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UNIVERSITY OF CALIFORNIA, SAN DIEGO

The Politics of Labor Protection in Authoritarian Systems: Evidence from Labor Law and
Enforcement in Post-Reform China

A dissertation submitted in partial satisfaction of the requirement for the degree

Doctor of Philosophy

in

Political Science

by

Christina Chen

Committee in Charge:

Professor Susan L. Shirk, Chair

Professor Stephan M. Haggard

Professor Megumi Naoi

Professor Barry J. Naughton

Professor Samuel L. Popkin

2011

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Chair

University of California, San Diego

2011

DEDICATION

In loving memory of my mother, Sophia Shu-Fang Chen, who has taught me strength and courage and whose boundless love has made me the person I am.

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ABBREVIATIONS

ACFTU	All-China Federation of Trade Unions
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
CCP	Chinese Communist Party
FDI	Foreign-directed investment
FIEs	Foreign-invested enterprises
GDP	Gross domestic product
LCL	Labor Contract Law
LOA	State Council Legislative Office
MNCs	Multinational corporations
MOLSS	Ministry of Labor and Social Security
NGO	Non-governmental organizations
NPC	National People's Congress
PRD	Pearl River Delta
SMEs	Small and medium enterprises
SOE	State-owned enterprises
YRD	Yangtze River Delta

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Field research in China can be one of the most challenging parts of dissertation research, and I went to China with little knowledge of what lay ahead. Thankfully, field research turned out to be one of the best experiences of this project. Many Chinese labor scholars, legal experts, labor activists, journalists and union officials have helped me better understand Chinese labor politics with their knowledge and personal experience. I am also grateful to several individuals whom I have become friends with.

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And I thank God for all the blessings He has given me.

All errors and omissions are my own.

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ABSTRACT OF THE DISSERTATION

The Politics of Labor Protection in Authoritarian Systems: Evidence from Labor Law and Enforcement in Post-Reform China

By

Christina Chen

Doctor of Philosophy in Political Science

University of California, San Diego, 2011

Professor Susan L. Shirk, Chair

This dissertation seeks to shed light on labor politics in authoritarian settings by examining the ways in which labor conflicts and unions affected the making and implementation of labor policy in post-reform China. Western observers would argue that the absence of trade union independence and pluralism in countries like China is the cause of weak labor protection. Contrary to conventional wisdom, I show that in the

absence of democratic elections, trade union independence and pluralism, labor conflicts can be a catalyst for union empowerment and pro-labor policies. In China, rising labor conflicts since the 1990s threatened the survival of Chinese Communist Party (CCP) rule and induced the CCP to allow the All-China Federation of Trade Unions (ACFTU), the previously feeble official trade union organization, to take on a more active role in articulating workers' interests at both the national and local levels. The CCP's shift gave the ACFTU the opening to promote workers' rights, and the ACFTU was able to gain rapid access to the policy process at the national level. At the local level, my research shows that the more contentious the labor situation, the more empowered the unions are on workplace issues. And the more empowered the unions, the more diligent government labor bureaucracies are in enforcing labor laws and regulations.

This dissertation is one of the first to systematically examine Chinese labor politics at the sub-national level. A systematic examination of labor law enforcement across China is required to know whether national-level changes have been implemented by local governments, which variables shape enforcement, and whether a stronger union brings positive changes to working conditions.

China's provinces offer interesting comparisons of union strength and labor enforcement at the sub-national level. Using an inter-provincial dataset I compiled, I tested the relationship between labor conflicts, union institutional development and regulatory enforcement. I compiled the data from a variety of sources, including more than 70 statistical yearbooks as well as official statistical reports published by provincial level government and Chinese news reports. I supported my empirical findings with interview information I gathered during my 12 months of fieldwork in China.

Chapter 1

Introduction

China's market reforms have transformed the lives of many people. For many Chinese citizens, marketization created new economic opportunities and wealth. However, for most workers—formerly revered as masters of the factory—marketization meant the end of job security, social welfare as well as the deterioration of labor rights and working conditions. That is why China has been criticized by foreign observers as the world's largest sweatshop, and many anecdotes of poor working conditions support this image. A report by a non-governmental organization (NGO) report bluntly stated: "The Chinese economy has boomed. But only on the backs of the people it was supposed to benefit. China is still sweat-shopping its way to success." An article in the *New York Times* wrote, "Chinese workers, often as young as 16, face far more serious hazards. Here in the Pearl River Delta region near Hong Kong, for example, factory workers lose or break about 40,000 fingers on the job every year."¹ In some Chinese factories: "workers were locked in the walled factory compound for all but a total of 60 minutes a day for meals. Guards regularly punched and hit workers for talking back to managers or even for walking too fast...And they fined [the workers] up to \$1 for infractions such as taking too long in the bathroom."²

¹ David Barboza, "In Chinese Factories, Lost Fingers and Low Pay." *New York Times*, January 5, 2008, <http://www.nytimes.com/2008/01/05/business/worldbusiness/05sweatshop.html> (accessed 07/31/2011)

² Dexter Roberts and Aaron Bernstein, "Inside a Chinese Sweatshop: 'A Life of Fines and Beating.'" *Businessweek*, October 2, 2000, http://www.businessweek.com/2000/00_40/b3701119.htm (accessed 08/01/2011)

Many critics single out weak labor unions as the major obstacle to labor protection in China. China's trade unions, all of which belong to the All-China Federation of Trade Unions (ACFTU), are tightly controlled by the Chinese Communist Party (CCP) and have been politically feeble throughout the history of the People's Republic of China (PRC; Chen and Sil 2006). The ACFTU's close link to the party has led many observers to view the ACFTU as an instrument that reflects the will of the CCP rather than a genuine union organization that protects workers' interests. Union organizations around the world such as the *American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)* do not recognize the ACFTU as a legitimate trade union organization.³ The *International Confederation of Free Trade Unions* even stated in its China policy that "the ACFTU is not an independent trade union organization and, therefore, cannot be regarded as an authentic voice of Chinese workers."⁴ Labor NGOs that operate in Hong Kong held equally unflattering opinions of the ACFTU. The *ITUC/GUF Hong Kong (IHLO)* viewed the ACFTU as "neither a partner nor a counterpart...has been carefully cultivating and promoting a glowing picture of its position in Chinese society and its alleged strength...[but it was] not as powerful as it wants the international labour movement to believe." The most critical comment came from *China Labour Bulletin*, a labor NGO created and headed by Han Dongfang, a key figure during the 1989 Tiananmen democracy protest: "The ACFTU is a paradox. It is

³ Kent Wong, "The AFL-CIO and China," http://www.aasc.ucla.edu/uschina/ee_aflciochina.shtml (accessed 01/20/2011)

⁴ "ICFTU China Policy," International Confederation of Free Trade Unions, <http://www.icftu.org/displaydocument.asp?Index=991217172&Language=EN> (accessed 07/17/2011)

the world's largest trade union, it has almost doubled its membership over the last five years, it enjoys unprecedented Party and government patronage, and yet, for the vast majority of China's workers, it is an irrelevance."⁵

This Dickensonian image of workplace relations in China—a land of dismal sweatshops where businesses are flourishing by exploiting hapless workers and unions sit comfortably in the lap of the ruling party—leaves a deep impression in one's mind. In the spring of 2008, as I was browsing through information on Chinese labor relations for this dissertation, I began to wonder if such a picture is accurate. The country is changing at a lightning speed. Every time I visited Beijing I found the city somehow different—skyscrapers sprung up in every corner of the city, additional subway lines appeared on the municipal map; and on the streets, a growing number of Western brand stores and Chinese people in trendy outfits talking on the latest models of cell phones. If China is experiencing such a drastic development, what about its workforce? Then I stumbled upon a news report on the passage of a Chinese labor law.

In June of 2007, the Standing Committee of the National People's Congress of PRC convened to vote on the draft Labor Contract Law (LCL). The legislators cast their votes and the results were highly in favor of the passage: 145 voted "yes" and 0 voted "no."⁶ After a highly publicized and controversial legislative process—a one-month

⁵ China Labour Bulletin (2009). "Going it Alone: The Workers' Movement in China (2007-2008)." *China Labour Bulletin Research Reports*.
http://www.clb.org.hk/en/files/File/research_reports/workers%20movement%2007-08.pdf (accessed 07/01/11)

⁶ "The Standing Committee of National People's Congress Office Speaker Addresses Journalists' Questions on the Labor Contract Law (quanguo renda changweihui banggongting fuzeren jiu laodong

public commentary period, high-profile oppositions from foreign business associations, notably the European Union Chamber of Commerce in China and the American Chamber of Commerce in Shanghai, and four rounds of deliberation—the PRC legislature passed the new LCL, which went into effect in January 2008. The new law increases the obligations of the employers toward their employees. The LCL requires that all employees receive a written employment contract. It also requires the employer to conclude the contract, including obtaining the signature of the employee. Under the LCL the employer is required to sign open-ended contracts with the employee who has worked over 10 years whether or not those contracts are requested by the employee. And the employer is required to pay the employee severance payment in the case of contract termination (except when the termination is due to employees' errors), with the usual rate of compensation being one month of pay per each year of service up to 12 years. The LCL thus provides enhanced protection for the workers;⁷ and Western media wrote flashy headlines such as “China Passes Sweeping Labor Law,” “New Chinese Labor Law Gives Employers the Jitters” to highlight the pro-labor effect of the LCL.⁸

heitongfa da jizhe wen).” *PRC National People’s Congress Web (zhongguo renda wan)*, 06/29/2007, <http://www.bjldzy.com/ShowArticle.shtml?ID=2008942171736693.htm> (accessed 07/20/2011)

⁷ “Labor Contract Law of the People’s Republic of China.” Promulgated by the Standing Committee of the 10th National People’s Congress, June 29, 2007, effective from January 1, 2008. English translation, http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/BasicLaws/P020070831601380007924.pdf (accessed 07/20/2011)

⁸ Joseph Kahn and David Barboza, “China Passes Sweeping Labor Law.” *New York Times*, June 30, 2007, <http://www.nytimes.com/2007/06/30/business/worldbusiness/30chlabor.html> (accessed 07/15/2011).

Zhou Xin and Jason Subler, “New Chinese labour law give employers the jitters,” *Reuters*, December 18, 2007, <http://www.reuters.com/article/ousiv/idUSPEK37429120071218> (accessed 12/20/2008).

Trade unions in China were major players in the making of the LCL. The ACFTU was actively involved in the making of the LCL, and was even more so after the passage of the law. First of all, the ACFTU mobilized its union branches and workers to submit opinions during a one month public commentary period.⁹ After slave labor and child labor abuses in a kiln factory in Shanxi province were exposed in May 2007 (right before the passage of the LCL), the ACFTU expressed its shock and anger, dispatched a joint taskforce with State Council officials to inspect the area, and urged the government to punish the guilty employers.¹⁰ And after delegate Zhang Yin, owner of China's powerful papermaking company, proposed to modify the LCL during a session of the Chinese People's Political Consultative Conference (CPPCC),¹¹ the vice-chair of Guangdong Federation of Trade Unions, Kong Xianghong, declared his willingness to debate the LCL with Zhang on national television.¹² But the LCL was not the only indication of growing union presence: in 2006, the ACFTU announced the establishment of union branches in all 66 Wal-Mart outlets across China, and in July 2008 the union

⁹Liu Tao and Wang Qi. "The Labor Contract Law: Debates and Clashes (laodong hetongfa: jibian he chongji)." Chinese Entrepreneurs (zhongguo qiyejia), February 8, 2008, http://www.xyzlove.com/Transshipment/Oppugn/_ldhtf_zd/_ldhtf_zd.htm (accessed 07/2011)

¹⁰ "The ACFTU holds press conference on Shanxi brick-kiln scandal (quangzong jiu Shanxi heizhuanyao shijian zhaokai xinwen fabu jizhejui)." Xinhuanet.com, June 18, 2007

¹¹ The CPPCC is a political advisory body composed of delegates from a range of political bodies and organizations. Although the National Committee of the CPPCC holds yearly meetings at the same time as the National People's Congress (NPC), it is not the same as the NPC, the national-level legislative house.

¹² Chen Jie and Zhou Sigen. "Guangdong Provincial Federation of Trade Unions Vice-Chair Kong Xianghong: I would like to invite Zhang Yin to a TV head-to-head (shenzonggonghui fuzhuxi Kong Xianghong: yuanyao Zhang Yin dianshi PK)." Southern Metropolis Daily (Nangfang Dushi Bao), March 11, 2008.

organization launched a 90-day campaign to unionize the Fortune 500 companies in China (Chan 2006).¹³

The passage of a pro-labor law and the effort that the ACFTU displayed in its push for the passage were surprising given the widely held view that China was the world's largest sweatshop and home of the world's largest but most ineffective trade union organization. The ACFTU is not a centralized peak organization; rather, it is an umbrella trade union organization with weak control over its union branches,¹⁴ so it enjoys little organizational strength (Golden, Wallerstein and Lange 1999; Robertson 2004; Murillo 2003; Cameron 1984; Golden 1993). Having close ties to the ruling CCP, the ACFTU is dependent on the party and has little bargaining leverage (Burgess 1999; Murillo 2003 and 2005). The ACFTU operates in an environment where employers are politically influential (Koo 2000; Frank 2002; Haagh 2002; Caraway 2004), where attempts by foreign labor NGOs and governments to raise Chinese labor standards have yielded limited results (Caraway 2004; Trubek et al. 2000), and where the absence of political liberalization has given both workers and trade unions little room to pressure the ruling party for pro-labor changes (Caraway 2004; Ho 2006). What explains this puzzling development in the country where workers have been the "losers" since economic reforms and trade unions, worker's only legal representatives, were controlled

¹³ The nation's trade unions setting in motion the task of fostering establishing unions in Fortune 500 transnational corporations (quanguo gonghui tuijin shijie wubaiqiang den kuaguo gongsi jizhong jianghui xingdong qidong)." Workers' Daily, June 12, 2008, <http://www.grrb.com.cn/template/10002/file.jsp?cid=0&aid=310796> (accessed 07/21/2011)

¹⁴ The ACFTU only has advisory role (yiewu lingdao guanxi) over its union branches; union branches at the sub-national levels are controlled by the same-level governments at localities

by the ruling CCP at the national level? If both the workers and the organized labor have been politically feeble and dependent on the CCP for protection of labor rights and interests, what explains the CCP's decisions to promote these pro-labor trends?

It is actually puzzling that the CCP allowed the pro-labor trends mentioned above to take place. Measures of labor protection would increase production costs, and might discourage foreign investments. Since international businesses and the investments they brought have been an important drive behind China's miraculous growth that helped the CCP maintain its rule, the CCP needed to make sure that the demands of foreign investors—a flexible labor market where labor cost is low—were met. By enacting the LCL the CCP puts the country's economic growth, as well as its own rule, under enormous risks. At the same time, industrial employers in China remained vocal in their opposition to a more protective and regulated labor market, and exercised strong influence over the Chinese Communist Party politicians. So the question is: why, despite the risks of economic slow-down and regime instability, did the CCP nevertheless promote pro-labor trends like a protective LCL and the empowerment of the country's official union organization?

And what has been the impact of these changes on the actual working conditions of the workers?¹⁵ China's economic reforms brought changes to labor relations by creating a labor market, decentralizing labor regulatory authority and increasing local

¹⁵ In this dissertation, "working conditions" refer to a number of minimum standards that are stipulated by China's 1994 Labor Law—contract (both individual and collective), working hours, wages, protection of female and child workers. Please see "Labor Law of the People's Republic of China." Promulgated by the Standing Committee of the Eighth National People's Congress, July 15, 1994, effective from January 1, 1005, <http://www.usmra.com/china/Labour%20Law.htm> (accessed 07/11/2011)

governments' responsibility over economic development. Career and fiscal incentives prompted local governments to strive for high rates of growth, and a part of the high-rate growth policies included the effort to attract domestic and foreign investments and an inclination towards the management. In order to meet domestic and foreign investors' preference for low production costs and management's preference for ample supply of cheap workforce that can be easily dismissed, local governments placed less emphasis on labor protection, and as a result labor bureaus did not enforce labor regulations to the extent that would have protected workers. Did unions at the local level help improve labor protection through more rigorous enforcement of labor laws and regulations? Did unions across China share equal strength, or did their strength vary from place to place? Did unions with more authority induce labor bureaus to enforce the labor laws and regulations?

This dissertation seeks to further understand labor politics in authoritarian settings with a focus on evidence in post-reform China. Although I disagree with the conventional wisdom that the improvement of labor protection can only come from the presence of an independent and strong organized labor movement or external pressures from foreign governments or NGOs, the conventional wisdom nevertheless shows that an understanding of relevant political actors, their policy preferences and the institutions in which they operate are needed to explain the pro-labor policy outcomes in China. I hypothesized that labor conflicts triggered China's recent pro-labor developments, and my research confirmed this hunch. The impact of labor conflicts occurred at two levels: at the national level, rising labor conflicts prompted the CCP to grant the ACFTU greater

organizational presence as well as authority over the protection of workers' legal rights. At the local level, labor conflicts enabled unions to gain the authority to monitor labor bureaucracy's enforcement effort.¹⁶

In China, rising labor conflicts since the 1990s threatened the survival of CCP rule and induced the CCP to allow the ACFTU, the previously feeble official trade union organization, to take on a more active role in articulating workers' interests on both the national and local levels. The CCP's shift gave the ACFTU the opening and the incentives to promote workers' rights, and because of the ACFTU's close link to the CCP, it was able to gain rapid access to the policy process at the national level. At the local level, my research shows that the more contentious the labor situation, the more authority the ACFTU has on workplace issues. And the more empowered the ACFTU, the more diligent government labor bureaucracies are in enforcing the standards prescribed by the 1994 Labor Law and other labor regulations.¹⁷

My arguments can be summarized into the following:

¹⁶ The 1994 Labor Law is implemented in three ways: enforcement by labor bureaucracy, dispute resolution mechanisms and monitoring by trade union organizations. The responsibilities of law implementation fall mostly on local labor bureaus. The labor bureaus (which operate under the dual leadership of the Ministry of Labor and Social Security (MOLSS) and local government at the same level) at prefectural/municipal and provincial levels oversee most aspects of the labor laws and regulations except occupational health and safety, which is the responsibility of Ministry of Health, State Administration of Work Safety and Special Quality Supervision and Inspection agencies under relevant ministries or local governmental departments. All the departments are equipped with inspectorates that supervise employers to make sure that the latter comply with the labor regulations. In this dissertation, the term "enforcement" would be used to refer to labor bureaucracy's oversight of employer compliance with labor laws and regulations (except for areas regarding occupational health and safety).

¹⁷ Please refer to footnote 16.

National Level—hypothesis 1

Higher labor conflicts leads to the empowerment of the ACFTU over the protection of workers' rights and the passage of pro-labor the laws and policies

Local Level—hypothesis 2

Higher labor conflicts leads to more union oversight authority over workplace and labor bureaucracy, and

Greater union power over labor bureaucracy leads to more rigorous enforcement of labor laws and regulations

This dissertation is one of the first to systematically examine Chinese labor politics at the sub-national level. Although weak and inconsistent enforcement is a major problem behind lagging labor protection in China, the subject has received little attention in literature. A systematic examination of labor enforcement is thus important to know whether national-level changes have been implemented by local governments.

Moreover, a systematic examination of regulatory enforcement by sub-national labor bureaus helps me assess which variables shape enforcement, and whether a stronger union brings positive changes to actual working conditions.

China's provinces offer interesting comparisons of union strength and labor enforcement at local level. Using an inter-provincial dataset I compiled, I tested the relationship between labor conflicts, union authority and regulatory enforcement. I compiled the data from a variety of sources, including more than 70 statistical yearbooks as well as official statistical reports published by provincial level government and Chinese news reports. The inspection data, which I used to measure local labor bureaucracies' enforcement of labor laws and regulations, was especially challenging to compile since it was not readily available in any single statistical source but was rather

scattered across various sources, and the term used to describe “inspection” varies among provinces.¹⁸ To compile the inspection data, I spent two years reading and locating inspection numbers from annual labor statistical reports issued by provincial labor bureaus, provincial yearbooks and media reports. The final dataset contains measures of labor conflicts, union activity, and enforcement of labor regulations, as well as controls, for the period of 2003-2008.

I supported my empirical findings with information I gathered in China. I spent the summer of 2008 in a labor NGO in Shenzhen, Guangdong to conduct some preliminary research and to establish contacts. In January 2009, I returned to China. During my 12 months of fieldwork there, I conducted interviews with union officials, labor scholars and journalists and collected union data.

The investigation into China’s puzzling development of labor policy and union activism sheds light on two broader issues across the world. Labor conditions and rights in developing countries have been a major interest for Western labor activists, policymakers and scholars. As multinational firms in developed countries shifted their production to developing countries, concerns about sweatshop condition—the exploitation of workers in these developing countries—grew abroad. But does the international community know how to improve the conditions and rights of the workers in developing countries? The surprising transformation of China’s political lapdog

¹⁸ The reports used three terms differed by their Chinese characters: “检察”、“检查”、“监察”. The latter two were more commonly used in the reports. I included the number if the accompanying term is 监察 or 主动检查 (inspection initiated by the labor bureau, rather than one responding to a claim or dispute).

union organization into an influential voice for labor interests and the passage of pro-labor legislation in China may offer some lessons.

A deeper understanding into China's labor politics is also important for the economic and foreign policy of developed countries. Many citizens, especially those of the United States, hold the view that China's booming economy is built on its low wage and inferior workplace conditions, which attract manufacturers and cause job losses in the developed countries. Many Americans thus argue that trade sanctions and other "punitive" measures are needed to better protect workers in China and preserve job opportunities at home. Union organizations such as the AFL-CIO place substantial efforts into lobbying US policymakers for such economic measures.¹⁹ Such a pessimistic view of China's organized labor and labor politics in China, more broadly, not only forecloses opportunities to improve China's human rights situation but also hampers bilateral trade relations between China and the developed countries. A more profound understanding of labor politics in China, especially changes in the role of the ACFTU and the effects of such changes on Chinese workers' welfare and conditions, could then help raise incentives for policymakers and union activists to engage China. Closer interactions between them may in turn enable China to improve its labor standards.

¹⁹ Kent Wong, "The AFL-CIO and China." http://www.aasc.ucla.edu/uschina/ee_aflciochina.shtml (accessed January 20, 2011)

AFL-CIO has a section on its website devoted exclusively to US-China trade relations. Entitled "Trade Deficits: China," it contains facts and figures, official petitions made to Congress, and speeches made by union officials making the case for trade sanctions. http://www.aflcio.org/jobseconomy/globaleconomy/tradedeficit_china.cfm (January 20, 2011)

Chapter 2

Labor Politics in China: Labor Conflicts, Union Development and Policy Outcomes

I. Introduction

What is the nature of labor politics in authoritarian settings? Many studies on democracies have sought to explain the impact of economic liberalization on national labor relations. While some, in particular the ones that uphold the “race to the bottom” view,²⁰ depict labor as loser in the liberalization process,²¹ others have begun to note some variations in labor standards and rights across the countries. These studies enrich our understanding by highlighting the “domestic side” of the story—though economic globalization is a potent force, its effect on workers is mediated by countries’ domestic dynamics. The behaviors of actors such as labor unions, governments and political parties affect working conditions. Can we apply the insights we gained from these studies to explain the political influence of labor and its impact on workers’ conditions in authoritarian contexts?

Studies have provided limited insights into the incentives and the complex dynamics between workers, organized labor and governments in authoritarian states like China.

²⁰ According to race to the bottom theory, the mobility of capital and trade flows will pressure countries to converge their regulatory standards. When capital is mobile, it will choose location that would yield the least cost. National governments are no longer able to set their regulatory standards but will have to compete with each other to set the ones that are most desirable to owners of capital. See Drezner (2006).

²¹ The International Labor Organization, for example, cites “race to the bottom” view as the inevitable outcome if labor rights were not secured via legal labor standards. See Singh and Zammit (2004)

Other studies (those not analyzing the race to the bottom view) also note the decline of labor power and rights in face of economic liberalization. The power of organized labor in post-communist societies, for example, was greatly challenged by privatization and increased trade and investment (Kubicek 1999),.

Ever since it initiated economic reform in 1978, China has been criticized as one of the world's largest sweatshops, and anecdotes of poor working conditions and worker abuses support this image (Chan 2001). Improvements, however, seem to be occurring: labor unions in China have become more vocal and influential over workplace affairs, and such development has resulted in major changes like the unionization of Wal-Mart and the passage of the Labor Contract Law (LCL), which went into effect in January 2008 (Chan 2005). Unlike its predecessor, the 1995 Labor Law, the new law clarifies the responsibilities and penalties for both the employers and labor regulatory bodies. According to the studies on democracies, China would have been an unlikely place to have developed pro-worker trends in labor relations. China's trade unions are tightly controlled by the Chinese Communist Party (CCP) and thus do not directly rely on union rank and file for support. Even though there is only one official trade union organization, which may imply concerted organizational and political strength, Chinese organized labor has been politically weak throughout the history of the People's Republic of China (PRC). Trade unions in China are not allowed to engage in militancy, and they have experienced low political status even when compared to their counterpart in Soviet Russia (Chen and Sil 2006). What is even more surprising is the occurrence of pro-worker trends in the absence of political liberalization—in most authoritarian settings, political change often provides organized labor with the opportunity to pressure the government for responses (Caraway 2004; Ho 2006). But in China, the empowerment of the unions and the passage of the LCL took place under the stable rule of the CCP.

China's puzzling development of pro-worker policies thus calls for a thorough examination of the country's labor political dynamics.

In this chapter, I highlight the role of labor conflict in labor policy. In China, growing labor conflict since the 1990s threatened the survival of Chinese Communist Party (CCP) rule and induced the CCP to allow the ACFTU, the previously powerless official trade union organization, to take on a more active role in articulating workers' interests at the national and local levels. The CCP's response gave the ACFTU new room to pursue measures that promote workers' rights, and because of the ACFTU's close link to the CCP, it was able to gain rapid access to the policy process at the national level. At the local level, the more contentious the labor situation, the more empowered the labor unions are on workplace issues. And the more empowered the labor unions, the more diligent government labor bureaucracies are in enforcing labor laws and regulations.

This chapter proceeds as follows: First, I review the literatures on labor politics in democracies. I show how fundamental differences between the nature of labor politics in China and the democracies suggest alternative variables to explain the Chinese case. Still, studies of labor politics in democracies are valuable in pointing out the importance of actors and the strategic environment they face—it is necessary to ask the questions “who are the actors,” “what are their incentives” and “how do political institutions shape actors' behaviors”—in order to understand the process and the outcome of labor politics in democracies as well as in authoritarian settings. Second, I present my theoretical framework of labor politics in China. I argue that the following variable—labor

conflicts—affects organized labor’s political influence and in turn its impact on government policy implementation and workers’ conditions. Third, I introduce the hypotheses. I then conclude the chapter.

II. Review of Labor Politics Literature

An extensive body of literature deals with the politics of labor relations—how actors and their dynamics shape the labor policy outcomes. The rise and spread of market liberalization further the study in this area as scholars and observers alike wonder about the impact of economic competitive pressure on the interests and welfare of workers. These studies, which mostly focus on industrial and developing democracies, provide various explanations for labor policy outcomes. These explanations can be roughly grouped into four categories: union structures, union-party relationships, “third actors(s)” and institutional legacies.

Many studies of labor politics expect the structural attributes of labor unions to have an effect on the way government responds to labor demands. Unions’ structural attributes determine the strength of organized labor: the more organized the unions, the more bargaining leverage they have vis-à-vis the governments and the more ability they have to extract pro-labor policy (Cook 1998; Webster and Adler 1999). Common indicators of union organizational strength include union density (Golden, Wallerstein and Lange 1999), organizational unity (Robertson 2004; Murillo 2003) and the structure and scope of collective bargaining (Cameron 1984; Golden 1993). It is expected that centralized, undivided peak labor union organizations wield greater influence over labor

policy and extract more pro-worker outcomes than those that are decentralized and challenged by rival union organizations (Schmitter 1979; Cameron 1984).

Labor's organizational strength, however, does not always yield consistent predictions on policy outcomes. Union density, organizational unity and the scope and structure of collective bargaining sometimes do not correspond to organized labor's ability to mobilize workers (Thelen 1994). Even if the indicators correctly predict the strength of the labor movement, organizational strength does not always translate into political strength. Some studies of labor politics in post-communist settings have found varying patterns of policy outcomes despite the overall decline of organized labor strength in the region (Avdagic 2005; Robertson 2004). On the other hand, Chen and Sil (2006)'s case on the post-Soviet Russian union movements and Caraway (2004)'s analysis of the Indonesian labor reform demonstrate that organizationally weak unions can prevent economic liberalization from causing workers' rights to decline. Unions' structural attributes are important, but they only offer one side of the story.

Studies have also identified union-party links as a contributing variable that explains varying labor policy outcomes. Union-party links facilitate the convergence of incentives between labor unions and political parties and allow labor unions to exert concerted pressure on political parties (Murillo 2005). Once in office, parties tend to grant these unions policy benefits, access to policy process and other resources that would help union leaders maintain rank and file support in exchange for union restraint and loyalty (Burgess 1999; Murillo 2003). However, studies are ambiguous on the effect of partisan links on union's bargaining leverage and show that other factors are

also important in predicting the likelihood for organized labor to extract favorable policy outcomes. One potential factor is the party system. Unions that have close ties to political parties enjoy greater bargaining leverage vis-à-vis the parties in two-party system as unions have the option to shift loyalty. In a one-party system, close union-party link implies less union “exit option,” greater union dependence on the party and thus less union ability to obtain favorable outcomes from the ruling party (Nelson 1991; Lange 1984). Policy uncertainty can also affect the governing party’s dependence on their union partners and the direction of labor policy: the more the policy uncertainty, the more likely is the incumbent party to enact pro-union and pro-worker policies (Murillo 2005). Although there is no consensus on the effect of partisan links on labor policy outcomes, the studies nevertheless show that parties are major actors in the making of labor policy. And it is not enough to examine partisan links alone: partisan links affect organized labor’s attitude towards the incumbent party’s policy, but other factors explain whether or not government concedes to union demands. It is important to know which factors induce governments to enact pro-labor policy changes.

Studies have also listed other political and economic actors as major factors that shape labor policy. Just like the workers, employers also desire to see policy outcomes that reflect their interests, so the political strength of employers may play a role in determining the concessions that governments will grant to labor. Through channels such as the employer associations and private connections to the politicians, employers can exert pressure and obtain policy outcomes that are more in their favor than the workers (Koo 2000; Frank 2002; Haagh 2002; Caraway 2004). International actors

can be another factor that explains pro-worker policy outcomes. Regardless of their ultimate motivations, foreign actors—for instance the International Labor Organization (ILO), the international financial institutions and major economic powers—can use direct pressure or incentive structure (for example, allowing trade access in exchange for countries' conformity with the institutional rules on labor practices; see Caraway 2004, 2010; Trubek et al. 2006) to encourage the national governments to improve their labor standards. Although the presence and the strength of these actors are important, they also do not offer a complete picture of the making and the implementation of labor policy. As scholars on comparative political economy have pointed out, it might be wrong to treat employers as a single class with common preference: some employers may have the incentives to support pro-worker policy even though doing so increases their costs (Mares 2003; Swensen 1991; Iversen 2005; Iversen and Soskice 2001). Likewise, foreign actors do not always support more stringent workplace standards—international financial institutions, for example, often pressure countries to increase labor market flexibility as condition for financial assistance. Moreover, foreign actors often have little success in changing the behaviors of authoritarian governments (Caraway 2010).

Lastly, institutional legacy accounts for the divergent labor policy outcome across countries. Legacy determines the starting point of industrial relations and the bargaining advantage of the workers vis-à-vis the government. If the country has a more protective workplace environment to begin with, workers have a greater advantage when they bargain (Caraway 2004). Legacy also determines the organizational, material and symbolic resources that organized labor receives (Crowley 2002; Cook 2001;

Chen and Sil 2006). Finally, legacy affects how organized labor interacts with governments over policy outcomes (Lee 2006). In general, pre-existing institutions shape the strategic environment that actors face; they provide opportunities while limiting the options that are available to workers and organized labor.

The variables that are listed by the studies on established or new democracies provide limited insights into the labor politics in authoritarian contexts like China. These explanations often treat labor unions and workers as one collective actor—labor—that shares a common interest. Such a view is based on the assumption that unions dependent of the support of their members. In many authoritarian contexts, unions are membership-based but legally, financially and operationally controlled by the governments. The existence of these unions therefore depends on the authoritarian regimes rather than the rank and file members (Caraway 2004). While such relationship does not necessarily imply diminished union incentive to act on behalf of their member workers, it nevertheless shows that the interests and the behaviors of unions in authoritarian settings are closely linked to the goal of the ruling regimes. Since the relationship between unions and governments in many authoritarian contexts is not equal to begin with, partisan links do not entail alliance, and it is unlikely for unions to “exit” and transfer loyalty to a group other than the authoritarian regime. Because the nature of labor politics in authoritarian settings is drastically different from the one in democracies, variables such as union structures and partisan links cannot be used to explain and predict labor policy outcomes in authoritarian settings.

Thus, there are at least two major differences that needed to be accounted for when examining labor politics in the authoritarian contexts: workers as a separate actor with distinct preferences apart from organized labor and the principal-agent relationship between organized labor and the governments. As I will show later, these differences affect how labor unions and governments in China respond to demands from workers.

China's puzzling pro-worker development in labor politics demonstrates the problems of applying the abovementioned variables to authoritarian contexts. In China, unions are a part of the All-China Federation of Trade Unions (ACFTU) and tightly controlled by the CCP. This system allows the ACFTU some status and limited bargaining strength vis-à-vis the government. Indeed, the ACFTU has few means to boost its bargaining strength: its integration into the CCP drastically limited its ability to exercise militancy. In the absence of political reforms, workers and the unions did not enjoy new political opportunities as their counterparts in transitioning democracies did, and international pressures have long been weak in altering CCP incentives. At the same time, employers remained vocal in their opposition to a more protective and regulated labor market and strong in their influence over the politicians. These variables would have cast China as an unlikely candidate for pro-worker development to develop. Thus, the variables commonly cited cannot explain labor politics in China.

While the studies put a great deal of emphasis on organized labor's structures, relationship with other actors as well as the institutional environment it faces, they also consider the role of an economic variable—labor supply. Labor supply may play a key role in shaping unions' bargaining leverage: when unemployment is low and labor is in

short supply, organized labor has more ability to pressure employers to make concessions (Kennan 1986; Soskice 1978; Ross and Martin 1999). Some evidence from authoritarian contexts suggests that labor supply is an important factor behind varying labor policy outcomes: in Taiwan, the growing labor shortages in the late 1980s helped increase wages, but the relocation of manufacturing capital to Southeast Asia and China in starting early 1990s weakened the labor movement (Minns and Tierney 2003). Labor shortage in Soviet Russia resulted in greater labor mobility and wide scale collective actions (Chen and Sil 2006). From these evidence, it seems that labor supply contributes to labor's bargaining leverage vis-à-vis employers, which indirectly affects labor's bargaining leverage vis-à-vis the government. I will examine the role of labor supply in explaining workplace relations and labor political outcomes in future research.

Although the variables listed by studies on democracies are not sufficient to explain the situation of labor in China and other authoritarian contexts, the studies nevertheless offer useful insights. The variable of union structures shows the importance of treating organized labor as an actor that plays a crucial role in the politics of industrial relations, while the variable of union-party links sheds light on the need to take the incentives of political actors—the ones responsible for making and implementing labor policy—into account. Institutional legacy, or institutions in general, helps us discern the dynamics between these labor organizations and the Communist Party and the way their preferences translate into policy outcomes, namely, how much pressure can organized labor exert and whether or not governments will respond to unions' demands for pro-worker policy. And the “third actors” variables remind us that strategic

environment matters—the less oppositions labor faces, the more likely it will succeed in obtaining pro-worker policy outcomes.

III. Labor Politics in China

As studies of labor politics in democracies have shown, the formation and implementation of labor policy are outcomes of union strength and government preferences. Political institutions, which shape the preference and behaviors of these actors, are central to the understanding of the “microfoundations” of labor relations: the causal links between the actors, the environment they face and the policy outcomes (Lake and Powell 1999). Building on this insight, in the following sections I provide a theoretical layout of labor politics in China. I first show how economic reforms changed the strategic environment by creating new institutions and actors with stakes in labor relations. Second, I offer an in-depth description of actors’ preferences for labor policy and show that divergent preferences gave room to varying labor policy outcomes across time and regions. Given that institutions in China or authoritarian settings in general differ from the ones in democracies, I show that the process of policy change in China also differs from the ones in democratic settings. Lastly, I argue that Chinese workers are a separate actor whose collective actions play a significant role in labor politics. Even though workers are not part of the political process and enjoy little political power, their use of contentious actions to express grievances nevertheless pressured political actors to place more emphasis on labor rights protection. Labor conflicts also change the relative power that some political actors, such as the labor

unions, enjoy. These changes in turn contribute to greater protection of workers' interests.

Economic reforms and the new labor political environment

China's economic reform and subsequent development have drastically transformed labor relations. To instill a market economy, the CCP opened China's borders to foreign investment, privatized state-owned enterprises (SOEs) and lifted restriction on population mobility. These trends resulted in the "privatization" of labor market—the state withdrew from assignment of individuals to jobs and setting wages to let the employers and the workers negotiate the terms of employment. As the CCP introduced and promoted the labor contract system, employers gained autonomy over the setting of workplace practices, and workers, once the holders of the "iron rice bowls" that guaranteed lifelong employment and workplace benefits, saw their bargaining power vis-à-vis the employers decline (Tomba 2002). A more privatized and skewed labor market thus necessitated the CCP to rely on legal institutions in the forms of labor laws and regulations to ensure the balance of divergent interests (Gallagher 2002; Ngok 2007). Indeed, the 1994 Labor Law not only formally codified the Chinese government and the ACFTU's role as administrators over labor relations but also delegated regulatory authority to local governments. The economic reform, therefore, resulted in a set of actors with new role in labor relations and the regulation of workplace standards—governments (center and localities), labor bureaucracy, trade unions, employers and employees. These actors, except for the employers and employees, are agents of the CCP: with the help of labor bureaucracy, governments are responsible for

the policy making and implementation mandated by the center. The ACFTU assumes dual roles: while responsible for carrying out the policies made by the CCP, it is also responsible for representing the interests of the workers. A new institutional environment was formed under the passage of the Labor Law and subsequent labor policy, and this new environment shaped the actors' policy preferences and options available for them to achieve their preferred outcomes.

Political actors, interests and conflict

Besides creating divergent interests between the employers and employees, the reform and resultant institutions also caused divergence of interests among political actors. This is because the center's delegation of policy implementation and regulatory authority to other actors resulted in a principal-agent relationship and gave rise to the problem of agency loss—the agents may not act consistently to the policy of the center, or the principal, because the latter lacks thorough knowledge of what the agents are doing, does not share the interests that the agents have and lacks ways to prevent the agents from using the power against itself (Kiewiet and McCubbins 1991; Lupia 2001). While it may be efficient for the center to delegate the tasks of policy implementation like the enforcement of legal workplace standards, the latter, especially the local governments, did not share the center's policy preference and thus often acted against central policies.

The center's ultimate concern is regime survival.²² Since the economic reform, economic development has replaced ideology and become the key to CCP's survival

²² Some authors, such as Cai (2010), argue that the center is ultimately concerned with regime legitimacy, or the political system's worthiness to be recognized (Michelman 2003). By this definition, one can treat legitimacy as a factor that contributes to the regime's political survival. Regimes like the CCP care about legitimacy because it helps the CCP stay in power.

(Zhao 2009; Xu 2010). As labor relations became more fluid and contentious, however, the CCP became alarmed by the rapidly growing incidents of labor conflicts. Fearing that social unrest would challenge the CCP rule, the center began to pay closer attention to industrial stability (Lee 2004; Hassard 2008), and legal institutions were used by the center as means to ensure regime stability. Although the CCP continued to emphasize economic development, which contributed to regime stability through the creation of wealth and benefits, the party also recognized that the benefits of development were not shared by all workers. While the young, educated and skilled workers obtained favorable jobs and earned much higher income and benefits as a result of economic development, a large number of former state-owned enterprise (SOE) employees (Solinger 2002) and migrant workers were marginalized in the reform process.²³

Unemployment, which is one of the central social economic problems that the CCP struggled with, has skyrocketed since the end of the 1990s: while official statistics of registered urban unemployment was the same from 1997 to 2000 (about 3.1%), official statistics did not include migrant workers, workers left unemployed in the countryside or SOE employees who were laid off from their workplaces. Including these groups changed the estimated unemployment rate to the following: 9.5% for year 1997 and 11.5% for year 2000 (Knight and Xue 2006). It is thus important for the center to enact and enforce rules that would improve the conditions of the “losers.” In other words, the ultimate need to maintain CCP survival gave the center more incentives to protect the interests of the urban ex-SOE and migrant workers who stood to lose from the process

²³ Although migrant workers were the beneficiary of job creation effort, most of them worked under extremely harsh conditions while receiving inadequate compensations. Also, migrant workers

and were thus likely to challenge CCP rule through militant actions. Although the CCP's priority over economic development resulted in pro-industry policy stance throughout the reform period, since mid-1990s the balance began to shift, and the post-reform period was marked by a greater policy emphasis on labor rights and workplace protection.

