

## CHAPTER 12

# Employment relations in China

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The People's Republic of China (hereafter China) was founded on 1 October 1949 and has since been ruled by the Chinese Communist Party (CCP). Following China's opening up from a state-planned economy in the late 1970s, the contemporary Chinese economy has been described by foreign commentators and scholars as 'Chinese capitalism' (e.g. Guthrie 1999; Gabriel 2006; Redding & Witt 2007; Huang 2008; Kennedy 2011) or 'authoritarian capitalism' (Witt & Redding 2014). The Chinese government prefers to call it the 'marketisation with Chinese socialist characteristics', to signal its departure from the state-planned regime, but without (at least publicly) abandoning the socialist ideology.

Commentators outside China also use the term 'state capitalism' to emphasise continuing state intervention as a defining feature of the country's liberalising economy. This state capitalism is characteristic of a developmental state, and manifests itself in various forms, including the dominance and existence of a significant number of state-owned enterprises (SOEs) that are managed in a capitalist manner, particularly in key industrial sectors or as lead enterprises of the industry; strong state control in the allocation of resources to privately owned businesses; and state intervention to protect the growth of large enterprises, often state invested or state connected, with national strategic interests. The Chinese economy is a 'mixed economy' characterised by 'a blend of market-driven, government-controlled and *guanxi* (relationship)-based culture', with strong management implications (Si et al. 2008: 932). Within this system, foreign capitalists, private entrepreneurs and local authorities interact to (re-)construct market-friendly institutions. Political power and social relations are mobilised and consolidated to achieve their respective goals (Cooke 2013).

With a population of over 1.36 billion, China is the world's most populous country, and in terms of one indicator, it became the world's most economy in the world in 2014.<sup>1</sup> The gross domestic product (GDP) per capita of China is more than US\$6500 (*The Economist* 2014). The labour market participation rate is high, in part because the social security system is basic, with only limited coverage. More than 56 per cent of the population is in employment (more than 764 million people) and nearly half of those employed are in urban areas (NBSC 2012).

Compared with their counterparts in other countries, Chinese women have a relatively high employment participation rate, making up more than 37 per cent of the total workforce in full-time employment in urban areas (NBSC 2012). Part-time employment is unusual in China, partly as a result of the low-pay, full-employment policy adopted by the government during the state-planned economy period. It is also driven by the Marxist emancipation thesis, in which women were encouraged by the state to participate in employment to gain financial independence and enhance their political and social status. In addition, women's high employment participation rate is underpinned by the work ethic in the Chinese collectivist culture, which treats work as an obligation and advocates that each should contribute to society to be entitled to benefit from it.

The development of the labour market of socialist China can be divided into three periods. The first was a highly regulated—or, more precisely, controlled—labour market through administrative policy during the state-planned economy. Labour mobility was highly restricted, monitored by the *hukou* system—a household registration system where individuals are registered with the local authority where they were born and where they live. The population was divided by two residential statuses: urban and rural. Rural residents were not allowed to enter urban areas for employment. This restriction was gradually removed during the period of deregulation that followed, between the 1980s and early 2000s, when millions of farmers migrated to urban areas for employment and millions of SOE employees were laid off and forced to seek re-employment in the labour market for the first time.

The enactment of three major employment-related laws in 2008 (see below) marked the beginning of the third period, in which the government has sought to re-regulate the labour market, through legislative intervention, to provide greater employment protection to workers—particularly those outside the state sector. Dealing with labour market transformation has been one of the most challenging tasks facing the Chinese government (Fleisher & Yang 2003). And

employment relations at the workplace level have been developed within this broader context of labour market transformation.

China's political economy, characterised by the enduring strong state intervention, a weak collective bargaining regime and the large size of its economy and workforce, makes China an interesting country to study. It brings a rather different perspective from those of the developed economies in this book. This chapter includes three main sections, in addition to this introduction and a conclusion. The first section outlines the changing role of the parties, including the state, the unions and the workers. The second examines the processes of employment relations by focusing on the development of collective consultation and collective contract, as well as labour disputes resolution. The third section discusses a few current issues that are confronting the state, employers and workers in China, which may have a broader impact on its economy.

### THE MAJOR PARTIES

#### The role of the state

As China is a socialist country with the legacy of a state-planned economy embedded in its political economy, the role of its government—or more broadly the state—is dominant as an employer, a legislator and an economic manager. This is despite state sector employment making up a shrinking proportion of the total employment since the early 1980s. For example, in 1978, the year when China adopted its 'open door' policy, more than 78 per cent of the urban workforce was employed in the state sector. This had been reduced to around 19 per cent by 2012 (see Table 12.1). The sharp decline of employment in the state sector, particularly from the late 1990s, was achieved mainly through downsizing, plant closures and privatisation of SOEs as part of the state-driven reform. Started in the early 1990s with the purpose of revitalising the out-moded and largely loss-making SOEs, the momentum of SOE reform reached its peak in the late 1990s after Premier Zhu Rongji announced his SOE reform plan in 1997. Poor-performing SOEs were given three years to 'sort themselves out'. In the ensuing five-year period between 1998 and 2002, more than 27 million workers were laid off (NBSC 2003).

