Collective bargaining, conducted by affiliates of the All China Federation of Trade Unions (ACFTU), has resulted in wage agreements signed by 293,100 firms, covering 35,790,000 employees. Collective agreements have been reached on a regional and industrial basis: 135,400 contracts have been negotiated at a regional and industrial level, covering 676,700 firms and 36,416,000 employees. As of the end of 2003, seventeen provinces had established related regional laws and regulations regarding collective bargaining.⁸ The trend to engage in collective bargaining has shifted from just those at traditional state-owned firms to non-state-owned firms and restructured enterprises (those that formerly were state-owned but now have mixed state and private ownership).

Collective contracts are rather legalistic, in that they codify the national labor law within the contract in much the same way as clauses that introduce U.S. collective bargaining contracts state that nothing in the contract should be construed as violating U.S. labor and employment law, and that any such clauses shall be considered null and void. They also are collective contracts only insofar as they collect the terms and conditions of individual worker contracts and place them in one document. This may seem insignificant, but in the Chinese Continental legal system,

⁸ Information on the number of collective agreements was provided in a briefing by the Collective Agreement Department of the ACFTU in September 2005.

the act of collecting written contracts together may have far-reaching implications (Brown 2006).

The Labor Contract Law: A New Era or Just More Duct Tape?

With change in the air, the MoLSS announced a new legislation proposal in March 2006 – the Labor Contract Law – and sought public opinion and comment for fine-tuning the law. The proposed labor contract law was designed not only to regulate the increasingly liberal labor market, but also may have been designed to strengthen the trade unions by delegating to them the responsibility for acting as workers’ advocates in the enforcement of Labor Law as well as a mandate for collective bargaining (Barboza 2006). This proposed law, however, kicked up a global dust-up. The American Chamber of Commerce wrote a series of comments on the law that sought to alarm Chinese officials; they claimed that these provisions would stifle the Chinese economy by discouraging foreign direct investment. They were concerned about several provisions that they believed would result in a return to lifetime employment as well as empower unions affiliated with the ACFTU to go far beyond the mediating human resource function they previously had (American Chamber of Commerce in Shanghai (AmCham) 2006; US China Business Council 2006, 2007). Labor supporters in the United States and other developed western countries responded differently than they had in the past, denouncing the comments of global business interests as self-serving, and expressing support for both Chinese lawmakers and the ACFTU (Global Labor Strategies 2006, 2007; International Textile Garment and Leather Workers’ Federation 2006; Kahn and Barboza 2007; Landsberg 2007). The debate was intense also within China, with leading labor law experts taking opposing views.

The growth of market relations over the last dozen years has exposed weaknesses in this law and the need for substantial modifications, as many new forms of employment – such as dispatching workers with an unclear relationship to existing institutions – had become common throughout the country. The Labor Contract Law supercedes the old individual contract provisions in the Labor Law, although it does so by strengthening, rather than weakening, reliance on individual contracts, while adding a limited responsibility for collective contract negotiation to the ACFTU’s portfolio. While it does not seem that the government is ready yet to cut the union loose to enforce Labor Law directly, by giving the union the responsibility of getting individual contracts on paper (something that the Labor Law already requires but which often does not happen, particularly in southern China), employees and employers will have to set

out terms and conditions of employment – rights and obligations – that comply with the law and can be enforced by the arbitration and court systems much more readily. The ultimate purpose of this change in the legal framework may be to put the brakes on the race to the bottom resulting from liberalized employment arrangements. The CCP may have concluded that the growing anarchy in labor markets has given too much power to employers and the government needs to engage the ACFTU in this effort to stop the growing inequality of outcomes. Indeed, one section regulates dispatched workers specifically.

The current resolution of this debate is the result of an internal debate within the ACFTU. The ACFTU legal department argued that from the legalistic point view, collective bargaining regulation should be separated from individual labor contracts. The ACFTU collective bargaining department has, on the other hand, the responsibility for advancing collective bargaining in union settings. The ACFTU leadership decided to add collective contract clauses into this new Labor Contract Law for pragmatic reasons. Union strength in collective bargaining is still weak in China today, and neither labor nor management can evaluate the relative success of collective bargaining so far. In addition, the Labor Dispute Resolution Act has not passed either, and decisions that must be made relative to this act depend in part on the success of the Labor Contract Law, so evaluation of its effectiveness has not begun.⁹ New labor laws, such as the Labor Dispute Resolution Act,¹⁰ therefore cannot be passed at least for the next few years, so the Western way of making collective bargaining work is not possible, at least under current conditions. The ACFTU's decision to add a collective bargaining clause into the new law, therefore, is a pragmatic way to give the union more power to initiate collective bargaining in dealing with market practices.

In sum, China's concept of collective bargaining system is quite different from that in the rest of the world, especially in developed western countries. In practice, it is not based on voluntary "freedom of association" but neither does it have a universal reach as a mere transmission belt. The ACFTU is an important element of the State and the Chairman of the

⁹ Personal conversation with Professor Liu Cheng, a professor of law at Shanghai Normal University and a government labor law advisor, on December 31, 2006.

¹⁰ Even though a Labor Dispute Mediation and Arbitration Act passed on Dec. 29, 2007, to be promulgated on May 1, 2008, the major function is to settle individual contract disputes, not the union-led collective disputes. The labor union role in this act is to serve a third-party role as the mediator; the union can also represent individual workers, or a group of workers, as the second party in the mediation process.

ACFTU also serves as vice-chairman of the National People's Congress. It appears to us that China intends to ensure that its trade union movement is not "liberalized to death," as has been the case with the reform of institutions governing a similarly state-oriented trade union movement in Taiwan. In the case of Taiwan, liberalization allowed the development of many trade union centers and this approach to liberalization may have contributed to the dramatic weakening of Taiwan's trade unions after the introduction of democracy (Pan Shih-Wei 1998, 2006). As suggested elsewhere in this paper, strong states are common in Asia and may play a critical role in China, as it currently does in Taiwan.

Experiments and Innovations in Union Activity

Chinese labor unions have been attempting to deal with growing problem of inequality and inequity that the market economy has produced. It may be fair to hypothesize that they really did not know what to expect when they shifted from planning to markets, but the steady drumbeat of support for markets coming from western economists and western-trained Chinese economists certainly did not prepare them for what they experienced. The stories from the west mostly have been glowing accounts of how markets work to make everyone prosperous. While markets have been successful in the west and while globalization may have produced higher average wealth, the failure to distinguish between overall wealth and the distribution of that wealth has not prepared the Chinese for the exploding inequality they experienced.