Organized under the umbrella ACFTU organization, Chinese labor unions in the post-reform period have become keener to the protection of workers' interests and rights. First, the change in ACFTU incentive was due to the shift in central policy. Being the sole legal union organization that is tightly controlled by the CCP, the ACFTU was given the role of the "transmission belt" between workers and the party, and its tasks were to fulfill the dual goals of economic production and industrial peace (Lu 2001; Lee 1986). This role exposed the ACFTU to a dilemma—it is the representative of both the party and the workers, whose interests differ. But this dilemma did not surface until economic reform resulted in the withdrawal of the CCP as the "paternalistic regime" and the differentiation of interests among labor and capital (Howell 2003). As market reform took place, the CCP was still concentrated on developing the country's economy through foreign directed investment (FDI) and privatization, so the ACFTU was given little role and authority to speak on behalf of the workers. Being a powerless, low status agent²⁴ of the party that focused on winning the investors and granting autonomy to the management, the ACFTU was often found siding with the management when labor

²⁴ The ACFTU was considered a marginal player in labor politics throughout post-1949 China. It enjoyed a low status in national economic debates, was disbanded during the Cultural Revolution, and did not have a sustained role to play in relations to personnel issues or social welfare (Chen and Sil 2006; page 68)

disputes arose. Collusion between the unions and the employers were indeed a common feature in the early part of the economic reform (Chan 2001; Chang 2005). ACFTU was to remain the same until mid-1990s when the CCP began to address workplace violations.

Besides being the agent of the CCP, the ACFTU is also an organization concerned with its own survival. Therefore, the union organization's interest in maintaining relevance also affects its incentives to advance workers' rights and interests. During the reform period, the union organization was confronted with the danger of eroding financial basis and operational control. The ACFTU experienced difficulties in securing funding, which mainly comes from a 2% levy on enterprises' wage bill. While every enterprise in China is required to submit the revenue, in reality many private enterprises—often with the implicit consent of local governments—refused to establish enterprise union branches and ignored the levy requirement altogether. This resulted in a drastic funding shortage, as the revenue collected by the SOEs, many of which were underperforming, could not cover the shortage (Howell 2003). The ACFTU's limited ability to defend workers' interests also contributed to worker disillusionment with the unions, which not only led to the rise of strikes or protests but also the formation of alternative organizations such as fraternal groups and underground labor unions (Lee 2003). The problems of funding shortage and alternative organizations thus prompted the ACFTU to expand enterprise union branches and court workers, including previously marginalized migrant workers whose mobility and reliance on alternative organizations threatened ACFTU survival.²⁵ Thus, the ACFTU's risk of organizational decline

²⁵ Xu Zhenhuan, "Role of Chinese Trade Union in Building Harmonious Labor Relations", available online: <http://english.acftu.org/template/10002/file.jsp?cid=41&aid=127>, accessed 11/10/10

induced it to implement the pro-labor policy enacted by the CCP, so the potential of agency loss was minimized. The union organization's urgent need to maintain survival raised its interests to follow the central policy, and the ACFTU became an agent that supported workers' claims within the state where most of the other political and bureaucratic actors still sided with industries (O'Brien and Li 2006).

Despite their role as agents of the center, local governments' focus on economic development often discouraged them from following the central policies on labor protection. During the reform period, China underwent fiscal decentralization, and the center gave the localities vast fiscal authority through the delegation of budgetary control and arrangements of various revenue sharing contracts with local governments (Shirk 1993). This "decentralization, Chinese style" institutional change prompted local governments to develop their economy. With authority over the allocation and retention of fiscal budget, local governments sought economic growth in order to increase government revenues (Oi 1992; Walder 1995). Fiscal decentralization also gave local governments more incentives to compete with each other through means that improve local practices and thus induce growth (Montinola et al 1995; Jin et al 2005; Zhuravskaya 2000; Qian 2003). At the same time, political centralization—the tightening of central appointment power of local officials—provided local governments with career aspirations and thus increased their desire to develop the local economy to meet the center's demand for economic growth (Blanchard and Shleifer 2001; Zhou 2004). Since external investment and industrial growth were the keys to development, local

governments rushed to meet employers' demands for cheap and flexible workforce that is subjected to managerial discretion (Wong et al 2008).

Local governments' incentives to preserve workers' interests were further limited by two developments. The economic reform contributed to the rise of the migrant workers who traveled to urban areas for employment. Although control on their physical mobility has been lifted, under the *hukou* system they were still identified by their rural hometowns and separated from the urban dwellers.²⁶ As a result, local governments, often with the implicit support of their urban citizens who were the beneficiary of economic development (Xu 2007), could afford to overlook the demands of the migrant workers. Close official-business relationships, which took the forms of joint ventures or individual connections, often entailed government revenues, bribes and other exchanges. These benefits further motivated local governments to support employer position (Gallagher 2001; Chan 2001). Due to these reasons, local governments had the tendency to under-regulate, or not to implement the labor laws and regulations to the full extent.

Local governments' policy attitude towards labor relations is extremely crucial because its policy priority determines the behaviors of the labor bureaucracies and local trade unions as well as the resources that will be allocated to labor rights protection. Just like the CCP at the center, local party committees have personnel control over labor bureaucracy and trade union branches at the same level. Local governments also control

²⁶ Wang Meiyang, "Wage arrears for and discrimination against migrant workers in China's urban labor market." CASS working paper, available online: <http://iple.cass.cn/file/workingpaper67.pdf>, accessed 11/05/10

the budget that the labor bureaucracy receives. Although local governments generally do not control the budget allocation of the local trade union branches, in some localities the governments have incorporated the unions into their structures, which transformed these unions from “mass organizations” into “administrative agencies” and increased trade unions’ dependence on governments for funding (Xu 2007). During the reform period, many local governments’ pro-industry stance translated into limited funding and actions for the labor bureaucracies and unions over labor rights protection. Many pro-development local governments openly stressed the importance of economic development and asked all their agencies to gear their activities and resources towards the “guarding and preservation of the goal of economic development” (wei jinji jiangshe baojia huhang, Xu 2007). And some local governments went as far as forbidding inspections by local bureaus, thereby directly forestalling the works of their agents (Xu 2007).

In summary, China’s economic reform and subsequent developments have altered the incentives and the behaviors of the major actors in labor politics. Since the reform, the center has been in focusing on the maintenance of social stability, and the center’s policy priority has shifted from a pro-industry to a more pro-worker stance in order to control the increasingly unstable labor relations. Economic reform created a more fluid and contentious labor relations, and as the party experienced eroding control over citizens whose active expression of grievances resulted in social instability, the party responded to workers’ demands in order to preserve its goal of regime survival. Local governments, however, often did not act according to the central policy mandate. It was

much more important for the local governments to address the demands of the employers than the workers. During the reform, fiscal decentralization and political centralization have increased local governments' incentives to develop their local economy through external investment and industrial growth. On the other hand, China's organized labor has developed greater incentives over the protection of workers. Being a pro-worker state agent benefited the ACFTU. As reforms progressed, the union organization found itself losing financial resources and challenged by alternative organizations. This fear of losing relevance, in addition to the encouragement of the CCP, prompted the ACFTU to court the workers, and in doing so required the ACFTU to look into workers' demands. This analysis suggests that local governments were the main obstacle to labor rights protection.

When will local leaderships, the ones that implement central policy and control the agents as well as the resources necessary for adequate labor rights protection, follow the central policy and respond to workers' demands? In the following section, I argue that labor conflicts explain the changes in local governments' policy stance and behaviors. Local leaders, just like their principal in Beijing, are concerned with social instability. While they are less sensitive to the overall rise in labor conflicts, they face greater pressure to respond when conflicts occur within their jurisdictions. Contentious demands by the workers thus play a significant political role in shaping China's labor relations.

Labor Conflicts: worker demands and policy implementation

As the previous section shows, rising labor conflicts directly contributed to CCP's shift in labor policy in mid-1990s. Following Solinger (2009)'s argument that social conflicts in authoritarian contexts, where the actions are usually outside the formal political process, carry similar effect on government response as actions expressed within the political process of democracies, I demonstrate that labor contentions not only have significant effect on the behaviors of central but local governments as well: the trend of growing contentious workplace relations at the local level prompts the pro-industry local government to implement labor policy. Labor conflicts induced local governments to encourage their agents—the labor bureaucracy and the local ACFTUs—to focus on labor rights protections. After the local governments gave the green light, the ACFTU gained greater authority to monitor labor bureaucracy's works, so labor bureaucracy enforced labor regulations with more rigors.

Workers relied on both illegal and legal means to express their grievances. Although strikes, street protests or other sudden violent outbursts by workers were less common in an environment where collective actions were discouraged by suppression, militant actions by the workers nevertheless existed (Chan 2001). Some workers also engaged in illegal activities like the formation of underground unions and gangs. Because the risks of engaging in these activities are higher in China than in other democratic contexts, their presence serve as credible and strong signals of collective worker discontent towards the Chinese governments—especially the local governments as they are seen as the ones having the power and responsibility to address workers' demands (Cai 2003). Alternatively, the workers could choose to appeal to the local

governments via the dispute settlement mechanism. In 1993, the labor dispute mechanism was institutionalized. The disputes settlement mechanism was separated into a three-step process: firm-level mediation, local-level arbitration and civil-court litigation. Labor bureaus replaced the enterprise-level CCP leadership as the mediators/arbiters of disputes, and unions took the role of intermediary that is more on the side of the workers. Whereas before 1993 the mechanism only took place in SOEs, the mechanism applied to private and foreign-owned enterprises afterward (Guo et al. 1994; Gallagher 2001). For the workers, legal means constituted a less costly form of grievance expression: the need to form collective actions and the risk of suppression were much more reduced. Nevertheless, the cost of arbitration was still significant for an average worker (Gallagher 2001). The presence and the growth of legalized labor disputes thus also consisted of credible signals of rising collective discontent towards the management and the local governments.

The presence and the rise of labor conflicts forced pro-industry local government to respond with more rigorous policy implementation. Labor conflicts, whether manifested in legal or illegal forms, reflected local governments' failure to maintain social stability. These contentious incidents acted like "fire-alarms" that revealed local governments' non-compliance with the central policy and increased the likelihood of intervention from upper level authorities and sanctioning of local officials (McCubbins and Schwartz 1987). Facing intervention or a threat of intervention from the central government, local governments were pressured to address workers' demands. As scholars on contentious politics have noted, governments have the following choices of

responses: repression and concession (Piven and Cloward 1979; Hurst 2009). A government's choice of response generally depends on the availability of fiscal resources. The more fiscal resources the local government has, the more likely that the government will rely on concession rather than repression (Hurst 2009). The prospect of persistent resistance always plays a role: if the prospect of resistance persisting after partial concession is high, then the government is likely to choose repression as a response (Cai 2010). Concessions or repressions are used to address individual incidents of labor contention. As labor conflicts increased over a sustained period of time, these measures were no longer effective at curbing contention (in fact the increase in labor conflicts demonstrate that these measures fail to deter contention), and the likelihood of intervention from the center is greatly increased. Originally designed to channel workers' discontents into means that can be controlled by the party, labor dispute resolution mechanism paradoxically resulted in a rise in labor disputes. The establishment of institutionalized system helped workers gain easier access and raised their awareness of their rights and interests (Gallagher 2001). Rising labor conflicts thus prompted local governments to shift from one-time measures to policy changes that protect workers' interest and rights. In the following section, I show that rising labor conflict explained ACFTU empowerment over workplace issues and how such growth in political power resulted in more rigorous implementation of labor laws and regulations.

Labor Conflict, ACFTU empowerment and Protection of Workers' Interests

Labor conflicts, which indicate worker's collective discontent and active attempts to change their conditions, pressured the pro-industry government at the central and local

levels to take a more balanced stance in labor relations. Once there was a shift in the incentives of the government, especially the ones at the local level, institutions determined how labor relations in China transform: ACFTU, the once powerless state agent of the CCP, was empowered to take a more active role over workers' interests and rights. The union organizations' close links to the CCP not only translated into unions' rapid access to policy process but also more active oversight over labor bureaucracy's works. Such process allowed the ACFTU to have greater ability to secure Chinese workers' interest on paper and in practice.

Contrary to democracies, the transformation of labor relations in China involves a top-down process with the CCP initiating the change. Labor relations in post-reform China continue to be characterized by extensive state involvement: instead of being the provider of jobs and benefits, the government became an active intermediary between the employers and the workers. Under the CCP, the Chinese government not only instilled and oversaw a regulatory mechanism but also became responsible for constructing and maintaining systems like social welfare (Hurst 2010) and labor disputes resolution (Gallagher 2001).²⁷ Therefore, CCP continues to be the main player in post-reform

²⁷ The debate over the Labor Contract Law shows that the Chinese government continues to involve extensively in labor relations. During the making of the law, some scholars (notably Dong Baohua, who was one of the consultants during the drafting of the law) criticized the law for giving the government too much role on the formation, the termination and other issues regarding employment contracts. Others, represented by Chiang Kai, argued that government intervention is necessary to change the unbalanced labor relations in which the workers have little power and means to defend their rights. Even after the law has been passed, many Chinese scholars continued to criticize government's reliance on administrative means and direct interventions over labor relations. See Li Qi, "An Assessment of the Debate and the Implementation of Labor Contract Law" (dueli laodong hetongfa zhenlun yu shishi de pinglun), 21st *Century Review* (ershiyi shizhi pinglun), available online: <http://www.cuhk.edu.hk/ics/21c/issue/articles/0803009.pdf>, accessed 11/17/10

China's labor relations: it is the one that shapes the country's labor policy direction while keeping the relevant players—local governments, the labor bureaucracy and the unions—accountable. The decentralization of labor politics meant that local governments' compliance is crucial to labor rights protection. As local governments continue to place the interests of the enterprises over those of the workers, the center's oversight became important in pressuring local governments to fulfill their tasks. Without local governments' compliance, state agents—the ACFTU and labor bureaucracy at local levels—would not receive the authority and resources necessary for rigorous enforcement of workplace standards. Therefore, China's institutions determine the strategies that the CCP would use to preserve the balance in labor relations: the CCP, the principal, would be the one initiating the policy change, and the agents at both the national level (the labor ministry and the ACFTU) and the local level (local governments) are to follow the changes in labor policy. CCP's support over workers' demand is important to pressure the local governments, which control the authority, the agents and the resources necessary for policy implementation, into compliance.

The CCP's dominance in Chinese labor relations also implied continuing party reliance on its agents such as the unions to ensure balanced labor relations. To strengthen the nascent legal institutions, the party allowed the ACFTU greater influence over labor policy process, including greater monitoring role over the activities of the labor bureaucracy. By enhancing the representative role and power of the ACFTU over

Zhai Yujuan, "China's Workplace Problems and Labor Law Mechanism" (Zhongguo laogong wenti yu falui zhidu), *Study and Theory* (lilun yanjiu), available online: http://www.szlaborlaw.org/news/News_View.asp?NewsID=506, accessed 11/17/10

the workers, the ACFTU helped the CCP achieve social stability. The presence of empowered unions at local levels, especially at the enterprise ones, enabled the CCP more control over the workers. Enterprise ACFTU branches could quickly respond to disgruntled workers and prevent the discontent from fermenting into collective actions and even underground unions that seriously challenge the dominance of the ACFTU and CCP. An empowered ACFTU also keeps the employers in check. The presence of enterprise unions would help upper level ACFTU and the CCP learn more about employers' compliance with workplace standards, and the empowered upper-level ACFTU enhances enterprise-level ACFTU's ability to press employers into compliance. Lastly, an empowered ACFTU allows the CCP to ensure bureaucratic compliance. Because of their presence in enterprises, ACFTU could help the labor bureaucracy enforce regulations by locating enterprises where the violations of workplace standards engender workers' discontent. ACFTU also provides resources such as personnel that reinforce the capability of the labor bureaucracy. More importantly, ACFTU acts as the spokesperson of the workers and helps transmit workers' demands for more rigorous enforcement/implementation of labor policy. Having close links to the CCP gives the ACFTU access to policy process. Once it is encouraged by the CCP to become more active over workplace matters, existing links to the CCP allow the ACFTU oversight power over the works of the labor bureaucracy. The party's greater reliance on the ACFTU led to the activation and reinforcement of the state corporatist arrangements between the unions and the state bureaucracy (Schmitter 1974; Chan and Unger 1995). Unions not only follow but also aid the CCP to achieve the goal of stability in labor

relations through policy implementation. In exchange, unions are granted continuing monopolistic position, increased access to policy making and implementation process and stronger presence in enterprises and workplace issues in general. This strengthening of state corporatist relationship and subsequent union activism over the enforcement of workplace standards thus allowed the ACFTU to better represent the interests and the rights of the workers.

This analysis of labor politics and the changing government responses to workers' demands yields the following hypotheses:

National Level—hypothesis 1

Labor conflicts→CCP delegates authority to the ACFTU→ACFTU gains organizational strength and authority over workers' rights protection→ACFTU promotes pro-labor laws and policies

Local Level—hypothesis 2

Labor conflicts→CCP delegates authority to unions→unions gain monitoring authority over workplace and labor bureaucracy→labor bureaus devote more effort to enforce labor regulations→more rigorous enforcement of labor laws and regulations

IV. Conclusion

Studies of labor politics in democracies have offered limited insights into the complex dynamics between workers, organized labor and governments in authoritarian states. In many authoritarian settings, the nature of organized labor and the relationship between organized labor and the state are very different from the ones in democracies. Common factors that are cited by the studies on democracies thus cannot adequately explain and predict labor policy outcomes in authoritarian contexts. Nevertheless, these studies show that it is important to identify the relevant political actors, their policy

preferences and the institutions in which they operate in order to grasp the complex dynamics and explain the policy outcomes. Building on this insight, I highlight the role of labor conflict and institutions in shaping government responses to workers' demand. In China, rising labor conflict since the 1990s threatened the survival of Chinese Communist Party rule and induced the CCP to allow the ACFTU, the previously feeble official trade union organization, to take on a more active role in articulating workers' interests at the national and local level. Union empowerment over workplace matters, I argue, contributes to the rise in labor rights protection: at the local level, the more contentious the labor situation, the more active is the ACFTU on workplace issues. And the more active the ACFTU, the more diligently government labor bureaucracies are in enforcing workplace standards. These findings suggest that union development helps secure workers' interests on paper and in practice.

Chapter 3

The Development of the Chinese Labor Unions

I. Introduction

In 2009 when I was doing my field research in China, I visited the All China Federation of Trade Unions (ACFTU) headquarter in Beijing. I was impressed by the twenty-five floor tall, glass windowed building that towered over the surrounding traditional-looking buildings on Changan Street. In the spacious lobby, I saw major ACFTU events running across an electronic ticker on the wall. In a room connecting the lobby and the elevator, one can find a large LCD TV, and in the elevator I was immediately attracted by the carpet that showed the day of the week. To me, it was a modern office building.

This modern-looking ACFTU building, however, was a rather recent creation. In September 8, 2003, a news article on *China News* reports the planned demolition of ACFTU headquarter in Beijing. The building, which was constructed in 1957 and considered one of Beijing's symbolic architectures in the 1950s, has been decaying since the 1970s, and in 1988 the Beijing safety authority declared that the building did not pass the new codes for earthquake resistance.²⁸ The new headquarter that reminded me so much of an office building was constructed directly on top of its predecessor.

²⁸ "Landmark ACFTU Building About to be Demolished (quanzong gonghuidalow kaishi zhuangyao tsengwei beijing biao zhixing jiangzhu zhiji)" ChinaNews.com, 9/8/2003, <http://www.chinanews.com/n/2003-09-08/26/343903.html>

The transition of the ACFTU headquarter is a fitting symbol of the history of the Chinese unions. In this chapter, I examine the evolution of the ACFTU up to the post-reform period. Even though the Chinese workers should be the vanguards of the Chinese Communist Party (CCP) according to Marxist theory, I show that the ACFTU—their official and only legal representative in China—has played a marginal role in Chinese labor relations throughout most of the CCP history. The ACFTU acted as a “transmission belt” between the workers and the party—it was to implement CCP directives downward and to transmit grass-root opinions upward. I show that this “transmission belt” role of the ACFTU was a major cause behind its weakness, and its inability to balance the two functions led to further deterioration of influence and status. Despite its attempts to become more influential over labor relations and in particular over the protection of labor rights and interests during pre-reform period, the party’s policy emphasis on production prevented the ACFTU from fulfilling its role as a defender of labor interests. Not only that, during reform period the ACFTU, like the old headquarter building, was eroding and becoming out of touch with the rapidly changing industrial environment. Although the ACFTU is one of the largest mass organizations in China, its status and influence over labor relations have been very limited throughout most of the modern Chinese history. It was not until early 2000s when the CCP began to focus on the protection of labor interests and welfare. As market reforms deepened, problems such as unemployment and workplace rights violations became severe, and labor conflicts greatly alerted the CCP. The party, whose priority was to improve economic performance without incurring social instability, was pressed to appease

discontented workers, and to do so the party allowed the ACFTU to gain more authority over workplace relations. This shift in CCP policy priority gave the ACFTU opportunity to revamp itself, and the union organization used its newly gained influence to protect the rights and interests of workers.

This chapter is organized as follows. First, I briefly describe the structure of the ACFTU. I show that the way the ACFTU is structured causes its policy goals and actions to be closely aligned to the CCP industrial policy. Secondly, I give a brief description of the ACFTU before reforms. Thirdly, I discuss the ACFTU during reform period and show that while economic reforms fundamentally changed labor relations and challenged the organizational survival of the ACFTU, the party's emphasis on economic development prevented the ACFTU from addressing workers' demands. Fourthly, I discuss the development of ACFTU since 2003 when the union organization became more active and influential over workplace relations. During this time the ACFTU not only gained more influence over workplace relations but also engaged in various activities that helped advance workers' rights and welfare. Lastly, I conclude the chapter.

II. Structure of the ACFTU

Unlike many democracies, organized labor in China is institutionally integrated and politically controlled by the ruling regime structure. Trade unions in People's Republic of China (PRC) were modeled after the Soviet Union. Established in 1950 under the Trade Union Law, the All-China Federation of Trade Unions is the peak organization that encompasses all trade unions and thus the sole legal union organization in China.

Subordinate trade unions were organized on industrial and geographical lines (see Figure 3.1). The ACFTU controls sixteen national industrial union federations that represented the horizontal principle. Vertically, the ACFTU has branches at all administrative levels (province, prefecture/municipality, county and below), with enterprise unions being the most basic unit level (Hong and Warner 1998). As mentioned above, the ACFTU acted as a “transmission belt” between workers and the CCP. Its staffs are appointed by the party, and its job is to relay and implement party policy downward, help the enterprise managers meet production goals and stabilize workplace relations (Chen and Sil 2006) and transmit grass-root opinion upward (Howell 2003). Being the “transmission belt” exposes the ACFTU to a dilemma—it is the representative of both the party and the workers, whose interests did not necessarily overlap. Indeed, the ACFTU often found itself juggling between the two roles and then attempting to become more representative of labor’s rights and interests. However, it was during the reform period when the conflict of interests widened. As the party turned to market reforms to improve the country’s economy, it not only withdrew itself from directly overseeing workplace matters but also began to prioritize business interests over those of labor. This widening of interests between the party and the workers led to the growth of worker discontent and militant actions. Worrying that the risk of labor conflicts would affect its regime survival, the CCP sought various means to stabilize labor relations, and the ACFTU became one of its major means to control labor. Thus, it is during the post-reform period when the ACFTU took a more active position over the protection of labor rights and interests.

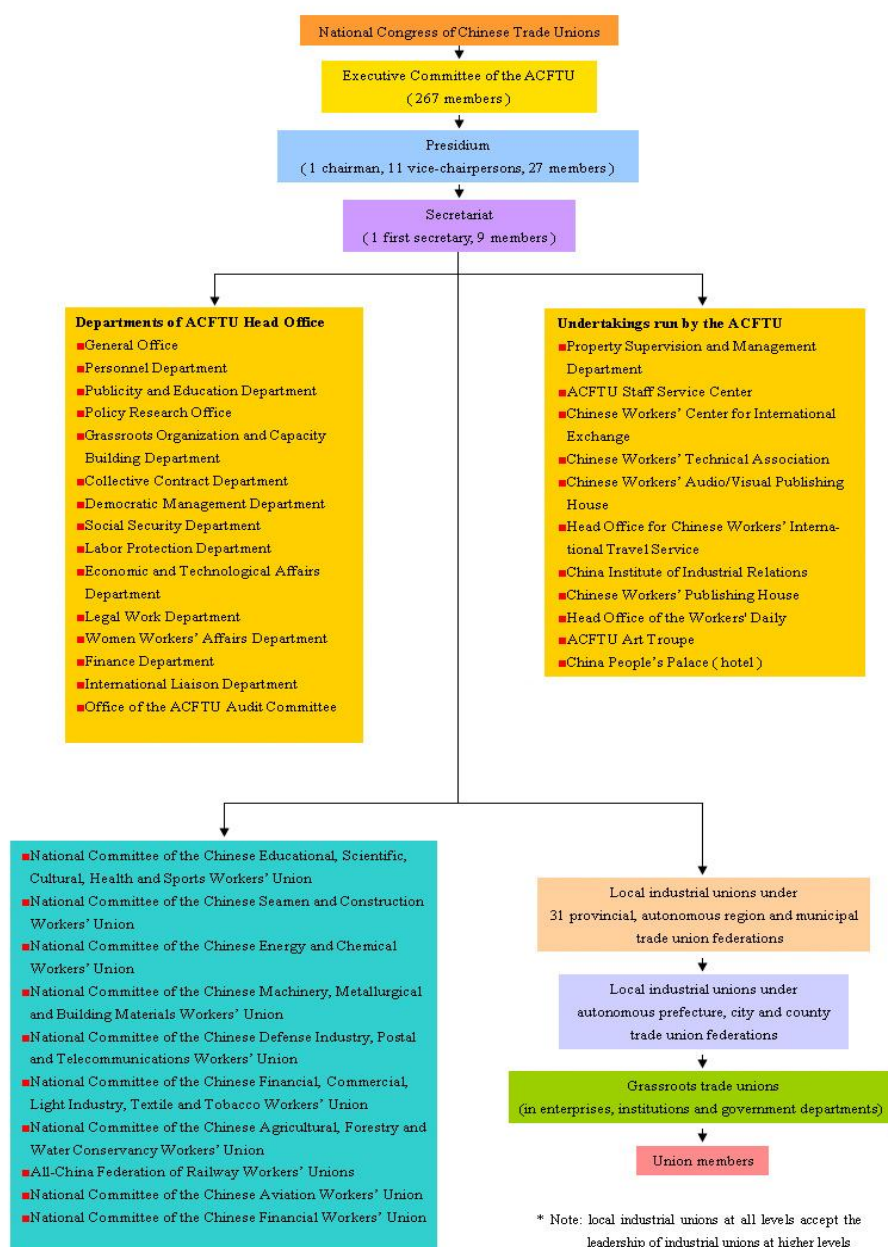


Figure 3.1. ACFTU Organizational Structure

Source: All-China Federation of Trade Unions Website

(<http://www.acftu.org.cn/template/10002/file.jsp?cid=64&aid=213>)

III. Looking back into the history: ACFTU from 1920s to 1970s

Part of the reason behind China's inadequate labor practices and declining worker benefits over the reform period lies in the absence of a strong advocate of workers' rights and welfare. Indeed, workers in China enjoy limited representation. There is only one legal union organization, the ACFTU, and independent unionism and labor activists who advocate alternative organizations are repressed by the regime. Although trade unionism is not a new invention in China—the ACFTU first appeared in 1920s, long before the founding of the PRC—and the umbrella union organization is well developed (Gallagher 2005), the ACFTU is considered a “paper tiger” by western observers due to its organizational dependence and thus close alignment to the CCP.²⁹ While it is correct that the ACFTU played a minimal role throughout most of the Chinese labor relations, such view glosses over the tensions that existed between the union organization and the party. A look at the history of the Chinese unions, I argue, not only shows the structural weakness but also the constant struggle of the union organization to balance its dual role as the agent of the CCP and representative of the workers. While the union organization exhibited interests in greater labor protection, its attempts were in conflict with the party's goal on economic production, and the latter's constant distrust of the union organization resulted in the weakening and even the dismantlement of the ACFTU.

The ACFTU was set up in 1925 in Canton but was quickly crushed by the Nationalist government in 1927, and unions across China were either disbanded or forced

²⁹ One of the most critical views comes from China Labor Bulletin, a Hong Kong-based organization that focuses on labor rights in China. See China Labor Bulletin, “Protecting Workers' Rights or Serving the Party: The way forward for China's trade unions,” http://www.clb.org.hk/en/files/share/File/research_reports/acftu_report.pdf (February 23, 2011)

to go underground. After that, the ACFTU went underground and retreated to revolutionary base areas like Yanan along with the CCP. The ACFTU thus worked largely around agrarian areas between 1927 and 1949.³⁰ In 1943, Deng Fa, a prominent CCP leader and labor activist, openly criticized some of the factory unions for advocating higher wage and benefits. While acknowledging the conflict of goals between production and workers' interests, Deng argued that the role of the public/party-owned unions differs from the privately-owned ones. The outputs of public owned unions, according to Deng, were used for revolutionary efforts, so factory unions were expected to cooperate with the factory management and help facilitate economic production.³¹ The dilemma of the unions' role and the complex issue of union-party relations thus surfaced even before the founding of the PRC.

The ACFTU was revived in 1948, and in 1949 it was immediately incorporated into the CCP. Modeled after the Soviet structure, the ACFTU was given the role of the "transmission belt," and it acted as the intermediary between the party and the workers: it was the workers' mass organization, but at the same time it closely followed the leadership of the CCP (Ng and Warner 1998). While the 1950 Trade Union Law recognizes the ACFTU as the only legal union organization with jurisdiction over all local, sector and factory unions, article 9, clause one stipulates that unions' primary role

³⁰ Shanxxi Federation of Trade Unions (2009). "History of the Chinese Labor Movement (Zhongguo gongyun shihua)." *Shanxxi Federation of Trade Unions*. Available at: <http://www.sxgh.org.cn/particular.aspx?id=7841&presentid=93>

³¹ Lei Yi (2010), "A Historical Look of the Chinese Unions and Their Role (zhongguo gonghui jiaose de lishi zhuesuo)." *China Review News*. <http://www.chinareviewnews.com/doc/1013/6/5/3/101365370.html?coluid=6&kindid=26&docid=101365370&mdate=0627101104>

is to “educate and organize workers, staffs and the mass to promote the government’s policy so as to consolidate the proletariat-led regime.” As China had just risen out of civil war, political instability continued, and economic recovery was urgently needed. The ACFTU’s goal of this period, thus, was to help the party consolidate its fledgling control over the country. The ACFTU moved quickly to establish union branches at provincial and enterprise levels. Unions at the provincial levels, such as Shanghai Trade Union Council and the General Trade Union Council of Canton (predecessor of the Guangdong Trade Union Council), helped local governments crush the Nationalist-controlled “Yellow” unions and were deeply involved in the purging of the capitalist forces during the “Three-anti” and “Five-anti” campaigns in 1951 and 1952 respectively (Ng and Warner 1998). At the factory level, the ACFTU often acted as an “ambassador” of the state when labor conflicts arose—instead of voicing workers’ demands, the ACFTU helped the state settle disputes by accommodating and even appeasing the management (Ng 1994).

The emphases of the ACFTU on party policy—the consolidation of party rule and economic recovery of the country rather than representing workers’ interests—soon led to a debate within the ACFTU on the role of the Chinese unions, and the debate eventually prompted its leader, Li Lisan, to advocate for greater labor protection and union activism. In 1951, Li, who was the Vice Chairman of the ACFTU, wrote the “View on the Debate and Issues Regarding Union Work: A Report to Chairman Mao (guanyu gonghui gongzuo zhong fasheng zhenglun de wenti de yijian xiang maozhushi de baogao).” In this letter to Mao, Li expressed the view that there existed conflict of

interests between the workers and the public-owned enterprises, particularly in the issues of wage and benefits.³² Unions, according to Li, need to be given greater role over labor protection in order to prevent labor conflicts from arising. Li's view was disapproved by Mao, and Li along with some ACFTU leaders were criticized for being anti-Marxist, "economism" (focusing on individual and temporary interest over that of the public) and importantly, for "unionism"—not upholding the party principles (Lee 1986). The CCP sapped Li's attempt to increase ACFTU influence by removing him from his post in 1953, and the ACFTU constitution was amended that year to emphasize the party's control over the unions.³³ While Li was replaced by a more "red" Lai Ruoyu, later Lai was also charged with attempts to challenge the party's power with attempts to increase union autonomy (Taylor, Chang and Qi 2003). These episodes reveal the ACFTU's failed attempts to expand its representative function and the subsequent tightening of party control over the union organization.

The ACFTU experienced further setback in the 1960s. During the Cultural Revolution, the ACFTU and its subsidiary branches at the local levels were purged, and in 1967 the Politburo sealed the safe deposit of the ACFTU to suspend the union organization (Ng 1984).³⁴ The ACFTU was charged with prioritizing production over "class struggle"—putting the "experts" ahead of the "red" elements (Lee 1986).

³² China Institute of Industrial Relations (1987). *Li Lisan and Lai Ruoyu on Unions (Li Lisan Lai Ruoyu lun gonghui)*. Beijing: Dangan Publishing House

³³ Please see the *1953 Constitution of the Trade Unions of the People's Republic of China*. Appendix to the Seventh All-China Congress of Trade Unions, Beijing: Foreign Language Press.

³⁴ "Background on the All-China Federation of Trade Unions."
http://big5.gov.cn/gate/big5/www.gov.cn/test/2005-06/28/content_18094.htm (02/24/11)

According to Ng and Warner (1998), the suspension revealed the deep distrust that the party had always had towards the union organization. With its growing presence in localities and enterprises, the CCP worried that the ACFTU would form a separate political influence and challenge its rule. The ACFTU was not revived until 1978 during the Ninth Trade Union Congress.

IV. ACFTU Evolving: 1980s to 2003

As the previous section has shown, the CCP squelched the ACFTU's efforts to articulate the collective interests of workers and as a result the ACFTU played little role in China's labor relations before 1980. Rather, it was tightly controlled by the CCP, and its development closely reflected the party's need to consolidate its rule over the new country. To help the party realize this goal, the ACFTU focused on establishing union presence in enterprises and economic production. Attempts by the ACFTU to become active over workers' interests incurred suspicion of independent unionism and were quickly crushed by the party.

The role and influence of the ACFTU from the 1980s to early 2000s remained marginal. The reforms resulted in a fundamental transformation of China's labor relations as well as unprecedented challenges for the ACFTU. During this period, the ACFTU saw its membership and union branches decline, which caused the funding of the unions to greatly diminish. The problem of inadequate funding became so severe that it placed the union organization's survival to test and pressured the ACFTU to seek changes. ACFTU's urgent calls led to changes of union status and influence on paper. While the party's emphasis on economic reforms meant that the main mission of the

ACFTU was to help the CCP implement privatization and ensure a smooth transition to market-based industrial structure, the ACFTU also gained some legal representation over workers' interests—employment and other rights—through the laws and regulations that were passed during this period.

China's economic and political landscapes took a drastic turn in 1980s under the reformist CCP leadership. The Third Plenum of the National Party's Congress' 11th Central Committee in 1978 marked the official launch of the gradual but fundamental economic reform of the economic system. During the meeting, preeminent leader Deng Xiaoping revealed the Four Modernizations, a design to transform China into a great economic power through the modernizations of agriculture, industry, national defense and science and technology. The core behind Deng's proposal of market-type reforms is profit incentives, market competition and reduced scope of planning (Shirk 1993). Market mechanisms would be introduced to gradually replace the command economic structure. In other words, China would “use capitalism to develop socialism” and achieve the status of great economic power by the 21st century.

Market-type reforms aiming to increase worker incentives and enterprise autonomy were introduced to the workplace. To encourage workers to increase their productivity, workers' compensation was changed from state-determined, egalitarian-based, non-performance to enterprise-determined, performance-based, “to each according to his work” criteria (Shirk 1993; Chen 1995; Chow 1992; Jackson 1992; Warner 1995, see De Cieri, Zhu's article). While wages continued to be seniority-based, bonus system that was tied to enterprise profit was revived, and bonuses became a larger share of workers'

compensation (Shirk 1993). Enterprise hiring practices also underwent some changes. State-owned enterprises were allowed some room to choose workers when hiring while private enterprises were given the full autonomy in their hiring practices. The installment of managerial responsibility system greatly increased managerial control over personnel, production and administration. For the workers, the workers' congress system was revived and expanded. Introduced in the 1950s but disrupted and disbanded during the Cultural Revolution (Andors 1977), the workers' congress would allow workers, through an elected body of representatives, to participate in managerial decision-making, including the election of factory directors and managers (Ng 1984). These measures were in line with the overall reform goals: the party retreated from workplace relations and gave actors within the workplace more autonomy over production decisions in the hope to boost economic performance. According to Lockett and Littler (1983), the workers' congress system was seen by the CCP as a mean of improving factory efficiency and productivity. As the management selection was still heavily based on patronage and political maneuvering, the party hoped that worker participation and election would help select managers with more skills and competence. Given that workers' compensation were linked to performance, it became more likely for workers to elect managers who had the skills and abilities to improve factory and efficiency.

During this period, the ACFTU assisted the CCP to implement market-type reforms. The goals of the ACFTU were defined by Deng's announcement during the Ninth Trade Union Congress: "Unions should educate and mobilize the workers to contribute to the

‘Four Modernizations.’ Unions need to speak and act on behalf of the workers and fight for workers’ ‘democratic rights.’ In response, the ACFTU announced at the 9th Trade Union Congress in 1978 that unions were to “facilitate production by helping improve production relations in enterprises.” The phrase “safeguarding workers’ interests” was first introduced at the 10th Trade Union Congress in 1983, and in the 11th Trade Union Congress in 1988, the ACFTU proposed that unions uphold and implement party’s policy but also demand greater participation in major government policy that affect workers, union autonomy in the administration of charts and regulations and emphasis on grass-root union election of chairs.³⁵

While the ACFTU activities reflected the party’s emphasis on market reforms, its calls for greater workers’ representation were not carried out due to external and domestic political turmoil. The development of Workers’ Congresses was put on hold as the CCP witnessed the collapse of the communist regime in Poland under the influence of the labor movements in 1981 as well as a series of labor conflicts throughout China. Significant labor unrest occurred in Wuhan and Taiyuan where workers protested and demanded for the establishment of free trade unions. Strikes were also found in Anshan Steelwork in Northeast region, Shanghai, Kunming and some places in Hubei and Shanxi provinces (Wilson 1990).³⁶ Although the ACFTU continued to institute and expand the workers’ congress system and unions within enterprises, these grass-root institutions

³⁵ China Labour Bulletin (2009), “Protecting Workers’ Rights or Serving the Party: The way forward for China’s trade unions.” China Labour Bulletin Research Report.
http://www.clb.org.hk/en/files/share/File/research_reports/acftu_report.pdf (04/10/11)

³⁶ Ibid

did not function as representatives of workers' interests. Rather, they became the means for the party, through the ACFTU, to contain labor instability. Facing changing labor relations and rising labor dissatisfaction, the CCP sought ways to channel workers' discontent (Chang 2010) and pre-empt further labor movements from challenging the party rule (Hearn 1977). Particularly after the Tiananmen crackdown of democracy movements in 1989, the CCP reasserted its presence in workplaces and control over the unions. The 1989 *Circular on Strengthening and Improving the Party's Leading Role in Work Regarding Unions, the Communist Youth League and Women's Federation* stresses party committees' leadership over ACFTU. It not only required party committees to emphasize unions and their work but also provide guidance over the prevention of forces that seek to weaken CCP leadership.³⁷ Meanwhile, enterprise management continued to enjoy expanding autonomy over workplace matters (Shirk 1993).