In the meantime, the private sector was encouraged to grow (Garnaut & Huang 2001; Saich 2001) through the removal of policy restrictions and operational barriers, and the provision of financial incentives. The sector provides employment opportunities for those

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**Table 12.1 Employment statistics by ownership in urban and rural areas (000,000s)<sup>(a)</sup>**

Ownership type	1978	1980	1985	1990	1995	1998	2000	2005	2012
Total	402	424	499	648	681	706	721	758	767
Urban employed persons	95	105	128	166	191	207	232	273	371
State-owned units	75	80	90	104	113	91	81	65	68
Collectively owned units	21	24	33	36	32	20	15	8	6
Cooperative units	-	-	-	-	-	1	2	2	2
Joint ownership units	-	-	0.38	1	0.53	0.48	0.42	0.45	0.39
Limited liability corporations	-	-	-	-	-	5	7	18	38
Shareholding corporations	-	-	-	-	3	4	5	7	12
Private enterprises	-	-	-	0.57	5	10	13	35	76
Units with funds from Hong Kong, Macao and Taiwan	-	-	-	0.04	3	3	3	6	10
Foreign-funded units	-	-	0.06	0.62	2	3	3	7	13
Self-employed persons	0.15	0.81	5	6	16	23	21	28	56
Rural employed persons	306	318	371	473	489	493	489	485	396
Township and village enterprises	28	30	70	93	129	125	128	143	-
Private enterprises	-	-	-	1	5	7	11	24	37
Self-employed persons	-	-	-	15	31	39	29	21	29

Notes:

Numbers rounded.

(a) Since 1990, data on economically active population, the total employed persons and the sub-total of employed persons in urban and rural areas have been adjusted in accordance with the data obtained from the Fifth National Population Census. As a result, the sum of the data by region, by ownership or by sector is not equal to the total. [Original note from NBSC 2003: 123.]

Sources: Adapted from NBSC (2003: 126-7; 2010: 117; 2013).

displaced by their state employer, new workers from urban areas and rural migrant workers. Once marginal and marginalised in the state-planned economy due to the ideological clash between capitalism and socialism, the private sector then took a major stake in the economy. This is despite the majority of the firms in this sector being relatively small, low technology based and competing mainly on price. Similarly, foreign invested enterprises (FIEs), and those funded from Hong Kong, Taiwan and Macao, have been given more autonomy to operate in China since the mid-1990s, including permission to set up wholly foreign-owned enterprises. FIEs are no longer required to set up joint ventures as their entry mode. They are also given more autonomy in determining their employment policy.

A series of labour laws and regulations have been promulgated by the government since the 1980s, symbolised by the launch of the Labour Law of China (enacted in 1995). In 2007, the government increased its legislative activities and passed three major employment-related laws to take effect from 2008: the much-debated Labour Contract Law (amended in 2013), the Employment Promotion Law and the Labour Disputes Mediation and Arbitration Law. In 2011, the Social Security Law was enacted. The promulgation of these laws signals the government's renewed and stronger determination to increase the level of protection of its workforce. Employees are afforded greater power to seek justice through legal channels when these laws are violated by employers. In addition, the government has issued regulations, including the Special Regulation on Minimum Wage (2004), the Regulations on Employment Services and Management (2008) and the Interim Provisions on Labour Dispatch (2014), that are aimed to support the amendments of the Labour Contract Law (2013) and tighten the use of agency employment.

These labour laws and regulations provide a legal framework within which employment relationships are governed and labour markets regulated, at least in principle. The primary objective of their implementation is to achieve a more efficient and equitable labour market. In parallel, a system for labour dispute resolution was developed. It has been argued that, with 'the major exception of freedom of association', the labour standards established by the series of labour laws and regulations of China 'are not markedly inferior to those of comparable countries and indeed many developed nations' (Cooney 2007: 674). However, the lack of effective enforcement remains problematic (Taylor et al. 2003; Cooke 2012). While implementation failures are a characteristic of all regulatory systems (Cooney 2007), the Chinese system is frustrated by the multiplicity of employment-related laws,

directive regulations and administrative policies issued at central, provincial and municipal government levels, the ambiguous status of some of these regulative instruments and the confusing channels through which employees can seek to secure compliance with laws (Potter 1999; Cooney 2007).

In addition, it has been argued that employment-related regulations are targeted primarily at those in the formal employment sector with formal employment relationships (Hu 2004). There is considerable ambiguity about whether certain laws and regulations should apply to the informal sector and to workers in informal employment (discussed further below). Employers also tend to take advantage of these regulatory loopholes and argue for exemptions (Cooke 2011). The amendment of the Labour Contract Law in 2013 and the adoption of the Interim Provisions on Labour Dispatch (2014) are both attempts by the government to stem creative non-compliance. While the labour laws carry more legal power, they provide only limited regulation of the labour market. Although the labour market-related regulations have some effect, these regulations, together with a series of other employment-related regulations, are essentially administrative policy regulations that have limited authority and enforceability (Hu 2004).

A feature in the Chinese laws and regulations is that the central government provides a broad framework. It is up to the local governments to devise their localised regulations based on the national framework to suit local characteristics. This flexibility is needed in a vast country like China, with significant economic disparities across the regions. But the decentralisation of interpretation and enforcement also opens up opportunities for implementation slippage. The power and determination of local government officials and labour authorities may be undermined by the priority of economic development; some of them may even be co-opted by employers.

### **Employers**

Unlike employers' associations in developed economies, which are developed and provide a range of services to their member employers and form pressure groups to influence government policy and legislation, employers' associations in China are much less well established. The China Enterprise Confederation (CEC)/China Enterprise Directors Association (CEDA) and the All-China Federation of Industry and Commerce (ACFIC) are the two main official employer/business associations that the state recognises at the national level as the representatives of employers' interests. Like other major non-government

organisations (NGOs) recognised by the Chinese government, both operate under the leadership of the CCP.

The CEC was established in 1979 and the CEDA in 1983. The two NGOs merged into one institution in 1988. The subordination to state control means that the CEC/CEDA has limited autonomy beyond state-sanctioned activities (see Unger 2008 on the relationships between associations and the state). Nevertheless, the lobbying power of Chinese employers is rising. They are able to form pressure groups rapidly to exert pressure on the government if forthcoming regulations and policies are likely to have a significant negative impact on their business environment. The drafting of the Labour Contract Law (2008) is a good example—the final version was watered down from the draft version as a result of employers lobbying to maintain flexibility in hiring and firing.