The earliest example of a migrant peasants union seems to be in Nanjing (Jingsu Province) in 2000. This approach developed because the local union leadership recognized that migrant peasant workers were not joining the enterprise unions because they had done at their home address (Chinese consider their home towns to be the place where they or their family, and their ancestors, originated). They began to organize them into "community unions" and by June 2000 they had spread the concept throughout the Nanjing area. Wuhan (Hubei Province) also recognized this problem and followed quickly in Nanjing's footsteps. Shenyang followed by 2001 and the concept was taken up by the union in Beijing as a means for organizing construction workers (XinYiyang 2003).

In Hubei Province, by 2003 the scope of the problem had become clear and on November 1, the provincial government announced "the implementation of 'People's Republic of China

Unions Law' in Hubei Province", which was a Hubei Province supplement to the Trade Union Law of 1992, as approved by the Hubei Province People's Congress in 1993 and amended in 2002. This law, one of the many precursors to the Labor Contract Law, strengthened the union's hand in dealing with the growing disorganization and even fragmentation of the workforce – especially with the lack of organization of the *nongmingong*, which had led to their increased exploitation. The new provincial law gave the union the authority to act as workers' representatives, which was a major policy shift that gave the unions the right to represent, the right to advocate on behalf of workers, and the right to sue on their behalf if necessary. Another important feature of the Hubei Model was that it prohibited bosses and their family from serving as union officials, it shifted fee collection responsibility from the union to the tax bureau, and it provided security from discharge to union presidents (XinYiyang 2003).

Another key innovation, or experiment, is the development of "community unions." These are union-type associations that unions establish at the street or block level within city districts. They have been implemented by volunteers who call themselves non-governmental organizations (NGOs) and which concentrate on helping out migrant workers with legal problems (helping with labor law and other legal issues), financial problems, and dealing with other personal problems. They almost might be considered grass-roots social work operations in some cases (2004) where the original initiative comes from individuals, and may be considered unions in others in which a union has taken the lead (Head Union of Chaoyang District 2007; XinYiyang 2003; Chen Xiaoyan and Zhang Shibin 2007).

Finally, in a variant on the community union model, the unions in Changchun, Jilin Province, began a program in 2006 to professionalize their community union leaders. Recognizing that the community union leader's job is difficult and requires mature union officials who have experience and sufficient education to understand the law and organizational concepts to be successful (Li Tianding and Chen Fuming 2007; Lü Lei, Li Jiangang, and Sang We 2007; 2007), the union in Changchun set out to hire union presidents and get them out on the street to establish unions across a range of small private enterprises, mostly in the restaurant industry, and employing migrant peasant workers.

An Experiment to Professionalize Union Presidents in Changchun

Some degree of uniformity to labor standards has begun to emerge, beginning to change the facts on the ground. Although wages have improved improvements seems to be quite uneven. Brakes have been placed on overtime work at the discretion of employers, more guarantees have backed up the system of employee leave and break time, social insurance and pension contributions by the employer have been enhanced, and workers have seen some improvement in working conditions and fringe benefits.¹¹ While none of this is meant to claim that China's industrial relations problems – much less its problems with freedom of speech and association – have been solved, they do represent concrete steps toward the development of a functioning industrial relations system appropriate for a market economy.

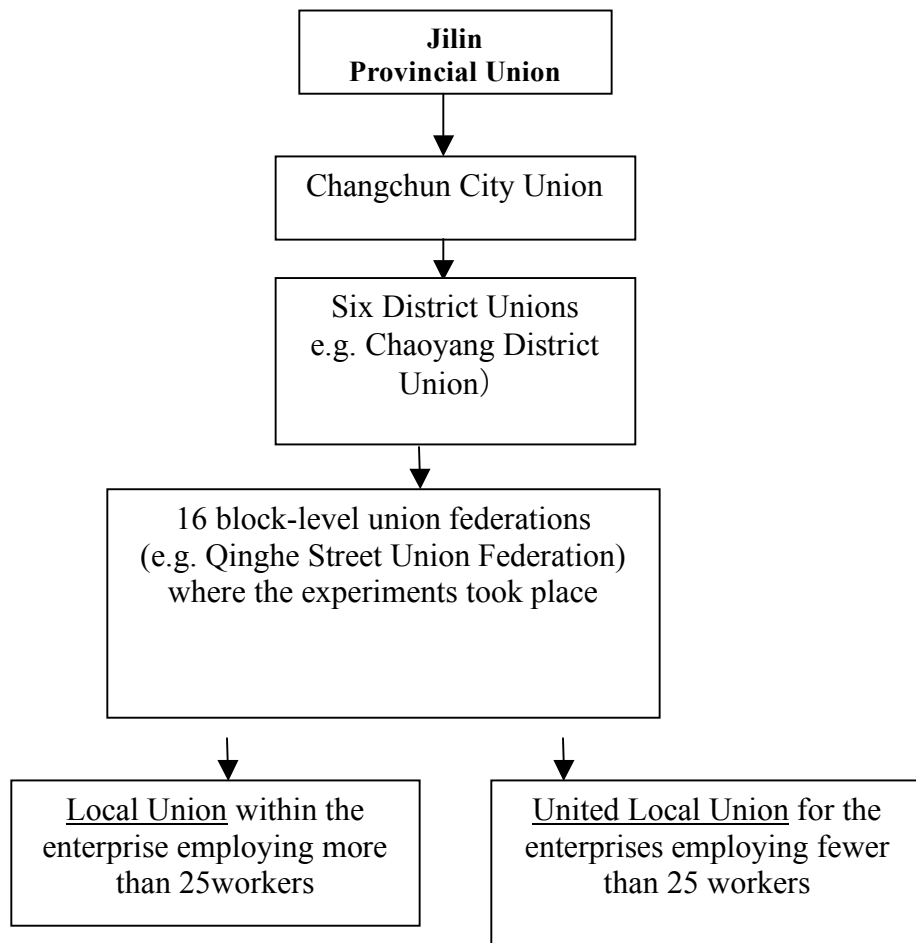
It also is important to understand that the Chinese make changes one small step at a time. Rather than begin by passing a law and then determining whether the law achieved the intended result, as we do ideally in the west, the Chinese tend to experiment with practices that address perceived problems and use these experiments to test the practices that they later formalize in the law. This use of experiments is particularly important for the development of labor law in particular and industrial relations generally in China (Gallagher 2005). As suggested above, this is consistent with an inductive approach to the world that is very different than the deductive one that westerners use (Nisbett 2003).