1990-early 2000s: Deepening Marketization, Labor Marginalization and ACFTU Crisis

Marked by Deng's famous Southern Tour in 1992 during which he called for the further intensification of reforms, economic reforms resumed and deepened despite a temporary hiatus after the Tiananmen crackdown. The reform of state-owned enterprises was a major CCP focus during this period. State-owned enterprises that were underperforming were allowed to be overhauled, leased or sold to the public or the employees according to the *Regulations on Transforming the Operational Mechanism of State-owned Industrial Enterprises* issued in 1992. Further moves regarding SOE

³⁷ *Circular on Strengthening and Improving the Party's Leading Role in Work Regarding Unions, the Communist Youth League and Women's Federation* (zhonggong zhongyan guanyu jiachiang he gaishang dang duei gonghui gongqingtuan fulian gongzuo lindao de tongzhi) (1989). Available at: <http://cpc.people.com.cn/GB/64184/64186/66683/4494100.html>.

reform were laid out by the CCP in 1997. In April, a State Council circular emphasized the expansion of SOE reform while detailing the disposing of bankrupt enterprises' assets and the creation of the "re-employment centers" for laid-off workers. In May, General Secretary Jiang Zemin gave a speech at the Central Party School. During the speech, he stressed the importance of SOE reform and hinted of a "breakthrough" in the reform.³⁸ These ideas were formally codified during the 15th Party Congress in September 1997. SOE reforms were on the top of the party's priority list: SOEs were to restructure and evolve into profitable enterprises or exit the market.³⁹ The SOEs were allowed to use any means necessary to become profitable, but the one endorsed by the party was the reduction of the number of workers (Hurst 2009). And the labor contract system was the most decisive measure of labor reform and means to reduce SOE workers. The use of labor contracts, which were to be signed by the employers and the workers and subjected to change and renewal that are agreed by both parties, were introduced in 1980s at special economic zones. Though the implementation rate was slow, and there was opposition at first--management at state-owned enterprises worried that the use of contract would grant skilled workers freedom to leave while creating division between permanent and contract workers--the system picked up speed in the 1990s, and the gradual but growing acceptance of labor contract system signaled the end of lifelong employment practices (Gallagher 2005).

³⁸ H. Lyman Miller(1998), "Preparing for Change with Promise of Continuity." The China Business Review. <http://www.chinabusinessreview.com/public/9801/miller.html> (accessed March 08, 2011)

³⁹ Renmin Chubanshe (1997), *Zhongguo Gongchandang Dishiwuci Quanguo Daibiao Dahui Wenjian Huibian* (Beijing: Renmin Chubanshe) p.23.

The reform of the SOEs and the reduction of workforce created the risks of social instability. For SOE workers, being laid-off (xiagang) entailed the end of the “iron rice bowl,” or the loss of permanent employment and the benefits that came with it. As many SOEs were underperforming, the shift in CCP focus on SOE reform not only caused the rapid reduction in the number of SOEs but also the rise of unemployment. The number of the SOEs went down since mid-1990s. The number of SOEs (please see Figure 3.2) stayed constant throughout the 1980s and early 1990s: during this period, the number of SOEs was between 80,000 and 120,000. Starting in 1995, the number declined rapidly, and in 2003 there were only 20,000 SOEs left. Corresponding to the change in SOE number was the decline in SOE employment (see Figure 3.3): while the number of SOE employment remained positive and constant throughout the 1980s and early 1990s, SOE employment decreased starting year 1997, and has been on a decline ever since then. The biggest decrease occurred in 1998—the year after the CCP made the announcement regarding SOE reform. While the public sector declined, private sector quickly grew (see Table 3.1). From 1993 to 2000, the number of privately-owned firms (siying qiyie) grew at an average of 33.1%, and the rate ranges from 16.8 to 81.4%. Private sector employment experienced similar trend: the number of workers employed in privately-owned firms grew at an average of 30.7%, and the rate ranges from 15.2 to 74.0%.⁴⁰

As the SOEs trimmed their workforce, the rapid decline of SOE employment became a serious problem. The share of SOE employment also declined during this

⁴⁰ Please refer to Asia Development Bank report on “The Development of Private Enterprises in China,” available at: http://www.adb.org/Documents/Reports/TAR3543/sec_1-5.pdf

period: while the percentage of SOE employees in all employment remained slightly above 16% before mid-1990s, the figure dropped starting in 1998 and was on a constant decrease throughout late 1990s and early 2000s. In 2003, there was about 9% of workforce employed by the SOEs. These changes reflect the CCP's "gradualist" approach to SOE reform. Reforms went from smaller in 1990s to bigger in late 1990s to prevent large-scale protests by laid-off workers (Cui 1997). The intent to delay SOE reform by the CCP suggests that the party worried about the risk of labor conflicts and would respond to such pressure with means that could increase the rights and benefits of the workers.

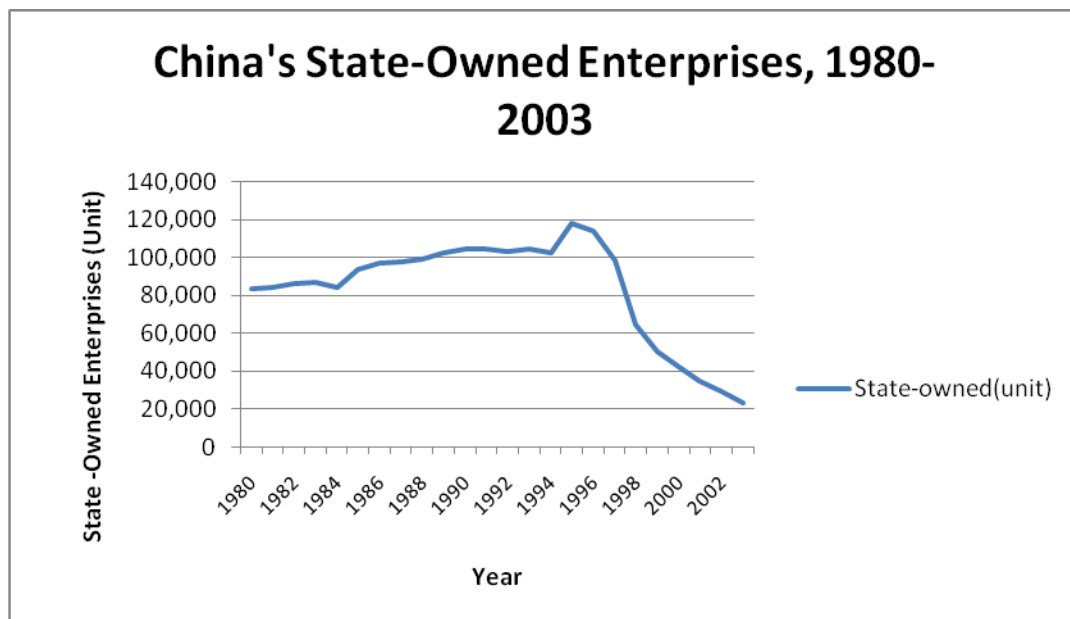


Figure 3.2. Changes in China's State-Owned Enterprises, 1980-2003

Source: All-China Marketing Research

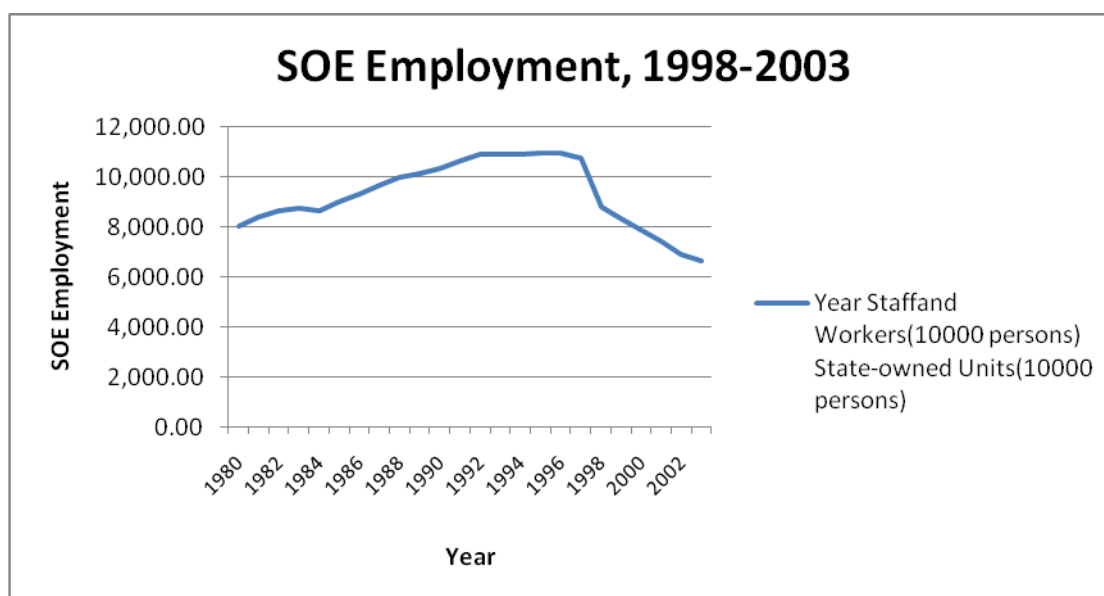


Figure 3.3. Changes in State-Owned Enterprise Employment, 1980-2003

Source: All-China Marketing Research

Table 3.1. Private Sector Development since 1993

Source: China Statistical Yearbook, 1994-2001

Year	Number of Firms (thousands)	Growth rate (%)	Number of Employment (millions)	Growth rate (%)
1993	238		3.7	
1994	432	81.4	6.5	74
1995	654	51.4	9.6	47.4
1996	819	25.2	11.7	22.5
1997	960	17.2	13.5	15.2
1998	1201	25.1	17.1	26.7
1999	1509	25.6	20.2	18.3
2000	1762	16.8	24.1	19

The deepening of the SOE reforms created the risks of protests by laid-off workers and forced the CCP to come up with new measures in response. The CCP sought legal

institutions to regulate the increasingly complex labor relations. In 1994, China passed its first national labor law. The Labor Law codifies the rights of the workers and the standards for enterprises while detailing the new responsibilities of the governments and unions (Gallagher 2001). While the party guaranteed workers' rights (on paper) with the passage of the Labor Law, it enacted means to help them preserve the welfare and conditions they had enjoyed previously. After implementing the *xiagang* system in which certain workers were removed from the active labor force without being released from the work units since 1995, the CCP sought the creation of the re-employment centers to provide assistance to laid-off workers. Established in SOEs, the re-employment centers offered occupational guidance, employment information and free job training at a six-month basis. Laid-off workers also received benefits: these re-employment centers also provided allowances for basic living expenses and pay workers' social security premiums⁴¹.

The altered industrial and labor environment presented the unions with unprecedented challenges and the prospect of diminishing organizational relevance. The ACFTU experienced difficulty in establishing union branches at the increasingly important private sector. ACFTU unionization effort was often resisted by the private enterprises for fear that union interference would affect enterprise performance and profits, and local governments' pro-industry attitude helped these enterprises ward off ACFTU influence (Zhang 2002, from Qi's Chapter 4). ACFTU's low presence in private sector along with the trend of SOE restructuring contributed to the declining

⁴¹ Labor and Social Security in China (2002).

<http://www.lawinfochina.com/Wbk/dispecontent.asp?db=3&id=32> (03/06/11)

number of enterprise unions and union membership (see Table 2.2). Between 1992 and 1999, the number of enterprise union branches went from 589000 to 509000, a decline of 13.6%⁴². Meanwhile, union membership experienced a mild reduction in early 1990s, from 103 million union members in 1992 to 102 million in 1996. Steeper declines occurred during the latter half of 1990s: union membership went from 102 million in 1996 to 87 million in 1999, a 14.7% decline.

Table 3.2. Union Density, 1990-2000

SOUs=state-owned units (enterprises, institutions and government agencies);

POEs=privately-owned enterprises; FIEs=foreign-owned enterprises. Based on Liu (2010)

(<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1368&context=ilrreview>)

<u>Year</u>	<u>Total</u> <u>Members</u> <u>(10000)</u>	<u>Densit</u> <u>y (%)</u>	<u>SOUs</u> <u>Member</u> <u>(10000)</u>	<u>Densit</u> <u>y (%)</u>	<u>POEs</u> <u>Member</u> <u>(10000)</u>	<u>Densit</u> <u>y (%)</u>	<u>FIEs Member</u> <u>(10000)</u>	<u>Densit</u> <u>y (%)</u>
1990	10,346.00	39.6	8305	80.28	0	0.28	48	70.68
1996	10,949.00	29.25	8339	74.17	11	0.97	180	33.24
1999	8689.8717	26.27	6540	76.29	69	3.43	201	32.82
2000	10361.52	32.5	6652	82.1	437	18.17	444	69.22

The ACFTU's declining membership and union branches also affected its financial resources. According to the Trade Union Law of 1992, unions have five sources of funding: 1) Membership dues, 2) Two percent levy of monthly wage bill of enterprises that have established union branches, 3) Profits from enterprises and units that are

⁴² The Progressing Chinese Unions in the time of Reform and Opening (gaige kaifan zhong buduan fenjing de zhongguo gonghui) (2008), China Workers' Daily (Gongren Ribao) link address (03/14/11)

operated by the ACFTU at various levels, 4) Subsidy from the government and 5) Others. Amongst these five sources, the ACFTU draws its revenue mostly from the two percent levy. Because the enterprise contribution was a major source of union funding, the presence of ACFTU branches particularly in large enterprises was very important for the ACFTU to obtain the two percent levy. As the number of enterprise union branches decreased, fewer enterprises were available to contribute to the ACFTU fund. Underperforming enterprises, most of which were SOEs, were often unable to pay the two percent levy. Meanwhile, the ACFTU often lacked the ability to pressure private and foreign enterprises, many of which lacked willingness to contribute, to fulfill their levy requirement. As mentioned above, many private and foreign-owned enterprises bypassed the requirement altogether when they refused to set up enterprise union branches. Private and foreign enterprises that have established union branches often ignored or delayed the dues, and many enterprises only submitted partial dues.⁴³ Thus, the ACFTU experienced trouble securing funding. According to the ACFTU statistics, in 1992 the average rate of levy submission among enterprises was 55%; in 2002 and 2003 the average rate has diminished to 41.9% and 34.8% respectively.⁴⁴ The problem of obtaining adequate union funding was especially pervasive in places where the private sector had a strong presence: in Guangdong province, the average rate of levy submission

⁴³ Han Heng (2005), "On Union Organization's Self-Interest: Research and Analysis of China's Enterprise Unions (guanzhu gonghui xitong de zizhu liyi)." *Twenty-First Century (ershiyi shiji)* 7(40)

⁴⁴ Zhang Chunshen (2002). "Explanation on the PRC's Trade Union Law (zhonghua renmin gongheguo gonghui fa shiyi)." Beijing: Law Publishing House (falui chubanshe)

"The Challenges Regarding the Implementation of Trade Union Law (gonghui fa guan che shi shi zhong de xian shi yu tiao jian)," <http://yhzgh.org/Article/view.asp?id=47> (03/14/11)

among its 21 municipal-level ACFTU was 23%, and among the 40% of the private enterprises with union branches, more than 80% of them did not comply with the levy requirement.⁴⁵ In Shenzhen, a special economic zone dominated by foreign-invested enterprises, most of the non-state owned enterprises dodged the levy requirement: in 2002, about 90% of the zone's ACFTU dues came from the SOEs, which constituted only 10% of the enterprises in Shenzhen.⁴⁶ Eroding organizational and especially financial resources thus put the ACFTU on a precarious trajectory and increased its incentives to seek change. As the party retreated and allowed the management greater autonomy over labor relations, the ACFTU could no longer rely on the party to solidify its organizational status and strength. Instead the ACFTU turned to workers as a source of support. The protection of workers' rights and interests became increasingly important for the ACFTU to gain support from workers. Support from workers could then help the union organization bolster its attempts to establish branches in enterprises and extract funding from the employers. The protection of workers' interests is not only an organizational mission but also a tool for the ACFTU to retain its status and position.

During this time of major changes in labor relations—the retreat of the party, the growing strength of the management vis-à-vis the workers and union's eroding organizational influence, the ACFTU began to seek to increase its status via legislations.

⁴⁵ Ibid

⁴⁶ “The Challenges Regarding the Implementation of Trade Union Law (gonghuifa guan che shishizhong de xianshi yu tiaojian),” <http://yhzgh.org/Article/view.asp?id=47> (03/14/11)

The ACFTU was involved in the revision of the 1950 Trade Union Law since 1978.⁴⁷ It was responsible for the research and the drafting of the revision, and under the supervision of the State Council Legislative Office (LOA), the ACFTU consulted with various ministries and provincial governments.⁴⁸ The amended Trade Union Law was passed in 1992 and signifies some changes in unions' role. Article 6 of the 1992 Trade Union Law states: "While protecting the overall interests of the Chinese people, trade unions shall represent and safeguard the legitimate interests of workers and staff members...Trade unions must maintain close contacts with staff members and workers, heed and reflect their opinions and requests, show concern for their livelihood, help them solve their difficulties and serve them wholeheartedly..."⁴⁹

The ACFTU also helped draft the 1994 Labor Law.⁵⁰ Unions' role in aggregating and protecting workers' interests and rights was further recognized and expanded in the 1994 Labor Law.⁵¹ Article 1 of the Labor Law states: "Trade unions shall represent and protect the legal rights and interest of workers independently and autonomously and

⁴⁷ The timing of the passage was likely a reflection of the marginal role that the ACFTU played throughout the 1980s. While the ACFTU was revived in 1978, its development was limited as the CCP focused on market reforms and the improvement of the country's economic performance.

⁴⁸ Xie Liangming. "On the Revision Process of the Trade Union Law (gonghuiifa zhiding siugai lichen)" (2009). Available at: <http://www.hnghw.com/Info.aspx?ModelId=1&Id=11902>

⁴⁹ Trade Union Law (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 3, 1992, effective Apr. 3, 1992), *translated in* Laws of the People's Republic of China 811 (Chinese English ed.v.1 2000)

⁵⁰ Interview, 01/2010

⁵¹ Labor Law of the People's Republic of China (No.28) (promulgated by the Standing Committee of National People's Congress, July 5, 1994, effective January 1, 1995). Available at: http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=50906

develop their activities according to the law.” Article 33 extended the ACFTU’s representative function to sub-national levels by giving union branches the right to negotiate “collective contracts” with enterprise managers for the first time. Article 80 and 81 officially stipulated that ACFTU participate in all labor arbitration cases and other labor-related disputes. The 2001 Trade Union Law further enhanced unions’ legal representation capacity by giving the ACFTU the right to seek legal redress against any enterprise that violates labor regulations.⁵²

While the ACFTU made progress on paper, actual changes were slow. Given that the party’s emphasis is on the deepening of the market reforms, particularly the restructuring of the SOEs to improve their efficiency and profitability, the unions were expected assist the party to remove the obstacle to enterprise privatization—unemployment and subsequent labor unrest. Local governments’ lukewarm attitude towards labor rights protection also hampered ACFTU effort to initiate change.⁵³ Fearing that the enforcement of labor standards would increase production cost and drive away investment, local governments had little incentives to implement measures that would increase union responsibility and influence over labor relations. Without the backing of local governments, local unions—especially those at the enterprise level—experienced trouble to overcome managerial resistance to labor rights

⁵² Trade Union Law (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 3, 1992, effective Apr. 3, 1992, amended and adopted at the Standing Committee of National People’s Congress, October 27, 2001). Available at: <http://www.china.org.cn/english/DAT/214784.htm>

⁵³ “The Issues and Solutions to Union’s Works on Legal Rights Protection (gonghui weiquan de kungzhing yu chulu).” (2006). Current Affairs Report (shishi baogao). Available at: http://news.xinhuanet.com/politics/2006-09/28/content_5150400.htm

protection⁵⁴. Taking a more confrontational stance often elicited discomfort for union leaders used to a cozy relationship with the management, or fear of harassment or even the loss of jobs (Howell 2003). As the experience of the ACFTU has demonstrated, there was a trade-off between the promotion of production and the protection of workers' rights and interests, and the CCP and local governments' focus on economic production forced the ACFTU to sacrifice workers' interests. Still, the ACFTU's legislative achievements have helped the union organization redefine its role in labor relations and thus lay the foundation for its activism at later period.

V. ACFTU in Action: 2003 to present

The ACFTU's role over labor relations became much more prominent in the 2000s. The negative consequences of market reforms—rising social problems, particularly the prevalence of unemployment and violation of workers' rights—surfaced in 1990s and greatly challenged the survival of both the CCP regime and the ACFTU organization. The CCP's increasing emphasis on social stability and the ACFTU's interest in expanding its organizational influence gave the unions room to become more active over labor rights protection.

Unemployment began to pick up in China at the end of the 1990s: while official statistics of registered urban unemployment was the same from years 1997 to 2000 (about

⁵⁴ While there are no reports of systematic data on particular local governments' attitude towards labor rights protection, Ye (2007)'s book contains a case study of BU City (pseudonym)'s labor relations. The municipal party leadership was interested in developing the local economy, and to attract investment (zhaoshan yinzi), the local government asked all bureaucratic departments, including the local Federation of Trade Unions, to focus on the development of local economy. BU leadership's pro-business attitude meant that BU's labor bureau and union branch often had trouble enforcing the labor regulations: when workers experienced workplace violations and appealed to these bodies, they often could not conduct investigation as the enterprises often refused to provide any information.

3.1%), official statistics did not include migrant workers, those left unemployed in the countryside or SOE employees who were laid off from their workplaces (they do not count as unemployed because they still retain an employment relationship with their former state employers).⁵⁵ Including those groups changed the estimated unemployment rate to the following: 9.5% for year 1997 and 11.5% for year 2000 (Knight and Xue 2006). And the situation only worsened after year 2000: the official unemployment rate was 3.6% in year 2001, 4% in 2002, 4.3% in 2003 and 4.2% in year 2004 and 2005.⁵⁶

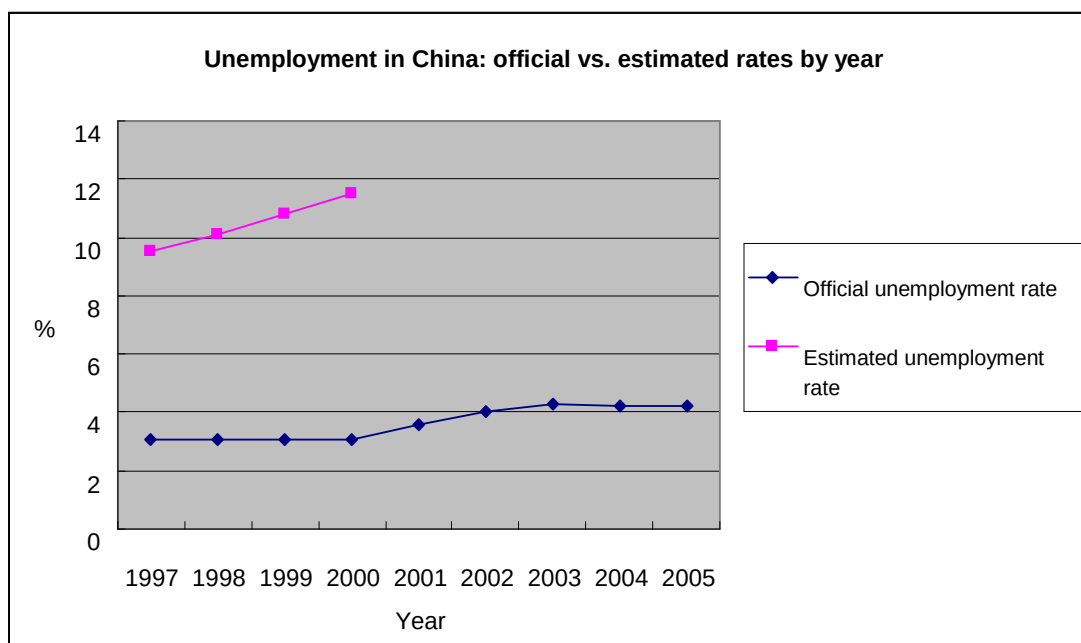


Figure 3.4. Unemployment in China, 1997-2005

Source: Official rates based on National Bureau of Statistics of China; estimated rates based on Knight and Xue (2006) (estimates not available after year 2000)

⁵⁵ China Labor Bulletin, "Unemployment in China." Available at <http://www.china-labour.org/hk.en>, access date 11/22/2008

⁵⁶ National Bureau of Statistics of China

Former SOE workers, many of whom became unemployed after their enterprises underwent reforms, were not the only ones experiencing diminishing welfare during this period. Migrant workers emerged as a new group of workers who have received inadequate protection of rights and conditions. Commonly referred to as “peasant workers” (*nongminggong* or *minggong* in short), migrant workers were people who were born in the rural areas but later came to the cities for employment. Migrant workers first appeared in large increase during early 1990s. It is estimated that in 1993 one third of rural migrants have moved between provinces, and two thirds within provinces.⁵⁷ In mid-1990s the number of rural-urban migration decreased—in response to the rise in SOE reform and resultant unemployment, local governments placed more restrictions on rural-urban movement to prevent migrant workers from competing with laid-off urban workers (Li 2006). The number of migrant workers increased again after 2000. In 2004, there were about 120 million migrant workers employed and living outside their townships for more than three months; in 2006 there were 132 million workers employed and living outside their townships for more than three months.⁵⁸ While they were able to move to the cities due to the relaxation of labor mobility from rural to urban areas, migrant workers were still considered peasants as their household registration (*hukou*) still remained in the rural areas. This ambiguous status means that the migrants were not seen as workers, and as a result they could not receive the rights that urban workers

⁵⁷ Research Project Team, State Council (2006). “Research Report on Rural Migrant Workers in China.” China Yanshi Press (PRC).

⁵⁸ National Bureau of Statistics (2007). *Situation of Rural Migration in China in 2006*. Internal Research Report No. 18, 2007.

were entitled to under Chinese labor laws regulations (Ngok 2007). As a result, migrant workers often encountered employer refusal to sign contracts with them, and they became the new victims of various workplace violations, such as the ones mentioned below.

Working hour violation is also common in China. According to a study by Verite, a US-based non-profit organization specializing in labor auditing, about 93% of the factories audited (133 out of 142) in years 2002 and 2003 violated the 36 hours/week legal limit.⁵⁹ Of those factories that violated the legal limit, about 28% of the factories were found to operate more than 100 hours every month—that is, a minimum of 25 hours above the legal weekly limit.

The problem of wage arrears, which was considered the most serious workplace violations in China, has grown over years: on the national scale, over 11 million workers have not received wages on time in year 1997, while the number has increased to 13.9 million in year 2000. In other words, the proportion of Chinese workforce experiencing wage arrears has grown from 1.58% in year 1997 to 1.93% three years later.⁶⁰ Local governments like the one in Guangdong also found wage arrears problematic: in 1996 the Guangdong Labor Bureau secured 21 million yuan of owed wages for the workers; in years 1997 and 1998 the figures jumped to 150 million and 450 million yuan, respectively (Chan 2001).

⁵⁹ The factories that were audited belonged to apparel and footwear sectors. They were mostly located in Guangdong, Zhejiang, Fujian and Jiangsu provinces. Verite (2004), "Excess Overtime in Chinese Supplier Factories."

⁶⁰ Wage arrear figures were taken from ACFTU yearbooks and the percentage was calculated using employment data from the same source. Wage arrear figures also appear in Greenfield & Prindle year and Blecher 2002.

Because of labor conflicts and social instability in general, the CCP policy priority shifted, and the party began to devote more attention and effort in the protection of labor rights and interests. The CCP's policy priority took another turn under the new leadership of Hu Jintao. In 2003 at the Third Plenary Session of the 16th Central Party Committee, the Central Committee approved a key document names "The Decision on Several Issues in Perfecting the Socialist Market Economy (zhonggon zhongyan guanyu wanshan shehuizhuyi shichang jingji tizhi ruogan wenti de jueding)." The document emphasized "social development" as an integral component of CCP agenda and lists several labor issues such as employment, development of social security system and rural-urban labor mobility as major goals to be focused on by the government.⁶¹ The notion of "harmonious society" was later introduced at the Fourth Plenary Session of the 16th Central Party Committee in 2004. These concepts constituted the party's response to the rising social problems over the past two decades. Economic development was no longer the sole focus of the party; rather, development should also be "people-oriented, comprehensive, balanced and sustainable" with the aim of greater social equity.⁶² These concepts were formally adopted by the CCP in the "Resolution on the Major Issues Regarding Building a Harmonious Socialist Society" during the 16th Plenary Session of the CCP in 2006 and signified the party's shift from economic development to social issues.

⁶¹ "The Decision on Several Issues in Perfecting the Socialist Market Economy (zhonggon zhongyan guanyu wanshan shehuizhuyi shichang jingji tizhi ruogan wenti de jueding)." (2003). Available at: <http://cpc.people.com.cn/GB/64162/64168/6459/65411/4429165.html>.

⁶² "Hu: China embraces new scientific development concept." People's Daily Online, April 22, 2006. http://english.peopledaily.com.cn/200604/22/eng20060422_260256.html (March 30, 2011)

The CCP's increasing attention on labor protection gave rise to the passage of a series of pro-labor policies. In 2007, the National People's Congress passed three labor laws. The Labor Contract Law is a comprehensive legislation designed to give the workers more rights and easier enforcement of these rights.⁶³ The Employment Promotion Law and the Law on Mediation and Arbitration of Labor Disputes were two additional laws that helped increase workers' rights through the promotion of employment and efficiency over labor dispute process. The Employment Promotion Law aims to advance employment, establish fair working conditions and ban employment discrimination. Specifically, the law bans discriminations against women and migrant workers.⁶⁴ The Law on Mediation and Arbitration of Labor Disputes aims to expedite the dispute resolution process and increase workers' accessibility to the system.⁶⁵ The time that employees are allowed to lodge complaints were extended from 60 days to one year, and there is no limitation period if the complaints are related to remuneration. Employers are subject to heavy burden of proof: where employer is required for handling the evidence relevant to the issues, the employer must provide the evidence whether or not the claim is forwarded by the employer. Finally, the parties could seek arbitration

⁶³ The Labor Contract Law (promulgated by the Standing Committee of People's Republic of China, June 29, 2007, effective January 1, 2008). English available at: http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/BasicLaws/P020070831601380007924.pdf

⁶⁴ The Employment Promotion Law (promulgated by the Standing Committee of the People's Republic of China, August 30, 2007, effective January 1, 2008). English available at: [http://www.no-trafficking.org/content/Country_Pages_China/china_pdf/employment%20promotion%20law\(english\).pdf](http://www.no-trafficking.org/content/Country_Pages_China/china_pdf/employment%20promotion%20law(english).pdf)

⁶⁵ The 1994 Labor Law established a labor dispute resolution system that is based on three steps: mediation, arbitration and civil lawsuits appeal. Mediation is not mandatory.

directly by bypassing the mediation steps entirely, and the outcome of arbitration is immediately effective and enforceable—so the outcome will not be delayed by any appeal process.⁶⁶ Through the creation of a legal and regulatory framework for labor relations, these laws and regulations increased workers, unions and labor bureaucracies' oversight over enterprises and the latter's compliance with labor standards.

The CCP's greater attention on workers' demands provided an unprecedented opening for the ACFTU to redefine its role and priority on labor relations. At the 14th National ACFTU Congress in September 2003, the Trade Union Constitution was amended to put the 'safeguarding the workers' legitimate rights and interests' as the basic duties and functions of trade unions. At its second session of the 14th Executive Committee in December 2004, the ACFTU established the principle of "organize workers and fight for labor rights" as its long-term goals and tasks. ACFTU media such as *Zhongguo Gongyun* (Chinese Workers' Movement), a monthly journal published by the union organization, also reflected this change in priority. A news search of the journal from 1994 to 2010 shows that most articles with *weiquan*—safeguarding the rights (in this instance it is about the rights of the workers)—as keyword appear between 2005 and 2010 (see Figure 3.5). While there are fewer than 10 articles on *weiquan* before 2004, there were as many as 93 articles in 2008. The sudden drop in the number of articles on *weiquan* is directly related to the global financial crisis. The crisis reduced the demand for Chinese exports and caused many loss or bankruptcy among many factories in China.

⁶⁶ Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes (promulgated by the Standing Committee of the National People's Congress, December 29, 2007) English available at: <http://tradeinservices.mofcom.gov.cn/en/b/2007-12-29/27880.shtml>

With many factories undergoing difficulties, many workers either lost their jobs or had their wages withheld, and the mission of the ACFTU, was to help ease the problems of unemployment and remuneration.⁶⁷ This explains the appearance of terms like “help and support [workers] (banfu),” giving warmth (song wennuan),” and “stability and development (pingwen fazhan)” in the articles of *Zhongguo Gongyun* from 2009 to 2010. By redefining and clarifying its role over labor relations, the ACFTU was not only able to expand its influence on paper but also succeeded in instituting various moves that helped improve the protection of workers’ rights and interests.



Figure 3.5. Journal Articles on *Weiquan* in *Zhongguo Gongyun* (Chinese Workers’ Movement), 1994-2010

Source: *Zhongguo Gongyun*, 1994-2010

⁶⁷ “The Function of the Unions during the Global Financial Crisis: a special interview with the ACFTU on the NPC and CPPCC meetings (yinduei guoji jingrong weijizhong gonghui zuzhi de zuoyong: lianghui qijian zhongguo gonghui zhuagchang caifan).” (2009). *ACFTU News Center*, available at: <http://news.acftu.org/template/10001/file.jsp?cid=161&aid=18668>

The ACFTU has been surprisingly successful at increasing its political influence through the legislative process. ACFTU was able to shape legislation as early as mid-1990s, involvement in legislative process occurred as early as mid-1990s to increase ACFTU authority over labor issues, for example, authority to negotiate collective contract, seek legal redress for workers and access arbitration bodies for dispute settlement (Perry 1995; White 1996; Chan 2008). The active involvement of ACFTU in legislation allows the union organization to institute clauses that enhance ACFTU ability to represent and protect labor interests.⁶⁸ This is especially true after the passage of the 2001 Trade Union Law, which gives unions the right to participate in the making of labor laws and regulations.⁶⁹ ACFTU legislative involvement, which also occurs at local levels, is the union organization's first step to increase its influence over government decisions regarding labor issues.

After it succeeds in gaining authority on paper, the ACFTU devoted effort to implement its goal of worker organization. Several developments paved the way for the expansion of trade union organization, particularly union membership, during this period. First, the 2001 Trade Union Law (revision) enabled local unions (street union or regional/sector-based unions) to organize workers in small enterprises (Lee 2009). This new way of organizing allowed the unions to bypass enterprise level and thus reduce employer resistance. Also, the ACFTU passed the decision at the 14th Trade Union

⁶⁸ ACFTU Legal Office (2008), "Five Years of Glorious Union Legislative Works (gonghui falui gongzuo de hueihuang wunian)." *ACFTU net*, available at: <http://www.acftu.org/template/10004/file.jsp?cid=201&aid=72841>

⁶⁹ 2001 Trade Union Law, article 33

Congress in 2003 to formally accept rural migrant workers as a part of the “working class.” As more and more migrant workers traveled to cities for employment—about 113.9 million or 23.2% of the total rural laborers in 2003—the welfare and interests of migrant workers have become an increasingly important issue for the party and the ACFTU.⁷⁰ Organizing migrant workers thus not only helped the party and the ACFTU address this issue but also rapidly expanded union membership. Third, the ACFTU devoted effort to unionize foreign-owned enterprises. The ACFTU launched two unionization campaigns in this period: In March 2006, the ACFTU launched a campaign to unionize foreign firms that led to the unionization of Wal-Mart stores. In 2008, the ACFTU announced a new 90-day campaign to unionize Fortune 500 companies operating in China. Lastly, the ACFTU attempted a “bottom-up” organizing campaign to organize enterprises with strong anti-union stance. Instead of approaching and negotiating with employers, unions began to approach the rank and file workers and persuaded them to set up unions. ACFTU’s effort to organize migrant workers and foreign companies and its adoption of new unionizing strategies allowed the union organization to rapidly expand its organizational basis. Membership rose from 123 million in 2003⁷¹ to 226 million in 2010.⁷² Importantly, more than half of the 14

⁷⁰ Xinhua News (2004), “China had 113.9 million migrant workers in 2003” http://www.chinadaily.com.cn/english/doc/2004-05/15/content_330991.htm

⁷¹ Xinhua News Agency October 21, 2008

⁷² Xinhua News Agency-August 30, 2010

million new members in 2009 were migrant workers.⁷³ Union branches increased from 9.31 million in 2002 to 17.25 million in 2008.⁷⁴

The ACFTU has also spent tremendous effort in promoting collective bargaining arrangements at the local level. In 2006, the ACFTU, Ministry of Labor and Social Security and the National Enterprise Association issued the Opinions Regarding the Work of Developing Regional and Industry-specific Collective Consultations, which stated that labor agencies at all levels of government, union organizations and enterprise federations and associations should “under the leadership of the local Party committee and government,” re-double their efforts to establish regional and industry-specific collective consultations.⁷⁵ While some critics might argue that the absence of elected workers’ representatives and the ACFTU’s relationship with the party reduce the system’s ability to address workers’ demands, as labor tensions increased over time and the ACFTU faced greater organizational crisis, the ACFTU would have greater incentives to become more active, influential and representative over workers’ interests. Indeed, some observers note that the increase use of collective bargaining would prompt the unions to fulfill their leading and supervising functions in the workplace.⁷⁶ The tripartite consultation mechanism is another way for unions to gain representation over

⁷³ http://english.acftu.org/template/10002/page.jsp?cur_page=6&aid=536&cid=146&keyword=null

⁷⁴ ACFTU Study Office (2008). “The Unions that Were Continuously Progressing during Reforms and Opening (gaige kaifangzhong buduan fenxing de zhongguo gonghui)” Workers’ Daily, link

⁷⁵ China Labour Bulletin (2007). “Breaking the Impasse: Promoting Worker Involvement in the Collective Bargaining and Contract Process.” *China Labour Bulletin*, Research Report No.4.

⁷⁶ Broad and Bright Law Firm (2010). “Must Knows about Collective Bargaining in China.” [http://www.broadbright.com/en/up3/\(No.33\)Must%20knows%20about%20collective%20bargaining%20in%20China.pdf](http://www.broadbright.com/en/up3/(No.33)Must%20knows%20about%20collective%20bargaining%20in%20China.pdf)

labor issues. China implemented its first tripartite consultative mechanism in 2001. The tripartite consultation is composed of government (represented by labor ministry and labor bureaus at local levels), labor (the ACFTU) and capital (on the national level enterprises are represented by the Chinese Enterprise Confederation but it may vary on local levels). As a forum for the three sides to exchange ideas about major labor issues, the mechanism allows concerned parties to meet and tackle labor issues. Indeed, the tripartite consultative mechanism was seen as a means to address rising labor disputes since late 1990s (Qiao & Applebaum 2011). Even though some observers argue that the mechanism does not meet the standards of tripartism as advocated by the International Labour Organization—the lack of union and enterprise organization independence from the state reduces the effectiveness of such mechanism (Treblicock 1994, Clarke and Lee 2002—others find that it is becoming more relevant at representing labor interests (Shao, Nyland and Zhu 2005). Thus, the establishment of the mechanism and subsequent periodic tripartite meetings could increase enforcement by enhancing ACFTU influence over local governments, which are the ones that control regulatory bodies.

At the same time as the ACFTU has been gaining oversight authority over the workplace, which enables it to press for enforcement of labor regulations, the ACFTU pursues moves that would increase its autonomy from management. Grass-root union democracy is one of such attempts. Since year 2001, the ACFTU has been experimenting with direct election of enterprise union leaders. Although the experiment is limited in scope and the procedure is still controlled by the ACFTU (Howell 2006), field studies show that such procedure does allow enterprise unions to represent workers

(Howell 2006; Chan 2008). Besides direct election at enterprise-level unions, the ACFTU is also implementing collective contract and collective bargaining system. ACFTU effort to promote collective contract and bargaining began in mid-1990s and covered both state-owned and private enterprises. The result of such effort is that about 56% of workers in China are under collective contracts.⁷⁷ Successful implementation of collective bargaining could increase ACFTU influence over regulatory enforcement. Therefore, the attempt by the ACFTU to gain autonomy from management at grass-root level could increase grass-root unions' ability to provide greater protection of labor rights through greater regulatory enforcement.

VI. Conclusion

The development of Chinese unions, particularly the role and the function of unions over labor relations, is shaped by the party's policy priority and objectives and the official union organization's need to maintain status and relevance. As China's official trade union organization, the ACFTU has had the dual roles of being the party's agent and representative of Chinese workers' interests. During the pre-reform era, the ACFTU has tried to become more active over the representation of workers' interests, but these attempts were sapped by the CCP as the union organization's calls were in conflict with the latter focus on regime consolidation and economic production. Thus, the ACFTU played a marginal role over labor relations and its status further deteriorated during the reform period. Market reforms, especially the privatization of the SOEs,

⁷⁷ China Labour Bulletin (2007). "Breaking the Impasse: Promoting Worker Involvement in the Collective Bargaining and Contract Process." *China Labour Bulletin*, Research Report No.4.

greatly eroded ACFTU's organizational and financial basis. However, it was during this period when labor conflicts grew severe. This development prompted the party to shift its policy priority to labor protection, while the ACFTU's eroding organizational relevance increased its incentives to seek changes. Starting 2003, the ACFTU not only made breakthroughs in legislative fronts but also sought various activities that increased its reach within enterprises and oversight over labor standards and other realms that helped unions to better address workers' concerns. This altered environment gave rise to the passage of the Labor Contract Law in 2007, which will be discussed in chapter 4.

