

## **The New Labor Contract Law in 2008: China's Legal Absorption of Labor Unrest**

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### **Abstract**

Since labor protests in China are not directed at the post-socialist party-state but only directed at individual enterprise on a case-by-case basis, the Chinese party-state has articulated a response what can be called "*legal absorption of labor conflict*" by setting up new labor legislations more congruence with the interests of labor. The aim is to improve the wage and other compensation for *individual* workers without at the same time leading to the rise of working class at a *collective* level to form a class-wise organization or to engage in a collective social movement. However, previous labor laws set up before 2008 have failed to stop the abuses of business on the Chinese workers. In this respect, many researchers have labeled the 2008 Labor Contract Law as the most significant piece of Chinese labor legislation passed in recent years. The aim of this paper is to examine the distinctive features, the historical process of the making, and the impact of the Labor Contract Law at the turn of the 21<sup>st</sup> century. In the conclusion, this paper will discuss the implications of the Labor Contract Law for meeting the challenge of labor unrest in China.

Since the turn of the century, China has turned into the workshop of the world. China's exports grew from US\$18.1 billion in 1978 to US\$266 billion in 2001, reflecting an annual average growth rate of 12% (Nolan, 2004, p. 910). In a short span of 30 years, China has been quickly transformed from a poor, backward third world country to an economic powerhouse of the world.

Although China is having a developmental miracle, China's working people's life has not gained much improvement. Instead, the literature likes to use label 'sweat shop' label to characterize the despotic nature of the labor regime in the China's booming export sector. For example, Tim Pringle (2001) reported that "abuses of Chinese workers' rights have been widely documented both inside and outside China over the past five years. Forced overtime, illegal working hours, unpaid wages, and dreadful health and safety conditions are commonplace. The general pace of work has increased dramatically as competition forces the prioritizing of order deadlines and production targets over safe and dignified working environments. 'There is no such thing as an eight-hour day in China anymore,' explained a private employment agency in Shulan, northeast China."

Furthermore, Anita Chan (1998) points to the troubling fact that many of the tens of millions of workers who work in the so-called township and village enterprises as well as in the foreign-funded enterprises are victims of blatant labor rights violations, including:

- *Migrant workers' lack of rights.* Chinese peasants working in urban areas are subjected to tight "immigration" controls under China's household registration systems. They are not entitled to any of the benefits enjoyed by local residents such as social welfare, schooling, and employment for their children.

Periodically the police carry out raids to round up those peasants do not possess a temporary resident permit to stay in the city. Those workers are harassed, humiliated, thrown into detention centers, and then deported from the cities.

- *Forced and Bonded Labor.* Under China's "neo-apartheid" system, workers are required to pay for a temporary work permit in one lump sum. In a seller's labor market, factories dictate the terms of employment and also charge a "deposit" of about half a month to a month's wages, further bonding the workers. Workers have to forfeit the "deposit" if they quit without management permission before the contract expires, or if they are fired. In some cases, the factory simply keeps a portion of the workers' wages each month, promising to return the money at the end of the year.
- *Subsistence or Below Subsistence Wages.* In recent years the Chinese government has introduced a common standard for its urban workers, and has made these minimum wages mandatory in the Labor Law. In 1997, for forty-four hour work week, the minimum standard per month for Shenzhen Special Economic Zone was set at Y420 (US\$54). However, despite the already low minimum wage, managers engage in a wide repertoire of manipulations to get away with paying *less* than the minimum wage. A monthly pay that looks on paper to be above the minimum wage is usually earned by a large amount of enforced overtime. It is not uncommon for workers to work two or three hours of overtime each day with only one or two days off every month. The wage system is constructed on a rigid system of penalties, deductions and fines. Factories devise their own sets of arbitrary rules and regulations in open breach of China's labor laws. Workers caught in violations of such rules will be fined.

- *Intimidation, Physical Violence, Corporal Punishment and Control of Bodily Functions.* The use of private security guards in factory and dormitory compounds is very common in China. In fact, factories sometimes hire policemen in their off hours to serve as their security guards. This type of internal security system set up behind factory walls is extremely effective in intimidating and controlling workers. Under this atmosphere of intimidation, some factories impose strict rules that control workers' bodily function by drastically restricting the frequency and length of time allowed for going to the toilet. Physical mistreatment and control of bodily functions are more prevalent at Korean and Taiwanese-invested forms.
- *Lack of Occupational Health and Safety.* The factories are also known to have the lack of work insurance, the high level of accidents at the shop floor, the numerous factory fires, explosions, severed and maimed limbs, and the use of poisons with safeguards, with little or no medical treatments or compensations. In footwear factory, there is the widespread use of toxic glues in poorly ventilated workplaces, where workers are provided with neither gloves nor masks.