In July of 2005, Chaoyang District in Changchun, in the northeast province of Jilin, began an experiment to professionalize union presidents for small private enterprises, with the exploration and subsequent promotion of this concept by district Union Chairman Wang. The project began for the first time in Qinghe Street. Qinghe Street, which includes six communities, is a famous restaurant business district in Changchun employing tens of thousands of *nongmingong*, or peasant migrant workers. *Nongmingong* are among the most exploited workers in China because they tend to have limited literacy and extremely limited urban skills, have a very limited understanding of their rights, and work in very low paid service sector and construction jobs.

¹¹ “Conditions on Collective Bargaining in China.” Briefing paper provided to the authors during their visit with the Director-General of the Collective Contracts Department of the ACFTU on September 2, 2005. In Chinese.

The union structure in Changchun also plays an important role. While the ACFTU and employees of member unions are government employees, the hierarchy to which they report is somewhat different from that of the rest of the government, creating a parallel chain-of-command that may represent a countervailing power structure (Taylor, Chang Kai, and Li Qi 2003). At the province level, the union hierarchy extends down to the Basic Local Union for firms employing 25 or more workers and the United Local Union for firms employing fewer than 25 workers.

Figure 1. Structure of Jilin and Chaoyang Unions



According to the 2001 Amendment to the Trade Union Law, originally passed in 1992, the following options are available to the union. First, higher level union can establish a local union commission; second, two or more firms can be united to establish a local union commission; and third, one “organizer” can be elected from among the employees to organize the workers to

participate in union activities (Fifth Session of the Seventh National People's Congress and 24th Meeting of the Standing Committee of the Ninth National People's Congress 2004). The law has no specific guidance regarding whether the union can hire professionals as presidents.

The Changchun City union hired six persons as union president candidates from among 150 people who applied as the result of a local news story. Once hired, their job was to organize enterprises and workers in a sector of firms employing fewer than 25 workers. Their employment was provisional for two months after which they would be evaluated by the district level union, followed by an election procedure held by the Workers' Congress in that District. The six selected union presidents were responsible for all the union organizing and worker protection work in Qinghe Street. During their first year, from July 2005 to July 2006, these six union presidents organized 30,000 workers and their organizing efforts successfully recovered ¥100,000 in unpaid salaries.

In August of 2006, the provincial union recognized the success of the Qinghe experiment and decided to implement the same practice to the other streets of Chaoyang District. During 2006, 16 persons were recruited and deployed to eight streets and one economic development zone to organize community unions. They successfully organized unions throughout that area and were elected as presidents of Private Enterprise Union Confederations, in charge of union work for 16 blocks in Chaoyang District in which more than 2,000 small private enterprises are located.

In April of 2007, the Jilin provincial union decided to apply the Chaoyang practice to the whole province. Implementing the plan made by the provincial union in 2007, the medium-sized cities in the province have recruited 300 persons as professional union president candidates for private enterprises, and in 2008 and 2009, the union plans to recruit 150 more persons in small cities and towns. On April 10, the ACFTU held a conference in Changchun to promote the Chaoyang Model throughout the whole nation.

What is new about this model and what problem was it created to resolve?

Union presidents had never before been hired and paid by the union outside the control of the firm. In the traditional system, union presidents develop inside the enterprise and are paid as employees by the work unit (*danwei*) for their work for the enterprise and for their union activities. In state-owned firms, the pay for the position of full-time president is equal to that of a

vice-director of the firm. In privately owned firms, presidents usually serve on a part time basis, usually not receiving additional pay for their positions as presidents¹². According to the Trade Union Law, in firms or work units employing more than 200 persons, full time presidents or the other union clerks can be constituted and will be paid by the firm or the work unit (Fifth Session of the Seventh National People's Congress and 24th Meeting of the Standing Committee of the Ninth National People's Congress 2004). In these cases, presidents frequently are appointed by the boss or only take the union job as a part-time one in private enterprises. Because they are employed by the boss and to a substantial extent depend on the boss to make a living, it is very difficult for them to protect the workers' rights in the private enterprises. Moreover, it is very difficult to organize the workers into unions in the large number of small private enterprises that are increasing very rapidly with the development of privately owned enterprises. The union created this new model, which is somewhat similar to a western union hiring organizers, to try to solve these problems; these organizers, however, become like professional business agents in a western sense and are responsible for administering the labor-management relationship after they have completed their organizing task but do so subject to election by their constituents. The union confederation that unites all the private enterprises in a certain block is created by the upper level union organization, and the president of it is recruited publicly and selected strictly based on the judgment of the union that the president is competent and independent from any private enterprise.

What political arrangements govern the system?

The Communist Party and the government support this new initiative because the ACFTU is led by the Party. In order to execute the new model properly and get the support of the Party, union organizing is combined with the construction of the local Party Committee in the private enterprises. Obviously this allows the CCP, which has become increasingly separated from the workers and the all-important *danwei* (Frazier 2002), to reconstruct its relationship with regular people as they move from the state-owned enterprises to privately owned ones.

A good example came from a meeting held by President Gao on Oct. 24, 2007. The President of the Branch Union in a privately owned restaurant, who also serves as the Secretary

¹² Interview with official of the Federation of Labor Union of Jilin Province.

of the Party Division there, helped outstanding employees of the restaurant to get medical insurance and social security. According to him, the activities of the union and Communist Party are making this private enterprise's organizational atmosphere very good, and workers like to work hard because they are treated well by the enterprise and because they have developed a sense of belonging to the enterprise.

Public recruitment is organized by the District Level of the Union (e.g. Chaoyang District) and the presidents are deployed to the street or block level union confederation as president candidates; their employment as union presidents becomes formalized only after their evaluation by the union and election by workers. Their salary is paid by three parties – the provincial ACFTU, the Medium and Small Enterprises Bureau of Jilin Province, and city-level ACFTU. Benefits are paid by the District-level ACFTU. The Street organization provides an office and bears the usual work expenses. Pay increases are regular but compensation is quite low.

These Community Union presidents are evaluated according to the administrative measures made by the provincial union. Presidents who implement their tasks and meet their organizing and representational targets, while serving both the needs of the workers and the development needs of the enterprises, receive public recognition and bonus compensation. Presidents who do not perform well and achieve less than a 60% satisfaction rate from the union members¹³ will be dismissed.