Chapter 4

The Politics of Labor Legislation: Party Policy and Unions in the Making of the Labor Contract Law

I. Introduction

China's labor relations took an unexpected pro-labor turn in 2003. Of the changes that indicate an improved environment for the workers, the passage of the Labor Contract Law (LCL) was the most noteworthy. The LCL, which was passed by the Standing Committee of the National People's Congress (NPC) on June 2007 and went into effect in January 1, 2008, had attracted wide attention in China and abroad. Observers such as the *Washington Post* see the LCL as a landmark law and a major victory for the Chinese workers. Businesses greatly opposed the new law—foreign firms expressed their worries about rising labor cost after the passage of the law.⁷⁸ The passage of the LCL was puzzling: labor protection in China has been inadequate, and the employers, who favored a de-regulated labor market, remained influential over the politicians. What explains the passage and the pro-labor nature of the LCL?

This chapter analyzes the politics of labor legislation in post-reform China by examining the making of the LCL. I argue that labor legislations are shaped by CCP policy priority and union involvement. The CCP's shift from economic development to social stability prompted it to emphasize labor protection, and to achieve that goal the party had allowed the ACFTU greater room to shape the LCL. This in turn enabled the

⁷⁸ Ariana Eunjung Cha, "New Law Gives Chinese Workers Power, Gives Businesses Nightmares." *Washington Post* April 14, 2008, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/13/AR2008041302214.html?nav=emailpage> (accessed 06/14/11)

ACFTU to rely on its close links to the CCP to access and actively participate in the legislative process, and the resultant law expanded the union organization's responsibility and oversight over workplace. This change helped the unions improve the welfare and conditions of the workers.

This chapter is organized as follows. First, I elaborate on my argument that the party's policy objective and ACFTU empowerment resulted in the passage of a pro-labor law like the LCL. Second, I briefly discuss labor legislation in China to show that such process is not only protracted and contentious but also gives the ACFTU access to lawmaking. The availability and extent of ACFTU access and influence, however, are controlled by the CCP. Third, I analyze the making of the LCL to address the following: the significance of having a law on labor contract, the timing of the drafting process, the legislative influence of the ACFTU at both the State Council and NPC, the contention that the ACFTU encountered and its responses, and the implication of the LCL passage. Lastly, I end the chapter with a conclusion.

II. The ACFTU and the Labor Contract Law: A Review of Existing Explanations

The puzzling passage of the LCL attracted a great deal of media and scholarly attention. Observers have in general noted the involvement and impact of non-governmental actors in the making of the LCL: Chinese labor and legal academics, foreign investors, international and domestic non-governmental organizations, and last but not least, Chinese media (Wang 2008; Verma, Wang and Frost 2008; Karindi 2008). While observers agree that the resultant law strengthened the authority of the unions,⁷⁹

⁷⁹ Hang Dongfang, "China Brief: Labor Contract Law Strengthens Chinese Unions" China Labour Bulletin, available at <http://www.china-labour.org.hk/en/node/100194>, accessed 05/24/11

there is little attempt in explaining the role and the empowerment of the ACFTU over the legislative process. Even though those like Gallagher and Dong (forthcoming) list the ACFTU's structural linkages to the CCP and political advantage vis-à-vis the enterprise associations as reasons behind its legislative activism and influence, such view does not explain the variation of union legislative activism and influence across time. The key questions that need to be addressed are these: why was the ACFTU significantly more active and influential over the making of the LCL, and did such difference affect the final content of the law, which is considered more pro-labor than previous legislations such as the Labor Law, given that the structural linkages and the position of the ACFTU vis-à-vis the CCP and the enterprise associations remained constant?

Contrary to conventional wisdom, I argue that the party policy and ACFTU play a key role in the making of labor legislations. The CCP's priority over labor protection and ACFTU involvement in the legislative process are crucial in explaining the timing and the content of labor laws and regulations. To maintain its control over a complex labor market that has become increasingly volatile, the CCP turned to law and allowed the ACFTU more power over the legislative process of the LCL. With more accesses and resources at its disposal, the union organization actively pushed for the passage of the LCL and shaped the content of the law to strengthen unions' oversight authority over labor protection.

Labor legislations are shaped by party policy priorities and extent of ACFTU involvement. As mentioned elsewhere, the ACFTU is a bureaucratic agent of the CCP with the goal of managing the workers. Even though the 1992 Trade Union Law have

dropped the term “under the leadership of the party,” thereby indicating that the ACFTU was no longer formally “transmission belts” for the CCP policies, the two continued to be bound by close political linkages, and the CCP maintained tight control over the union organization. Indeed, the terms “junctions (shuniu)” and “bridges between the party and the workers” have both appeared in official speeches and documents, thereby suggesting the ACFTU’s role as the agent of the party.⁸⁰ The role that the ACFTU plays in labor relations and the extent of its influence in the making and implementation of labor policy are thus determined by the policy objectives and priorities of the CCP. The party’s concern over growing labor conflicts and its attempts to stabilize labor relations explained the timing of the LCL drafting: while there has been call for a law on labor contracts since the 1990s, it was not until 2004, the time when the CCP has put “harmonious society” on the top of its agenda, that the drafting of the LCL was launched. The CCP’s desire for greater labor control via labor laws also prompted it to empower the ACFTU: the union organization was allowed to exert more influence over the legislative process, and the ACFTU actively drafted and lobbied other policymakers through both institutional channels and more innovative means, such as media campaign. As the only

⁸⁰ ACFTU (2003). “Report by the ACFTU Chairman Wang Zhaoguo at the 14th Trade Union Congress” (Wang Zhaoguo zai zhongguo gonghui shisidashang de baogao), available at <http://14da.acftu.org/template/10001/file.jsp?cid=33&aid=2269> accessed 05/24/11

The terms “unions as the junctions and bridges linking the party and the workers” also appeared in Hu Jintao’s speech at the 15th Trade Union Congress, see “On Advocating and Implementing the Key Messages of Party Secretary Hu Jintao’s Speech (renzhen xuanchan guanche Hu Jintao zongshuji zhongyao jianghua jingsheng), available at: http://big5.china.com.cn/gate/big5/www.lianghui.org.cn/gonghui/2008-10/27/content_16671310.htm, accessed 05/24/11

legal representative of the workers, the ACFTU is the only actor that can shape the legislations on behalf of the workers (Ngok 2007). Being an agent but also a bureaucratic organization with intention to expand its authority and status, the ACFTU prefer legislations that preserve the rights and welfare of the workers, since doing so would also help the ACFTU expand its authority over the workplace. ACFTU's active lobbying efforts yielded a law that gave the unions more oversight power over labor protection.

III. Labor Legislation in China and the Role of ACFTU

The CCP has assumed a central role in the labor relations of pre-reform period. Since the establishment of the PRC, the party has been directly responsible for managing and providing jobs and social services to workers. As the party's intervention in the labor market drastically declined since reforms, it turned to laws and regulations to maintain control over labor relations, and the CCP's reliance on labor laws and regulations intensified as issues such as unemployment and workplace rights violations became rampant (Gallagher 2005; Ma 2009). Labor legislations have thus become an important aspect of Chinese labor relations in post-reform era, and the outcome of labor legislations—whether and to what extent they benefit the workers—calls for a better understanding into the politics of labor legislations.

In this section, I will give a brief review of the politics of labor legislations in China starting with legislative institutions/procedures and the key players involved. Then I will discuss the role of the ACFTU in labor legislations. By examining the legislative process and the role of the ACFTU in this process, it becomes clear that the passage and

content of labor policies are outcomes of CCP policy objectives and the extent of ACFTU involvement. The party's policy objective on social stability induced it to place more emphasis on labor protection and delegate more authority to the ACFTU, and the ACFTU used this newly gained authority to actively push for the passage of a pro-labor law.

Labor legislations follow the same procedure as other legislations in China. On the national level, the process starts with the ministry that is responsible for issues regarding labor relations—in this case, it is the Ministry of Labor and Social Security (MOLSS). MOLSS is responsible for drafting the law and submitting the draft to the State Council for review. The Legislative Affairs Office of the State Council (guowuyuan fazhi bangongshi, or LAO) then makes amendments to the draft after soliciting opinions from other relevant ministries, bureaucracies and local governments. Once it is reviewed and approved by LAOS, the draft is then submitted to the Executive Meetings of the State Council for review. After receiving approval, the draft is then submitted to the National People's Congress (NPC) or Standing Committee of NPC as official bill to be reviewed.⁸¹

Several key actors can be discerned from the abovementioned process. As the ministry responsible for the formulation of the draft, MOLSS is the first actor that has access to legislation and thus the ability to place its preferred issues and positions onto the draft. The State Council is also important—LAO is responsible for coordinating (xietiao), studying and overseeing the legislative works initiated by ministerial actors. In particular, LAO is in charge of initiating the drafting process and organizing relevant ministries to implement the process; reviewing the drafts submitted by the ministries; and

participating in the drafting and amending of major laws and regulations (Ngok 2007). The State Council is not only a key lawmaker but also a veto player as its support is required for the draft to be passed onto the next stage. The NPC Standing Committee is also a veto player. The Legislative Affairs Office of the NPC Standing Committee has power over the legislative programs of the NPC Committee Chairman Meetings (weiyuanzhang hueiyi), the highest decision-making body of the NPC Standing Committee (Ngok 2007). A draft will not become a bill if it is not on the legislative programs of the NPC Committee Meeting.

How does the legislative process affect the passage of labor laws and regulations, and what is the implication for union involvement? First of all, the legislative process is likely to be protracted and contentious. The legislation could be delayed at either the SC or NPC, and more *xietiao* is needed as the number of ministerial actors that is involved goes up. Cooperation from these veto players is necessary for actors like the ACFTU to shape the law. As one labor scholar says, “Unions rely on the government to shape legislation (gonghui lifa yikao zhengfu).”⁸² ACFTU influence over the law depends on its ability to lobby other lawmakers in the government.

The Role of the ACFTU in Labor Policy

As the only official union organization in China, the ACFTU enjoys access to labor policy-making at various government levels. Unions’ role in policymaking progresses over time: a State Council directive in 1985 gives the ACFTU the right to participate in any State Council or ministerial-level meetings relating to workers’ interests. The Trade

⁸² Interview, 9/3/09

Union Law (1992) provides greater details on unions' authority over policy formulation: the government or ministries are required to solicit unions' opinions when drafting major policies relating to the interests of the workers, and unions at the county and above-levels have the rights to join deliberations and submit comments during the drafting of major policies relating to workers' interests. Article 33, clause 1 of the amended Trade Union Law (2001) introduces three changes: unions at all levels (so unions below the national level are included) could participate in the drafting *and* the amendment of any labor policies or regulations; likewise the unions at the county and above levels are allowed to join the lawmakers to "study" *and* draft policies/regulations relating to workers. The amended Trade Union Law not only expands the scope of unions' involvement but also affirms unions' role in the policymaking process.

Existing literatures on Chinese labor relations pay scant attention to unions' role in labor policymaking. Ever since economic reforms, the ACFTU has been relying on legislative involvement to further labor protection. The ACFTU has been advocating legislative involvement as unions' major way of safeguarding worker's rights (*weiquan*) as early as the late 1980s,⁸³ and since then the ACFTU has been participating in the drafting of major policies like the Labor Law. But it was not until the passage of the amended Trade Union Law, which formally recognizes unions' role as representative and protector of workers' rights, when the ACFTU began to push for greater union legislative

⁸³ Liu Yufang (2001), "Strengthen Participation from the Beginning and Realize the Trade Unions' Social Proposal (*jiada yuantou tsanyu lidu shixiang gonghui shehui zhujian*)."
Theory and Practice of Trade Unions (*gonghui lilun yu shijian*), 15(4)

participation at all levels.⁸⁴ By participating in the making of over 1200 laws and regulations, unions in China were able to expand their oversight authority over labor issues like enterprise union establishment, collective contract negotiation, social security, occupation safety and disputes settlement mechanism (Perry 1995; White 1996; Chan 2008; Gong 2002).

The ACFTU has several venues to participate and shape labor policies. Ngok (2007) lists several institutional channels that the ACFTU could employ:

1. Direct access to the central party-state organs: usually the chairman of the ACFTU is a member of China's leadership body, the Politburo. When this is the case, the ACFTU (at least on the national level) enjoys elevated political status. The ACFTU could access leadership bodies by directly reporting its opinions on major labor issues to the Central Party and the State Council.
2. Union representatives in lawmaking bodies. Many current and ex-ACFTU officials hold concurrent posts in central and local party committees, people's congresses and people's political consultative conferences, and these representatives could voice unions' positions through legislative motions, policy debates and vote on the policy draft. The presence of these union representatives gives the ACFTU a direct way of shaping labor laws and regulations at all government levels.
3. Participation in policy working/study group. The ACFTU, at least on the national level, often participates in working/study group during the drafting of major labor

⁸⁴Qi Tingrui, (2003), The Sound of Chinese Trade Unions Stepping Forward (2): protecting one's rights from the beginning (zhongguo gonghui qiangjinde jiaobushen (2): weihu quanyi zhong yuantou)," People.com (renmin wang), available at: <http://www.people.com.cn/GB/shizheng/8198/29614/29623/2089599.html>, accessed 05/20/11

policies. For example, the ACFTU is a part of the working group for both the Labor Law and the amendment of the Trade Union Law and is heavily involved in the study, debate, and review of these major legislations.⁸⁵ The policy working/study group not only allows the ACFTU to exert its influence but also gives it opportunities to work with MOLSS or other ministerial actors.

4. Submission of opinions on policy drafts. As mentioned above, the Trade Union Law requires the government and relevant ministerial agencies to solicit union opinion before submitting the draft to formal reviews. This gives unions a good opportunity to shape the policies at the early stage of the legislative process.

5. Participation in the tripartite consultation mechanism. According to the amended Trade Union Law, the tripartite consultation is composed of government (represented by the MOLSS and labor bureaus at local levels), labor (the ACFTU) and capital (on the national level enterprises are represented by the Chinese Enterprise Confederation but it may vary on local levels). As a forum for the three sides to exchange ideas about major labor issues, the mechanism allows the ACFTU to voice its opinions and shape government policies.

Having these channels, however, does not necessarily give the ACFTU greater influence over labor policy. The opinions of the ACFTU might not be adopted by lawmakers (Ngok 2007). This is because the role of the ACFTU in lawmaking, as implied by the original and amended Trade Union Law of 1992, is consultative: while the

⁸⁵Ibid

ACFTU's opinions have to be sought during the legislative process, unions do not have rights to veto. Also, by law unions' participation in legislative works (drafting and amendment) is not guaranteed. The ACFTU's consultative role thus implies that the extent of the influence unions could exert ranges from being a "rubber stamp" (unions' act of submitting comments becomes a formality) to co-authoring the drafts.

The extent of ACFTU involvement and influence over the legislative process depends on the party's objective and policy priority. Because the government is responsible for implementing party's policy objectives—thus subordinate to the party—party objectives and priorities dictate the legislative works of NPC, SC and government ministries. Lawmakers thus "anticipate" CCP's responses during the making of the laws and regulations, and they are more likely to draft laws and regulations that are in line with the party policy. In other words, they are more likely to enact pro-labor laws and attend to ACFTU lobbying and other involvement if the CCP's policy objective is labor control and protection. Party policy objective and priority also determine the level of support the CCP gives to the ACFTU. The CCP is more likely to support ACFTU effort to increase its involvement and influence if it is concerned about labor conflicts and labor demands. Indeed, a top ACFTU official made the following statement that illustrates the effect of party policy on ACFTU legislative involvement:

Between the 13th and the 14th Trade Union Congress, the [party] focused on introducing market mechanism, and efficiency (xiaoyi) has been the priority. Since the 15th Trade Union Congress, however, the focus has been shifted to "scientific development," "harmonious society" and "human-based (yiren weibeng)," and then on the improvement of grass-root democratic development starting the 17th Trade Union Congress. Unions' works

received greater attention after the party shifted its focus. This altered environment gave trade unions more opportunities and channels to voice their opinions.⁸⁶

IV. The Making of the Labor Contract Law

Timing of the drafting process

The Labor Contract Law (LCL) is one of several supplementary laws of the 1994 Labor Law. Being PRC's first comprehensive law that standardized the regulations of labor relations across sectors, the Labor Law formally institutionalized the country's labor contract system as the basic mode of labor relations (Gallagher 2005). However, the law's comprehensive nature also meant that the law acted more like principles than rules that can be implemented.⁸⁷ This abstract nature of the Labor Law thus left a great deal of room for interpretation, and uneven enforcement arose as ministries and local governments issued rules and regulations that were inconsistent and sometimes in conflict with each other.⁸⁸ The lack of uniform regulation on labor contract system thus called for the passage of the LCL.

The earliest version of the draft was written by the former Labor Ministry in 1995, and since then the ACFTU as well as other representatives have lobbied for the passage of the law by raising motions in every year's NPC and CPPCC meetings (lianghui).⁸⁹

⁸⁶ Interview, 11/20/09

⁸⁷ Interview, 04/2009

⁸⁸ Cnlss.com (2009), "An Overview on China's Labor Contract System and Legislative Process (wuoguo laodonghetong zhidu gaishu yu laodong hetongfa de lifa guocheng)." Available at: http://www.cnlss.com/LssReference/NounExplanation/200911/LssReference_20091117224052_7379.html (accessed 12/01/2009)

⁸⁹ Interview, 01/2009

In 2001, the draft was finally submitted to the State Council for review but was not approved on the basis of underdeveloped social security system. A well established social security system, according to the State Council, was needed for the LCL to be effectively implemented.⁹⁰ As a result, official legislative process of the LCL did not begin until 2004. What explains the delay of the LCL process despite the pressing need for it, given that the Labor Law is not enforceable and that some politicians have been lobbying for the drafting of the law? How did China's social security system play a role in the timing of the LCL legislative process? Lastly, what explains the continuation of the LCL process in 2004?

It seems that the timing of the LCL process is affected by the changing landscape of Chinese labor relations. Economic reforms have resulted in a transition to “the [Chinese] state’s *withdrawal* from the key welfare and surveillance duties of socialism and its *embrace* of market principles and tools to regulate labor.” (Gallagher 2005) The party not only had to focus on “reworking the employment relationship” through privatization of SOEs and labor contract system (Gallagher and Dong forthcoming) but also had to deal with the challenges posed by these reforms. SOE restructuring increased the number of retirees and laid-off workers, while the lift of the restriction on household registration led to the rise of migrant workers who also faced the prospect of

⁹⁰Liu Tao and Wang Qi (2008), “The Labor Contract Law: Debate and Clashes (laodong hetongfa: jibia yu chongji). Chinese Entrepreneurs (zhongguo qiyejia), available at: (show) (accessed 02/01/2008)

unemployment and retirement as they shifted away from non-agricultural jobs (Li 2008). The growth of these groups forced the party to find a solution to prevent potential labor discontent. The establishment of a new social security system was then seen by the government and other observers as solution to the mounting unemployment problem. In 1998 the government established the new Ministry of Labor and Social Security (MOLSS) to replace the Labor Ministry and to manage the new social security system (Li et al 2008). At the 15th Central Committee Meeting in September 1999, the CCP issued the “CCP Central Decision on Questions Regarding SOE Reforms and Development (zhonggon zhongyang guanyu guoyouchiyei gaige he fazhan ruogan zhongyao wenti de juedin).” The CCP pressed for the reform of SOEs and listed social security system as one of the key complementary elements that facilitated the SOE reform process. Social security system was listed after emphasis on SOE laid-offs (xiagang) and re-employment services, thus implying that the purpose of a developed social security system was to help ease the pressure of unemployment. As the Chinese government devoting more effort to construct social safety net through the social security system, supplementary laws like the LCL were given a lower priority. From the party’s perspective, passing the LCL might have actually obstructed its goals of social stability and economic development. As the LCL is a law that aims to improve the labor contract system, it is a law that reduces flexibility in labor practices. In other words, the passage of the LCL would provide greater protection to labor and increase labor cost—near bankrupt SOEs would be forced to lay off more workers, and private or foreign-invested enterprises that thrive on cheap migrant labor could also encounter

similar problems. Thus, the delay of the LCL drafting and passage was the direct result of party's priority on privatizing labor relations. Social security reform, rather than the passage of a law that would re-regulate labor relations and reduce labor market flexibility, was deemed the way to fulfill these two goals.

The continuation of the LCL process in 2004 was part of the pro-labor trend caused by changing CCP policy focus from SOE privatization and unemployment to labor protection. Starting year 2000, the CCP encountered a different set of social problems. While the problem of unemployment was alleviated, the inadequate implementation of the labor contract system led to low wages, wage arrears, work injuries and other concerns. As a result, there was a change in the pattern of labor discontent, and the country experienced an increasing number of grievance associated with inadequate labor contract implementation. In 2002, of a total number of 184116 cases, there were 591441 disputes on wage and remuneration while 2169 cases on laid-offs (xiagang). In other words, in 2002 31.1% dispute cases were on wage and remuneration while 1.18% of cases were on laid-offs. In 2005, there were 85132 cases on wage and remuneration but 1638 cases on laid-offs—about 32.7% of cases were on wage and remuneration and 0.63% cases on laid-offs. Migrant workers, many of whom were exposed to remuneration, workplace injuries and other problems mentioned above, also replaced former SOE workers as the main victims of the altered labor environment. Because of China's strict household registration system, citizens with rural household registrations were not entitled to the rights and benefits that the urban citizens enjoyed even after they have worked and settled in the cities (Croucher and Miles 2010). Without adequate

protection of their general rights and benefits, employers often refused to sign contracts with migrant workers knowing that regulations sometimes often did not apply to migrant workers, and penalty for non-compliance was low.⁹¹ Migrant workers' general experience of inadequate working conditions and labor protection contributed to the sudden labor shortage in coastal Chinese regions. Starting 2003, signs of migrant worker shortage in Guangdong-Fujian-Zhejiang areas have appeared in media reports despite the abundance of migrant labor supply in rural areas, and since then the phenomenon of migrant labor shortage has spread to the interior regions.⁹² The presence of problems related to labor contract implementation and their consequences—rising labor disputes and the shortage of migrant workers—signaled growing instability and prompted the CCP and the government to respond with greater labor protection. The State Council issued the “Circular on the Improvement of Services and Management of Migrant Workers (guowuyuan bangongting guanyu zuohao nongminggong jingcheng wugong jiuyei guangli he fuwu gongzuo de tongzhi)” in 2003

⁹¹ China Legal Information Resources Web (zhongguo falui xinxi ziyuan wan) (2007). “A Brief Discussion of the Legal Issues On Migrant Labor Rights Protection (chiangxi nongminggong laodong chuangyi bao hu de falui wenti).” Available at: <http://www.mzfz.gov.cn/fzjy/57/135/2007071322532.html> (accessed 06/01/11)

⁹² Southern Daily (nanfang ribao) (2004), “What does the phenomenon of migrant labor shortage indicate (mingong huang shuoming le shemo)?” available at: <http://www.southcn.com/opinion/topics/200408040325.htm> (accessed 06/02/2011)

Sina Guangdong has compiled a list of news articles on migrant labor shortage in the Pearl River Delta region under the title “Pearl River Delta Enterprises Having Difficulty Hiring (zhushanjiao chiye zaoyu zhaogong nan).” See <http://gd.news.sina.com.cn/quegong/index.shtml> (accessed 06/02/11)

The China Post (2011), “Labor shortage spreads to central, western areas.” February 14, 2011. Available at: <http://www.chinapost.com.tw/china/national-news/2011/02/14/290934/Labor-shortage.htm> (Accessed 06/13/11).

to emphasize the need for governments at all levels to resolve the problems faced by migrant workers, including employment discrimination, wage arrears and job training, and in 2006 the “Some Opinions on Resolving the Problems Faced by Migrant Workers (guoyuyuan guanyu jie jue nongminggong wenti de ruogan yijian)” the State Council not only urged local governments to solve the abovementioned issues with more rigor but also gave specific and thus more enforceable guidelines.⁹³ It was under this context that the legislation of the LCL—a law that aimed to improve the labor contract system—was re-launched. Greatly alarmed by the prevalence of discontented workers, the CCP leadership “slapped their head (pai naodai)” and pushed for the passage of the LCL.⁹⁴ The party considered the LCL as means that would provide greater protection to workers and helped the party better control labor relations.⁹⁵

CCP’s policy priority on labor protection since the early 2000s helped the ACFTU augment its legislative influence. As the CCP sought laws like the LCL to grant workers more rights and protection, it became important for the ACFTU—the agent of

⁹³ State Council Office (2003), “Circular on the improvement of the services and management of migrant workers,” available [here](#) (accessed 05/30/2011).

State Council (2006). “Some opinions on resolving the problems faced by migrant workers (guoyuyuan guanyu jie jue nongminggong wenti de ruogan yijian),” available [here](#) (accessed 06/10/11).¹

⁹⁴ Interview, 04/09. The term “pai naodai” (usually used in the context of making a decision) refers to acting without much thoughts and consideration, acting solely based on intuition or subjective thoughts.

⁹⁵ “Interpreting the Recommendation made at the Fifth Plenary Session of 16th National Congress’—Putting the Improvement of Legal Development First (jiedu wuzhong chuanhuei jianyi: jiachiang fazhi jiangshe zhuyao renwu).” Available at: <http://cpc.people.com.cn/GB/64162/64168/64569/65414/4429196.html> (accessed 06/04/11)

the party and the legal representative of Chinese workers—to participate in the legislative process. Indeed, legislative participation was part of the “legalization of union (gonghui fazhihua)” as encouraged by the party: in 2003, the party leadership asked the ACFTU to “actively participate in the making of laws and policy regarding the rights of workers and unions, rely on legal means to protect workers’ rights and manage union affairs.” The ACFTU responded to the party’s call by putting greater effort in legislative activities while lobbying governments at all levels to grant unions more room to participate in the legislative process. A commentary from *Workers’ Daily* states: “Union organizations are important for the protection of the rights and interests of workers. It is through unions that workers can become more organized, and labor relations become stabilized...governments need to facilitate the development of legal institutions...[by] promoting collective consultation, collective contract and other related pro-worker institutions...”⁹⁶ The party’s encouragement allowed the ACFTU greater participation in the legislative process, and as a result the ACFTU was able to implement party policy by shaping the laws in ways that would increase labor protection.

From MOLSS to State Council: cooperation and ACFTU success

In 2004, MOLSS, under the guidance of State Council Legislative Affairs Office (LAO), began the drafting process of the LCL, and the draft LCL was passed to State Council for review in 2005. Originally, the LAO preferred MOLSS to be the only one responsible for the drafting and envisioned only one round of negotiation before the draft

⁹⁶ *Workers’ Daily* (2003). “A Brief Discussion on the Role of the Government in Labor Relations (qiantan zhengfu zai laodong guanxi zhong de zuoyong).” Available at: http://www.gov.cn/zwhd/2006-03/28/content_238154.htm (accessed 06/06/11)

was passed to the NPC Standing Committee. Such a plan was changed after consultation with the ACFTU, and as a result the union organization was able to become more involved in the drafting of the LCL from the beginning of the legislative process.”⁹⁷

The ACFTU also prompted the LAO to consider various opinions, and in response the LAO conducted a joint research of LCL along with MOLSS, the ACFTU and China Enterprise Confederation. After the three teams went to six major regions of the country to sponsor conferences and collect views regarding the draft, the LAO revised the original draft, and most of unions’ opinions were incorporated into the revised draft.⁹⁸

ACFTU lobbying at this stage had some effect: the draft law that was reviewed and revised by the State Council contains clauses that provide more labor protection than the one drafted and submitted by MOLSS.⁹⁹ Overall, the ACFTU was able to shape the content of the draft LCL with the help of the State Council. The State Council was “very attentive to ACFTU’s opinions. The State Council viewed the LCL as a law that addresses the concerns of marginalized workers more than those of the enterprises, so it is crucial that workers’ and unions’ views were considered and incorporated into the LCL.”¹⁰⁰

⁹⁷ Interview, 11/20/09

⁹⁸ Interview, 1/18/10

⁹⁹ Liu Tao and Wang Qi (2008), “The Labor Contract Law: Debate and Clashes (laodong hetongfa: jibia yu chongji). Chinese Entrepreneurs (zhongguo qiyejia), available at: (show) (accessed 02/01/2008)

¹⁰⁰ Jiangsu Federation of Trade Unions Legal Office (2007), “Lesson Plans on the Labor Contract Law.” Available at: (show), accessed (05/02/10).

Having a supportive State Council helped the ACFTU establish close working relationship with labor ministry, government's agent over labor affairs and thus a major player in labor legislation. Interactions between the ACFTU and MOLSS occurred at several levels. At the organizational level, the ACFTU and MOLSS, along with the China Enterprise Confederation, interacted and discussed the LCL drafts through the tripartite mechanism. Also, the legal departments of the two, under the leadership of the legislative affair offices of the State Council and then NPC, worked together to create and revise all LCL drafts.¹⁰¹ But the ACFTU and MOLSS also engaged in less formal interactions: leaders from the ACFTU and MOLSS would meet and discuss when disagreements arose. Also, the key drafters from the two bodies often met in private so that they could reach consensus and present it on paper.¹⁰² An example illustrates how interactions between the ACFTU and MOLSS at these levels enabled the ACFTU to gain the support of the MOLSS and shape the law from the very beginning of the legislative process. When the LCL draft was being circulated among the ministries at the State Council for opinions, the ACFTU and the former Ministry of Personnel (now merged with MOLSS to become one department) disagreed over the scope of the law (article 2), particularly whether the law applies to public administrations (*shiye danwei*). ACFTU effort to apply the new law to public administrations was countered by the Ministry of Personnel, as the latter feared the loss of jurisdictional authority if public administrations were included within the scope of the new law. To overcome opposition from the

¹⁰¹ It is important to note that there was no formal LCL drafting group; interview 01/10.

¹⁰² Interview, 01/10

Ministry of Personnel, the ACFTU relied on MOLSS, whose political influence vis-à-vis the ACFTU is greater at the State Council, to lobby LAO. This helped the ACFTU successfully expand the scope of the law to public administration.¹⁰³ Hence, it is important for the ACFTU to have the support of the labor ministry for it to shape the content of the LCL.

Overall, the ACFTU successfully shaped the content of the draft law at the State Council stage. With cooperation from the LAO and MOLSS, the ACFTU was able to institute most of its opinions, and the official draft one of the law—the draft that was reviewed and revised by the State Council before being submitted to NPC Standing Committee—was much more pro-labor than the original draft composed by MOLSS.¹⁰⁴

Legislating at the National People's Congress: conflicts and ACFTU responses

The draft LCL that came out of the State Council reflects CCP's policy priority on labor protection and union influence over the legislative process at the State Council stage. Under a State Council that was sympathetic to workers' causes, the ACFTU was able to access key legislative channels and work with a cooperative MOLSS, and as a result the State Council version of the draft was much more pro-labor than the one authored by MOLSS. When the draft law was reviewed by the NPC, however, ACFTU

¹⁰³ While draft 1 states that the law applies to all public enterprises, draft 2 modifies to exclude employees at public services or companies managed a la public services. See Liu Qian and Cheng Pengfei (2007), "Hot Topic: Labor Contract Law Draft (reiyi: laodong hetongfa caoan)." Available at: http://city.dzwww.com/zhichang/200707/t20070702_2320396.htm (accessed 06/09/11)

Interview, 01/10

¹⁰⁴ Liu Tao and Wang Qi (2008), "The Labor Contract Law: Debate and Clashes (laodong hetongfa: jibia yu chongji). Chinese Entrepreneurs (zhongguo qiyejia), available at: (show) (accessed 02/01/2008)

effort was countered by business opposition and lawmakers who were sympathetic to business cause. Still, the ACFTU exerted a great deal of influence and employed several means to defend the content of the draft law.

On November 26, the draft LCL was passed to the National People's Congress for further discussion, revision and comment, and about a month later the draft law was formally passed to NPC Standing Committee for review. During this time the NPC Office made an interesting move: it prompted the ACFTU to become more active over the legislative process. "Right after the first review at the NPC, the NPC promptly 'reminded' the ACFTU the fact that workers and unions tended to be less vocal [vis-à-vis the business] during the making of labor laws."¹⁰⁵ This move by the NPC suggests government encouragement of greater ACFTU involvement and partly explained the union organization's subsequent activism. In March 2006, the draft law was open to public commentary for a 30 day period. During this period, the ACFTU launched a campaign to mobilize support for the LCL (or, to be more precise, the State Council version of the draft law). The ACFTU focused on publicizing its position and collecting workers' comments. To ensure that local union branches understood their official position, the ACFTU provided local union branches with a guideline. In this guideline, the ACFTU listed four major issues and explained ACFTU's views on these issues. This guideline was intended to help local unions when they publicize the LCL draft.¹⁰⁶

¹⁰⁵ Jiangsu Federation of Trade Unions Legal Office (2007), "Lesson Plans on the Labor Contract Law." Available at: (show), accessed (05/02/10).

¹⁰⁶ "Guidelines on Campaigning during the draft Labor Contract Law Public Commentary Period (guanyu laodong hetongfa gongkai zhengqiu yijian huodong de shuanchuan baodao tigang)." Provided by interviewee, 11/20/09.

The ACFTU also asked its local union branches to help collect workers' comments. The ACFTU compiled a list with twenty-one questions on the draft law, and again, added ACFTU's views on each of the questions.¹⁰⁷ The list was meant to be shown to the workers when the latter were asked for their opinions on the draft law. The ACFTU's mobilizing effort yielded some results: at the end of the public commentary period, the NPC received over 191000 comments on its web, and 65% of the comments came from workers.¹⁰⁸ While the subsequent revisions of the LCL curtailed some of the union and workers' rights (as will be discussed later), ACFTU's mobilizing effort nevertheless constituted a highlight of union activism.

It was during this time when oppositions to draft LCL also became evident. Business interests quickly seized the public commentary opportunity to make their opinions known. Three foreign business groups, the American Chamber of Commerce in Shanghai, the US-China Business Council, and the European Chamber of Commerce all gave detailed criticisms and recommendations for almost the entire draft law.¹⁰⁹

¹⁰⁷ Dong Baohua (2009), "Ten Thousand Worded Advice and a Great Defensive (wanyenshu yu baoweijan)." Available at: http://www.eastlaborlaw.com/work/xueshu_detail.asp?newsid=100&type_sort=zhuzuo (accessed 06/01/11).

¹⁰⁸ Xinhua News (2006), "Collection of the Masses' Opinions on the Labor Contract Law (gedi remnin chunzhong duei laodong hetongfa caoan de yijian hueizong)" Available at: http://news.xinhuanet.com/newscenter/2006-04/06/content_4392500.htm (accessed 06/11/11).

¹⁰⁹ EUCCC, "Re: Comments of the European Union Chamber of Commerce in China on the Draft Labour Contract Law," 04/18/06, available at: european-chamber.com/cn/online/login.php?preurl=/groups/presentations.php?id=79

AmCham-China, "Comments on the Draft Labor Contract Law of the People's Republic of China," 04/19/06, available at:

Domestic business groups such as the Shanghai Association of Human Resources management in Multinational Companies and Taiwanese and Hong Kong businesses with investment in China also gave their criticisms of the draft law.¹¹⁰ Besides displaying their oppositions openly through the public commentary channel, foreign and domestic business also relied on other lobbying activities to influence lawmakers and other politicians. These actors' participation greatly affected subsequent drafts that were passed in May 2007 and in June 2007.

The ACFTU relied on media to promote its views and lobby the lawmakers. An ACFTU official said, "The ACFTU did a lot of research on the draft LCL. The research results were meant to be distributed to lawmaking institutions and the public in order to shape public opinion." A quick count of the news articles illustrates ACFTU's active use of media to advocate its views: between the period March 2005 and September 2007, there were 140 news articles with ACFTU officials as authors or interviewees. Of the 140 articles, 89 came from *Workers' Daily*, the official newspaper of the ACFTU.¹¹¹

lawprofessors.typepad.com/china_law_prof_blog/files/AmChamChinaLaborLawComments.pdf (accessed 06/05/11)

USCBC, "Comments on the Draft Labor Contract Law of the People's Republic of China (Draft of March 20, 2006), 04/19/06, available at: uscchina.org/public/documents/2006/04/usc-bc-comments-labor-law.pdf (accessed 06/05/11).

¹¹⁰ China Labour Bulletin (2006), "Disputes over new Labour Contract Law, foreign business groups threaten to withdraw investments," China Labour Bulletin, 07/06/06, available at iso.china-labour.org.hk/en/node/38245 (accessed 06/01/11).

¹¹¹ The news count was obtained by using baidu (China's major search engine)'s newspaper search service. I typed in the keywords (ACFTU and LCL) and set the date range and got a list of news articles that contain the keywords. I then quickly looked at the content to make sure that the articles were about ACFTU officials being the authors or interviewees.

And 65 of the 140 news articles were on the press conference held by the ACFTU regarding the LCL or its legislative process.

There were three specific points where business interests conflicted with those of the ACFTU. The first point of conflict centered on labor dispatch system. The practice of labor dispatch (*laowu paiqian*), or temporary staffing of workers, is very common in China, and has led to some problems in labor relations. The recent rise and the ambiguous nature of labor dispatching firms gave employers room to evade legal requirements. As a result, many employees hired by the labor dispatching firms did not receive adequate social welfare and insurance, and they generally had lower compensation than regular workers who were under contracts (Gallagher and Dong forthcoming, Cao and Wang 2009 Asian Social Science). When the draft was reviewed at the State Council, the ACFTU proposed more stringent regulations on labor dispatching firms, and the draft law that came out of the State Council contains more clauses on labor dispatch than the one authored by MOLSS.¹¹² Labor dispatching firms and multinational firms that relied on the use of temporary workers greatly opposed these clauses and vigorously lobbied individual lawmakers, and some individual leaders (*lindao*) even issued orders in favor of more lax regulations. The ACFTU also had problems overcoming oppositions from other ministerial actors. As labor dispatching industry often provides services to foreign companies and uses migrant labor, many ministries, including the Ministry of Commerce, Ministry of Foreign Affairs, Ministry of Construction and Ministry of Agriculture were involved. Finally, it is important to

¹¹² See Gallagher and Dong (forthcoming), and Interview 1/18/10.

remember the position of MOLSS: given that MOLSS favored a much less stringent version of the draft law on labor dispatch industry, it is not surprising that MOLSS would be more sympathetic to business interests. Strong lobbying by the business, the difficulty of “coordinating (xietiao)” with many ministerial actors and MOLSS opposition forced the ACFTU to compromise with some changes. Still, additional clauses on labor dispatching system were added to draft two and three of the LCL and thus suggests successful ACFTU resistance to business pressure.

The second point of contention consists of regulations on work rules and decision-making (article 4). The ACFTU succeeded in expanding the power of the unions and employee representative congresses over work rules—in draft 1, the rules must be discussed and passed (taolun tongguo) by the trade union, employee representatives or through equal consultation. The wordings suggest trade union veto power over rules. Subsequent drafts, however, grants unions consultative rather than veto power—unions are required to participate in the decision-making process, but their approval is not required. This change reflects the wide-ranging disagreement over the issues and the oppositions that the ACFTU faced. While the ACFTU was able to put their views onto paper during the first and second readings, business lobbying greatly reduced union influence at third reading of the draft law. Moreover, some lawmakers from MOLSS and NPC shared the views of the business—to them, work rules in private firms should be decided by the management, and deadlocks would occur if unions/employees congresses have the right to approve the rules. The actors did not

reach a compromise, so during the third reading the NPC Standing Committee stepped in and decided the final provision.

Article 14 of the draft law is on written labor contracts (or open-ended contracts) and has generated most contention during the legislative process. The clause on open-ended contracts was meant to discourage the practice of short-term contracting as the latter has been widely used by employers to trim workforce and avoid severance payment. The ACFTU favored draft 1, which requires employers to provide severance payment if the employers choose not to renew the contract after the fixed term contract expires, and a default open-ended contracts will take place if employers fail to sign written contracts within the time mandated. Employers greatly opposed this clause. Due to their fierce lobbying, severance payment was removed from the subsequent drafts, and instead employers are required to sign open-ended contracts if 1) the employee has been working for ten consecutive years, 2) when the employee has been working for ten consecutive years and is less than ten years away from retirement, 3) when the employee has received two consecutive fixed-term contracts and is about to renew. While the new additions seemingly imply more requirements, they actually provide employers room to evade open-ended contracts. Thus, the ACFTU was least satisfied with the outcome.