In addition, Ching Kwan Lee (2007) and Karindi (2008) reported the following labor problems are common in China: unpaid wages, illegal wage deductions, withholding or embezzlement of employee's wages and social insurance payments by employees, payment of wages that are lower than the legally fixed minimum, failure to provide compensation for overtime work, lack of work safety and denial of any responsibility in case of an occupational accident.

How do the Chinese working class and the state respond to this challenge of labor rights violations rights in the post-socialist era since the late 1970s?

Labor Response: Rightful Resistance. Chinese working people have responded to the labor rights violations by a new wave of labor protests. *China Labour Bulletin* (2002, p.1) reports that “almost every week in Hong Kong and mainland China, newspapers bring reports of some kind of labor action: a demonstration demanding pensions; a railway line being blocked by angry, unpaid workers; or collective legal action against illegal employer behavior such as body searches or forced overtime.”

Although comprehensive figures on the number of strikes and worker protests are not made public, official figures on so-called collective action (usually strikes or go-slows with a minimum of three people taking part) can give an indication of the extent of labor unrest. According to *Chinese Labour Bulletin* (2002, p.2), in 1998 there were 6,767 collective actions involving 251,268 people in 1998, and the figure jumped to 8,247 collective actions involving 259,445 workers in 2000. China’s Ministry of Public Security also reported that the number of public protests had risen dramatically – from 15,000 in 1990 to 74,000 in 2007 (Wang et al. 2009, p.488). Figures on the number of officially-arbitrated labor disputes also tell a similar story: there are 135,000 labor dispute cases in 2000, and the number jumped to 314,000 labor dispute cases in 2005 (*Labor Statistics Yearbook* 2006).

Most of the working class’ collective actions can be classified as “*Rightful Resistance*” (O’Brien 1996) because workers frame their claims with reference to protections implied in ideologies or policies of the Chinese party-state, like demanding the factories to pay their wages on time and pay their back wages, to pay the minimum wage according to the state, to reimburse medical payments for on-the-job injury, or to

compensate their forced and excessive overtime work. Rightful resistance because workers' protests stay within bound of the existing regulations imposed by the state, and they usually appeal the leaders in the Central Government to look into their grievances. In other words, Chinese labor protests in the post-socialist era can be called "rightful resistance" because they are merely defensive struggles, aiming to get back their "rightful" share promised by the state and factory management (like pay wages on time, pay minimum wages, receive medical compensations for on-the-job injury, and get compensations for overtime work, etc.); they are not aimed to challenge the authority of the post-socialist party-state or the existing capitalist system.

State Response: Legal Absorption of Labor Conflict. Since the labor protests are not directed at the post-socialist party-state, and they are only directed at individual enterprise on a case-by-case basis, the Chinese party-state has articulated a response what can be called "*legal absorption of labor conflict*" by setting up new labor legislations more congruence with the interests of labor. The aim is to divert the surging labor conflict to the formal legal channel and to improve the individual rights of the working class without improving its collective rights. In other words, the aim is to improve the wage and other compensation for *individual* workers without at the same time leading to the rise of working class at a *collective* level to form a class-wise organization or to engage in a collective social movement.

The post-socialist party-state has always tried very hard to suppress the formation of the working class and an independent labor movement. The party-state accomplishes this goal through setting up a nation-wide official trade union. Workers are deprived of the rights of organization to form independent trade union in China. Instead, they are only allowed to join the All China Federation of Trade Union (ACFTU), the only trade union officially sanctioned by the party-state. It is always clear

that the ACFTU is an organization of the party-state rather than a working-class organization. The ACFTU is obliged to obey the Chinese Communist Party leadership, as stated in trade union regulations: “Trade Union shall observe and safeguard the Constitution ... uphold the socialist road, the people’s democratic dictatorship, leadership of the Communist Party of China and Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory” (Leung 2008). ACFTU is expected to “penetrate private enterprises and act as a middleman” to resolve any labor conflicts that erupt in the enterprises.

It is under this historical context of post-socialist development which aims to safeguard individual rights while suppressing the collective rights of Chinese workers that many labor laws (like The Trade Union Law in 1992; The Production Safety Law in 2002; The National Labor Law in 1995) were formulated over the past two decades.

However, the previous labor laws set up before 2008 have failed to stop the abuses of business on the Chinese workers. For example, although basic labor contract regulations (on working hours, wages, labor safety, social insurance, labor disputes) were already laid out under the 1995 Labor Law, many local Chinese enterprises and foreign factories still do not have employment contracts with their workers. As Wang et al. (2009, p.486) explain: “The Chinese labor law was a vague and ambiguous set of statutes of which most workers knew little, thus giving employers significant latitude to interpret the law and explain regulations in ways that served their self-interest.”