The management of the system is under the direction of the Provincial and City Union, is implemented and organized by the District-level Union, and is administered directly by the Street-level Union. The Private Enterprise Union Confederations are under the dual direction of the District Union and the Street Party Committee. The tasks of the Presidents of Confederations are to (1) lead and direct all the unions founded in the private enterprises covered by the Confederation, including union branches in enterprises of more than 25 employees and union groups in enterprises of fewer than 25 employees; (2) be responsible for union organizing in the enterprises in which no union has been set up; (3) coordinate the labor relations in the covered district and the covered industry; and (4) implement the functions of workers protection when necessary, including where the local unions are not functioning properly or where no union

¹³ Membership satisfaction is determined by the Workers Representative Congress, which generally is held once a year but can be held any time when necessary if two-thirds of the members agree to call such a Congress.

exists.

A big outstanding problem for all of the unions in China has been the fact that despite the fact that they are entitled to two percent of all compensation – remember that they perform both a representational and human resource function for the firm – they have been chronically underfunded for many years (Gallagher 2005). One reason why the Jilin union can afford to undertake this massive organizing and representation effort is that the province has agreed to assign responsibility for collection to the Tax Bureau. Even when there is no a local union, the Tax Bureau will collect two percent of total pay as a union fee. This money is used as a development fund for organizing unions when the Unions are in their organizing phase and used for administration once they have been organized.

How have these unions responded to organizing challenges?

Some of the private enterprises do not welcome these Presidents' union organizing activities. A South Korean owner of one foreign-invested restaurant objected to it and said, "I don't want to make myself that kind of trouble. When I once traveled to Europe, I met worker's strike. It's terrible." In these cases, the union must convince the company that the union will benefit the enterprise as well as the workers. Unlike western unions, Chinese unions are responsible for both protecting workers and developing enterprises and need to develop consent of both labor and management. Employees in the small private enterprises are usually young *nongmingong*, who do not understand what unions will do for them and only care about earning money if conditions allow. They are reluctant to participate in unions or do not want the Presidents to approach them.

How do these Presidents organize their work?

First, the Presidents in Chaoyang District are independent and professional, and not constrained by the old-style bureaucracy of the ACFTU. Many of them are middle-aged workers from state-owned enterprises that have downsized and they do not belong to the traditional hierarchy of ACFTU. They do not just stay in the office like most of the ACFTU cadres but rather spend their time on the street, traveling from workplace to workplace on foot or by bicycle. Their "office", therefore, is "flowing". They move around to visit the private enterprises and go to talk with and help the workers. Every worker employed in private enterprises in Chaoyang District who holds a Worker Protection Green Card (union member card) can go to the President

for help.

At the same time the Presidents work to protect workers' rights, they serve the interests of the enterprises too. For example, one President of Qinghe Street Union Confederation in Chaoyang District made his own rule about how to serve the enterprises when at the same time protecting the workers; he called it the "Five Presences" (五到场).

1. The President has to be present when workers and their bosses have conflicts.
2. The President must be present when issues of non-payment occur.
3. The President must be there when workers get very sick.
4. The President must be present when workers face difficult-to-resolve problems.
5. The President must be on the scene when accidents happen in the enterprises and to take action to avoid occupational safety problems.

The Presidents also have helped resolve human resource shortage problems. In January of 2006, union Presidents helped the enterprises to solve the labor shortage problem as Spring Festival approached – a common problem in China's migrant economy. After Presidents discovered the shortage problem, they reported it to the Chaoyang District. They then united three town-level unions to recruit young *nongmingong* from the countryside. *Nongmingong* also trusted them more because as representatives of the Chaoyang District Union, workers could assure themselves that the recruiters were actually there to help them get legitimate jobs and not to trick them to take employment that might lead to an undesirable job or even slavery (French 2007; Ni Ching-Ching 2007). More than 170 *nongmingong* met with the employers, and mutual selection was done on the spot. Presidents extracted a *quid pro quo*, however, as they also signed contracts with these enterprises to get them to promise not to let non-payment problems happen. This way they also protected the rights of workers and these *nongmingong* became union members. After this event, a network was set up to get to know the employment needs of the enterprises and keep contacts with the labor market in case shortages develop again.

How do these union Presidents organize?

The union Presidents' style is as important as we would consider union organizers' style in the west. Presidents persuade the workers by telling them what they will get by participating in

the union, and at the same time persuade the owners by telling them the benefits they get by supporting the union's establishment in their enterprise. Although union organization does not necessarily need the employers' agreement according to the Union Law, peaceful ways are preferred since harmonious society is the goal.

The first preference of these Presidents is to persuade the owners of the enterprises using soft ways to allow the unions to become organized. For example, when meeting very strong resistance from an enterprise, a few Presidents joined together to invite the owner to drink tea together, persuading the owner with collective power (a tea house is an important meeting space in China and served the same purpose in Taiwan). Sometimes they wait for good timing to convert the owners' thinking. For example, one owner who went on a business trip to Beijing for more than 20 days entrusted an employee — one new university graduate — to be in charge of the enterprise in his stead. The union President made good use of this chance and cooperated with this employee to develop a Suggestion Box for the workers in this enterprise. When the owner returned he found that the workers had become very energetic and enthusiastic about the company. The owner changed his mind when his substitute manager told him that this new attitude was one of the benefits of the union organizing.

To attract workers to become union members and also help them ease their living, discounted service functions are added to the Green Card, much like the Union Advantage Card in the U.S. Union members can enjoy discounted medical services, haircut service, or shower service just by showing their cards. Five hospitals have now agreed to provide 20% - 30% discounts on medical services to union members. Medical or health insurance, however, is beyond the reach of unions and workers at this level.

In sum, what did union organizing achieve in Chaoyang District?

The union tackled the problems of workers protection in the private enterprises. The union identified itself as the institution that can really protect workers; it addressed workers' fear of losing jobs if conflict arises with the boss; but it still is not capable of protecting workers if their human capital characteristics are insufficient.

Between August 2005 and March of 2007, 30,000 union members in 1500 small private enterprises joined the union in Chaoyang District. By the end of June 2007, in Chaoyang District unions had been established in nearly 97% of non-public companies and 98% of all

employees had joined the union. In addition, the two indicators mentioned above had been both 100% in the smaller non-public companies employing fewer than 25 employees.