The Effect of the Labor Contract Law and Implication

The story of the LCL reveals ACFTU empowerment. Although it faced oppositions and ended up compromising at the NPC stage, the ACFTU was nevertheless able to put most of its agendas onto the final law as some provisions in the LCL are much more pro-labor and pro-union than the 1994 Labor Law. Negative reaction from

businesses also shows that the passage of the new law, if implemented, would greatly improve the protection Chinese workers receive. Media accounts of massive layoffs grew in number as the date of the LCL implementation (January 1, 2008) drew near. These massive layoffs were seen as companies' attempts to avoid article 14 of the LCL, or one that requires employers to sign open-ended contract with employees with more than ten years of working experience until their official retirement age. Amidst waves of company layoffs, two examples stood out: China's largest communications device producer, Huawei Technologies, has shed almost 12 % of its 60000 employees since the end of September in the form of voluntary retirement.¹¹³ Likewise, Carrefour China has asked over 40000 workers across China, except those who have already signed open-ended contracts, to re-sign a two year contracts with the company before December 28, 2007 regardless of the length of the employees' service in the company or whether their contract term will expire by then.¹¹⁴ Unlike its previous low-profile reaction throughout the legislative process, domestic Chinese businesses greatly resisted the new law. A survey done by *Shanghai Stock News* shows that 70% of business, in particular privately-owned (minyin) enterprises, wanted some clauses in the LCL to be amended after a month of implementation.¹¹⁵ Some business owners even openly demanded that

¹¹³ DongA.com (2007), "China's New Labor Law No Help to Chinese Workers," November 05, 2007. Available at: <http://english.donga.com/srv/service.php3?bicode=060000&biid=2007110530318> (accessed 06/12/11)

¹¹⁴ Renmin web (2007). "ACFTU: There's No Need to Evade the Labor Contract Law (quanzong: gueibi laodong hetongfa xinwei wanquan meibiyao)." Available at: <http://acftu.people.com.cn/GB/6703184.html> (accessed 06/12/11)

¹¹⁵ Shanghai Stock News (2008). "70% of Chinese Enterprises Fear the Labor Contract Law due to Possible Cost Rise." February 20, 2008. Available at: http://big5.china.com.cn/info/txt/2008-02/20/content_10222209.htm (accessed 06/13/11)

the LCL to be amended: during the 11th CPPCC meeting, member Zhang Yin, China's paper tycoon, proposed to amend the Labor Contract Law to exempt labor-intensive companies from signing open-ended contracts with their employees¹¹⁶. Business resistance to the new law shows that the LCL, if implemented, can significantly increase the rights and protection of the Chinese workers.

Support and cooperation from government is important for the ACFTU to influence the content of the labor laws. Even though by laws unions were given the right to review and express opinions on drafts, and the ACFTU had the backing of the CCP during the making of the LCL, in reality ACFTU involvement and influence depend on whether government actors like the State Council and NPC support ACFTU work. Support from the party and the government in turn allowed the ACFTU several channels to interact and lobby the lawmakers and other ministerial actors. The ones that allowed the ACFTU greatest influence, however, were the official seminars on the draft law where the ACFTU and other ministerial actors participated. Being part of the drafting group also enabled the union organization to interact with MOLSS from the very beginning, which may have increased the latter's support over ACFTU agenda and enabled the ACFTU to better shape the content of the law. In general, support from the CCP and government allowed the ACFTU to establish closer working relationship with labor ministry, government's agent over labor affairs and thus a major actor in labor legislation. Interactions between the ACFTU and MOLSS are very important. When the support from MOLSS was absent, the ACFTU ended up compromising a great deal,

¹¹⁶ Xinhua News (2008). "Rich CPPCC member kicks off storm." March 10, 2008. Available at: http://www.chinadaily.com.cn/china/2008npc/2008-03/10/content_6521877.htm (accessed 06/10/11).

and the final provisions were less pro-labor and pro-union. Finally, the story of the LCL reveals the “double identities” of the ACFTU. While it has been an agent of the CCP, and its role over labor legislation depends on the party’s policy priority and objectives, ACFTU’s active attempts and effort to secure pro-union clauses show that the union organization was also an actor interested in expanding its organizational presence.

V. Conclusion

Labor legislation has become a vital aspect as China’s labor relations underwent major changes. However, scant attention has been paid to the politics of labor relations, and there have been few studies examining the role of China’s official union organization in labor legislation. In this chapter, I took such step with my analysis of the Labor Contract Law. Other than treating the ACFTU as one of the (and for some studies, a rather minor) contributors to the law’s passage and effect on labor relations, I argued that the ACFTU played a major role in the making of the LCL. The extent of ACFTU role and influence in legislation depend on CCP policy priority and objectives. As the CCP became more concerned about rising labor conflicts due to the implementation of labor contract system, it began to place labor stability on a higher priority, and labor laws became the party’s major means of reasserting control over labor relations. It was under this context that the ACFTU became more active and influential over labor legislation: being the agent of the CCP over labor relations and the only legal representative of labor, the ACFTU was given more access and resources to help institute a law that would better protect the rights and conditions of workers. This explains ACFTU activism and the growth of union organizational influence as a result of the LCL. Due to party intention

to address labor demands and encouragement of ACFTU work, the ACFTU was able to shape the LCL by crafting the draft LCL, lobbying the State Council and the NPC and working with a more cooperative MOLSS.

Chapter 5

Labor Conflicts and Union Activism

I. Introduction

Popular resistance has become common in China since the 1990s, and a majority of incidents involved disgruntled workers. Indeed, labor relations in post-reform China are characterized by heightened conflict of interests between businesses and workers as well as rapidly growing opposition by the latter. The most recent global financial crisis, which triggered a wave of worker suicides and strikes, pressed several provincial governments to raise the minimum wage standards.¹¹⁷ Have China's disgruntled workers succeeded in changing the policy priority of the CCP on labor relations? In face of rising labor conflicts and the risk they posed to the CCP rule, did the party initiate new measures to stabilize labor relations? And what was the implication of labor conflicts for labor unions?

This chapter examines the effect of labor conflicts on the development of China's official union organization, the ACFTU. I argue that rising labor conflicts since the 1990s threatened the CCP rule and induced the CCP to allow the ACFTU, which was the previously feeble official trade union organization, to have more authority over workplace relations. Using quantitative analyses, I find evidence that supports the

¹¹⁷ "Strike Waves Prompted Changes in Chinese Labor Policy (gongchao tuidong laogong zhengctze juangshing)". *Southern Window* (Nangfong Chuang), vol.13, 06/16/2010-06/29/2010

Yang Lan, "FoxConn and the Honda Strike: Can Chinese Labour break from capitalist accumulation?" *The Comment Factory*, 06/10/2010, available at <http://www.thecommentfactory.com/foxconn-and-the-honda-strike-can-chinese-labour-break-from-capitalist-accumulation-3133/>

following hypothesis: At the local level, the more contentious the labor situation, the more empowered the trade unions are on workplace issues.

This chapter is organized as follows. First, I present my argument that rising labor conflicts caused the empowerment of trade unions. Worrying that social instability would affect its political survival, the local leaders entrusted the unions with the task of monitoring workplace relations. Second, I review the literatures on Chinese labor conflicts and labor activism. I show that these studies generally treat labor conflicts as the variable to be analyzed, and that few studies systematically examine the effect of labor conflicts. Third, I discuss the development of various forms of labor conflicts in post-reform era and show that labor conflicts have become more frequent and intense. Fourth, I introduce the research design I used to test my hypothesis, and lastly, I present the empirical analyses.

II. Labor Conflicts and Union Empowerment

The recent development of the ACFTU has sparked interest and discussion amongst observers. An article in the *LA Times* states: “[The ACFTU], China’s government-backed trade union, long considered a paper tiger, is growing real fangs¹¹⁸.” Some Western union organizations, such as *Change to Win* (a major US labor union) and *International Trade Union Confederation*, even withdrew their previous boycotts and approached the ACFTU after seeing its drastic transformation.¹¹⁹ Before analyzing the

¹¹⁸ Evelyn Iritari, “China union drives harder bargains.” Los Angeles Times 04/12/2007, available at: <http://articles.latimes.com/2007/apr/12/business/fi-chinalabor12>

¹¹⁹ Brendan Smith, “Labor Charts a New Course in China.” 07/10/2008, available at and International Trade Union Confederation

impact of these positive changes on labor protection, it is important to address the following: what explains the recent empowerment of China's labor unions, which are tightly controlled by the CCP and which have been politically marginalized throughout most of the PRC history?

I suggest that the empowerment of the ACFTU—the rising influence of the Chinese labor unions over the protection of workers' rights—is the outcome of the country's growing labor conflicts. As more and more discontented Chinese workers demanded better treatments through both legal and militant means, the specter of rising social instability endangered regime survival and thus prompted the CCP to respond with new initiatives. ACFTU empowerment consisted of a key component of the party's strategy to counteract social instability, and the empowered unions were expected to help the party resolve labor conflicts by monitoring employers and government labor bureaucracy.

The discussion on labor conflicts and union development sheds light on the nature of state-society relations in China and other authoritarian states. I show that societal groups like the workers can shape the policy direction and initiatives of authoritarian rulers. While the CCP has enacted changes that allowed the unions to monitor the workplace and speak on behalf of the workers, labor unions in China are not gaining autonomy from the CCP. As the agent, the ACFTU and its union branches remain closely tied to the party, and they changed their role to help their principal—the CCP—maintain control over labor relations.

Even though labor conflicts in the post-reform period were mostly localized, scattered incidents that centered on bread and butter rather than political issues, their

development nevertheless impelled the CCP to put effort in improving workers' rights and conditions. A stable labor relation is intrinsically important to social stability and thus the survival of authoritarian regimes like the CCP. Compared to their democratic counterparts, the survival of the authoritarian regimes depends on their ability to thwart rebellions. Thus, citizen cooperation is equally if not more important in authoritarian regimes. A major problem with citizen cooperation in authoritarian regimes, however, is that cooperation is not a good indicator of citizen preference towards authoritarian rule. Cooperation could stem out of fear, rewards or sincere support of the regime. Because it is difficult to detect sincere preference towards authoritarian regime, social instability—even if it is consisted of scattered acts of protests, demonstration of other forms of citizen resistance—signals citizen dissent within the society and is thus likely to encourage others who share the same preference to participate. This fear of “revolutionary bandwagon” in turn raises authoritarian regimes' sensitivity to social instability (Kuran 1991). In other words, social instability reflects citizens' dissatisfaction with the authoritarian rule and raises the possibility of rebellions. Autocrats' fear of “revolutionary bandwagon” is higher where citizen dissatisfaction is high and space for grievance expression is closed (Magaloni and Wallace 2008). While authoritarian regimes can rely on coercion to obtain citizenry compliance, coercion is very costly, is not always effective and might even encourage more acts of resistance against the regime (Chen 1997; Weatherley 2006; Cai 2010). Maintaining social stability is thus necessary for the authoritarian regimes to prevent rebellions and achieve political survival.

Besides being an authoritarian ruler whose regime survival depends on its ability to maintain social stability, the CCP has other reasons to maintain labor peace.

Historically, workers were the proletariat, the vanguards of the CCP. Chinese workers have played the “lead role” in the state and labor relations, and they received privileged socio-political status, better pay and employing benefits (Lee 2003). Even though their social and economic welfare were greatly diminished since the reform period, as the foundation of the party the workers still occupied a major role in Chinese politics, so it is difficult for the CCP to ignore their demands. Moreover, events domestic and abroad demonstrated the potential for labor conflicts to disrupt regime rule. In Eastern Europe, union-led labor movements resulted in the demise of the Communist rule and the transition to democracy. The Tiananmen Incident, though unsuccessful, was the first mass movement that demonstrated how societal discontent, including that of the workers, could transform into serious political challenge (Chen 2000). The legacy of the Chinese working class and individual historical incidents raised the party’s anticipation of labor uprising and thus further induced the CCP to control labor relations.

This need to exert control over rising labor conflicts became the key objective of the CCP. After Hu Jintao came to power, the CCP policy emphasis shifted from economic development to social equity. At the third plenum of the 16th CCP Central Committee in late 2003, the Central Committee approved a document called “The Decision on Several Issues in Perfecting the Socialist Market Economy.” This document discussed the problems that have arisen out of China’s economic development and emphasized

“social development” as an integral part of the CCP agenda.¹²⁰ The fifth plenum of the Chinese Communist Party People’s Consultative (CPPCC) recognized this shift away from GDP growth and used the term “harmonious society (hexie shehui)” to reflect the party’s new emphasis on social stability,¹²¹ and maintaining social stability has become a key indicator to evaluate party and government officials’ performance.¹²² In light of the party’s change in the overall course of the policy, workplace issues, particularly the protection of workers’ rights and welfare, became the party policy focus since early 2000s. In China’s 11th Five-Year Plan (2006-2010), the CCP indicates the use of labor contracts, improving labor dispute resolution mechanism, protecting the legal rights of the workers, closer supervising of the labor market and the implementation of labor laws and regulations as specific goals that China were to fulfill from years 2006 to 2010.¹²³

Being an integral component of the party’s new policy emphasis on labor stability allowed trade unions to gain authority over labor protection. Since the 1990s, the CCP granted the ACFTU the right to participate in national policy debates, formally recognized its role in aggregating and representing workers’ interests at lower administrative levels, and stipulated greater union involvement in labor dispute settlement, workplace oversight and other activities (Chen 2003). Moreover, unions

¹²⁰ Victorien Wu, “Labor Relations in Focus.” Chinabusinessreview.com, November-December 2006. Available at: <https://www.uschina.org/public/documents/2006/11/labor-issues-corporate-responsibility.pdf>

¹²¹ Tony Saich, “Governance and Politics of China,” available at: <http://www.palgrave.com/politics/saich/docs/update1.pdf>

¹²² China Labour Bulletin, “Swimming against the Tide: A short history of labour conflict in China and the government’s attempt to control it.” China Labour Bulletin Research Notes, October 2010.

¹²³ Ibid

were endowed with the authority to monitor employers and labor bureaucracy. Since economic reforms, the CCP has relied on law and regulations to administer the increasingly complex labor relations while decentralizing labor regulatory authority. Thus, local governments and their bureaucracy, particularly the labor bureaucracy, were delegated with the responsibility of implementing labor laws and regulations. Since government and its labor bureaucracy play a major role in labor relations, its performance shapes the welfare and conditions that workers experience. To prevent labor conflicts from destabilizing the overall societal relations, the CCP needed the ACFTU to ensure that labor bureaucracy is acting in accordance to the party's mandated policy. Thus, trade unions acted as "watchdogs" for the party. As the only legal union organization in China with union branches at the local levels and even within enterprises, the ACFTU became the only trade union organization with the authority to directly oversee employer compliance with labor regulations and detect employee discontent against the management. And labor laws and regulations were unions' "weapons." As the ACFTU still lacked ability to sanction non-compliance with the laws, unions had to rely on laws and regulations to legitimize their monitoring activities and induce employers to comply with the laws and regulations. This explains the union organization's emphasis on the goal "protecting workers' rights through law (yifa weiquan)" and its push to establish enterprise union branches to increase its monitoring strength. In response to growing labor conflicts that threatened the survival of the CCP regime, the CCP allowed the ACFTU more influence over workplace relations. The course of the ACFTU empowerment, however, was shaped by the party's turn to the rule of law and regulatory

state. The ACFTU and its union branches did not, as their counterparts in most democratic countries, become more autonomous organizations that represent workers' interests; rather, the ACFTU was further drawn into the party-government apparatus when it became a part of the legal and regulatory institutions. Union monitoring of workplace activities helps the CCP understand the changing workplace relations and thus enables the latter to better manage labor conflicts.

III. Labor Conflict in China: a review

Labor conflicts have been a major topic in the study of Chinese labor relations. Studies generally agree that workers' grievances shaped the occurrence and pattern of labor conflicts, and they place a considerable amount of effort to analyze and explain labor grievances. They look at the types, the central claims and the ways grievances are framed by the workers.¹²⁴ There are different types of grievances. Many workers engaged in contentious actions when they experienced the loss of income and benefits, or the so-called "subsistence crisis" (O'Brien and Hurst 2002, Chen 2000, Chen 2003). Others, especially the migrant workers in urban areas, tended to be discontented with contractual, specific and legalistic issues. Although these workers did not suffer from the lack of basic subsistence, they often worked under conditions that did not meet the legal workplace standards set by the Labor Law and other regulations (Lee 2002; 2007). Workers' grievances also centered on issues like the lack of reemployment opportunity

¹²⁴ This is based on Hurst (2009)'s typologies of workers' contention. Hurst presents six dimensions—primary type of grievance, primary type of claim, dominant frame, political opportunity structure, overt target and hidden target of contention. Here I merged the first three dimensions into one as I see the three closely interrelated. I also focus on political opportunity structure and mobilizing structure, which is a dimension that is not included in the typologies but nevertheless discussed by Hurst.

(Si 2003; Hurst 2009) as well as local government and managerial corruption (Chen 2000; 2003). The type of grievances that workers experienced affected the way they framed their collective actions. Workers whose grievances centered on subsistence framed their contention in ways that were nostalgic of the Maoist past when the state was responsible for workers' livelihood (O'Brien and Hurst 2002; Chen 2003). Those who experienced inadequate workplace conditions framed their contention in ways that emphasized the preservation of legal rights and fairness (Lee 2007).

Scholars like Cai (2002; 2010) viewed workers' mobilizing structure as another important factor behind the occurrence and pattern of collective actions. While grievances explain workers' incentive to engage in collective actions, the presence of social and institutional structure and networks enabled them to translate their grievances into actions. As Hurst (2009) points out, however, in China workers were greatly constrained by their options of mobilizing structures. How to explain the steady rise of collective actions despite the constraints workers faced, which would reduce their ability to express their grievances? While mobilizing structures is important, it is necessary to look into alternative sources of structures to explain the continuing rise of labor conflicts.

While it is central to examine the causes and patterns workers' contention, studies of labor conflicts do not yield a complete picture of labor relations because another crucial aspect—the political impact of workers' contention—receives much less attention. The state plays a major role in the labor relations of many democratic (for example, Western European countries like Germany, France and Italy) and authoritarian countries (pre-democratic Taiwan, Mexico and some other Latin American states), and it is even

more so in China where government relies on local governments and bureaucracy to stabilize labor relations. It is therefore important to examine the preference and behaviors of the party and the government when analyzing Chinese labor relations. Discussions on government responses, such as the ones by Hurst (2009) and Chen (2003), mostly focus on how local government responds to a single strike, protest or other collective incident by workers, and they often rely on field researches in a single or few selected localities that treat workers or enterprises as the unit of study. While studies such as the ones by Gallagher (2001), Gallagher and Dong (forthcoming) as well as media reports suggest that growing labor conflicts induced positive changes in labor policy, especially the passage of the Labor Law and the Labor Contract Law, there are still few systematic empirical analyses that look at the “long-term” effect of labor conflicts—namely, the development of labor institutions, especially the development of the labor unions.¹²⁵ Moreover, these works do not account for labor conflicts other than protests, strikes or similar actions. The Chinese workers also participated in underground unions and even criminal activities as they sought alternative means to express grievances (Lee 2010). Besides institutional means like the labor dispute settlement mechanisms (Gallagher 2001), workers also engaged in informal strategies to resist factory rules that would worsen their working conditions (Chen 2003, Lee 2007).¹²⁶ These alternative forms of labor activism should also exert a significant impact on the

¹²⁵ Hurst (2009) is the only one who looks at the regional variation of workers’ contention and government responses. However, even Hurst does not look at the overall government response, namely, the overall political and institutional impact of labor conflicts. And Hurst does not discuss the impact of labor conflicts on union development.

¹²⁶ I will provide a more in-depth discussion of these informal workers’ resistance in next section.

way governments (in particular, local-level ones) respond to labor demands for better working conditions.

IV. The Trends and Development of Labor Conflicts in Post-Reform Era

As stated earlier, the CCP turned to law and the ACFTU when labor conflicts intensified. Labor conflicts in post-reform China took various forms. Regardless of the form they took, labor conflicts have become more violent, and workers from different backgrounds—whether they were laid-off SOE or migrant workers in manufacturing plants—were involved. These developments explained the party's growing resolve to improve working conditions.

The labor dispute settlement mechanism, as Gallagher (2001) argues, constitutes the party's attempt to institutionalize labor conflicts. Labor disputes, both individual and collective,¹²⁷ have been growing since 1990s. Table 5.1 shows labor disputes from 1994 to 2008. The average number of disputes per 100,000 workers in 1994 is about 28.4. In 2008, this figure changed to 937. The annual rate of growth shows that the number of labor disputes has been steadily growing over time, and in 1995 and 2008 there were about 70% more of disputes than previous years. Labor disputes have grown steadily and at a significant volume: the average annual rate of change in labor disputes from 1994 to 2008 is about 30.5%. In other words, between 1994 and 2008 the Chinese labor bureaus as a whole received on average 30.5% more labor disputes every year than they had in previous year. There has also been an increase in the number of collective disputes (see Table 5.2): in 1996, there were about 3150 collective dispute cases; in 2008

¹²⁷ Collective disputes are cases that involve three or more workers.

the figure has increased to 21880. While the change in collective disputes has not always been consistent, as indicated by the negative growth in years 2000, 2003, 2005, 2006 and 2007, in other years the rate of growth was as high as 77.8%. Likewise, there has not been a significant rise in the scale of the collective disputes as measured by the average number of workers per dispute case. Although the figures range from 21.3 to 47.5 workers per dispute, they nevertheless suggest the deterioration of labor stability. Overall, the data on individual and collective labor disputes show that labor conflicts have become a serious social problem in China.

Table 5.1. Labor Disputes in China, 1994-2008

Source: China Labor and Social Security Statistical Yearbook, 1995-2009

Year	Labor Force (in 10,000)	Disputes	Disputes per 100,000 Workers	Annual Rate of Change (%)
1994	6719.9	19098	28.42	
1995	6794.7	33000	48.57	70.891
1996	6885	47591	69.12	42.324
1997	6960	71524	102.76	48.669
1998	6995.7	93649	133.87	30.266
1999	7058.6	127234	180.25	34.652
2000	7115	140906	198.04	9.868
2001	7302.5	154543	211.63	6.862
2002	7374	196293	266.20	25.784
2003	7443	241941	325.06	22.112
2004	7520	278188	369.93	13.804
2005	7582.5	331094	436.66	18.037
2006	7640	338808	443.47	1.560
2007	7699	375088	487.19	9.860
2008	7748	726108	937.16	92.359
				<i>Average 30.503</i>

Table 5.2. Collective Labor Disputes in China, 1994-2008

Source: China Labor and Social Security Statistical Yearbook, 1995-2009

Year	Collective Disputes	Annual Rate of Change (%)	Workers Involved	Average Size of Dispute (person)	Annual Rate of Change (%)
1996	3150		92203	29.271	
1997	4109	30.444	132647	32.282	10.288
1998	6767	64.687	251268	37.131	15.022
1999	9043	33.634	319241	35.303	-4.925
2000	8247	-8.802	259445	31.459	-10.887
2001	9847	19.401	286680	29.113	-7.457
2002	11024	11.953	374956	34.013	16.828
2003	10823	-1.823	514573	47.544	39.784
2004	19241	77.779	477992	24.842	-47.749
2005	16217	-15.716	409819	25.271	1.725
2006	13977	-13.813	348714	24.949	-1.273
2007	12784	-8.535	271777	21.259	-14.790
2008	21880	71.151	502713	22.976	8.075

Institutional mechanisms, however, could not fully contain workers' discontent, so workers continued to rely on extra-institutional means to press their demands. Strikes, work stoppages and protests are common forms of collective actions by discontented workers. Strikes occurred as early as late 1980s when unemployment and the loss of benefits have struck many veteran SOE workers who experienced difficulties in securing re-employment. Collective actions have spread starting 1990s as more workers experienced the loss of jobs and benefits, while the younger migrant workers also joined the rank and became a major group engaging in militant activities (Chan 2004; Lee 2005). Labor strikes and protests were especially more frequent and violent when

unemployment was high (Lee 2005). As the most recent global financial crisis reduced export demands and caused massive factory shutdowns and relocations, many Chinese workers who suffered from job loss and wage arrears took their grievances to the street. In 2007 to 2008 alone, major overseas Chinese news media reported about 100 incidents of labor militancy. Out of these 100 incidents, about 84 incidents involved more than 100 workers in action. These workers participated in strikes, demonstration, sit-ins, roadblocks and petitioning (*shang fang*) to demand job restoration and wage payment.¹²⁸ Given that media reporting is still subjected to censorship by the CCP, it is safe to say that the actual number of labor militancy between 2007 and 2008 is higher than 100.

Workers also employed various informal means to protest against their undesirable working conditions. A common response of discontented workers is what Lee (1998) called “collective inaction.” In her study of state workers in Guangzhou City, Lee finds that workers often engaged in goldbricking, spontaneous work stoppages, absenteeism, second-job craze as well as inefficient and sloppy works to protest against the new factory rules that worsened their working conditions and benefits. Chen (2003)’s article on the township and village enterprises in Zhejiang Province also shows that workers used informal strategies to counter factory rules and resultant conditions. To thwart unwanted changes in factory rules and practices, workers complained, slandered, slacked off or even ostracized the middle-ranked managers who were responsible for implementing changes. The act of suicide can also be seen as an unconventional and

¹²⁸ China Labour Bulletin, “Going it Alone: The Workers’ Movement in China (2007-2008).” China Labour Bulletin Special Research Reports, July 2009. Available at: http://www.clb.org.hk/en/files/share/File/research_reports/workers_movement_07-08_print_final.pdf

violent way for workers to protest against their conditions. In summer 2010, Taiwanese electronics company FoxConn made international news headlines when several workers of the company's manufacturing plants committed suicides. The incidents—10 suicides and a few attempted ones—attracted media attention and government scrutiny over the company's factory workplace standards.¹²⁹ While these informal strategies mostly took place in localized factory settings, their presence revealed growing conflict of interest between workers and the management as well as workers' incessant attempts to pressure the management and even the local governments to respond. Together, the growth of these institutional and extra-institutional expressions of worker grievances yields a disconcerting picture of Chinese labor relations.

V. Research Design and Data

In this section, I estimate a set of regressions to test the effect of changes in the level of labor conflicts on changes in the level of union influence. By conducting these estimations, I show that rising union influence is associated with the increase of labor contentions. My test is based on a dataset I have compiled from various official statistics.

I derived two measures of labor conflicts from the official statistical resources, China's *Labor and Social Security Yearbooks* (see Appendix A for a description of variables). The first measure, *Dispute*, is based on the number of labor disputes the provincial labor bureaus receive from either the employers or the workers (most often the disputes were initiated by the workers). I then divided the measure by the total number

¹²⁹ "FoxConn suicide probe to be made public." Reuters, 06/12/10. Available at: <http://www.reuters.com/article/idUSTRE65C0AE20100613>

of enterprises in the provinces so I could obtain a standardized measure—the number of labor disputes per 100,000 workers—to account for the variation of employment scale across provinces. I also wanted to see if the scale of labor conflicts has an impact on union development, so I calculated the average number of workers involved in a collective dispute and named the measure *DisputeSize*. I then created lagged variables for both measures to test the effect of conflicts on union empowerment at later periods, assuming that it takes time for labor conflicts to trigger union empowerment. In other words, it is unlikely to see any positive changes in union influence when there is an increase in labor conflict in the same period.

The union data was based on statistical resources from the ACFTU. Each year, the ACFTU publishes a yearbook on recent union development at all level and reports quantitative indicators of various union activities during that year. Of the numerous activities that unions engage in every year, I identified the ones that constitute the development of ACFTU institutional capacity. Activities on union institutional capacity building, I argue, better capture the variable “union empowerment.” While other union activities constitute ACFTU effort to address workplace violations and growing worker discontent, they serve to ameliorate immediate conflicts and result in little systematic or long-term union involvement in workplace relations. The tripartite consultative mechanism is composed of the government (represented by labor ministry and bureaus at the local levels), labor (the ACFTU) and capital (on the national level enterprises are represented by the Chinese Enterprise Confederation but it may vary on local levels). As a forum for the three sides to exchange ideas about major labor issues, the mechanism

allows ACFTU union branches and management to shape government decisions, and some argue that the mechanism is becoming more relevant at representing workers' interests (Shao, Nyland and Zhu 2005). The labor relations alarm system (laodong yuzhing zhidu) is targeted at the prevention of labor collective actions. In this system, unions and "relevant" (mostly the labor department) administrative departments design and carry out means to detect sources of labor discontents.¹³⁰ Often, the role of the unions is to report, intervene and resolve discontent before it turns into any large-scaled collective actions. Legal aid clinics operated by the ACFTU at various levels have been a major focus of union activities. These clinics offer free consultation and service to workers who experience workplace violations but are unsure of which laws or regulations are broken. The ACFTU is also responsible for legal supervision (gonghui laodong falui jiangdu). The 2002 Trade Unions Law gives unions the power to oversee employers' compliance with labor laws and regulations, and unions can investigate enterprises and request information from the latter. When workers experience rights infringement they can file complaints to union legal supervision committees. Upon receiving the complaints, the committees could either administer (which usually means seeking further information from the alleged enterprise/management), refer to same-level labor bureau or do nothing. However, unions do not have sanctioning power even when violations are found.

Based on these union activities, I constructed four dependent variables: *TriMech*, which stands for the number of unions with tripartite mechanism; *AlarmMech*, which

¹³⁰Dong Jianming, "A look into the ways for unions to improve their works on dispute resolution (gonghui zuohao laodong zhengyi tiaojie gongzuo lujing fengxi)." China Workers' Daily, 01/26/2010

stands for the number of unions with labor relations alarm system; *Supervise*; which stands for the number of unions with union legal supervising units; and *LegalAid*, the total number of unions with legal aid clinics. For each measure, “unions” refer to the ones that are above enterprise-level, so unions that are established at enterprises were excluded from these regression tests.

Methodology

In this analysis of labor conflicts on union activism, I used the logistic model for proportion data. My dependent variables for the test are the proportion of unions that had the union institutions measured. Those variables are essentially the aggregation of unit-level binary outcomes into groups—an individual union either had the institution (1) or not (0).

For this set of regression estimates, I expect no association between labor conflicts variables and each of the union activism measure but positive association between the lagged labor conflicts variables and each of the union activism measures; that is, for any time period (represented by the letter t), we can expect no significant response in *TriMech* when there is a unit increase in labor conflicts at time period t , but a unit increase in *TriMech* when we see an increase in labor conflict in previous time period, $t-1$ or $t-2$. I expect the same relationships to hold for the other three union activism measures. Summary statistics are available in Appendix B.

Results

The evidence on the effects of changes in labor conflicts on union empowerment is strong. I find that rising labor disputes is linked to increasing union empowerment at a

later period (please see Table 5.3). The union institutional measures are positively associated with *Dispute* and *Disputeslag1* but positively associated with *Disputelag2*. An increase in union authority is associated with disputes at t-2. Take the measure on tripartite mechanism as an example. For every 1% increase in *Dispute*, the odds of having tripartite mechanism in a union increases by 1.003. What this means is that provinces with more disputes at any time period are more likely to see an increase in the level of union institutions two time periods later. Contrary to expectation, the association between labor conflicts at time t and t-1 and union insituitional measures is significantly negative. For every 1% increase in *dispute* and *disputelag*, the odds of having tripartite mechanism in a union increases by 0.99.¹³¹ It is possible that the negative association at period (t) and period (t-1) is a result of resource allocation. Seeing increasing labor disputes may prompt the unions to place greater emphasis on resolving disputes, which diverts resources away from institution building. Unions turn to institution buildings only when they realize that the rise in labor disputes constitutes a trend and more structural measures are needed to reduce and prevent future disputes.

The result remains the same even when economic control variables, *FDI* and *GDPpc*, were added to the model. *FDI* is negatively associated with all four union measures—provinces with more FDI are more likely to see a decrease in the level of union institution building. Given that an increase of union institution helps workers improve their working conditions and welfare, this finding lends indirect support to the view that FDI dampens workers' rights and protection (Gallagher 2001). *GDPpc*,

¹³¹ The only expectation is *Supervise*: the association between *Supervise* and *Dispute* (at time t) is positive.

however, is positively associated with the four union activism measures—provinces with more *GDPpc* are more likely to see an increase in the level of union institutions. It is possible that greater level of economic development means more resources at hand for the governments to spend on building union institutions.

The size of the contention yielded inconsistent outcome (please see Table 5.4). Collective disputes at time period *t*, *DisputeSize*, are positively associated with all union measures except for *LegalAid*. Collective disputes at period *t-1*, *Disputesizelag*, are positively associated with *AlarmMech* and *LegalAid* but negatively associated with *TriMech*, while the association is not significant for *Supervise* measure. Collective disputes at period *t-2*, *colsizelag2*, are positively associated with *Supervise* but negatively associated with *TriMech*, while the relationships between *colsizelag2* and *AlarmMech* as well as between *colsizelag2* and *LegalAid* are not significant. This suggests that the size of the contention has an immediate effect in increasing tripartite consultative mechanism, labor relations alarm system, union legal supervision system but not union legal aid clinics. This makes sense—collective disputes have the potential of eliciting other large-scaled, collective labor actions and are thus more alarming for the governments. The rise in collective disputes should then prompt the governments to stabilize labor relations by empowering the unions with greater monitoring capacity—one that will detect and prevent worker discontent. Establishment of legal aid clinics was not emphasized by governments as it constitutes more of ad-hoc means to stabilize labor relations: workers who are seeking legal aids have not only experienced labor rights violations but were already seeking institutional ways to resolve their grievance (for

example, via dispute resolution process), so more legal aid clinics would do little to prevent workers' grievances from developing into individual disputes or collective labor conflicts. However, the inconsistent results among union measures and lagged collective disputes imply the following: overall, collective disputes that occurred earlier (at time period t-1 and t-2) have imprecise or little effect on union institutional activities. Given that the governments immediately respond to the changes in collective disputes, it is reasonable for collective disputes that occurred at earlier periods to have little or no effect on union activities.

Table 5.3. Odds Ratios for Changes in Union Activism, Individual Labor Disputes

	TriMech	AlarmMech	Supervise	LegalAid
Disputes	0.998*** (-15.35)	0.999*** (-4.29)	1.00*** (5.04)	0.999*** (-4.11)
DisputesLag	0.99*** (-23.78)	0.988*** (-28.92)	0.988*** (-32.96)	0.994*** (-12.43)
DisputesLag2	1.003*** (5.06)	1.005*** (9.68)	1.004*** (10.05)	1.002*** (3.06)
FDI	0.153*** (-4.60)	0.072*** (-5.74)	0.00*** (-20.14)	0.003*** (-11.16)
GDPpc	1.00*** (31.68)	1.00*** (39.18)	1.00*** (49.15)	1.00*** (17.77)

Exponentiated coefficients; t statistics in parentheses

* p<0.05, ** p<0.01, *** p<0.001

Table 5.4. Odds Ratios for Changes in Union Activism, Size of Collective Labor Disputes

	TriMech	AlarmMech	Supervise	LegalAid
DisputeSize	1.004*** (20.66)	1.00* (2.03)	1.00*** (10.47)	0.999*** (-4.02)
DisputeSizelag	0.996*** (-20.23)	1.00*** (5.09)	1.00 (1.21)	1.002*** (6.66)
DisputeSizelag2	0.999*** (-6.11)	1.00 (-1.84)	1.00*** (4.55)	1.00 (1.17)
FDI	0.109*** (-11.06)	0.014*** (-9.27)	0.00*** (-24.73)	0.00*** (-14.59)
GDP	1.00*** (-8.66)	1.00*** (13.30)	1.00*** (25.99)	1.00** (3.02)
Exponentiated coefficients; t statistics in parentheses				
* p<0.05, ** p<0.01, *** p<0.001				

VI. Conclusion

The empowerment of the labor unions is explained by rising labor conflicts in China. Labor relations have become more unstable in post-reform period as a growing number of workers pressed for more workplace protection through both legal and illegal, and often violent, means. Although the incidents remained mostly localized and apolitical, they nevertheless induced the CCP, whose regime survival is contingent upon its ability to maintain social stability, to focus on labor protection. The development of ACFTU authority was thus a part of the ruling CCP's strategy to alleviate workers' unrest. Using quantitative analysis, I show that labor conflicts were positively associated with

measures of union empowerment—when there was increasing labor disputes at time 1, the odds of establishing union legal institutions were greater.

Chapter 6

The Effects of Labor Union Development—Union Authority and Enforcement of Labor Laws and Regulations

I. Introduction

China's labor relations have grown contentious since the 1990s. In this new environment, the official All-China Federation of Trade Union (ACFTU) sought to redefine its role and functions. The trade union organization has gained political influence during the post-reform period, which facilitated the passage of pro-labor policy measures. While most policy changes seemed to occur at the national level, unions at the local levels also underwent changes. During the post-reform era the local union branches of the ACFTU have engaged in moves like the unionization of foreign-invested enterprises (FIEs), establishment of industry or sector-based unions, promotion of collective consultation system and provision of legal aids and other material assistance (ACFTU Research Office 2007).

Observers, however, remain cautious, if not skeptical, of the effect of local union development on the representation and protection of workers' interests. They argue that these changes were top-bottom campaigns that superficially involved workers (China Labour Bulletin 2009). Because these developments operated within the goal and the confinement of the Chinese Communist Party (CCP), these observers conclude that union development had little effect on workers' interests (Chen 2003; Chen and Chan 2005; Ding et al. 2005; Pun 2005; Zhu 2004; Howell 2003; Chang 2005).

Are union developments at the local levels unlikely to have a positive impact on the rights and working conditions of the Chinese workers? In this chapter, I look at the development of the Chinese labor unions across regions and assess their impact on the enforcement of labor laws and regulations. I find that union strength significantly shapes labor bureaucracy's enforcement efforts and decisions. When unions gain the authority to monitor employer and labor bureaucracy through the development of union legal institutions, they act as fire-alarms that help the labor bureaucracy locate and defuse workers' contention. By enabling unions the access to labor bureaucracy's enforcement decisions and facilitating interactions between the unions and the labor bureaucracy, unions were able to hold the labor bureaus accountable. The development of union authority at the local levels thus contributed to higher level of regulatory enforcement.

This study systematically addresses the relations between union influence and enforcement of labor laws and regulations. Many previous studies of Chinese union development attempted to assess the impacts of unions through studies on a few selected localities. I look at labor unions' ability to defend workers' legal rights (*weiquan*), an aspect that receives little attention in previous studies. And I use regulatory enforcement, which is an indicator of bureaucratic effort to implement labor laws and regulations, to proxy for the level of protection workers receive. Since inadequate and uneven enforcement is the major challenge behind lagging protection, it is important to examine the patterns of enforcement.

This chapter is organized as follows. First, I review the literatures on Chinese union development and present my hypotheses on union development. Second, I

describe China's labor enforcement regime and the issues that are faced by the enforcement bodies. Third, I discuss labor unions' role in regulatory enforcement and show that unions have been empowered to monitor both the employers and the labor bureaucracy. Unions were able to induce more rigorous enforcement through institutions that allowed unions to overcome employer resistance to union monitoring, interact with labor bureaucracy and access labor bureaus' enforcement decisions. Fourth, I introduce the research design I used to test my hypotheses, and lastly, I present the empirical analyses.

II. Union Development and Regulatory Enforcement

Studies of Chinese labor politics look at the roles of labor unions throughout the history of the People's Republic of China (PRC). These studies point out the inherent contradiction in the role of the Chinese labor unions: as the "transmission belt," the ACFTU and its sub-national union branches are representatives of both the workers and the CCP (Lee 1986; Lu 2001; Pravda and Ruble 1986; Chan 1994; White et al 1996; Howell 1997; Hong and Warner 1998). While they recognize attempts by the unions to reform themselves, these studies disagree on the effect that union development has on workers' interests: some argue that the changes within the ACFTU helped the unions better protect workers' rights and interests (Zhang 1997; Chan 2005; Chan 2008), but others remain pessimistic and point out that, as impressive as they were, union reforms nevertheless failed to increase the rights and the protection that the workers receive (Baek 2000; Chen and Sil 2006; Howell 2003; MetCalf and Li 2006; Zhu 2004). Regardless of which camp they belong to, these studies share the view that unions-party relations

determine the extent that unions represent workers' interests. The underlying assumption is that workers' interests are in conflict with those of the party, and union autonomy is necessary for greater labor protection since it gives unions the incentives and ability to represent workers. Studies that claim positive union effect find more union autonomy from the party, while the pessimists note unions' continuing subordination to the party.