Established in 1953, the ACFIC, also called the All-China General Chamber of Industry and Commerce, is a chamber of commerce with enterprises and personnel from the private economic sector as its main component. It is a channel for the CCP and the government to liaise with the private sector, an aid to the government in administering and serving the private economy. In 2008, ACFIC added an employment relations function and was recognised by the state as a representative of employers in national tripartite consultations in 2010. ACFIC's espoused functions and tasks include promoting harmonious labour relations, participating in coordination of labour relations, promoting social harmony and stability, and representing and safeguarding the legitimate rights and interests of the private sector (see ACFIC 2015).

As mentioned, the state is no longer as dominant, though it is still a major employer in the urban sector. Private firms and FIEs are becoming major employers too. Employers of different ownership forms operate in different historical, legislative, economic and labour market contexts. Their business strategies and employment policies are heavily influenced by the context. Outside the state sector, employment relations are shaped mainly at the enterprise level, and display different characteristics across various ownership forms, as we show in this chapter.

### **Workers**

Not only has the Chinese government's economic policy triggered radical changes to its economic structure; it has also brought about fundamental changes in the ideological identity and demographic profile of its workers. These changes have diverse implications. During the state-planned economy period, Chinese workers were relatively homogeneous, consisting largely of employees in urban areas who were employed primarily

by the state. The status of workers under socialist China was political as much as it was economic. Workers were regarded by the state as the 'masters' of the country (see Sheehan 1999). The term 'working class' differentiated urban workers from those in rural areas (peasants). The former enjoyed a high level of social welfare and benefits. By contrast, the latter were relatively deprived. Employment relations in the state sector were portrayed as harmonious, with workers participating in the democratic management of the workplace and production activities through their union organisations and worker representatives.<sup>2</sup>

The reforms in SOEs since the late 1980s have led to profound changes in employment relationships between the workers and their state employers. An important change is the end of employment security and the reduction of workplace welfare provision. These changes have undermined, and in some cases almost ended, paternalistic bonds between the state employer and its workers. A significant proportion of the labour discontent and disputes has come from those who have been affected negatively by these changes. However, a number of SOEs have transformed themselves successfully, and continue to perform very well (e.g. see Nolan 2001). This is particularly the case for the extremely large SOEs that are controlled directly by the central government (*yangqi*). Well-performing SOEs continue to adopt a paternalistic management style, offering even better welfare benefits to their employees than they once did as a result of the improved performance of the enterprise (Chan & Unger 2008).

Meanwhile, the opening up of the economy has attracted millions of rural migrant workers seeking employment in urban areas. They have played a pivotal role in China's recent economic development. The inflow of rural migrant workers to urban areas started in the late 1980s, and there are now probably more than 262 million rural migrant workers engaging in urban employment (*China Labour Bulletin* 2014). Most of the rural migrant workers have informal employment status, even though they have been working in urban areas or doing the same job for many years on a full-time basis. Inferior employment terms and conditions, in terms of job security, pay level and working conditions, are a distinctive feature of this category of workers. Most of them have no written employment contract, little training, few rest days, no social security and little health and safety protection. They work long hours, live in poor conditions and are largely unorganised and unrepresented (e.g. Chan 2001; Gallagher 2005; Lee 2007; Pun & Smith 2007). Delays in getting paid are common, especially in the construction industry (Cooke 2008).

The inferior employment conditions endured by rural migrant workers are a legacy of the non-egalitarian socialist development

strategy adopted by the government, in which urban development has been achieved at the expense of rural populations (e.g. Solinger 1999; Meng 2000). Institutionalised discriminative practices continue when rural migrant workers enter urban employment. Although efforts have been made by the government to eliminate discriminative practices since the 1990s through regulatory and policy intervention, the lack of comprehensive legislative coverage and effective enforcement in the private and informal sectors means that these workers remain largely unprotected (Cooke 2011).

In sharp contrast to the above two groups of workers is the younger generation of university graduates employed in government and public sector organisations, well-performing private firms and prestigious multinational enterprises (MNEs). Following the expansion of higher education in the early 2000s, China has produced millions of university graduates each year, in addition to thousands who have been educated overseas. For example, the number of university graduates grew from 2.12 million in 2003 to almost 7 million in 2013 and a predicted 7.27 million in 2014 (China Education Online 2013). However, the prospect of gainful employment has not been achieved by all of them, so the term 'ant tribe' (*yizu*) has been coined to describe the expanding force of under-employed or unemployed university graduates.

Meanwhile, the well-documented talent shortage in China (e.g. Farrell & Grant 2005; Malila 2007; Cooke et al. 2014) means that some of them hold a high level of bargaining power in determining their terms and conditions. Enterprises are relying on financial rewards (e.g. pay rises, bonus and stock options) and career development opportunities as the main mechanisms to attract and retain talented and experienced employees (Wang et al. 2007; Cooke 2012). This new generation of workers—particularly the post-1980s generation (i.e. those who were born after the implementation of the one-child policy in the 1980s)—tends to have different values and a very different work ethic from those of the older generation of workers, who were more influenced by the traditional Chinese cultural values and socialist work ethics such as loyalty, obedience and diligence. Young graduate employees have little knowledge about the unions (Cooke 2012), and seem to be more materialistic, with stronger career aspirations and a keen desire to progress (Arkless 2007; Malila 2007; Cooke 2012).

### Unions

Only one union—the All-China Federation of Trade Unions (ACFTU)—is recognised by the Chinese government. The ACTFU–CCP tie dates

back to the 1920s (the union was founded in May 1925), when grassroots union organisations served as the party member recruitment bases and provided vital support to the CCP by mobilising workers. Since the founding of socialist China, the ACFTU has become one of the eight 'mass organisations' that have the function of organising and representing specific social groups, such as women, youth and workers. A distinct feature of these political organisations is that they have to be recognised and led by the CCP. This institutionalises superior and subordinate relationships between the party and the mass organisations, depoliticises the relationship and tries to disguise any conflicts and power struggles between these organisations and the state. Although the relationship between the party and the ACFTU has not always been smooth, attempts by the ACFTU to gain greater power and autonomy have been suppressed by the party (You 1998; Sheehan 1999). Similarly, attempts to form autonomous workers' unions are suppressed, as was the case during the Tiananmen Square incident in 1989.

