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Industrial Democracy in China

With additional studies on Germany, South-Korea and Vietnam

Rudolf Traub-Merz and Kinglun Ngok (eds.)

INDUSTRIAL
DEMOCRACY
IN CHINA

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Foreword

Industrial relations in China are undergoing profound changes. These changes were set in motion by reforms which ended centralised control of employment and wage fixing, reintroduced labour markets and made negotiations on labour contracts and wages extremely one-sided. Trade unions, which had no responsibility for collective bargaining under the socialist command economy, are now being challenged under the new dispensation to act as representatives of the workers under market conditions, while continuing to be under the tutelage of the party.

To obtain a better understanding of the direction these reforms are taking, Sun Yat-sen University and the FES co-hosted an international workshop on *Industrial Democracy—Building Harmonious Labour Relations* in April 2010 in Guangzhou. The workshop focussed on ways and means of interest representation of workers—through trade unions, workers' congresses or other means—and debated development trends in China within an international context by comparing them with interest representation in Germany, South-Korea and Vietnam.

Shortly after the workshop, a wave of wage strikes occurred in China. These events showed the limitations of an approach which focuses only on formalised structures of workers' interest representation. For a full picture of the development dynamics of industrial relations, informal workers' activism, such as irregular industrial action, must also be examined. The editors therefore decided to not restrict this reader to presentations held at the workshop but in addition invited other writers to capture more aspects of industrial relations, including recent industrial actions in China.

The Institute for Social Policy, Sun Yat-sen University and the Friedrich-Ebert-Stiftung would like to thank the authors involved in this

publication for their valuable contributions.

No bilingual book is possible without translators. Mrs. Wu Xiaozhen translated the Chinese contributions into English, while Professor Zheng Chunrong translated the English-language articles into Chinese. James Patterson copyedited all the English texts for publication. We owe them our thanks for their professional work.

We hope that this publication will be of interest.

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Part III **Corporate Social Responsibility and Workers Interests**

<i>Reingart Zimmer</i>	
Will Corporate Social Responsibility Help to Improve Working Conditions?	251
<i>Liu Kaiming</i>	
The Current Situation and Trend of Corporate Social Responsibility in China	265
<i>Pun Ngai and Lu Huilin</i>	
The Foxconn Production Model and the New Era of Student Workers	280
<i>Maren Knolle</i>	
Corporate Social Responsibility in Supply Chains: Improving Working Conditions through Dialogue and Cooperation	297
<i>Jenny Chan</i>	
Labour Rights Training at HP Supplier Factories in China	314
About the authors	328

Introduction

Rudolf Traub-Merz

This book gathers together a number of contributions^① on the topic of industrial democracy.^②

The main focus of analysis is the representation of workers' interests, concentrating on industrial democracy in China. Since systems tend not to reveal their strengths and weaknesses of their own accord but also require international comparison, important dimensions of the representation of workers' interests in three other countries are also addressed. Vietnam is comparable to China in its transformation from a formerly socialist country into a market economic structure, while Germany and South Korea are two market economies with different approaches to labour relations.

The book addresses three fundamental questions: (i) How are trade unions representing workers' interests in enterprises? (ii) What other forms of institutionally supported enterprise-level interest representation are there and how do they work? (iii) In companies without either trade unions or other institutional provisions for workers' interest representation is corporate social responsibility (CSR) as a voluntary management strategy capable of taking workers' interests into account?

① Predominantly, they are lectures given at a conference organised by Sun-yat Sen University and the Friedrich-Ebert-Stiftung in April 2010 in Guanzhou, entitled *Industrial Democracy: Building Harmonious Labour Relations*. These are complemented by a number of specially commissioned contributions.

② The concept of industrial democracy goes back to the work of Sidney and Beatrice Webb (*Industrial Democracy* 1897).