While these studies have greatly contributed to the understanding of the Chinese unions, the impact of union development on workers' rights and conditions, I argue, is more complex than what they have depicted. The view of conflicting interests between the state and the workers treats "the Chinese state" as unitary actor. Such view ignores the possibility that "the Chinese state" embodies different levels of political actors (the central versus the local) that do not necessarily share the same interests, and party politicians do respond to workers' demands even when they are acting on their own interest. Furthermore, union dependence does not necessarily imply the absence of union incentives and ability to represent workers. So the issue is not whether or not the party-controlled unions represent workers but when and how. Because these studies are based on case studies and/or observations of primary and secondary resources, they have not used research designs that provide more systematic studies of unions' impact on labor rights and conditions. As a result, many studies are silent on the actual effect of union development, and those that offer some evidences encounter the problem of external validity.

So how do unions in China affect the rights and the conditions of workers? I examined the development of labor unions across the Chinese regions for answers. Following Murillo and Schrank's (forthcoming) model on labor unions, I argue that the political effect of unions in China is determined by two factors: goals and resources. For the ACFTU and its branch unions at the local levels, the ultimate goal is organizational survival. Given that the relationship between the unions and the local governments is one of principal-agent where the CCP delegated the tasks of maintaining social stability to the ACFTU,¹³² I infer that unions share local government's goal of social stability. The principal-agent relationship also indicates that the local governments are the providers of resources. Political support from the local governments and their administrative agencies—especially the labor bureaucracy that is responsible for the implementation of labor policy—is important. Labor unions' incentives to improve workers' rights and conditions derive from their intent to maintain organizational relevance and social stability, but unions' ability to achieve this goal depends on whether the activities they engage with enable them more resources to affect the policy outcomes.

I present two hypotheses on the association between union development and the enforcement of labor laws and regulations. Although local unions are involved in various legal tasks, only the activities that focus on institution-building will have an

¹³² Chen (2003) nicely sums up the union-state relationship in the following sentences: "How big a representing role unions can play in industrial conflict is at the mercy of the state. That is, it depends on how much political and institutional space the state will give to unions in which to speak up and stand up for workers." See Feng Chen (2003), "Between the State and the Labour: The Conflict of Chinese Trade Unions' Double Identity in Market Reform." *The China Quarterly*, No.176 (December 2003), p. 1006-1028

effect on enforcement effort because they allow labor unions the access to labor bureaucracy's enforcement decisions. These corporatist-like institutions (Schmitter 1996) reinforce the interactions between the unions and local labor bureaucracy and help the latter maintain social stability. For the local government and its labor bureaucracy, unions act as fire-alarm (McCubbins and Schwartz 1984) that helps local labor bureaucracy defuse contention. Union legal institutions facilitate communication and coordination between the unions and the labor bureaus. Bureaucratic enforcement is greater when these corporatist institutions are in place.

Local Level—hypothesis 2

Greater union power over labor bureaucracy leads to more rigorous enforcement of labor laws and regulations

III. Labor Enforcement Mechanisms in China: Development and Challenges

China's labor policy is implemented in three ways: inspection by the labor bureaucracy, dispute settlement by the labor bureaucracy or trade union, and litigations in court. Here I focus on inspection and use "enforcement" to denote labor bureaucracy's inspection of enterprises.

China's labor enforcement mechanism was developed during the reform period. The mass inflow of foreign-invested enterprises (FIEs) and the privatization of Chinese state-owned enterprises (SOEs) have weaned Chinese workers from CCP care and left them to negotiate with empowered employers. As the interests of the employers and the employees diverged, the CCP turned to law to contain rising worker dissatisfaction against deteriorating working rights and conditions (Gallager 2001). In 1993, the

Ministry of Labor¹³³ issued the *Rule on Labor Inspection* (laodong jiangcha guiding). The *Rule* provides some basic guidelines on the inspection of labor standards. The *Rule* also stipulates the creation of inspection units at the county and above-level labor bureaus. Labor bureaus were endowed with the tasks of determining labor standards, promoting labor laws and regulations, inspecting enterprises and overseeing compliance with occupation health and safety standards. A year later, the Chinese government passed the Labor Law. The Labor Law further consolidated the labor regulatory mechanism: besides providing details on the scope of the regulations, the actors involved and the consequences for violations, the Labor Law also officially delegated the responsibility of implementing labor policies to local governments. Thus the Labor Law decentralized regulatory authority and delegated the tasks of overseeing workplace relations to county, prefecture/municipal and provincial governments. After the administrative reform in 1998 the responsibility over occupational health and safety was transferred from the Ministry of Labor and Social Security (MOLSS) to the Ministry of Health, State Administration of Work Safety and Special Quality Supervision and Inspection.

Further details regarding enforcement were found in the *2004 Regulation on Labor and Social Security Inspection* (the *2004 Regulation*). The *2004 Regulation* differs from the previous labor policies in three ways. First, contrary to previous regulations where both employer and employee are the subjects of enforcement, the *2004 Regulation* focuses on employer compliance with labor laws and regulations. Second, the *2004 Regulation* lists three ways to enforce labor laws and regulations. According to article

¹³³ The ministry was reorganized and named the Ministry of Labor and Social Security (MOLSS) in 1998 as the result of major bureaucratic restructuring.

14, labor inspection units are to conduct regular inspection (patrolling) (lichang xunshi jiangcha), review written information submitted by the employer and conduct investigation after receiving complaints from the employees. Third, the regulation entails three responses that the enforcement units could issue when violations are found: administrative penalty (shinzheng chufa) when violations are found and penalty is required; warning and correction (zeling gaizheng) and cancellation of cases when violations are minor and corrected after warnings are given. These responses, especially the first one, give enforcement units the authority to sanction non-complying employers. The *2004 Regulation* was an attempt by the CCP to consolidate labor regulatory institutions. Before then, crucial issues like employment contract and dispute settlement, for example, were listed but insufficiently covered in the law (Guan 2004; Sun 2005). Facing little guidance, MOLSS and other government agencies issued their own regulations, which not only created confusion but also loopholes for the enforcement bodies to exploit (Cooney 2007; Han 2005).

Despite the passage of the *2004 Regulation*, the regulatory institutions were ineffective at raising enforcement, and enforcement remained uneven across regions. Enforcement bodies often lacked the resources to implement their activities. From years 2003 to 2008, the average number of full-time inspector per enforcement unit was around 6 (Ngok and Zhuang 2009). It was common for regions—even the economically developed ones—to have a single inspector responsible for on average 3000 or more

employing units and 30000 to 40000 employees.¹³⁴ As a result, many units hired part-time inspectors, who received less rigorous training and had little sanction power. Due to bureaucratic streamlining, many enforcement units were not part of the administrative staffing (xinjeng bianzhi) and were instead registered as service units (shiyei danwei).¹³⁵ Even though most of the times government funding was provided for the ones that were categorized as service units, many enforcement bodies still financed their own operations or received partial funding from the government (zisho zizhi, collecting and financing on its own or cha'e buokuan, partial funding).¹³⁶ Enforcement bodies also had limited authority to implement and enforce labor laws and regulations. The Labor Law and the corresponding regulation only endowed the enforcement units with the authority to “warn,” “correct,” and “criticize.” Although the *2004 Regulation* gave enforcement units the authority to exact fines, their sanctioning authority and options remained limited (Guo 2005). Fines could be applied only after the employer received warnings and refused to comply, and the amount of fine was based

¹³⁴ “Three Welfare Questions: How to Strengthen Enforcement To Overcome Wage Arrears?” (minsheng sanweng: laodong jiangcha zhi chienxin chuchuan ruhe genyeoli) *Xinhua.net*, 02/03/2010, http://news.xinhuanet.com/employment/2010-02/03/content_12924077.htm

¹³⁵ “On Strengthening Labor Inspection Authority and Protecting Labor Rights,” (chianghua laodong baozhang zhifa chuanwei weihu laodongzhe hefa chuanyi) <http://zt.gog.com/cn/system/2009/01/19/0104626846.shtml>

¹³⁶ “Year-end report by the Jiangsu Provincial Labor Legal Inspection Team,” http://www.jslss.gov.cn/zwgk/09gzzj/200912/t20091208_53126.htm

“Shanxxi Province Labor and Social Security Supervision Work Meeting Opens Today,” (quansheng laodong baozhang jiancha gongzuo shiping huiyi jinri jangkai).” <http://www.shaanxihrss.gov.cn/Html/2009-8-24/121234.Html>

on the violations that were detected¹³⁷ and whether or not the employers refused to submit the information (which amounts to 2000-20000 yuan). The difficulty of enacting heavy sanctions greatly reduced employers' incentives to follow the laws and regulations. Sanctions therefore lacked credibility. Finally, enforcement was greatly affected by the overlapping and confusing jurisdiction between legal inspection and dispute settlement. Despite the fact that the mechanisms on labor dispute settlement and inspection belonged to separated regulatory units, the Labor Law and other regulations did not differentiate their scope (Dong 1996). In addition to vague jurisdiction, the availability of sanctions under legal inspection (as opposed to dispute settlement, where the final sanctioning authority lies in the court) prompted workers to appeal to the inspection bodies. This often forced the units to take on additional cases, act as mediators to resolve disputes or reject cases when they exceeded the amount that the units could take.¹³⁸ As a result, enforcement units, many of which started with little resources, were left with even less resources to implement their tasks.

While these problems—inadequate resources, limited sanctioning authority and overlapping jurisdiction—were important factors that reduced the capability of the labor enforcement bodies, they would have been overcome had local governments committed themselves to strengthen the regulatory institutions. Local government's unwillingness

¹³⁷ This usually means the number of workers who appealed and made complaints to the enforcement units.

¹³⁸ "On Strengthening Labor Inspection Authority and Protecting Labor Rights," (chianghua laodong baozhang zhifa chuanwei weihu laodongzhe hefa chuanyi).
<http://zt.gog.com/cn/system/2009/01/19/0104626846.shtml>

to promote labor protection was the root of these problems (Gallgher 2001). Concerned about economic growth, local governments were more interested in meeting the demands of businesses for a more flexible and less regulated labor market, so they did not endow the enforcement bodies enough ability to conduct inspection activities. Some local government even participated in activities that directly prohibited the enforcement of labor laws and regulations. For example, some local leaders in Guangdong Province required labor bureaus to report cases of violation for the leadership to decide whether or not penalty were to be applied. And a municipal government in Liaoning Province established a foreign invested enterprises management committee. Headed by the then mayor of the city, the committee required agencies except the tax bureau to obtain approval to conduct inspection in the FIEs (Huang 1996; Song 1997). Thus, local governments' pro-industry stance greatly diminished the ability of the enforcement bodies to carry out their tasks, and as a result poor and uneven enforcement was found across Chinese localities. The constraints also limited the ability of the enforcement bodies to conduct more active inspections, so the labor enforcement bodies often enacted ad hoc responses—initiating inspections after receiving workers' complaints instead of conducting inspections on a regular basis.

IV. Unions' Growing Influence over Regulatory Enforcement

Like the labor bureaus, local unions in China participate in both the inspection of labor laws and regulations as well as the settlement of workplace disputes. Here I focus on unions' role in labor regulatory inspection.

As the only official trade union organization in China, the ACFTU participates in the implementation of labor laws and regulations. According to the Labor Law, ACFTU at various levels are directed to safeguard workers' legal interests. The Labor Law not only endowed the unions with the authority to participate in the process of labor regulatory enforcement but also signified the changing role of the unions from acting as the "transmission belts" that helped foster economic production to one that defends workers' interests. The 2001 Trade Union Law further specifies the terms of union legal supervisions and the actions unions take when the employer violates labor standards. Articles 19 to 26 cover issues from contract to occupational health and safety. Unions have the right to conduct investigation, especially on incidents of work-related injury or death, but the most unions could do is to "demand" employer to provide written responses and seek intervention from the labor bureaucracy if the employer refuses to comply. Other than that, unions could only assist the worker to negotiate with the employer or help the latter file lawsuits at the court. The laws therefore placed the ACFTU on a dilemma: although the unions were given the responsibility to represent and protect the legal rights of the workers, they did not have the necessary authority to hold the employers accountable. Even though unions could seek the intervention of the labor bureaus when they faced employer resistance, the latter often delayed their responses and intervention,¹³⁹ and it is likely that interventions did not occur in many instances. Furthermore, the laws did not clarify unions' role in the enforcement process. How does "union legal supervision" differ from regulatory inspection conducted by local labor

¹³⁹ Zhou Pishen, "The Problems and Suggestions on Union Legal Rights Protection Works (Gonghui yifa weiquan de tuchu wenti ji qi duice)" *Union Theory and Studies (Gonghui lilun yanzhiu)*, vol.2, 2001

bureaus (other than the difference that the latter has sanctioning authority), and how is union legal supervision related to regulatory inspection by labor bureaus? Although the laws suggested that union legal supervision is part of the “mass supervision (qunzhong jiangdu)” and complements the inspection activities of the labor bureaus and other related agencies,¹⁴⁰ the laws gave little details on the relationship between the union supervision and labor bureaucratic inspection.

Right after the passage of the amended Trade Union Law in 2001, MOLSS issued “Notice on Strengthening the Coordination and Complementary Works of Legal Inspection by the Labor and Social Security Departments and Union Legal Supervision (Guanyu jiachang laodong baozhang jiangcha yu gonghui laodong bojiang jiangdu xianghu peihei gongzuo de tongzhi).” The notice constitutes the first official document that connects union legal supervision to regulatory inspection by labor authorities. This notice clarifies unions’ role in regulatory enforcement by calling for greater cooperation and coordination between the ACFTU union branches and labor bureaus and mandating several channels of interaction: unions are to exchange information with the labor bureaus, conduct joint research with the labor bureaus on issues that affect workers’ rights and social stability, seek help from the labor supervision units on cases where unions face employer resistance, train and provide inspectors to labor bureaus, work with the labor bureaus to facilitate supervision within factories and participate in the hearing of cases that involve major administrative penalty.

¹⁴⁰ Guan Huai, “Unions’ Role and Responsibility in the Improvement of Workplace Relations (gonghui zai tiaozheng laodongguanxi zhong de diwei he zhiquan).” Available at: <http://politics.csscipaper.com/china/union/3490.html>

The passage of the *2004 Regulation* provides greater details into union legal supervision. Article 7 states that labor administrative departments at various levels need to consider unions' comment and suggestions on the formers' inspection activities. By requiring labor authorities to consider unions' views on inspection activities, the regulation established the links between union legal supervision and labor regulatory inspection. Still, unions' authority remained limited: sanctioning authority is still reserved in the hands of the labor enforcement bodies. While the *2004 regulation* confirms the relationship between union supervision and regulatory inspection by the labor authorities and even suggests that unions having authority over the work of the labor enforcement bodies, preceding laws and the reality of weak union authority actually imply the opposite. As one local union official aptly remarked when asked about the nature of union legal supervision, "union legal supervision depends on (yi kao) administrative supervision."¹⁴¹

The discussion on the development of the enforcement mechanisms sheds light on the importance of union involvement in regulatory enforcement. The problems of inadequate and uneven enforcement across the Chinese regions are pressing, and as the sole official union organization the ACFTU is the only legal representative of the Chinese workers. However, unions could not shape the enforcement outcomes on their own. Cooperation from the labor bureaus is essential for labor unions to influence enforcement, and to do so labor unions need the authority to hold the labor bureaus

¹⁴¹ Author's interview, October 2009

accountable. Institutions that grant unions the authority to monitor labor bureaus should thus induce the latter to enforce labor laws and regulations more diligently.

IV. Research Design and Data

To test my hypothesis that union development, particularly the development of union authority to monitor labor bureaucracy, has a positive impact on the enforcement of labor laws and regulations, I compiled an original dataset on union activities and labor regulatory outcomes at the provincial level. Using this dataset, I estimated a set of regressions to test the effect of changes in the level of union development on changes in regulatory enforcement from years 2003-2008.

Enforcement: variable and data

I used on-site (factory/enterprise) inspection as my measure for the dependent variable *enforcement*. Unlike other regulatory activities conducted by the local labor bureaus, on-site inspection encompasses almost all aspects of workplace rights (wage, working hours, contract, etc) and involves direct intervention from the labor bureaus. Finally, on-site inspection is the only regulatory move with deterrent effect--labor bureaus can penalize the non-complying employers for violations of labor standards. Given these reasons, I argue that on-site inspection is the most appropriate measure of all the regulatory activities that are conducted by the labor bureaus. I turned to various official statistical resources to obtain data on enforcement of labor regulations at the provincial level. *Inspect* is measured as the percentage of enterprises being inspected by

the labor bureaus at the county level and above.¹⁴² More details will be given in the following section.

Union development: variables and data

The union data were based on statistical resources from the ACFTU. At the end of every year, the ACFTU publishes a yearbook on the recent union development at all levels and quantitative indicators of various union activities in that year. From these ACFTU yearbooks, I identified union activities where the unions have direct or indirect involvement in regulatory enforcement. The tripartite consultative mechanism is composed of the government (represented by the MOLSS and labor bureaus at the local levels), labor (the ACFTU) and capital (on the national level enterprises are represented by the Chinese Enterprise Confederation but it may vary on local levels). As a forum for the three sides to exchange ideas about major labor issues, the mechanism allows the labor unions and the management to shape government decisions, and some argue that the mechanism is becoming more relevant at representing workers' interests (Shao, Nyland and Zhu 2005). The labor relations alarm system (laodong yuzhing zhidu) is targeted at the prevention of labor collective actions. In this system, unions and "relevant" (mostly the labor bureaus) administrative departments design and carry out means that detect the sources of labor discontents.¹⁴³ Often, the role of the unions is to report, intervene and resolve discontents before they turn into large-scaled collective actions. Legal aid clinics operated by the ACFTU at various levels have been a major

¹⁴² In other words, the on-site inspection figures were aggregated data reported by provincial labor bureaus.

¹⁴³Jianmin Dong, "Examining Ways for Unions to Improve the Tasks of Labor Dispute Settlement" (gonggui zuohao laodong zhengyi tiaojie lujin fenxi), China Workers' Daily, 2010/1/26

focus of union activities. These clinics offer free consultation and service to workers who experience workplace violations but are unsure of which laws or regulations are broken. The ACFTU is also responsible of legal supervision (gonghui laodong falui jiangdu). The 2002 Trade Unions Law gives unions the power to oversee employers' compliance with labor laws and regulations, and unions can investigate enterprises and request information from the latter. When workers experience rights infringement they can file complaints to union legal supervision committees. Upon receiving the complaints, the committees could either administer (which usually means seeking further information from the alleged enterprise/management), refer to same-level labor bureau or do nothing. However, unions do not have sanctioning power even when violations are found.

I used factor analysis to extract three factor variables on union activities.¹⁴⁴ The first factor variable, which I named *Institution*, consisted of union legal institutions where labor unions and the governments collaborate and coordinate to minimize labor contention. This factor variable included four union indicators mentioned above: the tripartite consultative mechanism, the labor relations alarm system (laodong yuzhing zhidu), the legal aid clinics operated by the ACFTU and union legal supervision (gonghui laodong falui jiangdu) units.

I also included a second factor variable, *DisputeRes*, which consisted of union indicators that capture union activities on grievance resolution. Unlike the ones above

¹⁴⁴ Unions in China are involved in various activities. I chose the ones that allow direct participation of unions in the making and the overseeing of labor laws and regulations. I also excluded the ones with incomplete data. Conducting statistical analyses with factor variables rather than the individual union indicators helps me avoid the problem of multicollinearity.

where unions interact with other political/bureaucratic actors to enact and implement preventive measures, some union activities constitute ad hoc responses to workers' appeals of grievances. Unions' actual involvement in enterprise supervision and legal consultation were some examples. Here I calculated the percentage of grievance cases that were administered or forwarded to the labor bureaus by the unions as measures of union efforts in grievance resolution. Again, those measures do not include union activities that occur at the enterprise level.

I added a third factor variable, named *LeaderInteg*, which measures the level of union integration into the local party-state power structure. In recent years, the ACFTU at various levels have been implementing the joint-post system to increase the political status of local union leaders. Implementation of the system could result in great union bargaining vis-à-vis government, which in turn allows unions to exert greater influence over policies. *LeaderInteg* measures the total percentage of union leaders in local government and party decision-making bodies. See Appendix C for a description of variables.

Controls

I identified five controls for the analysis: level of economic development (GDPpc), level of foreign-directed investment (FDI), level of contention (Disputes), scale of contention (DisputeSize) and number of enterprises (Enterprise). The first two economic factors are generally seen as significant forces behind worker protection. Many studies see economic development exerting a positive effect by increasing citizenry and government incentives to improve labor conditions (Flanagan 2006; Mosley & Uno

2007; Haskel 1996; Siegel 1997). More studies, however, point out the ambiguous impact of FDI, with some arguing that the presence of multinational companies (MNCs) facilitate demands for pro-worker trends like the rule of law (Garcia-Johnson 2000; Graham 2000), skilled labor (Santoro 2000; Gallagher 2001; Hall & Soskice 2001; Moran 2002) and labor NGOs (Blanton & Blanton 2007) while others seeing multinational corporations (MNCs) as actors with interest in cheap workforce and thus the culprits behind deteriorating labor protection (Break 1967; Oates 1972). Workers' contentions, as measured by the number of labor disputes brought to the local labor bureaus per 100,000 employees, signal the risk of social instability and should thus induce government responses. The scale of workers' contention may also be a major signal of social instability for the local leadership, so I included the *DisputeSize*, the number of workers per collective dispute, to measure the size in addition to the frequency of the disputes.¹⁴⁵ Finally, *Enterprise* measures the constraint of bureaucratic effort: the growth in enterprise number should reduce enforcement effort.

Methodology

In the analysis of enforcement effort of labor enforcement bodies, I used the logistic model for proportion data. My dependent variable for the second test, *Inspect*, is the proportion of enterprises that are inspected by the local labor bureaus (# enterprises inspected/total number of enterprises). Those variables are essentially the aggregation

¹⁴⁵ The maximum number of workers that can file a labor dispute is three; the dispute is considered collective when the number of workers involved is beyond that. Therefore, I chose collective disputes as the basis of my measure

of unit-level binary outcomes into groups—an individual enterprise is either inspected (1) or not (0).

Data availability poses a challenge to the analyses. Data for on-site inspection is collected from annual statistical reports by provincial labor bureaus. Unfortunately, those annual reports are not always available—oftentimes there are missing years or missing figures even if those reports are found. The issue of missing data is only partially resolved with data from alternative sources (provincial yearbooks, *nianjian*, or local newspapers). Because analyses using the list-wise deletion data (the one in which observations containing missing data are dropped) tends to produce biased estimates, I produced dataset using multiple imputation, a process in which missing values are replaced with values repeatedly drawn from simulated conditional probability distributions (Schafer, 1997).¹⁴⁶ I then based my analysis on the multiply imputed dataset.

I expect the abovementioned union indicators associating with varying level of enforcement. *CorpInst* connotes a higher degree of union access (and thus higher level of union monitoring authority over labor bureaucracy's enforcement activities) to enforcement decisions by labor bureaucracy and should therefore carry a positive effect. *DisputeRes*, which consists of demand-driven, ad hoc activities, connotes low degree of union access, should therefore have a little or no effect. The effect of *LeaderInteg* is

¹⁴⁶ Multiple imputation is defined as the following: instead of filling in a single value for each missing value, Rubin's (1987) multiple imputation procedure replaces each missing value with a set of plausible values that represent the uncertainty about the right value to impute. These multiply imputed data sets are then analyzed by using standard procedures for complete data and combining the results from these analyses. From "Multiple Imputation for Missing Data" SAS Documentation, available online: <http://support.sas.com/rnd/app/da/new/dami.html>, accessed 08/29/10

ambiguous: integration implies greater union power over policymaking and implementation but also more need to synchronize with the agendas of the party-state, which is not always in favor of the workers. Summary statistics are available in Appendix D.

V. Results

In this section, I present the empirical result of my hypothesis on the effect of union monitoring strength on regulatory enforcement, which I used as an operationalization of labor rights protection.

The empirical analysis lends support to the hypotheses that the degree of union monitoring authority has varying effect on the enforcement effort of labor regulations by labor bureaus. Model 1 consists of three union factor variables and model 2 includes control variables along with the ones from model 1. *Institution*, the institution-building variable, is positively associated with the increase in inspection: for 1% increase in *Institution*, the odds of inspection increases by 1.34. These suggest that provinces with more unions having the union legal institutions are more likely to contribute to higher level of regulatory enforcement than provinces with fewer unions with union legal institutions. The nature of these activities suggests that cooperation from the labor bureaucracy is necessary for the labor unions to play a positive role in regulatory enforcement. Provinces with more unions accessing and thus exerting influence over labor bureaucracy's enforcement decisions were more likely to see greater regulatory

enforcement effort by the labor bureaucracy than provinces with less unions having influence over the enforcement activities of the labor bureaucracy.

Table 6.1. Exponentiated Coefficients (odds ratio) of Changes in Regulatory Enforcement

	1	2
<i>Institution</i>	1.30*** (16.49)	1.343*** (14.95)
<i>DisputeRes</i>	0.984 (-0.74)	1.035 (1.51)
<i>LeaderInteg</i>	1.02 (0.50)	0.990 (-0.37)
<i>Disputes</i>		1.001 (1.57)
<i>DisputeSize</i>		1.003*** (14.76)
<i>FDI</i>		0.540 (-0.26)
<i>GDPpc</i>		1.000* (-2.36)
<i>Enterprise</i>		1.000*** (-6.46)
<i>Exponentiated coefficients; t statistics in parentheses</i>		
<i>* p<0.05, ** p<0.01, *** p<0.001</i>		

The variable *DisputeRes* is positively associated with inspection, but it is not a statistically significant predictor of changes in inspection. Ad hoc activities like the ones of union supervision and legal consultation do not help reduce workers' grievance in the long-run. In those instances, unions only intervene when workers "ring the alarm"

by bringing their complaints to the unions—unions do not act before they receive the complaints. And these activities require little involvement from the labor bureaucracy. In fact, those activities may act as substitutes for regulatory enforcement like inspection: rather than bringing their complaints to the local labor bureaus, workers appeal to the local union branches of the ACFTU, which can then resolve workers' grievances through various means, especially if unions face employer resistance when they attempt to investigate the cases. While unions do refer some cases to the labor bureaus (most likely due to employer resistance), it is unclear how labor bureaus treat those cases—labor bureaus may use means other than inspection to resolve the complaints. Although the title “union supervision” somehow connotes enforcement, unions still play a mediating role, and it is the workers who demand greater rights protection and representation. Borrowing Hurst (2009)'s analysis on labor protests, workers who bring their grievances to the unions are “informally enforcing” the labor laws/regulations. Unions act to reduce labor conflicts through ad hoc measures, and workers' informal enforcement replaces the more proactive and preventive official regulatory enforcement.

The controls yielded mixed results. While *Dispute*, which measures the level of individual labor grievances, is not a significant predictor, the variable *DisputeSize* is positively associated with the change in inspection. This result shows that the scale of the labor contentions affects labor bureaucracy's enforcement effort. The larger the scale is, the more likely the labor bureaus will inspect the enterprises/units. It also explains why the institution building union variables have positive impact on inspection: when the level of inspection is shaped by the size of the collective disputes, union

activities that focus on the prevention of those contentions will help increase inspection as well. Unions thus act like “fire-alarms” and their job is to locate and alert the labor bureaus instances of potential large-scaled labor movements. The variable *GDPpc*, surprisingly, is negatively associated with inspection. What the result suggests is that provinces with higher level of development are likely to see less inspection than those with lower level of development. One possible explanation for this result is that the level of development determines the amount of resources governments can use to resolve workplace contentions. In provinces with higher level of development, the local governments have more options to appease disgruntled workers, which in turn decrease the likelihood of using enforcement. If inspection or other enforcement activities are the most costly option for local governments since those activities incur greater costs for enterprises, it is likely for local governments with more resources to avoid enforcement activities. Local governments with less resource have fewer options so are more likely to rely on enforcement activities like inspection. The result of *Enterprise* matches the expectation that an increase in the number of enterprises causes decrease in enforcement.

VI. Conclusions

In this chapter I argued that labor unions play an important role in the labor bureaucracy’s enforcement of labor laws and regulations. While local unions, especially the ones at the enterprise level, struggled to defend workers’ rights and interests throughout most of the reform period, their recent development appeared to help workers fulfill their demands. In particular, I found that local union legal institutions had strong and positive impact on the enforcement of labor laws and regulations. This

finding suggests that union legal institutions are important for unions to oversee labor bureaucracy's work. Union legal institutions help labor bureaucracy target and defuse contention while giving labor unions the access, and thus influence, over labor bureaucracy's enforcement process. Thus, these activities give unions the ability to shape regulatory enforcement in the positive direction. My empirical tests lead to a conclusion that differs from previous studies on the political effect of unions (in China): labor unions can defend and represent workers' interests, but through greater rather than less institutional linkages to labor bureaucracy, which is a crucial actor in enforcement and policy implementation in general.

Chapter 7

Labor Relations Up-close: Labor Conflicts, Union Development and Regulatory Enforcement in Pearl River Delta and Yangtze River Delta

I. Introduction

The 2008 global financial crisis caused a slowdown in the Chinese economy. As the demands for Chinese exports diminished, many exporters in China were either forced to take a huge loss or go bankrupt.¹⁴⁷ I witnessed the impact of the crisis firsthand when I visited Dongguan City in Guangdong province, one of China's major manufacturing and exporting sites: during the half hour drive around the town of Qingxi, I saw blocks of empty factories lining each side of the road. Without noise from workers and operating machines, the town almost had an eerie ambience.

Chinese unions' reactions to the crisis differed across regions. A union official in Zhejiang Province said, "We [unions] work with the government to achieve the goal of economic development (zhingzhi jiangshe). Our job is to protect the country's interests and participate in our country's development. We act as a buffer to conflicts (huanchongji)."¹⁴⁸ Union official in Jiangsu Province echoed, "We want to see both the employers and the workers benefit (laozi gongyin). We want to make sure there is a 'win-win' outcome."¹⁴⁹ An official from the labor department in Jiangsu also

¹⁴⁷ Graeme Wearden and David Stanway (2008), "China warns financial crisis is damaging its economic growth," *The Guardian*, 10/21/2008. Available at: <http://www.guardian.co.uk/world/2008/oct/21/china-globalrecession>

¹⁴⁸ Interview, 01/21/10

¹⁴⁹ Interview, 01/24/10

commented on the role of the unions in Jiangsu: “Unions in Jiangsu work from a broad perspective (*cong dazhu chufa*). They immediately grasped the negative impact that the financial crisis would have on enterprises and proposed a series of measures to help both the enterprises and employees find a balancing point, particularly one on wage freeze. They are concerned about social development, not just the benefits of the workers.”¹⁵⁰

While unions from the abovementioned two provinces seemed to be as concerned about the interests of the enterprises as those of the workers, unions in Guangdong Province seemed to focus more on the impact of the crisis on the workers as well as the unions themselves. A union official in Guangdong stated the following comment with a slight tone of frustration:

I would say that [the local party leadership and the government] have become increasingly attentive to the opinions of the unions in the 2000s. Since the 2008 crisis, however, unions’ opinions were given less importance, and most of the legislative proposals made by the Guangdong Federation of Trade Unions (GDFTU) were either rejected or placed on hold. But we continue to seek more means (*shoduan*) to get our jobs done, even as we realized that our jobs have become more and more challenging. We seek to maximize the number of means we can use to reduce labor tensions under the framework (*kuangjia*) we have now.¹⁵¹

These varying responses by union and labor bureaucracy officials all suggest the decline of union influence during the immediate aftermath of the financial crisis, as the term *weiquan* (protection of workers’ rights), a keyword for the ACFTU since 2003, was almost non-existent when these officials were discussing unions’ role after the crisis.

¹⁵⁰ Interview, 09/21/09

¹⁵¹ Interview, 02/04/10

However, the Guangdong union official's response seems to suggest continuing attempts to look after the interests of the workers as well as the status of the unions. What explains such variation, and what is the effect of this variation of union development on the enforcement of labor regulations in these regions?

This chapter discusses Chinese labor relations at the sub-national levels. My analysis of the two regions—the Pearl River Delta (PRD), which comprises of Guangdong province, and the Yangtze River Delta (YRD), which is made up of Zhejiang and Jiangsu provinces,¹⁵² I argue that the varying pattern of union influence and enforcement of labor regulations in localities are explained by labor conflicts and party policy. Higher level of labor conflicts found in PRD region resulted in local party's greater focus on labor protection and thus contributed to greater union influence and higher enforcement of labor regulation. Lower level of conflicts in the YRD region, on the other hand, explained local parties' relatively less attention on labor protection and thus lower union influence and enforcement of labor regulations.

This chapter is organized as follow. First, I briefly discuss the literature on labor conflicts in China, especially those that examine the two regions. Second, I briefly discuss my case selection—why I chose them, and the expectation that higher labor conflicts in the PRD would lead to relatively greater union influence and enforcement of labor regulations than those in YRD. Third, I examine the patterns of labor conflicts in these two regions to demonstrate that labor conflicts in PRD are relatively greater than

¹⁵² Although the Yangtze River Delta is made up of Shanghai, Jiangsu and Zhejiang provinces, I chose the latter two because economic conditions in Shanghai are differ from the ones in the other cases (including Guangdong).

those in YRD, and that local party in PRD was more alarmed by the risk of social instability and thus more interested in labor protection. Fourth, I look at the varying pattern of union role and involvement in these two regions. I show that unions in PRD are more active over labor protection, particularly on the supervision of workplace matters, and are more adversarial vis-à-vis the management, than unions in YRD. Fifth, I show that enforcement of labor regulations in these two regions also differ: because of higher level of union influence, enforcement in PRD is higher, whereas enforcement in YRD is lower. Lastly, I offer a conclusion on my discussion.

II. Literature Review

As discussed in chapter five, studies on labor conflicts in China generally focus on three aspects of labor conflicts: the characteristics of workers' grievances, the "mobilizing frames" that enable workers to translate their grievances into actions, and state's responses to labor conflicts. Most of these studies investigate labor conflicts in the PRD region. Lee (2002) and (2006) show that labor conflicts in Guangdong province tended to center on contractual, legalistic and specific issues, and the migrant workers there were more willing to work with the existing administrative and legal apparatus to express their grievances. Thireau and Hua (2003) look at workers' use of dispute resolution mechanism in Shenzhen and find different patterns—urban workers were most likely to use the dispute mediation and arbitration system, whereas migrant workers were inclined towards using the *xinfang* system. Chan (2005) shows that the problems experienced by migrant workers, in addition to the corporate social responsibility movement by major Western brands and NGOs, gave rise to the increase of

labor disputes and prompted unions in Guangdong to take a more active stance. These studies generally categorize labor conflicts by forms (disputes, protests, strikes, disruptive tactics on factory level, or so-called “inaction”) and type of the workers (former SOE workers or migrant workers) while presenting two forms of state responses (reemployment schemes for SOE workers, legal/institutional channels for migrant workers). Studies on the YRD region, on the other hand, were scant. Hurst (2009) is the only one that analyzes labor conflicts in the YRD.

While these studies all agree that labor conflicts prompted the CCP to respond with new measures in order to maintain its control over labor relations, there were two elements that received less attention. Chinese unions played a minor role in these studies. Unions’ changing role amidst labor conflicts were sometimes documented but in a non-systematic fashion, and most observers still argue that unions do not constitute a major player in workplace relations and especially labor rights protection.¹⁵³ Moreover, studies rarely explore the effect of state responses on workers’ conditions. While measures such as the reemployment projects and legal/institutional mechanisms helped the workers express their grievance and the party stabilized labor relations, it is unclear whether these measures increase the protection of workers’ rights and interests in the long run. Lastly, these studies still give little insight to the regional patterns of labor relations. Although there are studies on the patterns of labor conflicts across regions,

¹⁵³ Chan (2001, 2005, 2008) and Chen (2003) are the exceptions. Chan’s works show that the ACFTU is becoming a state corporatist institution where it receives some authority over the preservation and representation of workers’ rights and interests. Chen (2003) shows that ACFTU and its subsidiary union branches respond differently to the type of the action workers take. Unions are most active when express their grievances through legal actions.

there is little on party/state responses, union development and the effects of these two.

In this chapter, I follow the steps of Hurst (2009) and Lee (2007), which constitute the pioneer works on regional studies of labor relations in China, to analyze the variation of labor relations—labor conflicts, party policy, union development and enforcement of labor regulations—between two major regions in China.

III. Setting up the Comparison: PRD vs. YRD

I examine labor relations in the PRD and the YRD and find that higher labor conflicts in the PRD caused union influence/activism and enforcement of labor regulations by the labor bureaucracy to be greater, whereas lower labor conflicts in the YRD explain lower union influence/activism and enforcement of labor regulations. I chose the two regions to conduct a most-similar case study: the two regions are similar in many aspects except for the independent variables, which are labor conflicts and union development (Mill 1872). As I have stated in chapter five and six, the locality's economic conditions (such as the level of development and foreign investment) could also shape its union development and enforcement of labor regulations, so it is necessary to control for these conditions to ensure that the results are explained by the independent variables. In this section, I show that economic conditions in the PRD and YRD are very similar. Please refer to Table 7.1 for comparison.

Table 7.1. Economic Indicators for PRD and YRD, 2003-2007¹⁵⁴

Source: China Data Online, various years; provincial statistical yearbooks, various years

Econ Indicators/Province	Guangdong	Jiangsu	Zhejiang
Per Capita GDP	22862.85	21884.4	24375.85
FDI	5.16	6.543	3.883
SOE	5.16	7.85	6.32
Light Industry	41.18	34.96	48.70
Small and Med	63.12	68.33	82.56
Primary Sector	7.20	4.50	7.29
Secondary Sector	50.96	59.50	52.90
Tertiary Sector	41.84	35.99	39.81
Disputes per 100000 employees	14.35	11.78	5.56
Collective Dispute Size	87.47023981	16.79609077	15.85284508
Union Supervise	23.357547	20.15217119	26.79323285
Inspection Rate	33.2186	18.46137	16.237352

Guangdong is the first province that opened its door to market reforms and one of the most developed provinces within PRC. Foreign investment has been a major driving force of Guangdong's economy. On average, FDI accounted for 5.16% of the province's GDP between 2001 and 2007, with Hong Kong as its largest source of FDI.

¹⁵⁴ All are average numbers of the indicators from 2003 to 2007.

FDI=share of FDI of the provincial GDP; SOE=share in provincial gross industrial output by SOE; Light industry=share in provincial gross industrial output by light industry; Small and Med=share in provincial gross industrial output by small and medium enterprises; Primary, Secondary and Tertiary sector=share in provincial gross industrial output by primary, secondary and tertiary sector; Dispute per 100000 employees=the number of labor disputes received by the labor bureaus per 100000 employees; collective disputes size=number of employees per collective dispute; union supervise=share of above enterprise-level union branches that have union supervision units; inspection rate=percentage of enterprises that were inspected by labor bureaus

Guangdong has a very strong private sector—on average, SOE only accounted for 5.16% of the province’s total industrial output between 2001 and 2007. Guangdong is strong at light manufacturing industry—its major products include electrical appliances, garments, toys and electronics—but it is moving towards heavy industries. The share of heavy industries in gross industrial output increased from 47.1% in 2000 to 61.6% in 2007.¹⁵⁵ Guangdong is marked by relatively strong presence of small and medium enterprises (SME): the average share of SME in gross industrial output from 2001 to 2007 is 63.12%. As a center of manufacturing, Guangdong is predominated by its secondary sector, but the province aims to increase the presence of service sector within its 11th five-year program.

Jiangsu is also one of China’s most economically developed provinces and a major site of foreign investment: FDI accounted for 6.54% of provincial GDP between 2001 and 2007, which is slightly higher than that of Guangdong. Foreign investments in Jiangsu are mainly engaged in the manufacturing sector, and Hong Kong, Singapore and Japan are Jiangsu’s largest sources of FDI. Like Guangdong, Jiangsu has a very strong private sector. The famous Southern Jiangsu model, one that is mainly about private sector economic development, particularly industrial development,¹⁵⁶ is found in Jiangsu. Historically, Jiangsu has a strong light industry, but the development of heavy industry sector accelerated and overtook that of the light industry after 1993. In fact, the average

¹⁵⁵ Hong Kong Trade Development Council, “Market Profiles on Chinese Cities and Provinces: Guangdong Province.” HKTDC.com, available at: list website, (accessed 07/01/11)

¹⁵⁶ Hong Kong Trade Development Council, “Market Profiles on Chinese Cities and Provinces: Jiangsu Province.” HKTDC.com, available at: list website, (accessed 07/01/11)

share of light industries in gross industrial output between 2001 and 2007 is 34.96%.

The average share of SME in gross industrial output from 2001 to 2007 is 68.33%, which is comparable to that of Guangdong. Just like Guangdong, Jiangsu is marked by the predominance of secondary, mostly manufacturing, sector.