The governance structure of the ACFTU branches includes vertical and horizontal reporting lines. They are under the dual control of the local government at the lower levels and their organisational branch at higher levels. ACFTU branches are responsible for liaising with union organisations at the enterprise level, where they have to win recognition from employers.

The roles and responsibilities of the unions are set out by laws: the Trade Union Law (1950, 1992, amended 2001), the Labour Law (1995) and the Labour Contract Law (2008). According to the Trade Union Law (2001: Article 6), 'the basic function and duty of the trade unions is to safeguard the legal rights and interests of the employees. While upholding the overall rights and interests of the whole nation, trade unions shall, at the same time, represent and safeguard the rights and interests of employees'. Article 7 further stipulates that the 'trade union shall mobilise and organise the employees to participate in the economic development actively, and to complete the production and work assignments conscientiously, educate the employees to improve their ideological thoughts and ethics, technological and professional, scientific and cultural qualities, and build an employee team with ideals, ethics, education and discipline'.

According to Martin's (1989: 78) typologies, the Chinese trade unions fall within the 'authoritarian' category as the 'state instruments', carrying out a 'decisively subordinate role' that is 'concerned with both production and protection'. The unions' primary responsibility is the state (Martin 1989), the interests of which are not necessarily aligned with those of the workers. Under the socialist system, in which the state

employer and the workers are perceived to share the same interests, the unions' main functions are to organise social events, take care of workers' welfare, help management implement operational decisions, organise skill training, raise employee morale and coordinate relations between management and workers (Verma & Yan 1995). They carry out these functions effectively by acting as a 'conveyor belt' between the CCP and the workers (Hoffman 1981). The way the ACFTU is operationalised has led to questioning by global union organisations, labour movement activists and scholars about its legitimacy as a genuine union (e.g. Taylor & Li 2007).

Since the mid-1990s, when SOEs shed millions of their workers, skill training and assisting laid-off workers to regain employment have been two major functions of the unions. With the growth of new ownership forms outside the state sector and the concomitant social welfare reforms in the state sector, the welfare role of the state has been diminishing. The formerly relatively harmonious management-labour relations have been replaced by relations that are characterised by conflicting interests, more disputes and increasing inequality in contractual arrangements between capital and labour. However, the role of the unions—or, more specifically, the union officials' perception of their duties—has not changed sufficiently to reflect the new reality. Union officials generally lack the resources, power, skills and legal knowledge to fulfil their collective bargaining role and to defend their members' rights (Warner & Ng 1999; Cooke 2012). They are often ineffective in representing workers' interests against management prerogatives, and sometimes even side with management (e.g. Clarke 2005).

Nevertheless, the ACFTU is the largest national union confederation in the world, measured by its official membership (Warner & Zhu 2010). As shown in Table 12.2, union density has been consistently high, at more 90 per cent, since 1990 in workplaces where union organisations are established. The number of grassroots union organisations has grown substantially since 2009. So has the number of full-time union officials in union branches, after experiencing a brief period of decline between 2001 and 2004 when union organisations underwent a period of restructuring and downsizing as part of the state sector reform. Nevertheless, the high level of membership in unionised workplaces has not brought real power to workers. Once a union is established in an enterprise—particularly in the urban sector—it is almost mandatory for its employees to become members.

The majority of studies on the Chinese unions have taken a union-bashing approach, highlighting their inadequacy in organising and representing workers' interests. Much less attention has been paid to

**Table 12.2 Enterprise union membership**

Year	Grass- roots unions (000s)	Employees (000s)	Female employees (000s)	Members (000s)	Female members (000s)	Union density (%)	Full-time union officials (000s)
1952	207	13,932	–	10,023	–	71.9	53
1962	165	26,671	–	19,220	–	72.1	86
1979	329	68,972	21,717	51,473	–	74.6	179
1980	376	74,482	25,186	61,165	–	82.1	243
1985	465	96,430	35,967	85,258	31,492	88.4	381
1990	606	111,569	42,910	101,356	38,977	90.8	556
1995	593	113,214	45,153	103,996	41,165	91.9	468
2000	859	114,721	45,345	103,615	39,173	90.3	482
2005	1174	159,853	60,163	150,294	55,748	94.0	477
2006	1324	181,436	67,193	169,942	61,778	93.7	543
2007	1508	204,524	74,945	193,290	70,422	94.5	602
2008	1725	224,875	81,688	212,171	77,738	94.4	705
2009	1845	245,353	86,526	226,344	82,484	93.3	746
2010	1976	253,454	92,881	239,965	88,715	94.7	864
2011	2320	273,047	102,112	258,851	97,636	94.8	998
2012	2663	293,715	110,145	280,213	106,110	95.4	1079

Note: Since 2003, statistical coverage of the number of grassroots unions has been adjusted. [Original note in NBSC 2010.]

Sources: Compiled from NBSC (2010: 885; 2013: 927).

the institutional environment in which unions need to gain recognition, and the diversifying organising strategies deployed by the ACFTU at the operational level. Kim et al. (2014) and Liu (2010) are among the few exceptions. Drawing on a large dataset and a dual institutional pressure perspective, Kim et al.'s (2014: 34) study of union recognition by foreign MNEs in China concludes that a foreign firm is more likely to recognise unions if the legitimacy of collective representation is high in its home country and 'if it is located in a Chinese city where

union recognition is prevalent among Chinese-owned firms'. Similarly, Liu (2010: 30) argues that the ACFTU is not a monolithic organisation; instead, 'there is considerable variation within ACFTU in terms of local union organising strategies', and different patterns of organising may have 'vastly different consequences for the future of trade unions and collective bargaining in China'.