The point of departure of any critical approach to the analysis of labour relations in capitalist market economies must be the systemic asymmetry of power between employers and employees. Wage workers who have nothing to bargain with other than their labour power can stand up to the power of the employers' side only by means of collective action. In these terms, trade unions are organisations for the formation of a counterforce whose aim is to limit the competition of workers for jobs.

The principal task of trade unions is clear-cut in these terms: they attempt to dissolve or limit competition between workers in order to prevent a 'race to the bottom' in the individual pursuit of employment. Trade unions can be regarded as successful, when they manage to establish a market cartel (for their members) to negotiate for better working/employment conditions and higher wages.

The ways in which trade unions encounter employers in collective negotiations differ considerably from country to country. Germany is the main representative of so-called branch agreements (see Däubler in this volume). Industry-wide trade unions with a representative monopoly for individual branches seek a uniform wage level with the widest possible coverage. The trade union has a clear motto; companies should not conduct (downward) wage competition but instead seek to improve their market edge with better management and technology. However, even in Germany branch coverage has long been incomplete and a growing number of companies do not (or no longer) belong to employers' organisations and thus are not bound by the branch collective agreement. If the trade unions are unable to get these companies (whether they have relinquished employer association membership or were never members in the first place) to fall in line with the branch wage level, wage competition can spread and the wage level will fall.

Enterprise trade unions are a less effective way of preventing wage competition. They are usually able to establish a uniform wage norm within a company, but they frequently stoke up wage competition between companies and may conclude an agreement with the management about wage cuts (concession bargaining) which gives their own company an advantage over its competition.

In South Korea, trade unions have been trying for a number of years to replace enterprise agreements with branch agreements, so far with only

partial success. Now the enterprise-oriented trade unions are facing a new form of competition. The principle “one enterprise—one union” is a thing of the past. Although the principle of only one collective agreement per company has been retained rival trade unions can now recruit members in the same company and have a say in wage negotiations in accordance with the size of their membership (see Lee). Whether trade union pluralism strengthens or weakens the workers’ negotiating position remains to be seen.

In socialist economies the antagonism between employers and employees is partly annulled or displaced. When employees are entitled to lifelong employment and employment is linked to basic social provision for children, illness and old age—as in urban China between around 1955 and 1995—labour markets are dissolved. However, distribution conflicts continue to exist in centrally managed economies concerning wage levels and can lead to collective action. Enterprise codetermination and flexible implementation of state wage guidelines are mechanisms for resolving such conflicts consensually.

China and Vietnam left behind a common past of centralised labour allocation when they introduced market economic reforms in the 1990s. Wage formation and also the tasks of the trade unions were also transformed. One of the key debates in the present volume concerns the ways and extent to which the trade unions have been able to resume their function, obsolete under socialism, as bargainers for higher wages and better working conditions and to be recognised by both employers and employees as a legitimate collective bargaining agent (see Chan; Chi; Hui and Chan; Kong; Traub-Merz). It should be noted that this functional reorientation of trade unions towards collective bargaining in both China and Vietnam is taking place without a substantive restructuring of the trade unions’ organisational apparatus and therefore without a redefinition of their linkage with the party-state. Both the ACFTU and the VGCL continue to be mass organisations of the governing Communist Party and act under their instructions.

Can unions organised on the principles of Lenin’s “democratic centralism” do both at the same time: serve the interests of the party-state and bargain for higher wages and better working conditions? The views of the contributors to this volume are divided. There is overwhelming acceptance that most Chinese—and Vietnamese—trade

unions at enterprise level have been captured by the management: they are mere paper unions and have no discernible record of improving working conditions or bargaining for higher wages. Opinions differ, however, concerning the way forward. Some see the closeness of unions to the party-state as beneficial as it provides a platform on which to build a grand alliance of societal interests to improve working conditions (see Jing on the well-known “Yiwu Model” in this volume), while others argue for reconnecting unions with workers through legitimate grassroots elections or by providing space for the organisational autonomy of unions at enterprise level as a precondition of real collective bargaining.