The Community Union has begun to protect workers' rights according to the Labor Law and Labor Contract Law. The President of one of the leading Street Union Federations said the Labor Contract Law has already turned into a very good lever that the union has used to fight with recalcitrant owners. For example, between 2005 and 2007 President Gao recovered ¥250,000 in unpaid workers' compensation through negotiations with the employers; he also represented and filed lawsuits *pro bono* on behalf of workers who either could not afford lawyers or did not know how to file legal claims, recovering an additional ¥250,000 in lawsuits acting as the workers' agent.¹⁴ This is ¥500,000 translates to US\$71,271, which is a great deal of money for workers making ¥500-600, or US\$70-85 per month). He was able to do so because of his independence from the enterprises and also because of his knowledge of how to use the law to protect workers. In another example, President Liu, in charge of Chongqing Street Union Confederation in Chaoyang District, once found three firms that were paying workers under the lawful lowest wage.¹⁵ President Liu negotiated with the bosses and got workers' wages up to the minimum wage. He also took initiative to select 20 workers as the negotiating representatives to help him with the negotiations about all kinds of issues. In 2007, the union investigated compliance with the law requiring employers to sign labor contracts and found that the labor contract signing rate and pension security participation rate was 12% and 10% respectively in this district. These rates have risen to 60% and 30%, respectively, as a result of having professionalized the union presidents¹⁶. The Community Union generally has been able to increase the welfare of many of the lowest-paid and most disadvantaged workers, such as obtaining workers' compensation payments for injuries at work as well as improved food and lodging.

The Community Union has lowered the turnover rate of workers. Yuenan Restaurant, which originally was located in Qinghe Street but which now is relocated in Nanzhan Street the same Chaoyang District, provides a good example. The Union there helped to build cooperative labor relations, lowering the turnover rate from 30% (which is very usual in restaurant industry)

¹⁴ Interview with President of a leading Street Union.

¹⁵ In Changchun, the standard is ¥650 per month, but these firms were only paying ¥500 or ¥550.

¹⁶ Notes from union meeting on April 8, 2008.

to 10%. Since the beginning of 2007, in the level of small private enterprises, union confederation tripartite consultation systems and procedures have been set up and improved step by step, standardizing the preparation process for starting the Workers' Congress and the equal consultation procedure that develops the terms and conditions to include in collective contracts. In addition, the unions standardized the equal mediation process and the content of the mediation before signing the collective contracts. The rate of both building systems and signing collective contracts has reached 100%.

Starting in 2007, the union researched issues involved in the Worker's Congress at the level of the Union Confederation of Small Non-public Enterprises (i.e. a collective Worker's Congress for private enterprise) as well as larger non-public enterprises that qualify to have basic unions. These issues include the form, procedure, and contents of this kind of Worker's Congress. They summarized a series of flexible methods that are suitable to non-public companies. Actions were taken to create an open-door policy with respect to the company's affairs, create a democratic style of merit appraisals in the company, and create a suggestion system adapted to small private enterprises, as appropriate, in an effort to introduce democratic management. The union hopes that will give workers some faith in democratic management. The union intends that this activity protect the workers' democratic political rights, and workers can protect their own benefits through participating widely in management. The union also intends that this activity arouse workers' initiative and enthusiasm in participating in management, seeking to achieve development together with employers. Some of the unions in the sixteen-union confederation of non-public companies in Chaoyang District held a Workers Congress in September of 2007 and signed collective contracts at the level of the union confederation. The Workers Congress activity will be promoted in the companies that have more than 25 workers, aiming at enlarging the coverage of democratic management in non-public companies, and attempting to make all these companies have democratic management by the end of 2008. During the conclusion of the Employees' Representative Congress, a regular system for checking up on the status of democratic management in these firms began. At the request of the Workers Congress, worker representatives were designated and authorized to supervise and check regularly to ensure that the suggestions and comments issued by the Workers' Congress and from the worker representatives have been dealt with seriously and implemented properly, and if they find problems they will report them to the upper level union.

With all this success, the Community Union still faces some challenges. The qualities of the people – dedication, enthusiasm, integrity, and commitment to improving the working and living conditions of migrant peasant workers – is a crucial variable. Great people can use these institutions to achieve success, while less inspired people who do not put forward the effort tend to be less successful. Controlling for these individual factors, however, the professional presidents in all districts appear to be performing better than did some of the traditional union people in their hierarchies¹⁷. The enthusiasm and capabilities of the Chaoyang district staff have been critical factor making this model successful. The biggest challenge they now face is trying to organize collective negotiations among these small firms, which would be the basis for collective contracts. Salaries remain low, particularly in view of their responsibilities and workload.

Conclusion

Chinese industrial relations is important to US workers employed by industries that compete with the Chinese, including US-based automobile manufacturers and US-based industries that subcontract to China for parts and components. While China's currency and environmental policies contribute to their trade advantage, China's biggest advantage stems from differences between China's labor policy and that of the United States and the developed world – policies that allow Chinese firms or China-based production enterprises to compete based on low-cost labor. The domestic competition within China for business within the prevailing liberal regulatory framework – including free trade – has spawned the development of sweatshops that exacerbate the trade gap.

While China's unions have been established in enterprises that as of September 20, 2007, employed more than 169.94 million workers, 24.1% of whom are *nongmingong*, in more than 1.324 million primary trade union organizations in 2.753 million enterprises and institutions¹⁸, industrial relations seems to be on the cusp of change between the transmission-belt model, in which the Communist Party used the trade unions to advocate the Party's mission (Baek Seung Wook 2000), and an uncertain but potentially promising future role. The old model is a heritage

¹⁷ Interview with official of the Federation of Labor Union of Jilin Province.

¹⁸ <http://www.acftu.org.cn/>, accessed on April 15, 2007.

both of the role of the trade union movement in earlier stages of the Chinese revolution (going back to the general “nationalist” era before the open conflict between the Chinese Communist Party and the Kuomintang [or Guomindang; People’s Party]¹⁹) and of the role of the trade unions in China since 1949. Many scholars and officials would like to see the ACFTU transformed into a more independent organization for worker interest representation (Taylor 2000), but insufficient understanding of the process and consequences of such a change holds them back. Recent developments provide evidence of their serious interest in modifying employment and labor law, but modification has developed incrementally to avoid social and political destabilization.

The other dimension we see is the transformation of the union. Even though from a macro perspective the trade union itself is still under the control of the CCP, efforts such as these to seek alternative approaches that re-orient the trade union movement under a market based economy are taking place with the full support of the CCP. We can see from secondary sources that the union is struggling to reorient its function to become an authentic representative of workers in a market economy and is doing so in cooperation with the CCP. Interviews with union organizers who are organizing workers in workplaces with less than 25 employees show that new forms of community-based unions are stepping into the representational void created by the development of small companies where organizing and representation has always been difficult. An initiative not permitted by the Trade Union Law, they have recruited outsiders – most of them retired public servants and even retired private firms managers – as organizers and hired the “community union” president²⁰ on a temporary basis; the hired union president must stand for election in two months if he is to remain in office. They argue that although the Trade Union Law requires that union leadership be elected from among the membership, employees of these small firms cannot deal with the employers directly and hence cannot organize themselves on their own. For this reason, the district union has begun organizing employees in these small companies, facilitating the union’s daily business by providing them with a union president who is paid by the provincial union, the Provincial Medium-Small Enterprises Bureau (a government institution in charge of development of medium-small private enterprises) and the District-level

¹⁹ The meaning of Kuomintang in Chinese literally is the “Party of the People of the Nation.”