A small number of studies provide a more balanced assessment of the ACFTU. For example, the senior leadership of the ACFTU has been regarded as instrumental in pressing for collective regulation in labour legislation (Clarke & Pringle 2009; Taylor & Li 2010). Similarly, Chen (2007: 65) acknowledges the ACFTU for 'its effort to promote the pro-labour legislation', particularly in drafting the Labour Contract Law and the Labour Disputes Mediation and Arbitration Law. In addition to their legislative role, unions also have a direct economic impact, particularly in the enforcement of mandatory social insurance, although evidence about union influence on pay is inconclusive (e.g. Yao & Zhong 2013).

## THE PROCESS OF EMPLOYMENT RELATIONS

### Collective consultation and collective contracts

The notion of collective bargaining was first introduced in employment relations in China in the early 1990s, after the Trade Union Law (1992) authorised unions at the enterprise level to conclude collective contracts with employers. The state prefers the term 'collective consultation' rather than 'collective bargaining'. It holds that consultation is a more constructive approach than bargaining, as the former conforms to the Chinese culture of non-confrontation and conflict avoidance. In 1994, the Provisions on Collective Contracts was issued by the Ministry of Labour, which provided detailed regulations to support the collective contracts provision outlined in the Labour Law of 1994 (see Taylor et al. 2003; Brown 2006 for more detailed discussion). Unions have been given the official role of representing workers in consultation with employers. This position of the unions has been reinforced and expanded in the subsequent amended Trade Union Law (2001) and the improved Provisions on Collective Contracts (2004), which superseded the 1994 version. According to the Trade Union Law (2001), a union shall represent employees in the negotiation and signing of a collective contract. Matters that can be concluded in a collective contract may include pay, working time, rest breaks, vacations, occupational safety and health, training, insurance and welfare. In addition, local labour authorities are responsible for facilitating and monitoring the consultation process.

The establishment of this tripartite consultation system is an important mechanism for the government, unions and enterprises to strengthen social dialogue and cooperation in coordinating labour relations. Achievements have been made in the period since this system was implemented. Collective contracts are widening to cover a range of aspects of labour standards, though pay remains the major issue (Zhang 2006). The ACFTU is also pushing for collective contracts that provide large coverage, such as region-based and industry-wide collective contracts.

However, there is still scope to improve the collective contract system that has been developed since the late 1990s (Brown 2006; Clarke et al. 2004). The collective consultation system does not provide an independent framework for regulating employment relations. Most collective contracts are standard agreements made between the employer and the union without the direct involvement of workers or any real negotiation process. Where there is collective bargaining, it takes place mostly at the enterprise level. The government is trying to promote industry-based bargaining, or multi-establishment bargaining for enterprises (often MNEs) that have operations in various parts of China. But region-wide or nationwide collective contracts may be too broad to reflect local needs. This gives managers an excuse to ignore local union representatives (Cooke 2011). Wal-Mart (China) is one example (China Labor News Translations 2008).

### **Resolution of labour disputes**

A labour dispute reconciliation system was established in the early 1950s. After a period of disruption during the Cultural Revolution (1966–76), the system was resumed in 1987 with the promulgation of the Temporary Regulation for Labour Disputes Reconciliation in State-Owned Enterprises. This was amended in 1993 and implemented as the Labour Disputes Reconciliation Regulation. The regulation was later incorporated into the Labour Law (1995), which forms the legal basis for settling labour disputes. The Labour Law officially brought all labour disputes in all enterprises under the jurisdiction of the formal dispute resolution system (Cooke 2008).

The labour dispute resolution system consists of three stages: mediation, arbitration and litigation (see Taylor et al. 2003 for a more detailed description). Mediation is the initial procedure; it usually takes place in the enterprise where the dispute occurs through a mediation committee consisting of representatives of the employer, the employees and the union or a third party who is acceptable to both parties to the

dispute. Resolution of the dispute through consultation and voluntary mediation is the approach encouraged by the state. Any agreements made at this stage and beyond are legally binding. If this approach fails, then one of the two parties in dispute can apply to the Labour Dispute Arbitration Committee for resolution. An arbitration committee will then be formed to arbitrate the dispute. A dispute case can also be submitted directly to the arbitration committee without going through the initial stage of mediation at the enterprise level if it is felt that mediation is unlikely to settle the dispute. However, a dispute case will not be accepted for lawsuit until after it has been through the arbitration procedure. Cases resolved by the arbitration committees are classified as being settled by mediation, arbitration or other means. If either party is not satisfied with the arbitration ruling, then the case can be appealed at the local People's Court. At each stage, emphasis is made on resolving the conflict through negotiation, mutual understanding and voluntary agreement between the parties directly involved. Labour disputes are categorised as individual or collective disputes.

Several characteristics have emerged from the rising trend of labour disputes since the adoption of the Labour Law (1995), which peaked in 2008 and 2009 following the enactment of the Labour Contract Law and the Labour Disputes Mediation and Arbitration Law in 2008 (see Table 12.3). First, the number of labour disputes accepted by the arbitration committees at all levels had been rising in the 2000s before starting to decline from 2010. This is due to the strong promotion of mediation by the state to maintain a harmonious society, sometimes by forcing arbitration applications back down to workplaces for mediation (Cooke 2012). As we can see from Table 12.3, the proportion of cases settled by mediation has been increasing steadily since 2007, from about 35 per cent in 2007 to 47 per cent in 2012. In addition, a substantial number of cases are mediated outside the arbitration system. Nevertheless, we do not know the level of satisfaction with mediation and arbitration of those involved, which could assess their relative efficiency and effectiveness.