In this respect, many researchers have labeled the 2008 Labor Contract Law as the most significant piece of Chinese labor legislation passed in recent years (Becker and Elfstrom 2010; Chan 2009; Karindi 2008; Wang et al 2009). The aim of this paper is to examine the distinctive features, the historical process of the making, and the impact of

the Labor Contract Law at the turn of the 21<sup>st</sup> century. In conclusion, this paper will discuss the implications of the Labor Contract Law for meeting the challenge of labor unrest in China.

To recall, the Labor Contract Law was first presented to the Chinese public for comments in December 2005; it was formally approved by China's NPC (National People's Congress) in June 2007. It took effect in January 2008.

### **What Issues are at Stake in the Labor Contract Law?**

The Labor Contract Law is often labeled as the "Labor Contract Law" by some analysts because it stipulates clearly that every Chinese worker needs to be protected by a written contract. Millions of the migrant workers working at the S&M (Small and Medium) firms in the foreign sector don't have contracts, leaving them in legal limbo unable to access existing rights and benefits however limited. The Labor Contract Law is aimed to fill in this loophole. In particular, the Labor Contract Law has the following distinctive features:

- A *valid written labor contract* must be offered by the employer before a worker is asked to start working. If an employer has not given a worker a contract after 30 days, a contract is automatically assumed providing wages and working standards prevalent in the industry in which the worker is employed.
- *Open-ended contracts* for employment are required for those workers who have completed two fixed term contracts or with more than 10 years of service in a firm. That means a permanent contract of legally valid labor relationship is automatically formed from the date a worker begins to provide substantial labor service to the



employer, and workers are protected from dismissal without a valid cause.

- *Severance Payment.* Employers are now obliged to give severance payment which is about one month for every year one has worked in the firm. Previously, employers can offer fixed term contracts that automatically end without the need for termination or severance pay.
- *Contribution to Social Security and set labor standard.* The Labor Contract Law also requires employers to contribute to their employee's social security accounts and set wage standards for workers on probation and overtime.
- *Consequences for violations.* The new law states that if employers fail to sign contracts or pay wages on time, workers not only can ask for compensation from the employer, but they also can ask the court to get their wages back. The law also states that government officials will face administrative penalties or criminal prosecution for abusing their authority that result in serious harm to the interests of workers.
- *Expands the Scope of Bargaining over Company Policies and Work Rules.* The new law requires companies to negotiate company rules and regulations on a broad array of issues from compensation to health and safety issues, to vacation and days off.
- *Expands the Role of (official) Unions.* The new law expands the role of official unions by allowing a broader scope for collective bargaining at the enterprise level.

*China Daily* reported that when the draft labor law was completed in December 2005, the Chinese leaders decided to seek public comments

on the draft, an action which China Daily describes as “rare, if not unprecedented” (Batson and Fong 2007). This action reflects the party-state wants to involve interest groups and the public at large in the formation of the Labor Contract Law; it is a step toward the long march of making the post-socialist party-state more transparent and more responsive to social forces in society.

A public comment period of one month provoked a series of heated debates in Chinese society. China Daily reported the party-state has received a total of 191,849 responses through internet, media, and mail. Most of the comments came from individual workers and Chinese trade groups, but there were comments from transnational corporations and their Chambers of Commerce.

### **Historical Process in the Making of the Labor Contract Law**

In 2006 Tasini (2006) reports that US-based global corporations like Wal-Mart, Microsoft, Nike, AT&T, acting through the following three US business organizations:

- *The American Chamber of Commerce in Shanghai* which represents over 1,300 corporations, including 150 Fortune 500 companies
- *The US-China Business Council*, representing 250 US companies doing business across all sectors in China
- *The European Union Chamber of Commerce in China*, representing more than 860 companies

have put up a concerted effort to actively lobby against the Labor Contract Law in China. They are also threatening that foreign corporations will withdraw from China if the labor law is passed.

What explains the keen interests of the transnational corporations on a Labor Contract Law in China? Business lobbies are worried that strict contract requirement of the Labor Contract Law could raise costs and give the transnationals less flexibility to hire and fire in China. The transnationals are also concerned about the major role that China's officially sanctioned trade union will play in collective bargaining (Batson and Fong 2007).

For transnationals, the Labor Contract Law is a battle they have to fight because efforts to improve the wages and the conditions of Chinese workers have profound implications for workers everywhere. In the 2000s, one in four workers in the global economy is now Chinese. Business lobbies worry that improving the wages and labor standards in China will drive up wages and labor standard not only in China but also in other part of the world. Improving labor conditions in China can help workers in the rest of the world to resist a trend so-called "the race to the bottom" in the globalization era (McMichael 1996).