Trade unions are not only partners in collective bargaining, seeking better working and employment conditions in direct negotiations with the employers. They also try to impact on policies and come up against the state and thus also parliament as lobbyists and pressure groups seeking better laws on health and safety and employment protection. They also participate in industry-wide or national tripartite consultations in which employers, trade unions and the state (labour ministry) seek wide agreements on the formation of working and employment conditions. ACFTU notched up an important victory in the amendment of the Labour Code in 2008 (see Ngok). The fulfilment of these tasks depends equally on the trade unions’ organisational and political proximity to the state and the ruling party (see Qiao; Ngok).

In many countries, labour relations are characterised by dualism. Collective bargaining on working/employment conditions and wages is undertaken by trade unions, alongside which employees enjoy enterprise consultation rights or codetermination through different channels (see Bae; Chi; Däubler; Feng). This workplace rights are mainly enshrined in law and binding on all enterprises, or at least for enterprises of a certain size. While negotiating rights for trade unions are oriented primarily towards the distribution of enterprise profits and thus by their very nature exist in a conflictual framework, consultation and codetermination rights are directed towards the running of the company. The idea is to protect workers from unjustified management decision-making, such as lay-offs, encouraging a positive identification with the workplace (and the employer) and enabling workers to engage a wider range of their capabilities in the production process, both for their own and the company’s good. The articulation of rights in the workplace can

be very different, ranging from little more than the right to obtain information from the company management—for example, on upcoming investments—through consultation rights which compel the management to seek the opinion of the workforce before making decisions, to—in some cases—a kind of veto, in the sense that management decisions can be implemented only with the assent of the workers' side. The organisational implementation of such participatory rights, in turn, takes many forms. In some countries they are exercised by trade unions; in many others, they are assigned to a works council, usually elected by the workforce.

Institutional dualism is most pronounced in Germany (see Däubler on Works Councils), where trade unions have no formal role in enterprises. Although they conduct wage negotiations (works councils are not permitted to do this), they have no voice in enterprise codetermination,^① which is reserved for works councils elected by the whole workforce. Trade union influence must be exercised informally through trade union members standing for election in the company. In fact, most works council members are also trade union members, but (informal) trade union influence remains limited since works councils simply exercise the workforce's mandate.

In China, workers' congresses^② and trade unions are institutionally interwoven (see Feng). Enterprise unions serve as secretariats for the workers' congresses, dominate daily business and have a dominant voice in setting the agenda when workers' congresses meet (mostly annually). Where the union is dormant, the workers' congress is usually dormant as well and where the union is active, the workers' congress follows the union's policy. The opening up of the Chinese economy for privately-owned businesses has weakened workers' institutional representation. While workers' congresses continue to be mandatory institutions for state-owned companies, the private sector is free to opt for other forms of consultation.

Vietnam has experienced something similar. Official enterprise unions have largely failed to perform as channels to voice workers' concerns.

① With the exception of a special provision for the supervisory boards of large companies, where unions are entitled to seats (see Däubler).

② In larger companies, workers' congresses have an elected committee.

With legal mechanisms moribund and labour conflicts on the rise, employers are forced to initiate new forms of labour-management cooperation. The changes are taking place according to a typical pattern: conflict, consultations and negotiations, then institutionalisation of dialogue. There is now a need for a new legal framework of workplace consultation to entitle workers, with or without union representation, to information and consultation on workplace issues with the employers (see Chi on workplace consultation).