Economic indicators in Zhejiang province are similar to those of Guangdong and Jiangsu. The level of development, as measured by per capital GDP, is about the same as the two provinces, though Zhejiang's level of FDI is lower than the other two: FDI accounted for on average 3.88% of provincial GDP between 2001 and 2007. Zhejiang also has a strong private sector, as SOE accounted for 6.32% of the province's total industrial output between 2001 and 2007, which lies between those of Guangdong and Jiangsu. Light industries play an important role in Zhejiang's industrial sector. Between 2001 and 2007, light industries accounted for 48.7% of the province's total industrial output, and labor intensive industries such as textiles have predominant advantages.¹⁵⁷ Zhejiang has a very strong SME presence. SMEs accounted for 82.56% of Zhejiang's total industrial output, more than those of Guangdong and Jiangsu.

Patterns of Labor Conflicts and Local Party Responses in PRD and YRD

In this section, I examine the patterns of labor conflicts and local party response in PRD and YRD. Using various measures, I show that labor relations were more volatile in PRD than in YRD. In PRD, higher labor conflicts increased the risk of social instability and prompted its local party leadership to place more emphasis on labor protection, including union works. This enabled the unions in PRD greater room to

¹⁵⁷ Hong Kong Trade Development Council, "Market Profiles on Chinese Cities and Provinces: Zhejiang Province." HKTDC.com, available at: list website, (accessed 07/01/11)

develop and become influential over workplace affairs. In YRD the story is different. Lower conflicts in the region overall elicited less response from the local party leadership, and as a result unions in the region obtained less room to expand their activities and influence.

Provincial leadership, however, may place greater emphasis on labor protection and union works in response to pressure from the top. The Zhili fire tragedy in 1993, at Shenzhen, Guangdong province spurred the CCP at the national level to pass the Labor Law while pushing the leadership in Guangdong to facilitate the passage of one of the first local-level labor regulations—it is also one of the first times where labor unions actively lobbied and shaped the content of the regulation—in the nation. Meanwhile, rising labor conflicts in the town of Yiwu, Zhejiang province, motivated the unions there to launch innovative measures, and the success of their experiment attracted the attention and encouragement from the central leadership, which motivated the provincial leadership to promote the experiment in Zhejiang.

Labor Conflicts in PRD and YRD

Labor relations in PRD were more volatile than those in YRD. Figure 7.1 shows the trend of labor disputes that were received by the local labor bureaucracy from 1998 to 2007. While the level of disputes is similar for Guangdong and Jiangsu, it is clear that Guangdong has higher level of disputes between 1998 and 2000 and in 2007. Also, the difference in periods 1998, 1999 and 2007 is greater: the difference between Guangdong and Jiangsu is 5.4, 5.1 and 16.5 disputes per 100,000 employees respectively. Labor disputes in Zhejiang, meanwhile, experienced constant increase but were overall lower

than those of Guangdong and Jiangsu. Overall, Guangdong has higher rate of disputes: the average rate between 1998 and 2007 is 11.22 disputes per 100,000 employees for Guangdong, 10.46 for Jiangsu and 4.65 for Zhejiang. The trend also shows that PRD was the first to experience heightened labor conflicts—being the first to open its door to market reforms, PRD was one of the first to experience increasingly complex and contentious labor relations.¹⁵⁸ Indeed, a look at the total number of labor disputes received by the labor bureaucracy shows that PRD was the first one to witness a large growth in the number of labor conflicts: in 1995, Guangdong received 3200 disputes and was the province with second highest number of labor disputes; in 1997, the number of disputes occurred in Guangdong is 24704, whereas the ones in Jiangsu and Zhejiang are 2493 and 2496 respectively. In 1998, the number of disputes in Guangdong is 28813, whereas those in Jiangsu and Zhejiang are 8413 and 3536 respectively.

¹⁵⁸ Interview, 06/16/09.

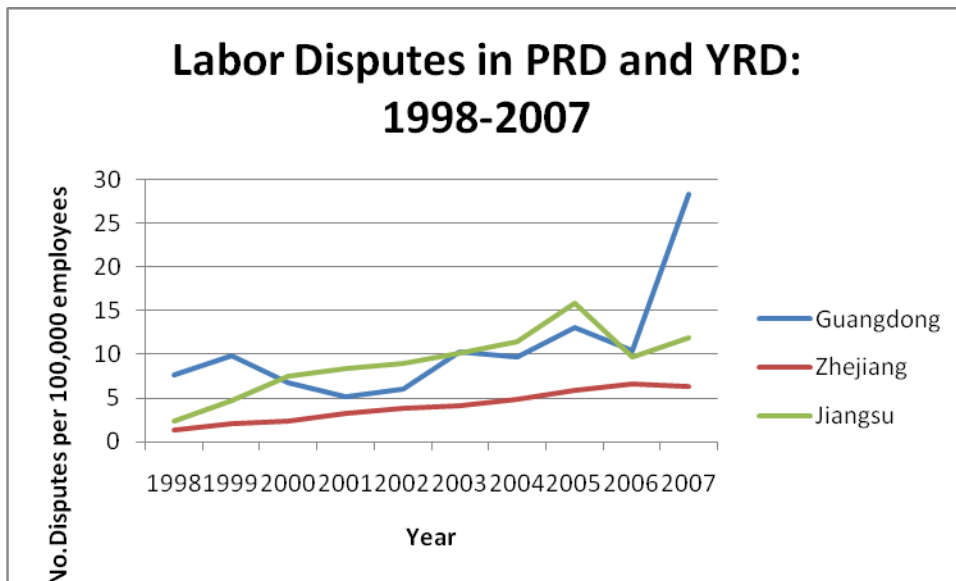


Figure 7.1. Labor Disputes in PRD and YRD: A Comparison

Source: China Labor and Social Security Statistical Yearbook, various years

Collective dispute is another indicator of the scale of labor conflicts in these two regions. Figure 7.2 shows the trend of collective disputes from 2000 to 2006. With the exception of year 2004, Guangdong has the highest rate of collective disputes—the number of employees per collective dispute ranges from 19 to 203 in Guangdong, while the range for Jiangsu and Zhejiang is 4 to 29 and 13 to 34 respectively.

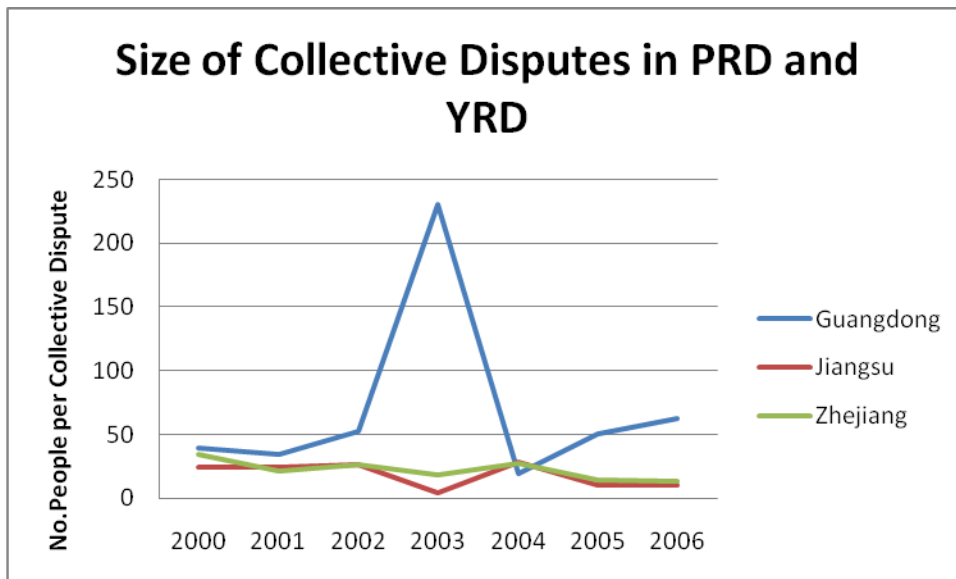


Figure 7.2. Collective Disputes in PRD and YRD: A Comparison

Source: China Labor and Social Security Statistical Yearbook, various years

Besides being the region with the highest recorded number of labor disputes, which indicates higher risk of labor instability, PRD is also known for having higher level of labor militancy. While systematic reports on labor protests are lacking, media reports nevertheless provide a glimpse into the scale of protests in these regions. *China Labour Bulletin*, a Hong Kong-based non-governmental organization, compiled a list of 100 labor protests and related actions covered by the media from 2007 to 2008. Of the 100 protest incidents, about 26 cases occurred in PRD, while 5 cases occurred in YRD.¹⁵⁹ PRD's higher level of labor conflicts, such as protest activities, can be attributed to the presence of labor NGOs in the area. After operating in the PRD for more than a decade,

¹⁵⁹ China Labour Bulletin (2009). "Going it Alone: The Workers' Movement in China (2007-2008)." *China Labour Bulletin*, available at: http://www.china-labour.org.hk/en/files/share/File/research_reports/workers_movement_07-08_print_final.pdf (accessed 06/01/11).

grass-root NGOs have helped raise workers' consciousness. The impact of these NGOs were felt by local governments and the unions—the pro-business sectors of the bureaucracies advocated a curtailing the legal activities of the NGO, while GDFTU wanted to incorporate the labor NGOs under its wing.¹⁶⁰ While NGOs have become an important force that raised workers' consciousness and the risk of collective actions in PRD, there was fewer number of labor NGOs in YRD, so these organizations played a much smaller role in YRD labor relations.¹⁶¹

PRD is not only known for having higher level of labor conflicts but was also the hotspot of other sources of social instability that were usually associated with migrant workers. Many migrant workers turned to violence when their workplace rights were infringed upon (Lee 2010), and the most common cause of criminal behaviors is the problem of wage arrears.¹⁶² In PRD, there was a rise in violent crime committed by migrant workers as early as late 1980s: the percentage of criminal cases committed by the so-called “floating population” is 6.6% in 1980, but the figure dramatically increases to 29.6% in 1988. Some cities in Guangdong also reported a large number of crimes that were associated with migrant labor: in 1994, the percentage of criminal cases committed

¹⁶⁰ China Labor New Translation (2008?), “Labor NGOs in Guangdong Province.” China Labor News Translation, available at: <http://www.clntranslations.org/article/27/labor-ngos-in-guangdong-province> (accessed 07/03/11).

¹⁶¹ Huang Yan, “Let grass-root NGOs become legal (rang caogen laogong jigo zoshang fazhilu.” Southern Weekend (nanfang zhomou), 12/25/2008. Available at: <http://www.infzm.com/content/21717> (accessed 07/04/11)

Interview, insert date.

¹⁶² Qian Jun and Wang Haixia (2006). “High Crime Rate Committed by Migrants Attracts Attention (nongminggong fanzueilu jugaobuxia yinren guangzhu)” Dongfang Faye 03/03/2006, available at: <http://www.dffy.com/fayanguancha/sh/200603/20060303200427.htm> (accessed 07/05/11)

by the “floating population” in Guangzhou, Shenzhen and Dongguan is 69.2%, 97% and 85.4% respectively.¹⁶³ Migrant-related violence crimes were less severe in YRD. In 1994, the percentage of criminal cases committed by the “floating population” in Hangzhou and Wenzhou, Zhejiang Province, and Nanjing, Jiangsu Province is 50%, 48.6% and 47% respectively. PRD continues to be the region with higher level of crime rates committed by the migrant population in the 2000s. Between 2005 and 2009, there was on average 104,044 criminals who were migrants in Guangdong province, while the average number was 39,494 and 83,330 migrant criminals for Jiangsu and Zhejiang respectively.¹⁶⁴

IV. Local Party Responses to Labor Conflicts: PRD vs. YRD

Rising labor conflicts were not only the cause of changes in national party policy priority but also those of local policy. In general, I found that the early occurrence of heightened labor tension in PRD since mid-1990s explained local leadership’s attention on policy regarding labor protection, and because of that local leadership in PRD allowed unions more room to develop. The later occurrence and lower level of labor conflicts in YRD, however, did not lead to such leadership responses. In Jiangsu, increasing labor conflicts did elicit greater leadership attention on labor protection, but unions there did

¹⁶³ Liu Woting (2007). “Discussion on Crimes by Floating Population and Solution (lun liudongrenko fangzuei jiqi zhili duice).” Available at: http://www.lawtime.cn/info/lunwen/sifazd/2007071261843_8.html (accessed 07/08/11)

¹⁶⁴ Zhang Qinlang, (2010) “A Study of Crimes Committed by Floating Population during China’s Reform Period (zhongguo zhuangxing liudong renkou fanzui yanjiu).” Doctoral dissertation, Southwestern University of Finance and Economics (China).

not obtain much room to develop its status and influence over workplace relations. In Zhejiang, overall provincial leadership attention on labor protection is lower.

The protection of the rights and welfare of workers became one of PRD party leadership's major emphases since early 2000s. In its 10th Five Year Plan, the Guangdong leadership has listed unemployment as a key obstacle to stable social development, and in response has set the promotion of employment and social security services as solutions to the issue. Three additional points were also mentioned: the improvement of regulatory mechanisms (labor legislations and implementation, particularly the enforcement and supervision of labor regulations), labor contract system and disputes settlement mechanism.¹⁶⁵ The provincial party leadership announced the "Opinion on the Establishment of Stable Guangdong" in 2005 and "Opinion on the Implementing 'Decision on the Establishment of Socialist Stable Society by the CCP'" a year later. In both documents, the Guangdong government lists "floating population" as one of the issues that affected social stability and set dispute settlement as a key objective for the provincial government. Labor legal and regulatory mechanisms, particularly the need to strengthen the staffing and other resources of labor inspection and dispute settlement teams, are again seen as a major target to be achieved. In addition, unionization—the establishment of enterprise union branches and the recruitment of

¹⁶⁵ "Tenth Five Year Social and Economic Development Plan of the Guangdong Province (guangdongshen guoming jinji he shehueifajan di shiwunian jihua gangyao)." (2001). http://www.foshan.gov.cn/zwgk/fzgh/hggh/201009/t20100927_1854655.html (accessed 07/12/11)

union members—is seen as another target that will help improve the protection of the workers.¹⁶⁶

Unions in PRD were able to expand their influence as local party leadership shifted its policy priority to social stability and encouraged greater union development. In 2002, the Guangdong Provincial Party Committee convened a meeting to discuss works and progress by the GDFTU, and later issued the “Opinion on Fully Implementing the Core of the ‘Three Represents’ and Further Improve Union Works (quanmian guanchedaibiao zhongyaosixian jinyibu jiaqiang gonghui gongzuo de yijian).” In this document, the provincial party committee lists the protection of labor rights, establishment of grass-root union branches as unions’ major tasks. The provincial committee met with the GDFTU in 2005, and again an opinion was issued to instruct subsequent union works and development.¹⁶⁷ Besides conducting special meetings, there were signs that unions and their works were on the top of provincial party leadership’s agenda: since 2002, the provincial party secretary chaired the provincial

¹⁶⁶ “Opinion by the CCP Guangdong Provincial Party Committee, Guangdong People’s Government on the Establishment of Stable Guangdong (Zhonggong Guangdong shenwei Guangdong renmin zhenfu guangyu gojian hexie Guangdong de ruogan yijian).” (2005). Available at: http://www.gd.gov.cn/gdgk/sqwx/200709/t20070928_21542.htm (accessed 07/05/11)

“Opinion by the CCP Guangdong Provincial Party Committee, Guangdong People’s Government on Implementing the ‘Decision by the CCP on the Core Issues Regarding the Establishment of Socialist Harmonious Society (Zhonggong Guangdong shenwei Guangdong renmin zhenfu guanyu guanche ‘zhonggong zhongyang guangyu gojian shehujuyi hexieshehui ruogan zhongda wenti de jue ding).’ Promulgated by the 9th Guangdong Provincial Party Committee, 10/20/2006. Available at: <http://cpc.people.com.cn/GB/67481/71679/71683/4982500.html> (accessed 07/05/11)

¹⁶⁷ “Speech by Comrade Ton Weiyong at the 11th Guangdong Provincial Union Congress (Tong Weiyong tongzhi zai shenzong shiyida de jianghua).” (2005). Available at: <http://gonghui.yuexiu.gov.cn/docu.asp?ID=445> (accessed 07/15/11)

standing committee meetings several times and heard reports by the GDFTU on its works.¹⁶⁸ It is important to note that pressure from the central-level leadership also attributed to the shift of local party policy priority to labor protection. A union official in Guangdong stated the following: “Guangdong was one of the very first to be exposed to market reforms, so it received a great deal of attention from the ACFTU. The ACFTU has given us [the GDFTU] more guidelines and instructions [than unions in other provinces].”¹⁶⁹ A journalist who was familiar with the works by the Shenzhen Federation of Trade Unions (SZFTU) also noted, “The Center [central party leadership in Beijing] and the Shenzhen leadership (yibasho) were the main driving force behind the transformation of SZFTU.”¹⁷⁰

Local party leadership in YRD, on the other hand, placed less emphasis on labor protection, and as a result unions in the region did not obtain as much room for expansion as those in PRD did. The local CCP of Jiangsu also issued its 10th Plan in 2001 and stressed the importance of raising employment and improving social security system, but regulatory mechanisms were not listed as a means for the government to achieve the two goals. Thus, the enforcement of labor regulations seemed to be on a lower priority for government in Jiangsu during early 2000s, and it was not until the 11th Five-Year Plan

¹⁶⁸ Ibid

“Report by Deng Weilong at the 12th Guangdong Provincial Union Congress (Deng Weilong zai Guangdongshen gonghui di shierci daibiao dahuishang de baogao).”(2011). Available at: <http://www.gzisd.org/info.asp?id=829> (accessed 07/11/2011)

¹⁶⁹ Interview, 03/09/2010

¹⁷⁰ Interview, 03/09/24/2009

when the term “the enforcement of labor regulation” was listed.¹⁷¹ In Zhejiang, the emphasis on labor protection through regulatory enforcement is even less: enforcement of labor regulations or the improvement of regulatory mechanisms did not appear on Zhejiang Province’s 11th Five-Year Plan.¹⁷² Given that the local leadership in YRD placed less attention on labor protection (or focused on labor protection at a later period than leadership in PRD), the development of local unions were given less priority. The CCP Committee at Jiangsu Province issued two opinions on trade union works in 2005 and 2009, which appeared a few years later than the ones in Guangdong.¹⁷³ The CCP Committee at Zhejiang Province issued “Opinion on Strengthening and Improving Party’s Leadership Over Trade Unions, Communist Youth League and Woman’s Federation during The New Era (zhonggong zhejiangshenwei guangyu jiachiang he gaishang dang duei xingshiji shingjieduang gonghui gongqingtuan fulian gongzuolingdao de yijian)” in 2004. But as its name indicates, the opinion signals

¹⁷¹ “The 11th Five-Year Plan on Jiangsu Province’s Economic and Social Development (Jiangsushen guoming jingji he shehui fajang di shiwuge wunian gueihua gangyao).” (2006). Available at: http://www.jiangsu.gov.cn/xxgk/jhgh/ghgy/201106/t20110602_602338.html (accessed 07/10/11)

¹⁷² “Suggestions on the Making of the 11th Five-Year Plan on Zhejiang Province’s Economic and Social Development (guangyu zhiding zhejiangshen guoming jingji he shehui fajang di shiwuge wunian gueihua de jiangyi).” (2006). Available at: <http://www.zhejiang.gov.cn/gb/zjnew/node3/node22/node170/node2565/userobject9ai36100.html> (accessed 07/10/11)

¹⁷³ “Opinion by the CCP Jiangsu Provincial Party Committee on Further Improving Trade Union Works in a New Era (Zhonggong Jiangsu shenwei guangyu jinyibu jiaqiang xingshiqi gonghui gongzuo de yijian).” (2005). Available at: <http://www.laodongfa.com/search/lawcontent.asp?id=1113> (accessed 07/15/2011)

“Opinion by the CCP Jiangsu Provincial Party Committee on Strengthening and Improving Trade Union Works under a New Context (Zhonggong Jiangsu shenwei guangyu jinyibu jiaqiang hei gaijing xingxingshi qia gonghui gongzuo de ruogan yijian).” (2009). Available at: <http://www.laodongfa.com/search/lawcontent.asp?id=1113> (accessed 07/15/2011)

Zhejiang leaderships' intent to exert more control over the mass organizations than on giving these organizations more room and influence.

Local party response to top-down pressure

Changes in regional labor policy sometimes occurred in response to rising labor tension (or problems) at the lower-level, rather than in place of overall rise of labor conflicts in the region—in Guangdong, the remarkable passage of a labor regulation in 1994 and union empowerment took place after the tragic fire incident in a factory in Shenzhen a year earlier. In Zhejiang, union works in Yiwu, a small town in the province, attracted the attention and encouragement of the central party and ACFTU leadership in 2005. Central leadership's encouragement of the “Yiwu union labor protection model” prompted provincial leadership in Zhejiang to devote more attention on labor protection and union works.

While PRD did not experience drastic rise in labor conflicts until mid-1990s, pro-labor policy trend took place as early as 1994. The earliest piece of legislation that the GDFTU has helped usher in was the “Rule on the Protection of the Labor Rights of Enterprise Staff and Workers (qiyei zhigong laodong chuangyi baozhang)” in 1994 (which was passed before the 1994 Labor Law). And GDFTU was responsible for proposing this rule as a solution to rising workplace rights violations and labor conflicts in Guangdong since early 1990s.¹⁷⁴ The passage of the regulation was a direct response to the fire incident that occurred a year earlier. In November 1993, in Longguan district

¹⁷⁴ Interview, 2/4/2010

<http://news.9ask.cn/fgjd/zxfjgd/201004/479629.html>

of Shenzhen, a fire broke out in Zhili Toy Factory. 87 migrant workers died, 57 workers were injured and more than 20 workers suffered from life-long disabilities.¹⁷⁵ Almost all of the victims were young migrant women who left their home in countryside to work in Shenzhen. The tragedy attracted public attention, and the ACFTU dispatched a team to investigate the incident. In its report, the ACFTU team listed managerial-bureaucratic collusion as the major cause of the fire. The management at Zhili Factory not only ignored the warning issued by the local fire authority regarding the risk of a fire but also bribed the fire authority to obtain a safety certificate. The Zhili fire incident prompted the CCP to respond. Less than 10 days after the incident, the Office of State Council forwarded a report by the Public Ministry on strengthening the prevention of fire hazards (Tan 2005). The Zhili fire not only raised public awareness of occupational work and safety but also further induced the CCP to enact policy measures—in 1994, the NPC passed the Labor Law.¹⁷⁶ Attention from the CCP on labor protection explained provincial leadership's corresponding policy shift—it was possible that pressure from the CCP pressed leadership in Guangdong to enact a pro-labor policy and grant unions more influence over labor protection.

While the presence of lower labor conflicts in Zhejiang province caused its local unions to have less room and influence over labor protection, unions in Zhejiang became more active since 2005, and they gained greater organizational/institutional presence as a result. What explains this sudden surge of union activism and development since 2005?

¹⁷⁵ China Labour Bulletin, "Victims of the 1993 Zhili Fire." *China Labour Bulletin report*, Nov-Dec 1999, <http://www.clb.org.hk/en/node/922> (accessed 08/12/11)

¹⁷⁶ Interview, 06/26/2009

This change after 2005, as I will show later, is caused by the development of a local union branch in Zhejiang. The development and the progress that were made by this local union branch attracted the attention of the Center, which in turn prompted the provincial leadership in Zhejiang to allow unions to have greater influence.

Trade unions in Yiwu, a county-level city in Zhejiang province, were known for their recent development. Yiwu Federation of Trade Union (YWFTU) became more active in protecting labor rights (*gonghui weiquan*) during late 1990s as labor relations in the county underwent major transformation. The bustling private sector of the county attracted a great number of migrant workers. As these migrant workers often received inadequate labor protection, they became the victims of workplace violations such as wage arrears and occupational hazards, and many of them turned to violence to express their grievances. Starting 1997, Yiwu witnessed over 10,000 cases of labor disputes, and there were increasing incidents of crimes committed by the migrant workers. Organized violence also became rampant. Many migrant workers banded with those from their home province, and there were several large-scaled migrant-based gangs that were active in the county¹⁷⁷. These signs of social disturbances greatly alarmed the Zhejiang Federation of Trade Unions, and the provincial union organization demanded the municipal government to resolve the problem.¹⁷⁸ Pressured by the Zhejiang

¹⁷⁷ “Zhejiang Yiwu Federation of Trade Unions: the Unions Social Rights Protection Model.” (2011). China Innovations, available at: insert cite (accessed 07/05/11).

Interview , 09/03/10

¹⁷⁸ “The Quandary After Trade Unions at Yiwu Gained Influence (Yiwu *gonghui kuoquanho de xianshi juongjin*)” (2008). Available at: <http://blog.ifeng.com/article/1940770.html> (accessed 04/08/2009)

Federation of Trade Unions, the local leadership at Yiwu was alerted and decided that union restructuring and reform were the solution to social problems in Yiwu. This change in Yiwu leadership's policy priority gave YWFTU opportunities to become more active over the protection of workers' rights and interests, which were dubbed the "Yiwu Union Socialist Legal Rights Protection Model (yiwu gonghui shehueihua weiquan moushi)." The works and effort by YWFTU helped stabilize labor relations in Yiwu, and their works gained positive feedbacks from the Center. In 2004, Party Secretary Hu Jintao wrote after reading the article on Yiwu unions' work in "An Overview of Current Affairs and Development in the Country (guonei dongtai qingxiang)": "It is necessary to improve the labor protection (weiquan) mechanisms under the leadership of the unions. [Unions] should focus on combining their experiences, strengthening their functions and improving the services to the workers."¹⁷⁹ ACFTU Chairman Wang Zhaoguo also approved the works by Yiwu unions: "The ACFTU and unions at all levels should learn, understand and implement Comrade Hu's statement...in conclusion [the ACFTU] should promote the Yiwu experiences."¹⁸⁰ The Center's approval of Yiwu unions' works prompted the provincial leadership to place greater emphasis on union development. In response to the decisions made by Hu and Wang, Zhejiang Provincial Party Secretary Xi Jinping declared: "Yiwu Federation of Trade Unions made a major breakthrough on union *weiquan* works. ZHFTU should absorb and integrate the experiences and

¹⁷⁹ Ibid

¹⁸⁰ Ibid

promote the model across the province.” Xi also made a few appearances in Yiwu and addressed the importance of promoting the Yiwu model across the province.¹⁸¹

While unions in Zhejiang gained greater organizational presence since 2005, but whether they gained more influence, particularly the authority to enforce labor regulations over workplace is questionable. The following section shows that, despite provincial party leadership’s call for greater union activism and subsequent increase of union presence in Zhejiang, the overall influence of unions in Zhejiang over workplace still did not exceed those in Guangdong. Overall, unions in PRD were able to exert more influence over workplace than those in YRD. The growth of union institutions, such as the number of union supervision units in Zhejiang since 2005, is likely due to the promotion of the Yiwu model across Zhejiang.

¹⁸¹ Yu Xi (2005). “Xi Jinping: Trade Unions in Zhejiang to Protect the Rights of the Workers According to the Law (xijingpin: Zhejiang geji gonghui yao yifa weihu zhigong hefa chuangyi).” Zhejiang Daily (Zhejiang ribao), 2005/08/30

Li Jing (2005). “Zhejiang Party Secretary Xi Jinping: Dutifully Strengthen Trade Unions’ Legal Protection Mechanisms (Zhejiang shenwei shuji Xi jingpin: qeishi jiaqiang gonghui weiquan jizhi jiangshe).” Workers’ Daily (gongren ribao), 2005/09/13

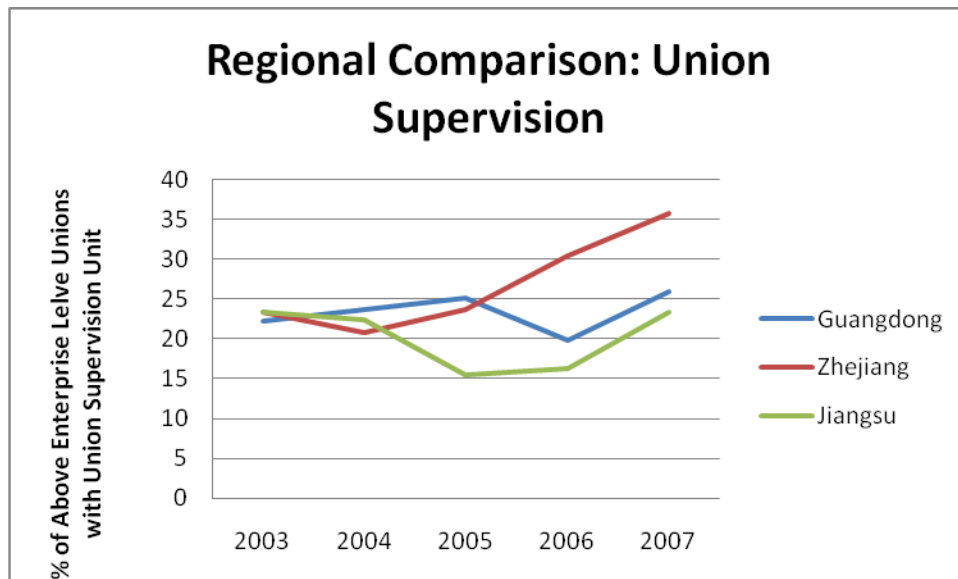


Figure 7.3. Union Legal Supervision in PRD and YRD

Source: China Trade Union Statistical Yearbooks, various years

Note: PRD=Guangdong, YRD=Zhejiang and Jiangsu

V. Local Unions in Action: patterns and variations

The pattern of labor conflicts and leadership responses affect the extent of union development and influence over labor protection. In this section, I show that unions in PRD, which were exposed to higher level of labor conflicts and encouragement from local leadership to change, were more active and influential over labor protection than those in YRD. Unions in PRD were actively involved in the following: the making of local labor regulations and the development of grass-root union autonomy from management. In the following, I examine each region in terms of their union development and emphasis.

Union Activities and Development in Pearl River Delta

The PRD is known for being the forerunner of labor legislations. Governments in Guangdong emphasize labor legislations as the major means to deal with the changes in labor relations, and many local regulations were first initiated in Guangdong province and later adopted by other local governments.¹⁸² Unions in Guangdong were active participants of these legislative processes.

Unions in Guangdong have been involved in the making of many labor regulations at the provincial and municipal levels. In general, unions in Guangdong participated in the formation of more than ten pieces of labor legislations every year.¹⁸³ GDFTU helped with the passage of two pieces of legislations that set the precedents for other provinces—“Regulations on Enterprise Collective Contracts, Guangdong Province (Guangdongshen qiye jiti hetong tiaoli)” in 1996 and “Regulations on Union Labor Supervision, Guangdong Province (Guangdongshen gonghui laodong jiandu tiaoli)” in 2001. Unions in Guangdong also helped with the passage of several innovative labor legislations—for example, the Shenzhen Federation of Trade Unions (SZFTU) was involved in the drafting of the “Implementing Regulation on the Trade Union Law of PRC, Shenzhen City (Shenzhen shi shishi zhonghua renming gongheguo gonghuifa bangfa)” amended and passed in 2008. This labor legislation not only uses the words “collective bargaining” instead of “collective consultation” but also contains a unique “public censure” clause. Article 51 of the implementing regulation states that higher-level union branches could publicly censure enterprises for violating the legal

¹⁸² Interview, 6/10/2009

¹⁸³ Interview, 2/4/2010

rights of the employees, for violating the Trade Union Law and the implementing regulation (along with several other conditions) if enterprises do not correct their behaviors after receiving warnings from the labor departments.¹⁸⁴

Unions in Guangdong were able to extend their influence over labor relations, particularly the protection of workers' rights, through their participation in the making of local laws and regulations. The legislative process of the "Regulations on Union Labor Supervision, Guangdong Province" (Regulation) illustrates how union's legislative activism results in the passage of a pro-labor regulation. *Regulation* is the piece of regulation that solidifies unions' right to monitor employers. Although Article 88 of the 1994 Labor Law stipulates that unions have the responsibility to supervise employer observance of labor laws and regulations, local unions lacked the actual administrative authority to implement their responsibility.¹⁸⁵ Local unions often faced employer resistance when they attempted to fulfill their supervising authority—employers not only would refuse to give union officials entry to the facilities or provide relevant documents for inspection but also claimed that union officials lacked the "legal basis" to supervise.¹⁸⁶ This lack of administrative authority to supervise prompted GDFTU to lobby provincial people's congress for the drafting of the regulation. The drafting

¹⁸⁴ Implementing Regulation for the Trade Union Law of PRC, Shenzhen City (Shenzhen shishi zhonghua renming gongheguo gonghuifa bangfa), promulgated by the Shenzhen Municipal People's Congress, June 27, 2008. Available at: <http://law-star.com/cacnew/200807/180020962.htm> (accessed 07/11/11).

¹⁸⁵ "Labor Law of the People's Republic of China." Promulgated by the Standing Committee of the Eighth National People's Congress, July 15, 1994, effective from January 1, 1995. Available at: <http://www.usmra.com/china/Labour%20Law.htm> (accessed 07/11/11)

¹⁸⁶ Interview, 01/27/2010

process lasted two years, and the major point of contention occurred between the GDFTU and the provincial labor bureau. The two disagreed over the title of the document that unions could issue after detecting employer non-compliance. Originally, the GDFTU lobbied for the name “correction book (zhengshaishu).” This term was opposed by the provincial labor and social security bureau for reason of jurisdictional competition—since the labor and social security bureau uses the same term to refer to the document they issue, the provincial labor and social security bureau worried the GDFTU and lower level union branches would be assuming the same authority as the ones labor and social security bureaus had. The disagreement persisted, and the Guangdong Provincial People’s Congress stepped in to resolve the contention: “the People’s Congress realized that unions needed to be given more means [shoduan] to fulfill their supervising responsibilities, but it also agreed that the wordings of the documents cannot be the same as the administrative department.”¹⁸⁷ In the end, the GDFTU compromised, and the term was changed to “labor legal supervision book (laodong falui jiandushu). Although the GDFTU did not succeed in obtaining more influential measures such as the issuance of “correction book,” the *Regulation* nevertheless provided unions in Guangdong the legal basis for workplace supervision. According to Article 16, “unions can report and seek correction (which may involve penalty or punitive measures) from the administrative departments if employing units [yongren dangwei] refuse the entry of the

¹⁸⁷ Interview, 02/04/2010

union supervisors and/or disrupt any supervision activities by union supervisors.”¹⁸⁸

Article 11 of the *Regulation* also indirectly allows unions to monitor the labor and social security bureaus: “relevant administrative departments should, based on the labor laws and regulations, respond to unions’ report of enterprise non-compliance in given time, and notify unions the results of their investigation.” Thus, the involvement of PRD unions in the making of the *Regulation* such as introducing the draft or lobbying the lawmakers in the local people’s congress, allowed those such as the GDFTU to help institute regulations that help unions to better protect the rights of the workers.

Union activities in the PRD centered on grass-root union development, especially on the autonomy of enterprise (grass-root) union branches from management. Guangzhou City’s trade union branch, the Guangzhou Federation of Trade Unions (GZFTU), actively participated in the making of the “Implementing Regulation for the Trade Union Law of PRC, Guangzhou City (*GZ Trade Union Law Implementation*),” which was passed in December 2007. According to *GZ Trade Union Law Implementation*, persons in charge of business management are not allowed to take union leadership positions.¹⁸⁹ The *GZ Trade Union Law Implementation* helped GZACFTU to achieve the goal of greater enterprise union autonomy (albeit at a slow rate): in this year’s GZACFTU Congress

¹⁸⁸ “Regulation on Trade Union Legal Supervision, Guangdong Province.” Promulgated by the People’s Congress of Guangdong Province, 12/30/2000 and effective from 01/01/2001. Available at: http://www.gd.lss.gov.cn/gdlss/zcfg/fghb/gddffg/t20070815_33930.htm (accessed 07/11/11)

¹⁸⁹ “Rule on Implementing the Trade Union Law of the People’s Republic of China, Guangzhou City (Guangzhoushi shishi zhonghua renmin gongheguo gonghui fa banfa).” Promulgated by the Standing Committee of People’s Congress, Guangzhou City, 03/27/200 and effective from 05/01/2008. Available at: http://www.gzlss.gov.cn/gzlss_portal/show_article_byid_frontside.do?article_id=2415 (accessed 07/05/2011)

during which the representatives for provincial-level Congress were chosen, a few candidates were not chosen because they are business owners or heads of enterprise human resource department (so-called “administrative chairmen, or xinjeng zhuxi”).¹⁹⁰ The chairman of GZACFTU has declared that GZACFTU will no longer give approval to xinjeng zhuxi by the year 2009, thereby suggesting a full implementation of the regulation by year 2010.¹⁹¹ Besides shaping and implementing the regulation, currently the GZACFTU is also working for the passage of two legislative pieces: one on the protection of enterprise union leaders and another on the direct election of enterprise union leaders.¹⁹²

Union Activities and Development in Yangtze River Delta

Unions in the YRD were overall less active in the making of local labor laws and regulations, and as a result they gained less influence over the protection of labor rights. There was, however, some difference when comparing unions within the region: unions in Jiangsu were more active in terms of legislative participation than those in Zhejiang. Jiangsu is known for its “One Implementing Regulation, Six Regulations (yi banfa liu tiaoli)” on labor relations. Between 2004 and 2009, Jiangsu Federation of Trade Unions (JSFTU) took part in the drafting of “Implementing Regulation for the Trade Union Law of PRC, Jiangsu Province,” “Regulation on Labor Contracts, Jiangsu Province,” “Regulation on the Collection and Payment of Social Security Fees, Jiangsu Province,”

¹⁹⁰ Interview, 06/29/2009

¹⁹¹ Ibid

¹⁹² Ibid

“Regulation on Wage Payment, Jiangsu Province,” “Regulation on Collective Contracts, Jiangsu Province,” “Regulation on the Occupational Safety and Hazard, Jiangsu Province,” and “Regulation on Enterprise Democratic Management, Jiangsu Province.” The passage of these local regulations took place amidst the reform of the SOEs and subsequent rising labor disputes in Jiangsu during early 2000s. JSFTU participated in the process—the provincial union federation, along with the provincial labor and social security bureau, proposed to the Jiangsu Provincial People’s Congress the drafting of the regulations. JSFTU also relied on the party-government joint conferences to recommend and propose new regulations.¹⁹³ In Zhejiang, there were two major pieces of legislations passed between 2004 and 2009: “Regulation on Enterprise Democratic Management, Zhejiang Province,” and “Regulation on Collective Contracts, Zhejiang Province.”¹⁹⁴ Unions in Zhejiang relied on similar channels to influence the drafting process: unions would rely on their representatives in local people’s congress or people’s political consultative conference to raise motions regarding the drafting of a labor regulation. Unions also worked with the local labor and social security bureaus to draft the legislations. Meanwhile, unions lobbied the lawmakers during research conferences (zuotanghui).

¹⁹³ Interview, 01/24/2010

¹⁹⁴ There was also another piece of regulation passed during the period: “Regulation on Staff and Workers’ Basic Retirement Insurance, Zhejiang Province (Zhejiangshen zhigong jiben yanglao baoxiang tiaoli).” Promulgated by the Standing Committee of Zhejiang People’s Congress, 05/30/2008, effective from 10/1/2008. Available at: <http://www.szldj.gov.cn/zcfg/ylbx/doc1812.shtml> (accessed 07/11/11)

Interview, 01/12/2010

Despite the passage of several labor regulations, there was no provincial-level regulation on union legal supervision, and a major reason behind this absence was opposition from the labor bureaus. A union official in Zhejiang said the following: “Zhejiang Federation of Trade Unions (ZHFTU) has been calling for the passage of a regulation on union legal supervision for years but received little response because of limited legislative resources.” Another union official was more straightforward about the reason. While giving an account on the legislative process of the regulation on union legal supervision in Hangzhou City, Zhejiang Province, the official mentioned that a major obstacle behind the passage of the regulation came from Zhejiang Provincial Department of Labor and Social Security. The provincial labor bureau opposed the draft because it saw union legal supervision as an encroachment upon the authority of the labor bureaus.¹⁹⁵ To help the Hangzhou Federation of Trade Union (HZFTU) pass this regulation, the Hangzhou municipal people’s congress had to “do provincial labor bureau’s job” (*shi renda zuo shen laodongting de gongzuo*)—the municipal people’s congress put up two drafting seminars and invited provincial labor bureau to participate, and through these two seminars the parties discussed and coordinated (*xietiao*). The efforts by the municipal people’s congress reduced opposition from the provincial labor bureau, and in exchange HZFTU compromised on some clauses. For example, after the provincial labor bureau expressed opposition to a clause that requires employers to provide information when unions conduct *inspection*, the HZFTU compromised, and the clause was changed to “requiring employers to provide information when unions

¹⁹⁵ Interview, 01/27/2010

investigate.” The HZFTU also compromised after provincial labor and social security bureau opposed measures that allow unions to exact fines and other forms of penalty. One can thus infer from these accounts that cooperation from labor bureaus are necessary for unions to increase their influence over labor protection. Unions in YRD did not gain more influence than those in PRD most likely because of oppositions from labor bureaucracy in the YRD region.