Global Labor Strategies (2008) report that the transnationals' battle over the Labor Contract Law in China is not one-sided winning; instead the battle has gone through twists and turns. In the beginning in April 2006, the transnationals started the battle by putting an all-round attack. The American Chamber of Commerce in Shanghai (AmCham), for instance, issued a 42-page submission on behalf of its 1,300 corporate members to the Chinese government. AmCham demanded a list of revisions and outright reversals of "rigid" regulations, including provisions making it harder to fire workers, new protections for temporary workers, and restrictions on non-compete agreements. Similar submissions were sent to the Chinese government by EU Chamber of Commerce on other lobby organizations. AmCham warned the Labor Contract Law may negatively impact the PRC's competitiveness and appeal as a destination for foreign investment; the AmCham makes threats to withdraw their investments

from China if the current version of the legislation passed, arguing the Chinese government was turning the clock back twenty years.

According to a lawyer at a firm representing AmCham members in China, comments from the business community appear to have an impact. Whereas the March 2006 draft offered a substantial increase in the protection for employees and greater role for unions than existing law, the [new draft] scaled back protections for employees and sharply curtailed the role of unions (Lauffs, 2007).

Corporate lobbies largely concentrated their efforts on eliminating new contract rights for workers, including mandatory collective bargaining requirements over health and safety, wages, and layoffs; limitations on probation periods; mandated severance payments; and new protections for temporary workers. While some protections for workers remain in the second draft of the legislations, Global Labor Strategies' (2007) analysis shows that many important provisions have been seriously weakened or eliminated wholesale in response to global corporate threats and demands. For example, the new law has watered down the role of trade union in collective bargaining. The revised law now states that employer need *only listen to the advice (but need not seek the approval)* of the union before the company makes any layoff over 20 employees or 10 percent of total employees.

Aside from the transnationals, the Chinese capitalist class also rallied against the legislation of the Labor Contract Law. A leading voice among the Chinese capitalist class was Ms. Zhang Yin who was the chairwoman of Hong Kong-listed Nine Dragon Paper Holdings, the largest containerboard manufacturer in China. Zhang is reported as the richest woman in China in 2006 and became a member of Chinese People's Political Consultative Committee (CPPCC) in 2008. In attacking the draft Labor Contract Law, Zhang said that "if the law over protects the labor, an

enterprise can hardly operate” (World by Data 2007). Zhang further complains that “signing labor contracts without a fixed-term proposed in the new Labor Contract Law is equal to the iron rice-bowl policy during the age of planned economy” (China Review News 2008). Later at the CPPCC meeting in March 2008, Zhang made a motion calling for the scrapping of the core provision of the Labor Contract Law, i.e., eliminating the provision that long-time workers who had provided a substantial service to an employer should receive an open-ended labor contract. Zhang’s CPPCC motion had attracted mass media attention and aroused national heated debates on how to enhance labor protection in order to avoid “potential hazards” to the local economy.

### **Labor & Human Rights Group Worldwide Fight for Rights of Chinese Workers**

However, the above offensive movement that business conducted against the Labor Contract Law was not without resistance from labor and human rights groups. After the global media had publicized the role of foreign corporations in lobbying against reform of Chinese labor law, a series of fissures began to emerge with the corporations in China and the business lobbies that represent them. Obviously, we do not know what has happened behind the closed doors of the corporate chamber, but Global Labor Strategies (2007) has pieced together the information from the mass media to infer what may be going on.

For example, Nike has suddenly distanced itself so far from AmCham’s position that prompted a headline “Nike Repudiates AmCham Position on Chinese Law Reform” in ITGLWF’s new release (ITGLWF 2006).

An even more remarkable shift occurred in the attitude of the E.U. Chamber of Commerce in China. Initially, E.U. Chamber criticized

the draft labor law and issued a veiled threat that European corporations that it represented would abandon China if the Labor Contract Law were passed. On December 8, 2006, the E.U. Chamber suddenly reversed its position in a public statement stating that the Chamber believes that there is a serious need to improve working conditions in China and the Chamber stands firmly behind the Chinese government's efforts to improve working conditions (E.U. chamber of Commerce 2006).

A number of corporations too have tried to put distance between themselves and the original positions of the foreign business lobbies. Ericsson, for example, dissociated itself from the threats of withdrawing from China initially made by the EU Chamber of Commerce:

Ericsson supports the Chinese government's legislative efforts to improve the labor law and regulations for working standards . . . Ericsson is in no way actively lobbying against the proposed legislation by the Chinese government. Nor has Ericsson threatened to pull out of China if the new labor laws were to be passed. . . . Just because we are a member of the European Chamber of Commerce does not necessarily mean we endorse every lobbying initiative (Ericsson 2007).