²⁰ A “community” can be an office building or a business neighborhood, a district, a street, or some other entity in which the small firms with fewer than 25 employees gather..

government. In this case, the union claims that it is helping the community-based union achieve its voice on labor relations issues.

Whether the Workers' Congress can perform its function actually depends on the capacity of the trade union at different firms. Clearly at top-tier firms, the workers' congress can perform its function because the institutional legacy maintains the influence of the Party workers' voice. At lower-tier firms, while the workers congress structure may still exist, the function is dwindling. This trend demonstrates the challenge that worker interest representation faces as China's market revolution continues.

Figure 1: 1999 Industrial Enterprises by Ownership Structure (in hundreds)

Source: China Statistical Yearbook, National Bureau of Statistics

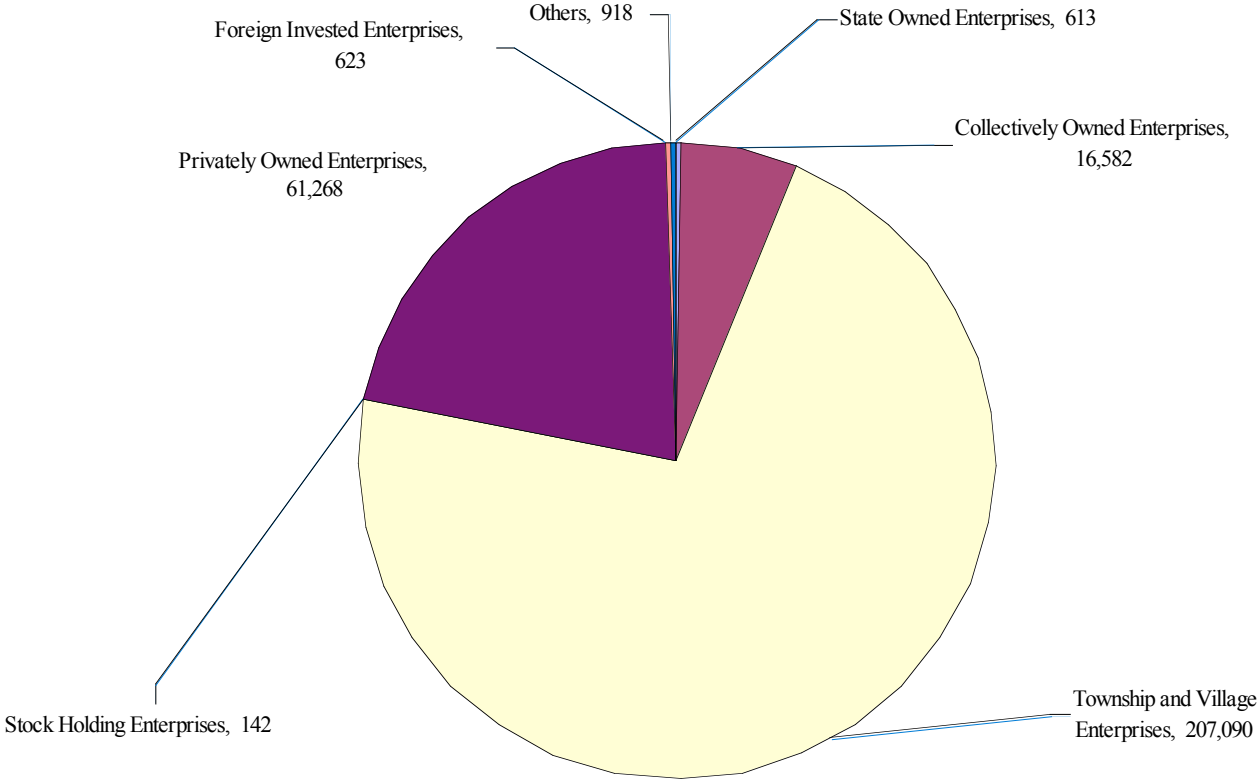
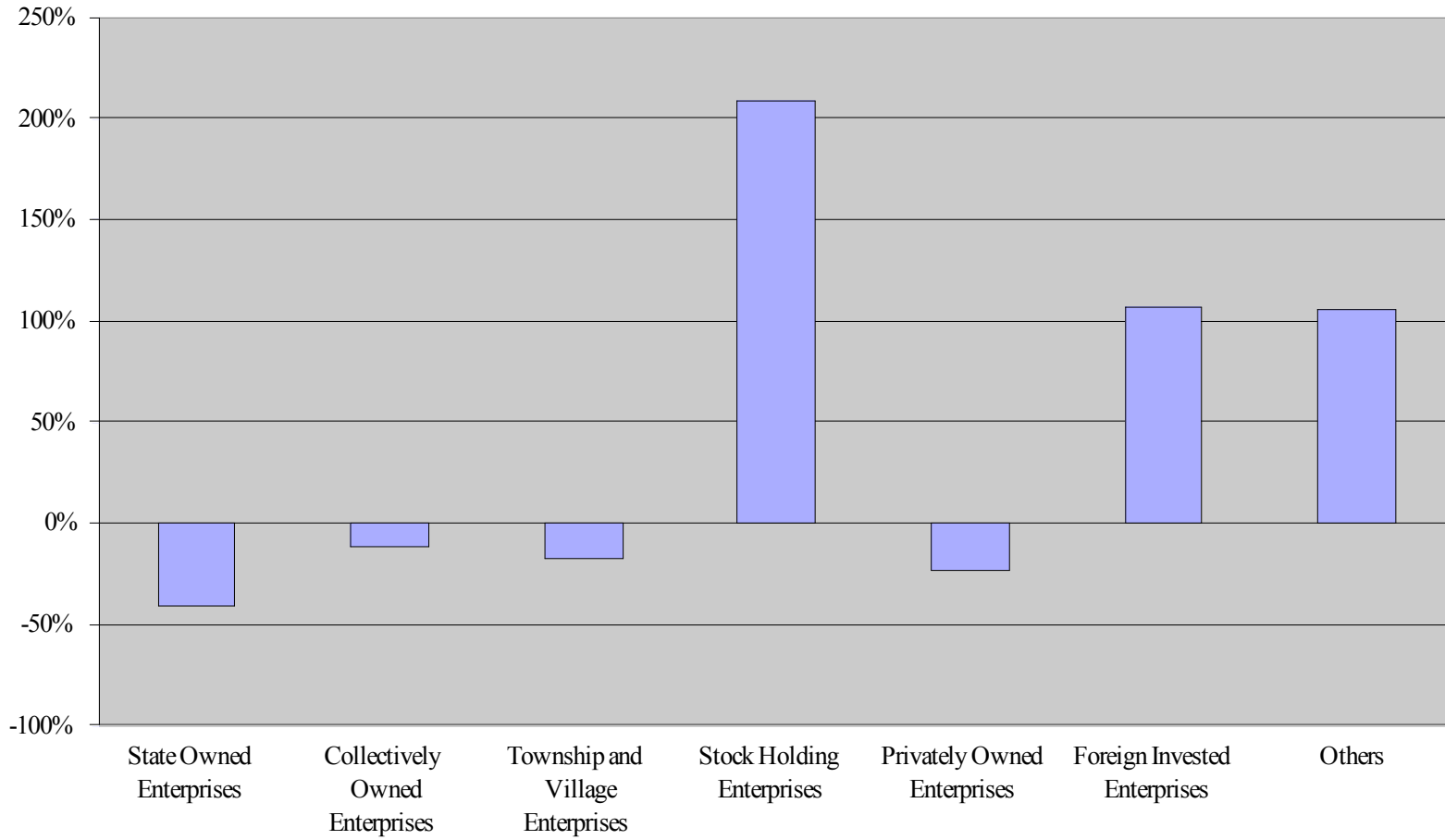