Collective negotiation has been a major focus for unions in YRD. Unions in both Jiangsu and Zhejiang provinces have been engaged in promoting collective contracts and collective consultation since 2003. What is particular about the development within the region is that collective consultation takes parts at multiple levels of economy, not just at the enterprise level. With the creation and spread of regional/sectoral unions, unions of YRD were able to promote collective consultation at the regional and sectoral levels. Zhejiang is the pioneer of regional/sectoral collective wage consultation, and the experiment began in Wenling, a small town in Xinhe county, Zhejiang province. Wenling is the home of 20,000 small domestic privately-owned, labor-intensive enterprises. Wenling is known for its woolen knitwear industry, and by early 2000s the industry has attracted a large number of migrant workers. The industry experienced the problem of labor shortage in early 2000s: the highly seasonal nature of the industry resulted in fierce competition among enterprises for skilled labor and high wages as well as frequent demands for higher wages by workers. Labor conflicts also became a problem: there were frequent collective labor disputes involving strikes, petitioning to the

government, damaging factory properties and even beating of factory owners.¹⁹⁶ These signs greatly alarmed the local government and trade unions and prompted them to introduce the collective wage consultation experiment. The knitwear industry has been using the collective wage consultation system to determine workers' wage since 2003, and the "Wenling model" was adopted by water pump, bearing, footwear and other industries in Wenling. And similar to the "Yiwu model," the "Wenling model" was first viewed by the central party leadership as one to be implemented throughout China, and later promoted by the provincial leadership. In late 2007, the Chinese Premier Wen Jiabao directed that the Wenling model should be promoted nation-wide¹⁹⁷. In response to that, the Zhejiang Provincial Party Committee and Zhejiang Provincial Government have jointly promulgated the "Zhejiang Provincial Party Committee and Zhejiang Provincial Government's Opinion on Fully Implementing the Collective Wage Consultation Works among Staff and Workers" in 2008. The opinion mandates that 70% of all enterprises and 100% of state-owned and collective enterprises were to adopt the system by the end of 2010. Enterprises that already have trade unions should adopt the collective wage consultation system across the board before the end of 2009, while those that have not should promote regional collective wage negotiations.¹⁹⁸ Jiangsu

¹⁹⁶ "The Wenling Model: an experiment in trade-wide collective bargaining." China Labor News Translation, October 2009. Available at: <http://www.clntranslations.org/article/49/wenling> (accessed 07/12/11)

¹⁹⁷ Ibid

¹⁹⁸ Zhejiang Provincial Party Committee and Zhejiang Provincial Government's Opinion on Fully Implementing the Collective Wage Consultation Works among Staff and Workers, promulgated by Zhejiang Provincial Party Committee and Zhejiang Provincial Government, July 10, 2008. Available at: <http://www.zjld.gov.cn/020212/1139.htm> (accessed 07/12/11)

also emphasized the promotion of collective wage consultation. In 2005, unions in Jiangsu launched the “wage consultation offer campaign (gongzi xieshang yaoyuei xingdong).” During the campaign, the above-level union branches will instruct and assist enterprise union branches to “offer” enterprises that have not begun or renewed collective wage contracts a chance to meet with the local labor bureaus and trade unions to negotiate the contract.¹⁹⁹ In Suzhou City, the municipal trade union organization launched the “two-level offer (liangji yaoyuei)” procedure: enterprise-level union branches would be the first ones to demand the enterprises to complete the collective wage consultation, and the upper-level union branches would step in and raise the demands when enterprises refuse to participate in the consultation.²⁰⁰

The effect of collective wage consultation and collective consultation in general remains unclear as of now. While some studies find that union participation in collective wage consultation helps reduce intra-firm wage inequality and improve job security (Lee and Liu, forthcoming; Lee 2009), others are more cautious in their assessment. Collective wage consultation was a recent creation, and it has only been successfully implemented in a small number of enterprises. Even in Wenling, regular and effective annual collective consultation has happened only in the woolen knitwear industry. Employers strongly resisted local government and trade unions’ effort to implement the system, and their attitude has led some local governments to shy away

¹⁹⁹ “Jiangsu Province Implements Wage Consultation Mechanism (Jiangsu chuanmian tueijing gongzi xieshangzhi).” *Workers’ Daily* (Gongren ribao), 09/30/2005.

²⁰⁰ Interview, 09/30/2009

from a full implementation of collective wage consultation.²⁰¹ In Ningbo City, Zhejiang Province, the recent effort by the municipal union organization to promote industry/sectoral collective contracts as a means to increase wage was not received positively by the local government. Opposition from the municipal labor bureau was the major reason behind Ningbo government's lukewarm attitude towards collective wage consultation.²⁰² A number of critics also argue that many collective agreements often yielded the legal minimum conditions with minor modifications, while the process itself was often ritualistic with little actual worker participation (Lee, Clarke and Li 2004; Taylor, Chang and Li 2003).

VI. Regulatory Enforcement Compared: PRD vs. YRD

In this section, I examine the enforcement of labor regulations in PRD and YRD. I first show that local regulations in PRD provide greater status and authority to regulatory, particularly inspection bodies, than those in YRD. I then show the pattern of enforcement of the two regions in 2000s—enforcement is higher in PRD. Lastly, I cite some examples of unions affecting the enforcement of labor regulations.

Regulations on Labor Inspection: PRD vs. YRD

The PRD was the first one to come up with a legal basis on the enforcement of labor regulations. “Regulation on Labor Inspection, Guangdong Province (Guangdongshen laodong jiangcha tiaoli)” was passed by the Standing Committee of Guangdong's People's Congress in July 1996. This regulation defines the term “labor inspection

²⁰¹ Ibid

²⁰² Interview, 01/27/2010

(laodong jiancha)” and states the responsibilities of relevant actors, the procedure on labor inspection and potential penalty involved when non-compliance is found. “Labor inspection” is conducted by labor administrative bodies and involves the acts of supervising, inspecting employing units (yongren dianwei) and “checking,” “correcting” those who do not comply with labor laws and regulations. Labor inspectors have greater responsibilities and authority to impose a wider range of penalty. Article 18 stipulates that labor bureaus could issue either “labor inspection request notification (laodong jiancha xunwen tongzhishu)” or “labor inspection instruction (laodong jianha jilinsu)” to enterprises that violate the labor laws or regulations, and enterprises are required to respond within 10 days of receipt of either document. Article 19 stipulates that labor administrative departments have to conclude their investigation within 30 days from initiation; a maximum 30 days of extension is permitted upon special circumstances and needs to be approved by an upper-level labor administrative body.

The YRD also has similar legal basis on the enforcement of labor regulations, but these regulations are not as “enforceable” as the one in the PRD as they have lower legal status and grant the inspectors less authority. In both Jiangsu and Zhejiang, the regulations (Regulation on Labor Inspection, Jiangsu Province (Jiangsushen laodong jiancha gueiding), and Regulation on Labor Inspection, Zhejiang Province (Zhejiangshen laodong jiancha gueiding), were passed by the provincial people’s government in 1997.²⁰³ Since these two regulations were issued by the provincial government rather

²⁰³ Zhejiang passed the “Regulation on Labor Inspection, Zhejiang Province (Zhejiangshen laodong jiancha tiaoli)” in 2005, and this new regulation replaced the 1997 “gueiding.”

than the people's congress, they have lower legal status.²⁰⁴ Contrary to the labor inspectors in PRD, those in YRD are given longer time to investigate and conclude cases: in Jiangsu, the maximum time that the labor administrative department could work on a case is 30 days with an extension of at most 30 more days upon permission granted by the upper-level labor and social security department—but it also lists some conditions that allow labor administrative departments to suspend the time count. In Zhejiang, the labor administrative departments are given 30 days to work on their cases with an extension of maximum 60 days. In both provinces, the labor inspectors could issue documents to note the violations found, but there is no clause that requires the non-complying enterprise to respond.

Enforcement Pattern in PRD and YRD

The enforcement of labor regulations varies across the two regions. Figure 7.4 shows the inspection rate (measured in the percentage of enterprises that are inspected by the local labor administrative bodies in a given year) of PRD (Guangdong) and YRD (Jiangsu and Zhejiang) from 2003 to 2008. As the graph indicates, inspection rate in PRD is higher than the ones in YRD—an average of 38% of enterprises in Guangdong were inspected by the local labor and social security bureaus every year, while the average figure for Jiangsu and Zhejiang is 17.9% and 14.3% respectively. The decline of the trend is caused by the increase in denominator—for example, in Guangdong, the number of enterprises inspected remains the same for year 2005 and 2006, yet the total

²⁰⁴ Huang Hueifen (2006), “A Brief Discussion on Issues Regarding the Applicability of Law—the relationship and conflicts between ministerial regulations, local regulations and local governments’ regulations.” Available at: <http://xfx.jpkc.gdcc.edu.cn/show.aspx?id=372&cid=33> (accessed 07/13/11)

number of enterprises increased from 475,000 to 525,000. But overall, the graph shows that PRD had higher enforcement of labor regulations than YRD did.

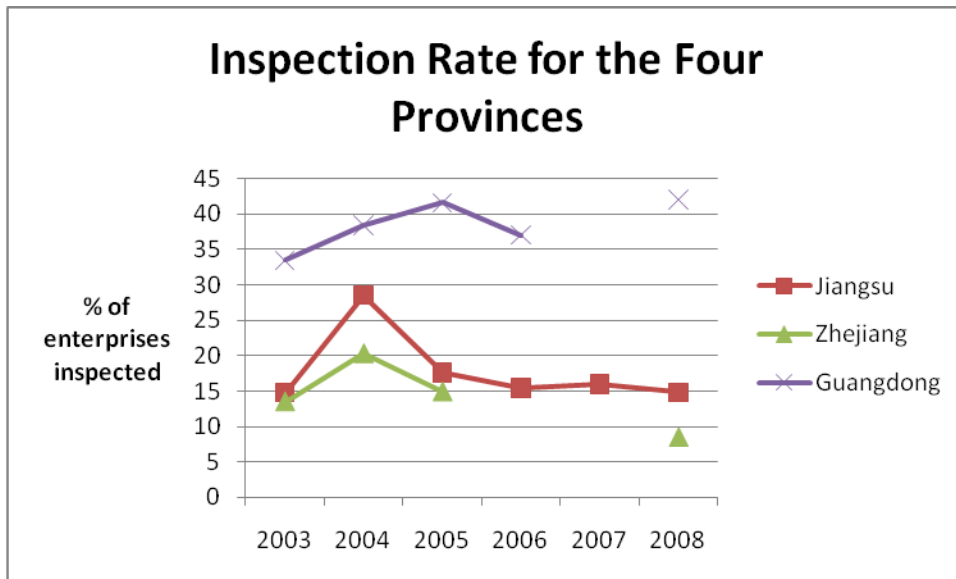


Figure 7.4. Enforcement Pattern of PRD and YRD²⁰⁵

Source: China Basic Enterprise Yearbooks, various years; labor and social security statistical reports published by the provincial labor and social security bureaus, various years

Unions played an important role in the enforcement of labor regulations when they are given greater influence, especially oversight authority, over workplace relations. A union official agreed that unions in Guangdong have become an active participant in the enforcement of labor regulations: “After the passage of the regulation (“The Regulation

²⁰⁵ Note: The line “discontinues” as there exist a few missing data—there is a missing data (2007) for Guangdong and two (2006 and 2007) for Zhejiang

on Labor Inspection, Guangdong Province), the government paid greater attention to unions' opinions and advice. We often work with the labor departments. Over the last ten years, the major activity that we jointly conducted was the annual "Spring Festival Wage Arrears Inspection." We also conducted one or two more inspection campaigns every year."²⁰⁶

A union official also viewed unions having a positive effect on the enforcement of local labor regulations in Hangzhou, Zhejiang Province:

We [unions in Hangzhou] have been very active at lobbying for the passage of several labor regulations, including the one on union supervision of workplace [gonghui jiandu]. We also worked hard to gain the trust from the municipal labor bureau, and we have established a pretty good working relationship. With the passage of the regulation on union supervision and the support from the labor bureau, we were able to become more active over labor regulatory enforcement. We promoted the regulation for a year, conducted a inspection campaign last year (2007) and referred some cases to the labor bureaus. Our efforts have helped better protect the rights of the workers: we are beginning to see more workers coming to us for help.²⁰⁷

These two examples illustrate that union development—especially the expansion of influence over workplace oversight—contributes to the improvement of enforcement of labor regulations. Again, the attitude of the labor bureaucracy matters. When oppositions from the labor bureaucracy are strong, unions have trouble gaining more influence over workplace relations.

VII. Conclusion

²⁰⁶ Interview, 02/04/2010

²⁰⁷ Interview, 01/27/2010

In this chapter, I looked at labor relations—labor conflicts, union development and the enforcement of labor laws and regulations—from a sub-national perspective. I compared the Pearl River Delta and the Yangtze River Delta and showed that, despite their similarities in terms of their economic conditions, the two varied in their regulatory enforcement. This difference, as I showed in my discussion, was caused by two factors. PRD was exposed to high level of labor disputes, strikes and other forms of labor conflicts. This trend alarmed the provincial (and the higher-level) party leadership and pressured it to respond with measures that would help restore social stability. Unions were seen as one of those means that would help the PRD leadership to achieve stability, and the leadership in PRD gave unions more room to expand their influence over workplace issues. As a result, unions in the PRD became more active—they not only shaped the local regulations but also placed greater effort in implementing these regulations. The active efforts of the unions in the regions also yielded a major piece of regulation—Regulation on Union Supervision. This regulation gave unions in Guangdong the legal authority to monitor enterprises through inspections. In YRD, however, the story is different. As labor conflicts is lower in the region, the threat of social instability was lower and the party leadership placed less emphasis on giving unions greater influence over workplace relations. Without important measures like the regulation on union supervision, unions in the YRD were less active and exerted less effect over enforcement. The lower level of union activism and influence in the region thus contributed to lower level of enforcement of labor regulation.

Chapter 8

Conclusion

This dissertation began with a description of a series of dramatic events between year 2006 and 2007 in China. The drafting of a new labor law, particularly the Chinese lawmakers' decision to open the draft to a 30 day public commentary in March 2006, incurred strong reactions from various groups of society. Foreign business associations published their criticisms and even threatened to withdraw investments from China; Chinese academics took their sides and engaged themselves in heated debates via medias such as the newspaper and web blogs, and China's official union organization, the All-China Federation of Trade Unions (ACFTU), not only mobilized its union branches to solicit workers' opinions for the public commentary but also made several high-profile moves to express its support for the passage of the law. After a sustained period of fierce debates, media frenzy, and the revelation of a shocking scandal of slave labor in Shanxi province, the Chinese legislature passed the Labor Contract Law (LCL) in July 2007. These events and the passage of the LCL were rather unexpected, as Chinese workers had been experiencing inadequate conditions and rights since the reform period. Market reforms have ended the lifelong employment and benefits that the Chinese workers used to enjoy, and instead workers were exposed to a decentralized labor market where local governments, in an effort to meet the demands of businesses for a more flexible and deregulated labor market, did not enforce the labor laws and regulations to the extent that would yield adequate labor protection.

The puzzling nature of the passage and the activism that the ACFTU displayed during and after the passage of the law led to the larger question over the nature of labor policy making in authoritarian settings. How do the politically weak like the workers shape the policy outcomes when they have such limited means to access the policy making process compared to their counterparts in many democratic settings?

Conventional wisdom would argue that the absence of trade union independence and pluralism in countries like China is the cause of weak labor protection, so external pressures are seen as necessary to empower labor to incur positive changes. In this dissertation, I show that labor conflicts were the major catalyst for union empowerment and a series of pro-labor developments, and unions, with their newly gained authority, in turn induced labor bureaucracy to devote more effort to enforce labor regulations.

This dissertation focuses on gaining a clearer understanding of the dynamics of labor politics in authoritarian settings like China by examining the ways in which labor conflicts and unions affected the making and implementation of labor policy. In addition to case studies, as most existing studies use, this project also uses empirical tools to test the hypotheses on labor conflicts, union development and enforcement of labor regulations. I compiled new sub-national data on labor conflicts, union activity and labor bureaus' enforcement of labor regulations to test the abovementioned claims. I argue that rising labor conflicts pressured the CCP to empower the previously feeble ACFTU so that the latter could help the party better control labor relations. A more empowered ACFTU used its newly gained authority over workplace issues to initiate activities that contributed to the protection of labor. In particular, the ACFTU's newly

gained authority and activities over the oversight of workplace resulted in a more rigorous enforcement of labor regulations by local labor bureaucracy.

In this chapter I take a look at the major findings of this project, discuss future directions for the research, and conclude with some thoughts on the future of Chinese unions.

Research Findings

My findings show that China has indeed experienced a series of pro-worker changes, and these changes were caused by the internal dynamics of labor conflicts and union empowerment. The transformation of the ACFTU was directly caused by heightened labor conflicts. As labor relations became more complex and violent in 1990s, the CCP saw the need to control labor, and to do so it delegated the ACFTU more authority to articulate the interests of the Chinese workers. The ACFTU at the national level seized such opportunity to access the labor policy making process and lobby for pro-worker (and pro-union) policy. Similar dynamics also occurred at the sub-national level: growing labor conflicts pressed the local party leadership to empower unions, and as a result unions were able to expand their influences, including their ability to monitor the workplace. The more influential and active unions in turn induced the local labor bureaucracy to put more effort in enforcing labor regulations. These findings suggest that the improvement of labor conditions can come from within China, but changes in labor policy depends on the policy objectives and preferences of the ruling CCP.

Labor conflicts were the major causes of the recent transformation of the Chinese unions. Labor relations since the 1990s were marked by a rapid rise in workers' opposition to their declining welfare. Workers relied on both institutional and informal

(sometimes even illegal) means to express their grievances. Regardless of the form they took, labor conflicts intensified, and workers from various backgrounds—whether they were laid-off SOE or migrant workers in manufacturing plants—were involved. Even though these conflicts have remained localized and involved bread and butter rather than political issues, they nevertheless threatened the survival of the CCP regime. The CCP is an authoritarian ruler whose regime's survival depends on its ability to maintain social stability. In addition, the Tiananmen Incident and labor movements in Eastern Europe also motivated the CCP to prevent workers' discontent from challenging the party rule. ACFTU empowerment thus consisted of a key component of the party's strategy to counteract social instability, and the empowered unions were expected to help the party resolve labor conflicts by monitoring workers, employers and government labor bureaucracy.

My discussion of union history in Chapter 3 illustrates the relationship between the ACFTU and the CCP as well as the struggles the union organization faced in defending workers' interests up to the post-reform period. The ACFTU has been an agent of the CCP, and its task was to help the party implement its policy objectives. Throughout most of the history of the PRC, the ACFTU was called to assist the party to consolidate its rule by expanding union organizational presence and facilitating economic production. Workers' rights and interests were thus lower in priority. ACFTU attempts to advocate labor interests were quickly dismissed and squelched by party leadership.

The Chinese unions became more vocal over the protection of worker's interests after the post-reform period. My discussion of the making of the LCL in Chapter 4

shows that the rise in labor conflicts motivated the CCP to issue measures to stabilize labor relations, including legislative ones such as the LCL. The party also encouraged the ACFTU to become more active, and the ACFTU used this opportunity to extend its oversight influence via the LCL. In Chapter 5, my empirical analysis shows that labor conflicts were positively associated with union development—rising labor disputes are linked to the increase in union legal institutions at a later period. However, rising labor conflicts are linked to the decrease in union legal institutions at the same time period. It is possible that the presence of negative association during the same time period yet positive association during a later period is caused by resource allocation. Seeing increasing labor disputes may prompt unions to place greater emphasis on resolving disputes, which diverts resources away from institution building. Unions turn to institution building only when they realize that the rise in labor disputes constitutes a trend and more structural measures are needed to reduce and prevent future disputes. The qualitative evidence from Chapter 7 also supports this finding. I compare labor relations in Pearl River Delta (PRD) and Yangtze River Delta (YRD) since the 1990s. The case studies suggest that the presence of growing labor conflicts contributed to the expansion of union authority. Labor relations in PRD were much more volatile than in YRD. The PRD not only experienced higher level of labor disputes but also a greater number of militant actions such as strikes and crimes conducted by workers. Local leadership in PRD faced more pressing needs to control labor, and in response the leadership granted unions in PRD more authority over workplace affairs. Unions in YRD overall were given less room to develop as labor relations in the region were

relatively less volatile. It was only when the activities of lower-level (sub-provincial) unions attracted the attention of the central leadership that increases local (in this case, provincial) leadership's incentives to empower unions. Union transformation in YRD was more of a top-down process—the central leadership's attention and praise over local experiments prompted regional (provincial) leadership to respond by granting unions greater room to develop.

Union activism at the local level in turn affects the enforcement of labor regulations. The problems of inadequate and uneven enforcement across the Chinese regions are pressing. As the sole official union organization, the ACFTU is the only legal organized representative that could help Chinese workers influence CCP decisions and improve their conditions. While local unions, especially the ones at the enterprise level, struggled to defend workers' rights and interests throughout most of the reform period, their recent development appears to increase workers' ability to articulate their demands. In particular, I find that union activities that facilitate communication and cooperation between the ACFTU and local labor bureaucracies helped the latter increase the enforcement of labor standards. This finding suggests that greater union-bureaucratic interaction is important for unions to exert influence on enforcement and policy outcomes in general. While the ACFTU has incentives to become more active on behalf of the workers, it could not influence policy outcomes without support from local governments, the ones that are responsible for the implementation of labor laws and regulations, and their agents the labor bureaucracies, the ones that are given the authority to sanction

employers for non-compliance. Thus, active cooperation between the union and the labor bureau is needed for unions to induce employers to comply with labor standards.

Both empirical and qualitative analyses support my arguments that union development contributed to greater regulatory enforcement by labor bureaucracy. My empirical analysis in Chapter 6 shows that the increase in union institution building activities is associated with higher levels of enterprise inspection by local labor bureaus. These institutions allow unions to shape regulatory enforcement by helping labor bureaucracy target and defuse contention while giving labor unions access to labor bureaucracy's enforcement process. In the case study comparison of Chapter 7, I find support that union activities prompted the labor bureaucracy to devote more effort into enforcement. In PRD, unions actively participated in the making of local labor regulations, and their participation allowed them to gain greater authority over labor protection. In particular, the provincial trade union organization in Guangdong was involved in the passage of a regulation that solidifies unions' authority to supervise employer compliance with labor standards. Unions in PRD also put a great deal of effort in increasing the autonomy of grass-root level union branches, which were important as most grass-root level union branches were controlled by management. Unions in the YRD, however, were not as active over labor protection as their counterpart in the PRD, and as a result enforcement in the YRD was comparatively lower. Although these unions focused on promoting collective negotiations, the effects of these efforts remain unclear, and there are some critics who question the effectiveness of these measures in improving labor conditions.

Future Research

Existing studies on labor relations also briefly discuss the association between an economic variable—labor market condition—and labor activism. Labor supply may play a key role in shaping unions' bargaining leverage: when unemployment is low, organized labor has more ability to pressure employers to make concessions (Kennan 1986; Soskice 1978; Ross and Martin 1999). Some evidence from authoritarian contexts suggests that labor supply is an important factor behind varying labor policy outcomes: in Taiwan, the growing labor shortage in the late 1980s helped increase wages, but the relocation of manufacturing capital to Southeast Asia and China in the beginning of the early 1990s weakened the labor movement (Minns and Tierney 2003). Concerns about labor shortage in Soviet Russia resulted in greater labor mobility and contributed to the development of some wide scale collective actions (Chen and Sil 2006). From these examples, one may conclude that labor supply contributes to labor's bargaining leverage vis-à-vis the employers, which indirectly affects labor's bargaining leverage vis-à-vis the government. Building on my dissertation in which I show the importance of labor conflicts and union institutional development in explaining the enforcement of labor standards, I will examine the role of labor market conditions to show that they also affect the developments and impact of unions on labor rights protection.

To assess whether labor supply plays an important role in labor policy outcomes, including union development, I will first analyze China's labor market and labor political development. Long known for its abundant supply of labor, China has faced two

episodes of labor shortage since the year 2000. The first episode occurred in 2004. Starting that year, many factories had difficulties finding young migrant workers to help fulfill export orders.²⁰⁸ The situation was reversed in early 2009, when the global financial crisis caused massive factory shutdowns and layoffs, but resurfaced in 2010 when Chinese exports picked up again.²⁰⁹ I will develop some indicators for labor shortages and will consult official statistical reports, official policies, Chinese and foreign academic analyses and media reports for the analysis. I also plan to consult and interview Chinese scholars and officials who I have come to know when I was conducting dissertation field research in China.

In the second part of my research, I will conduct empirical analysis to assess the relationship between labor market condition, union development and labor protection at the provincial-level. I will use two union indicators to measure the level of union development/activism: union organizational strength and union institutional capacity. I will use two indicators to capture union organizational strength: union membership and unionization rate (the proportion of enterprise-level unions in a province). I will use employment and wage as the indicators to measure labor supply. As some observers point out the issue of unreliability of the employment data,²¹⁰ I will also use wage as a

²⁰⁸ David Barboza. 2006. "Labor Shortage in China May Lead to Trade Shift." *New York Times*, 3 April.

Kam Wing Chan. 2010. "A China Paradox: Migrant Labor Shortage amidst Rural Labor Supply Abundance." *Eurasian Geography and Economics* 51(4):513-530

²⁰⁹ Keith Bradsher. 2010. "Defying Global Slump, China Has Labor Shortage." *New York Times*, 26 February.

²¹⁰ See David Barboza. 2006. "Labor Shortage in China May Lead to Trade Shift." *New York Times*, 3 April.

measure. I will look at both officially-published minimum wage standards as well as wage rates offered by the private sector, such as agencies that hire migrant workers.

I will also include two control variables, per capita GDP and foreign-direct investment (FDI), so that I can confirm that economic development and foreign investment do not affect union development and activism if I do find that labor supply significantly explains union development and the enforcement of labor standards.

Final Thoughts

In this dissertation, I find that the CCP endowed the Chinese unions with greater authority to oversee workplace affairs, and such empowerment enabled the unions to press the local labor bureaus to enforce labor regulations with more effort and rigor. Using both quantitative and case studies, I show that the transformation of the ACFTU has occurred since the 2000s, and the ACFTU has taken significant strides in bolstering labor protection with moves such as the active participation in the making of the LCL. One can conclude that unions in China are on a different course and will, therefore, continue to gain more power and voice over the rights and welfare of the workers. But is it really so? Where do unions in China stand since 2008?

First of all, China continues to experience rising labor conflicts after the passage of the LCL in 2007. In the first half of year 2010, a string of suicides occurred in a factory in Shenzhen owned by Taiwan-based FoxConn Technology, the major manufacturer for big electronic brands such as Apple.²¹¹ A wave of strikes sparked by the one at Honda's

²¹¹ Malcolm Moore, "Inside FoxConn's suicide factory," *Telegraph*, May 27, 2010, <http://www.telegraph.co.uk/finance/china-business/7773011/A-look-inside-the-Foxconn-suicide-factory.html> (accessed 07/29/2011)

Nanhai factory in Foshan, Guangdong province, also took place between May and July of 2010. Some observers, especially the Western media, viewed these labor actions as “unprecedented” in Chinese labor history and an impetus to more radical labor movements.²¹² Others, however, point out that these militant actions were unprecedented in terms of the media coverage they received—by putting these actions in the context of growing labor unrests in China since 1990s, it became apparent that the strikes and suicides were not really unique; what distinguished them from the previous ones were the amount of attention from Chinese and foreign medias, and such attention reflected a tacit support by the Center for the workers.²¹³ While more research is required to know which view yields a more accurate picture of the Chinese labor relations, both views share the notion that labor relations in China since 2008 are equally, if not more, volatile.

The findings of this dissertation would suggest union empowerment in the face of labor conflicts, and there are signs that unions in China are striving for more authority to protect workers’ rights. In the latter half of the year 2010, right after the occurrence of worker suicides and strikes, the ACFTU issued two notices. On June, 2010, the ACFTU issued the *Urgent Notice on Furthering Enhancing the Establishment of Trade Unions in Enterprises and Fully Exploring the Use of Trade Unions in Enterprises*. This notice requires ACFTU branches at all levels to push forward the establishment of trade unions

²¹² “China’s Labor Tests Its Muscle.” New York Times, August 16, 2010, <http://topics.nytimes.com/top/news/international/countriesandterritories/china/labor-issues/index.html> (accessed 07/29/2011)

²¹³ Lance Carter (2010), “Auto Industry Strikes in China.” *China Study Group*, <http://chinastudygroup.net/2010/10/auto-industry-strikes-in-china/> (accessed 07/27/2011)

in private sector enterprises, including foreign invested enterprises and those with investors from Hong Kong, Macau and Taiwan. This notice also calls for expanding union representation of migrant workers²¹⁴. On May 2010, the ACFTU, the Ministry of Human Resources and Social Security and China Enterprise Confederation/China Enterprise Directors Association jointly issued the *Notice on Pushing Forward Collective Bargaining and the Implementation of the Rainbow Plan (the Rainbow Notice)*. The *Rainbow Notice* requires trade unions to focus on collective wage negotiations in private sector enterprises and labor-intensive industries.²¹⁵ On July 2010, the ACFTU announced its decision to further implementation of collective wage negotiation and requested local ACFTU branches to “offer” to bargain collectively for all of the enterprises that have not established collective negotiations or the collective negotiation contracts of which have expired.²¹⁶ A more astonishing development took place at the local level: in June 2010, the Guangdong Provincial Party Committee demanded faster progress in the preparation of the draft *Regulations on the Democratic Management of Enterprises*, and in response the Provincial People’s Congress put the draft onto the

²¹⁴ *Urgent Notice on Furthering Enhancing the Establishment of Trade Unions in Enterprises and Fully Exploring the Use of Trade Unions in Enterprises* (Guanyu jinyibu jiaqiang qiye gonghui jiangshe, chongfeng fahuei qiye gonghui zuoyong de jingji tongzhi). *People’s Daily Online* (renmin wang), June 5, 2010, <http://acftu.people.com.cn/GB/67560/11790578.html> (accessed July 29, 2011)

²¹⁵ *Notice on Pushing Forward Collective Bargaining and the Implementation of the Rainbow Plan* (Guangyu shenru tuijing jiti hetong zhidu shishi caihong jihua de tongzhi). *Ministry of Human Resources and Social Security*, http://www.mohrss.gov.cn/Desktop.aspx?path=mohrss/mohrss/InfoView&gid=fcec6fd8-c613-458a-a9e6-4bfe93382bad&tid=Cms_Info (accessed July 29, 2011)

²¹⁶ “The ACFTU announces: Fully implementing Collective Wage Negotiation (quanguo zonggonghui qiangdiao: quanmian tuijing gongzi jiti xieshang).” *Rednet.cn*, <http://china.rednet.cn/c/2010/07/03/1998657.htm> (accessed July 29, 2011)

legislative program of the same year.²¹⁷ The draft Regulations were innovative in the following two issues: collective negotiation and the right to engage in strikes. Article 40 stipulates that when workers recognize the need for collective wage consultations with the enterprise, a request should be sent to the union. When one-fifth or more of the enterprise workers have asked the union for collective wage consultations, the union should organize the democratic election of worker representatives to engage in such negotiations, and inform the enterprise of the request for collective consultations on wages. Article 41 states that for enterprises that have not yet set up a union, when one-fifth of workers ask for collective consultations on wages, the management must discuss workers' grievance and local trade union must supervise the democratic election of worker representatives. Article 51 indicates that if an enterprise management fails to respond to a workforce demand for collective bargaining, or fails to arrange such negotiations, that employer may not terminate workers' employment contracts on grounds of stoppages or go-slows. Article 51 can be interpreted as the reinstatement of legal protection for striking workers: as long as workers try to negotiating and refraining from violence, strikes are allowed.²¹⁸ Since the passage of the LCL, ACFTU at various levels has been taking initiatives to not only expand their presence in workplace but also the authority to speak on behalf of the workers. Although unions in China are still

²¹⁷ CLB's Analysis of Guangdong's Regulation on the Democratic Management of Enterprises (2010). China Labour Bulletin, <http://www.clb.org.hk/en/node/100849> (accessed July 29, 2011)

²¹⁸ "Seeking Public Opinions on the draft *Regulations on the Democratic Management of Enterprises* (Guangdong shen qiyie minzhu guangli tiaoli (zhengqio yijianggao) xiang shehui gongkai zhengqio yijian)." *Guangdong Provincial People's Congress Web*, August 14, 2008, http://www.rd.gd.cn/rdgz/flca/200902/t20090201_78350.html (accessed July 29, 2011)

tightly controlled by the CCP, labor conflicts have been, and continue to, induce the party to grant the unions more room to oversee labor relations. Implementation of these initiatives—unionization, collective negotiation and democratic management (election of union chairs)—will considerably solidify the role of the ACFTU as an advocate of the workers.

But are unions in China on their way to gain autonomy from CCP control? It is still too early to discern the future direction of the ACFTU. The CCP rule appears to be secure in the short and medium run, and up to now the party has been rather successful at defusing labor unrests. Meanwhile, workers' demands continue to be centered on bread and butter issues rather than political demands, and most of them rely on the existing Chinese legal system, more so than the militant collective actions, to express their grievances.²¹⁹ Finally, it is important to bear in mind the role that the economy plays in the course of the ACFTU and Chinese labor relations in general. As mentioned previously, labor supply is another potential variable that shapes labor's bargaining leverage, and labor shortage in the PRD in recent years partially explained the pro-labor development since 2008, as the labor shortfall encouraged workers to demand higher wage and better working conditions through both legal and militant means.²²⁰ Given the current state of the global economy, however, it is possible that the labor supply situation

²¹⁹ Lance Carter (2010), "Auto Industry Strikes in China." *China Study Group*, <http://chinastudygroup.net/2010/10/auto-industry-strikes-in-china/> (accessed 07/27/2011)

²²⁰ Edward Wong, "Chinese Exports Regions Face Labor Shortages." *New York Times*, November 29, 2010, <http://www.nytimes.com/2010/11/30/world/asia/30china.html?adxnnl=1&adxnnlx=1311921146-EmDVEYmBiPFCGOWEi/fs9g> (accessed July 29, 2011)

will be reversed by the diminishing demands in Chinese exports. Chinese workers' bargaining leverage could thus decline, and the fall in labor conflicts may in turn stall ACFTU development. A turbulent labor relation might thus be needed to prompt the CCP to unleash the ACFTU and allow independent unions to flourish in China.

Such prospects do not mean, however, that the Chinese unions cannot transform and help improve workers' rights and conditions. There is no doubt that the ACFTU has made some breakthroughs, and there are positive indications that Chinese unions' effort pushed the government to oversee the protection of workers' rights with more vigor. The international labor movements could take a more active stance towards the ACFTU. Even Han Dongfang, head of *China Labor Bulletin*—the labor NGO that has been especially critical of the ACFTU—gave the following comment: “Times have clearly changed...[the international trade union movement] now has the perfect opportunity to reach out. Constructive engagement with the ACFTU at this point in history could produce real benefits—not just for the union itself but for China's workers' movement.”²²¹ Thus, instead of pressuring or excluding the ACFTU, labor activists around the world could help improve labor conditions in China by engaging the country's trade union organization.

²²¹ Han Dongfang, “China's main union is yet to earn its job.” *Guardian.co.uk*, June 26, 2011, www.guardian.co.uk/commentisfree/2011/jun/26/china-trade-union-global-movement (accessed July 25, 2011)

Appendix A

Description of Variables for Chapter 5

Variable	Definition	Source
<i>Dependent Variables</i>		
<i>Union</i>	No. of above enterprise-level unions	ACFTU Yearbooks
<i>TriMech</i>	No. of above enterprise-level unions with tripartite consultative committees	ACFTU Yearbooks
<i>AlarmMech</i>	No. of unions above enterprise-level unions with labor relations alarm systems	ACFTU Yearbooks
<i>Supervise</i>	No. of above enterprise-level unions with union legal supervision units	ACFTU Yearbooks
<i>LegalAid</i>	No. of above enterprise-level unions with legal aid clinics	ACFTU Yearbooks
<i>Independent Variables</i>		
<i>Disputes</i>	Labor disputes per 100,000 employees	China's Labor and Social Security Yearbooks, China' Basic Unit Statistical Yearbooks
<i>Disputeslag</i>	Labor disputes per 100,000 employees in previous year (lagged one time period)	China's Labor and Social Security Yearbooks, China' Basic Unit Statistical Yearbooks
<i>Disputeslag2</i>	Labor disputes per 100,000 employees in t-2 year (lagged two time periods)	China's Labor and Social Security Yearbooks, China' Basic Unit Statistical Yearbooks
<i>Control Variables</i>		
<i>GDPpc</i>	Per Capita GDP	All China Data Online
<i>FDI</i>	FDI as share of GDP	All China Data Online

Appendix B

Summary Statistics for Chapter 5

Variables	Observations	Mean	Standard Deviation	Minimum	Maximum
<i>UnionNo</i>	186	1798.98	1655.75	0	7845
<i>TriMech</i>	186	274.03	309.90	0	1537
<i>AlarmMech</i>	186	194.9624	247.00	0	1310
<i>Supervise</i>	186	333.35	379.96	0	1714
<i>LegalAid</i>	186	142.64	145.33	0	736
<i>Disputes</i>	186	43.95	57.90	1.19	369.00
<i>Disputeslag</i>	155	52.40	59.97	6.44	369.00
<i>Disputeslag2</i>	124	50.22	56.73	6.44	297.43
<i>DisputeSize</i>	186	36.95	48.62	1.75	275.69
<i>DisputeSizelag</i>	155	50.22	56.73	6.44	297.43
<i>DisputeSizelag2</i>	124	43.75	57.13	1.75	275.69
<i>GDPpc</i>	186	18200.25	12975.33	3701	752109
<i>FDI</i>	186	0.03	0.02	0.007	0.09

Appendix C

Description of Variables for Chapter 6

Variable	Definition	Source
Dependent Variables		
<i>Inspect</i>	No. of enterprises inspected by labor bureaus ²²²	China's Labour and Social Security Yearbooks, Regional Labour and Social Security Statistical Reports
<i>Enterprise</i>	No. of enterprises (legal person units)	China's Basic Units Statistical Yearbooks
Union Independent Variables		
<i>Institution</i>	Factor variable of union jurisdiction, including: AlarmMech (% of above enterprise-level unions with labor relations alarm systems) TriMech (% of above enterprise-level unions with tripartite consultative committees) Supervise (% of above enterprise-level unions with union legal supervision units) LegalAid (% of above enterprise-level unions with legal aid clinics)	China Trade Union Statistical Yearbooks
<i>DisputeRes</i>	Factor variable of union dispute resolution activities, including: Supervise (% of cases resolved by union legal supervision units) SupReferred (% of cases referred to same level labor bureaus by union legal supervision units) LegalAid (% of cases resolved by union legal aid clinics)	China Trade Union Statistical Yearbooks
<i>LeaderInteg</i>	Factor variable of the integration of unions into local political structures, measured by the % of total union leaders in local government and party decision-making bodies	China Trade Union Statistical Yearbooks
Control Variables		
<i>Enterprise</i>	No. of enterprises (legal person units)	China's Basic Units Statistical Yearbooks
<i>FDI</i>	FDI as share of GDP	All China Data Online
<i>Disputes</i>	Labor disputes per 100000 employees	Chinas Labour and Social Security Yearbooks; China Basic Unit Statistical Yearbooks
<i>DisputeSize</i>	No. of workers per collective dispute	China Labour and Social Security Yearbooks
<i>GDPpc</i>	Per Capita GDP	All China Data Online

²²² The percentage is derived by dividing the number of units inspected over the number of legal person units (faren danwei) in second and third sectors. Because there is no clear definition of what "employing units" constitute and such data are not available, I think legal person unit is an appropriate proxy of employing units.

Appendix D

Summary Statistics for Chapter 6

Variables	Observations	Mean	Standard Deviation	Minimum	Maximum
<i>Inspect</i>	159	45710.36	38041.72	2756	259220
<i>Institution (factor score)</i>	185	5.24e-10	1	-1.44554	3.38678
<i>DisputeRes (factor score)</i>	185	-2.01e-10	1	-3.73538	2.23396
<i>LeaderInteg (factor score)</i>	185	-4.66e-10	1	-3.84937	2.98180
<i>PerCapGDP</i>	186	18200.25	12975.33	3701	75109
<i>FDI</i>	186	.0266955	.0214156	.0007	.088344
<i>Disputes</i>	186	43.95165	57.90388	1.193202	369.008
<i>DisputeSize</i>	186	36.95391	48.61791	1.75	275.689
<i>Enterprise</i>	186	190075.2	144604.6	13135	630800

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