What explains the reverse position of some transnationals and their business lobbies? *Global Labor Strategies* (2007, p.28) suggests two explanations. First, there is the explanation of a divided corporate world. The emerging division may reflect differences of interest among different foreign sectors. Nike's image is a crucial part of what it sells, and it has been intent to project itself as a leader in human rights ever since its image was damaged by labor rights campaigns. Some companies hope to sell products in China, and regard both a positive image and rising wages in China to be to their benefit. Some foreign corporations, conversely, view

China primarily as a source of cheap labor for exports and oppose anything that might raise their labor costs. The breakup of a common front among foreign corporations offers the promise of reducing one of the main barriers to effective labor legislation for the benefit of Chinese workers.

The other explanation is social struggles. The emerging division in the corporate world is the product of the social struggles waged by labor and human rights groups worldwide on behalf of Chinese workers.

A leading role in this social struggle has been taken by the International Textile, Garment, and Leather Workers Federation (ITGLWF). The ITGLWF (2006) issued a statement entitled "Multinationals Accused of Hypocrisy over China Labour Law Reform," demanding that EU and US corporations halt their lobby campaigns against the modest improvements embodied in the new law. Neil Kearney, General Secretary of the ITGLWF, approached numerous apparel and footwear employers to request that they "distance themselves from the position of their industry associations. Many industrial corporations like Nike have been reversed their previous position as a result of this pressure from unions (Global Labor Strategies 2007, p.33).

Similarly, the European Trade Union Confederation (ETUC) has played a primary role in forcing the E.U. Chamber of Commerce to "clarify" its position after its aggressive lobby campaign against the Labor Contract Law was exposed. After the Chamber's initial actions, John Monks (2006), General Secretary of the ETUC, demanded that "European companies should behave outside Europe as they are supposed to do inside. They should certainly not act to drive standards down." Later, ETUC further condemns the "disgraceful occurrences" of threats by the European Chambers of Commerce in Beijing to reconsider new investment in response to the proposal to improve labor laws. Subsequently, the EU

Chamber revised its position, saying that the Chamber now stands firmly behind the Chinese government's efforts to improve working conditions.

Observing the changing tide of the Chamber, other trade unions and their officials, including the AFL-CIO, European Metal Workers, and the Dutch Federation of Trade Union, soon issued press releases, exposed U.S. and E.U. Chambers' efforts on their blogs, and used a host of other campaign techniques to draw public attention to the issue.

Many human rights groups and other NGOs have also been involved in the fight to protect the worker rights included in the new law, including the German Toy Campaign, PC-Global, India Committee of the Netherlands, Center for the Research on Multinational Corporations, and the CSR Platform, a coalition of 40 unions and NGOs working on Corporate Social Responsibility issues. The Business and Human Rights Resource Centre, chaired by former UN Human Rights Commissioner Mary Robins and affiliated with Amnesty International, asked leading companies about their role in opposing the law, then posted their responses on its website. As Chris Avery, Director, and Gregory Regaingnon, Senior Researcher for the Centre explained:

Respect for labor rights is a core aspect of companies' human rights obligations. Companies' position on labor rights issues, including on labor law reform in countries such as China, are a major part of their human rights impacts, as are the lobbying activities of companies' associations (Global Labor Strategies 2007, pp.35-36).

In China too, local labor NGOs had waged a resistance movement against business' offense against the Labor Contract Law. For example, SACOM (Student and Scholars against Corporate Misbehavior) immediately conducted an investigation on two product sites of Zhang Yin's Nine



Dragon Paper Holdings after Zhang voiced an attack on the labor protection clause in the Labor Contract Law. Later, SACOM used a public report uncovering instances of exploitation in Zhang's factories and issued a call for public action against Zhang's exploitative labor practices (SACOM 2008).

SACOM's report aroused a lot of mass media interests in China. Dozens of influential opinion leaders subsequently wrote on newspaper and on internet, accusing Zhang Yin's of exploitative practices and her questioning her integrity in her position of the new Labor Contract Law non-sense. Hundreds of reporters also surrounded Zhang Yin's production sites to look for more headline stories related to her exploitation of workers. For nearly three whole weeks in 2007, the Chinese public turned their attention to labor rights violations and unfair labor practices in China, showing that the new Labor Contract Law had a lot of support in the Chinese civil society.

Observing the split in transitional business community and getting the support of the global labor and human rights groups both inside and outside China, the party-state held its position firm in promoting the labor law despite receiving a strong opposition from the transnational and Chinese business lobbies. In January 2008, the Labor Contract Law was finally put into effect. The final version has the following three major features:

- The final version said companies only need to "*consult*" the state-backed union if it plans workforce reduction, suggesting a softening from earlier drafts that gave union the right to "*approve or reject*" layoffs before they could take place.
- The final version, however, retained language that limits "probationary contracts" that many employers use to deny

employees full-time status. It also states that severance pay will be required for many workers and tightens the conditions under which an employee can be fired.