Second, pay, social insurance and termination of employment contract have been the major causes of disputes. Third, the proportion of cases won by workers appears to be significantly lower than the proportion of cases submitted by them, and appears to have been in decline, from 46 per cent of the cases being won by the workers in 2007 to only 33 per cent in 2012. In comparison, the decline of cases won by employers has been much less pronounced, from about 14 per cent of the cases being won by employers in 2007 to 12 per cent in 2012.

In addition to the official labour disputes resolution system, workers rely on other channels to voice their grievances and seek

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**Table 12.3 Number of labour disputes and settlements (by year)**

	2007	2008	2009	2010	2011	2012
Cases from previous year	25,424	33,084	83,709	77,926	42,308	36,151
Cases accepted in current year	350,182	693,464	684,379	600,865	589,244	641,202
Collective labour disputes	12,784	21,880	13,779	9314	6592	7252
Cases filed by workers	325,590	650,077	627,530	558,853	568,768	620,849
<i>Cases by cause of dispute</i>						
Remuneration	108,953	225,061	247,330	209,968	200,550	225,981
Social insurance	97,731	-	-	-	149,944	159,649
Change of labour contract	4695	-	-	-	-	-
Termination of labour contract	80,261	139,702	43,876	31,915	118,684	129,108
Workers involved	653,472	1,214,328	1,016,922	815,121	779,490	882,487
Collective labour disputes	271,777	502,713	299,601	211,755	174,785	231,894
Cases settled	340,030	622,719	689,714	634,041	592,823	643,292
<i>Cases settled by means of settlement</i>						
Mediation	119,436	221,284	251,463	250,131	278,873	302,552
Arbitration lawsuit	149,013	274,543	290,971	266,506	244,942	268,530
Others	71,581	126,892	147,280	117,404	69,008	72,210
<i>Cases settled by result of settlement</i>						
Lawsuit won by employing unit	49,211	80,462	95,470	85,028	74,189	79,187
Lawsuit won by workers	156,955	276,793	255,119	229,448	195,680	213,453
Lawsuit partly won by both parties	133,864	265,464	339,125	319,565	322,954	350,652
Cases mediated	151,902	237,283	185,598	163,997	194,338	212,937

Sources: Compiled from NBSC (2010: 885; 2013: 927).

justice—for example, letters and petitions (Thireau & Hua 2003), workplace industrial actions, and street protests, which are often spontaneous (Chan 2001; Chen 2003; Gallagher 2005; Lee 2007). Official statistics on labour disputes reveal only a partial picture. The precise number of labour disputes, industrial actions and street protests, and the total number of those who are involved, may not be recorded. Another development in is industrial action-driven collective bargaining, especially in MNE-funded manufacturing plants such as Honda (Nanhai) and Foxconn (Cooke 2014; Elfstrom & Kuruvilla 2014). Negotiations take place after strikes (see below).

### **Labour market flexibility**

The key features in the labour deployment strategy adopted by enterprises in developed economies to combat labour and skill shortages and the pressure of global competition include temporary employment, job sharing, annualised hours, and part-time and seasonal work. Chinese labour market flexibility is achieved through the rapid expansion of the informal employment sector, including agency employment. The primary motives are cost savings (from employers' perspectives) and the creation of employment opportunities (from the government's perspective). China has been experiencing a change from a rigid internal labour market dominated by the state sector to an increasingly informal and unprotected labour market since the mid-1990s. Redundant SOE workers and former rural migrant workers constitute most of those in informal employment. Increasingly, though, university graduates are also joining the informal employment ranks through a variety of job-placement schemes (e.g. internships, trainee schemes, long probation, in-sourcing, agency employment) innovatively introduced by employers to avoid formal employment commitments. The main causes of university graduates' unemployment, under-employment and insecure employment include the rapid expansion of higher education, the absence of skills sought by employers and a lack of work experience.

The opening up of the economy to the private sector and foreign investment since the mid-1990s, and the government's prioritisation of the interests of capital rather than those of labour in the interests of economic development, have led to widening income disparities across different social groupings and regions. The Gini coefficient<sup>3</sup> has been recorded to be above 0.4 (the international warning line) since 1992, and it has subsequently increased. According to *The Economist* (2013), China's Gini coefficient was 0.474 for 2012, having peaked at 0.491 in 2008. Low wages for workers with undifferentiated skills have

been a main cause of income disparities. Li et al.'s (2014) analysis of the nationally representative China General Social Survey data suggests that the average level of under-payment was almost 44 per cent in the period 2003–08, which is substantially higher than generally estimated in developed economies.

### **Employment agencies**

Accompanying the rise of informal employment has been a significant growth since the mid-1990s in the number of employment agencies tailored for the lower end of the labour market. Despite being around since the mid-1990s (Xu 2009), employment agencies represent relatively new institutional actors in employment relations. Most employment agencies and job centres have been set up by, or under the auspices of, local governments to provide services at the lower end of the labour market. In 2001, there were nearly 27,000 employment agencies, 70 per cent of them funded by local governments at various levels as part of the multi-level employment services network. By 2009, the number of employment agencies had grown to more than 37,000. The number of employees working in employment agencies had increased from fewer than 85,000 in 2001 to 126,000 in 2009 (NBSC 2002, 2010). This significant growth was a response to the large-scale downsizing in the state sector, the inflow of rural migrant workers to urban areas to seek employment and the growing number of unemployed school leavers and university graduates (Li et al. 2006). More importantly, it was an opportunistic growth that stemmed from the enactment of the Labour Contract Law in 2008. While the objective of the law was to offer a greater level of employment protection to workers, an unintended consequence has been the dismissal of long-serving employees, stopping recruitment and the use of agency employment (Cooke 2012). This necessitated the amendment of the Labour Contract Law in 2013 and the introduction of the Interim Provisions on Labour Dispatch (2014).