Figure 2: Fractional Change in Number of Enterprises by Structural Form, 1994-1999

Source: China Statistical Yearbook, National Bureau of Statistics



References

- China Labor Statistics Annual Bulletin (中国劳动统计年鉴 Zhong Guo Lau Dong Tong Ji Nien Jian). Beijing: Ministry of Labor and Social Security.
2002. "China, A Rising Global Factory". People's Daily, November 2, 2002.
2003. Labor and Social Security Annual Report (Lau Dong Ji She Hui Bao Zhnag Nien Bao; 劳动及社会保障年报). Beijing: Ministry of Labor and Social Security.
2004. Qingdao Union: innovate the union organizing and improve the level of union organization building (青岛市总工会：创新建会形式 完善领导体制不断提升工会组织建设水平). Qingdao, Shandong Province, P.R. China: Shandong Province Union.
2005. "Let's protect migrant workers". China Daily, April 4, 2005.
2007. Handan correctly training primary labor-union chairman (邯郸开展基层工会主席维权培训): General Office of China Federation of Trade Unions.
2004. "Labor Disputes Continue Growing 劳动争议案件持续增长." China Labor and Social Security News (中国劳动及社会保障报 Lau Dong Ji She Hui Bao Zhnag) , March 9, 2004.
- American Chamber of Commerce in Shanghai (AmCham). 2006. Comments and Suggestions on Revisions to Labor Contract Law: American Chamber of Commerce in Shanghai.
- Baek Seung Wook. 2000. "The Changing Trade Unions in China." Journal of Contemporary Asia Vol.30, No.1:pp 46-66.
- Barboza, David. 2006. "China Drafts Law to Boost Unions and End Abuse". New York Times, October 13, 2006.
- Belman, Dale L., and Michael H. Belzer. 1997. "Regulation of Labor Markets: Balancing the Benefits and Costs of Competition". In Government Regulation of the Employment Relationship, edited by B. E. Kaufman. Madison, WI: Industrial Relations Research Association.
- Belzer, Michael H. 2000. Sweatshops on Wheels: Winners and Losers in Trucking Deregulation. Oxford, UK and New York, NY: Oxford University Press.
- Bowie, Norman E. 2005. "Kantian Ethical Thought". In The Ethics of Human Resources and Industrial Relations, edited by J. W. Budd and J. G. Scoville. Champaign: Labor and Employment Relations Association.
- Brown, Ronald C. 2006. "China's Collective Contract Provisions: Can Collective Negotiations Embody Collective Bargaining?" Duke Journal of Comparative and International Law Vol.16:pp 35-77.
- Budd, John W. 2004. Employment with a Human Face. Ithaca: ILR Press Imprint of Cornell University Press.
- Budd, John W., and James G. Scoville. 2005. "Moral Philosophy, Business Ethics, and the Employment Relationship". In The Ethics of Human Resources and Industrial Relations, edited by J. W. Budd and J. G. Scoville. Champaign: Labor and Employment Relations Association.
- Central Intelligence Agency. 2007a. "China". In The World Factbook. Washington, DC: Central Intelligence Agency.
- . 2007b. "United States". In The World Factbook. Washington, DC: Central Intelligence Agency.