- In addition, the Labor Contract Law empowers company-based branches of the state-run unions or employee representative committees to engage in collective bargaining with employees over salaries, bonuses, training, and other work-related matters.

What then are the impacts of Labor Contract Law to businesses, workers, and the party-state? And what is the implication of the Labor Contract Law for the absorbing humane conflict in China?

### **Impacts of the Labor Contract Law: Business**

Taking advantages of the global recession, business group protested by closing down or relocation. Canaves (2009) reported that in the first months of 2008, 15,661 enterprises in Guangdong, the manufacturing-heavy southern province, shut their doors. Workers say companies avoid paying claims by liquidating or by just disappearing without properly settling their business.

There was also a scramble by companies to circumvent the labor contract requirement before the law came into effect. The most publicized case was Huawei Technologies – China's largest telecommunication equipment manufacture and a former state-owned firm. Huawei asked 7,000 employees with more than eight years of service to resign and accept re-employment as "new staff." Huawei's model was quickly copied throughout Guangdong Province. Wang et al (2009, p.493) reported that Dayawan Huili Daily Products Co Ltd forced half its 2,000 employees to terminate their old contracts and sign a new one, and more than 2,000

employees in Henan Zhengzhou Transport Company experienced the same situation.

Divjak (2008) also reported “creative” employers in China had already worked out ways to get around the minimal restrictions contained in the new legislation. Donald Straszheim, vice chairman of Los Angeles-based Roth Capital Partners, said: “We are seeing new labor contracts, two half-time shifts, the use of outside staffing companies, the creation of new companies to do the same work, so-called voluntary resignations before year-end only to rehired on Jan 1, 2009. How to make workers voluntary resign their jobs? Wang et al. (2009, p.494) reported that some employers purposely put their aging workers into physically demanding jobs; others transferred their senior managers to entry-level posts; a 33-year-old found that his firm had moved to Fengxian and changed its name, legal representatives and stockholders, thus all the old contracts had become invalid overnight. He signed a new contract with a new company, but his work years went back to zero.

Furthermore, in order to avoid minimum wage provisions, employers are increasing the dormitory and canteen prices in order to offset wages. Workers also reported the factories have imposed a stricter discipline and an increase in employee’s fines for any number of insubordinations (Wang et al 2009).

### **Impact of the Labor Contract Law: Labor**

Parry Leung (2008) reported that the legislation of the labor law, even just before it took effect in 2008, had triggered a new round of labor protest beyond the established legal channel. In the industrialized zone in Pearl River Delta, a dozen large-scale worker protests and collective action were reported in the Hong Kong and Guangzhou media in Nov-Dec, 2006 (see Table 1). For example, over 700 workers started to strike in a Taiwan invested electronic factory on Dec. 14, 2007 and blocked a nearby road for

3 hours. Workers asked for minimum wage protection and protest against the termination of existing employment contract.

The labor law also provided opportunity to raise workers' right conscious when they discuss the details the law in 2005-2007. When the legislation was open for public discussion and input, over 190,000 comments were received from the civil society in China. Many NGOs like Shenzhen Dagongzhe Migrant Worker Center actively spread the knowledge of the Labor Contract Law and arouse worker's enthusiasm to discuss it. According to Manfred Elfstrom from the International Labour Rights Forum, labor NGOs in mainland China saw a spike in attendance at their legal training classes (almost double previous attendance) right after the Labor Contract Law went into effect on January 2008 (Wang et al. 2009, p.496).

When the Labor Contract Law took effect in January 2008, the Wall Street Journal reported (Canaves 2009) there was a big jump of labor disputes, showing the rising rights conscious of the workers. Just in the city of Guangzhou, the local arbitration office received more than 60,000 cases from January through November, about as many cases it handled over the previous two years combined. Huang Huping, deputy director of the labor bureau in Dongguan, said, "Before we would try to mediate more disputes before going to arbitration, but now that workers have the right to go to arbitration, they choose to do that right away." The Chinese media in 2009 have also reported numerous recent incidents of labor unrest, from taxi strikes to protests by factory workers over unpaid wages.

The labor law also makes the official trade union more active. The ACFTU, the official labor union, is starting 866 legal aid centers in preparing for a national-wide campaign for enforcement of the Labor Contract Law (Global Labor Strategies 2007, p.38). Hon DongFang (2005), a well-known labor activist, also pointed out that during the drafting of

the labor law; official unions have to respond to the workers' demand once their rights conscious is aroused.

All the above factors eventually led to a stronger resistance from the Chinese workers. About a year after the passing of the Labor Contract Law, 13 young migrant workers attempted or committed suicide at two FOXCONN production facilities in South China, an act interpreted as a protest against an inhumane labor regime that is widely practiced in China (Chan and Pun 2010).