According to the Employment Agency Regulation of 1995, employment agencies established by local labour authorities should be non-profit-making, whereas those set up by private enterprises unrelated to the authorities can be either profit-making or non-profit-making. Most employment agencies charge service fees, often beyond the price set by the local authority. Employment agencies have been criticised for their lack of professionalism, up-to-date market information and ability to coordinate various organisations related to labour market services. Their training function is under-resourced and poorly

equipped. Their training content is out-dated, and fails to reflect what is most needed by employers (Li 2000). The legitimacy of employment agencies as labour market brokers is also questioned by job seekers (Li 2003; Mu 2003). Despite all these limitations, employment agencies play an increasing role in the labour market, and agency employment forms a part of employers' staffing strategies. It remains to be seen how effective the amendment of the Labour Contract Law and the Interim Provisions on Labour Dispatch are in offering an enhanced level of protection to workers.

### **The rising level of labour disputes and workers' bargaining power**

A key feature of employment relations since the mid-2000s has been the increasingly public and high-profile protests and strikes undertaken by workers to seek justice in both the public and private sectors. According to the ACFTU, there were nearly 10,000 collective disputes in a year, including strikes, go-slows, appeals and demonstrations (Lu 2010). Similarly, the *China Labour Bulletin* (2014) recorded nearly 1200 strikes and worker protests between mid-2011 and the end of 2013. These actions included high-profile strikes organised by workers seeking improved terms and conditions in MNE establishments in various major cities; protests from taxi drivers over high costs, cumbersome local government regulations and enterprise charges; protests from teachers in remote regions over pay arrears; and protests about poor terms and conditions of sanitation for workers hired (some via subcontracting) by local governments.

These events are officially referred to as 'mass incidents' to disguise or underplay their disruptive and antagonistic nature. This euphemism partly reflects traditional Chinese culture, characteristic of confrontation avoidance and harmony-seeking. It also reflects a political ideological demand to maintain stability. The right to strike is neither denied nor granted in the Chinese labour laws. The state-controlled ACFTU does not have the right to organise industrial action. Strikes are dealt with by local governments pragmatically as and when they emerge in the absence of legal guidance (Cooke 2013).

In developed economies, industrial action usually takes place as organised events following the failure of negotiations to reach an agreement. By contrast, such attempts at dispute resolution in China in recent years have occurred in the reverse order, with strikes and protests taking place without any forewarning and before negotiation has been attempted to settle the dispute. These spontaneous events

often take the enterprise, union and government by surprise, and exert an enormous amount of pressure on unions and the government to deal with the situation rapidly to avoid contagion (Cooke 2013).

Within the domestic private sector, a diverse range of expressions of worker discontent and power wrestling with proprietors—often covertly and subtly, and on a day-to-day basis—has been found. These include, for example, slack attitudes, low efficiency, material waste, go-slows, sabotage, a low level of organisational citizenship behaviour and a high level of negligence (e.g. Liu & Yuan 2005; Cooke 2013).

The above instances of confrontational industrial action and covert expressions of discontent suggest that Chinese workers are increasingly becoming aware of their rights and willing to advance their interests through self-organising and other forms of expression. They are not powerless, although many workers still have poor terms and conditions of employment (Cooke 2013; also see Box 12.1).

Labour NGOs, including international and domestic ones, are emerging industrial relations (IR) actors, and have been playing a growing role, particularly in southern China. They have been developing the rights awareness of workers and facilitating pay negotiations and dispute settlement. In some cases, they have been pivotal in strike-driven collective bargaining (e.g. Cooke 2012; Lee & Shen 2011).

#### **BOX 12.1 HONDA (NANHAI) STRIKES**

On 17 May 2010, a high-profile strike took place, involving some 1900 workers and interns in the Honda (Nanhai) car component plant in the Pearl River Delta region of south-eastern China. Striking workers were demanding substantial pay increases, better pay and conditions for student interns who were one-third of the workforce, job security and, most importantly, a union to be elected by and accountable to the workers at the plant. The strike, which lasted for two weeks and paralysed Honda's whole operation in China due to the 'just-in-time' production mode, ended in a total victory by the workers, who were given a 24 per cent pay rise and a promise of democratic union elections. This success inspired other Honda plants in China, whose workers also went on strike and won substantial wage increases. Workers' successful industrial actions in Honda have also inspired their counterparts in other foreign plants in China, including Toyota and Hyundai, to follow suit.

The strike was initially led by two workers; they were later sacked by Honda. Workers then refused to send representatives to negotiate with management for fear of being singled out for reprisals. They wore face masks and uniforms to conceal their identities during the strike action. Young and information technology (IT) savvy, the workers used internet chat rooms and other social networks to organise the strike and maintain communication. As the strike continued, the workers not only developed higher consciousness of the importance of having a formal organising body through the setting up of a democratic union in their factory, but also employed Professor Chang Kai, the influential Beijing-based IR scholar, as their expert adviser to guide them through the negotiations with management. Honda (Nanhai) raised wages three times in 2010 as a result of the collective bargaining between the workers and the company.

When the strike started, ten union officials tried to shut down the workers' picket line, although a thin apology from the local government was made afterwards (Watts 2010). This suggests that peacekeeping rather than defending worker rights was the main priority of the unions. It also showed that the local unions were not well equipped to handle strikes. Under heavy public criticism, the union's attitude changed as the strike went on, and it became more proactive in facilitating the negotiation process.

The Honda (Nanhai) case and other similar cases highlight the growing mobilisation of labour activism in channelling worker demands and the impact of worker-led collective bargaining. However, these achievements have been made possible with the support of other key institutional actors, including lobbying by the government and unions to broker deals, and the involvement of media, scholars and other pressure groups (Xie 2011). Nonetheless, the success of such worker-led collective bargaining, facilitated by worker-elected representatives rather than state- or enterprise-appointed union officials, suggests that effective bargaining can take place only when workers play an active part in it, with the support of state institutions and other actors. In many ways, the government's continuing involvement in dealing with labour disputes reflects the institutional inefficacy in dispute resolutions and the low level of confidence from the workers in this system (Cooke 2013).