- Chen Xiaoyan, and Zhang Shibin. 2007. "The Protection of Migrant Labor Rights by Shi Jiazhuang Trade Union". *Labor Daily*, April 9.
- de Bary, William Theodore, and Tu Weiming, eds. 1997. *Confucianism and Human Rights*. New York: Columbia University Press.
- Fairbank, John K. 1978. *The Ch'in and Han Empires 221 B.C. to 220 A.D.* Edited by D. Twitchett and J. K. Fairbank. 15 vols. Vol. 1, *The Cambridge History of China*. Cambridge: Cambridge University Press.
- Fifth Session of the Seventh National People's Congress, and 24th Meeting of the Standing Committee of the Ninth National People's Congress. 2004. *Trade Union Law of the People's Republic of China*. In *Administrative Law and Social Law*. China: Law Press.
- Frazier, Mark W. 2002. *The making of the Chinese industrial workplace: state, revolution, and labor management*. [electronic resource] ed. Cambridge, UK ; New York: Cambridge University Press.
- French, Howard W. 2007. "Reports of Forced Labor Unsettle China". *New York Times*, June 16, 2007.
- Gallagher, Mary E. 2002. "'Reform and Openness': Why China's Economic Reforms Have Delayed Democracy." *World Politics* Vol.54, No.3:pp 338-72.
- . 2005. *Contagious Capitalism: Globalization and the Politics of Labor in China* Princeton: Princeton University Press.
- Gallagher, Mary E., and Dong BaoHua. 2008. "Legislating Harmony: Labour Law Reform in Contemporary China". In *Globalization and the Future of Labour Law*, edited by S. M. Lynk.
- Global Labor Strategies. 2006. *Behind the Great Wall of China: Global Labor Strategies*.
- . 2007. *Undue Influence: Corporations Gain Ground in Battle over China's New Labor Law—But Human Rights and Labor Advocates Are Pushing Back: Global Labor Strategies*.
- Head Union of Chaoyang District. 2007. *Build a multi-channel system to provide comprehensive service to employees*. Changchun, Jilin Province, P.R. China: Chaoyang District Union.
- International Textile Garment and Leather Workers' Federation. 2006. *Nike Repudiates AmCham Position on Chinese Labour Law Reform*.
- Jiang Junlu. 2007. "The Employment Contract Law: A New Era in China's Labor Market." *China Law Reporter (中国法律报道)*, Vol.3, Issue, No.5:pp 27-29.
- Johnston, M. Francis. 2002. "Elites and Agencies: Forging Labor Policy at China's Central Level." *Modern China* Vol.28, No.2:pp 147-76.
- Junjie Huang. 2001. *Mencian Hermeneutics: A History of Interpretations in China*. Transaction Publishers.
- Kahn, Joseph, and David Barboza. 2007. "As Unrest Rises, China Broadens Workers' Rights". *New York Times*, June 30, 2007.
- Kaufman, Bruce E. 2005. "The Social Welfare Objectives and Ethical Principles of Industrial Relations". In *The Ethics of Human Resources and Industrial Relations*, edited by J. W. Budd and J. G. Scoville. Champaign: Labor and Employment Relations Association.
- Kochan, Thomas A., and Harry C. Katz. 1988. *Collective Bargaining and Industrial Relations*. 2 ed. Homewood, IL: Irwin.
- Kochan, Thomas A., Harry C. Katz, and Robert B. McKersie. 1986. *The Transformation of American Industrial Relations*. 1 ed. New York, NY: Basic Books, Inc.
- Kochan, Thomas A., Harry C. Katz, Robert B. McKersie, and Alexander J. S. Colvin. 2008. *An*

- Introduction to Collective Bargaining and Industrial Relations. 4 ed. New York: McGraw-Hill/Irwin.
- Landsberg, Mitchell. 2007. "L.A. delegation seeks brotherhood in China". Los Angeles Times, July 4, 2007.
- Li Tianding, and Chen Fuming. 2007. "Endeavor for construction of standardization (全力向标准化建设发起攻坚战)". Sichuan Worker's Daily, March 13, 2007.
- Lin Mousheng. 1942. Men and Ideas: An Informal History of Chinese Political Thought. New York: John Day Company.
- Lü Lei, Li Jiangang, and Sang We. 2007. "Carry out labor-union work under scientific development value (以科学发展观统领工会工作)". Liaocheng Daily, March 19.
- Mair, Victor H. 1998. "Introduction". In Wandering on the Way: Early Taoist Tales and Parables of Chuang Tzu: University of Hawai'i Press. Original edition, 1994, Bantam Books.
- Morrison, Wayne M. 2006. China's Economic Conditions. In CRS Report for Congress.
- Mozi (墨子). 2006. Mozi. Translated by Wang Rongpei and Wang Hong. 1 ed. 2 vols. Vol. 1 (books 1-8; chapters 1-32), Library of Chinese Classics. Changsha, Hunan, PRC: Hunan People's Publishing House. Original edition, ~400 B.C.E. as writings and lectures of Mozi, compiled by himself and his disciples
- Ni Ching-Ching. 2007. "China to probe brickyard slavery: The number of people rescued from forced labor in police raids surpasses 500 as scandals continue to plague the government". Los Angeles Times (latimes.com), June 16, 2007.
- Nisbett, Richard E. 2003. The Geography of Thought: How Asians and Westerners Think Differently...and Why. New York: Free Press.
- Pan Shih-Wei. 1998. "Employment Relations in a Changing Global Economy: The Case of Taiwan", New York State School of Industrial and Labor Relations, Department of Collective Bargaining, Labor Law, and Labor History, Cornell University, Ithaca, NY.
- . 2006. Globalization and Trade Union Policy in Taiwan: A Balance between Economic Efficiency and Social Equity. In International Conference on Labor Relations and Labor Standards under Globalization. Renmin University, Beijing, PRC.
- Saxton, Jim. 2005. Overview of the Chinese Economy: Joint Economic Committee United States Congress.
- Scoville, James G., John J. Lawler, and Xiang Yi. 2005. "Non-Western Ethical Frameworks: Implications for Human Resources and Industrial Relations". In The Ethics of Human Resources and Industrial Relations, edited by J. W. Budd and J. G. Scoville. Champaign: Labor and Employment Relations Association.
- Standing Committee of the National People's Congress. 1988. Law of the PRC of Industrial Enterprises Owned by the Whole People.
- . 1994. Labour Law of the People's Republic of China.
- . 2004. "Labor Law of the People's Republic of China". In Economic Law. China: Law Press.
- Sun Yan. 2004. Corruption and Market in Contemporary China. Ithaca, NY: Cornell University Press.
- Taylor, Bill. 2000. "Trade unions and social capital in transitional communist states: The case of China." Policy Sciences Vol.33, No.3,4:pp 341 ff.
- Taylor, Bill, Chang Kai, and Li Qi. 2003. Industrial Relations in China. Cheltenham, UK; Northampton, MA: Edward Elgar.
- US China Business Council. 2006. Comments on the Draft Labor Contract Law of the People's

- Republic of China (Draft of March 20, 2006): US China Business Council.
- . 2007. Comments on the Draft People's Republic of China Law on Employment Contracts (Draft of December 24, 2006).
- Warner, Malcolm. 2004. "Human resource management in China revisited: introduction." *International Journal of Human Resource Management* Vol.15, No.4:pp 617–34.
- Wheeler, Hoyt N. 2005. "Globalization and Business Ethics in Industrial Relations". In *The Ethics of Human Resources and Industrial Relations*, edited by J. W. Budd and J. G. Scoville. Champaign: Labor and Employment Relations Association.
- Xinhua News Agency. 2005. "Building harmonious society crucial for China's progress: Hu". *People's Daily Online*, June 27, 2.
- XinYiyang. 2003. "Building Peasant Workers' Unions." *Ban Yue Tan* Vol.4:pp.
- Yi Zhang, and Xi Li. 2006. "Volume, Issue Ownership Structure and Corporate Diversification." *Business and Politics* Vol.8, No.1:pp.
- Zhang Dainian. 2002. *Key Concepts in Chinese Philosophy*. Translated by E. Ryden. Beijing, New Haven, and London: Foreign Languages Press and Yale University Press.