Workers' suicides were followed by the strike waves in the summer of 2010. The strikes first started at Honda production lines in South China: 1,900 workers engaged in strike for as long as 19 days from May 17 to June 4. What is significant about the Honda strike is that workers not only raised the demand of forming an independent trade union during the strike, but the strikers were also reported to have a physical confrontation with official union members on May 31<sup>st</sup>, 2010. At around 2 pm on May 31<sup>st</sup>, a Honda worker who had been interviewed by Chris Chan the day before sent him a mobile phone message saying that "members from the district trade union started beating strikers in a chaotic situation!" Honda workers later told Chris Chan that the strikers were beaten up by about 200 people mobilized by the town- and district-level trade union. A few of strikers were hurt and sent to a nearby hospital (Chan and Hui Unpublished).

Another significance of the Honda strike was that it triggered by a series of strike across factories, across industries, and even across regions from Shenzhen and Foshan to Kunshan and Huizhou (Lau and Choi 2010). The strike wave in 2010 is different from the previous strikes in post-socialist China, as the previous strikes (labeled as cellular activism by Lee 2007) tended be to confined to a particular enterprise or workplace and could not spread from one workplace to another, from one industry to another, or from one locality to another.

### **Impact of the Labor Contract Law: The Chinese party-state**

When the strike wave first erupted in Honda in May 2010, the post-socialist party-state allowed the Chinese mass media to cover the strikes in details. The tacit approval of coverage of the strikes seems to reflect a genuine desire of the party-state to see higher wages for the workers so as to increase domestic consumption during the global economic crisis.

The above speculation is confirmed by the fact that soon after the strike wave in early summer 2010, various local governments in Shenzhen, Nanhai, and Beijing quickly announced that they would raise the minimum wage by 10-20 percentages in the following months (Insurgent Notes, 2010). In August 2010, Chinese Premier Wen Jiabao further bluntly warned “Japan that its companies operating in China should raise pay for the workers” during a high-level Japan-China meeting. Wen told the Japanese officials that the background of labor troubles was the relatively low level of pay at some foreign companies (Browne and Shirouzu 2010).

It seems that the strike waves had convinced the party-state that the Labor Contract Law cannot resolve the deep-rooted labor conflict in the economy. Something needs to be done to prevent the 2010 strikes from escalating into a large-scale class war against the status quo. In this respect, the Labor Contract Law is well positioned because it effectively builds on the labor rights that provide the necessary legal basis for a genuine collective bargaining system. In particular, the earlier draft of the Labor Contract Law stipulated that it is the employer’s responsibility to sign a collective labor contract with the employees’ representative within an enterprise.

However, the Labor Contract Law later became ineffective because its final version had eliminated the initial clause that would allowed workers to independent negotiate with management. Thus, it may be necessary to bring back the initial clause to close the loophole of the Labor Contract Law so as to strengthen collective bargaining in order to minimize the workers' tendency to engage in wildcat strikes. After all, as By William (2010) points out, "Although the Chinese authorities have long frowned on labor unrest, they have looked the other way at a recent spate of strikes and demand for higher wages. In fact, in some cases, local authorities have one the *collective bargaining* for their citizens by mandating higher minimum wages."

Consequently, the official All-China Federation of Trade Unions (ACFTU) is working to implement a collective bargaining system nationwide among the trade union-established enterprises in China by 2012. A special committee consisting of about 60,000 members was put together by ACFTU to negotiate the wage issues between enterprises and employees across China. ACFTU also planned to invest 100 million Yuan in the first batch of trail cities for collective bargaining. In 2010, 23 cities and provinces have enacted rules and regulations on collective bargaining; and 13 cities and provinces in China are developing collective bargaining. The goal is to have collective contracts to be signed in more than 80 percent of the enterprises in China by the end of 2013 (Chen 2010).

In mid-2010, it is reported that Guangdong province is currently drafting regulations that would establish a legally binding collective wage bargaining system if 20 percent or more of workers sought it. In addition, the Collective Negotiation Act is currently under public hearing in Shenzhen Special Economic Zone.

### **Implications for Legal Absorption Labor Unrest in China**

This paper studies the origins, the process of drafting, and the impact of the Labor Contract Law at the latter half of the first decade of the 21<sup>st</sup> century. The new Labor Contract Law is important because it may indicate the turning point of China's labor regime.

Before the turn of the 21<sup>st</sup> century, China's world-workshop model of development was built upon its linkages to the tail end of the global production, i.e., it served as the subcontractors of the transnational corporations and engaged in low value-added, labor intensive industries whose profitability is dependent upon the "super-exploitation" of docile migrant workers in a sweat-shop factory. In order to attract the investment of foreign corporations and the promotion of export-led industrialization, Chinese party-state had put a blind eye towards all sorts of abuses of labor rights inside the enterprises. However, increasing labor unrest over the past decade raised the challenge that this sweat-shop mode of production is no longer sustainable as the first generation of migrant labor matured and getting organized. Therefore, in early 2000s, the post-socialist party-state has decided to gradually phase out the low value-added, labor intensive, polluting industries and moved China's economy up the value chain. Since China's development is no longer dependent on the sweat shop model, the Labor Contract Law is aimed to move toward a more humane industrial relationship like that in Western Europe.