Sources: China Labor News Translations (2010); Martin (2010); Watts (2010).

## CONCLUSIONS

Employment relations in China have undergone significant changes during the process of economic reform, notably in how the interests of workers are defined, challenged and defended. Characteristics of employment relations are diverging across different ownership forms, sectors and groups of workers. This is a trend that reflects those in developed economies in spite of fundamental contrasts that remain—in particular, union independence and strength. Due to the lack of representational strength of the unions and employers' associations, employment relations are shaped largely between the employer and the workers, with the majority of workers having little bargaining power. Where changes in employment practices are taking place, these often follow employment-related laws and regulations. The role of the state therefore continues to be crucial in shaping employment relations. However, despite the government's desire to create a more humanistic employment environment for workers through tightening legislative governance and a more harmonious society, the intended effect of laws and regulations is not always achieved. Employers continue to find ways to bypass legal constraints. Many workers may tolerate exploitative employment practices for fear of job losses, while others mobilise their bargaining power to advance their interests.

Unions are active mainly in the state sector, and in private enterprises that have strong government ties, although new initiatives of organising—such as special unions for smaller enterprises, community unions for the unemployed and project unions for construction sites—are promoted to organise those outside the state sector. Unions largely play a welfare role, which is inadequate for representing those in the private sector and those working in poorly managed SOEs. It is therefore not surprising that the level of disaffection with unions is high among SOE workers, who have experienced radical changes with worsened employment outcomes. The level of union identification is low among rural migrant workers; this reflects their unmet representation needs. In comparison, public sector employees are more receptive to, and vocal in their demands for, the welfare role of the unions. In this sector, employment relations remain relatively stable, and are less challenged by the market economy. And there is plenty of scope for the unions to improve their (welfare) functions (Cooke 2012).

More broadly, the welfare role of the unions continues, as it reflects both the government's ideology of building harmonious employment relations and the traditional Chinese culture. Benevolent paternalism, collectivism and harmony are some of the key characteristics of Chinese culture, which feature prominently in workplace relations.

The workplace plays an important role in providing social bonding activities to develop and maintain a harmonious relationship among employees, and between employers and their workforce. The provision of employee welfare and employee entertainment is traditionally seen by the Chinese as an important ingredient to improve the morale and commitment of the workforce and enhance the productivity of the firm (Cooke 2012). Unions help with organising social events and providing the welfare role required to improve the working and family life of employees. This role is particularly important when the HR function in the majority of Chinese enterprises is underdeveloped.

To some extent, the ideal form of employment relations promoted by the government—one that is influenced by Chinese culture—can be compared with the neo-pluralistic approach to contemporary employment relations promoted by certain scholars in more developed economies. It is an approach that emphasises social cohesion and stresses the importance of social values over interests, cooperation over conflict and trust over power (Ackers 2002). There has been a diversification of unions' constituencies; this is consequential of the growth of the market economy. The changing context presents opportunities as well as challenges to the unions. It requires them to adopt different roles and organising strategies, especially at local levels, to address diverse needs and interests if they are to maximise their continuing potential.

## FURTHER READING

- Chan, C.K.C. (2010) *The Challenge of Labour in China: Strikes and the Changing Regime in Global Factories*. London: Routledge.
- Chen, F. & Xu, X. (2012) "Active judiciary": Judicial dismantling of workers' collective action in China'. *China Journal*, 67: 87–108.
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- Taylor, B. & Li, Q. (2010) 'China's creative approach to "union" organizing'. *Labor History*, 51(3): 411–28.

## USEFUL WEBSITES

- ACFTU: <[www.acftu.org.cn](http://www.acftu.org.cn)>.
- China Labor News Translations: <[www.clntranslations.org](http://www.clntranslations.org)>.
- China Labour Bulletin*: <[www.clb.org.hk/en](http://www.clb.org.hk/en)>.
- Mini...

## A CHRONOLOGY OF CHINESE EMPLOYMENT RELATIONS

- 1949 Founding of socialist China, ruled by the CCP.
- 1950 Enactment of the Trade Union Law.
- 1966-76 Chinese Cultural Revolution, during which production activities were slowed down or stopped, with the national economy on the brink of paralysis.
- 1978 Beginning of China's open door economic policy, which has led to the growth of FIEs and private firms with different employment policies from SOEs.
- 1992 Enactment of the Second Trade Union Law.
- 1992 Southern Tour by Deng Xiaoping, the architect of China's market economy; he gave a speech that endorsed the role of private entrepreneurship, leading to the rapid growth of the private sector, which has become a major employer.
- 1993 Enactment of the Enterprise Minimum Wage Regulation, which first set the monthly minimum pay for full-time workers.
- 1994 Ministry of Labour issues the Provisions on Collective Contracts, which provided details of the collective contract system outlined in the Labour Law.
- 1995 Enactment of the Labour Law—the first major piece of employment law in China.
- 1997 Beginning of the radical restructuring of SOEs, which led to millions of workers being made redundant.
- 2000 Ministry of Labour and Social Security issues the Collective Wage Consultation Trial Implementation Measures, requiring employers and workers (represented by managers and unions) collectively to consult about pay.
- 2001 Amendment of the Trade Union Law. China joins the World Trade Organization, which intensifies competition and puts pressure on Chinese enterprises to change their business and employment practices.
- 2003 Premier Wen Jiabao and President Hu Jintao take office; this marks the beginning of the pursuit of an economic development policy that emphasises social justice, social harmony and environmental protection instead of the efficiency-driven economic development policy of their predecessors.
- 2003 Premier Wen Jiabao initiates a government-led campaign in an attempt to solve the delayed pay problem endemic in industries employing primarily rural migrant workers—especially the construction industry.
- 2003 The ACFTU launches a drive to recruit rural migrant union members; it also leads the campaign to put pressure on FIEs to recognise unions.