Delineating functional jurisdictions between unions and the various forms of bipartite consultation mechanism at the workplace is sometimes hard. Wage bargaining in non-organised enterprises is a case in point. In South Korea, employers without legal obligations open up space for wage bargaining in so-called labour-management councils (see Bae). Workers in these companies certainly welcome this development but unions see this as an employers' strategy to keep them out. Similar problems of overlapping functions exist in other countries. China allows elected workers' committees to bargain with management where unions do not exist. However, they are requested to accept a representative from higher trade union levels to avoid wage bargaining development outside the reach of unions. In Vietnam, the bargaining model in union-free enterprises is a key challenge of the new labour law reform (see Chi). Even in Germany, with its strict legal regulations, works councils may step out from their territory and adopt—some would say, beyond the law—a bargaining role. This may be the case when trade unions accept opening clauses in branch agreements which are then used by companies in dire economic straits to bargain with works councils for wage cuts (concession bargaining) at enterprise level.

Despite their importance for improving working/employment conditions and ensuring a decent wage level, in many countries trade unions and works councils reach barely more than half of employees, in many instances significantly less.^① Under such circumstances the state,

① In Germany, only just under half of employees are represented by works councils and just over half are protected by collective agreements. Large companies almost always have collective agreements and works councils, while most small and medium-sized companies have neither. In South Korea, the coverage of labour-management councils is substantial (above 70 per cent of enterprises), while the trade union presence is fairly low (only 10 per cent of employees are union members).

with its regulatory instruments, becomes the most important actor protecting workers' interests. This takes place through legal regulations on working time, provisions on occupational health and safety, social insurance obligations for employers and minimum wages, which are intended to prevent the wage level from collapsing. The main difficulty lies in the establishment of appropriate standards and the supervision of compliance.

The practice of many multinational companies in southern host countries—in which weak trade unions and a low level of state regulation of labour protection are almost powerless to counteract it—of setting up production facilities operating on the basis of inhuman exploitation came in for public criticism in the home countries in the 1990s. In response, the concept of corporate social responsibility (CSR) was developed. The idea is that company managements voluntarily subject themselves to a code of conduct and promise to comply with minimum standards with regard to working conditions. The CSR debate has led to numerous controversies (see Zimmer): should obligations remain voluntary or take on a contractual character and thus be legally enforceable? Should the minimum standards that are to be complied with only reflect the legally established minimum level or be above it and be oriented towards international labour law as embodied in ILO standards? Should legal minimum wages serve as a measure even if they do not enable a decent existence, or should a minimum consumption level be taken as a basis? Do the voluntary obligations apply only to the parent company or to all company units, including even supplier firms? Is “outsourcing” forbidden when it leads to a reduction in working conditions? Must the supervision of compliance be carried out by independent institutions or trade unions? Should the workers be granted only material minimum standards or also have participation rights with regard to company issues?

CSR is de rigueur for many large international companies today and they brandish their CSR certification for their products and services for the benefit of Western consumers (see Liu). In fact, there are numerous instances that show that raising minimum standards and participation rights for employees can lead to a win-win outcome. Productivity gains are made and the costs involved in social investment do not entail losses in competitiveness; higher wages and higher profits go hand in hand (see Knolle). Supervisory auditing to ensure compliance with norms should

therefore be complemented by projects targeting labour productivity (see Jenny Chan). However, a great deal of CSR is mere rhetoric. Even global firms such as Foxconn, probably the largest private employer in China, which professes CSR and with international clients such as Apple is subject to particular public scrutiny, continues to ignore legal standards or exploits loopholes in the law to seek higher profits by cutting wages (see Pun and Lu). CSR may offer advantages in an unregulated labour environment. In contrast to legally enshrined labour standards compliance with which is monitored and trade unions which collectively represent workers' interests voluntary professions by enterprise managements should be taken with a pinch of salt and are of only secondary importance.

In South China, in April 2010 the walkout at Honda triggered a strike wave which engulfed several hundred firms. These were wage strikes which, in classical terms represent "disputes of interest" and gave rise to controversy within the community of scholars as to whether a turning point had been reached in China's industrial relations. These events (see Hui and Chan; Traub-Merz) are evidence that in the analysis of industrial relations it is not enough to present formalised structures of interest representation; informal workers' activities must also be included.