In addition, the global financial crisis in 2008 and the economic decline of the Western advanced states has led to a new push towards a restructuring of the China's model from an export-led industrialization to a more balanced development based on both exports and domestic market (So 2011). In order to enlarge the domestic market, it is necessary to increase the wages and the living standard of the Chinese workers so they can buy more Chinese products. This re-orientation of the Chinese



economy serves to lay the foundation for to phase out the previous sweat shop model in the factory.

In conclusion, we want to point out that the Labor Contract Law has significant implication for meeting the challenge of labor unrest in China. First, using the “rule of law” and developing a European labor code, instead of intensifying the repressive apparatus (like police and prison) to deal with the labor unrest, is a very good sign that the post-socialist party-state is committed to transform itself into a modern state to commensurate with the rise of China in the inter-state system.

Second, the way that the state promotes the Labor Contract Law is also very promising. Instead of imposing the Labor Contract Law from above just like the repressive party-state has done many times before, the labor legislation was first open for public discussion and for public input before the party-state finalized the final draft. This fact shows the party-state is more transparent and more open to the inputs of civil society than before.

Third, Chinese workers responded to the Labor Contract Law not only by giving their opinions (190,000 comments) to the party-state, but they also rise up in protests and in engaging in labor disputes to defend their rights. NGOs and trade unions are also more active than before in spreading the rights consciousness to the working class. Together with other indicators, such as the “right resistance” movement of the peasantry in the countryside and the “rights resistance” protests of the new middle class in the urban areas, the rising number of labor disputes during and after the labor law may indicate right conscious is rising in post-socialist China.

Finally, the Labor Contract Law in 2008 has led to a new collective bargaining law in the near future. It seems that the strike wave in 2010

has convinced the party-state that it cannot delay tackling the issue of collective bargaining anymore. Observing the so-called Jasmine Revolution in the Middle East and the violent riots in European cities in 2011, the party-state must feel the urgency to cut down the intensity of labor conflict in the workplace.

In short, the battle of Labor Contract Law at the turn of the 21<sup>st</sup> century is a very promising step in a long march for the meeting the challenge of labor unrest in China when the Chinese citizens are becoming more conscious in asserting their rights in the workplace, and when strikes show the sign of spreading across-region and across-industry, and when the Chinese post-socialist party-state is worrying about the threat of Jasmine Revolution in civil society.

**Table 1.** Reported Labor Conflicts in 2007 Triggered by the forthcoming Labor Contract Law Legislation in Jan 2008

| Date   | Location  | Company                              | Details  |
|--------|-----------|--------------------------------------|--|
| Dec 22 | Shenzhen  | A massage company                    | Over 200 blind massagers took strike for 4 days against employers' termination of existing employment contract.  |
| Dec 20 | Shenzhen  | An IT company                        | Over 1000 workers took strike and blocked the Shennan Avenue against employers' termination of existing employment contract and reduction of benefits.                         |
| Dec 14 | Guangzhou | A Taiwan invested electronic factory | Over 700 workers took strike and blocked a nearby road for 3 hours. Workers asked for minimum wage protection and protest against termination of existing employment contract. |
| Dec 13 | Dongguan  | A HK invested paper factory          | Over 600 workers took strike and blocked a nearby road against employers' termination of existing employment contract.   |
| Dec 10 | Shenzhen  | A HK                                 | Over 2000 workers took strike for 3 days   |

|        |          |   |   |
|--------|----------|---|---|
|        |          | invested<br>factory                           | against employers' termination of existing<br>employment contact and reduction of<br>benefits in the new contract.  |
| Dec 5  | Hainan   | A foreign<br>invested<br>brassiere<br>factory | Over 1000 workers took strike against<br>employer arbitrary dismissal of 3 senior<br>workers.   |
| Nov 27 | Dongguan | A HK<br>invested<br>electronic<br>factory     | Over 8000 workers took strike and blocked<br>a nearby road for 6 hours. Workers asked<br>for higher wages and protest against the<br>increase of food charge. |
| Nov 23 | Dongguan | An<br>electronic<br>factory                   | Over 800 workers took strike against<br>dismissal due to factory relocation.  |
| Nov 20 | Shenzhen | Nil   | A labor activist working of a labor NGO was<br>assaulted for promoting Labor Contract<br>Law.   |

Source: Leung (2008, Table 1)

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