The wage strikes in China largely followed the pattern of walkouts in Vietnam. It was not trade unions which called for strike action in the context of collective bargaining, but spontaneous workforce action—and the negotiations for higher wages were predominantly conducted between strike committees and the relevant enterprise managements. Trade unions either kept away or tried to bring about a settlement as mediator between the two sides. Since then an important reform debate has been raging in China about the future role of the trade unions (see Kong; Hui and Chan; Anita Chan; Traub-Merz). Are they to be only go-betweens for capital and labour, mediating in emerging conflicts, or are they to throw in their lot with the workers and conduct wage negotiations on their behalf?

Labour relations cannot be extracted from the political economy and treated as isolable. They affect productivity and wage costs and influence income distribution, consumption and also foreign trade relations. China's new debate on a transformed growth model is also a debate on a new wage policy—and thus *nolens volens* a debate on reform of industrial relations and the redefinition of the role of the trade unions.

Part I

Representing Workers Interests through Trade Unions

All China Federation of Trade Unions: Structure, Functions and the Challenge of Collective Bargaining^①

Rudolf Traub-Merz

In China, the All China Federation of Trade Unions (ACFTU) is the sole legal trade union organisation. It was established in 1925 and over the years and decades has gone through many changes. After 1949 it was restructured according to the needs of a socialist command economy and became the “transmission belt” through which the Party controlled workers. The year 1978 was again a turning point, when China started its liberalisation and, fed by surplus labour from a peasant economy, gradually re-established labour markets. Since then, the system of industrial relations at all levels has been undergoing profound changes, in parallel with which the traditional functions of ACFTU are being challenged.

The process of adjusting industrial relations to the return of privately-owned companies is taking place in a situation in which the Communist Party of China (CPC) and ACFTU are maintaining their traditional bonds and ACFTU continues to function as an extension of the party-state. There are many questions about the future of this relationship. In view of intensifying labour protests and strikes for higher wages, ACFTU is facing a dilemma: should it side with the workers or act as a mediating force whenever labour conflicts arise?

^① This chapter was published under the same title in: ILO-GLU Working Paper No. 13, September 2011.

The relations between the CPC and ACFTU and the functional embedding of Chinese union organisations in industrial relations have a great bearing on the Chinese political economy. This chapter takes ACFTU as the focus of its analysis. After a brief look at its history before 1949 (Section 1) it looks at the transformation of industrial relations under the socialist command economy and analyses the organisational profile of unions and the ways they interact with the party-state (Section 2). Section 3 marks the adaptation of industrial relations to the labour markets which evolved after 1978 around migrant labour and through public sector reform, while Section 4 deals with ACFTU's strategies for organising the private sector. Mediation and lobbying are key functions of ACFTU (Section 5), but growing labour conflicts and, in particular, wage strikes are presenting unions in China with new challenges (Section 6). Finally, Section 7 assesses the extent to which ongoing interventions can serve as successful strategies for building collective bargaining around the official union organisations.

1. ACFTU before 1949

The origin of trade unions in China dates back to the early years of the 20th century when Sun Yat-sen led a struggle against the Qing dynasty for economic modernisation and political reforms.^① Following a century of imperialist domination, the emerging labour movement readily responded to nationalism and many unions became organisationally linked to Sun Yat-sen's Kuomintang (KMT) as the leading force of the nationalist movement.^② While it focused its economic struggle on better wages and working conditions it began to adopt rival affiliations to various political parties, although Kuomintang was the dominant force until the early 1920s. This changed radically with the establishment of the

① One of China's first modern labor unions was the Guangdong Mechanics' Association founded in 1906.

② The 1911 revolution ended the Qing dynasty. It was partly achieved by workers' strikes in Shanghai. However, the success was short-lived and in 1912 Sun Yat-sen was forced to hand over power. Successive warlord regimes tried to build a new imperial order, condemning China to warfare and fragmented military rule, during which the nascent trade union movement was faced with restrictive labor conditions.